

The Government's Sentencing Memorandum in the prosecution of Michael Cohen is a best practice of understated eloquence and legal and moral clarity. The Memo analyzes the facts, the law, the crimes, and why Cohen's behavior is morally wrong. The U.S. Attorney's Office for the Southern District of New York submitted the Memo by the Acting United States Attorney, Robert Khuzami - whom Trump appointed - and four Assistant United States Attorneys.

The Memo, compelling in its simplicity, explains that Cohen pled guilty to four crimes:

- (1) Cohen evaded \$1.4 million in taxes due to the United States.
- (2) Cohen made false statements to banks to obtain loans.
- (3) Cohen made illegal campaign contributions, paying off two women who claimed to have had an affair with Trump. *Cohen made the two payments with the intent to influence the 2016 election, acting in coordination with and at the direction of Trump.* As a result of Cohen's actions, neither woman spoke to the press before the election.
- (4) Cohen made false statements to Congress.

Cohen's actions are illegal, morally wrong, and undermine faith in democracy and the rule of law:

“While many [people] who desired a particular outcome to the election knocked on doors, toiled at phone banks, or found any number of other legal ways to make their voices heard, Cohen sought to influence the election from the shadows. He did so by orchestrating secret and illegal payments to silence two women who otherwise would have made public their alleged extramarital affairs with [Trump]. In the process, Cohen deceived the voting public by hiding alleged facts that he believed would have had a substantial effect on the election. [P]ublic cynicism may arise when individuals like Cohen act as if the political process belongs to the rich and powerful.”

“Taken together, these offenses reveal a man who knowingly sought to undermine core institutions of our democracy. His motivation to do so was not borne from naiveté, carelessness, misplaced loyalty, or political ideology. Rather, these were knowing and calculated acts – acts Cohen executed in order to profit personally, build his own power, and enhance his level of influence. The nature and seriousness of each of Cohen's crimes warrant a substantial sentence in this case. The need for the sentence to promote respect for the law and to afford adequate deterrence further supports imposition of a significant sentence of imprisonment.

Many commentators are explaining the Memo in print, on television and radio, and in social media. The Memo speaks for itself. You don't need a weatherman to know which way the wind blows. The following is a summary of the Memo, in the language of the Memo. (This summary does not show omitted text and citations. Insertions are marked in [brackets].)

*Robert García [Disclosure: I served as an AUSA in the SDNY prosecuting federal crimes from 1983-87 under John Martin and Rudy Giuliani.] [www.cityprojectca.org/blog](http://www.cityprojectca.org/blog).*

\* \* \*

## THE GOVERNMENT’S SENTENCING MEMORANDUM

Cohen, an attorney and businessman, committed four distinct federal crimes over a period of several years. He was motivated to do so by personal greed, and repeatedly used his power and influence for deceptive ends.

### **A. Cohen’s Offense Conduct**

Cohen committed four separate and serious crimes over the course of several years. These crimes – willful tax evasion, making false statements to a financial institution, illegal campaign contributions, and making false statements to Congress.

[Until Cohen started working for Trump in 2007], Cohen earned approximately \$75,000 per year.

[Beginning in 2007, Cohen] earned approximately \$500,000 per year [as] “Executive Vice President” and “Special Counsel” [at] a Manhattan-based real estate company (“the Company”) [owned by Trump].

In January 2017, Cohen formally left the Company and began holding himself out as the “personal attorney” to [Trump], who at that point had become the President of the United States.

### **2. Cohen’s Willful Tax Evasion**

Between tax years 2012 and 2016, Cohen evaded taxes by failing to report more than \$4 million in income to the Internal Revenue Service (“IRS”), which resulted in the avoidance of more than \$1.4 million due to the United States.

Cohen’s submission to the Probation Department asserted that “all relevant bank records were provided annually by Cohen to [his accountant] for the relevant years.” Cohen’s assertions are simply false.

### **3. Cohen’s False Statements to Financial Institutions**

In December 2015, Cohen contacted a bank (“Bank-3”) to apply for a home equity line of credit. In his application, Cohen made false statements about his net worth and monthly expenses. Specifically, Cohen failed to disclose more than \$20 million in debt he owed to another bank (“Bank-2”), and also materially understated his monthly expenses to Bank-3 by omitting at least \$70,000 in monthly interest payments due to Bank-2 on that debt. These statements were the latest in a series of false statements Cohen made to financial institutions in connection with credit applications.

### **4. Cohen’s Illegal Campaign Contributions**

On approximately June 16, 2015, [Trump], for whom Cohen worked at the time, began an ultimately successful campaign for President of the United States. Cohen had no formal title with the campaign, but had a campaign email address, and, at various times advised the campaign, including on matters of interest to the press. Cohen also made media appearances as a surrogate and supporter of [Trump].

During the campaign, Cohen played a central role in two similar schemes to purchase the rights to stories – each from women who claimed to have had an affair with Individual-1 – so as to suppress the stories and thereby prevent them from influencing the election. With respect to both payments, Cohen acted with the intent to influence the 2016 presidential election. In particular, and as Cohen himself has now

admitted, with respect to both payments, he acted in coordination with and at the direction of [Trump]. As a result of Cohen's actions, neither woman spoke to the press prior to the election.

### ***5. Cohen's False Statements to Congress***

Cohen also deliberately made false statements to the Congress. The offense conduct regarding Cohen's false statements is set forth in the sentencing submission being filed by the [Office of Special Counsel Robert Mueller ("SCO") in its separate case against Cohen].

### **B. Cohen's Meetings with Law Enforcement**

Cohen repeatedly declined to provide full information about the scope of any additional criminal conduct in which he may have engaged or had knowledge. However, this Office acknowledges and agrees that Cohen's provision of information to the SCO in connection with its investigation is a mitigating factor that the Court should consider in imposing sentence. Indeed, Cohen's provision of information to the SCO is the reason that this Office is not seeking a Guidelines sentence here, but rather is acknowledging that a modest variance is appropriate.

[A]ny suggestion by Cohen that his meetings with law enforcement reflect a selfless and unprompted about-face are overstated.

[I]n order to successfully cooperate with this Office, witnesses must undergo full debriefings that encompass their entire criminal history, as well as any and all information they possess about crimes committed by both themselves and others. This process permits the Office to fully assess the candor, culpability, and complications attendant to any potential cooperator, and results in cooperating witnesses who, having accepted full responsibility for any and all misconduct, are credible to law enforcement and, hopefully, to judges and juries. Cohen affirmatively chose not to pursue this process. Cohen's efforts thus fell well short of cooperation, as that term is properly used in this District.

For this reason, Cohen is not being offered a cooperation agreement.

### **A Substantial Term of Imprisonment Is Warranted.**

[T]he nature and seriousness of the offenses and the need to promote respect for the law and afford adequate deterrence are especially weighty considerations [in favor of a substantial prison term.]

#### ***1. The Nature and Seriousness of the Offenses***

Cohen managed to commit a panoply of serious crimes, all while holding himself out as a licensed attorney and upstanding member of the bar. His offenses strike at several pillars of our society and system of government: the payment of taxes; transparent and fair elections; and truthfulness before government and in business.

While many Americans who desired a particular outcome to the election knocked on doors, toiled at phone banks, or found any number of other legal ways to make their voices heard, Cohen sought to influence the election from the shadows. He did so by orchestrating secret and illegal payments to silence two women who otherwise would have made public their alleged extramarital affairs with [Trump]. In the process, Cohen deceived the voting public by hiding alleged facts that he believed would have had a substantial effect on the election.

The sentence imposed should reflect the seriousness of Cohen's brazen violations of the election laws and attempt to counter the public cynicism that may arise when individuals like Cohen act as if the political process belongs to the rich and powerful.

Cohen's submission suggests that this was but a brief error in judgment. Not so. Cohen knew exactly where the line was, and he chose deliberately and repeatedly to cross it.

Taken together, these offenses reveal a man who knowingly sought to undermine core institutions of our democracy. His motivation to do so was not borne from naiveté, carelessness, misplaced loyalty, or political ideology. Rather, these were knowing and calculated acts – acts Cohen executed in order to profit personally, build his own power, and enhance his level of influence. The nature and seriousness of each of Cohen's crimes warrant a substantial sentence in this case.

## ***2. The Need to Promote Respect for the Law and to Afford Adequate Deterrence***

The need for the sentence to promote respect for the law and to afford adequate deterrence further supports imposition of a significant sentence of imprisonment.

In sum, the nature of Cohen's conduct underscores the need for a substantial period of incarceration as a means both to promote respect for the law and to deter future abuses by other individuals seeking improperly to influence the electoral process, evade taxes, or lie to financial institutions. Cohen's crimes are particularly serious because they were committed on the eve of a Presidential election, and they were intended to affect that election.

Every defendant in every criminal case has the right to fight the charges against him. But where, as here, the evidence of their guilt is overwhelming, defendants often make the choice to plead guilty. After cheating the IRS for years, lying to banks and to Congress, and seeking to criminally influence the Presidential election, Cohen's decision to plead guilty – rather than seek a pardon for his manifold crimes – does not make him a hero.

Respectfully submitted,  
ROBERT KHUZAMI  
Acting United States Attorney  
Andrea M. Griswold  
Rachel Maimin  
Thomas McKay  
By: Nicolas Roos  
Assistant United States Attorneys