

On Retainer: Your In-House Counsel

'How Can You Sleep At Night Mr. Criminal Defense Attorney?'

by Danny Foster, Esq.

"How do you do it Danny? How can you sleep at night? How can you possibly defend the people you defend, especially the ones you know who did it?" If I had a dollar for every time I was asked that question I wouldn't need to practice law. I would be retired.

Well it is a fair question especially in light of the horrors of the past month in Aurora where it seems there is no question regarding the guilt of the killer. But I still have my response that has stood the test of time and works in any situation. I defend people charged because without good, competent defense the constitution has no value. If people are charged with crimes and we don't have a system for ensuring their fair treatment, then the system can run amuck and go out of balance.

I am a believer that the system is already heavily weighted toward the prosecution. Who writes the tickets? The police. Who files the indictments? The district attorneys. Who has unlimited access to the evidence? The prosecution. I could go on but you get my point.

You have all seen the statue of Lady Justice, blindfolded holding her scales of justice. Well these scales demand balance. If

criminal defendants, yes even ones who did it, don't have good, competent representation then the system breaks down. I'd love to say that all the prosecutors, police and judges I know are of the highest moral fiber and wouldn't knowingly or recklessly convict innocent people, but unfortunately that isn't the case. Whenever I select a jury the first question I ask them is "Tell me, what's my job?" Inevitably someone cries out "To get your client off!" Well that may be my goal, but it's not my job. My job, I tell the jury, is to ensure the prosecution meets their constitutional burden to prove my client guilty beyond a reasonable doubt. And if they cannot do that then they haven't done their job. And too often I have seen prosecutors push the ethical envelope to get their conviction, justice be damned.

One of my favorite quotes is from Cynthia Roseberry, a federal public defender from Georgia who said:

"We, as criminal defense lawyers, are forced to deal with some of the lowest people on earth, people who have no sense of right and wrong, people who will lie in court to get what they want, people who do not care who gets hurt in the process. It is our job — our sworn duty — as criminal defense lawyers, to protect our clients from those people."



Danny Foster, Esq.

Clearly said tongue in cheek, but damn if I haven't seen some innocent people get convicted and others almost get convicted by overzealous prosecutors and integrity-challenged police.

If not for the incredible work of some criminal defense attorneys like Danyel Joffe who freed her wrongly convicted client Robert Dewey on a murder charge where he unfairly spent over 17 years in prison for a crime he didn't commit, he would still be rotting in prison. Or the studly duo of Maria Liu and David Wy-more who never stopped fighting for Tim Masters after he was wrongly convicted by overly zealous prosecutors (who were later appointed as judges, then voted out!) and served nearly a decade in prison. Both of these INNOCENT people were called the scum of the earth and people screamed for them to be tied up to the tallest tree. Masters and Dewey weren't sympathetic, they weren't JCrew models, they may have

been a bit rough around the edges, but guess what? They were innocent and suffered cruelties and inhumanities beyond any of our worst nightmares.

I appreciate the fact that these gentlemen are not the norm and the vast amount of those convicted were likely guilty of their crimes, but their examples solidify the common bond of criminal defense attorneys across the country. We must be the Yin to the government's Yang. Ask the citizens of China, North Korea or Iran how well their criminal justice system works. That is if you can find a convict that hasn't been put to death yet.

But I am a human being just like most of you out there. After the horrific events that unfolded a few weeks ago at the Aurora theater, I found myself questioning whether I could represent the man charged with this brutal and horrendous crime. I have been called by many people whose criminal allegations made me sick and every time I have had to shake myself back into reality. Even the lowest of the low and the guiltiest of the guilty require good, zealous legal representation. The system will not work if there aren't people willing to hold the prosecution to their burden. Because if the system is tested, and works for the worst of the worst, then we know it will work for all of us who may be alleged to have committed a crime. And in your case, you may just be innocent.

Danny is one of the managing partners of Foster, Graham, Milstein & Calisher (FGMC). His practice focuses on criminal defense and personal injury. The law firm of FGMC, located in Cherry Creek, is a full service law firm focusing on: criminal defense, divorce, personal injury, real estate, litigation, liquor licensing, construction law, tax/estate planning, bankruptcy and zoning. This article does not create an attorney-client relationship and is for informational use only (what do you expect from an attorney!).

Denver Children's Home Gala To Celebrate 136 Years

Colorado's oldest charity is celebrating 136 years with a gala Sept. 21 at the Sherman Street Event Center, 6 p.m. One year older than Colorado, the Denver Children's Home was originally created to house children brought in on orphan trains to work in the coal mines and on the railroads back in 1876. Today, DCH serves the state's abused, neglected, and traumatized youth and their families. The event will include wine, hors d'oeuvres, dinner and entertainment. Information: 720-881-3366.