

TESTIMONY OF AMBASSADOR NORMAN L. EISEN (RET.)

HEARING ON THE MANHATTAN DISTRICT ATTORNEY'S OFFICE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

JUNE 13, 2024

Chairman Jordan, Ranking Member Nadler, and Members of the Committee:

Thank you for inviting me back today for this hearing.¹ I was in court throughout the over six weeks of the Manhattan criminal trial of former President Donald Trump for interfering in the 2016 election and covering it up. I want to make three points.

First, the verdict of twelve ordinary Americans—that Mr. Trump was part of a scheme to deceive voters and then falsified business records to hide it—was strongly supported by the evidence and the law.

Second, Mr. Trump's 2016 misconduct had striking similarities to his actions in 2020: deceiving voters about *that* election and also covering *that* up with false documents—false electoral certificates. Based on Mr. Trump's own statements, he seems to be warming up to run a similar voter deception playbook in 2024 as well.

Third, Mr. Trump's reactions to the guilty verdict are of a piece with his attempts to subvert democracy and his promise that he will be a dictator on day one if re-elected. He and his enablers are promising to baselessly prosecute his perceived adversaries and otherwise establish an autocratic regime (as I detail in the *American Autocracy Threat*

¹ You may notice that I'm not turning on my microphone myself. Today is the Jewish holiday of Shavuot, and I spoke to my Rabbi to ask permission to testify here today. Though I was sure he would say no, when I explained the significance of today's hearing and the threat to democracy that we are facing, he told me I could come but make some accommodations for Jewish practice.

Tracker I co-edit at *Just Security*). That represents the *real* politicization of the judicial system and weaponization of government.

The Trial

I'm appearing today sharing my personal views only and will begin by talking about the trial itself. It spanned over 130 hours, twenty-two witnesses,² and over 200 exhibits.³ A jury of twelve ordinary Americans—Mr. Trump's peers in the city where he lived and worked most of his life—found him guilty.⁴ I spent most of the trial watching them and, unlike some in court who dozed,⁵ they paid extremely close attention throughout. Some took notes, others simply listened, but all took great care. Their seriousness and engagement is what I will remember most about the case, and I wrote about it often in the twenty-five trial diaries I published in my journalistic capacity covering the trial daily, which are attached.

The jurors got it right. Witness after witness from inside Mr. Trump's orbit—many of whom expressed their continued respect and affection for the former

² Zach Schonfeld, *Here are the 22 witnesses who testified at Trump's trial*, The Hill (May 21, 2024), <https://thehill.com/regulation/court-battles/4677194-trump-hush-money-trial-witnesses/>.

³ New York v. Donald J. Trump Digital Docket (Exhibits), Law360, <https://www.law360.com/newyork-vs-trump-tracker>.

⁴ Jury Verdict Sheet, New York v. Trump, Indictment No. 71543-23 (N.Y. Sup. Ct., May 30, 2024), <https://s3.documentcloud.org/documents/24706628/trump-verdict-sheet.pdf>.

⁵ Maggie Haberman, *A Weary Trump Appears to Doze Off in Courtroom Ahead of Criminal Trial*, The New York Times (Apr. 15, 2024), <https://www.nytimes.com/2024/04/15/nyregion/trump-asleep-criminal-trial.html>.

president⁶—supported both parts of the jury’s conclusion. First, that Donald Trump intended to influence the 2016 election by unlawful means, including in the form of a \$130,000 payment to Stormy Daniels to benefit his campaign—over \$127,000 in excess of the legal limits.⁷ Second, that he covered it up through thirty-four false business records that disguised the repayment of that excessive contribution as a “legal expense,” “retainer,” or the like.

The jury were not the only ones who got it right. So did the judge. If I have one quibble about Justice Juan Merchan, it is that he sometimes bent over too far backwards to be fair to the defendant. Why should Mr. Trump have been allowed to act in contempt of court by violating the gag order no less than *ten* times⁸ before he was warned that the eleventh would lead to more serious action?⁹ Justice Merchan was patient—on that and many other occasions. He complemented this jury of twelve ordinary Americans with the

⁶ Jeremy Herb, Lauren del Valle & Kara Scannell, *Pecker says he's had 'great relationship' with Trump*, CNN (Apr. 23, 2024),

https://www.cnn.com/politics/live-news/trump-hush-money-trial-04-23-24/h_3f5bdf288595a09077339469a0db206; Michael M. Grynbaum, *Hope Hicks Reluctantly Confronts the Man She 'Totally Understands' in Court*, The New York Times (May 3, 2024), <https://www.nytimes.com/2024/05/03/nyregion/hope-hicks-testimony-trump-trial.html>.

⁷ FEC contribution limits by persons to candidates for 2015-2016 were increased to \$2,700 per election, per candidate. Contribution limits for 2015-2016, Federal Election Commission (Feb. 3, 2015), <https://www.fec.gov/updates/contribution-limits-for-2015-2016/>.

⁸ Decision & Order on People’s Motion for Contempt, *New York v. Trump*, SMZ 71762-24 & SMZ 71764-24 (N.Y. Sup. Ct., Apr. 30, 2024), <https://www.justsecurity.org/wp-content/uploads/2024/04/JustSecurityNY2016ElectionInterferenceCaseClearinghouse%E2%80%94Order-finding-Trump-in-contempt-fining-him-1000-per-each-each-of-9-violations-and-ordering-him-to-remove-postsApril302024.pdf>; Decision & Order on People's Motion for Contempt, *New York v. Trump*, SMZ 71911-24 (N.Y. Sup. Ct., May 6, 2024), https://s3.documentcloud.org/documents/24650629/2024-05-06-docontempt_5-6-24final.pdf.

⁹ Michael Bartiromo & Addy Bink, *How long could Trump be jailed if he violates his gag order again?*, The Hill (May 6, 2024), https://thehill.com/homenews/nexstar_media_wire/4646500-how-long-could-trump-be-jailed-if-he-violates-his-gag-order-again/#:~:text=%E2%80%9CDefendant%20is%20hereby%20put%20on,violating%20this%20Court's%20lawful%20orders.%E2%80%9D.

fairness and rigor he brought to resolving the many complex legal questions before him. The appellate process will prove that.

Let me also say that the lawyers for both sides, in my observation, did a terrific job. Mr. Trump's defense counsel were generally excellent and put the prosecution to the test. I even wrote an essay singing the praises of the defense team. It's number sixteen of my twenty-five trial diaries attached.¹⁰

Why the Conviction Matters

Turning to my second point—why do the trial and the verdict matter so much? Think of what this unanimous jury of average Americans found Mr. Trump did during and after the 2016 election: he lied to voters to grasp power and covered it up with phony documents. Does that sound familiar?

It should, because we saw this pattern repeat in 2020 with the “Big Lie”—that Mr. Trump actually won the election. He didn't, as sixty-plus failed lawsuits demonstrate¹¹ and as

¹⁰ Norman Eisen, *You can't deny the skill of Trump's defense lawyers*, CNN Opinion (May 10, 2024), https://www.cnn.com/2024/05/10/opinions/opinion-you-cant-deny-the-skill-of-trumps-defense-lawyers?cid=ios_app.

¹¹ William Cummings, Joey Garrison & Jim Sergent, *By the numbers: President Donald Trump's failed efforts to overturn the election*, USA Today (Jan. 6, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

authority after authority has since found.¹² His and his allies' deception was undertaken for him to hold onto power—to keep the White House even though his opponent had won fair and square. And the false documents were not just business records in 2020—they were fake electoral slates that were part of a scheme to overturn the legitimate outcome of the election in this body.¹³ 2016 was just the warm up.

And here's another reason this verdict matters in establishing the pattern—the recipe for an attempted coup—beyond a reasonable doubt: Mr. Trump is limbering up to try it again. He will not commit to accepting the 2024 election results. Over and over again—like in 2020—Mr. Trump has made statements such as, “if everything's honest, I'll gladly accept the results.... If it's not, you have to fight for the right of the country.”¹⁴ But based on his past behavior, we know what that means: if he wins, he will accept it, and if he loses, he won't.¹⁵

¹² See, e.g., *U.S. Dominion, Inc. v. Fox News Network, Inc.*, 293 A.3d 1002, 1039 (Del. Super. Ct. 2023) (“The evidence developed in this civil proceeding demonstrates that is CRYSTAL clear that none of the Statements relating to Dominion about the 2020 election are true. Therefore, the Court will grant summary judgment in favor of Dominion on the element of falsity.”); *Donald J. Trump for President, Inc. v. Sec'y Pa.*, 830 F. App'x 377, 381 (3d Cir. 2020) (“Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.”); In the Matter of John Charles Eastman, No. SBC-23-O-30029-YDR (Cal. State Bar Ct., Mar. 27, 2024 at 123-4) (“As counsel for President Trump during a disputed presidential election, Eastman made multiple patently false and misleading statements ... improperly aimed at casting doubt on the legitimate election results and support for the baseless claim that the presidency was stolen from his client”).

¹³ Ryan Goodman, Jacob Glick, Mary B. McCord & Rupa Bhattacharyya, *Comprehensive Timeline on False Electors Scheme in 2020 Presidential Election*, Just Security (May 15, 2024), <https://www.justsecurity.org/81939/timeline-false-electors/>.

¹⁴ Michael Gold & Chris Cameron, *Trump, Repeating 2020 Election Lies, Will Not Commit to Accepting 2024 Results*, The New York Times (May 1, 2024), <https://www.nytimes.com/2024/05/01/us/politics/trump-accept-2024-election-results.html>.

¹⁵ In his TIME interview, when asked what his reaction would be to a loss, Mr. Trump answered, “It always depends on the fairness of an election. I don't believe they'll be able to do the things that they did the last time. I don't think they'll be able to get away with it.” TIME Staff, *Read the Full Transcripts of Donald Trump's Interviews With TIME*, Time (Apr. 30, 2024), <https://time.com/6972022/donald-trump-transcript-2024-election/>.

The Real Weaponization

That brings me to my third point—where the real threat of the politicization of the justice system and weaponization of government lies. The attacks on the trial and verdict by the former president and his enablers, both those who attended the trial with him and otherwise,¹⁶ were politicizing a crime that has been prosecuted about 10,000 times in New York since 2015.¹⁷ If you do the falsifying records crime, you do the time in New York. It's as simple as that.

And yet, there was a staggering amount of disinformation and misinformation spewed by the former president and his allies, who tried to say that there was no crime here, as if those 10,000 other falsifying business records cases did not exist. They said that the gag order was unconstitutional or that it prevented Mr. Trump from testifying in his own defense, which is simply false. They argued the conspiracy theory that the prosecution was managed by President Biden, even though he had nothing to do with it.¹⁸ Not to mention the unfair smears they made of the hard-working jury and the witnesses who came forward at great personal risk.

¹⁶Allan Smith & Bianca Seward, *How Trump and his allies are spinning his historic guilty verdict*, NBC News (May 31, 2024),

<https://www.nbcnews.com/politics/donald-trump/trump-allies-spinning-historic-guilty-verdict-rcna154789>.

¹⁷Norman L. Eisen, Andrew Warren & Siven Watt, *A Complete Guide to the Manhattan Trump Election Interference Prosecution*, Just Security (Mar. 27, 2024),

<https://www.justsecurity.org/93916/guide-manhattan-trump-trial/>.

¹⁸Daniel Dale, *Fact check: Trump's false courthouse claims about his trial*, CNN (Apr. 27, 2024),

<https://www.cnn.com/2024/04/27/politics/fact-check-donald-trumps-courthouse-claims-new-york-trial/index.html>.

Many of the ugliest attacks were the false ones on Justice Merchan, who often ruled for the defense and sustained their objections, laboring to ensure that Mr. Trump received a fair trial. That was greeted by false claims that he was “corrupt” and doing “everything within his power” to help President Biden win the 2024 election.¹⁹

As bad as all that was, the absolute worst were the calls by Mr. Trump and his allies “to prosecute his adversaries...during and after his Manhattan trial...in retaliation for that proceeding—despite the lack of any evidence of criminal wrongdoing by those targeted.”²⁰ Just last week, Mr. Trump pointed to his own prosecution and then said, “it’s very possible that it’s going to have to happen to them,” namely his political adversaries.²¹

Contrast that with how President Biden greeted the news of his son’s conviction in a case led by a prosecutor originally appointed by Mr. Trump. Before the verdict, the president stated that he would not pardon Hunter Biden,²² and after the verdict he affirmed that he “accept[s] the outcome of this case and will continue to respect the judicial process.”²³

¹⁹ See Donald J. Trump (@realDonaldTrump), Truth Social (May 17, 2024, 11:00 p.m.), <https://truthsocial.com/@realDonaldTrump/posts/112459856028667718> (saying he was “corrupt” and doing “everything within his power” to help President Biden win the election).

²⁰ Norman L. Eisen et al., *American Autocracy Threat Tracker*, Just Security (updated June 5, 2024), <https://www.justsecurity.org/92714/american-autocracy-threat-tracker/>.

²¹ Jake Traylor & Alana Satlin, *‘It’s very possible’: Trump floats imprisoning his political opponents*, NBC News (June 4, 2024), <https://www.nbcnews.com/politics/donald-trump/trump-floats-imprisoning-political-opponents-rcna155543>.

²² Kevin Liptak, *Biden says he won’t pardon son if he’s convicted at trial*, CNN (June 6, 2024), <https://www.cnn.com/2024/06/06/politics/biden-will-not-pardon-hunter-biden/index.html>.

²³ Kathryn Watson, *Biden reacts to his son Hunter’s guilty verdict in gun case, vowing to ‘respect the judicial process’*, CBS News (June 12, 2024), <https://www.cbsnews.com/news/hunter-biden-guilty-verdict-joe-biden-reaction/>.

Meanwhile, Mr. Trump has outright denied the validity of *his* jury’s verdict, and in doing so undermines a fundamental bedrock of our judicial system.

Mr. Trump’s words are all the more chilling because they are not isolated to the issue of this trial. We should take them as a warning of what is to come should he return to office.

Mr. Trump has promised to be a dictator on day one. He has pledged to attack American rule of law with other illegal actions if he regains power, which I catalog in the American Autocracy Threat Tracker.²⁴ They range from promises to undertake mass immigrant roundups;²⁵ to summarily fire tens of thousands of civil servants;²⁶ to pardon convicted January 6th rioters, including those who attacked police²⁷—but who he views as “great patriots”²⁸ and “hostages”²⁹—and on and on.

That is the real weaponization of government—not Mr. Trump’s being held accountable by twelve ordinary Americans in a fair trial for the voter deception and cover up that are the hallmark of how he approaches campaigning and governing.

²⁴ Norman Eisen et al., *American Autocracy Threat Tracker*, Just Security (updated June 5, 2024), <https://www.justsecurity.org/92714/american-autocracy-threat-tracker/>.

²⁵ Charlie Savage, Maggie Haberman & Jonathan Swan, *Sweeping Raids, Giant Camps and Mass Deportations: Inside Trump’s 2025 Immigration Plans*, The New York Times (Nov. 11, 2023), <https://www.nytimes.com/2023/11/11/us/politics/trump-2025-immigration-agenda.html>.

²⁶ Lisa Mascarol, *Conservative groups draw up plan to dismantle the US government and replace it with Trump’s vision*, AP News (Aug. 29, 2023), <https://apnews.com/article/election-2024-conservatives-trump-heritage-857eb794e505f1c6710eb03fd5b58981>.

²⁷ Mariana Alfaro, *Trump vows pardons, government apology to Capitol rioters if elected*, The Washington Post (Sept. 1, 2022), <https://www.washingtonpost.com/national-security/2022/09/01/trump-jan-6-rioters-pardon/>.

²⁸ Simone Carter, *Donald Trump Praises Jan. 6 Rioters: ‘Great Patriots’*, Newsweek (Jan. 14, 2023), <https://www.newsweek.com/donald-trump-praises-jan-6-rioters-great-patriots-1773808>.

²⁹ See Donald J. Trump (@realDonaldTrump), Truth Social (Mar. 11, 2024, 7:55 p.m.), <https://truthsocial.com/@realDonaldTrump/posts/112079753989223875> (calling January 6th rioters “hostages”).

And all of that—the seriousness of the crime, Mr. Trump’s total lack of remorse, and his apparent determination to continue his election interference and assault on the rule of law—is why a jail sentence is warranted for the former president. While it should and will not be served until after Mr. Trump completes his appeals (almost certainly after the election), it is justified as a matter of both accountability and deterrence.³⁰

Moreover, other strong steps are needed now to rein in these dangerous threats. I was glad to see that House members are coming together to combat the plans for autocratic takeover next year through the new Stop Project 2025 Task Force.³¹ My American Autocracy Threat Tracker concludes with a survey of concrete solutions the Committee, the new task force and other policy makers can consider. Those recommendations include proposals to:

1. Find bipartisan legislative solutions, such as reining in excessive executive emergency powers or extending standing for state attorneys general to seek federal court review of particularly egregious federal autocratic conduct;
2. Stand together against political violence, and stand up for the independent public servants who help our government and our democracy run;

³⁰ Norman Eisen, *Should Trump Be Sentenced to Prison? Two Opposing Views*, The New York Times (June 2, 2024), <https://www.nytimes.com/2024/06/02/opinion/trump-prison-time-sentencing.html>; Norman L. Eisen, *What Sentencing Could Look Like if Trump Is Found Guilty*, The New York Times (Apr. 18, 2024), <https://www.nytimes.com/2024/04/18/opinion/donald-trump-trial-prison.html>.

³¹ Ja’han Jones, *House Democrats prepare to highlight right-wing 'Project 2025' plans*, MSNBC (June 11, 2024), <https://www.msnbc.com/the-reidout/reidout-blog/democrats-alarm-far-right-project-2025-policy-agenda-elections-rcna156609>.

3. Invest in the free and fair elections that give legitimacy to our democracy, such as by properly funding elections and strengthening protections for election workers; and
4. Many more ideas that we set forth in the Tracker.³²

I look forward to answering questions about those policies and other topics that are useful to the Committee.³³

Thank you.

³² Norman L. Eisen et al., *American Autocracy Threat Tracker; XXII. Bipartisan Actions to Counter Autocratic Threats*, Just Security (June 5, 2024), https://www.justsecurity.org/92714/american-autocracy-threat-tracker/#post-92714-_m5tyl7nx7h9d.

³³ Susan Corke et al., *Democracy Playbook 2021: 10 Commitments for Advancing Democracy*, The Brookings Institution (Dec. 2021), https://www.brookings.edu/wp-content/uploads/2021/12/Democracy-Playbook-2021_10-Commitments-for-Advancing-Democracy.pdf.

APPENDIX

Trial Diaries

- 1) Trump seems to be searching Manhattan for one angry juror (4/10/24)
<https://www.cnn.com/2024/04/10/opinions/trump-hush-money-trial-jury-eisen/index.html>
- 2) Don't call it a 'hush money' case (4/16/24)
https://www.cnn.com/2024/04/16/opinions/trump-trial-jury-hush-money-election-eisen?cid=ios_app
- 3) Who has the upper hand after Trump trial opening? (4/22/24)
https://www.cnn.com/2024/04/22/opinions/prosecution-defense-opening-statements-trump-trial-eisen?cid=ios_app
- 4) As Trump trial opens, attorneys have to make deft first moves (4/23/24)
https://www.cnn.com/2024/04/22/opinions/trump-criminal-trial-opening-statements-eisen?cid=ios_app
- 5) Trump's refusal to follow gag order could cost him (4/23/24)
https://www.cnn.com/2024/04/23/opinions/trump-trial-gag-order-hearing-eisen?cid=ios_app
- 6) How Trump's tabloid ally pecked holes in his case (4/24/24)
<https://www.cnn.com/2024/04/24/opinions/trump-tabloid-ally-david-pecker-testifies-eisen-conway/index.html>
- 7) New York understood the need for speed on Trump's immunity claim. Will SCOTUS? (4/25/24)
<https://edition.cnn.com/2024/04/25/opinions/trump-supreme-court-immunity-claim-new-york-eisen/index.html>
- 8) Trump attorney's embarrassing courtroom apology (4/27/24)
<https://www.cnn.com/2024/04/27/opinions/trump-trial-david-pecker-court-eisen>

9) Even if Trump can't stay awake this week, the jury will have reason to (4/30/24)
<https://www.cnn.com/2024/04/30/opinions/trump-criminal-trial-week-two-jury-document-s-eisen/index.html>

10) Trump should go to jail if he violates judge's gag order again (4/30/24)
https://www.cnn.com/2024/04/30/opinions/trump-should-go-to-jail-contempt-gag-order-eisen?cid=ios_app

11) How one text exchange gave Trump an ominous day in court (5/2/24)
<https://www.cnn.com/2024/05/02/opinions/keith-davidson-testimony-trump-ominous-day-in-court-eisen/index.html>

12) Hope Hicks' testimony was a nightmare for Trump (5/3/24)
https://www.cnn.com/2024/05/03/opinions/hope-hicks-trump-hush-money-trial-eisen?cid=ios_app

13) The prosecution is racking up points - and that should make Trump nervous (5/6/24)
<https://www.cnn.com/2024/05/06/opinions/trump-trial-prosecutors-hush-money-case-rack-up-points-eisen/index.html>

14) Stormy Daniels clears up hush money events for jury while clouding Trump's defense (5/7/24)
<https://www.cnn.com/2024/05/07/opinions/stormy-daniels-hush-money-testimony-clouding-trump-defense-eisen/index.html>

15) The Trump team swung for the fences. Thanks to Stormy Daniels, they struck out (5/9/24)
<https://www.cnn.com/2024/05/09/opinions/trump-trial-testimony-stormy-daniels-struck-out-eisen/index.html>

16) You can't deny the skill of Trump's defense lawyers (5/10/24)
https://www.cnn.com/2024/05/10/opinions/opinion-you-cant-deny-the-skill-of-trumps-defense-lawyers?cid=ios_app

17) I've grilled Michael Cohen. The jury may be surprised by this star witness (5/12/24)
<https://www.cnn.com/2024/05/12/opinions/michael-cohen-lied-trump-jury-can-believe-him-eisen/index.html>

18) Michael Cohen propels prosecution of Trump past this critical threshold (5/13/24)

<https://www.cnn.com/2024/05/13/opinions/michael-cohen-takes-trump-trial-past-this-critical-threshold-eisen/index.html>

19) Did Trump's defense think this strategy would work on Cohen? (5/14/24)

<https://www.cnn.com/2024/05/14/opinions/michael-cohen-defense-strategy-trump-trial-eisen/index.html>

20) Trump's defense rocked Michael Cohen. But they didn't knock him out (5/16/24)

<https://www.cnn.com/2024/05/16/opinions/trump-defense-landed-some-punches-michael-cohen-eisen/index.html>

21) Trump's defense got one last shot at Michael Cohen. Did they make their case? (5/21/24)

<https://www.cnn.com/2024/05/21/opinions/trump-defense-rests-case-michael-cohen-eisen/index.html>

22) Trump's defense ends on one disastrous witness (5/22/24)

<https://www.cnn.com/2024/05/22/opinions/trump-trial-defense-witness-costello-eisen/index.html>

23) Trump's fate now hinges on these three questions (5/28/24)

<https://www.cnn.com/2024/05/28/opinions/trump-trial-hinges-on-these-three-questions-eisen/index.html>

24) I've observed the Trump jury. Here's what could be happening in deliberations (5/29/24)

<https://www.cnn.com/2024/05/29/opinions/trump-trial-jury-questions-deliberations-eisen/index.html>

25) Trump verdict keeps this bedrock American ideal alive (5/30/24)

<https://www.cnn.com/2024/05/30/opinions/trump-verdict-guilty-justice-system-eisen/index.html>

Other Publications

1) What Sentencing Could Look Like if Trump Is Found Guilty, The New York Times (4/18/24)

<https://www.nytimes.com/2024/04/18/opinion/donald-trump-trial-prison.html>

2) Should Trump Be Sentenced to Prison? Two Opposing Views, The New York Times (6/2/24)

<https://www.nytimes.com/2024/06/02/opinion/trump-prison-time-sentencing.html>

3) American Autocracy Threat Tracker, Just Security (6/5/24)

<https://www.justsecurity.org/92714/american-autocracy-threat-tracker/>

Book

Trying Trump: A Guide to His First Election Interference Criminal Trial (4/10/24)

<https://www.amazon.com/Trying-Trump-Election-Interference-Criminal-ebook/dp/B0CZT1WX23>