

'El Chapo' Lawyer Argues For New Trial, Alleging Jury Misconduct

Attorney raised concerns over a report that jurors saw potentially prejudicial news items about the drug kingpin during the trial



Elizabeth Williams/AP

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A lawyer for Joaquín ["El Chapo"](#) Guzman argued that the drug kingpin deserves a new trial, primarily based on a report of alleged jury misconduct.

Guzman's lawyer, Marc Fernich, made his argument before a three-panel judge on the Second Circuit Court of Appeals Monday, October 25th. The appeal had [been in the works](#) essentially since [Guzman was found guilty](#) of all charges against him February 2019: Not long after the jury reached its verdict, one anonymous juror spoke with [Vice](#) and claimed at least five fellow jurors disregarded orders to ignore media coverage of the trial. The juror also said that their peers had heard about allegations against Guzman unrelated to those he was on trial for, including that he had drugged and raped children.

Fernich said this "in-depth firsthand account of... breathtaking juror misconduct" had been swept under the rug, and argued later that a hearing or investigation into the juror's statements was necessary, even if it turned out the misconduct claims were false. "It's very disquieting in a case like this to do an end-around and just let it go," he said. "I get that there's going to be some quantum of intrusion, but this guy is going to be in a box for the rest of his natural life. I'm not asking you to play violins for him, and I'm not playing violins for him either."

On top of his concerns about jury misconduct, Fernich also argued that a new trial was warranted because of Guzman's pre-trial incarceration conditions. He claimed, for instance, that Guzman's time in solitary confinement impacted his mental condition and ultimately prevented him from properly participating in the construction of his defense.

The hearing at times grew contentious, especially when the judges questioned Fernich's claims about Guzman's pre-trial conditions, and when Fernich claimed a lower court judge did not properly consider the *Vice* report of juror misconduct. But at least one judge on the appellate panel did seem open to Fernich's argument about the jury misconduct, saying, "And you made the argument that what is in the article consists of: If we take it as true that the jurors consistently... followed news reports; specifically were aware of highly prejudicial allegation — at least in the ordinary case — highly prejudicial allegations that were kept out of the trial; and three, deliberately lied to the judge about what they had done... Sounds like not a bad argument. I'll be interested in what the government has to say."

Speaking for the government, federal prosecutor Hiral Mehta argued that a new trial wasn't necessary, and a lower court judge was right to reject a request over the

misconduct allegation, because the evidence in the *Vice* article wasn't competent enough: "It's anonymously sourced, it's uncorroborated, it is heresy and double heresy, and its allegation are easily controverted by the trial record," he said. Mehta added that the record showed some jurors had acknowledged to the judge that they had seen news items about Guzman during the trial.

A ruling on the appeal will be issued at a later date.