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CITY BAR

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**The Stress Test of the Rule of Law Continues in
“The people of the State of New York against Donald J. Trump”
Statement by New York City Bar Association President Susan J. Kohlmann**

The stress test of the rule of law in America continues with unprecedented attacks on the public servants involved in the case of “The people of the State of New York against Donald J. Trump.”

While New York Supreme Court Justice Juan Merchan has emphasized that the defendant has a First Amendment right to express himself, common sense and the factual record indicate that a line must be drawn.

The line must be drawn when a defendant calls the DA prosecuting his case “[a criminal](#)” or a “[thug](#)” or a “[radical left monster](#),” or when a defendant whose previous statements [incited supporters](#) to riot in the Capitol with deadly results calls the judge in his case “a Trump-hating judge with a Trump-hating wife and family,” leading to [dozens of threats](#).

During the arraignment, prosecutors reminded the court that in anticipating his indictment, the defendant had posted a composite [image](#) of himself wielding a baseball bat next to the district attorney and wrote that criminal charges could incite “death and destruction.” In the run-up to the indictment, the defendant also called the DA “[an animal](#),” used [antisemitic tropes to impugn the DA’s motives](#), and declared “[Our country is being destroyed as they tell us to be peaceful](#).”

After underscoring the defendant’s rights under the First Amendment, the judge [requested](#) that the defendant’s lawyers ask the defendant to “please refrain from making statements that are likely to incite violence or civil unrest” and to avoid rhetoric that could “jeopardize the rule of law.”

If necessary, a judge has the discretion to impose sanctions on a defendant whose words threaten to incite violence or civil unrest, and it will be up to the judge to decide how to exercise that discretion.

But separate and apart from how the judge decides to proceed, as lawyers we must speak out *now* against threats of violence and intimidation. We urge that enhanced security measures be taken *now* to protect those facing threats. We cannot wait to consistently and forcefully express to each other, our colleagues, and our elected representatives our absolute intolerance for violence, or the incitement of it, against the public servants whose well-being is essential for the independence of the judiciary and the fair administration of justice. That line has surely been crossed.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. www.nycbar.org