

THE LITTLE NOTICED JAY CLAYTON PICK AT SDNY

Amid the Star Wars bar menagerie of Trump Administration picks, that of Jay Clayton to be US Attorney for SDNY has gone little noticed.

But it was among the earliest picks Trump announced, on November 14, like that of Mike Huckabee to be Ambassador to Israel on November 12, weirdly early, bespeaking an unusual set of priorities.

Here's how NYT – reporters who know the Sovereign District well – covered the Clayton pick.

President-elect Donald J. Trump on Thursday said he would pick Jay Clayton, the top Wall Street enforcer in the first Trump administration, as the head federal prosecutor for the Southern District of New York, a critical post for an incoming president who has vowed revenge on those who pursued him in the courts.

Mr. Trump made the announcement on his social media platform Truth Social, where he called Mr. Clayton “a highly respected business leader, counsel and public servant.” Mr. Clayton still must be confirmed by the Senate.

The office of U.S. attorney for the Southern District of New York is considered one of the most prestigious federal prosecutor's offices in the nation. It holds sway over some of America's most powerful businesses and financial institutions, and it has aggressively targeted politicians accused of corruption.

[snip]

Mr. Clayton is not a former prosecutor – often seen as a prerequisite to being

named as a Southern District U.S. attorney – but he has long wanted the Manhattan post, said Steven Peikin, a lawyer at Sullivan & Cromwell who served as his co-director of enforcement at the S.E.C.

In fact, toward the end of his tenure at the S.E.C., Mr. Clayton nearly got the job when he emerged as a potential candidate to replace Geoffrey S. Berman, a Trump-appointee who then held the post.

In a surprise move, the attorney general at the time, William P. Barr, announced in June 2020 that Mr. Berman had resigned as U.S. attorney for the Southern District and Mr. Clayton would replace him. But Mr. Berman denied he had stepped down. He was then fired by President Trump, an action he did not contest after he was assured his deputy, Audrey Strauss, would lead the office.

The affair was worrisome to some Justice Department officials because at the time Mr. Berman's office was handling cases involving people close to Mr. Trump. The episode raised concerns about possible political interference in criminal investigations.

Mr. Berman, in a statement to The New York Times on Thursday evening, said of Mr. Clayton, "Jay is an exceptional lawyer and will be an excellent United States attorney."

Clayton is a grownup, though not a prosecutor. But Trump attempted to install him once before as a way to oust the incumbent US Attorney and – it is widely understood – in an attempt to thwart ongoing investigations into Trump's people.

Even in spite of their expertise, I don't see a NYT story on what happened next.

First, on November 18, Merrick Garland visited SDNY to encourage AUSAs there to continue on: “You will continue in the Department’s mission, what has always been its mission: to uphold the rule of law, to keep our country safe, and to protect civil rights.”

Then on Monday, the current US Attorney for SDNY, Damian Williams, announced he would resign on December 13, leaving his Deputy, Edward Kim, in charge.

Damian Williams, the United States Attorney for the Southern District of New York, who has served as the chief federal law enforcement officer in the district, announced today his intention to resign his position as United States Attorney, effective 11:59 p.m. on December 13, 2024. Edward Y. Kim, who currently serves as Deputy United States Attorney, will become the Acting United States Attorney upon his departure.

U.S. Attorney Damian Williams said: “Today is a bittersweet day for me, as I announce my resignation as United States Attorney for the Southern District of New York. It is bitter in the sense that I am leaving my dream job, leading an institution I love that is filled with the finest public servants in the world. It is sweet in that I am confident I am leaving at a time when the Office is functioning at an incredibly high level – upholding and exceeding its already high standard of excellence, integrity, and independence. That success is due to the career attorneys, staff members, and law enforcement agents of this Office. Working with them during my tenure has been a privilege of a lifetime. They are worthy custodians of this Office’s tradition of doing the right thing, the right way, for the right reasons. They are patriots. They are my family. And I will miss them dearly.

In spite of NYT's apparent reticence (or, perhaps, ongoing reporting), it was big news: WaPo's coverage noted Williams' close ties to Garland and Bill Barr's past effort, described by NYT, to install Clayton as a means to oust Williams.

NYPPost's coverage instead focused on the boon this may present for Eric Adams' case, even while noting that prosecutors plan to supersede the indictment and have a December 20 status hearing scheduled. By the end of NYPPost's story, they had moderated their headline claim that Williams' move, will "make way for Trump's replacement." As they acknowledged, Williams' resignation doesn't make way for Clayton, at least not before he is confirmed; it makes way for Kim as the interim Acting US Attorney.

Clayton's appointment still requires confirmation by the US Senate.

Until then, Williams' deputy, Edward Y. Kim, is set to take over as acting US Attorney when he steps down.

We'll see how all this plays out, as we saw how it played out in June 2020, when Barr tried to remove Geoffrey Berman before SDNY took action in August 2020 against Steve Bannon and his co-conspirators and tried to advance the investigation into Rudy Giuliani, only to have Berman lawyer up and invoke succession rules to ensure that *his Deputy* Audrey Strauss would continue. Unless SDNY judges take action to protect Kim, I think Trump can just replace *him* with another Acting US Attorney on January 20, though I'm not an SDNY lawyer and they have ways of working the law.

In any case, by announcing the Clayton pick so early, Trump ensures that incoming SJC Republicans can prioritize his confirmation – and since he's a much higher caliber pick than Trump's *other* picks – it could go quickly.

But it's likely *not* Adams' prosecution (much less Diddy's, which NYPPost also invoked) that

Trump's early pick of Clayton was an attempt to redirect. For a variety of reasons, I expect Trump will include Adams in the pardon-palooza that will kick off his Administration.

Indeed, I can't help but notice that Trump announced this pick one day after the FBI seized the devices of Polymarket CEO Shayne Coplan on November 13.

The FBI seized a cellphone and other electronic devices of betting site Polymarket's CEO, Shayne Coplan, in a raid on his New York City apartment early Wednesday, according to a source familiar with the matter.

The company's markets wagered correctly and controversially in Donald Trump's favor in bets on who would win the presidential election, even though opinion polls showed a tight race.

Coplan, 26, was home when numerous agents entered his apartment Wednesday and he turned over his devices to authorities, the source said, adding that he has not been arrested or charged. The source said it is not clear whether Coplan or Polymarket are targets of an investigation.

"New phone, who dis?" Coplan posted on X after the raid.

Polymarket, which Coplan founded in 2020, has recently been the subject of intense debate and scrutiny over its creation of election betting markets. It brought in more than \$3.6 billion from bets placed on the presidential election, including \$1.5 billion on Trump and \$1 billion on Vice President Kamala Harris, according to an NBC News analysis.

Speculation has swirled around the identities of major bettors who wagered on Trump and whether or not the odds and

the existence of the markets could have had an effect on voters.

Though U.S. election betting is newly legal in some circumstances, Polymarket is not supposed to allow U.S. users after the Commodity Futures Trading Commission halted its operations in 2022, but its user base largely operates through cryptocurrency, which allows for easy anonymity.

There are other investigations that Trump might be trying to interrupt with this quick appointment. But the Polymarket investigation – in which FBI got a probable cause warrant targeting someone who helped Trump's campaign within days of the election – is likely one of them.

Once before, Trump tried to install Jay Clayton at SDNY to block investigations into his people. This time around, Trump will have to find a different path than just firing the incumbent US Attorney. Because he already quit.