

The torrent of Trump post-presidential revelations

BY MICHAEL MCAULIFFE

Guest Columnist

Post-presidential revelations usually come like sap from the maple tree — slowly and with great anticipation. We find out about the more secretive conduct of a former president over time, often measured in decades. Such is not the case with Donald Trump and the Department of Justice. We are being subjected to a torrent of sewage instead of a trickle of sap.

After being defeated at the polls, Trump sent private advocates bearing specious accusations of election fraud straight into the highest levels of the Department of Justice. The private lawyers, whose claims had been rejected by numerous courts across the country, even provided a fully drafted brief for the solicitor general (the government's advocate before the Supreme Court) to file on behalf of the United States with the goal of overturning the national presidential election.

Newly released communications reveal a lame duck chief executive trying to use the department as a personal sledgehammer, one designed to hit with all the force of a department with unique legal power. Trump did this without any deliberation within the department itself; he simply sent the missionaries because he wanted to remain in office. That Trump's appointed officials at Justice largely resisted his demands shows just how compromised the process was as Trump's acolytes pounded on the department's back door.

The country also is learning that Trump or his assistants directed the Department of Justice to secretly obtain sensitive and private information of journalists, reporters and even his own White House legal counsel, in an effort to advance his own personal agenda. The manner and scope of the subpoenas and other requests appear to violate longstanding procedural safeguards outlining the rare circumstances when federal prosecutors can seek such information. The former president's actions smack of stealth to avoid accountability, not pursue it.

Trump's authoritarian path regarding the election and the rule of law was like leaving loaves of bread in the road for all to find — from false pronouncements immediately after the election, to initiating deficient state and federal lawsuits, to creating political chaos in the state legislatures during the certification process, to muscling the Department of Justice into leading attempts to overturn the election, to, finally, inspiring a violent assault on the Capitol.

Admittedly, Justice is a department of the executive branch headed by the elected president. The executive branch possesses broad authority to shape policy in numerous areas including criminal justice enforcement. Any efforts initiated by Congress to limit or define the nature of contacts within the executive branch face significant separation of powers issues. In essence, no effective legal mechanism for accountability exists (other than, in theory, impeachment) when it is the law's enforcers who are potentially violating the laws.

However, the Constitution, in Article II, Section 3, requires that the president "... shall take Care that the Laws be faithfully executed." This provision becomes critical when applied in the specific context of White House-Department of Justice interactions. Both Republican and

Democratic presidents and attorneys general have for four decades publicly restricted the communications between the White House and Justice prosecutors about specific law enforcement matters and activities. The reason is non-partisan: It is to preserve and maintain trust in the fair and non-political enforcement of the laws against specific individuals or groups. That is, Republican and Democratic leaders in the executive branch heeded the dictates of Article II, Section 3 — its terms and spirit.

On the back side of Trump’s unrelenting erosion of the department’s norms and internal procedures, the Justice Department’s role appears to be stabilizing. One example is its evidence-based efforts to investigate and prosecute the individuals who committed crimes during the Capitol attack. The newly announced Justice restrictions on the manner and threshold for investigating members of the press represent another hopeful sign.

Citizens of all political persuasions need to recommit to the notion that the law answers to no one individual and no one office. The presidency isn’t an award of personal power but an exercise of entrusting institutional authority for a limited time and for legitimate purposes. The law may not prevent abuses of the executive’s interference with the Justice Department’s non-partisan responsibilities; it may fall to leaders of sufficient vision and discipline to defend the independence of the Justice Department.

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