

NYU LAW
REUNION WEEKEND 2026

LEGAL ETHICS CLE
STEPHEN GILLERS

TIMED AGENDA

- Introduction: Eliminating Checks ...
 - From Judges -- 15 minutes
 - From Its Own Lawyers -- 25 Minutes
 - From State Court Discipline – 20 minutes

DOJ'S WAR ON JUDGES

Calling John Roberts

DOJ View of Interbranch Comity

- “**‘It's A War, Man:’** Trump's Deputy AG Unloads On Judges, Bars”
 - Law 360 Headline 11/7/25
- From Bloomberg Law 2/10/26:
 - A Trump Justice Department official is soliciting examples of perceived **judicial activism** from all US attorneys’ offices to inform potential **impeachment referrals** to Congress, portending an escalation of the executive branch’s clash with judges.
 - At a recent virtual meeting, chief prosecutors and other leaders of the 93 US attorneys’ offices were told to provide DOJ headquarters with **vivid instances in which judges obstructed through adverse rulings**, said two people familiar with the call.

Threat to Impeach Judges

- “House Speaker Johnson Supports Impeachment of Judges,” Law360, Jan. 21, 2026.

- “Judges Grow. Angry Over Trump Administration Violating Their Orders,” N.Y. Times, Feb. 24, 2026
 - A nationwide review of dockets located 35 instances in which federal judges ordered the government or DOJ lawyers to explain why they should not be held in contempt for violating court orders.

- “Judges Struggle to Signal Alarm as Fiery Rulings Become Norm,”
N. Y. Times, March 30, 2026.

From AP 3/17/26

- President Donald Trump called a federal judge who ruled against the administration “wacky, nasty, crooked and totally out of control.”
- Two days later, John Roberts warned that personal criticism of federal judges is dangerous and “it’s got to stop.”
- Then on 3/26...

From Bloomberg Law 3/26/26

- President Donald Trump publicly called on Republican lawmakers to pass legislation to rein in “rogue judges” and slammed jurists as “criminals” who hurt the country with their rulings.
- “We got rogue judges that are criminals. They’re criminals. What they do to our country, the decisions that they hand down and hurt our country.”

From Bloomberg Law

- Threats against federal judges have heightened in recent years. Federal authorities logged 564 threats to federal judges last fiscal year, up from 509 the year prior, according to data from the US Marshals Service.

DOJ LAWYERS CAN JUST SAY NO

And Sometimes They Must

“WHERE’S MY ROY COHN?”

Available on Prime

See also “Point of Order.”

Read In re Cohn, 503 N.Y.S.2d 759 (1st Dep’t.1986).

Advice to DOJ Lawyers and Recruits

- DOJ is the Venus Fly Trap of Law Offices
 - It can be easy to enter, but hard to escape.
- Current DOJ officers have corrupted its mission by using it to serve the administration's political agenda and harm the rule of law.
- That will not stop.
- Be ready to **quit**
- Keep a bag in the office for personal items so you can leave quickly

You Can Say No

- Sometimes you must.

D.C. Rule 5.2

- (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
- (b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.
- (There is no following orders defense.)

D.C. Rule 1.2(a)

- (a) A lawyer shall abide by a client's decisions concerning the **objectives** of representation, subject to paragraphs (c), (d), and (e), and shall **consult** with the client as to the **means** by which they are to be pursued.

D.C. Rule 3.8

- The prosecutor in a criminal case shall not:...
- (b) **File** in court or maintain a charge that the prosecutor knows is not supported by **probable cause**;
- (c) **Prosecute** to trial a charge that the prosecutor knows is not supported by evidence sufficient to **establish a prima facie showing of guilt....**

D.C. Rule 1.13(a)

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

From NYC Opinion 2025-1

- “DIGEST: A lawyer representing a government officer or agency, such as the U.S. Department of Justice (“DOJ”) or other federal, state or local executive, may not violate the New York Rules of Professional Conduct (the “Rules”) and may refuse orders from superiors that could, in the lawyer’s independent judgment, result in such a violation.
- This Opinion clarifies that a government lawyer who carries out a directive of a senior official, regardless of who that official is, that would violate the Rules may be professionally disciplined for doing so.”

NYC Opinion 2025-1

- “The Rules clearly contemplate that not all client directives must be obeyed. For example, even assuming that the President is the final arbiter of the objectives of his administration, and DOJ lawyers must accept all his lawful objectives, all lawyers retain their personal discretion as to how to achieve lawful objectives. This conclusion necessarily requires lawyers to retain the discretion to reject those objectives that cannot be achieved by means that are consistent with the law and with the lawyer’s personal obligations under the Rules.”

Vindictive and Selective Prosecution

- “[S]elective prosecution requires a showing that the defendant “(1) ... [was] **singled out** for prosecution while other violators similarly situated were not prosecuted; and (2) the decision to prosecute was based on an **arbitrary classification** such as race, religion, or the exercise of **constitutional rights**.”
 - That would include a president’s desire for revenge.
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Vindictive and Selective Prosecution

- There are two essential elements of a claim of actual vindictiveness: “the defendant must show that (1) the prosecutor harbored genuine animus toward the defendant, or was prevailed upon to bring the charges by another with animus such that the prosecutor could be considered a ‘stalking horse,’ and (2) the defendant would not have been prosecuted except for the animus. U.S. v. Romano (2d Cir. 2012).

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Ousting State Court Ethics Committees

The Attempt to Sideline State Courts From Disciplining the Lawyers They License

- Lawyers are a CHECK against the abuse of executive power.
- DOJ proposes to amend its rules to delay or prevent state court power to discipline DOJ lawyers for violating state court ethics rules.
 - Announcement attached
- Attorneys General Thornburgh and Reno
 - The McDade Amendment 28 USC 530B.
- See handouts.

28 USC 530B

- (a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.
- (b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.
- (c) As used in this section, the term "attorney for the Government" includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.