

RELEASE THE KRAKEN: FOX NEWS' REVOLVING SIDNEY POWELL CONSPIRACY THEORY DOOR

It does Dominion Systems no good, in their defamation lawsuit against Fox News and Fox Corporation, to prove that Sidney Powell was a long-time Fox News commentator. They are suing Fox for defamation based on Fox' platforming of Sidney Powell *after the time* the Murdoch outlet had internally recognized her as a bullshit artist, not during the time when she routinely showed up to lie about another topic – Mike Flynn's innocence.

That explains why that prehistory, the long period when Powell was just another personality on Fox News, doesn't appear in Dominion's motion for summary judgement or its response to Fox's MSJ.

What appears, instead, are two inflammatory claims which – taken together – may be as important as the billion dollar lawsuit and the sordid truth about Fox that Dominion has aired as part of it.

First, as Dominion lays out in response to Fox's attempt to blame Trump for all the outrageous false claims about Dominion, Fox started it,

Fox went *beyond* the claims that Rudy Giuliani made in court, and Fox aired Sidney Powell's false claims *before* she made those claims in court (which is one reason why, Dominion argues, Fox can't simply claim they were covering newsworthy lawsuits).

Dominion lays out a timeline showing that Powell didn't make any of the allegedly defamatory claims against Dominion *in court* until November 25, after Fox had floated them in 12 of the

claimed instances of defamation.

As Giuliani himself told the court in one Pennsylvania lawsuit brought by the campaign, the lawsuit is not a fraud case. See Donald J. Trump for President, Inc. v. Sec’y of Pennsylvania, 830 Fed.Appx. 377,382 (Cir. 2020). Or to quote the headline of a November 23, 2020 Wall Street Journal article: “Trump Cries Voter Fraud. In Court, His Lawyers Don’t.” Ex.702. Only Powell’s lawsuits, the earliest of which was filed on November 25 (after she had been disavowed by the Trump campaign), made allegations along the lines of the defamatory statements accused in this case allegations that Fox had been broadcasting for weeks before Powell’s lawsuits were filed.⁹

The facts about the cases Fox focuses on are as follows:

November 7: The Trump campaign files an Arizona election challenge alleging defects in the ballots and poll worker deviation from protocols, not a technological failure of vote tabulation machines. See generally Ex.C1. Dominion is not mentioned.

November 11: The Trump campaign files a challenge to results in Antrim County. The gravamen of the complaint is interference with Republican election observers, disputes about voter eligibility, and ballots being run through tabulating machines multiple times—not mechanical tabulation errors. See Ex.C227-60. The complaint concedes that the Secretary of State found that the Antrim error was a result of the failure of a county clerk to properly update media drives, and does not allege any intentional misconduct by Dominion. See id. 60-62.

November 13: Lin Wood files a Georgia election contest, challenging certain changes in Georgia's election laws. See Ex.C425-50. The lawsuit was not filed on behalf of the President or his campaign, nor does it make any misconduct allegations against Dominion or even mention Dominion by name.

November 17: Lin Wood files an affidavit in his Georgia lawsuit alleging certain misconduct by Smartmatic (not Dominion). The affidavit was irrelevant to the subject matter of the underlying suit, and was never filed in any case brought by the Trump campaign. Ex.C5.

November 25: More than two weeks after Fox first gave her a platform to promote her conspiracy theories, and days after the campaign expressly disavowed her, *Powell files lawsuits in Georgia and Michigan. These lawsuits parrot the lies amplified by Powell and others on Fox.* Exs.C8-C9.

December 1& 2: Powell files two more lawsuits in Wisconsin and Arizona—repeating the false allegations against Dominion. Exs.C11-C12. [italics my emphasis]

More importantly, Dominion lays out that Fox had Powell on to float these allegedly defamatory claims before Trump embraced them. Dominion suggests that having Trump embrace them was part of luring Trump back to the network.

It is also belied by the record for at least four reasons : (1) President Trump followed lead, making the same allegations against Dominion only after Fox had made them; (2) Sidney Powell was not on the President's legal team when she started making the Dominion allegations and was disavowed after being associated with that team for at

most 8 days; (3) Powell received some of her information via Fox hosts, who then laundered the lies by hosting her on their shows; and (4) neither Trump nor his campaign ever filed a lawsuit alleging the at-issue statements.

First, Fox's own recitation of the timeline of Trump tweets establishes that Fox went first, Trump went second. On November 7, 2020, President Trump retweeted a report of Georgia using the same machines as Antrim County. Ex.G6. Notably Trump did not name Dominion, and certainly did not accuse Dominion of participating in an election-rigging conspiracy. The Trump campaign then filed a lawsuit on November 11 regarding the events in Antrim County that merely asserted there had been a "glitch" in the Dominion software. Ex.C2 . It was not until November 12 that Trump first made any allegations about Dominion intentionally switching votes, which he did via a tweet crediting OAN's reporting. See Ex.G6 p.3. Though this tweet refers to OAN, it demonstrated Trump could be pulled back to Fox—provided the network broadcast what he wanted to hear. Indeed, later that same day, Trump tweeted his approval of Fox hosts attacking Dominion, telling his followers that they "[m]ust see @seanhannity takedown of the horrible, inaccurate and anything but secure Dominion Voting System which is used in States where tens of thousands of votes were stolen from us and given to Biden. Likewise, the great @LouDobbs has a confirming and powerful piece!" Ex.683. From here on out, Trump had Dominion in his sights.

Dominion argues that what got Trump to start attacking Dominion was seeing Fox focus on the claims of fraud; it suggests Fox was airing

those claims of fraud to appease Trump.

What changed between November 7 and November 12? Fox entered the fray. Specifically, on November 8 Maria Bartiromo brought Powell onto her show to air the false claim that Dominion machines used an algorithm to calculate the votes that they would need to flip. Ex.A2 p.15. The Fox platform gave Powell the stamp of credibility, and reach, needed to spread the lies about Dominion. And while Trump was widely known to be a voracious consumer of Fox, Bartiromo did not leave anything to chance. [three lines redacted]

These redacted lines suggest that Bartiromo spoke with the Trump campaign directly to highlight these false claims; in the earlier filing, Bartiromo told Powell, "I just spoke to Eric [Trump] & told him you have very imp[ortant] info." In that same reference, the filing revealed that Bartiromo "also provided information directly to Powell," suggested that Bartiromo was a go-between between Powell and the campaign.

But that's not the craziest part.

The crazy part – which is only clear from reading both Dominion's recent filings – is that Fox got Trump to disavow Sidney Powell.

Remember how this looked in real time. After the embarrassing Four Seasons Total Landscaping press conference, the campaign publicly distanced itself from Powell on November 22.

 **Jenna Ellis** ✓
@JennaEllisEsq



- November 22, 2020 -

Trump Campaign Statement on Legal Team

“Sidney Powell is practicing law on her own. She is not a member of the Trump Legal Team. She is also not a lawyer for the President in his personal capacity.”

- Rudy Giuliani, Attorney for President Trump, and Jenna Ellis, Trump Campaign Senior Legal Adviser and Attorney for President Trump

10:23 PM · Nov 22, 2020 · Twitter for iPhone

Here's the explanation offered by Maggie Haberman at the time.



Maggie Haberman ✓
@maggieNYT

The president was not pleased by the loss in the PA suit, per people familiar with what took place. Powell was easiest to vote off the island, especially as the president was getting complaints about her from a number of people.

11:39 PM · Nov 22, 2020

499 Retweets 119 Quote Tweets 4,949 Likes



Tweet your reply

Reply



Maggie Haberman ✓ @maggieNYT · Nov 23, 2020

Replying to @maggieNYT

“She was too conspiratorial even for him,” said one Trump adviser. Other advisers note there's little daylight between what Giuliani and Powell have been serving up.

159

337

3,785



Tip



Maggie Haberman ✓ @maggieNYT · Nov 23, 2020

Sources familiar with the discussions said that there became a lot of unease about what Powell and Giuliani have been saying given the two Senate runoffs, but that people see Powell's comments as more problematic. Saturday Newsmax interview brought it to a head.

According to Dominion, however, after Powell came after Tucker Carlson, Raj Shah – who used to work as a spox in Trump's White House – inquired about her status with Trump. He learned two days before Rudy made a show of publicly ousting her from the campaign that *she never worked for the campaign*.

Second, Fox ignores what it knew better than the public at the time: Powell was never officially on the Trump campaign's legal team, having never signed an engagement agreement. Ex.605, Shah 246 :4-12; id. 273:11-20. When Fox was finally motivated to get to the bottom of the relationship between Powell and Trump (which only happened after Powell came after one of Fox's own, Tucker Carlson), it took Fox but a day or so to get the truth. See, e.g.,infra pp.163-164.

[snip]

Shah believed the Decision Desk got the Arizona call right (see,e.g.,Ex.725);that the November 19,2020,press conference featuring Sidney Powell and Rudy Giuliani was not credible ,including the claims about Dominion (see, e.g., Ex.605 , Shah 214 :21-215 :7); see also Ex.726 (crazy fucking presser);and that Sidney Powell was generally nuts (Ex.727).

Yet Shah did nothing when on or around November 20,2020, he learned that Sidney Powell never had a retention agreement with Trump or his campaign. This was explosive news. *For several weeks Shah's network had been airing false allegations from Powell, in part, so they say now, because she was the President's lawyer.* But upon learning that she was not the President's lawyer what did Shah do? Effectively nothing. See Ex.605, Shah 297:18-298:2. [italics my emphasis]

Fox learned that Sidney Powell never had a retention agreement with the Trump campaign, but still covered her, purportedly, based on the claim that what she did for the campaign was newsworthy.

It's these two comments that are particularly interesting though: Fox brought her on and off the campaign, and had a role in her conspiracy theories.

And while Powell appeared on Fox only four times when she was even arguably part of the President's team, and six times when Fox was clearly aware that she was not. As important, Fox was instrumental in maneuvering Powell both into the Trump campaign and then out of it.

Third, Fox ignores its own role in developing the conspiracy theories it then aired See Dom. MSJ pp.39-44

These two claims – that Fox “maneuvered Powell ... out of” the Trump campaign and that they played a role in developing these conspiracy theories, are discussed in heavily redacted passages of the earlier filing (probably redacted because Fox has claimed it pertains to internal business deliberations).

The first – describing how Fox “maneuvered Powell ... out of” the Trump campaign after Tucker came under fire for questioning Powell – consists of almost four full paragraphs introduced with a description that Fox, including Tucker and Raj Shah, “mobilized.”

“We won the battle with Powell. Thank god,” the passage quotes a Tucker text later. Dominion is now explaining that that “battle” pertained to getting Powell ousted from Trump's orbit.

The second claim – that Fox was the source of some of these conspiracy theories – incorporates the description of how Fox got Powell ousted from the campaign, but also includes redacted passages describing Lou Dobbs' role in “promoting the narrative,” another making a redacted reference to Hannity, as well as the unredacted reference to Bartiromo chasing an email from Sidney Powell that Powell herself said relied on a “wackadoodle” source. The later

filing suggests the earlier filing goes as far as saying that Fox played part in developing the conspiracy theories.

To be sure: Fox's real-time knowledge that Sidney Powell never had a formal relationship with Trump and Tucker's [apparent] role in getting her ousted from Trump's orbit are critically important for Dominion's case that Fox properties continued to air her conspiracy theories, falsely claiming to do so because they reflected Trump's strategy, are both crucial pieces of evidence in their case that Fox knew they were allowing Powell to make false claims on their shows.

But they are important for another reason: because Jack Smith is investigating at least one and possibly two (the Sidney Powell investigation that went overt in September 2021) prongs based on claims that the people raising money were knowingly lying.

Fox likely still has no criminal exposure for the campaign finance violations that Smith is investigating (though the report that Rupert gave Jared confidential information on Biden's ads may give Smith reason to look more closely).

But, as I noted after the last filing, all this material about what Fox was being told by Trump's team is directly relevant to those suspicions of fraud.

It's not just that Dominion has laid out damning evidence that Fox knowingly and falsely accused it of fraud. But discovery in this suit appears to have produced abundant evidence that the campaign itself knew it was recycling fraudulent claims Fox was peddling to keep Trump loyal.

Fox may have no more than this civil exposure. But Dominion lays out plenty of evidence that Fox was part of Trump's suspected fraud on his own voters.