

Jury Trial

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK

Indictment
No. 71543/2023

-against-

DONALD J. TRUMP,

FALSIFYING BUSINESS RECORDS
FIRST DEGREE

Defendant.

-----X

100 Centre Street
New York, NY 10013
May 20, 2024

BEFORE: HONORABLE JUAN M. MERCHAN, JUSTICE

A P P E A R A N C E S:
For the People:

ALVIN L. BRAGG, JR., ESQ.
District Attorney, New York County
BY: JOSHUA STEINGLASS, ESQ.
MATTHEW COLANGELO, ESQ.
SUSAN HOFFINGER, ESQ.
CHRISTOPHER CONROY, ESQ.
REBECCA MANGOLD, ESQ.
KATHERINE ELLIS, ESQ.

For the Defense:

BLANCHE LAW
BY: TODD BLANCHE, ESQ.
EMIL BOVE, ESQ.
KENDRA WHARTON, ESQ.
NECHELES LAW, LLP
BY: SUSAN NECHELES, ESQ.

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1 THE CLERK: Calling the People of the State of
2 New York versus Donald J. Trump, Indictment 71543/23.

3 Appearances, please, starting with the People.

4 MR. STEINGLASS: For the People, ADAs Joshua
5 Steinglass, Susan Hoffinger, Becky Mangold, Matthew
6 Colangelo, Christopher Conroy and Katherine Ellis.

7 MR. BLANCHE: Todd Blanche, joined by Emil Bove,
8 Susan Necheles, and President Trump seated to my left.

9 THE COURT: Good morning, Counsel.

10 Good morning, Mr. Trump.

11 THE COURT: First, I want to thank you all for
12 working out your schedule so that you could be here at
13 8:45.

14 As you know, there were a couple of issues that
15 came up over the weekend. I wanted to be able to address
16 them before the jury got here, so they wouldn't have to
17 wait.

18 As a result of some of those issues, which we'll
19 discuss momentarily, and upon further consideration, as
20 you know, it's become apparent that we're not going to be
21 able to sum up tomorrow.

22 The details of the scheduling for the rest of the
23 week will be discussed later.

24 But, right now, it's looking much more like we're
25 going to be finishing up everything that's evidence,

1 testimony, pre-charge conferences this week, so that we
2 can have summations first thing Tuesday, without a break,
3 and then we can have the charge and begin deliberations.

4 It was either have a long break now or have a
5 long break then.

6 And, unfortunately, the calendar is what it is.

7 So, let's begin with the issue that you brought
8 to my attention regarding Defense Exhibits.

9 MS. HOFFINGER: Good morning, your Honor.

10 Initially, Mr. Blanche had provided us 17
11 exhibits to which we had a number of objections.

12 He has since then pared them back.

13 We have objections now only to two.

14 We just worked out this morning with Mr. Blanche
15 a redaction to one, which had embedded hearsay, which we
16 had an objection to.

17 Now we have just one exhibit we have an objection
18 to, which we believe is hearsay. Defense Exhibit B1005.

19 I can hand it up.

20 (Whereupon, an exhibit is given to the Court.)

21 MS. HOFFINGER: This is entirely hearsay, your
22 Honor. It's a third person reporting in an email about
23 what Mr. Costello said in a meeting.

24 So, certainly, if Mr. Costello testifies, he can
25 testify to the substance of the meeting.

1 But, this is hearsay, and we object.

2 THE COURT: Give me one second to read it.

3 (Whereupon, the Court reviews the exhibit.)

4 MR. BLANCHE: 1005 is an email from
5 Mr. Costello's partner to Mr. Cohen following their
6 initial communications.

7 What Mr. Citron says to Mr. Cohen about what he
8 had talked to Mr. Costello about is they were very pleased
9 with the discussion, I know you have my cell, and that
10 you're involved on multiple fronts, I'm glad we can help
11 bring you some peace.

12 That is direct impeachment against what Mr. Cohen
13 testified to, both on direct and on cross, on Tuesday and
14 Thursday.

15 He testified that he didn't feel like he clicked
16 with Mr. Costello, they had given him an Engagement
17 Letter, and they were still working things out.

18 We are not offering this for the truth, but it's
19 certainly impeachment we can offer and cross him on it.

20 THE COURT: It would be the truth of the
21 statement you're impeaching him with; right?

22 MR. BLANCHE: Well, it depends how he answers it.

23 THE COURT: Well, how he answers it, at that
24 point the cat is out of the bag, the jury heard it.

25 So, how do you get past the hearsay argument?

1 MR. BLANCHE: Impeachment evidence, you're
2 allowed to impeach with hearsay evidence. There's nothing
3 wrong with that.

4 THE COURT: Not for the truth. Not for the truth.

5 MR. BLANCHE: Well, I'm not offering this email
6 for the truth of the matter asserted.

7 I'm offering it because there, presumably, will
8 be testimony -- unless he says something different
9 today -- that what happened at the meeting is different
10 than what this email suggests.

11 So, if he testifies something different happened
12 than what this email suggests -- it's not to say this
13 email is right.

14 THE COURT: Which meeting are you referring to,
15 specifically?

16 MR. BLANCHE: This is the initial meeting, when
17 they first met.

18 There was a couple of phone calls, your Honor,
19 and they met at a hotel with Mr. Cohen, and then there was
20 a follow-up phone call.

21 And so, what this -- what this email is about,
22 apparently, is Mr. Citron's communication with his
23 partner, Mr. Costello, about their views of how the
24 meeting went with Mr. Cohen, which is, potentially,
25 different than what -- not "potentially" -- that's

1 different from what Mr. Cohen testified to last Tuesday
2 and last Thursday.

3 MS. HOFFINGER: Judge, Mr. Citron's opinion of
4 their efforts to provide him with some comfort is not an
5 impeachment of Mr. Cohen's view of how he felt the meeting
6 went and his views about whether he wanted to retain him.

7 Whether it's impeachment or not, this is still
8 hearsay, so it should not be admissible.

9 Again -- this is opinion, also. This is a
10 lawyer's opinion, pitching a client, saying: We would like
11 to give you some comfort; allow me to give you some
12 comfort.

13 This doesn't disclose what's in Michael Cohen's
14 mind and how he felt about the meeting and how he felt
15 about retaining or not retaining the firm.

16 MR. BLANCHE: It's to Mr. Cohen.

17 This isn't an email amongst partners talking
18 about something.

19 This is an email to Mr. Cohen.

20 THE COURT: Expressing Mr. Citron's opinion.

21 MR. BLANCHE: To Mr. Cohen.

22 There's a lot of emails admitted, including by
23 the People directly, of views of the person.

24 THE COURT: There's another layer of hearsay
25 here. It wasn't sent by Mr. Citron. It was sent by Diana

1 Porcello on behalf of Mr. Citron. There's another layer of
2 hearsay.

3 At this point, at this moment, I'm not going to
4 allow it in.

5 It expresses the opinion, arguably, of Mr. Citron
6 or Mr. Costello.

7 It doesn't express the opinion of Mr. Cohen.

8 I don't think you can impeach him on this.

9 MR. BLANCHE: The People offered several exhibits
10 that were emails to Mr. Cohen like this one that expressed
11 some sort of opinion by the author; right. Meaning, the
12 author is saying to Mr. Cohen: We met, or, here's what I
13 did after what you directed me to do.

14 Those all come in.

15 Of course, whether those are the truth depends
16 on -- whether Mr. Cohen believes that's a truthful
17 statement depends on his answer or on what he wrote in
18 response to such an email, potentially; right.

19 The fact that there isn't a response to this
20 email and the fact that he will be allowed to say whether
21 this is true or not is consistent with the other emails
22 that have already been admitted around this relationship.

23 MS. HOFFINGER: Judge, I just don't see it.

24 In other words, he's going to opine on whether
25 they had a view as a firm, whether they could pitch work

1 for him where they say: I'm glad we can give you some
2 comfort.

3 They may have been on different playing fields on
4 how they felt about the meeting.

5 The exhibits admitted were admitted, and they
6 were on Mr. Cohen's state of mind on why he made decisions
7 on how to act for a period of time and, including, why he
8 did not tell the truth for a period of time, including to
9 Mr. Costello.

10 THE COURT: I don't see any probative value for
11 impeachment purposes here at all.

12 Nowhere in this email does it express Mr. Cohen's
13 state of mind.

14 You can certainly ask him some follow-up
15 questions if you like.

16 Right now, this is double hearsay, and it's not
17 Mr. Cohen's state of mind.

18 So, I'm not going to allow it.

19 Please hand this back down.

20 MR. BLANCHE: Assuming it's okay with the Court,
21 I'll show him the email and ask him a series of questions
22 and, depending on his answers, potentially, offer it at
23 that point.

24 THE COURT: What kind of questions would you ask
25 him?

1 MR. BLANCHE: For example, confirm he didn't
2 respond to this email; and, arguably, it would be an
3 admission by silence.

4 There's dozens and dozens of emails back and
5 forth amongst Mr. Cohen and Mr. Costello and Mr. Citron
6 over a two or three-month period.

7 So, him receiving this email, testifying last
8 week that this wasn't his impression, the jury has a right
9 to see how he reacted to him being told at the time about
10 what the lawyers' impression was of the meeting.

11 MS. HOFFINGER: I would object.

12 They shouldn't be able to show him this.

13 Again, this is a third person's opinion --

14 THE COURT: So, once you start asking the witness
15 these questions out of the presence of the jury, the jury
16 doesn't see the email; right. So, now, they're all sitting
17 there, wondering what is going on, what are you talking
18 about. They won't understand that testimony. It's going to
19 be confusing.

20 So, I'm not going to allow it.

21 I'm prepared to rule on the expert witness issue.

22 But, is there anything else that either side
23 wants to take up?

24 MR. STEINGLASS: Judge, I don't know if you want
25 to do this now or at another time. There's a couple of

1 additional points that we want to raise about the charge,
2 but we can wait until we have the pre-charge conference if
3 that's preferable. They're minor points.

4 THE COURT: Actually, let me go through this
5 first, and then we'll decide if we can take that up.

6 On Thursday, May 16th, the Defense made an
7 application to this Court regarding the scope of
8 permissible testimony from their expert, Brad Smith, who
9 the Defense intends to call to testify regarding Campaign
10 Finance Law. Defendant pointed to this Court's decisions
11 on Motions in Limine and, in particular, to this Court's
12 ruling that the expert could testify as to general
13 definitions and terms that relate directly to the case,
14 such as, for example: campaign contribution, relative
15 individual campaign contribution limits, expenditure, and
16 coordinated expenditure.

17 Defendant specifically requested permission to
18 elicit testimony from Mr. Smith about the three separate
19 terms.

20 First, the term, "For the purpose of influencing
21 an election for Federal office."

22 As I understand it, in order to define this term,
23 the expert would rely upon legal precedent, including the
24 Supreme Court's decision in Buckley and the D.C. Circuit's
25 decision in Orloski.

1 The second term is the, "Irrespective Rule."

2 Here, the Defendant would like to elicit, among
3 other things, testimony regarding the Federal Register
4 Provision that discusses the FEC.

5 They would also like to rely upon agency advisory
6 opinions and agency adjudications.

7 I won't go into the "Press Exemption" here
8 because you both submitted your exceptions as to that.

9 Ordinarily, expert testimony is permissible to
10 assist the jury in understanding topics that are beyond
11 the ken of the average juror. For example, DNA evidence,
12 blood splatter evidence, and countless other fields.

13 But, an expert is not permitted to present or
14 interpret the law.

15 However, it seems to this Court that it will be
16 impossible for Mr. Smith to testify about these three
17 subjects without invoking, discussing and interpreting the
18 application of Federal Law in the form of legal precedent,
19 advisory opinions, agency adjudications, and even the
20 purpose and intent behind the creation of some of these
21 rules.

22 In his argument on Thursday, Mr. Bove offered
23 that Mr. Smith would only testify as to very basic matters
24 and, at a bare minimum.

25 See Thursday's transcript on Page 238.

1 However, it is difficult to reconcile how an
2 expert would testify to the very basic topics and, yet,
3 have to rely on Supreme Court decisions, other legal
4 precedent, advisory opinions, agency adjudications, and
5 even the Federal Register to explain how and why the
6 provisions were developed.

7 Clearly, this would virtually all fall under the
8 umbrella of legal opinion.

9 If Mr. Smith is permitted to testify to these
10 subjects, the People would have to be given an opportunity
11 to offer an expert to testify as to these same legal
12 principles, as well.

13 The jury would then hear my instructions on the
14 law, as well as the instructions from two others. As
15 Mr. Colangelo pointed out on Thursday, the jury would hear
16 legal instructions from three different people: the
17 Defense expert, the People's expert, and the Court.

18 As Mr. Bove alluded to last week, there is no
19 question this would result in a battle of the experts,
20 which will only serve to confuse and not assist the jury.

21 Indeed, Mr. Smith has been precluded from
22 testifying about similar matters in the Southern District
23 of New York by Federal District Court Judge Lewis Kaplan
24 in the matter of United States v. Bankman-Fried. There,
25 Judge Kaplan found the testimony was improper precisely

1 because it sought to instruct the jury on matters of law.

2 Likewise, Mr. Smith was precluded from testifying
3 about similar subjects in United States v. Suarez in the
4 Northern District of Ohio. In Suarez, the Court ruled that
5 the proposed testimony was irrelevant because, quote:
6 Whether the law is commonly misunderstood does not weigh
7 on whether the defendant in this case intended to violate
8 Campaign Finance Laws.

9 The same holds true here.

10 The fact that both parties have submitted
11 proposed jury instructions does not change this Court's
12 prior rulings on the Omnibus Motions and the Motions in
13 Limine and does not in itself make relevant what is not
14 relevant.

15 The proposed jury instructions are just that:
16 proposals.

17 The Court will hear argument, consider the
18 submissions, and then decide whether to accept one
19 version, or the other, or a combination of both, or
20 possibly neither. The Court may craft its own instructions
21 or decide that no instruction is necessary at all.

22 Therefore, I again invite you to submit proposed
23 jury instructions regarding the "Irrespective Rule" and
24 "For the purpose of influencing an election for Federal
25 office".

1 I believe you both already submitted proposals
2 for the "Press Exemption".

3 Having said that, that does not, necessarily,
4 mean I will use either one or the other. I may not
5 instruct the jury on either one of those rules.

6 As far as what the expert can testify to, I
7 direct you back to Page 3 of my decision.

8 He can testify as to what the FEC is, its
9 purpose, background as to who makes up the FEC, what laws,
10 if any, the FEC are responsible for enforcing, and general
11 definitions and terms related directly to this case, such
12 as "contribution", "expenditure", and "independent
13 expenditure".

14 By "general definitions", I mean just that.
15 Where the FEC has defined a general term, the expert can
16 refer to that definition, but he cannot interpret it.

17 I also do not want the expert to delve into
18 defining words or phrases contained within a word or
19 phrase he is already defining. In other words, no
20 sub-phrases or sub-definitions.

21 I invite both sides to come to the charge
22 conference prepared to argue these issues, and I also
23 invite you to submit written proposals in advance of the
24 charge conference.

25 Any questions about that?

1 MR. BOVE: Yes, Judge.

2 Thank you. And we appreciate the guidance.

3 I think the challenge for us is, is that the
4 phrases that your Honor referred to, "For the purpose of
5 influencing an election" and the regulatory phrase that we
6 all described as the "Irrespective Rule", those are just
7 absolutely critical to the jury understanding the
8 Government's allegations in this case.

9 And so, coming into the trial, our plan and our
10 hope, based on your Honor's ruling, was that we would give
11 the jury guidance on those issues through Mr. Smith, on
12 the understanding -- on the understanding, your Honor,
13 that in The Trump Organization trial you had not
14 instructed the jury down to the level of a 175.10
15 predicate and, also, on the understanding that in pretrial
16 motion practice, I think under People v. Mackey, if I
17 remember correctly, the Government had taken the same
18 position.

19 So, that was our strategy coming into the trial,
20 understanding that there is some tension in that strategy,
21 with us needing the jury to understand what those terms
22 mean, but also the traditional role of the Court in
23 telling the jury what legal terms mean.

24 I do think things changed a little bit when both
25 sides proposed additional instructions on FECA.

1 To be clear, our instructions we submitted last
2 week do include instructions related to the terms at
3 issue, "For the purpose of influencing a Federal election"
4 and "Irrespective Rule", especially because the
5 "influencing" conduct is part of the texts of
6 "contribution" and "expenditure", as the Court knows.

7 The tough spot that we're in right now, I think,
8 is that your Honor has not indicated a firm intention to
9 instruct the jury on FECA. And so, we're in a place where
10 we're -- we understand the Court's ruling.

11 You have our position.

12 We're restricted in what Mr. Smith could say.

13 And, frankly, Mr. Smith reading the texts of
14 those statutory definitions is not going to help the jury
15 grapple with the issues that these charges present and
16 that the Government, from their new theory of this case,
17 presents.

18 I know it's not the best position, for a lawyer
19 to be asking questions to the Court. It usually goes in
20 the other direction. I understand that.

21 But, we are trying to make decisions about our
22 defense, how to present it. It impacts closings and the
23 charge conference.

24 I am wondering if you are willing to give us any
25 sense on the way you're leaning, if you're going to

1 instruct the jury on the FECA issues. If that's the case,
2 that would be helpful for us to understand, because,
3 obviously, we would come to the pre-charge conference,
4 both sides, armed up with authorities and the authorities
5 they cited. From our cite, they would sound like whatever
6 in our best world Mr. Smith would say to the jury. And we
7 would, ultimately, resolve that at the charge conference.

8 The issue for us, what would be helpful in terms
9 of clarity is anything you can give us is the Court's
10 intention on instructing the jury on these issues.

11 I think it's undisputed among the parties that
12 it's appropriate the way the Government constructed the
13 predicate and the underlying activity.

14 THE COURT: I think at this point, beyond -- as
15 you already referred to the way I instructed the jury in
16 the People v. The Trump Organization, I can tell you, when
17 it comes to these types of matters, I often think that
18 less is better.

19 I think that is -- you must remember, the People
20 are not required to prove these offenses beyond a
21 reasonable doubt; therefore, that reduces the need or the
22 burden to define every term and every phrase.

23 The problem that you have, as I see it, is that
24 your client can't testify to these definitions without
25 invoking the law.

1 You haven't told me that he can.

2 If you were to tell me that he can take the stand
3 and, without relying on legal precedent or advisory
4 opinions or how these matters have been interpreted, how
5 the law has been interpreted, he might be able to take the
6 stand and do that. But he can't. Not the way I see it
7 right now.

8 MR. BOVE: Sensing the signals you gave us on
9 Thursday, in working with Mr. Smith this weekend, I was
10 pretty clear with him: We're not talking through Buckley
11 v. Valeo. We're not going to talk to this jury about
12 Orloski.

13 This was my idea working with him last night:
14 What we want is for you to explain to the jury what these
15 terms mean, and we won't get into the bases of your
16 review.

17 He's a former Commissioner of the FEC. He has an
18 authoritative view on what these things mean.

19 Is that based on interpretations of the law?
20 Yeah. He's a lawyer. That makes sense on the basis for it.

21 We were not going to get into the details based
22 on the Valeo and Orloski arguments on Thursday.

23 That's one issue.

24 I want to clarify. If there were no restrictions,
25 what we would do, ideally, when we're presenting our

1 defense case, is I would ask a series of questions: What
2 does expenditure mean? What does contribution mean? The
3 terms your Honor outlined.

4 And then, multiple times in that testimony he
5 will include in that definition, "For the purpose of
6 influencing the election."

7 And then I would elicit: What does that term
8 mean?

9 And he would explain his answer as an expert,
10 offering an opinion about what the term means.

11 And he would not say: My understanding is based
12 on this and that and this, and then it would be the
13 Government's --

14 THE COURT: You're offering him as an expert.

15 MR. BOVE: Right.

16 THE COURT: A lawyer, an expert in this field.

17 Therefore, he doesn't have to say he relied on a
18 Supreme Court decision. He's still presenting the law with
19 the authority of a legal expert.

20 MR. BOVE: I understand that.

21 So -- so -- I completely understand that point.

22 I do think, though, that we're still in a very
23 tricky situation, because the way the Government has
24 structured these business records charges -- I understand
25 we're not going to have a pre-charge conference now. But,

1 there's one point that I want to make. This is a
2 fundamentally different charging structure than what
3 happened at the prior trial.

4 At the prior trial, I think the predicates were
5 really substantive charges, and the jury got a sense of
6 that.

7 THE COURT: Forgive me for interrupting you.

8 How they structured it in their proposal at this
9 moment carries no weight. The Court could very well decide
10 I agree with you a hundred percent, that the way that they
11 presented it is not appropriate.

12 I'm not sure that I agree with you that there's a
13 change in theory.

14 But, I do see what you're talking about when
15 you're talking as to structure in their proposed charges.

16 MR. BOVE: My point is, what makes this case
17 different, then, is that the predicate for the 175.10
18 charge, this New York Election Law conspiracy, that
19 conspiracy to influence the election, to promote a
20 candidate, the statutory language is: "only unlawful if
21 there is unlawful activity."

22 And so, otherwise, it's just an agreement to try
23 to win an election.

24 That's why I think that statute has not been
25 applied very many times.

1 There is a -- the charges in this case require a
2 showing of a predicate; and then for that, on the
3 Government's theory today, as of the proposed
4 instructions, there is a -- there has to be a predicate of
5 the predicate.

6 THE COURT: All right.

7 Just to clarify, when you refer to being in a
8 difficult position, I want to be clear, the Court has not
9 changed its position from day one. My decision on the
10 Omnibus Decision remains the same. My decisions on the
11 Motions in Limine remains the same. I offered guidance in
12 those motions. And, therefore, you've known for months --
13 this is not new -- you've known for months what my
14 position would be.

15 If you had concerns about these specific topics
16 and you wanted an earlier ruling, you could have come to
17 me -- just relax.

18 You could have come to me for an earlier ruling
19 some time ago. But you didn't. And now, you've waited
20 until the People are basically done with their direct
21 case, their case in chief.

22 You're asking me for further guidance, but that's
23 precisely why we have a pre-charge conference, so that you
24 know exactly what you can use on summations.

25 It would be inappropriate for me to tell you

1 right now what my charge is going to be without hearing
2 from both sides what the recommendations are.

3 MR. BOVE: I understand, Judge.

4 What has changed, the reason that we didn't come
5 to you, say, at the February hearing on this is because at
6 that point in the Government's theory of the case, FECA
7 was still a 175.10 predicate on our understanding.

8 I think that's the way that your Honor described
9 it in the Omnibus rulings.

10 From what -- from our perspective -- I understand
11 what you're saying.

12 From our perspective, what is new is FECA is now
13 buried under the New York Election Law predicate.

14 What makes that difficult, we submit, is that the
15 Government has to establish there was intent -- intent to
16 defraud and intent to conceal a crime.

17 That New York Election Law charge is only a crime
18 if people who were part of that conspiracy, there was an
19 agreement, and it had to be to violate the law.

20 So, there is no 175.10 predicate -- this is our
21 argument -- unless there's a FECA violation or -- I know
22 about the tax and the business records charge. We'll talk
23 about that at the charge conference and when we talk about
24 the sufficiency of the Government's case.

25 But, the way it's structured now -- we did,

1 respectfully, learn about that when the People submitted
2 their instructions. So, it was recent, in fairness to us.

3 THE COURT: Again, it's just a proposed
4 instruction. That's all it is.

5 MR. BOVE: I can't imagine your Honor is going to
6 put to the jury a theory that's different than the one the
7 People are explaining of the case.

8 That's all I mean.

9 THE COURT: I can tell you that I'm going to be
10 consistent with my earlier rulings.

11 If you recall, the People initially had four
12 theories. I ruled that they could not use one of those
13 four theories, and there were three theories left.

14 To the extent it's your opinion -- and I think
15 there's some merit to your argument -- that it appears
16 there might not be one theory and that the others are
17 being kind of inserted to that one theory, I can tell you,
18 the Court has taken note of that.

19 MR. BOVE: So, the only point I'm making -- this
20 is a very long windup. I'm sorry.

21 We appreciate you being here.

22 THE COURT: It's all right.

23 MR. BOVE: From our perspective, the way --
24 however your Honor is going to treat the Government's
25 proposal, the way the Government's proposal is structured

1 adds significance for the need for this jury to understand
2 what FECA obligated people to do and did not obligate
3 people to do.

4 We're not seeking to offer testimony from
5 Mr. Smith like the testimony from Suarez you referenced,
6 that the law is confused and -- that's not what we want to
7 do.

8 Fundamentally, our issue and our concern right
9 now is that these two -- it's the phrases at issue, For
10 "the purpose of influencing election" --

11 THE COURT: Why don't we do this. I'd like to
12 give them a chance, as well. Give me an offer of proof
13 what he would say. Tell me what he would say in response
14 to those questions, and I'd be in a better position to
15 determine whether it's an appropriate response or not.

16 Let me hear from the People.

17 MR. COLANGELO: Three quick points.

18 First, to respond to the argument that any aspect
19 of the People's Election Law violation theory is new, we
20 briefed this quite explicitly in Opposition to the
21 Defendant's Omnibus Motion, which we filed November 9th of
22 last year. In that Opposition, I'm looking at Page 25, we
23 identified violations of FECA as among the unlawful
24 means -- that's a part of the Election Law violation.

25 We specifically said: The evidence is sufficient

1 to support the conclusion that Defendant and others
2 conspired to promote the election of any person to a
3 public office by entering into the scheme, specifically
4 for the purpose of influencing the 2016 presidential
5 election, and that they did so by unlawful means,
6 including by violating FECA through the unlawful,
7 individual and corporate contributions by Cohen, Pecker
8 and AMI, and by falsifying the records of other New York
9 enterprises, and mischaracterizing the nature of their
10 payment for tax purposes.

11 So, dating back at least six months, we have been
12 clear to the Defense and to the Court that the Election
13 Law object crime relied for its unlawful meanings theory,
14 the unlawful FECA violations, unlawful false filings of
15 business records, and tax violations.

16 So, there's nothing new at all about the unlawful
17 means argument in our Election Law theory.

18 The second point I would make, as the Court has
19 just said, the Judge should and will charge on appropriate
20 legal definitions in the charge conference, and the
21 Defense is not entitled to have an expert front-end that
22 process.

23 I think, in some ways, what Mr. Bove just said,
24 asking your Honor for a preview of what you will do in the
25 charge conference, is to say: If your Honor is not

1 inclined to include those definitions, that's why they
2 need the expert to testify.

3 That's a back-door way around what your Honor
4 ultimately decides as to what is an appropriate legal
5 instruction.

6 We agree with Your Honor's conclusion this
7 morning that the Court should review the legal
8 submissions, hear arguments at a pre-charge conference,
9 and then decide what the charge should be.

10 Obviously, we're interested in hearing any other
11 offer of proof, as well.

12 I think Mr. Bove just said: Precisely because
13 Mr. Smith is a lawyer and a law professor and a former
14 Commissioner of the FEC, his entire experience in
15 understanding how these terms apply is based on
16 interpretation.

17 I think the transcript will show Mr. Bove just
18 said his understanding of how these terms are defined is
19 based on interpretation.

20 So, it's very hard to see how -- beyond the
21 barest definition included in the text alone, with nothing
22 more, it's hard to see how any testimony here could
23 proceed within the appropriate boundaries the Court has
24 set and could proceed within those boundaries without
25 inviting responsive testimony for the battle of the

1 experts the Court is concerned about.

2 Thank you.

3 THE COURT: That's my ruling on this.

4 Is there anything else we need to go over?

5 MR. BLANCHE: If we can approach, briefly?

6 THE COURT: Sure.

7 (Whereupon, the parties approach sidebar.)

8 (Whereupon, the transcript continues on the
9 following page.)

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Proceedings

(Whereupon, the following proceedings were preceded by a sealed discussion at sidebar.)

(Whereupon, the following proceedings are held at sidebar:)

MR. BLANCHE: So, as it stands right now, we have, potentially, Mr. Smith; potentially, Mr. Costello; and then our paralegal to put in one phone chart, which is very quick.

We, obviously, need to think about Mr. Smith.

Honestly, we're going to think about Mr. Costello, depending how this morning goes.

There's still a lot up in the air.

That's where we're at.

THE COURT: Okay.

Do you think this changes things at all as far as the scheduling, or are we still on the same track?

MR. BLANCHE: I'll let everybody speak.

I think the problems you identified yesterday remain, no matter who testifies or who does not testify today, because even if we're finished and everybody rests by the afternoon today, we're still on a tight schedule to have a full charge conference with complicated issues, have your Honor make a decision, tell us what the decision is going to be, sum up tomorrow -- I don't need to restate the same things -- spill over to Thursday. You may charge

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Senior Court Reporter

1 them or maybe not.

2 THE COURT: Just so you know, I was just handed a
3 note, telling me that the alternate who had to leave by
4 one o'clock on Thursday has canceled his appointment, so
5 we no longer have to stop at one o'clock on Thursday.

6 I don't know that that really changes much,
7 because in the back of my mind, one of the options was
8 just to continue without him, anyway.

9 I don't think that changes much.

10 Look. You've all worked really hard on this case,
11 well before we stepped foot in this courtroom.

12 I don't think that we should rush through the
13 jury charges and the pre-charge conference.

14 We want to get this right. We all want to get it
15 right.

16 I want to hear your arguments. I want to be able
17 to research it.

18 I want to give you the proposed charges with as
19 much notice as possible so you can prepare your
20 summations.

21 Believe me, I would hate to be down from today
22 until next Tuesday. I've never done that. But, I think
23 that's what's in the best interest of the case.

24 MR. STEINGLASS: Can I ask a quick question -- of
25 course, we're fine with that.

2 I agree with that.

3 Are you thinking about the charge conference
4 tomorrow, or are you thinking about the charge conference
5 this afternoon?

6 Does it depend on when the testimony ends?

7 THE COURT: It depends.

8 If the testimony ends sometime today, I think we
9 can have the charge conference tomorrow afternoon, so we
10 can all prepare for it.

11 I think I definitely want to have it before
12 Thursday.

13 MR. STEINGLASS: I totally agree.

14 Tomorrow, at the latest, would be perfect.

15 THE COURT: We'll shoot for tomorrow afternoon.

16 (Whereupon, the transcript continues on the
17 following page.)

18 | *****

Proceedings

(Whereupon, the following proceedings were
preceded by a sealed discussion at sidebar.)

(Whereupon, the following proceedings were held
in open court:)

THE COURT: Let's take a short ten-minute break.
We'll start up around 9:30.

(Whereupon, a recess is taken.)

THE CLERK: Remain seated.

Come to order. Part 59 is back in session.

THE COURT: Going back to my request that you
submit the proposals, what I would like is for one side or
the other to draft a proposal as to each one of these
theories, give it to the other side. Then I can get
redline version of it and see where you differ.

Because, the safer course may be, at the end of
the day, to keep things as simple as possible for the
jury.

And, if the two sides can agree on the
definitions of these terms, that's all the better.

You decide who wants to draft it and who wants to
do the redline. You can send it to me.

MR. BOVE: Yes, Judge.

THE COURT: Let's get the witness, please.

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1 COURT OFFICER: Witness entering.

2 (Whereupon, the witness, Michael Cohen, having
3 been previously duly sworn and/or affirmed, resumes the
4 witness stand and testifies as follows:)

5 THE COURT: Good morning, Mr. Cohen. Welcome
6 back.

7 I remind you, you're still under oath.

8 THE WITNESS: Good morning, your Honor.

9 THE COURT: Let's get the jury, please.

10 COURT OFFICER: All rise.

11 Jury entering.

12 (Whereupon, the jurors and the alternate jurors
13 are present and properly seated.)

14 THE CLERK: Do all parties stipulate that all
15 jurors are present and properly seated?

16 MR. STEINGLASS: Yes.

17 MR. BOVE: Yes.

18 THE COURT: Thank you.

19 Good morning, jurors. Welcome back.

20 Counsel, you may inquire.

21 MR. BLANCHE: May I?

22 CONTINUED CROSS-EXAMINATION

23 BY MR. BLANCHE:

24 Q Good morning, Mr. Cohen.

25 A Good morning.

1 Q So, we ended last Thursday. Since that time until
2 right now, how many reporters have you talked to about what
3 happened last week?

4 A I didn't speak to reporters about what happened last
5 week.

6 Q You didn't speak to a single reporter about what
7 happened last week?

8 A I have spoken to reporters who just called to say
9 hello, to see how I'm doing, to check in. But I did not talk
10 about this case.

11 Q So, the reporters you spoke with just greeted you and
12 asked how you were doing, didn't speak at all about your
13 testimony last week?

14 A Correct.

15 Q Now, you -- prior to your testimony -- let's focus on
16 2024.

17 So, just since the beginning of this year, you talked to
18 reporters pretty extensively about this case; correct?

19 A I have, yes.

20 Q Again, just focus on this year.

21 Did you -- how many times did you meet with the Prosecutors
22 of this case, again, just this year, in 2024?

23 A More than a dozen.

24 Q More than a dozen.

25 Like, more than 12, but -- 20 times?

1 A It's possible, yes.

2 Q Well -- and I'm not looking for an exact number, but
3 is it closer to 20 or closer to 12?

4 A Probably closer to 20.

5 Q Were those meetings all more than an hour?

6 A Yes, sir.

7 Q Were some of them more than two hours?

8 A Yes, sir.

9 Q When is the most recent time you met with them?

10 A Approximately ten days ago.

11 Q So, you testified on Monday -- you started to testify
12 on Monday of last week. Was it over the prior weekend?

13 A Yes, sir.

14 Q When you met with the Prosecutors -- again, just
15 focused on this year, 2024 -- they asked you questions similar
16 to what they asked you last Monday or Tuesday; right?

17 A They asked me questions, yes, sir.

18 Q Right.

19 But, that wasn't my question to you.

20 They asked you questions similar to the questions they
21 asked you on the stand on Monday and Tuesday of last week;
22 correct?

23 A The same topics, yes, sir.

24 Q Well, the topic you testified to hasn't changed in
25 your prep with them for a long time; right?

1 A Correct.

2 Q So, my question is different than the way you're
3 answering.

4 When they asked you questions last Monday and Tuesday,
5 okay, when Ms. Hoffinger asked you questions, you had heard
6 those questions from her before, during prep; correct?

7 A Some of them. Not all of them.

8 Q What's a question you were asked last week that you
9 were hearing for the first time?

10 A (Shakes head). I can't tell you. There were many
11 questions that I have not heard before.

12 Q So, you heard many questions last Monday or Tuesday
13 that you were hearing for the very first time?

14 A Yes, sir.

15 Q How about documents?

16 The documents that you were shown by the People last Monday
17 and Tuesday and the emails and text messages and the records
18 and the invoices, you had reviewed those in prep with the
19 People; right?

20 A That's correct.

21 Q And there were some emails and documents, I assume,
22 that you were shown in prep that you were not shown last week;
23 meaning you went over them in prep, but they, ultimately,
24 weren't shown to you by the People last week; right?

25 A Correct.

1 Q The prep you're talking about for this trial -- maybe
2 not to the same extent -- but, any time you would testify under
3 oath, you would prep for it; right?

4 A Correct, sir.

5 Q Maybe not more than 20 times.

6 Any time you prep to be under oath, you meet with your
7 lawyer and other people, and you prep; right?

8 A Yes.

9 Q That includes when you testify before Congress?

10 A Yes, sir.

11 Q Do you know someone named Dan Goldman?

12 A I know Dan Goldman; yes, sir.

13 Q Who is Dan Goldman?

14 A Dan Goldman is a member, now, of Congress.

15 Q He's met with you in prep for certain testimony, as
16 well?

17 A Congressional testimony, yes.

18 Q Which Congressional testimony was that?

19 A House Oversight Committee.

20 Q So, that was the one in February of 2019; is that
21 right?

22 A Yes, sir.

23 Q How many times did you meet with him?

24 A I believe, twice.

25 Q You know he's a former Federal Prosecutor; right?

1 A Yes, sir.

2 Q During the testimony you gave in February of 2019,
3 that's one of the times when you lied; right?

4 A Yes, sir.

5 Q Now, I'm gonna start, briefly, with the time in
6 October of 2016; okay.

7 So, we're going back to the few weeks leading up to when
8 you put money in and then paid the NDA with Ms. Daniels; okay.
9 So, early October until October 26th; okay.

10 You said last week, correct me if I'm wrong, that there was
11 significant urgency to the Daniels situation at that time;
12 right?

13 A Correct.

14 Q And that issue, the Ms. Daniels issue was taking a lot
15 of your time; right?

16 A Yes, sir.

17 Q And when you spoke with President Trump during that
18 time, you testified last week that many of the times you spoke
19 with him, it was about that issue; right?

20 A Yes, sir.

21 Q Whether it was on the phone or in person; right?

22 A Correct.

23 Q But, you'll agree with me, right, that you had a lot
24 going on, both in your personal life and with President Trump,
25 in those first few weeks of October; right?

1 A Yes, sir.

2 Q Do you recall dealing with a meaningful issue with
3 respect to your taxi medallion business and whether you should
4 invest or restructure loans? Do you remember doing that at the
5 time?

6 A Yes, sir.

7 Q You were doing that with Mr. Freidman? He was,
8 possibly, part of that deal?

9 A No, sir. That's incorrect.

10 Q We'll come back to that.

11 You were also dealing with a loan -- I think it was a
12 loan -- correct me if I'm wrong -- on one of your investment
13 properties that you have with your brother; is that right?

14 A I had an investment property with my brother, but
15 there was no loan.

16 I believe it was a sale.

17 Q Well, do you recall in the October timeframe working
18 on -- working with a lawyer to close a deal that generated
19 \$7 million, that ultimately closed at the end of October of
20 2016?

21 A Yes, sir.

22 As I said, it was a sale.

23 Q And that was with your brother?

24 A Yes, sir.

25 Q Now, you also were working -- you testified last week

1 about your work for the National Diversity Coalition for
2 President Trump.

3 There was a fair amount of work going on in October with
4 respect to that, as well; right?

5 A Yes, sir.

6 Q Do you recall, right around October 26th and the
7 week before, getting an endorsement from a family member of
8 Dr. King?

9 A Yes, sir.

10 Q And that was very important, for sure; right?

11 A It was very important.

12 Q Do you also recall working pretty closely in that time
13 period, early October to October 26th, with Mr. Pecker, but not
14 on anything to do with what you testified about, with a
15 separate litigation involving iPayment?

16 A I do. Yes.

17 Q In that case, a lawyer named Marc Kasowitz was
18 involved; right?

19 A Correct.

20 Q And another lawyer that you knew was involved, as
21 well; right?

22 A (Shakes head). I don't --

23 Q You don't recall?

24 A No, sir.

25 Q We'll come back to it.

1 What about, do you remember, at that same time period
2 leading right up to the 26th, helping one of President Trump's
3 sons -- daughters, Tiffany Trump, with a potential extortion of
4 photographs; do you remember that?

5 A I do.

6 Q That was leading up -- right up to the 25th and the
7 26th of October; right?

8 A Yes, sir.

9 Q In connection with that issue, do you remember having
10 a conversation with Mr. Pecker about that?

11 A Yes, sir.

12 Q And a conversation with the General Counsel of AMI
13 about that?

14 A Yes, sir.

15 Q And then, we talked about the issue with the harassing
16 phone calls last week; right.

17 That also happened in that time period, leading up to the
18 26th; right?

19 A Yes, sir.

20 Q So, I started talking about the taxi medallion issue.
21 Do you know somebody named John Lydon? L-Y-D-O-N.

22 A Yes, sir.

23 Q Who is that?

24 A He is a mortgage broker, bond broker out of Florida.

25 Q Was that the person that you were working on a

1 potential deal with in the first few weeks of October of 2016?

2 A Yes, sir.

3 Q What's the name of his company?

4 A Resolution Consultants.

5 Q So, his Florida entity that he runs his business out
6 of is called the same thing that you called your LLC when you
7 opened it up in early October?

8 A Yes, sir.

9 Q That was right when you were talking to him about,
10 potentially -- about a deal with respect to some loans around
11 some of the medallions that you had investment in, or they were
12 your medallions?

13 A No, sir.

14 I spoke to Mr. Lydon about I had a mortgage on a property,
15 and I was looking to sell that mortgage to him.

16 Q Using Mr. Lydon?

17 A Yes, sir.

18 It didn't have to do with medallions. It had to do with a
19 piece of real estate --

20 Q Go ahead.

21 A -- in Florida that I had a first-position lien on.

22 Q You're sure that the deal didn't have something to do
23 with the New York City medallion portfolio, an overview of the
24 portfolio as of August 31, 2016?

25 A No.

1 I believe Mr. Lydon had to do with a mortgage that I had on
2 a piece of real estate in Florida.

3 Q So, if I can show you what's been marked for
4 identification, just for you and for the parties and the Court,
5 B130.

6 (Whereupon, an exhibit is shown on the screens of
7 the witness and the parties.)

8 MR. BLANCHE: If we can focus on September 28th
9 of 2016.

10 (Whereupon, the witness reviews the exhibit on
11 his screen.)

12 Q Do you see that text message from someone named Kerry?

13 A I do.

14 Q That's Mr. Lydon's wife?

15 A I believe so, yes.

16 Q Do you have any doubt?

17 A I do not.

18 Q So, you see that communication from her, saying, "The
19 New York City medallion portfolio overview as of 8/31," and
20 then there's an attachment, a spreadsheet?

21 A Yes, sir.

22 MR. BLANCHE: We can take that down.

23 Q Do you recall receiving a text a few days later from
24 John, from Kerry's husband, saying that he wanted to talk to
25 you about that over the weekend?

1 A Yes, sir.

2 Q And then you -- we don't have to go through every
3 communication.

4 You had multiple communications around that issue into
5 October; correct?

6 A Correct.

7 Q And you talked to him on the phone about it, as well?

8 A Yes, sir.

9 Q If we can put up just for you and the parties and the
10 Court B132, which is an October 13th email.

11 (Whereupon, an exhibit is shown on the screens of
12 the witness and the parties.)

13 Q Take a look at that, and see if you remember that and
14 that it was a medallion acquisition proposal that you were
15 discussing.

16 (Whereupon, the witness reviews the exhibit on
17 his screen.)

18 A Yes, sir.

19 Q And then, do you recall your conversations with
20 Mr. Lydon, again, during that time period in early
21 October 2016, he was asking you to find somebody to help invest
22 with you, to find a client who has the funds to invest with
23 you; do you recall that?

24 A Yes, sir.

25 Q And the client was Mr. Freidman; right?

1 A No, sir.

2 Q So, let's take a look, if we can -- well, let's step
3 back for a minute.

4 You were contacting -- communicating with Mr. Freidman
5 regularly during that time, as well; right?

6 A He was the medallion operator for medallions; yes,
7 sir.

8 Q So, it's fair to say you were, obviously,
9 communicating with him a lot; is that fair?

10 A Yes.

11 Q If you can now take a look at what's been marked for
12 identification as B133.

13 (Whereupon, an exhibit is shown on the screens of
14 the witness and the parties.)

15 Q This is part of the deal that you were working on with
16 Mr. Lydon involving Resolution Consultants.

17 I highlighted some of those at the top.

18 Those are all medallion loans that were part of your
19 relationship with Mr. Freidman; right?

20 A No, sir.

21 Q No?

22 A No, sir.

23 Q What were they part of?

24 A I don't know.

25 I was never partners with Mr. Freidman.

1 Q What do you mean by that?

2 A Mr. Freidman was a licensed New York City medallion
3 agent, and he was running my medallions, both in New York as
4 well as some in Chicago.

5 Q So, the spreadsheet that Mr. Lydon sent to you that
6 went to October, that doesn't refresh your recollection whether
7 Mr. Freidman was part of that deal?

8 A No, sir.

9 MR. BLANCHE: You can take that down.

10 Q We can show you B144, which is an October 14th email.

11 (Whereupon, an exhibit is shown on the screens of
12 the witness and the parties.)

13 Q Take a look at that.

14 Take your time reading it, and see if that refreshes your
15 recollection about whether Mr. Freidman was part of that deal.

16 MS. HOFFINGER: Objection, Judge, just as to
17 characterizing the testimony.

18 THE COURT: Let's see if it refreshes his
19 recollection.

20 (Whereupon, the witness reviews the exhibit on
21 his screen.)

22 A Sir.

23 MR. BLANCHE: You can take that down.

24 Q Does that refresh your recollection about who is the
25 funder that you were interested in getting for that deal?

1 A No, sir.

2 Q Well, do you recall right after receiving that email,
3 you called Mr. Freidman regularly on that day?

4 A I spoke -- yes, I spoke to Mr. Freidman.

5 Q Now, during that time period, do you recall any issues
6 with Mr. Freidman because of his financial situation?

7 A Because of the entire taxi industry financial
8 situation.

9 Q Well, I'm not -- I'm not talking about the entire
10 industry.

11 I'm asking you whether you were having issues with
12 Mr. Freidman paying you during that time period?

13 A Yes, sir.

14 Q Checks were bouncing?

15 A Yes, sir.

16 Q You were having a hard time getting checks from him?

17 A Yes, sir.

18 Q And there was a ton of communication about that at
19 that time; right?

20 A Yes, sir.

21 Q Do you recall whether he was also going through
22 something personal during that time?

23 A Yes, sir.

24 Q What was he going through?

25 A Marital problems.

1 Q Did you, in that time period, help him with respect to
2 his marital problems?

3 A I tried.

4 Q What did you try to do?

5 A I tried to assist in bringing them back together, as
6 well as talking to him about potential lawyers.

7 Q Did you help him find a place to live?

8 A Yes, sir.

9 Q Was that --

10 MS. HOFFINGER: Judge, I'm going to object at
11 this point.

12 THE COURT: Please approach.

13 (Whereupon, the following proceedings were held
14 at sidebar:)

15 MS. HOFFINGER: I understand we're going into
16 some areas that he was busy in October.

17 But, to go into some other person's personal
18 marital issues and whether he assisted him, I don't see
19 how that's relevant.

20 THE COURT: Where are you going with this,
21 Mr. Blanche?

22 MR. BLANCHE: Mr. Cohen, in October, was
23 dealing with a tremendous number of issues, including
24 Mr. Freidman, who, the Court will recall, very quickly
25 after that gets into a lot of legal trouble coming out of

1 his financial problems.

2 During this time, there is a series of
3 communications we're about to talk to him about, where
4 he's working to get an apartment for him in one of Ivanka
5 Trump's apartments. That's all.

6 Two questions.

7 THE COURT: Do you have to bring up
8 Mr. Freidman's financial troubles?

9 How does that factor into Mr. Freidman's
10 financial troubles?

11 MR. BLANCHE: Because he, eventually, cooperates
12 and testifies against him in the Southern District of New
13 York.

14 MS. HOFFINGER: So what?

15 Are you suggesting Mr. Cohen can't do more than
16 one thing at a time as a lawyer for a company?

17 THE COURT: Keep it to three more questions about
18 him being busy.

19 MR. BLANCHE: All right.

20 (Whereupon, the following proceedings were held
21 in open court:)

22 (Whereupon, Senior Court Reporter Laurie
23 Eisenberg is relieved by Senior Court Reporter Lisa
24 Kramsky, and the transcript continues on the following
25 page.)

1 (The following proceedings are continued from the
2 previous page.)

3 *****

4 CONTINUED CROSS-EXAMINATION

5 BY MR. BLANCHE:

6 Q So, you helped him find an attorney; is that correct?

7 A I did.

8 Q And is that all during that same time period, meaning
9 the first few weeks of October, meaning around and up until
10 October 26th and maybe a little bit after; right?

11 A Yes, sir.

12 Q Did you have -- the Resolution Consultants deal that
13 you were working on, did that deal ever close?

14 A No, sir.

15 Q So, when you opened Resolution Consultants in early
16 October, your testimony is that you opened this because of
17 the -- you needed to find an LLC for the Karen McDougal payment
18 and for all of the materials that AMI had on President Trump,
19 the company wasn't because you were considering doing this deal
20 with the Resolution Consultants in Florida?

21 A No, sir.

22 Q Now, I want to talk for a few minutes about the
23 iPayments litigation.

24 What do you recall about that litigation?

25 A I don't recall the specifics of it.

1 Q Do you remember an individual named Michael Sirota?

2 A Sirota.

3 Q Sirota.

4 Who is Mr. Sirota?

5 A Mr. Sirota is a partner over at a law firm called
6 Cole Schotz.

7 Q Do you recall him being Mr. Pecker's attorney in
8 connection with this litigation?

9 A Yes, sir.

10 Q And that litigation was filed the very last day of
11 September 2016; correct?

12 A Yes, sir.

13 Q And do you remember what that litigation was about?

14 A Again, I do not.

15 Q Do you remember whether another colleague of yours
16 named Marc Kasowitz represented the other side of that
17 litigation?

18 A Yes, sir.

19 Q And that was when, at least for part of that time, you
20 were in London, visiting your daughter and celebrating your
21 anniversary; correct?

22 A Correct.

23 Q And you recall having communications with Mr. Sirota,
24 at that point when you were in London, about this litigation?

25 A Yes, sir.

1 Q Ultimately, you tried to play a role in settling that
2 litigation; right?

3 A Yes, sir.

4 Q And one of the reasons you did that is because of your
5 friendship with Mr. Pecker?

6 A Yes, sir.

7 Q Is one of the reasons you did that because of
8 your relationship with Mr. Sirota and your relationship with
9 Mr. Kasowitz?

10 A They are all friends, yes, sir.

11 Q They are all friends of yours?

12 A Yes, sir.

13 Q And you communicated to them about that in October;
14 right?

15 A Yes, sir.

16 Q Do you -- but you also were at least exploring the idea
17 of getting a job at iPayments; correct?

18 A It was floated, yes, sir.

19 Q And that was -- when you say "it was floated" -- during
20 that time period it was floated; right?

21 A Yes, sir.

22 Q So, all of this was within the few weeks during that
23 time around October 26th?

24 A Yes, sir.

25 Q Now -- and we talked about this for a few minutes at

1 the beginning of your testimony today, but you worked with an
2 individual named Pastor Darrell Scott on the National Diversity
3 Coalition; right?

4 A That's correct.

5 Q And, at the time, I believe you testified last Tuesday,
6 this was a pretty big, big deal for you and for the campaign;
7 right?

8 A Yes, sir.

9 Q And the week of October 26th, in fact, on October 25th,
10 you were sent a video link about Dr. King's niece's support for
11 President Trump; right?

12 Do you remember that?

13 A I do.

14 Q And the niece is a doctor herself; right?

15 A Yes, sir.

16 Q So, this was a big deal for you; right?

17 A It was a big deal for everyone.

18 Q So, including you?

19 A Yes, sir.

20 Q And on October 26th, you -- so, that's the day that you
21 caused the -- that the payment was made to Ms. Daniels'
22 attorney; right?

23 A Correct.

24 Q You talked on multiple times that day with folks
25 associated with Dr. King's statement and the fact that she was

1 now going to be supporting President Trump; right?

2 A That's correct.

3 Q She actually participated in an event later on that
4 week; do you recall that?

5 A I do.

6 Q Do you recall you and Pastor Scott trying to
7 immediately put her on the Board or whatever leadership position
8 you all had at the time; is that right?

9 A That's correct.

10 Q And all that was happening the week of the 24th, 25th
11 and 26th; right?

12 A Yes, sir.

13 Q And then, I mentioned this earlier with President
14 Trump's daughter, do you recall on October 25th -- so, the day
15 before -- do you recall her communicating with you that she had
16 concerns about somebody trying to blackmail her?

17 A Yes, sir.

18 Q And do you recall that you handled it immediately?

19 A Yes, sir.

20 Q You spoke with Mr. Pecker?

21 A Yes.

22 Q You spoke with the -- with, obviously, with Miss Trump
23 about it -- with Tiffany Trump about it; correct?

24 A Yes.

25 Q And you then, later, spoke with the General Counsel at

1 AMI; correct?

2 A Correct.

3 Q And that was all to figure out a way to shut this down;
4 right?

5 A Correct.

6 Q And that all happened in the afternoon and evening of
7 October 25th; correct?

8 A Correct.

9 Q Are you sure about that?

10 I could show you documents.

11 A No, I believe it's correct.

12 Q So, do you remember -- now I'm talking about the 26th,
13 the day this all happened. You testified on direct that you had
14 two phone calls with President Trump that morning, at 8:26 and
15 at 8:34.

16 The 8:26 call was three minutes and one second; the 8:34
17 call was one minute and twenty-eight seconds.

18 Do you remember talking about that?

19 A I do.

20 Q Correct?

21 A Yes.

22 Q Now, you testified on direct that the reason why you
23 wanted to speak with President Trump on that day was to make
24 sure that he approved of what you were doing, you needed his
25 approval for this, and that was the sum and substance of the

1 conversation.

2 You wanted the deal -- you wanted Ms. Daniels to not be
3 able to sell her story to The Daily Mail, and you were about to
4 go across the street and do it, so you wanted his blessing;
5 right?

6 A That's correct.

7 Q And that's still your testimony today?

8 A Yes, sir.

9 Q Now, do you remember what was happening in the
10 campaign, what President Trump was doing on October 26th?

11 A Sir, I don't understand your question.

12 Q Well, do you have a recollection of what President
13 Trump was doing on the 26th in connection with his campaign;
14 rallies, interviews or anything else?

15 A He was doing rallies basically every day.

16 Q All right.

17 But, do you have a specific recollection of what he was
18 doing on that day?

19 A No, sir.

20 Q So, let me show you what has been marked for
21 identification, just for you, the Court and the parties, B168.

22 (Displayed for the aforementioned parties only.)

23 Q And I don't know that you've ever seen this before, so
24 I'm not showing it to you like you have.

25 I'm just showing it to you to see if it refreshes your

1 recollection.

2 MS. HOFFINGER: Objection, your Honor.

3 THE COURT: Sustained.

4 Q Well, do you remember that morning, okay, so the
5 morning of the 26th, that President Trump was going to sit down
6 and do an interview with ABC News right after 9:00?

7 Does that ring a bell?

8 A No, sir.

9 Q Does it ring a bell, though, if I reminded you that it
10 wasn't just President Trump, it was going to be his entire
11 family that was sitting down with Mr. Stephanopoulos, so not
12 just President Trump, but also his children and Melania Trump as
13 well?

14 MS. HOFFINGER: Objection, your Honor.

15 THE COURT: Sustained.

16 Q That doesn't ring a bell, Mr. Cohen?

17 MS. HOFFINGER: Objection.

18 THE COURT: Sustained. The objection is sustained.

19 Q Do you recall -- are you familiar with the Post Office
20 Building in Washington, D.C.?

21 A I am.

22 Q Do you recall, for a time period, President Trump owned
23 that; right?

24 A Yes, sir.

25 Q Do you recall October 26th being the day that there was

1 an opening ceremony for that?

2 Do you remember that?

3 A No, sir.

4 Q So, but you do have a specific recollection, it sounds
5 like, that on those two phone calls, you just talked about the
6 Stormy Daniels deal; that's it?

7 A Because they were important to me.

8 Q So was fixing Tiffany Trump's situation important to
9 you?

10 A It was important that I take care of it, but it was not
11 personally important to me.

12 Q But that wouldn't have been something you updated her
13 father about when you spoke with him the next morning?

14 A No, sir.

15 Q No? You wouldn't have updated him about any -- well,
16 let me ask you this: At the time, that was right around the
17 time that there was still fallout from the Access Hollywood
18 tape; correct?

19 A Correct.

20 Q So, if there was going to be meetings and interviews
21 that day, you don't think you would have spoken with President
22 Trump about anything involving that issue, just about Stormy
23 Daniels?

24 A My recollection is that I was speaking to him about
25 Stormy Daniels because that was what he tasked me to take care

1 of and that's what I had been working on.

2 Q Do you recall ever speaking with President Trump about
3 the fact that he was opening a hotel in the old Post Office in
4 Washington, D.C.?

5 A Yes, we've had conversations about that.

6 Q Even before it was opened; right?

7 A Yes, sir.

8 Q But you wouldn't have talked to him about that on that
9 day?

10 A No, sir.

11 Q Just about the Daniels situation?

12 A As I recall, yes.

13 Q Now, I want to talk for a few minutes now about
14 the Retainer Agreement -- the meeting that you had with
15 Mr. Weisselberg in January 2017 and you talked about -- you met
16 with him, you brought the statement that showed that you had
17 transferred \$131,000, and then there is writing from you and
18 there is writing from Mr. Weisselberg; correct?

19 Do you know what I'm talking about?

20 A Yes, sir.

21 Q And I believe your testimony is that the way that the
22 \$35,000 a month -- the way that that number was kind of
23 developed was \$130,000 for the payment to Ms. Daniels; right?

24 A Correct.

25 Q \$50,000 from the Red Finch polling situation?

1 A Yes, sir.

2 Q That's 180; right?

3 A Correct.

4 Q And then your testimony is that Mr. Weisselberg said,
5 "Let's gross that up and double it," which brings you to 360?

6 A That's correct.

7 Q And then Mr. Weisselberg said that you are getting
8 another \$60,000 bonus?

9 A Yes, sir.

10 Q And that adds up to 420 or 35,000 a month; right?

11 A Correct.

12 Q But you were shorted a hundred thousand on your bonus
13 that year; right?

14 A Correct.

15 Q So, for many years you had gotten 150,000, and in 2016
16 you got 50; right?

17 A That's correct.

18 Q So, the 50,000 that you got back from Red Finch, you --
19 well, you only paid the Red Finch owner 20,000; right?

20 A Yes, sir.

21 Q So, you were getting some -- he was a friend of yours
22 or you knew him; is that right?

23 A I knew him.

24 Q And he was giving you a hard time because he hadn't
25 been paid and The Trump Organization wasn't going to pay him;

1 right?

2 A Correct.

3 Q And so, you went to a bank and cashed two checks for
4 him; is that right?

5 A No, sir.

6 Q Well, how did you pay him the \$20,000?

7 A I went across the street from my home to TD Bank, and I
8 just took out cash over a couple of days.

9 Q So you went and withdrew cash.

10 Why did you do it over a couple of days?

11 A I just didn't want to take it out, the \$20,000.

12 Q What were the increments that you took it out in?

13 A I don't recall, sir.

14 Q But, at some point, after a couple of days, you have
15 20,000 in cash, and you meet up with him.

16 Where?

17 A He came to the office.

18 Q And you had, what, like a duffel bag of cash? Like,
19 where was the cash?

20 A No, sir, it was in a small bag.

21 Q What kind of bag?

22 A A small brown paper bag.

23 Q A brown paper bag?

24 A Yes.

25 Q So, you had 20,000 in a brown paper bag; you met

1 with him, and you gave him \$20,000 to take care of that \$50,000
2 bill?

3 A Yes.

4 I don't recall if it was exactly 20,000, but he came to the
5 office and I gave him the cash.

6 Q And when was that in relation to the meeting that you
7 had with Mr. Weisselberg in January of 2017?

8 A Substantially before.

9 Q "Substantially," like a year?

10 A Ummm, yes, sir.

11 Q More than a year?

12 A It could have been a couple of months more.

13 Q Okay.

14 So, at some point in late 2015 or early 2016 that happened?

15 A I believe so.

16 Q So, you paid him back his 20,000, and you were square
17 with him; right?

18 A He would have liked the additional 30,000 as well.

19 Q Well, we -- fair enough.

20 But, you said before, in meetings with prosecutors, that
21 that ended that dispute, that ended that issue with him; right?

22 A Between us, yes.

23 Q Well, who else would it have been between?

24 A Mr. Trump and Red Finch.

25 Q So did -- are you aware of Mr. Trump and Red Finch

1 having ongoing litigation or issues after you gave him \$20,000?

2 A No, sir.

3 Q Because you were the connect; right?

4 A I was, yes.

5 Q And it was your friend that owned the company?

6 A Again, someone who I knew, yes.

7 Q It's all right,.

8 I'm sorry. I'm calling him a friend.

9 Someone you know owned the company.

10 And so, you knew when you gave him \$20,000, that was the end
11 of it; right?

12 A No, sir. He still wanted the full amount, but this was
13 enough to placate him for the time being -- I still needed his
14 service and I still needed his availability, so I accepted the
15 request, which was to give him at least certain monies that he
16 was out-of-pocket on.

17 Q And then Mr. Weisselberg says: Okay, what do we owe
18 you?

19 You say: 50,000 for Red Finch.

20 And Mr. Weisselberg says: Let's gross that up, and makes
21 that 100,000; right?

22 A That's correct.

23 Q So, at what point did you give -- well, let me ask it a
24 different way.

25 You never gave the \$30,000 that was owed to the guy that

1 owned Red Finch; did you?

2 A No. No, sir.

3 Q So you stole from The Trump Organization; right?

4 A Yes, sir.

5 Q And you didn't just steal the \$30,000, right, it was
6 actually, because it was grossed up, it was \$60,000?

7 A Yes, sir.

8 Q Meaning, if you had been honest with Mr. Weisselberg
9 and said, "I'm only owed 20,000," and he grossed that up, that
10 would have been 40, not a hundred; correct?

11 A Correct.

12 Q And you told multiple prosecutors in the District
13 Attorney's Office that story; right?

14 A Yes, sir.

15 Q Did you ever have to plead guilty to larceny?

16 A No, sir.

17 Q Have you paid back The Trump Organization the money
18 that you stole from them?

19 A No, sir.

20 Q And, by the way, you were in communication with
21 Mr. Weisselberg, coming up with a plan to cover up the \$130,000
22 payment; right? That's your testimony?

23 A Yes, sir.

24 Q And in the middle of that conversation, you lie to him
25 about how much money you are owed from the Red Finch

1 transaction?

2 A The transaction with Red Finch had gone on, as I
3 stated, for a long time prior.

4 He knew of the \$50,000 that was owed to Red Finch.

5 And when we were sitting down and making the calculations,
6 that's when he asked me: It's 50,000 for Red Finch?

7 And I said: Yes.

8 Q You didn't just say, "Yes;" you actually wrote "50,000"
9 on that sheet of paper; right?

10 A Yes.

11 Q So, my question before you gave us that answer was --
12 was a very simple question:

13 In the middle of this conversation that you are having with
14 Mr. Weisselberg and you are figuring out when to -- how to cover
15 up this \$130,000 payment, right, you lied to him about how much
16 you owed, you need reimbursement for Red Finch?

17 A Correct.

18 Q And to this day, you've never fixed that; right?

19 A No, sir.

20 Q And you've talked about that incident on multiple
21 occasions with the District Attorney?

22 A I have.

23 Q And, moreover, when you had testified last week, on
24 Tuesday, about what you just said, you didn't say you stole from
25 The Trump Organization; did you?

1 MS. HOFFINGER: Objection.

2 THE COURT: Sustained.

3 Q But you did steal from The Trump Organization;
4 correct?

5 MS. HOFFINGER: Objection.

6 THE COURT: Overruled.

7 A I'm sorry?

8 Q You did steal from The Trump Organization based upon
9 the expected reimbursement from Red Finch; correct?

10 A Yes, sir.

11 Q Now, I want to understand that meeting a little better.
12 Your testimony is that you have a conversations with
13 Mr. Weisselberg?

14 A (No response.)

15 Q That you are going to come up with -- you are going to
16 gross this up, add \$60,000, to get you to \$420; right?

17 A Yes, sir.

18 Q And then, at the time you think, I'm going to get paid
19 at one time, but you shortly thereafter learn that it's going to
20 be 12 payments of \$35,000; right?

21 A Correct.

22 Q And you are told by -- well, by Mr. Weisselberg just to
23 call it a retainer?

24 A That's correct.

25 Q And you are told: Just send in an invoice, and we will

1 get you paid; right?

2 A Correct.

3 Q We will send it monthly?

4 A Yes, sir.

5 Q But, your testimony, I think -- correct me if I'm
6 wrong -- is that there was never an expectation that there would
7 be a Retainer Agreement; right?

8 A Correct.

9 Q And, by the way, you had never had a Retainer Agreement
10 when you worked for Trump Org; right?

11 A That's correct.

12 Q We went over this last week.

13 But, you never had one with the personal work you were doing
14 for President Trump; right?

15 A Correct.

16 Q You never had one for any of the work that you were
17 doing for any of his children; right?

18 A Correct.

19 Q And the clear deal between you and Mr. Weisselberg was
20 that you weren't going to have one going forward; right?

21 A This was for reimbursement; correct.

22 Q Right. Correct.

23 Because if you weren't going to be paid for being his
24 lawyer, this was just some big coverup, some big reimbursement
25 for the \$130,000; right?

1 A Correct.

2 Q I want to show you -- let me ask you this. Except for
3 that one conversation with Mr. Weisselberg about that, and then
4 you guys go in and talk to President Trump about it, supposedly,
5 right, do you remember that, except for those two conversations,
6 did you have other conversations before that with
7 Mr. Weisselberg about your role as President Trump's Personal
8 Attorney?

9 A No, sir.

10 Q So, the conversations you had with Mr. Weisselberg
11 about the Retainer Agreement and that there would be no Retainer
12 Agreement were all in that meeting?

13 That meeting -- I'm sorry, that was a terrible question.

14 So, the conversations that you had with Mr. Weisselberg
15 about the Retainer Agreement and the fact that there would not
16 be one all took place in the meeting you had with him alone and
17 the meeting you had with President Trump; is that your
18 testimony?

19 A Yes, sir.

20 Q And, now, if you would have had a Retainer Agreement,
21 that Agreement would have been between you and your client;
22 right?

23 A Correct.

24 Q And who would your client have been?

25 A It would have been Mr. Trump.

1 Q So, you -- there was never going to be a scenario where
2 you were going to have a Retainer Agreement with the Trump Org;
3 correct?

4 A Correct.

5 Q Or with Mr. Weisselberg?

6 A Correct.

7 Q Or even with The Trust; right?

8 A Well, it couldn't have been with The Trust.

9 Q Well, don't you recall during that time that there was
10 a separation between President Trump and the Trump Org because
11 he was going to be President?

12 A Yes, sir.

13 Q And the way that that was dealt with was the Trump Org
14 and all of the assets got put into a Trust?

15 A Yes, sir.

16 Q And that was to separate President Trump being
17 President and his company; that was going to be run by his sons;
18 correct?

19 A And Mr. Weisselberg, yes.

20 Q So, his company -- the President was President, and
21 his sons and Mr. Weisselberg were going to run the company;
22 correct?

23 A Correct.

24 Q So, your personal relationship, your Private Attorney
25 to President Trump relationship wasn't going to be with you and

1 The Trust; it would be with you and President Trump; right?

2 A Yes, but The Trust controlled his cash flow, so I would
3 suspect that somewhere along the line, maybe that's where the
4 funds would come from, I didn't know the answer.

5 Q I'm sorry,.

6 I didn't ask you where the funds would come from,.

7 I'm saying your attorney-client relationship, your Retainer
8 Agreement, that would have just been between you and President
9 Trump?

10 A Yes, sir.

11 Q That was my only question.

12 A Understood.

13 Q The payment could have come from, as it often does,
14 from other sources?

15 A Correct.

16 Q But, the attorney-client relationship and the Retainer
17 Agreement is between you and President Trump; right?

18 A Yes, sir.

19 Q But, that's not what happened here, right, because you
20 and Mr. Weisselberg decided that there would be no Retainer
21 Agreement; right?

22 A Hmmm. Can you rephrase the question?

23 Q I will withdraw the question.

24 I'm going to show you what has been marked as Defense
25 Exhibit D260 just for you, the parties and the Court.

1 (Displayed for the aforementioned parties only.)

2 Q And take a look and see if you see your email,
3 Mr. Weisselberg's email, and then the date of that, January
4 31st, 2017.

5 Do you see that?

6 A I do.

7 Q And that's your email. You can only see part of it,
8 but that looks like your email; correct?

9 A Correct.

10 Q I mean, if you take a look at the lower chain with
11 someone named Nelson Ornelas.

12 And you are forwarding that -- that rings true, that this is
13 an email that you forwarded Mr. Weisselberg?

14 A Yes, sir.

15 MR. BLANCHE: We offer B260, your Honor.

16 MS. HOFFINGER: No objection.

17 THE COURT: Accepted into evidence.

18 (So marked in evidence.)

19 *****

20 MR. BLANCHE: If we can put that up on the screen
21 for everybody.

22 And then if we can blow up, first, when it was
23 sent. So, just the first page, the header.

24 (Displayed.)

25 MR. BLANCHE: No. Not that.

1 The email. The top email, please.

2 (Displayed.)

3 Q So, that's an email from Mr. Weisselberg to you on
4 January 31st, 2017, at 6:07 p.m.

5 A Correct?

6 A That's correct.

7 Q So, by this time, you had had your meeting with him
8 about how this coverup payment would work; right?

9 A Correct.

10 Q You had already started your role as President Trump's
11 Personal Attorney?

12 A Yes, sir.

13 Q And this is basically your last day at Trump Org. or
14 maybe right around this time was your last day at Trump Org;
15 right?

16 A Yes, sir.

17 Q Okay.

18 And you are forwarding an email -- I'm sorry.

19 Allen is responding to an email that you sent him,
20 Mr. Weisselberg, at 6:07 at night; right?

21 A He is sending me an email, yes.

22 Q Responding to an email that you send him lower down;
23 right?

24 A Correct.

25 Q Okay.

1 MR. BLANCHE: Can we look at the first two lines
2 of the actual text of that email?

3 (Displayed.)

4 Q Can you go ahead and read that out to the jury, please?

5 A "Thank you. You never stopped in for a bro hug.
6 Anyway, please prepare the Agreement we discussed so we can pay
7 you monthly."

8 MR. BLANCHE: You can take that down.

9 Q Why would you have had to prepare an Agreement so that
10 you could get paid monthly if, as you said last week, you -- and
11 again a few minutes ago, there was never an expectation that you
12 were going to have an Agreement?

13 A It was in order to get the reimbursement of the \$35,000
14 per month back.

15 Q Oh, I understand that.

16 But you just testified four minutes ago, and then you
17 testified last Tuesday, that you and Mr. Weisselberg had a deal
18 that there would never be an Agreement because it was all a
19 coverup; right?

20 That was your testimony last week, and that was your
21 testimony a few minutes ago; yes?

22 A Yes, sir.

23 Q All right.

24 MR. BLANCHE: So, can we put up People's Exhibit 1,
25 please.

1 It can go to everybody.

2 It's in evidence.

3 Can we go to the second page.

4 (Displayed.)

5 MR. BLANCHE: And then, if you can go to the third
6 page.

7 (Displayed.)

8 Q So, this is the first --

9 MR. BLANCHE: So if we can go back to the first
10 page, actually.

11 Thank you.

12 (Displayed.)

13 Q Now, you remember this arrangement that you had the
14 first couple of months that Trump -- that The Trust wrote the
15 checks; right?

16 A Correct.

17 Q Do you --

18 MR. BLANCHE: If we could blow up the middle of
19 that payment, the email from Allen Weisselberg to Jeff
20 McConney.

21 (Displayed.)

22 Q Do you have any understanding --

23 MR. BLANCHE: You can take that down, actually.

24 Q Do you have any understanding as to why Don Junior and
25 Eric would have approved your payment as opposed to President

1 Trump?

2 A Because they were the Trustees of The Trust.

3 Q So, that was what you were talking about a few minutes
4 ago, right, where you -- there could be a payment plan where the
5 money comes from The Trust as opposed to President Trump's
6 personal account; right?

7 A I'm sorry, your question is confusing.

8 Q A few minutes ago when you talked about how your
9 retainer would be with President Trump, but a third source may
10 provide payment; correct?

11 A Correct.

12 Q And for the first three months, that's exactly what
13 happened here; right?

14 The Trust paid you, it didn't come out of President Trump's
15 personal funds; right?

16 A Correct.

17 Q And then the remaining nine months the checks were
18 signed from President Trump's personal account; right?

19 A Correct.

20 Q But the first two checks for the first three months
21 were signed by representatives from The Trust; right?

22 A Correct.

23 Q And as that email just indicated, not surprising to
24 you, it would have been approved by Eric and Don; right?

25 A Either Eric or Don, in association with Allen

1 Weisselberg.

2 Q So, is it fair to say that once you became President
3 Trump's personal attorney in 2017, every single email you sent,
4 your signature block said the same thing; fair?

5 A Yes, sir.

6 Q Every time you sent an email, whether it was to a
7 potential client; right?

8 A Correct.

9 Q Whether it was to a friend?

10 A Yes, sir.

11 Q Whether it was to the Trump Org. sending an invoice, it
12 always said Personal Attorney to President Donald J. Trump;
13 right?

14 A Yes, sir.

15 Q And, by the way, that's the same job you had had for a
16 decade; right?

17 A Yes, except not to the President, CEO of the Trump
18 Organization as Special Counsel, but now it was Personal
19 Attorney to the President of the United States.

20 Q But what I mean is, his job changed, meaning President
21 Trump's job changed, your job didn't; right?

22 A Correct.

23 Q So -- and, again, at that time in 2017, as you were
24 rolling out to be Personal Attorney for President Donald J.
25 Trump, you told everybody that that was happening; correct?

1 A Not everybody, but I certainly was proud of the role,
2 and I announced it.

3 Q You told TMZ?

4 A Yes, sir.

5 Q You told the New York Times?

6 A Yes, sir.

7 Q You actually gave them a little scoop on it; is that
8 fair?

9 A Yes, sir.

10 Q And as to that fact, you went on TV and you told
11 Sean Hannity about it?

12 You announced it; right?

13 A I did.

14 Q And what you said, repeatedly, at the time, was that
15 you were going to remain in the same role you always had, right,
16 which is, you were going to be the Personal Attorney to the
17 President of the United States; right?

18 A Correct.

19 Q And that's what you did; right?

20 A Yes, sir.

21 Q So, I want to show you and the parties and the Court,
22 B261.

23 And I'm going to ask you if you see that email and, if so,
24 do you recognize it?

25 (Displayed to the aforementioned parties only.)

1 (Pause while witness reads the document.)

2 Q Do you recognize that email?

3 A I do, sir.

4 Q Is that your good-bye email to the Trump Organization?

5 A It was.

6 MR. BLANCHE: We offer B261.

7 MS. HOFFINGER: No objection.

8 THE COURT: Accepted into evidence.

9 (So marked in evidence.)

10 *****

11 MR. BLANCHE: We are going to display that for
12 everybody.

13 Q We are not going to read the email, but this is the
14 email that you sent on January 27th, 2017; right?

15 (Displayed.)

16 A Yes, sir.

17 Q It went to everybody at The Trump Organization;
18 correct?

19 A Correct.

20 Q And, here, you again tell everybody at The Trump
21 Organization that you are starting a new job to be President
22 Trump's Personal Attorney; right?

23 A Correct.

24 Q If you look at the third paragraph, the paragraph that
25 starts: "I will be in and out of the Office."

1 MR. BLANCHE: If we can blow that paragraph up.

2 (Displayed.)

3 Q And you write: "It is for this reason that I am truly
4 excited to begin my new position as Personal Attorney to
5 President Donald J. Trump." Correct?

6 A Yes, sir.

7 Q And you say what an honor it was. And you agree with
8 that; right?

9 A I do.

10 Q And that you are going to be -- have productive and
11 exciting times with President Trump; right?

12 A Yes, sir.

13 Q But then you say you are going to miss everybody?

14 A Yes.

15 Q And then give them a way to contact you; correct?

16 A Correct.

17 MR. BLANCHE: And we can take that down.

18 Q And then you started doing legal work for President
19 Trump; right?

20 A Excuse me?

21 Q Well, once you -- you changed roles, so you leave The
22 Trump Organization and you start as President Trump's Personal
23 Attorney, you continue to do what you were doing in January, in
24 February of 2017, right, helping President Trump with his
25 personal legal issues; right?

1 A Yes, sir.

2 Q You had a matter with Marc Kasowitz representing
3 President Trump; right?

4 A Yes, sir.

5 Q You were -- you and he were actually lead counsel on
6 that case; right?

7 A I think Marc Kasowitz was lead counsel.

8 Q Well, let's take a look at B176 just for you, the Court
9 and the parties.

10 MR. BLANCHE: And then we can go to the next
11 page.

12 (Displayed for the aforementioned parties only.)

13 MR. BLANCHE: Actually, let's go to Page 15. I'm
14 sorry.

15 (Displayed for the aforementioned parties only.)

16 Q Take a look at Page 15, and, actually, the bottom.
17 Hold on one second.

18 A Yes, sir.

19 Q So, isn't it true, that both you and Mr. Kasowitz were
20 both lead counsel on that matter?

21 A Yes, sir.

22 Q And that was, at the time, a relatively active matter
23 that was taking a fair amount of your time, and it looks like
24 Mr. Kasowitz's time; right?

25 A Yes.

1 Q Now, do you recall discussions with --

2 MR. BLANCHE: You can take that down.

3 Q Do you recall in discussions with the people that were
4 working at the White House, like Hope Hicks, working with you
5 to find a lawyer to represent President Trump in certain
6 matters?

7 A I'm sorry.

8 Can you ask that again.

9 Q Well, is -- so one of the things that you did as
10 President Trump's attorney was to help him find a lawyer to
11 actually work the case; right?

12 A One?

13 Q One of the things?

14 A Yes.

15 Q So, in the case that we just talked about with
16 Mr. Kasowitz, you were co-lead counsel with him; right?

17 A Yes, sir.

18 Q But, in some other cases you maybe wouldn't have
19 handled the case yourself if it wasn't your area of expertise,
20 but you would represent President Trump in getting a lawyer to
21 help him; right?

22 A Correct.

23 Q And do you recall doing that in January and February of
24 2017 for President Trump?

25 A Yes.

1 Q For example, there were issues at the time with
2 reporters potentially making defamatory statements against
3 President Trump; right?

4 A Yes, sir.

5 Q And you helped -- that was part of your job, right, to
6 help with that?

7 A Yes, sir.

8 Q And you have met regularly with counsel, including
9 Mr. Kasowitz, in February as well, on not only the case you were
10 lead counsel on, but some other matters as well; right?

11 A Yes, sir.

12 Q And there was -- I mean, just so the jury understands,
13 and to help us understand, that was a case that actually had
14 legal filings that had to be made; right?

15 A Yes.

16 Q So it wasn't just, like a threat of litigation, there
17 was ongoing litigation with legal filings; right?

18 A Yes, sir.

19 Q And you were part of that?

20 A Yes.

21 Q Your role changed, is that fair; is that what you
22 said?

23 A Yes.

24 Q Okay. So, certainly, talking about January and
25 February, you were actively a part of that; correct?

1 A Yes.

2 Q And then the filings in March, you helped with the
3 filings; correct?

4 A I reviewed the documents, yes.

5 Q Well, is reviewing the documents helping with the
6 filings?

7 A Yes, sir.

8 Q All right. Do you recall helping President Trump even
9 serving subpoenas on Government agencies, like helping figure
10 out how to serve a subpoena on a State Department?

11 Do you recall helping with that?

12 A No, sir.

13 Q Well, let's take a look at B237 and just review that,
14 for the parties and the Court.

15 (Displayed for the aforementioned parties only.)

16 MR. BLANCHE: If we can just blow up the text so
17 that Mr. Cohen can see it a little bit easier.

18 Thank you.

19 (Displayed for the aforementioned parties only.)

20 MR. BLANCHE: You can take that down.

21 Q So do you recall working with Mr. Kasowitz around
22 subpoenas that had been issued, including the State Department?

23 A I received the email from them, yes.

24 Q Well, when you received an email like that and you were
25 President Trump's attorney, would you have known something about

1 it?

2 A Yes.

3 Q So, that was just my question, whether that was one of
4 the things that you were doing at that time, was helping
5 President Trump with that type of issue?

6 A Yes, sir.

7 Q Now, in May of 2017, a Special Counsel was appointed
8 named Robert Mueller; right?

9 A Correct.

10 Q What, if anything, did that -- what, if any, effect did
11 that have on your attorney-client relationship with Mr. Trump,
12 if anything?

13 A It did not.

14 Q So, at some point, though, later in the year, did the
15 fact that there was a Special Counsel investigating President
16 Trump affect your relationship with President Trump?

17 A Yes, sir.

18 Q And that's because there were false claims made by
19 you?

20 A Yes, sir.

21 Q Now, President Trump appointed or named Mr. Kasowitz,
22 at least initially, to be his lawyer for that; right?

23 A Correct.

24 Q And you were part of that process; right?

25 A (Witness indicating with a quizzical look.)

1 Q Well, you were -- the process of selecting
2 Mr. Kasowitz, did you play a role in that?

3 A No, sir.

4 Q How did you find out about it?

5 A I don't recall.

6 Q Were you happy, sad or indifferent, that Mr. Kasowitz
7 had been appointed as President Trump's Personal Attorney for
8 that?

9 A Probably happy.

10 Q Because you had a good relationship with him?

11 A Yes, sir.

12 Q And did you continue to work with Mr. Kasowitz in his
13 representation of President Trump in connection with the Mueller
14 investigation?

15 A Not that I recall.

16 Q So that was a separation; right?

17 So you were aware that Mr. Kasowitz was selected.
18 Mr. Kasowitz was representing President Trump and you weren't
19 really a part of that; right?

20 A No, I was not.

21 Q But you were still Special Counsel -- Personal Counsel
22 to President Trump; correct?

23 A Yes, sir.

24 Q You also did a fair amount of work for -- legal work
25 for the First Lady in 2017; correct?

1 A I did legal work for the First Lady.

2 Q There was an issue with Madame Tussauds; correct?

3 A Yes.

4 Q And you helped with that?

5 A I reviewed the Agreement, yes.

6 Q And reviewing the Agreement is helping with that?

7 A Yes, sir.

8 Q You also met with the First Lady on many occasions, at
9 least in February and March and April of that year; right?

10 A Yes, sir.

11 Q Did you meet with the First Lady in New York?

12 A Yes, sir.

13 Q Because she was still in New York at that time?

14 A Yes, sir.

15 Q And part of your role in meeting with her was helping
16 her with legal issues or potential legal issues; correct?

17 A No, sir.

18 Q Well, was the Madame Tussauds a legal issue?

19 A That was.

20 Q Was there a -- do you recall there being a trademark
21 issue that arose involving Melania during that time period?

22 A Yes, sir.

23 Q And did you help with that situation?

24 A I did.

25 Q And, again, that's legal work you were performing for

1 the First Lady; right?

2 A Yes.

3 Q But you separately met with her on multiple occasions
4 for non-legal work as well; right?

5 A Personal matters.

6 Q And did you view that as part of your job?

7 A Yes, sir.

8 Q So, part of your job had always been or at least for
9 many years had been not only doing legal work, but helping
10 President Trump and his family with an array of issues; right?

11 A Correct.

12 Q And that's what a lot of lawyers do; right?

13 MS. HOFFINGER: Objection.

14 THE COURT: Sustained.

15 Q Well, that's what you did; right?

16 A That's what I did, yes.

17 Q And your job was being President Trump's lawyer;
18 correct?

19 A Yes, sir.

20 Q So, at some point, and we talked about this a little
21 bit on Thursday, but at some point were you advised that you
22 shouldn't have contact with President Trump because of the
23 Mueller investigation?

24 A Not that I recall.

25 Q So you don't recall being -- saying to the President

1 that you were advised that you could not speak to President
2 Trump in and around May of that year?

3 A I don't recall that, no, sir.

4 Q And, to be clear, the Retainer Agreement that you
5 entered into with Mr. Weisselberg and --

6 MS. HOFFINGER: Objection.

7 THE COURT: Sustained.

8 Q The Retainer Agreement that you discussed with
9 Mr. Weisselberg, okay, that led to you being paid \$35,000 a
10 month in 2017; correct?

11 MS. HOFFINGER: Objection.

12 THE COURT: Sustained.

13 Q Well, how much were you paid every month in 2017 from
14 President Trump personally?

15 A That would have been nine checks.

16 Q Nine checks --

17 A At \$35,000 a piece.

18 Q And the other three checks came from The Trust --

19 MS. HOFFINGER: Objection.

20 THE COURT: Sustained.

21 I'm sorry, can you ask that again?

22 Q The other three checks came from The Trust; correct?

23 THE COURT: You can answer.

24 THE WITNESS: I can answer?

25 THE COURT: You can answer if you know the answer.

1 A Yes.

2 Q So the first check was for \$70,000, which was for two
3 months; right?

4 A Yes, sir.

5 Q And then the second check from The Trust was for March
6 for one month; right?

7 A Correct.

8 Q Now, you continued to get paid all 12 months; correct?

9 A Yes, sir.

10 Q \$35,000 a month?

11 A Correct.

12 Q And that was the Agreement that was struck; correct?

13 A Yes, sir.

14 Q You also did a ton of consulting work in 2017; right?

15 A I did consulting work, yes.

16 Q Well, did you do a little bit of it or a lot of it?

17 A I don't know how to define a little or a lot. I had
18 consulting clients, yes.

19 Q How many?

20 A Six in total.

21 Q How much were you paid in 2017?

22 A Approximately \$4 million.

23 Q From those six clients?

24 A Yes, sir.

25 Q Now, let's start with AT&T. Was that one of your

1 clients?

2 A Yes, sir.

3 Q You signed with them in January of 2017; does that
4 sound right?

5 A I don't recall if it was January of 2017.

6 Q No problem.

7 MR. BLANCHE: Can we show the witness what has been
8 marked for identification as B188 just for the witness, the
9 parties and the Court.

10 (Displayed for the aforementioned parties only.)

11 *****

12 Q Take a look at that, and then we can discuss it.

13 A Yes, sir.

14 Q Does that refresh your recollection that it was
15 January?

16 A It does.

17 MR. BLANCHE: We can take that down.

18 Q And they paid you \$50,000 a month?

19 A Correct.

20 Q For how long?

21 A For one year.

22 Q So 12 months, \$50,000 a month; right?

23 A Correct.

24 Q What work did you do for AT&T?

25 A Consulting and advisory work.

1 Q So what does that mean? What actual work did you do
2 for them?

3 A I advised them on the issue that was taking place where
4 they wanted to acquire, I believe, it was Time Warner.

5 Q What time period of the year was this?

6 A (Witness indicating.)

7 Q What time period?

8 So you signed with them in January. At what point are you
9 advising them on this?

10 A Throughout that year.

11 Q Approximately how many communications did you have with
12 them during the year?

13 A Approximately 20.

14 Q And were those communications of all sort, meaning
15 email, phone calls, and in-person meetings?

16 A Yes, sir.

17 Q So over the course of 12 months, you had 20
18 communications with AT&T, and they paid you \$600,000; right?

19 A Yes, sir.

20 Q And there's nothing wrong with that; correct?

21 A I don't see it.

22 Q I'm not saying there are, I'm just asking you?

23 A I don't believe so.

24 Q And who -- what is Columbus Nova?

25 A Columbus Nova is a fund; that was also a client.

1 Q When did you sign with Columbus Nova?

2 A I believe in February of 2017.

3 Q Let's take a look at B180 -- well, could it have been
4 January?

5 A It could have been January as well.

6 Q January 25th, 2017; right?

7 A Sounds correct.

8 Q And they paid you \$80,000 a month; right?

9 A Correct.

10 Q How long did you work for Columbus Nova?

11 A The Agreement was supposed to be for one year.

12 Q Well, "supposed to be," it sounds like it was -- was it
13 longer or shorter?

14 A Shorter.

15 Q How long did they end up cutting the Agreement?

16 A Well, it was a little more than six months, I believe.

17 Q How many communications did you have with them over
18 that six-month period of time?

19 A More than a hundred.

20 Q And those hundred communications were of all sorts,
21 email, phone calls, in-person meetings?

22 A Yes, sir.

23 Q Why did that relationship come to a halt?

24 MS. HOFFINGER: Objection, your Honor.

25 THE COURT: Sustained.

1 Q Well, let me ask you this: There is nothing wrong with
2 you and/or another party signing an agreement and then saying,
3 we are not going to work together anymore; right?

4 A That's correct.

5 Q By the way, you never told President Trump that you
6 had -- and we are going to go through some more that you had --
7 had all these consulting arrangements; did you?

8 MS. HOFFINGER: Objection, your Honor.

9 THE COURT: Overruled.

10 You can answer.

11 A In fact, it was Mr. Trump who introduced the CEO of
12 AT&T to me, that's how I ended up obtaining him as a client.

13 Q So, let me ask that question again. I didn't ask you
14 who introduced you to your clients.

15 My question was whether along the way you told President
16 Trump that you had all these -- that you had six consulting
17 Agreements --

18 A I did not specifically tell President Trump that, no.

19 Q And -- well, you know at some point he found out;
20 right?

21 A I believe so, yes.

22 Q And you know that he was frustrated that you had signed
23 a deal with AT&T; correct?

24 MS. HOFFINGER: Objection.

25 THE COURT: Sustained.

1 Q What about Novartis?

2 Did you have a relationship with Novartis?

3 A I did.

4 Q They hired you in March of 2017; correct?

5 A Correct.

6 Q And they paid you \$100,000 a month; correct?

7 A Correct.

8 Q And that was a one-year deal?

9 A Correct.

10 Q So, you were paid 1.2 million by Novartis?

11 A Correct.

12 Q And you testified in front of Congress that you had six
13 communications with them; is that right?

14 A I think -- maybe more than that, but, yes, it was not
15 significant.

16 Q Well, if it was more than six, but not significant,
17 what number in your head today are you thinking?

18 A It could be six.

19 Q So that would mean that you were paid \$1.2 million for
20 six communications, that's \$200,000 a communication; correct?

21 A Correct.

22 Q And that's the deal they entered into; right?

23 A It is.

24 Q And what I mean by that is when you hire -- when you
25 enter an Agreement with AT&T or Novartis or Columbus Nova, it's

1 a Consulting Agreement, they can use you as much as they want;
2 right?

3 A Or as little or --

4 Q Or as little as they want.

5 So if AT&T wanted to call you every day, they could?

6 A They could have.

7 Q And under the Agreement, you would have had to talk to
8 them; right?

9 A Yes, sir.

10 Q Same with all of them?

11 A Same with all of them.

12 Q That's the way that a Retainer Agreement works; right?

13 A Yes, sir.

14 Q Meaning, it's not conditioned on the quantity of work
15 that is done?

16 MS. HOFFINGER: Objection, your Honor.

17 THE COURT: Sustained.

18 Q Well, a Retainer Agreement with Novartis --

19 MS. HOFFINGER: Objection.

20 THE COURT: I will allow it.

21 Q It's a Consulting Agreement --

22 THE COURT: I'm sorry?

23 Q A Retainer Agreement with Novartis --

24 THE COURT: Actually, you are right.

25 Sustained.

1 Q Well, what types of decisions do you think about when
2 you are trying to figure out whether to sign with a -- as a
3 consultant, whether you should represent a company?

4 MS. HOFFINGER: Objection.

5 THE COURT: Overruled.

6 A I'm sorry, sir. I don't understand the question.

7 Q I mean, we talked about different prices: Novartis was
8 \$100,000 a month; Columbus Nova was \$80,000 a month; AT&T was
9 \$50,000 a month.

10 What type of -- what goes into your strategy or decision
11 making when deciding what the right number was?

12 A It was based upon my communications with them.

13 Q Meaning, both sides talked about what the expectations
14 were, including how much to pay a month?

15 A Yes, sir.

16 Q And were there clients that you started talking to that
17 you ultimately didn't agree to work with?

18 A Yes, sir.

19 Q And that happens a lot; right?

20 A It happened quite often.

21 Q So, you also had retainers with Avenue Ventures; is
22 that right?

23 A No, sir.

24 Q What is Avenue Ventures?

25 A Avenue Ventures was a gentleman who, his name is Imaad

1 Zuberi, who I had met during the course of the campaign.

2 And the things that Mr. Zuberi was asking of me were not
3 things that I would agree to do, which dealt with lobbying or
4 Government relations.

5 And so I never agreed to represent him.

6 Q So you weren't their consultant?

7 A No, sir.

8 Q What about Korea Aerospace?

9 A KAI. Yes, sir.

10 Q Were you their consultant?

11 A Yes, sir.

12 Q How much did they pay you a month?

13 A I believe it was \$100,000 a month.

14 Q For how long?

15 A For one year.

16 Q And so, that's 1.2 million.

17 Did they -- were they your client the entire year?

18 A No, sir.

19 Q How long?

20 A Ummm, six, seven months, I believe.

21 Q So, in the six or seven months, how many communications
22 did you have with them?

23 A Approximately a dozen.

24 Q What about BTA Bank?

25 A Yes, sir.

1 Q Was that one of your clients?

2 A Yes, sir.

3 Q How much did they pay you a month?

4 A I believe it was supposed to be \$150,000 a month.

5 Q When you say "supposed to be," it sounds like they
6 didn't pay you \$150,000 a month?

7 A No, sir.

8 Q How much did they pay you?

9 A I believe for two or three months.

10 Q So, they paid you \$450,000 and then the relationship
11 went away or what happened?

12 A Yes, sir.

13 Q How many communications did you have with BTA Bank in
14 that two or three months?

15 A Again, approximately 20 communications.

16 Q Now, so we talked, I think, just about just about six.
17 Did you --

18 A There was one additional.

19 Q Go ahead. What was the one additional?

20 A A gentleman by the name of Franklin Haney, who, again,
21 I had met through Mr. Trump at Mar-a-Lago, who had a nuclear
22 facility that he had purchased from TVA, Tennessee Valley
23 Authority, and he was trying to obtain assistance with financing
24 on the re-activation of this nuclear facility to create both
25 jobs as well as to lower the cost of energy substantially.

1 Q How much did he pay you a month?

2 A He paid me an initial retainer amount, I believe it was
3 \$50,000, but he had offered more, I was to receive 15 percent
4 carry interest in the company if I was successful.

5 Q And what timeframe did you represent him in 2017?

6 A Towards the end.

7 Q So, you had the Retainer Agreements that we just talked
8 about, you had a retainer -- President Trump was paying you
9 \$35,000 a month; correct?

10 A Correct.

11 Q And then in 2018 -- I want to move into 2018, early
12 2018 is when the Stormy Daniels' payment leaked; correct?

13 A Correct.

14 Q And you told multiple people when it first leaked that
15 President Trump knew nothing about the payment; correct?

16 A That's correct.

17 Q Do you know somebody named Andrew Albstein?

18 A Yes, sir.

19 Q Who is Andrew Albstein?

20 A He's a real estate attorney.

21 Q And he's a longtime friend of yours?

22 A Yes, sir.

23 Q Do you remember going with him in 2018 to visit
24 somebody who was in jail by the name of Steven Croman?

25 A Yes, sir.

1 Q Steven Croman was a mutual friend of the two of yours;
2 is that right?

3 A I went to college with Steve Croman and continue to
4 this day to be friends.

5 Q And so, you and Mr. Croman went to -- I'm sorry, you
6 and Mr. Albstein went to visit Mr. Croman, who is in jail here
7 in New York City?

8 A Yes, sir.

9 Q And this was around the time or right after the time
10 that the story of you making the payment had been released;
11 right?

12 A I'm sorry, one more time, please.

13 Q When you went to visit him in jail, it was right after
14 the story had been leaked that you had made the payment to
15 Stormy Daniels; correct?

16 A Yes, sir.

17 Q And do you remember saying that both of them --
18 insisting to both of them that President Trump knew nothing
19 about it?

20 A I don't recall specifically saying that, but it would
21 have been what I would have said at that time, yes, sir.

22 Q And, do you remember saying that you had made the deal
23 and President Trump did not know?

24 Do you remember saying that?

25 A No, sir.

1 Q Would it have surprised you that you made that
2 statement at the time?

3 A No, sir.

4 Q Do you remember saying that you even called Melania,
5 the First Lady, and told her that President Trump didn't know
6 about it?

7 A No, sir.

8 Q Well, did you call the First Lady and say that
9 President Trump didn't know about it?

10 A Not that I recall, no, sir.

11 Q But you don't recall saying that to the -- to your
12 friend, Mr. Albstein, and the gentleman who was in prison?

13 A Correct.

14 Q Do you remember being told at the time that you should
15 keep that quiet? Meaning, keep it quiet what you knew or didn't
16 know about the payment?

17 A Not that I recall, no, sir.

18 Q Well, putting aside whether you were told that, I guess
19 you didn't keep it quiet; right?

20 A I did not.

21 Q You spoke to -- again, we talked about it a lot, but
22 you spoke to Ms. Haberman and told her that President Trump
23 didn't know about it; right?

24 A Yes, sir.

25 Q And you also -- and you said that on the record; right?

1 A Yes, sir.

2 Q You recorded conversations with multiple reporters
3 where you told them you didn't know; correct?

4 A No, sir.

5 Q Do you recall a conversation with a reporter named
6 Suzanne Kianpour with the BBC?

7 A Yes, sir.

8 Q Do you recall recording a long conversation with her in
9 early February about the payment?

10 A Yes, sir.

11 Q And do you recall telling her that there is no way you
12 had told President Trump about it at the time?

13 Do you remember telling her that?

14 A Sounds correct, yes.

15 Q Now -- and you didn't tell that reporter you were
16 recording her; correct?

17 A No, sir.

18 Q Do you remember telling her, and, again, I'm talking
19 about Ms. Kianpour, that your wife and kids had just found out
20 two weeks earlier?

21 Do you remember saying that?

22 A I don't.

23 Q Well, if you said that, would that have been true?

24 A Yes, sir.

25 Q And then -- and so, just up until April of 2018,

1 April 17th is when the FBI raided your house; right?

2 A April 9th.

3 Q I'm sorry. Thank you. April 9th.

4 You had told anybody who asked, that President Trump knew
5 nothing about the payment at the time; correct?

6 A That's what I said, yes.

7 Q You said that to reporters?

8 A Yes, sir.

9 Q You said it to friends?

10 A Yes, sir.

11 Q And until at least recently in 2018, you had said it to
12 family; correct?

13 A Correct.

14 Q And then April 9th the FBI raided your hotel room,
15 apartment, TD Bank and office; correct?

16 A Correct.

17 Q And a week later you went and met with a lawyer named
18 Bob Costello on April 17th, 2018; correct?

19 A No, sir.

20 Q No?

21 A No.

22 Q What do you recall?

23 A I received communication from Jeffrey Citron asking to
24 set up a meeting with him and Bob Costello in order to discuss
25 possible representation of me.

1 Q Right.

2 So on April 17th, you went and had a meeting with Mr. Citron
3 and Mr. Costello in a conference room in the hotel you were
4 staying at; correct?

5 A Yes. They came to me.

6 Q And it was about a two-hour meeting?

7 A I don't recall how long.

8 Q Do you -- you said last week that you thought that they
9 brought a Retainer Agreement that day; is that right?

10 A I believe that they brought some form of Retainer
11 Agreement, yes.

12 Q Are you sure that it was that first meeting and it
13 wasn't several days later, like April 20th or several days
14 after, that they brought in the Retainer Agreement?

15 A It could have been.

16 Q But it was early on?

17 A Yes, sir.

18 Q Fair.

19 Now, do you recall -- well, let me back up.

20 After that initial meeting, is it fair to say that you have
21 multiple communications with Mr. Costello over the next several
22 months?

23 A Yes, sir.

24 Q How many do you think that you had on the phone?

25 A On the telephone?

1 Q Yes. On the telephone?

2 A Ten. Maybe, maybe a few more.

3 Q And those would have been between like, around the time
4 that you had met with him the first time and then whenever you
5 stopped talking to them, a few months later; right?

6 A Correct.

7 Q On -- now, after that first meeting, a few days later,
8 on April 23rd, do you remember Mr. Costello calling, following
9 up with you, saying that he had spoken to somebody that you had
10 asked him to speak to?

11 Do you remember that?

12 A Yes, sir.

13 Q So I want to show you what has been marked for
14 identification as B106. Just for you, the parties and the
15 Court.

16 (Displayed for the aforementioned parties only.)

17 *****

18 Q I'm sorry, I said 106. I meant 1006.

19 (Displayed to the aforementioned parties only.)

20 *****

21 Q Take a look at that email. And the top half is
22 redacted.

23 But take a look at that email and see if it's an email from
24 Mr. Costello to you.

25 A Yes, sir.

1 Q Is that an email from Mr. Costello to you on
2 April 23rd, 11:44, a.m.?

3 A It is.

4 MR. BLANCHE: And we offer it. Part of it is
5 redacted, the upper half is redacted.

6 THE WITNESS: Yes, sir.

7 MR. BLANCHE: We offer B1006.

8 THE COURT: Any objection?

9 MS. HOFFINGER: No objection.

10 THE COURT: Accepted into evidence.

11 (So marked in evidence.)

12 *****

13 MR. BLANCHE: If we can put it up on the screen,
14 please.

15 (Displayed.)

16 MR. BLANCHE: If can you blow up the two paragraphs
17 and then the first four or five lines.

18 Q So that's an email from Mr. Costello to you on Monday,
19 April 23rd, 2018, at 11:44; correct?

20 A Correct.

21 Q "Attorney-client privileged communication. Michael,"
22 it says: "I spoke with the person you asked me to and he said
23 that he would find out exactly how the matter ended up in the
24 SDNY, and in particular who in Main Justice approved this."

25 Do you see that?

1 A I do.

2 Q And who did you ask him to discuss about that?

3 A I believe it was Rudy Giuliani.

4 Q But you asked Mr. Costello to find out from
5 Mr. Giuliani why the case was in the SDNY and who approved it;
6 right?

7 A Correct.

8 Q Now, by the way, this is right after -- a few weeks
9 after your -- the search warrant; right?

10 A Correct.

11 Q And, at that point, you didn't really know why they
12 searched your office, hotel room, apartment; correct?

13 You didn't know?

14 A No.

15 Q You later found out they were looking at bank records;
16 right?

17 A Amongst other things.

18 Q Amongst other things.

19 But they were looking at -- part of their probable cause for
20 the search warrant was Mr. Freidman; right?

21 A Yes, sir.

22 (Whereupon, Principal Court Reporter Susan
23 Pearce-Bates relieved Lisa Kramsky as the official court
24 reporter.)

25 *****

1 M. Cohen - Cross/Blanche

2
3 1 (Continued from the previous page.)

4 2 Q The guy that you were in business with -- not in
5 3 business with.

6 4 The guy that you had loaned tax medallions to for many
7 5 years?

8 6 A I had leased taxi medallions to him.

9 7 Q Now, if we look at the rest of that email, it looks
10 8 like -- well, what Mr. Costello says to you, is that he thought
11 9 he would have no problem tracking that down, and that he might
12 10 have the answer the night before, but that hasn't happened,
13 11 right?

14 12 So, Mr. Costello is telling you he asked the question
15 13 and he is waiting for an answer back, right?

16 14 A Correct.

17 15 Q So, let's look now -- if I can show you what's been
18 16 marked for identification as B-1008.

19 17 MR. BLANCHE: Just for the -- just for the
20 18 witness, the parties and the Court.

21 19 (Displayed.)

22 20 Q Take a look at that email and tell me whether you
23 21 recognize it?

24 22 Now, while you are looking at it, Mr. Cohen, for
25 23 reasons that they were produced, you will notice that they are
26 24 reversed.

27 25 Does that make sense?

Susan Pearce-Bates, RPR, CCR, RSA
Principal Court Reporter

1 Meaning, the bottom email is actually sent on May 16th
2 at 12:16, and the top email is sent May 15th at 1:42.

3 Do you see that?

4 A I do.

5 Q But do recognize an email, the top email, from you to
6 Mr. Costello, Mr. Citron and a bottom email from Mr. Costello
7 to you?

8 A I do.

9 Q And the top email was sent, like I said, on the 15th,
10 but the bottom was sent on the 16th, correct?

11 A Correct.

12 MR. BLANCHE: We offer B-1008.

13 MS. HOFFINGER: No objection.

14 THE COURT: Accepted into evidence.

15 (Document is received in evidence.)

16 MR. BLANCHE: If we can show that to the jury.

17 And, actually, blow up the bottom email first,
18 which is -- sorry.

19 Can we get out of that and blow up the top email?

20 (Displayed.)

21 Q This is an email from you, right, to Mr. Costello?

22 And it says, Bob, as I have stated in the past, when
23 the right time comes, and now is not the right time, we will
24 advance our conversations regarding this issue. Too many hands
25 right now with all varying viewpoints and ideas, right?

1 A Yes, sir.

2 Q You asked Mr. Costello to reach out to Mr. Ryan.

3 Mr. Ryan is your lawyer from McDermott Will and Emery
4 at the time, right?

5 A Yes, sir.

6 Q He was representing you in the Mueller investigation?

7 A As well as the Congressional.

8 Q And the Congressional investigation.

9 And then you say to Mr. Costello that he can reach out
10 to you, but you do not want him communicating on your behalf
11 with anybody, correct?

12 A Yes, sir.

13 MR. BLANCHE: We can pull that out.

14 Q And then he writes back to you.

15 Mr. Costello writes back to you the next day,
16 May 16th, and he is trying to reassure you, correct?

17 A Correct.

18 Q Now, at that point they wanted to -- they, meaning Mr.
19 Citron and Mr. Costello, wanted to speak with you again, right?

20 A Correct.

21 Q And you indicate that confirms that you asked
22 Mr. Costello to reach out to Mr. Ryan, right?

23 A Yes, sir.

24 Q And then they claimed they won't pester you, correct?

25 A Correct.

1 Q So, would it surprise you to learn that you actually
2 communicated on the phone, either you calling Mr. Costello or
3 Mr. Costello calling you, 75 times?

4 A It seems excessive, but possible.

5 Q And do you -- what it -- would it surprise you to
6 learn that there were multiple calls that lasted longer than a
7 half hour?

8 A No, sir.

9 Q That you spoke over nine hours over the course of a
10 few months with Mr. Costello, would that surprise you?

11 A No, sir.

12 Q Do you remember having a phone call over Memorial Day
13 weekend with Mr. Costello that lasted an hour and a half?

14 A I don't recall that, if that was Memorial Day weekend.

15 Q Do you remember weekend calls that lasted a long time?

16 A Yes, sir.

17 Q And you initiated a lot of those calls, correct?

18 A I don't know if I initiated them or responding to a
19 request to call him or just accepting his phone call.

20 Q Well, just try to -- the best of your recollection,
21 based on your recollection, do you recall you initiating more
22 phone calls or Mr. Costello initiating more phone calls?

23 A To the best of my recollection, I believe Mr. Costello
24 reached out more to me.

25 Q Did you -- and I want to make sure I understand your

1 testimony from last week, those nine hours of calls that you
2 had, how many times did you meet with him personally?

3 MS. HOFFINGER: Objection, your Honor.

4 THE COURT: Overruled.

5 Q How many times, if you can recall, did you meet with
6 Mr. Costello in person?

7 A I believe it was once or twice.

8 Q So, the two times you met with him, and all of the
9 phone calls you had with him, you understood at the time that
10 those were privileged communications, right?

11 A Yes, sir.

12 Q Because you hadn't signed an Engagement Letter, right?

13 A No, sir.

14 Q But that doesn't mean that a conversation isn't
15 privileged?

16 A Anticipation of potential representation.

17 Q So, the signing of -- the fact that you had not signed
18 an Engagement Letter with Mr. Costello didn't mean that those
19 phone calls weren't privileged and didn't mean that those
20 meetings weren't privileged, right?

21 A Correct.

22 Q Now, I am going to show you another email.

23 MR. BLANCHE: Which we can show the witness,
24 parties and the Court, B-1003.

25 (Displayed.)

1 Q Do you recognize that email?

2 A I do.

3 Q That's another email between you and Mr. Costello?

4 A Yes, sir.

5 Q Or a chain of emails, right?

6 A Correct.

7 MR. BLANCHE: We offer B-1003.

8 MS. HOFFINGER: No objection.

9 THE COURT: Accepted.

10 (Document is received in evidence.)

11 MR. BLANCHE: Can we put it on the screen?

12 (Displayed.)

13 MR. BLANCHE: If we can blow up the bottom third
14 of the email, please.

15 Q This is an email on April 19th from Mr. Costello to
16 you saying, I am sure you saw the news. Rudy is joining the
17 Trump legal team. I told you my relationship with Rudy, which
18 would be very well useful -- very, very useful for you and Bob
19 Costello.

20 MR. BLANCHE: And then, if we can go to the
21 statement back.

22 Q This is from you, Mr. Cohen.

23 You say, Robert, great news for Rudy. I know I owe
24 you a call. You have been working for lawyers all along and
25 just now coming up for air, correct?

1 A That's correct.

2 Q After the first time you met with Mr. Costello, Rudy
3 was hired to represent President Trump, right?

4 A Correct.

5 Q And Mr. Costello was telling you about that?

6 A Yes.

7 Q Now, I am going to show you People's Exhibit 208,
8 sorry, in evidence. This was shown to you last week, Mr.
9 Cohen.

10 MR. BLANCHE: If you can just blow up the bottom
11 half, please.

12 (Displayed.)

13 Q And then -- so, this is an email from Mr. Costello to
14 you a little bit later in time.

15 This is June 14, 2018, correct?

16 A Correct.

17 Q And this is in response to you getting an email from
18 them that had an attachment that says, Giuliani on possibility
19 of Cohen cooperating on Mueller probe.

20 It was on YouTube, correct?

21 A Correct.

22 MR. BLANCHE: If we can go to the next page,
23 please, and then blow up from the middle of the page down,
24 please.

25 (Displayed.)

1 Q Now, here this is Mr. Costello saying to you that,
2 YouTube something you should see, Bob.

3 And your response back on June 14, 11:21 a.m. was, why
4 send this to me, right?

5 A Correct.

6 MR. BLANCHE: We can take that down, please.

7 Q Now, I am going to show you B-1013, 1013, marked for
8 identification.

9 (Displayed.)

10 Q Is that an email from you to Mr. Costello, same day,
11 June 14th at 11:44 a.m.?

12 A Yes.

13 MR. BLANCHE: We offer B-1013.

14 MS. HOFFINGER: No objection.

15 THE COURT: Accepted into evidence.

16 (Document is received in evidence.)

17 MR. BLANCHE: If we can put that up on the screen
18 and just blow up the top.

19 (Displayed.)

20 Q This is an email from you to Mr. Costello talking
21 about -- it looks like a different article that says, Trump's
22 campaign to discredit Michael Cohen is already underway, right?

23 A Yes, sir.

24 Q That's what the title says?

25 And you wrote to Mr. Costello, since we are sharing

1 this morning, they are again on a bad path, right?

2 A Yes, sir.

3 Q And you were talking about President Trump and his
4 team trying to discredit you, correct?

5 A Correct.

6 Q And this was during that time when you were still --
7 you had not decided you were going to cooperate yet, correct?

8 A Correct.

9 Q But you decided to cooperate shortly thereafter this
10 time, within a month or so, is that right?

11 A Correct.

12 Q Now, I am going to show you one more email, B-1014.

13 (Displayed.)

14 Q Take a look at that and tell me whether you recognize
15 it.

16 Do you recognize that?

17 A I do, sir.

18 Q That is another email from Mr. Costello to you on
19 June 28th?

20 A Yes, sir.

21 MR. BLANCHE: Your Honor, we offer B-1014.

22 MS. HOFFINGER: No objection.

23 THE COURT: Accepted into evidence.

24 (Document is received in evidence.)

25 MR. BLANCHE: If we can put that on the screen

1 and just blow up the bottom portion.

2 (Displayed.)

3 Q So, this is Mr. Costello's email to you on June 28th
4 in response to what looks like a question from you, is that
5 right, Mr. Cohen?

6 A Yes, sir.

7 Q And what you wrote is, or what he writes to you is,
8 the answer about why they haven't brought an action challenging
9 Mueller, his investigation, and the Michael Cohen referral and
10 investigation based upon the findings of the IG Horowitz
11 Report.

12 Do you see that right?

13 A I do.

14 Q So, he was answering a question that you had asked
15 about what was going on in DC about the Mueller case and your
16 investigation, correct?

17 A Correct.

18 Q And is that --

19 MR. BLANCHE: We can take that down.

20 Q Mr. Cohen, is that consistent with your memory of the
21 types of things you were talking about with Mr. Costello at
22 that time?

23 A Yes.

24 MR. BLANCHE: Now, can you also put that same
25 Exhibit back up, again, please?

1 So, Exhibit 1014, and go to the second page at
2 the top.

3 (Displayed.)

4 Q You were also talking to him about who was going to
5 pay for Mr. Costello, correct?

6 And the reason why I ask that question, Mr. Cohen, is
7 because it looks like the earlier email that we just showed
8 you, you write to Mr. Costello, not sure what concerns, meaning
9 what concerns you have, sir, other than nonpayment that you
10 expressed that you told Mr. Costello about, and that was your
11 lawyers had stopped getting paid, correct?

12 A And McDermott Will and Emery.

13 Q So, in the time that you started speaking with Mr.
14 Costello in April, and now there had been a change in whether
15 The Trump Organization was paying the lawyers, right?

16 A Correct.

17 Q And as far as you knew at the time, they had stopped?

18 A No, sir.

19 Q So, what had happened that caused you to write to Mr.
20 Costello, nonpayment I expressed to you?

21 A There was significant invoices that were being sent by
22 McDermott Will and Emery to The Trump Organization for the
23 payment, and the payment was not being made in accordance with
24 the invoices.

25 Q And you wanted Mr. Costello to talk to Mr. Giuliani

1 about why that was happening, is that right?

2 A I expressed to him that the nonpayment was becoming an
3 issue, and, yes, to let Mr. Giuliani know to pass it along to
4 President Trump that it is becoming an issue.

5 Q Right. That wasn't my question, Mr. Cohen.

6 It is that you wanted Mr. Costello, in June of 2018,
7 to communicate to Mr. Giuliani about the fact that the
8 nonpayment was becoming an issue, correct?

9 A To keep him advised, yes, sir.

10 Q You asked Mr. Costello to do that, right?

11 A Yes, I believe so.

12 Q Well, do you have any doubt that it was you who
13 initiated that communication to Mr. Costello?

14 A I don't recall if I asked him to reach out to Mr.
15 Giuliani, other than I expressed it to him.

16 Q And then -- and this is late June.

17 Is this around the time your relationship with
18 Mr. Costello and his law firm ends?

19 A Yes, sir.

20 Q That you had been -- like we talked about, you met
21 with him a couple of times and you were talking to them and
22 emailing them all the way up to this time in June, correct?

23 A Correct.

24 Q And those are privileged communications, correct?

25 A Yes, sir.

1 Q You were seeking advice of counsel from Mr. Costello,
2 correct?

3 A Yes, sir.

4 Q And he was giving you counsel as well, correct?

5 A Yes.

6 Q But you, to be sure, you never signed the Engagement
7 Letter and you never paid because you didn't sign the
8 Engagement Letter, correct?

9 A Correct.

10 Q So, you testified Tuesday and today, I believe, that
11 in that 2017 -- well, in 2017, you made, approximately, how
12 much money, not counting what President Trump paid you?

13 A Approximately, \$4 million.

14 Q So, approximately \$4 million you made from your
15 consulting agreements, correct?

16 Is that what you are saying?

17 A Correct.

18 Q And then 35,000 from President Trump or from The Trust
19 was another 420?

20 A As reimbursement, yes.

21 Q We know what your view is about that.

22 MS. HOFFINGER: Objection.

23 THE COURT: Sustained.

24 Q How about the month after -- so the year after. That
25 was 2017.

1 In 2018, the Stormy Daniels payment that you made is
2 leaked in early 2018, correct?

3 A Yes, sir.

4 Q How much money did you make in 2018?

5 A When I said, approximately 4 million, it was from the
6 '17 through the '18 period, I believe.

7 Q So did you stop making money when you pled guilty in
8 2018?

9 A Yes, sir.

10 Q So, we are talking about January of 2017 through the
11 summer of 2018, you made four and a half million?

12 A Yes, sir.

13 Q Was that the most money you had ever made in a
14 18-month period in your life?

15 A No, sir.

16 Q How much is the most money you made in an 18-month
17 period in your life?

18 A More than \$5 million.

19 Q In an 18-month period?

20 A Yes, sir.

21 Q Now, when you -- in 2018, when you pled guilty, how
22 did you make money between the time you pled guilty and the
23 time that you published your book?

24 A I did not.

25 Q And during that time, is it correct that you paid back

1 a lot of your taxes?

2 A I paid the deficiencies of the taxes before
3 sentencing.

4 Q So, that was my question.

5 In between the time you pled guilty, and the time you
6 published your book, you said you didn't have any income,
7 correct?

8 A Correct.

9 Q Correct?

10 A Correct.

11 Q And you had a lot of bills during that time, though,
12 correct?

13 A Yes, sir.

14 Q You had -- you paid your -- well, you just said
15 deficiencies in taxes?

16 A Correct.

17 Q And you had to pay lawyers?

18 A Yes, sir.

19 Q And living expenses as well, correct?

20 A Yes, sir.

21 Q And then, since your podcast started and you published
22 your book, so that's -- when did you start your podcast?

23 A While I was on home confinement.

24 Q So, that was in 2020?

25 A 2020.

1 Q The fall of 2020?

2 A Yes, sir.

3 Q Does September sound right?

4 A October.

5 Q And you published the book September, same time
6 period, correct?

7 A Yes, sir.

8 Q So, since you started your podcast the fall of 2020,
9 and wrote your book, how much have you made on a yearly basis
10 until now?

11 A In total between the books and the podcasts, about
12 \$4 million.

13 Q So, you testified last week that you made 3.4 million
14 from your two books, is that right?

15 A Correct.

16 Q So, are you saying you made about \$600,000 from your
17 two podcasts?

18 A Probably more since it started.

19 Q How much more?

20 A A million dollars in total.

21 Q So, that would make it 4.4 million since the fall of
22 2020?

23 Does that sound about right?

24 A Yes.

25 Q So, that's over a million a year, is that right?

1 A Correct.

2 Q How else do you make money?

3 A I have one remaining piece of real estate that has a
4 lease on to it so, the delta between the expenses on that unit
5 and the rent.

6 Q And do you make money off of the merchandise that is
7 sold on your behalf from your podcast?

8 A Yes, sir.

9 Q Did you include that in the million, or is that
10 separate?

11 A It's included.

12 Q And then you testified about the TikToks, but you
13 haven't made significant money off of that?

14 A Correct.

15 Q So, you are also, am I correct, pitching a TV show
16 based upon your life, correct?

17 A Not pitching it, but there is a television show.

18 Q Well, who is pitching it if it is not you?

19 A A gentleman who used to be part of the Mea Culpa
20 Podcast named Phil Alberstat in California. He's the one that
21 came up with the idea and asked if he can send a crew to New
22 York to film a potential piece of work.

23 Q But that's with your permission, right?

24 A Yes, sir.

25 Q So, when I said, you are pitching a TV show, I am not

1 suggesting you are out pitching a TV show.

2 There is a TV show being pitched with your permission
3 about your life, right?

4 A Yes, sir.

5 Q And, in particular, about your job, your self-given
6 title as a Fixer, right?

7 A Correct.

8 Q As a matter of fact, that's the proposed name of the
9 show is Fixer, right?

10 A Yes, sir.

11 Q And your expectation and hope is that if it gets
12 picked up, you are going to make money, right?

13 A Yes, sir.

14 Q Has it been picked up?

15 A No, sir.

16 THE COURT: You want to take a break?

17 MR. BLANCHE: Yes.

18 THE COURT: All right, Jurors.

19 Let's take our morning recess.

20 Please remember all of my instructions. I will
21 see you in about 10 minutes.

22 (Whereupon, the jurors were excused.)

23 THE COURT: You can step down.

24 You maybe seated.

25 (Witness is excused.)

1 (Recess is taken.)

2 SERGEANT: Remain seated.

3 Come to Order.

4 Part 59 is back in session.

5 LIEUTENANT: Witness entering.

6 (Whereupon, the witness entered the
7 courtroom and was properly seated.)

8 THE COURT: Let's get the jury, please.

9 SERGEANT: All rise. Jury entering.

10 (Whereupon, the jury entered the courtroom
11 and were properly seated.)

12 THE COURT: Please be seated.

13 THE CLERK: Case on trial continued.

14 All jurors are present and properly seated.

15 THE COURT: Mr. Blanche.

16 CONTINUED CROSS-EXAMINATION

17 BY MR. BLANCHE:

18 Q Mr. Cohen, when we took our break you were talking
19 about the show, The Fixer.

20 How long have you been working with the gentleman you
21 described to try to pitch this show?

22 A Approximately, three months.

23 Q And, three months, meaning the past three months?

24 A No, sir.

25 Q When was it?

1 A It was after it was shot, maybe seven, eight months
2 ago, then the next three months thereafter.

3 Q And are you also working on a third book?

4 A I am considering a third book, yes.

5 Q And have you been paid any money upfront for that?

6 A No, sir.

7 Q Are you negotiating to get paid for a third book?

8 A No, sir.

9 Q You recently said that you are actually considering a
10 run for Congress, is that correct?

11 A I did.

12 Q Is that true?

13 A Yes, sir.

14 Q And did you tell a news article, a news reporter, that
15 one of the reasons why you think you should run for Congress is
16 because you have the best name recognition out there?

17 A Yes, sir.

18 Q And you said that because of your work and what you
19 have been doing over the past several years, going after
20 President Trump, correct, that's your name recognition?

21 A I wouldn't characterize it that way.

22 My name recognition is because of the journey that I
23 have been on.

24 Is it affiliated to Mr. Trump?

25 Yes, not because of Mr. Trump.

1 Q Well, the journey you have been on, at least for the
2 past few years, has included daily attacks on President Trump.

3 That's part of your journey, right, sir?

4 A My journey is to tell my story, yes, sir.

5 Q That's not my question.

6 My question was, whether your journey has been near
7 daily attacks on President Trump, at least since 2020?

8 A Sure.

9 Q Sir, yes or no?

10 A Yes, sir.

11 MS. HOFFINGER: Objection.

12 Q Now, you worked as President Trump's lawyer for more
13 than -- what ended up being around 11, 10 and a half years, is
14 that correct?

15 A Correct.

16 Q And during that time you said in your books, and you
17 said publicly, that you believed that President Trump trusted
18 you?

19 A Yes, sir.

20 Q Trusted your counsel?

21 A Yes, sir.

22 Q His family trusted you?

23 A Yes, sir.

24 Q As far as you know?

25 A As far as I know.

1 Q His wife trusted you?

2 A Yes.

3 Q And not just trusted you as President Trump's lawyer,
4 but as their own lawyer, correct?

5 A Yes, sir.

6 Q At least for those family members that you
7 represented, correct?

8 A Yes.

9 Q And along the way you have a traditional
10 attorney-client relationship with President Trump, correct?

11 A Correct.

12 Q And in some ways not traditional, correct?

13 A Correct.

14 Q And he -- and in either scenario, he relied on your
15 counsel, correct?

16 MS. HOFFINGER: Objection, your Honor.

17 THE COURT: Sustained.

18 Q Well, when you were working for him at Trump Org., you
19 were acting as his lawyer, correct?

20 A Yes, sir.

21 Q And part of your job as his lawyer was to give him
22 counsel, correct?

23 A Yes, sir.

24 Q And discuss with him whatever he wanted to discuss
25 involving legal issues, correct?

1 MS. HOFFINGER: Judge, may we approach?

2 THE COURT: Sure.

3 (Discussion is held at sidebar, on the
4 record.)

5 MS. HOFFINGER: They are straying now, again,
6 into advice of counsel, presence of counsel.

7 THE COURT: Where are you going with this, Mr.
8 Blanche?

9 MR. BLANCHE: Judge, there is, putting aside the
10 advice of counsel defense, which we are not making, never
11 made and never claimed we were going to make, he was his
12 lawyer. There is nothing, in my view, wrong with me asking
13 questions about the trust and counsel that they had, not
14 because we are going --

15 THE COURT: In what context?

16 Where are you going with it?

17 What is the context?

18 MR. BLANCHE: I mean, in summation I anticipate
19 arguing that one of the reasons he should be --

20 THE COURT: What is it --

21 MR. BLANCHE: One of the reasons his testimony
22 should be rejected is the breach of trust he engaged in. I
23 have a right to establish --

24 THE COURT: You made that out.

25 You can leave it. You made that out.

1 (Discussion at sidebar concluded, and the
2 following occurred in open court.)

3 BY MR. BLANCHE:

4 Q So, when did you stop becoming -- when do you view
5 your attorney-client relationship with President Trump as
6 ending?

7 MS. HOFFINGER: Objection.

8 THE COURT: Sustained.

9 Q Did you -- so, going back, briefly, to the \$420,000
10 that you were paid, the first three payments by the Trust and
11 the remaining nine payments by President Trump from his
12 personal account, correct?

13 A Correct.

14 Q Now, the Stormy Daniels payment that you negotiated in
15 October of 2016 was 130,000, correct?

16 A Correct.

17 Q And the \$20,000 that you paid back the Red Finch owner
18 adds up to \$150,000, right?

19 A Correct.

20 Q The remaining -- the difference between that consists
21 of the gross up and the \$16,000 bonus that you claimed Mr.
22 Weisselberg said you got, right?

23 A Correct.

24 Q Now, you received -- you testified that
25 Mr. Weisselberg told you that that was being grossed up because

1 you are in a 50 percent tax bracket, right?

2 A Correct.

3 Q But you didn't claim that \$35,000 a month on your
4 taxes?

5 MS. HOFFINGER: Objection.

6 THE COURT: Sustained.

7 MR. BLANCHE: Your Honor, may we approach?

8 THE COURT: Yes.

9 (Discussion is held at sidebar, on the
10 record.)

11 MS. HOFFINGER: This has been precluded by your
12 decision very clearly. Whatever he did or did not do does
13 not go to the defendant's intent.

14 MR. BLANCHE: Your Honor, it is an additional
15 \$150,000 he stole from The Trump Organization. If you
16 accept his testimony, he was entitled to a reimbursement.

17 THE COURT: You can say he stole money. You can
18 talk about stealing money all you want.

19 Once you start talking about filing taxes, you
20 get into my ruling, and I already precluded that.

21 MR. BLANCHE: Okay.

22 So I can ask him about whether he actually stole
23 more money from the Trump Organization?

24 THE COURT: Okay.

25 MS. HOFFINGER: That has been asked and answered.

1 THE COURT: It has.

2 MS. HOFFINGER: I will object to asked and
3 answered. He made a clear record.

4 MR. BLANCHE: That's regarding the Finch payment,
5 not the \$130,000 extra.

6 MS. HOFFINGER: You asked about the gross up with
7 regards to that.

8 THE COURT: You asked about it a number of times.
9 I think it's best to just move on.

10 (Discussion at sidebar concluded, and the
11 following occurred in open court.)

12 BY MR. BLANCHE:

13 Q So, while you were employed at The Trump Organization
14 for the past five years or so, you were paid, including bonus,
15 just over 500,000 a year?

16 A Correct.

17 Q And the money that you have made since 2000, okay --
18 so the money you have made since 2000 is a lot more than
19 500,000 a year?

20 A Correct.

21 Q And the money that you made in 2017 when you were
22 President Trump's personal attorney greatly exceeded the
23 500,000 that you were paid every year by President Trump,
24 correct?

25 A Correct.

1 Q Now, you talked about, and this goes back to Thursday,
2 but you talked about the fact that you actually have a
3 financial interest in the outcome of this case, correct?

4 MS. HOFFINGER: Objection.

5 THE COURT: Sustained.

6 Q Well, do you have a financial interest in the outcome
7 of this case?

8 A Yes, sir.

9 Q Because if President Trump is convicted that would
10 benefit you personally, financially, right?

11 A No, sir.

12 Q Well, then, what is your financial interest in this
13 case?

14 A Whether or not -- when you say -- said, do I have a
15 financial interest in this case, I may talk about it on my
16 podcasts. I talk about it on TikTok, and they make money, and
17 that's how I was viewing your question.

18 Whether Mr. Trump is ultimately determined innocent or
19 guilty is not going to affect whether I speak about it or not.

20 Q Well, I didn't ask whether it would prevent you from
21 speaking about it.

22 My question was, would you benefit financially from
23 it?

24 And this is different than what you said on Thursday,
25 sir.

1 MS. HOFFINGER: Objection.

2 THE COURT: Sustained.

3 Q The question to you today is, whether a conviction
4 benefits you financially?

5 MS. HOFFINGER: Asked and answered, your Honor.

6 THE COURT: I will allow it.

7 You can answer it.

8 A The answer is, no.

9 Q It doesn't?

10 A It's better if he is not for me because it gives me
11 more to talk about in the future.

12 Q Now, you also testified on Thursday that you are mad
13 at President Trump, you blamed him, at least in part, for what
14 happened to you, correct?

15 A That's correct.

16 Q You said, and we played it for the jury, that revenge
17 against President Trump is a dish that is --

18 A Served best cold.

19 Q Best served cold, correct?

20 A Correct.

21 Q And you meant it when you said it then, correct?

22 You meant it when you said it then?

23 A Yes, sir.

24 Q And you meant it when you just said it now?

25 A Yes, sir.

1 Q You also testified last week on Thursday that when you
2 are placed under oath, but it affects your personal life, you
3 are willing to lie, correct?

4 A I am sorry.

5 Say that again, please.

6 Q You are willing to lie under oath if it affects your
7 personal life, correct?

8 A Sir, I am not understanding your question.

9 Q Well, when you testified a few months ago in October
10 in a different trial, the question was asked whether you would
11 lie under oath if it affects your personal life, and you said,
12 yes.

13 Do you remember that?

14 A I do.

15 Q And then, I asked you that same exact question on
16 Thursday. I asked you whether it was true that you are willing
17 to lie under oath when it affects you personally and last
18 Thursday you said, yes. And I am just asking you one more time
19 today.

20 MS. HOFFINGER: Objection.

21 THE COURT: Sustained.

22 Q This trial affects your personal life, doesn't it?

23 A Yes, sir.

24 Q Now, you also said to this jury, but I want to make
25 sure that I understand, that you would lie under oath out of

1 loyalty, correct?

2 MS. HOFFINGER: Objection.

3 THE COURT: Sustained.

4 Rephrase the question.

5 Q When you lied to Congress, you said you were lying out
6 of loyalty, correct?

7 A Yes, sir.

8 Q Meaning, the reason why you lied is out of loyalty,
9 and you said it is out of loyalty to President Trump, correct?

10 A Correct.

11 Q So, my question to you is, just restating that, it's
12 true that you will lie out of loyalty, correct?

13 A Yes, sir.

14 Q Now, would you -- and your testimony remains the same
15 as you gave it last Tuesday, that notwithstanding everything
16 that you have said over the years, you have specific
17 recollections of having conversations on the phone with then
18 candidate Donald J. Trump about the Stormy Daniels matter,
19 correct?

20 A Yes, sir.

21 Q No doubt in your mind?

22 A It's no doubt.

23 MR. BLANCHE: I have no further questions.

24 THE COURT: People.

25 MS. HOFFINGER: Yes.

1 Thank you, your Honor.

2 May we approach for a moment, your Honor?

3 THE COURT: Yes.

4 (Discussion is held at sidebar, on the
5 record.)

6 MR. STEINGLASS: So, your Honor has made it clear
7 many times that your rules and Motions in Limine are
8 subject to the door being opened. And I think that Mr.
9 Blanche opened the door wide enough to drive a truck
10 through it on this Red Finch thing.

11 Now --

12 MR. BLANCHE: What did you say?

13 MR. STEINGLASS: The Red Finch issue, the money.

14 As you know from your decision, I have a copy of
15 the decision --

16 THE COURT: I am aware of it.

17 MR. STEINGLASS: -- he elicited questions about
18 there being cash in a paper bag and implied that there was
19 something untoward going on, which, of course, was going
20 on, but it was a payment for rigging the polls.

21 I think that we are entitled to go into that.
22 They are not allowed to use the ruling as a sword and
23 that's exactly what they are doing.

24 MR. BLANCHE: Judge, absolutely not.

25 I didn't ask questions about money in paper bags.

1 Those were his answers.

2 I asked him if he paid for it. That doesn't open
3 a door.

4 MS. HOFFINGER: You asked, all of that cash.

5 MR. BLANCHE: He said -- I said, how did you pay
6 him?

7 He said, I walked across the street to my bank,
8 and I took out cash.

9 THE COURT: I remember the testimony.

10 MR. BLANCHE: I didn't ask that. It came out.

11 THE COURT: Sure. I will let you finish.

12 Go ahead.

13 MR. BLANCHE: No, Judge, it can't be that I ask a
14 question that just has him saying I paid \$20,000, and the
15 witness launches into a story about getting cash over three
16 or four days and putting it in a bag.

17 THE COURT: Mr. Steinglass brought the issue up.
18 I was expecting it.

19 I was expecting it because you asked many
20 questions about his \$50,000, and the \$20,000, and the
21 \$30,000, and you -- you did.

22 You opened the door wide open.

23 I am going to allow it.

24 (Discussion at sidebar concluded, and the
25 following occurred in open court.)

1 THE COURT: Thank you.

2 MS. HOFFINGER: Thank you.

3 REDIRECT EXAMINATION

4 BY MS. HOFFINGER:

5 Q Good afternoon, Mr. Cohen.

6 A Good afternoon.

7 Q I just want to ask you some follow-up questions based
8 on defense counsel's questions.

9 Now, defense counsel asked you a question, and it was
10 rather fast, but I want to ask it a little bit more slowly.

11 He asked whether you testified falsely in Congress in
12 2019.

13 Did you testify truthfully in Congress in 2019?

14 A Yes, ma'am.

15 Q Was it in Congress in 2017 that you testified falsely?

16 A Yes, ma'am. That's what I thought he said.

17 Q Was it just a mistake then when you said yes, when he
18 asked you about 2019?

19 A Yes, ma'am.

20 Q Now, defense counsel asked you if you may have
21 discussed other matters on the telephone calls in the morning
22 of October 26th of 2016, with President Trump, meaning other
23 matters, besides the Stormy Daniels matter.

24 Do you remember that question?

25 A I do.

1 Q And you testified that you didn't have a specific
2 recollection about talking about other matters, was that right?

3 A Correct.

4 Q But you did have a specific recollection about talking
5 about Stormy Daniels' payoff to Mr. Trump?

6 A Yes, ma'am.

7 Q And that is because it was important to you at that
8 time, correct?

9 A Yes, ma'am.

10 Q So, is it possible that other matters may have been
11 discussed on those calls, but you are sure that the Stormy
12 Daniels matter was discussed?

13 A Yes.

14 MR. BLANCHE: Objection.

15 THE COURT: Overruled.

16 Q Now, defense counsel asked you a lot of questions
17 about how busy you were in October of 2016.

18 Do you remember that?

19 A Yes, sir. ma'am.

20 Q Were you pretty busy all the time or just in October
21 of 2016?

22 A I was busy.

23 Q Were you too busy in October of 2016 to finalize the
24 Stormy Daniels' payoff with Mr. Trump?

25 A No, ma'am.

1 Q Were you too busy to get his approval to make that
2 payoff?

3 A No, ma'am.

4 Q Now, Mr. Blanche asked you about an email from Mr.
5 Weisselberg, People's 260 in evidence.

6 It was an email in January of 2017. Mr. Weisselberg
7 asked you to send in that Agreement we were discussing.

8 Do you remember those questions?

9 A I do.

10 Q Did you ever send Mr. Weisselberg a Retainer
11 Agreement?

12 A No, ma'am.

13 Q Why not?

14 A Because it was no legal work that I was to be paid
15 for. There was no Representation Agreement within which to
16 send.

17 Q And was the \$420,000 payment that you were owed as
18 reimbursement, did that have anything to do with a Retainer
19 Agreement?

20 A No, ma'am.

21 Q And so, ultimately, did Mr. Weisselberg just ask you
22 to send invoices instead for the reimbursement payments?

23 A Yes. Yes.

24 Q Now, both on direct examination when I asked you, and
25 also on cross-examination when Mr. Blanche asked you, he asked

1 you about legal work that you did and other work that you did
2 for Mr. Trump and his family in 2017.

3 Do you remember those questions?

4 A I do.

5 Q And you said you did do some work for Mr. Trump in
6 that year, right?

7 A Correct.

8 Q And you did do some work for his wife in that year?

9 A Yes, ma'am.

10 Q And did you ever bill for that work?

11 A No, ma'am.

12 Q And did the \$420,000 reimbursement payments have
13 anything to do with that work that you did?

14 A No.

15 Q And in 2018, I asked you some questions about that as
16 well.

17 Did you do some work in 2018 for Mr. Trump?

18 A I did.

19 Q Did you ever bill for that work?

20 A No, ma'am.

21 Q By the way, did you ever get paid a dime for the work
22 in 2018?

23 A No, ma'am.

24 Q Now, Mr. Blanche asked you all about Consulting
25 Agreements in 2017 and 2018 and other work that you did for

1 other people.

2 Did you ever tell Mr. Trump that you were only going
3 to do work for him and never do any work for anybody else?

4 MR. BLANCHE: Objection.

5 THE COURT: Overruled.

6 You can answer.

7 A No.

8 Q There was no such understanding, was there?

9 A No, ma'am.

10 Q Now, Mr. Blanche asked you some questions about Red
11 Finch.

12 Do you remember the questions about the \$50,000 owed
13 to Red Finch?

14 A I do.

15 Q Can you tell the jury exactly what the work was that
16 Red Finch did for Mr. Trump?

17 A Red Finch is a technology company that I had asked to
18 assist in a CNBC poll, and the poll was regarding the most
19 famous businessmen in like the last century, and Mr. Trump's
20 name was on that list.

21 And at the beginning of this poll, he was polling
22 towards the very, very bottom, and it upset him.

23 And so, he had me come to his office, and he provided
24 me with a sheet of paper that showed it. I reached out to the
25 gentleman from Red Finch who assured me that he was able to,

1 through the acquisition of IP addresses, to create an algorithm
2 that would ensure that Mr. Trump would rise and rise
3 significantly into this poll.

4 And so, I had expressed what I had learned, and we
5 talked about what number Mr. Trump wanted to finish.

6 Of course, initially, he wanted to be number one, but
7 we didn't think that that was a good idea because it would
8 be -- of course, it would raise red flags. As long as we were
9 in the top 10, we would go into another round.

10 And so, with Mr. Trump's permission, I advised the
11 President, CEO of Red Finch, to start acquiring the IP
12 addresses, and more IP addresses were needed because the volume
13 was actually greater than what we had all anticipated.

14 And so, we had to purchase more IP addresses, and then
15 even more again, until, ultimately, when the poll came to its
16 conclusion Mr. Trump was number nine.

17 (Whereupon, Principal Court Reporter Susan
18 Pearce-Bates was relieved by Senior Court
19 Reporter Theresa Magniccari.)

20 (Continued on the following page.)
21
22
23
24
25

M. Cohen - Redirect/Hoffinger

(Whereupon, proceedings were continued from
previous page:)

CONTINUED REDIRECT EXAMINATION

BY MS. HOFFINGER:

Q. And just as a reminder, did Mr. Trump say that he
wouldn't pay Red Finch for that work that they had done to make
sure that his name was higher in the polls?

A. Yes.

Q. Did he say why he wouldn't pay them?

A. He did.

Q. What was it?

A. Because CNBC ended up not continuing and moving forward
with this poll, and so he didn't feel that he had gotten the
benefit of what the services were supposed to ultimately
provide. And that, of course, was being Number 9.

CNBC also had the right to some language, that they can
take anybody out of the poll that they wanted to, and so Mr.
Trump didn't feel that he got the benefit of what the funds were
supposed to go to, despite achieving Number 9, and refused to
make the payment.

Q. So, Mr. Cohen, after some period of time, you felt
pressure to make some payment to your friend, to your colleague?

A. Yes.

Q. And that's after the bills had been outstanding for

Theresa Magniccari
Senior Court Reporter

1 some period?

2 A. For some period.

3 Q. Now, Mr. Blanche did ask you also about that extra
4 \$30,000 that you got from The Trump Organization for Red Finch,
5 you paid your friend 20 but you took the 30. Why did you take
6 that extra 30? Why didn't you just put 20 down on the list
7 instead of 50?

8 A. For a long time I had been telling them about the
9 \$50,000, so I could have collected it for the President of Red
10 Finch.

11 I was angered because of the reduction in the bonus so
12 I just felt it was almost like self-help. You know, I wasn't
13 going to let him have the benefit this way as well. I wasn't
14 going to correct the conversation I was having with Allen about
15 it. I had not only protected him to the best that I could, but
16 I had also laid out money to Red Finch like a year and a half
17 earlier.

18 And, again, \$130,000, to have my bonus cut by
19 two-thirds was very upsetting, to say the least.

20 Q. But you admitted on cross-examination that it was
21 wrongful?

22 A. It was.

23 Q. Now, defense counsel asked you last week some questions
24 about the letter that your attorney Steven Ryan wrote for you in
25 February of 2018 and submitted to the FEC in response to that

1 complaint; do you remember that?

2 A. I do.

3 MS. HOFFINGER: Let's put up People's Exhibit 201,
4 please.

5 Thank you.

6 Put it up for everyone.

7 (Displayed.)

8 Q. Defense counsel showed you this letter. Do you
9 remember that?

10 A. Yes, ma'am.

11 Q. He highlighted the second paragraph and read that to
12 you. Do you remember that?

13 A. I do.

14 Q. When he asked you about it, you said it was an
15 omission?

16 A. Correct.

17 Q. When I asked you about it on direct examination, you
18 said it was also misleading and deceptive?

19 A. Yes, ma'am.

20 Q. Can you explain to the jury why it was misleading and
21 deceptive?

22 A. Well, the misleading deceptive line is neither The
23 Trump Organization nor the Trump campaign was a party to the
24 transaction with Ms. Clifford and neither reimbursed Mr. Cohen
25 for the payment directly or indirectly.

1 Q. So, what is omitted from in that paragraph that makes
2 it deceptive?

3 A. The fact that it was paid for by Mr. Trump or the Trump
4 Trust.

5 Q. Did you intend for it to be misleading in that way?

6 A. I did.

7 MS. HOFFINGER: Can we take a look at Paragraph 3
8 now and highlight a line that says, "The payment in
9 question does not constitute a campaign contribution or
10 expenditure."

11 (Displayed.)

12 Q. Do you see that line?

13 A. I do.

14 Q. When defense counsel was reading that line to you, you
15 said "correct."

16 Let me ask you the question: Is that a truthful
17 sentence?

18 MR. BLANCHE: Objection.

19 THE COURT: Please approach.

20 (Whereupon, the following occurred sidebar:)

21 MS. HOFFINGER: So, Mr. Blanche is looking at the
22 transcript. Mr. Blanche read up through that line and he
23 said correct, which I think left a misleading impression,
24 which is, that he was saying that the sentence was correct.
25 I am asking him if that was a truthful statement.

1 MR. BLANCHE: Judge, we're not allowing an expert
2 to talk about what's a truthful statement. He is certainly
3 not going to be able to say whether it was a truthful
4 question.

5 MS. HOFFINGER: That was the question.

6 MR. BLANCHE: That is not the question that I
7 asked.

8 Take a look at the transcript exactly. It was a
9 series of questions about what was truthful, the entire
10 letter. At the time what his testimony was, was everything
11 truthful. Now, the People --

12 THE COURT: You asked him: Was it truthful?

13 MR. BLANCHE: The whole letter.

14 THE COURT: That section of the letter and asked
15 him, was this part truthful.

16 MR. BLANCHE: He is the witness talking about
17 whether it was not truthful.

18 THE COURT: You asked the question. You asked him
19 the question.

20 MR. BLANCHE: Before this question is answered, we
21 should look at the transcript.

22 THE COURT: Look at it.

23 MS. HOFFINGER: Page 3570. I have the wrong one.
24 I apologize. It's 3963.

25 MR. BLANCHE: Okay.

1 MS. HOFFINGER: You just said: Correct?

2 MR. BLANCHE: 3963.

3 MS. HOFFINGER: I have it right here.

4 THE COURT: Show it to me.

5 MS. HOFFINGER: It's a small version. It's a
6 little hard to read without my glasses. If you read that
7 line: Is that correct?

8 MR. BLANCHE: I wasn't asking if it was truthful.
9 I was asking if the letter said it.

10 MS. HOFFINGER: That's why -- then he said a few
11 seconds later, "Is everything that you said in the letter
12 true?" It left a misimpression.

13 THE COURT: 3963.

14 "But that is a true statement; right?

15 "ANSWER: That is a true statement.

16 "QUESTION: Meaning, you used your own funds to
17 make the payments to Ms. Daniels?

18 "ANSWER: Correct.

19 "QUESTION: And neither The Trump Organization nor
20 the campaign paid you back; right?

21 "ANSWER: It was a party to the transaction or
22 not."

23 I am looking for the part where he asked whether
24 it was a campaign contribution.

25 Do you have that?

1 MS. HOFFINGER: Line 17 on 3963.

2 "QUESTION: And that it doesn't constitute a
3 campaign contribution or expenditure, and therefore the FEC
4 lacks jurisdiction over the matter?"

5 THE COURT: What page is that?

6 MS. HOFFINGER: 3963.

7 MR. BLANCHE: 3963.

8 MS. HOFFINGER: If you want to look at it, I could
9 hand it to you. It's underlined there, 3963, line 17.

10 MR. BLANCHE: I am asking if it's true.

11 THE COURT: On 3963, beginning on line 17.

12 "And that it doesn't constitute a campaign
13 contribution or expenditure and therefore the FEC lacks
14 jurisdiction over the matter?"

15 "ANSWER: Correct."

16 MR. BLANCHE: I was reading that it's correct,
17 that the letter says that.

18 MS. HOFFINGER: Exactly.

19 THE COURT: The People will have an opportunity to
20 clean that up.

21 MS. HOFFINGER: Thank you.

22 I thought you made your ruling, which is why I
23 left.

24 MR. BLANCHE: Depending on the answer, we would
25 ask for an instruction again.

1 I am not sure how the witness is going to answer
2 the question.

3 THE COURT: What is your proposed instruction?

4 MR. BLANCHE: If he says that it's not true, that
5 he did commit a campaign violation, we would ask for the
6 instruction that we asked for repeatedly that you gave,
7 the fact that he said that he committed a campaign
8 violation.

9 MS. HOFFINGER: Is it your understanding at this
10 point whether that's a false statement in the letter?
11 That's why I am asking.

12 MR. BOVE: That's why we want the clarification.

13 MS. HOFFINGER: Okay.

14 Thank you.

15 THE COURT: The Court's version is on Page 3964.

16 (Whereupon, the following occurred in open court:)

17 MS. HOFFINGER: Can we put back up the letter
18 again, People's Exhibit 201.

19 (Displayed.)

20 CONTINUED REDIRECT EXAMINATION

21 BY MS. HOFFINER:

22 Q. And the line in Paragraph 3 that says, "the payment in
23 question does not constitute a campaign contribution;" do you
24 see that line, Mr. Cohen?

25 A. I do.

1 Q. Let me ask you: Was that a true statement?

2 A. No, ma'am.

3 THE COURT: Are you asking for an instruction?

4 MR. BLANCHE: Yes.

5 THE COURT: All right.

6 Jurors, you just heard the questions that were
7 asked of Mr. Cohen and his response that it was not a true
8 statement.

9 Put it back up.

10 MS. HOFFINGER: It was the third paragraph.

11 THE COURT: That the payment in question does not
12 constitute a campaign contribution or expenditure, and Mr.
13 Cohen responded that is not true.

14 I remind you that Michael Cohen pleaded guilty to
15 violating the Federal Election Campaign Act, but that
16 evidence has been permitted to assist you in assessing Mr.
17 Cohen's credibility as a witness and help provide context
18 for some of the other evidence that has been offered.

19 You may consider that testimony for those purposes
20 only.

21 Mr. Cohen's plea is not evidence of the
22 defendant's guilt. You may not consider it in determining
23 whether the defendant is guilty or not guilty of the
24 charged crimes.

25 MS. HOFFINGER: Thank you.

1 Can we now put up People's 202 in evidence.

2 (Displayed.)

3 Q. Do you recall, Mr. Cohen, that defense counsel asked
4 you some additional questions about this document?

5 A. Yes.

6 Q. Is this a statement regarding the FEC matter that you
7 released to the press?

8 A. Yes.

9 Q. Now, defense counsel asked you about one line in this
10 letter, "Just because something isn't true doesn't mean it can't
11 cause you damage; I will always protect Mr. Trump."

12 Do you remember that question about that line?

13 A. Yes.

14 Q. Do you remember your answer of why you included that
15 line, you said you wanted reporters to believe that it was true?

16 A. Yes.

17 Q. Now, in general, was the statement that you issued to
18 the press overall, was it false or misleading?

19 A. Yes.

20 Q. Why was it so?

21 A. Again, it goes back to the part about neither The Trump
22 Organization nor the Trump campaign was a party to the
23 transaction with Ms. Clifford and neither reimbursed me for the
24 payment either directly or indirectly.

25 Q. So what was missing?

1 A. Who made the payments, that's either the Trump Trust or
2 Mr. Trump himself.

3 Q. And did you intend it to be misleading in that way?

4 A. Yes, ma'am.

5 MS. HOFFINGER: Can we please put up the line at
6 the end of the second paragraph.

7 (Displayed.)

8 Q. "The payment to Ms. Clifford was lawful and not a
9 campaign contribution or campaign expenditure by anyone."

10 Do you see that line?

11 A. Yes.

12 Q. Was that truthful?

13 A. No, ma'am.

14 MR. BLANCHE: Objection.

15 THE COURT: Overruled.

16 Q. Did Mr. Trump approve the substance of the false
17 statements by you?

18 A. Yes, ma'am.

19 Q. And, in fact, had you provided the substance of this to
20 Jay Sekulow, Mr. Trump's attorney?

21 A. I did.

22 MS. HOFFINGER: Can we take that down and put up
23 People's 216 in evidence. It looks like I have the wrong
24 exhibit.

25 Can you blow up the line that client says "thank

1 you for what you do."

2 (Displayed.)

3 Q. What was your understanding of what that was about?

4 A. It was about the sum and substance of the response that
5 I just read.

6 MS. HOFFINGER: Thank you.

7 You can take that down.

8 Q. Now, defense counsel asked you some questions about
9 whether NDA's or Settlement Agreements happen all the time. Do
10 you remember those questions?

11 A. I do.

12 Q. And he asked you whether in a normal situation an NDA
13 was perfectly legal; do you remember that?

14 A. Yes, I do.

15 Q. You said it was?

16 A. I do.

17 Q. Do you remember that?

18 A. I do.

19 Q. Were the circumstances surrounding this NDA, your
20 paying Stormy Daniels at Mr. Trump's direction and for the
21 principal purpose of his election, was that perfectly legal?

22 MR. BLANCHE: Objection.

23 THE COURT: Sustained to leading.

24 Please rephrase.

25 Q. Was the circumstances of this NDA that you testified

1 to, was that perfectly legal?

2 MR. BLANCHE: Objection.

3 THE COURT: Overruled.

4 Q. I couldn't hear your answer.

5 A. Can you repeat it?

6 Q. Under the circumstances of this NDA with Stormy Daniels
7 that you testified to, was it perfectly legal under those
8 circumstances?

9 A. No, ma'am.

10 Q. On August 21, 2018, did you plead guilty to making an
11 excessive campaign contribution in violation of the Federal
12 Election Campaign Act in connection with that payoff to Stormy
13 Daniels?

14 MR. BLANCHE: Objection.

15 THE COURT: Overruled.

16 A. I did.

17 Q. On Thursday I believe defense counsel read to you what
18 you said at your hearing about the crimes of tax evasion and
19 false statements to a bank; do you remember that?

20 A. I do.

21 Q. And he asked you what you said with respect to those
22 charges; do you remember?

23 A. Yes.

24 Q. Did he ask you what you said under oath about making an
25 excessive campaign contribution in violation of FECA when you

1 paid off Stormy Daniels?

2 MR. BLANCHE: Objection.

3 May we approach.

4 (Whereupon, the following occurred sidebar:)

5 MS. HOFFINGER: Judge, they can't pick and
6 choose which portion of the allocution to read, at 3801 and
7 3802 --

8 THE COURT: Go through the sections that he
9 pointed out.

10 MS. HOFFINGER: He specifically read to the
11 witness his allocution of August 21, 2018, and had him say
12 yes, that was what he allocuted to with respect to the
13 counts of tax evasion and the count of false statements to
14 the bank. But he did not read the allocution with respect
15 to the payoff to Stormy Daniels and the payoff to Karen
16 McDougal as being illegal campaign contributions.

17 He read that allocution. I think at this point
18 we're entitled to read the allocutions.

19 MR. BLANCHE: Absolutely not. The reason why
20 those were read is because he later said that he was lying
21 under oath when he had made those statements. That's why
22 we elicited that statement. That is perfectly legal and
23 proper to elicit specific incidents where the individual
24 has lied under oath.

25 The only reason why I elicited those statements

1 from him is the witness later on again in this courtroom
2 said that those were lies under oath. He was saying he
3 didn't commit the crime.

4 I wasn't picking and choosing which part of the
5 allocution to read into the record, just the part of the
6 allocution where he specifically said he lied. That's
7 completely different than just letting them blast out that
8 he pled guilty.

9 THE COURT: It's very, very prejudicial to allow
10 it. So I am going to side with the defense.

11 MS. HOFFINGER: Okay.

12 (Whereupon, the following occurred in open court.)

13 MS. HOFFINGER: May we approach for a minute?

14 THE COURT: For the record, the objection is
15 sustained.

16 (Whereupon, the following occurred sidebar:)

17 MS. HOFFINGER: I just need a clarification of
18 your decision. I could still ask him when he pled guilty
19 to those two counts what was true then and what is true
20 now. I am not reading the allocution. I could still do
21 that. Given the questions that was just asked on that
22 score, I think I should be able to. I am not going to read
23 the allocution.

24 THE COURT: Look, arguably that would be fine.
25 But I think it came out a couple of times. In an excess of

1 caution, it's better to stay away from it.

2 MS. HOFFINGER: Okay.

3 (Whereupon, the following occurred in open court:)

4 CONTINUED REDIRECT EXAMINATION

5 BY MS. HOFFINGER:

6 Q. Now, defense counsel asked you last week, and I think
7 today as well, about whether the outcome of this trial affects
8 you personally. Do you remember those questions?

9 A. I do.

10 Q. There were questions about your plea back in 2018 and
11 how that affected you personally. Do you remember those
12 questions?

13 A. Yes.

14 Q. Now, I know it may feel like you are on trial here
15 after cross-examination, are you actually on trial here?

16 MR. BLANCHE: Objection.

17 THE COURT: Overruled.

18 Q. Are you actually on trial here in this case?

19 A. No, ma'am.

20 Q. Are you a witness here?

21 A. Yes.

22 Q. Are you charged with any crimes in this case?

23 A. No, ma'am.

24 Q. Is your liberty at stake in this case?

25 A. No, ma'am.

1 Q. Is your wife's liberty at stake in this case?

2 A. No, ma'am.

3 Q. Did we subpoena you to testify here?

4 A. Yes, ma'am.

5 Q. So, is that different -- is this situation here
6 different from the situation you were in in 2018 with criminal
7 charges brought against you?

8 A. Yes.

9 Q. You want to explain the difference?

10 A. The other one, it was my life was on the line, my
11 liberty. I was the defendant in that case.

12 Again, here, I am just a nonparty subpoenaed witness.

13 Q. And was there an issue about whether your wife might be
14 charged in that case?

15 A. Yes, ma'am.

16 Q. Now, one moment please.

17 I want to clarify something. When you left The Trump
18 Organization to become Personal Attorney to the President ---
19 withdrawn.

20 You were asked questions about whether you would have a
21 Retainer Agreement when you worked for a company. What's your
22 understanding when a lawyer works for a company about whether
23 one has to have a Retainer Agreement?

24 A. You're an employee, it's unnecessary.

25 Q. To clarify, when you left The Trump Organization, you

1 were no longer an employee but private counsel when you left in
2 2017?

3 A. That's correct.

4 Q. Did you ever put together a Retainer Agreement for any
5 work that you did for President Trump?

6 A. No, ma'am.

7 Q. Why was that?

8 A. I never expected to get paid and --

9 Q. Did you offer any -- did you ever bill for any services
10 or work that you did for President Trump in 2017 or 2018?

11 A. No, ma'am.

12 Q. Did the \$420,000 that you received in 2017 have
13 anything to do with legal services you provided in 2017?

14 A. No.

15 Q. And when you submitted each of your 11 invoices to The
16 Trump Organization stating that each was for services rendered
17 for the month in question pursuant to a Retainer Agreement, was
18 that true or false?

19 A. It was false.

20 Q. And when you received those 11 checks from the
21 Revocable Trust and from Donald Trump in response to those false
22 invoices, was the stub and the stub attached to those checks
23 which said retainer for the particular month, was that true or
24 false?

25 A. It was false.

1 Q. Now, you were asked some questions about Mr. Costello;
2 do you remember that?

3 A. Yes, ma'am.

4 Q. Did you ever sign a Retainer Agreement with him?

5 A. No, ma'am.

6 Q. Why not?

7 A. I didn't trust him. I didn't like the way that he kept
8 invoking Rudy Giuliani, and my concern was that anything that I
9 would say to him would immediately go directly back to President
10 Trump.

11 Q. And did you ever agree to pay him anything?

12 A. No, ma'am.

13 Q. Is that why you didn't sign the Retainer Agreement
14 also?

15 A. Yes.

16 Q. Now, in February of 2019, did you speak to some
17 prosecutors at the Southern District about Mr. Costello?

18 A. Yes.

19 Q. Did they have some questions for you about him?

20 A. They did.

21 Q. And in order to answer those questions, did you sign a
22 Waiver Agreement with respect to Mr. Costello so you could
23 answer those questions?

24 A. Yes, ma'am.

25 MS. HOFFINGER: Can we please put up for the

1 witness, the Court, the parties only, People's Exhibit
2 504AT for identification.

3 Q. Do you recognize that document, Mr. Cohen?

4 A. I do.

5 Q. What is it?

6 A. This is a waiver document.

7 Q. Did you sign it?

8 A. I did.

9 Q. Who did you provide it to?

10 A. To your office.

11 Q. Understood.

12 But prior to our office in 2019, do you know who?

13 A. The Southern District of New York.

14 Q. Is that an exact copy of the Waiver Agreement and is it
15 signed by you?

16 A. Yes, ma'am.

17 MS. HOFFINGER: I offer that in evidence.

18 MR. BLANCHE: No objection.

19 THE COURT: It's accepted into evidence.

20 (Whereupon, People's Exhibit 504AT was received
21 and accepted into evidence.)

22 Q. Can we read that for the jury? First paragraph and
23 then the second paragraph?

24 A. "I, Michael D. Cohen, hereby declare:

25 One: I am the defendant in the above-captioned case.

1 Number two: I was previously represented by the law
2 firm of McDermott Will & Emery in connection with the
3 investigation that preceded this case, the SDNY investigation,
4 as well as in connection with investigations into alleged
5 Russian influence in the 2016 Presidential Election.

6 During the period in which I was represented by MWE, I
7 was approached by Robert Costello, Esquire, of the law firm of
8 Davidoff Hutcher & Citron LLC.

9 Costello sought to represent me in connection with the
10 SDNY investigation and presented me with a Retainer Agreement.

11 I declined to sign the Retainer Agreement and informed
12 him I was already represented.

13 Although, I subsequently had several other
14 conversations and communications with Costello, at no time did I
15 sign a retainer or otherwise agree to retain Costello, nor did I
16 ever consider Costello or any lawyer at DHC to be my attorney.

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

22 Q. You can take that down.

23 There was a last line there. I apologize.

24 A. "I have discussed the foregoing with my current counsel
25 and am making this waiver knowingly and voluntarily."

1 Signed on February 7, 2019.

2 Q. So you waived any privilege you might have with respect
3 to communications with Mr. Costello so you could answer
4 questions; is that right?

5 A. That's correct.

6 Q. You are able to answer questions here because you
7 waived any privilege; is that right?

8 A. That's correct.

9 Q. Now, defense counsel asked you some questions last week
10 about some of your texts with people, texts with Keith
11 Schiller, texts with other people that you know. You were
12 asked today about some texts. They asked you some questions
13 about phone calls, emails and conversations that you taped with
14 various individuals.

15 Do you remember all those questions?

16 A. I do.

17 Q. And in January of 2023, when you surrendered your
18 phones to our office voluntarily, did you understand that we
19 would copy everything on those phones and turn over a copy of
20 all that material to defense counsel?

21 A. Yes, I was advised.

22 Q. You were aware that we did turn over all of that
23 material to defense counsel?

24 A. Yes, ma'am.

25 Q. Now, last week Mr. Blanche asked you some questions

1 about your lawyer submitting an application in November of 2023
2 to a Federal Judge for early termination of your supervised
3 release.

4 Do you remember those questions?

5 A. I do.

6 Q. And he asked about your role in your lawyer's
7 submission of some legal cases that turned out to be fake or not
8 real cases.

9 Do you remember those questions?

10 A. I do.

11 Q. And you explained some of what occurred to Mr. Blanche.
12 Can you explain a little bit more about what happened ?

13 Did you intend to mislead anybody about those Google
14 Bard searches and providing those cases to your lawyer?

15 A. No.

16 Q. Can you explain a little bit more about what happened?

17 A. Again, I went on to Google Bard, which is an AI search
18 engine, and I typed in the query, "Second Department New York
19 cases regarding early termination of supervised release" based
20 upon certain factors.

21 And it gave me a plethora of cases that appeared to me
22 to be legitimate. They certainly looked legitimate. There were
23 facts behind it that supported what we were going to put in this
24 upcoming motion.

25 And so, after I just copied and pasted the first three

1 because they were on point, I sent them over to my lawyer's
2 office to review and incorporate into the document.

3 I was just trying to be helpful. I didn't have any
4 longer, whether it's Westlaw or LexisNexis.

5 Anticipating they would look it over, just to make sure
6 that the information was accurate and correct and fit into the
7 motion that was being put forth on my behalf, I ultimately also
8 sent it to my current lawyer Danya Perry, and she noticed that
9 these cases were not legitimate. They were created by the AI
10 program which wanted to -- it wants to please the user. So it
11 created these hypotheticals.

12 And Ms. Perry immediately notified me that they're
13 wrong and that we should notify the Court, to which I sent her
14 "Absolutely, please do it."

15 At which point, Ms. Perry went ahead and sent the
16 letter to the Judge advising him that these three cases, the
17 citations are inaccurate, and Ms. Perry even went so far as to
18 then find three cases that were directly on point, just
19 different names, different citations, but with the same
20 underlying facts.

21 Q. So your lawyer notified the Court that the cases were
22 not accurate?

23 A. Yes, I authorized her to do that when she advised me
24 that the citations were inaccurate.

25 Q. Now, you were questioned by defense counsel regarding a

1 call at 8:02 p.m. with Keith Schiller and Mr. Trump on October
2 24, 2016. Do you remember those questions?

3 A. I do.

4 MS. HOFFINGER: Can we put up just please for the
5 witness, the parties and the Court People's Exhibit 417B
6 for identification.

7 Q. Do you recognize anyone in People's Exhibit 417B for
8 identification?

9 A. I do.

10 Q. Who do you recognize in that picture?

11 A. I recognize President Trump who is off to the right,
12 and in the dead center Keith Schiller.

13 Q. What is Keith Schiller wearing in the picture?

14 A. He is wearing a dark suit with a white shirt and red
15 tie.

16 MS. HOFFINGER: Your Honor, we offer that in
17 evidence.

18 MR. BLANCHE: Objection.

19 THE COURT: Please approach.

20 (Whereupon, the following occurred sidebar:)

21 MR. BLANCHE: Your Honor, this is a picture I
22 believe of a rally on that same date, in Tampa, Florida.

23 Now, there is a date on this somewhere, I presume,
24 that says the date. That's inadmissible hearsay. There is
25 no way that this witness can say that this document is --

1 that this picture is from a rally on that date. It's a
2 complete violation of the laws.

3 MS. HOFFINGER: I tell you what I am going to do,
4 I skipped a step. I am going to offer one more picture
5 which is going to also show again President Trump there on
6 that date and ask if it's a true and accurate
7 representation of how Mr. Schiller and Mr. Trump looked in
8 October 2016.

9 If you wish, we can offer it subject to
10 connection. We have an additional witness who will
11 testify.

12 THE COURT: What?

13 MS. HOFFINGER: We have an additional witness who
14 will testify how these screen shots from the video of the
15 rally were obtained. We can do that. It would be subject
16 to connection. If it's just for the purpose of identifying
17 the --

18 MR. BLANCHE: The additional witness is a
19 paralegal who is going to say they Googled it. It's
20 massive hearsay. You cannot admit into evidence for the
21 truth of the photograph for a specific date based upon the
22 paralegal Googling it.

23 MS. HOFFINGER: He reviewed the audio tape. The
24 tape was from C-Span. There's testimony how it's retrieved
25 and how he reviewed the rally. These were screen shots.

1 THE COURT: Let's take our lunch recess and we can
2 discuss this on the record.

3 MS. HOFFINGER: Thank you, your Honor.

4 (Whereupon, the following occurred in open court:)

5 THE COURT: Jurors, I remind you of all of my
6 instructions, including not to discuss the case either
7 among yourselves or with anyone else.

8 Please continue to keep an open mind as to the
9 defendant's guilt or innocence.

10 Please do not form or express an opinion as to the
11 defendant's guilt or innocence.

12 I will see you at 2:15.

13 Enjoy your lunch.

14 (Jury leaving courtroom.)

15 ***

16 (Witness leaving courtroom.)

17 ***

18 THE COURT: I thought it would be easier to
19 excuse the jury and discuss this out of the presence of the
20 jury.

21 MS. HOFFINGER: I am going to let Mr. Steinglass
22 speak.

23 MR. STEINGLASS: So, what the proffered exhibits
24 are, 417A and B, are photos of the defendant together with
25 Keith Schiller, that were taken on October 24th, at about

1 7:57 p.m., which shows that they're together.

2 That is in response to any potential defense
3 suggestion that maybe the call that took place on the
4 night of October 24th between Mr. Cohen and Keith
5 Schiller -- that the defense, should not be able to argue
6 that Mr. Trump was not there and did not participate in the
7 conversation or subsequent conversation during the same
8 call.

9 So I believe that it takes three things to get
10 this photo in.

11 One is that, the witness has to identify the
12 parties, which the witness has done.

13 Two, we have to be able to establish how this was
14 pulled from C-Span's archives, from their website, which we
15 have a paralegal lined up to do.

16 The third piece comes from C-Span themselves, when
17 they testified earlier in this trial, the way they archive
18 and produce case materials, which is enough to lay the
19 proper foundation to admit the photos which proves that the
20 defendant and Mr. Schiller were together at the time of
21 that call on October 24th.

22 THE COURT: So you're offering it to establish the
23 date and the time?

24 MR. STEINGLASS: Yes.

25 THE COURT: Do you have a copy?

1 MR. STEINGLASS: Sure.

2 THE COURT: Yes, Mr. Blanche.

3 MR. BLANCHE: Your Honor, we never asked or
4 implied that Mr. Schiller was or was not with President
5 Trump on that day.

6 What we argued and implied is that the phone call
7 that was made was to Keith Schiller about a completely
8 different topic than what the witness testified to on
9 direct.

10 So the first point that we somehow implied that
11 President Trump and Mr. Schiller were not together, that
12 was not our position at all. It's not going to be our
13 position.

14 Secondly, and more significantly, both of these
15 have the same hearsay problems that we argued, and your
16 Honor didn't go with us, that the Tweets have.

17 There is going to be a witness, apparently, that
18 is going to testify that the only thing that matters about
19 this entire exhibit is the date and time. Okay. That's
20 inadmissible hearsay. It's a business record. And that
21 there was a C-Span witness, and the C-Span witness could
22 potentially authenticate the documents, we don't know.
23 They weren't supplied the documents.

24 There was a ton of foundation laid about the
25 exhibits they were shown that established, indeed, the

1 rally took place that day, and they were perfectly
2 comfortable asking a dozen questions or so, to lay a proper
3 business foundation.

4 And so now they say, well, we laid the proper
5 business for the exhibits that were offered a few weeks
6 ago, we don't want to do that again, we're going to have a
7 paralegal come and say they Googled it. That's an
8 exception to the hearsay rule. That's not the rules.

9 THE COURT: Didn't the witness from C-Span lay the
10 foundation?

11 Didn't that witness testify to the functions and
12 how they maintained the records and the liability, and how
13 long they were doing it? Didn't he lay the foundation for
14 how they were maintained.

15 MR. BLANCHE: Absolutely. They were kept in the
16 archives. When he got the subpoena, he went to the
17 archives and pulled the documents and confirmed they were
18 accurate, which is what the rules require.

19 It seems like it's neither here nor there. We all
20 have Googled. The rules of evidence have to apply. You
21 still have to establish a foundation that isn't met here.
22 Especially when one of these is not a picture of Mr.
23 Schiller. One of them is. And the one that is, again, the
24 only thing -- the only relevance at all about this is,
25 again, the date and the time.

1 And so, it's an out of court statement being
2 offered for the truth of the matter asserted. Just like we
3 said before, but it's even more poignant here. It's
4 inadmissible.

5 MR. STEINGLASS: Well, so, there are a few points
6 I would make here.

7 First of all, I think if you go back and look at
8 the C-Span testimony, which is on Page 1665 through 1667,
9 there is a whole lot of detail about how the camera
10 operator reports the events in realtime. And the camera
11 operator has a business duty to do so accurately. They
12 try to record the entire event. They watch it from end to
13 end to make sure there is no interruptions when it airs.

14 This was not pulled off of Google. This was
15 pulled off of C-Span's website. I believe we can satisfy
16 the foundation requirements.

17 It seems like Mr. Blanche is also making a kind of
18 a relevance argument and saying that it's irrelevant to
19 their arguments that Mr. Trump was together with Mr.
20 Schiller at that time, and not just together, but that the
21 speech ended at 7:57, that the defendant was giving that
22 night. They walked off the stage together at 7:57.
23 That is not what the defense is getting at. It's certainly
24 an implication that was raised by defense's questions.

25 Who knows what they're going to say in their

1 summation.

2 We're entitled to establish -- I realize this is
3 not wholly responsive to what happened to their arguments,
4 what happened in the phone cal, it's certainly partially
5 responsive for us to be able to prove that the defendant
6 and Mr. Schiller were together at the time of this phone
7 call. And I think that relevancy is a low threshold.
8 So I think there is some probative value to that. There is
9 no prejudice. We can lay the proper foundation. That's
10 all we have to do.

11 MR. BLANCHE: I was not making this argument. I
12 was responding to the People's suggestion when we asked Mr.
13 Cohen we implied that he wasn't with Mr. Schiller. There
14 is no evidence of that. I have significant evidence that
15 he lied under oath when he said he had a conversation with
16 Mr. Trump that night. And that is what I crossed him on.
17 That's the issue.

18 Now, it's not a relevance argument. It's an
19 absolutely inadmissible hearsay argument.

20 If your Honor looks at the testimony from the
21 C-Span witness, including through Page 1668 and 69, there
22 was multiple questions to this witness about how careful
23 the process is to authenticate something that they record.
24 That's for good reason. The rules require it. It's not
25 they require it for one rally video. It doesn't count for

1 only this one in Tampa. It's the rules require it. It's
2 not inadmissible.

3 THE COURT: I am sorry. I didn't follow that.
4 He was very careful and he testified in great detail,
5 why are you saying that that testimony does not apply to
6 this rally?

7 MR. BLANCHE: Well, it applies to the process that
8 he went through in responding to the subpoena to confirm
9 that this record that this jury is going to see is a true
10 and accurate business record of C-Span, not of C-Span's
11 website as taken by a paralegal. There is a difference.

12 THE COURT: Give me an offer of proof as to what
13 the paralegal would testify to.

14 MR. STEINGLASS: Essentially, the paralegal will
15 testify that they were on the official website of C-Span.
16 They know how C-Span stores its videos. That this is
17 based part on the familiarity with this case but also on
18 the testimony of Dr. Browning that they were present for.
19 And they will testify that they were able to retrieve this
20 exhibit, and that this exhibit on its face shows that it's
21 a first run, and it started at a particular time, and it
22 ended at a particular time.

23 The C-Span representative testified that the
24 videos are aired in their entirety.

25 I mean, to me, to the extent that this -- that

1 this is not a tight foundation, I think it is a pretty
2 tight foundation. But if the two additional questions
3 would be necessary, we can fly the C-Span representative
4 back here to answer these questions. But I think that the
5 record as it exists now from the C-Span witness is
6 perfectly sufficient.

7 THE COURT: What would be the two questions that
8 you would ask the C-Span representative be?

9 MR. STEINGLASS: I don't think we need to ask any
10 of the C-Span rep. If Mr. Blanche believes the foundation
11 is somehow insufficient based on everything that the C-Span
12 rep already testified to and one or two more questions
13 would have to be asked in regard to the particular video, I
14 think we can do that. I believe that's an exercise in
15 futility.

16 THE COURT: Let me ask Mr. Blanche why is the
17 foundation that was laid by the C-Span representative, Dr.
18 Browning, why is that foundation not good enough for this
19 document?

20 MR. BLANCHE: There was no foundation laid for
21 this document.

22 Judge, whenever a witness who testifies as an
23 exception to the hearsay rule that something is a business
24 record, just because they establish the foundation that a
25 particular document from an organization, or in this case a

1 rally video, is a business record, doesn't mean that
2 whatever else that company produced or whatever else we
3 pull off the internet we can go and borrow those
4 foundational questions. I would say that probably applies
5 to the video as well. It's not the way the rules of
6 evidence work.

7 By the way, I am sure that the People knew about
8 this issue, we certainly did, before today. And so, they
9 should have brought the witness back.

10 I mean, it cannot be that there is a hearsay
11 exception that applies that can easily be cured and that
12 the People will say we tried once, we're not going to try
13 it this time.

14 THE COURT: What are the pages of Mr. Browning's
15 testimony?

16 MR. STEINGLASS: It's Dr. Browning.

17 THE COURT: Dr. Browning. I am sorry.

18 MR. STEINGLASS: I am not sure the pagination on
19 the small version is exactly as your Honor. It's
20 approximately Page 1665. All of his testimony starts on
21 1660 and goes to 1670.

22 THE COURT: I am not concerned. I think it's
23 relevant. I want to look into the hearsay issue. We will
24 discuss it after lunch.

25 Enjoy your lunch.

1 (Whereupon, the Court took a luncheon recess.)

2 ****

3 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

4 THE SERGEANT: Remain seated. Part 59 back in
5 session.

6 THE COURT: Before you went to lunch, we had a
7 discussion regarding the People's proposal to introduce
8 into evidence two videos, or at least stills taken from
9 videos. The defense objected.

10 Over lunch I did receive the People's submission,
11 just Section 9.14 of the Rules of Evidence.

12 Also, People v. Goldman, G-O-L-D-M-A-N. That is
13 a Court of Appeals decision, 35 NY 3d 582.

14 I had the opportunity to read through the
15 testimony of Dr. Browning. I wanted to see exactly what he
16 had testified to and what kind of foundation he made. I
17 was able to do that.

18 So beginning on Page 1664, I will be jumping
19 around a little bit.

20 But Page 1664:

21 "QUESTION: What is your position at C-Span?

22 "ANSWER: Executive Director of the C-Span
23 Archives.

24 "QUESTION: How long have you held that position?

25 ANSWER: Thirty-seven years."

1 Page 1665:

2 "QUESTION: Did you travel from Louisiana for the
3 purpose of testifying today."

4 "ANSWER: Yes. Yes, I did.

5 "QUESTION: What is C-Span?

6 "ANSWER: C-Span is a public television network to
7 telecast events in their entirety.

8 "QUESTION: As the Executive Director of the
9 C-Span Archives, what do you do?

10 "ANSWER: I mainly collect video that is aired on
11 network."

12 Page 1666:

13 "QUESTION: Does the camera operator record the
14 events in realtime as it is occurring?

15 "ANSWER: Yes. That's the obligation."

16 Next page.

17 "QUESTION: Does the pool camera operator have a
18 business duty to record that event accurately?

19 "ANSWER: Yes, because C-Span wants the entire
20 event.

21 "QUESTION: How does C-Span ensure that the video
22 that it is getting is the correct video?

23 "ANSWER: Once the event is taking place, there is
24 a producer who watches the video from the beginning to the
25 end and makes sure there are no interruptions in the

1 transmission.

2 "QUESTION: Is the video camera equipment tested
3 before an event?

4 "ANSWER: Yes, they make sure there is a valid
5 signal; they would say the signal is good.

6 "QUESTION: That's a signal test?

7 "ANSWER: Yes.

8 "QUESTION: Is there also an audio test?

9 "ANSWER: Yes, they will make sure that there is
10 solid audio coming through the event.

11 "QUESTION: While the video is being transmitted,
12 does C-Span record it to its own servers in any way?

13 "ANSWER: Yes, we make copies of the video as it
14 is coming in.

15 "QUESTION: Does C-Span save those videos?

16 "ANSWER: Yes, in the video library, the C-Span
17 archives.

18 "QUESTION: Can you tell the jurors a little bit
19 about the video library that C-Span archives?

20 "ANSWER: The video library is an online
21 collection of everything that is telecast on C-Span. That
22 is 278,000 digital hours a day.

23 "QUESTION: And that is everything that is ever
24 aired on C-Span?

25 "ANSWER: That's correct.

1 "QUESTION: It's still being maintained by C-Span?

2 "ANSWER: That's right.

3 "QUESTION: Is it the regular course of business
4 for C-Span to record and save those videos?

5 ANSWER: Yes, it is.

6 "QUESTION: Now, at some point did C-Span receive
7 a document subpoena from the Manhattan District Attorney's
8 Office requiring the company to turn over video recordings
9 of events featuring Donald Trump?

10 "ANSWER: Yes, it did.

11 "QUESTION: Did C-Span comply with its legal
12 obligations to turn over the subpoenaed videos?

13 "ANSWER: Yes, it is.

14 "QUESTION: Are you the one that retrieved the
15 videos in response to the subpoena?

16 ANSWER: Yes, I was.

17 "QUESTION: Can you tell the jury how you
18 identified those videos?

19 "ANSWER: Well, subpoena indicated the videos that
20 were requested, including what we call the URL of the
21 video. But we would verify that each video -- that it
22 matched the subpoena -- what the subpoena was.

23 "QUESTION: Did you confirm that the videos were,
24 in fact, events featuring Donald Trump as identified in the
25 subpoena?

1 "ANSWER: Yes, we did.

2 "QUESTION: Did you transmit exact copies of
3 videos to the Manhattan District Attorney's Office without
4 making any alterations, deletions or changes?

5 "ANSWER: Yes, I did.

6 "QUESTION: Before testifying today, did you have
7 the opportunity to review files marked for identification
8 as People's Exhibit 409A through 409D?

9 "ANSWER: Yes, I did.

10 "QUESTION: Are all of those files video clips of
11 videos that C-Span produced to the Manhattan District
12 Attorney's Office?

13 "ANSWER: Yes, they were."

14 Line 17:

15 "QUESTION: For each of those clips, did you
16 review both the full video and the video clip and confirm
17 that the clip is an exact copy of the portion of the longer
18 video?"

19 "ANSWER: Yes, I did."

20 The People offered into evidence Exhibits 409A as
21 in Apple to 409D as in Dog.

22 First, I appreciate the case law that was
23 referenced by the People during lunch recess.

24 I believe it's distinguishable from what we have
25 going on right here now.

1 I also do agree that certainly the proffered
2 evidence is relevant.

3 However, I don't see how the People can get past
4 the hearsay objection. The testimony that was offered by
5 Dr. Browning was a foundation. One, he's highly qualified,
6 and gave foundation for the exhibits that we were going to
7 be accepting, to whom those exhibits were going to be
8 introduced. He didn't lay the general foundation for any
9 and all videos. This goes for some videos that came in
10 through him.

11 To suggest that a paralegal or anybody else can
12 now take the stand and based upon Dr. Browning's testimony
13 state that they are now qualified to testify as a records
14 custodian and authenticate the video would mean to suggest
15 whoever was here when Dr. Browning testified would be
16 equally qualified do the same.

17 I don't think we can say that.

18 So the objection is sustained. Those images are
19 not going to come in as offered.

20 Anything else?

21 MR. STEINGLASS: We accept your ruling, but I
22 think that may mean that we want to bring the C-Span rep
23 back so he could confirm the business records status of
24 that video. So we're making arrangements to try to do
25 that.

1 THE COURT: Give me a timeframe.

2 MS. MANGOLD: We just reached out to them. We can
3 update you at the end of today of the timeframe. We asked
4 them to be available as soon as possible.

5 MR. STEINGLASS: The Court has the inherent
6 authority to kind of control the order of proof that takes
7 place in the trial.

8 I don't think there is any reason this has to hold
9 up the defense case or any other witnesses that we have.

10 I will just cite two quick cases on this point.

11 People V. Hinkley, which is 178 A.D. 2d 800,
12 which says, "The statutory order of trial, CPL Section
13 260.30, is not a rigid framework. The trial Court
14 maintains its commonlaw discretionary power to alter the
15 order of proof, at least up until the time the case is
16 submitted to the jury."

17 So, that's one cite.

18 This is pretty well established. I will give a
19 couple of quick cites.

20 Court of Appeals, People v. Olsen, 34 N.Y. 2d
21 349. And --

22 THE COURT: I know I have the authority. I know
23 it's discretionary.

24 I will hear from the defense.

25 MR. BLANCHE: We very much object. We're,

1 presumably, within a few minutes of the People resting the
2 case.

3 We have witnesses here. There is a likelihood
4 that we will rest today.

5 So, the People have known about this issue. Well,
6 I don't know how long they have known about this issue, but
7 certainly as of last Thursday it was something that was
8 elicited on cross-examination before lunch.

9 So, here we are on Monday, and they're about to
10 rest and they're asking, I guess, for an opportunity to see
11 if this witness can come back.

12 We very much object. We have a witness in the
13 back, that depending on how the rest of the cross goes, and
14 assuming we call the witness, we have another short
15 witness. We anticipate resting as well. At least as of
16 now.

17 We would object and ask that the Court not allow
18 the trial to just go on.

19 THE COURT: People, why wasn't this taken care of
20 sooner?

21 MR. STEINGLASS: Well, Judge, we learned of this
22 over the weekend and have been making diligent efforts to
23 move forward on this.

24 Frankly, we thought that the -- I understand your
25 Honor's ruling.

1 I think it certainly was our position that the
2 foundation that was set forth by Dr. Browning was
3 sufficient to do this through this witness, through not
4 only through the three pieces that I articulated before
5 lunch.

6 I don't want to characterize your Honor's ruling.
7 I understand it. I will certainly follow it.

8 I think we have more than a good faith basis to
9 believe it was going to come in.

10 It doesn't seem like Mr. Blanche is going to
11 contest the fact they were together.

12 I am not sure why we're jumping through all the
13 hoops. I understand the rules of evidence apply. They
14 have the right to put us through our burden.

15 They don't have to stipulate, for example, that
16 Mr. Schiller was together with Mr. Trump on that date and
17 time. Although, it does not sound like they're contesting
18 that.

19 That being said, we're doing the best we can to
20 get this witness here as quickly as possible. Hopefully,
21 that will be tomorrow morning.

22 THE COURT: All right.

23 Are you objecting to letting the People finish out
24 this witness and put on your case and then we adjourn to
25 tomorrow morning and call this witness?

1 MR. BLANCHE: Very much so.

2 THE COURT: What is the prejudice?

3 MR. BLANCHE: The prejudice is the sequence of
4 events. The People rest or we take witnesses out of turn
5 just because we happen to have witnesses here.

6 To allow for the People to try to get a witness
7 here by tomorrow morning to testify about something that
8 there was testimony about last week, your Honor -- and I
9 accept that this fact wasn't learned until over the
10 weekend, but the call was made, apparently, over lunch to
11 see if the witness can come out.

12 This isn't a new fact. Presumably, the People
13 prepped Mr. Cohen on this phone call.

14 And I don't -- this is patently unfair in our view
15 for the Court to allow the People, given an obvious ruling
16 on the admissibility of a picture -- of a picture on
17 redirect, to allow them to stop, to presumably rest or not
18 rest, make us decide if we want to put on a case before
19 they rested for no reason.

20 THE COURT: I am not going to make you put on your
21 case before they rest. What I could do is simply adjourn
22 until tomorrow.

23 MR. BLANCHE: There have been multiple days where
24 we had to end early because the People are out of
25 witnesses. There has been scheduling issues. That happens

1 in a trial. I don't contest that.

2 Here we are now where, literally, the People are
3 going to rest, and now they want more time to try to get a
4 witness here tomorrow about something that was had on
5 cross.

6 That's not the way the trial is supposed to work,
7 Judge.

8 THE COURT: People, I would like you to take a
9 minute and see if she can be here 9:30 tomorrow.

10 MR. STEINGLASS: We reached out and we're waiting
11 to confirm.

12 THE COURT: Let's recess and get back to me in a
13 few minutes.

14 (Recess.)

15 ***

16 THE COURT: People, what did you find out?

17 MS. MANGOLD: Your Honor, we were able to reach
18 C-Span. They are booking travel right now in order to be
19 available at 9:30 tomorrow morning. They stress the
20 travel is not booked yet. But they are preparing to do
21 that.

22 THE COURT: Anything else, Mr. Blanche?

23 MR. BLANCHE: No. Just our continued objection.

24 This will be fifth or sixth time we're going to
25 apparently run out of witnesses for the day.

1 We have witnesses here, ready to go, and we think
2 the decision that your Honor made, that a witness has to
3 come and testify about this shouldn't then be immediately
4 compromised by giving the People more time to get the
5 witness.

6 MR. STEINGLASS: That is wrong. We haven't broken
7 early five or six days early. I can remember we broke one
8 day early for a private medical matter that we shared with
9 the Court. That is just wrong.

10 The testimony of this witness is so narrow that
11 none of the proffered defense witnesses spoke to it. There
12 is no particular reason why we couldn't keep going on.

13 If Mr. Blanche wishes to do that or if your Honor
14 has indicated a willingness to adjourn the case until
15 tomorrow and let Mr. Blanche put on his case tomorrow, that
16 is also fine. Essentially, the ball is in Mr. Blanche's
17 court.

18 THE COURT: I remember stopping early one time for
19 medical reasons.

20 Look, if scheduling were an issue, if time were of
21 the essence, I would agree with you, Mr. Blanche. We
22 agreed this morning that we are basically going to have a
23 week down. We're sending the jury home for a week to do
24 nothing. So, there is no prejudice to anyone that I can
25 see whatsoever.

1 Clearly, it's up to you. You can present your
2 case out of order or once we finish with Mr. Cohen we can
3 adjourn to tomorrow morning.

4 The witness has to be here at 9:30. The witness
5 has to take the stand at 9:30. If that doesn't happen,
6 we're going to proceed.

7 And after the People rest and you put on your
8 case, we're going to have our charge conference, what we
9 discussed this morning. The plan that we came up with this
10 morning and agreed to remains the same.

11 After tomorrow, after the charge conference, you
12 will get the proposed jury charges I believe Thursday,
13 hopefully. We'll be adjourned to Tuesday next week for
14 summations. There is no prejudice to anyone.

15 MR. BLANCHE: May I have two minutes to talk to my
16 team and my client?

17 THE COURT: Sure.

18 (Brief pause.)

19 MR. STEINGLASS: I think we may be able to move
20 this process along.

21 THE COURT: Tell me.

22 MR. STEINGLASS: I think, if I understand what we
23 agreed about, the exhibit will come in through Mr. Cohen.
24 We will not call a paralegal, and we'll agree to the
25 following stipulation:

1 The parties have agreed that People's Exhibit 417B
2 is a still photograph taken from the end of the video
3 which concluded at 7:57 p.m. on October 24, 2016.

4 And we'll just have to ask one more foundational
5 question about whether it's a fair and accurate depiction
6 of the way Mr. Schiller appeared in October.

7 Then we'll put the exhibit in through Mr. Cohen
8 and we'll read the stipulation, and then the exhibit won't
9 be coming in for the timestamp on the exhibit, but the
10 stipulation will cover that.

11 THE COURT: Mr. Blanche, you consent to that?

12 MR. BLANCHE: Yes.

13 THE COURT: I understand it's a strategic
14 decision.

15 Have you discussed this with your client?

16 MR. BLANCHE: Yes.

17 MR. STEINGLASS: So maybe we will read the
18 stipulation after we move it into evidence, after we move
19 the exhibit into evidence.

20 THE COURT: That's fine.

21 Let's get the witness, please.

22 (Witness entering courtroom.)

23 ***

24 (Jury entering courtroom.)

25 ***

1 THE COURT: Please be seated.

2 THE CLERK: The jury is present and properly
3 seated.

4 THE COURT: Jurors, thank you for your patience.
5 We were just taking care of some legal matters. I thank
6 you for your patience.

7 MS. HOFFINGER: Thank you.

8 CONTINUED REDIRECT EXAMINATION

9 BY MS. HOFFINGER:

10 Q. Good afternoon, Mr. Cohen.

11 A. Good afternoon.

12 MS. HOFFINGER: Can we put up just for the
13 witness, the Court and counsel People's Exhibit 417B.

14 (Displayed.)

15 Q. Mr. Cohen, do you see the picture?

16 A. Yes, ma'am.

17 Q. Before lunch you testified that you recognize Keith
18 Schiller in that picture; is that correct?

19 A. Yes.

20 Q. Wearing a red tie?

21 A. Yes.

22 Q. And also Mr. Trump in that picture?

23 A. Yes.

24 Q. Does this photograph fairly and accurately depict the
25 way Keith Schiller and Mr. Trump appeared in October 2016?

1 A. Yes, ma'am.

2 MS. HOFFINGER: Your Honor, I offer in evidence
3 now People's Exhibit 417B.

4 MR. BLANCHE: No objection.

5 THE COURT: Accepted into evidence.

6 (Whereupon, People's Exhibit 417B was received and
7 marked into evidence.)

8 MS. HOFFINGER: The parties have agreed that
9 People's Exhibit 417B is a still photograph taken from the
10 end of a video.

11 The video concluded at 7:57 p.m. on October 24,
12 2016.

13 It's signed by both the prosecution and the
14 defense today, May 20, 2024.

15 THE COURT: Thank you.

16 Q. Mr. Cohen, you testified that you believe that you
17 spoke to both Mr. Trump and Mr. Schiller on that call on October
18 24, 2016, at about 8:02 p.m.

19 Do you recall that?

20 A. I do.

21 Q. During this time period in October of 2016, did you
22 have a number of conversations with Mr. Trump about resolving
23 the Stormy Daniels matter?

24 A. Yes, ma'am.

25 Q. And were some of those conversations in person?

1 A. Yes.

2 Q. Were some of those conversations by phone?

3 A. Yes.

4 Q. Were some of those conversations longer and were some
5 shorter?

6 A. Yes.

7 Q. Approximately, how many conversations would you say
8 that you had with Mr. Trump about the Stormy Daniels matter just
9 in October of 2016, if you can approximate?

10 A. More than 20.

11 Q. Now, did you review materials like your phone records
12 and texts and emails before you testified?

13 A. Yes, ma'am.

14 Q. How did reviewing those materials assist you in
15 recalling some conversations?

16 A. It helped to refresh my memory.

17 Q. And do you recall the general substance of the
18 conversations with Mr. Trump?

19 A. Yes.

20 Q. For example, do you have any doubt that you had a
21 conversation with Mr. Trump in which he told you in substance to
22 work out the Stormy Daniels payoff with Allen Weisselberg?

23 A. Yes, ma'am.

24 Q. Do you have any doubt that, in fact, you did work that
25 out with Allen Weisselberg?

1 A. Yes.

2 Q. Meaning -- I am going to correct the record, I am going
3 to go back.

4 Do you have any doubt that you had a conversation
5 with Mr. Trump that you should work it out with Allen
6 Weisselberg?

7 A. No doubts.

8 Q. Do you have any doubt that you did, indeed, work it out
9 with Allen Weisselberg?

10 A. No.

11 Q. Meaning, do you have any doubt?

12 A. No, none at all.

13 Q. Do you have any doubt in your mind that Mr. Trump gave
14 you the final signoff to go ahead and make the payment before
15 you went to the back to complete that?

16 A. No doubt.

17 Q. Would you have paid Stormy Daniels the \$130,000 had
18 Mr. Trump not signed off?

19 A. No, ma'am.

20 Q. Why not?

21 A. Because I wanted to ensure that I was going to get my
22 funds back.

23 Q. And as you sit here, do you have any doubt in your mind
24 that Donald Trump also said that he would make sure that you got
25 paid back?

1 A. He said that.

2 Q. Would you have made the payment if he did not?

3 A. No, ma'am.

4 Q. Now, Mr. Cohen, have you had a chance to review the
5 audio recording of one of your telephone calls with Keith
6 Davidson on October 26, 2017? That's People's Exhibit 265 in
7 evidence.

8 Have you had a chance to listen to that recording?

9 A. Yes.

10 Q. Have you had a chance to also review the transcript of
11 that call which is People's 267 in evidence?

12 A. I don't recall if I did.

13 Q. You don't recall one way or the other, correct?

14 MS. HOFFINGER: Well, let's do this, let's play
15 the clip then for the jury, please, People's Exhibit 265.
16 Let's play a portion of the clip from 11 minutes and 13
17 seconds to 13 minutes and about 4 seconds.

18 We can put up a transcript while you are
19 listening.

20 Q. Let us know if the transcript is accurate in terms
21 of what you hear on the call.

22 MS. HOFFINGER: The transcript is People's Exhibit
23 267 and the call is People's Exhibit 265.

24 We need someone to let us allow it to play. We
25 are having a little bit of a technical difficulty.

1 Are you able to play it? Can you make it louder
2 on your end?

3 Thank you.

4 I think we're having an issue.

5 Can we take a break and see if we can fix it?

6 THE COURT: All right, jurors, I apologize. Let's
7 take a short break.

8 (Jury leaving courtroom.)

9 ***

10 THE COURT: You may be seated.

11 You can step out.

12 (Witness leaving courtroom.)

13 ***

14 (Recess.)

15 (Witness entering courtroom.)

16 ***

17 (Jury entering courtroom.)

18 ***

19 THE COURT: Please be seated.

20 THE CLERK: The jury is present and properly
21 seated.

22 MS. HOFFINGER: Thank you, Judge.

23 Can we now play the clip from People's Exhibit

24 265?

25 (Whereupon, audio clip was played in open court.)

1 THE COURT: One second.

2 Are you supposed to have a transcript?

3 MS. HOFFINGER: I think the transcript is supposed
4 to be on the screen.

5 THE WITNESS: It is not.

6 Now it is.

7 (Whereupon, audio recording played in open court
8 and the transcript was displayed.)
9
10

11 (Whereupon, Theresa Magniccari, Senior Court Reporter, was
12 relieved by Laurie Eisenberg as Senior Court Reporter.
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1 M. Cohen - Redirect/Hoffinger

2 1 (Whereupon, an audio exhibit is played in open
3 2 court and an exhibit is shown on the screens.)

4 3 Q Mr. Cohen, does that transcript accurately reflect
5 4 the conversation you had on the phone, that conversation with
6 5 Mr. Davidson?

7 6 A Yes, ma'am.

8 7 Q What did you mean when you told Keith Davidson, "I
9 8 can't even tell you how many times he said to me, 'I hate the
10 9 fact that we did it,' and my comment was, 'Every person you've
11 10 spoken to told you it was the right move;'" who were you
12 11 referring to? What were you referring to? What was it about?

13 12 A I was referring to the payment to Keith Davidson that
14 13 I made on behalf of Mr. Trump for the Stormy Daniels matter,
15 14 for the Non-Disclosure Agreement.

16 15 Q Who was it you were referring to when you said that,
17 16 "He said to me, 'I hate the fact that we did it;'" who was the
18 17 "he"?

19 18 A Mr. Trump.

20 19 Q Now, at the time of this call, which was October of
21 20 2017, were you still in the process of being repaid monthly by
22 21 checks --

23 22 A Yes.

24 23 Q -- from Mr. Trump for the \$130,000 payoff to Stormy
25 24 Daniels?

26 25 A Yes, ma'am.

27 Laurie Eisenberg, CSR, RPR
28 Senior Court Reporter

1 MS. HOFFINGER: You can take that down.

2 Q And you were Personal Attorney to President Trump at
3 the time?

4 A Yes.

5 Q Now, Defense Counsel has asked you a lot of questions
6 about how you've profited off of writing books and speaking
7 publicly in podcasts about Mr. Trump.

8 Do you remember those questions?

9 A I do.

10 Q Putting aside financial matters, putting that to
11 the side, how has telling the truth about what you did with
12 Mr. Trump affected your life, just briefly?

13 A My entire life has been turned upside-down as a direct
14 result. My -- I lost my law license, my businesses, my
15 financial security, which I was fortunate enough early to have
16 been able to retain my family's happiness, which is probably
17 paramount, just to name a few.

18 MS. HOFFINGER: One moment, please.

19 (Whereupon, the People confer.)

20 Q Have there been certain attacks that you faced as a
21 result?

22 A Yes, ma'am.

23 Q Personal attacks?

24 A Yes, ma'am.

25 Q Without describing them, have there been any affects

1 on both you and your family?

2 A Very much.

3 MS. HOFFINGER: I have nothing further.

4 RECROSS-EXAMINATION

5 BY MR. BLANCHE:

6 Q Mr. Cohen, you were asked a question a minute ago
7 about your life being turned upside-down because you decided to
8 change your view about Mr. Trump; right?

9 MS. HOFFINGER: Objection.

10 THE COURT: Sustained.

11 MR. BLANCHE: Sustained?

12 THE COURT: Sustained.

13 Q You were just asked questions about the consequences
14 of your conduct; correct?

15 A Yes.

16 Q And you said that you lost your law license; right?

17 A Correct.

18 Q Is that President Trump's fault?

19 A In part.

20 Q You pled guilty to tax crimes; correct?

21 A I did.

22 Q And you pled guilty to making false statements to a
23 bank; correct?

24 A As I previously said, yes.

25 Q Did President Trump have anything to do with that?

1 A No, sir.

2 Q And is one of the reasons why you lost your license to
3 practice law because of those felonies?

4 A No. Not because of those.

5 Because of the totality, including the campaign finance
6 violations, two counts, as well as the U.S.C., the 1001, lying
7 to Congress.

8 Q So, "the totality".

9 So, my question to you: Is one of the reasons that you lost
10 your license to practice law because of those tax crimes and
11 because of the false statements to a bank; correct?

12 MS. HOFFINGER: Asked and answered.

13 THE COURT: Sustained.

14 Q As a matter of fact, when you're convicted of a felony
15 in New York, no matter the felony, you automatically lose your
16 license to practice law; correct?

17 A Yes, sir.

18 Q But, you still blame President Trump "in part" you
19 said because of that; is that right?

20 A Correct.

21 Q Now, if we can put up the Waiver that you were shown
22 on redirect, 417B, I believe.

23 Can you take a look at that when it shows up on your
24 screen.

25 MR. BLANCHE: This can be shown to everybody. It's

1 in evidence.

2 (Whereupon, an exhibit is shown on the screens.)

3 Q That's the Waiver that you were just shown on
4 redirect; correct?

5 A Correct.

6 Q This is a Waiver that you signed when you were talking
7 to the SDNY Prosecutors; correct?

8 A Correct.

9 Q It was to allow them to speak with Mr. Costello about
10 conversations that Mr. Costello had had with you; right?

11 A Correct.

12 MR. BLANCHE: If we can turn to the second page.
13 Just blow up the top ten lines, please.

14 (Whereupon, an exhibit is shown on the screen.)

15 Q You write: "Although I do not believe that any of my
16 communications with Costello or other lawyers at DHC" -- which
17 is Mr. Costello's law firm?

18 A Correct.

19 Q -- "are subject to attorney-client privilege, I hereby
20 waive whatever attorney-client or other privilege that might be
21 argued to have attached to such communications."

22 You signed that; right?

23 A I did.

24 Q Earlier this morning, you said that you understood
25 that your communications with Mr. Costello were privileged;

1 right?

2 A At the time, yes.

3 Q When you made that; correct?

4 A (No response).

5 Q Meaning, when you had communication with Mr. Costello,
6 you thought it was privileged; right?

7 A My communications with Mr. Costello that were sent to
8 me contained attorney-client privilege. And so, yes, I accepted
9 it for what he wanted.

10 Q So, when you write here when you signed this Waiver
11 and said you don't believe that any of the communications with
12 Costello are subject to the attorney-client privilege, that's
13 different than what your testimony is today; is that right?

14 A No, sir. I think it's the same.

15 Q Today, you don't believe any of your communications
16 were privileged?

17 A To the extent that they were, I was waiving them.

18 But, at the time, I did not believe them to be. I was
19 appeasing what Mr. Costello --

20 Q At which time did you not believe them to be
21 privileged, at the time that you signed the Waiver or the time
22 you were talking to Mr. Costello?

23 A The time I signed the Waiver.

24 Q So, at the time you were talking to Mr. Costello, you
25 believed they were privileged?

1 A I accepted that he wanted them to be attorney-client
2 privilege.

3 Q So, do you -- you were just asked a couple of
4 questions about a photograph of a rally on October 25th.

5 Do you remember those questions just a few minutes ago?

6 A I do.

7 Q That showed then-Candidate Trump with Keith Schiller;
8 is that right?

9 MS. HOFFINGER: Objection to the date.

10 You said 25th.

11 Q Sorry.
12 October 24th of 2016; correct?

13 A Correct.

14 Q I misspoke.

15 Now, Mr. Schiller, at the time, was the bodyguard of
16 President Trump; correct?

17 A Correct.

18 Q And as his bodyguard, did he travel with him, more or
19 less, every day during the campaign?

20 A Yes, sir.

21 Q So, if there was a rally, no matter the day, no matter
22 the time, Mr. Schiller would be there; correct?

23 A Correct.

24 Q And so, when that rally ended around eight o'clock,
25 your testimony is still -- just so I understand -- is still

1 that in that 90 seconds, you spoke with Mr. Schiller about the
2 problem you were having with a 14-year-old, got him to agree to
3 take care of it, told him you would send him the number, which
4 you did, but also have Mr. Schiller pass the phone to Candidate
5 Trump and update Mr. Trump on everything that was going on;
6 that's your testimony?

7 A Yes, sir.

8 Q Got it.

9 So, early on in redirect, Ms. Hoffinger said that when you
10 spoke this morning about lying to Congress in connection with
11 the 2019 testimony, you misspoke.

12 Do you remember that question and that answer?

13 MS. HOFFINGER: Objection.

14 THE COURT: Sustained.

15 Q Well, did you -- did you lie to Congress in -- on
16 February 27, 2019?

17 A No, sir.

18 Q When you testified and when you wrote in your
19 statement that you never asked for, nor would you accept a
20 pardon from President Trump, you're saying that was not a lie?

21 A No, sir.

22 Q So, in 2016, you made \$425,000 from The Trump
23 Organization; correct?

24 A (No response).

25 Q What I mean by that, your base salary, plus you only

1 got a \$50,000 bonus; correct?

2 A Correct.

3 Q So, that's \$425,000; right?

4 A Correct, sir.

5 Q In 2017, you were paid \$420,000; correct?

6 A Correct.

7 Q 35,000 a month; correct?

8 A Yes, sir.

9 Q And I know that you were saying that that was just a
10 repayment, but during that time, to be clear, you were
11 President Trump's Personal Attorney the entire year of 2017;
12 correct?

13 A Correct.

14 Q Now -- but your testimony is that the \$420,000, the
15 \$35,000 per month retainer or payment that you received was not
16 for your legal services; it was to pay back the money that
17 President Trump owed you; right?

18 A Yes. I've classified it as a reimbursement.

19 Q It was a reimbursement? It wasn't a payment for your
20 services?

21 A Correct.

22 Q So, in all, you worked for President Trump, I believe
23 you said, for around 11 years; correct?

24 A Correct.

25 Q Did he overpay for things regularly?

1 A No, sir.

2 Q Did he happily write checks to lawyers, for example?

3 A No, sir.

4 Q One of the first things that you said you had to do
5 when you started working at The Trump Organization was to bring
6 a lot of bills down, and I think you said 20 percent is what
7 folks got paid; right?

8 A No.

9 What you're referring to was for Trump University where
10 people accepted 20 percent.

11 It's different than for the legal fees.

12 Q Oh. Understood.

13 Sorry. Legal fees is one thing.

14 This is different vendors that were owed money for Trump
15 University; correct?

16 A Correct.

17 Q And you made phone calls; and every time you got one
18 of them to pay just 20 percent, you said you had marched into
19 President Trump's office and you told him, you reported --

20 MS. HOFFINGER: Objection.

21 THE COURT: Sustained.

22 Q My question is -- and you understand that in 2016,
23 when he was running for election, he spent somewhere around
24 70 million of his own money on the campaign; correct?

25 MS. HOFFINGER: Objection.

1 THE COURT: Sustained.

2 Q So, of all the time, the 11 years that you worked for
3 President Trump, do you recall him -- except for the payment
4 that we're talking about now, the 420,000 -- do you recall him
5 ever just willingly overpaying for something?

6 MS. HOFFINGER: Objection, your Honor.

7 THE COURT: Overruled.

8 You can answer.

9 A No. That's the first time that I recall Mr. Trump
10 paying for any NDA.

11 Q That's when he repaid you or reimbursed you, according
12 to your testimony, the \$130,000; correct?

13 A Along with the other items, yes.

14 Q Along with the other 20,000 for Red Finch; correct?

15 A Well, it's not 20, but -- yes.

16 Q It was 20. You charged him 50.

17 MS. HOFFINGER: Objection.

18 THE COURT: Sustained.

19 MR. BLANCHE: I have no more questions, Judge.

20 THE COURT: Anything else?

21 MS. HOFFINGER: Nothing, Judge.

22 THE COURT: Thank you, sir.

23 You can step down.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness is excused.)

1 THE COURT: People?

2 MR. STEINGLASS: Your Honor, the People rest.

3 THE COURT: Counsel, please approach.

4 (Whereupon, the following proceedings were held
5 at sidebar:)

6 THE COURT: I wanted to confirm with you before I
7 ask you in the presence of the jury whether you intend to
8 present any evidence.

9 MR. BLANCHE: Yes, your Honor.

10 We also move for an immediate acquittal.

11 We can do that at the end of the day.

12 I don't want to take the jury's time.

13 We anticipate calling two witnesses. The first,
14 our paralegal, five minutes or so; and then Mr. Costello.

15 THE COURT: Do you think you'll be done by 4:30?

16 MR. BLANCHE: If Mr. Steinglass talks quickly,
17 yes.

18 THE COURT: To the extent we can finish at 4:45
19 or 5:00, we can do that.

20 MS. HOFFINGER: We need cross of Mr. Costello.

21 THE COURT: That's why I'm saying if you need to
22 go longer, I'm willing to do that.

23 (Whereupon, the following proceedings were held
24 in open court:)

25 THE COURT: Mr. Blanche, does the Defense wish to

1 present any evidence?

2 MR. BLANCHE: Yes.

3 The Defense calls Daniel Sitko.

4 D A N I E L S I T K O, having first been duly sworn and/or
5 affirmed by the court clerk, was examined and testified as
6 follows:

7 COURT OFFICER: State your full name for the
8 record, spelling your last name.

9 THE WITNESS: Daniel Sitko. S-I-T-K-O.

10 COURT OFFICER: County of residence.

11 THE WITNESS: New York.

12 DIRECT EXAMINATION

13 BY MR. BLANCHE:

14 Q Good afternoon.

15 Where do you work?

16 A I work for Blanche Law.

17 Q You work for me?

18 A I do.

19 Q You're a paralegal?

20 A I am.

21 Q You've been in court.

22 Generally speaking, what is your job?

23 A Um, I assist attorneys in whatever comes up. A lot of
24 it, as a defense firm, is reviewing discovery, which is
25 evidence produced in a case, summarizing it, helping with

1 filings, researching stuff, editing motions.

2 Q This past Friday, so three days ago, after trial ended
3 on Thursday, were you asked to do anything?

4 A Yes. I was asked to create a Summary Chart of phone
5 calls.

6 Q What did you do to accomplish that task?

7 A So, I looked in the People's Exhibit 400 for the phone
8 logs for Mr. Cohen's phone number ending 0114. I looked for
9 contacts or -- contact between that phone number and three
10 phone numbers associated with Robert Costello.

11 So, anyone that may have appeared in that phone log, I
12 would copy and paste certain information, like the time the
13 phone call was made, how long the phone call lasted, the date,
14 into an Excel spreadsheet.

15 Q So, you created an Excel spreadsheet?

16 A Yes.

17 Q I'm going to show you, the Court, and the parties what
18 I marked for identification as B101A.

19 (Whereupon, an exhibit is shown on the screens of
20 the witness and the parties.)

21 Q Is this the Excel spreadsheet you created?

22 A Yes.

23 Q Does it accurately reflect, with the exception of
24 redactions, the information that you reviewed from the phone
25 records you just described?

1 A Yes.

2 MR. BLANCHE: Your Honor, we offer B101A, a
3 Summary Chart.

4 MS. HOFFINGER: No objection.

5 THE COURT: Accepted into evidence.

6 (Whereupon, Defense Exhibit B101A is received in
7 evidence.)

8 MR. BLANCHE: If we can put that on the screen.

9 (Whereupon, the exhibit is shown on the screens.)

10 Q Looking at the top of the first page, can you just
11 explain the Call Summary and walk through the headers,
12 Mr. Sitko?

13 A Sure.

14 So, at the top, it was the two participants that we -- that
15 I culled the calls for, one being Mr. Cohen and the second
16 being Mr. Costello.

17 Right below his name on the right side of the page is a
18 number that appeared in Mr. Costello's email signature on
19 People's Exhibit -- I think it was, um, 206 and 204. I might
20 have the numbers a little wrong. But, associated with his law
21 firm.

22 The first column on the left is "Call Number". That just is
23 a way to keep track of which call in the chart we're referring
24 to.

25 Second is "Date".

1 Um, the third is the time that the call was made in the
2 call logs. I adjusted that from -- on the call logs it appeared
3 in UTC. I adjusted it to be 12-hour time and also Eastern Time.

4 The fourth column is call "Duration".

5 The fifth and sixth columns are the identity that
6 correspond to the seventh and eighth columns, which is the
7 redacted phone numbers that appeared in the call logs.

8 I got those identities, um, again, from the exhibits
9 that have been admitted, including numbers that appeared in
10 Mr. Costello's email signature.

11 Q It looks like the first call, for example, the
12 duration is 0000.

13 Is that true of a handful of the calls?

14 A Yes.

15 Q Do you have an understanding of what that means?

16 A That means that the call was not answered.

17 MR. BLANCHE: So, if we can back this out and go
18 to the end of this chart.

19 (Whereupon, an exhibit is shown on the screens.)

20 Q Do you know how many calls there were, in total,
21 including the ones that went unanswered?

22 A Seventy-five, in total.

23 Q Did you know whether there were several calls that
24 were longer than half an hour?

25 A Yes.

1 I believe there were six calls that were longer than half
2 an hour.

3 MR. BLANCHE: If we can back this out and go to
4 call 48.

5 (Whereupon, the exhibit is shown on the screens.)

6 Q That just means, Mr. Sitko, that's the 48th call
7 between the Costello numbers and Mr. Cohen.

8 A Yeah. That's the 48th call that appeared in the call
9 logs.

10 Q The 48th call appears to be on May 27th, and it
11 appears to last 96 minutes, from Mr. Cohen to Mr. Costello?

12 A Yes.

13 Q Do you know what day that was, May 27th, 2018?

14 A May 28th was Memorial Day. So, this would be the
15 Sunday before that, the day before Memorial Day. So, Memorial
16 Day weekend.

17 Q And then, separately, do you know what day Labor Day
18 was in 2016?

19 A Yeah.

20 So, Labor Day was September 5th in 2016.

21 Q Okay.

22 MR. BLANCHE: I have no further questions, your
23 Honor.

24 THE COURT: Your witness.

25 MS. MANGOLD: Thank you, your Honor.

1 CROSS-EXAMINATION

2 BY MS. MANGOLD:

3 Q Good afternoon, Mr. Sitko.

4 A Good afternoon.

5 Q You and I have encountered each other before; right?

6 A Yeah. We've seen each other.

7 Q We worked on the same case?

8 A Yes.

9 Q And you created this chart in Defense Exhibit B101A
10 based on the underlying phone records?

11 A Yes. In People's Exhibit 400.

12 Q And within People's Exhibit 400, you said you pulled
13 the records for Mr. Cohen's phone number ending 0114; right?

14 A That's correct.

15 Q Those records are provided by AT&T?

16 A Yes.

17 Q Those AT&T records are already in evidence, but
18 they're under seal; right?

19 A That's correct.

20 MS. MANGOLD: Can we pull up Exhibit E1018 for
21 the parties on the screen.

22 (Whereupon, an exhibit is shown on the screens.)

23 Q The Defense team has had the records contained in
24 People's 400 since mid-2023; right?

25 A Yes.

1 Q All right.

2 MS. MANGOLD: Can you please zoom in on the top
3 third of the page.

4 (Whereupon, an exhibit is shown on the screens.)

5 Q Do you see the rows indicated there that it says the
6 caller is DHC?

7 A Yes.

8 Q Is that -- does that correspond to the notation at the
9 top of the chart for Davidoff Hutcher & Citron LLP?

10 A It does.

11 Q Is there a way to tell, based on those phone records,
12 who at DHC was the caller, or is that just the general firm
13 line?

14 A It's the general firm line.

15 From the records, there would be no way to tell who,
16 specifically, made those calls.

17 Q And looking now at -- I think Mr. Blanche noted that
18 there are -- we can zoom back out -- a number of entries in the
19 chart where the duration is 0000?

20 A Yes. That's correct.

21 Q And you said those are instances where the call was
22 not answered; right?

23 A Yes. That's my understanding.

24 Q And do you remember when Mr. Blanche asked Mr. Cohen
25 on cross: Would it surprise you to learn that you actually

1 communicated on the phone, either Mr. Cohen calling
2 Mr. Costello or Mr. Costello was calling Mr. Cohen, up to 75
3 times?

4 A Yes.

5 Q And is that 75 number based on this chart you
6 prepared?

7 A Yes.

8 Q Now, looking at the originating number --

9 MS. MANGOLD: We can zoom in on the top. Maybe
10 row 12.

11 (Whereupon, an exhibit is shown on the screens.)

12 MS. MANGOLD: Just for the record, I'll note that
13 I believe what we've put up now might be an earlier
14 version of the exhibit that we received without row
15 numbers.

16 Q Mr. Sitko, is that consistent with your understanding?

17 A Yes. I believe so.

18 Q Okay.

19 Do you see where there's a line that says 0000, DHC, that
20 top row right there from 4-16-2018?

21 A Yes.

22 Q Just below that, with almost the exact same timestamp,
23 I believe -- so, the first call, zero minutes is timestamp
24 under 4:34:26; and the following call, dated the same time, has
25 a timestamp of 4:34:27; right?

1 A Yes.

2 Q That indicates that that call was 45 seconds; right?

3 A Yes.

4 Q And then on the right, where it has the originating
5 number, it has both the 7200 number, which is the law firm's
6 main number; right?

7 A Yes.

8 Q And then there's a second number below that, 3595;
9 right?

10 A Yes.

11 Q Do you know what that number indicates?

12 A I -- my understanding is that number indicates that
13 was forwarded to a voicemail, and that's a number associated
14 with a voicemail inbox.

15 Q So, is that a voicemail that was left after the
16 previous -- as part of that same call indicated above?

17 A Yes. I believe so.

18 Q Okay.

19 So, there are certain calls on this chart that are double
20 counted; right?

21 There's first -- like the one we're looking at here, the
22 first one with the missed call, that gets its own row. Then,
23 the second one is the voice call for that same call.

24 So, it's really just one call?

25 A Yeah.

1 Q And I believe your paralegal testified that these are
2 made from how the call bounces off of AT&T towers?

3 A Yes.

4 Q That's how the records are displayed in AT&T records?

5 A Yes.

6 Q But, there are 75 rows in the chart; right?

7 A Yes.

8 Q So, are all of those 75 rows separate times that
9 Mr. Cohen's number connected with Mr. Costello's number?

10 Is your understanding there was an actual conversation, or
11 could it be a missed call, a voicemail, or an actual connection
12 between the two?

13 A Yeah. So if Mr. Cohen and Mr. Costello had made a push
14 call, it could be reflected in two different lines on this for
15 the same call.

16 Q So, the total number of conversations, that was less
17 than 75?

18 A Conversations, yes. Certainly.

19 MS. MANGOLD: I have no further questions.

20 THE COURT: Anything further?

21 MR. BLANCHE: No redirect.

22 THE COURT: Thank you.

23 You can step down.

24 (Whereupon, the witness is excused.)

25 THE COURT: Your next witness, please.

1 MR. BLANCHE: The Defense calls Robert Costello.

2 MS. HOFFINGER: We need to approach before.

3 (Whereupon, the following proceedings were held
4 at sidebar:)

5 MS. HOFFINGER: The general rule is extrinsic
6 evidence by way of witness testimony is not permitted on
7 collateral matters.

8 My understanding is they're calling him purely on
9 matters of credibility with respect to Mr. Cohen.

10 The general rule is, you can't admit the witness
11 on credibility.

12 You're stuck with the witness' answers.

13 In the alternative, if what they're doing is
14 saying there are some prior inconsistent statements,
15 meaning that Mr. Costello is going to offer two prior
16 inconsistent statements by Mr. Cohen, the testimony would
17 be limited just to those two statements.

18 I say "two statements" because I've taken a look
19 at the transcripts. I've taken a look at the transcripts,
20 and there are only two questions where Mr. Cohen said he
21 didn't recall. That was the extent of it.

22 Everything else, he admitted each and every
23 question that Mr. Blanche put to him with respect to
24 Mr. Costello.

25 We don't think Mr. Costello's testimony should be

1 admitted. But, if it is, it should be limited only to
2 those two statements.

3 MR. BOVE: We, respectfully, disagree.

4 This testimony is being offered, in part, to
5 admit prior inconsistent statements through the testimony.

6 But, more importantly, it's being offered to
7 rebut the Government's theory of a pressure campaign by
8 President Trump in 2018.

9 We moved prior to trial to preclude that
10 evidence. It came in; we understand.

11 So, we're offering this as a significant part of
12 our defense, to rebut the suggestion from Mr. Cohen that
13 his interactions with Bob Costello were some kind of way
14 for President Trump to get to him, to apply pressure.

15 That was the general thrust of his testimony. He
16 said that in specifics. They offered emails about this.

17 So, Mr. Costello is going to explain his
18 relationship with Michael Cohen, from his perspective, to
19 rebut the Government's theory on this issue.

20 MS. HOFFINGER: This is really about Michael
21 Cohen's state of mind. That's the purpose of what you
22 admitted it for, which is why he didn't tell the truth for
23 a very long time.

24 He said repeatedly he did not tell the truth to
25 Mr. Costello. At no time did he tell him why.

1 So, your Honor said that that evidence would not
2 be permitted for consciousness of guilt for Mr. Trump.

3 What we're talking about here is Mr. Cohen's
4 state of mind, and you ruled that that was admissible for
5 that purpose.

6 MR. BOVE: Our position -- and we're seeking to
7 bring this out through the testimony of Mr. Costello -- is
8 that Mr. Cohen lied about his interactions with Bob
9 Costello, and he lied about his state of mind in this
10 timeframe, and that he very much wanted to be in touch
11 with Rudy Giuliani, to put questions to the President, to
12 try to extract information about the investigation.

13 This is very much a rebuttal of what the
14 Government believed, before they opened, was an important
15 part of their case.

16 And it also goes to the credibility of the star
17 witness.

18 And it's admissible for all these reasons.

19 I understand, I would expect with any witness we
20 take it question by question to some extent.

21 Generally speaking, our theory of admissibility
22 is to rebut this pressure campaign concept and to put
23 into evidence that whatever is being said today about
24 Mr. Cohen's state of mind, what he said was his state of
25 mind in 2018 was false, because Mr. Costello will say it's

1 false.

2 MS. HOFFINGER: Mr. Cohen admitted he reached out
3 to Rudy Giuliani.

4 What it's being admitted for is to rebut the
5 credibility of Mr. Cohen.

6 It's not admissible for that purpose. He's not
7 entitled to elicit opinion testimony about the credibility
8 of Mr. Cohen.

9 THE COURT: We should have discussed this before.
10 I'm going to excuse the jury.

11 (Whereupon, the following proceedings were held
12 in open court:)

13 THE COURT: I apologize. I'll ask you to step
14 outside for a few minutes.

15 (Whereupon, the jurors and the alternate jurors
16 are excused.)

17 THE COURT: Again, I do wish we had discussed
18 this earlier.

19 People, let me hear your objections, your
20 concerns.

21 MS. HOFFINGER: Sure.

22 Your Honor, again, to say that -- Mr. Costello,
23 it appears, is being brought in to provide extrinsic
24 evidence to rebut a witness' testimony on collateral
25 matters; and the general rule is that you're stuck with

1 the witness' answer on those matters that affect solely
2 credibility.

3 To the extent that defense is offering statements
4 by Mr. Costello as prior inconsistent statements of
5 Mr. Cohen, then we would say if his testimony is admitted,
6 which we believe it should not be, if it's admitted, it
7 needs to be limited and restricted only to those prior
8 inconsistent statements.

9 They're not entitled to elicit from Mr. Costello
10 his opinions about Mr. Cohen's credibility.

11 They should be restricted just to the two
12 questions, frankly, that Mr. Cohen testified that he
13 didn't recall. All he said was that he didn't recall.

14 He didn't recall Mr. Costello telling him in the
15 first meeting that he could or should cooperate against
16 President Trump.

17 He didn't recall -- he didn't recall the words,
18 saying that he didn't -- that he said to Mr. Costello he
19 had nothing on President Trump.

20 But, you will recall that he testified several
21 times that he did not tell the truth to Mr. Costello.

22 He absolutely did not tell the truth. He knew it
23 would get back to Mr. Trump through Mr. Giuliani.

24 So, I think there's very little testimony that
25 would be permissible, if at all.

1 We move for the testimony to be precluded. But,
2 if it's admitted, it should be on a very narrow basis.

3 MR. BOVE: As I said at sidebar, this testimony,
4 to me, is being offered to rebut the Government's argument
5 about a supposed pressure campaign from President Trump.

6 And I think you just heard a little bit about it,
7 which is that it's the Government's theory and it was
8 Michael Cohen's testimony that he was too concerned about
9 the possibility that information that he provided to
10 Mr. Costello in a privileged setting would get back to the
11 President.

12 We opposed the offer of all of that type of
13 evidence prior to trial.

14 The Government put it in.

15 We provided notice days ago of our intention to
16 put Mr. Costello on.

17 There's no mystery here.

18 What we're seeking to do is to counter that
19 evidence.

20 I'm not going to elicit -- of course I'm not
21 going to elicit Mr. Costello's opinion of Mr. Cohen's
22 credibility.

23 I am seeking to elicit many facts about the way
24 that their engagement worked between April of '17 and the
25 Summer of -- excuse me -- April of 2018 and the Summer of

1 2018 that bear on things that Mr. Cohen said.

2 For example, he said: I never agreed to retain
3 them.

4 This issue about: I was concerned that I couldn't
5 say things because they would get back to the President.

6 The idea that Mr. Costello was pestering him,
7 instead of it being the other way around.

8 All these issues, we didn't bring it up. We
9 didn't think this should be admissible. They brought it
10 up.

11 Now we're seeking to offer evidence to respond to
12 an argument they made in their opening and they put in
13 through Mr. Cohen.

14 In terms of prior inconsistent statement
15 evidence, what I expect Mr. Costello to say is different
16 from what Michael Cohen said.

17 What Michael Cohen suggested is he sat at the
18 Regency Hotel, at this meeting with Mr. Costello and Jeff
19 Citron, and omitted information because he was concerned
20 if he said certain things, they would get back to the
21 President.

22 That's not Mr. Costello's recollection of that
23 conversation at all.

24 What Mr. Costello recalls is Mr. Cohen saying
25 President Trump did not know about the statement -- excuse

1 me -- the payment to Stephanie Clifford.

2 That's extremely probative of the core issues in
3 this case. It's not collateral at all. It goes to the
4 heart of the Government's theory.

5 So, both in terms of evidence of prior
6 inconsistent statements that we will be offering through
7 Mr. Costello -- that's somewhat limited -- and, also, I
8 think, more importantly, to rebut the Government's
9 pressure campaign theory. That's why this testimony is
10 admissible.

11 You know, I understand the objections.

12 THE COURT: You don't think the pressure campaign
13 theory is collateral?

14 MR. BOVE: Not at all, Judge.

15 They didn't just ask a guy questions about this.
16 They put in exhibits. They asked how the relationship
17 went.

18 The whole purpose of this was to make President
19 Trump sound threatening, to make it sound like he was
20 interfering with the investigation.

21 THE COURT: I don't think so.

22 I think the reason for it was to explain why at
23 one point he said one thing and at another point he said
24 something else.

25 That doesn't go to the elements of your defense.

1 It doesn't go to your client's guilt or innocence,
2 necessarily.

3 It goes to the credibility of Mr. Cohen.

4 MR. BOVE: Judge, for the Government to be
5 suggesting -- they're basically suggesting that it
6 includes, through that Tweet in I believe it's April 2017,
7 that they juxtaposed against email traffic with
8 Mr. Costello, the Government suggested to this jury that
9 President Trump was tampering with this witness. That is
10 their theory of what the pressure campaign was.

11 They elicited from Mr. Cohen how he felt about
12 these things as they're going on.

13 We --

14 THE COURT: How can Mr. Costello testify as to
15 what Mr. Cohen felt?

16 MR. BOVE: He can't.

17 He can testify about what Mr. Cohen said and what
18 Mr. Cohen did.

19 There's many, many examples at this trial where
20 even witnesses who were not a party to a communication
21 were allowed to offer a lay witness opinion --

22 THE COURT: For state of mind, yes.

23 MR. BOVE: So, in that sense, that witness'
24 opinion is admissible with respect to Mr. Cohen's state of
25 mind, in the same way it's admissible with respect to any

1 other time.

2 THE COURT: I disagree Mr. Costello can testify
3 to Mr. Cohen's state of mind.

4 I'll consider some of your other arguments.

5 I disagree with that.

6 MR. BOVE: Mr. Costello can testify what he
7 understood communications to be. That's all I'm saying.

8 In the same way many other witnesses at this
9 trial have done.

10 MS. HOFFINGER: I think you have our point at
11 this point.

12 The only other piece is that rebutting the
13 so-called pressure campaign, which, as your Honor knows,
14 that was not our purpose in putting this in; it was for
15 Michael Cohen's state of mind and why he didn't tell the
16 truth for a long time.

17 Rebutting the pressure campaign should be part of
18 their direct case. It's not impeachment.

19 They didn't put this witness on their witness
20 list as a direct witness.

21 We didn't get, for example, exhibits that we were
22 supposed to get.

23 We got them recently in terms of Mr. Cohen; and
24 they might use them with Mr. Costello, too.

25 We heard this morning he was coming. They let us

1 know a couple of days ago he might.

2 That's direct, not impeachment.

3 The question is whether he's allowed for prior
4 inconsistent statements.

5 I suggest anything else, Retainer Agreements,
6 whether he paid him, or anything else that's lateral and
7 collateral, he shouldn't be testifying to that.

8 If it's a prior inconsistent statement, his
9 attention should be drawn to the exact statement, and his
10 testimony should be limited to that.

11 MR. BOVE: Part of what Mr. Costello is going to
12 do is explain that certain things that Cohen testified
13 about at this trial were false. Things like Cohen's
14 testimony that there was never an agreement, even verbal,
15 that Mr. Costello would represent him.

16 Things like that, where Mr. Costello is providing
17 direct evidence of perjury at this trial, are never
18 collateral, Judge.

19 That's what we're seeking to lay out.

20 MS. HOFFINGER: It's entirely collateral, your
21 Honor.

22 MR. BOVE: That he committed perjury is
23 collateral?

24 THE COURT: I'm going to take five minutes.

25 Don't leave the courtroom.

1 (Whereupon, the Court exits the courtroom, and a
2 pause is taken in the proceedings.)

3 (Whereupon, Senior Court Reporter Lisa Kramsky
4 relieves Senior Laurie Eisenberg, and the transcript
5 continues on the following page.)

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1 (The following proceedings continue from the
2 preceding page.)

3 *****

4 (Whereupon, the Court resumes the bench and the
5 proceedings continue.)

6 THE COURT: So, Mr. Bove, you can definitely
7 cross-examine as to the two prior inconsistent statements,
8 obviously.

9 And I will give you some latitude to explore the
10 pressure campaign so that you can elicit some
11 inconsistencies, so you can offer some rebuttal of
12 Mr. Cohen's testimony.

13 But I'm not going to allow this to become a trial
14 within a trial as to whether or not there was, in fact, this
15 pressure campaign and how it affected Cohen.

16 That's not the purpose of this trial, and I don't
17 want it to become that.

18 As far as the retainer issue, that's collateral.
19 We don't need to go into that at all.

20 Okay. All right. Let's get the jury, please.

21 MR. BOVE: Should we get the witness first, Judge?

22 THE COURT: No. The witness has not yet been sworn
23 in.

24 THE COURT OFFICER: All rise. Jury entering.

25 (Jury enters.)

1 THE COURT: You may be seated.

2 THE CLERK: Case on trial continues.

3 All members of the jury are present and properly
4 seated.

5 THE COURT: Counsel, please call your next witness.

6 MR. BOVE: The Defense calls Robert Costello.

7 THE COURT OFFICER: Ready for the witness, your
8 Honor?

9 THE COURT: Yes.

10 THE COURT OFFICER: Witness entering.

11 (The witness, Robert J. Costello, enters the
12 courtroom and steps up to the witness stand.)

13 *****

14 THE COURT OFFICER: Watch your step.

15 THE WITNESS: Thank you.

16 THE COURT OFFICER: Remain standing.

17 Raise your right hand and face the court clerk.

18 *****

19 R O B E R T J. C O S T E L L O, a witness
20 called on behalf of the Defense, having been first duly sworn
21 was examined and testified as follows:

22 THE CLERK: Thank you.

23 THE COURT OFFICER: Have a seat, please.

24 THE WITNESS: Thank you.

25 THE COURT OFFICER: State your full name, spelling

1 your last name.

2 THE WITNESS: Robert Costello -- that's awfully
3 loud.

4 Robert J. Costello.

5 THE COURT OFFICER: Spell your last name.

6 THE WITNESS: C-O-S-T-E-L-L-O.

7 THE COURT OFFICER: Please give your county of
8 residence.

9 THE WITNESS: County of residence is Nassau County.

10 THE COURT: You may inquire.

11 MR. BOVE: Thank you, Judge.

12 *****

13 DIRECT EXAMINATION

14 BY MR. BOVE:

15 Q Good afternoon, Mr. Costello.

16 A Good afternoon.

17 Q Where do you work?

18 A I'm sorry?

19 Q Where do you work?

20 A I'm a partner in a law firm of Davidoff Hutcher &
21 Citron.

22 Q How long have you been at that firm?

23 A About seven years.

24 Q And prior to your work at the law firm, did you have
25 some Government service?

1 A I did.

2 Q When, approximately, was that?

3 A 1975 to 1982.

4 Q And describe your service for the jury, please.

5 A I was an Assistant United States Attorney in the
6 Southern District of New York, right down the block.

7 I was in '81 and '82, I was Deputy Chief of the Criminal
8 Division there.

9 Q And so, you were a Federal Prosecutor in Manhattan;
10 right?

11 A Yes, I was.

12 Q Do you know somebody named Michael Cohen?

13 A I do.

14 Q When, approximately, did you meet Cohen?

15 A I met him exactly on April 17th, 2018.

16 Q Did you meet with him in person that day?

17 A I did.

18 Q Where was the meeting?

19 A At the Regency Hotel in Manhattan. And I was
20 accompanied by Jeff Citron, one of my law partners, who knew
21 Mr. Cohen.

22 Q Now, did you consider your conversation at the
23 Regency Hotel that day to be subject of the attorney-client
24 privilege?

25 MS. HOFFINGER: Objection.

1 THE COURT: Sustained.

2 A Absolutely.

3 MS. HOFFINGER: Objection.

4 THE COURT: Sustained.

5 MS. HOFFINGER: Can the answer be stricken?

6 THE COURT: And the answer is stricken.

7 Q Who was at the meeting at the Regency Hotel?

8 A Michael Cohen, Jeffrey Citron and myself.

9 Q Did the topic of potential cooperation come up?

10 A Yes, it did.

11 Q What was discussed?

12 A Well, first Michael Cohen explained his situation,
13 because I had never met Cohen before, so I had no idea what was
14 going on, that his home and his law office had been searched
15 pursuant to a search warrant.

16 And he was absolutely manic at the beginning and throughout
17 the two hours of that meeting; marching back and forth; pacing.

18 We were in a conference room on the second floor of the
19 Regency Hotel.

20 And he kept on pacing back and forth, left and right, while
21 myself and Jeff were seated.

22 And, after he explained what was going on, he said: My life
23 is shattered. My family's life is shattered. I don't know
24 what's going to happen.

25 He said: I really want you to explain to me what my options

1 are. What's my escape route?

2 That's the phrase he used.

3 Q So, was cooperation one of the options that you
4 described in response to that question?

5 A Absolutely it was.

6 Q What did you tell Mr. Cohen that day?

7 A I explained to Mr. Cohen that when he described the
8 search warrants, I pointed out that a search warrant of a law
9 office is much more difficult to get than a search warrant of
10 any other place.

11 MS. HOFFINGER: Objection.

12 THE COURT: Sustained.

13 Q What was your view that day about whether or not
14 Michael Cohen should cooperate?

15 MS. HOFFINGER: Objection.

16 THE COURT: Sustained.

17 Q What instructions did you give Mr. Cohen with respect
18 to cooperation?

19 A Okay. I explained -- I explained to Mr. Cohen that it
20 was obvious that he was not the target of the search by the
21 Southern District of New York, that they thought that he had
22 committed some crimes --

23 MS. HOFFINGER: Objection.

24 THE COURT: Sustained.

25 Q I just want to stay narrow on the topic of cooperation

1 and the instructions that you gave Michael Cohen.

2 A Okay.

3 I explained to Michael Cohen that this entire legal problem
4 that he was facing would be resolved by the end of the week if
5 he had truthful information on Donald Trump and cooperated with
6 the Southern District of New York.

7 Q And what, if anything, did Michael Cohen say about
8 President Trump at that point in the meeting?

9 A He made the same statement that he made about 10 or 12
10 times that day; quote: "I swear to God, Bob. I don't have
11 anything on Donald Trump."

12 Q Did the topic of Stormy Daniels come up?

13 A It did.

14 Q What, if anything, did Cohen say about Stormy Daniels
15 during the meeting?

16 MS. HOFFINGER: Objection, your Honor.

17 THE COURT: Overruled.

18 You can answer.

19 A He began by saying: "I don't understand why they're
20 trying to put me in jail for some F'ing NDAs," which is a
21 Non-Disclosure Agreement.

22 He then said, "I did an NDA with Stormy Daniels."

23 So, I asked him to tell me about what the circumstances
24 were, how was he involved.

25 MS. HOFFINGER: Objection, your Honor.

1 THE COURT: Sustained.

2 MS. HOFFINGER: Can you strike the answer?

3 THE COURT: The last answer is stricken, yes.

4 Q Did Mr. Cohen say anything about President Trump in
5 connection with the Stormy Daniels part of the conversation?

6 A He did.

7 MS. HOFFINGER: Objection, your Honor.

8 THE COURT: Sustained.

9 MR. BOVE: May I be heard, Judge?

10 THE COURT: No.

11 Please continue.

12 Q Did President Trump's family come up?

13 A Yes, it did.

14 Q What did Mr. Cohen say about President Trump's family?

15 MS. HOFFINGER: Objection, your Honor.

16 THE COURT: Sustained.

17 Please approach.

18 (At Sidebar:)

19 *****

20 MS. HOFFINGER: Mr. Steinglass would like to be
21 heard.

22 MR. STEINGLASS: Thank you.

23 Respectfully, this is exactly what you just told
24 him not to do.

25 If he's going to be impeaching Mr. Cohen by prior

1 inconsistent statement, the law is extraordinarily clear on
2 this.

3 The witness' attention has to be specifically
4 called to the prior inconsistency, and he has to be given a
5 chance to explain it.

6 Only if he maintains the inconsistency or he says
7 he doesn't remember is impeachment by a prior inconsistent
8 statement by a collateral witness permitted.

9 There were two instances where that happened.

10 One, Mr. Bove just covered.

11 We are going way far afield of that.

12 This is not a general: Everything that Mr. Cohen
13 testified, did he tell you something different, did he tell
14 you something different, did he tell you something
15 different.

16 He would have had to confront Mr. Cohen with those
17 inconsistencies and say: Did you tell Mr. Costello, X, Y
18 and Z on this date, and then Cohen would have had to have
19 denied it; and then it would be permissible.

20 It is not permissible to have a wholesale of
21 everything that Mr. Cohen said --

22 MR. BOVE: That's not what I'm trying to do,
23 Judge.

24 I'm trying to get to the specific statement that
25 Cohen made that President Trump did not know about the

1 payment to Stormy Daniels, which is not --

2 THE COURT: Well, why don't you just get to that.

3 MR. BOVE: I'm trying.

4 THE COURT: Because right now what's happening is
5 you are asking these questions, and he's going off, and he
6 is telling a story.

7 And I am going to sustain the story.

8 MR. BOVE: May I lead him then?

9 May I lead?

10 THE COURT: Just get to the question that you want
11 to ask.

12 MS. HOFFINGER: One question you have -- one
13 question you've already gotten to.

14 There is only one more.

15 THE COURT: That's it.

16 (Sidebar concluded.)

17 *****

18 CONTINUED DIRECT EXAMINATION

19 BY MR. BOVE:

20 Q Mr. Costello, we are still focused on the April 17th,
21 2018 meeting at the Regency.

22 And I want to focus very narrowly on whether Cohen said
23 anything about whether President Trump knew about the payment to
24 Stormy Daniels?

25 A Yes.

1 Q What did he say about that specific topic?

2 A Michael Cohen said, numerous times, that President
3 Trump knew nothing about those payments, that he did this on his
4 own.

5 And he repeated that numerous times.

6 Q Was Rudy Giuliani discussed at this meeting?

7 MS. HOFFINGER: Objection.

8 THE COURT: I will allow it.

9 You can answer.

10 A His name came up, very briefly.

11 Just in the fact that I had been a student assistant of his
12 back in the early '70s.

13 Other than that, we didn't discuss him.

14 MR. BOVE: I would like to bring up, Mr. Bernik,
15 Government Exhibit 203 in evidence.

16 If you can zoom in on the email, please.

17 (Displayed.)

18 Q Do you see this email?

19 A I do.

20 Q And is this an email that you sent to Mr. Cohen two
21 days after the meeting on April 19th?

22 A That's correct.

23 Q Why did you send this email to him?

24 A Because it was announced that day in the newspapers
25 and on TV that Rudy Giuliani was joining Donald Trump's legal

1 team.

2 MR. BOVE: And if we can take a look now at the
3 context around that email by bringing up Defense Exhibit
4 B1003 in evidence.

5 (Displayed.)

6 Q And let's start by zooming in on the 6:45 p.m. email.

7 A Right, I see it.

8 (Displayed.)

9 Q Now, that's the same email we were just looking at;
10 correct?

11 A It is, yeah.

12 Q And, now, let's look at Mr. Cohen's response at 7:36
13 p.m.

14 (Displayed.)

15 Q Do you see where Mr. Cohen wrote back to you, "Have
16 great news for Rudy?"

17 A Yeah.

18 Q What did you understand him to mean?

19 MS. HOFFINGER: Objection.

20 THE COURT: Sustained.

21 Q Do you see where Mr. Cohen wrote, "I have been working
22 with lawyers all day?"

23 A Correct.

24 Q What did you understand him to mean?

25 MS. HOFFINGER: Objection.

1 THE COURT: Overruled.

2 You can answer.

3 A He was working with McDermott, Will & Emery, a
4 Washington law firm, and they were going over the evidence that
5 had been seized pursuant to the search warrants and, presumably,
6 they were selecting documents that might be claimed to be
7 attorney-client privilege or work-product privilege.

8 Q Did Mr. Cohen ever say anything to you about not being
9 able to retain you because he had retained the McDermott firm?

10 MS. HOFFINGER: Objection, your Honor.

11 THE COURT: Sustained.

12 A Not directly, he complained --

13 THE COURT: Sustained.

14 MS. HOFFINGER: Objection, your Honor.

15 THE COURT: Sustained.

16 MS. HOFFINGER: Can the answer be stricken from the
17 record, your Honor?

18 THE COURT: That answer is stricken from the
19 record.

20 When I sustain an objection, you don't need to
21 answer it.

22 Q Did there come a time when there was a verbal --
23 there was a conversation about retaining you between you and
24 Cohen?

25 A Sure. Many times.

1 Q I would like to focus on the period of around
2 April 19th and 20th of 2018.

3 Do you remember a conversation about retention?

4 MS. HOFFINGER: Objection, Judge.

5 A Not off the top of my head.

6 Q Well, what do you recall about this general topic?

7 MS. HOFFINGER: Objection, your Honor.

8 THE COURT: Sustained.

9 A The issue was that --

10 MS. HOFFINGER: Objection, your Honor.

11 THE COURT: Sustained.

12 THE WITNESS: I'm sorry.

13 MS. HOFFINGER: Move to strike it.

14 THE COURT: The answer is stricken.

15 MR. BOVE: Now, if we could take a look at
16 Government Exhibit 204 in evidence, please.

17 (Displayed.)

18 *****

19 MR. BOVE: If we can zoom in on the email and the
20 header, please.

21 (Displayed.)

22 A Right. I see that.

23 Q Now, this is a message that you sent to Michael Cohen
24 on April 21st; right?

25 A That is correct.

1 Q And do you see the subject line? It says "Giuliani."

2 A Yeah, "Giuliani;" right.

3 Q And in the message you wrote, "I just spoke to Rudy
4 Giuliani and told him I was on your team?"

5 A Yes, I did.

6 Q And Cohen instructed you to do that?

7 A He did.

8 Q Do you see at the end of this email where it says, "He
9 said thank you for opening this back channel of communication
10 and asked me to keep in touch?"

11 A Yes.

12 Q Is that -- that term, "back channel," is that a term
13 that Mr. Giuliani used?

14 A Yes.

15 MS. HOFFINGER: Objection.

16 THE COURT: Sustained.

17 MS. HOFFINGER: Move to strike, your Honor.

18 THE COURT: Stricken.

19 Q What had Michael Cohen said to you about how to
20 communicate with Rudy Giuliani?

21 A He told me that I was authorized to tell Giuliani that
22 my firm was, quote, "on the team," that's the phrase that he
23 used, but that we weren't going -- he wasn't going to announce
24 it publicly, so although I could tell Giuliani and Giuliani
25 could tell anybody else associated with the President, he wasn't

1 supposed to tell the media, and that's why he used the term
2 "back channel."

3 Q And were there some times when --

4 MS. HOFFINGER: Objection, your Honor.

5 THE COURT: Overruled.

6 Q Were there some times when Michael Cohen instructed you
7 to ask questions of Rudy Giuliani?

8 A Correct.

9 Q What types of questions?

10 A He wanted to know how the investigation of Michael
11 Cohen began.

12 He wanted to know whether it was a referral from Washington.
13 How did it get to the Southern District of New York, which is
14 the Federal Court right down the street here.

15 And he wanted me to ask Giuliani if Giuliani knew.

16 Q So, Cohen was trying to get information from Rudy
17 Giuliani?

18 A That's correct.

19 MR. BOVE: Now, if we could take a look at Defense
20 Exhibit B1006 in evidence, please.

21 Can we zoom in on the header and email, please?

22 Thank you.

23 (Displayed.)

24 Q So, this is an email that you sent to Michael Cohen on
25 April 23rd, 2018.

1 Do you see that?

2 A Yes, it was.

3 I do see it.

4 Q And do you see the subject line "Assignment?"

5 A Yes.

6 Q Were you reporting back on an assignment from Michael
7 Cohen?

8 A Yes. What he asked me to do; right.

9 Q And the email begins, "I spoke with the person you
10 asked me to."

11 Do you see that?

12 A Correct.

13 Q Who were you referring to?

14 A Rudy Giuliani.

15 Q And then it continues.

16 He said that he would find out exactly how the matter ended
17 up in SDNY and, in particular, who in Main Justice approved
18 this.

19 Do you see that?

20 A I do.

21 Q And is that something that Rudy Giuliani said to you in
22 response to Michael Cohen's question?

23 A It is.

24 Q I would like you to take a look at the second paragraph
25 of that email.

1 Do you see where it says the question of "timing is
2 premature?"

3 A Yeah, I see that.

4 Q What did you mean by that?

5 MS. HOFFINGER: Objection.

6 THE COURT: Sustained.

7 A Jeez.

8 Q Was that in response to something Michael Cohen had
9 instructed you to do?

10 MS. HOFFINGER: Objection.

11 THE COURT: Sustained.

12 A Yes. Strike it.

13 THE COURT: Counsel, let's take a minute.

14 Can the jury please step out.

15 THE COURT OFFICER: All rise.

16 (Jury exits.)

17 *****

18 THE COURT: Mr. Costello, you remain seated,
19 please.

20 Remain seated.

21 You may be seated.

22 Mr. Costello, I want to -- I would like to discuss
23 proper decorum in my courtroom.

24 THE WITNESS: But -- I'm sorry. Go ahead.

25 THE COURT: I want to discuss proper decorum in my

1 courtroom.

2 THE WITNESS: Right.

3 THE COURT: Okay.

4 So, when there is a witness on the stand, if you
5 don't like my ruling, you don't say "Jeez," okay.

6 And then you don't say "strike it," because I'm the
7 only one that can strike testimony in the courtroom.

8 Do you understand that?

9 THE WITNESS: I understand.

10 THE COURT: Okay.

11 And then, if you don't like my ruling, you don't
12 give me side eye and you don't roll your eyes.

13 Do you understand that?

14 Do you understand that?

15 THE WITNESS: I understand that. I understand what
16 you're saying.

17 THE COURT: Okay. Thank you.

18 Let's get the jury back.

19 Are you staring me down right now?

20 THE WITNESS: No. I'm just wondering how --

21 THE COURT: Clear the courtroom, please. Clear the
22 courtroom.

23 THE WITNESS: Do you want me to answer your
24 question?

25 THE SERGEANT: Sir, please.

1 THE COURT OFFICER: Step outside, please.

2 Step out and step to the side, please.

3 Step out, please.

4 Quiet please.

5 Step out, please.

6 A PERSON IN THE AUDIENCE: Your Honor, may I object
7 on behalf of the press?

8 Your Honor, our lawyer is objecting, the press
9 lawyer is objecting.

10 We have a right to remain here.

11 THE COURT OFFICER: Step out.

12 Step out.

13 A PERSON IN THE AUDIENCE: Why? This is an open
14 courtroom.

15 THE COURT OFFICER: Step out.

16 Any questions -- any and all questions will be
17 answered in the hallway.

18 A PERSON IN THE AUDIENCE: The press lawyer has a
19 question.

20 THE COURT OFFICER: This is not an open forum.

21 We will answer all questions in the hallway.

22 Please step out.

23 This is a Supreme Court courtroom.

24 Step out.

25 A PERSON IN THE AUDIENCE: This is an open

1 courtroom.

2 A PERSON IN THE AUDIENCE: It is open to the
3 people, open to the public. You can't throw us out!

4 A PERSON IN THE AUDIENCE: Our lawyer has a
5 question.

6 This is a public forum, why do we need to step
7 out?

8 THE COURT OFFICER: Step out, please.

9 A PERSON IN THE AUDIENCE: Where do you want us to
10 go?

11 We have a lawyer here.

12 A PERSON IN THE AUDIENCE: I am the lawyer.

13 THE COURT OFFICER: Keep going, please.

14 I will answer all questions out in the hallway.

15 I will answer everything in the hallway, but right
16 now everybody step out.

17 A PERSON IN THE AUDIENCE: We are guests, why do we
18 have to leave?

19 THE COURT OFFICER: Step out, everybody.

20 Step out in the hallway.

21 Let's go.

22 A PERSON IN THE AUDIENCE: Will this be on the
23 record so that we can read it afterwards?

24 THE COURT OFFICER: Step out, please.

25 Step out.

1 Step out, please.

2 Step out.

3 (The courtroom is cleared of people in the audience
4 by the court officers at this time.)

5 *****

6 THE COURT: All right.

7 Let the record reflect that it's now five after
8 four.

9 Let the record also reflect that the court officers
10 had great difficulty clearing the courtroom, because the
11 courtroom is made up, primarily, of the press.

12 And I can appreciate that the press wants to be
13 present for every part of these proceedings. Therefore,
14 this record is not sealed. The press will have access to
15 this record.

16 The fact that I had to clear the courtroom and that
17 the court officers, including the Captain, had great
18 difficulty clearing the courtroom, and that there was
19 argument back and forth between the press and including
20 counsel for the press, goes to why I had to clear the
21 courtroom in the first place:

22 And that is, sir, your conduct is contemptuous
23 right now.

24 I'm putting you on notice that your conduct is
25 contemptuous.

1 If you try to stare me down one more time, I will
2 remove you from the stand.

3 I will strike his entire testimony; do you
4 understand me?

5 MR. BOVE: Yes, Judge. I understand.

6 THE COURT: Listen to the question and answer the
7 question.

8 THE WITNESS: Can I say something, please?

9 THE COURT: No. No. This is not a conversation.

10 THE WITNESS: Okay.

11 THE COURT: All right.

12 Let's -- we can bring the press back in, please.

13 THE COURT OFFICER: Ready, your Honor?

14 THE COURT: Yes, please.

15 THE COURT OFFICER: Okay. The press is entering
16 the courtroom.

17 (The people in the audience return to the
18 courtroom.)

19 *****

20 THE COURT OFFICER: Same seats.

21 Same seats, folks.

22 Same seats.

23 Same seats.

24 Same seats.

25 Same seats.

1 THE COURT: Let's get the jury, please.

2 THE COURT OFFICER: Jury entering.

3 All rise.

4 (Jury enters.)

5 THE WITNESS: You don't want me to rise?

6 THE COURT OFFICER: No.

7 THE COURT: You may be seated.

8 THE CLERK: Case on trial continued.

9 All jurors are present and properly seated.

10 THE COURT: Mr. Bove.

11 MR. BOVE: Thank you, Judge.

12 *****

13 CONTINUED CROSS-EXAMINATION

14 BY MR. BOVE:

15 MR. BOVE: May I inquire?

16 THE COURT: Yes.

17 MR. BOVE: Mr. Bernik, if you could please bring up
18 Defense 1008 in evidence.

19 And zoom in on the bottom email.

20 (Displayed.)

21 Q Now, Mr. Costello, this is a message from you to
22 Michael Cohen.

23 Do you see that in the top left?

24 A Yes.

25 Q And in the right, the date is May 16th of 2018; right?

1 A May 16th.

2 Q You wrote at the bottom of this message: "I will not
3 pester you, if you want to talk, you know how to reach Jeff or
4 myself."

5 Do you see that?

6 A I do.

7 Q Is "Jeff" Mr. Cintron that you had mentioned earlier?

8 A That's correct.

9 Q And what were you trying to convey here?

10 MS. HOFFINGER: Objection, your Honor.

11 THE COURT: I will allow it.

12 You can answer.

13 THE WITNESS: Yes?

14 THE COURT: Yes.

15 A Michael had been complaining about the lawyers. He --
16 he was complaining about Steve.

17 MS. HOFFINGER: Objection, your Honor.

18 THE COURT: Sustained.

19 MS. HOFFINGER: Move to strike.

20 THE COURT: The answer is stricken.

21 Q What did you mean by "not pester you?"

22 A Meaning, he would not hear from me again unless he
23 contacted me.

24 MR. BOVE: So, if we could keep this on the left
25 side of the screen and bring up the phone records chart,

1 Defense Exhibit 1018, please.

2 (Displayed.)

3 MR. BOVE: If we could zoom in on Rows 47 and 48.

4 (Displayed.)

5 Q So, we were just speaking about an email on May 16th of
6 2018; right?

7 A Correct.

8 Q And the next call in the chart, is this Sunday of
9 Memorial Day weekend; right?

10 A That's right.

11 Q And who called you?

12 A Michael Cohen called me.

13 Q And how long was the call?

14 A An hour and 36 minutes and 15 seconds.

15 Q Did Michael Cohen give you instructions during that
16 call, without getting into what the instructions were?

17 A Yes.

18 Q And I understand there is a Waiver.

19 We are just trying to keep this narrow.

20 So, he gave you some instructions and you discussed legal
21 issues during this call?

22 A Yes, I did.

23 MR. BOVE: Now, if we could take a look at
24 Government Exhibit 206 in evidence, please.

25 (Displayed.)

1 MR. BOVE: If we can zoom in on the header and
2 email.

3 (Displayed.)

4 Q And this is an email that you sent to Mr. Cohen on
5 June 7th, 2018.

6 Do you see that?

7 A I do.

8 Q And from the text of the email, it looks like there
9 had been some conversations between you and Mr. Cohen about
10 Mr. Giuliani; correct?

11 A That is correct.

12 MR. BOVE: Now, I would like to take a look at the
13 phone records chart again.

14 So if we can keep this on the left and put up
15 Defense Exhibit 1018 on the right again.

16 (Displayed.)

17 MR. BOVE: If we can zoom in on Rows 50 to 56,
18 please.

19 (Displayed.)

20 Q So, does this part of the chart, Defense B1018, reflect
21 a series of calls between you and Mr. Cohen on this same day as
22 this email?

23 A Yes, it does.

24 Q And do you see in Row 57 the call that lasted
25 46 minutes and some change?

1 A I do, yes.

2 Q Who initiated that call?

3 A Michael Cohen.

4 Q And during those calls on June 7th, did Mr. Cohen
5 instruct you to contact Rudy Giuliani?

6 A (Pause.)

7 Q You could take a look at the second paragraph on the
8 email on the left.

9 It says, "After you called me back at 2:43 p.m. and we spoke
10 I called and left a message for Rudy?"

11 A Yes.

12 Q Does that refresh your recollection as to whether or
13 not you got instructions that day about calling Mr. Cohen from
14 Michael Cohen?

15 A Yes.

16 MR. BOVE: Now, if we could make the phone chart,
17 Defense B1018, the main exhibit and zoom in on Rows 57
18 through 64.

19 (Displayed.)

20 Q And does this part of the chart reflect a series of
21 calls on June 12th and the last one on June 13th of 2018?

22 A That is correct.

23 MR. BOVE: If we could bring up, now, a
24 June 13th email, which is Government's 207 in evidence.

25 (Displayed.)

1 Q And I just want to zoom in on the last paragraph of
2 this message.

3 It's on the second page.

4 And this is a message that you sent to Mr. Cohen on June
5 13th.

6 Do you see where you wrote: "Please remember if you want or
7 need to communicate something, please let me know and I will see
8 that it gets done?"

9 A Right.

10 Q What were you communicating to Mr. Cohen there?

11 MS. HOFFINGER: Objection.

12 THE COURT: Overruled.

13 You can answer.

14 A Mr. Cohen was making constant complaints about Rudy
15 Giuliani and what he was saying to the press.

16 And he was also complaining that his law firm, McDermott
17 Will & Emery --

18 MS. HOFFINGER: Objection.

19 THE COURT: Sustained.

20 A -- hadn't been paid --

21 THE COURT: Sustained.

22 Again, please just answer the question.

23 THE WITNESS: Okay.

24 MR. BOVE: Now, if we could take a look at
25 Government Exhibit 208, which is in evidence.

1 (Displayed.)

2 MR. BOVE: And if we can zoom in on the
3 header and email.

4 (Displayed.)

5 Q This is a message that you sent to Michael Cohen the
6 next day, June 14th; correct?

7 A Correct.

8 MR. BOVE: And I would like to focus on Page 2 of
9 this.

10 And if we could zoom in on the top paragraph there
11 that carries over.

12 (Displayed.)

13 Q Do you see where you wrote, "If you really want certain
14 things to happen, you should make that known. If you really
15 want other lawyers to refrain from saying this or that, you
16 should make it known."

17 Do you see that?

18 A I do.

19 Q And just very, very narrowly, with respect to those two
20 sentences, what were you communicating to Michael Cohen on
21 June 14th of 2018?

22 A That was in response to his complaint.

23 And I said, "If you want to let anybody know what you are
24 complaining about, just tell me and I will pass it on."

25 Q And who were you telling Michael Cohen you would pass

1 it on to?

2 A He -- Rudy Giuliani.

3 Q Mr. Costello, did you ever put any pressure on Michael
4 Cohen to do anything?

5 A No.

6 Q Did you ever pressure him to interact with Rudy
7 Giuliani in a certain way?

8 A Not at all.

9 Q Did Mr. Giuliani ever put pressure on you to try to
10 extract information from Michael Cohen?

11 MS. HOFFINGER: Objection.

12 THE COURT: Sustained.

13 Q Did you ever perceive any type of pressure from Rudy?

14 MS. HOFFINGER: Objection.

15 THE COURT: Sustained.

16 MS. HOFFINGER: Move to strike.

17 A No.

18 MS. HOFFINGER: Move to strike, your Honor.

19 THE COURT: It's stricken.

20 Q During your interaction with Michael Cohen, did you
21 consider him to be a client?

22 A Absolutely. I had to treat him that way.

23 Q And whose interests did you have in mind during the
24 course of that relationship?

25 A Exclusively Michael Cohen's.

1 Q Did you care about President Trump's interest while you
2 were dealing with Michael Cohen?

3 A No. My obligation was to Michael Cohen.

4 Q And, at some point, did your firm seek payment from
5 Michael Cohen?

6 A Yes, they did.

7 Q And did he pay?

8 A No, he did not.

9 Q Were you aware of, that the firm was trying to collect
10 on that?

11 A I'm sorry, I couldn't hear you.

12 Q Were you aware of efforts by your firm to try to
13 collect payments?

14 A No. They didn't sue. The amount wasn't enough.

15 Q Now, before I sit down...

16 We've met before; right?

17 A Yes.

18 Q And you've also had meetings with State and Federal
19 Prosecutors regarding Michael Cohen; right?

20 A Oh, yeah.

21 Q And did you turn over documents during those meetings?

22 A I did, a lot of documents.

23 Q And answered questions from both State and Federal
24 Prosecutors?

25 A At different times, yes.

1 Q And, more recently, have you appeared on the -- in
2 media in conversations about this case?

3 A Yes.

4 Q Fair to say, frequently?

5 A Yeah.

6 Q And have you also testified in Congress about this
7 case?

8 A I did, the House Judiciary Committee.

9 Q And that was actually while this trial was ongoing;
10 right?

11 A I think it was last Wednesday.

12 MR. BOVE: Nothing further, Judge.

13 THE COURT: Your witness.

14 MS. HOFFINGER: Thank you, your Honor.

15 *****

16 CROSS-EXAMINATION

17 BY MS. HOFFINGER:

18 Q Good afternoon, Mr. Costello.

19 A Hi.

20 Q On April 17th, 2018, your partner, Joel Citron (Sic),
21 reached out to Michael Cohen by email; is that correct?

22 A Jeff, Jeff Citron.

23 Q I apologize.

24 Jeff Citron?

25 A Yes.

1 Q To see if he would be interested in meeting with you;
2 is that correct?

3 A I'm sorry, say that again?

4 Q To see if Michael Cohen would be interested in meeting
5 with you; is that correct?

6 A No. The email speaks for itself.

7 Q Well, let's take a look at People's Exhibit 512P.
8 Well, before we put it up.

9 Mr. Citron did not email Mr. Cohen to see if he wanted to
10 meet with you?

11 A He did. Yes, he did.

12 Q And didn't Mr. Citron in that email lay out all of your
13 qualifications, that you were a former Chief of the Criminal
14 Division of the U.S. Attorney's Office and that you had
15 represented famous people like Leona Helmsley and George
16 Steinberg; didn't he send that type of email to Mr. Cohen?

17 A I don't remember. The email speaks for itself.

18 Q Well, let's take a look at that.

19 MS. HOFFINGER: Let's look at People's
20 Exhibit 512P.

21 Just for the witness, the Court and counsel.

22 (Displayed to the aforementioned parties only.)

23 *****

24 Q Do you recognize that email, sir?

25 A Yes, I do.

1 Q Who is that an email from and to, and who is copied on
2 that?

3 A That was from Jeffrey Citron to -- it's blocked out.
4 But this should have been Jeffrey Citron to Michael Cohen.

5 Q And are you copied on that email, sir?

6 A I'm sorry?

7 Q Are you also copied on that email?

8 A (Witness reading.)

9 Q I know there are certain redactions, but does it
10 appear --

11 A What's confusing to see is that this is sayings it's
12 from Michael Cohen to Jeffrey Citron, but I guess this is a
13 string.

14 Q It's a string, so look at the bottom.

15 A So I'm having trouble seeing the string, yes.

16 Q So you were on those emails?

17 A Yes, I was.

18 MS. HOFFINGER: I offer those in evidence.

19 MR. BOVE: No objection.

20 THE COURT: Accepted into evidence.

21 (So marked in evidence.)

22 *****

23 Q So, now you see an email that Mr. Citron sent and
24 copied you on.

25 Are you aware of that now? Do you see that email exchange,

1 extolling your experiences, your famous clients, and what you
2 wanted?

3 A Except you misstated it before, you stated I was Chief
4 of the Criminal Division, it's Deputy Chief.

5 Q I apologize for that. Deputy Chief of the Criminal
6 Division.

7 Is that otherwise accurate, the question I asked you?

8 A It is, yeah.

9 Q And you were hoping that Michael Cohen would hire you
10 as his lawyer; correct?

11 A I wasn't hoping anything. It wasn't my email.

12 Q I'm sorry, had you heard about the case in the news,
13 sir, that Michael Cohen had had search warrants in early April
14 of 2018, as the Personal Attorney to President Trump?

15 Had you heard about it in the news?

16 A I probably did, yeah.

17 Q It was big news; right?

18 A If I heard about it, I guess it was.

19 Q And you and your partner thought this would be a good
20 opportunity to see if you could get Michael Cohen as your
21 client; isn't that correct?

22 A No. This was Jeffrey Citron's relationship with
23 Michael Cohen.

24 He knew him for ten years.

25 I didn't know Michael Cohen from a hole in the wall.

1 Q So, you weren't interested in having him as your
2 client?

3 A No, I wasn't.

4 Q And so, you met with him, but you weren't interested in
5 retaining him; is that right?

6 A I met with him because Jeff Citron made an arrangement
7 with Michael Cohen.

8 And he asked me to come along, because Jeff Citron is a real
9 estate attorney and this was, obviously, a criminal matter.

10 Q So, you were just accompanying him to this meeting?

11 A Well, I wouldn't say I was just accompanying him, it
12 was Jeff Citron's client, not mine.

13 Q But I thought you said they knew each other, he wasn't
14 his client, I thought you said they knew each other?

15 A Yes, Jeff Citron knew Michael Cohen for at least ten
16 years.

17 Q So you knew at the time, based on the news, that
18 Michael Cohen was President Trump's personal attorney;
19 correct?

20 A I think I knew that before we entered the Regency
21 Hotel, yes.

22 Q And if you could land him as a client, Personal
23 Attorney to the President, that would be a big case for your
24 firm; wouldn't it?

25 A I suppose so.

1 Q And it would get you public exposure; wouldn't it?

2 A Yes, it would.

3 Q And you would be in the news as his attorney; right?

4 A I guess that's true, yes.

5 Q And this is what you would call a high profile case for
6 you; right?

7 A Probably, yes.

8 Q And it would connect you with the President of the
9 United States, right, because he was his former -- his Personal
10 Attorney; right?

11 A No, it would not.

12 Q It wouldn't connect you with the President of the
13 United States and those who were close him, like Rudy Giuliani?

14 A No. Rudy Giuliani wasn't involved in representing
15 President Trump at that point in time. He wasn't in the picture
16 at all.

17 Q But just a few days later he was representing President
18 Trump; right?

19 A Two days later is not the date that we met, yes.

20 Q So, is it your testimony that this wouldn't push you
21 into the arena with Rudy Giuliani and President Trump by
22 representing Michael Cohen?

23 A I don't understand that question.

24 What do you mean it would "push me into the arena?"

25 Q Well, I will withdraw the question.

1 Having Michael Cohen as a client, you said, would be a big
2 win for you and your firm; correct?

3 A I didn't say that.

4 You did.

5 Q I'm asking you. Would it be a big win for you and your
6 firm?

7 A No. I would say no. I didn't want him as a client
8 with the firm.

9 Q Would it be something that you would announce on your
10 website, your firm's website, if you had on him on the client
11 list, as your client?

12 A I don't know what the firm would do.

13 Q Okay.

14 MS. HOFFINGER: Can we, please, show now People's
15 528M.

16 Just to the witness, please, the Court and the
17 parties.

18 (Displayed for the aforementioned parties only.)

19 Q And maybe you can review that email and let us know who
20 it's from and who it's to.

21 A Yes. I have read it.

22 I know what it is.

23 Q Who is it from and who is it to?

24 A This was from me to my son.

25 Q What is the date of the email, sir?

1 A April 20th.

2 MS. HOFFINGER: I offer that in evidence.

3 MR. BOVE: No objection.

4 THE COURT: Accepted into evidence.

5 MS. HOFFINGER: Can we put that up on the screen,
6 please.

7 (Displayed.)

8 Q And I would like you to ask you to, please, read it.

9 Please read your email to your son and your son's response,
10 if you would.

11 A You want me to read it?

12 Q Yes, sir. If you are able to.

13 A Okay. From the bottom up.

14 It says, "I will be on the team."

15 That was Michael Cohen's phraseology.

16 Quote. "It would be an honor to have you as part of my
17 team. I will be eternally grateful for the help and guidance
18 you have already given me."

19 That's a quote from Michael Cohen.

20 Q If you would just, just read the email, please, from
21 your son?

22 A That's what it says, it says -- it's in quotes and it
23 says, "Michael Cohen, Personal Attorney to Donald J. Trump."

24 I did read it.

25 Q Okay.

1 A The second paragraph. "This is not public --" that,
2 too, was from Michael Cohen.

3 "-- yet. So do not say anything to anyone about this. I do
4 not know when we will make an announcement, but I have been
5 authorized to contact Rudy Giuliani as counsel to President
6 Trump and tell him that I will be representing Michael Cohen."

7 That's my Michael Cohen's instructions, right.

8 Q So what you're saying is, you were not saying that you
9 were going to put it on your firm's website, you were not going
10 to announce it; is that right?

11 A This has nothing to do with my firm's website.

12 Q It says, "I don't know when it's going to be announced.
13 Please keep it to yourself?"

14 A Announced by Michael Cohen.

15 Q So what you're saying is that that's all Michael
16 Cohen's language, not you, telling your son that?

17 A Okay, yes.

18 Q Okay. Can you read your son's response?

19 A "Wow. That's big news. Congrats, Dad. I hope this
20 leads to a lot of good things coming your way."

21 That's from my son, yeah.

22 Q And so, you were telling your son that you were going
23 to be involved in this big case and it was going to be great big
24 news for you and your firm; is that right?

25 A No. I was telling my son exactly what I told my son in

1 this email.

2 And this is his response to it.

3 Q Okay. Now, let's talk a little bit about meeting at
4 the Regency on April 16th, 2016.

5 Now, Mr. Cohen agreed to meet with you and Mr. Citron;
6 correct?

7 A Yes. On April 17th.

8 Mr. Cohen requested to meet with us. He asked us to come to
9 the Regency Hotel.

10 Q Sure.

11 After your partner -- as we saw in the email -- reached out
12 to him and asked if he would like to meet with you; isn't that
13 right?

14 A No. That's not what he said. He said to Michael
15 Cohen, I have a partner who used to be the Deputy Chief of the
16 Criminal Division of the US Attorney's Office. If you want to
17 pick his brain, let me know.

18 And Michael Cohen responded immediately, yes, I want to meet
19 him.

20 Q So, Mr. Citron reached out to see if Michael Cohen
21 would want to speak to you and you had a meeting with him; is
22 that right?

23 A Yes. Yes, that's what the email said.

24 Q Okay. So let's talk about the meeting on April 17th?

25 A Sure.

1 Q Now, you said that you met with him at the Regency
2 Hotel, where he was staying with his family; correct?

3 A We met with him at the Regency Hotel. I didn't know
4 where he was staying when I met with him.

5 Q And you knew, based on the news of the search warrants,
6 that Mr. Cohen had been through a traumatic event; right?

7 A Yeah, I would say, sure.

8 Q And, because eight days earlier, the FBI had raided his
9 apartment, his hotel room, and his office; right?

10 A I wouldn't use the term "raided." They executed a
11 search warrant.

12 Q And you know from your experience, that executing
13 search warrants is that they come into your place, wherever it
14 is, and they take your personal items, phones, your devices
15 documents, et cetera.

16 You know what a search warrants is; do you not?

17 A Of course I do.

18 Q And, you knew, as a result of that, and you knew,
19 obviously, he was under criminal investigation by the Southern
20 District of New York; right?

21 A I did, yes.

22 Q And that's pretty serious; isn't it?

23 A Generally, yes.

24 Q And, in fact, having a search warrant executed at
25 lawyer's offices and hotel rooms, et cetera, that's pretty

1 serious; isn't it?

2 A It's very serious, and it requires special proof.

3 Q And, in fact, you said that -- well, withdrawn.

4 Mr. Cohen was visibly shaken up that day; wasn't he?

5 A He was suicidal that day and acting manic -- he was
6 manic.

7 Q And you said he was pacing back and forth; right?

8 A That's correct.

9 Q And you had been a criminal defense attorney for how
10 long, sir, at that time?

11 A Oh, (laughter), 40 years -- 50 years.

12 Q Now, and in all that time as a criminal defense
13 attorney, you can understand how traumatic it is for somebody to
14 go through that kind of experience?

15 A Talk into the microphone, please.

16 Q Oh, I'm sorry.

17 As a criminal defense attorney for all of those years, you
18 can understand how traumatic it is for someone to go through
19 that kind of experience; right?

20 A Yes, sure.

21 Q And as a criminal defense attorney, you can empathize
22 with someone who has gone through that experience; can you not,
23 sir?

24 A Yes.

25 Q But you thought he was being a drama queen; didn't

1 you?

2 A No, I didn't know Michael Cohen. I had never met him
3 before in my life.

4 And he was putting on quite a show, and I didn't know when
5 he initially said --

6 Q Sir.

7 A I was --

8 Q Sir.

9 A I'm answering your question.

10 MR. BOVE: The witness needs to be allowed to
11 finish his answer.

12 THE COURT: Surely.

13 He can finish his answer.

14 A (Continuing.) He was putting on quite a show.

15 And he explained to us -- he told us that two nights before
16 he was on the roof of the Regency Hotel and he was going to jump
17 off and kill himself because he couldn't handle the pressure of
18 what he saw as the ongoing criminal case coming his way.

19 Q Sure.

20 And you remember testifying in the Grand Jury in this case,
21 sir?

22 A Yes, I do.

23 Q And you remember that it was in March, on March 20th of
24 2023?

25 A Approximately, yeah.

1 Q And did you tell the Grand Jury that you didn't know
2 whether he was being a drama queen or not?

3 A Yeah, and that's because --

4 Q Did you tell --

5 A And that's because --

6 MS. HOFFINGER: Well, I'm asking for the witness
7 to answer the question, your Honor.

8 THE COURT: Sir, if you are able to answer the
9 question yes or no, please answer yes or no.

10 If you are not able to, just let Ms. Hoffinger know
11 and she will rephrase it.

12 A Do you want me to answer that question yes or no?

13 Q Sure.

14 Did you tell the Grand Jury that he was acting like a drama
15 queen?

16 A No. I said I didn't know whether he was acting as a
17 drama queen, right --

18 Q Well, you don't like drama queens; right?

19 A I just didn't know, because I didn't know the guy.

20 I couldn't assess whether these actions by him were genuine
21 or not, but my partner thought they were, and he knew him for
22 ten years.

23 Q So, Michael Cohen ultimately chose a different lawyer
24 to represent him; right?

25 Not you; is that correct?

1 A Well, he had one lawyer at the time that was talking to
2 him, that was McDermott Will & Emery.

3 He was also talking to Guy Petrillo, who he, later on in
4 June, whatever the date was, he announced publicly that he was
5 going to retain Guy Petrillo.

6 Q So he retained Guy Petrillo instead of you; is that
7 correct?

8 A Retained?

9 You mean he signed a Retainer Agreement?

10 I don't know.

11 Q Whether he signed a Retainer Agreement or not, he ended
12 up going with Guy Petrillo to represent him in connection with
13 the matter in the Southern District, not you; correct?

14 A Yes, that's correct.

15 THE COURT: Counsel, please approach.

16 MS. HOFFINGER: Sure.

17 *****

18 (AT SIDEBAR.)

19 THE COURT: So, I haven't asked the jurors if they
20 can work late.

21 MS. HOFFINGER: Yes.

22 THE COURT: How much more do you have?

23 MS. HOFFINGER: I probably have about maybe half an
24 hour, at the most.

25 But --

1 THE COURT: Let's come back tomorrow.

2 MS. HOFFINGER: Okay. Thank you.

3 (End sidebar.)

4 THE COURT: Jurors, we are going to stop at this
5 time.

6 Before I excuse you, I remind you to please not
7 talk, either among yourselves or with anyone else, about
8 anything related to the case.

9 Please continue to keep an open mind.

10 Do not form or express an opinion about the
11 defendant's guilt or innocence until all of the evidence is
12 in, and I have given you my final instructions on the law,
13 and I have directed you to begin your deliberations.

14 Do not request, accept, agree to accept, or discuss
15 with any person the receipt or acceptance of any payment or
16 benefit in return for supplying any information concerning
17 the trial.

18 Report directly to me any incident within your
19 knowledge involving an attempt by any person improperly to
20 influence you or any member of the jury.

21 Do not visit or view any of the locations discussed
22 in the testimony.

23 And do not use any program or electronic device
24 to search for and view any location discussed in the
25 testimony.

1 Do not read, view or listen to any accounts or
2 discussions of the case, and that includes the reading or
3 the listening to the reading of any transcripts of the
4 trial, or the reading of any posts on any Court sites.

5 Do not attempt to research any fact, issue or law
6 related to the case.

7 Do not communicate with anyone about the case by
8 any means, including by telephone, text messages, email, or
9 the internet.

10 And do not Google or otherwise search for any
11 information about the case or the law which applies to the
12 case or the people involved in the case.

13 I will see you tomorrow morning at 9:30.

14 Have a good night.

15 THE COURT OFFICER: All rise.

16 (Jury exits.)

17 *****

18 THE COURT: Remain seated.

19 Sir, you may step down.

20 MS. HOFFINGER: Your Honor, your Honor, before
21 Mr. Costello goes, would you please ask him or tell him that
22 he's not to be in contact with the Defense team directly or
23 through other parties while he's still on the stand.

24 MR. BOVE: As counsel, we are going to and do abide
25 by that either way.

1 THE COURT: I generally do not give that
2 instruction, but you can ask him tomorrow whether he has or
3 has not.

4 (Witness excused.)

5 THE COURT: Ms. Hoffinger, you think that you have
6 about a half hour left?

7 I'm not going to rush you.

8 MS. HOFFINGER: Understood, understood. Probably
9 half an hour to 45 minutes at the most.

10 And I may cut some of it tonight, so.

11 THE COURT: Okay. And then I expected you will
12 have some redirect?

13 MR. BOVE: Yes, your Honor.

14 But I don't expect that it's going to be long.

15 THE COURT: Okay. And then at this point, do you
16 expect to call any other witnesses?

17 MR. BOVE: Not at this point, Judge.

18 We are going to do some thinking tonight, but,
19 obviously, there are some limitations on that, but not at
20 this point.

21 THE COURT: That can change, but it appears that
22 tomorrow very early in the morning you will rest and I will
23 excuse the jury at that time.

24 All right. Thank you, everyone.

25 MR. BOVE: Judge --

1 MR. BLANCHE: Your Honor, we don't have to do this
2 now, but at the conclusion of the People's case, at sidebar
3 we said that we were going to move for a Trial Order of
4 Dismissal.

5 I do not have to do that now --

6 THE COURT: We can do it now. That's fine.

7 MR. BLANCHE: Thank you, your Honor.

8 Your Honor, for several reasons we believe that the
9 Court should enter a Trial Order of Dismissal now.

10 First, there is absolutely no evidence that the
11 filings were false.

12 The business records were not false.

13 There is no dispute that Mr. Cohen provided legal
14 services to President Trump in 2017.

15 Not only did Mr. Cohen admit that, but Miss
16 Tarasoff when she booked the records that are part of at
17 least 12 of the counts said the same thing.

18 When they were entered in the Trump system, they
19 were entered as legal expenses for Retainer Agreement.

20 There is no dispute that during 2017, that's
21 exactly what Mr. Cohen was doing for President Trump.

22 Now, not only that, but when the invoices were sent
23 to The Trump Organization, there is no evidence that those
24 were mishandled and entered falsely.

25 So when the invoices are sent, President Trump is

1 not in New York, he's in the White House, and the invoices
2 come in for services rendered.

3 And Mr. Cohen testified that he was rendering
4 services for President Trump during that time, as his
5 Personal Attorney.

6 So, at the start, there is absolutely no false
7 business filing.

8 They are accurate business filings.

9 Second, there is no evidence that there is any
10 intent to defraud by President Trump in connection with
11 these filings.

12 So, even, even if there was evidence that the
13 records themselves were false -- but they weren't -- these
14 are records that were generated in connection with Michael
15 Cohen's personal relationship and Personal Attorney-client
16 relationship with President Trump in 2017.

17 He was paid first by a trust, by The Trust, for
18 three of the months and then out of the personal funds --
19 the personal bank account of President Trump, while
20 President Trump was the only person that had any signatory
21 authority over the bank account.

22 So, again, the idea that there would be any sort of
23 intent to defraud by President Trump when the invoices are
24 going to The Trump Organization, a check is being generated
25 for him to sign in the White House, for the President to

1 sign in the White House, and then -- which he does, which he
2 signs in the White House.

3 There is no evidence that there is any idea or any
4 intent by President Trump at that time to mislead or to hide
5 or to falsify the business records.

6 And, again, now, these are records of his
7 personal -- his personal records of the Trump Organization.
8 So, again, if there was an intent to defraud, there would be
9 evidence of something besides what we have here.

10 Either the records are entered in a different
11 manner, either they are entered in a false manner describing
12 something, services that are different than what was
13 actually rendered or something to give even a little bit of
14 evidence that there is an intent to defraud.

15 We have none of that.

16 And, third, your Honor, the other crimes that
17 purportedly are being covered up in connection with these
18 false business filings -- there are no other crimes.

19 And, now, the People rested earlier today.

20 And there is no evidence, zero evidence, that
21 anyone was thinking about a Campaign Finance charge in 2016
22 when this payment was made to Ms. Daniels.

23 There is also no evidence that anybody was thinking
24 about a Campaign Finance charge when Mr. Weisselberg and
25 Mr. Cohen met in January of 20 -- of 2017 to come up with a

1 way that he would be paid.

2 There is a \$35,000 monthly retainer. It was
3 established months after the election.

4 And so, there is simply no evidence that there is
5 any effort to conceal anything by -- not only by President
6 Trump, but also by any of the others involved.

7 And so, the Prosecutors have talked in their
8 opening statement and in papers about some sort of
9 conspiracy to influence the election.

10 But, as the Court knows, there has to be something
11 illegal about this effort.

12 There has to be something illegal about the efforts
13 by the coconspirators to influence the election.

14 And what the evidence shows is that they all got
15 together in 2015 and agreed that they would talk about
16 positive and negative stories, and that there would be
17 positive stories pushed and negative stories pushed and that
18 Mr. Pecker would keep an eye out, keep an eye out for
19 anything that he heard that was bad about President
20 Trump.

21 Now, there is no evidence from any of the witnesses
22 who testified of any criminal intent with respect to any of
23 those, of that kind.

24 The underlying criminal intent that the People are
25 suggesting, FECA, New York State Tax Fraud, some other

1 business record fraud that they claim showed some sort of
2 criminal intent.

3 As a matter of law, they should not be allowed to
4 use any of those predicates, when at the end of the day
5 there is absolutely no evidence that Mr. Pecker, Mr. Cohen,
6 President Trump, Dylan Howard, or any of the other purported
7 coconspirators for this Misdemeanor State Law crime had any
8 criminal intent at the time that they were engaging in this
9 conduct.

10 (Whereupon, at this time, Senior Court Reporter
11 Laurie Eisenberg relieved Senior Court Reporter Lisa Kramsky
12 as the official court reporter.)

13 *****
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Proceedings

MR. BLANCHE: By the way, there was no discussion at this October 2015 meeting about catch and kill. Nobody said that.

There was no discussion about any financial payments that would potentially be made with respect to any stories.

So, you don't have evidence of any criminal intent or criminal conduct at this supposed first meeting where the conspiracy is born and then played out over the next year plus.

Then, when you look at actually how the conspiracy played out, Karen McDougal, if the evidence is to be credited, she never even wanted her story out. She was looking to start her career anew, jumpstart her career. She wanted an arrangement with AMI so that she could be on the covers of magazines, write a column; not catch and kill a story.

While that's the words used by Mr. Cohen and in opening statements, that's not the evidence that came out at trial.

That was a demonstrably false story. Everybody agrees.

So, again, if there's some conspiracy to influence an election or some conspiracy to illegally influence an election, how on Earth is keeping a false

Laurie Eisenberg, CSR, RPR
Senior Court Reporter

1 story from the voters criminal?

2 So, it's a false story, and there's a decision
3 made to pay off the person who's spreading the false
4 story. That means that a false story is not being
5 presented to the folks that are voting in New York State.

6 That's not a catch and kill, your Honor,
7 certainly not a criminal catch and kill.

8 As it relates to Ms. Daniels, AMI wanted nothing
9 to do with that. There's lots of testimony about that.

10 When it came to catching and killing, which is
11 supposedly the conspiracy that's going to be entered into
12 between Mr. Pecker, Mr. Howard, Mr. Cohen and Mr. Trump,
13 if that was really the conspiracy, AMI jumped out of that
14 conspiracy.

15 As you heard over the past several weeks,
16 Mr. Pecker was insistent that he wanted nothing to do with
17 any kind of catch and kill with Ms. Daniels.

18 In fact, that led to Mr. Cohen entering into an
19 NDA with her.

20 Mr. Cohen is not a member of the press. He
21 doesn't own the National Enquirer.

22 This isn't a catch and kill story, which is,
23 supposedly, the conspiracy that was formed in
24 October 2016.

25 So, the three separate incidents this jury heard

1 about that gave conspiratorial criminal intent to the
2 participants are not that at all.

3 So, the underlying predicate that gives rise --
4 that makes this misdemeanor a felony, there's simply no
5 evidence of any intent, of any criminal intent on any of
6 the parties in 2016, 2017; and for that reason, the Court
7 should enter a verdict in favor of the Defendant.

8 Finally:

9 We've been saying this for months, and we heard
10 Mr. Cohen testify the past several days.

11 There is no way that the Court should let this
12 case go to the jury, relying on Mr. Cohen's testimony.

13 And I don't think the People will disagree that
14 without Mr. Cohen, there is no case. Meaning, without his
15 testimony last week and today, there is no case.

16 And he not only lied repeatedly in the past under
17 oath, but he lied in this courtroom.

18 And I'm sure that the People will say: Well, he
19 didn't really lie, or he misremembered.

20 But, we put on irrefutable proof, irrefutable
21 proof.

22 When he testified on direct about a phone call
23 and he remembers specifically a key part of this crime
24 that took place, a key part is keeping President Trump
25 updated, and he said it 19 times on his direct, and today

1 he said he talked to him about it more than 20 times --
2 that's, obviously, a key part of their story.

3 He confidently said that on October 24th, when he
4 had that call just after eight o'clock at night, the
5 purpose of the call was to call Keith Schiller, have
6 Mr. Schiller give the phone to President Trump and then --

7 THE COURT: So you're asking me to find Mr. Cohen
8 not credible as a matter of law?

9 MR. BLANCHE: Yes. Absolutely.

10 Because it wasn't just that lie, your Honor.

11 He also lied to this Court repeatedly, for
12 example, about his testimony in front of Congress and
13 whether he said that he never asked for a pardon.

14 It shouldn't move the Court that he continues to
15 lie about that?

16 I mean, the Court has the transcript. The Court
17 has the evidence, the testimony that he put in in front of
18 Congress where he says something that we know from the
19 testimony at this trial was not true.

20 And he still doubles down.

21 THE COURT: So you want me to take it out of the
22 jury's hands and decide before it even gets to the jury
23 that, as a matter of law, this person is so not worthy of
24 belief that it shouldn't be considered by the jury?
25 That's what you're asking?

1 MR. BLANCHE: That his entire testimony should
2 not be considered by the jury. Absolutely. That's exactly
3 what we're asking the Court to do.

4 Again, we didn't just catch him in a lie, your
5 Honor. He came in here with a history of lying under oath.

6 Again, as your Honor ruled before this trial
7 started with respect to that issue, your Honor said,
8 correctly, that he hadn't appeared in front of you, so it
9 wouldn't be appropriate just based on past allegations of
10 lying under oath, it wouldn't be appropriate to just say
11 he can't testify.

12 He testified. And he lied under oath. In this
13 courtroom.

14 And the consequences of that lie, if accepted by
15 the jury, is that -- is a conviction, potentially.

16 And so, imagine the --

17 THE COURT: You said his lies are "irrefutable;"
18 that you think he's going to fool 12 New Yorkers into
19 believing this lie?

20 MR. BLANCHE: Well, Judge --

21 THE COURT: It's an "irrefutable" lie?

22 MR. BLANCHE: I certainly hope he doesn't
23 convince 12 jurors.

24 THE COURT: I would like to hear from the People.

25 MR. COLANGELO: The standard, as the Court knows,

1 for the motion the Defense just made requires assessing
2 the evidence in the light most favorable to the
3 Prosecution, assuming that the jury credits the People's
4 witnesses and giving the Prosecution's evidence the full
5 weight it might reasonably be accorded.

6 So, against that backdrop, there's just no
7 argument that the evidence falls short of the standard the
8 People need to show to defeat this motion.

9 Let me address -- I think Mr. Blanche made three
10 key arguments:

11 First is that there's no evidence of falsity
12 because Mr. Cohen performed or provided legal services in
13 2017.

14 The trial record overwhelmingly rebuts the
15 argument "there's no evidence of falsity."

16 Among other things, Mr. Cohen performed similar
17 legal services in 2018 and was not paid.

18 Then, of course, you have People's Exhibits 35
19 and 36, accompanied by the testimony of Jeff McConney
20 explaining those documents, which memorialize and track
21 the conversion of the \$130,000 wire transfer to Keith
22 Davidson into the exact \$420,000 reimbursement that
23 Mr. Cohen ultimately received.

24 On top of that, you have the admission in at
25 least three other pieces of evidence we introduced.

1 People's 81, which is the Defendant's signed and
2 certified Office of Government Ethics Form, which explains
3 in that footnote we pointed to on Page 45 that the
4 Defendant reimbursed Mr. Cohen for expenses he incurred.

5 We've got People's 407G, I believe it was, which
6 was a public statement from the Defendant admitting he
7 reimbursed Mr. Cohen.

8 You have the testimony from Ms. Daniels'
9 transcript, 2903, where she acknowledged from civil
10 litigation in California, the Defendant acknowledged
11 Mr. Cohen had to be reimbursed.

12 The evidence this payment was for reimbursement
13 and not for a retainer for legal services performed is
14 overwhelming; and, at minimum, a rational juror can
15 conclude beyond a reasonable doubt the invoices, the
16 ledger entries, the signed checks with check stubs, all
17 contain false instruments.

18 Mr. Blanche made a couple of arguments regarding
19 intent to defraud. At least one of them touched on the
20 first element in the CJI instruction, whether the
21 Defendant made or caused a false entry in the business of
22 his entries, because Mr. Blanche talked about the
23 accounting staff and the normal operations of the
24 accounting staff.

25 As a matter of law, your Honor, it's sufficient,

1 more than sufficient, if the Defendant set in motion the
2 sequence of events that led to the false entries being
3 made and if those false entries were the reasonable,
4 foreseeable consequences of his actions.

5 So, I think there can be no question related to
6 the overwhelming evidence leading up to the payment scheme
7 that the Defendant caused the false entries.

8 On intent to defraud, again, your Honor, you
9 already held in denying the Defendant's Omnibus Motion
10 that, as a matter of law, the Grand Jury supported, at
11 that point at least, three different theories of intent to
12 defraud.

13 The first was evidence of a general intent to
14 deceive.

15 And, here, the evidence in the trial record,
16 including the overwhelming record of concealment, is --
17 supports general intent to deceive.

18 The Court also acknowledged general intent to
19 deceive the voting public supports -- also supports the
20 element of intent to defraud.

21 Then, of course, as your Honor also held at
22 Page 19 of your Omnibus Decision, the evidence supports a
23 showing of intent to deceive Government regulators.

24 On the last element that Mr. Blanche discussed,
25 the intent to commit, aid or conceal the commission of

1 another crime, your Honor, there were weeks and weeks of
2 testimony from witnesses who testified and whose testimony
3 was corroborated by emails, bank records, contemporaneous
4 phone calls, text messages, and other documents of a
5 conspiracy that was entered into in Trump Tower in August
6 of 2015, that was then effectuated through unlawful means.

7 The "unlawful means" include an illegal corporate
8 contribution to Karen McDougal, the illegal -- the
9 excessive individual campaign contribution to Stormy
10 Daniels.

11 And then, of course, your Honor, there's
12 extensive evidence of other false business records being
13 created in the course of carrying out that conspiracy,
14 including the false invoice from Investor Advisory
15 Services to conceal the intended transaction between AMI
16 and Mr. Trump, as well as all of the false documents that
17 Mr. Cohen submitted to his bank in order to open both of
18 the shell companies he intended to use to tender the
19 transfer.

20 There's a lot more. We don't need to give a full
21 summation in order to rebut the information Mr. Blanche
22 gave.

23 The trial evidence overwhelmingly supports each
24 of the element of the offense, and the trial Order of
25 dismissal is not warranted.

1 THE COURT: I'll reserve decision.

2 MR. BLANCHE: Briefly, your Honor, the evidence
3 of there being any sort of illegality in this
4 conspiracy -- a conspiracy isn't a conspiracy just because
5 three people get together and talk. There has to be an
6 illegal objective.

7 False filings of AMI records doesn't qualify.

8 False records years after the fact, the fact that
9 there was a campaign contribution that Mr. Cohen
10 ultimately pled guilty to, that shouldn't qualify.

11 The evidence that came in this courtroom is
12 really what the Court should consider.

13 You have no evidence of a catch and kill at that
14 meeting; just evidence that -- of what reporters and
15 politicians do every day during every campaign, and the
16 People have turned that into a beginning of a
17 conspiratorial agreement and relationship.

18 But, that's not what the evidence showed over the
19 last several years.

20 At the end of the day -- then I'll sit down --
21 you have a books and records violation where you have a
22 legal expense. That's the entry that's false, supposedly.

23 And you have testimony, non-contrary, that
24 Mr. Cohen was President Trump's lawyer in 2017.

25 So, it's hard to imagine what book -- how this

1 was supposed to be booked by the Trump -- by Ms. Tarasoff
2 when she gets the invoice. How is she supposed to book the
3 fact that the lawyer working for President Trump was his
4 personal attorney? Legal expense.

5 So -- I was going to just finish with Mr. Cohen.

6 I won't go on and on.

7 The other -- in addition to what I already said,
8 Judge, the exacting testimony that he gave this jury --
9 and we crossed him on it, but a lot of the objections were
10 sustained. The exacting testimony that he gave about
11 particular conversations that he remembered with President
12 Trump in 2016, we never saw those. They're not in any
13 notes with the Special Counsel, with the Southern
14 District, or with the Manhattan District Attorney. That's
15 something that we talked about before.

16 He definitely talked about in the Grand Jury and
17 in meetings that there were phone calls and there were
18 conversations.

19 That's a lot different than what he said on the
20 stand when he gave very specific recollection.

21 That's something -- that's not something we knew
22 about. Apparently, the People knew he was going to do
23 that.

24 Under the law, if he's going to change his story
25 like that, they should provide us notes of that. They

1 didn't.

2 That's another reason why his testimony should be
3 rejected, your Honor.

4 MR. COLANGELO: Your Honor, as the Court knows
5 and as Defense Counsel knows, they have received probably
6 hundreds of pages of notes of conversations with
7 Mr. Cohen. It is simply not the case that his testimony at
8 the trial was not reflected in the notes.

9 The Defense Counsel had ample opportunity to
10 impeach by omission. Where impeaching by omission was
11 permitted, the Court permitted it. Where it was not
12 appropriate, the Court did not allow it.

13 There's no evidence, none, that his testimony in
14 this courtroom was new.

15 One other correction.

16 The false entries on the invoices, General Ledger
17 entries, and checks or check stubs were these payments
18 that were falsely described as payments pursuant to a
19 retainer for services rendered in a given month, not the
20 legal expense standard.

21 THE COURT: Thank you both.

22 As I said, I'm going to reserve decision.

23 See you tomorrow at 9:30.

24 MR. BLANCHE: Can we approach?

25 (Whereupon, the following proceedings were held

1 at sidebar:)

2 MR. BLANCHE: I just have a scheduling question.

3 Assuming we'll finish by 10-ish, 10:15-ish, are
4 we going to go right to the charge conference, or in the
5 afternoon?

6 THE COURT: What's your preference?

7 MR. BLANCHE: Emil is arguing it.

8 MR. STEINGLASS: He's behind you.

9 (Whereupon, Defense Counsel confer.)

10 MR. BOVE: Whenever it's convenient.

11 THE COURT: I think that we should take at least
12 a short break so that we can all properly prepare for the
13 pre-charge conference.

14 Unless there's a strong objection, I would
15 actually like to come back at 2:15 and do it in the
16 afternoon.

17 MR. COLANGELO: No objection here.

18 We were just conferring on the exchange of
19 proposed language your Honor was requesting this morning.

20 We haven't had an opportunity yet to exchange
21 that proposed language. The additional time will give us
22 a chance to do that.

23 THE COURT: Okay.

24 (Whereupon, the case is adjourned to May 21,
25 2024.)