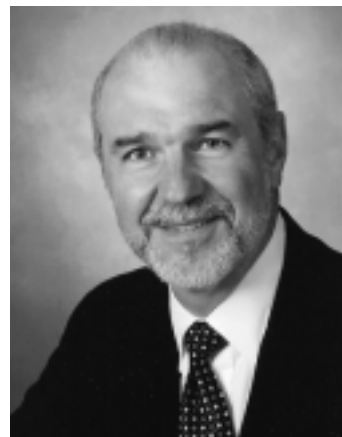


## Defending the System



by Joseph A. Condo 2000–2001 VSB President

The unprecedented events following last fall's Presidential election have been widely characterized as a "civics lesson" for the nation. However, judging from the remarks of some campaign spokesmen and media commentators on the role of the legal system in the post-election dispute, we still have a lot to learn. And, for this observer, there were some very disturbing aspects to the situation that should give pause to all of us who labor in the law.

The first of these was the spate of attacks on the judiciary. References to judges were invariably coupled with mention of their party affiliation (or the party affiliation of the executive who appointed them). Their independence was routinely questioned. Individual judges and entire courts were referred to as "hacks," "renegade," "lawless," and "kangaroo." Was anyone else struck by the irony of constant references to "the rule of law" by people whose other comments made it clear that they don't have a clue of the profound meaning and significance of that concept? Certainly these folks do not see that an indispensable component of the rule of law is an independent judiciary, unfettered by ties to the other branches of government and insulated from the ebbs and flows of popular sentiment or political pressure.

In a recent op-ed piece in the *New York Times*, columnist Thomas Friedman wrote:

[T]he rule of law is most reinforced when—even though it may have been imposed wrongly or with bias—the recipient of the judgment accepts it, and the system behind it, as final and legitimate. Only in that way—only when we reaffirm our fidelity to the legal system, even though it rules against us—can the system endure, improve and learn from its mistakes . . . If Chinese or Russian spies are looking for the most valuable secret they can steal in Washington, . . . [t]hat secret is not Wall Street and it's not Silicon Valley, it's not the Air Force and it's not the Navy, it's not the free press and it's not the free market—it is the enduring rule of law and

the institutions that underlie them all, and that allows each to flourish no matter who is in power.

We lawyers must never forget that we are the stewards of this system, the keepers of this flame—the primary agent for preserving and strengthening the rule of law in this society. Lawyer-statesman John W. Davis called us the "sentinels on the ramparts of human liberty." "What duty," he asked, "could be more transcendent and sublime?"

The faith of the public in our system of justice, the willingness of people who come to court to follow the rules and to accept and follow the courts' orders and decrees—*voluntarily, in the vast majority of cases*—is critical to the system working at all. Take that away, and chaos will soon follow. But this faith is a very fragile thing, so we must not be careless or thoughtless in the way we talk about the courts to our clients. When we ridicule or criticize the rulings judges make against our clients—no matter how unfair we may think they are—or blame the judge, or the system, for outcomes that may actually be the result of our own shortcomings, we are contributing to the erosion of that faith and the undermining of the system itself.

Our duty to protect and nurture the rule of law goes beyond merely exercising caution in our words about the courts. It mandates that we affirmatively support and defend a judiciary that cannot defend itself. Despite the perceived low esteem the public has for our profession, they still look to us as the ultimate explainers and interpreters of legal process. If we stand mute while the irresponsible, the ignorant, the partisan, or the misinformed unfairly attack judges and the courts, we become complicit in those attacks and the harm they do to the system.

There were also some pretty vicious assaults on our profession during the Florida election controversy. Attacks on lawyers are nothing new, but it was very disheartening to hear almost universal expressions of dismay at what was termed "turning the election over to the lawyers." To my mind, this exposes another troublesome misunderstanding about our system: Far too many people fail to appreciate that if there were no lawyers, there would be no rule of law. Our critics who quote Shakespeare's

famous line, “The first thing we do, let’s kill all the lawyers” do not realize that Shakespeare was actually recognizing this truth; the characters in that scene were talking about overthrowing the government, and they knew they couldn’t do that unless they got the lawyers out of the way first. This role of the profession is as real here and now as it was in Shakespeare’s England. Watergate Prosecutor Leon Jaworsky once said, “When dictators and tyrants seek to destroy the freedoms of men, their first target is the legal profession *and through it the rule of law.*”

If you think that society’s lack of trust and esteem for lawyers is irrelevant, I suggest that you think again, for I am convinced that it is a short leap from loss of confidence in the legal profession to an undermining of public confidence in the legal system as a whole. After all, as I have said earlier, we lawyers are the stewards of that system—and all judges ascend to the bench from our ranks.

Isn’t low regard for the legal profession as old as the profession itself? What are we supposed to do? First of all, we have to continue making sure that people work within the system, play by the rules, and abide by the results. But that is not enough. We have an added responsibility to constantly reinforce respect for the legal system and the rule of law among the public we serve, to avoid saying and doing things that beget cynicism and distrust about the system. This should go beyond the concepts of professionalism and comity that are often the subjects of legal discourse. It should pervade our lives as lawyers and inform our every word and deed—not just our formal public comment or courtroom conduct, but the tone and language of our correspondence, the civility of our interpersonal dealings, and most important, the things we say about lawyers and the courts. You see, the sum of all these countless, seemingly trivial transactions and interactions conveys not only to our clients,

but to our neighbors and our friends, and everyone else with whom we come in contact, the true level of our regard for our colleagues and the judiciary—the *system*.

To remind you of the enormity of the stakes, I offer this stark picture of a nation without the rule of law from “A Man For All Seasons,” Robert Bolt’s play about the test of wills and conscience between Thomas More and King Henry VIII. More’s son-in-law, Roper, has just said that he’d cut down every law in England to get after the devil, to which Thomas More replies:

Oh? And when the last law was down, and the devil turned round on you—where would you hide, Roper, the laws all being flat? This country’s planted thick with laws from coast to coast—man’s laws, not God’s—and if you cut them down, d’you really think you could stand upright in the winds that would blow then?

No other nation on earth better exemplifies the ideal of the rule of law, and the legal profession is more critical to the continued vitality of the rule of law than any other segment of our society. I know that they probably didn’t tell you in law school about this awesome responsibility to the rule of law that we have, individually and collectively. It is easy to understand how such noble and lofty considerations can get lost in the everyday bustle and the adversary rough-and-tumble of the practice of law. But most of us derive abundant rewards from the practice of law, spiritual as well as material. And, as the saying goes, from those to whom much is given, much is expected. This is the price our society exacts from us in return for granting us the privilege of practicing this splendid profession. And a very small price it is, indeed. 🙏