

AFTERWORD

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AS THIS VOLUME GOES TO press, the country continues to deal with one of the core themes this book has taken on: Donald Trump’s sense of impunity and his utter disregard for the rule of law. He has been indicted or faces indictment in multiple federal and state cases. Michael Cohen warned us all that Trump’s pattern of conduct would inevitably result in exactly this kind of situation, and now Trump—and the nation—confront the consequences.

One of the most serious of the cases is the former president’s prosecution for wrongly retaining classified documents and obstructing justice. In August 2022, investigators searched Mar-a-Lago—Mr. Trump’s Florida residence and private club—pursuant to a warrant signed by a federal magistrate judge. Those investigators recovered items that alarmed us to a degree akin to if bomb-grade uranium were found on the property. Highly classified documents were recovered, including many marked as Top Secret/SCI, “Sensitive Compartmented Information”—some of the most closely held secrets

in our nation's intelligence system. In our former roles as a United States ambassador and as a federal prosecutor, we gained an appreciation for the gravity of mishandling such files. Those documents have the potential to identify intelligence community sources and operations. Mr. Trump also allegedly retained and, in at least one case showed, highly sensitive documents containing potential military attack plans concerning a foreign nation. Mr. Trump's recklessness and willfulness in taking, improperly storing, and even reportedly sharing these items has the potential to damage our country's national security and intelligence capabilities in ways most of us cannot even imagine.

Then, as we went to press, there is breaking news that Trump has received a target letter in Special Counsel Jack Smith's investigation of the events of—and leading up to—January 6. We were among the co-authors of a model prosecution memo analyzing the substantial evidence against Trump and predicting that he was likely to be charged. In our memo, we explained just how close the constitutional framework of our country came to failing, and just how close Mr. Trump came to succeeding in his attempted coup. In addition to Mr. Trump's pressuring state officials (such as in the now infamous phone call to Georgia Secretary of State Brad Raffensperger asking him to "find" 11,780 votes for him) we now have more information as to just how extensive his campaign was to develop and deliver fabricated slates of electors to Congress, and to pressure Vice President Mike Pence to overrule the democratic will of the voters. We have also learned more about the events of January 6 itself, including that Mr. Trump reportedly stood idly by (other than the occasional tweet to urge on his supporters) for 187 minutes as the rioters stormed the Capitol.

In both cases, the Department of Justice's handling of its investigations has been consistent with the law, precedent, and its own institutional norms. Indeed, the appointment of Special Counsel Jack Smith by Attorney General Merrick Garland demonstrated a desire to remove even a hint of any appearance of improper motives. As Michael Cohen chronicles in this book, this stands in contrast to the disregard for the rule of law shown by Mr. Trump and former Attorney General William Barr, and to their abuse of the criminal justice system.

But the consequences of Trump's heedless disrespect for the rule of law do not stop there. He has been charged in connection with his 2016 election interference by Manhattan district attorney Alvin Bragg—a matter in which Michael Cohen is a critically important witness. The charges are for falsifying business records to cover up hush money payments made to avoid another scandal at the end of the 2016 campaign—one which, on the heels of the infamous Access Hollywood tape, could have changed the outcome of that race.

In retrospect, that misconduct represented a gateway drug for the 2020 election interference. That later and more elaborate alleged electoral misconduct is, in addition to Jack Smith's federal investigation, also under review by the Fulton County, Georgia district attorney, Fani Willis. As we go to press, she is widely expected to bring charges as soon as August 2023, targeting Trump and others for his sweeping national schemes as they impacted the state of Georgia. That includes Trump's notorious call to Mr. Raffensberger to "find" votes that did not exist.

Moreover, the criminal cases triggered by Trump go beyond these four current or anticipated cases charging him. In the very first

prosecution relating to his plan to fob false electoral slates off on the country in the aftermath of the 2020 election, Michigan Attorney General Dana Nessel has charged all 16 of the false electors in that state. Each faces eight charges for forgery and related crimes, with penalties ranging from 5 to 14 years in prison for each count. Other states are also investigating the fake electors and related matters in their jurisdictions. These investigations are not remotely a “witch hunt,” as Mr. Trump so frequently claims. Take for example the federal Mar-a-Lago documents case. Aware of the likely incendiary ramifications of any public action by the DOJ against Mr. Trump, Mr. Garland—and the executive branch generally—gave the former president every opportunity to avoid criminal consequences related to his mishandling of classified documents. Throughout the year following Mr. Trump’s departure from the White House, the National Archives and Records Administration attempted to arrange the return of what it believed were missing records. In January 2022, Mr. Trump returned fifteen boxes containing 184 unique documents with classification markings. Those were haphazardly mixed with miscellaneous other items, including newspapers, magazines, and photos.

The FBI subsequently obtained evidence that many additional boxes remained at Mar-a-Lago that likely contained classified material. In May 2022, Mr. Trump’s counsel accepted service of a DOJ subpoena demanding production of any remaining classified documents. If Mr. Trump were to have complied at this stage of the investigation, no further action likely would have been taken—despite the grave harm Mr. Trump already had done to our country’s security capabilities. Instead, several weeks later, Mr. Trump produced a single

Redweld folder of additional material along with a certification from his counsel that “a diligent search” had been performed and that no further documents remained. That woefully deficient production led directly to the warrant and the search of Mar-a-Lago.

During the search, the government recovered thirteen more boxes containing over 100 classified documents. It appears that either a diligent search had not been performed or that Mr. Trump or others willfully refused to relinquish these highly sensitive materials.

It is worth noting that the attorney general likely wanted to do everything possible to avoid both a search warrant and a criminal indictment of Mr. Trump. Mr. Garland has attempted to restore the DOJ’s stature and credibility, in part by avoiding the appearance of any political influence in the department’s operations and charging decisions. Rather than being the political “witch hunt” Mr. Trump repeatedly decries, the investigation (and now prosecution) has instead been a model of restraint and caution. Time and again, the DOJ tried to give Mr. Trump an out. In a characteristically contemptuous response that by now will be familiar to readers of this book, Mr. Trump repeatedly refused to take it. The subsequent indictment in fact demonstrates the DOJ’s commitment to the rule of law over politics.

Compare that with the DOJ as it existed under Mr. Barr—an institution decidedly less concerned with the rule of law. Mr. Barr was appointed in early 2019, at the tail end of the investigation by Special Counsel Robert Mueller. Prior to his appointment, Mr. Barr had publicly described the investigation concerning possible obstruction of justice by Mr. Trump as “asinine” and said it risked “taking

on the look of an entirely political operation to overthrow the president.” Those comments were made during the earliest stages of Mr. Mueller’s investigation, long before Mr. Barr knew what evidence the special counsel had uncovered.

Mr. Barr took extraordinary steps after assuming office to protect then-President Trump. Shortly before the Mueller Report was released, Mr. Barr sent what he described as its “principal conclusions” to Congress. Mr. Barr accurately reported that the special counsel had concluded that it was outside his purview to determine whether Mr. Trump should ultimately be prosecuted for obstruction of justice: quoting one of the report’s most consequential lines, the summary stated, “while this report does not conclude that the president committed a crime, it also does not exonerate him.”

Nevertheless, Mr. Barr decided to announce his own office’s determination that Mr. Trump had not committed any crime. According to Mr. Barr, no crime had been committed because “no actions that, in our judgment, constitute obstructive conduct, had a nexus to a pending or contemplated proceeding, and were done with corrupt intent.”

Prior to the announcement, two of the most senior members of the DOJ authored a memo analyzing Mr. Trump’s actions that were detailed in the report. It served as the legal justification for Mr. Barr’s summary to Congress. Because of the seniority of the authors, it is likely that the memo was drafted at the direction of, and perhaps also with input from, Mr. Barr himself. At any rate, he signed it, agreeing with its conclusions.

Two federal District Court judges, a Republican appointee and a Democratic one, have noted Mr. Barr’s dishonesty in connection

with the Mueller Report, with the latter stating that the former attorney general's treatment of the memo is further confirmation of his "disingenu[ity]." Perhaps the most egregious aspect of the memo is its suggestion that prosecution for obstruction is appropriate only if the conduct at issue involved "(i) inherently wrongful acts to destroy evidence, to create false evidence, or to tamper with witnesses or jurors, and (ii) an effort to prevent the investigation or punishment of a separate, underlying crime."

You don't need to be a former prosecutor to understand how wrong this is. The logic of the memo suggests that any person who successfully obstructs justice cannot be charged with obstruction because the proof of the underlying crime would be unavailable. Even at the time the memo was drafted, that was an incorrect interpretation of the law—and prior cases had indeed been prosecuted where proof of the underlying crime was not established. (Martha Stewart's conviction is one of the more high-profile examples of this phenomenon.)

Moreover, Special Counsel Robert Mueller *did* find compelling evidence of efforts by Mr. Trump to create false documents and to tamper with witnesses. For example, Mr. Trump's pattern of obstruction included urging his own White House counsel to create a false document relating to the Mueller investigation—and his witness intimidation included targeting none other than the author of this book, Michael Cohen.

The contrast between the two attorneys general could not be more stark. Whereas Mr. Garland has taken steps to avoid political considerations and to hold Mr. Trump accountable, Mr. Barr appears to have deliberately misconstrued the law to insulate Mr. Trump from accountability for political reasons.

These events are not unrelated. It is this type of enabling behavior by Mr. Barr that helped create the sense of impunity that ultimately required the execution of the search warrant at Mar-a-Lago. There are chapters in that narrative yet to be written. But regardless of the final outcome, it serves as a reminder of the danger a potential re-election of Mr. Trump presents to the country: the specter of a president who places himself above the law.