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
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 this 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. I months, he has been interviewed by prosecutors and he’s testified before the grand jury about how Trump allegedly broke the law by directing 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 barely 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 evasion charges to which he pleaded guilty back in 2018.

“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 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 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 quick record.

When Cohen pleaded guilty, the charges included five counts of federal tax evasion stemming from his failure to report millions of dollars in 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 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 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 “accept responsibility for the offense conduct.” They argued, though, that the underlying facts concerning tax evasion did not warrant significant sancti form of incarceration and fines because the conduct was crude, not that serious, and did not entail the “complex and sophisticated offense cond characterizes many of the criminal tax cases prosecuted in this and other federal courts.” Defense lawyers in white-collar cases often make argu this 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 argue that their clients should not do serious prison time, and that their client is, in fact, actually innocent, which federal prosecutors — and, ju 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 benet exchange, including, most notably, a reduction in the sentence recommended under federal guidelines. Clear and unambiguous acceptance of r 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.”

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 advises the H&R Block website and endorsed Cohen's comments on CNN last night. "Note for your factual complete reporting," Davis wrote to me, "we did not, 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 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 Michael Cohen was charged by SDNY with criminal income tax evasion breaking with precedent, baseless criminal charge, and showing persor 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 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 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 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 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 CNN, "They were filing an 80-page indictment against me and my wife, right?"

That may be very understandable from a human perspective, e 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 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 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 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 — have 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 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 to 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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