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On Donald Trump and the rule of law

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Donald Trump's recent public excoriation of the judge (and the magistrate judge) handling the "Trump University" lawsuit is truly appalling and, given that this guy could become president, terrifying. Anyone seriously thinking of voting for Trump for president should have a look, before — not to get too dramatic about it — it is too late.

Here is your presumptive Republican nominee, commenting at a rally on a case that is currently pending in federal court — and not just any case, of course, but one in which he has *adirect financial stake*. (The transcription is by Josh Blackman, [available here](#), along with full video of the Trump rally):

The trial, they wanted it to start while I am running for President. The trial is going to take place sometime in November. There should be no trial. This should have been dismissed on summary judgment easily. Everybody says it, but **I have a judge who is a hater of Donald Trump. He's a hater. His name is Gonzalo Curial. And he is not doing the right thing.** I figure what the hell? Why not talk about it for two minutes. Should I talk about it? Yes? [cheers and applause] so we should have won. . . .

I am getting railroaded by a legal system, and frankly they should be ashamed. I will be here in November. **Hey, if I win as president, it is a civil case.** I could have settled this case numerous times. But I don't want to settle cases when we are right. I don't believe in it. When you start settling cases, do you know what happens? Everybody sues you because you get known as a settler. One thing about me, I am not known as the settler.

And people understand with this whole thing, with this whole deal with the lawyers, class action lawyers are the worst. **It is a scam.** Here is what happens. **We are in front of a very hostile judge. The judge was appointed by by Barack Obama – federal judge. [Boos]. Frankly he should recuse himself. He has given us ruling after ruling, negative, negative, negative. I have a top lawyer who said he has never seen anything like this before. So what happens is we get sued. We have a Magistrate named William Gallo who truly hates us.**

The good news is it is a jury trial. We can even get a fully jury. We are entitled to a jury, and we want a jury of 12 people. And you are going to watch. First of all, it should be dismissed. Watch how we win it as I have been treated unfairly. . . . **So what happens is the judge, who happens to be, we believe Mexican, which is great. I think that is fine.** You know what? I think the Mexicans are going to end up loving Donald Trump when I give all these jobs. I think they are going to love it. I think they are going to love me. . . .

A lot of people said before you run you should settle. I said I don't care. The people understand it. And they use it. So when I have 10,000 people, and when we have mostly unbelievable reviews, how do you settle? And in fact, when the case started originally, I said how can I settle when I have a review like this? Now I should have settled, but I am glad I didn't. **I will be seeing you in November either as president.** And I will say this. I have all these great reviews, but I will say this. **I think Judge Curiel should be ashamed of himself. I think it is a disgrace he is doing this.** I look forward to going before a jury, not this judge, and we will win that trial. We will win that trial. Check it out. Check it out, folks. You know, I tell this to people. November 28. I think it is scheduled for. It should not be a trial. It should be a summary judgment dismissal.
...

It is a disgrace. It is a rigged system. I had a rigged system, except we won by so much. This court system, the judges in this court system, federal court. They ought to look into Judge Curiel because what Judge Curiel is doing is a total disgrace. Ok? But we will come back in November. Wouldn't that be wild if I am president and come back and do a civil case? Where everybody likes it.

Ok. This is called life, folks. . . .

No, this is called "authoritarianism." It's what Berlusconi sounded like, what Chávez sounded like and what Perón sounded like — for that matter, it's what Sulla and Caesar and the others who helped destroy the world's first great republic sounded like: I am bigger than the law, I AM THE LAW.

From a TV talk show host, this would just constitute an eminently ignorable, semi-coherent, vaguely racist and rather pathetic little rant. But this ain't TV anymore; from a man being seriously considered to head one of the three branches of our government, it is a not-too-thinly-veiled attack on the notion of judicial independence and the rule of law. If the guy in charge of executing the laws thinks the system is "rigged" — against billionaires, I suppose he means — and a "total disgrace," then . . . well, you can figure it out. Enforce the law against himself? Or against his pals? That's for suckers.

And no, Mr. Trump, it won't be "wild" if you are elected president and come back for your civil trial in November — it will be a disgraceful spectacle. Great for ratings, though — and that's all that matters, right?

I have no idea whether reasoned consideration of what the candidates say plays any role anymore in this campaign, and the pundits keep saying that Trump has some kind of magnetism that keeps people devoutly on his side no matter what he says. I really hope that's not correct, and that the American people will see this and see him for what they are.

Our republic has survived some terrible presidents, with terrible ideas about how to run the country; but this is something different. We've never had a president who not only thinks the government will be a toy for him to play with and push people around — wow!! how wild is that!! — *but who tells us, in advance, over and over again, that that is his game.* If we vote him into office, I suppose we will deserve what comes.

***** UPDATE 5/31

Let me try to clarify one point that seems, from some of the comments, to have been confusing in my initial posting. As a private citizen, Donald Trump has the right (protected by the 1st Amendment) to say pretty much whatever he likes about the judges handling his case (short of issuing real threats of physical harm), and about the legal system. And that holds even though the case is currently pending, and even though he is directly involved in the litigation. I've got *no problem at all* with "Donald Trump the TV star" going on television and saying whatever he wants to say — even ignorant, silly, racist, things — about the judges hearing the case, about the jury that will decide the case, and about how our legal system is rigged against billionaires like him. No problem at all.

But he's not just a private citizen/TV celebrity; he is a private citizen/TV celebrity who is trying to become the president of the United States. That he wants to head the coordinate branch of our federal government, like it or not, gives his comments an entirely different meaning. I'm not suggesting that he doesn't have the *right* to say what he said; I'm suggesting that what he said should show everyone why he should not be elected president, because it shows he either does not understand, or (worse) does not care about the way our constitutional system operates.

Our form of government will not work if the executive branch does not respect the legitimacy of decisions made by the judicial branch, because our judicial branch is *entirely* without power to enforce its judgments without the assistance of the executive branch.

It is, really, that simple. While I don't want to be accused of over-dramatization, it is not inappropriate to point out, on this day after Memorial Day, that many people actually gave their lives to defend this idea, and we dishonor them if we throw it away.

We have faced many crises in the past where that principle has been tested, and some of those actually did threaten the very existence of our republic. Trump is signalling that he doesn't really care about all that. And it's not like he is standing on some important point of constitutional principle; he's speaking out of naked self-interest, complaining about a case in which he stands to lose many millions of dollars if the judgment goes against him.

It is far, far too easy to imagine President Trump on prime time TV tearing up any judgment against him with a big smile on his face: "Hey, Judge Curiel, you think I have to fork \$22 million to defrauded customers? Try and make me ...". After all, the system is rigged — and the judge, to make matters worse, is a Mexican. President Trump is going to be pushing *them* around, remember? Not vice versa!

Trump seems to think this would be hilarious — "wouldn't it be wild?" And I admit, it has great potential as an episode of "Celebrity President."

But in the real world, it would rock our constitutional order to its foundation. "No man is above the law" is a charming phrase. But it only has meaning because we respect it and give it meaning, through our governing institutions. That a TV celebrity wants to be above the law and immune to its commands is no surprise; I suspect that lots of TV celebrities would like to act outside the law.

But the president actually has the levers of the law in his/her hands. And there is a name for a chief executive who believes he/she is above the law: tyrant.

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