

## **The State of the Union under a failed Constitution.**

*June 14, 1997*

*The need for public opinion to support the removal of lawyers from elective office.<sup>1</sup> The issue of unfitness of lawyers for elective office. The corruption of the legal profession as a whole. (Part 2 of 4),<sup>2</sup> The Empirical<sup>3</sup> Approach.*

Federalist 97 concluded, by the use of the rational approach to logical argument, that the American legal profession is materially more corrupt than the Nation, and that therefore all members of that profession should be excluded from elective office. The next step involves examining the available factual evidence to confirm that conclusion on an empirical basis.

### **The empirical approach - the unavailable evidence.**

Let us first identify the kind of evidence that will not be found, and why. *There will be no evidence of widespread criminal convictions of dishonest lawyers.*

The main reason is that the legal and criminal justice system created by the legal profession,<sup>4</sup> makes it difficult or impossible to convict the rich and the powerful even if they are not lawyers, let alone those who are.

One has only to consider the recent criminal trials of O.J. Simpson (1995) and John Gotti (1992) to see the truth of that statement.<sup>5</sup> Simpson was acquitted of two murders most people are convinced he committed.<sup>6</sup> He succeeded by assembling a 'defense team' capable of 'beating the system' but at a cost only a tiny minority in the Nation could afford. John Gotti was only convicted of criminal wrongdoing on the third try.<sup>7</sup> A successful prosecution resulted only after the removal of Gotti's regular defense counsel from the trial, and the enlisting of the help and support of Sammy 'the Bull' Gravano as a key witness. Gravano is a confessed Cosa Nostra murderer of 19 people. His 'price' for testifying was immunity from prosecution on all murders.

If the 'system' had so much trouble convicting a known Cosa Nostra family head, about whom the FBI had so much information, what hope is there that the authorities can successfully prosecute large numbers of wrongdoers in the legal profession? A profession far more powerful, and one estimated to have harmed the Nation far more than all of organized crime.<sup>8</sup> One whose crimes are often all but invisible to anything but the closest scrutiny.

### **The empirical approach - the available evidence.**

Notwithstanding the absence of the aforementioned kind of evidence, substantial empirical evidence does exist. For example:

1. Evidence in a book written by John Dos Passos, an American lawyer, in 1907, describing the decline in ethical and moral standards of the profession commencing with the Civil War.

2. Evidence in the Bible and international literature confirming that lawyers as a group, have generally been perceived as corrupt.
3. Evidence in American literature by lawyers describing the particular methods by which lawyers cheat their clients, as well as other wrongdoing by lawyers.
4. Evidence of the acknowledgment by the legal profession itself, that very serious problems exist concerning the lack of integrity of the profession, and the potential disastrous effects on the Nation.
5. Anecdotal evidence showing specific instances where the levels of corruption in the courts and of lawyers in elected office, have reached alarming proportions.
6. The absence of any material evidence contesting the conclusions reached by the profession's critics, or suggesting that any other profession is corrupt.

### **1. The American Lawyer by John Dos Passos of the New York Bar.**<sup>9</sup>

This book written in 1907 by John Dos Passos, a New York lawyer, is exceptionally insightful. The author, a man of the highest moral standing and an accomplished legal scholar, recognized in 1907 the grievous harm that the legal profession was inflicting upon the Nation. The philosophy he espouses, his concept of the proper ethos<sup>10</sup> of the profession, is in keeping with the very highest moral approach to the law. This writer agrees with Dos Passos agree as to the existence and seriousness of the problem, but not as to the cause or the solutions. Here are a few of the most significant passages from *The American Lawyer*, (***Emphasis added***):

*"While it is said (America) is a government of the people, by the people and for the people, it is not, perhaps going too far to add, -- subject to the lawyers (p.2) The lawyers swarm in all of the Departments of the National and State Government (p.2) When a lawyer undertakes an honest introspection of his profession...he must then say some ugly things about himself. (p.3) Fundamentally (lawyers) believe that .. they should serve their clients at all sacrifices, sometimes even of truth and justice. (By holding up to the lawyer a faithful picture of his real mission)... (it) then will be seen, that a large number of the lawyers are delinquents to society, not with malice prepense (sic), but from a failure to appreciate the real and full nature of their professional duties. (p.6)"*

*"(Lawyers).. have been led to excesses in advocacy -- often to gross exaggeration of facts -- and sometimes to crime. **Inordinate zeal for clients, and ambition to win...often sweep away moral and legal barriers. (p.10) The abuse of power and opportunities, and of unlimited confidence is the primary sin for which lawyers are answerable. (p.11)"***

*"In the ordinary judgments of men, it is the law and lawyers that suffer most (when non meritorious suit are filed); as to the latter it brings a shallow reputation for cleverness, largely and sincerely blended with contempt; to the former a sense of its inadequacy to fulfill its ordained purpose. Law is a 'humbug' - a mere game of chicane (sic); **the lawyer a cunning scamp, not essentially different from other scamps, except that he is better protected and more to be feared.** Sheltered in the garb of his office, the lawyer can always insidiously and secretly, deflect the course of justice and defraud the law. (P.70)"*

*"Picture the lawyers training themselves in a school of dishonesty, trickery, and chicanery, diverting and stopping the machinery of the law, prostituting the forms of justice for gain, selling their knowledge, ability, experience, and such talent as they may possess, to the client who pays most for the service, and resorting to every device of cunning and deceit to gain their end... In (all ranks) of the profession can be found many lawyers whose services are sought only to enable guilty men to escape punishment; only to open the door for others to avoid consequences of the civil law, and of their contracts; **only to defeat and evade the legislative will and public policy; only to show their clients how to cheat, defraud, vilify, and defame, without penalty or damage.** (p.76)"*

*"There is no arbiter (over the lawyer) but his conscience. In a very extensive search into the subject, **I have found that there has always been a recognized temptation, or tendency, on the part of lawyers, to overleap the bounds of conscience,***<sup>11</sup> *and that these acts have frequently called for very stringent measures against them.*<sup>12</sup> (p.125)"

*"The duty of a lawyer is threefold: to the State, as an officer and a citizen; to the court, as an officer and adviser; and to his client, as a fiduciary. He owes loyalty to the State, both as a citizen and as a sworn officer of justice; he owes respect and dignity in his deportment, to the courts, and candor or honesty in his statements and dealings with them; to his client he owes his talents, his knowledge, his time and his fidelity. In every employment which the lawyer receives, his primary duty is to the State.*<sup>13</sup> *In performing this duty, he can fulfill all his obligations to his clients and courts with fidelity and honor. If he attempts to go beyond this, he strikes a blow to Society. If a conflict arises between his duty to the Government and his client he must decide in favor of the former, for the interest of that client is subordinate to the interests of all other citizens constituting the State -- who are interested in maintaining the integrity of the judicial system. Salus populi suprema lex.*<sup>14</sup> (p.127-128)"

*"To bribe a policeman... to corrupt a magistrate... to pay a lawyer to use his knowledge to defeat the law; what difference is there in these acts? Is the lawyer's conduct less serious because it is hidden and secret? The law is defeated... The difference is not in the degree of the act but in the difficulty of detection... (p.129) (The lawyer) insidiously fills (the client) with false pleas and defenses, and he appears merely as the representative, whereas in fact he is often the principal actor. Is not the... lawyer as corrupt as any other officer who takes a direct bribe. (p.130)"*

*"It is the common belief, inside and outside the profession, that the most brilliant and learned of the lawyers are employed to defeat or strangle justice. (p. 131) The lawyer's duty to society and the law must be constantly kept before him, for... the combined acts of a body of lawyers oft repeated,... silently and secretly gnawing at the foundation of a great and magnificent structure, will gradually but surely cause it to... tumble into ruins. (p. 136-137) Let anyone consider the effect of forty or fifty thousand legal agents<sup>15</sup> spending their lives in distorting and prostituting the forms of justice, misapplying and perverting its principles, undermining the constitution and its laws, and he can make fairly accurate calculations as to the longevity, of the system of government, under which they exist and thrive. ( p.137)"*

*"The profession of the law holds out a perpetual temptation to human weakness.<sup>16</sup> (p139) Upon what principle can (the lawyer) use the machinery of justice in knowingly aiding and abetting unfounded and dishonest suits? Upon what principle can he use the machinery of the law to accomplish results contrary to justice, truth right? **How can the law be efficacious, if it is slaughtered in the temple of justice, by its own chosen guards?**<sup>17</sup>... A lawyer, with knowledge of the facts, is 'morally responsible' for the act of a party in maintaining an unjust cause... If anything can be more distinctly immoral, I cannot conceive it. (p.145)"*

Dos Passos' book *The American Lawyer*, is exceptionally insightful and revealing. He saw with great accuracy and foresight most of the ills that the legal profession had already brought upon the Nation, and many of the further disasters that would follow. Dos Passos (1844-1917), was a lawyer possessed of great moral commitment, who was not afraid to speak out concerning the 'ugly truth' about his profession.

Dos Passos acknowledged the continuing powerful temptation to which lawyers are subject, thus confirming the conclusion provided by the rational analysis (Federalist 97). Dos Passos also confirmed that as early as 1907, lawyers controlled all government; that the ethics and behavior

of a substantial plurality of lawyers were distinctly immoral and often illegal; and that a large number of lawyers were delinquents to society. He condemned lawyers and held the profession liable for the potential fall of this democracy. Since 1907 things have become substantially worse. Although Dos Passos failed to understand the constitutional violation at the heart of the problem, he makes this writer's case for the removal of lawyers from elected office because they are corrupt, as well as anyone.

PUBLIUS II  
(Ronald Bibace)

**About the author:** *This writer is a constitutional scholar who wrote Federalists 86 through 97, in defense of the Constitution. He is like Madison, a non lawyer and like Hamilton an immigrant and naturalized American.*

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1. See Federalist 96 by this writer.
  2. This paper and Federalists 97, 99 and 100, should be read as four parts of a single unit.
  3. The empirical approach, *Empiricism*, is the belief that all knowledge is derived from experience through the senses. The alternative, *Rationalism*, is the theory that knowledge is attainable through reason alone.
  4. Primarily for its own financial gain.
  5. O.J.Simpson was a very famous, wealthy, football player and part time actor, who was accused of murdering his ex-wife and her friend, Ronald Goldman. John Gotti, known as The Dapper Don, was the accused head of one of the Cosa Nostra New York 'families', who ordered the murders of many people.
  6. Including a unanimous jury in the 'wrongful death' civil suit, where Simpson did not have the benefit of his 'dream team'. Most jurors in that trial who spoke out, declared themselves convinced of Simpson's guilt to the criminal standard of proof of '*beyond a reasonable doubt*' (see Federalist 96), not merely to the civil case standard of proof of '*preponderance of the evidence*'.
  7. He was given a sentence of life in jail without the possibility of parole.
  8. The Nation's losses attributed to the corruption of the legal profession and its unconstitutional control of government was estimated at \$1 trillion annually in 1989. The cost in human lives either ended by suicide, born of despair created by lawyer's activities, or destroyed in other ways, is impossible to measure but believed to be substantial.
  9. Original publisher: The Banks Law Publishing Co. New York, 1907, Current Publisher: Fred B. Rothman & Co. , Littleton Colorado, 1986. ISBN 0-8377-0524-X
  10. Ethos is the characteristic spirit, disposition, or tendency of the profession as expressed in their actions.
  11. Dos Passos' extensive research specifically confirms the conclusion reached in the rational approach, that temptation 'the mother of corruption' is forever '*banging on the lawyers' door*'.
  12. Stringent measures against lawyers are impossible when lawyers control all government. That is probably the main reason why the legal profession has sinned so grievously against the Nation. All available evidence indicates there is probable cause to charge all lawyers in elective office with treason. So far not a single one has been charged with any unconstitutional violation of any kind.
  13. This view of the lawyer's primary responsibility is identical to the rule of law established in Florida by the Florida Supreme Court's decision in *Petition of FLORIDA STATE BAR ASS'N et al.* 40 So.2d 902 at 908, where the opinion states: *On the theory that it is such an important factor in the administration of justice this Court has held that a lawyer's responsibility to the public rises above his responsibility to his client. The very nature of our democratic process imposes on him*

*the responsibility to uphold democratic concepts **regardless of how they affect the case at hand.** (Emphasis added).* In spite of the law this writer has not found a single Florida lawyer who was even aware that this is the law, or practices the law this way. Furthermore several Florida lawyers have expressed the opinion that to place their duty to Society above that to their client could result in a malpractice lawsuit against them. This false perception that the client's interests should prevail above all others appears to have been institutionalized by the Nation's Law Schools as part of their courses on Ethics.

14. The welfare of the people is the supreme law.
15. That comes to about one third of approximately 130,000 lawyers in the USA in 1907. There are almost one million lawyers in the USA today. It is reasonable to assume that the proportion of 'corrupt lawyers' is even higher now than it was then. That means that at this time either a substantial plurality or a majority of lawyers are corrupt, if as the evidence indicates Dos Passos' views were accurate both then and now.
16. See Footnote 11.
17. Juventus, a senator in ancient Rome, raised the same issue by asking: *Who shall guard the guardians themselves?* He supplied no answer. This writer believes the answer must always be: *We the people!*