“REASONABLE PERSONS:” TRUMP’S RECUSAL STUNT FLOPS

Yesterday, Judge Tanya Chutkan denied Trump’s motion for her recusal.

Chutkan’s order was judicious, clinical, and never once responded to the ridiculous claims John Lauro made in his bid to remove a Black woman judge. In other words, it is a model of judicial temperament, and so will hold up under any appeal.

For example, rather than laying out how much video she had seen implicating Trump in the violence and lawlessness of January 6, Chutkan simply corrected the error Trump’s lawyers had made when they falsely claimed she had seen no video on which to base her comments in Chrstine Priola’s sentencing, and so (they insinuated) had formed opinions based on what she had seen on the news.

> The statements at issue here were based on intrajudicial sources. They arose not, as the defense speculates, from watching the news, Reply in Supp. of Mot. for Recusal, ECF No. 58 at 4 (“Reply”), but from the sentencing proceedings in United States v. Palmer and United States v Priola. The statements directly reflected facts proffered and arguments made by those defendants. And the court specifically identified the intrajudicial sources that informed its statements.
>
> [snip]
>
> The court also expressly based its statements in Priola’s sentencing on the video evidence presented earlier in the hearing. Priola Sentencing Tr. at 11–14, 29. Priola. The statements directly reflected facts proffered and arguments

> made by those defendants. And the court specifically identified the intrajudicial sources that informed its statements.

Here's the proof, from the sentencing transcript Trump's attorneys cited themselves, that prosecutors entered the video that Trump's lawyers claimed they couldn't find into evidence.

> As we've discussed, I would like to play seven video clips which the government feels are the best evidence of the defendant's conduct that day. The clips total about ten minutes. Each was an exhibit to the government's sentencing memorandum. Before I play each clip, I'll just preview a little bit about what each clip shows.
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> [Introduction of each of 6 videos, including notation that the videos were played.]
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> THE COURT: There's no Exhibit 6. Is that right?
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> MS. ZIMMERMAN: No. That was a mistake, Your Honor.
>
> THE COURT: Okay.
>
> (Video played.)
>
> [snip]
>
> Does the Court have any questions about any of the videos?
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> THE COURT: No. Thank you.

Having established that the comments about which Trump complained arose in the course of her role as a judge, Chutkan described that she was *obligated* to directly address the bids that Robert Palmer and Christine Priola made for a downward departure because they were not as culpable as Trump.

> To begin, the court's statements reflect its obligation to acknowledge Palmer and Priola's mitigation arguments on the record. As already noted, both defendants sought a lower sentence on the grounds that their culpability for the January 6 attack was lesser than that of others whom they considered to be the attack's instigators, and so it would be unfair for them to receive a full sentence while those other people were not prosecuted. See supra Section III.A. The court was legally bound to not only privately consider those arguments, but also to publicly assess them. By statute, every judge must "state in open court the reasons for its imposition of the particular sentence." 28 U.S.C. § 3553(c). For every sentence, the court must demonstrate that it "has considered the parties' arguments," Rita v. United States, 551 U.S. 338, 356 (2007), including a defendant's arguments that their case involves mitigating factors that should result in a lower sentence, United States v. Pyles, 862 F.3d 82, 88 (D.C. Cir. 2017). That is what the court did in those two cases. A reasonable person—aware of the statutory requirement that the court address the defendant's arguments and state its reasons for its sentence—would understand that in making the statements contested here, the court was not issuing vague declarations about third parties' potential guilt in a hypothetical future case; instead, it was fulfilling its duty to expressly evaluate the defendants' arguments that their sentences should be reduced because other individuals whom they believed were associated with the events of January 6 had not been prosecuted.

While Chutkan's comment about what a "reasonable person" should know given sentencing obligations

might be a dig at Trump's lawyers' claimed ignorance of this basic fact, it nevertheless adopts the standard for recusal: not what a defense attorney feigning ignorance might argue, but instead what a reasonable person might understand.

Chutkan similarly noted that Trump's team had to adopt a "hypersensitive, cynical, and suspicious" in order to interpret her factual statements as if they necessarily addressed Trump himself.

> But the court expressly declined to state who, if anyone, it thought should still face charges. It is the defense, not the court, who has assumed that the Defendant belongs in that undefined group. Likewise, for the sentencing hearing in Priola, the defense purports to detect an "inescapable" message in what the court did not say: that "President Trump is free, but should not be." Id. at 2 (emphasis added). The court did state that the former President was free at the time of Priola's sentence—an undisputed fact upon which Priola had relied for her mitigation argument—but it went no further. To extrapolate an announcement of Defendant's guilt from the court's silence is to adopt a "hypersensitive, cynical, and suspicious" perspective rather than a reasonable one. Nixon, 267 F. Supp. 3d at 148.

Again, this opinion should be rock solid in the face of appeal, even if it won't impress those of "hypersensitive, cynical, and suspicious" disposition.

This opinion addresses what reasonable people should understand and believe. It certainly won't persuade Trump's groupies, because they are not reasonable people. But it soundly addresses the standard for recusal and the actual evidence before Chutkan.