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# Trump on Trial Sidebar: What's Happening

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Jerry Goldfeder and Karen Friedman Agnifilo's "Trump on Trial Sidebar Series" aims to spotlight some of the more salient issues during the trial of Donald Trump and help provide insight as to what is happening inside the courtroom. This first installment provides an overview of the case.

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For the first time in American history, a former president faces at least one criminal trial. Prosecutors in other countries have convicted their leaders—in [France](#), [Israel](#), [South Korea](#) and [Italy](#), to name a few—but the idea of American exceptionalism makes us think that our presidents won't be hauled off to prison. Of course, President Richard Nixon escaped indictment by a [pardon](#), and his vice president, Spiro Agnew, [resigned](#) with a plea of “no contest” to avoid a criminal trial; and there have been quite a few [governors](#), [senators](#), [mayors](#) and [other elected officials](#) who have been indicted or wound up behind bars. Because the rule of law is central to our democracy and thus nobody is above the law, including former presidents, we are now witnessing a once-and-perhaps-future leader of the free world in the dock.

There are several [comprehensive articles](#) on this trial, and a book edited by our friend [Norman Eisen](#) is about to be published. What we hope to accomplish in this *Sidebar Series* is to spotlight some of the more salient issues during the trial and help provide insight as to what is happening inside the courtroom. In that this upcoming Manhattan DA criminal trial's central charge is that the former president broke several laws in order to improperly and illegally influence the 2016 presidential election, we—an election lawyer and former career prosecutor in the Manhattan DA's Office and now criminal defense lawyer—have teamed up to present a full picture. We hope this *Sidebar Series* is useful for readers to understand what is happening.

We start off with a simple explanation of the essential charge: the felony crime of Falsifying Business Records in the First Degree. Donald Trump was indicted for cooking his books to hide hush money payments to adult film star Stormy Daniels, with whom he allegedly had an extra marital affair, with the goal of hiding the truth from the American people in order to get elected president.

Twelve jurors, chosen by both Trump and prosecutors, will have to sift through records and documents during several weeks of testimony to unanimously decide whether the District Attorney has proven these charges beyond a reasonable doubt. Trump's defense is that any payment made to Daniels was to shield him from the wrath of his wife—and that might also be true. But the crux of the case turns on whether jurors have no reasonable doubt that fraudulent ledger entries were made, and that a scheme of phony invoices and payments behind his false record-keeping was designed to commit or conceal the commission of another crime.

Falsifying business records in New York is illegal, a misdemeanor—but if done with the intent to commit or conceal another crime, it is a felony. The prosecutors have stated that they will prove Trump's intent here was to prevent voters knowing of his affair, which, he apparently believed, could harm his prospects in the election.

Let's drill down on the relevant statutes. Trump is charged with Falsifying Business Records in the First Degree, N.Y. Penal Law §175.10. This statute says: "A person is guilty of falsifying business records in the first degree when he commits the crime of falsifying business records in the second degree, and when his intent to defraud includes an *intent to commit another crime or to aid or conceal the commission thereof*" (emphasis added).

The emphasized phrase is what makes the charge a felony. There has been much discussion and speculation as to which other crime was intended to be committed or concealed during this scheme. Although knowing exactly which crime Trump intended to aid, conceal or commit must be gleaned from the evidence, the prosecution has identified several they believe they can prove (originally the prosecution identified an additional crime, which Judge Juan Merchan, the presiding judge in this case, ruled inadmissible). One relates to the tax laws, which we will leave for another day. The others involve both federal and New York state election laws.

The federal election crimes that Trump either intended to commit or conceal are making contributions to his campaign in excess of statutory limits, and violating the ban on corporate contributions to a federal campaign. At the time, the limit a contributor could give to a presidential campaign was [\\$2,700 per person](#). 52 U.S.C.A. § 30116. That contribution could be in actual money ("hard dollars") or "in-kind," meaning in the form of unreimbursed goods, services or "things of value." 52 U.S.C.A. §30101(8)A).

In this case, because the \$130,000 payment to Stormy Daniels was supposedly for the purpose of getting himself elected (or at least preventing him from losing), it was a thing of value – an in-kind contribution to the campaign. That sum was excessive (because it didn't all come from the candidate, which would be permitted), and thus illegal. And in that some of the monies that ultimately went into this payment scheme came from the Trump Organization—*i.e.*, corporate money—it was unlawful for this reason as well. 52 U.S.C.A. §30118 (a).

The New York election law crime that prosecutors will try to show is that Trump intended to commit or conceal unlawful acts for the purpose of winning an election. N.Y. Elec. Law §17-152. That statute says that it is a crime when "two or more persons...conspire to promote or prevent the election of any person to a public office by unlawful means..." Here, the DA must show that Trump, Michael Cohen and others, conjured and implemented a scheme to mask the

payments to Ms. Daniels through checks, invoices and record-keeping all containing fraudulent information—and these unlawful acts were for the purpose of promoting Trump’s election.

Two other related federal and New York laws that may come up involve the requirement that campaign contributions, either through hard dollars or in-kind, must be in the name of the actual contributor. 52 U.S.C.A. §30122; N.Y Elec. Law §14-120. Thus, because the Cohen payment to Stormy Daniels was secretly reimbursed by Trump and the Trump Organization, Cohen essentially became an unlawful “straw donor” to the campaign. In that Trump, Cohen and others in his campaign and organization helped to contrive Cohen’s fake payment, these election laws were skirted as well.

The DA does not have to prove Trump *committed* the federal or state election laws, just that he *intended* to commit or conceal these or other banned acts.

So, as a primer, there you have it, and given the central theme that he intended to unlawfully influence the 2016 presidential election, Trump’s complaint that the trial is “election interference” is certainly ironic. Moreover, those who have dismissed this case as weak tea next to Trump’s [oath-breaking insurrection](#) (to use Justice Sonia Sotomayor’s phrase) are [missing the point](#). To be sure, candidates prefer voters to learn only the good stuff about them, and try to bury whatever misdeeds they may have committed. But there is a line which cannot be crossed, and Manhattan prosecutors will try to persuade twelve jurors that he did in fact falsify business records with the intent to either aid, commit or conceal a crime.

As the trial unfolds, we will publish periodic essays for this *Sidebar Series*, and look forward to your questions and comments. We can be reached at [jgoldfeder@cozen.com](mailto:jgoldfeder@cozen.com) and [kagnifilo@gmail.com](mailto:kagnifilo@gmail.com).

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