

Public Corruption Enforcement In 2024 Has Clues For 2025

By **Cathy Fleming** (January 17, 2025)

2024 was a significant year for federal prosecutors in public corruption cases, at least measured by news coverage. The following cases dotted the headlines:

- In July 2024, former U.S. Sen. Robert Menendez, D-N.J. was found guilty on 16 counts of federal charges, primarily related to bribery. He is due to be sentenced Jan. 29. He resigned from the Senate after the jury's guilty verdict.
- In August 2024, former U.S. Rep. George Santos, R-N.Y., pled guilty to committing wire fraud and aggravated identity theft. The charges centered on his use of donors' credit cards without their authorization. He is scheduled to be sentenced on April 25. Congress voted to expel Santos in December 2023 following an ethics report on his conduct.
- Former Illinois House of Representatives Speaker Michael Madigan has been on trial since October 2024, facing 23 counts, including federal racketeering and bribery charges. Federal prosecutors charge that he and others ran a criminal enterprise, exchanging influence on legislation for job opportunities for constituents and other allies.
- In September 2024, New York City Mayor Eric Adams was indicted on federal corruption charges. His trial is scheduled for April 21.



Cathy Fleming

There were numerous other federal cases brought against public officials related to official corruption throughout the U.S. in 2024, continuing a longtime U.S. Department of Justice priority — some might say zeal — in prosecuting public corruption cases.

The \$64,000 question is: What happens now, with a new Trump presidency, a new attorney general, new senior staff at the DOJ, a new FBI director, new U.S. attorneys and dozens of other significant leadership changes in law enforcement?

The Executive Branch

The prospect of accurately predicting the future of public corruption cases under these circumstances is daunting. First, there has perhaps never before been such significance to the phrase, "There's a new sheriff in town."

Returning President Donald Trump has not been shy in expressing his disdain for what he has characterized as overzealous prosecutions and prosecutors. He has loudly criticized every case that involves him.

He has promised to pardon persons convicted in connection with the Jan. 6, 2021, insurrection at the U.S. Capitol.

And he has named Kash Patel as his pick for FBI director, a Trump supporter who has, in the past, vowed to dismantle the very organization he has been asked to lead.

In his first presidency, Trump granted clemency to former public officials who were convicted of crimes connected to their public service, including:

- Former White House adviser Scooter Libby;
- Former chief of staff of the U.S. General Services Administration, David Safavian;
- Former U.S. Reps. Chris Collins, R-N.Y.; Duncan D. Hunter, R-Calif.; Steve Stockman, R-Texas; Rick Renz, R-Ariz.; Robin Hayes, R-N.C.; and Duke Cunningham, R-Calif.;
- Former political appointees Michael Flynn, Robert Coughlin and Bernard Kerik;
- Former California State Assembly member Pat Nolan;
- Former Palm Beach County Commissioner Mary McCarty;
- Former Detroit Mayor Kwame Kilpatrick; and
- Former Illinois Gov. Rod Blagojevich.

Trump has named Pam Bondi, former state attorney general and longtime prosecutor in Florida, as his pick for attorney general. Bondi was Florida's attorney general from 2011 to 2019. Her office robustly prosecuted trafficking cases.

Supporters of Bondi emphasize that she was an effective state attorney general who followed the norms and rule of law. Detractors argue that Bondi is a Trump loyalist who publicly supported Trump's claims of election fraud and a stolen election in 2020.

In a Fox News interview on June 18, 2024, Bondi — then co-chair of the America First Policy Institute's Center for Law and Justice — criticized the New York district attorney for "going after a political opponent" — Trump — rather than prosecuting violent crimes in New York City.

Reflecting on the jury's May 2024 verdict of guilty on 34 counts in *New York v. Trump*, Bondi called it a "sad day for our justice system." Her comments, however, were from a private citizen, not the head of a prosecutor's office.

In general, of course, federal prosecutors emphasize white collar crime, leaving violent crimes to the states to prosecute.

The press has also reported that Bondi made statements on Fox News in 2023 after Trump was indicted in Georgia to the effect that "the Department of Justice, the prosecutors will be prosecuted, the bad ones ... the investigators will be investigated."

As attorney general, Bondi will set the tone from the top of the federal justice system. If she is sworn in, she will pledge to uphold the U.S. Constitution.

It has been my experience that prosecutors enthusiastically prosecute public corruption targets — particularly high-profile ones — regardless of party affiliation. Historically, federal prosecutors have investigated and charged people without regard to political affiliation.

Indeed, under the Biden administration, prosecutors brought cases against Democrats; Menendez and Adams are two examples. Charges were also brought against the president's son, Hunter Biden.

And the investigation into the alleged misuse of classified documents included queries into the handling of classified documents by outgoing President Joe Biden and former Vice President Mike Pence — neither of whom were charged — as well as Trump, who was charged.

The Supreme Court

It is not only the executive branch that influences trends in public corruption cases. The U.S. Supreme Court has, in the recent past, reversed a significant number of convictions involving public officials. And at least four of the opinions reversing convictions were unanimous.

The court has repeatedly expressed concern over prosecutors bringing charges based on broadly worded statutes.

For instance, in 2016, the court reversed the conviction of former Virginia Gov. Bob McDonnell, who had been found guilty of corruption.

McDonnell had been charged with bribery by using his office to help a benefactor who gave McDonnell and his wife travel on a private jet, as well as the use of a vacation home and a Ferrari.

Chief Justice John Roberts, writing for a unanimous court and calling the actions "distasteful," said that the meaning of "official act" does not include "merely setting up a meeting, calling another public official, or hosting an event.

He continued,

[O]ur concern is not with tawdry tales of Ferraris, Rolexes and ball gowns. It is instead with the broader legal implications of the government's boundless interpretation of the federal bribery statute. A more limited interpretation of the term "official act" leaves ample room for prosecuting corruption, while comporting with the text of the statute and the precedent of this Court.

A few years later, in 2020, the Supreme Court unanimously reversed the "Bridgagate" convictions in *Kelly v. U.S.* — where two aides to then-New Jersey Gov. Chris Christie had arranged traffic problems on the George Washington bridge to punish the local mayor for failing to support the governor.

The court said that there was evidence of wrongdoing, but no federal crime.

Then, in May 2023, the Supreme Court reversed two federal corruption convictions of individuals connected to New York state government.

In *Percoco v. U.S.*, the court reversed the conviction of Joseph Percoco, a former aide to then-New York Gov. Andrew Cuomo, for taking approximately \$300,000 in illicit payments to benefit a Syracuse-based developer.

In the other case, *Ciminelli v. U.S.*, the court likewise reversed the bid-rigging conviction of

Louis Ciminelli, a developer in Buffalo.

Both convictions were reversed because the court found that the prosecutors' fraud theories were too expansive.

Perhaps the most significant recent decision was *Snyder v. U.S.* in June 2024, when the Supreme Court reversed the conviction of a former Indiana mayor, James Snyder, who was accused of accepting \$13,000 in gratuities for steering \$1 million worth of city contracts to a truck company.

In a 6-3 opinion, the court distinguished gratuities from bribes, finding that the anti-corruption statute charged in that case does not criminalize gratuities, i.e., "payments made to an official after an official act as a token of appreciation."^[1]

Takeaways

In the year to come, there are a few things we can expect to remain largely the same when it comes to public corruption enforcement. To begin with, the Supreme Court's yearslong efforts to curb expansive prosecutorial theories of fraud show no signs of slowing down.

Indeed, on Dec. 9, the Supreme Court heard oral arguments in *Kousisis v. U.S.*, an appeal from the U.S. Court of Appeals for the Third Circuit, which affirmed of a conviction based on the "fraudulent inducement" theory of property fraud, i.e., "whether deception to induce a commercial exchange can constitute mail or wire fraud, even if infliction of economic harm on the alleged victim was not the object of the scheme," as articulated by the petition for certiorari.

If *McDonnell* and its progeny are any indication, it seems plausible that the court will limit this fraudulent inducement theory.

On the other hand, on Dec. 16, the Supreme Court declined to hear former Democratic New York Lt. Gov. Brian Benjamin's pretrial challenge to revived corruption charges involving campaign contributions from a developer, Gerald Migdol, that involves the scope of federal bribery law, permitting the case to proceed.

The Supreme Court didn't indicate why it declined to hear the case, but perhaps the justices thought it prudent to allow the case to be decided by a jury before addressing wider constitutional and legal issues that the case may pose.

One thing is certain: In 2025, federal prosecutors should be cognizant of the warnings of the Supreme Court. Before charges are sought, prosecutors should analyze the facts to see if they fall within the classic definitions of the corruption statutes. For example, in bringing a bribery case, prosecutors should look at whether there was actually a *quid pro quo* — something of value given in exchange for an official act.

In the same vein, defense counsel should examine charges against their clients to see if the facts fit the traditional molds of corruption and fraud cases. Defendants should not hesitate to challenge novel, expansive or outside-the-box charges.

It is more difficult to predict what the new administration — including a new attorney general and new FBI director — could mean for public corruption prosecutions.

For instance, will Bondi "prosecute the prosecutors" — and if so, on what basis?

Will Kash Patel be confirmed as FBI director? And if so, will he radically transform the face of the bureau, potentially firing thousands of employees?[2] Or will it ultimately be business as usual?

Some of his stated priorities, such as reforming the FBI's surveillance practices, could ultimately be a positive development for defendants' Fourth Amendment rights.[3] On the other hand, mass firings of rank-and-file agents could destabilize the department, which could certainly have downwind effects on the enforcement of public corruption.

A clearer picture should emerge in the coming months. In the meantime, stakeholders should keep an eye on currently unfolding prosecutions and public corruption cases on tap at the Supreme Court to see how these trends play out in the year to come.

Cathy Fleming is a principal at Offit Kurman Attorneys At Law. She previously served as an assistant U.S. attorney, as well as deputy chief and acting chief of special prosecutions, in the U.S. Attorney's Office for the District of New Jersey.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Snyder v. United States, 603 U.S. 1 (2024). The statute is 18 U.S.C. § 666.

[2] <https://abcnews.go.com/US/deep-state-investigation-kash-patel-fbi-director/story?id=116386001>.

[3] <https://apnews.com/article/fbi-trump-patel-fisa-russia-2d215ded96ad8a08689b6f7f0b2d49ec>.