



Fox Rothschild Podcast

The Presumption of Innocence

Episode 59: Enforcement Priorities of the Second Trump Administration: DOJ Focus

Featuring Matt Adams of Fox Rothschild and Andy Kroll

Matt: Welcome back to "The Presumption of Innocence," a podcast brought to you by the White-Collar Criminal Defense and Regulatory Compliance Practice at Fox Rothschild. I'm your host, Matt Adams, and on today's episode we will continue our multi-part series on the ways that the second Trump administration is dramatically reshaping criminal justice in the United States.

Regardless of where you stand politically, it seems no one can dispute that we are living through some dramatic changes currently. Today we're gonna unpack yet another angle on this rapidly unfolding situation. Our guest on today's episode is Andy Kroll, a hard-hitting investigative journalist, renowned for his in-depth reporting on the intersections of politics, money and power. Since 2022, he's served as a national reporter for *ProPublica*, focusing on justice and the rule of law, including the Justice Department, U.S. Attorneys, and the courts. Prior to joining *ProPublica*, Kroll was the Washington Bureau Chief for *Rolling Stone*, where he covered foreign influence campaigns, corporate power and the judiciary.

He's also worked for a sundry of other media outlets and his work has appeared in many more. His investigative reporting on cyberattacks targeting congressional campaigns contributed to the indictment of a California political operative. Earlier in his career, as a senior reporter at *Mother Jones*, Kroll's exposes on self-dealing during the first Trump administration prompted congressional investigations.

If that wasn't enough, in 2022, he authored "*A Death on W Street: The Murder of Seth Rich and the Age of Conspiracy*," a true-crime narrative, exploring the life and untimely death of DNC staffer Seth Rich, the proliferation of conspiracy theories in American politics and the Rich's family's quest for a truth.

Andy Kroll's brand of journalism is known for leaving no detail to chance. He doesn't write softball fluff pieces and has received numerous awards and accolades for his in-depth coverage of issues central to the cornerstones of American democracy. And we're gonna explore one of those issues here today. And that is the unfolding policy shifts in our federal justice system.

It's my pleasure to welcome Andy Kroll to "The Presumption of Innocence." And now let's get after it. Andy, welcome. How are you?



Andy: I'm good. Good to be here. Thanks for having me.

Matt: Well, during his second inaugural address, the president vowed quote, "the vicious, violent and unfair weaponization of the Department of Justice and our government will end."

What does that fact that he called out the Department of Justice in that speech really mean?

Andy: I think it means that the Justice Department has been near or at the top of Donald Trump's to-do list from the moment he took office on January 20. I think-- and my colleagues here at *ProPublica* think --a lot of smart people who cover the justice system, who are lawyers, you know, working in the justice system, believe that going into his second presidential campaign, the thing that was, you know, at the front of Donald Trump's mind every single day was this belief that the Justice Department, the justice system, had been weaponized against him.

That they were unfairly pursuing him for criminal charges. That the entire apparatus of law and justice in this country had been turned against him and was trying to prevent him from not only running for president, being president again, but even, you know, being a free man living out in the world.

And so maybe it's not surprising that the thing that he has singled out time and time again-- as a candidate in 2024 and then as president this year-- has been this belief that the Justice Department is corrupt. That it is filled with partisans or, Trump antagonists, and that he has to basically rip it out down to the studs and replace as many people as he can, shutter as much of it as he believes needs shuttering, and repurpose-- not just the DOJ honestly but the justice system across the country itself-- to his ends, to what he believes this apparatus of justice needs to be doing.

So it's, it's a sweeping vision for law and order in this country that I don't think we've seen a president articulate in quite a long time. You could argue going back to Nixon, you could even argue going back further, even, you know, going back a century, really. But it is unlike anything we've seen in a really long time. And it is unfolding literally hour by hour as we speak, even right now.

Matt: Well, well amidst that sweeping vision-- and if we accept that premise that it is a sweeping vision and that it is unfolding rapidly-- what is it like as a journalist covering Trump 2.0 and this rapidly unfolding, nearly daily or hour-by-hour, changes at the Department of Justice?

Andy: Oh my gosh. It is drinking from a fire hose all day long. All night long. Every workday, every weekend--

Matt: Do you sleep?

Andy: --day. Yeah, I do. 'Cause I'm one of those people who needs like seven to eight hours of sleep. But you know, I feel like these subjects have even gotten into my dreams. Where like I am, go to sleep and I'm thinking about Kash Patel, or I'm thinking about some source that I've been going back and forth with. It literally has gotten to that, level.



But I mean, that's what happens when you are covering, in real-time, a point in history that I think will be history. That I think will be taught in decades or centuries from now. Hopefully they're still teaching history decades and centuries from now. But it's, exhausting. It's, it's all the time. You know, it's a lot of work that I do talking to sources in the federal government. There's been an outpouring of tips and people reaching out to us with information, people reaching out to us with documentation-- which obviously is critical to how we do our jobs at *ProPublica* as investigative reporters.

And really it's a matter of trying to figure out what is most important at any one time. Almost a triage process, if you will, to try to figure out, you know, what's happening, where it's happening, why it's happening. Can I get more sources to help me confirm something? We're talking to people who have to do, you know, related to the Justice Department, Main Justice. We're talking to people related to U.S. Attorney's Offices in DC and around the country. We're talking to people related to the court system, because that's something I've covered a lot here: the Supreme Court people in and around it. The powerbroker, Leonard Leo, some people listening to the podcast might have heard of him. So--

Matt: And we're gonna get there. We're gonna get down that path. Good. We're gonna, we're gonna open up those doors.

But let me ask you this and let's start here with the U.S. Attorneys. It's been said, to the victor goes the spoils. Every change of presidential administration comes with U.S. Attorney changes throughout the country. It is seldom where you see somebody stay on during a change of administration. Election to that office carries with it the absolute right to appoint U.S. Attorneys and change them in each and every district if the president elects.

Andy: Yep.

Matt: How is this go-round the same? Or is it different? Speaking to you as we record this episode, I am sitting in the District of New Jersey where a U.S. Attorney was appointed in March and today --by Truth Social post-- it appears that a new U.S. Attorney has replaced him and he's being called the prior interim U.S. Attorney, and he is being sent to a delegation appointment with a ambassadorship in some foreign land.

So what the heck is going on? Is this the same, is this the same carousel of changes that we have seen historically at the conclusion of one administration in the beginning of the next, or is this something different?

Andy: Yes and no. And I'll unpack what I mean by and what I'm referring to when I say yes and no.

So I'm glad that you restated the point as needs to be restated. I think there are some folks maybe on the political left of the spectrum whose hair gets on fire when they hear about a U.S. Attorney being fired.

Matt: There's nothing to it. It's the same old thing.



Andy: For sure. And it, and, and right you, you win the presidential election. It is your prerogative to nominate U.S. Attorneys around the country. That is how the system works. And so people have to turn the temperature down there when they are freaking out about so-and-so being, you know, fired as a U.S. Attorney when they were an appointee of the previous administration. That is how this process almost always works.

Rare exceptions where someone's deep into a politically sensitive investigation. There's continuity between the administrations to not seem like they're interfering in that investigation. But usually you clean 'em out and you appoint your own people. So that is, uh, you know, the, the, the part that is totally normal. And it may have the Trumpian flourish to it this time around, where people are getting picked and fired on Truth Social. That is new. Though I guess Trump did some of that in Trump 1.0 back on the platform formerly known as Twitter, but now he's doing it. And again, that is not totally unprecedented what Trump did on Truth Social.

Matt: I think there's no mistaking he's got some, a big personality and --

Andy: Yeah.

Matt: Likes to do things in a, in a big, big way.

Andy: Right. But any viewer of "The Apprentice" knows that he likes to make a show of the firing aspect of his job.

Matt: But at the end of the day, right, why is it that the turnover we're seeing today should come as an alarm or not?

Andy: The turnover should come as an alarm potentially for a few reasons. And I'll point to one example to illustrate what I mean. The interim U.S. Attorney for the District of Columbia-- which is a really interesting U.S. Attorney's office, the only one in the country that functions as both kind of a DA and a federal prosecutor's office-- is a gentleman named Ed Martin. Ed Martin is, in a lot of ways, a textbook Trump political loyalist. He has been ride or die with Donald Trump since about 2016. You can see books he's written, you can see, you know, scores of podcasts and so on. He even did a coloring book, an adult coloring book, in support of Donald Trump that riffed on that "covfefe" Twitter thing that happened what feels like a million years ago.

So, you know, listeners can go out and find that Ed Martin coloring book on the internet. But Ed Martin is illuminating because he is one of the earliest interim U.S. Attorney choices that Donald Trump made. He is the choice for one of the most important U.S. Attorney's offices in the country, having, you know, jurisdiction over so much of what happens in the nation's capitol as Martin now does.

He's a U.S. Attorney who basically has no real prosecutorial experience. Does not have a background as a federal prosecutor, does not have a background as a, you know, highly experienced or sought-after criminal defense attorney. Basically, the guy is a longtime political party figure, first in Missouri and then sort of in Northern Virginia. And by all indications was chosen for the job as interim-- and



he's also the nominee for the full position, I should add-- here in DC as U.S. Attorney because he is very loyal to the president. Because he basically willing to carry out whatever order it seems the president wants done.

U.S. Attorney Interim, U.S. Attorney, Ed Martin posts these letters on X to address to Elon Musk saying, you know, Elon, we've heard you loud and clear. You say people are threatening DOGE, like, we're ready to come in and support you in that work. And Martin has used his office in the two months that he's been there in some really... how do I put this? Uh, some ways that really seem to test the rule of law, whether it's supporting DOGE, whether it's, you know, ousting career employees because they wouldn't act on what seemed like overtly political investigations.

This guy, Martin, by all indications, seems to be a kind of model for what Donald Trump wants in a U.S. Attorney. And that is, honestly, that is different from Trump 1.0. There were tensions between some of the U.S. Attorneys in Trump 1.0 and the president and the White House. This time around if the interim U.S. Attorney in DC as any indication-- this guy Ed Martin-- Trump has figured out who he wants in these roles. And he doesn't want people who are gonna push back and say, that is unprecedented. That is unethical. That seems to challenge the rule of law. These are people who are, by all indications in lockstep with the White House.

Matt: Is there precedent in prior administrations? Yes, everybody that gets the job of U.S. Attorney has some level of political connection. I mean, let's be honest, you don't get a political appointment just by good looks or book smarts or test scores or whatever the heck. You get them because you have an in, right? You have an in into a political circle, whether it's a Democrat, whether it's a Republican.

But is there precedent for selecting the incoming president's personal lawyers to lead high-ranking positions within the Department of Justice like we've seen in this first hundred days?

Andy: Not in the way that we've seen with this presidency. There's a long history of presidents picking people to work in legal advisory roles, to work in the Justice Department, who are close to them. I mean, look no further than Jack Kennedy and his brother, the Attorney General.

Matt: Right.

Andy: That's as, that's as close as it gets. But to basically transport your criminal defense team into the Justice Department as Donald Trump has with the former acting Deputy Attorney General, basically the sort of like key operational figure for the entire department. First it was Emil Bove who pushed through a lot of really contentious, aggressive-- in some cases retaliatory-- reforms or changes, actions during the first hundred or so days. And then-- well, not quite a hundred days, you know, first month, 50, 60 days.

And then Todd Blanche, the Senate-confirmed DAG, also a Trump criminal defense attorney. I've heard rumblings as well that other, you know, sort of lower-tier criminal defense attorneys of the president might be in the works, might be getting a look for other U.S. Attorney roles around the



country. Keep an eye on Georgia in particular, given how big that criminal case was for President Trump.

Matt: The New Jersey U.S. Attorney named today is one of not criminal lawyers of the president, but civil lawyers of the president.

Andy: Yeah. Yeah. So, and I think, again, what is the commonality here? What is the through line? It's loyalty. It is a willingness to follow through on President Trump's completely open, public, self-declared goals of, you know, retribution against enemies perceived and real, critics, you know, whether that's law firms, whether that's individual lawyers.

That seems to be the thread that connects all of these people. And, and again, that I don't think is something that has much if any precedent in terms of a president in his Justice Department. I don't even, I mean, it's not even the case in Trump 1.0. I mean, there were a lot of U.S. Attorneys appointed who got there 'cause they had political connections as you point out, but also because they had real experience.

Todd Blanche, the current DAG, he has real experience. Emile Bove has real experience as well. However, they have both signaled an openness to carry out the president's wishes, again, in terms of retribution, in terms of cracking down on a allegedly weaponized Justice Department. And again, I don't think we really have much precedent to go on with this kind of situation.

Matt: In a recent piece you wrote for *ProPublica* titled, "Revealed: Top Lawyer Warned Trump Administration IRS Firings Were a 'Fraud'," you reported that on February 20, nearly 7,000 probationary employees at the Internal Revenue Service began receiving an unsigned letter telling them that they had been fired for poor performance.

And you tell the story of Joseph Rillotta, a senior IRS lawyer that wrote, quote, "no one" unquote, at the IRS had taken into account the performance of probationary workers set to be fired, and that Rillotta urged that the language be struck from the draft termination letter.

Tell us what you uncovered with your reporting.

Andy: Yeah, so we're, we're changing the focus a little bit here and talking about the administration's approach to shrinking the federal workforce, reforming some of these agencies that the president and his allies believe are bloated or politicized or just out of control. And in particular, the work of this Department of Government Efficiency, or DOGE-- a phrase I still can't believe I have to say on podcasts like this one-- led by Elon Musk. And this is an interesting sort of inversion, or maybe it's the other side of the coin -- building on what we were just talking about a second ago. In this case, the IRS, at the direction of the White House and DOGE, the IRS was putting together this letter that it was gonna send out to, yeah, nearly 7,000 employees at the service, telling them you're fired.

These were probationary employees, which again, doesn't mean that they are, on disciplinary review or something that just means that they're new. They've been in that specific role for less than a year. This letter was gonna tell them that you're fired, based on president's direction, guidance from the



White House. And it was gonna say, not only are you fired, but we're firing you for performance. This lawyer, Joseph Rillotta, high up at the IRS, hours before this letter's about to go out the door, raises the alarm. He says, no one has actually assessed the performances of these people to say what we're gonna say in this letter. And in fact, a lot of them are extremely high performers. So this isn't true. And not only is it not true-- Joe Rillotta, this IRS lawyer said-- but in his view, it was written to give the administration an advantage in court. It was written to give them a leg up by preventing-- again, according to Rillotta -- these federal workers who were gonna get fired from, you know, basically having the ability to form a class to, to bring a, a class action contesting their firing. And so this IRS lawyer writes in an email to all the top brass at the IRS: Not only is this statement false, but it's a fraud. An anticipatory fraud is how he put it in his email.

And we, you know, we obtain this email through our reporting at *ProPublica*. And it just seemed like a really important piece of information to get out there. Not only are there multiple major federal lawsuits going on challenging these mass firings orchestrated by the White House and by DOGE. But here was someone-- experienced lawyer inside one of these federal agencies --who was saying, you can't do this. This is not true. It could be fraudulent. This is not how you're supposed to operate as a federal agency. This is not what you're supposed to do.

And he was essentially ignored. The letter went out, the language in it that he said was wrong. It went out. You know, federal workers were fired. They have since, obviously, you know, brought action in court to try to contest these firings and have had some success so far with federal district court judges undoing these firings.

But, you know, again, it's the opposite side of the coin from what we were saying earlier. We were talking about lawyers in the administration needing to be seen as loyal, needing to be seen as onboard with the president's agenda. In this case, a career lawyer does what a career lawyer is supposed to do: Raise the alarm. Air, you know, his legal opinion on a document about to go out to 6,700 employees. And in this case, he was ignored because it wasn't what the administration wanted.

And, and we felt like that was an important piece of information to get out there, not only for what it says, but for the larger, import about this administration and how it's thinking about and dealing with the rule of law.

Matt: What does this mean for IRS enforcement in the United States? And is this a broader microcosm for what we're gonna see for the next four years?

Andy: It is. Yeah. So what it means for IRS enforcement is that enforcement will go down. And it will go down in a way that not only means significantly less money coming into the U.S. Treasury, the coffers of the federal government.

There was a story by the *Washington Post* that estimated a 10% drop in, uh, revenue collection by the IRS. Which is a pretty significant figure, uh, not the direction that the IRS wants to be trending in.

The, the other important point here is that this drop in enforcement will not be felt across the spectrum. You know, most tax returns are reviewed on an automated basis by the IRS. They have the



technology for the vast majority of us to use, uh, you know, AI and other software to scan your returns. And they don't have humans necessarily doing that work, maybe if there are inconsistencies or problems. Where the human capital comes into play at the IRS is with the most sophisticated, most lucrative tax filers. So we're talking about publicly traded corporations, private companies and extremely high-income individuals. That is where enforcement is gonna drop off.

I've, I've written about this at *ProPublica*, how the experts at the IRS, known as engineers, have been gutted as a result of these cuts. And again, you know, average folks out in the Midwest, my home state of Michigan, wherever, they are probably not gonna see much of a difference. But the very, very large companies and wealthy individuals will probably see a difference. Which means that they'll probably try to get away with more, you know, tax gimmicks, other kinds of techniques, to try to lower their taxes. That's what the experts told us, and, I, I don't see any way that, the enforcement is going to improve in that category.

It seems right now it's only gonna drop.

Matt: To this point, Andy, we've been talking about sort of direct ways that the administration has begun to shape and mold its priorities with controversial but direct action. They're not hiding what they're doing.

In another act here in the first hundred days, we saw what I could best describe as an unofficial moratorium. And I say unofficial in air quotes because it was a moratorium on FCPA enforcement. And as far as I'm concerned, the FCPA is still a duly enacted act of Congress that was signed into law and remains on the books. But this administration has really come out and said, we're putting that on the shelf. We are not making this a priority of our administration. Anecdotally, I am learning that certain cases that were on the eve of trial, almost, involving the FCPA, letters have been written to federal judges that say, consistent with the priorities of this administration, we are dialing back. We're asking for 180-day adjournment so we can evaluate whether this case is gonna go forward. And this is the official position of the executive branch of the government of the United States of America. But it is an unofficial rollback of a law that remains on the books in a very, very direct way.

What do you make of actions like this? Their impact on the rule of law and this concept of our justice system being sort of reshaped in the likeness of the individual at the helm of our government at this moment?

Andy: It is interesting. I was gonna share an anecdote that I recently heard from a criminal defense attorney very much along the same lines. Yeah, years-long FCPA case that this attorney--

Matt: We, we might be talking about the same one because it's, local to you and I and it's probably one of the largest FCPA cases that has ever been brought in, in the United States history.

Andy: This one actually is in the South, so I don't think we are actually talking about the same case, which probably makes it even more interesting.

Matt: Right.



Andy: That this pattern seems to be happening. You know, and in, in talking to this lawyer, you know, he wasn't necessarily thrilled by the uncertainty that all of a sudden was injected into his case. You know, a case, these, these FCPA cases are super complicated and he's been working on it for years. And then at the 11th hour to have the Department of Justice come in and basically say, you know, we need a delay. It's undergoing a review, you know, uncertain how this is gonna play out. Judges get angry. Criminal defense attorneys get angry. Clients get angry-- though maybe possibly excited at the thought of the case getting dismissed.

But it has thrown many of these cases into a state of uncertainty. And I think that there's a huge amount of confusion --and again, uncertainty-- not only in the criminal defense bar over this, but also in U.S. Attorney's offices around the country.

Matt: I know there's uncertainty in the criminal defense bar.

Andy: You know this, yes.

Matt: And, and I'm hearing a lot of friends in U.S. Attorney's offices telling me there's uncertainty as well. I talked to U.S. Attorneys from around the country every single day. And what I'm hearing is just, I've almost used it as an icebreaker, now, like an opening line, a bit of a joke. But some of them are so glum and sounding so depressed that I don't want to use it as a icebreaker any longer 'cause I feel bad.

Um, but at the end of the day, can you think of a time in history when we have actually had the wholesale suspension of an enforcement on an entire body of law?

Andy: I'm not an FCPA historian, so I can't, in this specific context, tell you, oh, you know, when so and so was an AG, you know, they also undercut the FCPA.

I mean, I think a couple of things. One is that, you know, Attorneys General have priorities. And they do have discretion. And they do have the ability to very, very broadly steer the Justice Department in certain directions. And you look at, you know, Holder under Obama and then Garland under Biden, you know, there was obviously efforts at the highest levels there that, to a certain degree, trickled down on say, like criminal justice reform. On, you know, sentencing. On, you know, responding to, say, the summer of 2020, responding to Black Lives Matter, et cetera.

And you saw that, and I, I don't think that is the same as a wholesale sidelining of something like the Foreign Corrupt Practices Act. But they do have the ability to set kind of policy priorities at the very top. But the Justice Department is a massive cruise ship, you know, you can't just turn it one day, you can't really turn it over four years even. You can just kind of slightly adjust the course.

But I don't think that what Pam Bondi, Attorney General Bondi, is doing now is that slight adjustment. I mean, to see FCPA sidelined in the way that she outlined it in one of those early memos. And to see as well key prosecutors throughout the department in those fraud roles, sidelined or demoted, shows that this is not just talk. Or this is not just, you know, revisiting ongoing cases. I mean, I'm gonna go back here to the U.S. Attorney's Office in Washington, uh, interim U.S.



Attorney Martin, one of his many controversial acts there was to demote-- to basically the lowest roles in his entire office --the top fraud prosecutors under his leadership. These are people who are nonpartisan. These are people who not only investigate fraud on the federal level, but also handle cases in DC, criminal cases as well. People who played instrumental roles in some of the January 6 cases, like the Proud Boys and the Oath Keepers, very high-profile cases. But also nonpolitical or apolitical fraud cases. They were demoted basically to misdemeanors and intake, which is about as low as it gets. And is absolutely a message being sent to those prosecutors --and to people throughout the department --that this is not important. Or this is not as important as it was if you're gonna be demoting these folks.

So again, that term "unprecedented" keeps coming up and. I can't say that I'm a completist on this, but I'm struggling to find earlier examples in quite the systematic way of this whole FCPA and, and fraud related issue that, than what we're seeing today.

Matt: Lest we be accused of being overly critical of the current state of affairs, one of the real true victories, policy victories, for the Trump 1.0 was the reforms set forth in the First Step Act.

Andy: Mm-hmm.

Matt: The criminal justice reforms, the bipartisan effort that led to the First Step Act. Should we expect to see any more of that kind of bipartisanship? Is that effort something that we will see expounded upon here in the second administration? Are there signals pointing to that? What are we gonna see in that regard?

Andy: Yeah, it's a good question. And I think it's, it's as much a, a political consideration as it is a policy consideration. You know, I've been talking to a lot of Democrats here in Washington, uh, House members, Senators, people who work for those members of Congress. And you do hear a level of humility and a desire to pretty strongly rethink the Democratic Party's position on some issues, including immigration, after the results of the 2024 elections. So I wouldn't be surprised if you saw some bipartisan agreement on something involving immigration. Democrats wanna show that they are-- or, you know, rightly or wrongly --wanna show that they are not head-in-the-sand on that issue, I think, given how salient it was in 2024. And so I think you could see some overlap there.

But there aren't a lot. I mean, if there's another stab at criminal justice reform, maybe, um, you could see some, some bipartisan effort there as well. But, you know, right now it's hard to see -- I mean, I think that the, the, the tensions between the parties, between members of Congress and the White House is so overwhelming that the climate is so fraught that... I don't even know. It's hard to think what that, you know, first step-style bill could be this time around.

And even on immigration, I think that the administration's actions with this El Salvador deportation litigation ongoing and some of the other steps they've taken, I think may even dissuade some centrist Democrats from wanting to sign on to legislation with Republicans in Congress and then the White House.



But I think that they're looking for it. It's been really fascinating to see the difference between the Democratic/opposition reaction this time around versus being in this seat in March of 2017 where it was sort of full-on resistance mode. Democrats seem much more chagrined this time around. They seem willing to--

Matt: They got smoked in the election.

Andy: Yeah. Yeah, well, exactly. And, and I, and I don't think that they are immediately jumping to resistance, opposition, in the way that they did in 20, you know, early 2017, 2018.

So, uh, I wouldn't rule it out, but I, I, it's just right now it's hard to see what that's gonna be other than just like trying to keep the government open. Which obviously Senate Minority Leader Schumer did not that long ago. And that has led to a whole bunch of blowback for him. So it's, uh, yeah, it's pretty, it's pretty fraught right now. It doesn't, it doesn't seem like there's any kind of grand bargain anywhere on the, uh, on the horizon, at least in the near future.

Matt: On the subject of immigration, the *New York Times* reported that the Trump administration shut down the Civil Rights branch of the Department of Homeland Security Office for Civil Rights and Civil Liberties, which was tasked with quote, "individual liberty, fairness and equality under the law in its policies and action."

Why on earth would the office tasked with individual liberty, fairness and equality under the law at the Department of Homeland Security pose a threat to the administration's policies surrounding immigration?

Andy: This is a pattern. The administration has been targeting for dramatic reductions or even outright closures a lot of civil rights offices across the federal government. So you got DHS, the one you just referred to, which is, again, quite striking. But you've got the Department of Education, you've got the Health and Human Services Department. Multiple offices of civil rights across the government are in the crosshairs, so to speak.

I think from talking to people in and around the White House, they see these offices of civil rights as, in their view-- definitely not saying this is my view, I'm saying this is their view --as kind of, uh, the engines for the, you know, dreaded DEI or as the, you know, what is, what does, Elon Musk say, the woke mind virus or whatever.

Like they, they see these civil rights offices and the career lawyers who work there as the enablers of these, you know, unpopular policies on diversity, on equity. I mean, Department of Education, the Office of Civil Rights there took a lot of criticism because they thought it was, uh, you know, supporting trans rights and, and in, in the education context. And the Trump administration has gone after that fiercely.

So I think that the, these Offices of Civil Rights are seen as, you know, too woke or too focused on DEI or whatever. Even though, as you rightly said, with DHS, individual liberties is right there in the, you know, job description or in the mission statement. So it's a little strange. But I, I, you know,



there's not a lot of individualized consideration, as best I can tell from our reporting and our conversations. Like this Office of Civil Rights is okay, but this one has gone too far. But this one is, you know, on our team. Like there's just a kind of across the board...

Matt: Baby out with the bath water, if you will --

Andy: Yeah, yeah, sort of just like there's mass firings of employees. There's sort of, you know, mass, government-wide decisions being made that like these Offices of Civil Rights are getting in the way of what we wanna do. For too long they've been captured by liberal interests or whatever. And so it would be better if they just weren't there. And, and we could do what we wanna do at DHS or HHS. Insert your agency here.

Matt: Well, we're gonna take another hard pivot. For all the talk of decisive, if not outright provocative moves from the executive branch of government these days. The primary checking force on a unified federal legislative branch and executive branch is the judiciary. Yet you're reporting from 2023 for *ProPublica* reveals a quiet effort to shape the judiciary at the federal level, starting with the United States Supreme Court. You alluded this, allude to this in some of your comments earlier. Will the judiciary turn out to be a check on absolute power in this administration or has it to been remade to support some of the comprehensive efforts to dismantle aspects of our justice system?

Andy: I think that the most consequential outcome of the first Trump administration was the remaking of the federal judiciary. The Supreme Court is the obvious example. There is a conservative supermajority on that court now, and several members of that conservative supermajority are young by the standards of federal judges and will be there for a while.

But if you go down to the appellate level, there was a, you know, dramatic influx of new conservative, sort of, vetted Federalist Society in trained lawyers who have gone onto the circuit courts around the country. And then again, you know, hundreds more at the district level as well. And I think more than anything Donald Trump did in his first term, reshaping the judiciary with the help of people like Leonard Leo, someone whom we've written a lot about, did a whole podcast about at *ProPublica*.

Matt: Your, your piece was titled, "We Don't Talk About Leonard: The Man Behind the Right's Supreme Court Supermajority."

Andy: Yes. Thank you for that, that plug. I wish I could say I came up with that title, but I think, uh--

Matt: Whoever did deserves an award.

Andy: Yeah, yeah. Agreed. And also a podcast of the same title, if here on a podcast if people want the audio version.

So bear in mind, Trump's legacy on the courts during Trump 1.0. In Trump 2, now, you would be forgiven for thinking, okay, well he's got all of these judges that he appointed-- not that that means they're loyal to him or will rubber stamp whatever he wants to do, but, you know-- a whole wave of judges who maybe come from that conservative legal movement. Surely he will have a much easier time getting, you know, any of these policies, decisions, actions through the courts.



Well, it hasn't really turned out to be the case for a variety of reasons. I think, you know, in some of these cases they've, they've drawn judges who have been much more skeptical to their actions. And I think that this administration is pushing the limit, doing it in many more places and doing it in a somewhat more sophisticated way than it did the first time around.

If people remember the so-called Muslim ban, you know, that underwent a whole bunch of revisions and was a kind of a legal debacle until the end when they cleaned it up enough to pass muster. This time around, basically, they --meaning the Trump administration, the president, VP JD Vance and so on-- basically seem to think that executive orders are laws or, you know, inviolable decrees, and that judges should not be overturning these actions, whether it's mass firings, whether it's deportations, uh, whether it's trying to gut whole agencies like the U.S. Agency for International Development. And judges have been--

Matt: Birthright citizenship.

Andy: Birthright citizenship, exactly. And so judges have been skeptical, to say the least of, of a lot of these actions. I think it has, seems to have caught the Trump folks a little bit by surprise. They thought maybe they'd get a warmer welcome in the courts. But that hasn't chastened them at all. They seem to want to press ahead with this really aggressive view of executive power, of Article Two power.

Um, and what we don't know yet, but we will very soon, is how the conservative supermajority that Donald Trump assembled responds to his sweeping views of executive authority. We haven't really gotten, the cases just haven't gotten up to the Supreme Court, though I saw that they're seeking to take one of the probationary mass firing cases up to the Supreme Court. So I, I think very soon, within prob, probably a couple of months, the Supreme Court will have one of these major cases in front of it that, you know, related to executive power and, and the president's authority. And that will be a really big test. That will signal whether this court is gonna go along with the president's aggressive views of executive authority, or if they're gonna rein him in at all.

And, and honestly, sitting here today, I couldn't tell you what I think, uh, is gonna happen in those cases. I have theories, but I, but I, I, I couldn't pretend to be Nostradamus here.

Matt: Well, you must have read my mind 'cause my next question for you, as we wind down our time together today on "The Presumption of Innocence:" If you're a betting man-- and we're sitting here a year from today talking about this period, this namely the first hundred days, because there will be an election, the midterm election will shape a lot of the policy that happens after the first hundred days --but this first a hundred days where the second Trump administration is taking shape in our country. If you're a betting man, where does this go? Are we on a collision course for a constitutional crisis? Do the checking forces built into our constitution vis-a-vis the separation of powers hold, and sort of rebuke some of the more provocative measures that are being undertaken? Where are we a year from today?

Andy: Well, as a Midwesterner, my inclination is toward a more optimistic view. As an investigative reporter, my inclination is toward a more pessimistic view or, you know, uh, the sort of negative view



of where we might be a year from now. And, you know, I'm always holding those two things in balance, going through my day-to-day grind.

Sitting here today, honestly, it just feels like we are headed toward the constitutional crisis route. And I don't say that just as a gut call or, you know, an opinion off the top of my head here. I'm not, this isn't a coin flip situation. I think you just have to look at what influential people in this administration are saying and doing and extrapolate that out. I mean, I think about Vice President Vance saying on social media that it, you know, that judges shouldn't be allowed to put the brakes on executive actions in the way that--

Matt: Or, or advocating to impeach judges who rule against the administration.

Andy: Correct. Advocating to impeach judges, absolutely. An attack on, in this case, one particular judge, here in federal court in, in Washington, that prompted the Chief Justice of the Supreme Court to-- of his own volition --issue a statement saying, you should not be doing this. I mean, that is a sign. And this is again, Chief Justice John Roberts, someone who takes a pretty expansive view of executive power if you just look at the *United States versus Trump* decision. But even he felt compelled to come forward.

You look at what Tom Homan, one of the presidents, sort of, top advisers on immigration says, again, sort of disparaging judges and, and, and saying that they don't have the ability to stop the administration from what it's doing.

You know, I keep coming back to what I now know is a totally untrue, apocryphal, Andrew Jackson line that everyone gets taught, but it's also told it's not real. But you know, the whole, uh, you know, the Chief Justice has made his decision and I'll let him enforce it did not happen. However, those are the vibes right now. I'm just imagining a situation where another federal District Court, an appeals court, even the United States Supreme Court, rules in some way and the administration just says, no, we're not. I mean, think about, just think about the TikTok decision, for instance. Like I know that there's an executive order on that, but that was a law that was challenged, that went to the United States Supreme Court, and the Supreme Court ruled in a certain way. And yet the president just said, nope, nope, we're reviewing this. TikTok should stay, you know, should be available. And so it is.

And like we're just kind of, in some ways, living in this bizarro reality even right now. Now, that's not to say anything mean about TikTok. I, I have lots of fun stuff on TikTok. But it just happens to be the example where like, you know, Supreme Court has ruled on this. Like, why, how is this still happening? So --

Matt: When you say--

Andy: I don't know.

Matt: Say those are the vibes, are those the vibes in the halls of power in Washington DC? Are those the vibes in your newsroom? Are those the vibes at coffee table, cocktail party communications that



you're having with your friends? Where are those the vibes? Are those the vibes you're getting at your sources in DC in positions of power?

Andy: Yeah. A lot of those places. I, you know, I think the cocktail/happy hour crowd, we try to avoid talking about work and, you know, and, and will literally discuss anything but politics, uh, everyone's gotta get a break sometime. But yeah, you know, you talk to members of Congress, you talk to employees in the federal government, especially lawyers. Talk to, yeah, other journalists, obviously. Yeah, those are definitely the signs that we feel like we're all getting.

I would love to be and hope to be wrong, that if the Supreme Court rules against the administration on one of these major policy issues that the administration says, okay, you know, you've made your decision. We will go back and rework that policy, or we'll put a brake on that, or we'll reinstate these workers, until we've, you know, actually gone through the process to fire them if that's what they still want to do. They being the heads of federal agencies. But those are not the signals we're getting. Some of this stuff I'm not drawing on, you know, sources deep in the government. I'm, I'm talking about the things that were being told publicly on top of the things that are happening in court, on top of the things that those sources deep in the government are also telling us.

Matt: Are people in the president's own party concerned? Are you hearing things from people in his own party?

Andy: Not really. Unless you talk about, you know, the sort of resistance, anti-Trump Republicans and there are very few of those left. Though they, though there are, you know, and, and George Conway has his group Society for the Rule of Law. And there are, I think they, those folks there still call themselves Republicans and they're obviously raising the alarm about this every chance they get. But, you know, not, not on Capitol Hill with Congressional Republicans, certainly not in the administration. This is not, again, Trump 1.0. There is no Rex Tillerson or John Kelly or James Mattis who are pushing back on the Chief Executive.

Matt: Or even Bill Barr in the final days of--

Andy: Or even Bill Barr. Yeah, great, great example. Or even Bill Barr at the very end, you know, when... Criticize Bill Barr all you want. But when it came to 2020 election denial, he said it's not true. And he did it publicly. And he found himself on the president's enemies list, it seems, just for stating that simple fact.

You're not seeing a lot of that right now. I think that's intentional. This is not team of rivals or even anything close to that. People who are running agencies, running key offices in this administration were chosen because they're on board with the president. They're loyal to him and to his agenda.

Matt: Well, talk to us a little bit about your book, "*A Death on W Street: The Murder of Seth Rich and The Age of Conspiracy.*" And I will tell you we're short on time here at the end of the program, but I do want to give you an opportunity to plug the book and I would extend an invitation for you to come back and talk to us about this true crime book that you wrote and what you learned about this particular case.



But preview that for us. What drew you into the story of Seth Rich and what does the Seth Rich story tell us about the role of conspiracy theories in modern American society?

Andy: Strangest situation. Seth Rich, as you said, was a, a normal guy in Washington. He worked in politics. He, you know, played on kickball teams. He hung out with his old college buddies from Creighton University. He and I played on a really crappy men's soccer team together and, so I knew him. And then in the summer of 2016, he was tragically killed a few blocks from his house, uh, in an unsafe part of town, walking home from a bar, way too late at night.

And, you know, I thought that this was you know, one of these horrible, rare tragedies that happens in your network, in your circle of friends. But instead, you know, Seth, after his death, became this national and then international focus of conspiracy theorists and political propagandists, people in Donald Trump's orbit, WikiLeaks. He became the fixation, the, center point of really a kind of case study in how misinformation and disinformation goes viral in American politics.

It's a really weird thing to happen for a guy that you've, you know, like, had a beer with at a bar after a, a really crappy weekend soccer game. And so the book is really his story as the kind of skeleton key that unlocks why, honestly, American politics feels like it's gone haywire in the last 10 years. Social media, you know, the uses and abuses of the legal system, the role of *Fox News*, it's kind of this very tight, dramatic story that explains a whole lot about why our country is the way it is right now.

And I will say, for lawyers listening, you know, the whole sort of third act, second half of second, third act is all about the, the team of lawyers who went to work for Seth Rich's family, helping them try to clear Seth's name in the court of law and then get some accountability out of *Fox News* for amplifying these conspiracy theories and lies about Seth.

And you know, this is all really happening right at the kind of cutting-edge of the law, social media-- I mean, defamation law in particular-- social media and politics. And so I got to kind of look over the shoulder of some really talented litigators as they ventured out into kind of uncharted territory to get justice for this family that had gone through the worst thing imaginable. And so I think that there's, there's maybe some appeal there for, for the lawyers who, who wanna go inside a really fascinating set of cases.

Matt: Well, promise me that you'll come back on the program and talk about that--

Andy: I'd love to.

Matt: --in particular.

Andy: Yeah, love to.

Matt: I would love to have you. That's all the time that we have for this episode of "The Presumption of Innocence." And until next time, I'm your host, Matt Adams. We've been talking with *ProPublica's* Andy Kroll. It's been such a great pleasure to have you. We'll see you next time. Take care.



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