BIRD MARELLA LLP

BIRD • MARELLA • RHOW • LINCENBERG • DROOKS • NESSIM

William E. Johnston Authors Law360 Article Discussing Legal Challenges of Trump Targeting Prosecutors

Bird Marella partner William E. Johnston authored the *Law360* article, "Trump Faces Uphill Battle If He Tries To Target Prosecutors." The article considers the potential legal challenges of President Trump going after the federal and state prosecutors who have previously investigated and prosecuted him.

In the piece, Mr. Johnston highlights that although opening a criminal investigation on specific prosecutors will be simple, filing charges and obtaining convictions will not. Mr. Johnston notes that few federal criminal statutes will be available to prosecute these specific prosecutors (including special counsel Jack Smith, New York Attorney General Letitia James, Manhattan DA Alvin Bragg, and Fulton County, Georgia DA Fani Willis). In addition, there is a strong potential for backlash from the public, judges, and juries if President Trump decides to target prosecutors.

Mr. Johnston notes that few prosecutors have faced criminal charges solely for acting in their official capacity. He shares that this is "largely because grand juries or judges must sign off on the filing of criminal charges [and] prosecutors must back up their charges in court with evidence and legal authority."

Although rare, the article shares some examples of prosecutors facing criminal charges – including intentionally withholding exculpatory evidence, bribery, extortion, and other forms of corruption concerning their official duties. Mr. Johnston further discusses potential offenses that President Trump's new Attorney General could pursue against prosecutors, including mishandling classified documents, willful violations of grand jury secrecy, and false statements to judges. Although these are all possible routes President Trump could target, Mr. Johnston notes that these are all intent-based crimes and would be exceedingly difficult to prove were made willfully.

Other potential areas Trump's Attorney General could target are taxes and loans. Although career prosecutors with simple finances should be safe, elected officials with more complex personal finances could face inquiries. Mr. Johnston provides Baltimore State's Attorney Marilyn Mosby as an example; she was convicted in February for making false statements in a mortgage application for a vacation form and was convicted in 2023 of perjury for making early retirement plan withdrawals.

The article states that the final avenue Trump's Attorney General could pursue criminal liability

against prosecutors is if the prosecutors obstruct any investigation the new Attorney General opens. Mr. Johnston notes that "[t]he prosecutors who pursued President Trump would likely know to be very careful when talking to agents or attorneys who are investigating them" to avoid allegations of obstruction of justice.

Although Mr. Johnston outlines several potential routes President Trump could utilize to target prosecutors, he summarizes the article by discussing the unlikelihood of any targeted prosecutors actually being convicted of a crime. There will likely be expensive and lengthy investigations ahead for them, but the legal and practical obstacles to securing a conviction will likely be too great.

Read a PDF of the article here.

Click here to read the article in its entirety (*Law360* subscription required).