

Trump says Michael Cohen didn't commit crimes. He's wrong.

Campaign finance law is clear. And Cohen clearly broke it.



By Trevor Potter

Trevor Potter is the president of the Campaign Legal Center and a Republican former chairman of the Federal Election Commission.

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On Tuesday, Michael Cohen pleaded guilty to making an excessive and unreported in-kind contribution to President Trump's 2016 campaign by paying \$130,000 to Stephanie Clifford — better known by her stage name, Stormy Daniels — for the purposes of keeping her alleged affair with Trump under wraps during the crucial closing days of the election. Cohen was later reimbursed by Trump based on phony invoices for “legal services.”

Cohen stated in court, under penalty of perjury, that he made the payment “for the principal purpose of influencing the election” for president in 2016, and “in coordination and at the direction of” Trump. Cohen's plea document states that he paid Daniels “to ensure that she did not publicize damaging allegations before the 2016 election and thereby influence that election.” For election law purposes, the two crucial facts in those sentences are that the payment was “for the purposes of influencing the election” and that it was done “in coordination and at the direction of” Trump.

Cohen also stated in court that a similar payment was made by American Media Incorporated (AMI), a corporation that owns the National Enquirer and other tabloids, to former Playboy model Karen McDougal, for the same purpose and also with the involvement of Cohen, Trump and the Trump campaign. Cohen says AMI entered into an agreement in August 2015, after Trump became a candidate for president, to work with Trump to prevent publication of such embarrassing stories during the election year.

Trump and his supporters now argue that these facts do not constitute violations of federal election laws, because the payments involved private matters and were ultimately reimbursed out of his personal — not campaign — funds. “They weren't taken out of the campaign finance, that's the big thing. That's a much bigger thing,” [Trump told Fox News](#) in an interview that aired Wednesday and Thursday. “Did they come out of the campaign? They didn't come out of the campaign, they came from me.” He went on to claim that Cohen had pleaded guilty to “two counts that aren't a crime, which nobody understands.” Former FEC commissioner Bradley Smith [argued](#) in The Washington Post Wednesday that Cohen's payment to Daniels cannot be a campaign expense because FEC regulations prohibit candidates from using campaign funds for personal obligations that would exist “irrespective” of the campaign; Smith suggests that the need to pay for the actress's silence would have existed irrespective of whether Trump was a candidate.

But Trump and his defenders are wrong. What we know about the facts would provide substantial evidence to any jury that these payments were all about influencing the election at a crucial moment, rather than purely personal matters — and thus, the payments were violations of federal election laws. The fact that Cohen was reimbursed by Trump for the payments the next year does not change the fact that Cohen's initial payment was illegal, and we now know that AMI was never reimbursed by Trump at all.

A jury won't have to weigh in on Cohen, of course. But clearly every lawyer and legal official involved — the prosecutors at the Department of Justice, Cohen and his lawyer, and the federal judge who accepted his plea — all believed there was a crime committed here, or they would not have allowed him to plead guilty to it. But both Trump's and Smith's arguments are about interpretations of facts, and in our legal system, factual questions are ultimately the province of the jury in a criminal case. Cohen opted to plead guilty rather than test his defense before a jury, given the evidence the government has in its possession, including tapes of his conversations with Trump and proof of conversations with AMI about their payments to hide the McDougal story.

That means it's certainly a fair conclusion that the hush money paid to Daniels was an expense that did not exist “irrespective of the campaign” (the relevant FEC standard), but rather only came about because of the rocky status of the Trump campaign just before the 2016 election. Had it not been for the campaign, the evidence strongly suggests that Daniels would never have been paid.

That evidence, as laid out in the plea agreement, was substantial. First, a blog and supermarket tabloid reported on the Trump-Daniels relationship in 2011, and then IN Touch magazine interviewed her. Cohen wrote a letter on behalf of Trump at that time, threatening to sue if the magazine published. He did not, however, offer Daniels any money for her silence about private citizen Trump then — apparently any potential embarrassment to the Trump family was not worth a hush payment back in 2011. Indeed, we now know that Daniels's attorney first approached Cohen in early October 2016 to suggest a financial payment, but he “initially balked at the idea” of paying her hush money, and did not execute an agreement or pay her anything. It was only after the crisis for the Trump campaign created by the release of the “Access Hollywood” tape later in October 2016 that Cohen suddenly developed an urgent desire to buy the former porn star's silence.

Despite what Trump has [claimed](#), it makes no difference that he later reimbursed Cohen for his contribution. That would just make Cohen's payment a loan to the Trump campaign. And [federal law](#) treats a loan to a campaign as a contribution, subject to contribution limits and disclosure requirements. Further, corporations are prohibited from making contributions, so the payments by AMI — which Cohen states were part of an advance agreement with Trump — were likely illegal, as well. In each of these instances, Cohen admitted to engaging in his activity knowingly and willfully, which is the standard for criminal conduct.

It is true that, as White House press secretary [Sarah Huckabee Sanders repeated](#) several times Wednesday afternoon, Trump has not been charged with any crime. It is also true that may be because the Justice Department has long taken the position that it should not, as a matter of policy, indict or prosecute a sitting president. In other criminal cases, plea agreements like Cohen's would usually be followed by charges against the person named as “directing” the illegal conduct. That might only be comforting for Trump, though, not for anyone else who worked for him: Cohen's plea states that other individuals in the campaign and in the Trump Organization coordinated and facilitated Cohen's illegal actions, and AMI's conduct, to keep news about these affairs from the American public before Election Day and to obtain reimbursement for him.

The Justice Department undoubtedly knows who these people are, and there is nothing to bar prosecutors from pursuing those Trump-connected individuals and putting all the facts before a jury for their decision about whether the payments were “purely personal” or illegally made for the purpose of influencing an election. Based on the facts we know now, there is more than enough evidence of violations of law for them to proceed.



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