

BRAGG'S COMPLETELY MORONIC NON-INDICTMENT INDICTMENT

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Alvin Bragg turns NYC into a Banana Republic

[Dispensing with all the hysteria, Andy McCarthy cuts right to the bottom line so clearly that anyone can understand: this is literally no indictment at all. The absurdity of Trump's persecution is bottomless—JW]

It's always possible to be surprised. The indictment brought by Manhattan's elected Democrat district attorney Alvin Bragg against Donald Trump is even worse than I'd imagined.

Bragg's indictment fails to state a crime. Not once . . . but 34 times. On that ground alone, the case should be dismissed — before one ever gets to the facts that the statute of limitations has lapsed and that Bragg has no jurisdiction to enforce federal law (if that's what he's trying to do, which remains murky).

Bragg's indictment charges 34 counts, based on media reporting that clearly came from illegal leaks of grand-jury information — a crime, you can be sure, that goes in the overflowing bucket of serious offenses that Bragg refuses to prosecute.

The 34 counts are arrived at by taking what is a single course of conduct and absurdly slicing it into parts, each one of which is charged as a separate felony carrying its own potential four-year prison term.

Trump reimbursed Michael Cohen in monthly installments during 2017 for the \$130,000 Cohen paid to porn star Stormy Daniels right before the 2016 election for her silence about an alleged affair. That, in reality, is a single transaction: Trump paying back a debt to Cohen.

Yet, because Trump paid in installments and each installment includes an invoice from Cohen, a bookkeeping entry by the Trump Organization, and a payment to Cohen by check, Bragg not only charges each monthly installment separately; he subdivides the installments into installments (as if the invoice, book entry, and check were independent criminal events).

Voilà, one transaction becomes 34 felonies!

This exactly the sort of abusive behavior that rogue prosecutors engage in, and that the Justice Department admonishes federal prosecutors to avoid. Here — from the Manhattan DA's office — we now have as egregious an example of this low tactic as one can find.

In a real prosecutor's office, the district attorney is the adult who makes sure his inexperienced young subordinates don't abuse their enormous power this way. In the Manhattan DA's office, Bragg is the exemplar of abuse.

The tactics only further demonstrate the shoddiness of the case.

A prosecutor holding a weak hand tries to hoodwink the jury into believing the defendant must be an incorrigible criminal, despite the lack of evidence; hence the dozens of counts.

A prosecutor holding a weak hand also hedges his bets in this way: The jury may flush most of the indictment down the drain, but the unscrupulous prosecutor knows if he can secure a single guilty verdict, even with 33 acquittals, he has achieved his objective of branding his target a felon.

The worst due-process abuse of Bragg's indictment, however, is that . . . *it's not an indictment*. The Constitution's Fifth Amendment guarantees that Americans may not be accused of a serious crime — essentially, a felony — absent an indictment approved by a grand jury.

The indictment has two purposes. First, it must put the defendant on notice of *exactly what crime has been charged* so that he may prepare his defense. Second, the indictment sets the parameters for the defendant's closely related right to double-jeopardy protection, also set forth in the Fifth Amendment.

That is, by stating the crime charged, the indictment enables the defendant to claim a double-jeopardy violation if the prosecutor attempts to try him a second time on the same offense.

Here, *the indictment fails to say what the crime is*. Bragg says he is charging Trump with felony falsification of records, under Section 175.10 of New York's penal code.

To establish that offense, Bragg must prove beyond a reasonable doubt that Trump caused a false entry to be made in his business records, and did so with an intent to defraud that *specifically included trying to “commit another crime or aid or conceal the commission” of that other crime.*

Nowhere in the indictment does the grand jury specify what other crime Trump fraudulently endeavored to commit or conceal by falsifying his records. That is an inexcusable failure of notice. *The indictment fails to alert Trump of what laws he has violated, much less how he violated them.*

If any prosecutor were ever daft enough in the future to accuse Trump of falsifying records to conceal, say, a federal campaign-finance crime, Bragg’s indictment would be useless for double-jeopardy purposes because it doesn’t specify what criminal jeopardy Trump is in.

We needn’t speculate why Bragg is being so coy about this. He doesn’t have another crime. At his press conference, he blathered about federal campaign-finance law, but he knows he lacks jurisdiction to enforce federal law. He further mumbled something about state election laws, but those — as you might imagine — apply to elections for state office, not the presidency.

And the DA’s stream of consciousness about Trump’s intent to defraud tax authorities is belied by the fact that he does not accuse Trump of evading taxes — despite having already prosecuted the Trump organization for tax evasion, a case that neither named Trump as a defendant nor cited the hush-money scheme as a source of tax crimes.

Here’s the thing, though: Prosecutors don’t get to be coy with the grand jury. The district attorney is the grand jury’s legal adviser in the indictment process. Consequently, a district attorney has the duty to instruct the grand jury on the law applicable to the charges proposed. So . . . what crime did Bragg’s office instruct the grand jury that Trump was trying to commit or conceal by falsifying business records?

There has to be one, at least in theory. But if Bragg did not spell it out, then the grand jury cannot have found probable cause of the crime charged, which is the grand jury’s function. I’d like to think a prosecutor would not make so basic an error as failing to advise the grand jury of the alleged crime at issue.

But if Bragg had properly instructed the grand jury, then surely the crime in question would have been explained in the indictment. It’s not.

Moreover, the document Bragg has the temerity to label his “statement of facts,” filed with the court in tandem with the no-notice indictment, is itself a work of fiction. He alleges that Trump falsified his records to conceal “damaging information from the voting public during the 2016 presidential election.” But every one of the 34 acts that Bragg charges as felonies happened *after the 2016 election* — from February through December 2017.

Bragg would like to be able to charge Trump with keeping unflattering information from the voting public. But all candidates for public office (no doubt including the progressive Democrat elected to the Manhattan district attorney’s post) try to airbrush unfavorable information — that’s electoral politics.

Bragg’s problem is that it is not a crime to pay people for their silence: Nondisclosure arrangements are not just legal, they are a staple of the civil-justice system.

The nondisclosure arrangements are the only relevant events in the case that occurred before the 2016 election. They are not crimes, but Bragg is hellbent on accusing Trump of crimes, so he is left to suggest — because he

cannot prove — that Trump skirted campaign-finance laws.

Put aside, though, that Bragg does not have the nerve to actually charge the federal crimes he is coyly intimating. To show how moronic this is, let's pretend that these hush-money deals were in-kind campaign expenditures, that Trump decided to regard them as such, and that Trump's campaign disclosed them to the Federal Election Commission as Bragg's fantasy version of the law mandated.

Even if all that were true, *the law would not have required the Trump campaign to disclose the expenditures until the next reporting period after they occurred, sometime months into 2017*. That is, such disclosures would not possibly have influenced the 2016 election.

What a disgrace.

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