

THREE THINGS: WAS SLOW RESPONSE TO HURRICANE MARIA DELIBERATE?

I can't help wonder why the post-hurricane response to Puerto Rico's devastation was so bad – so bad it looks deliberate.

THE TRUMP TRASH TALKING OF PUERTO RICO

This spot in our week here at Emptywheel is supposed to be a set aside for light hearted banter on sports, especially football and Formula One. That is what we have done since our beginning a decade ago. But I just cannot summon the enthusiasm for that right now.

TRUMP'S BELATED JONES ACT WAIVER FOR PR IS A SHAM, HERE'S WHY

This means Trump's "waiver" has maybe five days of use to Puerto Rico, an island of devastated American citizens that will be rebuilding and recovering for years.

THREE THINGS: SO MANY QUESTIONS, SEPTEMBER EDITION

So many questions have piled up, needing answers – I had to take time out to put bits and pixels to digital paper. Brace yourself.

DID PRESIDENT TRUMP VIOLATE FEDERAL LAW WITH HIS ALABAMA RANT?

I wrote yesterday about the racial, social and football implications of Trump's rant in the history and home of George Wallace.

But a new, and by all appearances excellent, commenter on that post noted this:

"It occurs to me that his tweets are at least arguably in violation of 18 U.S. Code § 227. That section prohibits the POTUS (among others), from "attempting to influence or interfere" in a private company's labor matter, to urge a "political" firing. This is especially true where the basis for the POTUS's urging of the firing of such a private company employee (union covered, collective bargaining agreement governed) – is (as here) centered on protected political first amendment expression."

So, is that right? Well, it is a LOT closer call than most would dismissively think. Let's look at the language of the relevant statute, 18 USC §277:

18 U.S. Code § 227 – Wrongfully influencing a private entity's employment decisions by a Member of Congress or an officer or employee of the legislative or executive branch:

(a) Whoever, being a covered government person, with the intent to influence, solely on the basis of partisan political affiliation, an employment decision or employment practice of any private entity—

(1) takes or withholds, or offers or threatens to take or withhold, an official act, or

(2) influences, or offers or threatens to influence, the official act of another,

shall be fined under this title or imprisoned for not more than 15 years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(b) In this section, the term "covered government person" means—

(1) a Senator or Representative in, or a Delegate or Resident Commissioner to, the Congress;

(2) an employee of either House of Congress; or

(3) the President, Vice President, an employee of the United States Postal Service or the Postal Regulatory Commission, or any other executive branch employee (as such term is defined under section 2105 of title 5, United States Code).

Read the statute. It is a lot closer call than you think. Will Trump's own Department of Justice pursue this? No, no chance, nor probably should it be. Is it a viable question, and one

that ought be discussed in the public and media, yes, absolutely.

As sports law “experts” would say, let’s break it down. There are elements to a crime. Trump is unequivocally a “covered person” within the ambit of the statute. Also unequivocal is the fact that his words in Alabama were meant to influence “an employment decision or employment practice of any private entity”, in this case, the National Football League.

The problem lies in section (a)(1) of the relevant statute, which requires:

takes or withholds, or offers or threatens to take or withhold, an official act

It is easy to see and admit that Trump would do just that in a heartbeat. But Trump did not do that per se in his Alabama speech.

No. That element cannot be met by Donald J. Trump’s Alabama Song of hate. So, no, there is no exposure to 18 USC §227.

It is a great thought and question though.

And it is a perfect example of the precipice of racism, bigotry and ignorance on which the political discussion in the United States, and our Article II Executive Branch, courtesy of President Trump, nows perilously treads nearly every day.

The events and actions in and from the NFL today, tomorrow, and in the next few weeks pale in comparison. They are a symbol and a voice. But it is so much more and bigger than that.

WHEN THE PRESIDENT

HATES A RACE AND TALKS RACIST TRASH

President Donald J. Trump is a racist bigot. Jemele Hill was right on that one, not that sane people had not already realized it long ago, and well before his election. Take his ignorant position on the Central Park Five case, just as a for instance. Then add on how he was sued decades ago for discriminating against blacks in housing. Throw in a thousand other tell tale points and you have a picture of a self entitled candy assed rich New York racist. That is just who he is. It has always been there for inquiring minds to see if they so desired.

Now the latest pure and unadulterated racism from the now President of the United States. Last night in Alabama, Trump let loose a rambling self centered screed of a speech that would make George Wallace cringe. Here is a sample:

"Wouldn't you like to see one of these owners, when somebody disrespects our flag, to say, 'Get that son of a bitch off the field right now, out, he's fired. He's fired!'"

He then went on to state that any player so exercising free speech should be "fired" and unemployable at their career job. From Michael David Smith at PFT:

Trump said an NFL owner who releases a player would instantly gain broad support across America.

"Some owner's gonna do that. He's gonna say, 'That guy that disrespects our flag? He's fired. And that owner . . . they'll be the most popular person in this country. Because that's total disrespect of our heritage. That's total disrespect of everything we stand for,'" Trump said.

Trump added that he believes fans should walk out if players don't stand for the anthem. "If you see it, even if it's one player," Trump said, "Leave the stadium."

Trump also argued that if they do this to boycott the NFL and personal free speech, they would be supporting him and his position.

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l Bennett and Malcolm Jenkins, prominent NFL players who have had the audacity to be free thinking humans and exercise the protected free speech our Bill of Rights is led by and that generations of American patriots fought and died to preserve. Donald Trump shits on every ounce of that every time he goes on one of his little pointed and racist rants. And boy did he shit on it last night in Alabama. You'd almost think Trump is aligned with the neo-Nazi white supremacists with torches in Charlottesville that he praised as "fine people" instead of the full diversity of American citizens. Including, you know, black people.

Was Trump done? Of course not. He then cravenly went on to scold the NFL for being soft because of their (still lame and ineffective) concern about CTE degenerative brain disease:

"When the ratings are down massively, massively. The NFL ratings are down massively. Now the number one reason happens to be that they like watching what's happening...with yours truly. They like what's happening.

Because you know if they hit too hard...Fifteen yards! Throw him out of the

game! they had that last week. I watched for a couple of minutes. Two guys, just really, beautiful tackle. Boom, fifteen yards!

The referee gets on television, his wife is sitting at home, she's so proud of him. They're ruining the game! That's what they want to do. They want to hit. They want to hit! It is hurting the game!"

An outrageous thing to say about, again, American citizens and their



workplace safety issues. Especially when the most recent studies found CTE degeneration in 99% of the brains from NFL players they have examined. And when the NFL was just slapped with a complaint on Aaron Hernandez that exhibited that even a relative young player displayed "a raisin-like brain of a 70-year-old even though he was 27". Simply craven, bigoted and outrageous.

It is the the stuff of a narcissistic self entitled bigot plantation slave owner. Trump literally thinks he is not only the the better, but genetically superior to other humans, including the constituents he works for. Including people he thinks are owned as slaves by the NFL and other terrorized employees.

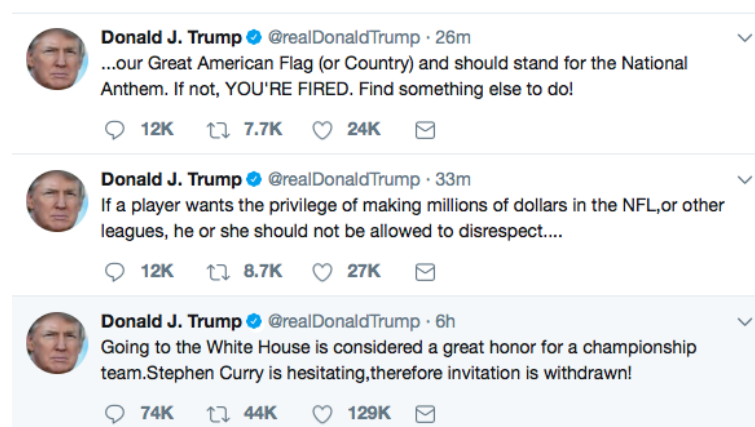
When Trump instructs NFL owners to fire people that disagree with his own petty world view, he thinks they are plantation owners such as he sees himself with the rest of humanity. Trump makes "the best deals" but cannot see, nor

appreciate, the NFL collective bargaining agreement (CBA), nor does he respect that deal for squat if employees thereunder happen to annoy the fat ass boy king and god.

Apparently Trump thinks the illustrious group of NFL owner oligarchs are his bitches too. As Don Van Natta noted, "Bob Kraft, Jerry Jones, Stan Kroenke, Daniel Snyder, Shahid Khan, Woody Johnson & Bob McNair each gave \$1M to Trump". That is nearly one quarter of the NFL owners. What are they rewarded with by their benefactor Trump? A call for boycott of their business interests unless they enforce an unconscionable suppression of political free speech he disagrees with.

This may "only be sports", but this is one of the more stunningly outrageous and un-American symbols of the cancer the Trump Presidency really is. And what a demented, sick and small man Trump really is.

Did Trump stop with that stunning pettiness and bigotry? No, of course not. He woke up and decided to be the charlatan of humanity he really is, and decided to lash out at another icon of sports. Steph Curry. And more:



Well that is brilliant Art of the Squeal Like a Pig Don.

So, lets see, who has Donald Trump lashed out at exclusively in the last 24 hours? Ryan Lizza hit it on the head:

Trump has now attacked Jemele Hill,

Colin Kaepernick, & Stephen Curry. All have something in common but I can't quite put my finger on it.

Ryan was being sarcastic about the putting a finger on it. And, again, he was completely correct in his observation. I wonder what Trump would say about a golden white boy who turned down a White House invitation"? Oh, wait....

The face of the New England Patriots, Tom Brady, did not attend Wednesday's White House ceremony with his teammates due to "personal family matters" – but the show went on without the star quarterback.

Brady's decision not to visit the White House comes on the same day former teammate and convicted murderer Aaron Hernandez was found dead after an apparent suicide in his prison cell.

Yes, a pure as white can be Tom Brady gets no bad mouth at all from our racist bigot President, but be a black person in sports, whether athletes like Colin Kaepernick and Michael Bennett, or sports journalist like Jemele Hill, and he will try to deprive you and your family of the essential income your professional career provides.

This is where we are in America in the Age of Trumpism. If you are a white nationalist fat ass racist bigot, your President thinks you are "fine folk". If you are an intelligent black, brown, gay or other, even trying to serve your country's military, your President, Trump The Genetically Magnificent, will attack you and your family's very source of income, and well being, mercilessly.

It is the shame of modern America.

I'm sorry, I've no stomach for the actual games this weekend at this point. We can all discuss that in comments, but not here. Not now. Not

after this.

JEMELE HILL IS RIGHT, TRUMP IS A RACIST BIGOT, TRASH TALK

The biggest sports story of the week, unless you are a legal freak in the Zeke Elliot weeds, is more politics than sports. The classy and wonderful Jemele Hill of ESPN let fly some hard truth about Trump on his favorite medium, Twitter. And of course the vacuous suits at Fox News got bent out of shape over the fact a smart woman, especially one of color, had the temerity to point out that their boy Trump was indeed a racist bigot.

I usually tailor videos and images, but had a hard time with this one from USA Today, so you get the full screen scene this time. It is short and lays everything out that you need:

Did Jemele take to a soapbox and do this on air with her partner, Michael Smith on their absolutely excellent Sportscenter 6 platform? Nope, she did it in her private time, on her own personal Twitter account. Now, ESPN is a business, a House of Mouse one at that, so first amendment protections are inapplicable. But that does not mean ESPN ought be censoring or punishing her private thoughts and political speech. Especially on a platform that the snowflake President takes to daily to issue outright lies, bigotry, racism and generally ignorant screed. To ESPN's credit, while they stepped back from Hill slightly, they did not step away from her. That is good, because Jemele Hill is not only a better and smarter person than Trump, she is quite likely far more popular too. I will stand with her any day and every day.

Okay, back to the games! Hell of a tilt between USC and Texas last night. Don't know how in the world the Trojans let the Horns back in it, but it was thrilling. In the NFL, it is getting to where who "isn't" playing is as important as who is. The Cardinals looked horrible last week against Detroit when they had David Johnson, now they don't, and may not the rest of the year. Luckily, they are playing the Colts, who do not have Andrew Luck. Think Homer Simpson is scheduled to start for the Colts. He probably will beat the hapless Cards.

The Eagles at Chiefs looks to be a great game. Vikings at Steelers looked like it would be too....but this morning it was announced that Sam Bradford is out for the game. Bradford looked like a world beater last week in collecting up offensive player of the week accolades. But apparently tweaked a knee in the process that we didn't really see. So, the Vikes will go with Case Keenum today. Not the worst substitute, he is capable.

Cowboys at Broncos looks pretty interesting too. Trevor Siemian did not look that good in the second half last week, and the Broncs were lucky to emerge with a win. He will have to play much better this week, even with the aid of Mile High. The Sunday Night feature of Packers at Falcons should also be great. First NFL game for the Dirty Birds in their new gazillion dollar nest.

Who knows what you will get out of the MNF game between the Lions and Giants? Last week was the return of Really Bad Eli. I am not sure this week will be the return of Good Eli. That is the beauty of it though, like Forrest Gump's stupid box of chocolates, you just never know what you will get! Matt Stafford has been playing consistently solid ball for quite a while though.

Last, but not least, two future Hall of Famers duel down in Nawlins. Brady and Brees. Deflategate versus Bountygate. Two weeks ago, I would have said this is a laugher. Nut, man, the

Patriots looked awfully non-Belichickian last week. So maybe worth a watch.

That is it for this week, rock on.

CAN'T STOP/WON'T STOP: CNN HAS A NEW RACIST BIGOT APOLOGIST

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racist bigot Trumpian apologist asshole, Jeffrey Lord.

As Politico succinctly put it:

CNN on Thursday fired contributor and staunch Trump supporter Jeffrey Lord after he tweeted a Nazi salute.



Well, yes. That is literally the least you could say about Jeff Lord's "contributions" to CNN. He was, from the start, an unnecessary, and in the face of competent journalism and reportage, complete plant by Jeff Zucker into the CNN family and reportage to do NOTHING but assuage the idiot extremist right wing racist assholes who were watching FoxNews to start with. In short it was insane and counterproductive

programming to cater to ignorant racist people that hated, and were not watching, CNN to start with.

The presence of Jeff Lord on CNN was an affront on common intelligence, good journalism and root morality. But there he was. Until Lord actually displayed his inner Trumpian Nazism that was clear under the veneer from moment one, and was the exact reason Zucker and CNN hired and paid the jerk to start with. Jeff Lord was exactly who Zucker and CNN bought and paid for from moment one. He was exactly what they cravenly wanted.

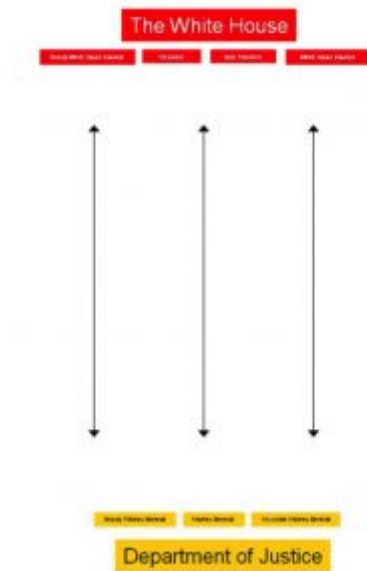
So, did Jeff Zucker, and the worthy geniuses at CNN, learn any lessons by having promoted a clear cut immoral asshole racist Nazi like Lord?

Nope. They have simply found and cultivated a new one.

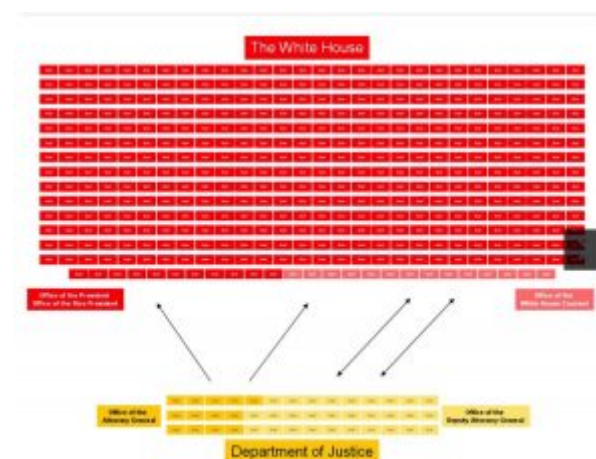
Today's version (and seen on CNN!) is Trumpalo Michael Caputo, who had these gems to say on CNN's The State of the Union show today:

“Our Department of Justice under Obama was the most political Department of Justice in modern times”

Well Mike, that is not quite right. In fact, that would have been the DOJ under George Bush, who your boy Trump is making look good at warp speed. Here is thanks to Senator Sheldon Whitehouse back in 2007, is a graph of political appointee communication of the Clinton White House with the Department of Justice:



Here is, again from Senator Whitehouse, an identical chart of the contacts of the contacts from the Bush/Cheney White House:



Ooof, if you want to talk about root politicization of the DOJ, that is pretty telling, even without going into the Monica Goodling/Karl Rove nonsense.

Caputo goes on to belligerently defend Trump

“...against all this talk of racism”

So, eh, no. For Caputo, in the face of what Trump is doing vis a vis the DOJ, whether firing the Director of the FBI for not covering his ass or asking his Attorney General to kill an investigation of his largest racist supporter Arpaio, is just another hired liar.

But having such an immoral liar to balance actual truth and fair reportage with absolute flat earth level racism horse manure from Trumpland, is what Jeff Zucker and CNN demands. They simply cannot fathom presenting the former without salting it with the latter.

Ted Turner must be beside himself somewhere in Montana. The demand of media, in this case CNN, to “both sides” even in the face of grossly immoral and unconscionable racism and bigotry, is insane. It needs to stop. There is no need to put on an apologist like Michael Caputo just to say you did so. It added nothing, but support for rank ignorance and bigotry. That is not what America’s media should be about.

SOME THOUGHTS ON THE ARPAIO PARDON

As you probably already know, Trump has pardoned Joe Arpaio. It



is an abominable act by a lawless jackass. One lawless jackass pardoning another lawless jackass. Trump and Arpaio are really two peas in the same racist bigot pod; both supreme narcissists, ignorant and contemptuous of the rule of law down to their deepest bone.

And Marcy Wheeler is right that the nation as a whole is not the audience Trump is signaling, and while “Trump’s base” may be part of his

audience in making this pardon move, it is likely even more intended for law enforcement. Police unions were almost across the board for Trump, and they do speak for their rank and file. Not to mention that all cops are fine with a pro law enforcement approach of Trump and his DOJ, not just the racist bigot ones.

The ACLU statement on the pardon is good:

ACLU Deputy Legal Director Cecillia Wang said:

“With his pardon of Arpaio, Trump has chosen lawlessness over justice, division over unity, hurt over healing. Once again, the president has acted in support of illegal, failed immigration enforcement practices that target people of color and have been struck down by the courts. His pardon of Arpaio is a presidential endorsement of racism.”

For more from the ACLU, see the Twitter feed of Cecilia Wang, the litigation lead for ACLU on the Melendres and Arpaio litigation (she is seriously great).

But the ACLU doesn't really go far enough. A couple of weeks ago I tweeted:

Because there is no point to which @realDonaldTrump will not shit on the rule of law and sanctity of federal courts. What a piece of shit.

That was a little flippant, but there is simply no question but that the pardon of Joe Arpaio is Donald Trump is degrading the Constitution and undermining the very fabric of the sanctity of courts and Rule of Law itself. If the Presidential pardon was not so unbound, this pardon would not stand up. It violates every iota of the American rule of law. It also is heinously invasive to the separation of powers in that it infringes on the power of the federal courts. But, again, don't buy any nut telling you this pardon is unconstitutional or won't stand up. That is silly, it is Constitutional, and it will stand up.

That said, Noah Feldman did a good piece explaining just what a Constitutional affront this act is, and should be considered:

To see why pardoning Arpaio would be so exceptional – and so bad – you have to start with the sheriff's crime. Arpaio wasn't convicted by a jury after a trial for violating some specific federal statute. Rather, he was convicted by a federal judge on the rather unusual charge of criminal contempt of court.

Specifically, Arpaio was convicted this July by Judge Susan Bolton of willfully and intentionally violating an order issued to him in 2011 by a different federal judge, G. Murray Snow.

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Judge Bolton convicted Arpaio of criminal contempt. She found he had "willfully violated" the federal court's order "by failing to do anything to ensure his subordinates' compliance and by directing them to continue to detain persons for whom no criminal charges could be filed." And she held that Arpaio had "announced to the world and to his subordinates that he was going to continue business as usual no matter who said otherwise."

This is the crime that Trump is suggesting he might pardon: willful defiance of a federal judge's lawful order to enforce the Constitution.

It's one thing to pardon a criminal out of a sense of mercy or on the belief that he has paid his debt to society.

It's trickier when the president pardons someone who violated the law in pursuit of governmental policy, the way George H.W. Bush pardoned the Iran-Contra participants, including Oliver North.

But it would be an altogether different matter if Trump pardoned Arpaio for

willfully refusing to follow the Constitution and violating the rights of people inside the U.S.

Such a pardon would reflect outright contempt for the judiciary, which convicted Arpaio for his resistance to its authority. Trump has questioned judges' motives and decisions, but this would be a further, more radical step in his attack on the independent constitutional authority of Article III judges.

An Arpaio pardon would express presidential contempt for the Constitution. Arpaio didn't just violate a law passed by Congress. His actions defied the Constitution itself, the bedrock of the entire system of government. For Trump to say that this violation is excusable would threaten the very structure on which is right to pardon is based.

Go read Noah's entire piece at Bloomberg, you should. It perfectly captures everything I have thought ever since Arpaio was convicted by Judge Susan Bolton in July, and pardon talk started up. And, make no mistake, Arpaio started carping about getting a Trump pardon almost immediately, even if behind the scenes. It started long before the last 10 days.

To add insult to injury, Trump had the gall to issue this announcement after glibly leaving for the personal golf driving range at Camp David with a message to the victims in Texas and the Gulf Coast, who are currently being hammered by a Category Four hurricane and face imminent disaster. Trump's message was "good luck". What a complete cad.

And after callously signing his order implementing his patently discriminatory transgender ban for the military. Chris Geidner has a good report on that.

Just for the record, this is Trump's first pardon issued, and for that he chose the most craven one imaginable. For comparison, both Obama and Bush waited nearly two years, and applied the power only to subjects properly vetted by the DOJ traditional pardon process, a copy of which is here for reference. Arpaio was not even eligible for consideration at this point, much less deserving under the guidelines. Those guidelines can be found here, pay particular attention to §1-2.112. To be clear, Arpaio had not even been sentenced yet, and was almost certainly not going to be sentenced to incarceration by Sue Bolton. I have known Judge Bolton for nearly 30 years, and I just cannot fathom that she was going to do more than give a nominal fine to Arpaio.

Craven jackass Arapio has already started crowing about his ill begotten good fortune through, what else, Twitter:

Thank you @realdonaldtrump for seeing my conviction for what it is: a political witch hunt by holdovers in the Obama justice department!

What a racist bigot ass. Joe Arapio came into office on the wings of lies he told his initial backers. Before we close, a little story I wrote here a few years ago:

Joe Arpaio did not magically come to be Sheriff of Maricopa County. It happened because the two previous occupants of the Sheriff's Office were, shall we say, problematic on their own. There was Dick Godbehere, who was, prior to being Sheriff of the fourth largest county in the United States, literally a lawn mower repairman. No, I kid you not. And he served with the same level of sophistication you would expect of a lawn mower repairman.

Then came Tom Agnos, who was supposed to return "professionalism" to the Maricopa

County Sheriff's Office (MCSO). But Agnos was a subservient Sun City resident who led the MCSO into not just the biggest cock-up in Maricopa county law enforcement history, but one of national and international proportion. The Buddhist Temple Murder Case where nine buddhist monks and acolytes were lined up and shot in the back of the head, execution style, at the Wat Promkunaram Buddhist Temple on the west side of Phoenix.

It was out of the Buddhist Temple Murders Joe Arpaio came to be. A group of prominent Phoenix trial attorneys, both criminal and civil, wanted an alternative to Tom Agnos and the whitewashing coverup he was conducting on one of the greatest coerced false confession cases in world history. The group of trial lawyers coalesced around the upstart primary candidacy of a local travel agent with a colorful background. Yep, one Joseph Arpaio.

Joseph Arpaio promised that initial group of trial lawyers he would clean up the MCSO, release the damning internal report of the gross misconduct that had occurred in the Temple Murder Case under Tom Agnos, which lead to at least four false and heinously coerced confessions, and that he would refuse, under all circumstances, to serve more than one term in office. It was a promise made and, obviously, a promise long ago broken.

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paio did release the internal report on the Temple Murder Case, which led to five plus million dollar settlement for some of the most wrongfully arrested souls in American history. But with that promise kept within a short time of taking office, Joe Arpaio breached the solid promise he made to the people who gave him the seed funding carrying him into office. And Arpaio has made a mockery of his word, as a man, ever since by repeatedly running for office and sinking Maricopa County into depths of depravity and fiscal distress beyond comprehension, from the vantage of the MCSO.

So, now you know just exactly how Joe Arpaio came into office on the wings of lies. He leaves today on the wings of a Constitutional fraud and spittle in the face of the Rule of Law.

As a parting shot, the picture at the head of this article is of Arpaio at a cocktail party getting a surprise visit from Michael Manning, the local civil rights attorney who has fleeced Maricopa County for over \$50 million because of Joe Arpaio's craven and illegal actions. Arpaio was not thrilled to get his photo taken.

THE ARPAIO PARDON: YOU'RE NOT THE AUDIENCE

The message Trump is sending with his promised pardon of Joe Arpaio is that he'll make sure abusive cops never face any federal consequences.