

## ANOTHER VIEWPOINT

# Judge already drawn into election dispute

By Michael McAuliffe

A taut line in tug-of-war gets pulled from opposing sides. The force applied at one end determines the necessary effort on the other end to stay in play. That's the whole game, and it can be dramatic and fun as it ends; when it's a criminal case and presidential election at the opposite ends, the stakes change.

Judge Tanya Chutkan recently held a critical hearing in the case that charges defendant Donald Trump with criminal election interference. The hearing comes after the Supreme Court remanded the case for further proceedings after its immunity ruling. The mandate to implement its immunity decision is perhaps the most difficult assignment in the American justice system.

The Supreme Court not only judicially created three immunity categories for presidential conduct, it also (inexplicably to many legal scholars) fashioned a draconian evidentiary exclusionary rule that forbids the government from introducing any evidence of immunized conduct to tell the full story of what the president allegedly engaged in that wasn't immunized.

For example, as others have posed, if the

president took a million-dollar bribe in exchange for appointing an ambassador, a jury — if it was able to hear the case at all — might not be able to know what the payment was intended to accomplish.

The Special Counsel made his post-immunity decision move by reindicting Trump using a narrowed set of factual allegations to support the original set of charges. The new indictment is more succinct, but it also now doesn't contain allegations regarding the attempt to compromise the Department of Justice leadership in the election dispute process.

Now, it's the trial judge's turn to evaluate the government's updated indictment in light of the immunity ruling, re-establish a discovery schedule and set a trial date.

Trump's lawyers have two objectives — further delay and dismissal. Both are understandable from a defense perspective, but the judge so far isn't receptive. She rejected Trump's argument that he is entitled to a significant date deference (in effect, a stay of the proceedings) so he can campaign. The trial judge opined that the campaign was not relevant to the case. She declared: "I am definitely not getting drawn into an election dispute."

While undoubtedly made in good faith (with the upside of good optics), her

pronouncement is only partially correct. The case she's presiding over literally is about alleged illegal presidential election interference. Further, any decisions the judge makes about discovery becoming public or rulings about immunity claims prior to, or after, the election on Nov. 5 will impact the presidential election as well as the criminal case.

What is wholly accurate is that Chutkan's first and only duty is to the case, not the outside world, and the case's ripple effects on politics, elections, policy or even foreign policy, aren't her burdens. She has to wear judicial blinders.

However, a judicial declaration doesn't render the criminal case irrelevant to the world outside the courtroom.

Voters can and should evaluate the case's publicly available information. Trump alternatively uses the prosecution as an oddly shaped political shield and weapon, at least when courting his own core supporters. Even Vice President Kamala Harris, the Democratic presidential nominee, can't completely ignore the newfound democratic chants to "lock him up."

The presidential debate was an example. Trump repeated his claim that he's a victim of a politized Justice Department, ignor-

ing that his criminal conviction was in state court, not federal. Harris deftly allowed Trump's felon status to hang in the air.

Legal commentators, myself included, have argued that the court can and should take into consideration the need for a timely adjudication of the indictment's allegations. Whether that proposition stems from straightforward judicial economy or the belief that voters must know if a candidate for the presidency has been convicted of preventing the peaceful transfer of power is less important than the forward movement of the case itself.

Despite Chutkan's statement about irrelevancy, the Jan. 6 criminal case and the 2024 presidential election are linked by one person — Donald Trump. He's the common factor. Chutkan's duty (and challenge) may be to hammer a big spike in that taut line, to anchor it, so no one, not the defendant or the special counsel or even the Supreme Court, can rip it away.

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