

AILEEN CANNON IS STIFF-ARMING THE PRESS

I'm going to write up what really happened yesterday – as predicted, virtually all outlets I've seen simply quoted what Aileen Cannon claimed she had done, rather than describing what she had actually done.

Before I do that, I want to note that Judge Cannon is stiff-arming the same press that is reporting so credulously on her interventions.

Back on August 31, the press coalition that does such things moved to intervene in the case. Most of it was the same boilerplate the coalition uses for all such motions, but they did cite both sides in the matter calling for transparency.

Former President Trump himself has called for greater transparency. See, e.g., ECF No. 1, at pp. 2-3 (noting personal desire for more openness). The Government has stated likewise. See, e.g., ECF No. 1, at pp. 9-10 (detailing Attorney General Merrick Garland's statements on why the Government sought to unseal certain search warrant records); see also ECF No. 48, at p. 2 n.1 (noting that the Government is "prepared . . . to unseal the more detailed receipt").

They described that the government did not oppose the motion and Trump took no position on it. They asked to be heard on the matter on September 1.

The next day, Judge Cannon released the detailed inventory the government had submitted (it has since submitted a slightly revised inventory, but didn't address the press access.

After the government moved to unseal the

privilege status report on September 8, the press coalition submitted their own request for unsealing.

Then, after two weeks had elapsed since their initial motion, the press coalition tried again. They pointed out that if anyone wanted to oppose their intervention, the two week deadline to do so had expired. And they noted that the privilege review status report still remained under seal.

The News Media further note that certain records remain under seal in this matter, namely those docketed at ECF No. 40. The News Media understand ECF No. 40 to contain the Government's submission regarding its Privilege Review Team's Notice of Status of the Filter Process. The Government filed a motion to unseal that document (less Exhibits A and B to that filing) on September 8, 2022. See ECF No. 71. The News Media filed a further motion to unseal that court record on September 9, 2022. See ECF No. 79.

But Judge Cannon has simply ignored those requests.

There's an obvious reason she did so: In her September 5 order first appointing a Special Master, she made claims based on that sealed status report. The claims are not only probably false, but she effectively double counted the potentially privileged materials as both potentially privileged and personal. That was the means by which she found that Trump had a possessory interest in the items seized on August 8. So she likely *can't* allow that status report to be unsealed, because if it were, her deceit would become evident.

Ironically (or perhaps cynically), Cannon cited the importance of the perception of fairness in that same ruling relying on the status report she won't let the press see.

A commitment to the appearance of fairness is critical, now more than ever.

[snip]

As Plaintiff articulated at the hearing, the investigation and treatment of a former president is of unique interest to the general public, and the country is served best by an orderly process that promotes the interest and perception of fairness. See supra Discussion III–IV; see also *In re Search Warrant Issued June 13, 2019*, 942 F.3d at 182 (“[A]n award of injunctive relief in these circumstances supports the ‘strong public interest’ in the integrity of the judicial system.” (quoting *United States v. Hasting*, 461 U.S. 499, 527 (1983) (Brennan, J., concurring in part and dissenting in part))).

[snip]

“[E]fficient criminal investigations are certainly desirable,” *In re Search Warrant Issued June 13, 2019*, 942 F.3d at 181, but so too are countervailing considerations of fair process and public trust.

But she only maintains this perception by stiff-arming the press and hiding that status report.

Thus far, she has gotten away with it. Not only isn't the press calling her out for stiff-arming them, but they continue to quote what she says rather than reporting on what she does.

Update, 10/4: After she ordered the status report unsealed, Judge Cannon granted the motion to intervene prospectively.