

JUSTICE IS VULNERABLE, WE MUST BE RESILIENT

By Chad Eggspuehler

It really is mourning in America. Amid the seemingly unending plague, wild fires, tragic instances of racism and police violence, peaceful protests, and riots, we all have reason to feel vulnerable. Even our venerable legal system has been exposed this summer.

With collective morale already strained, a madman opened fire at the front door of a federal judge's home in New Jersey, claiming her 20-year-old son and severely injuring her husband. Of all this year's tragedies, that last one hits close to home (even four hundred miles away in Ohio) because I had worked with that Judge during my first clerkship after law school. At the time, Judge Esther Salas was the Magistrate Judge assigned to my boss, Senior District Judge Harold A. Ackerman.

The learning curve of any clerkship is steep. New clerks would be wise to check their politics at the door. As Judge Ackerman often put it, "judges have cases, not causes." Or as our Chief Justice recently reminded us, judges do not belong to teams, but give "their level best to do equal right to those appearing before them." Dispensing equal justice under the law to litigants is not always glamorous or swift. There is a reason the U.S. Supreme Court's courtyard lamps ride on the backs of turtles. A constant barrage of case filings, contentious litigants and attorneys who sometimes misbehave, more shades of gray than the black-and-white issues appearing in textbooks—all contribute to the slow, careful, deliberate judicial process.

But we studied at the feet of giants, within the marble and wood confines of a palace of Justice, among the ghosts of a judicial history spanning more than 200 years. *The oldest continuous (undivided) judicial district in the country*, they are quick to tell you in that District. A painting of George Washington gave inspiration behind my Judge's seat. The inscription on his bench gave reassurance: *Let Justice Prevail Though the Heavens May Fall*. And, we were told, we were part of the larger "federal family." No matter how much judicial opinions may differ, we were all united in supporting the dedicated public service of our Judges, the U.S. Marshals Service, and other court personnel.

Judge Salas and her staff were among those who welcomed a bright-eyed, bow-tied new clerk from Texas (by way of Ohio) to the federal family in Newark, New Jersey. Though it has been many years, I remember fondly our frequent meetings, whether it was navigating procedural hurdles in a massive MDL or coordinating case progress on the master docket. She was always prepared, poised, and positive. Above and beyond her dedicated service to our Judge, she took the time to mentor law clerks so that we could better serve our Judges, too.

When the President nominated her to a District Court judgeship in 2011, as I was preparing to leave for an appellate clerkship in Ohio, I remember being pleased and not at all surprised. I suppose it was then that I first realized the trailblazing significance of her appointment as the first Latina judge in the District. In my mind, she (and everyone else) were *New Jerseyans* welcoming me, a Texas Buckeye who could not tell the difference between the Parkway and the Turnpike. Her continued service to the judiciary would no doubt serve as an inspiration for so many.

Fast-forward nine years, and the unimaginable happened. In the immediate aftermath, reports of the suspected gunman's misogynistic and racist writings, another possible victim, and potential plans to attack others only added to the horrific cloud that had descended upon our federal family. May the attacker's venom die with him. But the wounds will last a lifetime. Our hearts go out to Judge Salas and her family, but thoughts and prayers seem woefully inadequate. As the *Hamilton* song "It's Quiet Uptown" explains, "[t]here are moments that the words don't reach, there is suffering too terrible to name."

While it may be easy to dismiss this tragedy as a freak occurrence, we should heed the ominous signals of a broader vulnerability and take appropriate precautions. According to the U.S. Marshal Service website, "[i]n recent years, there has been a dramatic increase in the number of threats against members of the judiciary, U.S. attorneys and other court officers." <https://www.usmarshals.gov/duties/courts.htm#:~:text=Explicit%20threats%20against%20the%20judiciary,%2Dthe%2Dclock%20protective%20details> (visited 9/21/2020) Its 2019 annual report reflects this trend, with inappropriate communications / threats to protected persons increasing from 926 in FY15 to 4,449 in FY19. And though the report attributed the increase to "improved effectiveness in data collection and reporting," that still seems a worrisome increase from the range of threats (768–1,930) from the previous four years reported in the 2015 annual report.

In the depths of her despair, Judge Salas issued a video statement calling for greater protections for judicial officers. Somehow still lighting the way for others through incomparable darkness. In addition to legislation proposed by New Jersey local officials, in August, the Judicial Conference of the United States (the national policy-making body for federal courts) approved a “series of recommendations to upgrade and expand security for federal judges,” including:

- Seeking legislation to protect judges’ personally identifiable information;
- Developing resources with the U.S. Marshals Service “to monitor the public availability of judges’ personally identifiable information,” “inform judges of security vulnerabilities,” and advise law enforcement of “inappropriate communication”; and
- Improving courthouse and home electronic security systems.

At the end of September, Congress took up the issue, with the bipartisan announcement of the Daniel Aderl Judicial Security and Privacy Act of 2020, named for Judge Salas’s late son. The bill would prohibit the dissemination of “personally identifiable information” about federal judges and their immediate families—*i.e.*, home addresses, personal phone numbers, drivers’ license numbers, schools attended by children, etc.

Congress must take swift action on this legislation. Ohio’s policy makers should consider similar steps to protect the State’s judges, especially in light of a 2017 ambush and gunfight involving a Jefferson County judge. That would be an important first step.

More broadly, policymakers should consider security risks posed by the availability of similar personal information about other public officials. Just this month, federal agents stopped a plot to kidnap the governor of Michigan from a personal home, and it now seems commonplace for protestors to gather at the homes of other public officials—for instance, the former director of Ohio’s Department of Health, Dr. Amy Acton.

If this turbulent period has taught us anything, we need our legal system now more than ever. And yet, these tragic events serve as a reminder that Justice, too, is vulnerable. As the West Frieze in the U.S. Supreme Court’s Courtroom depicts her, she must keep constant watch over the forces of evil, while Divine Inspiration, holding Justice’s scales, encourages our better angels.

Sometimes, it would seem, Justice gets knocked down. We mourn. We remember. But with our help, Justice eventually gets back up and resumes her post. We must answer her call now. Divine Inspiration calls our better angels.

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