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Justice Juan Merchan. Photo credit: NYLJ/Rick Kopstein

## Speed of Trump Jury Selection Proves Merchan Is in Charge: Veteran Lawyers

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White Collar Crime



Emily Saul



The Manhattan judge presiding over Donald Trump's criminal case may have shocked the country when he empaneled seven jurors on Tuesday, following just two days of jury selection—but observers say it shows the jurist is in complete control of the proceedings.

"Despite everyone's belief that voir dire was going to be next to impossible and was going to stretch on for weeks, we have jurors," said longtime white-collar defense attorney Robert Gottlieb, who has practiced in Manhattan Criminal Supreme Court for decades and empaneled many juries there.

The credit, Gottlieb says, goes to Acting Supreme Court Justice Juan Merchan and his staff.

J. Bruce Maffeo, senior counsel at Cozen O'Connor, said he was "shocked" Tuesday evening to learn seven jurors had been empaneled already to sit in judgment of the former president.

"I think everyone is surprised," said Maffeo. "Everybody but Merchan."

The judge has tentatively scheduled opening statements for Monday. The highly anticipated case was the first indictment brought against a former U.S. President and is the first of Trump's four criminal matters to reach the trial stage.

Jury selection began Monday, with a pool of nearly 100 Manhattanites appearing that afternoon before the judge and the parties. Merchan began by asking if anyone in the pool held any opinion that would make them unable to be fair and impartial in the case. Around half raised their hands and were dismissed.

Gottlieb, of Robert C. Gottlieb & Associates, attributed that decision to cutting down time spent battling over challenges for cause that could have dragged on indefinitely.

"The greatest amount of time in any voir dire is addressing the challenge for cause," Gottlieb said. "You do not see the type and extent of control that Judge Merchan is exercising in every case."

Merchan set strict guidelines for jury selection. He issued a letter to both sides ahead of trial and relied on a 42-point questionnaire to elicit basic information from jurors. He gave both the prosecution and the defense 30 minutes each to voir dire pools of potential panelists. And he held them to that limit.

“It’s easy to get dragged down if you don’t keep the assembly line moving,” Maffeo said. “It’s really easy in state court to get sidetracked. He’s moving it along very briskly. He’s setting a brisk pace and he’s keeping the colloquies limited. He’s hearing them out, but he’s not letting anyone waste time.”

While Merchan continues to preside over Manhattan’s mental-health court on Wednesdays, Gottlieb observed that he had otherwise cleared his schedule to dispatch with this case.

“They have clearly cleaned the decks to allow the judge to devote his undivided and full attention to this trial without any interruptions,” he stated, noting that proceedings are frequently halted by emergency meetings or other inevitable interruptions that may grace a judge’s calendar. “So far, that has not happened here and I don’t think that’s an accident.”

“The judge is controlling his courtroom and he is not tolerant of wasted time,” Gottlieb added. “This judge is conducting the voir dire as every judge should: He hears arguments, for or against cause and he makes a decision. He doesn’t countenance pontification and unnecessary argument. Yet what’s clear to me is he is handling, he is inviting and accepting, an argument that is focused on the issue at hand.”

Maffeo said he also thought the 42-point questionnaire, which he noted he had never seen before in state supreme criminal court, was helping move the process along.

McLaughlin & Stern partner Daniel Horwitz—who has tried numerous criminal cases in Manhattan Supreme Court and empaneled his last jury two weeks ago—said Trump’s jury selection has him thinking about how New York overhauled its juror criteria under the leadership of late Court of Appeals Chief Judge Judith Kaye.

The state used to allow professionals—such as doctors or lawyers—to exempt themselves from jury service. Kaye led a successful effort to abolish all exemptions.

Trump’s jury includes people of many professional backgrounds—including a corporate attorney and a civil litigator. The jurors hail from Ireland, Puerto Rico, Oregon, North Carolina, and New York.

“The jury pools today are not your stereotypical quote, unquote New York liberal jury,” he observed. “You have a more diverse group of people to choose from. Professionally, economically, socially, racially.”

With the seven empaneled, the parties need five more jurors and six alternates. Each side has just four peremptory challenges left as they attempt to fill those slots.

“I’m sure it’s going to get more difficult for the judge to control the courtroom, but based on what we have seen he is clearly up to the task,” Gottlieb remarked.

Trump is represented in this case by Todd Blanche and Emil Bove of Blanche Law and Susan Necheles and Gedalia Stern of Necheles Law. He has pleaded “not guilty” to 34 counts of falsifying business records, which prosecutors allege is part of a scheme to suppress negative information about himself during the 2016 presidential campaign cycle.

Jury selection is scheduled to resume Thursday.

The trial is expected to last 6 to 8 weeks.

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