Frison
LAW FIRM, P.C.

July 7, 2024

By ECF

The Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Carlos Watson and OZY Media, Inc.
Criminal Docket No. 23-82 (EK)

Dear Judge Komitee:

While the nature of a criminal trial is adversarial, the role of the prosecutor, defense team, and especially the Court is to ensure a fair trial. The United States v. Carlos Watson and OZY, Media Inc. is not a fair trial. In instance after instance, The Court has put its thumb on the scale of justice by providing inappropriate assistance to the prosecution, undermining the credibility of Mr. Watson's defense team, and through rulings that have reflected a disturbing bias. In doing so, the Court has constricted and restrained the defense's ability to provide effective representation.

This letter is a plea to the Court to uphold the standards expected in a criminal jury trial.

This is not the defense's first request of this Court. The defense has yet to receive a comprehensive response. After the initial letter (attached), the Court on July 2, 2024 (14th day of trial), briefly addressed the defendants' first letter on this topic before the testimony began that day. Tr. at 3084 – 3089. At that time, the Court gave an oral response in open court, cherry-picking and taking out of context several of defense counsel's claims. The Court noted that it would also respond in writing but has not yet published a letter on ECF. Tr. at 3084, ln 2 – 3. Of note, the Court did *not* allow undersigned counsel to respond in open court. Even upon a specific request to address the Court orally, the judge directed counsel instead to write yet *another* letter, hence this filing. Tr. at 3174, ln 1 – 24.

Response to the Court's July 2nd Comments:

1. The Court first stated that defense counsel made claims "without any citations." Tr. at 3084, ln 7 – 12. The first letter filed on July 2nd included several illustrative examples of the Court's treatment towards the defense as well as transcript citations; however, those instances are not exhaustive. Attached is a more comprehensive list of comments and rulings made by the Court, the dates of those instances, and transcript citations.

2. The Court next stated that it has given "constructive feedback" to the defense. Tr. at 3085, ln 5 – 14. In fact, what it has given the defense has been anything but constructive. The trial has been rife with demeaning and demoralizing comments, overly harsh penalties for alleged rule violations, and a general lack of care and appreciation for the optics and for the real consequences of this treatment.

   While these comments are *sometimes* made while the jury is dismissed, the Court is now making comments in front of the jury. For example, on July 3, 2024, the Court paused the direct examination of Mr. Watson, stating that the line of questioning was in a "place that is of questionable relevance" in front of the jury. Tr. at 3294, ln 13 – 18.

   Additionally, the Court signals to the jury its frustration with defense counsel and witnesses through its physical demeanor. At several points during the direct examination of Mr. Watson, the Court threw his face into his palms and became noticeably red at moments when Mr. Watson would elaborate on an answer. Please see attached tracker at entry 45.

   Anyone watching the Court's treatment of the defense can see that Mr. Watson is not receiving a fair trial, and the press continues to cover these disputes.

3. The Court then stated that "candor to the Court is an important feature in cases like this one." Tr. at 3086, ln 9 – 10. The defense does not lack candor with the Court. Defense counsel has been transparent and candid about its issues with the discovery platform and with receiving information from Mr. Watson's previous counsel.

   Defense counsel has provided the Court with as much information about its observance of the Court's orders as possible, yet the Court continues to misconstrue its actions and intentions. On June 26, 2024, for example, the Court suggested that defense counsel willfully violated its discovery and 26.2 disclosure obligations, calling it a "tactical choice and purposeful violation." Tr. at 2642 – 2643. The Court even suggested that defense counsel had a "brazen disregard for the rules and practices of this Court." Tr. at 2642 – 2643. That same day, the Court also suggested that defense counsel was not setting an appropriate example for the young lawyers in the room. Tr. at 2628 – 2629.

   The Court's belief that defense counsel has not been transparent throughout this trial has bled into its interactions with witnesses. For example, Professor David Robinson, the defense's expert witness, wrote a letter to both the Court and to the Chief Judge of the Eastern District of New York about the injustice he witnessed and experienced in courtroom 8D South. See attached. Professor Robinson also copied the prosecutors and defense counsel on that letter. In it, Professor Robinson made clear that he did not write the letter "at the request of defense counsel, nor has defense counsel (or anyone, for that matter) reviewed or assisted in the preparation this letter." Yet, on the afternoon of July 1, 2024, when it was received by all the above parties, the Court stated in open court that it came to his attention that the ***defense*** took issue with the fact that the Court refused to qualify Professor Robinson as a witness. Tr. at 3002, ln 18 – 21.

   Again, the defense was accused of something it did not do. The defense did not request or assist the professor in communicating with the Court or the Chief Judge. The allegations against counsel must end to ensure a fair trial for both defendants.

4. The Court then denied that it primarily sustains its own objections against defense counsel. Tr. at 3086, ln 14 – 18. In fact, the Court has sustained its own objections against questions from defense counsel approximately 32 times and against the prosecution team only four times. Tr. at 365, ln 6 – 7; 436, ln 12 – 13; 1588, ln 8; 2778, ln 9. See also the attached tracker for objections sustained against the defense.

5. The Court then denied that it has acted as a fourth prosecutor in this trial. Tr. at 3086, ln 21 – 25; 3087, ln 1 – 8. In fact, the Court's assistance to the prosecution has been legion. For example, the Court has granted every request for sidebar from the prosecution but has denied the defense counsel's request for sidebar on three occasions – each in front of the jury. Tr. at 3457, ln 2 – 3; 3494, ln 8 – 12, 17 – 19. The Court previously demanded that defense counsel ask for clarification about rulings "instead of just winging it." Tr. at 3299, ln 3 – 6; 3150, ln 21 – 23.

   The Court has also made controversial rulings in favor of the prosecution. Significantly, on June 6, 2024 (5th day of trial), during the cross examination of the government's first witness, inexplicably, the Court did not allow Mr. Sullivan to impeach Mr. Rao with a document that Mr. Rao himself authored. The Court opined that Mr. Sullivan could not read from a document not in evidence, notwithstanding that this was a rudimentary, non-hearsay impeachment permitted under the Federal Rules of Evidence and allowed in every court across the country. Tr. at 1010.

6. Lastly, the Court denied defense counsel's account of how he handled an accusation against Mr. Watson, stating, "That's not my recollection." Tr. at 3088, ln 19 – 25. The Court continued to suggest that he gave Attorney Sullivan the opportunity to respond after Attorney Siegel flagged the incident, but that is not true. The Court first chastised Mr. Watson and then threatened to revoke his pre-trial release on bail. Tr. at 1539. The Court specifically stated the following *before* Attorney Sullivan was able to speak:

   > "THE COURT: Yes. Obviously, the need to ensure -- Mr. Watson, I'm speaking to you directly now. Mr. Watson, the need to ensure an impartial jury that hears the evidence in this case and nothing else from anybody in this room, no lawyer, no party, you've heard me instruct the jury over and over again that they should not be engaged in any communication with you or the lawyers, and that you and the lawyers should not be engaged in any communication with them. If I hear one more thing along those lines, we are going to contemplate the state of your pretrial release on bail." Tr. at 1539.

Defense counsel has observed the following in the last week:

1. On July 1, 2024 (13th day of trial), during the direct examination of Mr. Watson, the Court sustained its own objection to the defendant's testimony once more. Tr. at 3063, ln 21. In doing so, the Court is not allowing for a vigorous examination of the issues from the defendant, who is facing 37 years in prison for these charges.

2. Also, on July 1, 2024 (13th day of trial), the Court repeatedly sustained government objections to the most basic information a witness can provide on the stand. Even as to *his own conduct*, Mr. Watson was shut down in explaining the business of OZY Media in meaningful ways that

3. would assist the jury. For instance, Mr. Sullivan asked Mr. Watson if he knew from his finance team whether OZY Media used a cash basis or accrual basis for its accounting. The prosecution objected, and the Court sustained the objection. Tr.at 3036 – 3039. So, Mr. Watson is unable at his own trial to state *whether his own company (also being tried) used a cash basis or accrual basis*. Not only does this hamper the jury in understanding what the actual dispute is as to OZY's finances and accounting, it completely violates Mr. Watson's ability to present his defense in this criminal trial.

4. Also, on July 1, 2024 (13th day of the trial), the Court sustained government objection to Mr. Watson testifying as to whether he received an email from Samir Rao (that also was sent to the entire OZY staff) announcing the company's Series C fundraising round. Tr. at 3045 – 3052. Mr. Watson was also not allowed to testify that he received the attachment to that email, which was a press release that was published in the Wall Street Journal and other publications. Tr. at 3045 – 3052. Mr. Watson was himself a board member and helped draft that press release and discussed with other board members how they would send it out. Again, this ruling completely deprives Mr. Watson of his right to testify about a specific *allegation* in the indictment and present a defense head-on against the charges against him.

5. On July 2, 2024 (14th day trial), the Court did not allow the cross examination of Mr. Watson by Ozy Media's undersigned counsel to meaningfully take place. Specifically, it did not allow Attorney Frison to question Mr. Watson on *all* of the topics on which he was directed by Professor Sullivan. Tr. at 3458 – 3460; 3485 – 3490. Instead, the Court has limited OZY's examination of him and ordered that the entire examination *conclude* on July 3, 2024, at 4:30 p.m. Tr. at 3459, ln 3 – 23. Notably, the Court allowed the government's star witness, Samir Rao, to testify on the stand for 6 days (May 29, 2024 – June 10, 2024). The Court is not allowing Mr. Watson a fair defense by rushing defense counsel along and shutting down relevant examination questions.

   The Court's desire to move questions along quickly – and seemingly wanting to adjourn early – might be related to the rigid schedule it has. See attached. It is clear from the transcript that the trial has been impacted by the Court's personal summer calendar. Tr. at 497 – 498.

6. The Court also holds defense counsel to a different standard than the prosecution as it relates to its presentation of witnesses and evidence. For example, when the defense asked for the lineup of prosecution witnesses to be called, the Court stated that the government only had to tell the defense the day before the witness testifies, Tr. at 13 – 14, which the prosecutors regularly did at or after 8:00 pm. However, during the defense case, the Court has asked defense counsel every day *in court* who its witnesses will be the next day and what they will be testifying about. See Tr. at 3510 – 3513. The government has also strangely and unfairly gotten a preview of defense witnesses, their testimony, and on several occasions the defense direct or cross examination of witnesses (Hillel Moerman, Kosmo Kalliarekos, Professor David Robinson, Carlos Watson) per order of the Court. Tr. at 1791 – 1824; 2785 – 2793; 2657 – 2682; 3153 – 3159. The unfairness is overwhelming and visible to all in the courtroom.

The Court's repeated indications of impatience and displeasure with defense counsel and their questions jeopardize Mr. Watson's right to a fair trial. Again, in United States v. Ah Kee Eng, where the judge continuously made disparaging remarks towards the defense and displayed an attitude of

impatience or annoyance, the Court concluded that "repeated indications of impatience and displeasure of such nature to indicate that the judge thinks little of counsel's intelligence and what he is doing are most damaging to a fair presentation of the defense." Id. at 161. This is exactly the problem in the trial at bar.

While the Court believes it is "revealing" that the defense has not quoted the long list of instances in which the Court has improperly intervened, Tr. at 3087, ln 18 – 23, it should note that the instances defense counsel has cited in its first letter do not even scratch the surface of the behavior it has witnessed. To better illustrate these instances, please find the attached tracker of the comments made by the Court. Some include actual quotations as well as notes about the tone and demeanor of the Court. The Court will find transcript citations for all comments made in open court. Defense counsel will continue to monitor this behavior.

Again, the defense team requests to be heard orally and in open court regarding these matters at the earliest opportunity. Further, on behalf of Mr. Watson and OZY Media, Inc., we request to be allowed to fully question remaining witnesses, to be treated with a modicum of respect, and to truly be allowed to defend our clients. Let us take the ruling in United States v. Coke, 339 F.2d 183 (2d Cir. 1964) to heart. There, the judge's "excessive interference in the examination of the witnesses, by repeated rebukes and disparaging remarks directed at appellant's counsel and by marked impatience, all in the presence of the jury, displayed an attitude of partisanship which resulted in the denial of a fair trial and a deprivation of due process of law." We hope to regain due process and the right to a fair trial in this case before it is given to the jury.

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7/7/2024

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Trial Date	Phase of Trial	Transcript Pg, Ln
05/29/24	Morning proceedings	Tr. at 8, ln 12 - 16
05/29/24	Morning proceedings	Tr. at 156, ln 21 - 25; 1 - 24
05/29/24	Cross examination of Janeen Poutre	Tr. at 133, ln 23; 138, ln 21 – 22; 146, ln 14; 153, ln 22.
05/29/24	Cross examination of Janeen Poutre	22; 119, ln 14; 123, ln 1 – 24; 129, ln 14; 146, ln 2, ln 6; 147, ln 16.
05/29/24	Trial break	Not yet located
05/30/24	Morning proceedings	Tr. at 270, ln 20; 273, ln 21; 274, ln 17; 285, ln 18, ln 22, ln 25.
05/30/24	Samir Rao direct examination	Tr. at 392, ln 3 - 25; 427, ln 2 - 21
05/30/24	End of day	Tr. at 501, ln 3; 512, ln 4 - 6
05/31/24	Morning break	Tr. at 587, ln 8 - 25; 588, ln 1 - 3
05/31/24	Samir Rao direct examination	Tr. at 724, ln 18 - 23
06/07/24	Trial break	Tr. at 960, ln 4 - 15
06/07/24	Samir Rao cross examination	Tr. at 985, ln 1 - 8; 986, ln 5 - 9
06/07/24	Trial break	Tr. at 1010
06/07/24	Samir Rao cross examination	Tr. at 1013, ln 6 - 16
06/07/24	Samir Rao cross examination	Tr. at 1053, ln 8 - 16
06/07/24	Samir Rao cross examination	Tr. at 1136, ln 4 - 12

06/10/24	Samir Rao cross day 2	Tr. at 1214, ln 24
06/10/24	Thomas Franco direct examination	Tr. at 1343, ln 4 - 5
06/13/24	Trial break	Tr. at 1414, 16 - 20
06/13/24	Allison Berardo cross examination	Tr. at 1522, ln 20; 1523, ln 16; 1525, ln 16; 1528, ln 17; 1529, ln 6, ln 8.
06/13/24	Trial break	Tr. at 1535
06/13/24	Tripti Thakur direct examination	Tr. at 1605, ln 1 - 6
06/13/24	Tripti Thakur cross examination	Tr. at 1611, ln 13
06/14/24	Alex Piper cross examination	Tr. at 1707 - 1708
06/14/24	Alex Piper cross examination	Tr. at 1709, ln 19 - 21
06/14/24	Alex Piper cross examination	Tr. at 1718, ln 8, ln 18; 1727, ln 2
06/14/24	Alex Piper cross examination	Tr. at 1725, ln 20 - 25
06/14/24	Hillel Moerman cross examination	Tr. at 1775, ln 24; 1776, ln 3; 1859, ln 3.
06/14/24	Evidentiary discussion during break of Hillel Moerman's cross examination	Tr. at 1777 - 1778
06/14/24	Evidentiary hearing/voir dire during break of Hillel Moerman's cross examination	Tr. at 1799, ln 17 - 25; 1800, ln 1; 1803, ln 16; 1828, ln 17 - 24
06/17/24	Morning break	Tr. at 2024 - 2025
06/17/24	Suzee cross examination	Tr. at 2140, ln 4 - 16
06/18/24	Maurice Werdeger direct examination	Tr. at 2229, ln 5 - 11

06/18/24	Trial Break	Tr. at 2278 - 2279
06/18/24	Trial Break	Tr. at 2285 - 2291
06/18/24	Direct examination of Joe O'Hara (after jury left)	Tr. at 2370
06/26/24	Direct examination of Renata Erlichman	Tr. at 2513, ln 4 - 13
06/26/24	End of day	Tr. at 2628 - 2629
06/26/24	End of day	Tr. at 2642 - 2643
06/26/24	End of day	Tr. at 2643, ln 10 - 16
06/27/24	David Robinson's direct examination	Tr. at 2700, ln 23
06/27/24	David Robinson's direct examination	Tr. at 2732, ln 4
06/27/24	David Robinson's cross examination	Tr. at 2763, ln 16 - 25; 2764, ln 1 - 3
07/01/24	Carlos DX	Observation
07/01/24	Carlos DX	Tr. at 3034, ln 15 - 17
07/01/24	Carlos DX	Tr. at 3065, ln 21
07/02/24	Carlos DX	Not put on the record
07/02/24	Carlos DX	Tr. at 3149, ln 6 - 12; 3151, ln 13 - 16
07/02/24	Carlos DX	Tr. at 3158, ln 19 - 23
07/03/24	Carlos DX	Tr. at 3294, ln 13 - 20; 3299, ln 3 - 6

07/03/24	Carlos DX	Tr. at 3316, ln 18 - 19
07/03/24	Proceedings	Tr. at 3361, ln 9 - 15
07/03/24	Entire trial day	Throughout transcript
07/03/24	Carlos Frison CX	3392, ln 14 - 20
07/03/24	Carlos Frison CX	Tr. at 3494, ln 8 - 20
07/03/24	Carlos Frison CX	Tr. at 3475 - 3477
07/03/24	Carlos Frison CX	Tr. at 3459, ln 3 - 23
07/03/24	Carlos Frison CX	Tr. at 3500, ln 2; 3503, ln 21 - 25

Description of Inappropriate Conduct

Court improperly characterizes conduct of the defense as unfair surprise even though the government is allowed to surprise the defense each night with the witnesses they plan on calling the next day.

Judge claims the BOR is not recent enough and that the 6th Amendment/5th Amendment argument advanced by Sullivan is a "waste of time"; says he will entertain arguments about 2nd circuit authority

Sustained his own objection 4x

Interrupted counsel to question the witness

"I don't know where you've tried cases before but this is federal district court"
the contract/terms were"; "document heavy case, defense should know it's documents"; May 16th task order excluded; "i need you to stay on subject"; interrupting defense; entertaining objections to keep docs out when the purpose of the hearing was to determine whether or not the information had been provided as a part of discovery; ruled against the defense and the government said it would resolve the issue but the mugshot flashed two more times (and took up half the screen) after the ruling; The court noted that the photo wasn't particularly prejudicial (no orange jumpsuit) and it was a small image that came up quickly even though the first time it came up it was
Not going to make prosecution conclude by Friday (meaning if the end at EOD Monday, the jury sits without a CX for 3 days; "I've tried to guide the defense as best as I could to comply, even in piecemeal, even in half-baked fashion with their obligations"

Refused to give a limiting instruction before Tripti Thakur email; he did one after the witness was able to read it fully and after the jury was able to digest it

judge helped clarify for attorney that without ads, the Carlos Watson show was bringing in $0

judge skeptical/raised his eyebrows when Sullivan said that Netsuite cut off access to data; evidence will not be admitted until predicate has been established for admission

"did you hear his answer?" indicating to the jury that Sullivan wasn't listening // "asked and answer sustained because the previous question had 99% overlap." // sustained objection to himself 3x //

extensive sidebar on how impeachment works; judge says Sullivan CANNOT read from documents (how else would the jury know that the witness lied); "as a professor of trial practice..."

Judge continues to signal to the jury that defense counsel is unprepared with multiple physical copies

judge in front of the jury "How much longer of this? I guess Im just struggling to understand the relevance of this" then sits in silence

judge is saying there is no "literal" inconsistency between samir's inconsistent statements (even though there is 2nd circuit authority saying the two statements don't have to be completely unidentical)

judge sustained his own objection 1x

judge asks foundational questions during direct ("why do you know what a pitch deck is")

precluded defense exhibits preliminarily without argument

sustained his own objection 6x

automatically assumes government's presentation of the facts about carlos shouting in the presence of jurors about race is true; immediately threatened Carlos to revoke bail without asking Sullivan for his version of the facts
said something about being asked to get a contract and judge clarified "by whom" and witness responded that Carlos asked her to get a contract that didn't exist then made us take a break, allowing the jury to ruminate on that assist

"was the deal done" to clarify that the contract wasn't complete

asked witness "are those advertisers buying those spaces/times from Youtube or the creator"?

"well beyond the scope of direct" and "struggling to understand the relevance" on **cross (which warrants more leeway)**

sustained his own objection (asked and answered); totals 5x (only 3 reflected in transcript; something is missing)

cut Gilbert off in her response to the judge saying "i think the witness has testified ..." "let's have another question"

sustained his own objection 3x
is irrelevant; "we're gonna hear the questions one by one and you're gonna be aware of the pitfalls we're describing"; "you're saying you decline to reveal where you're going with your questions and I'm going to start sustaining relevance objections"
production rules have been so spotty from defense (assuming it's our fault the government's document is inconsistent with ours) ; "sizeable coincidence" ; he admitted the doc; Goldman's ideas about how much the business was worth is "utterly irrelevant"

"statements of the law should be made with a good faith basis" regarding Gilbert stating that stipulations can be withdrawn before it is admitted

judge sustained his own objection when the witness was saying she was told there was an oral agreement (Stern then objected when Sullivan correctly pointed out that there was no objection)

"can you just stay on that point for a moment" and asking follow-up conversations ("does the timing matter (if the booking is for the following year and why?"); clarifying questions

"am I the only one who recognizes the [irony]" in the defense making a motion against the prosecutor's calling CW a con-man and us launching a "campaign to influence the public" about the ongoing case against CW.
CW got in trouble for allegedly lying to security officers that he was an attorney / had two non-operative phones and judge said carlos and interns could not have phones with them in court (even though a court order was received for interns)

judge doing Kassner's job of laying the foundation for GX1007 for her; admitted it absent case law saying why habit or routine practice couldn't be present sense impression

sustained an asked and answered and when Sullivan said he didn't ask that question, judge asked the question himself

insinuated that lawyers weren't being good mentors to interns because they keep making misrepresentations

"tactical choice and purposeful violation" to not give 26.2 on April deadline; "brazen disregard for the rules and practices of this court"

withdrew Sullivan's ability to bring his phone in court; "i dont want a phone in anyone's possession at the table with Mr. Sullivan and Mr. Watson"

judge interrupted sullivan's direct to ask his own questions about the difference between venture capital and private equity

sustained his own objection 1x

judge doubling over and face palming in exasperation during Carlos's testimony

going to sustain my own objection to that it's "clearly hearsay"

sullivan sat in protest and judge said he would contemplate other actions if he didn't continue his questions; sustained his own objection 1x

"mistaken assumptions" "can't have the witness testify falsley to everything"; after Sullivan said he'd like to make an application that everything the government read onto the record is inadmissible--"put it in writing"

does not allow Sullivan to read provisions of admitted documents that he doesn't believe are relevant ; "provisions that say things like accredited investors" are not relevant; Carlos is on trial for the representations that he made to investors and he is not beling allowed to talk about the representations he actually made to investors (yet Samir and Suzee were able to talk about representations Carlos made even though he actually wasn't on many of those called discussion of slides of "questionable relevance" in front of the jury; motion for mistrial denied (keeps cutting off Sullivan while he's making his application); judge above decibel that he will not allow Sullivan to speak on; "instead of winging it and doing what you want to do, ask me for clarification"

threatened Sullivan with contempt for saying the objection was overruled in front of the jury
"those rights are not a license to engage in not only sustained
gamesmanship, but also the willful choice to ignore Court
orders."

will not allow lawyers on both sides to make complete arguments and keeps interrupting, presumably to keep things moving forward. but the more this is done, the more the lawyers have to go in circles to explain--which keeps prolonging the process

says someone will have to explain after the trial why the ford foundation is donating money to a for-profit organization as a 501c3 in open court, in front of reporters

said Judge Frison couldn't be heard at sidebar (ultimately let her be heard because he said if we need clarification we needed to say something)

trying to elicit when SR first took out a loan in his name

4:10 pm Judge told Ozy they have to be done with ALL questions by 4:30 pm (out of frustration that Frison asked for a sidebar regarding why a series of objections were sustained (for which no basis was given)

defense counsel has done something extra egregious; actually cut Frison off around 4:20 pm even though the objection raised only ended up being foundation...Frison could have asked one more question and finished until 4:30 without the jury having to leave