



Legal Errors in the New York Prosecution of President Trump Smith Testimony

Despite allowing Michael Cohen and Stormy Daniels to testify on the nature of alleged illegal payments, Judge Merchan disallowed expert witness Brad Smith's testimony on the Federal Election Commission (FEC) and definitions of common campaign terms.¹

The court used a double standard on admissible evidence to harm President Trump's ability to put on testimony that helped him

- The entire prosecution hinged on the theory that certain payments made by Cohen to Daniels violated federal campaign finance laws.
- The judge allowed both Cohen and Daniels to testify about the payments—and draw negative insinuations about Trump—despite neither of them having any knowledge of campaign finance law.
- The defense attempted to call former FEC Commissioner Brad Smith to testify why the payments did not violate federal law.
- The Court, however, barred Smith from “lay[ing] out the ways [The Federal Election Campaign Act (“FECA”)] has been interpreted in ways that might not be obvious,” with “the idea that what is a campaign expense is an objective test” by presenting similar FECA allegations.²
- Smith would have testified to the effect that, “If [the President Trump payments are] not campaign expenditures, they’re not subject to disclosure. My view is that this is not a campaign expenditure, and once you hit that point, it doesn’t matter how you paid for it.”³
- He drew the comparison that: “[y]ou can’t make an argument like I need to have my teeth whitened so I look good on the campaign trail, or I need a new suit. ... [T]he statute defines ‘personal use’ as any abdication that would exist even if you weren’t running for office. You’ve still gotta have clothes, still gotta keep your teeth, these are things that existed before you ran for office. The obligation has to exist solely because he’s running for president. It’s the idea of, ‘I want to settle these lawsuits because I don’t want this to hang over me.’”⁴

¹ Jordan Boyd, *Trump Trial Judge Censors Federalist Writer, Former FEC Chairman from Sharing Key Defense Facts*, FEDERALIST (May 7, 2024), <https://tinyurl.com/3mu53rdn>; Randy DeSoto, *FEC Expert Witness Whose Testimony Was Denied by Merchan Reveals What He Would Have Said at Trump Trial*, WESTERN J., (May 23, 2024, 2:53PM) <https://tinyurl.com/22xrw7ty>; Byron York, *Brad Smith: What I would have told the Trump jury*, WASH. EXAM’R. (May 20, 2024), <https://tinyurl.com/4ecrusts>.

² Byron York, *Brad Smith: What I would have told the Trump jury*, WASH. EXAM’R. (May 20, 2024), <https://tinyurl.com/4ecrusts>.

³ *Id.*

⁴ *Id.*