



The Legal Fraternity

BOOK REVIEW



By William Peniston, MD

How our laws have developed ever more largesse for trial attorneys while making the acquisition of truth increasingly difficult.

The Fraternity: Lawyers and Judges in Collusion by John Fitzgerald Molloy, 244 pgs. \$22.95, Paragon House, ISBN 1-55778-841-3.

This is a book you must read. You may not enjoy it, but if you have any concerns about our legal system, and you surely must, you will learn there are more problems than you thought.

This is the story of a trial attorney, and the changes he was privy to, during 46 years of private practice that were interrupted by 12 years serving as a judge in various capacities, including the Arizona Supreme Court.

He admits to being a part of this "collusion" for almost all of his professional life. Admittedly, there were times when he mused about his "Daddy's" law practice and that of his own mentor, "Judge Hall." There even were times when he opposed some of the collusion and sometimes wrote minority opinions contesting some of the changes.

If, while reading, you start to think this author is a wild-eyed maverick, I believe such thoughts will eventually be dispelled by his reference to other writings critical of our system of justice¹ and to some critical opinions by prominent jurists².

There are several laudatory comments by well-known people on the back jacket. I mention this because you may be put off by his writing style. I disliked the general tone, of almost ranting and raving, throughout the book. Malloy practically sneers at the Supreme Court, repeatedly referring to it as "Great Court," "High Court," "Holy Nine," "Nine Gods," etc." Coupled with his repeated reference to his father as "Daddy," this struck me as rather unprofessional and initially took away much of the credibility of the book. I think it's one thing to scorn and quite another to sneer.

Admittedly his derision comes from the fact that very few Supreme Court justices have had any experience on a trial bench. He makes a point of naming them as he discusses decisions he believes were detrimental to our country. Interestingly, several of these decisions were made by five to four majorities. You may disagree with his reasoning and feelings about some of the Supreme Court decisions that you always felt were good rulings (*Miranda* perhaps?). But then again, that he changes your mind, as he did mine.

Don't let my reactions keep you from reading the book; they were purely personal and you may well not experience them. Certainly I found much to enjoy and learn from this book. I loved a statement by the firm he joined in 1947. "Charging by the hour is for plumbers,' we said proudly, 'but we are professionals.'" This is quoted in the Prologue where he later notes how lawyers were soon proclaiming that "fees were now of the essence." In that same section, he notes how he became "president" of a moneymaking entity and his "partners" became "fellow shareholders."³

From this point forward he repeatedly demonstrates how our laws have developed ever more largesse for trial attorneys while making the acquisition of truth increasingly difficult. And he decries the fact that guilt or innocence in trials is usually determined by the persuasive skills of the opposing attorneys rather than the discovery of truth.

He cites legal fee increases as recommendations by state and federal bar associations' conferences on economics and his own firm's executive committee. And, in all probability, the executive committees of other firms. This was justified as keeping up with other "successful" law firms.

These and other experiences in trial courts as a lawyer and judge eventually led him to believe that the only real purpose of these so called improvements in our laws was to increase lawyers' incomes.

As I was finishing my reading of this book, I couldn't help thinking of our profession. Have we shifted from a *profession* to a *business*? Or are we just in the throes of a shift? Why is it that our country has probably the best medical technology in the world, but ranks so far below other countries, even those that are poorly developed, in the quality of our care?⁴ I hope you read this book and, as you do, think about the quality of our profession.

willpen310904@sbcglobal.net

1. see pg. 224, footnote 181, Guilty: The Collapse of Criminal Justice by Hon. Harold J. Rothwax; and pg. 227, footnote 185, A Nation Under Lawyers by Mary Ann Glendon.
2. see pgs. 114-5, Malloy vs. Hogan; pgs. 115-7, Escobedo vs. Illinois; and pgs. 162-3, Bivens vs. Six Unknown Named Agents of Federal Bureau of Narcotics
3. see pgs. 3-4
4. see
<http://www.davidgratzer.com/report1/5.html>;
https://hopkinsnet.jhu.edu/servlet/page?_pageid=1701&_dad=portal30p&_schema=PORTAL30P;
<http://mwhodges.home.att.net/healthcare.htm>;
http://www.ufcw.org/worker_political_agenda/health_care/envyoftheworld.cfm;
and for a different view see <http://www.ncpa.org/pi/health/pd081401c.html>

Sierra Sacramento Valley Medical Society
5380 Elvas Avenue #100 • Sacramento, CA 95819
916.452.2671 PH • 916.452.2690 FX • Email: info@ssvms.org

Copyright © 2000-2008 Sierra Sacramento Valley Medical Society - All Right's Reserved