

DOJ CLAIMS A KEY WITNESS AGAINST TOM BARRACK WAS BEING PAID \$15,000 A MONTH AS PART OF HIS DEFENSE TEAM

With the exception of the epic conflicts that Jan 6 lawyer John Pierce has accumulated by representing dozens of Jan 6 defendants, most of the conflicts that come up in prosecutions are waivable. Prosecutors ask the defendant to be alerted to the conflict to ensure it doesn't provide a way for the defendant to blow up the case later. Or, in the case of John Durham, he uses claimed conflicts to float a bunch of conspiracy theories that elicit death threats.

But a conflict notice in Tom Barrack's case is something else. EDNY explains, first of all, that Colony Capital is paying for Barrack's defense as part of an employment agreement finalized in October. That part is another waivable conflict, not that surprising.

Where things get more interesting, EDNY reveals that Barrack's former Executive Secretary, who played a key role in some of the charged conduct, and who provided materials to the government in the period leading up to the June 2019 interview where (EDNY alleges) Barrack lied to cover up his relationship with the Emirates, was on the payroll of his defense team until April 29. She was being paid \$15,000 a month.

For example, the Witness played a role with Barrack in the planning and execution of the Presidential Inauguration of President Trump, including an event (the Chairman's Global Dinner) that is specifically mentioned in the Indictment. The Witness also assisted Barrack in the preparation

of materials submitted as part of his background investigation when Barrack was being considered for a potential appointment in the Trump Administration during the relevant time period. The government anticipates that these events and materials will be presented to the jury at trial.

Prior to the unsealing of the Indictment in this case, an attorney at Paul Hastings LLP (and one of Barrack's attorneys at that time) (the "Paul Hastings Attorney"), advised the government that he also represented the Witness, and requested the opportunity to voluntarily provide certain requested materials to the government. On or about May 2, 2019, the Paul Hastings Attorney produced records to the government, and in a letter indicated that the Witness was his "client," though in the same letter, he also indicated that he was "Counsel to Thomas J. Barrack, Jr." It is the government's understanding that the Paul Hastings Attorney's representation of the Witness was paid for by Barrack.

On or about July 16, 2021, the Indictment in this matter was unsealed and Barrack was arrested. Several weeks later, in early August 2021, Barrack's then-counsel, Paul Hastings LLP (who, as noted above, also represented the Witness in this investigation), hired the Witness as a litigation consultant. 3 Paul Hastings hired the Witness as a litigation consultant notwithstanding that the Witness has no legal education, is not a lawyer, and has never previously worked as a litigation consultant. When [O'Melveny & Myers] became the defendant's counsel, OMM also hired the Witness as a litigation consultant. It is the government's understanding that the Witness was paid

approximately \$15,000 a month for the Witness' services and that the only matter the Witness was working on for OMM is the instant case. OMM has included the payments for the Witness in invoices submitted to Company A as legal costs. Company A raised concerns to OMM about whether the Witness' costs were reasonable and appropriate under the terms of the Advanced Fees Agreement but ultimately, after speaking with OMM, agreed to pay the Witness' costs. OMM first advised the government that it had retained the Witness as a litigation consultant on or about March 31, 2022, a few days prior to a scheduled interview of the Witness by the government.

2 A potential conflict already compounded by the fact that Company A is a current client of OMM.

3 The Witness was no longer working with Barrack or at his company by this time, and instead was working at an unrelated business venture.

Particularly given that Barrack's lawyer involved this person in an effort to stave off indictment in 2019 that the government claims was an attempt to obstruct the investigation, I'm wonder what she was being paid \$15,000 a month to not remember ... and whether that will change now that Colony has stopped paying those bills?

Update: Pronoun changed per John Paul Jones' note of the footnote referring to the person as "her."

The timing of this all suggests what kind of more valuable information this witness might have. EDNY says OMM first told them she was part of the defense team on March 31, days before EDNY was to interview her.

Ten days earlier, OMM had included this question in an agenda for a status hearing on March 22:

Defense counsel respectfully request that the Court inquire of the government whether it presently intends to present a superseding indictment to the grand jury before trial and if so, any information the government can provide as to the timing of the superseder.

The answer EDNY provided was yes, they reserve the right to supersede the indictment and it might happen in June. Then on April 5, EDNY responded to a bunch of Barrack's complaints about discovery by suggesting that several of Barrack's not-yet charged co-conspirators (Bannon is the most obvious) might still be charged.

Additionally, the investigation related to this case is ongoing (we note that one of the charged defendants is a fugitive and the indictment alleges conduct by several unindicted co-conspirators).

In other words, at around the time that EDNY would have been arranging an interview with the former Executive Secretary as part of an investigation into Barrack's not-yet charged co-conspirators, OMM figured out that EDNY might supersede this indictment.

Which is probably one of the reasons they were paying her \$15,000 a month to consult on this case: to find out whether EDNY was onto other, more damning Barrack actions. Money well spent!

Meanwhile, somewhere along the way, Colony Capitol – which is itself represented by OMM – balked at paying \$15,000 for her costs, but kept paying anyway.

A month after informing EDNY that she worked for them, on April 29 (so about two weeks ago) OMM told EDNY that she no longer does.

Presumably, whatever "cooperation" she gave to EDNY in 2019 was a limited hangout, designed to

protect more damaging information. That information is probably related to the substance of the crimes that EDNY was investigating when they tried to get her interview in March.