

The Fraternity: Lawyers and Judges in Collusion

Law loses its way

By John F. Molloy

When I began practicing law in 1946, justice was much simpler. I joined a small Tucson practice at a salary of \$250 a month, excellent compensation for a beginning lawyer. There was no paralegal staff or expensive artwork on the walls.

In those days, the judicial system was straightforward and efficient. Decisions were handed down by judges who applied the law as outlined by the Constitution and state legislatures. Cases went to trial in a month or two, not years. In the courtroom, the focus was on uncovering and determining truth and fact.

I charged clients by what I was able to accomplish for them. The clock did not start ticking the minute they walked through the door.

Looking back

The legal profession has evolved dramatically during my 87 years. I am a second-generation lawyer from an Irish immigrant family that settled in Yuma. My father, who passed the Bar with a fifth-grade education, ended up arguing a case before the U.S. Supreme Court during his career.

The law changed dramatically during my years in the profession. For example, when I accepted my first appointment as a Pima County judge in 1957, I saw that lawyers expected me to act more as a referee than a judge. The county court I presided over resembled a gladiator arena, with dueling lawyers jockeying for points and one-upping each other with calculated and ingenuous briefs.

That was just the beginning.

By the time I ended my 50-year career as a trial attorney, judge and president of southern Arizona's largest law firm, I no longer had confidence in the legal fraternity I had participated in and, yes, profited from.

I was the ultimate insider, but as I looked back, I felt I had to write a book about serious issues in the legal profession and the implications for clients and society as a whole. *The Fraternity: Lawyers and Judges in Collusion* was 10 years in the making and has become my call to action for legal reform.

Disturbing evolution

Our Constitution intended that only elected lawmakers be permitted to create law.

Yet judges create their own law in the judicial system based on their own opinions and rulings. It's called case law, and it is churned out daily through the rulings of judges. When a judge hands down a ruling and that ruling survives appeal with the next tier of judges, it then

becomes case law, or legal precedent. This now happens so consistently that we've become more subject to the case rulings of judges rather than to laws made by the lawmaking bodies outlined in our Constitution.

This case-law system is a constitutional nightmare because it continuously modifies Constitutional intent. For lawyers, however, it creates endless business opportunities. That's because case law is technically complicated and requires a lawyer's expertise to guide and move you through the system.

The judicial system may begin with enacted laws, but the variations that result from a judge's application of case law all too often change the ultimate meaning.

Lawyer domination

When a lawyer puts on a robe and takes the bench, he or she is called a judge. But in reality, when judges look down from the bench they are lawyers looking upon fellow members of their fraternity. In any other area of the free-enterprise system, this would be seen as a conflict of interest.

When a lawyer takes an oath as a judge, it merely enhances the ruling class of lawyers and judges. First of all, in Maricopa and Pima counties, judges are not elected but nominated by committees of lawyers, along with concerned citizens. How can they be expected not to be beholden to those who elevated them to the bench?

When they leave the bench, many return to large and successful law firms that leverage their names and relationships.

Business of law

The concept of "time" has been converted into enormous revenue for lawyers. The profession has adopted elaborate systems where clients are billed for a lawyer's time in six-minute increments. The paralegal profession is another brainchild of the fraternity, created as an additional tracking and revenue center. High-powered firms have departmentalized their services into separate profit centers for probate and trusts, trial, commercial, and so forth.

The once-honorable profession of law now fully functions as a bottom-line business, driven by greed and the pursuit of power and wealth, even shaping the laws of the United States outside the elected Congress and state legislatures.

Bureaucratic design

Today the skill and gamesmanship of lawyers, not the truth, often determine the outcome of a case. And we lawyers love it. All the tools are there to obscure and confound. The system's process of discovery and the exclusionary rule often work to keep vital information off-limits to jurors and make cases so convoluted and complex that only lawyers and judges understand them.

The net effect has been to increase our need for lawyers, create more work for them, clog the courts and ensure that most cases never go to

trial and are, instead, plea-bargained and compromised. All the while the clock is ticking, and the monster is being fed.

The sullyng of American law has resulted in a fountain of money for law professionals while the common people, who are increasingly affected by lawyer-driven changes and an expensive, self-serving bureaucracy, are left confused and ill-served.

Today, it is estimated that 70 percent of low- to middle-income citizens can no longer afford the cost of justice in America. What would our Founding Fathers think?

This devolution of lawmaking by the judiciary has been subtle, taking place incrementally over decades. But today, it's engrained in our legal system, and few even question it. But the result is clear. Individuals can no longer participate in the legal system.

It has become too complex and too expensive, all the while feeding our dependency on lawyers.

By complicating the law, lawyers have achieved the ultimate job security. Gone are the days when American courts functioned to serve justice simply and swiftly.

It is estimated that 95 million legal actions now pass through the courts annually, and the time and expense for a plaintiff or defendant in our legal system can be absolutely overwhelming.

Surely it's time to question what has happened to our justice system and to wonder if it is possible to return to a system that truly does protect us from wrongs.

John F. Molloy was elected to the Arizona Court of Appeals, where he served as chief justice and authored more than 300 appellate opinions. Molloy wrote the final Miranda decision for the Arizona Supreme Court.