

News

SELECTIVE PROSECUTION: A HISTORICAL AND LEGAL EXAMINATION IN TIMES OF POLITICAL STRIFE BY JOHN AMBERG

Aug 20, 2024

Partner [John W. Amberg](#) authored an article for the Los Angeles County Bar Association (LACBA) regarding the rare criminal defense of selective prosecution, tracing its historical roots and exploring its resurgence during times of political strife— most notably in high-profile cases such as the Trump hush money/election interference trial in New York City and the prosecution of right-wing extremists in Orange County, California.

Selective prosecution is based on the equal protection clause of the Constitution which prohibits prosecutors from charging someone with a crime based on an arbitrary or invidious classification or in retaliation for the exercise of free speech. It is not a defense on the merits and does not attack the probable cause for the charge. Mere selectivity in prosecution presents no Constitutional issue, however, and there is a presumption of regularity that the defendant must overcome by proving that the prosecution policy had a discriminatory effect and was motivated by a discriminatory purpose.

Demonstrating why selective prosecution is such a rare defense, Amberg discusses recent decisions by the courts in New York and Washington, D.C. which rejected Trump’s argument that he was a victim of selective prosecution and by the Ninth Circuit Court of Appeals which rejected a similar argument by right-wing extremists prosecuted for fomenting violence at political rallies in California.

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