

Detroit Free Press

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'This case is going to be a 3-ring circus': Experts say Trump prosecution will drag on



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Detroit Free Press

Published 6:05 a.m. ET April 5, 2023 | Updated 8:08 a.m. ET April 5, 2023

In criminal cases, the government always carries the burden of proof.

In the case of former President Donald Trump, legal experts note, that burden is likely to feel especially heavy, given who the government is up against and the historic significance of the case.

"One would think that they took a deep breath before they filed these charges," said veteran criminal defense attorney Bill Swor, who viewed the hush-money indictment as "pretty straightforward" with few unknowns.

Swor is among multiple legal experts in metro Detroit who were not surprised by the crimes alleged in the unprecedented indictment, which centers on claims that Trump falsified business records in relation to hush money paid to porn star Stormy Daniels in the days before the 2016 election.

Recap: Trump's day in court: Circus-like fanfare, protests, rhetoric, and history being made

Trump indictment live updates: Trump pleads not guilty to 34 felony counts in historic New York case

Veteran attorneys see difficult road to prove felonies

"(There's) little here not already known," Swor said, though he and others anticipate months — if not years — of legal wrangling.

Defense and prosecutorial experts both believe the government faces an uphill battle in proving this case, specifically that the financial crimes alleged amounted to felonies, not misdemeanors. They also note that the case reads more like a federal case: Prosecutors allege that Trump's financial crimes were part of a bigger plot to hide campaign finance violations, and, ultimately, to deceive the American public during his bid for the presidency.

"I'm sure his attorneys will attack the factual validity of the indictment, saying it doesn't charge a crime, or that the actions alleged either don't amount to a crime or don't amount to a felony," Swor said, adding the defense may also make a statute of limitations argument.

A strong collection of evidence, but difficulties nonetheless

Former Assistant U.S. Attorney Mark Chutkow, who ran the public corruption unit for the U.S. Attorney's Office in Detroit, believes the Manhattan district attorney has strong evidence, including text messages, business records and audio recordings of Trump and his lawyer discussing hush money payments.

"Those are all pretty good corroborating pieces of information that would support a misdemeanor," said Chutkow, who led the prosecution of disgraced Detroit Mayor Kwame Kilpatrick. "But are they going to be able to prove the felony charge? Nobody knows because we don't have enough" information.

It's also unclear what the underlying crime is in the Trump case, Chutkow said.

"They talk about election crimes, but they don't really say what they are. They mention (Michael) Cohen's guilty plea," Chutkow said, referring to Trump's former attorney, who was the conduit for the famous payment to Daniels and pleaded guilty to tax and campaign finance crimes. "It seems to me that the DA is trying to hedge his bets by including as many potential felony predicates as possible, not knowing which one will survive at the end."

'It's like a supermarket tabloid'

For Chutkow and other experts, the fight in the Trump case will be over the admissibility of evidence and the scope of the charges. He said the prosecutor's charging strategy appears to be part of a broader effort to tell a bigger story.

For example, Chutkow explained that the Trump defense team may try to argue, "What does this 'Access Hollywood' tape have to do with falsification of records" or hush payments to a doorman? The prosecutor, he said, could argue that those particular pieces of evidence are

"inextricably intertwined" with a broader scheme, and need to be developed to prove that scheme.

As Chutkow further explained, the Manhattan DA could argue:

"The 'Access Hollywood' tape was a body blow to Trump," he said, referring to lewd comments Trump made to a host of the show that became public late in the 2016 campaign. "It impacted his potential for election, so they could not risk having any more stories like that come out."

Hence the alleged hush money to Daniels and others.

"This case is going to be a three-ring circus," Chutkow said, referring to what he described as a colorful cast of characters in the case.

There's a porn star. The National Enquirer publisher who helped suppress stories. A doorman who was allegedly paid off to hide what turned out to be a bogus story about Trump fathering a child out of wedlock. A second woman similarly paid off.

"The cast of characters — it's like a supermarket tabloid in and of itself," Chutkow said, noting: "The doorman surprised me."

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'These are all red flags'

Chutkow noted that prosecutors also have "corroboration by Cohen, who is going to get grilled by the defense."

"I think the centerpiece of this case is this audiotape that they indicate that they have between Trump and Cohen — that is very explicit," Chutkow said, noting prosecutors have cited conversations about how payments would be arranged, including Trump asking how much he had to pay. "These are all red flags," he said.

Chutkow likened the audio recordings of Trump to the text messages he showed jurors in Kilpatrick's 2013 public corruption trial. Kilpatrick was convicted of a slew of crimes and got 28 years in prison. (Trump ended up commuting that sentence and freed Kilpatrick 20 years early.)

"Having the voice of the defendant is a very persuasive thing," Chutkow said, noting that, as with text messages: "You can't cross-examine that. It speaks for itself."

Still, the prosecution has a long and bumpy road, he said, noting jury selection will be an especially tough feat.

"It's going to be very challenging to find a jury of 12 people where all 12 are going to find him guilty beyond a reasonable doubt," he said.

Meanwhile, Chutkow expects the case to drag into the presidential primaries, with Trump seeking the Republican nomination again.

"That will create more confusion and chaos, and chaos benefits the defense, not the prosecution," Chutkow said.

Leading with a 'whimper'

Former federal prosecutor Michael Bullotta, who also worked on the Kilpatrick case and is now a defense attorney, blasted the Manhattan District Attorney Alvin Bragg's case.

"I was surprised by the lack of surprises in the indictment. Underwhelmingly, it was exactly as advertised, 34 criminal counts for doing the same thing 34 times, that is, causing the falsification of business records," Bullotta said.

"I would hope that if I were Mr. Bragg, blazing the trail as the first prosecutor in American history to charge a United States president with a crime, I would have thought better of leading off with such a whimper. "

Bullotta said Bragg went out of his way to "justify his historical decision by detailing sleazy but not illegal conduct by Trump that smacks of partisanship."

"I do not believe Trump is the only former president who caught and killed negative stories about him leading up to an election. So to use that as the principal justification for bringing these relatively chippy charges makes the whole kettle of fish reek of politics," Bullotta said.

Schneider: Charges need deeper explanation

Matthew Schneider, whom Trump appointed as U.S. attorney in Detroit, said he saw many unknowns.

“There’s not any lawyer in America, Democrat or Republican, who would say this is a slam-dunk case. It’s not,” Schneider said. “There are still a lot of unknowns here.”

Among them: The indictment does not clearly explain what the underlying felony is, he said.

Schneider expects the Trump team will certainly file what’s known as a bill of particulars — which is a demand that the prosecution explain exactly what felony is being charged.

“The prosecution will have to explain that,” Schneider said, “or risk getting the charges thrown out.”

'The state of New York has the right to prosecute ... financial crimes'

Longtime criminal defense attorney Art Weiss, who has spent more than four decades defending clients, warned against viewing this case as strictly political.

"The reality is that Michael Cohen went to federal prison for these offenses," Weiss said. "The state of New York has the right to prosecute someone who commits financial crimes."

Like Chutkow, Weiss noted the government has documents to back up its claims, though he expects the defense will take about a year to come up with explanations for the documents. He said the defense could argue, among other things, that the documents were doctored or were part of a justifiable plan for Trump to avoid embarrassment in front of his family and the public.

"At the end of the day, yeah, it’s not first-degree murder. It's not a violent armed robbery. It’s a financial crime ... and you can demean it all you want, but at the end of the day people get prosecuted for it."

"I’m sure they’re going to have a year or two to come up with an innocent explanation," Weiss said. "But at the end of the day, the documents speak for themselves."

As for the 34 counts listed in the indictment, Weiss said this is typical for the government, noting "it will take one transaction and blow it up into a half dozen or a dozen counts, and it’s not only with Donald Trump."

"There’s a lot of specificity here," Weiss said. "Unless they’re deranged in the Manhattan DA’s office, they’ve got documents and evidence to back stuff up."

He stressed: "Documents are documents are documents, and they're going to have to be attacked, or they're going to have to be explained away."

He added, "Simply going in with 'I have alternate facts'" won't work.

"There's going to be a lot of gamesmanship and fighting back and forth," Weiss said. "Just simply saying it's a hack job or political BS is going to do a disservice. If I was a jury sitting through months of this, only to be told that it was political BS, I think I would be offended."

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