

Could Kamala Harris transform law enforcement as the vice president?

National conventions have long served as what magicians call the turn. As explained in the movie “The Prestige,” every magic trick has three stages. First comes the pledge, when the magician “shows you something ordinary.” Then comes the turn, when he “makes it do something extraordinary” like vanish. Finally, he has “to bring it back in the hardest part” known as the prestige.

In American politics, candidates make the pledge to voters on the extremes of their parties during primaries. Then comes the turn, when the more extreme nominee



disappears at the convention. The turn was not as tough for [Joe Biden](#) [Joe Biden House passes B bill to boost Postal Service](#) [Trump seeks to overcome eroding support among women](#) [Here are the states where Kanye West is on the ballot](#) [MORE](#), who was fairly moderate as a senator, as it was for [Kamala Harris](#)



[Kamala Harris](#) [Trump seeks to overcome eroding support among women](#) [Does Trump suffer from 'self-destructive syndrome'?](#) [Could Kamala Harris transform law enforcement as the vice president?](#) [MORE](#), who was ranked by GovTrack as the most liberal senator to the left of even Bernie Sanders.

Nonetheless, in perhaps the neatest trick of all, the Washington Post’s David Byler recently described Harris as a “small ‘c’ conservative.” The concern for some of us is that the prestige, when earlier objects might reappear after the election, particularly regarding the Justice Department and the legal system. There is reason to worry about what might be revealed, post-election.

One of the Democratic convention speakers was former deputy attorney general [Sally](#)



[Yates](#) [Sally Caroline Yates](#) [Could Kamala Harris transform law enforcement as the vice president?](#) [The Hill's 12:30 Report: Delegates stage state-centric videos for the roll call](#) [Trump fires back at Yates for convention speech: 'Terrible AG'](#) [MORE](#), widely viewed as the leading candidate for attorney general in a Biden administration. She was presented as the personification of a new Justice Department’s commitment to the rule of law. Yates declared: “I was fired for refusing to defend President Trump's shameful and unlawful Muslim travel ban.” The problem

is, she wasn't. She was fired for telling an entire department not to defend a travel ban that ultimately was upheld as lawful.

I was highly critical of the travel ban, but I also said Trump's underlying authority likely would be found constitutional. Despite revisions tweaking its scope and affected countries, opponents insisted it remained unlawful and discriminatory. They continued to litigate on those same grounds all the way to the Supreme Court, where they lost two years ago.

The Supreme Court ruled in Donald Trump versus Hawaii that the president had the authority to suspend entry of noncitizens into the country based on nationality and had a "sufficient national security justification" for his order. It also held that, despite most of the banned countries being Muslim-majority, the ban "does not support an inference of religious hostility."

That is why Yates deserved to be fired. Yates issued her order shortly after learning of the travel ban and despite being told by Justice's Office of Legal Counsel it was a lawful order. She never actually said it was unlawful, only that she was not sure and was not convinced it was "wise or just." Rather than working to address clear errors in the original ban, she issued her categorical order as she prepared to leave the department in a matter of days. Yates maintained afterward that she believed the ban might still be discriminatory, even with revisions. Four years later, Trump is still banning travel from many of these same countries under the same underlying authority.

Yates was due to retire from Justice within days when she engineered her own firing. It made her an instant heroine and allowed her to denounce Trump at this week's convention for "trampl[ing] the rule of law, trying to weaponize our Justice Department." But that's precisely what she did when she ordered an entire department not to assist the recently elected president – a move which, at the time, even Trump critics described as troubling. She could have resigned but chose to "go rogue," months before (as Yates recently declared) then-FBI director James Comey went rogue in the Michael Flynn matter. (Comey actually may have learned a lesson from Yates: A good firing can be better than completing a term in office.)

The person who likely would have the greatest influence in recommending the next attorney general is Harris. The Biden campaign lauds Harris as a former prosecutor and California attorney general. However, Harris has a disturbing view of the separation of law and politics. While Trump has been legitimately criticized for demanding prosecutions and improperly commenting on pending cases, Harris has long been accused of the same disregard for legal process.

She campaigned on a pledge to prosecute Trump upon taking office, inspiring "lock him up!" chants at rallies. She publicly called Ferguson police officer Darren Wilson a "murderer" after he was cleared of that charge by state and federal investigators, including a lengthy investigation by the Justice Department under Attorney General Eric Holder. This followed the recantation of eyewitness accounts and the disproving of claims that Michael Brown was shot with his hands up.

Harris has a history of such sentencings before verdicts. In Brett Kavanaugh's confirmation hearing, she declared him guilty of rape without hearing from witnesses

— then called for his impeachment after his confirmation as a Supreme Court justice. She also campaigned on a promise to vote to remove Trump from office, roughly seven months before his impeachment by the House, and nine months before she sat in judgment in the Senate trial, after swearing to be an unbiased juror.

Harris has shown a willingness to “weaponize” legal issues, including reversing her positions when polls shifted. During the campaign, Harris was confronted with clips where she once laughed about the controversy over her jailing of parents for the truancy of their schoolchildren and mocking calls to “build more schools, less jails!” She was equally strong on jailing nonviolent offenders. With those positions now anathema to Democrats, Harris has assumed diametrically opposite positions with indignant passion.

This month, however, came the magic turn for the Biden campaign. Asked if he could foresee his administration prosecuting Trump, Biden correctly said, “The Justice Department is not the president’s private law firm. The attorney general is not the president’s private lawyer. I will not interfere with the Justice Department’s judgment.” That is the correct answer and, to his credit, Biden has tended to emphasize legal process over politics.

The concern, however, is whether his administration’s Justice Department would be shaped by Harris or led by Yates. The thing about magic and politics is that both require the audience’s cooperation. With Yates’ self-promoting sleight of hand, few in the media wanted to cry out that she palmed the facts. As one character in “The Prestige” explained, “You’re looking for the secret. But you won’t find it because, of course, you’re not really looking. You don’t really want to work it out. You want to be fooled.”

Jonathan Turley is the Shapiro Professor of Public Interest Law at George Washington University. You can find his updates online [@JonathanTurley](#).