
TESTIMONY OF JEFFREY BOSSERT CLARK, SR.

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BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION

*Arctic Frost: Conspiracy and Coordination Against President Trump and
the American Right*

April 21, 2026

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INTRODUCTION

Chairman Schmitt, Ranking Member Welch, and Members of the Subcommittee, thank you for the opportunity to speak with you today.

My name is Jeffrey Clark. I am a former Senate-confirmed Assistant Attorney General at the United States Department of Justice (“DOJ”). I have served in three presidential administrations. From 2018-2021, I headed the Environment & Natural Resources Division and also, *simultaneously*, the Civil Division as Acting Assistant Attorney General from 2020-2021. When I left the Trump 45 Administration on January 14, 2021, I had approximately 1,400 lawyers under my supervision.

Most recently, for most of 2025, I served as the Acting Administrator of the Office of Information and Regulatory Affairs (“OIRA”), which the public tends to call the “Regulatory Czar,” part of the White House Office of Management and Budget. I left the Trump 47 Administration a little over one month ago. I am now the Vice President of Litigation at The Oversight Project, a 501(c)(4) nonprofit transparency organization.

Since 1997, I have been an attorney licensed to practice law in the District of Columbia. Until I took the position that caused heads to explode on the Left and in the mainstream media, that the 2020 Presidential Election warranted additional investigation, my ethics had never been questioned in 20-plus years of legal practice. I clerked for Judge Boggs on the U.S. Court of Appeals for the Sixth Circuit, was elected as a member of the American Bar Association’s Administrative Law Section’s Governing Counsel, served as a partner in a major international private law firm, and won numerous awards. The one I am especially proud of for safeguarding military readiness against litigation onslaughts brought by radical environmental groups trying to hamstring the U.S. Navy’s active sonar program that we need to meet the military challenge of Communist China.

I was one of the rare DOJ political appointees to brief and argue my own cases frequently.

One of the principal reasons that I came under fire comes directly out of the witch hunt that came to be called “Operation Arctic Frost.” Since arctic frost is a type of orange, and given the objectives of this Operation to destroy President Trump, his allies, and various members of Congress, the name was clearly chosen as an inside political joke. They would have called it Operation “Orangeman Bad,” if they could have gotten away with it.

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I appear before you today not as a government official, but as a private citizen who became a target of the Federal Bureau of Investigation (“FBI’s Operation Arctic Frost. Arctic Frost was a sprawling, multi-agency investigation that, based on the whistleblower documents released by Senate Judiciary Committee Chairman Grassley and Permanent Subcommittee on Investigations Chairman Johnson: (i) targeted approximately 430 conservative individuals and entities; (ii) issued 197 subpoenas; (iii) obtained the cell phones of the President and Vice President; and (iv) ultimately formed the scaffolding upon which former Special Counsel Jack Smith built his unlawful election-interference case against President Trump, brought to a halt only by the U.S. Supreme Court’s immunity ruling in *Trump v. United States*, 603 U.S. 593 (2024). After that decision, Jack Smith struck all references to me from a superseding indictment because the Supreme Court had rebuked him for trying to penetrate into and criminalize President Trump having the temerity to consult with me in my capacity as a DOJ lawyer confirmed by the Senate.

I appear before you today because I *lived* through Arctic Frost. I was in its crosshairs even though all I sought to do was entirely consistent with Rule 2.1 of the D.C. Rules of Professional Conduct, in acting to “exercise independent professional judgment and render candid advice” to the President of the United States. And I appear before you today because the documents that Chairmen Grassley and Johnson have made public paint a picture of constitutional overreach that should terrify every American, regardless of party. I can also help you fill in gaps as to what was happening alongside Arctic Frost, both in the halls of the D.C. Bar nearby and in a Fulton County, Georgia courthouse far to our south.

The injustice I suffered under the falsely predicated Arctic Frost investigation was not an isolated injustice. Arctic Frost was one chapter in a sustained, ideologically driven pattern in which the same cohort of DOJ and FBI actors weaponized federal law enforcement against conservative targets, while simultaneously shielding their political allies. These abuses are indistinguishable from the justice systems of history’s worst totalitarian regimes where a chief of police like Lavrenti Beria can proclaim: “Show me the man and I’ll find you the crime.” Pierre Lemieux, *Show Me the Man and I’ll Find You the Crime*, THE LIBRARY OF ECONOMICS AND LIBERTY (Aug 23, 2023), available at <https://www.econlib.org/show-me-the-man-and-ill-find-you-the-crime/>. That mentality

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

terrorized scores of civilian populations around the world and now, as Arctic Frost illustrates, it has come here.

The DOJ's and FBI's pattern of abuses stretched from Crossfire Hurricane to the Mueller Probe, through both Trump impeachments, the Mar-a-Lago documents case, Arctic Frost, and beyond, sweeping up not just federal government officials like myself but countless innocent Americans (from grassroots activists to parents, Catholics, pro-lifers, and January 6 bystanders), whose civil liberties were trampled by predawn raids, pretextual charges, and criminal leaks intended for reputational destruction. All the while, these same bad actors took affirmative, documented steps in violation of law, policy, and procedure to protect Hillary Clinton from the consequences of her email server, the shady conduct of the Clinton Foundation, and her campaign's false reports to the FBI about President Trump's nexus to the Alfa Bank and Russia collusion. They succeeded in insulating Joe and Hunter Biden from meaningful investigation of the family's bribery and foreign-influence dealings, and to bury or slow roll derogatory information about other Democratic officials. For this reason, the abuses of Arctic Frost must be understood as being merely a component of much broader, overarching conspiracy involving partisan application of federal investigative power.

* * *

My testimony will cover nine areas: (1) what Arctic Frost was; (2) my personal experience as a target of Arctic Frost; (3) Ranking Member Durbin's referral to the D.C. Bar; (4) the Fulton County indictment and parallel prosecutions; (5) major revelations from Chairman Grassley's investigation; (6) Arctic Frost as a microcosm of Biden-era weaponization; (7) the architecture of coordination; (8) the personal costs; and (9) recommendations going forward.

I. WHAT OPERATION ARCTIC FROST WAS

Operation Arctic Frost was a joint investigation conducted by the FBI, the DOJ Office of Inspector General ("OIG"), the U.S. Postal Inspection Service, and the National Archives and Records Administration. According to a draft FBI internal document later published by Chairman Grassley, the FBI characterized Arctic Frost as an investigation into what it described as a "multifaceted conspiracy to overturn the results of the 2020 Presidential

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

Election so that former President Trump could remain in office.” FBI, Arctic Frost; 56D-WF-3587997, at 1 (Jan. 23, 2023), https://www.grassley.senate.gov/imo/media/doc/arctic_frost_bank_record_subpoenas.pdf (on file with Chairman Grassley).

The investigation was launched in April 2022. According to the whistleblower records released by Chairmen Grassley and Johnson, it was initiated by FBI agent Timothy Thibault, a biased FBI official that the Office of Special Counsel concluded violated the Hatch Act due to well-documented aversions for conservatives. See www.grassley.senate.gov/imo/media/doc/office_of_special_counsel_to_grassley_-_thibault2.pdf (Jan. 19, 2024). The records indicate that Thibault’s launching of the investigation breached standard FBI protocols. This is not a minor procedural point — it goes to the very legitimacy of the investigation from its inception. If the predication requirements were not met, if the proper approvals were not obtained, then everything that flowed from Arctic Frost — the subpoenas, the surveillance, the referrals to Special Counsel Smith — is fruit of a poisonous tree.

The scope of Arctic Frost was breathtaking. According to the documents released on October 29, 2025, the investigation issued 197 subpoenas seeking records related to approximately 430 Republican individuals and entities. Press Release, S. Comm. on the Judiciary, Majority Press, NEW: Jack Smith Subpoenaed Records for Over 400 Republican Targets As Part of Arctic Frost (Oct. 29, 2025), <https://www.judiciary.senate.gov/press/rep/releases/new-jack-smith-subpoenaed-records-for-over-400-republican-targets-as-part-of-arctic-frost>.

The targets spanned six battleground electoral States — Pennsylvania, Michigan, Georgia, Wisconsin, New Mexico, and Arizona — and extended to individuals in the private sector, the Department of Justice, and the White House. The investigation obtained the government cell phones of President Trump and Vice President Pence. It made extensive requests to telecommunications companies, banks, and other service providers. Indeed, I only recently regained access to my gmail account which by then had about 54,000 unread emails.

And perhaps of greatest interest to this body: the FBI, under the Biden administration, unlawfully surveilled eight sitting United States Senators as part of an investigation that began with a protocol-violating initiation by a single partisan FBI agent.

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

The investigation also swept in dozens of Republican organizations. Chairman Grassley revealed that the FBI's investigation targeted entities including Turning Point USA, then led by the now-martyred Charlie Kirk. As Chairman Grassley stated in his opening remarks for this Committee's FBI oversight hearing in September: "Arctic Frost wasn't just a case to politically investigate Trump." Press Release, S. Comm. on the Judiciary, Majority Press, Grassley Opens Senate Judiciary FBI Oversight Hearing, Releases Additional Records Demonstrating Political Weaponization and Misconduct at Biden FBI (Sep. 16, 2025), <https://www.judiciary.senate.gov/press/rep/releases/grassley-opens-senate-judiciary-fbi-oversight-hearing-releases-additional-records-demonstrating-political-weaponization-and-misconduct-at-biden-fbi>.

It was, in the words of the Republican Attorneys General Association's executive director, a vehicle through which "the deep state, unelected Biden bureaucrats — including the FBI — used lawfare to target Republican AGs and many other close friends because we were allies of Donald Trump." Press Release, S. Comm. on the Judiciary, Majority Press, ICYMI: Grassley Exposes Biden FBI for Targeting Nearly 100 Republican Groups and Individuals (Sep. 19, 2025), <https://www.judiciary.senate.gov/press/rep/releases/icymi-grassley-exposes-biden-fbi-for-targeting-nearly-100-republican-groups-and-individuals>.

The plain fact is that the party in power from 2021 to 2025 tried to put the leaders of the opposition party in prison, like is always done in dictatorships around the world.

II. MY PERSONAL EXPERIENCE AS AN ARCTIC FROST TARGET

I come to this testimony not as a detached observer but as someone who has lived the consequences of Arctic Frost and the overlapping investigations that surrounded it.

In the aftermath of the 2020 election, I was involved in internal deliberations at the Department of Justice regarding allegations of election irregularities. I held views about the Department's obligations that differed from those of some of my colleagues. I expressed those views internally, through proper channels, cloaked in the most privileged settings at the Justice Department, in its Command Center SCIF, and in the Oval Office — as was my right and duty as a senior Justice Department official. For that — for the sin of disagreeing with the institutional consensus and committing a classic Orwellian thought crime — I became a target slated for personal destruction.

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

The DOJ OIG opened an investigation into my conduct. The provenance of that investigation should be closely investigated. I spoke to one former DOJ official about that investigation and that official was told that the IG would produce a report “soon,” but that report was never issued, which is suspicious. It is possible that Biden DOJ leadership stood the IG down, especially once Jack Smith was appointed.

In any event, the OIG investigation was then later formally merged into Arctic Frost. This merger was not a mere administrative consolidation. It had profound investigative consequences. By merging the OIG’s investigation of me into Arctic Frost, the FBI gained access to my communications and the communications of other senior DOJ officials — including former Attorney General Bill Barr — through the cell phones and email accounts that the OIG had collected. Material from the OIG investigation of me fed directly into Special Counsel Jack Smith’s so-called election-interference case.

Consider the implications. An internal DOJ watchdog investigation, which operates under its own set of rules and authorities, was absorbed into a criminal investigation that was itself predicated on a protocol-violating launch. The OIG’s materials — collected under one set of legal authorities — became ammunition for a criminal case operating under another. This is not how separation of investigative functions is supposed to work. To this day, we have never received a satisfactory answer as to how DOJ’s OIG could continue working on an investigation against a former employee they no longer had jurisdiction over. I wrote to DOJ asking this question. They never answered.

I want to be clear about what happened to me as a result of these overlapping investigations. I was referred to the D.C. Bar by Ranking Member Durbin and by him alone — not by virtue of a vote of the full Judiciary Committee, and not as joined by other Committee Members on the Democratic side. Communications between Senator Durbin, his staff, and D.C. Disciplinary Counsel must be sought and investigated.

I was indicted in Fulton County, Georgia. I was quickly identified by the media due to Jack Smith’s thinly veiled verbal pleadings shenanigans as “Co-Conspirator 4” in the federal case. My legal career, my professional reputation, and my family’s peace were all placed under siege — simultaneously, from multiple directions, by multiple institutions that, as I will discuss, had troubling interconnections. There were times when reporters camped out on my doorstep. Reuters Sarah Lynch and the *Washington Post’s* Jacqueline

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

Alemany made particularly annoying intrusions into my family's privacy. This was all part of a "package deal" designed to destroy me.

As I testified to the January 6 Select Committee in the House, I received death threats including a particularly graphic one left by voicemail right after I was attacked on air one evening by MSNBC's Chris Hayes. The voicemail was left at one of my workplaces by a man stating that he was from New Jersey. He invited me to the Pine Barrens, where he said he would chop up my body, then put my flesh and blood into buckets that he would then deliver to my wife and fatherless children. We referred that threat to the FBI. The intake agent agreed that the threat was serious and worthy of investigation. But the Biden FBI clearly must have squashed that, as I've received no information about whether that threatening individual was ever tracked down.

III. THE DURBIN REFERRAL AND THE D.C. BAR

On October 7, 2021, Senator Dick Durbin, then Chairman of this full Committee, referred me to the District of Columbia Bar's Disciplinary Counsel. Senator Durbin urged the bar to open an investigation into whether my actions violated the professional conduct rules governing attorneys.

This referral did not occur in a vacuum. It came alongside the release of a 394-page Senate Judiciary Committee report that followed an eight-month inquiry. That report included voluntary testimony from former Acting Attorney General Jeffrey Rosen and his number two, Richard Donoghue, regarding privileged internal DOJ deliberations in which I participated. The report provided what Senator Durbin's office characterized as new details about what it described as pressure tactics deployed by President Trump and me.

I want the Committee to understand the sequence and its significance. The Senate Judiciary Committee — under Chairman Durbin — conducted an investigation, produced a report based on privilege-violating testimony from my former colleagues, and then the Chairman of that same Committee personally and on a solo basis referred me to the D.C. Bar for discipline. The Legislative Branch was not merely overseeing or legislating; it was actively initiating a disciplinary proceeding against a private citizen and licensed attorney — a proceeding based on zero first-hand knowledge by Senator

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

Durbin, in violation of decades of D.C. Bar practice to investigate only complaints filed by individuals with first-hand knowledge.

No DOJ official filed such a complaint against me. And DOJ's Office of Professional Responsibility never referred me to the D.C. Bar. Later, the D.C. Bar would try to replace this divot by getting the D.C. Court of Appeals to change its rules, but they were not able to do that until January of 2023, months and months after D.C. Bar charges were brought against me. Retroactive changes in regulatory law are illegal but it didn't stop D.C.'s Disciplinary Counsel, a man who started his career by prosecuting Richard Nixon and clearly has long harbored partisan animus against Republicans.

Now, I want to connect this to Arctic Frost. The Durbin referral occurred in October 2021. Arctic Frost was launched in April 2022. The DOJ OIG investigation of me — which predated both — was eventually merged into Arctic Frost. The D.C. Bar disciplinary proceeding was running on a parallel track. The question this Committee should examine is whether these parallel proceedings were truly independent (which it most assuredly was not), or whether there was coordination between the Senate Judiciary Committee's referral, the D.C. Bar's disciplinary process, the DOJ OIG investigation, and the FBI's Arctic Frost investigation. This Committee should subpoena the records of D.C. Disciplinary Counsel, Hamilton Fox, his Office, and those of the Contact Member of the D.C. Board on Professional Responsibility who approved the investigation under DCCA R. XI §§ 5(d) & 4(e)(5), as well as examine Disciplinary Counsel's servers for exchanges with D.C. authorities, DOJ, the FBI, the Biden White House Counsel's Office, and Fani Willis, the Fulton County, Georgia District Attorney.

This DOJ should do the same. We need *radical accountability*, not excuses for these outrages and violations of my constitutional rights, a veritable host of legal privileges, and orderly internal DOJ and FBI procedure. DOJ stands at an inflection point and it can no longer delay action.

The D.C. Bar's disciplinary proceeding relied in part on information that came from the Senate Judiciary Committee's investigation. The DOJ OIG investigation of me produced materials that were then shared with the FBI through the Arctic Frost merger. The Senate Judiciary Committee's report drew on testimony from DOJ officials whose communications were subsequently obtained by the FBI through Arctic Frost. These are not separate, hermetically sealed processes. They are overlapping investigations drawing

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

on overlapping pools of information, and the flow of information between them deserves scrutiny.

For the lay mind, the aim was clearly to create the impression that with so many attacks being mounted against me, I must be guilty of something. The strategy against me could be characterized as “injustice by multiplication.”

There is more than enough from what we do know already to form reasonable inferences that a conspiracy against constitutional rights (*see* 18 U.S.C. § 241) was entered into and unfurled against President Trump, me, numerous alternate electors, members of the House and Senate, private lawyers for President Trump, and other Trump 45 officials such as Mark Meadows and Peter Navarro, as well as private citizens like Steve Bannon and Charlie Kirk.

To my knowledge, no significant investigation is underway at DOJ to either bring those who engaged in this sprawling conspiracy to account or to provide redress to those who were injured.

IV. THE FULTON COUNTY INDICTMENT AND PARALLEL PROSECUTIONS

In August 2023, I was indicted by a Fulton County, Georgia grand jury as one of 19 defendants in District Attorney Fani Willis’s election-interference case. The indictment charged me with violations of Georgia law stemming from the same conduct that was the subject of the DOJ OIG investigation, the D.C. Bar disciplinary proceeding, Arctic Frost, and before that the House Oversight and January 6 Committees. The Georgia case used that State’s RICO statute, positing that Donald Trump, myself, and others were engaged in an organized-crime like racketeering operation. The absurdity of that allegation should be enough to self-refute it and eventually the charges there collapsed but only after years of effort and, just for me alone, millions of dollars in legal fees.

By way of comparison to the ethics charges against me, I was accused of an attempted misrepresentation by the D.C. Bar — an ethics offense that no one anywhere has ever been charged with before — whereas in Georgia I was similarly accused of an “attempted

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

false writing” — once, again, a criminal offense no one in Georgia had ever been prosecuted for before based on my team’s research.

Fulton County District Attorney Willis sharply opposed my efforts to remove the case to federal court, with her office arguing that my legal positions reflected a “misunderstanding of criminal procedure.” Resp. to Def.’s Emergency Mot. to Stay State Crim. Procs., *Georgia v. Jeffrey Bossert Clark*, No. 1:23-cv-03721-SCJ, at 1 (N.D. Ga. Aug. 23, 2023). Just last week, the U.S. Supreme Court unanimously approved the removal by Chevron of an environmental case brought against it by Plaquemines Parish, Louisiana on federal officer removal grounds. Note that I removed based on challenges to my conduct while a federal officer. Chevron was simply acting in some connection with federal officer activity dating back to World War II. Chevron, unlike me, was not a federal officer. Remarkably, I was not permitted to remove my case. This is upside-down. I cannot help but conclude that this was not a result consistent with longstanding federal law, but rather a result consistent with the atmosphere of anti-Trump hysteria that had gripped even the courts.

I subsequently filed motions challenging DA Willis’s conduct of the prosecution, including allegations that her office had ratified perjury by the special prosecutor regarding an extramarital affair, and that her judgment for the prosecution was “corrupted beyond redemption.” Def.’s Reply to State’s Suppl. Post-Hr’g Br., *Georgia v. Jeffrey B. Clark, et al.*, No. 23SC188947, at 2 (Fulton Cty. Super. Ct. Mar. 6, 2024).

The question I raise for this Committee is straightforward: Was the Fulton County prosecution truly independent of the federal investigations? The same conduct, the same conversations, the same internal DOJ deliberations and the same ridiculous legal theories were being pursued simultaneously by:

1. The FBI through Arctic Frost;
2. The DOJ Office of Inspector General;
3. Special Counsel Jack Smith;
4. The D.C. Bar disciplinary process; and
5. The Fulton County District Attorney.

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

One would think that I was not a mild-mannered constitutional lawyer but Public Enemy Number Two (with President Trump denominated as Public Enemy Number One). But I had been identified by the *New York Times* and the January 6 Committee as a target and that overblown narrative started the avalanche against me.

Five separate proceedings, all targeting the same conduct, all drawing from the same well of information. The likelihood that these proceedings operated in complete isolation from one another strains credulity. Whether the coordination was explicit (which it was) — through sharing of investigative materials, witness interviews, or strategic communications — or implicit — through the natural convergence of institutions pursuing the same targets based on the same public reporting — this Committee should examine the degree to which these parallel proceedings reinforced and amplified each other.

Let's get even more granular, covering three particular incidents to show you that the coordination, the conspiracy was quite concrete:

First, on June 22, 2022, DOJ Inspector General agents raided my house and seized all of my electronics. They took my wife's iMac and my children's laptops, even though they had clarified with me while they had me trapped in my own house that they had quickly determined those computer devices were not mine. Thankfully, I was the only one home on the early morning of the raid. The intrusion was so great that when my then 12 year-old daughter returned home, in a quiet moment away from other family members, she asked me whether the agents would read her diary. My family and I were clearly subjected to a high-pressure shock-and-awe campaign designed to intimidate us.

I would later learn that FBI agents were also present and conducting the raid although they did not announce themselves. News cameras were set up across the street from my house as I was pulled out of it. I was not even allowed to get fully dressed in violation of FBI standard operating procedure so that maximum embarrassment would be inflicted, much like it was on Roger Stone when he was raided by air, land, and sea at his home in Florida and his wife was videoed in her underwear.

By some magic coincidence, the January 6 Committee held a hearing *the very next day on June 23, 2022*. See WCNC, *Jan. 6 Committee Hearing: Thursday, June 23, 2022* (YouTube, Jun. 23, 2022), <https://www.youtube.com/watch?v=QEPmfjRrFTs>. That June 23, 2022 hearing focused on me, soliciting the testimony of three former DOJ colleagues of mine

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

presented to the Committee in complete violation of a host of privileges. Coincidences abound in Washington, D.C. when you're the target of the Biden Administration and their Trump-hating allies in Congress, including abiding Trump haters Liz Cheney and Adam Kinzinger, members of the January 6 Committee. Recall that former White House Counsel lawyer Stefan Passantino who immediately was placed under investigation by D.C. Disciplinary Counsel Fox right after CNN got a leak that Cassidy Hutchinson was (falsely) alleging that Stefan had coached her to lie to the January 6 Committee. Certain elements of the media were clearly participants in the conspiracy against President Trump-connected lawyers.

I pray that no law-abiding citizens of the United States reading or watching this are subjected to such a multi-branch attack on their liberties as I experienced in that short 24-36 hour period in late June of 2022.

Second, a week later, the Disciplinary Counsel signed a verification of the charges against me on June 29, 2022. But Public charges were not filed until July 19, 2022. Why did they wait three weeks? Then, Mr. Fox tried to serve me with the charges the next day. This coincided — once more by another stupendous coincidence we are expected to believe — with the final Summer 2022 January 6 Committee hearing held on July 22, 2022. That hearing functionally served as a closing argument against President Trump (and me).

Third, it came out that in the course of her Georgia Superior Court investigation Fani Willis's office was in consultations with the White House and DOJ. On March 14, 2022, Fani Willis's lieutenant Donald Wakeford emailed Lori Beranek in the Northern District of Georgia's U.S. Attorney's Office to discuss making *Touhy* requests of DOJ to authorize witnesses against me. See Exhibit 1.

Touhy is the name of a Supreme Court case and the regulations various Executive Branch Departments developed in the wake of that case. In order to get DOJ witnesses cleared for testimony in a third-party legal proceeding, the *Touhy* process must be complied with. See also Glenn Thrush, Danny Hakim, & Adam Goldman, *Trump's Next Legal Threat Could Be in Georgia. That May Be Tricky for Federal Prosecutors*, THE NEW YORK TIMES (Apr. 7, 2023), <https://www.nytimes.com/2023/04/07/us/politics/trump-georgia-justice-department.html>.

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

On April 19, 2022, the lead investigator for the January 6 Committee, Tim Heaphy, wrote to a Fulton County investigator in order to coordinate between that Committee and Fani Willis's office. Heaphy said "we'd like to ensure continued communications as your grand jury investigation moves forward." Exhibit 2.

And by April 21, 2022, Heaphy was agreeing to give Fani Willis and her people access to documents on an *in camera* basis up in D.C. See Exhibit 2. A meeting to that end was arranged for Thursday April 28, 2022 and took up an entire half day. See *id.* This occurred after Fani Willis's investigator had requested "a brief *audience* with Congressman [Benny] Thompson [Chairman of the January 6 Committee]" to discuss 2020 election matters. For those of you unaware, Chairman Thompson had apparently assumed a kind of regal status when his January 6 Committee members and staffers were rushing around acting as the *enfants terrible* of Washington. See Exhibit 3.

Next, on May 11, 2022, DOJ devised a clever way to provide information to Fani Willis without itself violating executive privilege, law enforcement privilege, deliberative process privilege, or attorney-client privilege. Namely, DOJ declined Willis's *Touhy* request as immaterial on the theory that Willis couldn't get her act together to specify all topics on which she wished to examine the following: Former AG William Barr, former Acting AG Jeff Rosen, his number two Richard Donoghue, former Assistant Attorney General Steve Engel, and Inspector General Michael Horowitz. See Exhibit 4. Instead, Neil R. White, Deputy General Counsel of the Executive Office of United States Attorneys, writing for the General Counsel, Jay Macklin, suggested that Willis's office could draw on existing transcripts of congressional interviews.

On September 13, 2022, Special Counsel to the President Richard Sauber wrote to Mr. Wakeford, one of Fani Willis's right-hand lawyers, to indicate that President Biden had decided "not [to] assert executive privilege with respect to the testimony of former Trump Administration officials before the special purpose grand jury in connection with any inquiries related to efforts to use the Department of Justice to advance a false narrative that the 2020 election was tainted by widespread fraud," among other matters. See Exhibit 5.

The phrasing was quite deliberate: Biden's autopen wielders were not *waiving* President Trump's executive privilege; they were simply refusing to assert it. They no doubt thought that this maneuver sidestepped the questions the Supreme Court had raised in

OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

Trump v. Thompson, 142 S. Ct. 680 (2022), about whether as a matter of constitutional law, President Biden could waive the privilege claims of President Trump. As Justice Kavanaugh wrote in a Statement respecting denial of a stay application: “A former President must be able to successfully invoke the Presidential communications privilege for communications that occurred during his Presidency, even if the current President does not support the privilege claim. Concluding otherwise would eviscerate the executive privilege for Presidential communications.”

My lawyers and I had to drag these materials out of Fani Willis by moving to compel in the Superior Court, which we did on January 12, 2024. *See* Exhibit 6. In that motion, we noted that Ms. Willis’s paramour and her special prosecutor Nathan Wade had billed Fulton County for a May 23, 2022 episode of traveling to Athens, Georgia to have *an 8-hour* conference with the White House Counsel. And Mr. Wade also billed on November 18, 2022 for an interview with the White House. *See id.* Another of Fani Willis’s lawyers, Daysha Young, had wrongly told us that the State had fully complied with all of its discovery obligations. Clearly, this was not true. We explained without the testimony of witnesses against Mr. Clark in court, Fani Willis could not prove her case. *See id.* Conveniently, Mr. Wade would go on to testify to the Georgia Senate just last month that he cannot remember any of his contacts with federal officials when he was running the Special Purpose Grand Jury in Atlanta. *See* 11Alive, *Live stream | Georgia Senate Committee Investigating Fani Willis Hearing, Nathan Wade to Testify*, at 3:55:00–4:14:10 (YouTube, Mar. 13, 2026), https://www.youtube.com/watch?v=Y9_wlI80wok. I don’t know about you, but I tend to remember 8-hour long meetings, especially with prominent officials.

Unfortunately, Judge McAfee denied our motion and placed materials he reviewed *in camera* under seal. Hence, we still do not know if we have seen all of those materials *and it's now 2026!*

This Committee should, as rapidly as possible, subpoena Willis, Wade, and her entire office for all materials involving correspondence by and meetings with (1) DOJ, (2) the White House Counsel’s Office, (3) the January 6 Committee, and (4) any other congressional members, staff, or committees. DOJ should do the same. The clock to secure such materials is ticking and the American people have been waiting long enough to see them.

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OVERSIGHT PROJECT

IT'S YOUR GOVERNMENT

I think the Committee will agree that the evidence for collusion between and amongst (1) the Biden DOJ and FBI, (2) Fani Willis, (3) the White House Counsel, and (4) the January 6 Committee is strong and this Committee — as well as decisive and urgent action by the current Department of Justice — should subpoena to capture, for posterity and for use in ensuring accountability — all relevant evidence.

Additionally, subpoenas should be issued to Norm Eisen of the Brookings Institution (regardless of where such documents are kept) for all materials involving him authoring or co-authoring or supervising the preparation of model prosecution memos to be used by federal or state prosecutors. In reality, the Arctic Frost conspiracy likely included private actors like Mr. Eisen and his acolytes as well.

V. MAJOR REVELATIONS FROM THE GRASSLEY-JOHNSON INVESTIGATION

The whistleblower documents released by Chairmen Grassley and Johnson over the course of 2025 have pulled back the curtain on Arctic Frost in ways that demand this Committee's sustained attention. I want to highlight what I regard as the most significant revelations:

First, the protocol-violating initiation. The records show that Arctic Frost was launched by FBI agent Timothy Thibault in breach of FBI standard protocols. This is not a technicality. The FBI's predication requirements exist precisely to prevent the kind of politically motivated investigation that Arctic Frost appears to have been. If the investigation was improperly predicated from the start, then every subsequent action taken under its authority is tainted.

Second, the scope of surveillance. The Justice Department has a plaque where the Nazi saboteurs were tried during World War II. I can scarce say that the investigation mounted there in wartime to find Nazis who landed on our shores was less aggressive than Arctic Frost. The FBI obtained the government cell phones of President Trump and Vice President Pence. It issued 197 subpoenas targeting approximately 430 Republican individuals and entities. It surveilled eight Republican United States Senators. It made extensive demands of telecommunications companies, banks, and other service providers. This was not a narrowly focused criminal investigation. This was a dragnet.

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Third, the code-name change. Chairman Grassley has pressed the FBI on the process by which Arctic Frost received its code name and, critically, on the fact that the investigation's code name was changed at some point. Chairman Grassley has stated that this change was "anything but random." The Committee should examine the renaming. This will reinforce the obvious conclusion that Arctic Frosts was a politicized investigation.

Fourth, the merger with the OIG investigation. The formal merger of the DOJ OIG's investigation of me into Arctic Frost gave the FBI access to materials collected under the OIG's separate authority. This effectively allowed criminal investigators to bypass the limitations that apply to OIG investigations by absorbing their fruits into a criminal case.

Fifth, the Jack Smith connection. Arctic Frost formed the basis for Special Counsel Jack Smith's election-interference case against President Trump. The records released by Chairman Grassley show that Smith's team was warned that subpoenaing congressional information could violate the Speech or Debate Clause. Additional records, including subpoenas for now-FBI Director Kash Patel's phone records, raise further questions about Smith's conduct and candor to the court and the public.

Sixth, the targeting of Republican organizations. Arctic Frost was not limited to individuals. It targeted Republican entities, including Turning Point USA and the Republican Attorneys General Association. As Chairman Grassley stated, "Arctic Frost wasn't just a case to politically investigate Trump." It was a vehicle for investigating the entire Republican political infrastructure.

I would go farther and state emphatically to you that Arctic Frost was the first step in a Soviet Cheka/KGB-style and East German Stasi-style attempt to surveil on and criminalize anyone with policy influence who was a conservative and/or a Trump political ally. It was a flatly illegal and subversive, un-American attempt to criminalize the Republican party.

We have never seen the likes of this in American history and it must be forcefully exposed, forcefully overseen by the full Senate Judiciary Committee, and by this Subcommittee, which has full jurisdiction to investigate the following violations of the Constitution:

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- (1) invasions of the First Amendment's Petition Clause (the right to seek a redress of grievances from the federal government);
- (2) denials of equal protection of the laws by selectively investigating and prosecuting Republicans, including President Trump;
- (3) evisceration of the Due Process Clause;
- (4) violations of the Fourth Amendment based on improperly issued warrants arising out of a tainted and illegal investigation from the get-go; *and*
- (5) invasions of the Sixth Amendment right to understand what crime a target is being accused of, to confront witnesses, and to have compulsory process where Georgia was concealing evidence material to the defense.

VI. ARCTIC FROST IN THE CONTEXT OF BIDEN-ERA WEAPONIZATION

Operation Arctic Frost did not emerge from nowhere. It was part of a broader pattern of government action during the Biden administration that, in my view and the view of many legal observers, constituted the weaponization of federal law enforcement and regulatory power against political opponents.

Consider the landscape. During the Biden years, we witnessed:

- The Department of Justice's pursuit of parents who protested at school board meetings, following a memo from the National School Boards Association that likened such parents to domestic terrorists — a memo that was later revealed to have been coordinated with the Biden White House despite initial denials to the contrary.
- The FBI's creation of threat tags for school board protesters and the mobilization of counterterrorism resources against ordinary citizens exercising their First Amendment rights.
- The FBI's targeting of Latin Mass-going Catholics as domestic violent extremists, surveilling them coming and going to Mass. Outrageous!
- The unprecedented raid on Mar-a-Lago—the first time in American history that the home of a former President was searched by federal agents in connection with

OVERSIGHT PROJECT

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a documents dispute that prior administrations had resolved through negotiation and accommodation and where the President had declassified the relevant documents via the course of conduct of taking the documents with him as he left the presidency.

- The appointment of Special Counsel Jack Smith, who brought two separate cases against President Trump—the documents case and the election case—both of which drew on investigative work that, as we now know from the Arctic Frost documents, originated with a protocol-violating FBI investigation.
- The concurrent prosecutions by state authorities—most notably DA Fani Willis in Fulton County and Alvin Bragg in Manhattan, and the civil suit by E. Jean Carroll that was put together by Trump-haters—that targeted much of the same individuals and in some cases the same conduct being pursued at the federal level, creating a pincer movement that maximized legal exposure and financial cost for the targets. Many people forget that Alvin Bragg’s case also sounded in election law as that was a predicate crime he used to bump up a misdemeanor into New York state felony charges.
- The targeting of conservative journalists and activists through various means, including the FBI’s monitoring of social media communications and its interactions with technology companies regarding content moderation—activities documented in the “Twitter Files” and related disclosures.
- The mass techno-industrial-scale censorship of online speech that contradicted Biden Administration narratives on that was run through DOJ, FBI, DOJ, DHS and the big tech companies. This was the worst abuse of the First Amendment in our nation’s history.
- The Internal Revenue Service’s scrutiny of conservative nonprofit organizations, a pattern that echoed the Lois Lerner targeting scandal of the Obama era and suggested that the bureaucratic machinery of the federal government was once again being directed against political adversaries.
- Most recently, it has come out — and I give DOJ kudos for this — that the Biden Administration’s DOJ had targeted anti-abortion protesters who possessed both First Amendment Free Exercise and Speech rights, leaving crimes against churches

OVERSIGHT PROJECT

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and those harassing crisis pregnancy centers associated with the political right uninvestigated. This was yet another form of anti-Catholic bias.

Arctic Frost was the connective tissue that linked (or that blazed a trail of aggressive tactics undergirding) many of these efforts together at the federal level. It was the investigative engine that generated the materials, the leads, and the legal predicates that fed into Special Counsel Smith's prosecution. Indeed, Agent Thibault's partners at the January 6 Committee acted like an Evil John the Baptist paving the way for the prosecutions that the leftist-sainted Jack Smith would later bring in attempt to chill free speech, political association, and conservative political action — all to protect a Democrat Party monopoly on challenging elections.

It was a dragnet that swept up hundreds of Republicans — not because they had committed crimes, but because they were associated with a political movement that the Biden administration sought to destroy permanently.

The pattern is consistent: expand the definition of "threat," lower the thresholds for investigation, deploy the vast resources of the federal government against political opponents, and then characterize the resulting investigations as routine law enforcement. But Arctic Frost was not routine law enforcement. It was, as Chairmen Grassley Johnson have documented, an investigation launched in violation of protocol, expanded far beyond any legitimate scope, and used as the foundation for a result-oriented and politicized criminal prosecution of a former President and his associates.

VII. THE ARCHITECTURE OF COORDINATION

I want to return to the question of coordination, because I believe it is the most important insufficiently plumbed question arising from the Arctic Frost revelations.

The documents released by Chairmen Grassley and Johnson establish that Arctic Frost was a joint investigation involving the FBI, the DOJ OIG, the U.S. Postal Inspection Service, and the National Archives (the latter being especially involved in the Jack Smith DC/Florida documents case). They establish that the investigation's scope overlapped substantially with the House Select Committee's January 6 probe. They establish that both inquiries examined the same alleged post-election coordination, the same network

OVERSIGHT PROJECT

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of private-sector actors and political operatives, and shared many of the same witnesses and documents.

Now add the D.C. Bar. Senator Durbin's October 2021 referral to the D.C. Bar was based on information produced by the Senate Judiciary Committee's investigation. The D.C. Bar's disciplinary proceeding against me drew on the same factual record that was being developed by the January 6 Committee. Indeed, the Bar's Disciplinary Counsel tried to just reorder and change some words around in a documents subpoena from the January 6 Committee, which I had already successfully fended off. And it did so with advance knowledge — and an explicit decision *not* to defer the investigation until after the pending criminal proceedings were resolved, in violation of the applicable deferral rules governing D.C. ethics proceedings. The D.C. Court of Appeals — the District's highest local home rule, Article I court — would unanimously rule that Mr. Fox's document subpoena was an attempt to intrude on my Fifth Amendment rights. *See In re Clark*, 311 A.3d 882 (D.C. 2024). Again, it would be a natural inference to conclude that the January 6 Committee was trying to use the D.C. Bar process as a cat's paw to get at documents they could not get at themselves. I'm grateful to the D.C. Court of Appeals seeing through that attempted circumvention. And, of course, the January 6 Committee would later include me in a referral to DOJ for criminal prosecution.

What emerges from this picture is the architecture of overlapping investigations, each with its own institutional mandate and legal authority, but all coincidentally, we're told, converging on the same targets, drawing from the same information, relying on the same bogus legal theories, and reinforcing each other's conclusions. The Senate Judiciary Committee produces a report; the Chairman refers me to the D.C. Bar; the D.C. Bar opens a disciplinary proceeding; the DOJ OIG investigates; the OIG investigation is merged into Arctic Frost; Arctic Frost feeds into Special Counsel Smith; the January 6 Committee makes its own referral to DOJ; the Fulton County DA brings her own indictment. This is the anatomy of a pressure campaign designed to make anyone crack and rush in to testify against President Trump, just to make it stop.

I refused to be bullied and fought all of these abuses of law enforcement authority at every turn.

Each proceeding lends ostensible credibility to the others and gives a Democrat Party-aligned mainstream media fresh opportunities to cast aspersions on President Trump,

OVERSIGHT PROJECT

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me, and other Republicans. Each creates new legal exposure for the targets. Each generates new headlines that create the impression of guilt by sheer accumulation. And each makes it more difficult for the targets to defend themselves, because the resources required to fight on five fronts simultaneously are beyond what any ordinary private citizen can sustain. I firmly believe, though I am an able lawyer with a team of underpaid lawyer friends, that it is God who saw me through this ordeal — a veritable avalanche of legal processes — up to this point, although D.C. Bar proceedings, *now in their sixth calendar year*, continue to drag on.

All of this leads to the inescapable conclusion that this is the product of deliberate coordination using a system that has been weaponized against political opponents, where the left hand knows exactly what the right hand is doing because they are both reaching for the same target. Now multiply that by the fact that my political enemies had many more than just two hands.

VIII. THE PERSONAL COST

I want to conclude with a word about what this has meant for me and my family.

I am an attorney. I have spent my career in the law. I believe in the rule of law. I believe that the legal system, properly administered, is the greatest safeguard of individual liberty that mankind has devised. But I have also seen what happens when that system is turned against a citizen not because of what he has done, but because of what he believes and whom he has served.

Since the fall of 2021, I have been the subject of a House Oversight Committee inquiry, a Senate investigation, a D.C. Bar disciplinary proceeding, a DOJ OIG investigation, an FBI investigation, a Special Counsel investigation, and a state criminal prosecution. I have had to retain counsel in multiple jurisdictions. I have had to respond to subpoenas, discovery requests, and disciplinary complaints. At one point we were fighting in seven different forums simultaneously (Fulton Superior, N.D. Ga. or the Eleventh Circuit, the D.C. Bar Hearing Committee, the D.C. Board on Professional Responsibility, the D.C. Court of Appeals, the D.C. District Court, and the D.C. Circuit). I have had to defend myself in proceedings that constitute a systematic effort to destroy me professionally and financially. All of this has cost millions of dollars in legal fees. Additionally, it has cost

OVERSIGHT PROJECT

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even more millions of dollars of imputed legal fees based on the need for me to represent myself and write or contribute to writing briefs and other materials in my own defense.

The opportunity costs, as economists say, are immense. I could have been representing private clients, like I did for a total of about 17-18 years before entering the Trump 45 DOJ. I could have been doing *pro bono* work, which had been award-winning at my private firm. But I was denied all of that because of the unprecedented effort to destroy Donald Trump and to try to flatten any lawyer who would help him.

In the words of the pernicious 65 Project, an NGO created to go after Trump-adjacent lawyers like me: the idea is to “not only bring the grievances in the bar complaints, but shame them and make them toxic in their communities and in their firms.” Lachlan Markey & Jonathan Swan, *Scoop: High-Powered Group Targets Trump Lawyers’ Livelihoods*, AXIOS (Mar. 7, 2022), <https://www.axios.com/2022/03/07/trump-election-lawyers-disbar>. And damage my livelihood, they did. I do not expect rivers of tears from ordinary Americans who had to struggle through four years of, first COVID lockdowns, and then Bidenflation. But it is important to understand that I was an eminent lawyer who ran *two litigating Divisions in the U.S. Department of Justice*. I would have been earning millions of dollars at a partnership in a major law firm but-for Arctic Frost’s exploitative abuses. I am entitled to compensation.

Still, what my enemies intended for evil, God turns to good. He has put me at a scrappy NGO that was established to fight government weaponization. And I am here today with their blessing — the full support of my colleagues at the Oversight Project. I’m where God must want me to be in the fight.

But primarily, I do not ask for sympathy. I ask for accountability. Indeed, I ask for *radical accountability*. I ask that this Committee continue the oversight that Chairmen Grassley and Johnson have begun. I ask that the full scope of Arctic Frost be exposed — not just the subpoenas and the surveillance, but the decision-making that led to them, the conspiring with other investigative bodies, and the consequences for the citizens who were caught in its net.

IX. RECOMMENDATIONS

Based on my experience and the documents that have been made public, I respectfully submit the following recommendations:

First, the Judiciary Committee should obtain and make public the full record of Arctic Frost, including all internal FBI communications regarding the investigation's predication, initiation, and expansion.

Second, the full Committee should investigate the merger of the DOJ OIG investigation into Arctic Frost and determine whether that merger was consistent with the statutory and regulatory frameworks governing the OIG.

Third, the full Committee should examine the relationship between Senator Durbin's October 2021 referral to the D.C. Bar and the subsequent federal investigations, including whether information produced by the Senate Judiciary Committee was shared with the DOJ OIG, the FBI, or Special Counsel Jack Smith. Congress has plenary power over the District. The District is not a State with its own sovereign interests. It is an enclave of the federal government. You can plow into D.C.'s records as you see fit.

Fourth, the full Committee should investigate, beyond the facts I have already set out, about coordination between Fani Willis and her office, on the one hand, and federal authorities in the Biden Administration and in Congress, on the other.

Fifth, the full Committee should examine the January 6 Select Committee's referral of me and others to the DOJ and determine whether that referral influenced the trajectory of Arctic Frost or Special Counsel Smith's investigation.

Sixth, the full Committee should hold hearings on the protocol-violating initiation of Arctic Frost by FBI agent Timothy Thibault and determine whether similar protocol violations have occurred in other politically sensitive investigations he and his subordinates conducted.

Seventh, the full Committee should consider legislation to strengthen the protections against politically motivated investigations, including enhanced predication requirements and statutory firewalls between congressional investigations and bar disciplinary proceedings. This should include close examination of the D.C. Bar's disciplinary procedure, including the lack of transparency, its practice of having its Executive Attorney provide legal advice to Hearing Committees and their members

OVERSIGHT PROJECT

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while simultaneously representing the Board on Professional Responsibility, which supervises the same Hearing Committee, and the Board on Professional Responsibility's failure to adhere to the same ethical principles applicable to judges, judicial staff, and those acting on behalf of the judges. Congress's plenary power over the District would allow it to directly prescribe rules governing attorney discipline in D.C., which is necessary given the strong prospect and reality of bias against leaving D.C. to its own devices in such matters.

Eighth, since the D.C. Court of Appeals changed the rules dispensing with first-hand knowledge as a requirement for D.C. Disciplinary Counsel to docket a bar complaint in the wake of Senator Durbin's precedent-setting attack on me, the full Committee should wield the same tools evenhandedly. Look at the conduct of every lawyer involved in the Arctic Frost probe and refer them all to the D.C. Bar to see if they violated the smallest jot or tittle of D.C. ethics law. Go over their work with a fine-tooth comb, like they went over mine. It will be interesting to see if Mr. Fox charges anyone based on such referrals or whether that is a "joy" reserved only to Republicans he disagrees with.

Mr. Chairman, I have spent *more than five years/going on six* defending myself against investigations that, based on the documents now in the public record, were launched in violation of protocol, expanded beyond any legitimate scope, and coordinated across multiple institutions to maximize pressure on their targets. And I was one of their highest-priority targets, that is for sure.

I am one man. I have been fortunate to have able counsel and the support of my family. But the system that was deployed against me can be deployed against anyone. Today it was a former DOJ official who zealously advised a President the establishment disliked.

Tomorrow it could be a journalist, a professor, a community organizer, or any citizen who holds views that those in power find inconvenient. And not all of those individuals, needless to say, will have my Harvard and Georgetown education, my decades of experience winning high-profile national litigation, especially when vital government policies are on the line or where major companies face a risk of bankruptcy, as I have done.

OVERSIGHT PROJECT

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The purpose of this testimony is not to seek redress for my personal situation — though I will continue to fight for my rights in every forum available to me, including seeking restitution. The purpose is to ensure that what happened to me does not happen to others. The purpose is to ensure that the awesome power of the federal government is never again weaponized against its own citizens for political ends.

Operation Arctic Frost was — in the words of Meaghan Mobbs, Director of the Independent Women's Center for American Safety and Security, writing in *The Hill* — “an overreach of monumental proportions and consequence, using law enforcement authority in a manner that” undermined the trust that Americans must place in their institutions.

The documents released by Chairmen Grassley and Johnson, as well as the Exhibits I am filing with you to my written testimony, have given this Subcommittee of the full Judiciary Committee the road map. I urge you to follow it wherever it leads.

Thank you. I welcome the Committee's questions.

EXHIBIT 1

Wakeford, FMcDonald

From: Wakeford, FMcDonald
Sent: Monday, March 14, 2022 1:07 PM
To: Beranek, Lori (USAGAN)
Subject: Proposed meeting

Good afternoon, AUSA Beranek,

I wanted to reach out to you to see if it might be possible for a couple of us from FCDAO to come up the road and sit down with you for a few minutes later this week, possibly Thursday. We anticipate that we might have to make a few more Touhy requests and thought it would be beneficial to have a conversation about the process. Please just let me know if that's something we might be able to work out. Either way, we will see you on Monday at One Atlantic Center. The number below is my direct line.

Thank you,
Donald Wakeford

F. McDonald Wakeford
Assistant District Attorney
Fulton County District Attorney's Office



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EXHIBIT 2

Settles-Isby, Tywana

From: Lucier, Casey <Casey.Lucier@[REDACTED]>
Sent: Wednesday, April 27, 2022 2:12 PM
To: Hill-DA, Michael; Heaphy, Tim
Cc: George, Dan; Saunders, Grant; Wooten, Will; Wakeford, FMcDonald; Ney, Adam; Swanson-Lucas, Trina; [REDACTED]
Subject: RE: Select Committee Outreach

Good afternoon, Investigator Hill – I am checking in on our plan to meet here in Washington tomorrow afternoon. Can you give me a call this afternoon to discuss logistics? (Or, please let me know the best person to contact about finalizing meeting details if it is not you.)

Thanks very much,
Casey

To:
Casey Erin Lucier
House Select Committee to Investigate the January 6th Attack on the U.S. Capitol

[REDACTED] | [Casey.Lucier@\[REDACTED\]](mailto:Casey.Lucier@[REDACTED])

From: Hill-DA, Michael <Mike.Hill@fultoncountyga.gov>
Sent: Friday, April 22, 2022 8:44 AM
To: Heaphy, Tim <Tim.Heaphy@mail.house.gov>
Cc: George, Dan <Dan.George@[REDACTED]> Lucier, Casey <Casey.Lucier@[REDACTED]> Saunders, Grant <Grant.Saunders@[REDACTED]> Wooten, Will <Will.Wooten@[REDACTED]> Wakeford, FMcDonald <FMcDonald.Wakeford@[REDACTED]> Ney, Adam <Adam.Ney@[REDACTED]> Swanson-Lucas, Trina <Trina.Lucas@[REDACTED]>
Subject: Re: Select Committee Outreach

Casey Erin

Received:
2022-07

We will be in touch as we move closer to the meeting date.

From: F
See you soon.

Sent from my iPhone

On Apr 21, 2022, at 6:18 PM, Heaphy, Tim <Tim.Heaphy@[REDACTED]> wrote:

Subject: Re: Select Committee Outreach

Great. Let's plan on starting the meeting at noon on Thursday, which should allow you to travel to DC that morning. I think we'll need a half day, though could go into the evening if necessary. Our offices are in the O'Neill House Office Building, located at 200 C Street, SW in Washington.

Thanks,

Tim Heaphy

From: Hill-DA, Michael <Mike.Hill@[REDACTED]>
Sent: Thursday, April 21, 2022 11:50 AM
To: Heaphy, Tim <Tim.Heaphy@[REDACTED]>
Cc: George, Dan <Dan.George@[REDACTED]> Wooten, Will <Will.Wooten@[REDACTED]>
Wakeford, FMcDonald <FMcDonald.Wakeford@[REDACTED]> Ney, Adam
<Adam.Nev@[REDACTED]> Swanson-Lucas, Trina <Trina.Lucas@[REDACTED]>
nathanwade@[REDACTED] George, Dan <Dan.George@[REDACTED]> Lucier, Casey
<Casey.Lucier@[REDACTED]>
Subject: RE: Select Committee Outreach
Importance: High

Good morning Tim,

Thank you for the prompt follow up.

We would like to confirm the meeting date **Thursday, April 28th**. We are currently confirming travel arrangements.

Please follow up with specific meeting location and time when possible.

Thank you.

From: Heaphy, Tim [mailto:Tim.Heaphy@[REDACTED]]
Sent: Thursday, April 21, 2022 11:37 AM
To: Hill-DA, Michael
Cc: George, Dan; Wooten, Will; Wakeford, FMcDonald; Ney, Adam; Swanson-Lucas, Trina;
nathanwade@[REDACTED] George, Dan; Lucier, Casey
Subject: RE: Select Committee Outreach

Investigator Hill,

It was good talking with you yesterday. I've discussed your request for information with the committee, and I think we can accommodate it to some degree. As we discussed yesterday, we're willing to provide an oral summary of what certain witnesses have told the committee in interviews and depositions. We are also prepared to give you access to some committee documents, in camera in our office. We'd like to do this in Washington, sometime next week. Would Thursday, 4/28 work for you and your team? If so, we can arrange a meeting in our offices, provide you the proffer and allow you to view the documents.

Looking forward to meeting you soon,

Tim Heaphy

From: Hill-DA, Michael <Mike.Hill@[REDACTED]>
Sent: Wednesday, April 20, 2022 8:20 AM
To: Heaphy, Tim <Tim.Heaphy@[REDACTED]>
Cc: George, Dan <Dan.George@[REDACTED]> Wooten, Will <Will.Wooten@[REDACTED]>
Wakeford, FMcDonald <FMcDonald.Wakeford@[REDACTED]> Ney, Adam
<Adam.Nev@[REDACTED]> Swanson-Lucas, Trina <Trina.Lucas@[REDACTED]>
nathanwade@[REDACTED]
Subject: RE: Select Committee Outreach

Good morning Chief Heaphy,

I am now responding to this email, however, you and I communicated via text yesterday afternoon.

I look forward to our discussion this morning. I have cc'd my prosecutors who will also be on call.

Thanks.

From: Heaphy, Tim [mailto:Tim.Heaphy@hawaii.gov]

Sent: Tuesday, April 19, 2022 5:15 PM

To: Hill-DA, Michael

Cc: George, Dan

Subject: Select Committee Outreach

Investigator Hill,

I am the Chief Investigative Counsel the House of Representatives' Select Committee to Investigate the January 6 Attack on the U.S. Capitol. I understand that you have reached out today to some or all members of the Select Committee, seeking information about our interaction with two particular witnesses. Can we schedule a call to discuss your interest in the Select Committee's investigative work? We are available at 9 am if you are as well. If that works, we can send a calendar invitation. In the meantime, we request that you not directly contact the committee members, but rather work through me and our investigative staff to make any request for committee information.

I'm free tomorrow morning if you are free to talk then. We'd like to get more information about what you are seeking so we can evaluate your request for information. My colleague Dan George (copied here) has been in touch with DA Willis about this matter, and we'd like to ensure continued communication as your grand jury investigation moves forward.

Looking forward to talking with you soon,

Tim Heaphy

Timothy J. Heaphy

Chief Investigative Counsel

Select Committee to Investigate the January 6th Attack

on the United States Capitol

U.S. House of Representatives

03/00

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EXHIBIT 3

Settles-Isby, Tywana

From: Hill-DA, Michael
Sent: Tuesday, April 19, 2022 1:54 PM
To: [REDACTED]
Cc: Wooten, Will; Ney, Adam; Wakeford, FMcDonald; Swanson-Lucas, Trina
Subject: Fulton County District Attorney's Office: Investigation

Importance: High

Good afternoon Ms. Alexis Hunter,

Thank you for taking the time to speak with me this afternoon.

Again, my name is Mike Hill and I am a Sr. Investigator with the Fulton County DA's Office located in Atlanta, GA.

Our office is currently engaged in an ongoing investigation related to possible criminal disruptions that occurred during the administration of the 2020 general elections in Georgia.

As we discussed, my team and I would like a brief audience with Congressman Thompson related to the aforementioned subject matter.

Please forward this communication to Congressman Thompson.

Thank you, be safe.

"The Strength of a Family, like the Strength of an Army, is in its Loyalty to each other."

Michael L. Hill II

Senior Investigator, District Attorney | Anti-Corruption Unit
Atlanta Judicial Circuit



EXHIBIT 4



U.S. Department of Justice

Executive Office for United States Attorneys

General Counsel's Office



VIA EMAIL ONLY

(F.McDonald.Wakeford@fultoncountyga.gov)

F. McDonald Wakeford
Assistant District Attorney
Fulton County District Attorney's Office
Atlanta Judicial Circuit



Dear Mr. Wakeford:

We write in response to your April 19, 2022 letter to Civil Chief Lori Beranek requesting the Department of Justice's authorization to interview five individuals in connection with the Fulton County District Attorney's Office's "ongoing investigation into possible criminal disruptions to the lawful administration of the 2020 elections in the state of Georgia": former Attorney General William Barr, former Acting Attorney General Jeffrey Rosen, former Acting Deputy Attorney General Richard Donoghue, former Assistant Attorney General Steven Engel, and Inspector General Michael Horowitz.

As noted in your letter, your investigation "is still in its information-gathering stage," and you are "still collecting facts and evidence which may alter our current understanding of certain events." You further explain that it is "impossible" for you to "provide an exhaustive summary of all relevant topics, conversations, or events about which we may seek evidence and testimony," because you "continue to acquire new information." For this reason, your request to interview these five former and current high-level Department employees appears to be premature. In the absence of a particularized request for information that identifies all of the areas of inquiry, the Department cannot adequately assess whether such testimony should be authorized under the Department's *Touhy* regulations, 28 C.F.R. § 16.22.

While we are unable to evaluate your request at this point, we can share that, for at least some witnesses, much of the information you seek, and for which the Department would consider providing an authorization, is already publicly available. For example, Messrs. Rosen, Donoghue, and Engel each participated in interviews before congressional committees, and they discussed the issues that you identified in your letter. In addition, a transcript exists of a congressional interview of Byung J. "BJay" Pak, former U.S. Attorney for the Northern District of Georgia. Mr. Pak addresses many of your questions relating to Attorney General Barr. Those transcripts have been publicly disclosed either in full or in part, and as a courtesy, we are attaching those transcripts.

EXHIBIT 5



THE WHITE HOUSE
WASHINGTON

September 13, 2022

Donald Wakeford
Chief Senior Assistant District Attorney
Fulton County District Attorney
Via email

Dear Mr. Wakeford:

I understand that certain former Trump Administration officials and senior advisors to the former President have received subpoenas to testify before the special purpose grand jury convened on May 2, 2022, for the purpose of investigating the facts and circumstances relating to attempts to disrupt the lawful administration of the 2020 elections in Georgia, including the election for President of the United States. I further understand from counsel for certain of those individuals that there is a need to clarify President Biden's position regarding executive privilege.

President Biden recognizes the importance of candid advice in the discharge of a President's constitutional responsibilities and believes that, in appropriate cases, executive privilege should be asserted to protect either current or former White House senior staff from having to testify about conversations concerning the President's exercise of his duties. He believes that executive privilege plays a critical role in supporting the separation of powers and federalism principles fundamental to our constitutional system and in supporting his responsibilities to fulfill his duties as the chief executive.

However, the insurrection that took place on January 6, and the extraordinary events surrounding it, reflected the most serious attack on the operations of the Federal Government since the Civil War. These events threatened not only the safety of Congress and others present at the Capitol, but also the principles of democracy enshrined in our history and our Constitution. In light of these unique circumstances, President Biden has determined, as he did with respect to the Congressional investigation of these events, that an assertion of executive privilege is not in the public interest with respect to efforts to thwart the orderly transition of power under our Constitution. This determination covers: events within the White House on or about January 6, 2021; efforts to use the Department of Justice to advance a false narrative that the 2020 election was tainted by widespread fraud; and other similar efforts to alter valid 2020 election results or obstruct the transfer of power. The President believes that the constitutional protections of

executive privilege should not be used to shield information that reflects efforts to subvert the Constitution itself. Such an assertion in these circumstances would be at odds with the principles that underlie the purpose and the foundation of executive privilege.

Consequently, President Biden will not assert executive privilege with respect to the testimony of former Trump Administration officials before the special purpose grand jury in connection with any inquiries related to the subjects in the prior paragraph.

Please contact the undersigned if you have additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Sauber".

Richard A. Sauber
Special Counsel to the President

EXHIBIT 6

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

v.

JEFFREY B. CLARK, ET AL.,

Defendants

Case No.

23SC188947

MOTION TO COMPEL

Comes Now Jeffrey Bossert Clark, Defendant in above-entitled matter, and submits this motion to compel production of certain documents from the State.

BACKGROUND

On December 12, 2023, the undersigned counsel for Mr. Clark wrote to the Fulton County District Attorney requesting the following information:

Please provide copies of all communications with any agency or office of the U.S. Government relating to any request or subpoena for testimony or documents from your office to any agency, office or current or former employee of the federal government under or pursuant to the *Touhy* regulations for that agency or office in connection with the investigation or prosecution of *State v. Trump, et al.*, or any pre-indictment investigation eventually giving rise to the indictment in that case.

A copy of this letter is attached hereto as Exhibit 1.

Counsel wrote a follow up letter on January 9, 2024, seeking an answer to this query, and adding an additional request as follows:

Copies of all communications with the White House Counsel's office, including but not limited to those referenced on the invoice from the Law Offices of Nathan J. Wade dated May 32, 2022, showing an entry

for May 23, 2022 “Travel to Athens: Conf with White House Counsel,” and the invoice from the same office dated January 19, 2023 showing an entry for November 18, 2022 “Interview with DC/White House.”

In your response, please identify all persons present or participating in the referenced conference and interview, and all documents or information provided or received by your office in such meetings.

A copy of this letter is attached as Exhibit 2.

On January 10, Executive District Attorney Daysha Young responded to these requests on behalf of the District Attorney via email. In the same email she responded to counsel for President Trump with respect to his Motion to Compel filed January 8, 2024. In this email, Executive District Attorney Young took the position that the State had fully complied with all of its statutory discovery and disclosure obligations and declined to provide the information we had requested.

The Court previously scheduled a hearing on President Trump’s Motion to Compel for January 12, 2024. Mr. Clark adopted President Trump’s Motion to Compel, but the scope of the issues in President Trump’s motion does not include the above-referenced items. In light of the State’s refusal of the requests, the issues are ripe for decision, as this Motion calls for.

ARGUMENT AND CITATION OF AUTHORITY

Granting (purely for the sake of argument) the State’s position that the state law criminal discovery statutes do not require them to produce the information, it is

elementary that those statutes do not exhaust the scope of the State's disclosure obligations.

The State is required by *Brady* to disclose information that is exculpatory.

"Exculpatory" means:

[E]vidence tending to establish a criminal defendant's innocence. Fed. R. Crim. P. 16. • The prosecution has a duty to disclose exculpatory evidence in its possession or control *when the evidence may be material to the outcome of the case*. See Brady Material"

BLACK'S LAW DICTIONARY (11th ed. 2019) (emphasis added). Cf. *Houston v. State*, 187 Ga. App. 335, 338 (1988) (citing BLACK'S LAW DICTIONARY (4th ed.) definition of "exculpatory"). *Black's* defines "Brady Material" as "information or evidence *that is favorable to a criminal defendant's case* and that the prosecution has a duty to disclose. The prosecution's withholding of such information violates the defendant's due-process rights. *Brady v. Maryland*, 373 U.S. 83 (1963)." *Id.* (emphasis added).

Brady and *Giglio* must also be disclosed in time for use in pretrial motions such as will be forthcoming in this case. See e.g., *United States v. Gamez-Orduno*, 235 F.3d 453, 461 (9th Cir. 2000) ("The suppression of material evidence helpful to the accused, whether at a trial or on a motion to suppress, violates due process"). In *United States v. Williams*, the Fourth Circuit approvingly cited a Third Circuit case involving a "pre-trial evidentiary hearing resulting from a motion to suppress" and holding that the Jencks Act "in no way impairs the government's constitutional obligations under *Brady v. Maryland*." 10 F.3d 1070, 1079 (4th Cir. 1993) (citing *United States v. Murphy*, 569 F.2d 771 (3d Cir. 1978)).

The State is thus required to disclose the requested information because it “may be material to the outcome of the case” and because it is “favorable” to Mr. Clark.

The request for the State’s *Touhy* correspondence with agencies of the Federal government “may be material to the outcome of the case” and “favorable” to Mr. Clark because it may show that the Department of Justice has refused to grant *Touhy* clearance for Jeffrey Rosen and Richard Donoghue to testify at trial in this case. The State needs their testimony to prove its case against Mr. Clark, and cannot prove it without them. If the State is unable to call them as witnesses, and therefore unable to prove its case against Mr. Clark, that is clearly material to the outcome of the case against him and favorable to his defense and should be produced.

It was reported by the *New York Times* that the Department of Justice refused the State’s request for *Touhy* clearance for Mr. Rosen and Mr. Donoghue for the Special Purpose Grand Jury. *See* Exhibit 3, p. 2, Glenn Thrush, Danny Hakim, and Adam Goldman, *Trump’s Next Legal Threat Could Be in Georgia. That May Be Tricky for Federal Prosecutors*, THE NEW YORK TIMES (Apr. 7, 2023). According to the article, “[a]ides to Ms. Willis filed what are known as *Touhy* requests, named after a 1951 Supreme Court case. Under the rule, local prosecutors are required to get authorization from the Justice Department to question its current or former employees. But the requests were ultimately rejected.” The article gave no reason for the rejection. There are no material witness

applications or certificates for Mr. Rosen or Mr. Donoghue in the public record of the Special Purpose Grand Jury proceedings.

This reported refusal of the State's *Touhy* requests is consistent with the notation on the State's Witness List for the Special Purpose Grand Jury for Mr. Rosen and Mr. Donoghue that reads "Video Presentment/Review." As noted in Mr. Clark's adoption of President Trump's Motion to Compel, the undersigned asked the DA's office what this notation meant on November 29, and December 11, 14, and 20, 2023, before finally getting answer on December 27, 2023 that it meant that the Special Purpose Grand Jury had been shown an unspecified video recording of their congressional testimony. In other words, it appears that the Special Purpose Grand Jury was shown video of these witnesses' congressional testimony because the State could not obtain their live testimony, since the Department of Justice had earlier refused the State's *Touhy* requests for their testimony.

DOJ's apparent refusal to grant *Touhy* clearance for Mr. Rosen and Mr. Donoghue at the Special Purpose Grand Jury stage suggests that the State will likewise be unable to call them as witnesses at trial. Knowing that the State would be unable to prove its case against Mr. Clark through these witnesses would obviously be helpful to his defense and material to the outcome of the case against him.¹ Conversely, if *Touhy* clearance has been

¹ If the State knew these witnesses would be unavailable at trial, it would raise troubling questions about the decision to indict Mr. Clark.

granted for trial, and these witnesses will in fact appear at trial, that is also material to the outcome of the case and should be disclosed to Mr. Clark.

In either event, the matter should not be left to mere inferences or conjecture. The *Touhy* correspondence should be produced. For all of these reasons, we are entitled to obtain a copy of the correspondence to review it, so that we can determine precisely what it says.

There is an additional way in which the *Touhy* correspondence might be material to the outcome of the case or helpful to Mr. Clark's defense. From review of the *Touhy* regulations and from Mr. Clark's considerable experience in the Department of Justice, it is possible, if not likely, that *Touhy* clearance for the Special Purpose Grand Jury was refused on grounds of federal supremacy and related immunity doctrines similar to and congruent with those articulated in President Trump's motion to dismiss on supremacy and immunity grounds.² Mr. Clark will be filing his own motion asserting federal supremacy and related immunity doctrines according to the deadlines in his Case Specific Scheduling Order. Mr. Clark's arguments on these issues would be strengthened if DOJ has asserted the same supremacy and immunity doctrines as grounds for refusing *Touhy*

² After all, we are unaware of any other case—ever—in which a former Assistant Attorney General of the United States was indicted by a state or local prosecutor in any circumstance, much less circumstances analogous to those charged in this case. The exceptional challenge this case poses to federal supremacy is clear. If Mr. Clark were still in the Justice Department, and a former senior Democrat DOJ official were indicted in a state court under comparable circumstances, he would advocate a *vigorous* assertion of the supremacy interests of DOJ and the federal government against any such prosecution.

clearance for Rosen and Donoghue. If DOJ did, this would tend to explain the State's reluctance to produce the requested information.

And while it is a federal not state guideline, the U.S. Attorney's Manual Section 9-5.001(C)(2) states that "[a] prosecutor must disclose information that...might have a significant bearing on the admissibility of prosecution evidence." This guideline is persuasive authority for disclosure of the requested information because it exemplifies the general prosecutorial duty to seek justice rather than merely conviction, so that it can prevail in this litigation.

To the extent the State claims the requested *Touhy* correspondence is work product, any such privilege would yield to the State's disclosure obligations. "Certainly, much of a prosecutor's work product will not fit the definition of exculpatory evidence subject to disclosure under *Brady*, but where the work product doctrine and the constitutional right to exculpatory evidence to be in conflict, the former obviously would have to yield to the latter." *Waldrip v. Head*, 279 Ga. 826, 827 (2005). Upon this basis, the Court in *Waldrip* noted that while there was no obligation to disclose the defendant's own statements, "it would be another case altogether if the State failed to disclose evidence confirming the defendant's allegations." *Id.* at 828. The Court went on to hold that the habeas petitioner was nevertheless not entitled to relief because the evidence he claimed had been wrongfully withheld was inadmissible hearsay and therefore did not support his claims. *Id.* at 828. Here, the requested disclosure should be made (1) to establish the

official position of the United States under the Biden Administration as to Messrs. Rosen and Donoghue's authorization to testify here and (2) to confirm whether DOJ's *Touhy* responses, in fact, will provide further support for Mr. Clark's federal supremacy and immunity defenses.

Finally, the requested *Touhy* correspondence should be produced under *Brady* because it may bear on the Prosecution's credibility. If the State indicted Mr. Clark knowing that it would not be able to prove its case against him, then the indictment is wrongful, as a prosecutor should only indict upon a good faith belief that they can prove the case beyond a reasonable doubt. ABA Standard 3-4.3, though not adopted in Georgia, emphasizes that a prosecutor must believe they can prove the charges with admissible evidence:

Standard 3-4.3 Minimum Requirements for Filing and Maintaining Criminal Charges

(a) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, *that admissible evidence will be sufficient to support conviction beyond a reasonable doubt*, and that the decision to charge is in the interests of justice.

(b) After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and *that admissible evidence will be sufficient to support conviction beyond a reasonable doubt*.

(c) If a prosecutor has significant doubt about the guilt of the accused or the quality, truthfulness, *or sufficiency of the evidence* in any criminal case assigned to the prosecutor, the prosecutor should disclose those doubts to

supervisory staff. The prosecutor's office should then determine whether it is appropriate to proceed with the case.

(Emphasis added). Georgia Rule of Professional Conduct 3.8, Comment 1, is not as specific as this ABA Standard but is doctrinally consistent in requiring sufficient evidence, which necessarily means admissible evidence: "This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and *that guilt is decided upon the basis of sufficient evidence.*" (Emphasis added).

The requested information regarding contacts between the State and the White House Counsel's Office may be material to the outcome of the case or helpful to the defense, if it supports an argument that the prosecution of this case is tainted with partisan political objectives coordinated with, suggested or directed by the White House. The political benefit of this prosecution to President Biden and his political party are obvious and a current fact of political life. The record shows clear and obvious collaboration between the State and the January 6 Committee and the Biden White House. The political animus of that Committee and the Biden White House toward President Trump and Mr. Clark is open, obvious, and undeniable. The District Attorney's partisan motives as a member of the opposite political party from President Trump and Mr. Clark, as applied to another Republican official, previously resulted in the disqualification of her entire office from any further investigation of Lt. Gov. Burt Jones during the Special Purpose Grand Jury. All defendants should know the nature of the State's communications with the White House Counsel's Office to assess whether they can

mount a defense based on selective or political prosecution in violation of their rights to due process and the equal protection of the laws. There is a plausible basis for suspicion on that score, and therefore sufficient justification to require production of the requested information that might support a defense motion.

There is no privilege between the D.A.'s office and the White House Counsel's Office. An analogy can be drawn to cases piercing the deliberative process privilege. *See, e.g., In re Sealed Case*, 121 F.3d 729, 738 (D.C. Cir. 1997) ("where there is reason to believe the documents sought may shed light on government misconduct, the [deliberative process] privilege is routinely denied, on the grounds that shielding internal government deliberations in this context does not serve "the public's interest in honest, effective government.") (cleaned up).

We recognize that there may be legitimate non-political reasons for such consultations, such as discussions of various federal privileges relevant to this case. If the communications were related to privileges arising from federal supremacy, it may also be helpful to Mr. Clark's defense by lending support to the federal supremacy, immunity, and separation of powers arguments that he intends to make. But this is another topic that should neither be left to conjecture, nor to hastily drawn presumptions or inferences in favor of or against any party, especially in the supercharged political climate within and surrounding this case. If there are legitimate State interests in confidentiality that would be implicated by disclosure of the requested communications with the White

House, the Court can conduct an *in camera* review of the requested documents and balance the interests of the parties in making its decision and tailoring any disclosure that it might order.

CONCLUSION

The District Attorney has routinely assured defense counsel of her “Open File Policy.” In addition to the reasons stated above, Mr. Clark’s Motion to Compel should be granted to vindicate that policy. Prosecutors wielding the immense power of the State should be held to their own pronouncements as a basic element of fairness.

Respectfully submitted, this 12 day of January, 2024.

**CALDWELL, CARLSON, ELLIOTT &
DELOACH, LLP**

/s/ Harry W. MacDougald
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BERNARD & JOHNSON, LLC

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Direct phone: 404.432.8410
catherine@justice.law

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of January, 2024, I electronically lodged the within and foregoing *Motion to Compel* with the Clerk of Court using the PeachCourt eFile/GA system which will provide automatic notification to counsel of record for the State of Georgia:

Fani Willis, Esq.
Nathan J. Wade, Esq.
Fulton County District Attorney's Office
136 Pryor Street SW
3rd Floor
Atlanta GA 30303

**CALDWELL, CARLSON, ELLIOTT &
DELOACH, LLP**

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TELEPHONE 404-843-1956
FACSIMILE 404-843-2737

December 12, 2023

VIA USPS AND ELECTRONIC MAIL:

The Honorable Fani D. Willis
& Prosecution Team
136 Pryor Street, 3rd Floor
Atlanta GA 30303

RE: State v. Trump, et. al.; Discovery Request

Dear Ms. Willis:

Please provide copies of all communications with any agency or office of the U.S. Government relating to any request or subpoena for testimony or documents from your office to any agency, office or current or former employee of the federal government under or pursuant to the *Touhy* regulations for that agency or office in connection with the investigation or prosecution of State v. Trump, et al., or any pre-indictment investigation eventually giving rise to the indictment in that case.

Should you have any questions regarding this request, please do not hesitate to call on me.

Sincerely,

Caldwell, Carlson, Elliott & DeLoach, LLP



Harry W. MacDougald

cc: Catherine Bernard
Jeffrey B. Clark
Counsel of Record

CALDWELL, CARLSON,
ELLIOTT & DELOACH, LLP

HARRY W. MACDOUGALD
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TELEPHONE 404-843-1956
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January 9, 2024

Via Email: fani.willisda@fultoncountyga.gov

The Honorable Fani Willis, Esq.
District Attorney for Fulton County
Fulton County District Attorney's Office
136 Pryor Street, S.W., Third Floor
Atlanta GA 30303

RE: State v. Clark, 23SC188947

Dear Madame District Attorney:

I am writing to follow up on my request of December 12, 2023 to your office to the attention of Grant Rood for the following:

Please provide copies of all communications with any agency or office of the U.S. Government relating to any request or subpoena for testimony or documents from your office to any agency, office or current or former employee of the federal government under or pursuant to the *Touhy* regulations for that agency or office in connection with the investigation or prosecution of *State v. Trump, et al.*, or any pre-indictment investigation eventually giving rise to the indictment in that case.

A copy of this letter is enclosed for your reference.

Thus far, I have not received any response from your office. Please respond at your earliest convenience.

In addition, I am also requesting the following:

CALDWELL, CARLSON,
ELLIOTT & DELOACH, LLP

The Honorable Fani Willis, Esq.

January 9, 2024

Page - 2 -

Copies of all communications with the White House Counsel's office, including but not limited to those referenced on the invoice from the Law Offices of Nathan J. Wade dated May 32, 2022, showing an entry for May 23, 2022 "Travel to Athens: Conf with White House Counsel," and the invoice from the same office dated January 19, 2023 showing an entry for November 18, 2022 "Interview with DC/White House."

In your response, please identify all persons present or participating in the referenced conference and interview, and all documents or information provided or received by your office in such meetings.

Thank you in advance for your attention and assistance in this matter.

Sincerely,

Caldwell, Carlson, Elliott & DeLoach, LLP



Harry W. MacDougald

Enclosure

cc Prosecution Team (by email only)
Catherine Bernard (by email only)
Jeffrey B. Clark (by email only)

Exhibit 2

The New York Times | <https://www.nytimes.com/2023/04/07/us/politics/trump-georgia-justice-department.html>

Trump's Next Legal Threat Could Be in Georgia. That May Be Tricky for Federal Prosecutors.

The concurrent investigations create complications for separate teams relying on similar evidence, some of the same criminal targets and a small, shared pool of witnesses.



By Glenn Thrush, Danny Hakim and Adam Goldman

April 7, 2023

6 MIN READ

WASHINGTON — The Fulton County district attorney's investigation into former President Donald J. Trump's effort to overturn the 2020 election in Georgia is nearing a decision point, posing fresh challenges for federal prosecutors considering charging him in connection with the Jan. 6, 2021, attack on the Capitol.

The long-running investigation by Fani T. Willis in Atlanta substantially overlaps with the broader inquiry into Mr. Trump's conduct by the special counsel, Jack Smith, in Washington. Both rely on similar documentary evidence, some of the same criminal targets and a small, shared pool of witnesses with knowledge of the former president's actions and intent.

Mr. Trump's critics believe the concurrent investigations provide assurance that the former president and architects of the scheme to install fake electors in battleground states, including Rudolph W. Giuliani and John C. Eastman, will be held to account.

But they also create complications for two aggressive investigative teams pursuing some of the same witnesses, increasing the possibility of discrepancies in testimony that Mr. Trump's lawyers could exploit. Ms. Willis and her team have a head start, having begun their work in February 2021, and are expected to seek indictments early next month. That raises the pressure on Mr. Smith, who has pledged to work quickly, to move even faster, according to current and former prosecutors.

Exhibit 3



The investigation by the Fulton County district attorney, Fani T. Willis, overlaps with the broader inquiry into Mr. Trump's conduct by the special counsel, Jack Smith, in Washington. Audra Melton for The New York Times

“Normally, the lead federal prosecutor just picks up the phone and tries to work it out with the local prosecutor, but it’s obviously a lot more difficult in a case of this magnitude,” said Channing D. Phillips, who served as acting United States attorney for the District of Columbia from March to November 2021. “The stakes of not working things out are incredibly high.”

The investigative efforts are by no means the same. Mr. Smith’s purview extends into other areas, most notably the investigation into whether Mr. Trump mishandled classified documents that were found at his Mar-a-Lago estate after he left office.

The federal investigation into Jan. 6 focuses on several charges, according to two law enforcement officials: wire fraud for emails sent between those pushing the false electors scheme; mail fraud for sending the names of electors to the National Archives and Records Administration; and conspiracy, which covers the coordination effort. (A fourth possible charge, obstruction of an official proceeding before Congress, has been used in many cases brought against participants in the Capitol attack.)

And some of Ms. Willis’s work has been more parochial in nature, including a review of false statements that Trump allies like Mr. Giuliani made at state legislative hearings in December 2020.

Justice Department officials said the indictment of Mr. Trump by the Manhattan district attorney, Alvin L. Bragg, over a hush money payment to a porn star will have little effect on their investigations. Federal prosecutors in Manhattan passed on bringing a similar case.

But the Georgia investigation is entirely different. The Justice Department has no authority to order local prosecutors to step aside in areas where the investigations do overlap, unless their investigations conflict with federal law. In fact, internal department rules discourage indicting the subjects of prior state prosecutions.

Moreover, there is “no formal rule book” for settling jurisdictional questions or for deciding the chronological sequence of prosecutions, and disputes are usually hashed out informally, as they arise, on an ad hoc basis, said Preet Bharara, a former U.S. attorney for the Southern District of New York.

Local and federal prosecutors routinely work together to coordinate charging decisions based on which jurisdiction offers better chances of conviction or a stiffer sentence. But in many high-profile cases, prosecutors view dueling investigations as a nuisance or even a hazard.

Witnesses, even forthright ones, sometimes offer different accounts when interviewed by lawyers representing different offices. Differences between state and federal laws can lead to damaging conflicts over strategy and priorities. Then there is what is known as “witness fatigue,” when important players simply grow tired or uncooperative after running gantlets of government inquisitors.

Fulton County prosecutors are conducting a wide-ranging investigation that includes calls made by Mr. Trump to exert pressure on state officials and efforts by the former president and his allies to replace legitimate electors in Georgia with pro-Trump alternates. Last year, Ms. Willis’s office sought to interview two key figures who had served in the Justice Department: Richard Donoghue, the acting deputy attorney general in the waning days of the Trump administration, and Jeffrey Clark, an assistant attorney general who led the department’s environmental division.

Shortly after Mr. Trump left office, it emerged that Mr. Clark had tried to circumvent the department’s leaders and aid Mr. Trump’s efforts to stay in power. He even drafted a letter that was to have been sent to lawmakers in Georgia falsely claiming that the Justice Department had “identified significant concerns” that would affect the state’s election results and urging lawmakers to convene a special session.

Mr. Donoghue was alarmed when he saw the draft, according to testimony he provided to the House committee that investigated the Jan. 6 attack.

Aides to Ms. Willis filed what are known as Touhy requests, named after a 1951 Supreme Court case. Under the rule, local prosecutors are required to get authorization from the Justice Department to question its current or former employees. But the requests were ultimately rejected.

It is not clear why the department rejected the requests. But both men were at the center of an investigation into Mr. Clark’s conduct by the Justice Department’s inspector general that was subsequently handed off to Mr. Smith’s team.

A spokesman for Mr. Smith declined to comment.

The possibility of an indictment in the Georgia investigation next month raises the pressure on the special counsel, Jack Smith, to move even faster, according to current and former prosecutors. Peter Dejong/Associated Press

Fulton County prosecutors also declined to comment. The forewoman of an Atlanta special grand jury that issued an advisory report in January, which has remained largely under seal, appeared to hint in an interview this year that it had recommended that Mr. Trump be indicted.

The Atlanta case has put additional pressure on Mr. Smith. Justice Department officials have said they wanted to make charging decisions in the spring or summer, before the 2024 election kicks into high gear — which raises the question of whether Mr. Smith will try to bring charges before Ms. Willis does.

“Looking at this as a federal prosecutor, I would just want to go first,” said Joyce Vance, a University of Alabama law professor who served as the U.S. attorney in Birmingham from 2009 to 2017. “I don’t want to have to try my case after it’s already been brought in a state court. You really want to go first to avoid problems with witnesses, and other technical or legal problems.”

If Ms. Willis moves first, Mr. Smith’s team would have to obtain department approval to waive an internal rule that precludes “multiple prosecutions and punishments for substantially the same act(s).”

Demonstrators rallying for Mr. Trump near his Mar-a-Lago estate this week. Hilary Swift for The New York Times

That is not considered a high bar, however. Mr. Smith would simply have to show that the state case did not completely cover all the issues addressed in a federal case. It is believed that exemption was recently used to obtain a hate crimes conviction against three men who murdered Ahmaud Arbery, a young Black man who was jogging through their neighborhood.

John P. Fishwick Jr., a former U.S. attorney for the Western District of Virginia, said he often requested that local prosecutors step aside when he thought their investigations conflicted with his. He suggested that Mr. Smith could at least consider asking Ms. Willis to do the same.

“D.O.J. and state prosecutors do not play well in the same sandbox, but at the end of the day, if it gets into a tug of war, D.O.J. is usually going to win,” he said. “The federal government just has more power as far as compelling witnesses, more power to assign people to a case and more oomph, in general.”

While prosecutors should clear up disputes over access to witnesses and documents, it is vital that the two efforts be seen as independent and fact-driven and not a “witch hunt,” as Mr. Trump has described all of the investigations into him, former Justice Department officials say.

“I don’t think they would coordinate on things like timing or language of the charges or anything like that — although that wouldn’t be illegal,” said Mary McCord, a former top official in the department’s national security division who is now a visiting professor at Georgetown University Law Center.

“But the goal here is avoid any appearance that they are coordinating prosecutions for political purposes,” added Ms. McCord.

Glenn Thrush and Adam Goldman reported from Washington, and Danny Hakim from New York.