

Merrick Garland Is Compromised. He Must Stand Aside and Appoint a Special Prosecutor.

Mark R. Weaver (Opinion) - Newsweek

In a famous dissent from 1988, Justice Antonin Scalia had some prescient remarks that seem newly relevant in the wake of an FBI raid on Mar a Lago, private home of former President Donald Trump Monday night, authorized by President Joe Biden's Department of Justice.

“Nothing is so politically effective as the ability to charge that one's opponent and his associate are not merely wrong-headed, naive, ineffective, but, in all probability, ‘crooks, ’” wrote Scalia.

“And nothing so effectively gives an appearance of validity to such charges as a Justice Department investigation and, even better prosecution.”



Win McNamee/Getty Images WASHINGTON, DC - AUGUST 03: As U.S. President Joe Biden, appearing via teleconference, looks on Attorney General Merrick Garland attends a meeting of the Task Force on Reproductive Healthcare Access during an event at the White House complex August 3, 2022 in Washington, DC.

We all knew Scalia was brilliant, but who knew he was psychic?

In a clash of coincidence apropos to our times, it was the [Supreme Court](#) seat left vacant by Scalia's death in 2016 that [Merrick Garland](#) fancied for himself.

But President Obama's nomination of Garland vaporized when [Senate](#) Republican Leader [Mitch McConnell](#) withheld confirmation hearings until newly elected President Trump could appoint [Neil Gorsuch](#).

This snub gives Garland, already [under fire](#) for appearing to use the Justice Department to [further](#) President Biden's political agenda, the strongest of motives to retaliate against Donald Trump by using the law enforcement resources available to him.

Not so coincidentally, Garland is the only one with access to the immense power of federal prosecution that can be harnessed in the fashion about which Justice Scalia warned.

Motive and opportunity don't always equate to misdeed, but such portentous alignment deserves scrutiny.

Let me be clear: If there is solid evidence that any former president has committed a serious crime, he must be held to account. That's the rule of law. But when the former president is an all-but-certain political opponent of the president, then the Attorney General must recuse himself and appoint a special prosecutor.

To date, this has not been done. As a result, the credibility and trust that allows federal prosecutors to do their important work is imperiled.

President Biden has so far denied knowing or approving of the raid on Mar a Lago. But there is evidence that Garland and his team are acting with partisan motives—evidence they themselves appear to have leaked.

When I was a young spokesman at the Justice Department, it was clear in our practice and policy that no one at the department was permitted to tell reporters the details or even the basis of a sealed search warrant. Indeed, since nearly all federal investigations involve taking evidence before a [grand jury](#) that operates in secrecy, releasing anything from that chain is likely [illegal](#).

And yet, as early reports about the FBI raid of Trump's home took shape, someone in the Biden administration with detailed knowledge leaked to [news outlets](#) that the predicate for the search was purported to be classified documents in Trump's possession. And this happened despite the fact the search warrant affidavit had not (and still has not) been made public.

This leak itself was improper and may have violated [federal law](#) governing Justice Department release of classified grand jury information—which is ironic, given the allegations against Trump.

Every sentient American knows our nation is strained and divided in ways not seen for many decades. This tension [wasn't](#) caused by Donald Trump, but his current situation is the most searing of flashpoint in our political cauldron.

If the tens of millions of our countrymen who support Trump's re-election in 2024 see federal prosecutors and FBI as nothing more than partisan agents of the [least popular](#) chief executive in generations, our national fabric may rip beyond repair.

Legal ethics rules require every prosecutor to be a “[minister of justice](#).” That includes those who worked with the FBI to get a federal judge's permission to search the Trump residence.

Attorney General Garland must remember that the unpretentious robe of a minister becomes nothing more than a patchwork of rags when it cloaks the boldest of partisan colors.

A special prosecutor must be appointed immediately, or the Biden Justice Department will have squandered the trustworthiness crucial to upholding the rule of law.

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