

ORANGE COUNTY REGISTER

Donald Trump and the Rule of Law

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2016-07-20 17:15:36

The controversy over Justice Ruth Bader Ginsburg's criticism of Donald Trump obscured the underlying reality: Donald Trump is a greater threat to the rule of law than any political candidate that I have seen in my lifetime. I, too, was disturbed by Ginsburg and Trump trading insults last week. Ginsburg said that she is frightened by 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!"

Justice Ginsburg was excoriated in the press for speaking about a political candidate. She then issued a contrite statement saying that her remarks were ill-advised and declaring: "Judges should avoid commenting on a candidate for public office. In the future I will be more circumspect."

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

I confess I do not understand Donald 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 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 Donald Trump handling delicate diplomacy with foreign countries.

But what troubles me most as a lawyer and a law professor 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 that 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." 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 that he wants the country to resume torturing prisoners, including, he says, “a hell of a lot worse than waterboarding.” He says that we should not only go after terrorists, but kill their families. U.S. law and international treaties, which our country has signed, 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 that he would bar Muslims from entering the country. This would violate the Constitution’s guarantees of equal protection and religious freedom. Under the Constitution, never can a person’s dangerousness be presumed because of his or her religion or ethnicity.

In February, he 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.” He declared, “We’re going to open up those libel laws. So when The New York Times writes a hit piece which is a total disgrace or when The Washington Post, which is there for other reasons, writes a hit piece, we can sue them and win money instead of having no chance of winning because they’re totally protected.” Trump apparently does not know that libel laws are state law, not federal law. More importantly, 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 of the examples where Trump has shown a lack of understanding and disdain for the legal system. His campaign has used openly racist and anti-Semitic appeals. Just days before Justice Ginsburg made her statements, Trump’s campaign ran an ad criticizing Hillary Clinton for greed that had a six-pointed Star of David over \$100 bills. It is impossible to see the presence of the Jewish star as anything other than an allusion to the offensive association of Jews and money.

I understand why Justice Ginsburg spoke out. She is 83 years old and she 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 their views about political candidates. But there is a reason she did so, and that must not be obscured by the debate over her behavior: Donald Trump’s views on the law and the legal system are truly frightening.

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