

Courting Danger

Most American citizens have read about our country's foundation---among other topics, of its being in peril during the days of George Washington and Abraham Lincoln. Even reading only a smattering of history reveals this nation has undergone dangerous times, times that came close to splintering the republic.

I have been re-reading the biographies of Washington and Lincoln. I had forgotten the details of their stupendous achievements that were instrumental in the creation of America (Washington) and later, its rescue (Lincoln). After reflecting on their lives, I am certain Washington held the recalcitrant colonies together, then bonded them tightly enough that they were able to create the Constitution, and thus the United States. I am also certain that had it not been for Lincoln's outlier intelligence and uncanny political instincts the nation would have remained divided.

Today's America is not as perilous as its yesteryears when the colonies were attempting to forge themselves into a nation (late 1700s), or when the country was coming apart (mid-1860s). Nonetheless, the U.S. is entering into dangerous times, and has been traveling this path for several decades. In my book *Fractured*, I have described this recent history and the threats it poses to the well-being of the country.¹

The book covers the history of the United States from just after 1945 until September 30, 2023 (when it was prepared for publishing). This article examines events of the past several months, providing updates and amplification to the material in *Fractured*.

All Citizens are Affected

Several contributors to the growing fracture of America's political and social foundations are based on decisions made in federal courts. They are centered on granting more power to the office of the presidency---power that has the danger of making this office above the law, immune to the directives that govern all other citizens.

This trend is not one favoring one political party over another. It is dangerous for both Republicans and Democrats; for both pro-Trump and anti-Trump factions. While the examples below revolve around court cases involving a Republican, Donald Trump, it is a precarious trend for all Americans, regardless of one's political creed.

Courting Danger, Example One: Presidential License to Steal the Nation's Classified Documents

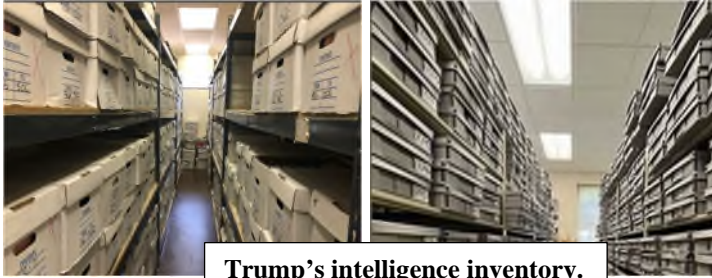
First, a sidebar about this writer's background in intelligence operations: For five years, while serving in the U.S. Navy, I was cleared for access to top secret material. I was also cleared to higher levels, permitting access to "eyes only" encrypted traffic available to a select few in the military and the intelligence community.

The care of my country's top secrets was deeply embedded into my ideas of responsibility and loyalty to America. On two occasions during this tenure, classified material under my purview was misplaced/mis-stored. All hell broke loose as my departments aboard a

¹ Uyless Black, *Fractured Volume One: How the Cold War Divided America; Fractured Volume Two: How Class and Culture Wars have Divided America*. Available at Amazon.com.

warship, and later, at the Defense Intelligence Agency (DIA), searched for the material. Fortunately, the documents were found; their contents had not been compromised.

The point of this sidebar is that classified material, while my responsibility, did not belong to me. It belonged to the U.S. Navy (the federal government). If I had carried it off the ship or out of the DIA facility, I was breaking the law. It would have been a cut-and-dry case. I would have been arrested immediately and charged with major crimes. Having been caught red-handed, I would have gone to prison.



Trump's intelligence inventory.

Donald Trump was caught red handed stealing classified material. He took it upon himself to take a "few" highly classified documents home with him when he left the White House.

Few, as seen in the photos above, which represent only a sample of the inventory. Trump treated this government property as if it belonged to him.

Donald Trump was in clear violation of the law. But because he stole these documents during the latter time of his presidency (or shortly thereafter), he was treated with kid gloves. He retained the material for a while, even after the Feds discovered the documents at his residence in Mar-a-Lago.

He then schemed "to keep [the material] from investigators attempting to recover them."² After all, possession is 9/10ths of ownership, even if the ownership came about illegally. It's akin to Lt. Black declaring, "Get off my property. This U.S. Navy material about America's assessment of China's submarines belongs to me. I stole it, fair and square."

During this time, it is unknown if the material Trump pilfered was compromised. In addition, at the time of recovery, it was unknown how much of the material, if released, would have been harmful to the U.S., perhaps exposing and compromising personnel working in the nation's intelligence community.

These are serious issues, and they relate to another severe problem: immunity from laws that govern the average citizen.

Above the Law. Lt. Black was not the U.S. President. Donald Trump was. So somehow, Trump is above the same law that would have sent Lt. Black to the brig.

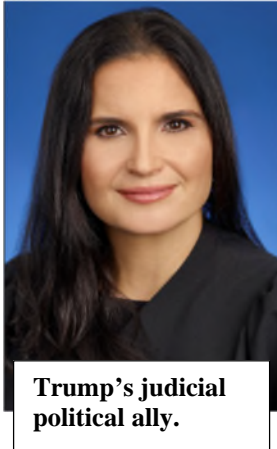
There is something seriously amiss about this concept and practice; something of which the founders of America were all too aware. For centuries, European kings and queens placed themselves above the laws that governed all others under their fiefdoms. Many citizens wanted to make George Washington a king, with all the despotic trappings of Europe's monarchies. Knowing the dangers of authoritarian regimes, he refused.

Trump is no dummy. He knew full-well he was in violation of America's laws regarding classified material. He ignored the laws, even defied them by stonewalling the federal

² *The Spokesman Review*, July 16, 2024, A3.

investigation and claiming the Feds were themselves breaking the law (!) by their entering his home looking for the classified material he himself had stolen.

Dismissing the Law. U.S. District Judge Aileen Cannon (see photo below) recently dismissed the federal case against Trump’s handling of the classified documents. She declared the “Justice Department’s appointment of a special counsel to prosecute the case was in violation of the U.S. Constitution.”³



Not so. Cannon’s legal logic is flawed and politically motivated. Cannon is in violation of her ethical and legal responsibilities to render impartial judgments. The legality of special counsels, which she dismissed, has been reviewed, tested, and held legal in other courts and cases. Going against all legal precedents preceding her ruling, she adapted rarely used procedures in the proceedings that favored Trump’s lawyers. She has been spending months dilly-dallying over what were simple pre-trial motions.

Aileen Cannon, using the power of the court, has undermined the rule of law for political purposes. While her behavior favored a Republican, another politically tainted judge could rule for a Democrat.

Courting Danger, Example Two: Supreme Court Grants Presidents Additional Immunity from America’s Laws

The balance of power between the executive, legislative, and judicial branches of the government was one of the central issues facing the founding fathers as they went about laying the framework for America’s democracy. As mentioned, they and their forebearers had witnessed how solitary-rule systems, such as the monarchical dictatorship in England, led to the suppression of liberty and free expression of people except those with intimate ties to the monarchy.

Fortunately for people who live in the United States, the nation’s founders forged a system where the three branches acted as checks on one another’s potential to abuse or overuse power. Part of this idea (rare at the time) was made widely known to the budding American populace by one man.

The patriot, Thomas Paine, wrote in his historic *Common Sense*, “In absolute governments the King is law so in free countries the law ought to be King.”⁴ It has long been held that in America, the law is indeed the king, with even the President of the United States is subject to the law---just like any other citizen.

A recent Supreme Court ruling places this vital key to the separation of powers, as well as the potential to upend much of America’s democratic underpinnings, in jeopardy. On July 1, 2024, in *Trump vs. United States*, a case about presidential immunity, a 6-3 decision ruled the President of the United States, “now has ‘absolute immunity’ from criminal prosecution as long

³ Ibid.

⁴ <https://www.bing.com/search?PC=YF73&q=who+said+%22In+absolute+governments+the+King+is+law%22>.

as their [Presidents'] alleged crime was done as an 'official act.'⁵ Here is the ruling as published by the Supreme Court:⁶

Held: Under our constitutional structure of separated powers, the nature of Presidential power entitles a former President to absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority. And he is entitled to at least presumptive immunity from prosecution for all his official acts. There is no immunity for unofficial acts. Pp. 5–43.

Repeating its ruling:

The Court thus concludes that the President is absolutely immune from criminal prosecution for conduct within his exclusive sphere of constitutional authority. Pp. 6–9.

It should be noted that a crime must be committed as part of the President's official act. The President is not protected for committing crimes that are not part of such an act. The rub is that any President, now aware of this distinction, can more easily mask his/her actions under the guise of behaving in accordance with official acts.

Chief Justice Roberts, who wrote the majority opinion, was "worried that presidents would not be able to fulfil their responsibilities if their days in office could later subject them to criminal prosecution."⁷

That is an incredible assertion. A President can break the law, essentially with immunity. This decision and Robert's comments give the President, as some news media write, a "Stay out of Jail" card.

The court expressed concern about future prosecutors acting in bad faith and going after a President. Really? How about a President acting in bad faith and going after the Constitution?

Above the Law. Justice Sonia Sotomayor, one of the dissenting votes, wrote, "In every use of official power, the President is now a king above the law." She also stated, "Today's Court...has replaced a presumption of equality before the law with a presumption that the President is above the law for all of his official acts."⁸

Our forefathers must be turning over in their graves.

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Whether or not one agrees with the two examples in this article, they exemplify the courts taking stands that should be left to Congress. But the gerrymandered, ideologically stalemated legislative branch is incapable of acting on such issues.

⁵ *The Press* (Coeur d'Alene), July 10, 2024, A5.

⁶ *TRUMP v. UNITED STATES CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT* No. 23–939. Argued April 25, 2024—Decided July 1, 2024

⁷ *The Economist*, July 6, 2024, 20.

⁸ *The Press*, *ibid.*

And these two examples, are just that, examples. Other court decisions are resulting in the judicial branch assuming more checks and balances than the other two branches of the federal government.

If present trends continue, I fear these thoughts from former Supreme Court Chief Justice, John Jay, will be rendered valueless: *Justice is indiscriminately due to all, without regard to numbers, wealth, or rank.*⁹

But not if one of the “all” is President of the United States. Paraphrasing Thrasymachus, of the 4th century BC, the principle of justice will become justice based on the interests of those in power. For this article, the executive branch of the United States government.

As stated, Republican or Democrat, all citizens should be aware what is happening in the federal courts of our nation and what is not happening in Congress.

⁹ John Jay, Supreme Court Chief Justice, *Georgia vs. Brailsford*, 1794.