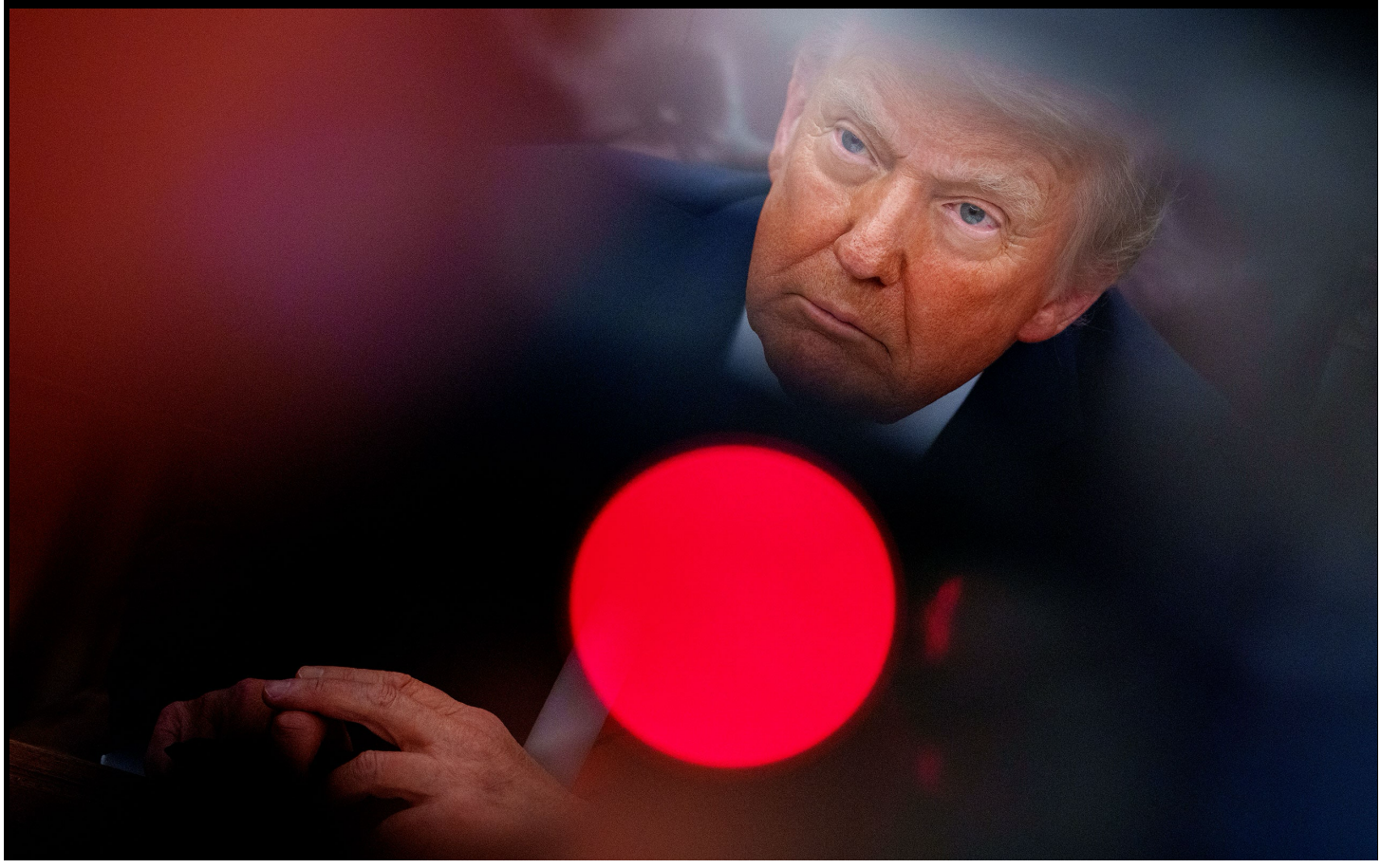
Feb. 16, 2025

The New Yorker Interview

We Might Have to “Shut Down the Country”

Anthony Romero, the A.C.L.U.’s executive director, talks about what he thinks could happen if the Trump Administration defies the authority of the courts.

By David Remnick



Photograph by Andrew Harnik / Getty

Listen and subscribe: Apple | Spotify | Google | Wherever You Listen

Sign up for our daily newsletter to get the best of The New Yorker in your in-box.

In less than a month, Donald Trump has come through on his promise to exact retribution on his enemies and to set about overhauling the federal government. Whole agencies are potentially being tossed, to use Elon Musk's heedless language, into "the wood chipper." To understate matters radically, Trump has sparked many debates. One of them is how close is the United States to a constitutional crisis: Are we headed toward one, on the brink, or already there?

If there is going to be a concerted resistance to Trump's blizzard of executive actions, it will likely play out largely in courts across the country and, ultimately, in the Supreme Court. And if the Administration spurns court orders, what happens next will conceivably determine the fate of democracy and the rule of law in our time. Chief Justice John Roberts himself said in December, as the Biden Administration began closing shop and the incoming Trump Administration made its intentions increasingly clear, that in our current politics, we now live with the "specter of open disregard for federal court rulings." And what would such a conflict look like with MAGA loyalists like Pam Bondi leading the Justice Department, Pete Hegseth leading the Department of Defense, and Kash Patel leading the F.B.I.? Some legal scholars recommend a keep-your-powder-dry attitude for the time being. But there has arguably not been such a potentially dramatic test of the country's constitutional order since the Civil War era.

The American Civil Liberties Union, a major player in this drama, has been quick to file lawsuits on, among other issues, birthright citizenship, which the Administration seeks to eliminate. Anthony Romero, who is fifty-nine and grew up in public housing in the Bronx and later in New Jersey, has been the executive director of the A.C.L.U. since 2001. I spoke with him recently for The New Yorker Radio Hour. His sense of resolve and confidence were all in evidence. But if things go south and Trump defies the courts, he said, "we've got to shut down this country." What does *that* mean? Our conversation has been edited for clarity and length.

Let's begin with the most essential question, legal and political. Are we—less than a month into the Trump Administration—on the brink of a constitutional crisis?

I think we could very well be there. We're at the Rubicon. Whether we've crossed it is yet to be determined.

Well, describe what the Rubicon is.

The Rubicon is the flagrant disabuse of judicial power. If the Trump Administration decides to run the gantlet and openly defy a judicial order, in a way that is not about an appeal, it's not about clarifying, it's not about getting a congressional fix, but open defiance to a judicial order, then I think we're there.

What are the issues where that's a possibility?

Well, there are forty cases, so many of the issues could be the one that precipitates the Rubicon moment. There have been a bunch of lawsuits around the Department of Government Efficiency, and whether or not the DOGE and Elon Musk have overextended their power. There are some who say that they're violating the Privacy Act; that they're accessing personal identifiable information on American citizens—their Social Security numbers, their tax returns, all sorts of information that are in the government data banks. Now, whether or not they've actually accessed that, whether there's harm, whether or not the individuals who are bringing cases have standing, those things are all to be determined by the judges.

Then there's all the questions around shutting down, or the closure of grants from the federal government, from U.S.A.I.D. and other agencies. And there's the "fork in the road" litigation.

And just to be clear, this is considered illegal by legal experts because—

Because Congress appropriates the money. It's not in the President's power to rewrite the appropriations from Congress.

You have the Vice-President of the United States saying that judges are not allowed to control the executive's legitimate power. What say you, as the head of the A.C.L.U.?

"Legitimate"—that's the word that jumped out at me. And that's what we're arguing about, whether it's a *legitimate* use of executive-branch power. It's not a new controversy. We've had these debates before. The unitary executive—remember that back in the days of George [W.] Bush? Of course, most Presidents have tried to exert a much more muscular approach to executive power than I think the courts or Congress often give them the room for.

Where do you think the Rubicon will be—on what issue and in what court?

The one I'm most worried about is birthright citizenship. That was the first executive order. That was the first case we filed, two hours after he signed it.

What does the Trump Administration want and what does the A.C.L.U. want?

They want to eliminate the right to citizenship if you are born here, which was established in the Fourteenth Amendment. It's also in the statute. It's how we created American citizens out of the children of slaves.

For us in the civil-rights community, this is hallowed ground. This is how we fixed that problem that we had in terms of chattel slavery, and how we made all of us citizens and so that the citizens included the children of slaves. It's also the way that we became a nation of immigrants and levelled the playing field. It's the great equalizer, David.

And so to go at it and say, in an executive order, I'm going to repeal birthright citizenship is both trying to undo a core tenet of the Bill of Rights and also the statutory provisions, which are equally clear. So we have belt and suspenders on when it comes to birthright citizenship, and they're trying to rip them both off.

If birthright citizenship goes the direction that the Trump Administration wants it to, what are the repercussions and what are the actions that could follow?

Well, the repercussions are enormous. If they were allowed to repeal birthright citizenship, that means that even people who are here lawfully, and whose kid is born here, would not be a U.S. citizen. So take, for instance, two graduate students at Princeton who are here lawfully, and are endeavoring to make a life here. If their kid is born here, it wouldn't necessarily mean that that child is entitled to birthright citizenship. So the implications are enormous.

Do we have any sense of the number of people that would be in jeopardy?

There would be hundreds of thousands. We have clients already in our litigation who are pregnant women, whose children would be born after the date of the executive order, whose citizenship would be called into question.

So siblings would be potentially rent apart, and parents and children would be rent apart as well.

And you would create a legal vehicle for intergenerational stigma and discrimination. In places like Germany or Japan, these countries still struggle with what it means to be a German citizen or Japanese citizen. You see the discrimination against Koreans in Japan. That's because they haven't had a concept like birthright citizenship, the way we do.

Who else has filed birthright-citizenship cases?

We have the attorneys general, we have many of them on the East Coast. I think there are two cases on the East Coast, one case on the West Coast. And the attorneys general are important contributions because they're making arguments on behalf of their citizens not just because it implicates the citizens of their state—of New York State or New Jersey or Washington State. They're making administrative arguments. How the hell are we supposed to implement this?

I looked at my birth certificate, and it basically said: Anthony D. Romero, son of Demetrio and Coralie Romero, born in New York City. There's no vehicle for these states to corroborate the citizenship of the parents. How are they going to do the administrative investigations on whether or not you're a citizen? It creates an enormous burden on the states to be able to do that. And so I think that's why the attorneys general are so key in this litigation as well.

If you lose?

We ain't going to lose.

O.K. But if you lose, that case would then be sent to the Supreme Court?

It would go up into the Federal Court of Appeals and then to the Supreme Court.

And knowing what you know about the Supreme Court, ideologically, politically—

I think we win.

You win anyway?

We win anyway.

Because you have to say that?

No, no. I've never been this bold. I've been in my job twenty-three years. I don't usually predict the outcome of our cases, because my heart's been broken multiple times.

And you don't think your heart will be broken again?

No.

Why?

Because I think this is really, really going a step too far. [Samuel] Alito and [Clarence] Thomas are the only ones I can't bet on, but I think even [John] Roberts, [Neil] Gorsuch, [Brett] Kavanaugh, and Amy Coney Barrett, and certainly the three liberals, are there at a point where the Supreme Court would eviscerate their legitimacy among constituents and audiences that really care.

Is your confidence specific to birthright citizenship or is it across the board?

No, it's birthright citizenship. The rest of it is more up for grabs.

Where else could you locate a constitutional crisis that's now happening, or in the process of happening?

Suits around congressional appropriation of funds that are now being disregarded by the executive branch—those very well could be the precipitating factor for a constitutional crisis.

What happens when and if there is a constitutional crisis? What happens if a White House refuses to obey a court order?

Well, then you've got to sue to implement it. I mean, we've been here before. We've had two different lawsuits, years ago, against Sheriff Joe Arpaio and Kris Kobach, both of whom refused to implement an A.C.L.U. order that we had won in litigation. [Maricopa County] Sheriff Joe Arpaio was someone who was trying to round up immigrants in Arizona. He was corralling people up and having Gestapo-like law-enforcement efforts focused on immigrants. [Kansas Attorney General] Kris Kobach was the one who was trying to purge people from the polls.

And both of these individuals we sued, and we won, and they didn't like the fact that we won. They tried to defy these court orders in both of those instances, and so you sue to implement your rulings. You would threaten them with fines and threaten them with incarceration. Ultimately—

You're going to do that with the President of the United States?

You bet.

We've seen the Republican Party become the party of Trump. They are well aware that if they defy Trump in any way, they're going to lose their seat. Doesn't give you a lot of confidence, does it?

Look at the Supreme Court. Six to three. It has been a generational shift in the consolidation of conservative power in the Supreme Court. If I'm a good old conservative, I'm not going to fritter away that power. Why would I immediately allow my Supreme Court or my federal judges to be diminished in their status and power?

And you will, in the process, though, defy the President who puts you on your seat?

I think there will be moments when good people of conscience will stand up. I do.

So what stands between us and the ruination of the Constitution is the conscience of good people?

The conscience of good people, the work of good people. The judges are the front line right now. It's not people in the streets as much. It's really the judges who are playing a critical role in this effort.

Do you sense, in the political and public world, any politicians who are forcefully, clearly, and effectively speaking up for what you are talking about?

I'm looking.

You're looking?

I'm looking, I'm listening.

And not finding any yet?

There's a lot of mumbling. You see the articles about how some Democrats are trying to find their feet under them.

What's the problem?

I think they're still a little bit in shock. I don't have to run for office. I don't have to be popular. When I file my transgender-rights lawsuit, I don't need fifty-one per cent of the American people to agree with me. I know what's right; the equal-protection arguments are what's right.

Yeah, but let me ask you a question: If they're not going to stand up now, when will they stand up? And for what?

It's a great question.

Are you despairing of it?

No, I think it comes around. I compare this moment, David, to the 9/11 moment. That's when I started my job, the week before 9/11. You remember the Patriot Act was enacted with everyone's assent in Congress except for one, Russ Feingold.

And so I told my folks back at the A.C.L.U.: this is a time where you have to ride this moment, just like we did after 9/11. We have to build public momentum. The war on terror was very popular. The deportations that former Attorney General John Ashcroft did, the creation of Gitmo as a place to hold people and detain them . . .

Gitmo is about to get a new lease on life, potentially.

They're going to try. We're litigating that one, too.

We've already seen ICE scoop up U.S. citizens and immigrants not convicted of crimes. What's the legal path to protect people in schools and churches and day-care centers from the threat of deportation?

Well, there are sanctuary-city laws and sanctuary-jurisdiction laws that are in fact—

Which are the source of contempt for the Republican Party.

Yeah. And they can be defended. It's important that, for instance, the litigation they're bringing against the City of Chicago, we think is really far afield. They cannot use the power of the purse and pulling money from roads and hospitals and schools to pressure them on immigration. That's got to be challenged in court. The governors and the state attorneys general, especially in the blue states, have enormous power to put up roadblocks.

You find that they're feeling their sense of authority, or are they backing off?

I think some of the governors are beginning to find their sense of authority—in Colorado and New Mexico.

How about New York?

In New York, we're working on it.

"We're working on it." You're not confident in Governor [Kathy] Hochul?

Well, I think the Governor is really working with us. I think the mayor is a bit more complicated on the immigrants'-rights issue.

Eric Adams, in New York City.

I think it's complicated.

"Complicated" is a euphemism for what?

For not what we'd like it to be.

For not standing up. [*Laughs*.]

For not what we want it to be.

One of the characteristics of the moment we're living in is the absolute speed and volume of what's coming out of the White House—what Steve Bannon called "flood the zone with shit." That's the strategy and it's being enacted with real efficiency and real skill as compared to the first term.

But the zone is responding. There are more than fifty or so executive orders that have come down. There are more than forty lawsuits that have been filed in response. I'm really quite impressed with the ecosystem of groups that have been involved. The A.C.L.U. can't do it alone. A group like Democracy Forward is an excellent group doing outstanding work on many of the issues that we don't cover. There are groups of attorneys general, as you mentioned, the blue-state attorneys general. It's really quite a different moment. People realize that the zone is being flooded and it requires us to coördinate with each other in a way I haven't seen before.

You sound pretty confident.

I'm not sure I'm confident in the ultimate outcome. I'm confident in the response that we're engaged with. We have filed over ten lawsuits already in three weeks.

One of the major, major cultural issues that came up during the election—and this is very much in your wheelhouse—is free speech. The A.C.L.U. has fought for the free speech of leftist students on campus as well as somebody like Ann Coulter. Your traditional defense of the First Amendment is bipartisan, but when a gazillionaire like Elon Musk buys a social-media platform and brings Nazis back to it, and appears to do a very strange salute on television, how does the A.C.L.U. absorb that?

I think the same principles apply, right? It's just that we have to make sure that the government stays out of the business of regulating people's private speech. That is probably my biggest concern right now, that hasn't yet materialized or matured. But it may.

Were you comfortable with the way Facebook and Twitter barred certain people from—

No. We criticized Facebook and Twitter when they de-platformed Donald Trump. I mean, they kept people like [Jair] Bolsonaro and [Viktor] Orbán on, but they de-platformed Trump. We felt that they were not calling balls and strikes as they saw

them. And we criticized them in real time, and we applauded them when they re-platformed them.

So are you pleased that, say, Mark Zuckerberg has changed his policy on Facebook?

Facebook is afforded a lot of latitude because it's a private entity—the right to set its terms of service. That's part of the free-speech kind of framework.

And you see it as a platform or as a publisher?

I see it as a platform. And there are parts of it when they're pushing the algorithm out, and it's both a platform and a publisher. And that's why I think they can have a different set of rules applying to different parts of these companies. The algorithm is more like a publisher, and so you have to scrutinize it differently. But the terms of service—in terms of the individual user, and the ability to post one's content, even when it's hateful or not aligned with the A.C.L.U.'s values—has also got to be secure.

Let me go back to your trust or confidence in the courts. A federal judge called out the Trump Administration for blatantly ignoring an order to resume federal funding for the Office of Management and Budget that had been frozen. What can you do if Trump simply ignores the judges, and doesn't want to listen to anybody, and just directs his people to keep doing what they're doing? What possible authority or power does anyone have in this, much less the A.C.L.U.?

I think you keep running the gantlet. Basically, the Trump Administration is arguing not that we don't have to heed you. They argue in their response to the judge: no, we are heeding you, we think your order was more limited. The judge then clarified, I think on Monday, saying that no, he had meant for them to reinstate all the grants writ large. And so this will continue to move up the food chain.

The crisis moment comes when the Supreme Court rules and says, The Trump Administration has flagrantly disregarded a clear judicial order, and thou must comply. And if they don't comply, then we're in a different moment.

I realize I'm repeating myself, but: play that moment out.

We have to exhaust all the remedies. We have to get fines. We have to ask for incarceration of individuals who flagrantly disregard judicial orders.

And that includes?

And that includes the federal-agency heads.

And it also includes the President of the United States, does it not?

He himself or the Vice-President? Sure, sure. No one's above the law, right? Now, if we do not succeed, let's say no one comes—the cavalry doesn't ride—

Then what?

Then we've got to take to the streets in a different way. We've got to shut down this country.

What does that mean?

We're just beginning to think it through. We're talking with colleagues and other organizations. There's got to be a moment when people of good will will just say, This is way too far.

What's the historical precedent for that anywhere?

Well, there have been efforts. Marbury v. Madison—the case in which the government tried to snub its nose at the role of the Supreme Court. The Supreme Court was not yet as powerful or as established an institution as today. You also had F.D.R., who tried to pack the Court. It's not new that Presidents bristle at judicial oversight. Clinton passed some of the most egregious court-stripping measures, like the law on prison reform, where he basically tried to get the courts out of the business of looking at prisoners'-rights cases or immigrants'-rights cases.

But I can just hear the listener's mind saying, O.K., that was Bill Clinton, and that was bad enough. This is a person, an executive, a politician of a very, very different order.

Totally agree. And we've got to take it one step at a time.

When you say "shut the country down" and take to the streets, who's doing that? Because I have to tell you, this time around, so far—and we're not even a month into this—the number of people that you sense have decided things are so complicated, difficult, or awful, and have decided to shut politics out of their mind—"I'm not watching the news," you hear this—is alarming.

It is alarming, but it's also true that it's evolving. I mean, for instance, we had a town hall recently. Fifty thousand people turned up. Largest number ever, even compared to Trump One.

It's a self-selecting group, though.

Yeah, but that still shows you that there's more energy there. There's more of a heartbeat. I wouldn't give up on the patient just yet. There's more of a pulse.

Let's go back to the phrase "shut the country down" that you used. What does that mean?

I think you have to call on, for instance, corporate leaders. We'll have to yank them into the pool with us if they believe that part of what is going to protect good corporate interests or the workings of the economy is the rule of law. There's got to be a moment when people are saying, Can you countenance this?

President Biden had a number of instances when he bristled at judicial oversight and judicial review. He hated the effort to shut down his student-loan program. It's one of his signature programs. He never got it through, because the courts got in his way.

But it's really quite another matter when there's a final order, from the highest court of the land, and the President just says, Doesn't bother me. I don't have to heed you or hear you. That is a moment when I think we'll be able to harvest the opinions of people, and get people engaged in a very different way.

One of the instruments for mobilization is communication—information, the press. We've seen, in the last weeks, a lot of outlets of the press pay obeisance as well.

Sure. The settlements.

And what does that tell you?

Well, that means that we've had to help them find their spine.

It's located in the back. It connects the brain to the rest of the body.

And it can be reinforced with a steel rod. With or without anesthesia. But I think it will have to come, David. And I think—

Haven't the courts, though, changed in recent years? Donald Trump had time to install a lot of—

Twenty-eight per cent of the federal judges are Trump appointees.

And have you sensed that difference in your cases?

Sure, sure. They're on the bench and sometimes they watch his back, and sometimes they rule in ways that are kind of head-scratching in terms of how far they will go to protect the person who put them on the bench. It's also true that sixty-five per cent of the judges have been appointed by Obama and Biden. So there's a larger number of them. That will change as they start to move judicial appointments.

I mean, what's in front of us? I mean, let's talk a little bit about what else might be in front of us that's not just the onslaught of the executive orders. This is where I'm going to curl, or uncurl, your listeners' hair.

We have not yet seen the mass deportations that I think are on the horizon. I think the number I've seen is somewhere between five and six thousand people in the first two weeks. It's about half the number of the deportations that you saw in the last year of Biden. I don't believe it's just smoke and mirrors on this one. I do think they're going to run the gantlet on deportations. When they start revving up that machinery, that's going to be massive. So that's No. 1. I think the deportations is something to watch out for.

Have you looked at the polls on how people favor deportations?

Yeah, but when they start seeing that their nannies or their gardeners or their fellow-workers or the local shoeshine guy—

Or their neighbors—

Or their neighbors are getting ripped up, and that U.S. citizen kids are put in family protective services as a result of it, when they start seeing . . . Because what they ran on was saying, We're going to get rid of the criminals. Well, that's clearly not what they're doing already. When they really ramp up and they start grabbing all these individuals who are part of the social fabric, I think we'll harvest that.

You're suing the Trump Administration for an executive order forcing passports to reflect gender assigned at birth, which has laid out a binary definition of gender. What's the point of Trump making that claim, and how do you form a legal case against it, and him?

It's fearmongering. It's a card that he played in the election. You saw the ads he ran. "She is for they/them, I'm for you." It was clear fearmongering against a community, 1.5 million people, who are really under assault. You have over five hundred state laws that have been targeted at the trans community. It's really an onslaught the likes of which we haven't seen in generations.

On matters of speech: Would the A.C.L.U. today defend the right of American Nazis to march in Skokie, Illinois? [*In 1977, the A.C.L.U. defended the National Socialist Party of America, which applied for a permit to march in Skokie, home to more than forty thousand Jews, including many survivors of the Holocaust.*]

You bet. We just took the N.R.A. case a year ago. The N.R.A. came to us saying, You are the best litigation organization on free speech. And I said, O.K., I'll take over your case. You are the client. We are the lawyers. We will argue for the N.R.A. in the Supreme Court. This was a case of Governor [Andrew] Cuomo and the administration trying to shut down the N.R.A. because they didn't agree with its pro-gun policies. And we saw it as a free-speech issue, and we brought that case and won, 9–0, in the Supreme Court.

How does the A.C.L.U. feel about cases at, say, universities where protesters shut down a speaker?

No, the heckler's veto is a problem. You have a right to free speech, but you don't have a right to shut down information, debate, discussions. There are limits.

Finally, what are the main challenges now in front of the A.C.L.U.?

We are going to see a scaling up of deportation efforts. I think they will come for the millions of undocumented people in our communities. And that will rip apart the social fabric.

Congress has been on the sidelines. Congress can get into this game, to our detriment. The Republican Party controls both houses of Congress. When Congress starts rolling out its version of the avalanche of executive orders that we've seen—in terms of a federal abortion ban, any of the efforts to defund Planned Parenthood; there's a whole bunch of revising of the nation's immigration laws through statute—that could be quite a moment.

The third one would be, of course, the issues around defying a judicial order that I think we are already looking at and trying to anticipate. But when those elements come, I think that we'll have really a very different debate in this country.

One of the seminal texts that's been published in the past decade, warning about authoritarianism, is Timothy Snyder's "On Tyranny." And he warns against knuckling under in advance, and warning against exhaustion. Do you see that? Or do you see the opposite?

Knuckling under in advance? You see that in other places. I mean, look, that's what a lot of these tech leaders, that beautiful parade of billionaires who were preening for the camera behind the President as he took the oath of office. Now, I know some of them personally, and I know that some of them were there because they felt they had to defend their corporate interests, their shareholder interests.

But I think there, you definitely see the knuckling under in the private sector. I think the fatigue factor is a matter of pacing ourselves.

Is it possible to pace yourself considering the ferocity and speed at which things are happening?

You've got to retain bandwidth. If we run the gantlet and we file all the cases that we need to right now, and then don't have the ability to file them in years two, three, and four, we'll do the country no good. We have to play this game smartly. And we are picking and choosing our battles. ♦

Sign up for our daily newsletter to receive the best stories from *The New Yorker*.

David Remnick has been the editor of The New Yorker since 1998 and a staff writer since 1992. He is the author of seven books; the most recent is "Holding the Note," a collection of his profiles of musicians.