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Op-ed: The president's judicial ignorance and obstruction is dangerous

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President Donald Trump's infamous tweet referring to a respected federal judge (the Honorable James L. Robart) as a "so-called judge" has circled the globe. The president launched this attack because he disagreed with Robart's temporary restraining order halting operation of Trump's executive order on immigration until the case could be heard fully.

Later, Trump practically demanded that the three-judge panel of the U.S. Court of Appeals for the 9th Circuit rule in his favor as the only way to maintain respect for our federal court system: "If these judges wanted to — in my opinion — help the court in terms of respect for the court, they'd do what they should be doing. I mean, it's so sad."

In the same remarks, the president accused federal judges of being "so political." He also appeared to question the objectivity of the 9th Circuit judges simply because they asked the federal attorney tough questions, as they did of Washington state's solicitor general as well.

When the 9th Circuit panel ruled to keep the stay in place, the president taunted by tweet "see you in court," told reporters the ruling was "a political decision," and later tweeted that it was "a disgraceful decision."

I leave it to others to debate the propriety of the president's use of social media to attack anyone who disagrees with him. I comment instead on the extreme danger of this unprecedented presidential attack on the integrity and independence of the judiciary.

When the federal government is in litigation, the Department of Justice or U.S. Attorneys offices around the country represent the government's position in court, based on the applicable facts and law. After hearing the other side, judges decide those cases based on the merits of the issues presented to them. There is no room in an objective judicial process for the president to seek to influence the result directly, as he might in shaping a debate in Congress.

If I agree with Trump about one aspect of this situation, it is that the judicial process should not be political. But when the president injects himself directly and publicly into an ongoing judicial proceeding (whether in such a caustic fashion or not), he politicizes the case—exactly what he purports to reject in his comments.

The president also misunderstands the nature of appellate arguments by suggesting that judges show bias simply by asking the attorneys tough questions. Judges ask difficult questions to probe the strength of each party's position. It helps ensure that the decision is well reasoned.

Clearly and properly, the three 9th Circuit judges deciding the government's request for a stay did not consider the president's public statements imploring them to rule the "right" way. In their order, the judges correctly referred only to positions taken by federal attorneys in briefs and oral argument. But when the president insults and taunts federal judges in public, and suggests that they should heed his wishes as he might expect someone who works for him directly, he undermines public respect for the courts and the independence of the judiciary.

In The Federalist No. 78, one of the essays published in 1788 to convince the citizens of New York to ratify the proposed Constitution, Alexander Hamilton famously explained and defended the critical role of an independent judicial branch as a safeguard of our liberty. First, because the judicial branch "may truly be said to have neither force nor will; but merely judgment," public respect for the judicial branch is essential to its role in safeguarding our rights.

Second, Hamilton argued that liberty is ensured only "so long as the judiciary remains truly distinct from both the legislature and the executive." That, he argued, justified constitutional provisions ensuring that no one person or branch of government is responsible for selecting or appointing our federal judges, and that they should serve for life subject only to the requirement of "good behavior."

It also suggests that the president — and all of us — need to maintain our collective respect for the role of entirely independent federal judges.

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