

# Our system protects even those who sought to undermine it

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On Jan. 3, 2021, Acting U.S. Attorney General Jeffrey Rosen bluntly informed President Trump that the Justice Department would not interfere in the U.S. presidential election. Period. That statement — made in the Oval Office to the president directly — embodied the most deeply entrenched tradition of the Department of Justice to function as a nonpartisan executive department adhering to the rule of law. The Justice Department hasn't always met that ideal, but the country was reminded of its value last week. Rosen and his acting deputy, Richard Donoghue, stood fast when the winds of corruption were blowing hurricane hard.

That many Democratic activists had labeled Rosen and Donahue political hacks because they were Trump appointees reminds us of the saving truth that individuals can put principle above politics at any time and in any circumstance. Or possibly the better way of stating it is that politics and principle aren't inherently inconsistent, but it takes people acting on conscience to bring them together.

We are now in the midst of a congressional inquiry into the assault on the Capitol and the attempt to recast the results of a presidential election. State and federal grand juries also are actively scrutinizing the same events for possible criminal law violations. Several notable developments provide insight into the possible outcomes of these efforts.

The vast majority of witness testimony before the Jan. 6 Committee thus far is from Republicans — mostly appointed officials from the Trump administration and Republican officials in several strategically chosen battleground states. The developing mountain of evidence against Trump isn't from progressives or activist Democrats, but from

Republican insider eyewitnesses. The airing of previously undisclosed accounts of the former president's actions and inaction during crucial events leading up to and on Jan. 6 has been clarifying and terrifying.

The final report of the committee will provide posterity with the first comprehensive accounting of the Jan. 6 attack and subversion. The evidence developed during the committee process, if shared in a timely manner to the federal grand jury, may well provide (or already has provided) momentum to the federal criminal investigation. It's unlikely that state grand juries will directly benefit from the committee's non-public work, but the state authorities can use the public accounts to supplement their own inquiries.

As for the federal investigation, signs are emerging that it is gaining traction. That progress might, in part, be a byproduct of the committee's work. The seizure of the cell phone of John Eastman, an attorney who represented the president, is a dramatic development. Besides a judge issuing a warrant for such a seizure, the agents would have needed approval at the highest levels of the Justice Department. That departmental review would have been detailed and exacting. Indeed, while the legal standard for any search warrant is probable cause, the DOJ reviewers would have used a much more demanding one. That is, the internal DOJ standard may well have been whether compelling evidence of a crime likely would be found by searching the attorney's cell phone and its contents.

Further, the person proposed to take over the Justice Department and direct its efforts to challenge the election — Jeffrey Clark, a little-known civil DOJ official — had his home searched on the same day as Eastman's phone was seized. Those two developments reflect an unmistakable escalation in the investigations of the efforts to circumvent the results of the presidential election.

Attorney General Merrick Garland will make the ultimate decision whether to pursue charges against the former president. His will be a lonely post from which to render one of the most consequential prosecutorial decisions in the history of our democracy.

However, a decision to charge Trump won't be the final word. The court system provides myriad protections for defendants facing such charges.

The burden will remain on the government to prove guilt within a known and transparent process.

The irony is that Trump and some of his acolytes wanted to ignore process and protections to achieve the result they sought — retaining power. Even if charged, Trump will be the beneficiary of a system he was willing to cast aside. Ultimately, it is a hallmark of a real democracy that a person receives the protections of the law and due process not because one deserves it, but because the system demands it for all.

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