

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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May 9, 2023

Mr. Theodore V. Wells, Jr.
Mr. Roberto Finzi
Paul Weis, Rifkind, Wharton, & Garrison LLP
1205 Avenue of the Americas
New York, NY 10019-6064

Re: Deposition of Mark Pomerantz

Dear Mr. Wells and Mr. Finzi:

We are in receipt of your May 4 letter concerning the Committee on the Judiciary's deposition of your client, Mark Pomerantz.¹ During both the oral argument before Judge Vyskocil of the U.S. District Court for the Southern District of New York and throughout the negotiations over the April 21 agreement resulting in the deposition date of May 12, Mr. Pomerantz deferred his interest in this matter to New York County District Attorney's Office.² In fact, the Court specifically noted that "[i]t appears that Pomerantz is content to largely allow Bragg to speak for him."³

The Committee and the District Attorney's Office negotiated in good faith, and the District Attorney's Office specifically represented to the Committee that if an agreement were to be reached that Mr. Pomerantz would appear. Moreover, at no time during those negotiations were any conditions or restrictions on Mr. Pomerantz's appearance ever mentioned, much less discussed.

The Committee will conduct the deposition, scheduled for May 12, 2023, in accordance with the Committee's Rules of Procedure and the Rules of the House of Representatives for the 118th Congress. Enclosed is a copy of the Committee Rules. Pursuant to the Committee and

¹ Letter from Theodore V. Wells, Jr., Attorney for Mark Pomerantz, to Rep. Jim Jordan, H. Comm. on the Judiciary (May 4, 2023).

² Defendant Mark F. Pomerantz's Response to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, *Bragg v. Jordan*, No. 1:23-cv-3032 at 1 (MKV) (S.D.N.Y. Apr. 19, 2023). "These are matters for the District Attorney of New York County to argue." *Id.*

³ Opinion and Order Denying Temporary Restraining Order, *Bragg v. Jordan*, No. 1:23-cv-3032 at 6 (MKV) (S.D.N.Y. Apr. 19, 2023).

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House Rules, Mr. Pomerantz is permitted to appear with two designated personal attorneys.⁴ The Rules also require the Chairman to “ensure that the testimony is either transcribed or electronically recorded or both.”⁵ The Committee, accordingly, will do so consistent with its current practices. The press article you cite about the use of video recordings is inapposite because the agreement reached in that instance was with regard to transcribed interviews, not a deposition, which, as noted above, are governed by specific House and Committee rules.

Accordingly, we look forward to Mr. Pomerantz’s deposition on May 12, 2023, at 10:00 a.m. in 2237 Rayburn House Office Building.

Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member

Enclosure

⁴ Rules of Procedure, Committee on the Judiciary, 118th Cong., R. XI(3) (2023). As a part of the Committee’s agreement with the New York County District Attorney’s Office, as an extraordinary accommodation, the Committee has agreed to allow a representative of the Office to attend the deposition.

⁵ *Id.* at R. XI(8)

U.S. HOUSE OF REPRESENTATIVES

**COMMITTEE ON
THE JUDICIARY**

**RULES OF
PROCEDURE**

ONE HUNDRED EIGHTEENTH
CONGRESS

ADOPTED FEBRUARY 1, 2023

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RULES OF PROCEDURE

Rule I.

The Rules of the House of Representatives are the rules of the Committee on the Judiciary and its Subcommittees with the following specific additions thereto.

Rule II. Committee Meetings

- (a) The regular meeting day of the Committee on the Judiciary for the conduct of its business shall be on Wednesday of each week while the House is in session.
- (b) Additional meetings may be called by the Chair and a regular meeting of the Committee may be dispensed with when, in the judgment of the Chair, there is no need therefor.
- (c) The Chair shall furnish each Member of the Committee or Subcommittee with the date, place, and a list of bills and subjects to be considered at a Committee or Subcommittee meeting, which may not commence earlier than the third day on which Members have notice thereof (excluding Saturdays, Sundays and legal holidays when the House is not in session).
- (d) At least 48 hours prior to the commencement of a meeting for the markup of legislation, the text of such legislation shall be made publicly available in electronic form.
- (e) In an emergency that does not reasonably allow for the notice as requirements in (c) and (d), the Chair may waive the notice requirements with the concurrence of the Ranking Minority Member.
- (f) To the maximum extent practicable, amendments to a measure or matter shall be submitted in writing or electronically to the designee of both the Chair and Ranking Member at least 24 hours prior to the consideration of the measure or matter. The Chair may give priority to amendments submitted in advance.
- (g) At the start of each meeting, the Chair, or the Chair's designee, may lead the Committee in the Pledge of Allegiance to the Flag, in accordance with Section 4 of Title 4, United States Code.
- (h) Committee and Subcommittee meetings for the transaction of business, i.e. meetings other than those held for the purpose of taking testimony, shall be open to the public except when the Committee or Subcommittee determines by majority vote to close the meeting because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would tend to defame, degrade or incriminate any person or otherwise would violate any law or rule of the House.
- (i) Every motion made to the Committee and entertained by the Chair shall be reduced to writing upon demand of any Member, and a copy made available to each Member present.
- (j) All amendments or any other material offered or submitted by any Member, including motions reduced to writing pursuant to a demand under paragraph (i), shall be emailed to judiciarydocs@mail.house.gov. All items submitted shall be in .pdf format.
- (k) For purposes of taking any action at a meeting of the full Committee or any Subcommittee thereof for which a majority is not required, a quorum shall be constituted by the presence of not less than one-third of the Members of the Committee or Subcommittee, respectively.

- (1)(1) Subject to subparagraph (2), the Chair may postpone further proceedings when a record vote is ordered on the question of approving any measure or matter or adopting an amendment. The Chair may resume proceedings on a postponed request at any time.
- (2) In exercising postponement authority under subparagraph (1), the Chair shall take all reasonable steps necessary to notify Members on the resumption of proceedings on any postponed record vote.
- (3) When proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.
- (m) Transcripts of markups shall be recorded and may be published in the same manner as hearings before the Committee.
- (n) Without further action of the Committee, the Chair is directed to offer a motion under clause 1 of rule XXII of the Rules of the House of Representatives whenever the Chair considers it appropriate.

Rule III. Hearings

- (a) The Committee Chair or any Subcommittee Chair shall make public announcement of the date, place, and subject matter of any hearing to be conducted by it on any measure or matter at least one week before the commencement of that hearing. If the Chair of the Committee, or Subcommittee, with the concurrence of the Ranking Minority Member, determines there is good cause to begin the hearing sooner, or if the Committee or Subcommittee so determines by majority vote, a quorum being present for the transaction of business, the Chair or Subcommittee Chair shall make the announcement at the earliest possible date.
- (b) At the start of each hearing, the Chair, any Subcommittee Chair, or their designee may lead the Committee or Subcommittee, respectively, in the Pledge of Allegiance to the Flag, in accordance with Section 4 of Title 4, United States Code.
- (c) Committee and Subcommittee hearings shall be open to the public except when the Committee or Subcommittee determines by majority vote to close the hearing because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would tend to defame, degrade or incriminate any person or otherwise would violate any law or rule of the House.
- (d) For purposes of taking testimony and receiving evidence before the Committee or any Subcommittee, a quorum shall be constituted by the presence of two Members.
- (e) In the course of any hearing each Member shall be allowed five minutes for the interrogation of a witness until such time as each Member who so desires has had an opportunity to question the witness.
- (f) Every motion made to the Committee and entertained by the Chair shall be reduced to writing upon demand of any Member, and a copy made available to each Member present.
- (g) All material offered or submitted by any Member, including motions reduced to writing pursuant to a demand under paragraph (f), shall be emailed to judiciarydocs@mail.house.gov. All items submitted shall be in .pdf format.
- (h) The transcripts of those hearings conducted by the Committee which are decided to be printed shall be published in verbatim form, with the material requested for the record inserted at that place requested, or at the end of the record, as appropriate. Individuals, including Members of Congress, whose comments are to be published as part of a

Committee document shall have five legislative days following the hearing to verify the accuracy of the transcription in advance of publication. Individuals, including Members of Congress, whose comments are to be published as part of a Committee document may review the accuracy of the transcription in the Committee office. Any requests by those Members, staff or witnesses to correct any errors other than errors in the transcription, or disputed errors in transcription, shall be appended to the record, and the appropriate place where the change is requested will be footnoted.

- (i) Prior to approval by the Chair of hearings conducted jointly with another congressional Committee, a memorandum of understanding may be prepared that specifies, to the extent possible, any deviation from Rule III of the Committee rules, and incorporates an agreement for the publication of the verbatim transcript. The Chair shall provide any such memorandum of understanding to the Ranking Minority Member prior to the commencement of such hearing.

Rule IV. Subpoenas

- (a) A subpoena may be authorized and issued by the Chair, in accordance with clause 2(m) of rule XI of the House of Representatives, in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee, following consultation with the Ranking Minority Member.
- (b) In addition, a subpoena may be authorized and issued by the Committee or its Subcommittees in accordance with clause 2(m) of rule XI of the House of Representatives, in the conduct of any investigation or activity or series of investigations or activities, when authorized by a majority of the Members voting, a majority of the Committee or Subcommittee being present. Authorized subpoenas shall be signed by the Chair or by any Member designated by the Committee.
- (c) At least one calendar day before issuing any subpoena pursuant to subsection (a), the Chair shall consult with the Ranking Minority Member regarding the authorization and issuance of such subpoena and shall provide a draft copy of the proposed subpoena, including a draft of any proposed document schedule, at that time.
- (d) The Chair may waive the requirements of subsection (c) in the event of an emergency that does not reasonably allow for advance written notice, including, but not limited to, when a witness who is voluntarily before the Committee refuses to answer a question.

Rule V. Broadcasting

Whenever a hearing or meeting conducted by the Committee or any Subcommittee is open to the public, those proceedings shall be open to coverage by television, radio and still photography subject to the requirements of clause 4 of Rule XI of the Rules of the House of Representatives.

Rule VI. Subcommittees

- (a) The full Committee shall have jurisdiction over such matters as determined by the Chair, and relevant oversight.
- (b) There shall be six standing Subcommittees of the Committee on the Judiciary, with jurisdictions as follows:

The *Subcommittee on the Constitution and Limited Government* shall have jurisdiction over the following subject matters: constitutional rights, constitutional amendments, Federal civil rights, claims against the United States, Federal charters of incorporation, non-immigration private claims bills, ethics in government, tort liability, including medical malpractice and product liability, legal reform generally, other appropriate matters as referred by the Chair, and relevant oversight.

The *Subcommittee on Courts, Intellectual Property, and the Internet* shall have jurisdiction over the following subject matters: administration of U.S. Courts, Legal Services Corporation, Federal Rules of Evidence, Civil and Appellate Procedure, judicial ethics, patent and trademark law, copyright, information technology, other appropriate matters as referred by the Chair, and relevant oversight.

The *Subcommittee on Crime and Federal Government Surveillance* shall have jurisdiction over the following subject matters: Federal Criminal Code, drug policy, sentencing, parole and pardons, internal and homeland security, Federal Rules of Criminal Procedure, prisons, criminal law enforcement, and other appropriate matters as referred by the Chair, and relevant oversight.

The *Subcommittee on Immigration Integrity, Security, and Enforcement* shall have jurisdiction over the following subject matters: immigration and naturalization, border security, admission of refugees, treaties, conventions and international agreements, private immigration bills, non-border immigration enforcement, other appropriate matters as referred by the Chair, and relevant oversight.

The *Subcommittee on the Administrative State, Regulatory Reform, and Antitrust* shall have jurisdiction over the following subject matters: the antitrust laws and competition policy, bankruptcy and commercial law, bankruptcy judgeships, Federal Rules of Bankruptcy Procedure, administrative law, the Administrative Conference of the United States, state taxation affecting interstate commerce, interstate compacts, other appropriate matters as referred by the Chair, and relevant oversight.

The *Subcommittee on Responsiveness and Accountability to Oversight* shall have jurisdiction over the responsiveness of agencies, departments, and entities to oversight requests of the Committee and any Subcommittee of the Committee and the operations of their congressional liaisons or offices of legislative affairs, with respect to the necessity or desirability of enacting, changing, or repealing any legislation within the jurisdiction of the Committee.

- (c) Pursuant to House Resolution 12, 118th Congress, there shall be one select Subcommittee of the Committee on the Judiciary, with jurisdiction as follows:

The *Select Subcommittee on the Weaponization of the Federal Government* shall have such jurisdiction as set forth in House Resolution 12.

- (d) The Chair of the Committee and Ranking Minority Member thereof shall be ex officio Members, but not voting Members, of each standing Subcommittee to which such Chair or Ranking Minority Member has not been assigned by resolution of the Committee. Ex officio Members shall not be counted as present for purposes of constituting a quorum at any hearing or meeting of such standing Subcommittee.

Rule VII. Powers and Duties of Subcommittees

Each Subcommittee is authorized to meet, hold hearings, receive evidence, and report to the full Committee on all matters referred to it or under its jurisdiction. Subcommittee chairs shall set dates for hearings and meetings of their respective Subcommittees after consultation with the Chair and other Subcommittee chairs with a view toward avoiding simultaneous scheduling of full Committee and Subcommittee meetings or hearings whenever possible.

Rule VIII. Non-Legislative Reports

No report of the Committee or Subcommittee which does not accompany a measure or matter for consideration by the House shall be published unless all Members of the Committee or Subcommittee issuing the report shall have been apprised of such report and

given the opportunity to give notice of intention to file supplemental, additional, or dissenting views as part of the report. In no case shall the time in which to file such views be less than three calendar days (excluding Saturdays, Sundays, and legal holidays when the House is not in session).

Rule IX. Committee Records

The records of the Committee at the National Archives and Records Administration shall be made available for public use according to the Rules of the House. The Chair shall notify the Ranking Minority Member of any decision to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination on the written request of any Member of the Committee.

Rule X. Official Committee Website

- (a) The Chair shall maintain an official website on behalf of the Committee for the purpose of furthering the Committee's legislative and oversight responsibilities, including communicating information about the Committee's activities to Committee Members and other Members of the House.
- (b) The Chair shall make the record of the votes on any question on which a record vote is demanded in the full Committee available on the Committee's official website not later than 48 hours after such vote is taken. Such record shall identify or describe the amendment, motion, order, or other proposition, the name of each Member voting for and each Member voting against such amendment, motion, order, or proposition, and the names of the Members voting present.
- (c) Not later than 24 hours after the adoption of any amendment to a measure or matter considered by the Committee or its Subcommittees, the Chair shall make the text of each such amendment publicly available in electronic form.
- (d) Not later than 48 hours after the disposition or withdrawal of any other amendment to a measure or matter considered by the Committee or its Subcommittees, the Chair shall make the text of each such amendment publicly available in electronic form.
- (e) Not later than 3 days after the conclusion of a Committee meeting, the transcript of such meeting and the text of all amendments offered shall be made available on the Committee website.
- (f) The Ranking Member is authorized to maintain a similar official website on behalf of the Committee Minority for the same purpose, including communicating information about the activities of the Minority to Committee Members and other Members of the House.

Rule XI. Depositions

Pursuant to section 3(k) of House Resolution 5, 118th Congress, the Chair may order the taking of depositions, including by subpoena. Section 3(k) of House Resolution 5 and the Regulations for the Use of Deposition Authority shall govern depositions conducted by the Committee on the Judiciary and its Subcommittees, and are reproduced herein.

House Resolution 5, section 3:

(k) DEPOSITION AUTHORITY.—

- (1) IN GENERAL.—During the One Hundred Eighteenth Congress, the chair of a standing committee (other than the Committee on Rules), and the chair of the

Permanent Select Committee on Intelligence, upon consultation with the ranking minority member of such committee, may order the taking of depositions, including pursuant to subpoena, by a member or counsel of such committee.

(2) REGULATIONS.—Depositions taken under the authority prescribed in this subsection shall be subject to regulations issued by the chair of the Committee on Rules and printed in the Congressional Record.

(3) PERSONS PERMITTED TO ATTEND DEPOSITIONS.—Deponents may be accompanied at a deposition by two designated personal, nongovernmental attorneys to advise them of their rights. Only members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness's two designated attorneys are permitted to attend. Other persons, including government agency personnel, may not attend.

Regulations for the use of Deposition Authority:

1. Notices for the taking of depositions shall specify the date, time, and place of examination. Depositions shall be taken under oath administered by a member or a person otherwise authorized to administer oaths. Depositions may continue from day to day.
2. Consultation with the ranking minority member shall include three days' notice before any deposition is taken. All members of the committee shall also receive three days written notice that a deposition will be taken, except in exigent circumstances. For purposes of these procedures, a day shall not include Saturdays, Sundays, or legal holidays except when the House is in session on such a day.
3. Witnesses may be accompanied at a deposition by two designated personal, nongovernmental attorneys to advise them of their rights. Only members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness's two designated attorneys are permitted to attend. Other persons, including government agency personnel, may not attend.
4. The chair of the committee noticing the deposition may designate that deposition as part of a joint investigation between committees, and in that case, provide notice to the members of the committees. If such a designation is made, the chair and ranking minority member of the additional committee(s) may designate committee staff to attend pursuant to regulation 3. Members and designated staff of the committees may attend and ask questions as set forth below.
5. A deposition shall be conducted by any member or committee counsel designated by the chair or ranking minority member of the Committee that noticed the deposition. When depositions are conducted by committee counsel, there shall be no more than two committee counsel permitted to question a witness per round. One of the committee counsel shall be designated by the chair and the other by the ranking minority member per round.
6. Deposition questions shall be propounded in rounds. The length of each round shall not exceed 60 minutes per side and shall provide equal time to the majority and the minority. In each round, the member(s) or committee counsel designated by the chair shall ask questions first, and the member(s) or committee counsel designated by the ranking minority member

shall ask questions second.

7. Objections must be stated concisely and in a non-argumentative and nonsuggestive manner. A witness's attorney may not instruct a witness to refuse to answer a question, except to preserve a privilege. In the event of professional, ethical, or other misconduct by the witness's attorney during the deposition, the Committee may take any appropriate disciplinary action. The witness may refuse to answer a question only to preserve a privilege. When the witness has refused to answer a question to preserve a privilege, members or staff may (i) proceed with the deposition, or (ii) either at that time or at a subsequent time, seek a ruling from the Chair either by telephone or otherwise. If the Chair overrules any such objection and thereby orders a witness to answer any question to which an objection was lodged, the witness shall be ordered to answer. If a member of the committee chooses to appeal the ruling of the chair, such appeal must be made within three days, in writing, and shall be preserved for committee consideration. The Committee's ruling on appeal shall be filed with the clerk of the Committee and shall be provided to the members and witness no less than three days before the reconvened deposition. A deponent who refuses to answer a question after being directed to answer by the chair may be subject to sanction, except that no sanctions may be imposed if the ruling of the chair is reversed by the committee on appeal.

8. The Committee chair shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's attorney shall be afforded an opportunity to review a copy. No later than five days after the witness has been notified of the opportunity to review the transcript, the witness may submit suggested changes to the chair. Committee staff may make any typographical and technical changes. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript.

9. The individual administering the oath, if other than a member, shall certify on the transcript that the witness was duly sworn. The transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the committee in Washington, DC. Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken once filed there with the clerk of the committee for the committee's use. The chair and the ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time.

10. The chair and ranking minority member shall consult regarding the release of deposition testimony, transcripts, or recordings, and portions thereof. If either objects in writing to a proposed release of a deposition testimony, transcript, or recording, or a portion thereof, the matter shall be promptly referred to the committee for resolution.

11. A witness shall not be required to testify unless the witness has been provided with a copy of section 3(k) of H. Res. 5, 118th Congress, and these regulations.

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