

Commentary

Dan Popeo: The American legal profession must clean its own house

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WASHINGTON -

Some of [America's](#) most experienced, powerful, and successful lawyers are now behind bars, or soon will be, giving new meaning to the phrase "jailhouse lawyers." Consider the more recent inductees into the lawyers' hall of shame.

Securities class action gurus Bill Lerach and [Melvyn Weiss](#) recently pleaded guilty to felony charges of conspiracy and racketeering for giving kickbacks to their lead plaintiffs, and are each facing two years in prison. This scheme allowed them to rake in more than \$250 million in attorneys' fees.

Lerach defended his criminal conduct by saying, "Believe me, it was industry practice. We kept it quiet because obviously if a judge knew about it, you're not going to get appointed as lead counsel."

In March, noted plaintiffs' lawyer [Dickie Scruggs](#) also pleaded guilty for trying to bribe a judge to get him to award even more attorneys' fees in one of his multimillion-dollar cases. His son, [Zach Scruggs](#), also a lawyer, and two other lawyers were part of the conspiracy. Still other unscrupulous trial lawyers have been caught fabricating medical evidence and tampering with witnesses.

Regrettably, several state attorneys general have teamed up with opportunistic lawyers — hiring them to sue companies on behalf of their states, supporting their outrageous fee requests, or benefiting from their campaign contributions.

Former Texas AG [Dan Morales](#) went to prison for funneling fees to a lawyer cohort. Mississippi AG [Jim Hood](#) maneuvered that state's Katrina insurance litigation in such a way that it appeared to help Scruggs' parallel lawsuits. And the now disgraced [Eliot Spitzer](#) took \$120,000 in campaign contributions from [Milberg Weiss](#) lawyers and coincidentally pursued companies targeted by his trial lawyer allies.

Even some unaccountable federal prosecutors threaten abusive criminal actions to extort settlements from companies. Aggressive prosecutors know that an indictment alone can doom a company and are able to extract huge penalties, even though they can't prove their case in court.

Most lawyers in both private and government practice are honorable professionals who serve their clients well. But sadly, some self-interested lawyers have polluted our legal system with ethically questionable tactics that are toxic to justice and the rule of law.

The legal community must no longer delay cleaning up this despicable spoils system. It can start right now in America's courtrooms. Judges should not tolerate frivolous lawsuits, lawyers' misrepresentations, discovery abuses, junk science, astronomical attorneys' fees, and other shenanigans that undermine the integrity of the legal system.

Whether imposing monetary sanctions, issuing a public censure, referring the matter to attorney disciplinary boards or for criminal prosecution, or scrutinizing and slashing megamillion-dollar fee requests, judges have the authority to keep litigation lawyers accountable -- and shouldn't be afraid to use it.

The organized bar has a special responsibility to police its own by publicly and vigilantly investigating lawyer misconduct and imposing sanctions, including disbarment, rather than sweeping wrongdoing under the rug.

The [American Bar Association](#), which is ironically celebrating the centennial of its code of ethics, needs to tighten these rules and bring them up to date. We also need to end the practice in some states that allows lawyers to give huge cash campaign contributions to judges running for election, either directly or through multiple "front" groups, and then later appear before those same judges to plead their case.

Our nation's law schools must also share the blame for this appalling state of ethical standards. Legal ethics instruction and training

are not integrated into the law school curriculum. Instead, perfunctory courses are offered that enable the students to answer only a few questions on the topic on the bar exam. Reports that convicted felon Bill Lerach may even be allowed to teach a course in legal ethics at his alma mater is nothing short of scandalous.

More troubling is the proliferation of legal clinics that train future litigators to conduct legal jihads against free enterprise. Why aren't there any clinics that fight for clients and consumers against lawyer abuse?

During the [Enron](#) and [WorldCom](#) fraud scandals, Congress was quick to conduct investigations and hold hearings, yet when it comes to massive criminal conduct by plaintiffs' attorneys involving hundreds of millions of dollars, the silence can be deafening. Recent calls by Reps. [John Boehner](#) and [Lamar Smith](#) for such investigations by the [House Judiciary Committee](#) should be heeded.

Unfortunately, nothing will really change until the legal establishment admits that too many other Lerachs, Scruggses and Spitzers are still out there using "justice" and "consumer rights" as a cover for their own aggrandizement.

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