

For Trump's perceived enemies, the process may be the punishment

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The costs – in time and money – may be incredibly significant for those targeted by the Trump administration.

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Former FBI Director James Comey pleaded not guilty to two criminal charges in a federal court in Alexandria, Virginia, on Oct. 8, 2025. The charges allege that Comey lied to Congress in September 2020 when he stood by earlier testimony that he did not authorize a leak of an FBI investigation involving Hillary Clinton.

Numerous legal commentators on both the left and right have argued that Comey's indictment is little more than the Trump administration seeking vengeance on one of the president's perceived enemies. They allege that the president has it out for Comey, who investigated Russian interference in the 2016 presidential election and was fired by Trump in 2017.

The president's own words support the idea that the Trump administration is targeting Comey. In a social media post on Sept. 20, 2025, Trump directed Attorney General Pam Bondi to move forward with prosecutions against Comey, Democratic U.S. Sen. Adam Schiff and New York Attorney General Letitia James: "They're all guilty as hell, but nothing is going to be done. ...JUSTICE MUST BE SERVED, NOW!!!"

If the case against Comey is exceedingly weak – and little more than a political prosecution – then, in my view as a scholar of the U.S. legal system, it should result in the dismissal of charges by the judge or a not guilty verdict by the jury.

But even when an individual is not convicted, the process of defending against charges can itself be a form of punishment, as renowned legal scholar Malcolm Feeley pointed out almost 50 years ago.

Here's how the criminal justice process punishes even innocent people.

The criminal justice process

The criminal justice process is complex.

After a grand jury returns an indictment at the request of a prosecutor, the accused appears in court for their arraignment. They are informed of the charges against them and typically enter a plea.

During what's called "discovery," the prosecution and defense investigate the evidence the other side plans to rely on. There are also pretrial motions in which the parties ask judges to dismiss charges and accept or exclude evidence.

The defense and prosecution may also meet to discuss a plea bargain, wherein the accused may plead guilty in exchange for a lesser sentence or reduced charges.

If there is no plea bargain, then the case moves to trial, which is itself a complicated process. If a defendant is found guilty, they can mount an appeal to higher courts in an attempt to have their conviction overturned.

To help navigate this process, criminal defendants typically hire a lawyer.

And good lawyers don't come cheap.

Money and time

Indigent defendants, who do not have the financial resources to pay their own legal fees, can rely on public defenders paid for by the government.

But individuals who can afford to pay for their own lawyer face a substantial financial burden for attorney services and court fees. An experienced criminal defense lawyer can charge more than US\$1,000 per hour, with fees quickly adding up. This means that mounting a legal defense can easily cost tens of thousands of dollars.

On top of this, it takes a great deal of time to prepare for a criminal case. While lawyers and their staff do much of the legwork for trial preparation, a client works with their attorneys to help formulate a defense.

As a result, criminal defendants lose one of the most precious commodities in the world: their time.

And this time can come at a tangible cost in the form of lost wages, which harms their day-to-day lives. Put simply, every hour spent preparing for trial is an hour defendants could spend working or enjoying their lives.



Patrice Failor, center, wife of former FBI Director James Comey, is embraced by daughters Claire Comey, left, and Maurene Comey at the courthouse in Alexandria, Va., where James Comey was arraigned and pleaded not guilty on Oct. 8, 2025.

Chip Somodevilla/Getty Images

Stress and embarrassment

It's not pleasant being charged with a crime.

The criminal process, which typically lasts months, takes a toll on one's mental health. This is largely driven by the uncertainty surrounding the outcome of a criminal trial and the possibility of losing one's freedom if convicted.

In addition, there is a social stigma that comes with being accused of a crime. This can result in reputational damage, anxiety and embarrassment.

The Trump administration appears to recognize this reality.

Several media outlets have reported that FBI leadership had planned a public perp walk for Comey.

According to a CBS News report, this was to have included “‘large, beefy’ agents ... ‘in full kit,’ including Kevlar vests and exterior wear emblazoned with the FBI logo.” Apparently, the plan was aborted after several FBI supervisors refused to cooperate, viewing it as inappropriate. One agent was disciplined for insubordination after refusing to go along with the plan to embarrass Comey in this way.

Not all criminal defendants suffer the same

The extent to which criminal defendants experience the criminal justice process as a form of punishment varies from person to person.

For high-status people like Comey, lost wages and attorneys’ and court fees may not be that big of a deal.

But these costs may be incredibly significant for other people who have been, or are likely to be, targeted by the Trump administration.

The high costs of lawyers’ fees are well known to the president. For instance, his political action committee spent millions of dollars on attorneys’ fees in an unsuccessful effort to defend Trump from criminal charges in New York.

In addition, people no doubt experience the psychological stress and stigma of a possible criminal conviction differently. But regardless of one’s wealth, the lost time spent preparing a criminal defense is something that cannot be replaced.

The recognition that the criminal process is itself a form of punishment is one of the reasons that the Department of Justice has maintained independence from the president. By violating the tradition of staying out of politics, the Justice Department in the Trump administration has opened the door for the president to seek retribution on his perceived political enemies.

The mere act of putting them through the criminal process ensures that they suffer, regardless of their guilt or innocence.

Paul M. Collins Jr. does not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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