

**Testimony of Jill Wine-Banks before the House Judiciary
Weaponization of the Federal Government Subcommittee**

5.15.24

Chairman Jordan, Ranking member Plaskett, and members of the Committee, thank you for allowing me to testify today.

My parents raised me to believe in facts and to respect the President of the United States and all members of Congress. I still do.

After finishing law school, I joined the Department of Justice as a prosecutor and carried those same beliefs with me. Regardless of who was president, I knew that my assignment – like that of every federal prosecutor – was to serve the American public by pursuing truth and justice. That did not change when I joined the Watergate Special Prosecution team a few years later.

At both DOJ and in the Watergate Special Prosecutor's Office, we pursued the the truth through witness testimony and documents. The fact that those investigated included a sitting president, his

top White House aides and campaign staff changed nothing. We had no political agenda or preconceived notions of guilt or innocence. We acted solely on the publicly available credible evidence that suggested that crimes had been committed that required investigation.

In pursuing our investigation, we kept an open mind and followed the rules of the DOJ that ensure fairness. Those rules require that no investigation be opened without reasonable cause, no indictment brought without a high probability of conviction, and that prosecutors speak only through the indictment if there is one. In this process, politics and bias have no role.

Those rules have not changed in the 50 years since. Without fear or favor, DOJ prosecutors look at the facts and the law and then decided whether or not to indict after a fair analysis of the evidence as applied to all the elements of the crime that must be proved beyond a reasonable doubt. Prosecutors must and do consider both incriminating and exculpatory evidence, aggravating and mitigating circumstances, and follow the facts wherever they lead. I was told by my mentor and first supervisor

in DOJ's Organized Crime Section, Chuck Ruff, that my job was to do justice, not to win cases.

The same was true at the Watergate Special Prosecutor's office. And I see no evidence that today's DOJ is doing anything different.

Your committee website says today's hearing is to examine the use of lawfare tactics to weaponize the rule of law. I admit I had to look up what that meant. I learned that lawfare is the use of legal systems and institutions to damage or delegitimize an opponent. I see no lawfare in today's DOJ or in the any of the special counsels' decisions regarding the cases against former President Donald Trump or President Biden. I see no double standard. No selective prosecution. No weaponization or lawfare tactics.

If we could go back to the Watergate era when facts were agreed on and only the conclusions drawn from those agreed facts were debated, it would be obvious why the Department of Justice was justified in investigating Trump, Biden and Pence, but justified in only indicting former President Trump.

The standards for opening the investigations and for prosecuting or declining to do so were the same for all three. All involved possession of classified materials after they were out of office and required to return them to NARA under the Presidential Records Act, passed in response to President Nixon's attempt to retain documents.

The standard used to decide whether or not to prosecute former President Trump, President Biden and former Vice President Pence was the same. It was the facts as applied to that standard that were not the same. The facts differed greatly so the outcomes in the three cases were not the same. The conduct of former President Trump is not comparable to that of President Biden or former Vice President Pence so the results of evaluating them under the same standard rightly lead to different prosecutorial decisions.

So let's look at the facts and distinguishing characteristics of the cases against President Trump and former President Trump. I hope we can all agree on some of these facts.

Here's a brief summary of the facts in the case against former President Trump:

When confronted by NARA, he refused to return classified documents despite the many opportunities he was offered to do so. It was NARA that knew he still possessed them and requested their return, and had he voluntarily returned them, he would have avoided prosecution. Instead, he hid returned some but hid others from his own attorney and from the FBI during their execution of a lawful warrant, adding the crime of obstruction to those of espionage. Video evidence shows boxes being moved.

This conduct shows willfulness and knowledge. These documents belong to the United States and were clearly marked classified and were very recent and presented a current threat to our national security.

Those are aggravating factors that required the Special Counsel to seek an indictment against the former president, as they did for Sandy Berger and General Petraeus, whose indictments demonstrate the lack of a double standard or selective prosecution. And although they are not classified document cases that endanger our national security, the cases filed by this DOJ

against two Democratic members of Congress, Robert Menendez and Henry Cuellar, disprove a bias for prosecuting only Donald Trump.

In contrast, the facts of President Biden's possession of documents are very different. His staff, not NARA, found the documents, informed the President who had them immediately notify the proper officials and cooperated fully with those officials. He allowed numerous searches of all his offices and homes, returned everything, and, even in the midst of a national crisis due to the Hamas attack on Israel, President Biden sat for lengthy interviews.

The former president did not none of that. He did the opposite.

Another distinction between the cases is that President Biden possessed old documents. Some were diaries and a handwritten letter by him as the then-Vice President to President Obama, documents he reasonably assumed he had a right to retain based on precedent going back to President Reagan.

In the end, President Biden's Special Counsel, Robert Hur, a Republican who Trump had appointed as the US Attorney for Maryland, concluded no criminal charges were warranted. He noted the evidence did not establish willfulness, an essential element to prosecution, and that there was a reasonable ground for President Biden to believe that he had a right to retain certain of the documents, and that some of the documents may not have actually been classified.

Bottom line, Hur noted the factual distinctions between the Trump and Biden cases. Those differences are fact and undermine any allegation of selective prosecution, double standards, or bias. As Hur wrote, "Trump is in a whole different category than either Pence or Biden in terms of retention and concealment and destruction."

Unlike the Mueller decision not to indict Trump in the Russia investigation, Hur said "We would reach the same conclusion even if Dept of Justice policy did not foreclose criminal charges against a sitting president."

In my years of experience, nothing justifies allowing anyone to evade accountability for alleged criminal conduct, especially a former president responsible for seeing that our laws are faithfully executed. During Watergate, we came close to indicting former president Nixon. A pardon from his successor prevented that. I believed then and still believe that no one is above the law, that accountability is necessary for the rule of law to survive, and that there is existential danger in not holding the guilty accountable.

I still hold my younger self's belief in the rule of law and the need for accountability and that this Department of Justice is now fairly administered justice, making investigation and prosecution decisions solely based on the evidence and law, not a preconceived political agenda. I have seen no evidence to the contrary in the cases against Defendant Trump. He is entitled to due process and the presumption of innocence as are all criminal defendants, no more or less. He is not entitled to commit crimes and get away with them.

I am thrilled to be here in your search for facts and truth. I look forward to your questions.