



Donald Trump

COMMENTARY

Civil Rights and the 47th President

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By Ilann M. Maazel

It is impossible to write a civil rights litigation column today without addressing the Trump in the room.

Donald Trump was elected the 47th president with a (slim) majority of the popular vote. But for those who take the rule of law seriously, most have reacted with some mix of horror, disbelief, resignation, desperation, and grim determination. These are disturbing times which we, as lawyers and judges, must confront with clear eyes.

First, for the first time in the history of our country, a convicted felon has become president of the United States. Donald Trump, with limitless resources to retain counsel and mount a vigorous defense, was convicted by a unanimous twelve-person jury of thirty-four felonies. We now have a criminal president.

Second, a federal jury unanimously found Mr. Trump liable for sexual abuse, for "deliberately and forcibly penetrat[ing].[a woman's] vagina with his fingers, causing immediate pain and long lasting emotional and psychological harm."

Third, after an eleven-week trial, Mr. Trump, his company, and others were found liable for fraud and ordered to pay hundreds of millions of dollars. The judge found that his and his co-defendants' "complete lack of contrition and remorse borders on pathological."

Fourth, Mr. Trump has demanded the termination of the Constitution, adulated strongmen and dictators, and repeatedly expressed contempt

for the rule of law. He most recently expressed that contempt by pardoning some 1,500 people who stormed the capitol and attempted to overthrow our democracy. He pardons his allies and has promised to prosecute his enemies, political or otherwise.

Finally, Mr. Trump does not believe in an independent Department of Justice and intends to stack the top levels of the DOJ with his own attorneys and others loyal to himself.

Whatever our party or politics, it is plain that the current president is a threat to the rule of law in this country. *The* single greatest threat to the rule of law, in my view. A criminal, sexual abuser, and fraudster with contempt for the constitution is now in charge of executing the law, at the very highest level of our government.

What does this mean for the lawyers and judges who read the *New York Law Journal*? We must first remember that every time Mr. Trump's DOJ takes action, it is now Mr. Trump's DOJ taking the action. Thousands of DOJ employees will undoubtedly do their best to uphold the constitution, but they will also be under pressure from people above them who may not. In these abnormal times, judges must now give extra scrutiny to every action of Mr. Trump's DOJ, in every civil and criminal case.

Second, our judiciary, particularly the federal judiciary, must be the last bulwark of the constitution. Whether blessing the internment of over 100,000 innocent people of Japanese descent during the Second World War, or in some of the darker decisions of the McCarthy era, courts too often have abandoned constitutional principle in response to fear or pressure.

We simply cannot let that happen again. With a president who does not believe in checks and balances, and a republican congress that cannot be trusted to serve as any kind of check or balance, it is up to the courts to serve as the last, best check on presidential power. Luckily, we have many fine judges in New York who are prepared to do just that.

Third, the bar must step up to the plate. With tech leaders kowtowing and embracing a would-be strongman, and some mainstream media capitulating to intimidation, lawyers must bring and defend the cases necessary to maintain the rule of law, our democracy, and the constitution.

This president is already attempting to eliminate birthright citizenship, has expressed a desire to serve a third term, and will take any manner of other illegal actions. It will be up to lawyers and judges to stop him.

These are grim times. But the country survived the Civil War, two World Wars, and any number of political demagogues.

We can do it again.

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