

# OK, BUT CAN WE ALSO FIRE LANNY BREUER?

I've lost count of how many White House petitions are seeking some kind of vengeance for the harsh treatment of Aaron Swartz. Fire Carmen Ortiz. Fire Stephen Heymann. Pardon Swartz. Commute John Kiriakou's sentence.

One of the most ethical suggestions I've seen (and I'm not even sure if there is a White House petition for it) is to fix the Computer Fraud and Abuse Act. [Update: Thanks to Saul Tannenbaum, here it is.]

The government should never have thrown the book at Aaron for accessing MIT's network and downloading scholarly research. However, some extremely problematic elements of the law made it possible. We can trace some of those issues to the U.S. criminal justice system as an institution, and I suspect others will write about that in the coming days. But Aaron's tragedy also shines a spotlight on a couple of profound flaws of the Computer Fraud and Abuse Act in particular and gives us an opportunity to think about how to address them.

I didn't know Aaron personally, but he doesn't strike me as the kind of guy who would seek individualized solutions to systemic problems. And one of the problems with the system that destroyed him is a law that badly criminalizes actions that don't present much harm.

Moreover, as Corey Robin argues in this post, asking Obama to take action to absolve the actions of his own government defeats the point.

Asking the state to pardon Swartz doubly empowers and exonerates the state. It cedes to the state the power to declare who is righteous and who is wrong (and

thereby obscures the fact that it is the state that is the wrongful actor in this case). The petitioning language to Obama only adds to this. The statement depicts Obama as somehow the good father who stands above the fray—much like how the Tsar was depicted in the petition of the Russian workers who marched with Father Gapon on the Winter Palace in 1905 and were summarily slaughtered.

Pardoning Swartz also would allow the government, effectively, to pardon itself.

These petitions seem to serve the purpose of pretending that Swartz' treatment was abnormal.

It was not.

Not only has Obama's Administration treated all those who liberate information without his government's sanction as dangerous criminals, but his DOJ has been ruthless against just about everyone who is not a Wall Street Executive.

Jesslyn Radack—who knows how aggressively Obama's DOJ has targeted those who free information as well as anyone—discusses the legal futility of trying to go after Stephen Heymann. But she also notes that the real remedy to prevent more people from experiencing what Swartz did is to start fixing DOJ.

What might be more realistic is for citizens to *demand* that the Senate Judiciary Committee exercise meaningful oversight over the out-of-control Justice Department, which has waged an unprecedented, unaccountable, brutal war on whistleblowers and hackers, and to create something akin to the Church Committee to investigate the improper monitoring and targeting of hackers, whistleblowers, Occupy participants, journalists, and a numerous other groups of non-violent "offenders" who've done nothing to harm anyone or the country,

and have been acting purely in the public interest.

It would be a good start (though SJC Chairman Patrick Leahy has been lax in examining any Obama Administrations abuses).

But there is one action Obama could take today that would both address some of the problems with his dysfunctional DOJ and attest he means to change things systematically: Fire DOJ's Criminal Division head, Lanny Breuer.

Lanny Breuer is not the only reason Obama's DOJ has been so aggressive (though he has been instrumental in ensuring it ignores bank crimes). There are far more senior and far less senior people who have fostered DOJ's overreach. But Breuer runs this system. Moreover, as the head of this system of prosecutorial overreach, he has actually explicitly rewarded abuse.

If we want to fix the injustice that was done to Aaron Swartz, we need to fix the aspects of the system that rewarded such behavior. We need to fix the law that empowered the prosecutors gunning for him. We need to put some breaks on DOJ's power. And we should start by getting rid of the guy who has fostered this culture of abuse for the last four years.