

Rank-And-File DOJ Attorneys Will Keep Calm And Carry On

By **Michael Landman** (December 3, 2024)

As with every new administration, the election of Donald Trump to serve as the 47th president of the U.S. is undoubtedly causing many current and prospective U.S. Department of Justice attorneys to question whether now is the right time to work for the department.

Traditionally, a change in administration — or a change in political philosophy — causes a wave of departures of political appointees, including many of the 93 presidentially appointed U.S. attorneys. However, the rank-and-file DOJ attorneys often pride themselves on the ability to withstand what they view as an inevitable ebb and flow of the political tides.



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That ability has traditionally been one of the department's strongest assets. These career prosecutors are the department's engine; they use their experience and commitment to the rule of law to train the DOJ's new ranks and provide guidance to the political appointees.

Of course, a change in administration will often alter the department's prosecution priorities. However, career prosecutors' ability to remain apolitical helps keep the department on a consistent path toward justice. And they ensure consistency in the thousands of investigations and prosecutions that run across change in administrations.

Trump's second term is unlikely upend this tradition.

Let's look to Trump's first term as a guide.

Eight years ago, I was in the same position as many current and prospective DOJ attorneys are now. I was offered a position in the department through the Attorney General's Honors Program shortly after the election, and had to decide whether to accept it before Trump took office.

While many of my friends and colleagues with certain political leanings pushed me to decline the offer, those currently at the department, as well as department alumni, encouraged me to join, regardless of who occupied the White House.

These individuals assured me that the DOJ was an apolitical body that could weather a storm coming from the Left or the Right. They pointed out that, in times of intense political polarization, the department needs to retain and attract those who believe politics should play no role in the administration of justice.

I was sold. From my vantage point, the department's engine successfully maintained its apolitical nature throughout Trump's first term.

Of course, my perspective was limited by the fact that I was responsible for prosecuting criminal tax cases, an area that was not the focus of the Trump administration, and I was a line attorney who had limited interaction with the department's political appointees.

In that respect, my perspective was similar to that of most of the 100,000-plus department employees throughout the country. Like theirs, my job during the Trump administration was

easy — show up and do justice.

That is not to say that the administration had no effect on the department. As with any incoming administration, the priorities of the DOJ shifted. This shift included a greater focus on drug offenses and on immigration-related offenses. This included bringing the largest-ever healthcare fraud enforcement against medical professionals participating in the distribution of opioids and other dangerous narcotics.[1]

On the civil side, the administration prioritized bringing actions to protect free speech on university campuses and the right to receive equal treatment in college admissions.[2]

Internally, the Justice Department suspended all diversity and inclusion training for its employees and managers.[3]

These changes, while significant to those affected by the change in priorities and internal policies, did not alter the department's core mission of doing justice.

Upon leaving the department, I remained of the belief that the media's focus on a small fraction of the DOJ's prosecutions — namely, those conducted by the special counsel's office — distracts the public from the department's core mission. This mission was fulfilled during the last two administrations under which I worked.

Just recently, in addressing a group of prosecutors in the U.S. Attorney's Office for the Southern District of New York on Nov. 18, Attorney General Merrick Garland echoed this sentiment, stating, "Every day you come to work with one job only: to do the right thing. All day long. And I wish the American people could see that." [4]

The attorney general was speaking to the department's engine and making a plea for them to remain committed to staying the course. He continued:

Now, for myself, I may be coming to the end of my tenure at the Justice Department, but I know that all of you will continue. ... You — the career lawyers of this district, the career lawyers of all the U.S. Attorneys' Office, the career lawyers of the Justice Department as a whole — you are the institutional backbone of this Department. You are the historical memory of this Department. You are the heart and soul of the Department. You are the Justice Department.

The attorney general's words echo the general sense among current and former department attorneys that their mission is not subject to the political whims of the current administration and its political appointees.

In vocalizing it, the attorney general was signaling his view — or at least aspiration — that the new administration will not alter the department's institutional backbone.

Will Trump's second term be different?

Trump's first term felt like a unicorn. Trump had never held political office and was best known as a reality television star and real estate mogul. Nevertheless, Trump's presidency came and went, and the department's institutional backbone remained.

Trump's second term presents new challenges to the department. First, this is the first time that the incoming president is someone that the DOJ prosecuted — multiple times.

The very prosecutors that participated in decisions to indict Trump, or the decisions to indict many of his supporters, may soon be working under his administration.

And members of Trump's transition team have openly called for those within the DOJ who disagree with Trump to leave or be fired.[5] Trump's initial decision to nominate former U.S. Rep. Matt Gaetz, R-Fla., for attorney general compounded this concern, as Gaetz himself had been investigated by the department.

Second, Trump has openly called for going after the prosecutors who investigated and prosecuted him. As NBC News reported, officials from the department have begun to reach out to lawyers amid fears they will be prosecuted by the incoming administration.[6]

As discussed by Will Johnston in a recent Law360 guest column, there are various reasons why it would be an uphill battle if the administration makes good on its promise to target prosecutors who investigated and prosecuted Trump.

Nevertheless, the mere prospect of these potential prosecutions may push career prosecutors to the exit. It may also cause those who wish to join the department to reconsider.

People are keeping a watchful eye.

The incoming administration's pick for attorney general is one that is always watched closely by pundits. But to career DOJ attorneys, the pick is seen as little more than fodder for discussion around the water cooler.

That may have changed with Trump's initial announcement of Gaetz as his nominee. In addition to the fact that Gaetz was recently under federal criminal investigation by the very department he was tapped to lead, he is an individual with little legal experience and no prior prosecution experience. Trump's nomination of Gaetz signaled a significant departure from past political appointees.

Trump's most recent pick for attorney general, Pam Bondi, will likely be viewed as a step in the direction of business as usual at the department. Bondi is a former state prosecutor and Florida attorney general who has experience as a line prosecutor and has led a large team of public servants.

Much ink will be spilled regarding her past affiliations with Trump, her connections to foreign powers while working as a lobbyist, and her lack of federal criminal experience.[7] These are issues that should certainly be considered. But at the end of the day, career department attorneys may view these stories as additional topics for water cooler discussions, rather than as a reason to bolt for the exit.

While the attorney general can influence some of the high-profile cases that the DOJ is pursuing or will pursue in the future, the attorney general's politics have a minimal impact on the work of the vast majority of department attorneys.

A principal reason for this is the manner in which most prosecutions arise: Most investigations are initiated at the agency level — e.g., by the FBI, IRS or the U.S. Department of Homeland Security — often in reaction to being notified of potential criminal activity by another source. It can take months or years for a department attorney to even become involved.

By that time, it is often clear whether or not a crime has been committed, and it is up to the prosecutor to shore up the investigation and make a decision whether to prosecute.

It is rare that the attorney general plays any role whatsoever in the thousands of decisions that federal prosecutors make each day. Rather, it is the hundreds of career prosecutors who are supervising the DOJ line attorneys who have the biggest influence on the trajectory of the department.

Their willingness to stay during the change in administration will have a greater impact on the department than whoever is confirmed by the Senate.

No doubt, Bondi is someone who will help implement Trump's prosecution priorities, which may include his campaign promise to go after those who investigated him.

Bondi previewed her position on this matter last year during an interview on Fox News in which she said, "The Department of Justice, the prosecutors will be prosecuted, the bad ones." [8]

Bondi's inclusion of the qualifying term "the bad ones" foretells how this will likely play out: Bondi will devote department resources aimed at investigating some of the individuals involved in prosecuting Trump, but will only prosecute someone if they are found to have violated the law.

This is something that career prosecutors will likely get behind, as they did when former FBI attorney Kevin Clinesmith was prosecuted in 2020 for lying in connection with the department's efforts to obtain a warrant as part of the DOJ's probe of Trump's connections to Russia. [9]

Bondi is also likely to prioritize narcotics and immigration enforcement, as we saw with Trump's first term. And we are also likely to see a shift away from the regulation of cryptocurrencies, prosecutions related to Jan. 6 and regulatory prosecutions brought against large corporations. Companies and company executives are less likely to face scrutiny from the department as its resources are shifted elsewhere.

But as discussed above, Bondi's shift in priorities only have a limited effect. There are entire units, such as the Major Frauds Section of the U.S. Attorney's Office for the Central District of California, whose mission is to ferret out and prosecute large-scale financial fraud.

These units are often staffed with more experienced attorneys — i.e., career prosecutors — who have the discretion to continue to prosecute fraud wherever they can find it. And there is nothing to suggest that Bondi will upend these sections.

History tells us that the overall mission of the department will remain intact. As Trump said when nominating Bondi, "Pam will refocus the DOJ to its intended purpose of fighting Crime and Making America Safe Again."

While some may disagree with the premise that the department needs to be refocused, the career attorneys will share Bondi's interest to "fight crime" and serve the public.

Like Garland, I expect that the career prosecutors at the department will remain there to help guide Trump's nominee and other political appointees, whoever they will be.

And I hope that prospective prosecutors make the same choice that I did eight years ago by

blocking out the political noise and joining the department in order to contribute to its pursuit of justice.

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[1] <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trumps-first-year-restoring-law-order/>.

[2] Id.

[3] <https://www.nytimes.com/2020/10/09/us/politics/justice-department-diversity-training.html>.

[4] <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-us-attorneys-office-southern-3>.

[5] <https://www.politico.com/live-updates/2024/11/11/congress/mark-paoletta-justice-department-lawyers-00188772>.

[6] <https://www.nbcnews.com/politics/justice-department/doj-fbi-officials-reach-lawyers-potential-trump-revenge-prosecutions-l-rcna179737>

[7] <https://nymag.com/intelligencer/article/what-we-know-about-pam-bondi-trumps-loyalist-ag-pick.html>.

[8] <https://www.nbcnews.com/politics/politics-news/pam-bondi-attorney-general-justice-department-rcna181493>.

[9] <https://www.politico.com/news/2021/01/29/fbi-lawyer-trump-russia-probe-email-463750>.