CHAD MIZELLE'S APPEARANCE OF IMPROPRIETY

Something funny happened before the hearing in the Emil Bove's motion to dismiss Eric Adams' case today (after a long exchange, Judge Dale Ho did not rule on the motion itself).

Pam Bondi's Chief of Staff Chad Mizelle posted a very long thread on Xitter falsely pretending that this case was *only* about the single bribery charge against Adams. He focused closely on the way John Roberts' court has rolled back bribery statutes.

> For too long the DOJ has lost its way.
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> Prosecutorial misconduct and political agendas will no longer be tolerated.
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> The case against Mayor Adams was just one in a long history of past DOJ actions that represent grave errors of judgement.
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> This DOJ is going back to basics.
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> Prosecuting the mayor of America's largest city raises unique concerns.
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> I want to focus on one aspect: The legal theories underpinning SDNY's case and the particularly expansive reading of public corruption law adopted by the prosecutors in this action.
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> To win a bribery conviction against a public official, DOJ must show some official act in exchange for benefits — a quid pro quo. What is the official act alleged in this indictment?
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> Well, the main event took place before Adams was even Mayor.
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> In September 2021, when Adams was a candidate for office, **[1]** a person

> associated with the Turkish government allegedly asked Adams to help ensure the swift opening of a new Turkish consulate in NY in advance of a visit from Turkey's leader.
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> So here is a key question: How do these facts as alleged in the indictment stack up against the case law? Let's start with a history lesson.
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> EVERY TIME DOJ has pursued expansive theories of public corruption, the Department has been rebuked by the Supreme Court. Put simply, DOJ's track record of public corruption cases at the Supreme Court is abysmal.
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> In 2024, DOJ lost 6-3 in Snyder v. US, where SCOTUS overturned the conviction of an Indiana mayor who was convicted of federal bribery in connection with supposedly illegal gratuities. The Court rejected DOJ's theory that accepting gratuities constituted quid pro quo bribery.
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> The year before, in 2023, DOJ unanimously lost two cases in the Supreme Court—both brought by prosecutors in the U.S. Attorney's Office for the Southern District of New York.
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> In Ciminelli v. United States, The Supreme Court unanimously tossed the wire fraud conviction in connection with former Governor Andrew Cuomo's "Buffalo Billion" initiative, calling DOJ's theory of criminal liability "invalid."
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> And in Percoco v. United States, the Supreme Court unanimously rejected the government's theory about when private citizens can be liable for honest-services fraud in a case involving Governor Cuomo's former executive secretary.

> By the way, both Ciminelli and Percoco were decided on the same day, May 11, 2023. What a stunning rebuke to the US Attorney's Office in the Southern District of New York — Losing 18-0 in a single day.
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> Then there is Kelly v. United States from 2020, unanimously overturning the conviction of New Jersey officials involved in the so-called "Bridgegate" matter by, again, faulting the government for defining federal fraud too broadly.
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> Before then, SCOTUS unanimously repudiated the United States' prosecution of Gov. Bob McDonnell in 2016, again faulting DOJ's expansive theories of bribery. SCOTUS in Skilling v. United States in 2010 similarly rejected DOJ's theory of honest-services fraud as overly broad.
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> And finally, when DOJ prosecuted Senator Ted Stevens for failing to report gifts, DOJ ended up having to dismiss the indictment even after obtaining a conviction, because prosecutors egregiously failed to disclose material evidence to the defense.
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> Clearly, this history and case law underscores the legal risks associated with prosecuting Mayor Adams. DOJ could win a bribery conviction against a public official only by showing some official act in exchange for benefits.
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> The alleged official act in the indictment, however, took place before Adams was mayor. And one of the main benefits that the Mayor allegedly received was campaign contributions. **[2]** But all successful politicians, no matter the party, receive campaign contributions.
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> In the Adams case, SDNY was rolling the

> dice. And given the DOJ's abysmal history of losing at the Supreme Court, the odds were against the DOJ. Even the district judge said at a recent hearing that there was "some force" to Adams's challenges to the gov'ts central legal theory.
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> The government must tread particularly carefully before classifying contributions a crime given the First Amendment implications of such a theory.
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> Additionally, the amount of resources it takes to bring a prosecution like this is incredible — thousands and thousands of man hours. Those resources could better be used arresting violent criminals to keep New York safe or prosecuting gang and cartel members.
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> Given the history, DOJ had to decide—among other issues—whether to keep going down a road that the Supreme Court has viewed with skepticism on numerous occasions. Dismissing the prosecution was absolutely the right call. END.
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Mizelle is not wrong, at all, about the Roberts' court's disinterest in public corruption. They are, at least some of them, aficionados of it!

But along the way, Mizelle addressed only the bribery charge — the sole charge that Adams' lawyers moved to dismiss.

Even there, Mizelle was playing loose with the record. The quote (from Judge Ho's opinion rejecting the challenge) that Adams' argument has "some force" only applies to one of two theories of bribery adopted by SDNY.

> Mayor Adams takes particular issue with the Government's first theory, arguing that— even leaving aside Snyder—being "influenced in connection with the City

> of New York's regulation of the Turkish House" is simply too general or vague to constitute the requisite quo for bribery under § 666. Def. Reply Br. at 6–7; see also Def. Br. at 11. He contends that the words "business," "transaction," and "series of transactions" in § 666 refer to "specific and concrete governmental actions, not abstract or general objectives." Def. Br. at 10. He further argues that to the extent the word "business" could be read broadly, it should not be—because that would render the terms "transaction" and "series of transactions" superfluous. Id. Adams seeks, in effect, to imbue the quo element of § 666 with a degree of specificity that, even if not identical to McDonnell's "official act," embodies a "core requirement [that] would be the same: . . . a specific and formal exercise of governmental power." Def. Br. at 10.
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> Mayor Adams's arguments on this point have some force.

Judge Ho didn't say the same about the theory that Adams paid off Türkiye's favors by helping them get into their new consulate.

> Separately, regardless of whether the "regulation" of the Turkish House is specific enough to form the requisite quo at the indictment stage, there is no real dispute that the issuance of a TCO is a specific and formal exercise of governmental power

Furthermore, Mizelle claimed at **[1]** that Adams was just a candidate. While Adams was not yet Mayor (though he had won the Democratic primary) he *was* Borough President when he sent some texts to get the FDNY to approve the building. As Judge Ho noted in his opinion, whether Adams used his authority as Borough President to

deliver a quo to Türkiye was a matter for a jury to decide.

> Mayor Adams makes a separate but related argument that, even if formal authority is unnecessary, a pressure theory still requires that a defendant "*us[e]* his official position to exert pressure on another official." McDonnell, 579 U.S. at 574 (emphasis added). Adams contends that the Indictment fails to allege that any pressure he exerted on the FDNY stemmed from his official position as Brooklyn Borough President. See Def. Br. at 19. Rather, he argues, "the government is effectively claiming that Adams used his *potential future position* as Mayor to exert pressure on officials." Id.
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> But the Indictment alleges that, "as Brooklyn Borough President, [Adams] met with members of the FDNY from time to time," Ind. ¶ 38a, and the Government argues that it will prove at trial that it was Adams's position as Brooklyn Borough President that "[got] him in the room, as it were, with the fire commissioner" in order to exert pressure regarding the TCO. Tr. at 33; see also id. at 34 (arguing that the jury could conclude that "the defendant was using his official position as Brooklyn Borough president to let him reach out [to] the fire commissioner on city business with the mayor, that's what got him a room"). Ultimately, whether or not Adams used his official position as Brooklyn Borough President to exert pressure on the FDNY is a factual question for a jury to resolve.

So even on the bribery count, Mizelle was playing loose with the record.

But then he dismissed the other allegations in the indictment — which, again, Adams' lawyers

didn’t challenge as a matter of law — which include wire fraud, soliciting straw donors, and accepting illegal campaign contributions from foreigners, as mere campaign donations.

Pam Bondi’s Chief of Staff treated gifts from foreign powers as if they’re totally legal.

Noted.

That far, anyway, Chad Mizelle’s little screed looked thoroughly dishonest. But I didn’t doubt his — and by extension, DOJ’s — opposition to the enforcement of bribery statutes.

But at 2:37 ET, shortly after I was reading the rant Mizelle posted at 12:42, I was alerted to this development: an information setting up a one count guilty plea by former DC official Dana McDaniel, in a scheme that is almost certainly related the charges filed against former DC Council Member Trayon White last September. The information was signed by Acting DC US Attorney Ed Martin, one of Pam Bondi’s trusted operatives.

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Pam Bondi’s DOJ doesn’t have a categorical opposition to bribery charges, it turns out.

Only bribery charges against those from whom they want something in exchange.