

Something That's Actually Rigged: The Conservatorship System

By Thomas F. Coleman
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During the last few weeks of the presidential campaign, voters heard Donald Trump repeatedly tell audiences at his rallies that “the system is rigged.” As applied to voting systems operated by state governments, that was a gross exaggeration.

Even so, the notion of a system being “rigged” did not seem far-fetched to me. I have been fighting oppressive and overbearing economic and legal systems my whole life.

My first experience was with an unfair economic situation in Detroit. A major newspaper was taking advantage of newspaper delivery boys who were under my supervision. I was fired when I tried to organize the boys into a union so they could collectively demand fair working conditions.

Intervention by the National Labor Relations Board caused my reinstatement, but I dropped the union organizing because, as a teenager myself, I lacked the resources to press the matter further. To me, that system was rigged. A battle between a group of teenagers and a large corporation had a predetermined outcome. As expected, the system won.

My next encounter with a rigged system occurred a decade later in California. This time it was with an unfair criminal justice system that sent undercover vice officers to gathering spots for gay men to entrap and arrest them. I was fresh out of law school and started defending these victims of the vice squad.

That system was definitely rigged. The police and the judges knew the men would not fight back. The legal system could count on a plea bargain in almost every case because the deck was stacked against homosexuals even though the crimes involved consenting adults.

The legal profession provided these defendants with a lawyer, but the attorneys counseled their clients that plea bargaining was the only viable option. Few

lawyers took cases to trial to contest the charges. None of them challenged the system itself. None, that is, until I took up the cause.

I decided to challenge the constitutionality of the system itself. It took several years of litigation – with plenty of losses along the way – but I finally got a case to the California Supreme Court.

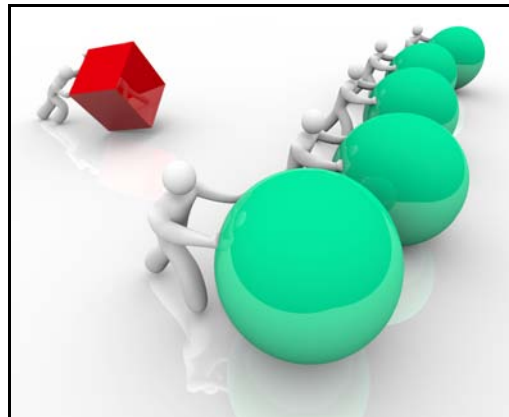
After 18 months of review, the court handed down a landmark decision in *Pryor v. Municipal Court* – a ruling where it declared that the law and the system of enforcement were unconstitutional. It set new rules that all but ended undercover entrapment and the resulting need for defendants to plea bargain.

Fast forward to 2013 when I was confronted with another rigged system. This time it was one that was operated by the probate courts in California. The victims of the rigging were vulnerable adults with intellectual and developmental disabilities and seniors with other cognitive impairments. The legal machine in question was the conservatorship system.

Conservatorship proceedings are initiated, often by parents or relatives, for the protection of seniors or adults with cognitive disabilities who are at risk of neglect because they cannot make major life decisions for themselves. Some states call them guardianship proceedings.

Over the course of 18 months, three cases came my way. Mickey's case was the first. It involved alleged abuse by his conservator. Greg's case was the second. He was being forced to spend time with a parent against his will – a parent whom he said he feared. Stephen's case involved numerous rights violations, including the threatened loss of his voting rights.

In each situation, I was asked to give advice about whether the disabled adult was receiving proper legal representation from a court-appointed lawyer.



My investigation showed a pattern of negligent representation. I began to wonder if these were isolated incidents or if perhaps I was being introduced to another rigged system.

Three years later, and after 3,000 hours of analyzing the conservatorship system in California and similar systems in other states, I have concluded the probate courts are operating a rigged system that is all too often meting out assembly line injustice to hundreds of thousands of seniors and adults with disabilities.

When a conservatorship petition is filed with the court and served on a senior or an adult with a developmental disability, the adult is involuntarily drawn into complicated legal proceedings. Because of cognitive and communication disabilities, there is no way these individuals can question or challenge the petition, much less produce evidence that they should retain some or all of their fundamental rights. The proceedings seek to take away their right to make decisions we all take for granted as adults, involving medical, financial, educational, residential, social, sexual, and marital matters.

“Protective” systems like this exist in all 50 states. There are more than 1.5 million adults in the United States who are currently under an order of guardianship or conservatorship.

In at least 20 states, it is not mandatory for the court to give these adults a lawyer. How rigged is that? Imagine yourself with a cognitive disability, perhaps even unable to speak, and then being served with legal papers in a proceeding that seeks to remove your decision-making rights and confer them on another person. The proposed guardian may even be someone who has been abusing you physically or exploiting you financially.

Then there are 30 states that do give a lawyer to the adult in question. My auditing of the system in California, and consultations with advocates who are ringing alarm bells in other states, has caused me to conclude that the policies and practices in state courts throughout the nation are not truly giving clients adequate advocacy and defense services.

These state-run probate court systems remain perpetually rigged because of a perfect storm of circumstances. Legislators turn a blind eye to the situation because their primary concern is limiting judicial budgets. Judges feel trapped because they must manage huge caseloads. They resist developing a system where

properly trained lawyers who act as zealous advocates file motions and demand hearings – proceedings which will take up precious court time.

Court-appointed lawyers depend on a flow of future cases from the judges who appoint them and so they are afraid to rock the boat. Trouble makers or those who put in “too many hours” on cases fear they may not be appointed to future cases.

Another element of this perfect storm of circumstances perpetuating the status quo is the inability of these litigants to complain. Because of their cognitive and communication disabilities, they do not file appeals with higher courts or lodge complaints with state bar associations. Thus the usual corrective systems are never activated and the pattern of deficient advocacy services continues indefinitely.

Whether these three cases came to me by coincidence or “cosmic design,” I have taken up the call of reform. My goal is that litigants with cognitive or communication disabilities will routinely receive individualized justice and due process of law. My hope for a better future rests more with the U.S. Department of Justice than with state officials.

The DOJ could open a formal inquiry into the California policies and practices that violate the Americans with Disabilities Act – a federal law requiring courts, and the attorneys they appoint to these cases, to provide access to justice to people with disabilities.

That is not systematically occurring in California now, has not occurred in the past, and is not likely to happen in the future unless and until California is required to answer to a higher authority. The ADA, as administered by the DOJ, is that higher authority.

The DOJ has seen and tackled rigged systems before. Federal intervention now could stimulate conservatorship reform in California, which in turn could launch a domino effect to unrig state guardianship systems throughout the nation. ♦♦♦



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