

The Trump prosecution is a test of people, not process

One of the most consequential prosecutions in the nation's history surfaced just days ago. Donald Trump, the nation's former chief executive, became a criminal defendant for the second time. He now faces federal charges (along with his aide Walt Nauta) that include willful retention of national defense materials, obstruction of justice, conspiracy to obstruct, unlawful concealing of documents and false statements. Trump is scheduled to appear in federal court in Miami today.



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The justice system acted as the midwife for the charges, but it was the participants — prosecutors, agents, witnesses and even the target's attorneys and the target himself — who have animated the matter. In the Trump prosecution, the two — process and participants — often are conflated by critics who scream about an unfair, rigged system. Their goal (and Trump is one of this group) is to fire political weaponry into the court system and degrade the case to the point of collapse. That must not occur.

The new federal criminal indictment is a "case" only because grand jurors heard evidence in the matter and voted on recommended charges based on probable cause. During that investigation, prosecutors and agents issued and served subpoenas and they obtained and executed search warrants. These tools were based on established legal procedures and standards.

The initial appearance, the bond, the scheduling order, the pretrial discovery and ultimately a trial or a plea are the standard components of the federal criminal case. While accommodations will occur given the defendant's protective detail and the need to view/use classified evidence, the basic mechanisms developed over centuries will dictate the course of the Trump prosecution.

As such, the basic attributes in the Trump case are not special; the same process plays out thousands of times each year in federal district courts across the country. The Trump federal prosecution may be extraordinary — including the quantum of evidence described in the detailed speaking indictment — but the procedures relied upon to ferry the matter from one point to the next are common.

That's heartening, but it also may expose a different type of vulnerability. The nation's



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Donald Trump arrives at the North Carolina Republican Party Convention on Saturday in Greensboro, N.C. He is scheduled to appear in federal court in Miami today.

current legal and political crises arise from people, not rules. Whether the participants in the process adhere to the long-standing procedures and the oaths to honor them is a real and ripe dispute.

For example, whether the presiding judge can act as an efficient and fair magistrate is being questioned because of her previous decision-making in another Trump matter. The 11th Circuit Court of Appeals issued repeated rebukes of the trial judge's decisions in the Mar-a-Lago search warrant litigation. The appellate court didn't find the law lacking, but the judge's application of the rules. With the same judge now presiding over the newly charged case against Trump, the issue now is whether the judge's actions will confer credibility or detract from it.

As importantly, jurors will sit in judgment of the facts at any trial of the Trump case. The indictment outlines a compelling narrative and contains specific references to taped conversations, photographs, conspiratorial communications and video evidence. However, prosecutors aren't exempt from their professional obligations, including having the burden to prove all the offenses' elements beyond a reasonable doubt with admissible evidence.

The judge will provide the law to the jurors, but the jurors — selected by the lawyers and the court using a detailed process

known as *voir dire* — will determine the facts. Despite self-serving accusations to the contrary, the Justice Department does not have the power to convict; our criminal justice system assigns that to ordinary citizens, and it requires juror unanimity. With all the grandstanding, the availability of basic criminal justice procedures and protections to vet and resolve the matter should be a welcome feature, not the source of distrust.

The great challenge is whether the judge, the parties, the attorneys and the witnesses will allow the justice system's protections and rules to guide their conduct in the case. And the ultimate unanswered question is whether the public will respect the process as the case inevitably reaches a conclusion.

It is vital for the public to understand the criminal justice system itself doesn't need stress testing. The actions of the case's participants within or in breach of the rules will determine whether the nation falters or finds stability from the Trump prosecutions.

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