

NEWS ANALYSIS

Trump Says the Justice System Has Been Weaponized. He Would Know.

The former president is attempting to cast the investigations into his actions as politically motivated uses of the justice system. In office, he regularly sought to use government powers against his foes.



By Michael S. Schmidt and Maggie Haberman

March 29, 2023

As he awaits possible indictment by the Manhattan district attorney and remains under scrutiny in multiple other criminal investigations, former President Donald J. Trump has regularly railed against a justice system that he contends has been deployed against him by his political opponents.

“The Biden regime’s weaponization of our system of justice is straight out of the Stalinist Russia horror show,” he told a rally in Texas on Saturday night.

But as is often the case with Mr. Trump, his accusations — widely repeated by other Republicans — reflect his own pattern of conduct: his history of threatening or seeking to employ the expansive powers of the presidency to go after his enemies, real and perceived.

“He was always telling me that we need to use the F.B.I. and I.R.S. to go after people — it was constant and obsessive and is just what he’s claiming is being done to him now,” said John F. Kelly, Mr. Trump’s second White House chief of staff.

“I would tell him why it was wrong, and while I was there I did everything I could to steer him away from it and tell him why it was a bad idea,” Mr. Kelly said. “I thought we were successful, but he would often ask a lot of people to do a lot of things that he didn’t want to do himself in the hopes that someone would do it and he could claim he did nothing wrong.”

Some of his demands were public, and to some degree a political performance, like his calls, never acted upon, for the prosecution of Hillary Clinton, his defeated rival in the 2016 campaign.

Other actions were personal, and more petty. He blocked then-Speaker Nancy Pelosi from using a military plane in 2019 to visit troops in Afghanistan. Andrew McCabe was temporarily denied his federal pension upon retiring as deputy director of the F.B.I., after intense criticism from Mr. Trump for his role in the Russia investigation.

In some instances, Mr. Trump acted more quietly and persistently. Among those he wanted to see prosecuted was John F. Kerry, the former senator, Democratic presidential nominee and secretary of state under President Barack Obama.

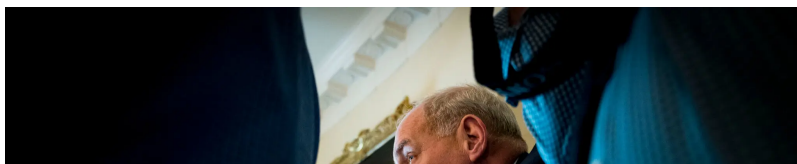
Mr. Trump maintained that Mr. Kerry had broken the law by staying in touch with Iranian officials with whom he had negotiated a nuclear deal that Mr. Trump was unwinding. As president, Mr. Trump repeatedly pressed senior officials behind closed doors about using the Justice Department to target Mr. Kerry, according to two people familiar with the matter.

Ultimately, federal prosecutors in New York were pushed by senior Justice Department officials in Washington to investigate Mr. Kerry, according to the U.S. attorney in Manhattan at the time.

John R. Bolton, who served as Mr. Trump’s national security adviser, said the former president is now clearly playing to a base that has increasingly embraced his claims of “weaponization” about a range of investigations, and responded to his portrayal of himself as its victim. But, Mr. Bolton said, “The idea that he’s a paragon of virtue who didn’t do this to other people and is now a victim of this unfairness really is laughable.”

Asked to comment about Mr. Trump’s use of the levers of power to go after his enemies, including Mr. Kerry, a senior consultant to Mr. Trump’s campaign, Chris LaCivita, spoke only of Mr. Kerry and reiterated the call for his prosecution, calling him “a threat to national security.”

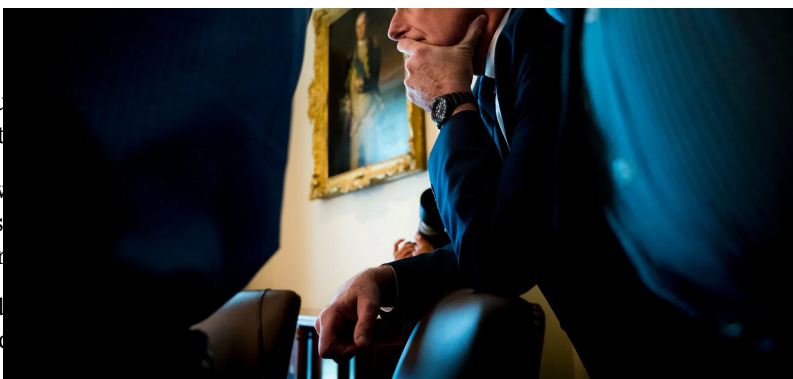
For decades, Mr. Trump has generally viewed institutions and systems as entities that reward friends and allies of those leading them and that punish their enemies. It was how he perceived the world of machine politics that surrounded him in New York City as he was growing up. He has long made clear that he believes every system and every person is corruptible.



“Anyone will say anything if you tell them,” Mr. Trump saying at their first meeting.

Mr. Trump has insisted that he would not make payments to a porn star if times were better. The current Manhattan district attorney is a former prosecutor.

While Mr. Trump did little to hide his actions publicly — it is unclear how much he has done — others.



...or, John Brennan, recalled Mr.

...s related to hush-money and was a predecessor of the prosecution.

...s Twitter account or discussed it as part of aides, prosecutors and

Mr. Trump privately pushed aides like Mr. Kelly to revoke the security clearances of former top intelligence officials who were critical of him. “Yes someone wrote an op-ed criticizing you, but that doesn’t mean you should go and do that,” Mr. Kelly recounted telling Mr. Trump.

Mr. Trump’s desire to order the Justice Department to prosecute Mrs. Clinton and James B. Comey, whom he had fired as F.B.I. director, was rebuffed by his White House counsel at the time, Donald F. McGahn II.

“Consensus has emerged that a key component of ensuring fair criminal proceedings is avoiding even the appearance of political motivation for prosecution or criminal investigation,” Mr. McGahn wrote. That notion, he added, had solidified in the years after the Watergate scandal, when it was revealed how Richard M. Nixon had tried to target his rivals.

But legal experts say the mere knowledge that Mr. Trump tried to use them for his own purposes damages public confidence that the Justice Department and the F.B.I. will follow the law, and the facts, rather than go in a political direction.

In the case of Mr. Kerry, the U.S. attorney for the Southern District of New York at the time, Geoffrey Berman, has said there was a direct link between Mr. Trump’s desires and the pressure put on his office to prosecute Mr. Kerry. In a book published in September, Mr. Berman said that two days after Mr. Trump said on Twitter that “the United States does not need John Kerry’s possibly illegal Shadow Diplomacy,” in May 2018, Justice Department officials in Washington referred a case to Mr. Berman’s office to determine whether Mr. Kerry had broken the law by being in contact with Iranian officials after he left office.

Mr. Berman’s office investigated Mr. Kerry in the months that followed. A little less than a year later, Mr. Trump again spoke out on Twitter about Mr. Kerry, repeating the allegation that he had broken the law by remaining in contact with the Iranians.

That afternoon, Mr. Berman said, his office received a call from David Burns, a top national security prosecutor at the Justice Department in Washington, “who wanted to know why we were delaying” the inquiry, and why his office had not taken a step that would have given investigators access to parts of Mr. Kerry’s electronic communications.

“They were asking us, basically, what’s taking so long?” Mr. Berman wrote in his book. “Why aren’t you going harder and faster at this enemy of the president? There was no other way for me to look at it.”

A spokesman for Mr. Burns’s law firm, Gibson Dunn, where Mr. Burns is now the co-chairman of its national security practice, declined to comment.

Mr. Berman’s office ultimately decided against prosecuting Mr. Kerry. Shortly after the office told senior Justice Department officials in Washington of that decision, the chief of staff for Attorney General William P. Barr told Mr. Berman that national security prosecutors in Washington were likely to take Mr. Kerry’s case to another U.S. attorney’s office.

In April 2020, Mr. Berman said that the U.S. attorney in Maryland, Robert K. Hur, called him to discuss the case, which had been reassigned to Mr. Hur’s office. Like Mr. Berman, Mr. Hur declined to prosecute Mr. Kerry. In January 2023, Attorney General Merrick B. Garland appointed Mr. Hur as a special counsel, to investigate whether President Biden and his aides had mishandled classified documents found at Mr. Biden’s home and in an office he used in Washington.