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THE CURRENT: How serious are the Trump Organization tax fraud charges?

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(MUSIC)

PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita.

A New York grand jury has issued indictments against the Trump Organization and its chief financial officer Allen Weisselberg on criminal charges of tax fraud and other tax crimes. With us to explain the charges the Trump business is facing and what this may mean for the former president is Norm Eisen, senior fellow in Governance Studies here at Brookings. Norm, thanks for talking to us today.

EISEN: Adrianna, wonderful to be back with you.

PITA: The details of the indictments facing the Trump Organization were unsealed Thursday afternoon -- which is just a short time ago from our recording time here -- so what can you tell us about the charges that the Trump business is facing?

EISEN: The Trump Organization, a cluster of businesses belonging to Donald Trump and as well as his closest business associate, likely his closest, Allen Weisselberg, the CFO of the Trump Organization, were charged in a 15-count indictment that alleges a sweeping, years-long, going back to 2005 and running to the present day, scheme to defraud the state of New York of tax revenue and to commit a variety of other related crimes. And the gist of the charges is that the Trump Organization compensated Mr. Weisselberg and others through a series of very lucrative fringe benefits -- cars, apartments, tuition payments for grandchildren -- that the total sum that Mr. Weisselberg benefited was well in excess of a million dollars, and that there was a scheme to avoid paying taxes on this, both by the company and by Mr. Weisselberg.

Some had speculated that this would be minor or tricky-tack set of charges, but when you read through the indictment, through all 15 counts and the 24-page indictment and the stunning level of detail, it really presents a sweeping tax fraud case, much as we predicted in our new Brookings report on the New York state Trump investigation that we released earlier in the week with myself and a very distinguished group of co-authors: Don Ayer, senior former U.S. attorney and Republican DOJ official; Danya Perry, who was a senior New York state and New York federal prosecutor, and John Cuti who, like me, is a long-time defense lawyer. So we thought it would be big. We cautioned that we wouldn't know until we saw the first indictment, and now we know, indeed, this is a breathtaking scheme. And Adrianna, it's one that is designed to be tried to a jury and when it is, it is something that a jury won't like because it describes extremely lucrative New York apartments, Mercedes Benzes, tuition payments at fancy private schools, large cash bonuses; it describes a pattern of things that juries won't like.

It signals, number one, the pressure is on Mr. Weisselberg to flip, that is to cooperate and work against Mr. Trump, testify against Mr. Trump; and number two, as we described in our report, that if he does, you know, the cases on the precipice of perhaps we'll see, but if they can get that cooperator perhaps moving against the ex-president himself.

PITA: Thanks, Norm, and we're going to come back to that question about what this could mean for former President Trump himself in just a little bit. And for our listeners who might be interested, for your report, for more on the legal framework and principles of this case, that's going to be linked, as always, in our show notes, so folks can find it there, or anywhere on the Brookings website.

I want to ask you to expand a little bit on what you were just talking about, about the severity of these charges. Obviously this is really important because of the potential involvement of the president, but, aside from that, put this on a scale for us: in terms of you what you might cynically call garden-variety corporate corruption versus like Enron and the Arthur Andersen scandals, where the companies essentially folded and people went to jail for some serious time.

EISEN: This is a very serious felony indictment. It's a large sum. People are regularly prosecuted for amounts less than the sum of \$1.76 million that is alleged to be the benefit to Mr. Weisselberg – and we have to remember these are just allegations; he is entitled to the benefit of being considered innocent until proven guilty and now we need to let the judge and eventually the jury do their work. But the most important aspect of evaluating this very serious set of initial charges is that they are just initial charges. These are the first charges that were brought in the case, and typically in prosecutions, you often, not always -- sometimes the first charge is the last charge – but you often see that initial charges are brought and then the prosecutor works their way up the ladder.

In the Mueller investigation, for example, there were ultimately a wide array of criminal charges that were brought against a large number of people and, in my view, in the Mueller report, the special counsel concluded that there was sufficient evidence to charge Mr. Trump once he was out of office. Of course, I worked as counsel for the House Judiciary Committee on the impeachment, I sat across from Mr. Mueller as he told the members of the committee that the president could be charged as a matter of law, without pre-judging whether he should be charged once he left office.

So investigations take time to develop, and before we compare it to Arthur Andersen, Enron or any of the other cases – I actually worked on the Enron cases as a private lawyer -- there again, it took years for those cases to be filed, charged, the criminal litigation, the parallel civil litigation, there's allegations of federal tax fraud in here that could lead to federal charges so let's not judge yet. We need to give the process a chance to work. My own guess, as we explained in the report it's an educated one based on the evidence, law, and assessment of the defense's knowledge of the prosecuting authorities, is that this is not the end; it is not even the beginning of the end, but to paraphrase Churchill, it is just the end of the beginning.

PITA: With that in mind, knowing, understanding that it's still at the early stages yet, the big question, of course, is whether or not this will lead to charges against Donald Trump himself. Based on these early documents, what's your read on the likelihood of further charges against the president himself coming?

EISEN: Well, Adrianna, if I answered that question, I probably would have to be and should be tossed out of Brookings, because nobody knows what is going to happen. All I can tell you – I can't

predict the likelihood that he'll be charged or not, it's too difficult but – and this is a fine distinction that I know your listeners will get even if people out in the world don't always get it – what I can do is assess the risk today, based on the evidence that's in this indictment, and of course the 60 pages of analysis of not only the publicly available evidence, but the law, the legal defenses that Trump will bring, the Trump Organization, Mr. Weisselberg and that Mr. Trump would bring if he were charged, that's in our Brookings report, and my view is that there's a substantial risk. So, I'm not sure if that answers your question, but I can tell you that I think Mr. Trump is at substantial risk today, but beyond that I can't predict if he'll be charged or not.

PITA: No, that's a great clarification, thanks for explaining it that way.

EISEN: And if readers, if listeners or readers want to see for themselves how we reach the conclusion, myself and the experts I wrote with, they should check out the report because a lot of analysis – we have been working for months – a lot of analysis goes into doing those kinds of risk assessments.

PITA: And you've mentioned that this could be you a very long process; a lot of these investigations can go on for years. The Manhattan district attorney, Cyrus Vance, it's his office that's in charge of this proceeding, his term is going to expire at the end of this year. What could that mean for how the case goes forward? How could that affect it?

EISEN: Yeah, we write about this in the report. Again, it's an assessment of what we know. I think there will be a desire, because Mr. Vance's term ends at the end of the year, to advance the case as much as possible before he goes. There are other factors that point to that calendar. These grand juries are impaneled, special grand juries that return today's indictments, they're impaneled for six months. Now, that term can be extended. The statutes of limitations are running, although they address the statute of limitations, the prosecutors do, in the indictment by pleading a conspiracy, and as we explained in our report, conspiracy charges can toll; they extend statutes of limitations. The felonies in the complaint bear a five-year statute of limitations, but they're going back to 2005 because it's an ongoing conspiracy and it continued until the day the indictments were returned. The period is, the end of the conspiracy is June 30, 2021. That's just yesterday, so, despite that statute, you never know if you're going to win or lose these arguments, the statute of limitation arguments that we write about at length, for those who are curious, so that's another reason to attempt to wrap things up.

All of that being said, a new DA will take office and it's possible that DA Vance will try to move as much as he can, by the end of the year, certainly attempt to resolve whether or not Weisselberg is going to cooperate and then hand the baton to his successor, so he doesn't have to conclude it by then.

PITA: Norm, thanks so much for talking to us today and explaining this. And, again, our readers can find you and your co-authors' report on the Brookings website, brookings.edu. It's "New York state's Trump investigation" and we'll have it linked in the show notes. Thank you, Norm.

EISEN: Thanks for having me again Adrianna, my pleasure.