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

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	PEOPLE'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR A FURTHER ADJOURNMENT BASED ON PRETRIAL PUBLICITY Ind. No. 71543-23

The Court should deny defendant's eighth request to adjourn the start of this trial—this time, based on a claim of pretrial publicity—because (1) publicity is unlikely to recede and an indefinite adjournment is inappropriate; (2) thorough voir dire can allow the parties to select an impartial jury, as defendant's commissioned poll shows; and (3) defendant's own incessant rhetoric is generating significant publicity, and it would be perverse to reward defendant with an adjournment based on media attention he is actively seeking.

The Court previously rejected defendant's request to adjourn because of pretrial publicity on February 15, 2024, explaining that defendant had provided no reason to believe that publicity concerning this trial would abate in the near future. Feb. 15 Hearing Tr. 16-21. When defendant reiterated this request on March 25, the Court asked defendant to "tell [the Court] what's different? What has changed since when you last made the motion on February 15th and now?" Mar. 25 Hearing Tr. 57. The only new facts flagged by defendant were additional "data and . . . analysis." *Id.* Defendant has now presented that additional data in his motion—specifically, a survey of residents and a review of media coverage—while at the same time rehashing now-familiar complaints about supposedly prejudicial press coverage that this Court has already found unpersuasive. *See, e.g.*, Def. Mot. at 3 (citing statements and press reports from as early as 2021).

None of the new information presented by defendant supports his request for an adjournment; indeed, much of the new data actually *confirms* that this Court will be able to find twelve impartial jurors (and alternates) in Manhattan. This Court should accordingly decline to revisit its prior rulings and should adhere to the April 15, 2024, trial date.

In addition, and despite being asked to identify new information unavailable the last time his request was denied on February 15, 2024, defendant has littered his motion with dozens of untrue allegations based on events that date back three years or more—most of which were already considered and rejected in prior decisions by this Court. Although the Court can and should reject defendant's motion without adjudicating the many baseless claims defendant rehashes throughout his motion, the People note in Part D below some of defendant's most egregious mischaracterizations to the extent the Court reaches any of those claims.

A. Defendant's motion is an improper request for an indefinite postponement because he has provided no reason to believe that media coverage of this trial is sufficiently prejudicial or will meaningfully change in the near future.

As an initial matter, defendant repeatedly characterizes the media coverage of this criminal trial as "prejudicial," but his own media study indicates that such a characterization is vastly overstated. The study (Def. Mot. Ex. 2) merely tallies up how many press stories mention one of various search terms. But many of those search terms—such as "trial," "jury," and "appeal"—are extremely generic; even assuming that an article relates to defendant, it is unclear from the limited information provided that an article mentioning defendant and a "trial" necessarily relates to this criminal proceeding. Tellingly, some of the press reports that defendant attaches to his motion do not even mention this case. *See, e.g.*, Def. Mot. Exs. 9, 13, 16, 17, 18.

As for press coverage that does mention this case, defendant fails to establish that the coverage is necessarily prejudicial. Objective reporting that summarizes the status of defendant's legal matters, informs readers about the subject of those cases, and recounts the parties' positions

is simply not the type of inflammatory coverage that can support a claim of prejudicial pretrial publicity. *See United States v. Angiulo*, 897 F.2d 1169, 1181 (1st Cir. 1990) ("Although the news coverage was extensive, it largely was factual in nature, summarizing the charges against the defendants and the alleged conduct that underlay the indictment."); *Harris v. Pulley*, 885 F.2d 1354, 1362 (9th Cir. 1988) ("The vast majority of the media accounts are largely factual in nature."); *see also Murphy v. Florida*, 421 U.S. 794, 799, 802 (1975) (rejecting pretrial-publicity claim based on mere "juror exposure to information about a state defendant's prior convictions or to news accounts of the crime with which he is charged" that were "largely factual in nature"). It is again telling that none of the press reports attached to defendant's motion express the opinion that the jury in this case should find him guilty. Def. Mot. Exs. 4-18. And defendant's media study includes public reporting that is actually favorable to defendant, in whole or in part. *See, e.g.*, Def. Mot. Ex. 5 at 4, Ex. 7 at 2 (news articles noting criticisms of People's case). Defendant thus fails to demonstrate that the publicity surrounding this case is prejudicial at all, much less so inflammatory as to jeopardize the fundamental fairness of the trial.

In any event, nothing that defendant has presented answers the question that this Court asked on February 15: whether an adjournment would actually address the publicity that he complains about so strenuously. *See* Feb. 15 Hearing Tr. 18. Because this trial is a criminal proceeding against a former president, the press attention will be substantial regardless of when (or, for that matter, where) this trial is held. The Court of Appeals has specifically warned that adjournment is an inappropriate remedy for pretrial publicity if such publicity is unlikely to abate with the passage of time, because granting a continuance in such circumstances would amount to "indefinite postponement." *People v. Moore*, 42 N.Y.2d 421, 434 (1977).

Defendant appears to acknowledge that there is no end in sight to public coverage of this criminal proceeding, laying bare his strategy of obtaining an open-ended delay of the trial.[1] For example, although defendant asks this Court to adjourn his trial "until the prejudicial media coverage subsides," he simultaneously acknowledges that publicity is "likely to increase" and predicts that it will not abate "at any time in the near future." Def. Mot. at 1-2. The answer to defendant's complaint about pretrial publicity is thus to hold this trial sooner rather than later.

Because there is no reason to think that a continuance would do anything to ameliorate the purported issue, this Court should deny defendant's latest request for an adjournment. *See People v. Ferguson*, 240 A.D.2d 199, 200 (1st Dep't 1997) (court properly denied request to adjourn trial to await appearance of defense witness because "there was no reliable indication that the witness would ever appear or that the witness's testimony would be of any benefit to defendant"); *see also People v. Quartararo*, 200 A.D.2d 160, 162 (2d Dep't 1994) (propriety of venue change as a remedy "hinges on proof of the extent to which, as between the original venue and the venue to which a transfer is sought, significantly different levels of 'saturation' have been reached").

B. Defendant has failed to show that Manhattan jurors would be so thoroughly and irredeemably biased that a thorough voir dire process could not lead to the selection of an impartial jury.

Defendant's request for an adjournment is based on the fundamentally flawed premise that *any* amount of pretrial publicity irreparably taints the jury pool. That argument flouts bedrock law that expressly holds otherwise. Pretrial publicity, even when pervasive and adverse, "does not inevitably lead to an unfair trial." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 554 (1976); *People v. Harris*, 84 A.D.2d 63, 100 (2d Dep't 1981), *aff'd*, 57 N.Y.2d 335 (1982). And jurors may be

[1] *See also* Decision & Order on Def.'s Mot. to Vacate the Court's Order on the Filing of Motions at 2 n.2 (Mar. 26, 2024) (noting defendant's publicly-stated goal, directly and through counsel, of delaying these proceedings).

qualified to serve even if they are aware of the "the facts and issues involved" in a case. *Murphy*, 421 U.S. at 799-800. Indeed, even when potential jurors openly "question or doubt they can be fair in the case," there is no barrier to seating them on the jury if they ultimately provide "some unequivocal assurance of their ability to be impartial." *People v. Harris*, 19 N.Y.3d 679, 685 (2012).[2]

Defendant is thus flatly wrong to claim that the overriding issue here is how many people in New York County voted for or against him. *See* Def. Mot. at 23. The mere fact that a potential juror voted for one presidential candidate over another in 2016 or in 2020 says nothing about his or her ability to be fair and impartial in a 2024 criminal trial involving one of those candidates. Similarly, the relevant question here is not whether potential jurors merely have opinions about defendant. Def. Mot. at 24. Given that defendant is a former president—who ran for that office in two past elections—virtually every American already knows about defendant and has an opinion about him. But this circumstance is not unique to either the April 15 trial date or to New York County.[3] Furthermore, such opinions are not, by themselves, disqualifying. *Reynolds v. United States*, 98 U.S. 145, 155-56 (1879) ("[E]very case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not

[2] It is thus completely immaterial that, as defendant complains, 95% of Manhattan residents in the survey have been exposed to media pertaining to him in the last six months, and that 93% of New York County residents have seen media that related to one or more of the criminal investigations involving him. In addition, defendant omits the fact that these figures for New York County are similar to the percentages for residents of the other four counties in the survey. Def. Mot. Ex. 1. Thus, defendant's own survey shows that New York County is not unique with respect to how often its residents are exposed to media that mentions defendant or his pending criminal matters.

[3] Notably, defendant's survey revealed that in all five of the surveyed counties, only about 10% of all respondents had a "neutral" opinion of defendant, and virtually no respondents in any county were "unsure" as to their opinion of him. Def. Mot. Ex. 1 (Question 13).

some impression or some opinion in respect to its merits."); *People v. McClary*, 150 A.D.2d 631, 633 (2d Dep't 1989) ("To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." (quoting *Irvin v. Dowd*, 366 U.S. 717 (1961)).

Rather, as courts have repeatedly found, the most appropriate means of determining juror impartiality—including to tease out the impact, if any, of pretrial publicity—is to engage in a "thorough voir dire" of prospective jurors, not to employ blunderbuss methods like adjournment or dismissal. *People v. Govan*, 64 Misc. 3d 389, 395 (Sup. Ct. Kings Cnty. 2019); *see also Skilling v. United States*, 561 U.S. 358, 389 (2010) (holding that voir dire process adequately ensured impartial jury despite pretrial publicity). Voir dire is also part of the answer to defendant's statistical claim that nearly all of Manhattan is biased against him: when faced with similar statistics, courts have repeatedly observed that individual answers from prospective jurors will give a judge the basis to determine who is "capable of putting aside whatever preconceptions they might initially have as the result of external influences and of deciding the case strictly in accordance with the trial court's instructions." *Quartararo*, 200 A.D.2d at 164 (rejecting defendant's reliance on statistics purporting to show prior knowledge and bias in the jury pool); *see also People v. Boudin*, 90 A.D.2d 253, 255 (2d Dep't 1982) (courts "often do well to rely 'less heavily on a poll taken in private by private pollsters and paid for by one side than on a recorded, comprehensive *voir dire* examination conducted by the judge in the presence of all parties and their counsel'") (quoting *United States v. Haldeman*, 559 F.2d 31, 64 n.43 (D.D.C. 1976)). If any prospective juror is unable to state that they can follow this Court's instructions and set aside any

preconceived views they may have, that juror may be challenged for cause. These kinds of measures are more than adequate to address the negative effects of pretrial publicity without having to indefinitely delay this trial. *People v. Ruger*, 288 A.D.2d 686, 687 (3d Dep't 2001) (trial court "conducted an adequate inquiry of the prospective jurors concerning the effect, if any, that pretrial publicity would have on their ability to fairly and impartially judge the evidence and render a verdict"); *cf. Murphy v. Florida*, 421 U.S. 794, 803 (1975) (holding that defendant received a fair trial, even though he was a "continuing subject of press interest" and even where "20 of the 78 persons questioned" during voir dire were "excused because they indicated an opinion" as to the defendant's guilt; the latter fact did not "impeach the indifference of jurors who displayed no animus of their own").

Defendant offers this Court no reason to believe that these tools will be insufficient. As an initial matter, the sheer size of New York County makes it much more likely that this Court will be able to find a sufficient number of prospective jurors who are capable of being fair and impartial, even assuming that many other residents are unable or unwilling to be seated. *Skilling*, 561 U.S. at 382 (where trial took place in Houston, "the suggestion that 12 impartial jurors could not be empaneled is hard to sustain," in light of the city's "large, diverse pool of potential jurors"); *compare People v. Sawyer*, 94 A.D.2d 978, 978 (4th Dep't 1983) (granting venue change in part because of the "relatively small population" of the county). In addition, the Court has agreed to supplement its standard voir dire questionnaire—based on submissions that the Court invited from both parties—to ask numerous questions designed to probe bias in this specific case. The Court also agreed to give the parties 30 minutes for the first round with each new panel and 20 minutes for subsequent rounds—more time than typical—to help ensure a fair jury selection process.

Moreover, the private, commissioned survey that defendant cites in his motion *confirms* rather than rebuts the ability to empanel an impartial jury from Manhattan residents, assuming that its results can be taken at face value.[4] For example, Question 46 of the survey asked respondents whether, based on their knowledge or opinions about defendant, they thought they could "serve as a fair and impartial juror in a criminal trial against him." Def. Mot. Ex. 1. In New York County, 70% of respondents said they could "definitely" (51%) or "probably" (19%) be fair and impartial—a figure that is notably higher than in any of the other four surveyed counties, which ranged from 64% to 69%. Similarly, in all five of the surveyed counties—including New York County—only about 20% of respondents felt they "probably" or "definitely" could not be fair and impartial, with another 10% to 15% of respondents being "unsure." *Id.* These results establish that there is a surfeit of prospective fair and impartial jurors in New York County who could be selected for this jury.

Other survey results confirm that Manhattan residents would be able to set aside any preexisting knowledge or opinions they may have about defendant if they were called to serve on

[4] The People have serious doubts about the reliability of the survey, given the paucity of information that defendant has provided about it. For example, the survey does not adequately explain its methodology for collecting responses, merely saying, in conclusory fashion, that it employed "text-to-online methodology" to "obtain a random representative sample of 400 residents in each of the five counties." Def. Mot. Ex. 1. The survey also provides no information about how it obtained the contact information of respondents or how it ensured that its samples were actually random or representative of the residents of each of the counties in question. Defendant does not even provide information about the survey response rate or an analysis of nonresponse bias—among the most basic measures of a survey's validity and reliability. *See* Federal Judicial Center, Reference Guide on Survey Research, *in* Reference Manual on Scientific Evidence, at 359, 383-86 (3d ed. 2011). Without providing more detailed information about its methodology, the results of this survey are not necessarily valid or reliable. *Compare McNeilab, Inc. v. Am. Home Prod. Corp.*, 848 F.2d 34, 36 (2d Cir. 1988) (describing extensive process of pre-survey review and judicial approval of written questions and methodology). Nevertheless, even assuming the survey results can be taken at face value, they essentially refute defendant's claim of irremediable bias.

the jury. For example, Question 40 asked respondents whether they would be able to "set aside any opinions you currently hold" as to whether defendant "is likely guilty or innocent" and "render a verdict based only on the evidence presented during the trial." In Manhattan, 67% of respondents said they could "definitely" (51%) or "probably" (17%) set aside their opinions and render a verdict based solely on the trial evidence—equal to or higher than the rate in any other surveyed county. Def. Mot. Ex. 1. Similarly, Question 48 asked respondents whether, if they served as a juror, they would "feel any pressure to reach a certain decision" because of "public opinion or based on the opinions" of "family members, friends, coworkers, fellow community members, etc." In Manhattan, 74% of said they would not feel "any pressure" to find defendant guilty or not guilty—a higher rate than in any of the other four surveyed counties. Def. Mot. Ex. 1.

Defendant's own survey thus defeats his request for an adjournment by showing that a large majority of residents in Manhattan would be able to serve as fair and impartial jurors because they would be able to set aside any preexisting opinions or knowledge and would not feel pressure to reach any particular outcome. *See People v. Ryan*, 151 A.D.2d 528, 529-30 (2d Dep't 1989) (trial court properly denied change-of-venue motion where "more than half the jurors questioned, according to the defendant's figures, have expressed an ability to fairly judge the defendant based upon the evidence in the case, despite any prior knowledge they may have of the case"). Furthermore, given the sheer size of New York County, it is absurd for defendant to assert that it will be impossible or even impractical to find a dozen fair and impartial jurors, plus alternates, among more than a million people.

Instead, defendant makes the astonishing claim that survey respondents' claims about being fair and impartial *cannot be believed* because of the "volume and content of prejudicial coverage." Def. Mot. at 29-30. But just as politicians cannot selectively pick which votes to count,

defendant cannot rely on parts of the survey to claim that Manhattan residents have "overwhelming bias" while simply disbelieving other parts that show that the same residents can set aside any preconceptions and judge the evidence at trial fairly and impartially. Disregarding such assurances is also inconsistent with New York law, which deems a prospective juror's commitment to being impartial as being sufficient to override any concerns about this kind of pre-existing bias. *See Harris*, 19 N.Y.3d at 685. If defendant thinks that parts of his own survey cannot be credited, then the entire thing should be discarded.

In any event, the cases cited by defendant do not support his attempt to simply ignore survey respondents' assurances that they can be fair and impartial jurors regardless of their initial views of defendant. In *Patton v. Yount*, the United States Supreme Court *upheld* a trial court's finding that the "jury as a whole was impartial," stressing that the "relevant question is not whether the community remembered the case, but whether," under the totality of the circumstances, the jurors had "such fixed opinions that they could not judge impartially the guilt of the defendant." 467 U.S. 1025, 1031-35 (1984). Furthermore, the passage that defendant quotes from *Patton* (Def. Mot. at 29) was actually describing an older Supreme Court decision, *Irvin v. Dowd*, 366 U.S. 717 (1961), with facts that are worlds apart from this case. In *Dowd*, the defendant, who committed six murders, was tried for one of those murders in a small, rural community; local law enforcement had issued "press releases" stating that the defendant "had confessed to the six murders"; local press accounts announced the defendant's "police line-up identification," that "he faced a lie detector test," and that he "had been placed at the scene of the crime"; and eight out of the twelve jurors who were seated said during voir dire that they "thought" the defendant "was guilty," with "some going so far as to say that it would take evidence to overcome their belief." *Id.* at 718-28.

It was only under these extreme facts that the *Dowd* court found that these jurors' "statement[s] of impartiality can be given little weight." *Id.* at 728.

By contrast, the alleged crimes in this case, while serious, do not involve inflammatory underlying facts like serial murders. Courts have tended to find publicity surrounding particularly violent or gruesome crimes to be more prejudicial. *See, e.g., People v. Boss*, 261 A.D.2d 1, 4 (1st Dep't 1999) (four police officers accused of shooting unarmed man 41 times, killing him); *Boudin*, 90 A.D.2d at 254 (defendants accused of murdering a security guard and two police officers); *see also Sheppard v. Maxwell*, 384 U.S. 333, 335-57 (1966) (court failed to protect defendant from prejudicial publicity where he was accused of bludgeoning his pregnant wife to death). Nor are the allegations here particularly likely to inflame hyperlocal prejudices: defendant's own survey demonstrates that residents of New York County are not any more aware of this case than the residents of other counties in the State, Def. Mot. Ex. 1 (*e.g.*, Questions 29, 33-36). *See, e.g.*, *Skilling*, 561 U.S. at 392 (rejecting comparison to prosecution involving "a brutal murder and robbery spree in a small rural community"); *Govan*, 64 Misc. 3d at 398 ("The situation here is vastly different from that of a high profile case in a small town or a smaller county where the case is likely to be the center of public attention."); *People v. Boudin*, 95 A.D.2d 463, 464-65 (2d Dep't 1983) (denying pre-voir dire motion for change of venue where there was insufficient evidence of "inextricable involvement on a deeply personal level" among potential jurors). Finally, to state the obvious, New York County is not a small, rural community with a limited pool of jurors. Thus, the unique circumstances that in *Dowd* led the jurors' claims of impartiality to be outweighed are simply not present here.[5]

[5] The other cases cited by defendant are similarly distinguishable. *People v. Boudin* involved far more inflammatory facts from a crime that triggered intense local interests. *Boudin*, 90 A.D.2d at 254-58. And *Delaney v. United States* was a bizarre case where a congressional committee had

C. Defendant cannot seek relief based on pretrial publicity when he deliberately generates press attention himself.

Defendant should also not be heard to complain about the potential prejudice of pretrial publicity when he has constantly stoked and encouraged such publicity. *See* May 4, 2023 Tr. 25 (this Court observing that defendant "put out messages regarding date of arrest, alleged charges, and speaking on what he felt was a politically driven prosecution"). Courts have repeatedly rejected any relief when, as here, the "defendant willingly and voluntarily participated in the pretrial publicity by giving a statement to the media concerning the incident which formed the basis for the charge." *Ruger*, 288 A.D.2d at 687; *see also People v. Solomon*, 172 A.D.2d 781, 782 (2d Dep't 1991) (denying application for change of venue on account of publicity that the defendant "generated . . . himself"). Defendant here has done much more than simply give occasional statements: instead, he has repeatedly invited public attention to this criminal trial through campaign rallies, online social media posts, television interviews by himself and his counsel, and frequent press conferences—including in the very hallway of the courthouse just steps away from the courtroom before and after court appearances.[6]

Defense counsel has likewise eagerly generated press attention—giving television interviews about this case; appearing and speaking at defendant's press conferences; and publicly disseminating case-related diatribes in the guise of correspondence to the District Attorney for the express purpose of evading the Court's protective order in this matter. *See, e.g.*, Blanche Ltr. 2, 11

"caused and stimulated" "massive pre-trial publicity, on a nationwide scale," "shortly before the trial of a pending indictment" that was highly prejudicial, and that included information which would not be admissible at the defendant's criminal trial. 199 F.2d 107, 113-14 (1st Cir. 1952).

[6] *See, e.g.*, C-SPAN video, *Remarks After Court Ruling* (Mar. 25, 2024), at https://www.c-span.org/video/?534492-1/president-trump-remarks-court-ruling; C-SPAN video, *Remarks on Hush Money Case* (Feb. 15, 2024), at https://www.c-span.org/video/?533626-1/president-trump-hush-money-case.

(Mar. 4, 2024) (stating that because of "the extensive redactions you have convinced Judge Merchan to authorize in otherwise-public filings, we will be making this letter public").

Moreover, defendant has made clear that he intends to continue stoking such publicity. In opposition to the People's motion for an order restricting defendant's extrajudicial statements, defendant insisted on preserving his "uncensored voice on all issues that relate to this case" and his entitlement to make "unfettered" comments about this case. Def.'s Opp. to People's Mot. for an Order Restricting Extrajudicial Statements at 8. Immediately after the March 25 hearing last week, defendant held a press conference outside of the Court and then a second one a few blocks away excoriating this trial as "election interference," attacking individual trial participants by name, and accusing this Court of "trying to damage Trump as much as possible." Although some of the statements will now be tempered by this Court's March 26, 2024 Order restricting certain extrajudicial statements, the Order appropriately leaves substantial room to engage in public criticism of this criminal trial. Defendant simply cannot have it both ways: complaining about the prejudicial effect of pretrial publicity, while seeking to pollute the jury pool himself by making baseless and inflammatory accusations about this trial, specific witnesses, individual prosecutors, and the Court itself.

D. Defendant's remaining arguments are meritless.

Defendant's remaining contentions largely rehash prior complaints that defendant has made and that this Court plainly found insufficient at the February 15 hearing to warrant an adjournment. The People address them here principally to make sure the record is clear as to defense counsel's continued pattern of presenting inflammatory, baseless, or downright false claims in sworn filings to this Court.

First, defendant gratuitously names a family member of the District Attorney and cites a blog post from more than two years ago as support for the purported claim that the family member

retweeted an article critical of the defendant. Def. Mot. at 4. This purported retweet has nothing to do with anything even remotely at issue in this motion. Defense counsel's insistence on injecting the family members of trial participants into public court filings is reckless and beyond the pale—particularly when counsel is aware of the unprecedented security threats currently facing the District Attorney, his family, and others involved in this proceeding as a result of defendant's dangerous rhetoric and persistent attacks. *See* Aff. of NYPD Sgt. Nicholas Pistilli ¶¶ 3-14 (Ex. 13 to the People's Mot. for an Order Restricting Extrajudicial Statements (Feb. 22, 2024)).

Second, defendant makes the irresponsible and false claim that the People "coerce[d] a guilty plea" from Allen Weisselberg on two felony counts of perjury last month. Def. Mot. at 27. At his Superior Court Information proceeding on March 4, 2024, Mr. Weisselberg admitted that he was pleading guilty to the perjury counts because he was in fact guilty of perjury, and that his plea was entirely voluntary:

> THE COURT: Are you pleading guilty because you are guilty?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Has anyone forced you to take a plea?
>
> THE DEFENDANT: No.

Tr. at 9, *People v. Weisselberg*, Docket No. SCI-70913-24 (Mar. 4, 2024) (appended as Ex. 1); *see also id.* at 15-18. Defendant also makes the spurious claim that "[t]he People are also complicit in scheduling Weisselberg's sentencing on April 10, 2024," purportedly in order to cause news coverage before the start of this trial. Def. Mot. at 2, 9. In reality, the defendant in that matter was solely responsible for selecting April 10 as the date of his sentence, which defense counsel specifically requested of the Court prior to going on the record. Moreover, the defendant—who waived a presentence report, *see Weisselberg* Tr. at 18 (Ex. 1)—could have been sentenced on

March 4 when he pleaded guilty, but instead requested April 10. As the record reflects, the Court then offered defendant the exact date he requested:

> THE COURT: I am prepared to set this matter down for sentencing. The defendant is released on his own recognizance upon the consent of the People. Is April 10th a convenient date?
>
> MR. FISHMAN: It is for the People.
>
> MR. ROSENBERG: Yes, Your Honor.

Weisselberg Tr. at 18-19 (Ex. 1).

Third, defendant complains about public statements by Michael Cohen, Stormy Daniels, and Mark Pomerantz. Def. Mot. at 1-2, 4, 6-12. In the first place, the People largely have no means of enforcing restrictions on the speech of Cohen and Daniels, who are private citizens. In any event, there is no indication that their public statements have materially affected the overall level of publicity attached to this case, especially compared to the extensive national press coverage of defendant's own provocative remarks. Nor is there any reason to think that an adjournment would make a difference: the press is likely to seek comment from these individuals whenever defendant's trial occurs, regardless of whether the trial begins on April 15 or on a later date. On Daniels's recently released documentary (Def. Mot. at 2), the People had no control over the timing of that release, and defendant provides no evidence that this documentary has been widely viewed by potential jurors. As to Pomerantz, the only statements that defendant relies on were contained in a book that Pomerantz published over a year ago; none of those statements represent new information that was previously unavailable to defendant.

Fourth, defendant identifies no basis whatsoever for his false accusation that the People have been using "strategic leaks to prejudice" him. Def. Mot. at 1, 9. Defendant made this baseless claim in his omnibus motions last year, and the Court appropriately rejected the claim, finding that "Defendant's claims are without merit." Omnibus Decision at 27-28. And in any event, the

substance of the purported "strategic leaks" that defendant recounts (Def. Mot. at 3-4, 9) is either anodyne or incorrect. For example, defendant points to a Politico article dated March 29, 2023, which said that the grand jury "was not expected to hear evidence for several weeks" and that a source said it was "entirely possible" that the grand jury had already voted (Def. Mot. at 5)—both of which were speculative and false reports, which defendant knows because he is aware that he was indicted the next day. And even setting aside the nonsensical and false claim of "strategic leaks" of incorrect information, these updates about the procedural status of the case, or reports about the general topic of the grand jury's inquiry (Def. Mot. at 4), could hardly have prejudiced defendant or influenced any potential jurors. *See Skilling*, 561 U.S. at 379-83 (press reports about the defendant "contained no confession or other blatantly prejudicial information").

Fifth, defendant complains about certain post-indictment statements by the District Attorney (Def. Mot. at 5-6, 26-27), but this Court already rejected defendant's argument that the Statement of Facts or press conference were at all improper. *See* May 4, 2023 Tr. at 24-25 (noting that the district attorney had an obligation to "report on why charges were brought, what charges were brought, and to explain to the public why that's being done"). As for defendant's complaint that the District Attorney referenced "sex crimes" during a press conference (Def. Mot. at 26), defendant distorts the record. In that portion of his remarks, the District Attorney was merely listing examples of *other* cases where the office had charged defendants with falsifying business records. He was not implying that defendant had committed any sex crimes in the instant case. CNBC, *Manhattan DA Alvin Bragg Holds Press Conference Following Trump's Arraignment*, YouTube (Apr. 4, 2023), *available at* https://www.youtube.com/watch?v=C2XoDZjOMs8 (last accessed Mar. 27, 2024).

Defendant also complains about statements the District Attorney made while he was a candidate for office, including more than three years ago in early 2021 (Def. Mot. at 3). None of these statements are new, and defendant does not explain how they could meaningfully affect the level of publicity years later. In any event, defendant made similar arguments when he claimed that he was being prosecuted selectively (Defendant's Omnibus Mot. at 30), and this Court already rejected those contentions (Omnibus Decision at 20-22). The People incorporate by reference their previous arguments regarding the District Attorney's statements during his campaign (People's Omnibus Opp. at 64-65), which are equally applicable here.

Finally, defendant complains about publicity regarding "other politically motivated criminal and civil litigation" against him. Def. Mot. at 19. As an initial matter, defendant's accusations of political motivation have been repeatedly rejected by the courts and disproven as false (People's Omnibus Opp. at 67-68 (citing cases)); his insistence on that false characterization here only underscores his double standard of complaining about adverse publicity on the one hand while inflaming public passions on the other. In any event, publicity regarding these other cases has no relevance to this case. The factual allegations and legal issues in defendant's other criminal and civil proceedings have no relationship to the underlying allegations here. And as discussed, there is no indication that this Court will be unable to find twelve jurors willing to evaluate the evidence in this case impartially.

Defendant's request for an adjournment based on pretrial publicity should be denied.

DATED: April 1, 2024

Respectfully submitted,

ALVIN L. BRAGG, JR.
District Attorney, New York County

By: */s/ Matthew Colangelo*
Matthew Colangelo
Christopher Conroy
Katherine Ellis
Susan Hoffinger
Becky Mangold
Joshua Steinglass
Assistant District Attorneys
New York County District Attorney's Office
1 Hogan Place
New York, NY 10013
212-335-9000

Steven C. Wu
John T. Hughes
Of Counsel

Exhibit 1

CRIMINAL COURT OF THE CITY OF NEW YORK.

COUNTY OF NEW YORK: PART N

----------X

THE PEOPLE OF THE STATE OF NEW YORK, DOCKET NO.

-against- SCI-70913-24

PLEA

ALLEN WEISSELBERG,

Defendant.

----------X

100 Centre Street
New York, New York

March 4, 2024

B E F O R E:

THE HONORABLE LAURIE PETERSON, Judge

A P P E A R A N C E S:

FOR THE PEOPLE:

OFFICE OF ALVIN BRAGG, ESQ
District Attorney, New York County
One Hogan Place
New York, New York 10013

BY: GARY FISHMAN, ESQ.
ELYSSA ABUHOFF, ESQ.

FOR THE DEFENDANT:

CLAYMAN, ROSENBERG, KIRSHNER & LINDER, LLP.
305 Madison Avenue, Suite 650
New York, New York 10165

BY: SETH L. ROSENBERG, ESQ.
THOMAS C. ROTKO, ESQ.

EMILY GLASS
Official Court Reporter

COURT OFFICER: Docket ending 672-24NY, Allen Weisselberg. Defendant is charged with Penal Law 210.16, five counts of Perjury in the First Degree. Pre-sworn affidavit is signed. Appearances, please.

MR. ROSENBERG: Your Honor, for Mr. Weisselberg, Clayman, Rosenberg, Kirshner & Linder by Seth L. Rosenberg. This is my partner, Thomas C. Rotko.

COURT OFFICER: Counsel, do you waive the formal readings of the rights and charges?

MR. ROSENBERG: We do.

COURT OFFICER: People, your appearance?

MR. FISHMAN: Special Assistant District Attorney, Gary Fishman for the People.

MS. ABUHOFF: Elyssa Abuhoff, for the People.

THE COURT: Good morning to all of you.

MR. FISHMAN: Good morning.

THE COURT: Do you have any notices?

MR. FISHMAN: The People have no notices.

THE COURT: Are you consenting to the defendant's release?

MR. FISHMAN: Yes, Your Honor.

THE COURT: Are we ready to proceed to the Superior Court Information proceeding?

MR. FISHMAN: Yes, Your Honor.

THE COURT: Counsel, now, who is going to be

speaking? Mr. Rosenberg or Mr. Rotko?

MR. ROSENBERG: I will, Your Honor.

THE COURT: Do you waive the right to a felony hearing?

MR. ROSENBERG: We do, Your Honor.

THE COURT: Do you consent that the matter be transferred to me in Supreme Court for purposes of disposition?

MR. ROSENBERG: We do, Your Honor.

THE COURT: Swear the defendant.

COURT OFFICER: State your name for the record, please.

THE DEFENDANT: Allen Weisselberg.

COURT OFFICER: Do you swear that the statements you will be giving today are the truth?

THE DEFENDANT: Yes.

COURT OFFICER: Put your hand down, sir.

THE COURT: My understanding is that this will be a Superior Court Information. The defendant will waive prosecution by indictment and agree to be prosecuted upon the Superior Court Information which contains two counts of Perjury in the First Degree.

I will note that the felony complaint contains five counts of perjury.

The People recommend a sentence of five months in

jail. Now, Counsel, would you please let me know when you have reviewed the documents, signed them in open court and are ready to proceed.

MR. ROSENBERG: They have been signed. And we are ready to proceed.

THE COURT: Thank you, Counsel.

Now, Mr. Fishman, do you want to make any remarks before I proceed to allocute the defendant on the waiver of indictment?

MR. FISHMAN: Yes, Your Honor. As you already stated defendant Allen Weisselberg has already signed a waiver of prosecution by indictment and he also signed his waiver of a right to discovery and also his waiver of a right to appeal and, as Your Honor stated, he will be receiving five months in jail for the conduct alleged in the Superior Court Information relating to sworn testimony that took place during an investigative proceeding conducted by the New York State General on July 17th of 2020.

I would also like to place on the record some of the conditions Mr. Weisselberg has agreed to before he enters his plea of guilty.

First of all, Your Honor, I want to note that Mr. Weisselberg has entered into with the People a signed written plea agreement and, by, reference it incorporates the felony complaint that he was just arraigned on, and what

I would like to do is file that with the Court. So, it would be filing the plea agreement with the attached felony agreement with the --

THE COURT: The plea agreement is accepted and incorporated by reference into these proceedings.

MR. FISHMAN: I want to note for the record, that Mr. Weisselberg signed the plea agreement and he admits he committed conduct alleged in the felony complaint pertaining to sworn testimony during the deposition conducted by the New York State Attorney General's Office on May 12, 2023 and on October 10, 2023, during a trial titled the People of the State of New York vs. Donald J. Trump, et al., index number 452564 2022.

Your Honor, Mr. Weisselberg is currently on felony probation for his sentence in January of 2023, in front of the Supreme Court Judge Juan Mershad.

The People and defense counsel have spoken to Judge Mershad whose agreed that should this plea cause the Department of Probation to violate Mr. Weisselberg's current probation, he will not sentence Mr. Weisselberg to any additional jail time, and also understanding from Your Honor, that if for some reason the violation of probation is sent to you, you would also agree to not sentence Mr. Weisselberg to any additional jail time.

THE COURT: Counsel, let's be clear. The reason for

that is that the conduct which he is pleading guilty today preceeds his being sentenced; is that correct?

MR. FISHMAN: That is correct, Your Honor, although he is making certain admissions in the plea agreement by reference to conduct in the felony complaint that took place while he was on probation.

THE COURT: However, there will be no formal allocution or admission as part of the FBI to those counts?

MR. FISHMAN: Correct.

THE COURT: Thank you.

MR. FISHMAN: Finally, I would like to put on the record coming to a decision that Mr. Weisselberg should serve five months in jail, the People consider among other things the number of perjurious statements he made.

The fact he committed some of the conduct while he was on probation and the harm caused by the crime of perjury which tears at the very fabric of our justice system.

In deciding that more than five months was not warranted for Mr. Weisselberg, we considered certain factors including that he will be turning 77 in August, and his willingness to properly accept responsibility for his conduct. Thank you, Your Honor.

THE COURT: Anything further from the defense before I proceed?

MR. ROSENBERG: No, Your Honor. Thank you.

THE COURT: Mr. Weisselberg, I am going to ask you several questions. If you do not understand the question or you have not heard me properly, would you please let me know?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You may speak to your lawyers at any time. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Under the Constitution of the State of New York, a person who is charged with a felony has the right to have his case presented to a grand jury.

He also has the right to testify before the grand jury. The grand jury would hear the evidence and if it is sufficient would vote an indictment, and the person would then be produced upon the indictment.

Now, a person can also be prosecuted upon a Superior Court investigation. A Superior Court Information is an acquisition in writing which has been prepared by the People, the prosecution. It has the same legal force and effect as though your case had been presented to a grand jury and an indictment voted.

In your case, the Superior Court Investigation charges you with two counts of Perjury in the First Degree.

Now, do you now give up the right to be prosecuted upon an indictment which was filed by a grand jury?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you consent to be prosecuted upon the Superior Court Information?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I am showing you the written waiver of indictment. Is that your signature?

THE DEFENDANT: That is my signature, yes.

THE COURT: Did you understand what it meant when you signed it?

THE DEFENDANT: I did.

THE COURT: Your lawyers explained it to you?

THE DEFENDANT: He did.

THE COURT: I accept the defendant's waiver of indictment. I find that it is knowing voluntary and intelligent, and accept for filing Superior Court Information number 70913 of 2024. Counsel, do you waive the reading?

MR. ROSENBERG: We do, Your Honor.

THE COURT: You may enter the plea.

MR. ROSENBERG: Mr. Weisselberg pleads guilty to the charge.

THE COURT: To both counts that are set forth in the Superior Court Information? Is that correct, Counsel?

MR. ROSENBERG: Yes.

THE COURT: Thank you, Counsel.

Now, Mr. Weisselberg, are Mr. Rosenberg and Mr. Rotko, who are standing next to you your attorneys.

THE DEFENDANT: They are.

THE COURT: Have you had enough time to discuss your plea sentence and the plea agreement with them?

THE DEFENDANT: I did.

THE COURT: Are you satisfied with their representation?

THE DEFENDANT: Yes.

THE COURT: Are you pleading guilty because you are guilty?

THE DEFENDANT: Yes.

THE COURT: Has anyone forced you to take a plea?

THE DEFENDANT: No.

THE COURT: Are you currently under the influence of any drug, medications, or alcohol?

THE DEFENDANT: No.

THE COURT: Do you fully understand the nature of this proceeding?

THE DEFENDANT: I do.

THE COURT: When a person pleads guilty, he gives up several valuable constitutional rights. Do you understand that you are giving up the right to have a jury trial?

THE DEFENDANT: I do.

THE COURT: Do you understand that you are giving

up the right to have the prosecution prove your guilt beyond a reasonable doubt?

THE DEFENDANT: I do.

THE COURT: Do you understand that you are giving up the right to have your lawyers cross-examine the witnesses against you?

THE DEFENDANT: Yes.

THE COURT: Do understand that you are giving up the right to present defenses, call witnesses, you could have testified, or choose to remain silent? Do you understand that you are giving up all those rights by pleading guilty?

THE DEFENDANT: Correct.

THE COURT: You've signed a document that is a waiver of discovery. Is that your signature?

THE DEFENDANT: Yes.

THE COURT: Did your lawyers explain it to you before you signed it?

THE DEFENDANT: They did.

THE COURT: Did they explain to you that the People no longer have an obligation to provide you and your attorneys with discovery? Do you understand that?

THE DEFENDANT: I do.

THE COURT: You've also signed a waiver of appeal. Is that your signature on this document?

THE DEFENDANT: Yes.

THE COURT: Did you understand what it meant when you signed it?

THE DEFENDANT: Yes, Your Honor.

THE COURT: A defendant ordinarily retains the right to appeal even after he has entered a guilty plea. So, that means when you waive your right to appeal, you are giving up a right that is separate and distinct from the right to have a jury trial that you have already waived and have the proceeding before a higher court where a defendant would argue that mistakes have been made in the lower court which require reversal or modification.

Now, when you waive your right to appeal you can still file an appeal, but you would find that most of your claims of error would not be heard by the Appellate Court in view of this waiver. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Now, there are some claims that do survive the waiver of appeal. For example, the jurisdiction of the Court, the legality of sentence, or the validity of this waiver, and your lawyer would explain them to you in more detail. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Do you waive your right to appeal voluntarily and of your own free will?

THE DEFENDANT: Yes.

THE COURT: I accept the Defendant's waiver of appeal. Now, we will turn to the plea agreement which I have already incorporated by reference.

The plea agreement is a document that consists of four pages -- actually, five pages with the signatories and also a felony complaint. Now, are you familiar with this document, the plea agreement?

THE DEFENDANT: I am, Your Honor.

THE COURT: You are. Did you review it with your lawyers?

THE DEFENDANT: Yes.

THE COURT: Did you also review the felony complaint which is attached to the plea agreement?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you fully read all these documents?

THE DEFENDANT: I did.

THE COURT: Now, do you understand, sir, that this plea agreement constitutes the entire agreement between you and the prosecution. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: There are no other promises between -- or conditions that have been agreed to between you and the prosecution. Is that correct?

THE DEFENDANT: Correct.

THE COURT: Now, would you like any further allocution on the plea agreement and the felony complaint?

MR. FISHMAN: Not with respect to the agreement of the felony complaint, no.

THE COURT: So you are satisfied with Paragraph 3G of the plea agreement?

MR. FISHMAN: Yes, Your Honor.

THE COURT: As I have said this is incorporated by reference and, Mr. Weisselberg, you are aware that you are admitting to conduct that was committed that is set forth the in the Criminal court Complaint. Is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You are. Those are from the dates May 12, 2023, and October 10, 2023. Is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And the plea agreement will remain in the Court's file. Now, my promise to you is that you will be sentenced to five months in jail. Have any other promises been made?

THE DEFENDANT: No, Your Honor.

THE COURT: You both agree to the pre-sentence report?

MR. FISHMAN: Yes.

MR. ROSENBERG: We do.

THE COURT: You are pleading guilty to felonies. In

the future, were you to commit other felonies and be convicted of them, you would be treated as a predicate felon and subject to mandatory periods of imprisonment. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, I must also tell you, Mr. Weisselberg, that my promise to sentence you to five months is conditioned upon two things.

One of those things is you live a law abiding life, commit no crimes. The other condition is that you appear for your sentencing date. Do you understand?

THE DEFENDANT: I do, Your Honor.

THE COURT: If you do violate either of those conditions, your sentence could be enhanced to as much as two and a three to seven years of imprisonment. Do you understand?

THE DEFENDANT: I do.

THE COURT: Mr. Rosenberg, have you discussed the collateral consequences when a defendant is not a citizen of the United States?

MR. ROSENBERG: We did.

THE COURT: It's my obligation to tell you, if you are not a citizen of the United States, as a result of this conviction, you could be deported, excluded, or denied naturalization. Do you still want to plead guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: By your plea of guilty, do you admit as follows: Did you in the County of New York, on or about July 17, 2020, swear falsely by intentionally making a false statement which you did not believe to be true while you were giving testimony under oath that was material to the action, proceeding and matter in which it was made to -- when the Office of the Attorney's General was conducting an investigation into whether the Trump Organization and Donald J. Trump misstated the value of Mr. Trump's assets on his annual statements of financial condition and other documents in order to secure loan and insurance, and to obtain other economic benefits?

Did you on July 16, 2020, in connection with that investigation where you were called to appear as a witness and testify for a deposition by the Office of the Attorney General, and after having been administered an oath by a person authorized by law, did you swear that you would testify truthfully, and on July 17, 2020 during a continuation of the deposition, did you acknowledge that you knew that you were still under oath, and did you on July 17, 2020 in connection with questions about the size of Mr. Trump's s triplex apartment as reflected on his annual statement of financial condition, were you asked the following question,.

Question: "Have you advised any financial institutions that the 2015 Statement of Financial Condition contains this error?", and give the following answer,.

Answer: "Well, we did not find out about the error until the Forbes article came out."

Whereas, in truth, and in fact did you know that the testimony was false and the truth was that the defendant was informed that the triplex was 10,996 square feet not 30,000 square feet?

Prior to the publications of the May 2017 Forbes article and before the finalization on March 10, 2017 of the 2016 Statement of Financial Condition which valued the triplex based on the misstatement of 30,000 square feet and it was material to the Attorney General's investigation to identify when the defendant was informed of the correct square footage of the triplex in relation to the finalization of the 2016 Statement of Financial Content on March 10, 2017? Do you admit to all of that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: We will turn to the second count. Do you admit that in the County of New York, on or about July 17, 2020, did you swear falsely by intentionally making a false statement which you did not believe to be true while giving testimony under oath that was material to the action proceeding and the matter in which it was made to which the

Office of the Attorney's General was conducting an investigation into whether the Trump Organization and Mr. Trump misstated the value of Mr. Trump's assets on his Annual Statements of Financial Conditions and other documents in order to secure loans and insurance and to obtain other economic benefits on July 16, 2020, in connection with the investigation? The Office of the Attorney's General calling you to appear as a witness to testify for a deposition, you were administered an oath by a person authorized by law, you swore that you would testify truthfully?

On July 17, 2020, during a continuation of the investigation conducted by the Office of the Attorney's General, you acknowledged that you knew that you were still under oath and on July 17, 2020, you were asked the following question by the Office of the Attorney's General, "Were you ever present when Mr. Trump described the size of the triplex and did you give the following answer,.

Answer: "No." Whereas, in truth and in fact as you knew that testimony was false and the truth was that you were present on September 21, 2015, when Mr. Trump stated to a Forbes reporter that the size of his triplex was 33,000 square feet and that that was material to the Office of the Attorney's General investigation; whether Mr. Trump had mentioned in the presence that the size of the triplex was

greater than 10,900 feet? Do you admit that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: People, do you wish any further allocution?

MR. FISHMAN: No, Your Honor.

THE COURT: Is the plea acceptable to the People?

MR. FISHMAN: Yes.

THE COURT: The plea is acceptable to both the People and the court. Will the Supreme court Clerk please enter the plea and arraign the defendant upon it?

SUPREME COURT CLERK: Mr. Weisselberg, do you now withdraw your previously entered plea of not guilty, and do you now plead guilty to the crime of perjury -- first to two counts of Perjury in the First Degree to cover and satisfy SCI 70913 of '24? Is that your plea, sir?

THE DEFENDANT: Yes.

THE COURT: Both sides have waived pre-sentence report. Is that correct?

MR. ROSENBERG: Yes.

MR. FISHMAN: Yes.

THE COURT: I am prepared to set this matter down for sentencing. The defendant is released on his own recognizance upon the consent of the People. Is April 10th a convenient date?

MR. FISHMAN: It is for the People.

MR. ROSENBERG: Yes, Your Honor,

THE COURT: So, April 10th is the sentencing, and anything further from the People?

MR. FISHMAN: No, Your Honor.

THE COURT: Anything from the defense?

MR. ROSENBERG: No.

THE COURT: Thank you gentlemen. That concludes this proceeding.

Certified to be a true and accurate transcript.

Emily Glass

_____

Emily Glass - Official Court Reporter.