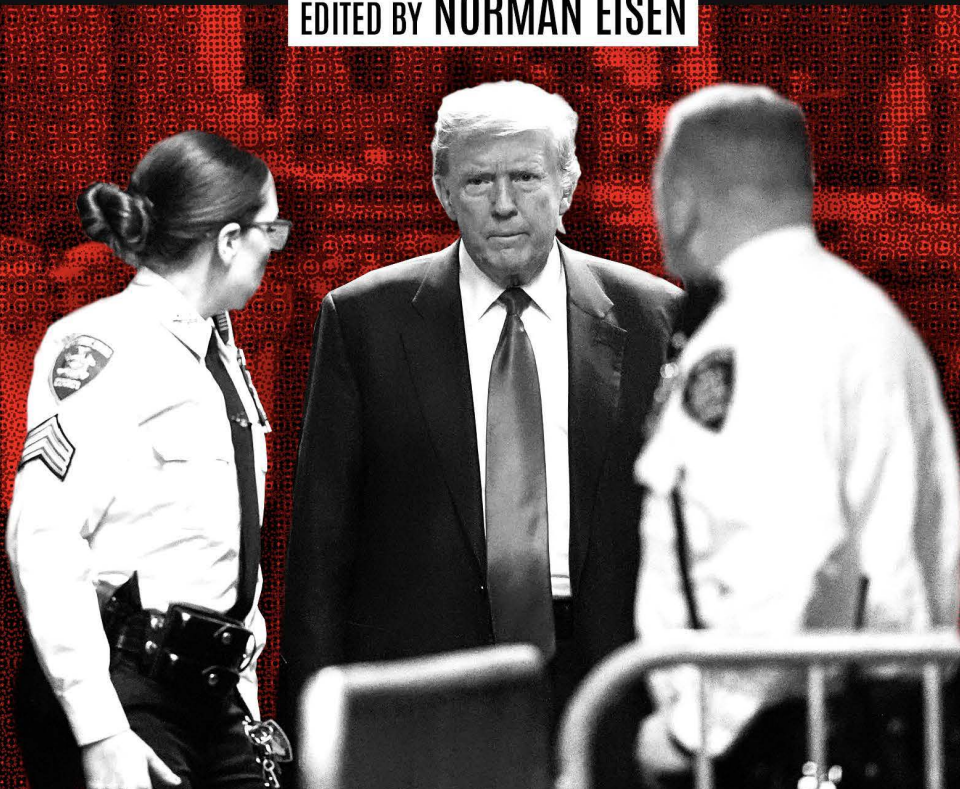


TRYING TRUMP

A GUIDE TO HIS FIRST ELECTION
INTERFERENCE CRIMINAL TRIAL

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TRYING TRUMP

A GUIDE TO SENTENCING

Chapter 8 addresses sentencing, specifically the likelihood of incarceration if Trump is convicted. We start by explaining New York's sentencing law before exploring the state's precedent for imposing incarcerative sentences for falsifying business records, using case-specific examples. We conclude by evaluating how Trump's history and character factor into the sentencing analysis.

Introduction

TRUMP FACES 34 felony counts of falsifying business records to cover up hush money paid to keep a damaging scandal from voters in the 2016 election. Each felony charge of first-degree business record falsification carries a statutory maximum sentence of four years of imprisonment.¹ Normally as a first time offender we would not expect Trump to receive a sentence of incarceration—but he and this case are anything but normal. As we detail below, Trump's case presents legally cognizable aggravating factors that make a sentence of incarceration not only possible but likely, and

there are multiple examples of first-time offenders charged with this offense getting jail time. Whether Trump is among them will depend of course on what is proven at trial and also on whether he continues to comport himself as he has so far in this case, in his other criminal cases, and in his recent civil trials in state and federal court. No one knows the answer to that question, perhaps not even Trump himself. But we see little reason to think he will change.

Because falsifying business records in the first degree is a Class E felony, non-incarceral sentences such as probation or conditional discharge are available sentencing option for the court. But District Attorney Bragg can and may well make a strong argument that the court should sentence Trump to prison if he is convicted at trial. Under New York law, its state courts regularly consider “the nature and circumstances of the crime and . . . history and character of the defendant” in determining whether to impose a sentence of imprisonment.² At sentencing the DA may argue and the judge consider the full context—that is, Trump’s misconduct, both here and elsewhere, as well as his character.

That picture will be profoundly adverse to Trump should it be presented at sentencing. His alleged conduct giving rise to the charges here is serious: the payment of hush money to avoid another damaging sex scandal in the last days of the 2016 presidential contest, which could have cost him the election in the wake of the Access Hollywood revelations. He is charged with covering up that hush money scheme with 34 instances of document falsification. This is no minor peccadillo but (if proven at trial) an offense amounting to election interference—a precursor to his alleged 2020 election interference at issue in the federal and Fulton County prosecutions. Facts relevant to all of that may be considered at sentencing under New York law.

As we outline below, many other issues regarding Trump’s character may also be relevant: his lack of remorse (assuming that

does not change), his attacks on witnesses and court personnel in this case and elsewhere, his penchant for lying, and on and on. There is also precedent for sentencing first-time offenders to incarceration where the charges include felony document falsification. Even defendants who have accepted responsibility and pleaded guilty to felony records falsification have been incarcerated, as have defendants who have pleaded guilty to that felony in the context of campaign finance violations. That includes the outcome of a recent case involving a different falsification of the Trump Organization's business records, although there and in other cases additional serious misconduct was charged.

The net effect of all of these factors is to make a sentence of incarceration likely should Trump continue his long-established approach to similar allegations and be convicted. That is appropriate given the impact of his misconduct upon our democracy both in 2016 and in paving the way for what happened in 2020.

The Nature of the Charged Crimes

The formal charges in this case for false business records must be understood in the context in which Trump allegedly committed those crimes. In the closing days of the 2016 election, he concealed a potentially devastating political story from the voting public through an alleged scheme to make hush money payments to a porn star. Because he did not want this scheme to be revealed through campaign finance disclosures, he allegedly channeled those payments through his personal lawyer and then allegedly concealed the nature of those payments through the falsification of business records. Those facts, if proven, constitute an attempt to corruptly influence the 2016 presidential election and then conceal it. District Attorney Bragg has in effect charged Trump with committing crimes that harmed voters and democracy itself³ by covering up⁴ the most consequential alleged campaign finance

violations⁵ in American history.⁶ According to the Statement of Facts filed with the indictment,

The defendant DONALD J. TRUMP repeatedly and fraudulently falsified New York business records to conceal criminal conduct that hid damaging information from the voting public during the 2016 presidential election From August 2015 to December 2017, the Defendant orchestrated a scheme with others to influence the 2016 presidential election by identifying and purchasing negative information about him to suppress its publication and benefit the Defendant's electoral prospects. In order to execute the unlawful scheme, the participants violated election laws and made and caused false entries in the business records of various entities in New York. The participants also took steps that mischaracterized, for tax purposes, the true nature of the payments made in furtherance of the scheme.⁷

The 34 felony falsifying business records charges against Trump are the result. The consequences of the alleged conduct appear significant. The election was extremely close and decided by fewer than 80,000 votes across three states that Trump won by 0.2, 0.7, and 0.8 percentage points.⁸ The story that his hush money payments suppressed was poised to break in the wake of the release of the "Access Hollywood" tape, wherein Trump proclaimed that he was free to sexually assault women, so he could not risk another revelation that could have altered the outcome of that contest.

Thus, the former president allegedly tampered with the 2016 election and got away with it, facing no immediate consequences. That appears to have emboldened him to try again in 2020. Seen in this light, District Attorney Bragg's prosecution is a precursor to the federal 2020 election-overturn cases and also an important case for our democracy.

New York Sentencing Law Basics

For sentencing purposes, New York classifies crimes into five categories of felonies—A through E—and three categories of misdemeanors—class A, class B, and unclassified. On the most severe end of the spectrum are class A felonies, including murder, terrorism, kidnapping, major drug trafficking, and predatory sexual assault. On the other end of the spectrum are unclassified misdemeanors, which include vehicle and traffic offenses. New York also classifies certain low-level offenses as “violations,” including trespass and disorderly conduct.

New York’s sentencing laws vary based on the type of offender. For example, different provisions apply for repeat offenders, repeat violent offenders, and juveniles. As noted above, falsifying records in the first degree is the lowest severity of felony, class E. Trump has no criminal history, so his sentence if convicted is governed by Chapter 40, Article 70, Section 70.00.

Section 70.00 provides that most felony sentences are “indeterminate,” meaning the court imposes a sentencing range consisting of a minimum and maximum term of years. PEN § 70.00(1). The section then defines the maximum term of an indeterminate sentence as “at least three years” and provides that for a class E felony, it “shall not exceed four years.” PEN § 70.00(2). This means that, for a class E felony, a court imposes a sentence with the high end of the range being between three and four years. The statute then says for any felony other than class A, “the minimum period shall be fixed by the court and specific in the sentence and shall be not less than one year nor more than one-third of the maximum term imposed.” PEN § 70.00(3)(b). This means that for a class E felony with a four-year maximum, the low-end of the sentencing range must be between one and $1\frac{1}{3}$ years. Therefore, for a class E felony, the lowest range of incarceration a judge may impose as an

indeterminate sentence is one to three years, and the highest range is 1 ½ to four years.

However, a judge is not required to impose an indeterminate sentence for class E felonies. Section 70.00(4) allows for an “alternative definite sentence” for class D and E felonies. For first time offenders, it provides that if:

the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate or determinate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

This provision gives judges flexibility to sentence a class E offender outside of the minimum and maximum (indeterminate) ranges and instead to a fixed term of one year or less. As expressly provided, such a sentence is warranted where the court determines that imprisonment is “necessary.” Pursuant to Section 65.00, a court may impose a sentence of probation rather than incarceration.

Section 65.00 provides several factors for the court to consider in imposing a probationary sentence. First, it requires the court to consider the “nature and circumstances of the crime” and the “history, character and condition” of the defendant. PEN § 65.00(1)(b). It then gives additional criteria: whether (i) confinement is necessary for the protection of the public; (ii) the defendant is in need of guidance, training or other assistance which can be effectively administered through probation; and (iii) probation is “not inconsistent with the ends of justice.” Probation is set at a fixed term of three, four or five years. PEN § 65.00(3)(a)(i).

New York sentencing law also provides for a sentence that does not involve incarceration or supervised probation. Called “condi-

tional discharge,” a court may impose conditions of restitution and rehabilitation, such as substance abuse treatment, community service, and maintaining gainful employment. Section 65.05 sets similar criteria to that of probation: the nature and circumstances of the offense; the defendant’s history, character and condition; the public interest; and the ends of justice. PEN § 65.05(1). The period of conditional discharge is fixed at three years for felonies. PEN § 65.00(3)(a).

In sum, if Trump is convicted, the judge will have a range of sentencing options at his disposal. Nevertheless, based on these authorities, DA Bragg will be able to make a compelling argument that Trump’s crimes warrant incarceration. We now turn to the why: the precedents and how they apply to Trump’s circumstances.

New York State Court Precedent

a. Statistical Data

There is precedent in New York state courts for imposing sentences of incarceration upon defendants convicted of felony falsifying business record charges. As set forth above, the statutory sentencing structure contemplates a carceral sentence of up to four years even for a first-time offender convicted of a single charge.⁹ New York State aggregate case data suggest that approximately one in ten cases in which the most serious charge at arraignment is falsifying business records in the first degree (and in which the court ultimately imposes a sentence) results in a sentence of imprisonment.¹⁰ Our analysis of the raw data available from New York State shows that between November 2020 and March 20, 2024, there were 457 cases with a final disposition in which the most serious charge at arraignment was falsifying busi-

ness records in the first degree. Fifty-five of these cases—or approximately 12 percent of the total—resulted in a prison sentence.¹¹

In order to perform our analysis, we downloaded the two .csv files available at OCA-STAT Act Report¹² and consolidated them. We refined the data to include only disposed cases in which felony falsification of business records, N.Y.P.L. § 175.10, was the top charge. We further refined that data to remove cases that were likely duplicates (i.e., those that were marked as being “disposed” due to having been sent to the grand jury or transferred to another court, each of which is almost certain to be reflected again in the court to which it was transferred). That yielded 457 cases with the following dispositions:

Count of Disposition Type Most Severe Sentence	Disposition Type						Grand Total
	Dism-ACD	Dismissed	Other	Plea	Unknown	Verdict-ACQ	
	48	35	36	22	4	1	146
Conditional Discharge				95			95
Fee				1			1
Fine		1		120			121
Imprisonment			2	53			55
Probation			2	32			34
Restitution				1			1
Surcharge				1			1
Unconditional Discharge				3			3
Grand Total	48	36	40	328	4	1	457

Some of these sentences of incarceration may of course have resulted from plea agreements where the prosecutor agreed not to file further uncharged offenses, as was the case in the recent guilty plea filed by Allen Weisselberg to the charge of perjury.¹³ Nonetheless, a sentence like Weisselberg’s was ultimately imposed for the charge for which he was convicted. These numbers thus demonstrate that the defendant was sentenced to incarceration in a meaningful number of cases where felony falsifying business records is the most serious charge in the indictment. Moreover, data show that defendants pleaded guilty in at least 53 of the 55 cases we mentioned above that had falsifying business records in the first degree as the top charge at arraignment and that resulted

in sentences of imprisonment; a defendant who is convicted at trial is frequently more worthy of receiving a carceral sentence than one who accepts responsibility and pleads guilty.

Other defendants convicted of this offense when it was not the top charge in the indictment may also have been sentenced to prison as a result of that conviction. The New York State aggregate case data does not, for example, account for cases in which the top charge at arraignment could potentially result in a longer sentence than falsifying business records but the defendant either accepts a plea offer to, or is convicted at trial of, the lower falsifying charge.¹⁴ Such a scenario would not be uncommon where the defendant is charged with one or more crimes more serious than falsifying business records in the first degree, such as the underlying crime(s) that the falsification is intended to hide (which in past cases has included violent crimes, schemes to defraud, campaign finance violations, tax fraud, and grand larceny, to name only a few). Convictions such as these that also result in sentences of imprisonment are not captured by the New York State Unified Court System data presented above but certainly do occur and may even represent a large fraction of all sentences for falsifying business records.

In sum, New York law authorizes a sentence of incarceration for a conviction of felony falsification of a business record. New York courts have not hesitated to impose such sentences in appropriate cases. Whether the court is likely to sentence Donald Trump to prison upon a conviction therefore depends on whether his case is comparable to prior cases in which the defendant was so sentenced.

b. Specific Case Examples

1. Convictions for Falsifying Business Records in the First Degree

—General

Past New York state sentences for falsifying business records in the first degree support a sentence of imprisonment for Trump if he is convicted at trial. Consider the case of David Adelhardt.¹⁵ Adelhardt, like Trump, was a corporate chief executive officer conducting business related to constructing buildings. While leading Adelhardt Construction Corporation, he falsified purchase orders to conceal both (1) his firm's construction work at the home of a Citibank real estate executive whom he bribed to hire his firm to do work for Citibank as well as (2) payments for the executive's hunting trips. This was part of a larger scheme involving commercial bribe receiving and money laundering offenses. Mr. Adelhardt accepted responsibility by pleading guilty to just one count of falsifying business records in the first degree and received a one-year intermittent prison sentence (two days per week) totaling 104 days of imprisonment.

Trump's case bears similarities to Adelhardt's. The latter was convicted for falsifying business records as part of a scheme to cover up the commission of serious crimes. He was convicted of no other offense, including the underlying bribery that his business record falsification concealed. While Adelhardt's overall scheme was a serious matter, so is Trump's. He is alleged to have falsified documents with the intent to conceal or commit state and federal campaign finance or election law violations and state tax ones.¹⁶ If that is proven, he will have been shown to have harmed voters by depriving them of important information and may well have affected the outcome of the 2016 presidential election.

Moreover, Trump's case will likely also present aggravating factors that were not present in Adelhardt's. In contrast to Adelhardt, Trump has not yet, and seems unlikely in the future to accept responsibility for his crimes.¹⁷ Trump likely will not conserve judicial resources or spare witnesses from having to testify against him by pleading guilty.

In addition to the Adelhardt case, New York courts have simi-

larly sentenced other defendants to periods of incarceration who pleaded guilty only to falsifying business record felonies where the cases, like Trump's, typically involve allegations of other offenses. For example, a case involving electrical supply corporation executives resulted in jail sentences: Ira Friedman (sentenced to approximately six months of incarceration) and Todd Ehren (sentenced to approximately four months) pleaded guilty in 2013 to falsifying business records by misclassifying their salaries as expenses. The case involved a larger scheme including commercial bribery, theft and fraud by the corporation where they worked.¹⁸ And in 2015, Kerriann Bryan pleaded guilty to one count of falsifying business records in the first degree and was sentenced to one year of incarceration.¹⁹ Like this case, a false invoice was involved; the defendant allegedly created a false invoice to steal a sum in excess of \$50,000. She was originally charged with grand larceny before pleading to record falsification.

If Trump is convicted at trial of the 34 counts of falsifying business records counts with which he is charged, then given both the nature of the underlying criminal conduct and the character of the defendant, the court could likewise sentence Trump to a period of incarceration consistent with prior cases.

2. Convictions for Falsifying Business Records in the First Degree—Campaign and Election Violations

Defendant Trump would not be the first person in New York to receive a carceral sentence following conviction for falsifying business records in the first degree related to campaign finance violations. For example, transportation executive Richard Brega was convicted of falsifying business records in just such circumstances.²⁰ Brega did so by misrepresenting to the New York State Board of Elections the source of funds that he funneled into a county executive campaign. In 2018, Brega pleaded guilty to one

count of falsifying business records in the first degree and was sentenced to one year of imprisonment to run concurrently with his federal sentence of 50 months in prison for a separate bribery conviction.

Another political campaign case in which the defendant was convicted of falsifying business records in the first degree and sentenced to incarceration is that of Richard Luthmann. Luthmann was accused of impersonating New York political figures²¹ on social media in an attempt to influence campaigns. In 2020, Luthmann pleaded guilty to three counts of falsifying business records in the first degree as well as to two misdemeanor violations of New York Election Law and received a carceral sentence on the felony falsification counts of time served. That amounted to approximately 40 months of incarceration, although the sentence was not solely attributable to the plea.²²

Similarly, former New York State Assemblyman Clarence Norman was convicted in 2005 in connection with campaign finance violations following two separate trials. At his first trial, Norman was convicted of two felony campaign finance violations for soliciting contributions in excess of the contribution limit in his primary campaigns in 2000 (approximately \$4,000 over the limit) and 2002 (approximately \$2,000 over the limit) and one felony and one misdemeanor count of falsifying business records related to these contributions.²³ At his second trial²⁴ a few months later, he was convicted of grand larceny in the third degree, falsifying business records in the first degree, and offering a false instrument for filing in the first degree as a result of his depositing a \$5,000 contribution to his campaign into his personal bank account and then falsifying related campaign records.²⁵ The court ultimately sentenced Norman to a period of incarceration of a minimum of two and a maximum of six years and noted that he had “willfully and repeatedly” violated the law and that his attempt to blame associates was “unconvincing and shameful.”²⁶

Although Norman's sentence was not solely attributable to his conviction for falsification of business records,²⁷ the fact that Norman was charged with the offense of falsifying business records related to campaign finance violations—and later sentenced to incarceration—makes his case yet another reference point.

3. Convictions for Falsifying the Trump Organization's Business Records in the First Degree by Other Trump Employees

Finally, Trump would not be the first person sentenced to a period of incarceration following a conviction for first-degree falsification of the business records of the Trump Organization. Trump Organization Chief Financial Officer Allen Weisselberg was sentenced in 2022 for his role in a Trump Organization tax fraud scheme to five months of incarceration after pleading guilty to all 15 charges he faced, including four counts of falsifying business records in the first degree, grand larceny, four counts of tax fraud, a scheme to defraud, conspiracy, and four counts of offering a false instrument.

Moreover, Trump's former attorney Michael Cohen was sentenced to three years in prison by a federal judge in part for committing, allegedly at the behest of Trump, the underlying criminal campaign finance violations in the instant case that are the basis for Trump's charges. Cohen was arguably a lesser participant in Trump's scheme to defraud voters and suppress information and he pleaded guilty and cooperated with prosecutors. While federal sentences might often be longer than state ones, the fact that Cohen was sentenced to three years in prison is also a relevant data point. Moreover, the fact the Cohen was sentenced to imprisonment for acting as a coconspirator to Trump in these very matters is a substantial reason why a sentencing judge might also sentence Trump to a carceral sentence.

The History and Character of the Defendant

Should Trump be convicted, District Attorney Bragg could develop a presentation on his history and character that would support incarceration. Below is a brief preliminary sketch supporting our conclusion that a sentence of incarceration is appropriate based on Trump's history and character.

There is relevant New York Court of Appeals precedent that supports lengthening the sentence of a defendant based upon evidence of wrongdoing that has not yet been finally adjudicated elsewhere in a court.²⁸ The misconduct must however be established at sentencing (or have been established elsewhere) by at least a preponderance of the evidence.²⁹ The judge will have discretion whether to consider merely pending cases and might elect not to do so. Matters which have been adjudicated of course present a more persuasive case for consideration at sentencing.

Trump's legal history is checkered, to say the least. His other pending indictments include two separate federal prosecutions: the Florida stolen classified documents and obstruction of justice case and the Washington, D.C., 2020 election interference case. In Georgia state court, Trump is a defendant in a sweeping multi-defendant RICO indictment for his conduct related to attempting to steal the 2020 election. His family business, the Trump Organization (of which he is the founder and which employs much of his family), has been convicted of numerous felonies including falsifying business records and engaging in a 13-year tax fraud scheme.³⁰ A federal judge also concluded in a civil case involving one of Trump's attorneys that "[b]ased on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021," likely committing federal crimes in attempting a "coup."³¹

Moreover, there have been multiple civil cases where Trump has already been found to have committed serious legal violations

by a preponderance of evidence; they also inform his history and character and the judge can consider them.³² A jury found him to have sexually abused and defamed E. Jean Carroll, who has made additional defamation allegations in another pending lawsuit; a New York State judge found him to have engaged in repeated and persistent civil fraud, including falsifying business records in the first degree;³³ and he has been held in contempt repeatedly, warned, fined, sanctioned, and gagged by state and federal judges for statements exposing witnesses, those involved in the judicial system or their families to danger.³⁴

Trump's character can also be gleaned from his own words. He taunts, mocks and threatens those who deign to hold him accountable. He openly brags about sexual violence, utilizes racist terminology, and evokes Nazi tropes. He has no respect for the rule of law as evidenced by his calling for "the termination of all rules, regulations, and articles, even those found in the Constitution"³⁵ and repeated threatening of judges, court staff, prosecutors, and witnesses. For example, in this case alone, his Truth Social account featured a picture of him holding a baseball bat next to District Attorney Bragg's head³⁶ and a post appearing to warn that "death & destruction" could result from District Attorney Bragg charging him with a crime; this prompted the court to issue a stern warning against making comments that were "likely to incite violence or civil unrest."³⁷ Moreover, he has repeatedly threatened judges, court staff, prosecutors, and witnesses in his other cases,³⁸ and Justice Merchan³⁹ as well as other judges including federal District Court Judge Tanya Chutkan⁴⁰ and New York Supreme Court Judge Arthur Engoron⁴¹ have imposed gag orders to prevent him from potentially inciting violence.

Trump is notoriously not truthful⁴²—whether it is lying about winning an election or the size of his crowds, apartment, and wealth. His lies know no bounds - he lies about all things big and

small, whether they are inconsequential or involve our nation's most closely-held secrets.

These are just a few examples of evidence upon which District Attorney Bragg can draw to argue that defendant Trump's character and conduct deserves a sentence of imprisonment. Much more could be said—and likely will be should Trump face sentencing.

Conclusion

Given the nature and circumstances of Trump's alleged crimes here, his history and character, and New York state court sentencing precedent, District Attorney Bragg can make a strong argument that Trump should receive a sentence of incarceration if convicted. Trump is of course innocent until proven guilty, denies all wrongdoing and has not yet been tried, much less convicted. But it is also true that in order to evaluate the prosecution and its seriousness, we must have an understanding of the range of possible outcomes. Should Trump be convicted, they are serious.

provide reciprocal discovery, stating that Trump had provided the prosecution with nothing he sought to rely on. There are no public court filings confirming Trump has since complied with his discovery duties, although in its opposition to Trump's motions *in limine*, on the matter of expert witness Bradley Smith, DANY said that Trump "should not be permitted to evade or delay reciprocal discovery by retaining a law professor 'as an expert consultant and witness'... but then claiming that 'he is not being called as an 'expert.'" In any case, the public may not necessarily be privy to what, if any, discovery has been provided by the defense as this is not required to be filed with the court and so it likely will not be in the public record.

4. The Census figures do not add up to exactly 100 percent.

6. The Trial

1. The content under this header originally appeared as part of "The Manhattan DA's Charges and Trump's Defenses: A Detailed Preview," in Just Security on March 20, 2023, and has been updated to reflect subsequent events. Material from our Just Security and other prior publications is interspersed throughout this volume.

8. A Guide to Sentencing

1. Falsifying business records in the first degree is a Class E felony. *Id.* "For a class E felony, the term shall be fixed by the court, and shall not exceed four years." N.Y. Penal Law § 70.00(2)(e). In New York, felonies are classified from Class "A" to Class "E" with Class "E" being the lowest-level felony.
2. See N.Y. Penal Law § 70.00(4); *People v. Williams*, 79 N.Y.2d 281, 286, 590 N.E.2d 1199, 1203 (1992).
3. Special Counsel Jack Smith has similarly charged defendant Trump with committing crimes against all American voters and American democracy itself, for his actions four years later as part of an alleged conspiracy to overturn the 2020 presidential election.
4. Such a coverup is somewhat like Special Counsel Smith's obstruction of justice charges in his separate prosecution against defendant Trump over retention of classified national defense information.
5. Defendant Trump's former attorney, Michael Cohen, was convicted of campaign finance violations for his role in this scheme.
6. See *People v. Trump*, Statement of Facts, at 1.
7. *Id.*
8. "Donald Trump will be president thanks to 80,000 people in three states," The Washington Post, December 1, 2016.

9. Falsifying business records in the first degree is a class E felony. N.Y. Penal Law § 175.10. For a class E felony, the term shall be fixed by the court, and shall not exceed four years. N.Y. Penal Law § 70.00(2)(e).
10. See OCA-STAT Act Report.
11. Our full dataset and analysis based upon the .csv files at OCA-STAT Act Report is available at <https://docs.google.com/spreadsheets/d/1-gme6ij84bOTGQNmpr9vFYQmFJHoGwDrRg6psgxybsE/edit?usp=sharing>.
12. See OCA-STAT Act Report.
13. “Former Trump CFO Allen Weisselberg pleads guilty to perjury in deal that doesn’t require cooperation,” Associated Press, March 4, 2024.
14. Analogously, there may be instances in which defendants have been convicted yet not imprisoned where falsifying business records was not the top charge. In our experience, although such instances are not captured by the available data, they are highly unlikely to be sufficiently large in number to alter our analysis.
15. See “Ex-Citigroup Construction Executive Admits Taking \$500,000 in Bribes,” *New York Times*, December 1, 2015. And “Former CitiGroup Exec Gets 2 Years in Prison for Taking Bribes,” NBC News, December 1, 2015.
16. See Sections 40 and 41 in “A Complete Guide to the Manhattan Trump Election Interference Prosecution,” Just Security, March 27, 2024.
17. See *People v. Crump*, 197 A.D.2d 414, 415, 602 N.Y.S.2d 394, 394 (1st Dept. 1993).
18. See *Berger ex rel. Nominal v. Friedman*, 2015 N.Y. Slip Op. 32189 (N.Y. Sup. Ct. 2015); *DA Vance Announces 24-Count Indictment in Major Electrical Contracting Kickback Scheme*, New York County District Attorney’s Office, Dec. 18, 2013; “Three-Year Investigation Leads to 24-Count Indictment in Electrical Contracting Kickback Scheme,” EC&M, December 20, 2013; Brief of Appellant-Respondent, *Meryl R. Berger, Suing Individually and Derivatively on Behalf of Nominal Defendant I.G. Federal Electrical Supply Corporation, Plaintiff-Respondent, v. Ira M. Friedman and Jodi B. Ehren, Defendants-Appellants, I.G. Federal Electrical Supply Corporation, Nominal Defendant-Appellant*, No. 2015-10682, 2015 WL 13809960, at *9 (2d Dept. Dec. 29, 2015).
19. See *People v. Bryan*, No. 990-2015 (Apr. 23, 2015). and *People v. Bryan*, 2015NY037198 (June 12, 2015). Case files were accessed at the New York County Criminal Court Clerk’s Office in Manhattan, NY. Scans on file with author.
20. “Richard Brega sentenced in Rockland political case,” *The Journal News*, Dec. 11, 2018.
21. “Lawyer Accused of Using Fake Facebook Pages to Sway Elections in Staten Island,” *New York Times*, November 30, 2018.
22. “Already disbarred, former Staten Island lawyer is released from federal prison,” *Staten Island Advance*, August 6, 2021.
23. “Top Brooklyn Democrat Convicted of Campaign Violations,” *N.Y. Times*, Sept. 28, 2005.

24. "NORMAN GUILTY OF stealing. 2nd conviction for ex-pol," New York Daily News, December 16, 2005.
25. See *People v Norman*, 2004 NY Slip Op 51392(U) (Nov. 16, 2004).
26. See "Ex-Lawmaker Sentenced to 2 to 6 Years in Corruption Case," *The New York Times*, January 12, 2006. Trump has previously blamed his attorney, Michael Cohen, in connection with the crimes charged in this case. See "Trump Admits To Authorizing Stormy Daniels Payoff, Denies Sexual Encounter," NPR, May 2, 2018. ("Trump denied knowledge of the payments, telling reporters on Air Force One, "You'll have to ask Michael Cohen. Michael is my attorney. You'll have to ask Michael.").
27. Appellant's Brief, *The People of the State of New York, Plaintiff-Respondent, v. Clarence NORMAN, Jr., Defendant-Appellant.*, No. 2006-00428, 2006 WL 4844734, at *43-44 & n.14 (2d Dept. July 31. 2006) (noting that Norman was sentenced concurrently to "one to three years for grand larceny in the third degree, one to three years for falsifying business records in the first degree, and one to three years for offering a false instrument for filing in the first degree" and consecutive to his sentence in the other indictment, resulting in a total sentence of two to six years").
28. *People v. Outley*, 610 N.E.2d 356 (N.Y. 1993) (sentencing enhancement based upon evidence of a mere arrest so long as the court finds there is a "legitimate basis for the arrest on that charge"; the defendant had agreed not to be arrested as a condition of probation and later was).
29. *United States v. Watts*, 519 U.S. 148, 157 (1997) (holding that even acquitted criminal conduct can constitutionally be used to enhance a sentence so long as the charges are separately proved by a preponderance of the evidence); *but see People v. Varlack*, 259 A.D.2d 392, 394, 687 N.Y.S.2d 93, 96 (1999) (holding that if the other case resulted in acquittal, a "sentencing court may not base its sentence on crimes of which the accused has been acquitted" under New York law); *see also* 3 Criminal Procedure in New York § 49:2 (2d), Nature and definition of sentence—Consideration of conduct for which defendant was never tried or was acquitted ("the Court of Appeals has ruled that in order to satisfy due process requirements, the sentencing court must have reliable and accurate information, which standard is a lower standard of proof than the beyond a reasonable doubt standard applied in criminal trials, and that an acquittal is not equivalent to a finding that a defendant is innocent.") (citing *People v. Naranjo*, 681 N.E.2d 1272 (N.Y. 1997)).
30. Trump Organization Chief Financial Officer Allen Weisselberg was sentenced in 2022 for his role in a tax fraud scheme to five months of incarceration after pleading guilty to all 15 charges he faced, including four counts of falsifying business records in the first degree, grand larceny, four counts of tax fraud, a scheme to defraud, conspiracy, and four counts of offering a false instrument.

31. “Judge: ‘More likely than not’ that Trump ‘corruptly attempted’ to block Congress from counting votes on January 6,” CNN, March 28, 2022.
32. See *United States v. Mackbee*, 894 F.2d 1057 (9th Cir.) (holding that a conviction is considered final for criminal history purposes at the time of the trial court’s determination of guilt notwithstanding any pending appeals), *cert. denied*, 495 U.S. 962 (1990).
33. See *People by James v. Trump*, Complaint at 2.
34. “Prominent conservatives issue report rebutting Trump election claims,” CNN, July 14, 2022.
35. “Trump calls for the termination of the Constitution in Truth Social post,” CNN, December 4, 2022.
36. “Trump posts disturbing baseball bat photo with Alvin Bragg, threatens ‘death and destruction,’” New York Post, March 25, 2023.
37. “Jan. 6 Prosecutors Ask for Protective Order, Citing Threatening Trump Post,” *The New York Times*, August 5, 2023.
38. “Jan. 6 Prosecutors Ask for Protective Order, Citing Threatening Trump Post,” *The New York Times*, August 5, 2023.
39. “Judge issues gag order barring Donald Trump from commenting on witnesses, others in hush money case,” AP News, March 26, 2024; “Read the new gag order muzzling Trump in his hush-money case,” Business Insider, May 8, 2023.
40. “Judge reimposes gag order on Trump in federal election interference case,” NPR, October 30, 2023.
41. “Judge defends fining Trump \$10,000 for breaking gag order,” CNN, October 26, 2023.
42. “Trump’s false or misleading claims total 30,573 over 4 years,” *The Washington Post*, January 24, 2021.

Appendix I: Key Court Opinions

1. *People v. Trump* NY Slip Op 30560(U) [2024], at 13.
2. *Id.*
3. *Id.* at 14.
4. *Id.* at 15.
5. *Id.* at 16.
6. *Id.*
7. *Id.*
8. *Id.* at 17.
9. *Id.* at 17-18.
10. *Id.* at 7,19.
11. *Id.* at 7.
12. *Id.* at 9.