THE LAW, CONSPIRACISM, AND GRAVITY

The lawsuit [docket] by nine FBI agents attempting to prevent the public release of a list of the names of all agents who worked on January 6 has detoured into a debate about Eagle Ed Martin's frustrations with rule of law.

That debate provides useful background to something going on more generally — the Trump Administration's effort to sustain the conspiracism that fuels MAGAt in the face of judges and a law built around evidence.

After Eagle Ed failed to secure Senate confirmation to be US Attorney and was instead moved to head DOJ's Weaponization and Pardon offices (in the latter of which he is considering freeing the men convicted of plotting to kidnap Gretchen Whitmer), Eagle Ed went on a media blitz promising to name and shame those he had long targeted as villains, but whose villainy consisted of no more than substantiating the crimes that Trump and his mob had committed.

> There are some really bad actors. Some people that did some really bad things to the American people. And if they can be charged, we'll charge them. **But if they can't be charged, we will name them. And we will name them and in a culture that respects shame, they should be people that are shamed**. And that's a fact. That's the way things work. And so, **that's how I believe the job operates**. [emphasis original]

Plaintiffs pointed to this appearance, arguing that Eagle Ed's promise to name and shame his targets confirmed the concerns of the plaintiffs that a list compiled in the first days of the Administration would be released to help freed

insurrectionists retaliate against FBI agents. The government responded by claiming that Eagle Ed would follow DOJ rules (as if Pam Bondi's DOJ follows even court rules about public comment!). Plaintiffs replied by quoting still more appearances from Eagle Ed's media tour, including his complaints that he can't get what he calls the truth out in Article III courts.

> Mr. Martin's comments during his May 15, 2025 interviews lead to several conclusions. First, he views his perceived mandate to "name" and "shame" as a legitimate alternative to following basic standards of federal criminal procedure. Second, he has indicated he is unconcerned about the consequences if he improperly or unlawfully "names" and "shames" government employees. ("Watch me" and "let the chips fall where they may.") Third, he believes that the trigger to "name it and shame it" is when something does not personally "make sense" to him. This is particularly troubling when considering Mr. Martin's frequently publicized views about the events of January 6, 2021, which includes his own representation of several criminal defendants and his dismissal of one of those cases as United States Attorney. 5
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> For example, on or about May 14, 2025, Mr. Martin sat for a one hour, twenty minute broad-ranging interview with television personality Tucker Carlson.6 On the January 6 riots, he lamented that "[m]illions of Americans are falling victim to the hoaxes, one after the other, and if you fall victim to the January 6th hoax, that it was an insurrection, armed, and this close to the end, then you might . . . rant and rave and things like that."7 To say the least, this indicates a vast departure from the Department of Justice's previous position that the January 6

> insurrection at the United States Capitol was not a hoax, and in fact involved the commission of serious, violent crimes. Far from enjoying the presumption of regularity, today's Department of Justice is anything but regular. Al-Hela v. Biden, 66 F.4th 217, 237 (D.C. Cir. 2023) ("[The presumption of regularity] can be rebutted if a petitioner demonstrates internal inconsistencies or inconsistencies with other evidence.").
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> After discussing his suspicions about the FBI's involvement in January 6, including in the FBI's investigation into the pipe bombs found near political party headquarters that day, Mr. Martin again addressed his frustration with Article III courts, and emphasized why publicizing private information is preferable to going through established procedures:
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>> Mr. Martin: And by the way, one of the reasons why I say information is so key, you can't, we can't win the Article III battle fast enough. We can fight it, and we can eventually win lots of them, you can't win it fast enough to get the progress we need, in terms of our, so you've got to be doing the information from . . .
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>> Mr. Carlson: For people watching, what's the Article III battle?
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>> Mr. Martin: Yea, the Article III means like, the federal courts, we're in federal courts, the President says you can't let people come into the country, and then the courts say nationwide injunction, then you know you're not allowed to do that, and you're constantly in court. You know, the U.S. Attorney's Office for D.C. has all

> of the cases of when the government is sued, and the President is sued, they all come into our office on the civil side, and so you see all that stuff coming in. During the Biden administration, the conservatives were suing in Texas, it was friendlier judges, now it's in D.C. So you're in the courts, **fighting to get the truth out, fighting to make these things, prosecutions and all, but they take a longer time than just getting the word out, right? Getting the information out.** I just, I feel like it's a different moment in history, and that's how I was as U.S. Attorney, that's why you saw, people saw so much outfacing action, because I wasn't just looking at courts, **I was looking at making an argument for the public** so they could see the policies.8
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> 5 See Andrew Perez, Trump's New Federal Attorney Withdrew Jan. 6 Charge Against His Own Client, Rolling Stone, Feb. 5, 2025 and United States v. Padilla, 1:21-cr-214-JDB (D.D.C.), Unopposed Motion to Dismiss Case by USA, ECF No. 125.
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> 6 Available at https://www.youtube.com/watch?v=LotMJAdWyOs (last visited May 22, 2025). 7 Id. beginning at approximately 00:09:00. [my emphasis]

Eagle Ed doesn't want to take the time to build cases. He wants to make an argument.

The problem, of course (besides those pesky rules on public comment), is that Eagle Ed's "arguments" have no basis in reality, and never have. The problem Article III courts pose for Eagle Ed is they review the evidentiary claims the government makes. And once courts start reviewing conspiracy theories of the sort Eagle

Ed favors, they poke holes in them.

That's what happened – according to a recent NYT story – to Eagle Ed's efforts to criminalize EPA grants.

> A politically fraught investigation opened by the Trump administration into a Biden-era Environmental Protection Agency grant program has so far failed to find meaningful evidence of criminality by government officials, according to people familiar with the matter.
>
> [snip]
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> While the investigation of some entities that received money through the program is continuing, agents and prosecutors see little evidence of any criminal conduct by E.P.A. officials who oversaw the funding. The vendor portion of the inquiry has yet to yield any strong evidence of criminal conduct, according to people with knowledge of the investigation who spoke on the condition of anonymity to discuss private conversations.
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> Prosecutors and agents have shared their findings with senior political leaders at the Justice Department, according to people familiar with the matter.

When you chase James O'Keefe propaganda, it turns out to be false … what a shock!

Most of Eagle Ed's complaints were directed at civil cases (where judges do keep catching DOJ in lie after lie after lie). But as Pam Bondi's DOJ moves to weaponizing DOJ via criminal charges, it will likely become a still bigger problem.

In the criminal cases charging Democratic officials, Judge Hannah Dugan, Ras Baraka, and LaMonica McIver, the facts claimed using criminal complaints rather than grand juries

deviate at least partly from reality and the inflammatory claims Trump's aides have made publicly deviate further still.

For example, county officials released video from Judge Hannah Dugan's interactions with an ICE team. Among other things, it clarifies that the doorway whence Eduardo Flores-Ruiz reentered the hallway from Judge Dugan's courtroom was *closer* to the Chief Judge's office where Dugan had sent the officers working with ICE than her own courtroom door; if she was really trying to hide him, she did a poor job of it. It also shows two DEA guys (possibly one of the ones she sent away) watch Flores-Ruiz just walk away down that hallway without arrest, undermining the claim that she concealed him (though success at concealing someone is not required to convict).

In New Jersey, the government told a different story in the felony criminal complaint against Congresswoman McIver, sworn out by HSI Special Agent Robert Tansey before Magistrate Judge Stacey Adams, than HSI Special Agent in Charge Rickey Patel swore out in the criminal complaint against Baraka before Magistrate Judge André Espinosa. Homeland Security told one story to a judge on May 9 and another story to a different judge on May 19.

The complaint against Baraka based its claim that Newark's Mayor knowingly trespassed by pointing to the chainlink fence and No Trespassing signs.

> 3. The Delaney Hall Facility is surrounded by chain-link fences and is accessible only through granted access. In addition to maintaining security, it likewise displays No Trespassing signage.

But the complaint against McIver confesses that a security guard let Baraka in.

> 5. Perimeter cameras show that when the security gate of Delaney Hall opened

> momentarily to allow a vehicle to enter into the secure area of the facility, McIVER and two other members of Congress moved quickly inside the secured area as the gate closed.
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> 6. Once the group entered the secured area, the **Mayor arrived thereafter at the facility and was told he could not enter without authorization**.
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> 7. However, the Mayor returned with members of his security detail and was able to enter inside the gate because **the guard was under the impression that the Mayor was part of the Congressional delegation**.
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> 8. While McIVER and the Mayor were in the secured area of the facility, V-1, an HSI agent, approached the Mayor and ordered him to leave the facility's secure area.
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> 9. V-1 spent approximately five minutes repeatedly ordering the Mayor to leave and issued multiple warnings that he would be arrested if he did not do so.
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> 10. McIVER and the other Congresspersons overheard this conversation and challenged V-1, protesting the Mayor's removal. V-1 explained to them that "Congress people are different," indicating members of Congress had lawful authority to be there, and that the Mayor did not.
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> 11. After numerous warnings to leave, and numerous warnings of potential arrest, the HSI agent announced he was going to place the Mayor under arrest. McIVER interjected, yelling "Hell no! Hell no! Hell no!" The HSI agent ordered the Mayor to put his hands behind his back and displayed his handcuffs. McIVER and other members of Congress surrounded the Mayor and prevented HSI from handcuffing him and taking him into

> custody.
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> 12. McIVER initially remained inside the secured area as **the Mayor was then moved outside** the gate.[my emphasis]

These details of the complaint against McIver will be hotly contested. WaPo did a good assessment of what the video evidence shows. It shows Baraka remained unchallenged inside the perimeter of the facility for almost 45 minutes. WaPo describes that after an initial confrontation and after a guard told Baraka to "walk out," he did (which is consistent with Baraka's own claims), as compared to the complaint's description that the Mayor, "was moved outside," using the passive voice.

> For nearly 45 minutes, Baraka remained just inside the secured area, occasionally chatting with members of his security detail, according to time-stamped videos. Then, at around 2:33 p.m., Homeland Security agents exited the building and confronted Baraka. In snippets of the conversation captured in video, agents told Baraka he had to leave because he was not a member of Congress. The three members of Congress joined the discussion as it grew tense.
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> Minutes later, video shows, an agent took a step toward Baraka, and Watson Coleman can be heard urging calm.
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> Referencing that moment, the Justice Department's complaint said a Homeland Security agent ordered the mayor to "put his hands behind his back and displayed his handcuffs."
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> McIver grew animated, calling the agent's intervention "unnecessary" and "ugly." One of the agents can be heard in videos saying: "All right, then. Walk out."
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> At 2:39 p.m., within moments of that

> remark, and six minutes after agents first confronted Baraka, he turned and walked away, arm-in-arm with Watson Coleman. The guard reopened the gate, and Baraka exited to an area in front of the facility, recessed from the sidewalk.

Then, *after Baraka walked out*, the guards plotted to arrest him within earshot of Rob Menendez, Jr, who warned Baraka.

> With concerns about Baraka's presence seemingly resolved, the three House members returned to the building for a tour, according to interviews with congressional staffers. The mayor remained outside the gate, speaking with reporters and protesters. Inside the building, congressional staffers said, lawmakers saw agents huddled and overheard them discussing plans to arrest the mayor.
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> Menendez then quickly exited the building and approached the gate, videos show. He spoke to Baraka through the chain-link fence, warning that agents were going to arrest him.
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> About a dozen agents then massed behind the fence. Some pulled masks up over their faces, and the group exited the facility gate and approached Baraka with handcuffs.

This was a premeditated confrontation on public land. And, WaPo describes, after Baraka's arrest, the members of Congress — including McIver — returned to the facility.

> After the scrum, agents accompanied McIver and the other House members as they resumed their tour of the facility — part of nearly two hours combined she remained on the grounds.

As Menendez noted in an interview with the Hill, “If you would witness an assault of an officer, you would not bring a group of people in to do a tour for 45 minutes.”

The government’s priorities – first arresting Baraka for trespassing *after he left the premises* into which he had been freely admitted, then letting McIver back in after she purportedly assaulted two officers – betrays what a stunt this is. And all that’s before you look at Kristi Noem’s typically batshit comments, which DHS did not defend when WaPo inquired about them.

> Speaking about the events outside the Delaney Hall detention facility, Department of Homeland Security Secretary Kristi L. Noem last week testified to Congress that a “mob of protesters including three members of Congress stormed the gate and they trespassed into the detention facility.” Her department published a news release claiming the lawmakers used an arriving “bus of detainees” as a decoy to gain entrance, then “holed up in a guard shack.” A department spokeswoman said lawmakers attacked officers, including “body slamming a female ICE officer.”
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> The videos examined by The Post did not support those descriptions of the events, and the government did not include them in its charges against McIver. In response to a request for comment, Noem did not directly address The Post’s findings about her remarks but noted in a statement that McIver had been charged. “No one is above the law,” she said.

Noem’s thugs ginned up this confrontation and then she blew them out of proportion. None of their actions – letting Baraka remain uncontested for a period, arresting Baraka after he left, allowing McIver back in after she

purportedly assaulted them – make sense. But having ginned up that confrontation, with Noem further escalating them with false claims, DOJ had to do something. They first charged, then abandoned charges against Baraka. Now they're attempting to prosecute McIver. And if this goes to trial, all the equivocations will be evidence of the unreliability of those behind the arrest.

The clown show has not gone unnoticed.

In comments made while dismissing the case against Baraka, Judge Epsinosa admonished Stephen Demanovich, the AUSA who picked up the Baraka case from a colleague and who is listed as the lead prosecutor in the case against McIver, for charging Baraka before investigating what really happened.

> Mr. Demanovich, beyond those 9.5 million constituents and above any individual or agency interests, federal prosecutors serve a singular paramount client: Justice itself.
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> Your role is not to secure convictions at all costs, nor to satisfy public clamor, nor to advance political agendas.
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> [snip]
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> The hasty arrest of Newark Mayor Ras Baraka, followed swiftly by the dismissal of these trespassing charges a mere 13 days later, suggests a worrisome misstep by your Office. An arrest, particularly of a public figure, is not a preliminary investigative tool. It is a severe action, carrying significant reputational and personal consequences, and it should only be undertaken after a thorough, dispassionate evaluation of credible evidence.
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> [snip]
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> The apparent rush in this case culminating today in the embarrassing

> retraction of charges suggests failure to adequately investigate to carefully gather facts and to thoughtfully consider the implications of your actions before wielding your immense power Your Office must operate with higher standard than that.

This is something I've been anticipating, as Trump and Eagle Ed and Pam Bondi and Noem promise prosecutions: They're creating the expectation among Trump's mob that there will be slam dunk prosecutions — precisely the same thing Eagle Ed kept promising but failing to substantiate — but in the process demonstrating the government's unreliability. "[T]oday's Department of Justice is anything but regular," the nine FBI agent plaintiffs argued, because the government has "demonstrate[d] internal inconsistencies or inconsistencies with other evidence."

I'm interested in this for two reasons: first, the possibility that these prosecutions will backfire, not just by creating sympathetic political martyrs, but also by further exposing Bondi and her top aides as liars violating legal ethics. Just as important, I'm interested in whether, as Trump's people have to abandon false claims when faced with judges, they'll lose credibility with Trump's rubes.

Several people entertained the latter possibility after Dan Bongino and Kash Patel debunked conspiracy theories about Jeffrey Epstein's death last week.

Phil Bump described what happened here.

> Over the weekend [now the weekend before last], Bongino — now the deputy director of the FBI, thanks to the president Bongino championed relentlessly for years — sat down alongside his boss, FBI Director Kash Patel, for an interview with Maria Bartiromo on Fox News's "Sunday Morning Futures." Bartiromo,

> never one to shy away from a right-wing conspiracy theory, asked about Epstein.
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> “You said Jeffrey Epstein committed suicide,” Bartiromo said. “People don’t believe it.”
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> “Listen, they have a right to their opinion,” Patel replied. But given his own experience and background, he said, “you know a suicide when you see one, and that’s what that was.”
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> “He killed himself,” Bongino added. “I have seen the whole file. He killed himself.”
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> When he subsequently posted his assessment of Epstein’s death on social media, the response from many of his followers was furious. Who’d gotten to him? Where was the Bongino from the podcast? He was offering a truth about America that wasn’t immune to the facts (as his podcast once promised) and his fans didn’t want to hear it.

Conspiracy expert Mike Rothschild reflected on the event and contemplated the possibility that conspiracists may no longer get away with contradicting their own past claims.

> [B]ecause contradiction is inherent to conspiracism, nobody minds if a trusted and cherished influencer says something wildly at odds with something they said another time. Sure, Mike Flynn can support QAnon while also saying QAnon is nonsense, or Alex Jones can get unreasonably excited about Trump seizing total power despite having spent years decrying presidents who sought total power. It doesn’t matter, because these people are trusted. And trust is everything among people who don’t trust anyone.
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> But that might be changing, and recent

> adventures in contradiction haven’t gone well for major figures in conspiracism. We might be going back to a time when certain ideas in fringe spheres are so ingrained and taken as infallible gospel to the point where even these trusted figures can’t go against them.
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> As Trump 2.0 grinds on, and the brain-rotting of the west accelerates at Ludicrous Speed, even major figures in the world of cranks and frauds are running up against the immovable object of their conspiracies moving past the need for the people who popularized them. The idea is starting to outweigh the person who communicates the idea. And it’s a shift that doesn’t bode well for many major figures in the intersection of politics, conspiracy, and commerce.
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> [snip]
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> No matter how much the conspiracy faithful like or trust Patel and Bongino, it’s not enough to override their belief in the idea of Epstein being murdered (probably by the Clintons) and his death made the subject of a coverup. That idea is sacrosanct to them. It is unshakable. And it’s telling that even two of the biggest purveyors of conspiracy theories in American politics didn’t embrace it in an official capacity when they had the chance to.
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> And now they’ve lost the trust of their audiences, at least for now. They can probably recover from this and sweep it away with some kind of justification, but the two are finding that it’s a lot easier to spout nonsense from the sidelines than it is to have to deal with it personally – particularly when your boss is connected to the guy at the center of the conspiracy theory.

Bump provides a possible explanation why: conspiracy theories are the weapon of the weak, not people in powerful positions like FBI Deputy Director.

> "Powerful people can't use conspiracy theories very well," Joseph Uscinski, associate professor of political science at the University of Miami and the co-author of "American Conspiracy Theories," told me in 2017. "They're tools of the weak to attack the powerful. But what we've seen in this instance is … Trump has built his entire machine on conspiracy theories."
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> He's built his machine in that way because reality doesn't comport with his rhetoric. His claims about immigration or his criminal cases or Joe Biden are indefensible if left to rely on actual evidence. So he relies instead on rumors, lies and baseless claims. It works largely because he's built a universe of compliant voices — like Bongino's — in an isolated information environment. He can make obviously false statements and be confident that his supporters will never encounter (much less seek out) the countervailing evidence.
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> He's also more adept at keeping the conspiracy theories alive. This is someone who, as president, refused to disavow adherents of QAnon, a bizarre theory about how he was secretly battling a cabal of Democrats and movie stars who were stealing children and extracting chemicals from them. ("I know nothing about it," he said of the movement at one point. "I do know they are very much against pedophilia.") He never flatly rejects any idea that his base supports, from theories about Epstein's death to false claims about vaccines.

> Others in his administration can't do that as readily.
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> In some cases, reality is rewritten to accommodate the argument advanced by Trump. Experts who rejected a link between a Venezuelan gang and that country's government were fired. Tattoos on a man sent to El Salvador are presented as reading "MS-13" when they don't.
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> In other cases, the can just keeps getting kicked down the road. When Attorney General Pam Bondi (Patel's boss) attempted to meet the roar of demand for ties between Epstein and prominent people on the left, she invited right-wing social media influencers to the White House and handed them binders of already available material. It was a flop — so Bondi keeps promising more to come. Those promises, incidentally, are one reason that the backlash against Patel and Bongino was so robust.

You can manipulate public releases — Eagle Ed's preferred tactic — by cherry picking and relying on propagandists. Stephen Miller deliberately pursued a legal tactic, the Alien Enemies Act, he believed afforded him the ability to make shit up about human beings with no pushback.

But, thus far at least, criminal cases are different, because they come with Speedy Trial deadlines, the ability to confront accusers, and — in the case of public events captured by video — compelling proof of government lies or overreach.

For now, until Trump packs the courts with more judges who adopt his conspiracy theories, DOJ will be a uniquely important sphere where Trump officials like Bongino will face the awkward moments where conspiracy theories experience gravity, where even past enthusiastic adherents

to conspiracy theories cannot sustain them, where Eagle Ed attempts to resort to name and shame rather than criminally charge the people who arrested thousands of January 6 mobsters. Even Pam Bondi, one of the most rabid parrots of Trump's propaganda, has earned the distrust of Trump's rubes with her own failure to deliver proof of the Epstein conspiracy theories.

None of that eliminates the pain and legal risk of those targeted with Trump's legal conspiracies. Baraka's lawyer, Rahul Agarwal, cataloged the cost being unjustly charged had had in just two short weeks.

> MR AGARWAL Judge the only other thing I'd say and I think it's worth noting publicly is you know the fact of this dismissal 10 days after the charges were — or lodged nearly two weeks after the charges were lodged does not undo the things that happened over the last two weeks; namely the fact that the mayor was detained for five hours in custody and the fact that he's been under these criminal charges We can't erase those things And think it's worth noting that notwithstanding this dismissal the mayor had to undergo you know public scrutiny and interrogation and detention all because of charges that are now being dismissed.

None of that guarantees the effort to use DOJ as an instrument of Trump's conspiracies will fail. And we saw in the Michael Sussmann and Igor Danchenko cases — Trump's prior attempt to weaponize DOJ — that the cost can extend far beyond five hours of detention.

But there's a way in which Trump and Bondi and Eagle Ed's abuse of DOJ could backfire. Because it creates a sphere in which the legal claims made in court and the political claims made on Fox News dramatically split. It creates a sphere in which those stoking conspiracy theories, like Bongino, publicly debunk them. It creates the

possibility that those seizing power by selling fear of the Deep State become it.