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Judges need a different kind of protection | Opinion



The U.S. Supreme Court building as seen on Sunday, July 11, 2021 in Washington, D.C. (Daniel Slim/AFP/Getty Images/TNS)



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Amid the insults and threats hurled across the political landscape, the risks of violence stemming from political and legal disagreements represent a governing challenge equal to the violence of the 1960s. One critical and immediate concern is the safety of federal judges.

Judges need to manage cases and render decisions without coercion or fear. That principle ensures that all litigants in disputes have a voice with an open-minded audience and that the outcomes of cases, correct or not, are based on law and facts, not the insidious influence or pressure of external forces.



Courtesy
Michael McAuliffe is a former federal prosecutor.

The U.S. Supreme Court's protection is primarily assigned to an office within the judiciary. The Marshal of the U.S. Supreme Court directs the [Supreme Court of the United States Police Department](#). The protection of all lower court federal judges is the responsibility of the [U.S. Marshals Service](#). These protective duties involve significant time, personnel and funding. That's true whether the protective detail is for a judicial event, or to address specific threats. That protection could include a 24/7 detail for an indefinite period of time.

The likely soon-to-be-confirmed director of the U.S. Marshals Service, [Gadyaces "Gady" Serralta](#), is a career law enforcement officer most recently serving as the U.S. Marshal for the Southern District of Florida. By background and past performance, Serralta is an appropriate, even commendable, choice to lead the Service.

The real issue — and risk — is what happens when the president orders Serralta to modify, curtail or abandon the protection of a federal judge because of that judge's ruling adverse to the administration. The obligation to refuse such an order is clear based on ethics and statutory duty. But if Serralta or a U.S. marshal under him upholds the Service's statutory duty, he or she could be summarily replaced with someone less honorable — they serve at the pleasure of the president.

Donald Trump governs by unilateral edict, ignoring statutory constraints and ethical obligations. He also has a documented history of using all manner of leverage to coerce others to capitulate to his wishes. Little doubt exists that the president would attempt to punish a federal judge who appears (to the president) to hinder his particular brand of executive power. Already, he has chastised judges, threatened them with impeachment, and personally insulted them, all based on his view of "performance." Removing judicial protection, or threatening to remove protection, is a very possible, even predictable, development.

In the current atmosphere, threats against federal judges have increased significantly — they've been directed at Supreme Court justices and every other level of federal judge, [including the murder](#) of a district judge's only child. The administration doesn't bear all the blame for the threats and violence against the judiciary, but it can't escape accountability for creating and sustaining distrust fed by misinformation about what the role of the judiciary is in a democracy. For Trump, the judiciary isn't independent, but an extension of his regime. That falsehood is powerfully destructive.

Congress needs to reevaluate the way federal judges are protected. An approach that moves that protection from the executive to the judiciary should be a nonpartisan option. Several Democratic members of Congress have introduced legislation to move the entire U.S. Marshals Service to the judicial branch, but the current bill that would accomplish this is defective in two respects. First, because no Republicans are sponsors, the legislation has an overly partisan label. Also, the bill fails to adequately address the nonjudicial functions of the Marshals Service, like fugitive investigations — activities that should remain in the executive branch. The more realistic proposal is to resize the U.S. Marshals Service and transfer its judicial protection responsibilities (and personnel) to a new, or expanded, office within the judiciary. This change can be accomplished through legislation and appropriations.

Notably, moving the protective duty of federal judges to the judiciary is a good move even absent the current risks. Such a move better insulates judges from the whims and prerogatives of an uncertain executive. Safety can never be a lever to bend or possibly break an independent judiciary.

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