

NewsRoom

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Section: Opinion

Commentary: Trump is on the wrong side of the law

Erwin Chemerinsky

The controversy over Justice Ruth Bader Ginsburg's criticism of Donald Trump obscured the underlying reality: Trump is a greater threat to the rule of law than any other political candidate I have seen in my lifetime.

I, too, was disturbed by Ginsburg and Trump trading insults last week. Ginsburg said she is frightened by the thought of a country with Trump as president and called Trump a "faker." Trump responded by tweeting: "Justice Ginsburg of the U.S. Supreme Court has embarrassed all by making very dumb political statements about me. Her mind is shot - resign!"

Ginsburg was excoriated in the press for speaking about a political candidate. She then issued a contrite statement saying her remarks were ill-advised.

But why did she speak in the first place? I think it is likely because she perceives Trump as a unique threat to our legal system. And she is right.

I confess I do not understand Trump's appeal. He seems totally unqualified for the presidency; unlike virtually every president in history, he has never served in government office in any capacity. I worry that his meanness and nastiness is changing the very nature of what is acceptable discourse.

In May, when I had the honor of delivering the commencement address at Irvine Valley College, I felt the need to remind the students of the importance of being nice, a message that in a different time would seem more appropriate for a preschool than a college graduation. I cannot imagine how people would want Trump handling delicate diplomacy with foreign countries.

But as a lawyer and a law professor, what troubles me most is Trump's stunning lack of knowledge about and disregard for our legal system. When a federal judge in San Diego ruled against Trump University, Trump said Judge Gonzalo Curiel had "an absolute conflict" in presiding over the litigation given that he was "of Mexican heritage" and a member of a Latino lawyers' association. Trump declared, "I'm building a wall. It's an inherent conflict of interest."

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Trump is simply wrong about the law. A judge's ethnic background never is a basis for finding a conflict of interest or requiring disqualification.

Trump says he wants the country to resume torturing prisoners, including "a hell of a lot worse than waterboarding." He says we should not only go after terrorists but kill their families. U.S. law and international treaties prohibit torture and intentional killing of innocent people. The latter is terrorism.

Trump has shown disdain for the Constitution's most basic values. Trump has said he would bar Muslims from entering the country. This would violate the Constitution's guarantees of equal protection and religious freedom. Under the Constitution, a person's dangerousness cannot be presumed because of his or her religion or ethnicity.

Trump said, "I'm going to open up our libel laws so when they write purposely negative and horrible and false articles, we can sue them and win lots of money." Trump apparently does not know that libel laws are state law, not federal law. More important, as president he cannot change the First Amendment limits on recovery for defamation that the Supreme Court has imposed for over 50 years.

These are just a few times when Trump has evidenced a lack of understanding and disdain for the legal system. His campaign has used openly racist and anti-Semitic appeals.

I understand why Ginsburg spoke out. She is 83 and has seen what has happened in the world when people remained silent and let demagogues who profess extreme nationalism and disdain for the rule of law come to power.

I think it is better that justices and judges not express views about political candidates. But there is a reason she did, and it must not be obscured by the debate over her behavior: Trump's views on the law and the legal system are truly frightening.

Erwin Chemerinsky is dean of the UC Irvine School of Law.

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