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Legal Reform 9/7/92 [OA 7579] [1]

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# Δ FACT CHANGE MASTER

\*w/zoellick changes

Provost/Bunton  
Sept. 5, 1992 / 3:30 p.m.

Presidential Remarks  
Waukesha County Picnic  
Waukesha, Wisconsin  
Monday, Sept. 7, 1992

Thank you Governor Tommy Thompson.

Today is Labor Day -- the day we honor American workers -- the most productive men and women in the entire world.

So today, I want to talk to you about a problem that affects you and every other worker -- our crazy, out-of control - legal system.

A serious discussion about legal reform may seem a little odd as a topic for a picnic. But I think you deserve more than talk from your political leaders -- you need answers. Answers to the most pressing question before America today -- how can we <sup>BUILD UPON OUR STRENGTHS AND (PORTER)</sup> guarantee that we will remain not just a military superpower -- but an export superpower, and an economic superpower //

As I see it, our current legal system is a roadblock that must be cleared from the path of America's economic progress.

Let me start by talking about a famous American enforcer of justice. I don't mean <sup>↑</sup> Oliver Wendell Holmes or John Marshall.

I mean someone more famous than that. I mean -- Hulk Hogan. //

My grandkids tell me that in his movie last year -- Hulk Hogan was confronted with the predictable crop of bad guys. Only the bad guys refused to fight Hulk. Instead they said, "this is

THE WASHINGTON TIMES  
1991  
OCT. 23, 91  
REMARKS ON TORT REFORM  
CIVIL JUST.

the nineties -- we're not going to fight you. We are going to sue you."

I fear that one statement, sums up a lot of what is troubling America today.

Pick up the newspaper, the stories roll out at you.

Like by the now famous story about the basketball referee, who made a controversial call at the buzzer of a Purdue-Iowa basketball game. Purdue won the game, and an Iowa souvenir company was suddenly left with victory T-shirts that weren't in all that much demand. So what did the company do? They sued the referee. Sound crazy? It took two years, and a lot of money, before the case was dismissed by the State Supreme Court.

WALL STREET JOURNAL  
AUG. 11, 89

Are these crazy legal stories just intended to give us something to make our friends chuckle at backyard barbecues. I don't think so. It's much more serious than that.

Look around here in Wisconsin, right here in Waukesha. [WOK - a show]

Anybody here cheer for the ~~football Spartans~~ of ~~East~~ Brookfield <sup>EAST</sup> <sup>Spartans</sup> High School?// I'm told Coach ~~Jack~~ Perry and his team now pay almost \$150 bucks for every football helmet -- 10 years ago they paid about a <sup>0</sup> ~~third~~ <sup>HALF</sup> of that. Why the price increase?

Because over the past 18 years, 18 American companies have stopped selling football helmets -- because they can't afford the insurance. (Before this is over, we may go back to the days of Jim Thorpe -- when people played football without helmets. Is that progress?)

BRIAN DAKE/  
HARVEY GRAF, PE  
SPECIALIST  
AT WAUKESHA  
HIGH SCHOOL

LIABILITY  
TAX RAISES  
PRICES: THE  
CASE FOR  
PRODUCT LIABILITY  
FAIRNESS  
MAY 1992  
PLCC -  
PRODUCT LIABILITY COORDINATING COMMITTEE

NO - IN 1988, RAWLINGS SPORTING GOODS BECAME THE 18TH COMPANY IN 18 YEARS TO GIVE UP THE FBALL HELMET BIZ. DUE TO INCREASING LIABILITY EXPOSURE.

Now, Waukesha and Wisconsin aren't unique -- except in their physical beauty. This kind of thing is happening every day in every town across America. And we are all paying the price.

Now understand, this is not a criticism of lawyers. They are an essential part of our society -- and the majority of legal professionals work with integrity and honor. But the good lawyers will tell you, the system is out of control.

In the past 20 years, the number of <sup>CIVIL (DOJ)</sup> lawsuits <sup>(DOJ)</sup> filed in federal courts <sup>(DOJ)</sup> has <sup>MORE THAN (DOJ)</sup> doubled. Today, the average case <sup>(DOJ)</sup> takes a year to be resolved -- and in the past year alone -- the number of cases that were pending for 3 years, increased by <sup>NEARLY (DOJ)</sup> 15 percent.

(Think about what that means. You can file a suit, and have time to enroll in law school, study three years, graduate, pass the bar, and then represent yourself in court on the day the decision is reached.)

What does this litigation explosion cost our economy? Well, the National Association of Manufacturers has just finished looking at that question. \* According to a soon to be released study, \* Americans spend \$200 billion dollars on direct costs to lawyers. [Keep in mind, that doesn't even count the lawyers on their own payrolls, or the money they end up paying in court settlements.] (JOHN HOWARD - OVP SAID DELETE THIS SENTENCE)

(\$200 billion sounds like a lot of money -- and believe me, it is. American businesses now spend more on insurance, lawyers and legal fees -- than on <sup>EITHER INFORMAL OR FORMAL</sup> training our workers for the new <sup>TO PREPARE</sup> economy.) To me that's crazy. As a nation, I believe it's high

DOJ / MRS. QUAYLE'S SPEECH ON AUG. 17, 92

BOBBY CHARLES FACT SHEET X 2449

THAT'S RIGHT BEHIND COULD PUT LANGUAGE RE: COURT DELAYS AND LOST OPPORTUNITIES IN ITS PLACE

\* BOBBY CHARLES SUGGESTS: "... AMERICAN CONSUMERS AND COMPANIES WILL SPEND UP TO \$200 BILLION DOLLARS IN LEGAL SERVICES THIS YEAR."

OK BUT ONLY W/ ADDITIONAL QUALIFIER (Betsy Anderson OVD - 9/90 STUDY) WORKER TRAINING: COMPETING IN THE NEW INTERNATIONAL ECONOMY

time, that we started suing each other less, and caring for each other more.//

That is why I have sent Congress comprehensive legislation to reform our Civil Justice System. It is complete with specific proposals. We want to solve more disputes early -- before they get dragged into the courtroom.// We want to speed the <sup>DISCOVERY (DOJ)</sup> legal process -- there is no reason anyone can go through law school

faster than it takes a court to reach a verdict. We want to put a lid on outrageous <sup>SWITS (JOHN HOWARD) OVP</sup> punitive damages, that strike terror into every mom and dad who wants to coach their kid's football team.//

And here's one big idea. I believe we should <sup>EXPERIMENT WITH (DOJ)</sup> copy a practice from our friends in Britain -- and <sup>IN APPROPRIATE CASES (PORTER - "WE ARE TRYING THIS OUT IN FEDERAL DIVERSITY CASES ONLY. WE HAVE ALSO ADVANCED IT WHERE SETTLEMENT REFUSED AND COURT VERDICT SHOWS OFFER WAS FAIR. NOT YET ADVOCATED FOR EVERY CASE.)</sup> make the loser pay the winner's court fees. You think that T-shirt company would have <sup>BROUGHT CRAZY LAWSUIT AGAINST THAT (JOHN HOWARD) OVP</sup> sued that referee -- if they'd known they'd end up footing his legal bills?//

This is one part of the crisis in our civil justice system. But we also need change in our product liability laws. These are the laws that are supposed to allow people to be compensated for harm caused to them by a defective product. That's an important right, and I am all for it. People ought to receive fair compensation when a product is defective and they get hurt.

But like so much of our civil justice system, product liability has careened out of control.

Let me give you an example of what I'm talking about: The Will-Burt Corporation of Orville, Ohio stopped making parts for ladders, scaffolds, and aircraft -- because the products

JOHN HOWARD

(JOHN HOWARD) OVP

From P.L.C. Hearing testimony excerpts. Nov. 7, 1999 Senate Small Biz. COMPETITION SUBCOMTEE.

encountered potential liability costs. But the workers paid an even higher price -- the company was forced to close plants and lay off 80 employees.

Here's the problem. The product liability laws vary from state to state and the rules have encouraged crazy lawsuits, and outrageous awards. The cost of defending these lawsuits has escalated. A lot of trial lawyers bring lawsuits, knowing that it is cheaper for companies to settle the case than to pay their own lawyers to defend them through trial. And the cost of insurance keeps skyrocketing.

Big deal, right? So companies have to pay extra for a few lawyers. But it's not just companies who foot the bill, we all pay higher prices -- for everything from medicine to step ladders.

It's worse than that. We've never seen a lot of good products -- because companies are afraid of liability.

In Europe, for example, Volvo offers parents a car seat built right in the car. You can't buy one in the U.S. today and may never be able to. No company wants to deal with our laws.

And if you're in Europe, and you suffer from AIDS, you can get medical treatment you can't get in the United States. Medical companies are afraid of the liability.

But it's all worth it right, because when someone does get hurt, they can a big settlement? Again, that's not what's happening. More than half of all the money awarded by juries in

PLCC  
MAY 1992

FROM PLCC  
MAY 1992

JOHN  
HOWARD -  
DVP -  
IS WORRIED  
ABOUT  
BOTH GRAM'S  
SUGGESTS  
DELETE  
BECAUSE OF  
CHRYSLER  
MINI-VAN  
AND --  
YOU CAN'T BE  
CURED OF AIDS  
IN EUROPE -  
FEELS IT WILL  
GET THE  
PRESIDENT  
IN TROUBLE

DELETE GRAM  
JOHN HOWARD  
DVP

DELETE GRAM  
JOHN HOWARD  
DVP

(DOJ CAN'T VERIFY LAWYERS TAKE IN PRODUCTS LIABILITY CASES HEARD BY JURIES)

product liability cases, goes not to the injured party, but to the lawyers. ] Think about that. <sup>(DOJ) NEARLY (42%) DOJ</sup> ~~More than~~ half of all the awards -- ends up in the pockets of Brooks Brothers suits.

But here's the real problem. Our product liability system is killing our economic competitiveness.

Liability costs are 15 times greater than that in Japan, and 20 times greater than that in Europe. Our businesses -- especially our small businesses -- are staggering under a weight our competitors don't even carry.

Every dollar we spend around a courtroom, is a dollar we won't spend on training, education, research, investment. It will be the difference between no jobs for our kids -- and good jobs for our kids.

We have to do something about this -- if we want our kids to have job. Luckily, Senator Bob Kasten understands this. He has been the fighter to change the system.

Bob has put forth a plan -- which I have endorsed -- to speed the legal process -- and settle more cases out of court -- which will help everyone.

We want uniformity in product liability law -- instead of the confusing 51 separate standards we have today. We want to have the same rules for damages from one state to the next. We want to bring some rationality to the system.

Our plan is pro-consumer, pro-business, pro-safety, and pro-jobs. The day my pen signs Senator Kasten's bill -- is the day our workers get a leg up on other workers.

PLCC  
MAY 1992  
US BIS  
COMPETITIVE  
US ADVANTAGE

STAFFING  
CALLS

PLCC  
MAY 1992

So what's the problem? Why do we still face this crisis? Bob Kasten will tell you the problem. The Gridlock Congress.

I know you are sick of the blame-game in Washington, but we can't ignore the facts.

Like my opponent, Mr. Clinton -- many members of Congress get their campaign funds from trial lawyer organizations. Here's what one Arkansas trial lawyer wrote about my opponent -- trying to raise money for the Clinton campaign: "I can never remember an occasion where he failed to do what was right where we trial lawyers are concerned." So for my opponent and in many Congressional offices -- the only thing that gathers more attention than a TV camera -- is a lawyer in tasselled loafers with a check in hand.

That's why product liability reform has been blocked, for almost two decades. In fact, trial lawyers' money has prevented product liability from ever even coming to a full vote.

But this very week, we have a chance -- to stop undermining our American workers.

Product liability reform will be up before the U.S. Senate. We believe we have the votes -- to pass the Senate.

But there's a legal catch -- something called "cloture." Now cloture sounds like something a doctor would give you after you cut your knee. But it's not. It's the number of votes it takes to <sup>PERMIT A VOTE (RED INK)</sup> ~~stop long-winded debate~~ in the U.S. Congress. (As you can imagine, getting Congress to stop talking about anything

DAVID TELL RUC ACCEPTANCE AND WALL STREET JOURNAL 8/27/92

STAFFING COMMENTS (RED INK) CALVO

STAFFING COMMENTS PORTER CALVO

STAFFING CALVO

SENATORS (FROM WHOEVER WROTE IN RED INK - ONLY 3 PAGES OF QUOTES P. 7-9)

requires some effort. In fact, it takes more votes to get them to stop talking -- than to pass a bill.)

While we have a majority of the Senate on our side and your side, we're not sure we have the extra votes for cloture. So here's the irony -- Congress and the trial lawyers may be able to stop the most-needed legal reform in a decade -- by using a legal loophole.

Bob Kasten doesn't want that to happen -- and neither do I. I'd like to wrap up a Labor Day present for the American economy, and for the jobs of the future.

I need you to get on the phone and let Congress know, the American people are tired of paying for crazy lawsuits. Tired of high prices. Tired of unsafe products. Most of all, we're tired of losing jobs to foreign competitors.//

What troubles me so about our litigation crisis, is that it is so at odds with the true nature of America.

[Revised conclusion]

But what would have happened -- if Columbus had sued the sailmakers of the Santa Maria? What if immigrants in 1903 had tried to win pain and suffering damages -- because the floor on Ellis Island had hurt their backs?

We cannot rid our world of risk, nor do we want to. Today, I appeal to the common sense of the American people -- to take a stand for America's values, and give our workers a chance to compete in the world economy.

BUT WHEN PEOPLE ARE INJURED BY DEFECTIVE PRODUCTS, THEY SHOULD BE COMPENSATED. WE NEED A RATIONAL PRODUCT LIABILITY SYSTEM THAT PROTECTS CONSUMERS WITHOUT MAKING INNOVATION IMPOSSIBLE. (RED LINE REMOVED)

CAH 105

Thank you for listening. God bless Wisconsin. God bless  
the United States of America.

# # #

- SUSAN DREYFUS -

- 414 -

544-1104 (home)

< 3032 Walden Circle  
Waukesha, WI. 53188 >

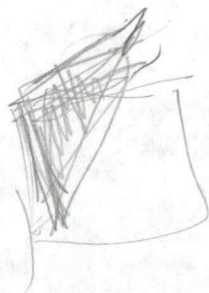
BRIAN DAKE  
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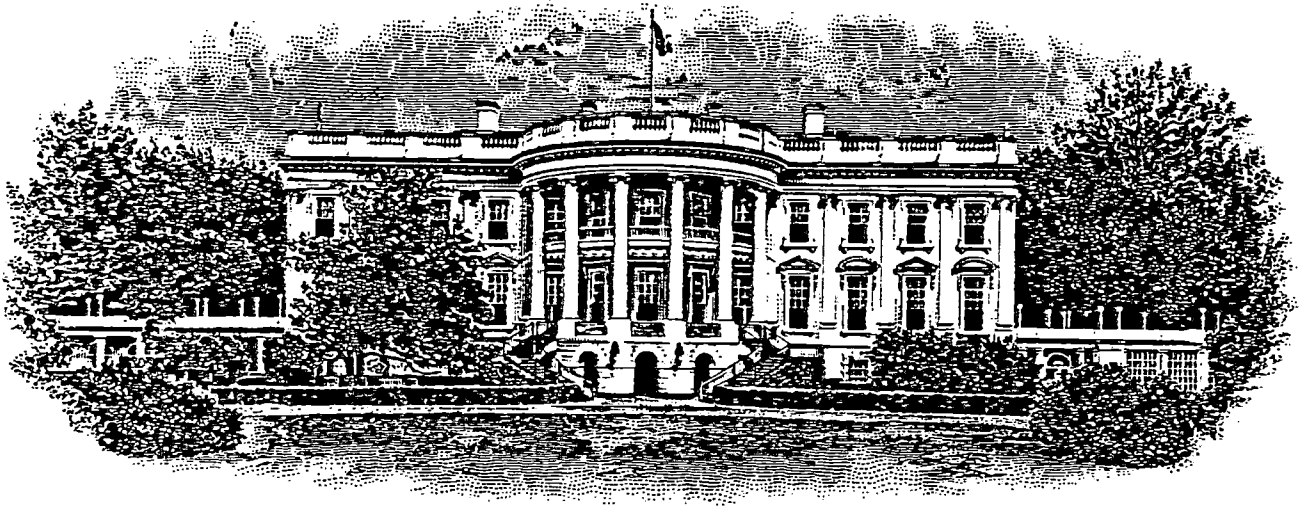
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Gov. Dreyfus / grandchild and FLORES / BOB  
"Red Vest"

testimony to Bobby

Susan / econ stuff





# OFFICE OF PRESIDENTIAL SPEECHWRITING

## FACSIMILE TRANSMITTAL SHEET

Number of Pages (Including Cover) 6  
To MR. BRIAN DAKE  
Fax Number 414-821-1996  
Date 10 SEPTEMBER 1992  
From JEANNIE BUNDN  
Office Number 202-456-7750

\*\*\*\*\*

COMMENTS

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AS PROMISED. AGAIN, MANY THANKS FOR YOUR  
HELP AND GUIDANCE. JEANNIE BUNDN

REMARKS BY THE PRESIDENT  
AT GOP LABOR DAY PICNIC

Waukesha County Exposition Grounds  
Waukesha, Wisconsin

10:16 A.M. CDT

THE PRESIDENT: Thank you so much. What a marvelous turnout. Waukesha knows how to do it. Thank you all very much. (Applause.) Barbara and I are delighted to be here. And may I thank our great United States Senator Bob Kasten, and say how lucky we are to have him and Eva in Washington, D.C. Two of the best. Please get out there and work hard in November. We've got to get more like him in the Senate. (Applause.)

And, of course, you heard from one of the great governors in this country, Tommy Thompson, your own. I salute him and Sue Ann. I don't believe I've got a better supporter out there than Tommy Thompson. (Applause.)

And may I greet Jim Sensenbrenner. If we had more like him in the Congress you wouldn't have everybody yelling "Clean House." He's right. Most of them are wrong. We do need to clean House. (Applause.)

And that brings me to Joe Cook. I'd like to see him elected to the Congress. And then, of course, John MacIver, an old friend who has been in these political trenches with me and Tommy and Bob Kasten for a long time. We salute him. Here's a guy who rolls up his sleeves, like so many of you, and just goes to work for what he believes. And it's a great part of American politics. And I salute him and every other volunteer out there doing the Lord's work. We are going to win because of all of you. (Applause.)

Barbara and I started this morning up at the Mackinac Bridge in Michigan. And with us today, incidentally, is Michigan's Governor John Engler over there -- another great Republican. John. (Applause.) We had a brisk 50-minute walk across that magnificent Mackinac Bridge. So when we say it's great to be at a picnic we know what we're talking about. It's nice to be here -- no more walks.

Now, this Labor Day we gather at a triumphant moment in history. I can stand before you this morning and can say something no other President could ever say: The cold war is over and freedom finished first. (Applause.)

But America is not a nation that brags, not a nation that looks behind -- we are loyal only to the future. So this Labor Day, we must rededicate ourselves to the future of all who punch the time clock, pay the bills, sweat it out at tax time. Our number one priority must be to build economic security for the working men and women of this great country of ours. (Applause.)

And today is the kick-off day for these campaigns. I think the American people feel this one has been going on about 10 months too long -- and so do I. But nevertheless, this is the official kick-off day. My opponent will kick off his campaign with a message of fear, telling us that our country is in decline. But I ask you to look beneath the rhetoric and look at the facts.

MORE

Governor Clinton will tell you that we're a nation in decline, slipping past Germany, headed south towards Sri Lanka, to use his words. Wrong, absolutely wrong, Governor Clinton. (Applause.) The world's most productive workers are not in Germany. They are not in Japan. They are right here in the United States of America. A lot of them right here today in Wisconsin. (Applause.)

And Governor Clinton will tell you that American wages are slipping. And he doesn't mention that since 1985, our workers have earned bigger paychecks and benefits than any other workers in the world. And I want to see them even better. (Applause.) Governor Clinton says that people are working harder for less. He won't mention that adjusted personal income is higher than it was four years ago. That's because inflation -- the thief of the middle class -- has been securely locked away. (Applause.)

Now, does this mean all is fine in America? Of course not. But at a time of uncertainty, a time of wrenching global challenge, Governor Clinton wants to scare American workers so that he can slip into office -- with the failed tax-and-spend policies of the past. Last night -- I don't know if any of you heard that Tom Brokaw show -- but last night the Governor appeared on the Brokaw show, and the first words out of his mouth were: "I have advocated a tax increase." Well, Governor, that is the wrong prescription for America. (Applause.)

He offers a treasure trove of new government programs that will cost at least \$220 billion more of your money. I say you already give too much to the tax man. (Applause.) And he wants to raise taxes by \$150 billion -- just to start; that's just for openers. I want to cut them and get the economy started in high gear. (Applause.)

You heard what Bob Kasten said; he's right. We've been trying to get through this gridlocked Congress some incentives that he and I believe in -- locked because of the old thinking of the Democratic leadership that's been in power for 38 years. So as this campaign gets into full swing, I make one promise. I will talk about real ideas -- of making health care available to the poorest of the poor, controlling what you pay when you go to a doctor. About reforming welfare, giving our kids what they deserve -- the world's very best schools. (Applause.) My policies will strengthen the most important institution in our nation -- and I am talking about the American family. (Applause.)

The liberals are trying to back us away from discussing how to strengthen the family. And we are going to stay with it. America knows that the family is slipping and we want to help strengthen it by child care and by support for these school choice and whatever it is -- welfare reform. So let's keep talking about what America needs -- strengthening the American family. (Applause.)

But today, as Governor Thompson said, I want to talk about another roadblock in the way of you and your families' economic security -- our crazy, out-of-control legal system. Don't just ask me about what's wrong with our legal system. Check the opinion of that famous enforcer of American justice. I'm not talking about Oliver Wendell Holmes or John Marshall. I mean someone even more famous than that: Hulk Hogan. (Laughter.)

My grandkids tell me that in his movie last year Hulk Hogan was confronted with the predictable crop of bad guys. Only the bad guys refused to fight. Instead they said, "This is the '90s -- we're not going to fight you. We are going to sue you." (Laughter.)

Well, I believe that one statement sums up a lot of what is wrong in America today. You pick up the newspaper and the stories roll on out at you. Like the story about a basketball -- true story.

MORE

-- about a basketball referee who made a controversial call at the buzzer of a Purdue-Iowa basketball game. Purdue won, and an Iowa souvenir company was suddenly left with a lot of victory souvenirs that weren't in all that much demand. So what did the company do? They sued the referee. Sound crazy? Well, it took two years and a lot of money before the case was dismissed by the state Supreme Court.

Now, understand, law is a noble and honorable profession. But most good lawyers will tell you that the system is out of control. In the past 20 years, the number of civil lawsuits filed in federal courts has more than doubled. Today, the average case takes almost a year to be resolved -- and in the past year alone the number of cases were pending for three years -- increased by nearly 15 percent.

That means you can file a suit, have time to enroll in a law school, study three years, graduate, pass the bar, and then represent yourself in court on the day the decision is handed down. (Applause.) Now, come on.

The NAM, the National Association of Manufacturers, has just finished looking at what this litigation explosion costs our economy. According to a soon-to-be-released study, American consumers and companies will spend up to \$200 billion on legal services this year -- \$200 billion dollars! American businesses now spend more on insurance and legal fees than on training and preparing our workers for the new economy. And that is crazy. (Applause.) As a nation, I believe it's high time that we started suing each other less and caring for each other more. (Applause.)

I have proposed a comprehensive plan to reform our civil justice system. And we reform our product liability laws. And these laws allow people to be compensated for harm caused by a defective product. People ought to receive fair compensation when a product is defective and they get hurt. But like so much of our civil justice system, product liability has careened out of control.

Let me give you just one example. The Will-Burt Corporation of Orville, Ohio, stopped making parts for ladders and scaffolds and aircraft because they couldn't afford the liability insurance. That was bad news for the company's owners -- but worse news for the 80 employees, all of whom got pink slips.

Here is the problem. The product liability laws vary from state to state and the rules have encouraged these crazy lawsuits and outrageous awards. And the cost of insurance keeps going right out through the roof, keeps skyrocketing.

Big deal, right? So companies have to pay extra for a few lawyers. But it's not just companies who foot the bill, we all pay higher prices for everything from medicine to step ladders. We never get to see a lot of good products because companies are afraid of excessive lawsuits. (Applause.)

Get this. Almost half of all the money paid out in these kind of cases goes not to the injured party, but to the lawyers. I don't want to see only lawyers getting rich, I want to see American workers getting rich. And that's the problem. (Applause.)

Our product liability system is killing our economic competitiveness -- costing Americans secure jobs that you deserve. Our liability costs are many times greater than in Japan and in Europe. Every dollar we spend all around the courtroom is a dollar we won't spend on training, education, research, investment. It could be the difference between no jobs for our kids and good jobs for our kids. (Applause.)

MORE

Now, we have to do something about this. Luckily, your great Senator, Bob Kasten, understands this. He has been fighting to change the system. And he has put forth a plan, which I am for, working with him on, to speed the legal process -- settle more cases out of court and bring some rationality to the product liability system. Once again, a Wisconsin man is in the lead. (Applause.)

Our plan is pro-consumer, pro-business, pro-safety, and pro-jobs. The day my pen signs Senator Kasten's bill is the day we stop undermining the American worker that we salute today on Labor Day. (Applause.)

So why then, if we have all these problems, do we face this crisis? Bob Kasten will tell you in three words -- the gridlocked Congress. And that's why I'm here today.

Forty-four years ago next month, another incumbent President came through Waukesha. His name was Harry S. Truman. Now, I admit it, Harry and I don't have everything in common. (Laughter.) He believed in bigger government -- I don't share that view. But quite frankly, I voted against Truman that year. But still there are some similarities between us.

I've just read that fascinating book, this big, fat book on Truman -- a marvelous biography. Harry Truman ran a small business. He knew what it was to meet a payroll, to work for a living in the private sector. And so do I. (Applause.) Harry Truman wanted to join the military and fight for his country. I so do I, and I did. (Applause.) Harry Truman ran as an underdog -- just as I am. And he liked it, and so do I. (Applause.) Harry Truman admitted when he made a mistake. And God knows I've done the same thing, and I've admitted it. (Applause.)

But most of all, Harry Truman was frustrated by what he called the "do-nothing" Congress. Listen to Truman's very own words from right here in this very town 44 years ago. "When I say do-nothing, I mean they" -- meaning Congress -- "have done nothing for the people. They have not listened to the people's demands."

Now, the gridlocked Congress hasn't listened to people either. One example: I favor a balanced budget amendment. So do you. The Congressman from this very district sponsored the balanced budget amendment, and then turned around and voted against his own amendment on the House floor. That's what I mean when I say gridlocked Congress. Clean House. (Applause.)

For years, Americans have complained about this crazy legal system, but once again the gridlocked Congress has refused to act on my reforms -- or on Bob Kasten's reforms. Later this week, we finally get a Senate vote on the product liability reform. My message to the gridlocked Congress is simple. Either fix our legal system -- stop undermining our workers -- or we're going to take a broom and do some spring cleaning in November, because we are going to clean House. (Applause.)

Send me some good leaders who will listen to the people, the way this Senator does. Elect Joe Cook to the House of Representatives. Help clean House. That's the message.

They talk about change -- change the one institution that hasn't budged for 38 years. Change the House. (Applause.)

Well we're going to clean House -- not just so companies spend less time paying lawyers, more time creating jobs. Not just so moms and dads can coach Little League without fear of some crazy lawsuit. We're going to clean House so we bring down health care costs, so we improve our schools, we take back our streets from the criminals, and we start backing up our law enforcement officials more and more. (Applause.)

MORE

Now, before I finish it's worth mentioning that while I'm in Waukesha this morning, my opponent -- guess where he is -- he's in Harry Truman's hometown -- in Independence, Missouri. So let's just have some plain speaking about Bill Clinton -- Governor Bill Clinton -- and Harry Truman.

Harry Truman never engaged in double-speak. He told people the truth, not merely what they wanted to hear. Compare that to Governor Clinton's position on reforming our legal system. The head of the lawyers -- the head of the trial lawyers in Arkansas -- Trial Lawyers Association -- said Governor Clinton has -- and I quote -- "always done what is right for the trial lawyers." I bet Harry Truman would have done what is right for the American people, not for the trial lawyers. (Applause.)

Whether it was the Soviet blockade of Berlin, or the invasion of Korea, Harry Truman never flinched from the tough decision. Now, contrast that with Governor Clinton's waffling and wavering about whether he would have followed my lead and stood up to Saddam Hussein and his naked aggression. (Applause.)

Harry Truman prided himself on his own military service, and he frequently visited veterans associations and spoke with great pride about his service to his country.

Last but not least, Harry Truman believed America could not turn our back on the rest of the world, even despite the challenges here at home. Governor Clinton virtually ignores foreign policy, and flirts with the dangerous idea of sticking America's head in protectionist sands.

Harry Truman said "the buck stops here." On issue after issue, Governor Clinton says "first, lets blame George Bush," and then "I'll get back to you later with an answer." (Applause.) I'll tell you, if the bucks stops there, than Governor Clinton is offering devalued currency. (Laughter.)

Harry Truman was a man of decisiveness, not equivocation. He'd find little in common with Governor Clinton, a man who hedges or ducks on almost every tough issue; a man who seems to feel strongly on both sides of almost every issue that are before this great nation.

I found out something in the Oval Office. You can't have it both ways. You've got to call it as you see it. You have to make the tough decision and then pay the consequences or get the credit. But you can't be on every side of every issue, waffling around and call that leadership. That is not leadership. (Applause.)

You know, many people thought Harry Truman would lose in 1948. But he said what was in on his mind, he didn't worry about the press, and he never lost faith in the United States of America.

I stand before you with the same passion and that same faith. I will talk about ideas for the next 57 days. Ideas that matter. Ideas that can deal with the real challenges facing this country. Ideas that won't make everyone happy, but that will be right for the United States of America.

And like Harry Truman, I believe a new age of America beckons, and that we can reap the benefits. With your help, come November we will match our global victory with economic security here at home.

Thank you all for being here. And may God bless the United States of America on this very, very special day. Thank you all. (Applause.)

END

10:40 A.M. CDT

For Immediate Release

September 7, 1992

REMARKS BY THE PRESIDENT  
AT GOP LABOR DAY PICNIC

Waukesha County Exposition Grounds  
Waukesha, Wisconsin

10:16 A.M. CDT

THE PRESIDENT: Thank you so much. What a marvelous turnout. Waukesha knows how to do it. Thank you all very much. (Applause.) Barbara and I are delighted to be here. And may I thank our great United States Senator Bob Kasten, and say how lucky we are to have him and Eva in Washington, D.C. Two of the best. Please get out there and work hard in November. We've got to get more like him in the Senate. (Applause.)

And, of course, you heard from one of the great governors in this country, Tommy Thompson, your own. I salute him and Sue Ann. I don't believe I've got a better supporter out there than Tommy Thompson. (Applause.)

And may I greet Jim Sensenbrenner. If we had more like him in the Congress you wouldn't have everybody yelling "Clean House." He's right. Most of them are wrong. We do need to clean House. (Applause.)

And that brings me to Joe Cook. I'd like to see him elected to the Congress. And then, of course, John MacIver, an old friend who has been in these political trenches with me and Tommy and Bob Kasten for a long time. We salute him. Here's a guy who rolls up his sleeves, like so many of you, and just goes to work for what he believes. And it's a great part of American politics. And I salute him and every other volunteer out there doing the Lord's work. We are going to win because of all of you. (Applause.)

Barbara and I started this morning up at the Mackinac Bridge in Michigan. And with us today, incidentally, is Michigan's Governor John Engler over there -- another great Republican. John. (Applause.) We had a brisk 50-minute walk across that magnificent Mackinac Bridge. So when we say it's great to be at a picnic we know what we're talking about. It's nice to be here -- no more walks.

Now, this Labor Day we gather at a triumphant moment in history. I can stand before you this morning and can say something no other President could ever say: The cold war is over and freedom finished first. (Applause.)

But America is not a nation that brags, not a nation that looks behind -- we are loyal only to the future. So this Labor Day, we must rededicate ourselves to the future of all who punch the time clock, pay the bills, sweat it out at tax time. Our number one priority must be to build economic security for the working men and women of this great country of ours. (Applause.)

And today is the kick-off day for these campaigns. I think the American people feel this one has been going on about 10 months too long -- and so do I. But nevertheless, this is the official kick-off day. My opponent will kick off his campaign with a message of fear, telling us that our country is in decline. But I ask you to look beneath the rhetoric and look at the facts.

MORE

Governor Clinton will tell you that we're a nation in decline, slipping past Germany, headed south towards Sri Lanka, to use his words. Wrong, absolutely wrong, Governor Clinton. (Applause.) The world's most productive workers are not in Germany. They are not in Japan. They are right here in the United States of America. A lot of them right here today in Wisconsin. (Applause.)

And Governor Clinton will tell you that American wages are slipping. And he doesn't mention that since 1985, our workers have earned bigger paychecks and benefits than any other workers in the world. And I want to see them even better. (Applause.) Governor Clinton says that people are working harder for less. He won't mention that adjusted personal income is higher than it was four years ago. That's because inflation -- the thief of the middle class -- has been securely locked away. (Applause.)

Now, does this mean all is fine in America? Of course not. But at a time of uncertainty, a time of wrenching global challenge, Governor Clinton wants to scare American workers so that he can slip into office -- with the failed tax-and-spend policies of the past. Last night -- I don't know if any of you heard that Tom Brokaw show -- but last night the Governor appeared on the Brokaw show, and the first words out of his mouth were: "I have advocated a tax increase." Well, Governor, that is the wrong prescription for America. (Applause.)

He offers a treasure trove of new government programs that will cost at least \$220 billion more of your money. I say you already give too much to the tax man. (Applause.) And he wants to raise taxes by \$150 billion -- just to start; that's just for openers. I want to cut them and get the economy started in high gear. (Applause.)

You heard what Bob Kasten said; he's right. We've been trying to get through this gridlocked Congress some incentives that he and I believe in -- locked because of the old thinking of the Democratic leadership that's been in power for 38 years. So as this campaign gets into full swing, I make one promise. I will talk about real ideas -- of making health care available to the poorest of the poor, controlling what you pay when you go to a doctor. About reforming welfare, giving our kids what they deserve -- the world's very best schools. (Applause.) My policies will strengthen the most important institution in our nation -- and I am talking about the American family. (Applause.)

The liberals are trying to back us away from discussing how to strengthen the family. And we are going to stay with it. America knows that the family is slipping and we want to help strengthen it by child care and by support for these school choice and whatever it is -- welfare reform. So let's keep talking about what America needs -- strengthening the American family. (Applause.)

But today, as Governor Thompson said, I want to talk about another roadblock in the way of you and your families' economic security -- our crazy, out-of-control legal system. Don't just ask me about what's wrong with our legal system. Check the opinion of that famous enforcer of American justice. I'm not talking about Oliver Wendell Holmes or John Marshall. I mean someone even more famous than that: Hulk Hogan. (Laughter.)

My grandkids tell me that in his movie last year Hulk Hogan was confronted with the predictable crop of bad guys. Only the bad guys refused to fight. Instead they said, "This is the '90s -- we're not going to fight you. We are going to sue you." (Laughter.)

Well, I believe that one statement sums up a lot of what is wrong in America today. You pick up the newspaper and the stories roll on out at you. Like the story about a basketball -- true story.

MORE

-- about a basketball referee who made a controversial call at the buzzer of a Purdue-Iowa basketball game. Purdue won, and an Iowa souvenir company was suddenly left with a lot of victory souvenirs that weren't in all that much demand. So what did the company do? They sued the referee. Sound crazy? Well, it took two years and a lot of money before the case was dismissed by the state Supreme Court.

Now, understand, law is a noble and honorable profession. But most good lawyers will tell you that the system is out of control. In the past 20 years, the number of civil lawsuits filed in federal courts has more than doubled. Today, the average case takes almost a year to be resolved -- and in the past year alone the number of cases were pending for three years -- increased by nearly 15 percent.

That means you can file a suit, have time to enroll in a law school, study three years, graduate, pass the bar, and then represent yourself in court on the day the decision is handed down. (Applause.) Now, come on.

The NAM, the National Association of Manufacturers, has just finished looking at what this litigation explosion costs our economy. According to a soon-to-be-released study, American consumers and companies will spend up to \$200 billion on legal services this year -- \$200 billion dollars! American businesses now spend more on insurance and legal fees than on training and preparing our workers for the new economy. And that is crazy. (Applause.) As a nation, I believe it's high time that we started suing each other less and caring for each other more. (Applause.)

I have proposed a comprehensive plan to reform our civil justice system. And we reform our product liability laws. And these laws allow people to be compensated for harm caused by a defective product. People ought to receive fair compensation when a product is defective and they get hurt. But like so much of our civil justice system, product liability has careened out of control.

Let me give you just one example. The Will-Burt Corporation of Orville, Ohio, stopped making parts for ladders and scaffolds and aircraft because they couldn't afford the liability insurance. That was bad news for the company's owners -- but worse news for the 80 employees, all of whom got pink slips.

Here is the problem. The product liability laws vary from state to state and the rules have encouraged these crazy lawsuits and outrageous awards. And the cost of insurance keeps going right out through the roof, keeps skyrocketing.

Big deal, right? So companies have to pay extra for a few lawyers. But it's not just companies who foot the bill, we all pay higher prices for everything from medicine to step ladders. We never get to see a lot of good products because companies are afraid of excessive lawsuits. (Applause.)

Get this. Almost half of all the money paid out in these kind of cases goes not to the injured party, but to the lawyers. I don't want to see only lawyers getting rich, I want to see American workers getting rich. And that's the problem. (Applause.)

Our product liability system is killing our economic competitiveness -- costing Americans secure jobs that you deserve. Our liability costs are many times greater than in Japan and in Europe. Every dollar we spend all around the courtroom is a dollar we won't spend on training, education, research, investment. It could be the difference between no jobs for our kids and good jobs for our kids. (Applause.)

MORE

Now, we have to do something about this. Luckily, your great Senator, Bob Kasten, understands this. He has been fighting to change the system. And he has put forth a plan, which I am for, working with him on, to speed the legal process -- settle more cases out of court and bring some rationality to the product liability system. Once again, a Wisconsin man is in the lead. (Applause.)

Our plan is pro-consumer, pro-business, pro-safety, and pro-jobs. The day my pen signs Senator Kasten's bill is the day we stop undermining the American worker that we salute today on Labor Day. (Applause.)

So why then, if we have all these problems, do we face this crisis? Bob Kasten will tell you in three words -- the gridlocked Congress. And that's why I'm here today.

Forty-four years ago next month, another incumbent President came through Waukesha. His name was Harry S. Truman. Now, I admit it, Harry and I don't have everything in common. (Laughter.) He believed in bigger government -- I don't share that view. But quite frankly, I voted against Truman that year. But still there are some similarities between us.

I've just read that fascinating book, this big, fat book on Truman -- a marvelous biography. Harry Truman ran a small business. He knew what it was to meet a payroll, to work for a living in the private sector. And so do I. (Applause.) Harry Truman wanted to join the military and fight for his country. I so do I, and I did. (Applause.) Harry Truman ran as an underdog -- just as I am. And he liked it, and so do I. (Applause.) Harry Truman admitted when he made a mistake. And God knows I've done the same thing, and I've admitted it. (Applause.)

But most of all, Harry Truman was frustrated by what he called the "do-nothing" Congress. Listen to Truman's very own words from right here in this very town 44 years ago. "When I say do-nothing, I mean they" -- meaning Congress -- "have done nothing for the people. They have not listened to the people's demands."

Now, the gridlocked Congress hasn't listened to people either. One example: I favor a balanced budget amendment. So do you. The Congressman from this very district sponsored the balanced budget amendment, and then turned around and voted against his own amendment on the House floor. That's what I mean when I say gridlocked Congress. Clean House. (Applause.)

For years, Americans have complained about this crazy legal system, but once again the gridlocked Congress has refused to act on my reforms -- or on Bob Kasten's reforms. Later this week, we finally get a Senate vote on the product liability reform. My message to the gridlocked Congress is simple. Either fix our legal system -- stop undermining our workers -- or we're going to take a broom and do some spring cleaning in November, because we are going to clean House. (Applause.)

Send me some good leaders who will listen to the people, the way this Senator does. Elect Joe Cook to the House of Representatives. Help clean House. That's the message.

They talk about change -- change the one institution that hasn't budged for 38 years. Change the House. (Applause.)

Well we're going to clean House -- not just so companies spend less time paying lawyers, more time creating jobs. Not just so moms and dads can coach Little League without fear of some crazy lawsuit. We're going to clean House so we bring down health care costs, so we improve our schools, we take back our streets from the criminals, and we start backing up our law enforcement officials more and more. (Applause.)

MORE

Now, before I finish it's worth mentioning that while I'm in Waukesha this morning, my opponent -- guess where he is -- he's in Harry Truman's hometown -- in Independence, Missouri. So let's just have some plain speaking about Bill Clinton -- Governor Bill Clinton -- and Harry Truman.

Harry Truman never engaged in double-speak. He told people the truth, not merely what they wanted to hear. Compare that to Governor Clinton's position on reforming our legal system. The head of the lawyers -- the head of the trial lawyers in Arkansas -- Trial Lawyers Association -- said Governor Clinton has -- and I quote -- "always done what is right for the trial lawyers." I bet Harry Truman would have done what is right for the American people, not for the trial lawyers. (Applause.)

Whether it was the Soviet blockade of Berlin, or the invasion of Korea, Harry Truman never flinched from the tough decision. Now, contrast that with Governor Clinton's waffling and wavering about whether he would have followed my lead and stood up to Saddam Hussein and his naked aggression. (Applause.)

Harry Truman prided himself on his own military service, and he frequently visited veterans associations and spoke with great pride about his service to his country.

Last but not least, Harry Truman believed America could not turn our back on the rest of the world, even despite the challenges here at home. Governor Clinton virtually ignores foreign policy, and flirts with the dangerous idea of sticking America's head in protectionist sands.

Harry Truman said "the buck stops here." On issue after issue, Governor Clinton says "first, lets blame George Bush," and then "I'll get back to you later with an answer." (Applause.) I'll tell you, if the bucks stops there, than Governor Clinton is offering devalued currency. (Laughter.)

Harry Truman was a man of decisiveness, not equivocation. He'd find little in common with Governor Clinton, a man who hedges or ducks on almost every tough issue; a man who seems to feel strongly on both sides of almost every issue that are before this great nation.

I found out something in the Oval Office. You can't have it both ways. You've got to call it as you see it. You have to make the tough decision and then pay the consequences or get the credit. But you can't be on every side of every issue, waffling around and call that leadership. That is not leadership. (Applause.)

You know, many people thought Harry Truman would lose in 1948. But he said what was in on his mind, he didn't worry about the press, and he never lost faith in the United States of America.

I stand before you with the same passion and that same faith. I will talk about ideas for the next 57 days. Ideas that matter. Ideas that can deal with the real challenges facing this country. Ideas that won't make everyone happy, but that will be right for the United States of America.

And like Harry Truman, I believe a new age of America beckons, and that we can reap the benefits. With your help, come November we will match our global victory with economic security here at home.

Thank you all for being here. And may God bless the United States of America on this very, very special day. Thank you all. (Applause.)

END

10:40 A.M. CDT

5 SEPTEMBER 1992

MEMORANDUM FOR CHRISTINA MARTIN  
STEVE PROVOST

FROM:

J. BUNTON *JB*

SUBJECT:

FACT CHANGES/CONCERNS RE: LEGAL REFORM  
-----

P. 2 --- In 1988, Rawlings became the 18th company in 18 years to quit the helmet bis.... we shouldn't say "over the past 18 years --- it's been four years since Rawlings became the 18th in 18.

p. 3 --- should qualify American business spends more on --- than on "either informal or formal" training "to prepare" our workers...

Based on chart from 9/90 study for Congress "Worker Training: Competing in the New International Economy

total training [formal and informal combined] in two studies can be as high as \$210 billion -- you'll note however neither inform nor formal separately exceed \$200 billion --- according to the chart.

p. 5 --- John Howard [OVP-Counsel] worried about both graphs I've indicated --- so am I. They should be deleted. He's worried cause -- Chrysler Co. here is the good ole USA already makes built-in car seats why would we mention a foreign competitor ---

He thinks Aids graph is just gonna get POTUS in trouble. I can't verify that the fact is true.

For what it's worth [p. 7-8 --- I presume the language on Sen. Kasten and his "bill" is from Calio.]

*FAXED THROUGH STT RM. TO C. MARTIN  
IN C'VILLE - TO HER ROOM -*

*JB 9/5/92  
16:10pm*

# Δ FACT CHANGE MASTER

(14)

\*w/zoellick changes

Provost/Bunton  
Sept. 5, 1992 / 3:30 p.m.

Presidential Remarks  
Waukesha County Picnic  
Waukesha, Wisconsin  
Monday, Sept. 7, 1992

Thank you Governor Tommy Thompson.

Today is Labor Day -- the day we honor American workers --  
the most productive men and women in the entire world.

So today, I want to talk to you about a problem that affects  
you and every other worker -- our crazy, out-of control - legal  
system.

A serious discussion about legal reform may seem a little  
odd as a topic for a picnic. But I think you deserve more than  
talk from your political leaders -- you need answers. Answers to  
the most pressing question before America today -- how can we <sup>BUILD UPON MR. SIKENETS AND (FORIER)</sup>  
guarantee that we will remain not just a military superpower --  
but an export superpower, and an economic superpower./.

As I see it, our current legal system is a roadblock that  
must be cleared from the path of America's economic progress.

Let me start by talking about a famous American enforcer of  
justice. I don't mean <sup>↑</sup> Oliver Wendell Holmes or John Marshall.  
I mean someone more famous than that. I mean -- Hulk Hogan./.

My grandkids tell me that in his <sup>\*</sup> movie last year -- Hulk  
Hogan was confronted with the predictable crop of bad guys. Only  
the bad guys refused to fight Hulk. Instead they said, "this is

\* FYE - HOGAN'S MOVIE "SHARBIN CONQUERO" WAS PAID PG

the nineties -- we're not going to fight you. We are going to sue you."

I fear that one statement, sums up a lot of what is troubling America today.

Pick up the newspaper, the stories roll out at you.

Like by the now famous story about the basketball referee, who made a controversial call at the buzzer of a Purdue-Iowa basketball game. Purdue won the game, and an Iowa souvenir company was suddenly left with victory T-shirts that weren't in all that much demand. So what did the company do? They sued the referee. Sound crazy? It took two years, and a lot of money, before the case was dismissed by the State Supreme Court.

Are these crazy legal stories just intended to give us something to make our friends chuckle at backyard barbecues. I don't think so. It's much more serious than that.

Look around here in Wisconsin, right here in Waukesha. [WOK - a Shaw]

Anybody here cheer for the football Spartans ~~of East~~  
Brookfield <sup>EAST</sup> ~~High School~~ <sup>Spartans</sup>?// I'm told Coach Jack Perry and his team now pay almost \$150 bucks for every football helmet -- 10 years ago they paid about a <sup>0</sup> ~~third~~ <sup>HALF</sup> of that. Why the price increase?

Because over the past 18 years, <sup>DELETE</sup> 18 American companies have stopped selling football helmets] -- because they can't afford the insurance. (Before this is over, we may go back to the days of Jim Thorpe -- when people played football without helmets. Is that progress?)

NOTE: FACT SHEET ~~IS~~ ATTACHED " IN 1988, RAWLINS BECAME THE 18TH COMPANY IN 18 YEARS TO GIVE UP THE FBAL HELMET BE. DUE TO INCREASING LIABILITY EXPENSE -

Now, Waukesha and Wisconsin aren't unique -- except in their physical beauty. This kind of thing is happening every day in every town across America. And we are all paying the price.

Now understand, this is not a criticism of lawyers. They are an essential part of our society -- and the majority of legal professionals work with integrity and honor. But the good lawyers will tell you, the system is out of control.

In the past 20 years, the number of lawsuits <sup>CIVIL (DOJ)</sup> filed in federal courts <sup>(DOJ)</sup> has <sup>MORE THAN (DOJ)</sup> doubled. Today, the average case <sup>(DOJ)</sup> takes a year to be resolved -- and in the past year alone -- the number of cases that were pending for 3 years, increased by <sup>NEARLY (DOJ)</sup> 15 percent.

(Think about what that means. You can file a suit, and have time to enroll in law school, study three years, graduate, pass the bar, and then represent yourself in court on the day the decision is reached.)

What does this litigation explosion cost our economy? Well, the National Association of Manufacturers has just finished looking at that question. \* According to a soon to be released

study, \* Americans spend \$200 billion dollars on direct costs to lawyers. <sup>ALONE (JOHN HOWARD - OVP) AND HE SUGGESTS DELETING SENTENCE THAT'S RIGHT BEHIND</sup> [Keep in mind, that doesn't even count the lawyers on <sup>COULD PUT LANGUAGE RE.</sup> their own payrolls, or the money they end up paying in court <sup>COURT DELAYS AND LOST OPPORTUNITIES IN ITS PLACE</sup> settlements.] <sup>(JOHN HOWARD - OVP SAID DELETE THIS SENTENCE)</sup>

(\$200 billion sounds like a lot of money -- and believe me, it is. <sup>(EITHER FORMAL OR INFORMAL) - TO BE DOUBLY SAFE - FACTUALLY</sup> American businesses now spend more on insurance, lawyers and legal fees -- than on <sup>TO PREPARE</sup> training our workers for the new economy.) To me that's crazy. As a nation, I believe it's high

\* <sup>(INSD)</sup> **BOBBY CHARLES SUGGESTS:** "... AMERICAN CONSUMERS AND COMPANIES WILL SPEND UP TO \$200 BILLION DOLLARS IN LEGAL SERVICES THIS YEAR."

▲ SEE ATTACHED FACT SHEETS ACCORDING TO "WORKER TRAINING: COMPETING IN THE NEW INTERNATIONAL ECONOMY" (9/90) EMPLOYER INVESTMENT IN TRAINING VARIES ONE <sup>(INSD)</sup> AS MUCH AS \$216,300,000 - WAS SPENT <sup>(INSD)</sup> INFORMAL AND FORMAL COMBINED.

time, that we started suing each other less, and caring for each other more.//

That is why I have sent Congress comprehensive legislation to reform our Civil Justice System. It is complete with specific proposals. We want to solve more disputes early -- before they get dragged into the courtroom.// We want to speed the <sup>DISCOVERY (DCT)</sup> legal process -- there is no reason anyone can go through law school

faster than it takes a court to reach a verdict. We want to put a lid on outrageous <sup>SUITS (JOHN HOWARD) OVP</sup> punitive damages, that strike terror into every mom and dad who wants to coach their kid's football team.//

And here's one big idea. I believe we should <sup>EXPERIMENT WITH (DCT)</sup> copy a practice from our friends in Britain -- and <sup>IN APPROPRIATE CASES (PORTER) - "WE ARE TRYING THIS OUT IN FEDERAL UNIVERSITY CASES ONLY. WE HAVE ALSO ADVANCED IT WHERE SETTLEMENT REFUSED AND COURT YEARS SHOWS OFFER WAS FAIR, NOT YET ADVANCED FOR EVERY CASE.)</sup> make the loser pay the winner's court fees. You think that T-shirt company would have <sup>BROUGHT CRAZY LAWSUIT AGAINST THAT (JOHN HOWARD) OVP</sup> sued that referee -- if they'd known they'd end up footing his legal bills?//

This is one part of the crisis in our civil justice system. But we also need change in our product liability laws. These are the laws that are supposed to allow people to be compensated for harm caused to them by a defective product. That's an important right, and I am all for it. People ought to receive fair compensation when a product is defective and they get hurt.

But like so much of our civil justice system, product liability has careened out of control.

Let me give you an example of what I'm talking about: The Will-Burt Corporation of Orville, Ohio stopped making parts for ladders, scaffolds, and aircraft -- because the products

JOHN HOWARD

(JOHN HOWARD) OVP

encountered potential liability costs. But the workers paid an even higher price -- the company was forced to close plants and lay off 80 employees.

Here's the problem. The product liability laws vary from state to state and the rules have encouraged crazy lawsuits, and outrageous awards. The cost of defending these lawsuits has escalated. A lot of trial lawyers bring lawsuits, knowing that it is cheaper for companies to settle the case than to pay their own lawyers to defend them through trial. And the cost of insurance keeps skyrocketing.

Big deal, right? So companies have to pay extra for a few lawyers. But it's not just companies who foot the bill, we all pay higher prices -- for everything from medicine to step ladders.

It's worse than that. We've never seen a lot of good products -- because companies are afraid of liability.

In Europe, for example, Volvo offers parents a car seat built right in the car. You can't buy one in the U.S. today and may never be able to. No company wants to deal with our laws.

And if you're in Europe, and you suffer from AIDS, you can get medical treatment you can't get in the United States. Medical companies are afraid of the liability.

But it's all worth it right, because when someone does get hurt, they can a big settlement? Again, that's not what's happening. More than half of all the money awarded by juries in

JOHN HOWARD - DUP - IS WORRIED ABOUT BOTH BEHAVIORS SUGGESTS DELETE BECAUSE OF CHAMPLAIN MINI-VAN AND -- YOU CAN'T GET CURED OF AIDS IN EUROPE - FEELS IT WILL GET THE PRESIDENT IN TROUBLE

DELETE GRAPH JOHN HOWARD DUP

DELETE GRAPH JOHN HOWARD DUP

(DO NOT CAN'T VERIFY LAWYERS TAKE IN PRODUCTS LIABILITY CASES HEARD BY JURIES)

product liability cases, goes not to the injured party, but to the lawyers. ] Think about that. <sup>(DOJ) NEARLY (42% DOJ)</sup> ~~More than~~ half of all the awards -- ends up in the pockets of Brooks Brothers suits.

But here's the real problem. Our product liability system is killing our economic competitiveness.

Liability costs are 15 times greater than that in Japan, and 20 times greater than that in Europe. Our businesses -- especially our small businesses -- are staggering under a weight our competitors don't even carry.

Every dollar we spend around a courtroom, is a dollar we won't spend on training, education, research, investment. It will be the difference between no jobs for our kids -- and good jobs for our kids.

We have to do something about this -- if we want our kids to have job. Luckily, Senator Bob Kasten understands this. He has been the fighter to change the system.

Bob has put forth a plan -- which I have endorsed -- to speed the legal process -- and settle more cases out of court -- which will help everyone.

We want uniformity in product liability law -- instead of the confusing 51 separate standards we have today. We want to have the same rules for damages from one state to the next. We want to bring some rationality to the system.

Our plan is pro-consumer, pro-business, pro-safety, and pro-jobs. The day my pen signs Senator Kasten's bill -- is the day our workers get a leg up on other workers.

So what's the problem? Why do we still face this crisis? Bob Kasten will tell you the problem. The Gridlock Congress.

I know you are sick of the blame-game in Washington, but we can't ignore the facts.

Like my opponent, Mr. Clinton -- many members of Congress get their campaign funds from trial lawyer organizations. Here's what one Arkansas trial lawyer wrote about my opponent -- trying to raise money for the Clinton campaign: "I can never remember an occasion where he failed to do what was right where we trial lawyers are concerned." So for my opponent and in many Congressional offices -- the only thing that gathers more attention than a TV camera -- is a lawyer in tasselled loafers with a check in hand.

That's why product liability reform has been blocked, for almost two decades. In fact, trial lawyers' money has prevented product liability from ever even coming to a full vote.

But this very week, we have a chance -- to stop undermining our American workers.

Product liability reform will be up before the U.S. Senate. We believe we have the votes -- to pass the Senate.

But there's a legal catch -- something called "cloture."

Now cloture sounds like something a doctor would give you after you cut your knee. But it's not. It's the number of <sup>SENATORS (FROM WHATEVER</sup> votes it <sup>WRITE IN RED</sup> takes to <sup>NEED A VOTE (RED WR.)</sup> ~~stop long-winded debate~~ in the U.S. Congress. (As you <sup>INK - ONLY 3</sup> <sup>PAGES OF CHANGE</sup> <sup>P. 7-9</sup>) can imagine, getting Congress to stop talking about anything

requires some effort. In fact, it takes more votes to get them to stop talking -- than to pass a bill.)

While we have a majority of the Senate on our side and your side, we're not sure we have the extra votes for cloture. So here's the irony -- Congress and the trial lawyers may be able to stop the most-needed legal reform in a decade -- by using a legal loophole.

Bob Kasten doesn't want that to happen -- and neither do I. I'd like to wrap up a Labor Day present for the American economy, and for the jobs of the future.

I need you to get on the phone and let Congress know, the American people are tired of paying for crazy lawsuits. Tired of high prices. Tired of unsafe products. Most of all, we're tired of losing jobs to foreign competitors.//

What troubles me so about our litigation crisis, is that it is so at odds with the true nature of America.

[Revised conclusion]

But what would have happened -- if Columbus had sued the sailmakers of the Santa Maria? What if immigrants in 1903 had tried to win pain and suffering damages -- because the floor on Ellis Island had hurt their backs?

We cannot rid our world of risk, nor do we want to. ^ Today, I appeal to the common sense of the American people -- to take a stand for America's values, and give our workers a chance to compete in the world economy.

BUT WHEN PEOPLE ARE INJURED BY DEFECTIVE PRODUCTS, THEY SHOULD BE COMPENSATED. WE NEED A RATIONAL PRODUCT LIABILITY SYSTEM THAT PROTECTS CONSUMERS WITHOUT MAKING INNOVATION IMPOSSIBLE (RED LINE AGAIN)

Thank you for listening. God bless Wisconsin. God bless  
the United States of America.

# # #

## LIABILITY TAX RAISES PRICES

**MYTH:** Liability costs are a negligible factor in product pricing.

**FACT:** Liability costs add greatly to the price of products, and even minor price increases affect market share, production, and jobs.

- Americans now depend on single companies to supply vaccines for polio, measles, mumps, rubella, and rabies. Lederle Laboratories, the lone maker of the diphtheria, pertussis, and tetanus (DPT) vaccine, raised its price per dose from \$2.80 to \$11.40 in 1987 to cover the costs of increased lawsuits.
- In a recent article in Product Safety and Liability Reporter, Vice President Quayle pointed out that the Hepatitis B vaccine costs \$160 here and only \$12 in Taiwan, because of the cost of U.S. product liability laws.

- Rawlings Sporting Goods announced in 1988 that it would no longer manufacture, distribute, or sell football helmets. Joining Spaulding, MacGregor, Medalist, Hutch and others who have stopped manufacturing helmets, Rawlings was the 18th company in 18 years to give up the football helmet business due to increasing liability exposure. Two manufacturers remain.

According to The Liability Maze, Brookings Institution authors estimate that liability costs in 1987 added from \$70,000 to \$100,000 per light aircraft that year, and directly contributed to the decline of the American small aircraft industry.

- Some states allow drunks who fall off ladders to sue a ladder manufacturer. That is one reason why today 20 percent of the price of a ladder is attributed to product liability costs.

May 1992  
THE CASE FOR  
PRODUCT LIABILITY  
FAIRNESS -  
PRODUCT LIABILITY  
COORDINATING CMTE.

Despite this growing investment, few States have evaluated their training efforts. One preliminary study indicates that State assistance has played a positive role in achieving the goal of enhancing the competitiveness of existing firms.

Small employers, who are most in need of training assistance, often need better technology and improved management techniques as well. However, current State technology assistance programs (which provide consulting services to firms seeking to upgrade their hardware, software, and management systems) are limited in scope and poorly linked with State training assistance. Neither State technology assistance nor State training assistance programs are adequate to meet growing employer demand. "One-stop" training and technology assistance for small employers lost in the jungle of public and private training providers is available only in Michigan, Massachusetts, and a few other States.

Growing State involvement in worker training raises important policy questions. Perhaps most fundamental is: Should government intervene in the training marketplace, and what criteria should govern its assistance given that State resources will never be adequate to aid all firms? Closely related is the question of substitution: Are companies using State training funds to support nontraining activities? If the money is being used correctly, would the firms have trained their workers anyway in the absence of State subsidy?

Raising these questions may be less necessary if companies are required to prove financial need and are limited to subsidies for formal training or systematic on-the-job training (such as trainers' salaries while on the shopfloor) which can be clearly identified as training time.

## HOW MUCH TRAINING IS DELIVERED?

Accurate estimates of the extent of worker training do not exist. There are several reasons:

- Few firms respond to surveys; only a handful of firms keep track of training expenditures and these firms account for training costs in very different ways.<sup>1</sup>
- In employee surveys, workers' memories and perceptions of training events may be unreliable.<sup>2</sup>
- Employers more often train their workers informally on the job than in formal classrooms, making it hard to differentiate between "training time" and "work time."<sup>3 4</sup>

Not surprisingly, therefore, estimates of the total employer investment in training vary greatly. (See table 5-1.)

Estimates of U.S. employers' investments in formal training range from \$30 billion to \$44 billion.<sup>5</sup> While these estimates could be off track, there is no doubt that employer-provided training is a large enterprise. How large is a matter of interpretation. The \$44-billion estimate is less than 1 percent of 1988 Gross National Product (GNP) (\$4.88 trillion). Averaged across an employed workforce of 114 million, investments in formal training are, at most, \$385 per worker per year.

In contrast, the total cost to educate America's 58 million full-time students (those in primary, secondary, and post-secondary education) in 1987<sup>6</sup> was about \$311 billion<sup>7</sup>—\$5,400 per student, or 13 to 20 times greater than the amount spent on workers. Because training is only a small component of most workers' jobs, its costs should not be nearly as great as those of the full-time education of students.

<sup>1</sup>Ann P. Bartel, "Utilizing Corporate Survey Data to Study Investments in Employee Training and Development," discussion paper for the National Assessment of Vocational Education, February 1989.

<sup>2</sup>Nell P. Eurich, *Corporate Classrooms* (Princeton, NJ: The Carnegie Foundation for the Advancement of Teaching, 1985), p. 7.

<sup>3</sup>Anthony P. Carnevale et al., *Best Practices: What Works in Training & Development—Organization and Strategic Role*, report prepared for U.S. Department of Labor (Alexandria, VA: American Society for Training and Development, March 1989), p. 36.

<sup>4</sup>U.S. Congress, Office of Technology Assessment, *Technology and the American Economic Transition*, OTA-TET-283 (Springfield, VA: National Technical Information Service, May 1988), p. 129.

<sup>5</sup>The most recent estimate, for 1989, is \$44 billion. This total was extrapolated from a survey of companies with 100 or more employees which received only a 16 percent response rate. The low response rate makes the accuracy of the extrapolation questionable. The survey was published in *Training Magazine*, October 1989.

<sup>6</sup>U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 1989* (Washington, DC: U.S. Government Printing Office, 1989), p. 29.

<sup>7</sup>*Ibid.*, p. 9.

Author  
Oberle (1989)

Mincer (1989)

Bartel (1989)

ASTD<sup>8</sup> .....

Carnevale &

Craig & Evers

NOTE: NE =not  
<sup>8</sup>Joseph Oberle  
<sup>9</sup>Jacob Mincer,  
Vocational Edu-  
cation, \$300  
billion to \$330  
<sup>10</sup>Ann P. Bartel, "The  
of Vocational E-  
ducation"  
<sup>11</sup>Amount Spent  
<sup>12</sup>Max L. Carey,  
<sup>13</sup>Anthony P. Car-  
77-82.  
<sup>14</sup>As cited in Car-  
SOURCE: Office

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<sup>8</sup>Survey of C  
<sup>9</sup>U.S. Chamt

NOTE

Table 5-1—Estimates of Employer Investments in Training  
(total annual investment by U.S. employers)

2 of 3

Author	(dollars in billions)			Comments
	Total	Formal	Informal	
Oberle (1989) <sup>a</sup> .....	NE	44.4	NE	The survey was sent to 20,000 business units with 100 or more employees in early 1989; 3,130 responded for a 16 percent response rate; estimate excludes wages of trainees. Three-fourths of the total was for wages of trainers. Excludes government training.
Mincer (1989) <sup>b</sup> .....	105-210	NES	NES	This study used wages while in training as a proxy for training costs. Includes government training.
Bartel (1989) <sup>c</sup> .....	NE	55	NE	The survey was sent to 7,765 business units in early 1987; 493 responded (6 percent response rate). One-third to one-half of responding units had formal training programs. Some respondents may have included trainees' wages in their cost estimates. Excludes government training.
ASTD <sup>d</sup> .....	120-210	30	90-180	The formal training estimate is based on average training costs multiplied by the number of trainees and courses from the 1978 Current Population Survey. ASTD excludes wages of trainees and government training from its formal training estimate. The low end informal estimate is based on a Bureau of Labor Statistics survey which found that informal training was cited three times more frequently than formal training as a source of qualifying training.* The high end informal estimate is based on Mincer's 1989 estimate (\$210 billion) minus ASTD's formal training estimate (\$30 billion).
Carnevale & Goldstein (1985) <sup>f</sup> .....	NE	10-21	NE	The study used 1978 case study survey data from 12 large firms, to determine training costs. This was multiplied by the number of courses from 1978 Current Population Survey. Includes government training. Higher estimate includes wages.
Craig & Evers (1981) <sup>g</sup> .....	NE	30-40	NE	Assumes average firm spends half AT&T's 1981 average per employee training expenditure of \$1,500, and that half of all U.S. employees receive training. Includes government training. Excludes wages of trainees.

NOTE: NE =not estimated; NES =not estimated separately.

<sup>a</sup>Joseph Oberle, "Training Magazine's Industry Report 1989," *Training Magazine*, vol. 26, No. 10, October 1989, p. 32.<sup>b</sup>Jacob Mincer, "Labor Market Effects of Human Capital and of Its Adjustment to Technological Change," discussion paper for the National Assessment of Vocational Education, February 1989, pp. 17, 33. A December 1989 analysis by Mincer, using much the same methodology, resulted in a revised total of \$240 billion to \$330 billion for formal and informal training combined.<sup>c</sup>Ann P. Bartel, "Utilizing Corporate Survey Data to Study Investments in Employee Training and Development," discussion paper for the National Assessment of Vocational Education, February 1989, p. 5.<sup>d</sup>"Amount Spent on Training by American Businesses—Fact Sheet" (Alexandria, VA: American Society for Training and Development, no date).<sup>e</sup>Max L. Carey, *How Workers Get Their Training*, U.S. Department of Labor, Bureau of Labor Statistics, bulletin no. 2226, March 1985.<sup>f</sup>Anthony P. Carnevale and Harold Goldstein, *Employee Training: Its Changing Role and An Analysis of New Data* (Alexandria, VA: ASTD Press, 1985), pp. 77-82.<sup>g</sup>As cited in Carnevale and Goldstein, in footnote f above.

SOURCE: Office of Technology Assessment, 1990.

However, training expenditures are also quite modest when compared with other employer investments in their workers. Forty-four billion dollars equals 1.8 percent of the total compensation that American firms and other private employers paid their workers in 1988 (\$2.4 trillion<sup>8</sup>). A few companies spend amounts equal to 4 or 5 percent of their payroll on

formal training while others spend nothing. Overall, employers spent more (2.8 percent of payroll) on coffee breaks, lunch, and other paid rest time for their employees than on formal training.<sup>9</sup>

When the costs of informal training are included, cost estimates range from \$105 billion to \$210 billion or more per year (see table 5-1). However, the

<sup>8</sup>*Survey of Current Business*, vol. 69, No. 7, July 1989, table 1.14, p. 45.<sup>9</sup>U.S. Chamber of Commerce, "Employee Benefits," *Survey Data From Benefit Year 1988* (Washington, DC: 1989), p. 27.

\$210 billion estimate is not comparable with the other estimates in table 5-1, because, unlike the others, it assumes that workers share in the costs of training by accepting a lower wage than would otherwise be paid during the training period.

Most informal training is unstructured, consisting of experienced co-workers and supervisors showing newer employees how to do their jobs. Such training does not compare favorably with the highly structured informal training and the growing amount of formal training provided by firms in competitor nations (see ch. 3).

### Training in Small Firms

Training is delivered unevenly across firms and among workers. While a few large corporations spend major sums on employee training, many small companies spend little or nothing.<sup>10</sup> Larger firms are more likely to provide structured training because they have lower labor turnover and greater access to capital to finance training.<sup>11</sup> It is also possible that the training tends to further reduce their labor turnover.

Although smaller firms invest little in formal training, they nonetheless do train their employees informally. Typically, workers at firms with less than 100 employees have greater training needs because, in comparison to workers at large firms, they tend to be less well-educated and have a less stable employment history. These needs are usually met by supervisors or co-workers informally teaching new hires.<sup>12</sup>

Strong management commitment at some smaller firms drives investment in formal as well as informal training. A few even develop their own in-house training. For example, General Tool, a family-owned machine tool job shop in Cincinnati, has a

full-time training manager who designs and delivers both an apprenticeship program and ongoing off-hours courses for the company's 300 employees.<sup>13</sup> The company defrays part of these costs by allowing nonemployees to enroll in its classes for a fee.

### Economic Barriers to Workplace Training<sup>14</sup>

According to human capital theory, worker training extends across a spectrum ranging from "general" training, which "is useful in many firms besides those providing it,"<sup>15</sup> to "specific" training, which is useful only in the firm where it is provided. Because firms could lose part of their return from general training investments if a newly trained worker took a job with another firm, the theory states that, although firms might provide such training, they do not pay for it. Instead, employers pay a lower wage during the training period to cover the training costs. Employees accept the lower wage because they recognize that they will benefit from the general training. Another theorem of human capital theory is that firms and workers share the costs of specific training (the workers' share is paid in the form of a wage lower than their productivity would otherwise justify) since both parties benefit.<sup>16</sup> To guard against turnover, the theory says, firms pay higher wages following specific training than would be warranted based strictly on productivity.

Some subsequent empirical studies have called both of these basic premises into question, suggesting that firms sometimes pay for general training and that firms and workers do not always share the costs of specific training. More importantly, however, these studies found that, when firms do take the risk of investing in both general and specific training, they are less likely to lose their investment through quits or layoffs than the original human capital theory would suggest. This suggests that, at least in

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<sup>10</sup>Jerome M. Rosow and Robert Zager, *Training: The Competitive Edge* (San Francisco, CA: Jossey-Bass, 1988), p. 1.; Eurich, op. cit., footnote 2, p. 9; Sheldon Haber et al., "Employment and Training Opportunities in Small and Large Firms" (Potomac, MD: Simon & Co., under U.S. Small Business Administration Contract No. SBA-8587-AER-84, 1988), p. viii.  
<sup>11</sup>John H. Bishop, "On-the-Job Training of New Hires," working paper #89-11, Center for Advanced Human Resources Studies, Cornell University, presented at the symposium on market failure in training, LaFollette Institute of Public Affairs, University of Wisconsin, Madison, May 1989, p. 33.  
<sup>12</sup>"Employment and Training Opportunities in Small and Large Firms," op. cit., footnote 10, p. 90.  
<sup>13</sup>James Stewart, Director, Manufacturing and Engineering, General Tool Co., personal communication, May 4, 1989.  
<sup>14</sup>This discussion is based on a working paper by Michael J. Feuer, OTA, "Economic Analysis of Workplace Training: Human Capital Theory and Beyond," August 1989.  
<sup>15</sup>Gary Becker, *Human Capital: A Theoretical and Empirical Analysis With Special Reference to Education*, 2d ed. (New York, NY: National Bureau of Economic Research and Columbia University Press, 1975), p. 19.  
<sup>16</sup>"Economic Analysis of Workplace Training," op. cit., footnote 14, p. 30.

<sup>17</sup>Ibid., p. 37.  
<sup>18</sup>Michael Feuer, 1987, pp. 121-136  
<sup>19</sup>Ibid.  
<sup>20</sup>Bishop, op. c  
<sup>21</sup>Ibid.  
<sup>22</sup>Donald Pars  
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<sup>23</sup>Michael Feuer  
invited paper, sym  
<sup>24</sup>Masanori Ha  
<sup>25</sup>Eurich, op. ci  
<sup>26</sup>Peter A. Creti  
Commission for Es  
<sup>27</sup>Ibid., p. 58.

2 September 1992 // ~~11:10 a.m.~~

MEMORANDUM FOR STEVE PROVOST

FROM: JEANNIE BUNTON  
SUBJECT: Legal Reform Speech

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POSSIBLE FUNNY: Judge Wapner -- The People's Court reference

For What it's worth from Ed --- whose Dad is a Reagan Democrat Lawyer about to not vote for POTUS because of the generic trial lawyer bashing --- need to "separate the sin from the sinner" -- there are some great lawyers out there doing great work -- it's the bad ones who take advantage of the sytem that we're talking about ...

WAUKESHA COUNTY EXPOSITION GROUNDS  
Waukesha [just west of Milwaukee]  
[WOK-a-shaw] not Wa-keesha

CONTACTS:

BQ Wisconsin -- Nate Elias (608) 256-2874  
Mark Block (414) 821-1992

Gov. Thompson -- (608) 266-1212  
Bill McCoshen

Research/local: per Mark Block and his researcher Bryan

1. Where does local high school team buy helmets? Cost today v. 10 yrs. ago?

Brookfield High School [east or central?] 10 mins. from Expo Center -- well known in community  
Coach  
Mascot  
today pays between \$105 and \$135 per helmet v. \$50 -\$60 decade years ago

Waukesha South High School  
Coach  
Mascot -- "Blackshirts"  
according to athletic director -- paid \$90 for helmets -- double what they paid a decade ago.

2. Little League Liability insurance -- Cost today v. 10 yrs. ago?

unable to get littl league info -- county doens't break liability down by team -- lagues are pooled -- if two kids

\* [ Advance  
Team goes in  
tonight 02/09/92  
per Mark Block

run into ine another on the field -- not liable, on the other hand if a kid slides into second base and gets hurt because it didn't break away -- then the county is liable.

3. Hepatitis B vaccine -- cost today v. 10 yrs. ago?

at Waukesha Memorial Hospital a Hep B shot costs \$55.46 today -- in 1989 [when it was developed] it cost \$52.25

Still working on --

ANYTHING AT EXPO THAT CAN'T BE DONE THIS YEAR DUE TO LIABILITY INS. OR COSTING MORE TO DO ...

any area bis. hampered by liability insurance costs --- professional or otherwise ie physician ...

List of industries in Waukesha County ...

John Howard - OVP/counsel 2816:

helping verify 2/3 obstetricians in America have been sued -- thinks it may be higher -- is checking; also looking into an obsto from Waukesha who may have been sued -- advised we may want to avoid local prejudice -- it might backfire on us -- instead use another example from nearby -- get the same bang for the buck...

asked if we were working with AMA -- I said no; should we? he said he'd check. probably would have to work through state and local associations.

Lincoln anecdote in "Little Brown Book of Anecdotes", p. 356.

"In his legal practice Lincoln was never greedy for fees and discouraged unnecessary litigation. A man came to him in a passion, asking him to bring a suit for \$2.50 against an impoverished debtor. Lincoln tried to dissuade him, but the man was determined upon revenge. When he saw that the creditor was not to be put off, Lincoln asked for and got \$10 as his legal fee. He gave half of this to the defendant, who thereupon willingly confesd to the debt and paid up the \$2.50, thus settling the matter to the entire satisfaction of the irate plaintiff."

9/6/92  
6:30 pm

**UPDATED AND AMENDED INFORMATION**

Josh:

Attached are amended documents that have been updated since the 12:00 memo. The only document that has been changed is 2. Rebuttal to Minority Report. These amendments are minor, they reflect current POTUS speech language regarding the costs of litigation (how much goes to the lawyers) and the liability costs.

- 1) Product Liability Fact Sheet (OVP)
- 2) Rebuttal to Minority Report (OVP)
- 3) Summary of S. 640 (Senate)
- 4) Product Liability Talking Points (Senate)
- 5) Response to Likely Questions (Senate)
- 6) What S. 640 Does (PLCC)

As before, none of these have been sent through the White House clearance channels.

Mark Paoletta from WHCounsel's Office is now shepherding the speech. He is soliciting comments from Stu Gerson, AAG for the Civil Division.

Tiger Joyce of the Commerce Committee is still standing by to provide any technical support we may need. His numbers are (703) 548-8155 and 224-2498. I have been unable to reach Victor Schwartz but have his home number -- 703-212-0524.

Please let me know if you would like any additional information.



cc: John Schmitz

# Product Liability Fairness Act

## FACT SHEET

Product liability litigation needs reform that can only be accomplished through clear and coherent national legislation. The current system of 51 separate product liability laws is plagued by uncertainties that hurt both consumers and manufacturers. Meritless suits clog the system, preventing swift and just compensation to those with meritorious claims. Long delays, high costs and the uncertainty of random punitive damage system fail to serve justice. Ultimately, these costs are borne by the American consumers.

The question is how to compensate those who have been injured by defective products without undermining American competitiveness. The Product Liability Fairness Act meets this challenge by establishing uniform federal rules to be applied by the state courts in all product liability litigation.

- o **Alternative Dispute Resolution:** The Act provides for alternative to trial and expedited offers of settlement. If the result in litigation is less favorable than the rejected offer, the rejecting party may have to pay the other side's legal fees. The Act also mandates fee-shifting if a party unreasonably refuses to engage in settlement discussions.
- o **Provides Rational Rules for Punitive Damages:** Punitive damages may be awarded if one proves by clear and convincing evidence that the defendant's conduct manifested "conscious, flagrant indifference" to public safety. The Act encourages proper conduct by drug and aircraft manufacturers by protecting them from punitive damages if they supply all material safety information to the FDA and FAA and the respective agencies have certified their products.
- o **Product Seller Liability:** Product sellers will be liable for harm caused by their own negligence. If the manufacturer is "judgment proof" or cannot be served with process, the product seller will then have the same liability as the manufacturer.
- o **Several Liability for Non-Economic Damages:** A defendant will be liable for non-economic damages only to the extent of his own share of responsibility.
- o **Alcohol and Drug Usage:** If a claimant's alcohol or drug usage is more than 50% responsible for his harm, he cannot recover.
- o **Worker Compensation Offset; Lien Limitations:** Encourages workplace safety by eliminating the lien when the employer's negligence causes the accident.

AMENDED

Minority Views of Senators Hollings and Gore  
Summary with Suggested Rebuttals

1. The Current System is Fair/There is No "Litigation Explosion"

- number of tort cases declining
- reform efforts are based on anecdote alone

Response:

- + these facts are disputed by a number of studies
- + total tort costs increase 12% each years
- + nearly 1/2 of the money goes to pay both sides' lawyers

2. The Current System Promotes Product Safety

- companies are becoming more careful in product design
- punitive damages deter unsafe products

Response:

- + fear of litigation chills innovation (AIDS, DPT etc)
- + threat of punitive damages limits all production, whether the product is safe or unsafe

3. The Current System Promotes Federalism

- S. 640 encroaches on state's prerogatives
- issue isn't important enough for Federal action

Response:

- + States have been unable to address issue
- + Reform is critical
- + National Governors' Association unanimously backs s. 640

4. The Current System Did Not Cause the Insurance Crisis

- Insurance "crisis" doesn't exist -- coverage is available

Response:

- + Municipalities/charities have limited services due to \$
- + Many companies are "going bare" lacking any coverage

5. Product Liability is Not a Major Factor in Competitiveness

- only 1% is spent on insurance
- OTA study didn't identify PL as a factor

Response:

- + legal expenses have increased more than R&D
- + U.S. companies pay much, much more than foreign companies for PL insurance
- + real cost is the time it takes to resolve disputes (over 2 1/2 years)

6. S. 640 will not reduce Product Liability Costs

- S. 640 will not reduce transaction costs
- S. 640 will not reduce insurance premiums

Response:

- + uniform rules will promote certainty
- + settlement provisions encourage earlier resolution

7. Product Liability System Does Not Stifle Innovation

- system works to keep only "unsafe" product off market

Response:

- + these are the same arguments used for the Corvair
- + In a 1988 survey of manufacturers, the Conference Board found that because of liability concerns:

more than 1/3 of firms decided against introducing new products

25% had discontinued some form of product research

47% had withdrawn products from the market

15% had laid off workers

8% had closed plants

General Responses

- + Trial Lawyers benefit more from the current system than injured parties. That is why the trial lawyers are fighting so hard to defeat this bill.
- + Nearly 1/2 the money in a product liability suit goes to both sides' lawyers. It takes, on average, 2 1/2 years to resolve these suits.
- + Product Liability laws are not balanced - largely because of trial lawyers' lobby. Ask the opposing Senators "which would you rather have for your state -- more lawyers or more jobs."

## SUMMARY - S. 640, THE PRODUCT LIABILITY FAIRNESS ACT

### I. Whoever Creates Harm Should Take Responsibility For It.

- o Joint and Several Liability. The bill abolishes joint and several liability with respect to noneconomic damages, such as pain and suffering. It is outrageous that an individual may be required to pay 100 percent of damages when he is only 1 percent responsible.
- o Product Sellers. Product sellers will be liable only for their own negligence, failure to comply with an express warranty, or if the manufacturer cannot be brought into court or is unable to pay a judgment.
- o Alcohol and Drugs. The defendant has an absolute defense if the plaintiff's drunk or drugged condition was more than 50 percent responsible for his injuries.

### II. The Bill Reduces Legal Costs.

- o Expedited Settlements. Either party may make a settlement offer. If the offeree refuses the offer and would have done better under the proposed settlement than he did in litigation, the offeree will pay the other party's legal fees and costs. This expands Rule 68 of the Federal Rules of Civil Procedure to cover both costs and attorneys' fees.
- o Alternative Dispute Resolution (ADR). Either party may offer to participate in an approved ADR procedure. If a party refuses to participate and later has a verdict entered against it, that party will pay the opponent's legal fees and costs.
- o Punitive Damages. In order to recover punitive damages, a plaintiff must prove conscious, flagrant indifference to the safety of those who might be harmed by clear and convincing evidence. Trials may be bifurcated so that the punitive damages phase of the trial is separate from the proceedings on compensatory damages. Food and Drug Administration or Federal Aviation Administration pre-market approval or certification is a defense against punitive damages except in cases of bribery or the submission of false data in the regulatory process.
- o Workers' Compensation Offset. An employer's right to recover workers' compensation benefits from a manufacturer who made a product that allegedly harmed a worker is preserved unless a manufacturer can prove that the employer caused the injury. This will reduce litigation and create incentives to make the workplace safer.

### III. The Bill Protects The Right Of Injured Persons To Receive Compensation.

- o Statute of Limitations. Would run two years after an injured person discovers the injury and its cause. Some statutes begin to run when a person is injured, even if injury's cause is discovered years later.

## Product Liability Talking Points

### I. The Present Tort System and, in Particular, the Product Liability System is an Outrage.

- o The System is Slow and Unfair to Victims. It fails to provide injured persons fair compensation in a timely fashion. According to a 1989 GAO study, cases take an average of nearly three years to resolve. According to former Commerce Secretary Mosbacher, as much as 75 percent of the system's costs go to pay attorneys' fees or other transaction costs, rather than to injured persons.
- o Compensation for Severely Injured Victims is Inadequate. According to a study by the Insurance Services Office, the victim of a product-related injury can expect to receive a windfall of nearly nine times his losses if his injuries are minor. If his injuries are severe, however, he should expect to receive only 15 percent of his losses.

### II. The Current Tort System is Great for Lawyers but it Hurts the National Economy.

- o The Product Liability System Hurts American Competitiveness. According to a 1988 Conference Board Report, 47 percent of the companies surveyed indicated that they had discontinued product lines, and 16 percent have laid off workers, and 21 percent have discontinued research and development because of liability concerns. For example, the general aviation industry has seen the number of aircraft sold drop from 17,000 in 1979 to 1,023 in 1991, partly as a result of liability concerns. The National Machine Tool Builders Association testified that it has lost nearly 25 percent of its market share to foreign competitors in recent years due mainly to excessive product liability costs.
- o Product Liability Costs are Much Lower Overseas. A 1984 Department of Commerce study found that product liability costs for U.S. manufacturers are 20 to 50 times higher than those of their foreign competitors. U.S. product liability judgments are so excessive that England and France have refused to enter into reciprocal enforcement treaties for legal judgments.
- o The Current System Benefits Only Lawyers. Less than half the costs of litigation goes to injured persons. U.S. tort costs between 1950 and 1988 have grown 4.5 times faster than the GNP. Further, the number of lawyers in the U.S. has more than doubled between 1970 and 1990. On a per capita basis, the U.S. has three times as many lawyers as Germany and 30 times as many lawyers as Japan. According to a Clemson University study, each lawyer costs the U.S. \$2.6 million in foregone GNP.

## Responses to Likely Arguments

1. This bill denies compensation to women injured by silicone breast implants.

Response: Breast implants have not been certified by the FDA. Therefore, this product is not covered by the defense against punitive damages. Women injured by breast implants may recover full compensatory damages and punitive damages under this bill.

2. The provision on alternative dispute resolution (ADR) will deny injured persons their right to a jury trial.

Response: If a party enters into voluntary ADR at the request of the other party, there will be no penalty for declining to accept the results of the ADR procedure and going to trial. Governor Clinton has indicated his support for promoting the use of ADR. That is what this provision accomplishes.

3. The provision on settlement offers could leave a poor individual paying the legal fees of a Fortune 500 Company because a verdict is \$1 less than a settlement offer.

Response: If a Fortune 500 company offers a settlement that is \$1 less than a jury verdict, then the provision has achieved its objective of promoting fair and prompt settlements. The bill provides that in such situations, however, the penalty for a plaintiff cannot exceed the amount of collateral benefits the plaintiff may receive for the injury. For a poor plaintiff with no collateral benefits, there would be no penalty.

4. Plaintiffs' rights should not be reduced based on decisions of an agency such as the FDA.

Response: The "FDA defense" applies only to punitive damages. Punitive damages are tantamount to a criminal penalty. They are not compensatory. A company that spends millions of dollars over several years to comply fully with regulatory requirements has not engaged in willful or intentional misconduct that merits punitive damages. This defense to punitive damages is not available if the company has withheld or misrepresented information in the regulatory process -- either before FDA approval or after.

5. The provision on joint and several liability denies compensation to severely injured persons.

Response: This provision is based on a 1986 referendum approved by voters in California. The provision does not affect state law regarding economic damages such as medical expenses or lost wages. It is outrageous that an individual may be required to pay 100 percent of a pain and suffering award even if he is only 1 percent responsible.

## What S. 640 Does Not Do

S. 640 bears little resemblance to the pro-defendant product liability bills that business groups were supporting a short number of years ago. In fact, this bill focuses on protection of plaintiff's rights. Unlike the past, this bill:

1. Does not contain any caps on damage awards.
2. Does not limit the amount of punitive damage awards and does not take away the jury's right to decide punitive damage awards.
3. Does not create a defense against liability for products that comply with Government standards.
4. Does not preclude courts from allowing evidence about product improvements to be admitted in cases.
5. Does not create a "state-of-the-art" defense for manufacturers.
6. Does not create a defense for manufacturers of products that are "inherently dangerous" or "unavoidably unsafe".
7. Does not contain a broad statute of repose for consumer products, unlike the European Economic Community which has a 10 year statute of repose for all products. S. 640 has a statute of repose of 25 years only for capital goods. Even then, the statute only operates to bar a claim if the claimant is eligible to receive workers compensation benefits for the harm.

## What S. 640 Does

Time Limitations: The bill helps consumers by preserving their right to sue until a person discovers, or should have discovered, the harm or its cause. This improves upon present law in that some states cut off lawsuits even before an injury has manifested itself. Similarly, the bill also puts an outer time limit on litigation involving workplace capital goods products over 25 years old. Thus, unlike the European Economic Community which has a 10 year limit on all products, S. 640 would only not allow a lawsuit on capital products over 25 years old, and even then the bar would apply only if the claimant is eligible to receive workers compensation for the harm.

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Punitive Damages: The bill creates a uniform standard for punitive damages. A claimant must prove "by clear and convincing evidence" that the defendant's conduct manifested a "conscious, flagrant indifference" to the public safety. The bill also makes it possible to consider punitive damages apart from the issues of liability and compensatory damages.

S. 640 establishes a defense against punitive damages for drugs and medical devices that have pre-market FDA approval and aircraft with pre-market certification from the FAA. These defenses would not apply if the defendant committed fraud, withheld information or bribed FDA or FAA officials in obtaining the approval or certification.

It should be noted that only Great Britain, which does not use a jury system, and the United States allow punitive damages. The rest of the world, including Japan, does not provide for punitive damages at all.

Several Liability for Non-Economic Damages: Consumers, insurers and businesses have long been victimized by the joint and several liability rule (i.e. the "deep pocket rule") which makes it possible to force any defendant to pay the entire damages even if that defendant is only minimally at fault and other persons who were at fault were not sued or could not pay. S. 640 adopts the California law--each defendant will be liable for non-economic damages (pain and suffering, emotional distress) only in proportion to the defendant's share of the responsibility for the harm. S. 640 does not affect joint liability for economic damages such as medical costs and lost wages.

Alcohol and Drug Defenses: S. 640 adopts Washington State law in disallowing suits when a claimant's use of alcohol or illicit drugs was determined by a jury to be the primary cause (more than 50%) of the injury. This means consumers will not have to pay exorbitant prices for products to cover drug or alcohol induced damages.

Workplace Safety: Currently, employers can recover any workers' compensation they have paid to an injured employee by filing a subrogation lien on the employee's suit with a manufacturer. As an incentive to employers to provide a safe workplace, the bill would disallow the lien if the employer was at fault for the injury (e.g. by removing a safety guard or not providing adequate training.)

9/6/92  
12:00 pm

Josh:

Attached are some documents that may aid in the product liability briefing.

- 1) Product Liability Fact Sheet (OVP)
- 2) Rebuttal to Minority Report (OVP)
- 3) Summary of S. 640 (Senate)
- 4) Product Liability Talking Points (Senate)
- 5) Response to Likely Questions (Senate)
- 6) What S. 640 Does (PLCC)

Tiger Joyce of the Commerce Committee is standing by to provide any technical support we may need. His numbers are (703) 548-8155 and 224-2498. I have been unable to reach Victor Schwartz but have his home number -- 703-212-0524.

Please let me know if you would like any additional information.

A handwritten signature in black ink, appearing to read "J. Howard". The signature is written in a cursive, flowing style.

DRAFT- NOT SIGNED-OFF ON YET

# Product Liability Fairness Act

## FACT SHEET

Product liability litigation needs reform that can only be accomplished through clear and coherent national legislation. The current system of 51 separate product liability laws is plagued by uncertainties that hurt both consumers and manufacturers. Meritless suits clog the system, preventing swift and just compensation to those with meritorious claims. Long delays, high costs and the uncertainty of random punitive damage system fail to serve justice. Ultimately, these costs are borne by the American consumers.

The question is how to compensate those who have been injured by defective products without undermining American competitiveness. The Product Liability Fairness Act meets this challenge by establishing uniform federal rules to be applied by the state courts in all product liability litigation.

- o **Alternative Dispute Resolution:** The Act provides for alternative to trial and expedited offers of settlement. If the result in litigation is less favorable than the rejected offer, the rejecting party may have to pay the other side's legal fees. The Act also mandates fee-shifting if a party unreasonably refuses to engage in settlement discussions.
- o **Provides Rational Rules for Punitive Damages:** Punitive damages may be awarded if one proves by clear and convincing evidence that the defendant's conduct manifested "conscious, flagrant indifference" to public safety. The Act encourages proper conduct by drug and aircraft manufacturers by protecting them from punitive damages if they supply all material safety information to the FDA and FAA and the respective agencies have certified their products.
- o **Product Seller Liability:** Product sellers will be liable for harm caused by their own negligence. If the manufacturer is "judgment proof" or cannot be served with process, the product seller will then have the same liability as the manufacturer.
- o **Several Liability for Non-Economic Damages:** A defendant will be liable for non-economic damages only to the extent of his own share of responsibility.
- o **Alcohol and Drug Usage:** If a claimant's alcohol or drug usage is more than 50% responsible for his harm, he cannot recover.
- o **Worker Compensation Offset; Lien Limitations:** Encourages workplace safety by eliminating the lien when the employer's negligence causes the accident.

**Minority Views of Senators Hollings and Gore  
Summary with Suggested Rebuttals**

1. The Current System is Fair/There is No "Litigation Explosion"
- number of tort cases declining
  - reform efforts are based on anecdote are scarce

Response:

- + these facts are disputed by a number of studies
- + total tort costs increase 12% each years
- + ~~more than 50%~~ <sup>nearly 1/2</sup> of the money goes to lawyers

2. The Current System Promotes Product Safety

- companies are becoming more careful in product design
- punitive damages deter unsafe products

Response:

- + fear of litigation chills innovation (AIDS, DPT etc)
- + threat of punitive damages limits all production, whether the product is safe or unsafe

3. The Current System Promotes Federalism

- S. 640 encroaches on state's prerogatives
- issue isn't important enough for Federal action

Response:

- + States have been unable to address issue
- + Reform is critical
- + National Governors' Association unanimously backs s. 640

4. The Current System Did Not Cause the Insurance Crisis

- Insurance "crisis" doesn't exist -- coverage is available

Response:

- + Municipalities/charities have limited services due to \$
- + Many companies are "going bare" lacking any coverage

5. Product Liability is Not a Major Factor in Competitiveness

- only 1% is spent on insurance
- OTA study didn't identify PL as a factor

Response:

- + legal expenses have increased more than R&D
- + U.S. companies pay 12-15 times more than foreign companies for PL insurance
- + real cost is the time it takes to resolve disputes (over 2 1/2 years)

*(President will not use in speech)*

6. S. 640 will not reduce Product Liability Costs

- S. 640 will not reduce transaction costs
- S. 640 will not reduce insurance premiums

Response:

- + uniform rules will promote certainty
- + settlement provisions encourage earlier resolution

7. Product Liability System Does Not Stifle Innovation

- system works to keep only "unsafe" product off market

Response:

- + these are the same arguments used for the Corvair
- + In a 1988 survey of manufacturers, the Conference Board found that because of liability concerns:

more than 1/3 of firms decided against introducing new products

25% had discontinued some form of product research

47% had withdrawn products from the market

15% had laid off workers

8% had closed plants

General Responses

- + Trial Lawyers benefit more from the current system than injured parties. That is why the trial lawyers are fighting so hard to defeat this bill.
- + Nearly Far more than 1/2 the money in a product liability suit goes to lawyers. It takes, on average, 2 1/2 years to resolve these suits.
- + Product Liability laws are not balanced - largely because of trial lawyers' lobby. Ask the opposing Senators "which would you rather have for your state -- more lawyers or more jobs."

## SUMMARY - S. 640, THE PRODUCT LIABILITY FAIRNESS ACT

### I. Whoever Creates Harm Should Take Responsibility For It.

- o Joint and Several Liability. The bill abolishes joint and several liability with respect to noneconomic damages, such as pain and suffering. It is outrageous that an individual may be required to pay 100 percent of damages when he is only 1 percent responsible.
- o Product Sellers. Product sellers will be liable only for their own negligence, failure to comply with an express warranty, or if the manufacturer cannot be brought into court or is unable to pay a judgment.
- o Alcohol and Drugs. The defendant has an absolute defense if the plaintiff's drunk or drugged condition was more than 50 percent responsible for his injuries.

### II. The Bill Reduces Legal Costs.

- o Expedited Settlements. Either party may make a settlement offer. If the offeree refuses the offer and would have done better under the proposed settlement than he did in litigation, the offeree will pay the other party's legal fees and costs. This expands Rule 68 of the Federal Rules of Civil Procedure to cover both costs and attorneys' fees.
- o Alternative Dispute Resolution (ADR). Either party may offer to participate in an approved ADR procedure. If a party refuses to participate and later has a verdict entered against it, that party will pay the opponent's legal fees and costs.
- o Punitive Damages. In order to recover punitive damages, a plaintiff must prove conscious, flagrant indifference to the safety of those who might be harmed by clear and convincing evidence. Trials may be bifurcated so that the punitive damages phase of the trial is separate from the proceedings on compensatory damages. Food and Drug Administration or Federal Aviation Administration pre-market approval or certification is a defense against punitive damages except in cases of bribery or the submission of false data in the regulatory process.
- o Workers' Compensation Offset. An employer's right to recover workers' compensation benefits from a manufacturer who made a product that allegedly harmed a worker is preserved unless a manufacturer can prove that the employer caused the injury. This will reduce litigation and create incentives to make the workplace safer.

### III. The Bill Protects The Right Of Injured Persons To Receive Compensation.

- o Statute of Limitations. Would run two years after an injured person discovers the injury and its cause. Some statutes begin to run when a person is injured, even if injury's cause is discovered years later.

## Product Liability Talking Points

### I. The Present Tort System and, in Particular, the Product Liability System is an Outrage.

- o The System is Slow and Unfair to Victims. It fails to provide injured persons fair compensation in a timely fashion. According to a 1989 GAO study, cases take an average of nearly three years to resolve. According to former Commerce Secretary Mosbacher, as much as 75 percent of the system's costs go to pay attorneys' fees or other transaction costs, rather than to injured persons.
- o Compensation for Severely Injured Victims is Inadequate. According to a study by the Insurance Services Office, the victim of a product-related injury can expect to receive a windfall of nearly nine times his losses if his injuries are minor. If his injuries are severe, however, he should expect to receive only 15 percent of his losses.

### II. The Current Tort System is Great for Lawyers but it Hurts the National Economy.

- o The Product Liability System Hurts American Competitiveness. According to a 1988 Conference Board Report, 47 percent of the companies surveyed indicated that they had discontinued product lines, and 16 percent have laid off workers, and 21 percent have discontinued research and development because of liability concerns. For example, the general aviation industry has seen the number of aircraft sold drop from 17,000 in 1979 to 1,023 in 1991, partly as a result of liability concerns. The National Machine Tool Builders Association testified that it has lost nearly 25 percent of its market share to foreign competitors in recent years due mainly to excessive product liability costs.
- o Product Liability Costs are Much Lower Overseas. A 1984 Department of Commerce study found that product liability costs for U.S. manufacturers are 20 to 50 times higher than those of their foreign competitors. U.S. product liability judgments are so excessive that England and France have refused to enter into reciprocal enforcement treaties for legal judgments.
- o The Current System Benefits Only Lawyers. Less than half

the costs of litigation goes to injured persons. U.S. tort costs between 1950 and 1988 have grown 4.5 times faster than the GNP. Further, the number of lawyers in the U.S. has more than doubled between 1970 and 1990. On a per capita basis, the U.S. has three times as many lawyers as Germany and 30 times as many lawyers as Japan. According to a Clemson University study, each lawyer costs the U.S. \$2.6 million in foregone GNP.

## Responses to Likely Arguments

1. This bill denies compensation to women injured by silicone breast implants.

Response: Breast implants have not been certified by the FDA. Therefore, this product is not covered by the defense against punitive damages. Women injured by breast implants may recover full compensatory damages and punitive damages under this bill.

2. The provision on alternative dispute resolution (ADR) will deny injured persons their right to a jury trial.

Response: If a party enters into voluntary ADR at the request of the other party, there will be no penalty for declining to accept the results of the ADR procedure and going to trial. Governor Clinton has indicated his support for promoting the use of ADR. That is what this provision accomplishes.

3. The provision on settlement offers could leave a poor individual paying the legal fees of a Fortune 500 Company because a verdict is \$1 less than a settlement offer.

Response: If a Fortune 500 company offers a settlement that is \$1 less than a jury verdict, then the provision has achieved its objective of promoting fair and prompt settlements. The bill provides that in such situations, however, the penalty for a plaintiff cannot exceed the amount of collateral benefits the plaintiff may receive for the injury. For a poor plaintiff with no collateral benefits, there would be no penalty.

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Deegan

Wish Times More Review

"I'm not gonna fight you  
I'm gonna sue you"

(Oct. 23)

"Urban Compacts" 1992

Top Reform / Pass. Rem.

Thank Deegan

mt/smr

## Statistics: Legal/ Civil Justice Reform

### New Data on US

- A soon to be published study [by NAM] estimates that "businesses and consumers will spend between \$163 and \$201 billion on legal services in 1992."

This figure does not include damage awards or in-house legal fees paid by many businesses. It does include payments to law firms for travel and other disbursements. [Source: NAM/ study author]

- A soon to be published study [by the Tillinghast, A Towers Parrin Company, Hartford consulting firm] estimates that "the total direct costs associated with the US tort system in 1991 are \$132 billion." [Source: Tillinghast, Co./ study author]

This figure does include settlements and benefits paid to third-parties and plaintiffs, as well as administrative costs.

It does not include the costs to business and to states of workers' compensation benefits, which "totalled another \$64 billion in 1991." It also does not include indirect costs of our tort system.

- The soon to be published Tillinghast study shows that "US costs of tort litigation have more than quadrupled since 1950, as a percent of GDP."

-- Today, the US costs of tort litigation account for 2.3 % of total US GDP.

-- By comparison, tort litigation costs in Japan account for only 0.7 percent [i.e. less than one percent] of that nation's GDP, a figure that has remained steady since 1970, while our litigation costs have risen.

-- Similarly, tort litigation costs in France account for only 0.9 percent [i.e. less than one percent] of that nation's GDP, and since 1970, tort costs in France have been falling.

Data on Wisconsin

- In 1980 [most recent data], Wisconsin:
  - Had 9,117 lawyers
  - Had a State population/lawyer ratio of 516/1
  - Had more lawyers than 33 other US States
  - Had 1.7 percent of all lawyers in US

THE WHITE HOUSE  
WASHINGTON



DATE: 8/31

TO: Steve Provost

FROM: JOSHUA BOLTEN  
Deputy Assistant to the President for  
Legislative Affairs  
2nd Floor, West Wing, x2230

Steve:

Attached is private sector coalition's  
notebook on product liability - Pls. return  
to me when done. (I got this one from VP's etc)

Castellani's phone & address is on sheet  
in inside pocket.

Good luck. Let me know how we can help

Josh

Prepared By:

**PLCC**  
Product Liability Coordinating Committee

May, 1992

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NEVER REPAIR A DAMAGED LADDER  
WITHOUT PERMISSION FROM MAN-

## EVERY COMPANY IS VULNERABLE TO LITIGATION

**MYTH:** Companies have nothing to worry about as long as they act responsibly.

**FACT:** Under today's laws, even responsible companies have to worry.

- According to a 1988 study by the Rand Institute for Civil Justice, 87 percent of American companies will become defendants in a product liability claim at least once!
- At this rate, moving operations offshore seems the only rationale decision for companies that do not want to be dragged into court. Piper Aircraft recently announced it was moving from Vero Beach, FL to Saskatchewan, Canada because of product liability costs.
- Liability costs in the U.S. are fifteen times greater than in Japan and twenty times greater than in Europe.
- Because of rising legal costs, even a successful defense can prove damaging to businesses. And, under the "deep pocket rule," in some states, even defendants who are found to be only one percent responsible for an injury are vulnerable for the entire amount of the damage award.

HIGHLIGHTS OF TESTIMONY BEFORE THE  
SENATE SMALL BUSINESS COMPETITION SUBCOMMITTEE  
NOVEMBER 7, 1991

"The tangled web of 50 different laws on product liability threatens this innovative spirit among small business owners. There is too much uncertainty for businesses operating in or attempting to break into the national marketplace. Potential liability is unpredictable once a product enters interstate commerce."

✓ "...the Will-Burt Corporation of Orville, Ohio was forced to close plants and lay off 80 workers because the company stopped making parts for ladders, scaffolds, and aircraft -- products that encountered potential liability costs....the Chief Executive Officer of the Will-Burt Corporation...emphasized to me that product liability reform is not just a good idea for the purposes of increasing small business profits -- it's a necessity for small business survival."

"The threat of liability cannot be underestimated...what it will do is make further innovation in a product line less appealing."

R. Wendell Moore  
Acting Chief Counsel for Advocacy  
U.S. Small Business Administration

"Small businesses are active suppliers to the lead firms in the automobile, aircraft, and pharmaceutical industries...to the extent that lead companies are harmed by liability problems, then the supplier firms to these industries, which are largely small firms, are definitely injured."

## LIABILITY TAX RAISES PRICES

**MYTH:** Liability costs are a negligible factor in product pricing.

**FACT:** Liability costs add greatly to the price of products, and even minor price increases affect market share, production, and jobs.

- Americans now depend on single companies to supply vaccines for polio, measles, mumps, rubella, and rabies. Lederle Laboratories, the lone maker of the diphtheria, pertussis, and tetanus (DPT) vaccine, raised its price per dose from \$2.80 to \$11.40 in 1987 to cover the costs of increased lawsuits.
- In a recent article in Product Safety and Liability Reporter, Vice President Quayle pointed out that the Hepatitis B vaccine costs \$160 here and only \$12 in Taiwan, because of the cost of U.S. product liability laws.
- Rawlings Sporting Goods announced in 1988 that it would no longer manufacture, distribute, or sell football helmets. Joining Spaulding, MacGregor, Medalist, Hutch and others who have stopped manufacturing helmets, Rawlings was the 18th company in 18 years to give up the football helmet business due to increasing liability exposure. Two manufacturers remain.
- According to The Liability Maze, Brookings Institution authors estimate that liability costs in 1987 added from \$70,000 to \$100,000 per light aircraft that year, and directly contributed to the decline of the American small aircraft industry.
- Some states allow drunks who fall off ladders to sue a ladder manufacturer. That is one reason why today 20 percent of the price of a ladder is attributed to product liability costs.

**REMARKS**  
**OF**  
**MARILYN TUCKER QUAYLE**  
**NATIONAL REPUBLICAN LAWYERS ASSOCIATION**  
**MONDAY, AUGUST 17, 1992**  
**HOUSTON, TEXAS**

**Thank you Bob --**

**It's been 16 years since Dan and I removed the Quayle and Quayle shingle from a small law office on Main Street in Huntington, Indiana. Half of the shingle was becoming a congressman, and eventually half of the Bush/Quayle ticket.**

The other half of the shingle was advised to put a law career on the back burner to avoid any conflict of interest. So, like most clients, I reluctantly took the advice. I packed up the lawbooks and legal pads in boxes, where we are confident they'll stay for at least another four years.

**But just because I haven't been mixing it up in the courtroom doesn't mean that I haven't kept up with what's going on in our profession. One thing I do know: there's many more of us.**

**The number of lawyers has almost doubled in the past 20 years. And, partly as a result, case filings have skyrocketed.**

**More isn't always better. Our courts have become overburdened -- and our obsession with the lawsuit knows no bounds.**

**Today, it takes over a year for the average case to be resolved. In the past year alone, the number of cases that were pending for 3 years increased by 15 percent.**

**Some of you may remember that a year ago this month, the Vice President presented the Administrations Civil Justice Reform recommendations to reduce costs and delays in litigation before the American Bar Association.**

**You remember the ABA: It's that group whose latest exploits include attacking the Administration because we are too tough on violent criminals, giving honor to Hillary Clinton and Anita Hill, working against reform to maintain the status quo and their financial interest.**

**Well, I'm proud to say that the Bush/Quayle Administration has given the ABA a lot to fight.**

**Now, don't misunderstand me. My husband is not anti-lawyer, nor am I. My profession -- our profession -- is fundamental to society. But our obligation to the rule of law is too important to squander on frivolous litigation or dilatory tactics.**

**Time and again, the organized bar has ignored the costs imposed by our overly litigious society.**

**First, there has been the problem of direct payments to lawyers. The longer the case, the more the meter runs.**

**And the more time spent litigating, the less time can be spent on innovation, research and development, or product design.**

**The very idea of lawsuits chills innovation. While the cost of lost opportunities is virtually incalculable, we do know that almost half of all U.S. manufacturers have withdrawn products because of litigation concerns.**

**Too often, manufacturers think it is wiser to shelve a new idea or lay off an assembly line of American workers than risk the chance of being sued over a new product.**

**I know of one company that developed a suitcase-sized, kidney dialysis machine that could be used at home. But, because of concerns of nuisance law suits, the company decided against selling the dialysis machine in the United States. Instead, it sold the patent to a foreign company, and Americans lost out.**

**The Civil Justice reform proposals are designed to move people to reach agreements earlier, rather than waiting until the last moment.**

**In fact, people would not be allowed to file suit unless they have attempted, and failed, to reach a resolution.**

**After a case is filed, the parties would be required to attend mandatory conferences and attempt to resolve the dispute in a swift, consensual manner.**

The "Fairness" or "Loser-Pays" rule would force parties to evaluate their cases with more care. No longer would plaintiffs bring lawsuits purely as a form of harassment; no longer would defendants maintain insupportable positions. When the loser pays the winner's fees, the system quickly becomes more rational.

**There has been a lot of talk about these proposals in the last year. The Vice President's office has received thousands and thousands of letters of support. These letters say, Americans want a fair system. They say, Americans want results. Then what is the hold-up: It's the Democrat-controlled Congress.**

**And the reason is money. Those who benefit the most from the current, overburdened system, the trial lawyers, have been spending a lot of money convincing Congress not to make needed changes.**

Last year, the Association of Trial Lawyers of America was the 2nd largest PAC in terms of donations to candidates for Congress. Almost 7 out of every 8 ATLA dollars went to Democrats. And in the presidential race, one-third of Bill Clinton's contributions so far have come from lawyers or lawyer/lobbyists.

**But this hasn't stopped the Bush\Quayle Administration.**

**We have kept pushing forward to reform the legal system. And in addition to Civil Justice Reform, the Administration has championed reforms in product liability to create substantive laws that are fair and uniform.**

**We have introduced medical malpractice reforms that seek improved health care and lower legal costs. We have drafted laws to protect volunteers from unwarranted exposure to legal liability.**

**In manufacturing, our companies have been facing liability costs fifteen times greater than in Japan and twenty times greater than in Europe. And those costs mean jobs. Eight percent of our manufacturers have closed plants due to product liability concerns.**

**Litigation -- malpractice litigation and resulting costs -- also exact a heavy burden on our health care system.**

**Three-fourths of all obstetricians have been sued; 12 percent have given up their practice all together. In 1990, the average jury verdict in medical malpractice cases was over \$1.7 million.**

**And we wonder why health insurance costs are soaring.**

**The Administration's Health Care Liability Reform Act will help bring these costs in line. Who doesn't like it? The trial lawyers.**

For most of my adult life, I have been involved with charitable efforts. I've worked side by side with hundreds of wonderful people who have given their time and support to help others. Without pay. Without asking for favors in return. Without their meters running.

**This activity is the cornerstone of the President's Points of Light Foundation. But the flood of lawsuits threatens to sweep away potential volunteers and drown some very worthwhile community efforts. In Little League Baseball, for instance, the liability insurance they need per league increased from \$75 to over \$750 annually in just five years.**

**Obviously, some cannot afford these higher costs. No one wants the box score to read: "Game called on account of lawyers." The Bush\Quayle Administration has proposed legislation to protect those performing voluntary community service from personal liability. Now it's up to the states to enact these needed protections.**

**Let me underscore that more often than not, our legal system does its job, albeit slowly. When people are injured by defective products or when doctors fail to practice skillfully, the system usually works to provide the victim compensation.**


**But let's not fool ourselves.**

**In the last decade, the legal profession has been evolving from a profession to a business -- one that is increasingly dominated by escalating attorney salaries and heavier demands for billable hours.**

**It is up to us, as lawyers and as Republicans, to bring reform to the legal system. We know that Bill Clinton certainly won't. He's too busy picking up his campaign checks from trial lawyers.**

**We need you, as Republicans, and as lawyers, to go out in your communities and tell people about the Administration efforts to change our legal system. We've all heard enough lawyer jokes to know that as a profession, we're not popular.**

Brian Deke  
1992  
5:05  
JB (414) 821 -

Susan Drayfuss  
414/544 1104  
  
414-1996  
821-788

LES PAUL

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WANLESHA "

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WANLESHA

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# BLOCK AND ASSOCIATES

740 N. PILGRIM PARKWAY  
ELM GROVE, WI 53122

September 2, 1992

414-821-1992  
(FAX)414-821-1996

TO: Jeanne

FR: Brian Dake

Subject: Information - Potential Presidential Visit

## Question 1 - Hepatitis B Vaccine

According to the Pharmacist at Waukesha Memorial Hospital the cost of the Hepatitis B Vaccine (Brand Name - Recombivax) is \$55.46. Furthermore the cost of the vaccine has not increased significantly since its introduction in 1989. Cost estimate for the vaccine when its was introduced was approximately \$52 according to the Waukesha Memorial Hospital Pharmacist.

## Question 2 - Football Helmets

According to Harley Graf, Physical Education Specialist for the Waukesha High Schools, the cost of a football helmet currently costs between \$90 and \$95 a piece. According to his information this same helmet cost approximately \$50 to \$55 a piece in 1982. he opined that the cost increase was primarily the result of litigation costs involving the Helmet manufacturer - "Bike". For the Brookfield High Schools the costs are similar.

The nickname for Waukesha South High School is the "Blackshirts". The crosstown rival Waukesha North has a nickname of the "Northstars". I will get back to you tomorrow with the name of the respective coaches.

The Brookfield High Schools are Brookfield East and Brookfield Central. Brookfield Central's nickname are the "Lancers" and Brookfield East nickname are the "Spartans". Brookfield East is coached by Mr. Jack Perry while Brookfield Central is coached by Rick Synold.

## Question 3 - Little League Liability

According to the risk management specialist for the City of Waukesha, Rick Jonanis, the cost of liability insurance for the Little League Baseball program is covered under an umbrella policy for the entire City of Waukesha. He informed me that they could not "break-out" the cost of the little league liability nor could he give any clue as to whether there has been an increase or decrease in the cost. Furthermore Wisconsin State Statute 895.52 states that the the city's liability for injury is limited to errors on the part of the Waukesha Park and Recreation Department. i.e. the City is not responsible or liable if two players collide but could be liable if a player breaks his leg sliding into an improperly positioned base.

Regard speech -  
TMNI - km ut gnu h.1 - sro

**BLOCK AND ASSOCIATES, INC.**

740 N. PILGRIM PARKWAY  
ELM GROVE, WI 53122

414-821-1992  
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**FAX TRANSMITTAL**

Date: 9/2/92

Time: 6:25 \* care in rural areas prob  
affluent country!

FAX #: 1-202-456-6218 # of pages (including this page): 2

Company: The White House

Attention: Jeanne From: Brian Deke

Special Instructions: Here is the information you  
requested. Please call me tonight or  
tomorrow morning if you need  
additional information.

Note from Mark: Brookfield Central High School,  
Jerry Hayes, Athletic Director, Brookfield Lancers.

Notes

▶ ▶ ▶ ▶ ▶ ▶ ▶ ▶ Confidential Fax Transmission ▶ ▶ ▶ ▶ ▶ ▶ ▶ ▶

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## More Referees Play Defense— In the Courts

By ROBERT TOMSHO

Staff Reporter of THE WALL STREET JOURNAL

In the arena of sports officiating, lawsuits are becoming as common as striped shirts and silver whistles.

Consider the case of Jim Bain, a part-time Big Ten basketball official. During a crucial 1982 Iowa-Purdue game, he called a last-second foul that gave Purdue both the victory and a post-season tournament berth. An Iowa souvenir company faced with a suddenly devalued inventory challenged his call with a \$175,000 negligence suit in state district court, claiming he had wrongly harmed its ability to sell the souvenirs. Mr. Bain, a Missouri mortgage banker, won, but only after a two-year court battle that went all the way to the Iowa Supreme Court. "It is absolutely blowing the whole perspective of sports out of proper focus," he complains.

Mr. Bain isn't the only sports official facing legal wrangles. Across the country, amateur referees at softball diamonds, high school stadiums and college field houses are finding that their decisions can trigger major-league lawsuits. Defense costs—which can exceed \$100,000 in cases that go to appeal—and time lost from defendants' full-time jobs are taking much of the sport out of refereeing. None of the suits have resulted in huge judgments so far, but some settlements have exceeded \$50,000. The increasing tumult has prompted several states to grant legislative relief and many more to consider it.

### Holding Officials Accountable

Statistics are hard to come by, but attorneys, referees' organizations and insurance companies say the number of such suits is growing steadily. "There were only a handful a decade ago," says John Spiotta, vice president of Bollinger Co., a New Jersey company that handles sports insurance. "Now, it's up in the hundreds."

Until recently, sports referees had no

Please Turn to Page B3, Column 1

## Learning That Defense Is No Game

Continued From Page B1

special legal standing in liability and other suits, but challenges were rare. Now, more amateur athletes want to participate while holding officials accountable for many of the risks, legal analysts say. So far, they add, the trend hasn't extended to professional athletes, who are more inclined to accept the risks of their games.

Some observers of the sporting scene say the problem reflects the rise of litigation in all sectors of society. Others blame the media glare that has exposed the once-carefree sports world's seamy underbelly: drug troubles, labor disputes and televised images of big-league managers kicking dirt at officials. "Sports has lost the magical quality that set it apart from everyday life," says sports sociologist James Fry of the University of Nevada at Las Vegas. "For a long time, referees in sports were sort of an unchallenged authority. Now there isn't anything that can escape legal liability."

The growing litigation has sent shudders through the ranks of the nation's 250,000 amateur sports officials, whose pay ranges from a miserly \$8 for a junior-varsity soccer match to \$450 for college football bowl games. Many have given up their avocation. The Amateur Softball Association's roster of umpires has declined to 57,000 from 63,000 in 1983, and other amateur sports groups report similar losses.

"Some of our people got to the point where they were just afraid to work because of the threat of lawsuits," says Dotson Lewis of the Southwest Officials Association in Dallas, which provides officials

for scholastic games. "I think some of our better, older officials are just quitting."

Those who remain are loading up on liability insurance. Policies are cheap for officials who are part of large organizations, as most are. For \$2 a year each, umpires of the American Softball Association can get a \$10 million liability policy.

But even with such coverage, many officials bristle at the notion that the fouls they call during games can lead to months in court. "We're supposed to be out there being impartial arbiters of the game," says former college basketball official Mel Narol, a Princeton, N.J., lawyer who specializes in defending referees against such suits. "Now referees spend much of their time thinking about risk awareness."

With good reason. Lawsuits have accused officials of being responsible for everything from broken bottles on the playing field to deadly bolts of lightning. In a case still pending, a Cooperstown, N.Y., bat girl sued some American Legion umpires for \$1 million after she was hit in the head by a bat being swung by an on-deck batter. A New Jersey umpire was sued by a catcher who was hit in the eye by a softball while playing without a mask; he complained that the umpire should have lent him his. The catcher walked away with a \$24,000 settlement.

Hofstra University's athletic director, Jim Garvey, was sued in 1985 after he officiated a college basketball game during which a St. Bonaventure University player punched and broke the jaw of an opponent from George Washington University. The victim sued the officials for unspecified damages in District of Columbia superior court, claiming they hadn't been in control of the game. Mr. Garvey won, but not before he spent two years taking weeks off work and traveling from his Lido Beach, N.Y., home to Princeton and Washington, D.C., to testify and give depositions.

"Guys working for \$25 a game don't want to deal with this sort of trouble," Mr. Garvey says. "It's almost not worth the aggravation."

Groups such as the National Association of Sports Officials have responded by lobbying state legislatures for laws limiting sports officials' legal liability to cases where gross negligence can be proved. Some attorneys' groups oppose those efforts, saying no one should receive such immunity. "It can create a scenario where someone injured because of someone else's act can't be compensated for their bills," says Richard Mason, director of the Kansas Trial Lawyers Association. Still, Kansas, Arkansas, New Jersey and three other states have passed such laws, and bills have been introduced in 15 others.

The national sports officials' group has urged its 14,000 members to take a legal offensive by suing or pressuring charges against players or fans who physically assault them during a game. Even the group's president, Barry Mason, doesn't expect that to end the nose-to-nose arguments that have always been part of a referee's job. "In our minds, we're probably right 95% of the time," Mr. Mason says.

"But I don't think it would be half as m...

THE WHITE HOUSE  
WASHINGTON

DATE: 9-3-92

TO: Steve Provost

FROM: J. RUSSELL GEORGE *JRG*  
Associate Director for Policy  
Office of National Service  
Room 100, OEOB, x6266

Per our conversation.

London apartment," she told him. "Why don't you go there and pick it up?"

7 At a reception given for Josephine Baker on one of her trips to New York, many theatrical personalities were invited. Among them was Beatrice Lillie, who patiently waited her turn to greet the fabulous Josephine. Unfortunately, Miss Baker chose this occasion to put on her well-known regal air. Holding out her hand for Beatrice to kiss, she purred, "Ah, Lady Peel, eet is a great plaisir." Bea Lillie glanced at the proffered hand: "Ah likes you too, honey," she said.

8 (Clifton Daniel tells the following story.)

"One bright day on Piccadilly I saw an unmistakable figure approaching—Bea on the arm of a man. She had been abroad entertaining the 'trooops,' as she called them, and I hadn't seen her for a long time.

"As she came down the street I maneuvered myself so that she could not avoid running into me. When she did she threw open her arms and embraced me.

"Darling," she cried, 'how are you?' Still holding me, she leaned back and examined my face. 'And who are you?'"

9 In Hollywood one day, Miss Lillie was absentmindedly driving on the left-hand side of the road when she suddenly noticed another car bearing down on her. She swerved to the left and crashed, wrecking the car but escaping with a few cuts and bruises. She staggered to the nearest house, which happened to be that of film star John Gilbert. "Why, Bea! What's up?" cried Gilbert as he opened the door. "Heard there was a party," gasped Miss Lillie. "Come."

•••••

LINCOLN, Abraham (1809–65), *US statesman; 16th president of the United States (1861–65). Born in a log cabin, Lincoln was a self-educated man. He became a lawyer and in 1847 entered Congress as a representative from Illinois. An opponent of slavery, he was elected president on an antislavery ticket, an election that precipitated the secession of the Southern states and the Civil War. In 1863 Lincoln issued the Emancipation Proclamation, freeing Southern slaves, and two years later masterminded the Thirteenth Amendment, prohibiting slavery*

*anywhere in the United States. He proposed a generous settlement to the defeated Southerners, hoping to heal the wounds caused by the war, but only a few days after its end he was assassinated while attending the theater in Washington. The most famous of Lincoln's speeches is the Gettysburg Address (1863). A vast fund of anecdotes and humorous stories by him or told of him have accumulated under his name. Many are doubtless apocryphal.*

1 As a young man Lincoln was captain of a militia company during the Black Hawk War of 1832. He was not well versed in military procedures. One day, as he was leading a squad of some twenty men across a field, the appropriate word of command for getting them into position for marching through a gate went right out of his mind. In desperation, he shouted, "This company is dismissed for two minutes, and will fall in again on the other side of the gate."

2 When Lincoln was a lawyer, an out-of-town case required him to hire a horse from the local livery stables. Returning the animal, he asked the liveryman whether he kept the horse for funerals. "Certainly not," said its owner indignantly. "I am glad to hear it," said Lincoln, "because if you did, the corpse would not get there in time for the resurrection."

3 Lincoln's friend and fellow-lawyer Ward Lamson was on circuit in Illinois. While waiting outside the courtroom, Lamson was challenged to a wrestling match and in the struggle tore the seat of his trousers. Immediately afterward he was summoned into court for a case. His short coat did not conceal the damaged condition of his trousers. One of the other lawyers facetiously started a subscription paper to buy him a new pair, and it was passed around the various members of the bar. When the paper reached Lincoln, he wrote his name and under the column for the amount the words: "I can contribute nothing to the end in view."

4 In his legal practice Lincoln was never greedy for fees and discouraged unnecessary litigation. A man came to him in a passion, asking him to bring a suit for \$2.50 against an impoverished debtor. Lincoln tried to dissuade him, but the man was determined upon revenge. When he saw that the creditor was not

to be put off, Lincoln asked for and got \$10 as his legal fee. He gave half of this to the defendant, who thereupon willingly confessed to the debt and paid up the \$2.50, thus settling the matter to the entire satisfaction of the irate plaintiff.

5 (A clerk of the court relates the only occasion on which he was fined for contempt of court.)

"Davis fined me five dollars. Mr. Lincoln had just come in, and leaning over my desk had told me a story so irresistibly funny that I broke out into a loud laugh. The judge called me to order, saying, 'This must be stopped. Mr. Lincoln, you are constantly disturbing this court with your stories.' Then to me: 'You may fine yourself \$5.00.' I apologized, but told the judge the story was worth the money. In a few minutes the judge called me over to him. 'What was that story Lincoln told you?' he asked. I told him, and he laughed aloud in spite of himself. 'Remit your fine,' he ordered."

6 A New York firm wrote to Lincoln, then practicing law, requesting information about the financial circumstances of one of his neighbors. The reply was as follows: "I am well acquainted with Mr. —, and know his circumstances. First of all, he has a wife and baby; together, they ought to be worth \$50,000 to any man. Secondly, he has an office in which there is a table worth \$1.50, and three chairs, worth \$1.00. Last of all, there is in one corner a large rat-hole which will bear looking into. Respectfully yours, A. Lincoln."

7 During his time as a lawyer in Springfield, Lincoln was walking into town one day when he was overtaken by a man driving in the same direction. Lincoln hailed him and asked, "Will you have the goodness to take my overcoat to town for me?"

"With pleasure," responded the stranger, "but how will you get it again?"

"Oh, very easily; I intend to remain in it."

(This may be a standard joke, attributed —like many others— to Lincoln.)

8 On hearing the anguished cries of children in the street, one of Lincoln's neighbors in Springfield rushed out of his house in alarm. There he found Lincoln with two of his sons, both of whom were sobbing uncontrollably.

"Whatever is the matter with the boys, Mr. Lincoln?" he asked. "Just what's the matter with the whole world," replied Lincoln resignedly. "I've got three walnuts, and each wants two."

9 When Lincoln ran for Congress as a Whig in 1846, his Democratic opponent was an evangelical Methodist, Peter Cartwright. During the campaign Lincoln attended a religious meeting at which Cartwright, after a stirring address, invited all those who wished to go to heaven to stand up. A few people rose self-consciously to their feet. "Now all those who do not wish to go to hell will stand!" The rest of the audience, with the exception of Lincoln, stood up. Cartwright saw an opportunity to embarrass his rival. "May I inquire of you, Mr. Lincoln, where you are going?" Lincoln stood up and said calmly, "I came here as a respectful listener. I did not know I was to be singled out by Brother Cartwright. I believe in treating religious matters with due solemnity. I admit that the questions propounded by Brother Cartwright are of great importance. I did not feel called upon to answer as the rest did. Brother Cartwright asks me directly where I am going. I desire to reply with equal directness: I am going to Congress."

(One of many Lincoln anecdotes of doubtful authenticity.)

10 In 1858 the Illinois legislature elected Stephen A. Douglas senator instead of Lincoln. A sympathetic friend asked Lincoln how he felt. "Like the boy who stubbed his toe; I am too big to cry and too badly hurt to laugh."

(Adlai Stevenson, when defeated by Dwight Eisenhower in 1952, ruefully recalled this story.)

11 Stephen Douglas was attempting to discomfit Lincoln by making allusions to his lowly start in life. He told a gathering that the first time he had met Lincoln it had been across the counter of a general store in which Lincoln was serving. "And an excellent bartender he was too," Douglas concluded. When the laughter had died away, Lincoln got up and said, "What Mr. Douglas says is quite true: I did keep a general store and sold cotton and candles and cigars and sometimes whiskey, and I particularly remember Mr. Douglas, as he was a very good customer. Many a time I have been on