



Fortifying the Guardrails: Reforming Federal Criminal Justice After Trump's Revenge Prosecutions

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FORTIFYING THE GUARDRAILS: REFORMING FEDERAL CRIMINAL JUSTICE AFTER TRUMP'S REVENGE PROSECUTIONS

What lawmakers and a new administration can do to prevent the use of federal investigations and prosecutions against personal and political opponents that subvert the rule of law

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I. EXECUTIVE SUMMARY

Donald Trump has used his second term in office to launch a series of revenge prosecutions against political enemies unparalleled in U.S. history. His high-profile targets, ranging from former FBI Director James Comey to a group of sitting Democratic lawmakers, have dominated the headlines. But the president's assaults on impartial justice reveal threats to everyday Americans, too, whose constitutional rights are jeopardized by a system that lacks sufficient institutional guardrails against abusive investigations and indictments.

I spent over 30 years at the Department of Justice as a prosecutor and as a policy lawyer. I worked with countless attorneys who were committed, first and foremost, to justice, integrity, fairness, and equality under the law. Many of them now rightly express sorrow that the values of impartiality and political neutrality that animated the DOJ's ethos for decades have broken down. Some suggest there is little that can be done to restore them in the face of a Supreme Court devoted to the "unitary executive" theory, which gives the president effectively unfettered control over his branch of government. Nonetheless, I believe there are concrete steps a new administration could take to strengthen the guardrails against a rogue president, and propose them in this report.

They stem from a simple premise: Federal criminal law and the procedures in place to administer it must not be so broad, vague, or easily manipulated that they can be readily turned into tools of political or personal payback. That is precisely what has occurred over the first 15 months of the second Trump term. Cases transparently animated by presidential grievance or political messaging have been packaged as ordinary law enforcement. At every stage of the criminal process — from the drafting of criminal statutes, to the decision to open an investigation, to the use of subpoenas and other grand jury process, to the independence (or lack thereof) of the Justice Department — the system has proven more fragile and susceptible to political manipulation than we who worked at the department ever thought possible.

In 2016, many of us assumed Trump's calls to lock up Hillary Clinton were just a crude performance designed to thrill his base rather than a literal promise of future criminal prosecutions. The stump speech punchline has turned into a governing strategy of domination via legal warfare that goes far beyond just criminal law, encompassing punitive state action against universities, law firms, those who investigated the president in the past, and many others. Many of those actions have been thwarted by the courts or by grand juries. Nonetheless, the damage the Trump Administration is doing to the integrity of the nation's justice system is deep and pervasive.

The problem is also not abating: This month, the Justice Department [indicted the Southern Poverty Law Center](#) based on the fanciful theory that it had defrauded donors by paying undercover informants within hate groups it had sought to disrupt, such as the Ku Klux Klan. The highly politicized case appears to be an audition of sorts by Acting Attorney General Todd Blanche, Trump's pliant former personal lawyer, in his bid to permanently succeed former Attorney General Pam Bondi, who was fired from her position in part because the president believed she failed to prosecute the president's foes aggressively enough. Unless Republican Senators take a stand and reject a nominee who threatens to act as a political hatchet, we may well see more politicized indictments.

This report focuses on the most prominent case studies of revenge prosecutions so far and the reforms they suggest. The prosecution of New York Attorney General Letitia James, for example, spotlights the dangerous combination of an overbroad federal criminal code and highly discretionary charging authority. James's indictment rested on an elastic interpretation of fraud statutes — interpretations that could be, and were, stretched to fit a political vendetta. Although those charges, along with those against James Comey, were ultimately dismissed because the acting U.S. Attorney lacked constitutional authority under the Appointments Clause, this legal defect could not erase all the fear, anxiety, pressure, and financial costs imposed on the targets and their families. Nor did it resolve the underlying problem: a federal criminal code so expansive and ill-structured that it invites selective and abusive enforcement.

Congress and the next administration must repair today's politicized federal criminal justice system. There is already bipartisan support to address overcriminalization and code reform. We urge lawmakers to build on the existing concerns by developing a process to review the criminal code and amend it where necessary to embody core criminal law principles, including clearly codified criminal laws, coherently graded, distinguishing crimes that are more serious from those that are less. Statutory definitions must be sharpened, limiting vague terms that invite prosecutors to "find a crime" once they have chosen a target. Such an architecture would more faithfully embody constitutional values and make it harder for any administration to use loosely worded laws against disfavored individuals.

The case of Federal Reserve Chair Jerome Powell illustrates the use of investigative subpoenas as instruments of pressure and humiliation. In Powell's case, Chief Judge Jeb Boasberg of the U.S. District Court for the District of Columbia found that subpoena

power, designed as a neutral mechanism of information-gathering, was being deployed by President Trump's subordinates to send a clear political message to the Chair: fall in line with the president's demands to reduce interest rates or face intrusive, public, and costly criminal scrutiny. Subpoena reform, including tighter judicial oversight, clearer relevance standards, and safeguards against the use of subpoenas to chill lawful policy disagreement or public criticism, is needed.

The case of the "Seditious Six" — Democratic lawmakers who drew Trump's ire by urging troops on video to resist illegal orders — illustrates both how the grand jury can be a shield for citizens against an abusive executive but also a vehicle for prosecutorial abuse. The report reviews this episode and recommends reforms to the grand jury process to ensure its proper role as an investigative body and a buffer between citizen and state, and not an opaque instrument of intimidation and political revenge.

Overlaying these case-specific reforms is the need for greater independence at the Department of Justice from the whims of an unscrupulous president. The Supreme Court's decision in [*Trump v. United States*](#) limits what Congress can do to ensure Justice Department independence. But internal DOJ policies, including the Principles of Federal Prosecution developed by Attorney General Benjamin Civiletti in 1980 to rebuild public confidence in the integrity and independence of the Justice Department and designed precisely to prevent politicized charging decisions like what we've seen this last 15 months, need to be reembraced and reinforced. President Trump won't be the last president tempted to politicize criminal law. But codifying and strengthening the norms of impartial justice will illuminate when pressure from the White House — sometimes public but sometimes conveyed through back channels or social media messages — distorts prosecutorial judgment and blurs the line between appropriate and political criminal law decision-making. Future administrations should codify regulations that protect the DOJ from direct presidential or political interference in individual cases, increase transparency around contacts between the White House and the Department, and empower career officials and inspectors general to report and resist improper directives.

Finally, this report examines the question of accountability for President Trump's accomplices in suborning justice. To deter future abuses, blatant misconduct must be punished. We outline a menu of accountability mechanisms: a congressional inquiry into these cases; potential disciplinary action, including termination, against Department officials who violated professional norms or legal obligations; and, where warranted, referrals to state bar authorities or inspectors general. Accountability is not about vengeance against individuals but about fully recognizing and signaling that using criminal power as a political weapon is incompatible with the rule of law.

Taken together, the five recommendations advanced here — criminal code reform, subpoena and grand jury reform, stronger DOJ independence, and meaningful accountability — are not a cure-all. No statute or regulation or set of actions can fully prevent a determined president from trying to exploit the system. But they can raise the costs of doing so, narrow the opportunities for abuse, and equip future institutions with

clearer tools to push back. The revenge prosecutions should be understood as a stress test that the current justice system partially passed and partially failed. The task now is to learn from the failures and fortify the guardrails before the next test arrives.

II. TRUMP II: VENGEANCE MASQUERADING AS JUSTICE

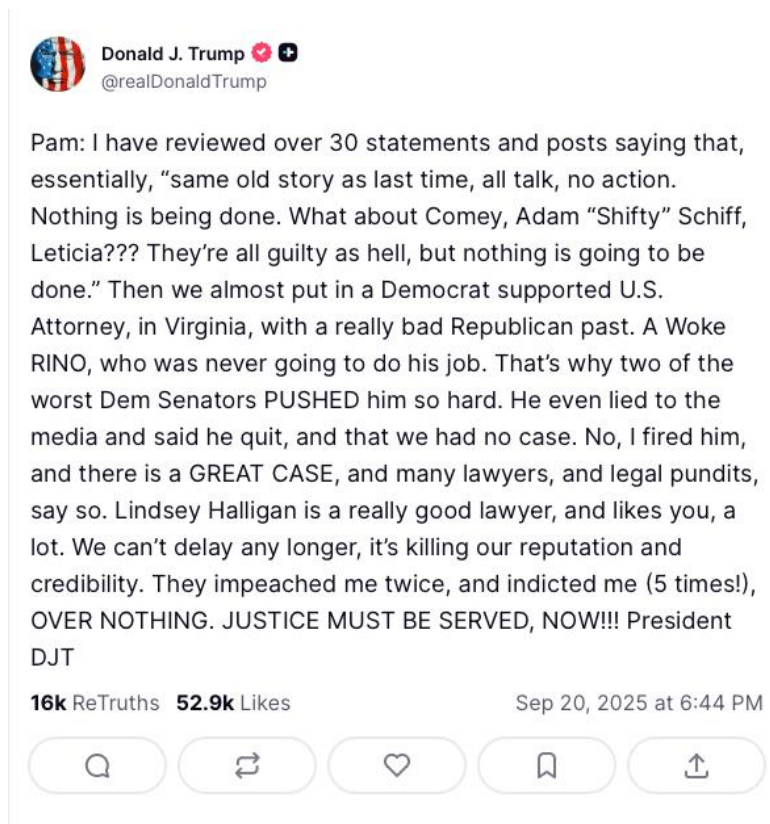
The Department of Justice has, for much of its history, tried to live up to values embodied in a speech delivered by Attorney General Robert Jackson on April 1, 1940, in the Great Hall of its headquarters on Constitution Avenue. Jackson spoke then of federal prosecutors' vast powers and why it was necessary that they embody the highest level of ethical integrity in order to deliver equal justice under law. That vision was driven into the culture of the DOJ over decades by career and politically appointed leaders, and it has been embodied in its policy.

In the early days of the second Trump term, the president's appointees paid lip service to these norms and values, especially in their Senate confirmation hearings. On her first day in office, Attorney General Pam Bondi issued a series of memos to all Justice Department employees. One, on charging, plea negotiations, and sentencing, included the following:

Critically, in determining whether to commence or recommend prosecution or take other action against a person, a prosecutor "may not be influenced" — in any respect — by the person's "political association, activities, or beliefs."

In retrospect, the memo's quotation reads a bit like snark. Bondi cited the Justice Manual, the DOJ policy bible that contains the Principles of Federal Prosecution, developed in the post-Watergate era to avoid precisely what has transpired these past 15 months at DOJ. The institutionalist gesture seemed reassuring to some. But the president soon ratcheted up the pressure to dispense with such pieties and go after his political foes.

In a posting on Truth Social that many reported was intended to be a private direct message to Bondi, the president made clear what he wanted and when he wanted it:



It didn’t take long for Bondi and some of her subordinates in the Justice Department to capitulate. While many at DOJ honorably refused to be part of the retribution campaign — some at the cost of their jobs — the guardrails gave way as the president gave top law enforcement roles to people known more for blind loyalty to him than distinguished careers in public service. Bondi, Deputy Attorney General Todd Blanche, FBI Director Kash Patel, and others were able to commandeer the Justice Department to criminally investigate and prosecute the president’s opponents. The government indicted three people on the president’s enemies list: former FBI Director James Comey, New York Attorney General Letitia James, and former National Security Adviser John Bolton. They are targeting many others Trump has picked fights with, including Federal Reserve Chair Powell, former Director of the Central Intelligence Agency John Brennan, and the six Democratic lawmakers who released the video to those in the military.

The excuses offered by Trump’s apologists — that the president is merely delivering payback for Democrats’ own illegal “lawfare” against him — do not hold water. The cases brought against the current president during the Biden administration were on vastly sounder legal footing and did not involve political directives from the White House. Trump and his most devoted supporters are simply unable to distinguish the administration of justice from personal and political animus.

As Immanuel Kant wrote, retribution for breaking clearly defined laws, applied equally to all citizens, is the heart of the rule of law. But when a president becomes obsessed with settling political and personal scores and misuses governmental power, especially the investigative and prosecutive power of the nation's criminal justice system, the rule of law gives way to narcissistic autocracy. The Constitution and other federal law include many provisions designed to prevent such abuses, but despite the Trump DOJ's mostly failed attempts to prosecute the president's enemies, the abuses continue, and they have inflicted significant harm on many innocent people.

We examine here several of the president's most blatant retribution cases to date and how they have undermined the rule of law. No matter their outcome, the revenge prosecutions should be a wake-up call, especially to criminal justice policymakers. The guardrails need to be fortified, not just for Comey, James, Bolton, Powell, Brennan, and the six Democratic lawmakers, but for all those who might be the subject of the abuse of prosecutorial power, most of whom will be the unfamous and unnoticed.

III. TRUMP'S RETRIBUTION PROSECUTIONS: CASE STUDIES

A. Letitia James

New York Attorney General Letitia James was charged by a grand jury in Norfolk last October with one count of bank fraud, in violation of 18 U.S.C. § 1344, and one count of making a false statement to a financial institution, in violation of § 1014.

The allegation of criminal activity spelled out in that indictment is quite simple: James falsely represented that the \$137,000 home she was buying in Norfolk would be used as her secondary residence. The indictment claimed that rather than using the home as a residence, James rented it out to relatives. That was the crime: A single alleged lie about how the home James was purchasing would be used.

Last November, however, Judge Cameron McGowan Currie dismissed the criminal cases that had been brought against James and against former FBI Director James Comey, because Lindsey Halligan, the Acting U.S. Attorney who presented and signed the indictments, lacked the legal authority to do so. Judge Currie found that Halligan's appointment was a violation of the Constitution's Appointments Clause and other federal law. While the cases were dismissed, the dismissals were "without prejudice," meaning the government could refile the charges. And, of course, the government could appeal Judge Currie's decision. White House spokeswoman Abigail Jackson made the Administration's intentions clear after the dismissal: "This will not be the final word on this matter."

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



THE UNITED STATES OF AMERICA

v.

LETITIA A. JAMES.

Defendant.

CRIMINAL NO. 2:25cr122

Count One: Bank Fraud (18 U.S.C. § 1344)

Count Two: False Statements to a Financial Institution (18 U.S.C. § 1014)

18 U.S.C. § 981(a)(1)(C) and 982(a)
28 U.S.C. § 2461
Criminal Forfeiture

INDICTMENT

October 2025 Term – at Alexandria, Virginia

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

1. Letitia A. James (“JAMES”) was a resident of Brooklyn, New York, and the borrower on a Fannie Mae-backed mortgage loan for the property located at 3121 Peronne Avenue, Norfolk, Virginia.
2. OVM Financial (also known as Old Virginia Mortgage / AnnieMac) was a mortgage lending business located in Virginia Beach, Virginia, engaged in the business of originating and underwriting residential mortgage loans, including those backed by the Federal National Mortgage Association (“Fannie Mae”). OVM Financial qualified as a “financial institution” within the meaning of 18 U.S.C. § 20(10).
3. Fannie Mae was a federally chartered corporation that purchased and guaranteed mortgages, operating as a government-sponsored enterprise under the oversight of the Federal Housing

A few weeks later, the DOJ tried again to charge James, but a grand jury in Norfolk refused to re-indict her. Abbe Lowell, James’ lawyer and a renowned defense attorney whose clients have included Hunter Biden, Senator Bob Menendez, and the president’s daughter and son-in-law, said the grand jury’s “no bill” was “a decisive rejection of a case that should never have existed in the first place.” The DOJ later attempted to re-indict James before a different grand jury in Alexandria, Virginia, which likewise refused. The President and his team now seem to have abandoned the fight.

While the effort to prosecute James has sputtered, the charges originally brought against James show how vaguely defined crimes can enable prosecutorial abuse.

The Supreme Court long ago declared that ill-defined criminal laws are invalid — a rule known as the “void for vagueness” doctrine. Crimes must be sufficiently clear to inform everyone of the conduct that will render them liable and subject to punishment by the government. When a statute is so hazy that “men of common intelligence must necessarily guess at its meaning,” that statute violates the “first essential of due process of law.”¹

The court has also recognized that criminal laws must, at some point, delineate degrees of culpability. Due process requires the articulation of factors to differentiate low-level crime and culpability from the more serious, and the government is required to prove those factors to a jury beyond a reasonable doubt. The legislature cannot simply define murder as the killing of another person and leave intent, heat of passion, and other culpability factors that would usually distinguish murder from manslaughter, for example, to the sentencing phase of the case.

In practice, however, the court has a long history of salvaging vague laws by writing in terms not contained in the statute. The result is a penal code that often provides the bare minimum of clarity, leaving it ripe for abuse. The bank fraud statute that James was prosecuted under is one such example.

In *Neder v. United States*, Chief Justice Rehnquist wrote for a unanimous Supreme Court that proof of “materiality” — that any falsehood could influence the decision-maker — is required for convictions under the federal mail, wire, and bank fraud statutes. The text of the law didn’t say anything about materiality; the Court simply added that element to save the ill-defined statute from a finding of vagueness. The statute itself, as written, which amounted to a mere 70 words, was overly broad and vague.

18 U.S. Code § 1344 - Bank Fraud

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

- (1)** to defraud a financial institution; or
 - (2)** to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;
- shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

¹ *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926).

Again, James was initially indicted for claiming she was purchasing a primary residence, which she then rented to family. There is no allegation that James failed to pay back the loan or that anyone lost any money on the transaction. Furthermore, there are genuine questions about whether any of the purchase and closing documents actually precluded James from renting the home to relatives — as opposed to marketing it through Airbnb or another commercial vendor — and thus whether James in fact made any misrepresentation. But let's assume, for argument's sake, that she did.

What matters legally then is whether the statements about her home were “material,” to make the case that they were, the indictment claimed that she received “favorable loan terms not available for investment properties, including a note rate of 3.000% (avoiding a 0.815% higher comparable investment property rate of 3.815% . . .).” Together with a bigger “seller credit” not available for investment properties, the indictment suggests “ill-gotten gains of approximately \$18,933 over the life of the loan.”

The bank fraud statute doesn't say anything about favorable terms. It doesn't include the word “materiality,” let alone define it. It doesn't distinguish small frauds from large ones. It doesn't say anything about whether a bank must lose money for a fraud to occur or whether favorable terms constitute a loss triggering the statute. If there were some loss to someone, whether it's \$5 or \$500,000, or \$5 billion, the crime is the same. It's a felony punishable by up to 30 years in prison. This is the kind of vagueness and undifferentiation that offends due process. They are characteristics of a broken code, and one that leaves citizens vulnerable to abusive charging.

So, why was James facing 60 years of imprisonment for a zero-loss case? First, the president is vindictive and will use any and all of his powers to settle scores. Two, he has enough subordinates who will stretch the law to meet his vindictive demands. And three, the federal criminal code is broken and enables this kind of charging of dubious and minor crimes as extraordinarily serious felonies. Code reform would lessen the ability of prosecutors to find a chargeable crime once they've set their sights on a particular target, like James.

In fraud cases, the federal criminal law simply doesn't adequately define the elements of the crime. The Supreme Court has been swatting away expansive interpretations of these laws by the DOJ for years now, while saving other interpretations by writing in new elements of what constitutes the crime. And if a case similar to James' makes its way to the Court, it should certainly swat it away too. Federal statutes don't differentiate stealing a can of soda from stealing a hundred million dollars in a Ponzi scheme, nor do they adequately define the limits of what is “fraud.”

Most state criminal codes, reformed in the 1960s and 70s, following the development of the Model Penal Code by the American Law Institute, properly articulate fraud and theft crimes and differentiate between small thefts — petty thefts, which are typically low-level misdemeanors — from larger thefts — grand thefts, which are typically felonies but often broken down further by the amount of the theft. There are usually several grades of theft codified in law, usually based on the amount stolen, the loss. It not only makes

common sense, but it protects citizens, like James, from being charged with 30-year felonies for an inconsequential act. And clear articulation of the elements of the crimes eliminates the need for the courts to fill in necessary elements like materiality and provides proper notice to the public.

Congress recognized the brokenness of the federal code in the 1960s. It created a commission to reform federal criminal law. But the reform effort failed. One of the consequences of that failure — and subsequent piecemeal criminalization — is that Letitia James was facing the possibility of 60 years in federal prison when the allegations of her criminal activity suggest, at most, the lowest level misdemeanor.

This prosecution should be a signal to Congress that it's time to take up criminal code reform and fix the federal laws. There is bipartisan support for such reform. Just a few months ago, the House Judiciary Subcommittee on Crime and Federal Government Surveillance held a hearing, "Criminalizing America" on overcriminalization. Reforms could embrace the principles the Supreme Court adopted in a series of cases in the 1970s, including *in re Winship* and *Mullaney v. Wilbur*, and more recently in *Apprendi v. New Jersey*, *Blakely v. Washington*, and *Booker v. United States*.

The code should differentiate among offenses of greater and lesser severity, grading crimes using articulated factors and designating different maximum penalties accordingly. It should define crimes clearly. The reforms could build a criminal law architecture that embodies the values of the Constitution and would be a protection — at least a partial protection — from abusive prosecutions.

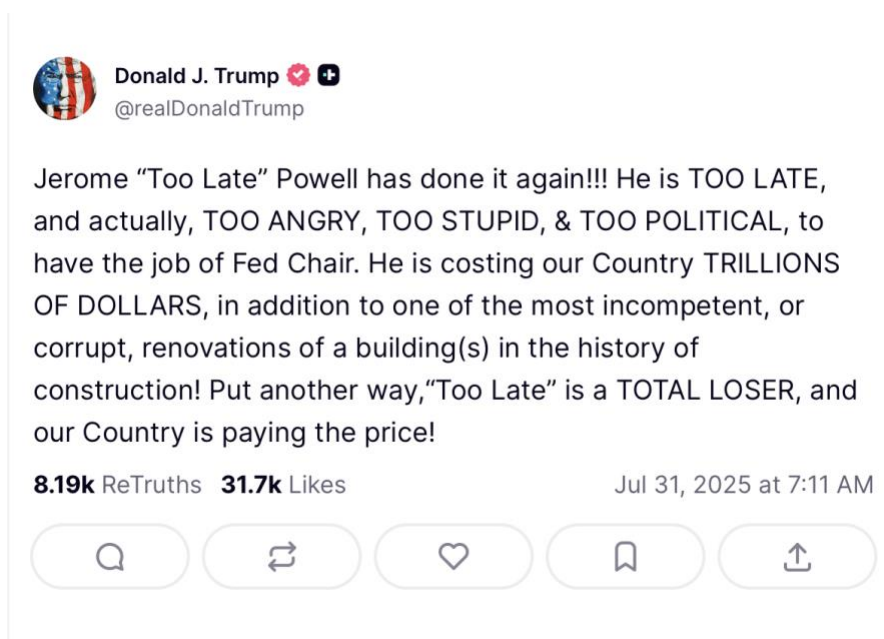
B. Jerome Powell

On January 11, 2026, Federal Reserve Chair Jerome Powell announced that the DOJ had served the central bank with grand jury subpoenas, "threatening a criminal indictment related to my testimony before the Senate Banking Committee" in June 2025. The Fed did not comply with the subpoena but rather moved to quash it, and in March, Chief Judge James Boasberg of the U.S. District Court for the District of Columbia granted their motion.

The subpoenas from the DC U.S. Attorney's Office sought records regarding expensive renovations that had been ongoing at the Federal Reserve's headquarters on Constitution Avenue for several years, which administration officials publicly suggested Powell had lied about to Congress. But according to Boasberg's opinion, the subpoenas followed more than 100 statements by President Trump slurring Powell and pressuring him to lower interest rates.

In one Truth Social post, for example, the president said, "'Too Late' Jerome Powell is costing our Country Hundreds of Billions of Dollars. He is truly one of the dumbest, and most destructive, people in Government . . . TOO LATE's an American Disgrace!" In another, the president lashed out, "'Jerome 'Too Late' Powell has done it again!!! He is TOO LATE, and actually, TOO ANGRY, TOO STUPID, & TOO POLITICAL, to have the

job of Fed Chair. He is costing our Country TRILLIONS OF DOLLARS . . . Put another way, 'Too Late' is a TOTAL LOSER, and our Country is paying the price!"



Chief Judge Boasberg found that a “mountain of evidence suggests that the Government served these subpoenas on the Board to pressure its Chair into voting for lower interest rates or resigning.” Boasberg said that federal prosecutors had produced “essentially zero evidence to suspect Chair Powell of a crime; indeed, its justifications are so thin and unsubstantiated that the Court can only conclude that they are pretextual.”

When the decision was made public, U.S. Attorney Jeanine Pirro almost immediately called a press conference. Pirro, a former Fox News personality, pledged that the DOJ would appeal the decision and described Boasberg as an “activist judge.” She pointed to “questionable statements” made by Powell before the Banking Committee about what she called the “atrocious cost overrun” of more than \$1 billion in renovations to the Fed’s headquarters. Pirro said these statements by Powell “did not comport with publicly available documents.” She went on to criticize Boasberg’s decision: “By inserting himself and preventing the grand jury from even obtaining — let alone hearing — evidence, he has neutered the grand jury’s ability to investigate crime.” Previously, the president had called for Boasberg’s impeachment over his rulings on a certain application of the Alien Enemies Act, and articles of impeachment have indeed been filed against him in the House of Representatives.

This month, prosecutors gave up the chase. Facing pressure from North Carolina Republican Senator Thom Tillis, who said publicly he would work to block the confirmation of Powell’s successor unless the investigation into the Fed chair was dropped, Pirro announced she was ending the probe.

Still, what is evident from this and other revenge prosecutions is that there ought to be an opportunity for citizens to challenge subpoenas of their personal records. At the very least, in cases where disclosure of the subpoena would jeopardize an ongoing investigation, subpoenas for personal or confidential information ought to be subject to court review before they are issued.

Rule 17(c)(2) of the Federal Rules of Criminal Procedure says that a “court may quash or modify the subpoena if compliance would be unreasonable or oppressive.” As Judge Boasberg notes uncontroversially in his opinion, “[e]ven if a criminal subpoena does not ultimately lead to prosecution, being subject to one can still impose costs. The subpoena’s target might need to hire a lawyer, shoulder the burdens of compliance, and live with the anxiety and fear of knowing that he is under criminal investigation.” Anyone who has ever actually been under investigation by the Justice Department knows that living with that anxiety and fear can be overwhelming. And more than that, a subpoena may require disclosure of invasive or embarrassing personal and confidential information.

Nonetheless, in late April, the Judicial Conference of the United States Advisory Committee on the Criminal Rules will meet in Washington to consider a proposal to amend the Federal Rules of Criminal Procedure, which would formally authorize the issuance of subpoenas by prosecutors and defense attorneys for all kinds of information, including personal and confidential information, without any court review and without notice to the person whose information is being sought. It would, as a practical matter, eliminate any opportunity in most cases for those impacted by a subpoena to challenge it, no matter the purpose for which the subpoena was issued, and no matter its intrusiveness.

The Judicial Conference of the United States is the congressionally created national policymaking body for the federal courts. The Chief Justice of the United States is its presiding officer, and membership is composed of the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and a district judge from each regional judicial circuit. The conference operates through a network of committees, one of which recommends changes to the Federal Rules of Criminal Procedure.

The pending proposal would amend Rule 17, which governs the use of subpoenas in criminal matters. After receiving several requests to review the existing rule, which is essentially unchanged from when it was first adopted in 1944, the committee found it needed an update. The proposed amendment spells out the proceedings to which the rule would apply; when subpoenas may be issued without informing the opposing party; the circumstances that require the production of the subpoenaed material to the court rather than to the requesting party; and the rules for disclosure of subpoenaed material to the opposing party. Most importantly, the amendment would change the standard that prosecutors and defense attorneys must meet to obtain a subpoena. The heart of the rule is that to obtain a subpoena for a court proceeding, a request must be specific, and the material sought must be relevant to, and likely admissible in, a criminal proceeding.

Most of these proposed changes are modest and reasonable. But one provision would authorize prosecutors and defense attorneys, generally, to prepare and serve a subpoena themselves without any motion to a court and thus without any court review or notice to the impacted party. The revenge prosecutions show clearly why this is problematic.

Proposed Rule 17(c)(2)(C) states quite clearly that neither a motion nor an order is required before servicing a subpoena. In its proposed committee note, the advisory committee explains its reasoning for this provision: that other provisions of the proposed rule “are adequate to control potential abuse of the subpoena process by the parties.” The actions of the U.S. Attorney’s Office in DC, the Eastern District of Virginia, and elsewhere in the U.S. regarding the revenge prosecutions of the Trump DOJ belie that conclusion.

If a subpoena is issued to the person being investigated — or, as in Powell’s case, the organization he runs — there will be an opportunity to contest the subpoena. But if instead of subpoenaing the Federal Reserve Board, the U.S. Attorney’s Office had issued a subpoena to Powell’s personal bank or brokerage for his financial records, there would be no opportunity to contest it and no court review. After all, Powell might not be notified, and the bank or brokerage would have no reason itself to challenge the subpoena. The same goes if the U.S. Attorney’s Office issued a subpoena to other third parties for all of Powell’s travel records, his medical records, or his mortgage applications.

Or maybe the U.S. Attorney’s Office will just wait a few months until Powell’s term as Chair has expired — and the Fed is then led by a Trump appointee who will be less attuned to Powell’s interests — to reissue the subpoenas and expect compliance. Under the proposed rule, Powell might never learn of any of the subpoenas under those circumstances subpoenas, no one might ever challenge them, and the investigation and collection of Powell’s information would proceed forward unchecked.

One lesson of the revenge prosecutions is that the proposed rule is insufficient to protect the constitutional and liberty interests of American citizens in these and other similar circumstances. There may have been a time when a “presumption of regularity” for federal prosecutors would be appropriate — that courts could confidently trust that the government was operating properly by the book. But no longer. The proposed rule is simply not “adequate to control potential abuse of the subpoena process by the parties.” It does not ensure an opportunity to challenge the subpoena by the person most impacted by it and it does not ensure court review of the subpoena before it is issued.

The only exceptions to the new rule allowing unchecked issuance of third-party subpoenas would be for subpoenas for a *victim’s* personal and confidential information or a subpoena issued by someone representing themselves. These subpoenas would indeed require court review. In 2008, the advisory committee recognized that a victim’s “dignity and privacy” requires a “protective mechanism,” at least when a subpoena is

issued to a third party to disclose personal or confidential information about that victim.² Fed. R. Crim. P. 17, Committee Note (2008). “Third party subpoenas raise special concerns because a third party may not assert the victim’s interests, and the victim may be unaware of the subpoena.”³ So said the Committee itself.

But this is no less so for Jerome Powell — and all of us — as it is for victims of crime. The 2008 amendment requires “judicial approval before service of a subpoena seeking personal or confidential information about a victim from a third party.” So should subpoenas seeking personal or confidential information about anyone. Victims and their privacy interests certainly deserve respect. But so does Jerome Powell and anyone wrongly charged by unscrupulous prosecutors. All citizens should be able to challenge an abusive use of the subpoena, investigative, and prosecution powers.

Under the proposed rule, a person who is not a victim — a suspect, a witness, a family member of a suspect, or anyone else — could have their personal or confidential information subpoenaed without any court review, without any finding that the information sought will be “likely to be admissible as evidence in the designated proceeding” (the new lower standard for the issuance of subpoenas), and without the chance for them to challenge the purpose of the subpoena or its scope.

This is troubling for many reasons beyond the potential for abuse of process, like in the Powell case. For example, the Supreme Court has already ruled that in some circumstances — for some personal and confidential information — the Fourth Amendment requires a warrant supported by probable cause for the government to demand that information, and that the use of a common subpoena for the information violates the Constitution. While we don’t yet know the full and precise scope of the information that is so constitutionally protected, in those circumstances, the proposed amendment provides no protection from unconstitutional uses of subpoenas beyond victims, even in non-abusive prosecutions.

At the very least, to protect citizens in their rights — constitutional and otherwise — the proposal should be amended to require both a motion and court review before a subpoena for private or confidential information is issued. If we have learned nothing else from the revenge prosecutions, it is that criminal subpoenas and other investigative methods can be abused, and that law and policy must be made to protect us all from such abuse.

C. Trump’s So-Called “Seditious Six”

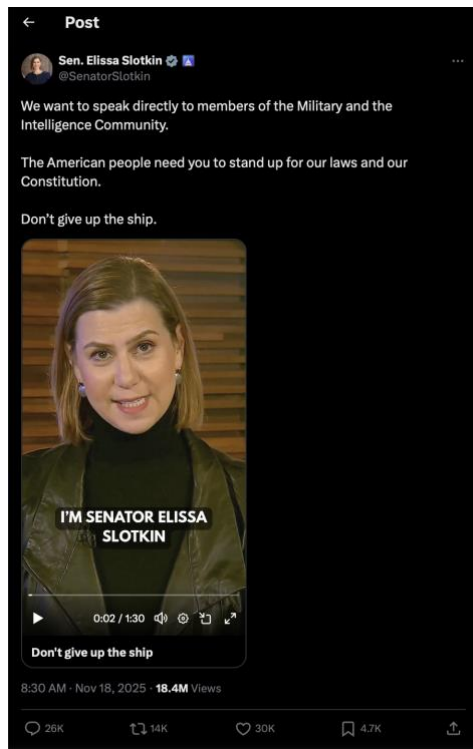
In November, six Democratic lawmakers who previously held positions in the military and intelligence services — Sen. Mark Kelly of Arizona, Reps. Chris Deluzio and Chrissy Houlahan of Pennsylvania, Rep. Maggie Goodlander of New Hampshire, Rep. Jason Crow of Colorado and Sen. Elissa Slotkin of Michigan — released a video on X.

² Fed. R. Crim. P. 17, Committee Note (2008).

³ Fed. R. Crim. P. 17, Committee Note (2008).

As Slotkin, a former intelligence agent who served three tours of duty alongside the U.S. military in Iraq, wrote in a post accompanying the video, the lawmakers wanted to “speak directly to members of the military and the intelligence community.”

“The American people need you to stand up for our laws and our Constitution. Don’t give up the ship,” Slotkin wrote.



In the video, the lawmakers said the trust that citizens have in the U.S. military and intelligence agencies was “at risk.” “This administration is pitting our uniformed military and intelligence community professionals against American citizens,” the lawmakers said.

“Like us, you all swore an oath to protect and defend this constitution. Right now, the threats to our constitution aren’t just coming from abroad but right here at home,” the video added. “Our laws are clear: You can refuse illegal orders.”

In response to the video, the president almost immediately called for the arrest of the six lawmakers and for them to be put on trial.



truthsocial.com/@WashingtonExa. It's called SEDITIOUS BEHAVIOR AT THE HIGHEST LEVEL. Each one of these traitors to our Country should be ARRESTED AND PUT ON TRIAL. Their words cannot be allowed to stand - We won't have a Country anymore!!! An example MUST BE SET. President DJT

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This is really bad, and Dangerous to our Country. Their words cannot be allowed to stand. SEDITIOUS BEHAVIOR FROM TRAITORS!!! LOCK THEM UP??? President DJT

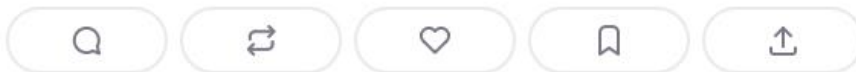


Democratic veterans in Congress urge service members to refuse unspecified unlawful orders [washingtonexaminer.com/policy/](https://www.washingtonexaminer.com/policy/)



www.washingtonexaminer.com
Dem veterans in Congress urge service members to refuse unlawful orders
None of the Democrats specified what illegal orders they should be concerned about or what to do if they believe they are given one.

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Secretary of Defense Pete Hegseth promptly announced an investigation into alleged breaches of military law by Senator Kelly, a former navy captain and astronaut, a highly unusual step against retired military personnel, as well as an effort to reduce Kelly's military pension.

Earlier this year, prosecutors in Jeanne Pirro's D.C. U.S. Attorney's Office contacted the lawyers for the six lawmakers. According to news reports, prosecutors asked to speak with the lawmakers. Soon, a grand jury investigation was begun. The precise investigatory steps taken by the prosecutors in the name of the grand jury are not made public; the process is deliberately shrouded in secrecy. Within weeks, the prosecutors presented an indictment to the grand jury, which it rejected. Before the second Trump Administration, a "no bill," the term used for when a grand jury declines to indict a person despite being presented with a charge by federal prosecutors, would only happen a handful of times a year in a system that charges more than 60,000 people with felonies. It's now happened multiple times in the Trump revenge cases.

As these rare cases reflect, a grand jury can indeed be a shield for citizens against an abusive prosecutor. In the last year, this is precisely what has happened. The system is showing some resilience. But the grand jury can also be a vehicle for that abuse, even if it doesn't result in an indictment.

Here's how the grand jury system works. There is no judge present in the grand jury room when it is meeting. No foundational evidence needs to be shown to a court before a grand jury investigation is begun. Prosecutors issue subpoenas for testimony, data, and documents in the name of the grand jury, usually without even mentioning them to the grand jurors. Neither subjects of the investigation nor witnesses may have counsel at their side while they are questioned by prosecutors in the grand jury; those who can afford lawyers are told they can ask for a recess and step outside the grand jury to consult their lawyer if they want to. Of course, every trip to the hallway can look like a sign of guilt. The grand jury process itself can be a vehicle for abuse through compelled testimony and compelled sharing of documents and data.

In their presentations to the grand jury, prosecutors can present snippets of evidence or fragments of document threads stripped of context, while declining to show the grand jurors public statements of subjects or witnesses. For example, in the grand jury of the six Democratic lawmakers, prosecutors could present the video that appeared on X without sharing any other statements made by the same lawmakers urging full compliance with military and civilian law. The rules of evidence do not apply in the grand jury. Even evidence seized in violation of the Constitution can be presented. And no exculpatory evidence need be shown to the grand jurors. With most grand juries, there is an informality in the presentations and almost camaraderie between the prosecutors and the grand jurors.

In March, news stories reported that James Comey, the former FBI Director who was earlier targeted unsuccessfully by the Trump Administration's U.S. Attorney in Virginia, was subpoenaed in connection with a wide-ranging grand jury investigation run by the

U.S. Attorney in the Southern District of Florida, Jason A. Reding Quiñones. The investigation is apparently focused on the examination into Russian interference in the 2016 presidential election that was eventually run by Special Counsel Robert Mueller. It has been dubbed the “grand conspiracy” investigation by Trump allies.

Whatever grand conspiracy might have taken place, it was longer than five years ago and thus outside the normal statute of limitations. So why is the investigation grinding on? There has been limited transparency from the Trump Administration. But what is clear — from this case and many others — is that the grand jury probe itself can be used as a tool of intimidation. According to news reports, more than 130 subpoenas have been sent out in connection with the “grand conspiracy” investigation. Without oversight, these subpoenas can command production of sensitive and confidential information. They can demand a witness’s presence and testimony with no counsel present for the questioning. And it can all be done solely on the direction of a partisan prosecutor driven to heap costs and stress on those being investigated and those being subpoenaed without any judicial oversight.

In the end, the investigation of the Seditious Six produced no sedition charges. The grand jury refused to return the indictment prosecutors had drafted and presented. But by then, significant damage was already done. The six had to hire lawyers, endure threats and harassment, and see their legislative work chilled. We’ll see what happens with the “grand conspiracy” investigation. The cases — and the others described above — have exposed not simply an abusive administration, but an investigative mechanism in need of reform. The current grand jury system simply gives a determined prosecutor unfettered power to investigate, intimidate, and stigmatize without judicial oversight.

The Seditious Six investigation — and the others discussed here — should be the catalyst for modernizing federal grand jury practice. For more than half a century, courts have described the grand jury as “a constitutional buffer between the Government and the people,” yet in practice, it operates as an arm of the prosecutor’s office. The Supreme Court, itself, in *Blair v. United States*, described it this way:

It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime.

And while other Supreme Court decisions have held that illegally obtained evidence can be used in grand jury proceedings and that prosecutors are not required to present exculpatory evidence to the grand jury under the common law, those decisions still leave Congress free to legislate higher standards of fairness.

Here are four steps Congress should take to reform the way grand juries work:

1. Give subjects and witnesses the right to counsel in the grand jury room. Any witness, and especially any subject or target, should be allowed to have

a lawyer present to advise on issues raised during questioning by federal prosecutors. Counsel need not be permitted to argue, object, or address the jurors; their role can be limited to silent advice to the witness, with courts empowered to remove lawyers who obstruct.

2. Create a legal duty to present exculpatory evidence to the grand jury and to exclude evidence a court has already held unconstitutional. A simple rule — that failure to present such evidence or exclude illegally obtained evidence can lead to dismissal of the indictment — would be a major step toward making grand juries truly independent.

3. Codify basic process protections for targets and witnesses. Any person whom prosecutors intend to ask the grand jury to indict should receive advance written notice of that status, Miranda-style warnings before questioning, and a meaningful opportunity to testify beforehand if they choose. Conversely, prosecutors should be prohibited from compelling appearance by targets who have, through counsel, already made clear that they will invoke the Fifth Amendment, absent a grant of immunity.

4. Rein in the subpoena power. Subpoenas to members of Congress, their staff, and political organizations for legislative and associational materials raise acute First Amendment, Speech-and-Debate Clause, and separation-of-powers concerns. But as discussed in relation to Rule 17 of the Federal Rules of Criminal Procedure, subpoenas to third parties for sensitive personal, financial, or political information should require prior judicial approval, and if possible, given the state and sensitivity of any investigation, reasonable notice and an opportunity for the affected person to move to quash the subpoena before production. The investigations discussed here show how easily bare subpoenas can be used to rummage through years of communications and other private and sensitive information. Moreover, prosecutors should be required, if so requested by a subpoenaed witness, to share with an overseeing court the predicate for the investigation.

There have been several task forces and working groups over the last several decades convened by bar associations and others that have more fully examined the work of federal grand juries and have made various other recommendations for reform. All of this work should be examined by Congress, and legislation should be crafted that would make important changes to ensure that the federal grand jury continues to be an effective investigatory body, one that also stands between the citizen and the state and is not a secret tribunal that can be turned, at a president's or prosecutor's whim, against perceived enemies.

IV. TWO ADDITIONAL REFORMS TO FORTIFY THE GUARDRAILS

A. Codify DOJ Independence

Overlaying these specific reforms is the need for greater structural independence at the Department of Justice from the political aims of the Administration. The Chief Justice's decision in *Trump v. United States* limits the degree of that independence from the president. It treats criminal investigation and prosecution as a core, exclusive executive function and roots it directly in Article II. The Chief Justice emphasizes that "investigation and prosecution of crimes" are quintessentially executive, and that the Executive Branch has "exclusive authority and absolute discretion" to decide which crimes to investigate and prosecute and how aggressively to pursue them. That discretion is exercised through the Justice Department, whose officials act as the president's subordinates in carrying out his Take Care duty. Because the Constitution vests "the entirety of the executive power" in the president, Roberts concludes that decisions about federal investigations and prosecutions, and the president's supervision (including removal) of the attorney general and other DOJ officials in that sphere, fall within the president's "conclusive and preclusive" constitutional authority. In that domain, Congress may not criminalize or otherwise regulate the president's exercise of this power, and courts may not second-guess it in a criminal prosecution; thus, statutes cannot validly be used to impose criminal liability on a former president for how he directed or pressured DOJ in deciding what election-related crimes to investigate or charge.

But internal DOJ policies, including the Principles of Federal Prosecution developed under Attorney General Benjamin Civiletti, designed precisely to prevent politicized charging decisions, need to be reembraced. With a President determined to politicize criminal law, those norms will be insufficient. But codifying the norms will help illuminate when pressure from the White House — sometimes public, but sometimes conveyed through back channels or social media messages — distorts prosecutorial judgment and blurs the line between legal and political criminal law decision-making. It will cause legal frictions that will raise the costs of rescission as well as provide these regulations with practical force.

Future administrations should codify regulations that protect DOJ from direct presidential or political interference in individual cases, increasing transparency around contacts between the White House and the Department, and empowering career officials and inspectors general to report and resist improper directives. They should also work with Congress to explore legislation that would codify the Civiletti Principles of Federal Prosecution into law. That could give constitutionally permissible guidance on the appropriate use of the prosecution power and the legal basis to narrow a rogue president's authority.

B. Hold Trump's accomplices accountable for politicized prosecutions.

Finally, accountability for those who designed and executed retribution prosecutions is a must. To deter future abuses and to make clear what rule of law compliance is all about, there must be consequences for abusive misconduct. There is a menu of accountability mechanisms: a congressional inquiry into these cases; potential disciplinary action, including termination, against Department officials who violated professional norms or legal obligations; and, where warranted, referrals to state bar authorities or inspectors general. Accountability is not about vengeance against individuals but about signaling that using criminal power as a political weapon is incompatible with the rule of law.

Former New York City Mayor Rudy Giuliani was disbarred from the practice of law in New York and Washington, DC for false statements he made in his efforts to overturn the results of the 2020 presidential election. The governing boards found that Giuliani's claim of massive election fraud was unsupported by any facts. "His malicious and meritless claims have done lasting damage and are antagonistic to the oath to 'support the Constitution of the United States of America' that he swore when he was admitted to the Bar."

Any proposed accountability mechanism faces a significant legal hurdle: the likely defense by the president's subordinates that they were executing lawful presidential directives. Given the Supreme Court's decision in *Trump v. United States* and the limits it puts on DOJ independence, there is a yet unresolved tension regarding how state bars or internal watchdogs can discipline federal prosecutors who assert they were following constitutionally authorized Article II orders. Whatever the boundary between protected execution of executive directives and independent violations of professional ethics, accountability measures should be undertaken to the greatest extent possible.

V. CONCLUSION

Taken together, the recommendations advanced here — criminal code reform, subpoena and grand jury reform, stronger DOJ independence protections, and meaningful accountability — are not a cure-all. No statute or regulation can fully prevent a determined president from trying to exploit the system. But they can raise the costs of doing so, narrow the opportunities for abuse, and equip future institutions with clearer tools to push back. The revenge prosecutions should be understood as a stress test that the current system partially passed and partially failed. The task now is to learn from the failures and fortify the guardrails before the next test arrives.

ABOUT THE AUTHOR

Jonathan J. Wroblewski, a contributing author for PPI, has been the Director of the Harvard Law School Semester in Washington Program since 2010. From 2008 until 2024, he served as the Director of the Office of Policy and Legislation in the Criminal Division of the U.S. Department of Justice. In that capacity, he led a team of policy analysts and attorneys in developing, reviewing, and evaluating national crime, sentencing, and corrections policy and legislation. Jonathan represented the Department of Justice on the United States Sentencing Commission, the Federal Judicial Conference's Advisory Committee on the Criminal Rules, and the American Bar Association's Criminal Justice Council.

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