

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, Attorney General of the State of New
York,

Plaintiff,

vs.

DONALD J. TRUMP, DONALD TRUMP, JR., ERIC
TRUMP, ALLEN WEISSELBERG, JEFFREY
MCCONNEY, THE DONALD J. TRUMP
REVOCABLE TRUST, THE TRUMP
ORGANIZATION, INC., TRUMP ORGANIZATION
LLC, DJT HOLDINGS LLC, DJT HOLDINGS
MANAGING MEMBER, TRUMP ENDEAVOR 12
LLC, 401 NORTH WABASH VENTURE LLC,
TRUMP OLD POST OFFICE LLC, 40 WALL STREET
LLC, and SEVEN SPRINGS LLC,

Defendants.

Index No. 452564/2022
Engoron, J.S.C.

**AFFIRMATION IN SUPPORT OF
DEFENDANTS' MOTION FOR A
MISTRIAL**

CLIFFORD ROBERT, an attorney duly admitted to practice law before the Courts of
the State of New York, hereby affirms the following statements to be true under the penalties of
perjury:

1. I am the principal of the law firm of Robert & Robert PLLC, attorneys for
Defendants Donald Trump, Jr. and Eric Trump. I am fully familiar with the facts and
circumstances set forth herein based on the files and materials maintained by my firm.

2. This Affirmation is submitted on behalf of Defendants Donald J. Trump, Donald
Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable
Trust, The Trump Organization, Inc., The Trump Organization, LLC, DJT Holdings LLC, DJT
Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC,

Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, “Defendants”) in support of their motion for a mistrial.

3. Trial in this matter began on October 2, 2023. Annexed hereto as **Exhibit A** is a true and correct copy of the transcript of that trial from October 2, 2023 to November 9, 2023.

4. The Court’s conduct at issue is not limited to on-the-record comments and rulings.

5. Specifically, the Court has repeatedly made *ex parte* comments on the subject matter of the case and parties and counsel thereto.

6. In an October 2, 2020, newsletter this Court maintains as an alumnus of the Wheatley School, this Court included links to articles about Eric Trump being compelled to testify in a subsection entitled “1967- Art Engoron – Articles about Decisions.” See <http://www.wheatleyalumni.org/BlogPost/Blogpost-20201002-51.html>.

7. In the December 28, 2020, newsletter, the Court included links to articles about this Court’s decision on the Trump Organization’s claims of privilege from, inter alia, Bloomberg, the Washington Post, and CNN. See <http://www.wheatleyalumni.org/BlogPost/Blogpost-20201228-54.html>.

8. In the February 16, 2021, newsletter, this Court included links to articles relating to the trial, characterizing one as a “humorous, irreverent take.” See <http://www.wheatleyalumni.org/BlogPost/Blogpost-20210216-56.html>. That newsletter, which is publicly available, was published just days after ruling that President Trump had to turn over documents to investigators.

9. In the November 7, 2021, newsletter, the Court, in a section entitled “1967 – Man in the News,” linked five articles, again from the Washington Post, CNN, and Bloomberg, about

his order in the special proceeding compelling Defendants to turn over documents. See <http://www.wheatleyalumni.org/BlogPost/Blogpost-20211007-63.html>.

10. In the March 14, 2022, newsletter, the Court likewise, in the “Graduate in the News” section, posted links to articles in the New York Times, Washington Post, and Politico regarding his decision in the special proceeding to order Defendants to testify. See <http://www.wheatleyalumni.org/BlogPost/BlogPost-20220314-68.html>.

11. In the May 8, 2022, newsletters, the Court posted links to New York Times and Newsweek articles regarding his decision to hold President Trump in contempt. See <http://www.wheatleyalumni.org/BlogPost/BlogPost-20220508-70.html>.

12. In the June 20, 2022, newsletter, the Court again posted a link to an NPR article that President Trump had lost the appeal. See <http://www.wheatleyalumni.org/BlogPost/BlogPost-20220620-72.htm>.

13. In the July 3, 2022, newsletter, the Court similarly linked an article from Business Insider about Cushman & Wakefield. See <http://www.wheatleyalumni.org/BlogPost/Blogpost-20220704-74.html>. Two days later, the Court held Cushman & Wakefield in contempt.

14. In the September 11, 2022, newsletter, ten days before the lawsuit was filed, the Court also posted a link to an Above the Law article criticizing Ms. Habba. See <http://www.wheatleyalumni.org/BlogPost/Blogpost-20220911-78.html>.

15. In 2022, Allison Greenfield (the “Principal Law Clerk”), the Court’s Principal Law Clerk since 2019, campaigned unsuccessfully for a Democrat nomination to Manhattan Civil Court.

16. As part of that campaign, the Principal Law Clerk participated in a virtual forum hosted by the Grand Street Democrats. During that forum, she framed her role as almost a co-

equal, describing her participation in a high-profile real estate case as follows: “*we* were incredibly active in that case” and “*we* tried to stop the two towers.” See <https://youtu.be/3Ug0lo7cYxo?feature=shared&t=2968> at 57:35 - 57:50. She also described her judicial philosophy as driven not by the facts and the law but by political considerations: “[o]ne thing that I think is incredibly important to consider, what would the people who elected me want me to do and is there any precedent . . . that would allow me to achieve that outcome.” Id. at 53:51-54:30.

17. During the pendency of the special proceeding leading up to this case and then after this case was filed by the Attorney General, the Principal Law Clerk contributed over \$3,000 to political organizations, including the West Side Democrats, Grand Street Democrats, Hell’s Kitchen Democrats, Village Independent Democrats, and New York County Democratic Committee, in 2022 and over \$900 in 2023 in violation of 22 N.Y.C.R.R. 100.5(c)(2). See <https://publicreporting.elections.ny.gov/Contributions/Contributions>.

18. The Principal Law Clerk also engaged with and financially supported numerous other political organizations, including, but not limited to, (1) the Manhattan Democrats, whose County Leader, Keith Wright, has spoken out against President Trump and in favor of Alvin Bragg’s indictment, (2) the Village Independent Democrats, who endorsed the Attorney General and campaigned actively against President Trump, and (3) the Four Freedoms Democratic Club, which has likewise taken anti-Trump positions.

19. In connection with her campaign, the Principal Law Clerk created and maintained a website, Instagram account, and Twitter account. The website “greenfield4civilcourt.com,” which remains functional, includes a link to, *inter alia*, the Principal Law Clerk’s Instagram page, created and maintained under the handle “@greenfield4civilcourt.

20. In February 2022, while the special proceeding against many of the same defendants was ongoing before this Court, the Principal Law Clerk posted on her public “greenfield4civilcourt” Instagram endorsements from the Village Independent Democrats and the Grand Street Democrats.

21. On February 26, 2022, the Principal Law Clerk made a post purporting to withdraw from the Democratic primary but advised followers to “[k]eep an eye on this space.”

22. The Principal Law Clerk actively posted on the “greenfield4civilcourt” account in the subsequent months, including with respect to Democratic primaries, the Village Democrats, and political gatherings at the National Arts Club, Arte Café NYC, and T.J. Byrnes Bar & Restaurant, the Porch, and Donnybrook NYC.

23. For example, on March 6, 2022, the Principal Law Clerk posted about “petitioning with the @villagedems who have endorsed incredible candidates like @bradhoylman @nycformaloney.”

24. The April 30, 2022, photograph of the Principal Law Clerk and Senator Schumer that ultimately became the subject of the Court’s initial gag order was originally posted by the Principal Law Clerk to the “greenfield4civilcourt” Instagram page. A caption accompanying the photograph read, in relevant part, as follows: “So thrilled to attend the Chelsea Reform Democratic Club Founder’s brunch today honoring incredible and fearless lifelong public servants like @senschumer and @repmaloney.”

25. It was then reposted by a public Twitter account, @JudicialProtest, and ultimately reposted by President Trump. President Trump’s caption to the post was as follows: “Schumer’s girlfriend, Alison [sic] R. Greenfield, is running this case against me. How disgraceful! This

case should be dismissed immediately.” Upon information and belief, the “greenfield4civilcourt” account is still active but was made private in the days leading up to trial.

26. This conduct has resulted in adverse rulings throughout these proceedings.

27. On October 3, 2023, the second day of trial, the Court *sua sponte* imposed its first gag order, based on President Trump’s reposting, to his Truth Social account, the Principal Law Clerk’s photograph with Senator Schumer, stating:

This morning, one of the defendants posted, to a social media account, a disparaging, untrue and personally identifying post about a member of my staff. Although I have since order[ed] the post deleted, and apparently it was, it was also emailed out to millions of other recipients. Personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them, under any circumstances. Yesterday, off the record, I warned counsel of this, and this was disregarded. My warning was disregarded.

Consider this statement a gag order forbidding all parties from posting, emailing, or speaking publicly about any members of my staff. Any failure to abide by this directive will result in serious sanctions.

NYSCEF Doc. No. 1619. (emphasis added).

28. On October 20, 2023, this Court *sua sponte* issued another order finding that President Trump violated the gag order because the original post was inadvertently still archived on President Trump’s website. This Court continued:

[W]hether intentional or the result of mere ‘campaign structure’ negligence, the effect of the post on its subject is unmitigated by how or why it remained on Donald Trump’s website for 17 days....

In the current overheated climate, incendiary untruths can, and in some cases already have, led to serious physical harm, and worse.

NYSCEF Doc. No. 1584.

29. This Court proceeded to state that “this Court is way beyond the ‘warning’ stage” and imposed punishment. Id.

30. On October 25, 2023, Michael Cohen (“Cohen”) took the stand as a witness for the Attorney General.

31. During a break in the proceedings, President Trump spoke to the press outside of the courtroom and this Court’s presence.

32. President Trump stated to the press, in relevant part: “This judge is a very partisan judge with a person who is very partisan sitting alongside of him, perhaps even much more partisan than he is.” Ex. A at 2373:2-10.

33. When the parties reconvened in the courtroom, this Court *sua sponte* raised President Trump’s statement to the press made moments before and outside of his presence:

It was just brought to my attention that the Associated Press reported, I wasn’t there, this is the Associated Press, that President Donald J. Trump just stated the following to the press outside the courtroom:

“This judge is a very partisan judge with a person who is very partisan sitting alongside of him, perhaps even much more partisan than he is.”

Now, it’s very easy for the public, for anyone to know who that person is.

Id.

34. This Court simply assumed that President Trump was referring to the Principal Law Clerk. NYSCEF Doc. No. 1598.

35. The Court then summoned President Trump to the stand in order for the Court to examine him as a witness.

36. President Trump testified, under oath, that he had been referring to Mr. Cohen, but that he did believe the Principal Law Clerk was “very biased against us” and that he had “made that clear.” Ex. A at 2413:21-25.

37. This Court nonetheless concluded, relying on his own testimony describing the layout of the bench and witness box, that:

As the trier of fact, I find that the witness is not credible; that he was referring to my law clerk, the principal law clerk, who is sitting much closer to me, who doesn't have a barrier, whom I believe has been accused by the defendant of being partisan or Democrat or partisan Democrat. I hereby fine you \$10,000, which is on the low side, to be paid within 30 days to the Lawyer's Fund for Client Protection.

Id. at 2415:13-20

38. In an effort to shield that co-judging from public scrutiny, the Court *sua sponte* entered an unconstitutional gag order prohibiting all parties from “posting, emailing, or speaking publicly” about any members of his staff. NYSCEF Doc. No. 1619.

39. Nonetheless, the Principal Law Clerk's unusual role in the proceedings has continued to be the subject of significant on-the-record comment by defense counsel.

40. On October 25, 2023, Mr. Kise described the “considerable tension” caused by her position on the bench and indicated that it is “unusual” for a Principal Law Clerk to sit on the bench. Ex. A at 2416: 6-14.

41. Yout affirmant described his experience in New York State, such that he had never seen a situation where “you're literally trying the case to two judges” with “notes constantly being passed,” where it “would appear the Court is in consultation with the Principal Law Clerk” with each ruling. Id. at 2418:3-12.

42. Yout affirmant further described that this Court would “appear to be leaning in one direction and then [will] either receive a note or there will be an eye gesture or a roll of the face and something changes and it is of significant concern to [Defendants.]” Id. at 2418:13-25.

43. Ms. Habba added “[i]t is incredibly distracting when there are eye rolls and constant whispering at the bench when I'm trying to cross-examine a witness.” Id. at 2308:6-9.

44. The following day, counsel continued to engage the Court, adding “I think that [President Trump] has a legitimate basis to raise these arguments because he is seeing as he’s told me on a regular basis head nods, eye rolls, notes being passed, head shaking, you know, comments on arguments that I’m making.” Id. at 2476:22-2477:4

45. Specifically, counsel has noted that it occurs only when counsel for Defendants is speaking and not when the Attorney General is speaking. Id. at 3404:5-21.

46. The following week, Counsel requested further clarification of how they could continue to make a record of the Court “accept[ing] a note” or other conduct they believed might evince bias, particularly in light of news reports of violations of the ethical rules by both this Court and the Principal Law Clerk. Id. at 3417.

47. Counsel also noted that since comments were made on the record about the Principal Law Clerk’s constant note-passing, the camera angle had been changed, which made it more difficult for the public to see any note-passing. Id. at 3418:8-21. The Court admitted knowing the camera angle had been changed but feigned ignorance as to the reason: “[a]s for the camera being moved, I was vaguely aware that Rob, the tech person, was switching the angle of the camera. Never occurred to me that it could have anything to do with what we’re discussing today or why it was.” Id. at 3422:25 - 3423:3.

48. After further colloquy, this Court concluded that he would continue to “consult” with the Principal Law Clerk “for the trial” and to consider the record preserved and closed:

If you want to appeal or move to recuse or whatever you want to do, you have plenty of ammunition. The problem is it’s totally useless and meaningless because I have an unfettered, absolute right to consult with my law clerks anytime, anyplace about any matter.

Id. at 3449:13-21.

49. The Court then issued the second gag order prohibiting counsel from commenting on his Principal Law Clerk's conduct in the courtroom. That order specifically proscribed "any public statements, in or out of court, that refer to *any* confidential communications, in any form, between my staff and me." NYSCEF Doc. No. 1631 (emphasis in original).

50. On November 6, 2023, counsel sought clarification on the scope of the gag orders. Specifically, counsel asked whether moving for a mistrial would implicate the gag order, to which the Court responded, using counsel's given name rather than his surname, "[d]on't file that motion, Chris." Id. at 3646:6.

51. After yet another "confidential communication" with the Principal Law Clerk, the Court concluded that any motion referencing the Principal Law Clerk would "ha[ve] to be in writing." Id. at 3649:9-10.

52. Consequently, the Court directed counsel to file this motion by order to show cause, in writing. Id. at 3649:18-19.

53. The foregoing conduct from both this Court and his Principal Law Clerk has resulted in adverse rulings throughout these proceedings.

54. First, the Court flatly refused to transfer this complex case to the Commercial Division, where it unquestionably belongs.

55. Shortly thereafter, on November 22, 2022, before the Attorney General even opposed Defendants' motion to dismiss or any discovery had been exchanged, this Court determined that the trial would begin on October 2, 2023, the date suggested by the Attorney General in her proposed preliminary conference order.¹ NYSCEF Doc. Nos. 228-229.

¹ This Court entered the Attorney General's proposed preliminary conference order essentially as written. NYSCEF Doc. Nos. 228-229.

56. The Court's order ignored both the presumptive 15-month standard in complex commercial cases and the burden imposed on the defense to review and assimilate millions of pages of documentary evidence and evaluate dozens of witnesses.

57. This compressed schedule also provided an advantage to the Attorney General, whose staff had already conducted an exhaustive, three-year investigation in preparation for filing the case and taking it to trial. The third-party discovery received by Defendants in December 2022 consisted of several terabytes of data containing 700,000 documents, which, after processing and de-duplicating, would require more than 11,000 hours to review.

58. Thereafter, despite a letter request and a motion by Defendants, this Court refused to adjourn the trial, stating that it did not "see a need for extensive disclosure." NYSCEF Doc. No. 528, 558.

59. On November 6, 2023, during President Trump's testimony, the Court stated it is "not here to hear what [President Trump] has to say." Ex. A at 3510:3.

60. The Court expounded as follows: "[w]ell, Mr. Kise, I think you said several times we should hear what he did, what the witness has to say. No, I am not here, and these people are not here, and the Attorney General is not here to hear what [President Trump] has to say." Id. at 3509:19-21.

61. Additionally, this Court has made evidentiary rulings in favor of the Attorney General.

62. As a matter of course, this Court has overruled Defendants' objections to time-barred evidence. Ex. A at 991, 1029, 1036.

63. This Court has also permitted the introduction of hearsay testimony under inapplicable exceptions and, in some circumstances, without identifying *which* Defendant(s) it might be admissible against.

64. The Court has given wide latitude to the Attorney General in presenting irrelevant evidence otherwise inadmissible due to the statute of limitations. Conversely, the Court immediately instructed Defendants' counsel to "just move on" within seconds of counsel starting cross-examination. Id. at 3792:22-3793-6.


65. The Court has overruled Defendants' continuing objections to documents indisputably predating the claims remaining after the First Department modification, as well as testimony on events prior to 2014, going so far as to characterize overruling Defendants' objections as a "Pavlovian reaction [sic]," and stating that he seeks only to "get the whole picture" and not "blind" itself. Id. at 3683, 3716:8-9.

66. Finally, on November 9, 2023, the Court, during oral argument on the motion for a directed verdict, asked if he could "bring up something not in the record, but a matter of public knowledge?" Specifically, he noted that he thought that "the perfect call with Zelensky about the military aid, there might have been code rather than straightforward talk." Id. at 3881:22-25.

67. When counsel raised that it was a "political issue that really has no bearing on anything in the courtroom," this Court quickly responded that he "understood" and "only base[d] [his] decision and rules on what's in the record." Id. at 3882:1-9.

68. For the reasons set forth above, as well as in the accompanying memorandum of law, Defendants respectfully request their motion for a mistrial be granted.

Dated: Uniondale, New York
November 15, 2023



CLIFFORD S. ROBERT