

Is Andrew Cuomo guilty, innocent or something in between?

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Prosecutors often want to bring a case, but they can't or at least shouldn't. They "know" in their hearts that the suspect whom they are investigating has done something wrong — probably criminally wrong. Still, they simply don't have enough proof to bring a case — *and, most important, to win it.*

If a prosecutor has good reason to believe that he or she will unlikely be able to win it due to a factual or legal impediment, the worst thing to do is to nonetheless go forward in a case that will likely end in ignominious defeat, particularly if the case involves an important public figure. Proceeding will not be good for the prosecutor, nor for the defendant who will have to face trial only to ultimately be found not guilty. Most important, though, it won't be good for the public, which deserves to have cases brought by prosecutors only when there is a substantial likelihood of conviction.

That's the way "the system" should work — particularly if the public might conclude that the prosecutor only brought the case for purposes of self-aggrandizement or based on political motivation. It is a problem that now directly faces U.S. Attorney General Merrick Garland in the wake of Jan. 6 and Congress's investigation in its aftermath. That is, if Garland were to take the extraordinary step of charging a public official, even the former president, for that terrible day's insurrection, what might a

loss look like to the general public? Put another way, the public has a right to demand that he have his ducks in a row if he pulls the legal trigger.

There is a similar issue, though, far closer to home — a burning issue that results from the several investigations of former Gov. Cuomo over alleged abusive conduct involving staff members. At bottom, it is now obvious that Cuomo won't be brought to trial, at least criminally, for any of that conduct — despite investigations by several district attorneys around the state after Attorney General Tish James's intensive investigation and that of the New York State Assembly, which separately concluded, in scathing and detailed reports, that he had engaged in a pattern of egregious workplace misconduct.

All that said, the district attorneys of Westchester, Nassau and Albany have each publicly stated that they will not proceed. Still, they did not do so simply stating, "My office has declined to prosecute." No, whether it is good or bad for them to have done so, each has publicly said that the complainant against the former governor in their respective county was "credible" — meaning, "we believe the accuser" when she says she was the victim of mistreatment by Cuomo.

For his part, Cuomo's attorney, speaking about the Albany DA's announcement in particular, immediately said that "no jury would have found [the complainant] credible — that's why this case was dismissed." Perhaps, but I am not here to assess the credibility of these respective accusers. I've never interviewed the women and have an insufficient basis on which to draw conclusions about their credibility.

Indeed, one wonders why these prosecutors found the questionable need to even mention their judgments about credibility in the context of a public announcement declining to prosecute. Nonetheless, especially given that they have chosen to do so, it is likewise hard to understand how the former governor's representatives can say, in effect, that he's been exonerated when he has not been acquitted or even gone to trial. Essentially, Cuomo's attorney has argued that "He's vindicated," even though the prosecutors have separately found the accusers believable.

So it's a mess. Whatever serious flaws he has or serious misconduct he has committed, some political insiders — who by their very nature engage in political gossip 24/7 — are already yakking about his campaign war chest and whether he will try to vindicate himself by running against James (or perhaps for governor again). That would be a mistake and bad for New York.

Whatever the drawbacks of the attorney general's and the state Assembly's investigative reports on the former governor's conduct raised by some including Cuomo's counsel — albeit both written by impeccably credentialed outside attorneys — they were both good faith efforts to uncover the truth. Dragging the voters into an "I'm right, you're wrong" election, which may somehow involve the settling of scores, would be a disservice to the public.

Andrew Cuomo may have a future in politics, but he needs to demonstrate that any unlawful or improper conduct is way in his past. The public may be forgiving — Americans do believe in redemption and second chances — but running for office should not be about vengeance or vindication, particularly given the nature of the conduct in question.

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