

Diane Ravitch's August 7 Blog—Unprecedented: Retired Judges Act to Protect the Rule of Law.

Attached is Diane Ravitch's August 7 blog which includes some statements and activities by former Ohio Supreme Court member Michael P. Donnelly regarding disrespect for the rule of law.

Several weeks ago, I had the opportunity to attend a lecture by retired Ohio Supreme Court Justices Michael P. Donnelly and Maureen O'Connor discussing the rule of law. They are speaking out to register their concern regarding a growing trend to ignore the rule of law.

The three branches of government are separate and co-equal. Each has specified duties and responsibilities and must be given due respect.

The judicial branch has no military to enforce its decisions. Neither do the other branches have such to protect their respective decisions. Each branch must respect the other branches.

No one branch is right every time. There are checks and balances in the process.

Unprecedented: Retired Judges Act to Protect the Rule of Law

By dianeravitch

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We live in strange and dangerous times. For the first time in memory, maybe ever, the rule of law itself is under attack. Our Dear Leader has threatened judges who rule against his wishes. He and his lawless administration ignore decisions they don't like. He installed a Supreme Court majority who were vetted by the far-right Federalist Society. That majority proceeded to overturn Roe v. Wade, despite their repeated pledges not to do so, and to gut the Voting Rights Act, terminating guarantees of equal rights for Black Americans.

At this time when the rule of law itself is disregarded by the President, who is himself ruled only by whim and self-aggrandizement, two retired judges expressed their concern in **The Guardian**.

Judge Michael P. Connelly and Judge Robert F. Orr wrote:

Last October, US lawyers, judges and rule-of-law advocates traveled to Warsaw as guests of the Carter Center. Neither of us was among them. But when our colleagues returned, their stories inspired us.

They told us about judges and lawyers across central Europe who had been surveilled, smeared, prosecuted and sometimes jailed for standing between political power and courts meant to remain independent.

And they kept going.

Poland's example was especially compelling. When its government sought greater control over the judiciary, Polish judges put on their robes and marched through Warsaw. Judges from across Europe joined them in what became the March of 1,000 Robes.

Then they left their courthouses and traveled through towns and villages, explaining what an independent judiciary means to a farmer, shopkeeper, parent or business owner. They talked about law not as an abstraction, but as protection against arbitrary power.

They understood a truth Americans can no longer overlook: judicial independence cannot survive merely because judges believe in it. The public must understand why it matters.

That lesson brought us on to a bus.

Last month, shortly after the United States celebrated its 250th birthday, the Justice in Motion tour traveled from western Pennsylvania through Ohio and into Michigan. Thirty sitting and retired judges, lawyers and advocates handed out pocket constitutions, met students and asked a question Americans do not consider often enough: what does the rule of law mean in everyday life, and what happens when we take it for granted?

In Columbus, we did something neither of us imagined during our years on the bench. We put on our robes and marched from the federal courthouse toward the supreme court of Ohio, carrying purple flowers, an international symbol of judicial independence.

American judges do not ordinarily march in the streets. Nor should they. The judiciary derives much of its legitimacy from restraint. Judges do not campaign for particular outcomes or answer criticism with press conferences. They speak through their decisions. But these are no ordinary times.

And our Polish colleagues taught us that silence can carry its own risk.

Our march was not about Democrats or Republicans, nor about defending particular judges or decisions. It was about defending the system that allows legal disagreements to be resolved according to law rather than political power.

One of us was elected to the supreme court of Ohio as a Democrat. The other was elected to the supreme court of North Carolina as a Republican and is now an independent. Through two long careers, we have disagreed about plenty.

That is precisely the point.

The rule of law is not a partisan possession.

Both sides enter a courtroom with the right to be heard. Judges must apply the law to the facts without regard to which party is more powerful, popular or politically useful.

Sometimes judges get it wrong. That is why we have appellate courts. Sometimes courts issue decisions that elected officials or citizens strongly dislike. That is unavoidable in a constitutional democracy.

The answer is appeal, legislation where constitutionally permissible, or constitutional amendment. It cannot be intimidation, retaliation for unpopular rulings or the suggestion that compliance with lawful court orders is optional.

Once adherence to judicial decisions depends upon whether the politically powerful agree with them, we have left the rule of law behind.

In Wooster, Ohio, about 150 people gathered across from the historic courthouse. The discussion was not about red America or blue America. It was about ordinary life.

The rule of law is why you can deposit money in a bank and expect it to be there tomorrow. It is why contracts mean something, property can be protected and an individual citizen can enter a courthouse and challenge the government.

These protections seem ordinary only because generations before us built institutions strong enough to make them ordinary. When the rule of law works, it is almost invisible.

Judges are trained – rightly – to exercise restraint. During our years on the bench, we spoke through our rulings. That tradition is essential to maintaining confidence in an impartial judiciary.

But restraint should not be confused with silence about the survival of the institution itself.

When judges are threatened because of their rulings; when an adverse decision is answered not with an appeal but with demands for retaliation; when courts are judged legitimate only when they produce

politically desired outcomes, those who understand the system have an obligation to explain what is being lost.

Our Polish friends understood this before we did. Their circumstances differ from ours, and comparisons should be made carefully. But the lesson travels well.

The rule of law does not defend itself. Neither does an independent judiciary. Constitutions are pieces of paper unless citizens and public officials possess the courage and habits necessary to honor them.

Four days on a bus will not persuade a nation. The purpose was more modest: to begin conversations, one community and one citizen at a time, about institutions Americans have been fortunate enough to take for granted.

That work belongs not only to judges and lawyers, but to all of us.

The rule of law is not something judges possess. It is something citizens inherit.

And every generation must decide whether to preserve it.

What's giving us hope now

Justice Robert F Orr (retired): *What gives me hope is the scope of individuals and groups now focusing and talking about the rule of law and the independence of our judiciary. Our bus trip had a great mix of backgrounds and experience both in the judges participating and meeting us at stops as well as the young people who amplified the message across various media platforms. It's genuinely a national movement.*

Justice Michael P Donnelly (retired): *What gives me hope is the genuine appreciation we encountered during the bus tour for the role of an independent judiciary in protecting individual rights and civil liberties. The people we met understood that these freedoms, defended at great sacrifice throughout our history, cannot be taken for granted – and that each generation must be willing to stand up for them.*

- *Michael P Donnelly is a retired justice of the supreme court of Ohio*
- *Robert F Orr is a retired justice of the supreme court of North Carolina. Both participated in the Justice in Motion tour organized by the Democracy Rising Collaborative and Keep Our Republic*