

## **Lay Off Our Judiciary**

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A prominent member of the Senate leadership recently described a Supreme Court justice as "a disgrace." An equally prominent member of the leadership of the House of Representatives on the other side of the political aisle has characterized another justice's approach to adjudication as "incredibly outrageous." These excoriations follow other examples of personalized attacks on members of the judiciary by senior political figures. So it is time to take a deep breath, step back, and inject a little perspective into the recent heated rhetoric about judges and the courts.

We might start by getting a firm grip on the reality that our independent judiciary is the most respected branch of our government, and the envy of the world.

Every day, thousands and thousands of judges -- jurists whose names we never hear, from our highest court to our most local tribunal -- resolve controversies, render justice, and help keep the peace by providing a safe, reliable, efficient and honest dispute resolution process. The pay is modest, the work is frequently quite challenging, and the outcome often controversial. For every winner in these cases, there is a loser. Many disputes are close calls, and the judge's decision is bound to be unpopular with someone. But in this country we accept the decisions of judges, even when we disagree on the merits, because the process itself is vastly more important than any individual decision. Our courts are essential to an orderly, lawful society. And a robust and productive economy depends upon a consistent, predictable, evenhanded, and respected rule of law. That requires respected judges. Americans understand that no system is perfect and no judge immune from error, but also that our society would crumble if we did not respect the judicial process and the judges who make it work.

We have recently witnessed tragic violence against judges, their families and court personnel in Chicago and Atlanta. These incidents serve as reminders of how vulnerable the judiciary is to those who may be aggrieved by judges' decisions. Violence and intimidation aimed at judges is plainly intolerable; all of us can, and should, be unequivocally unified on the proposition that judges must be protected from aggrieved litigants and acts of terrorism. The wall between the rule of law and anarchy is fragile; if it is penetrated, freedom, property and liberty cannot long endure.

This is not to say that some judges don't render bad decisions. Arrogant and misguided jurists exist, just as such qualities may be found in the rest of the population, and our citizens and elected representatives are fully justified in speaking out in forceful disagreement with judges who substitute their personal values or private social instincts for sound jurisprudential principles. But the remedies for these aberrations consist of reasoned, even sharp, criticism, appeals to higher courts, and selection of candidates for judicial positions that respect limits on the roles of judges.

But, absent lawlessness or corruption in the judiciary, which is astonishingly rare in this country, impeaching judges who render decisions we do not like is not the answer. Nor is the wholesale removal of jurisdiction from federal courts over such matters as prayer, abortion, or flag-burning. While Congress certainly has the constitutional power, indeed responsibility, to restrict the jurisdiction of the federal courts to ensure that judges decide only matters that are properly within their constitutional role and expertise, restricting the jurisdiction of courts in response to unpopular decisions is an overreaction that ill-serves the long-term interests of the nation. As much as we deplore incidents of bad judging, we are not necessarily better off with -- and may dislike even more -- adjudications made by presidents or this year's majority in Congress.

Calls to investigate judges who have made unpopular decisions are particularly misguided, and if actually pursued, would undermine the independence that is vital to the integrity of judicial systems. If a judge's decisions are corrupt or tainted, there are lawful recourses (prosecution or impeachment); but congressional interrogations of life-tenured judges, presumably under oath, as to why a particular

decision was rendered, would constitute interference with -- and intimidation of -- the judicial process. And there is no logical stopping point once this power is exercised.

Which member of Congress, each with his or her own constituency, would ask what questions of which judges about what decisions? Imagine the kinds of questions asked routinely in confirmation or oversight hearings. How can those questions be answered about a pending or decided case? And what if a judge refused to testify and defend his reasoning about a particular decision? Would an impeachment or prosecution for contempt of Congress follow? Either would be unthinkable. Federal judges are highly unlikely to submit to such a demeaning process and, if push came to shove, the public would undoubtedly support the judges.

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No discussion of the judiciary should close without reference to the shambles that the Senate confirmation process has become. It does no good to speculate about how or when the disintegration began, which political interest has been the most culpable, or the point at which the appointment of judges became completely dysfunctional. That sort of debate is both endless and futile. The only hope for an end to the downward spiral is for the combatants to lay down their arms; stop using judicial appointments to excite special-interest constituencies and political fund-raising; move forward with votes on qualified, responsible and respected nominees so that those who have the support of a majority of the Senate can be confirmed, as contemplated by the Constitution; and remove the rancor and gamesmanship from the judicial selection process.

We expect dignity, wisdom, decency, civility, integrity and restraint from our judges. It is time to exercise those same characteristics in our dealings with, and commentary on, those same judges -- from their appointment and confirmation, to their decision-making once they take office.

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Mr. Olson, solicitor general in the Bush administration from June 2001 through July 2004, is a lawyer in Washington.

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