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RWU First Amendment Blog: David Logan's Blog: Donald Trump And The Full-Employment-For- Lawyers Presidency

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April 4, 2017

Donald Trump and the full-employment-for-lawyers presidency

April 4th, 2017 by efitzpatrick



David A. Logan, professor of law and former dean of the RWU School of Law, who has studied and written extensively about First Amendment issues:

One thing you can say for Donald Trump's presidency: He sure keeps lawyers busy.

Within weeks of taking office, he suddenly rolled out immigration rules that banned entrance to travelers from seven predominantly Muslim countries, creating chaos and great anxiety at many airports. But that action was immediately challenged by state attorneys general and held unconstitutional by federal judges. And it brought [hundreds of pro bono lawyers to airports across the country](#) to help innocent people caught up in a Kafkaesque regime.



Attorneys Remain At JFK After Weekend Detentions Due To ...

newyork.cbslocal.com

The group of 30 volunteer lawyers say they will continue to set up shop inside the JFK's Terminal 4 as they do expect additional issues in the coming days.

Trump also has been enmeshed in litigation based upon conduct that arose before his election. A judge just gave final approval to a \$25-million settlement for people duped into believing Trump University was a bona fide educational opportunity. And litigation arose out of a dispute with a chef at one of his hotels.



Trump deposed in lawsuit against chef José Andrés

www.cbsnews.com

The president-elect is suing chef Andrés for backing out of a deal to open a restaurant in his D.C. hotel, blocks from the White House

He is also defending a libel action brought by one of the women who publicly accused Trump of sexual assault, using the same defense that Bill Clinton tried (unsuccessfully) to delay a damages claim of sexual misconduct brought by Paula Jones.

Now comes the latest: an incitement to commit violence claim made against candidate Trump arising out of inflammatory comments at a campaign event. You may remember the volatility of many Trump campaign events, with crowds chanting "lock her up" and "Trump that bitch!" and "Build a wall -- kill them all."

Similar anger was apparent at a rally in Louisville in March 2016, as candidate Trump saw protesters in the crowd and repeatedly exhorted his fired-up supporters to "get 'em out of here." Three protesters at the rally were then allegedly shoved and punched by Trump supporters. In *Nwanguma v. Trump*, the protesters seek damages for the manhandling that they experienced, which would constitute assault and battery under Kentucky law, and also damages from Trump for inciting the violence.

Trump's lawyers asserted the First Amendment as a bar to liability, and it is true that the U.S. Supreme Court has made it clear that incendiary speech can only be sanctioned in a narrow range of circumstances. Under the so-called "Brandenburg test," liability is appropriate if the plaintiffs can prove that (1) the statements "explicitly or implicitly encouraged the use of violence or lawless action," (2) the speaker "intended that his speech would result in the use of violence or lawless action" and (3) that "imminent violence or lawless action is the likely result" of the statements. The trial judge concluded that the protesters provided plausible evidence that satisfied each of these requirements and as a result their claims should not be dismissed.

Of course, it now is up to the lawyers for the protesters to actually prove these elements, and Trump's lawyers have made it clear that they will zealously defend against the charges. But one thing is for sure: Donald Trump's speech and conduct, both before and after the election, will be keeping lawyers very busy.

Posted by: [efitzpatrick](#) April 4th, 2017

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