SERIES: CORRUPT AMERICA ♦

The One He Cannot Pardon

An AI Wrangler illustrated story







From the film

MARTY

The president of the United States can forgive almost any federal crime. He can do it before a trial, during one, or decades after a sentence has been served, and no court and no Congress can reverse him. There is one thing that power cannot reach, and in May of two thousand twenty-four a jury in Manhattan handed him one. I'm Marty Shepard, and this is Corrupt America.

CAROL

So there is an edge to it. I don't think most people know there is an edge to it.

MARTY

There is, and it is written into the constitution itself. Article two gives the president power to grant pardons for offences against the United States. Six words doing an enormous amount of work. An offence against the United States means a federal offence. A conviction obtained by a state, under state law, in a state court, sits outside that power completely. A president cannot pardon it for someone else, and cannot pardon it for himself.

CAROL

And the Manhattan case was a state case.

MARTY

It was brought by the district attorney of New York County under New York State law. On the thirtieth of May, two thousand twenty-four, a jury convicted Donald Trump on thirty-four counts of falsifying business records in the first degree. Not thirty-four separate schemes. Thirty-four documents — eleven invoices, twelve ledger entries, eleven cheques, each one its own count.

CAROL

Thirty-four pieces of paper. That is a very ordinary-sounding crime for something that ended up where this ended up.

MARTY

Falsifying business records is ordinarily a misdemeanour in New York. What lifts it to a felony is an additional element: that the records were falsified with intent to commit or conceal another crime. The prosecution's theory, which the jury accepted, was that the entries concealed a payment of one hundred and thirty thousand dollars made shortly before the two thousand sixteen election, and that concealing it served to influence that election.

CAROL

So the paperwork is the charge, and the reason behind the paperwork is what makes it a felony.

MARTY

That is the structure of the offence. And it is worth saying plainly what a conviction is and is not. A jury of twelve people heard the evidence over six weeks and returned unanimous verdicts on every count. That is a finding of fact by a jury, and until a higher court disturbs it, it is simply what the law holds to be true.

CAROL

What happened at sentencing? Because I remember it being unusual.

MARTY

In January of two thousand twenty-five, Justice Juan Merchan imposed what is called an unconditional discharge. No prison, no fine, no probation, no conditions of any kind. He explained that it was the only lawful sentence that would not encroach on the office the defendant was about to hold. The conviction was entered. The punishment was nothing.

CAROL

A conviction with no consequence attached. That is an odd shape. I can see why a person would still want it gone.

MARTY

And the effort to make it go away has been considerable, along three separate paths. The first is the ordinary one: an appeal to the state appellate court asking that the verdict be thrown out. That appeal was filed and argued, and it has not yet been decided. He is entitled to bring it, and it may succeed.

CAROL

What are the other two?

MARTY

The second is an attempt to move the case out of state court and into federal court, where a claim of presidential immunity could be brought to bear on it. Judge Alvin Hellerstein has now refused that request three times, most recently at the end of August, two thousand twenty-six, finding that the request had not been made with the required diligence. That refusal is itself on appeal to the federal court of appeals for the second circuit.

CAROL
And the third?

MARTY
The third does not exist, and that is the point of this episode. There is no pardon available. Not from himself, not from any successor. The federal clemency power does not extend to a New York State conviction, and no president has ever been able to make it do so.

CAROL
I keep thinking about the other episodes we have done this season, because the same man appears in them.

MARTY
He does, on the other side of the same power. In December of two thousand twenty he granted Duncan Hunter a full pardon, before Hunter had served a day of a sentence for converting campaign funds to personal use. In October of two thousand twenty-five he commuted the sentence of George Santos, who had pleaded guilty to twenty-three federal counts. Both of those were federal matters, so both were within reach.

CAROL
So he has used the power, twice, on people in this series. And the one conviction he holds himself is the kind the power cannot touch.

MARTY
That is the arithmetic of it. And there is a wider record here worth setting out accurately, because it is easy to blur together things that a court decided with things a court never reached.

CAROL
Let's do that carefully. What else has actually been decided?

MARTY
Three things. In December of two thousand twenty-two, two corporate entities of the Trump Organization were convicted at trial on seventeen counts including

criminal tax fraud and falsifying business records, and were fined about one point six million dollars. Allen Weisselberg, the company's chief financial officer, pleaded guilty to fifteen felonies in that scheme and served time in jail, then later pleaded guilty to perjury and served a second sentence.

CAROL
The company itself, as an entity. That is not something most people picture being convicted of anything.

MARTY
Companies can be, and this one was. Second: in two thousand nineteen the Trump Foundation was dissolved under court supervision, and two million dollars in damages was paid, after a finding that charitable money had been misused, including for political purposes. Third, and this one is civil rather than criminal: in the New York attorney general's fraud case, a trial court found Donald Trump and others liable for persistent fraud in the way assets were valued, and ordered a penalty that had grown past five hundred million dollars.

CAROL
I remember that number, and I remember it not surviving.

MARTY
In August of two thousand twenty-five the appellate division voided the money. It held that a disgorgement of nearly half a billion dollars was an excessive fine under the eighth amendment. What it did not void was the finding of liability itself, and it left in place the orders barring him from serving as an officer or director of a company in New York for three years. The attorney general has appealed the loss of the penalty to the state's highest court.

CAROL
So the finding stands and the price attached to it went away. That is a third version of the thing this series keeps running into.

MARTY
It is. And now the part that matters most for getting this right: what was never decided. Two federal prosecutions were brought against him — one concerning the retention of classified documents, one concerning the twenty twenty election. Neither reached a verdict. The documents case was dismissed by the district judge and the appeal was abandoned. The election case was dismissed after the two thousand twenty-four election under the justice department's own policy. A separate state case in Georgia stalled after the district attorney was disqualified.

CAROL

So on those, there is no finding at all. In either direction.

MARTY

In either direction, and this series does not treat a dismissed case as a proven one. A prosecution that ends without a verdict establishes nothing about guilt and nothing about innocence. It simply stops. The only criminal conviction against Donald Trump personally is the one a Manhattan jury returned, and it is under appeal.

CAROL

What strikes me is how narrow the actual finding is compared to how large the argument around it has been. Thirty-four business records.

MARTY

That is usually true of this kind of case. A jury is not asked whether a person is good or bad or fit for office. It is asked whether particular elements of a particular offence were proved beyond reasonable doubt about particular documents. Everything else belongs to voters, and the voters have had their say on their own terms.

CAROL

And the pardon question just sits there underneath all of it.

MARTY

It sits there because it is the one line the office cannot cross. Every other person in this series who received clemency received it because their case was federal. Rod Blagojevich, Duncan Hunter, George Santos, Henry Cuellar — federal, federal, federal, federal. A state jury's verdict is answerable to a state appellate court and to nobody else. Whether that verdict survives is a question for judges in New York, and it is still open.

CAROL

And I'm Carol. Thanks for sitting with us.