

Intelligencer

EXHIBIT A | MAR. 31, 2023



Michael Cohen Is Already Undermining the Trump Prosecution Immediately after the indictment, he says he didn't really mean his guilty plea.

By Ankush Khardori



Photo: Eduardo Munoz/Reuters/Redux

It turns out it did not take long at all for Michael Cohen to throw a little wrench in the criminal prosecution of Donald Trump.

Late Thursday night, just hours after the news broke that the Manhattan district attorney's office had obtained the indictment, Cohen decided it would be a great time to take advantage of the national spotlight and sit down for an interview with CNN's Don Lemon and Alisyn Camerota. In the months, he has been interviewed by prosecutors and he's testified before the grand jury about how Trump allegedly broke the law by directing (or at least arranging) hush money to Stormy Daniels in 2016, which would likely make him a key witness against Trump at trial. Much of the CNN discussion entailed Cohen's concealed gloating by Cohen, but at one point, he made clear what he had recently been hinting at: He believes he is not actually guilty of the federal tax evasion charges to which he pleaded guilty back in 2018.

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"I have continuously told the same story. I've been shouting for five years from the rooftop," Cohen said. "The lies by the Southern District of New York against me for the tax evasion, I actually hope it comes out. I have all the documents to show. There was no tax evasion. I've never in my life tax evaded. I've never filed [a] late tax return. I've never been audited. I've never received, you know, letters from the IRS. I have never had an opportunity to meet with an agent, and none of this is accurate."

As I first noted several days ago, this is a major problem for Cohen's credibility as a cooperating witness, but before we return to that, let's quickly review his record.

When Cohen pleaded guilty, the charges included five counts of federal tax evasion stemming from his failure to report millions of dollars in income from taxi medallions he owned, which, according to the Southern District of New York, resulted "in the avoidance of taxes of more than \$1.4 million from the IRS." As a fundamental part of a guilty plea in the federal system, the defendant has to acknowledge that he is, in fact, guilty of all the offenses charged — factually and legally — which is what Cohen purported to do in 2018.

In the sentencing memo that Cohen's lawyers at the time submitted on his behalf, they told the judge presiding over his case that Cohen "accepted responsibility for the offense conduct." They argued, though, that the underlying facts concerning tax evasion did not warrant significant sanctions in the form of incarceration and fines because the conduct was crude, not that serious, and did not entail the "complex and sophisticated offense conduct that characterizes many of the criminal tax cases prosecuted in this and other federal courts." Defense lawyers in white-collar cases often make such arguments at sentencing. But in doing so, they have to walk a very fine line between arguing that the charges are not that serious, which is an entirely reasonable argument to make, and argue that their clients should not do serious prison time, and that their client is, in fact, actually innocent, which federal prosecutors — and, just as important, federal judges — do not tolerate if the defendant is pleading guilty and wants time shaved off his sentence, as Cohen did.

Pleading guilty to federal crimes is not some unilateral gift from defendants to prosecutors and the courts. Defendants receive significant benefits in exchange, including, most notably, a reduction in the sentence recommended under federal guidelines. Clear and unambiguous acceptance of responsibility by the defendant for the criminal conduct at issue is a nonnegotiable prerequisite for this arrangement.

The memo from Cohen's lawyers argued that they did not intend to "minimize the seriousness of tax evasion in any form" but that "the nature of conduct suggests that, on a comparative basis, it warrants relatively less punishment than cases where sophisticated means and schemes are employed. Again, this was entirely fair when it was written, but it is very different from what Cohen said on CNN.

To make sure I understood the state of play, I reached out this morning to Cohen and his current attorney, Lanny Davis, by email. Davis advised me the H&R Block website and endorsed Cohen's comments on CNN last night. "Note for your factual complete reporting," Davis wrote to me, "what was not done, that Michael Cohen does not have a single indicia justifying criminal prosecution of tax evasion outlined in this article — NOT ONE. offshore accounts, not intention [*sic*] to hide money (his bank account is near his home in NYC/bottom of his building) — indeed, the SDNY utterly ignored these facts. As you apparently have."

Davis went on to suggest that I read Cohen's sentencing memo. "And then," he suggested to me, "why not write an article — 'what everyone has said Michael Cohen was charged by SDNY with criminal income tax evasion breaking with precedent, baseless criminal charge, and showing perjury by SDNY prosecutors.' That is my opinion — but you can't use unless you back it up by the facts outlined by Mr. Cohen's attorney during sentencing as addressed by SDNY prosecutors or the judge."

To drive the point home, he added, "You could be the first reporter who actually does his homework about what I see as a baseless criminal tax charge the SDNY coerced Mr. Cohen to plead guilty to by presenting him with the option on a Friday afternoon that if he didn't plead guilty to it, they would indict him on Monday including his wife."

That would seem to clear it up to the extent that there was any ambiguity remaining: Michael Cohen and his current lawyer believe he is, in fact, innocent of the federal-tax-evasion charges to which he already pleaded guilty.

Trump's lawyers are likely to have a field day with this. They could argue that Cohen — by his own account now! — lied to the federal judge who accepted his guilty plea and sentenced him to prison.

The apparent reason? Because it was convenient for him to lie at the time so that he could avoid the risk of additional charges for him or his wife. On CNN, "They were filing an 80-page indictment against me and my wife, right?") That may be very understandable from a human perspective, even if it is true, but there is no way that the sentencing judge would have accepted Cohen's plea if he had made this clear. That is presumably why Cohen's lawyer at the time — led by a very well-regarded criminal defense lawyer in the city — went out of their way *not* to do this.

Trump's lawyers can now confront Cohen on the stand and ask him directly about these comments — and ask him why the jurors at the Trump trial believe anything he has to say if he was willing to lie to a federal judge when he thought it suited him. In fact, they may ask, why should anyone believe anything about anything, now that he has admitted to lying to two different branches of the federal government?

Perhaps Cohen had already made his position clear to prosecutors in the DA's office. If so, I sincerely hope — strictly as a professional matter — that he can provide a cogent explanation for all this and a compelling response to present to the judge and jurors if and when the time comes.

One element of that plan would, of course, include shoring up Cohen's credibility through other documents and witnesses, so it's useful to bear in mind that we do not have complete insight into the evidence that the DA's office has obtained, including from witnesses who have opted not to occupy the spotlight in connection with the investigation. To some extent, it is Cohen who has positioned himself as the central witness in the case. That could be true, but it may also be the case that we learn that there are other, perhaps more credible witnesses who will shore up the DA's prosecution.

In the meantime, the first-ever criminal prosecution of a president in the country's history is off to a bumpy start.

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Hunter Biden allegedly told a Chinese colleague in 2017 that his father "and every person he knows" would hold a "grudge" if a deal didn't go through.

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By Kevin T. Dugan

New emails show that the disgraced sex trafficker offered business advice and set up a key meeting.

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By Ed Kilgore

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Fight for better pregnancies and births for those who have no choice.

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By Alissa Walker

A state bill proposes that owners pay much more for their heavier (and deadlier) vehicles.

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By Andrea González-Ramírez

All the ways abortion bans have affected pregnant people, providers, and clinics, by the numbers and in their own words.

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The former Texas congressman has joined the increasingly crowded Republican presidential field.

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An innuendo-laced report that Trump’s potential VP pick “practically lives” at Mar-a-Lago is raising uncomfortable questions.

6/22/2023 BEEF**MTG on Calling Lauren Boebert a ‘Little B*tch’: She’s a ‘Little B*tch’***By Matt Stieb*

Well there you have it.

6/22/2023 EARLY AND OFTEN**House Republicans’ ‘Sham’ Censure Was a Gift to Adam Schiff***By Ed Kilgore*

The House GOP censured Schiff as retaliation for serving as Trump’s tormentor. But the Californian clearly thinks the move will boost his Senate bid.

6/22/2023 REPUBLICANS IN DISARRAY**Boebert Fails to Impeach Biden, Succeeds in Embarrassing GOP***By Ed Kilgore*

In a stunning display of disunity, Kevin McCarthy had to publicly attack Lauren Boebert’s effort to impeach the president without hearings.

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The fabulist congressman’s father and aunt came to his rescue.

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By Molly Osberg

The ultra-wealthy are boarding submarines, going to space, and tempting fate in search of bespoke experiences.

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By John Herrman

He once tried to buy it. Now he's creating a knockoff — and talking about a cage fight with Elon Musk.

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John Durham Admits He Knows Little About Russia Scandal

By Jonathan Chait

No wonder he thought the FBI was doing a witch hunt.

6/21/2023 TREMENDOUS CONTENT

Trump Pretends Jared and Ivanka Didn't Quit, He Fired Them

By Margaret Hartmann

He told Bret Baier he'd decided "that's enough for the family." But sources say Jared and Ivanka want nothing to do with Trump's political operation.

6/21/2023 LIFE AFTER ROE

House GOP Forges Ahead on Wildly Unpopular National Abortion Ban

By Ed Kilgore

Kevin McCarthy's leadership team is determined to placate the House GOP's right flank, even if it injects a toxic issue into 2024 races.

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By Shawn McCreesh

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