

PLR. Remarks on the State of Justice to the VBA Mid-Year Meeting, Manchester, VT 3.28.25

Thank you, Josh.

Some years ago, Judge Skip Mahady joined our Rutland County annual meeting and was asked to comment on the state of the justice system in Vermont. This followed a 6-month suspension of all civil jury trials state wide by the Vermont Supreme Court. Skip got up to speak and pulled out a paper from his suit pocket and said, "You have asked me to comment. Here is a letter I just received from a friend who is a judge in Columbia, South America, who I met at the National Judicial College training we both attended. The training lasted a matter of weeks. She was there with her husband and, Skip said we became friends. Reading the letter, Skip noted that she remarked on the lawlessness in the streets of the city, drug lords taking account of adversaries in open daylight. To this extent she wrote: my husband and I are fearful that men with guns will come in the front door. We have now made arrangements to escape, we have set up bank accounts in Florida and Texas.

Then Skip said, putting the paper back in his pocket, "You asked me about the state of our system....it's not that."

Today, I am not sure I can say the same thing. Let me start this way:

The Rules of Prof Conduct state (in the Preamble)

As a public citizen a lawyer should seek improvement of access to courts; Lawyers play a vital role in the preservation of society.

AND

My judicial ethics state judges shall uphold the integrity of the system. (The system is both state and federal courts and bar).

Currently, it appears there is an effort in Washington D.C. to destroy the public's faith in the courts, in our system of justice, in this country. See comments from across the land.

There is a misuse of power.

The President through a series of Executive Orders seeks to erect barriers to lawyers who represent clients who disagree with him.

No prior administration has taken such concerted action against the Bar, an effort to erode an institutional pillar designed to check abuse of power.

The Executive Orders regard: (1) 20 law firms the EEOC has targeted for their DEI programs to investigate and (2) public interest firms that have taken on clients who wish to test the boundaries of executive power.

Both actions have created a sense of retaliation and intimidation.

Intimidation of the Bar is a threat to us all.

As the NYT reported this week, in 2001 Justice Anthony Kennedy wrote:
“An informed independent judiciary presumes an informed independent Bar.”

And, if the Orders were not enough, there are those in Congress filing for articles of impeachment against federal judges. As Chief Justice Roberts said, appeal is the proper avenue for decisions you disagree with.

And even this---the Speaker noted that Congress has the power to eliminate federal districts and defund federal jurisdictions.

The federal executive branch, the President, is not the arbiter of truth.

And his language that targets law firms that says they can redeem themselves by refusing to represent parties who are the subject of his attacks is abhorrent to what we as a profession stand for.

At a recent event for the forthcoming Ken Burns documentary on the Revolutionary War, there was a panel of historians following the screening. One said, the Founders, 250 years ago, found the courage to place principle over personal interest. Now it's our turn.