

Trump's (misleading) closing argument to the court of public opinion The former president relies on false and debunked claims in his media appearances.

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(Victor J. Blue for The Washington Post)

As closing arguments began Tuesday in Donald Trump's hush money trial in Manhattan, the former president stopped to decry the proceedings in remarks to reporters. Trump, who did not testify in his own defense, often speaks in shorthand, so here's a guide to his statements — and what is false or misleading.

Trump faces 34 felony counts of falsifying business records, related to a \$130,000 payment that then-Trump attorney Michael Cohen made to adult-film star Stormy Daniels days before the 2016 election. Daniels has claimed she had a sexual encounter with Trump — which he denies — and she and Cohen testified that the money was intended to keep her silent. Cohen also arranged for a \$150,000 payment to former Playboy model Karen McDougal to keep her from revealing a year-long affair with Trump — also denied by Trump. During the trial, prosecutors played an audio recording in which Cohen and Trump can be heard discussing paying McDougal.

“I’m here because of crooked Joe Biden. ... This is purely his weaponization.” – Trump, May 28, outside the courtroom where he is on trial

There is no evidence that President Biden has anything to do with this case, which was brought by Alvin Bragg, a local Democratic prosecutor. Bragg inherited the file from a previous prosecutor, Cyrus Vance Jr. The tenuous connection cited by Trump supporters is that Matthew Colangelo, one of the prosecutors working for Bragg, served as acting associate attorney general, the third-ranking position at the Justice Department, before joining Bragg's office in late 2022. But prosecutors change jobs all the time.

“We have a judge who’s highly conflicted. He happens to be corrupt. It’s the worst conflict that anybody’s seen. Nobody has ever seen anything like it.”

Trump and his supporters have repeatedly attacked New York Supreme Court Justice Juan Merchan, who was randomly assigned the case, as “highly partisan” and “corrupt.” As usual, Trump amps the critique to say it's the “worst” conflict ever.

Merchan oversaw a trial that found two Trump companies guilty of 17 felonies, including conspiracy, tax fraud and falsifying records. He fined the companies \$1.6 million — the

maximum allowed by law. Trump was not charged in the case, and Merchan instructed the jury to remember that they had promised to set aside any personal feelings about the former president. “Donald Trump and his family are not on trial here,” he told the jurors. Merchan’s first ruling in the case brought by Manhattan District Attorney Bragg, on April 3, sided with Trump’s legal team. Media organizations had sought to broadcast Trump’s arraignment, but Merchan agreed with the legal team’s argument that it would have created a “circuslike atmosphere” and be “inconsistent with President Trump’s presumption of innocence.”

Merchan’s adult daughter has been active in left-leaning campaigns, including doing some work for Vice President Harris’s nascent presidential campaign, according to her LinkedIn profile, which was deleted after right-leaning websites drew attention to her work. In 2020, the judge made \$35 in political contributions to Democrats, including \$15 to Biden’s campaign. In 2023, Merchan requested that the New York Advisory Committee on Judicial Ethics decide whether these facts constituted a conflict. “A judge’s impartiality cannot reasonably be questioned based on (a) de minimis political contributions made more than two years ago or (b) the business and/or political activities of the judge’s first-degree relative, where the relative has no direct or indirect involvement in the proceeding and no interests that could be substantially affected by the proceeding,” the committee said. Accordingly, Merchan denied Trump’s request that he recuse himself.

New York’s Appellate Division last week upheld Merchan’s decision not to recuse himself, saying Trump failed to prove he overstepped his authority. “Petitioner has failed to establish that the court acted in excess of its jurisdiction by denying his motion,” the order said. “Petitioner also has not established that he has a clear right to recusal.”

“They should have brought this case seven years ago, not in the middle of my presidential election where I’m leading by a lot.”

Trump and Biden are neck and neck in most polls, though Trump currently seems to have an edge in battleground states that will determine the winner of the electoral college vote. That’s not the same as leading “by a lot.”

As for why a case was not brought earlier, there’s a simple reason: Trump was president when Cohen pleaded guilty to eight criminal charges, including two — “causing an unlawful corporate contribution” and “making an excessive campaign contribution” — that directly relate to the hush money case being litigated in Manhattan criminal court.

The charges laid out how “Individual-1” (Trump) began a presidential campaign in 2016 and how Cohen worked with the National Enquirer to squelch potentially damaging stories about

alleged affairs with Daniels and McDougal. His payoffs were reimbursed by the Trump Organization.

Geoffrey Berman, at the time the U.S. attorney for the Southern District of New York, revealed in 2022 that senior Justice Department officials tried to remove all references to Trump. In a compromise, the language was watered down, specifically to remove references to the idea that Trump acted “in concert with” and “coordinated with” Cohen to make illegal campaign contributions. In his memoir, “Holding the Line,” Berman says a case against Trump ended under pressure from Attorney General William P. Barr. The office, with Cohen’s cooperation in hand, began to investigate whether others should be charged in the hush money case. After Barr became attorney general in 2019, he ordered a review of the Cohen case, suggesting that the campaign finance charges be reversed — even though Cohen had pleaded guilty six months before.

Specifically, Barr asked the Office of Legal Counsel to review whether there was a legal basis for the campaign finance charges. That froze any further investigation: “Not a single investigative step could be taken, not a single document in our possession could be reviewed until the issue was resolved,” Berman wrote, saying Barr’s intervention so long after a guilty plea was “highly unusual, if not unprecedented.” Barr eventually was convinced not to seek dismissal of the Cohen charges. But no additional charges were brought.

“Donald Trump did nothing wrong — there’s nothing wrong. This is everybody saying it, except we have a judge who’s corrupt.”

Trump read out quotes from right-leaning figures who have denounced the trial. It will be up to a jury to decide whether Trump did nothing wrong.

“I have a gag order. I’m not allowed to speak — it’s a first. ... It’s a very sad day. This is a dark day in America.”

Trump, like anyone in the United States, has strong constitutional free speech rights. But unlike many defendants, he has repeatedly tested the limits with broad attacks on the judge, the judicial system and witnesses in the cases against him. Merchan initially imposed a narrowly tailored gag order — aimed at protecting witnesses in the case, court personnel and jurors — but then expanded it April 1 after Trump appeared to cross a line again.

Trump’s comments “were threatening, inflammatory, denigrating, and the targets of his statements ranged from local and federal officials, court and court staff, prosecutors and staff assigned to the cases, and private individuals including grand jurors performing their civic duty,” Merchan wrote in his initial order.

Merchan has held Trump in contempt 10 times for violating the orders and has fined him the maximum of \$10,000. Trump's effort to appeal the order was denied by New York's Appellate Division on May 14. The ruling said Merchan "properly determined that petitioner's public statements posed a significant threat to the integrity of the testimony of witnesses and potential witnesses in this case as well." A gag order has also been imposed in the federal criminal case alleging that Trump sought to overturn the 2020 election. That order, which applied to all trial participants, was upheld by the U.S. Court of Appeals.

"We had an election expert who was going to say everything was perfect, where the FEC [Federal Election Commission] did nothing, it was fine."

Merchan did not bar the expert, former FEC chair Bradley A. Smith, from testifying, but he limited what Smith could say about federal campaign finance laws. He said that if he allowed Smith to speak expansively in the realm of legal opinion, then the prosecutor would be permitted to bring in its own expert. "There is no question this would result in a battle of the experts, which will only serve to confuse, and not assist, the jury," Merchan said.

After the ruling, Trump's defense team chose not to call Smith.

Meanwhile, the FEC staff, in a December 2020 report by the general counsel, said it had found "reason to believe" violations of campaign finance law were made "knowingly and willfully" by the Trump campaign. The report said that Cohen's \$130,000 payment to Daniels was far in excess of the legal limit for individual contributions of \$2,700. "The available information indicates that Michael Cohen paid Stephanie Clifford [Daniels's real name] \$130,000 at the direction of 2016 presidential candidate Donald J. Trump, with Trump's express promise of repayment, for the purpose of influencing the 2016 election," the report said.

The FEC by law is made up of six commissioners split evenly between Republicans and Democrats. In 2021, the FEC on a party-line vote of 2-2 dropped the case; there was one vacancy and one Republican recusal. Democrats wanted to pursue the case, but Republicans said the public record was complete, given Cohen's punishment.

Separately, the FEC fined the National Enquirer's parent company \$187,500 for "knowingly and willfully" violating election law by making a payment in 2016 to McDougal.