

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

IN THE MATTER OF AN APPLICATION
OF NEWS ORGANIZATIONS RELATED
TO THE ARRAIGNMENT IN INDICTMENT
71543/2023

DECISION AND ORDER

Ind. No. 71543-23

HON. JUAN M. MERCHAN J.S.C.:

On March 30, 2023, the District Attorney of New York County, Alvin L. Bragg, Jr., by the Affirmation of Peter B. Pope, an Assistant District Attorney, applied to this Court for an Order authorizing the Office of the District Attorney (hereinafter “DANY”), to disclose to the public that the grand jury had returned a true bill in the Matter of the People of the State of New York v. Donald J. Trump, Ind. No. 71543-23. This Court signed the Order that day.

Arraignment on this matter is scheduled to take place tomorrow, April 4, 2023, at approximately 2:15 PM.

On the evening of Friday, March 31, 2023, the law firm of Davis, Wright, Tremaine, LLP, by Robert Balin, (hereinafter “Petitioners” or “News Organizations”), applied to this Court on behalf of numerous news organizations, for an Order allowing access at the arraignment of “print journalists ... [and] a limited number of videographers, photographers, and radio journalists.” As required by 22 NYCRR §§ 29 and 131, this Court contacted the People and the Defense via e-mail on Sunday, April 2, 2023, and invited both parties to bring to this Court’s attention any concerns or objections they might have regarding the application. The parties were asked to respond in writing by 1:00 PM on Monday, April 3, 2023. The Court also invited the Petitioners to make additional submissions, if necessary, to expand upon their original application.

All three parties filed submissions by the one o’clock deadline today.

CONTENTIONS OF THE PARTIES

PETITIONERS

Supplementing their original application of March 31, 2023, requesting that in addition to providing access to print journalists, the Court allow the presence of a limited number of videographers, photographers and radio journalists, the Petitioners made six additional requests in their letter of April 3, 2023. First, Petitioner requested a hearing on their application and asked that the hearing be consolidated with the required conference. See 22 NYCRR § 131.5.

Second, the News Organizations requested that “as many seats as possible be reserved for members of the press within the physical courtroom where the arraignment will take place.

Third, Petitioners expressed their objection to the use of “overflow” rooms arguing that such method of viewing court proceedings “is not a constitutionally adequate substitute for in-person news reporting.” In support of this argument, Petitioners argued, among other things, that the remote CCTV cameras used to transmit signals to the overflow rooms “cannot substitute for first-hand observation of the demeanor and facial expressions of parties, their counsel and judicial officers.” Nonetheless, Petitioners request, “to the extent the arraignment courtroom cannot accommodate every journalist and member of the public who wishes to attend, the News Organizations request that the court provide as many overflow rooms (with CCTV) as is possible under the circumstances.” The contradiction undermining the argument is self-evident. The Court also notes that those present in the arraignment courtroom will have a far more difficult time observing “demeanor” and “facial expressions” because they will be seated behind the parties and looking at the backs of their heads. Whereas the people seated in the overflow rooms will have the benefit of the faces of the parties because the CCTV cameras are mounted in the front of the courtroom.

Fourth, the News Organizations ask that journalists be permitted to bring all electronic devices into the courtroom (and overflow rooms) “so that they may e-mail, text and live-Tweet during the proceedings.”

Fifth, the News Organizations request confirmation that the use of cameras will be permitted in the hallways of the courthouse.

Sixth, the News Organizations request that a seat in the arraignment courtroom be reserved for one of its attorneys.

DISTRICT ATTORNEY NEW YORK COUNTY

The People take no position and defer to this Court's discretion though they note that "the presence of cameras" "raises a number of concerns" "including the prejudicial impact of pretrial publicity on the jurors, the impact on the truthfulness of the witnesses, responsibilities placed on the trial judge to assure a fair trial and the impact on the [defendant]" *Citing Courtroom Television Network LLC v. State of New York*, 5 N.Y.3d 222 at 230.

DEFENDANT

Defendant opposes the News Organization's application and asks that it be denied. Defendant expresses fear that granting the application will create a "circus-like atmosphere ... raise security concerns and is inconsistent with President Trump's presumption of innocence." Defendant further argues that the heightened media presence will "inevitably result in prejudice" and "detract from both the dignity and decorum of the proceedings and will necessarily interfere with the fair administration of justice." Lastly, Defendant correctly identifies the extraordinary security concerns associated with this arraignment.

DISCUSSION

That this indictment involves a matter of monumental significance cannot possibly be disputed. Never in the history of the United States has a sitting or past President been indicted on criminal charges. Mr. Trump's arraignment has generated unparalleled public interest and media attention. The populace rightly hungers for the most accurate and current information available. To suggest otherwise would be disingenuous. Understandably, the News Organizations want to fulfill their responsibilities and argue that obtaining the broadest possible public access helps advance that mission.

Unfortunately, although genuine and undoubtedly important, the interests of the News Organizations must be weighed against competing interests. This Court is now called upon to engage in that balancing exercise.

"In order to maintain the broadest scope of public access to the courts, to preserve public confidence in the Judiciary, and to foster public understanding of the role of the Judicial Branch in civil society, it is the policy of the Unified Court System to facilitate the audio-visual coverage of court proceedings to the fullest extent [.] 22 NYCRR § 131.1(a). "All presiding trial judges and all administrative judges shall take whatever steps are necessary to ensure that audio-visual coverage is

conducted without disruption of court proceedings, without detracting from or interfering with the dignity or decorum of the court ... without compromise of the safety of persons having business before the court and without adversely affecting the administration of justice.” 22 NYCRR § 131.1(g). “Coverage of judicial proceedings shall be permitted only upon order of the presiding trial judge approving an oral or written application made by a representative of the news media for permission to conduct such coverage.” 22 NYCRR § 131.3(a). Upon receiving such an application, a presiding trial judge is required to conduct an appropriate review which includes consultation with the news media, consultation with counsel and a review of all statements or affidavits submitted in support and opposition to the application. 22 NYCRR 131.3(b). This Court has conducted such a review.

“In determining an application for coverage, the presiding trial judge shall consider all relevant factors, including but not limited to: 1. The type of case involved; 2. Whether the coverage would cause harm to any participant; 3. Whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties; 4. Whether the coverage would interfere with any law enforcement activity; 5. Whether the coverage would involve lewd or scandalous matters; 6. The objection of any of the parties, victims or other participants in the proceeding of which coverage is sought; the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage can be ... operated without disturbance.” 22 NYCRR § 131.3(d)

“Following review of an application for coverage of a judicial proceeding, the presiding trial judge, as soon as practicable, shall issue an order, in writing or on the record in open court, approving such application, in whole or in part, or denying it.” 22 NYCRR § 131.3(e)

DECISION

In consideration of all relevant factors, including but not limited to those delineated in 22 NYCRR § 131.3(d) and in particular, whether the coverage would interfere with the fair administration of justice; whether the coverage would interfere with law enforcement activity; the objections of the Defendant; and limitations related to the physical structure of the courtroom, it is hereby

ORDERED that Petitioner’s original application is granted to the extent that five pool photographers shall be permitted into the jury box prior to the commencement of the arraignment. The photographers will be permitted to take still photos for several minutes until such time as they

are directed to vacate the jury box by court personnel. No further photography will be permitted in the courtroom after that.

Petitioner's six requests of April 3, 2023, are decided as follows:

First request: Having heard from all parties through their written submissions, the application for a further hearing is DENIED. A Conference is hereby scheduled for Tuesday, April 4, 2023, in Part 59 to be conducted at 2:15 p.m. immediately preceding the arraignment.

Second request: The proceedings will be heard in Part 59 commencing at 2:15. Access to the proceedings will be on a first-come first-served basis. Members of the press and public seeking access will be able to line up outside 111 Centre Street. The line for the press will open at 8:00 a.m. and the line for the public will open at 9:00 a.m. Court officers will distribute color-coded access cards to those on line subject to court room capacity. Individuals who receive an access card will be given access at approximately 1:30 p.m. through the north entrance of 100 Centre Street.

The third request is GRANTED to the extent that Parts 75 and Part 95 will serve as over-flow rooms where the proceedings can be viewed remotely. The press and public will be directed by court officers to one of the two over-flow court rooms, pursuant to color-coded access cards.

The fourth request is DENIED. The use of cell phones, laptops or any electronic devices will be strictly prohibited in the court rooms. Any such devices will have to be turned off and secured outside of public view while in the courtrooms. Any device that is not properly secured pursuant to this Order will be subject to confiscation.

Fifth request: Use of cameras will be PERMITTED in the hallways of the building.

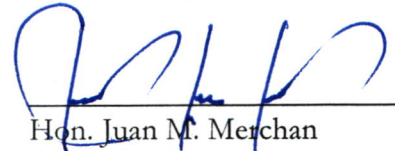
The sixth request is Granted. A seat in Part 59 will be reserved for Robert Balin as Counsel for Petitioners; and it is further

ORDERED that any violation of this ORDER shall be punishable by contempt pursuant to Article 19 of the Judiciary Law.

Dated: April 3, 2023
New York, NY

APR 03 2023

ENTERED,



Hon. Juan M. Merchan
Acting Justice of the Supreme Court
Judge of the Court of Claims

HON. J. MERCHAN