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THE VICE PRESIDENT'S OFFICE
OFFICE OF THE PRESS SECRETARY
(GENEVA, SWITZERLAND)

Embargoed until delivered * February 10, 1992 * 11:40 a.m.

ADDRESS BY THE VICE PRESIDENT
UNITED NATIONS HUMAN RIGHTS COMMISSION

U.N. Palais
Geneva, Switzerland

Mr. Chairman, distinguished delegates, ladies and gentlemen:

I stand before you representing a nation and a people for whom the rights of the individual are supreme. The United States is a nation built around a simple but compelling idea: that all men and women are created equal; that they are endowed by their Creator with inalienable human rights; and that the purpose of government is to protect these rights.

This is the essence of the American idea. It is the power of this idea that binds together the multi-ethnic, multi-racial, multi-faceted society known as the United States.

Of course, American practice has sometimes fallen short of American ideals. In the 19th century, Americans fought the bloodiest war in our history -- a Civil War -- to end the evil of slavery. And in the 20th century, we have struggled to make the American dream a possibility for all. Today, this effort continues.

For much of the 20th century, the American ideal has also found expression in foreign affairs. Simply put, we have sought universal recognition of the primacy of human rights. To us this is a vitally important subject in the affairs of nations and the concerns of statecraft.

With a suddenness no one could have predicted, millions of individuals, communities, ethnic societies, and captive nations -- all of them for generations smothered under the oppressive weight of dictatorship -- now are free. Free to speak out, free to move, free to organize, free to vote, free to make their own choices and pursue their own goals.

In Latin America, democratic pluralism, consent of the governed, and free choice in the marketplace are the watchwords of a hemispheric awakening. Across Africa, the promise of democracy is ushering out the post-colonial-era and empowering the people of Africa peacefully. Throughout the world, the people are becoming masters of their own destinies.

And by their very freedom, they remind us that any attempt to create a new world order without taking into account the aspirations of ordinary men and women to a life of individual dignity is doomed to failure.

We gather in Geneva to take stock of the state of the world's human rights practices. And one country is conspicuous by its absence in this chamber today -- a country that is absent for the simple reason that in the year 1992, it no longer exists. I am speaking of the Soviet Union.

Today, across Central and Eastern Europe, human rights have triumphed over Leninist ideology. The iron will of man has proved more durable than the Iron Curtain of Communism. So let us mark a place in history for the late 1980s and early 1990s. In a period of three years we have witnessed the greatest expansion in human rights since the revolutionary era that began with the American Revolution of 1776 and the French Revolution of 1789.

Let us review what has happened. The collapse of the Communist revolution, the end of the Cold War and the spread of democracy worldwide were no accidents. They did not simply happen. America and her friends and allies around the world stood firm on principle; and our principles prevailed.

The Free World prevailed against tyranny because the people of Central and Eastern Europe, the Baltics, and the former Soviet Union demanded their rights and their freedom. Freedom prevailed because ordinary citizens said no to the corruption of absolute power over their lives. And freedom prevailed because my country and other like-minded nations were willing to sacrifice our blood and the lives of our finest sons and daughters for the human rights revolution that we are celebrating today.

This has been a long, difficult struggle. During the struggle, my country was at times compelled to place less emphasis on human rights concerns in its relations with others. We had no choice. In World War II, when the Soviet Union under Stalin became an indispensable ally in the fight against Hitler, no one questioned that the imperative of defeating the greater evil of Nazism had to take priority.

So, too, after the war, when Soviet ambitions for global domination threatened freedom around the world, standing up to the greater evil of communist aggression required some painful compromises.

Some governments averted American scrutiny of their human rights failings by threatening to shift their support to the other side -- the Soviet camp -- if we pushed too hard for civil liberties and other democratic practices.

The world of 1992 is different. Today, no global evil today forces such distasteful dilemmas on the United States. Today, we assume the promotion of human rights as a fundamental responsibility. And we believe that the defense of human rights is an international responsibility. If a just peace is to prevail, human rights must be respected.

Fortunately, we are not alone in this belief. The world community at large stands for human rights and for the independence of free nations. And the world community recognizes that peace and security are closely linked to respect for human rights and national dignity.

That is why, when the world's fourth largest army invaded and terrorized the nation of Kuwait, the United Nations Security Council stood up to Iraq's aggression. That is why no fewer than 30 countries contributed to the coalition effort which -- after every reasonable alternative short of force had been exhausted -- counter-attacked with military force and achieved the liberation of Kuwait.

Mr. Chairman, this extraordinary commitment and sacrifice by the community of nations was not motivated by a lust for battle or a quest for domination. We did not come as conquerers, and we withdrew the great majority of our forces from Iraq and Kuwait as quickly as we came.

The unifying principle, the call to sacrifice, and the moral basis for this action was none other than that which brings us to this hall today. I am speaking of freedom, liberty, sovereignty, and the dignity of the individual. Iraq's conquest of Kuwait was an attack on everything this Commission stands for -- an assault on the fundamental human rights of the citizens of an entire country.

A year after Kuwait's liberation, we can contemplate a world in which the United Nations is seen as a legitimate and effective instrument for the resolution of disputes, and the advancement of shared values. A month after the U.N. General Assembly redeemed its credibility by repealing, overwhelmingly, the so-called Zionism-is-Racism resolution, we can speak of moral suasion and the growing weight of world opinion.

Today, as never before, the possibilities for advancing human rights are enormous. But despite all the progress and reasons for optimism, much remains to be done. We cannot rest or be satisfied with the progress to date. The member states of this Commission bear a special responsibility to champion the principles of human rights.

Unfortunately, massive human rights violations continue to occur in many parts of the world. Brutal dictators continue to

inflict tremendous suffering. Terrorism, sometimes state-sponsored, continues to claim innocent victims. Here on the Human Rights Commission itself -- the UN body primarily charged with the promotion and protection of human rights and fundamental freedoms -- sit some of the world's worst violators of human rights. Some members of this Commission are themselves presently the subject of investigations or special procedures of the Human Rights Commission.

It is unconscionable that member states of this Commission, who are called upon to judge and set an example for others, should include those who mock the very principles we are committed to uphold. I refer in particular to the governments of Iraq, Iran, and Cuba.

This Commission should not count among its members states which are themselves gross violators of human rights. When we speak of human rights we must resist the temptation to allow the lowest common denominator to prevail. We must set the highest possible standards of fairness, decency, and respect for individual dignity.

The United Nations Charter sets forth a comprehensive view of international peace -- a view that links security, peace and human rights. Let it be understood that the subject of human rights is not only an important humanitarian and moral issue, but a necessary element in building and maintaining peace and security. Recent experience has also taught us that respect for human rights is related to economic prosperity.

Finally, we have learned that democratic regimes, while by no means perfect, are the closest thing we have to a guarantee that human rights will be respected, and that abuses will be corrected. That is why the United States firmly supports the democratic revolution sweeping the globe today. The lessons of history are clear: democracies have the best human rights records; democracies produce the greatest wealth for individuals and society as a whole; and, in this conflict-ridden and blood-stained century of ours, it is a fact that no two democracies have waged war against each other.

Mr. Chairman, the new world order that is emerging before our eyes will emphasize the importance of human rights. We will work to expand the frontiers of political pluralism, tolerance and individual liberty. We will help to safeguard democracy in those many places where it has only recently been afforded a chance to take root.

The difficulties experienced with democratic advances in countries such as Haiti, Algeria and Romania merit our concern. Stability is a critical ingredient of democratic progress, and success is never guaranteed. We cannot allow the democratic

revolution to falter at this pivotal moment in history, a moment so full of promise yet so fragile in an uncertain world.

The United States will, of course, always respect the sovereignty of nations. However, you should be forewarned: we shall not hesitate to speak the truth about clear violations of civil rights and civil liberties wherever they may be found, and whoever may be responsible.

The days when a government charged with human rights abuses could cite "sovereignty" or "non-interference in internal affairs" as a defense, are gone. Today, whether we like it or not, we have all become our brothers' keeper -- not merely for our brother's sake, but for our own.

Mr. Chairman, when the Universal Declaration of Human Rights was adopted in 1948, many Americans believed that it would inaugurate a new era in world affairs. The Cold War forced us to defer these hopes, but we never abandoned them. We never lost our faith that someday, men and women everywhere would breathe the fresh, clean air of freedom. We never ceased to believe that liberty was the birthright of men and women everywhere, and not a privilege reserved for the lucky few. And, when it became necessary to defend freedom through the force of arms, we never turned our back on the call of duty, when our sons and daughters had to be sent in harm's way.

I therefore come before this Commission representing a nation, and a people, that is proud to have played its part in advancing the cause of human rights. And it is on behalf of that nation, the United States of America, that I declare that it is our most cherished hope, our most ardent ambition, that one day soon the basic principles and freedoms enshrined in the Universal Declaration of Human Rights will become a way of life for all the nations and peoples of the earth. To that end, let us join together to answer history's call and fulfill the bright promise of tomorrow.

Thank you very much.

# # #

PRESS RELEASE

THE VICE PRESIDENT

OFFICE OF THE PRESS SECRETARY

Embargoed until delivered -- October 25, 1991 -- 12:40 p.m. CST

PREPARED REMARKS BY THE VICE PRESIDENT
LITIGATION SECTION OF THE AMERICAN BAR ASSOCIATION
CHICAGO, ILLINOIS

I am here today to continue our dialogue. My message today will be similar: I need your cooperation in reforming and improving our civil justice system. It's appropriate to speak to the ABA Section of Litigation on this issue, since your group was founded to view improving civil litigation.

On the issue of reform, and our "Agenda for Civil Justice in America," let me put things in perspective. No one is questioning our commitment to protecting civil liberties and individual rights. No one is attacking the Constitution, the Bill of Rights, or the independent judiciary. Even though many believe we have the best legal system in the world, there's always room for improvement.

I hope you also agree we can do better. Just last month I visited my Alma Mater, the Indiana University School of Law, and spoke to the students about our reform package. To my pleasant surprise, there was strong support for these proposals from those who will be entering the legal system as new attorneys at law. They are not bashful about accepting the premise that not only can we do better, we must.

Similarly, the reaction from around the country has been most supportive, and I might emphasize that many lawyers have expressed strong agreement -- including those heavily involved in litigation.

As you know, I am chairman of the President's Council on Competitiveness. I travel all over the country talking about this issue. And to countless Americans I ask the question: "What do you think will improve our ability to compete in an age of global markets?" I get a lot of answers; the most common is education. But I also hear time and time again that our <u>legal system</u> is a factor, too.

Look at some of the examples.

o Product liability costs for American firms are as much as 15 times higher than those of some foreign competitors.

o The fear of unreasonable lawsuits has translated into a loss of jobs. Small businesses are closing, or not opening, because of potential legal costs. When I visited Columbus, Ohio last

week, I spoke with a person who used to manufacture components for scaffolding and ladders. He said he'd been sued many times; and even though he's never lost a case, the amount he spent defending repeated lawsuits took its toll. He simply threw in the towel and closed down.

o I'm told of an experimental vaccine that might reduce the incidence of HIV-positive babies born to mothers with AIDS. This is a wonderful development; but for fear of lawsuits, companies have been reluctant to proceed with testing.

Obviously, these kinds of episodes have serious consequences at home and abroad. The Council has supported substantive legal reforms to deal with such problems -- particularly in the area of product liability.

At the same time, we intend to work on improving the process -- because however you total the numbers, the civil justice system is overburdened. There are too many cases that should not have been filed. Similarly, there are too many cases that drag on for years when they could have been settled early in the process.

And some cases are in categories of their own. I'm sure many of you saw the front page of yesterday's Wall Street Journal. It seems a legal frenzy has erupted among lawyers trying to "Line Up Teen 'Victims'" who will claim they were injured as a result of lip-synching by the group "Milli Vanilli." Nobody could read that story and tell me things aren't getting out of hand. These types of lawsuits interfere with a fundamental right: access to justice. I note that one of the lawyers mentioned in that article recently hosted a political fundraiser, organized in part to oppose our reform package.

I am here to ask your careful consideration. This is more than just a legal issue. The simple fact is that civil cases take too long and cost too much to resolve. People want to see change; and change is plainly overdue.

We have proposed a 50-point reform agenda designed to make the system more cost-effective, and to speed the pace of delivering justice in America. Our Report is wide-ranging, but my comments this afternoon will center on a few items that would directly affect your day-to-day litigation practice.

It is well known that some 92 percent of all civil suits are settled or disposed of prior to trial. But a common problem is the case that goes through pretrial hearings and conferences, engenders extensive discovery, stays on the docket for years, generates large fees, and then, on the eve of trial -- literally on the courthouse steps -- is settled.

Imagine the benefit to parties and to the system if, at the

beginning of the process, we identified those cases most likely to settle -- and then brought them to an early resolution. We could use the time of lawyers for cases that really should be tried, and perhaps bring back the day when litigators were in fact trial lawyers and not discovery experts. Equally important, more judicial resources would then be available to deal with those cases that do need a trial. For all cases -- but especially for those that are candidates for early settlement or other disposal -- we have several recommendations.

First: To enhance the exercise of voluntary dispute resolution. We want to increase the chances that parties can reach agreement before their dispute even enters the system -- by setting a pre-complaint notice requirement. For most cases, the right to sue should be conditioned on a showing that the parties have attempted, and failed, to resolve the matter.

For those cases that do get filed, we recommend that the system provide a range of methods for early non-judicial resolution. The best term for this -- a term that comes from an ABA meeting years ago -- is the "Multi-door Courthouse." The idea is that shortly after a case is filed, the parties would attend a mandatory conference. There, they would be given the option of electing among several alternative methods -- such as mediation and early neutral evaluation.

The Federal Rules require a scheduling conference in every case. Furthermore, a majority of them will ultimately arrive at a final pretrial conference at which the issue of settlement may be addressed. But as matters stand now in most districts, the settlement conference typically doesn't occur until discovery is completed and the trial date nears. This is true even where an experienced litigator or judge could have predicted the case would probably settle. In light of that, we propose that a mandatory settlement conference be held -- at the outset of the litigation -- before the case takes on a life of its own.

Along the same line, we have proposed financial incentives to reward early settlement offers. One of our proposals would amend Rule 68 and require the party who rejects a settlement offer to bear the additional costs of trial if the final outcome is not more favorable than the offer.

Let me re-emphasize one point. We recognize that there are some cases that are not likely to be settled -- indeed, some that should not be settled. But by early resolution of the cases that can be settled, we would clear the way for the remainder to be tried more quickly. We also recommend the setting of early trial dates, since this is probably the most effective way to encourage a speedy disposition.

That leads me to a second group of recommendations. Just as

we should promote quick settlement where possible, we should have ways of ensuring the early dismissal of non-meritorious cases.

The key to prompt disposition -- and minimization of cost -- is the early and focused involvement of the trial judge. When the judge is involved early, dispositive motions can be identified and considered before the parties embark on unlimited discovery. One such motion, of course, is summary judgment.

The current language of Rule 56 allows judges to enter summary judgment in cases where there are no material factual issues in dispute. What the Rule should say is that courts must grant summary judgment in those cases. In addition, we believe Rule 56 should also require judges to make explicit findings concerning a factual dispute. This, too, could reduce litigation expenses and help narrow the issues for trial.

There's also room for strengthening disciplinary rules -- to reinforce the highest standards of the legal profession, and to emphatically show that abusive and oppressive tactics will not be tolerated.

I should also mention one of our proposals to help ensure that people fully calculate the cost of their actions. The Council suggests an experiment with a "loser pays" rule in federal diversity cases. It's often known as the English Rule, but I prefer to call it the "fairness rule," for three reasons. First, it's grounded in a simple equitable principle: that the winner should be made whole. Second, it'll cut the numbers of frivolous claims and defenses. Third, it will help fund some claims that have merit and should be pursued, but are not -- because the costs to the claimant outweigh the expected recovery.

That last point should be underscored. None of the proposals by the council is designed to close the courthouse doors to any meritorious claim, or to any person. Instead, we seek to open those doors -- indeed, we want to create more doors -- for people to vindicate their rights.

As I mentioned earlier, 92 percent of civil suits never go to trial. If we can clear them away sooner, the system will be better equipped to deal with the other eight percent. For those cases that have to go through discovery, we have further proposals to improve what can be the most expensive and burdensome aspect of civil litigation.

Since discovery is basically unlimited in federal cases, everyone here today knows of cases where every conceivable document -- no matter how tangential -- is demanded. And I'm sure you've seen cases where every person whose name appears in any way is deposed. Compounding these problems is the fact that discovery can be a virtually cost-free instrument of delay,

harassment, and embarrassment. Clearly, discovery must be better managed. Here again, early involvement by the trial court is necessary to make reforms work.

We propose amending Rule 26 to reflect the following ideas. Parties should be required to disclose -- at the outset, and on their own initiative -- limited core information, such as location of the most relevant documents, and basic data on persons likely to have a role in the case. The idea here is to have an exchange of the essentials -- without gamesmanship or significant expense.

After that, discovery would be conducted within presumptive quantitative limits, agreed upon by both sides, and changeable only with good cause. Then, we'd employ an incentive structure to eliminate marginal or abusive discovery: parties would be entitled to conduct discovery beyond the set limits -- but only so long as the requesting party pays the other side's production costs.

We also want to take some of the ideas I discussed earlier and apply them to discovery practice. Specifically: if the court should have to decide a discovery motion, the fairness rule comes into play. The prevailing side's costs in connection with the motion will be reimbursed by the adversary. Our reforms, which you might call market-oriented, are likely to curtail the number of discovery disputes.

It took a lot of work to put together this package, and it'll take a lot of work to get it enacted. But we've already taken major steps in the ten weeks since the Council's Report was issued. The day before yesterday, President Bush signed an Executive Order to apply some of our reforms to civil litigation involving the United States Government. Speaking to the acting Attorney General and the general counsels of the federal departments and agencies, the President said the order would enable the federal government -- the largest single consumer of legal resources -- to "lead the country toward civil justice reform." I urge all of you to look at the Executive Order. I believe you'll find it to be a significant step in the right direction.

Where action is needed from Congress, we intend to submit legislation before the end of this session. And we'll push hard to bring them to a vote on the floor. We're also drafting model state statutes to give guidance to governors and state legislators interested in promoting reform at the state level.

Other agenda items call for changes in the Federal Rules of Procedure and Evidence, and we're moving forward on these without delay. In less than a month, Administration representatives will be speaking to the Advisory Committee for Civil Rules at the Los

Angeles hearings.

The most vital ingredient of reform, however, is public attention and concern. And there is overwhelming evidence that people are highly attuned to this issue. Americans are looking for relief from a system that they no longer believe is looking out for their needs. They believe the current system favors the rich, big business and lawyers. We owe it to them to make changes.

That's why I'm committed -- the Administration is committed -- to a grass-roots effort to move things along. I've conducted roundtable meetings on this subject in a number of cities, and presented our recommendations to the National Conference of State Legislators. For support from the organized bar, I went to your House of Delegates -- and I'm here today to ask for your assistance.

You have a lot to contribute; the meeting we had a half hour ago proves that. The movement for reform is too strong to be derailed by special interest groups or any other organization. But ABA support can move it ahead faster. I hope you will join us.

I also hope every lawyer will help confront the over-litigiousness that now exists in our society. It impedes access to justice for many Americans. It also impedes access to health care, raises consumer prices, and hurts our ability to generate jobs. As best we can, let us direct our energies toward making litigation the last resort and not the first.

We would do well to bear in mind the words of a self-taught lawyer who practiced in this state a century and a half ago. "Discourage litigation," wrote Abraham Lincoln. "Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man."

# # #

PRESS RELEASE

THE VICE PRESIDENT

OFFICE OF THE PRESS SECRETARY

Embargoed until delivered -- December 11, 1991 -- 1:40 p.m. EST

PREPARED REMARKS BY THE VICE PRESIDENT
FOOD AND DRUG LAW INSTITUTE CONFERENCE

J. W. Marriott Hotel
Washington, D.C.

Today I want to speak with you about some of the issues taken up by the President's Council on Competitiveness, which I chair.

Our mission is a very basic one: To make America more competitive, to renew the entrepreneurial spirit, and to give Americans more control over their lives. The Council also believes we can improve health and safety for the American people -- with less bureaucratic red tape, and fewer regulations. We consider ourselves pro-worker, pro-family, and pro-consumer.

We operate on two premises. First, that a free market and a competitive economy are the best allies of the American people. Second: the less regulation -- the less government intrusion into peoples' lives -- the better.

Now, because competitiveness touches on so many issues, the Council has been active on a number of fronts. We've been a leader in regulatory reform. We've strived to clear the way for new developments in fields like communications and biotechnology. We've worked on implementing the Clean Air Act, and we've been in the forefront of legal reform.

Just about everything we've tried to do involves, in one way or another, challenging the federal bureaucracy and questioning the status quo. That's the way it should be; after all, competitiveness is about new technology -- but more importantly, it's about new ideas, and new thinking about the future.

But challenging the bureaucratic establishment is not the way you become popular in our nation's capitol. You're going to irritate all three edges of what I call the iron triangle: the bureaucracy, the staff on Capitol Hill, and those with vested interests in the status quo.

Let me give you an example of one of our initiatives that has run into knee-jerk opposition: improving America's drug approval process. While other modern industrialized countries have agencies analagous to the FDA, most of them approve drugs faster than we do -- and they're doing it without compromising

their standards for safety, efficacy, and quality. That leads reasonable minds to believe America can do better. And, when it comes to health care, if we can do better, we must.

About a year ago, the Council announced that it would look into administrative reforms in drug approval. We convened a special working group, which met once or twice a month for the past year.

In the course of those deliberations we heard from a lot of professionals, who gave us sound advice on how to speed up drug approval. We also heard from patient groups -- including cancer and cystic fibrosis. Believe me: quick access to promising therapies means everything to people with life-threatening or incurable diseases. Their families also care. They don't want to hear excuses for the slow bureaucracy, and they don't want to be lectured about how Washington supposedly knows what's good for them. Lives are at stake: they want results, and they want access.

So do we. That's why I was pleased to join HHS Secretary Lou Sullivan and Dr. Kessler of the FDA last month in announcing a comprehensive new approach to drug approval -- a set of reforms that will reduce the the average development time for promising therapies by 40 percent.

We're going to do it in three major ways. First, through accelerated drug approval wherever possible. Second, through a new process of external review, geared toward eliminating FDA backlogs. Third, through international harmonization -- and by that I mean drawing upon much of the good work being done in other countries.

Some of the other reforms will change the way the FDA does business. For instance, there will be a restructuring of how it prioritizes drug reviews -- putting the most urgent ones on a fast track process of review.

On the day we announced these reforms, we were joined by two remarkable women -- Suzanne Tomlinson, who suffers from cystic fibrosis, and Zora Brown, a former cancer patient with a long and sad family history of breast cancer. In the midst of all the jargon and technical talk, Suzanne and Zora helped us keep things in perspective. They talked about what these reforms could mean in real life situations. Better access, less bureaucratic delay: these are things that can build hope among the sick and the dying. And, yes, these are things that can literally make the difference between life and death.

Imagine a new drug that could save, on average, a hundred lives a day. If it gets certified four years sooner than it would have been under the old system, that's close to a hundred

and fifty thousand lives saved. Well, that's the kind of real-life results we can get from a faster drug approval process -- and it's certainly no surprise that we've received great encouragement from groups concerned with AIDS.

Now, in light of these realities, you might Capitol Hill would respond with a near-unanimous outpouring of support.

Think again. The very day we made our announcement, three Democratic committee chairmen tried to slow us down. Quoting unnamed so-called "respected experts," they claim our reforms will "weaken" the FDA. In fact, these reforms will strengthen the FDA. They will save billions of dollars, and maybe millions of lives.

But what I really want to know is, when they say "respected experts," who are they talking about? Consumer activist groups? Trial lawyers? And what possible justification could there be for opposing reform, when it's already clear safety will be maintained? It makes me think of the letter I received from a doctor in Houston, who said, "the FDA has so many needless hurdles." And he really put his finger on the biggest problem we face in trying to achieve reforms: he wrote, "it seems to me that it's hard for them to say YES. It's easier to say NO."

He's right; it is easier for the iron triangle to say no to change. It's also easy for the opponents of reform to ignore real issues and take the easier road of bearing down on the Council and its operations. On that topic, let me explain a few things about the Council.

We have a staff that works at the White House. Citizens from around the country are invited to bring regulatory problems to our attention. On policy issues, we welcome representatives of all sides of the debate to come in and make their case -- and we encourage them to present their arguments to the regulatory agencies. In the regulatory process, we see ourselves as an advocate for rationality and common sense in a town that's biased in favor of more and more regulation.

For example, we supervised the revision of the manual on our nation's wetlands. After an extraordinarily careful review of the facts, the Council recommended guidelines to distinguish between genuine wetlands, which deserve to be protected, and other kinds of land, which do not. Our proposal struck an important balance -- reaffirming the President's pledge of "no net loss" of real wetlands, while allowing legitimate land use and protecting constitutional property rights.

In another area -- with which many of you are familiar -- we convened a working group on civil justice reform, and proposed 50 recommendations to improve the delivery of justice in America.

In the course of its deliberations, the working group held wide-ranging discussions with legal scholars, judges, practitioners, and entrepreneurs from across the political and ideological spectrum. Once our proposals were ready, I presented them to audiences around the country -- including ABA gatherings in Atlanta and Chicago. Furthermore, as a follow-up measure I've held roundtable meetings on these reforms in at least a half-dozen cities. Judging from the mail I've received, I would venture a guess that most Americans are familiar with this aspect of our work at the Council. Letters have poured in by the thousands from Americans in every walk of life, and they've been running about a hundred to one in favor of meaningful civil justice reform.

Now, I will freely and proudly admit that the Council on Competitiveness is shaking things up. And, as I noted, that's not the kind of thing that gets rave reviews from the iron triangle -- because if you don't do things their way, they shift immediately into attack mode. And that's exactly what we've been seeing lately.

One of the committee chairmen I mentioned earlier referred to the Council as a "shadow government." The Boston Globe called it a "secret rule-buster." Others call it "Quayle's hush-hush council." And how's this for responsible dialogue: one congressman says the Competitiveness Council is guilty of "treason." Still another says it's a "serious breach of the separation of powers." In other words, an executive council, established by the President of the United States to improve life in America, create more jobs, and make us more competitive . . . is unconstitutional!

Well, I think the Wall Street Journal had it right: the Council on Competitiveness is controversial for one simple reason: Washington, D.C. wants to keep making more and more "elaborate rules for how Americans should lead their lives." But the Council is on the people's side.

You know, many members of Congress pursue an essentially negative agenda -- an agenda of staking out turf or joining forces with special interests to defend the status quo. Whatever the case, however, they are elected officials. They are entitled to advocate their own agenda.

And yet our critics seem to forget, or not to care, that the President was elected by all the people -- and that he, too, is entitled to advance his own, positive agenda of growth and reform and competitiveness. And let's be very clear: the attacks on the Competitiveness Council are nothing more than attempts by our critics to divert attention from an argument they know they are losing.

Let us hope that, sooner or later, they come around to realizing that the strength of America does not lie with the government, with regulations, or with the iron triangle. It lies with the spirit of the American people -- in their ability to compete, create, innovate, and generate opportunity. With this as our heritage, we have built the most prosperous country the world has ever known. May we never forget, as former President Ronald Reagan used to say, that "we are a nation that has a government -- not the other way around."

Some 20 years ago my grandfather wrote an editorial that appeared in major newspapers across the country. It was titled, "Will the Federal Bureaucracy Destroy Individual Freedom in America?" So far, the answer to my grandfather's question is "no." And I can promise you this: the answer will continue to be "no" as long as George Bush is President -- and as long as we have the President's Council on Competitiveness standing up for the real interests of the American people. I'll say it again: We're on their side, and that's where we'll stay.

# # #

THE VICE PRESIDENT'S OFFICE

Office of the Press Secretary

FOR IMMEDIATE RELEASE JANUARY 23, 1992

PREPARED REMARKS BY THE VICE PRESIDENT
BARRY M. GOLDWATER CHAIR OF AMERICAN INSTITUTIONS

Arizona State University
Phoenix, Arizona

My commitment to Barry Goldwater goes back to his second campaign for the Senate in 1958. That year, my mother was a Republican precinct committeewoman, and I handed out Goldwater literature at the Arizona State Fair. Years later, when I was elected to the Senate, I served on the Armed Services Committee with Barry. And to everyone on that Committee, Barry Goldwater will always be "Mr. Chairman."

He's been a friend of my family for a long, long time. He's also been a great source of political advice. Not too long ago Barry said he wanted to talk to me about 1996. I said, "Well, if you run, I'll support you one hundred percent."

Now, Barry Goldwater is not what you'd call a shy man. But he's never really been one to brag, either. As he puts it in his memoirs, "A man stands up, says his piece, then sits down. Others must judge his deeds." Well, Mr. Chairman, I hope you will forgive me a brief assessment of your deeds.

Over more than three decades in public life, Barry Goldwater stood for principle -- even when his ideas went against the prevailing intellectual fashion. He spoke out for the sacred rights of the individual, and against the fool's gold of socialism and central planning. And throughout the Cold War he demanded that we oppose communism -- an ideology that was, in his words, "the principal disturber of peace in the world."

I remember two great messages from the 1964 campaign. First: "In your heart, you know he's right." And then there were the memorable words from his acceptance speech: "Extremism in the defense of liberty is no vice. Moderation in the pursuit of justice is no virtue." To Barry there was no comfortable zone between right and wrong. And he knew that freedom and democracy were right -- and communism and repression were wrong.

Well, democracy has prevailed because America has always stood strong. And today, ladies and gentlemen, as the former communist bloc dissolves before our very eyes, I can only say: how

wonderful it is that all this happened in the lifetime of the great soldier and statesman, Senator Barry Goldwater.

Many believe that the end of the Cold War means that America can now retreat. That is plainly untrue. America's global opportunities haven't decreased; they've multiplied. And possible threats haven't vanished; they've taken on new forms. So we must remain engaged in world affairs, and we must continue to seek a just peace wherever we can. Today, more than ever before, other nations look to America for leadership. If we don't respond, who will -- Germany? Japan? China?

The world needs a strong, committed America. And our success in bringing about a new and more peaceful international order will depend on our devotion to three guiding themes: international economic engagement, a steadfast national security strategy, and the continued expansion of democratic institutions.

In January, 1992, any American would say that our economic well-being must be the top priority. It certainly is the President's number one concern. His Asian trade mission two weeks ago acknowledged a simple fact: that our prosperity, and our trading partners' prosperity, require open and free markets. Would it be easier for America if we didn't have to face foreign competition? Of course. Would we be better off? Absolutely not. Free trade is good for all players. It is not about winners and losers in a zero-sum game; instead it is about mutual gains from trade. And because of America's natural strengths -- namely, our free people and our superior resources -- free trade will make our country an even bigger presence on the world economic stage.

Thus, we have no more urgent global challenge than to bring about more open markets and reduce the number of foreign trade barriers. Let's look at America's third largest trading partner, Mexico. Four years ago, we had a $4.9 billion trade deficit with Mexico. Today it's about a third of that amount, thanks to a new free trade philosophy in Mexico. In the space of four years our exports to Mexico went up by more than 130 percent, and the export boom has created more than 300,000 new jobs in the United States. The future is equally promising. As their economy grows and prospers, the Mexican people will buy even more of the things made best in America -- things like manufacturing equipment, computers, and high-tech. These are opportunities we cannot afford to miss.

We can make even more progress, and create more wealth, by enacting a North American Free Trade Agreement linking the United States with Mexico and Canada -- thus uniting some 360 million consumers with a combined output of six trillion dollars per year.

We are also trying to conclude the Uruguay Round of GATT, a

process involving more than a hundred nations. Anyone -- presidential candidate or otherwise -- who downplays the importance of free trade should remember this: a successful Uruguay Round agreement would raise GNP in the United States alone by about 1.1 trillion dollars over the next decade. That's an additional 16,000 dollars for the average American family.

Of course, in recent days most of the news about trade has centered on Japan, and on the President's trade mission. And it's time to debunk a myth being unloaded these days on the American people: the myth that our trade relationship with Japan has reached a crisis point. In fact, our exports to Japan have gone up dramatically in the last few years. From 1985 to 1990, our exports to Japan rose by 119 percent -- much more than they rose worldwide. America's trade deficit with Japan peaked half a decade ago, in 1987, and we've reduced it by almost 30 percent since then. How many of the protectionists ever mention that Japan is the single largest market for American agricultural exports, and our second largest market overall? Obviously, the trends are moving clearly and strongly in the right direction, and to suggest otherwise is mindless Japan bashing.

That does not mean Japan shouldn't open its markets further -- it should, and it will. And it doesn't mean we should ignore the ridiculous and counter-productive anti-American statements that come from some Japanese officials. The fact is that Japan is now an economic superpower, and it must start acting like one. More than that, Japan is an important ally of the United States, and we should focus on a global partnership instead of exchanging hot rhetoric.

Now, every American who reads the newspapers or watches television is used to sorting through a lot of economic nonsense -- particularly in an election year. But the teachings of history -- especially the history of this century -- verify a few simple economic truths. One such truth is that protectionism is a dead-end road. As a philosophy, it is grounded in fear, suspicion, and doubt; as a policy, it leads to economic disaster. The other side of the coin, free trade, yields higher standards of living, greater productivity, and lower prices. And, just as important, economic engagement strengthens cooperation among trading partners around the world. Prosperity reinforces peace.

That leads me to the second theme that should guide us in a changing world: pursuing a sound national security strategy in line with the new strategic realities. Even without the U.S./Soviet military competition, we still need to stand by our friends and defend common vital interests. That was our mission, of course, a year ago in the Persian Gulf war. It is almost impossible to overstate the importance of what we did there. Saddam Hussein's aggression created the first crisis of the post-Cold War era -- in the President's words, "the first test of our

mettle. Had we not responded to this first provocation with clarity of purpose . . . it would be a signal to actual and potential despots around the world." One way or another, the invasion of Kuwait was bound to set a precedent: either on behalf of a more peaceful order among nations, or on behalf of greater chaos. And America, together with her friends and allies, made the right decision.

Naturally, the revisionists are hard at work to rewrite the story of the Persian Gulf. To hear some in the media, you'd think Saddam Hussein actually won the war. Well, here's a bulletin for the revisionists: Saddam lost. America won. The world knows it. And no one can take away this hard-earned victory for freedom.

We defeated the enemy because our armed forces were the best in the world. And I should note that much of the equipment that performed so well had been vigorously supported in Congress by our friend, the Chairman. Equipment like the Tomahawk Cruise Missile, the M-1 Abrams Tank, the F117A Stealth Fighter, and of course the Patriot Missile.

Senator Goldwater always had a gift of foresight, whether it came to new equipment or defense management. That was the kind of thinking that produced the Goldwater-Nichols Department of Defense Reorganization Act of 1986, labelled a "milestone" by President Ronald Reagan. And it was similar foresight that led Chairman Goldwater to be a fervent supporter of the Strategic Defense Initiative.

Over the next two decades or so, the world will see a proliferation of nuclear weapons and the means to deliver them, such as ballistic missiles. During Desert Storm we saw the terror created by Scud missiles. And we witnessed the effectiveness of the Patriot missile in shooting down those Scuds. But unfortunately, the Patriot cannot protect the United States. SDI can. I do not believe Americans will buy the argument that it is all right to defend Israel and Saudi Arabia from ballistic missile attacks, but somehow wrong to defend our own country.

Think back for a moment to the failed Soviet coup last summer, when one of three vital sets of launch codes, namely President Gorbachev's nuclear launch codes, spent three days in the hands of eight desperate conspirators. This scenario of uncertainty showed why a commitment to SDI makes even more sense in the post-Cold War world. The world is still a dangerous place. We must protect and defend our people against nuclear accidents -- and against nuclear blackmailers, whoever they may be.

Unlike offensive forces designed for deterrence, defensive forces protect; they threaten no one, they protect you against attacks launched by accident or design, and they don't rely on the so-

called "rationality" of the adversary. And the benefits of defensive forces can be shared among friends and allies, giving them the knowledge they need to strengthen their own security.

Beyond that, however, we should use our influence to curtail the spread of ever more destructive weapons. And we are doing so. The United States continues to urge other countries to sign the Nuclear Non-Proliferation Treaty, and our President has initiated a host of other security cooperation and technology control arrangements.

But the best security arrangement of all is probably the global spread of democratic values. That is the third and final principle that should guide our thinking in the post-Cold War era. Ask yourself: when was the last time a democracy waged a war of aggression? Democratic institutions are the best peace plans, the most effective arms control plans, and the most enduring collective security guarantees. We must, and we will, continue our steadfast support of the democratic revolution that is occurring in Eastern Europe, Africa, Latin America, and the former Soviet republics. It is the most spectacular political development of our time, and it is the foundation for the hopes and aspirations of an entire generation.

So, when you think about the global prospects for prosperity, and for a just peace, there is great cause for optimism. Victory in the Cold War means we can make sensible reductions in our defense spending, and we are doing so. It also means that challenges once considered far beyond our reach are now responding to the leadership of the United States.

Let us always welcome the opportunities, and the obligations, of leadership. Our finest moments as a nation came when we accepted the challenges of peaceful competition, when we resisted the forces of aggression, and when we aided those striving for freedom and democracy. So long as we hold fast to those values, the United States of America will always be the greatest nation on earth.

# # #

PRESS RELEASE

THE VICE PRESIDENT

OFFICE OF THE PRESS SECRETARY

Embargoed until delivered -- November 15, 1991 -- 11:40 a.m. EDT

PREPARED REMARKS BY THE VICE PRESIDENT
CHRISTIAN COALITION

Founders Inn and Conference Center
Virginia Beach, Virginia

We are brought together today by our shared values: faith, family, and freedom. We're here because we realize that the last few decades have been rough on the American family, and because we are committed to turning things around.

Some 25 percent of America's children live in homes with only one parent. The average age for first-time drug use is now thirteen. One million children are abused and neglected every year. And, ladies and gentlemen, <u>today</u> -- this beautiful autumn day -- eleven hundred American teenagers will have abortions.

All of us know the problems, and all of us understand what causes them -- all of us, I should say, except those who deem themselves the cultural elite. Those who believe that the traditional family was okay in the old days -- but that today it's no better than other so-called "domestic arrangements." Well, there is no substitute for the American family -- and by that I mean a mother, a father, and a child.

The mission of the pro-family movement has never been more critical, or more difficult. But if millions can pull down the communist hammer and sickle and raise the old Russian tricolor; if a playwright can go from political prisoner to president of Czechoslovakia; if an iron-fisted dictator in Nicaragua can be thrown out by his peace-loving countrymen, then surely we can change America.

Now, there are no guarantees in politics; you win a few and lose a few. Each of us has known candidates and nominees who deserved to win, but were overcome by the system. But the lynch mobs don't always prevail. And speaking of lynch mobs, let me just thank all of you for your steadfast support of Justice Clarence Thomas.

In the Thomas battle we saw a tactic that is powerful and often successful, but one we will never adopt: character assassination and nasty innuendo. I refer to episodes like the

following:

o This summer, when radical feminists pledged they would "Bork" Clarence Thomas, and "kill him politically."

o And three days ago, when a Democratic presidential candidate said, "David Duke is the son of George Bush."

The latest example in that category is the attack by Garry Trudeau in "Doonesbury." It would be tempting to lash out at Garry Trudeau, and all those on the left who think his cartoon is funny.

Am I outraged? Of course I am. Especially when I see editorials like the one in the New York Times, which hinted there may be some truth behind this mean-spirited smear. I just thank God the American people know the difference between humor and hate.

You know, I am proud of my midwestern heritage. I attended public schools in a town of 17,000. And unlike many in the liberal elite, I learned the value of truth. I learned the difference between what is right and what is wrong.

My friends, let us rededicate ourselves to the truth. Let us rededicate ourselves to what is right. Let us eliminate the ugliness that infects our political system today. Our adversaries resort to character assassination because very often that's the only weapon they have. But we have the issues, and we have the ultimate political weapon: the truth.

Scripture teaches us to lead lives that are examples to others. And we believe that public policy should always reflect the best values of our society. In foreign affairs, America should stand for freedom and against aggression. In education, we should stand for excellence -- and the right of the parents to choose where their kids go to school.

In civil rights, we should stand for justice -- and I join all of you in rejecting every hate group, every brown shirt, and every white sheet trying to turn the American dream into a nightmare. Let us struggle against intolerance and racial divisiveness -- whether it comes from a political candidate in one part of the country, or from a university professor in another.

And when it comes to public health, we should use more than cold, clinical terms like access, cures, and prevention. We have to talk about morality. Self-control. Personal responsibility. Health care is an area where you hear more common-sense advice than anywhere else: simple advice like "stay away from poison" and "don't smoke." But there's one public health issue that

hasn't had enough common sense discussion. I'm talking, of course, about AIDS.

This terrible disease has already claimed more than 125,000 American lives. Three years from now, it's estimated we could have 230,000 more deaths and as many as 600,000 new infections.

To hear some quoted in the media, you might think the best way to keep from getting AIDS is to go out and have safe sex. A young father told me recently that his 10-year-old daughter asked him, "When am I going to be tested for AIDS?" Her father responded, "You won't be." And the girl said, "But isn't everybody at risk?"

It's time to squarely face the causes of AIDS. Once we do, it's clear that the answer isn't so-called "safe sex," but the traditional formula of abstinence, responsibility, marriage, and fidelity.

Now, some call this "moralizing." Well, there <u>is</u> a moral dimension to personal behavior, and to deny such a simple truth is to toy with disaster for our society.

My friends, no matter how rough the road may be, we can never surrender our belief in what is right. Nor can we surrender our faith in the enduring decency of this nation -- our faith that one day all Americans will reject the idea that unborn children are disposable.

I believe we are moving closer to that day. From poll after poll, we know that the great majority of people oppose unrestricted abortion on demand. They may disagree about how far abortion should be limited, but most Americans clearly want more protection for children before birth.

The main source of that protection is the Republican Party. Since the time of Lincoln, we have stood for the rights of all and for the defense of the weak. As in years past, the Bush/Quayle platform was pro-life in 1988. I am confident that without excluding anyone from our party, our platform will be pro-life in 1992.

Let me turn to politics for a moment. No matter where I go in this country, I hear the same complaint about government time and time again: the Congress of the United States, controlled by liberals, is out of touch with the American people. And I find a lot of agreement with a view I've held since the day I entered public life. If Ronald Reagan was limited to two terms in office, and if George Bush is limited to two terms, then, for the good of the country, we ought to limit the terms of Howard Metzenbaum and Ted Kennedy.

I will leave you with the words of a Democrat who would not recognize his party in 1991: President Franklin D. Roosevelt. He said, "No greater thing could happen to our land today than a revival of the spirit of religion -- a revival that would sweep through the homes of the Nation and stir the hearts of men and women of all faiths. . . I doubt if there is any problem -- social, political, or economic -- that would not melt away before the fire of such a spiritual awakening."

I could not agree more with those words from a half century ago. And I could not be more pleased that all of you are working so hard to generate a spiritual revival in this great country of ours. I'm grateful to have your support and your prayers, and I promise you: you have mine.

# # #

OFFICE OF THE VICE PRESIDENT

Embargoed until delivered -- November 9, 1991 -- 6:00 p.m. EST

PREPARED REMARKS BY THE VICE PRESIDENT
CONGRESSIONAL MEDAL OF HONOR SOCIETY DINNER
PORTLAND, OREGON

We are here tonight to celebrate freedom. We are here to celebrate valor. Above all, we are here to celebrate a deep love of country.

Fifty years after Pearl Harbor was attacked, fifty years after Americans went to war to free the people of Europe from Nazism, we still remember the heroes of World War II -- Eisenhower, Patton, MacArthur and Halsey.

But there's another name -- of a person I never met, and you probably don't know of. His name was James Alexander Danforth -- Captain Danforth. He won three Purple Hearts in as many countries, but he was not around to celebrate the Axis surrender. You see, five months before V-E Day he lost his life on a battlefield in Germany. James Danforth was one of my father's closest friends, and it is an honor to bear his name.

It is also an honor to stand in this room filled with authentic heroes. Though I have never travelled in your shoes, I have unlimited love and respect for your bravery. I will always humbly cherish this award from you -- Medal of Honor recipients, and American heroes.

You patriots have exhibited great courage on behalf of our country. You have known, as Winston Churchill knew, that, "Courage is the first of all human qualities -- because it is the quality which guarantees all others."

Tonight, we remember the courage, but we also remember the anguish of war: The telegram from Washington -- the sound of Taps echoing -- and the terrible ache that the years can dull, but never erase.

No, we must never forget the pain of war. But neither should we forget why so many Americans, in every generation, have been willing to run the risks and to bear the pain. We have never fought to win the glory for ourselves, but to help others exercise their God-given right to be free.

Tonight, the prospects for freedom are brighter than ever. Tonight, a hopeful world looks to the day when no one wields a sword and no one drags a chain. In the Middle East, historic enemies are sitting down to the peace table. And in Europe,the evil empire has crumbled, and the Marxist-Leninist ideology is now past tense. We have entered a new era.

None of this happened simply by accident. It happened because under Presidents Reagan and Bush, the United States stopped apologizing for its values, and started asserting them: The values of peace,freedom and democracy.

We asserted that the great struggle of our time was the struggle between freedom and tyranny. We asserted that political and economic freedom would triumph over a centalized, oppressive, expansionist dictatorship. We asserted that America has a key role to play in the struggle for freedom -- and that we intended to play it. In short, we stood up, spoke out and fought back. And we have prevailed.

And thanks to the vision and courage of all those Americans who sacrificed in that long, twilight struggle known as the Cold War, we now have the chance to bequeath to our children a freer and more peaceful world.

Yet while events in recent years should make us all proud to be Americans, they must not leave us complacent. The world remains a dangerous place, with more than its share of unpredictable governments and uncertain situations.

We all wish there were no need for military establishments. We all wish that no American soldier would ever be sent halfway around the world to secure freedom. But wishes are no substitute for prudent policies, just as complacency is no substitute for national will. And wishful thinking only encourages the tyrants and dictators who still oppress their own people -- and who threaten all people. In the wake of our Cold War victory, we must never forego our strength, because being strong is the best guarantee of peace.

Throughout this turbulent era, from San Juan Hill to Desert Storm, American soldiers, sailors, airmen and marines have achieved victory. Selfless men and women who pray for peace but stand ready to fight whenever their country calls. They have fought for democracy, not dollars; for ideals, not ideology.

Most of all, they have fought for freedom. Freedom to vote and freedom to worship. Freedom to demand change and freedom to resist change. Freedom to think for oneself. Freedom to protest -- even to protest an award to a Vice President. Because protest is part of democracy. It is part of the precious legacy that one generation hands on to another.

No doubt many of you know that during the Vietnam war, I served in the Indiana National Guard. Some in the Guard were called to duty overseas; I was not. I have always been proud of my Guard service, and I always will be. There is a long line of Americans who fought in National Guard units in all the major wars of our history: In World War I and World War II, in Korea, in Vietnam, and in the Persian Gulf.

I, like many in my generation, chose the National Guard. I, like 98% of my generation, never went to Vietnam. And I, like the rest of America, have the greatest respect for those who did serve in Vietnam.

And to the Vietnam veterans, I readily admit that your sacrifice was much greater than mine. You served with distinction in a noble cause, but you did not receive the recognition you deserve. Perhaps we can make it up to you now - by recognizing our Vietnam veterans as the true heroes you are. I salute you.

Right now, the world is filled with hope. Right now, the winds of freedom are blowing -- from Berlin to St. Petersburg today, from Havana to Hanoi tomorrow. Because of you, and millions whose values you so valiantly defended, democracy is taking root in once stoney soil.

Ladies and gentlemen: Each of you is part of the coat of many colors that is America. Some of you live in small towns and some in bustling cities. You observe different creeds, and yes, you support different candidates.

But this much you have in common: An uncommon devotion to freedom. A willingness to defend freedom whenever threats arise. And a recognition that today, as in Tom Paine's day, " Those who expect to reap the blessings of freedom must undergo the fatigue of supporting it."

So long as we maintain our belief in freedom, so long as we continue to stand up for freedom when it is threatened, and so long as there are brave men and women willing to "undergo the fatigue" of defending our precious liberties -- our best days as a nation will still be ahead of us.

As my grandfather, Eugene Pulliam, always said, "America is great because America is free."

Thank you, and God bless America.

US DEPARTMENT OF STATE
DISPATCH
BUREAU OF PUBLIC AFFAIRS

Vice President Quayle

The Free Baltic Republics—A Victory of Self-Liberation

Remarks at the Hudson Institute's Conference on the Baltics, Indianapolis, Indiana, October 28, 1991.

On behalf of President Bush, I would like to take this opportunity to formally welcome to America: Prime Minister Savisaar of Estonia, Prime Minister Godmanis of Latvia, and Prime Minister Vagnorius of Lithuania.

We are meeting today at an amazing moment in history. Estonia, Latvia, and Lithuania are no longer captive nations. They are free and independent countries. It seems an incredible thing to say, but I'll say it anyway: The Cold War is over. That doesn't mean the world is not a dangerous place. It means there is only one superpower, and that the ideas of freedom and democracy have triumphed.

It is most appropriate that we meet today at the Hudson Institute. For the Hudson Institute is dedicated to the primacy of ideas—ideas about individuals, ideas about societies, and ideas about the international community.

Hudson's founder, the great Herman Kahn, knew the importance of ideas, and believed, as Victor Hugo wrote many years ago, that there is nothing more powerful than a new idea.

The Cold War was a classic battle of ideas. On our side is the belief in democratic values, the belief that all men and women are created in God's image and are endowed with certain inalienable rights—among the most important of which is the right to self-government.

The other side was the Leninist side. That view held that mankind is sharply divided into antagonistic classes, and that it is the historical role of the Communist Party, as the vanguard of the proletariat, to lead progressive mankind to victory over a supposedly decadent and divided West.

The peoples of the Baltic republics have achieved a tremendous victory of self-liberation—a victory of freedom over oppression and democracy over authoritarianism. The ideas of freedom and self-government bind the Baltic peoples, the American people, and institutions like Hudson. So once again, on behalf of the President, welcome forever to the family of the democracies.

For 51 years, the United States refused to acknowledge the incorporation of the Baltics into the Soviet Union. Your nations' histories are replete with suffering and tragedy. For more than 1,000 years, you have endured waves of invasion and domination. Never again should your countries lose the right of self-determination. Your having been a captive nation is a fact of the past—not a sign of the future. Your future will be one of freedom and opportunity.

Last month, President Bush talked to your presidents about a partnership of freedom—and he was right. This fall, we established our embassies in your capitals: Tallinn, Riga, and Vilnius. We were proud to sponsor the Baltic republics for UN membership. We were equally proud to sponsor your membership in the Conference on Security and Cooperation in Europe.

Now the real work begins. We must make democracy work, and you must integrate yourselves into the international community. Unfortunately, your recent past is 51 years of Soviet rule. Many changes will have to be made, and we want to be a partner in those changes. We are working with our Congress on issues such as aid, technical assistance, and most-favored-nation [trade] status. Our Peace Corps will soon be operating in your countries. [Peace Corps Director] Elaine Chao will send a team over next year.

I know that one of the remaining issues with the Soviet Union is the continued presence of Soviet troops on your soil without your consent. As you know, we support a prompt resolution of this matter. It is a fundamental right of national sovereignty to invite foreign troops to come—but also to invite them to leave. The United States will never stay on foreign soil unless we are invited and wanted. When our presence is no longer welcome, we leave.

As for your security in the future, look to the West. The NATO leaders have said that the security of NATO's

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United States Department of State
Bureau of Public Affairs
Office of Public Communication

members is inseparably linked to that of all other states in Europe. I would especially call your attention to the proposal that the United States and Germany issued 3 weeks ago. This proposal builds on the liaison relationship established by NATO during the London summit last year.

We now have proposed that NATO formalize, deepen, and expand the liaison relationships with the new democracies in the East. And we were delighted to see the North Atlantic Assembly last week admit the three Baltic countries as associate members. These new relationships should help in your efforts to promote security, stability, and democratic reforms in your countries.

And while we are on the subject of democratic reforms, let me raise one point: One of the legacies of more than 50 years of Soviet rule is the presence of large ethnic minorities in all three of your countries. I would respectfully urge you to take all steps possible to ensure that their fundamental freedoms and human rights are fully protected.

As you know, these rights are guaranteed under the Helsinki Final Act, which the Baltic states formally signed earlier this month. By strictly adhering to the provisions of the Helsinki Final Act, your people stand to gain a lot. You will find that your minorities add strength, richness, and vitality to your social fabric. This has certainly been our experience here in the United States, and we are confident that it can be yours as well.

So far, I have talked mainly about the political and security challenges facing the Baltic republics. It may be, however, that the economic challenges you confront will prove to be the most difficult. So let me say a few words about them. We know that the reforms necessary to move to market-based economies will not be easy to accomplish. But, as nations around the world have found, they are absolutely necessary. You must be bold. You must be radical. You must change.

Membership in the International Monetary Fund and the World Bank will help a great deal. As you know, we are supporting your candidacies. Last fiscal year, we provided $14 million in assistance for the three Baltic nations. This year, we are seeking an additional $15 million from the Congress. The United States has been safeguarding some of your financial assets for over 50 years. The President has pledged to unfreeze them and return them to you. We will move rapidly to do this.

I am also proposing that each of your countries engage in a broad-ranging economic dialogue with the United States. We would like to begin such dialogues before the end of this year. This would involve meetings in Washington and your capitals and would include discussions with US Government officials and the US business and industrial communities. The objective of these dialogues will be to help your nations become attractive sites for private business activity.

But, in the final analysis, neither assistance nor aid will be enough to provide your people with the quality of life they deserve. Foreign aid can alleviate short-term needs, and borrowing from international financial institutions can facilitate medium-term structural adjustments. Over the long-term, however, there is one and only one path to achieving your full economic potential: Unleashing the creativity and enterprise of your people in a free market.

You will need to move rapidly on true economic reform to do this. Economic reform means accepting the market-oriented economic model. Economic reform means reducing the role of the state and freeing the forces of individual initiative. Above all, economic reform means tapping into your most precious resource—the skills, the ingenuity, and the entrepreneurship of your people. Make no mistake about it: With economic reform will come private investment and growth. And economic growth will generate more trade, more investment, and more jobs for all.

A few minutes ago, I was pleased to sign three historic documents on behalf of the United States. These bilateral agreements with Estonia, Latvia, and Lithuania permit OPIC, the Overseas Private Investment Corporation, to promote joint ventures and other US private investments in the Baltics.

OPIC represents the new wave of US foreign assistance. Instead of massive bailouts financed by the taxpayer, OPIC mobilizes private capital to encourage economic growth and helps nations make the transition to a market economy.

I am confident that these agreements will help spread the word to our business community—including some of the great companies located here in Indiana—that the Baltic countries are open for business and that we can work together to enhance trade, investment, and global prosperity.

Let me conclude on a personal note: As you know, Indiana is my home. I served for 12 years in Congress, both in the House and the Senate. The people of this state are simply wonderful. They are full of life. They love their families. They are God-fearing and hard-working. And what I firmly believe is that if you really want to know how the United States works, don't spend all your time in Washington, DC—stay in the Midwest.

Come to places like Indianapolis. Look at our streets and our schools, at our factories and our markets, at our town halls and our corporate headquarters. We are self-reliant people—people who treasure freedom above all.

Free markets, free government, and the free exchange of ideas: That is what Indiana is all about; that is what America is all about; and I know that is what the Baltic nations will be all about.

So let me congratulate our distinguished Baltic visitors again for coming to the Hudson Institute. I am confident that the ties you have forged here will strengthen the bonds of friendship between our countries and will help you build the bright future that your people so richly deserve. ■

OFFICE OF THE VICE PRESIDENT

WASHINGTON

FOR IMMEDIATE RELEASE

December 4, 1991

Vice President's Detroit Trip to Discuss
Business Opportunities for American Auto Parts Manufacturers

Vice President Quayle today discussed new business opportunities for the American auto parts industry that have developed as a result of his trip to Japan last spring.

The Vice President has long been concerned about the health of the auto sector. As a Senator, he successfully sponsored legislation to create an auto parts advisory committee to work with the government on enhancing overseas business opportunities for the industry.

Just prior to his trip last May to Japan, the Vice President traveled to Detroit to hear first-hand about progress and problems in opening Japan's auto industry to American auto part firms. He then traveled to Japan, where he raised our concerns at the highest levels of the Japanese government and industry.

The Vice President has returned to Detroit to report on the initial results of that effort:

- six large Japanese auto manufacturers have just announced they will raise their level of annual purchases of U.S.-made auto parts to $16.8 billion by 1994, nearly doubling their 1990 level of purchases. The increase, amounting to some $7.5 billion annually, should create tens of thousands of jobs for American workers.

- several Japanese auto manufacturers have also announced that they will liberalize rules to enable their dealers to sell American cars more easily in Japan. One American auto manufacturer has announced it will soon make available a new right-hand drive version of a popular model for sale in Japan.

- there are now record numbers of supply relationships between U.S. parts manufacturers and Japanese auto companies. In many cases, the U.S. company works with the Japanese firm to help design-in the U.S. product, which can establish a stable long-term relationship.

- the U.S. and Japanese governments have agreed on several additional actions and studies which we intend to use to open the Japanese market further.

Automobiles and auto parts presently account for 75 percent of the U.S.-Japan bilateral trade deficit. Clearly, more needs to be done and this administration will continue to press for expanded opportunities for our auto industry.

These Japanese announcements are very welcome, but we see them as the beginning of a process that must include full access to the Japanese automobile and auto parts markets.

THE VICE PRESIDENT'S OFFICE

Office of the Press Secretary

FOR IMMEDIATE RELEASE **February 7, 1992**

REMARKS BY THE VICE PRESIDENT
TO THE PEOPLE OF LITHUANIA

VILNIUS LIBRARY, INDEPENDENCE SQUARE

VILNIUS, LITHUANIA

President Landsbergis, Honorable deputies, and friends: Sveikinu Laisva Lietuva! (I greet free Lithuania!) I bring you special greetings from President George Bush and your friends, the people of the United States of America.

Let me begin by paying a special tribute to President Landsbergis, a true champion of freedom. For many years, he helped keep alive the hopes of you, his countrymen. He never gave up. He inspired a nation, and in so doing, inspired the world. And so today, I am deeply honored to be standing next to President Landsbergis in a free and independent Lithuania.

In the middle of this century, darkness fell upon the peoples of Estonia, Latvia, and Lithuania. Millions suffered at the hand of an oppressive empire. Tens of thousands were martyred, brutalized, and torn from family and homeland. There was tragedy and despair. But the people of Lithuania never gave

up hope -- the hope of freedom. For, in the words of the Psalmist, "Weeping may endure for a night, but joy cometh in the morning."

The long night has ended. Morning has broken, and there is joy: Estonia is free. Latvia is free. Lithuania is free. Long live freedom!

Over the course of five decades, you showed courage and moral strength ... that no oppressor could overcome. Your resolve never weakened. Your hearts were never dominated. And your spirits were never defeated. After every injustice ... every injury ... every indignity ... the spirit of your people would always reappear as boldly, and as proudly, as the Hill of Crosses.

My country, America, was born in a revolution of independence, and our people have always had profound faith. This heritage makes Americans feel a special kinship with the Estonian, Latvian, and Lithuanian peoples. We have viewed with admiration your unshakable devotion to almighty God. And when you lifted your voice for freedom, you lifted the hearts of America -- for you affirmed a great truth spoken by one of our founding fathers, Thomas Jefferson: "The God who gave us life gave us liberty."

For more than 50 years, we stood by you. America refused to recognize the Soviet occupation. The battle cry of freedom was sounded in March of 1990, when Lithuania reasserted its independence. The struggle intensified on January 12, 1991, where -- at that television tower -- your brave patriots gave their lives in the cause of independence. A short time ago I stood at the television tower and presented a wreath of remembrance from the American people. The events at your tower of bravery happened before a watching world, and the scene inspired others to fight as never before in the struggle of good against evil.

Now my friends, you are part of a new Europe -- whole and free, and blessed with great opportunity. And let us remember that the world of tomorrow belongs to those who embrace democratic institutions and free markets. The great question of our time is settled: Freedom lives. Communism is dead. And the Russian soldiers are going home.

It is a privilege to stand at this place, on this day, with so many who made history. You changed a nation and helped change the world. I pledge to you the unwavering friendship of the American people in the months and years ahead. May God go with you, and may He always bless your dear, native land, Lithuania, the home of a free people.

# # #

Suing for damages has become both a huge industry and a tremendous drag on American industry's ability to compete.

The tort tax

By Leslie Spencer

MILLIONS OF ordinary Americans may be worried about the economy, but 1992 already promises to be another big year for the country's trial lawyers. Arm in arm with the Scientologists, the plaintiffs' bar is in hot pursuit of Eli Lilly, maker of the antidepressant Prozac. A flurry of liability suits is about to engulf Upjohn, maker of Halcion, the popular sleeping pill. On a third front, plaintiffs' lawyers have just filed hundreds of cases against Dow Corning's silicone breast implants, which they hope will enrich them as asbestos enriched them in the 1980s.

Further down the line, plaintiffs' lawyers are assessing their prospects against Nutri/System and HMR 500 diet plans. The Civil Rights Act of 1991 promises to generate countless lawsuits against employers.

How much does all this tort litigation cost the U.S.? Two years ago FORBES reported the tort system's direct costs at $80 billion a year (FORBES, *Oct. 16, 1989*). That figure was based on a study by Tillinghast, a Hartford-based actuarial consulting firm. It represented lawyers' fees, payouts to claimants and insurers' administrative costs in 1985.

The estimate did not go down well with the trial lawyers and the groups associated with them. Last October Joan Claybrook, president of Ralph Nader's Public Citizen, told PBS' *Adam Smith's Money World* that the annual cost of torts is just $30 billion. Claybrook sourced her figure to a study done by Rand Corp.'s respected Institute for Civil Justice, and asserted that the FORBES figure had "no statistical basis whatsoever."

If anything, FORBES' estimate understated the true cost of the tort system. In a recently released update of its 1984 study, Tillinghast analyzed liability insurers' costs for 1987. Its conclusion: Tort claims cost the country $117 billion that year. James Kakalik, coauthor of the Rand study cited by Claybrook, says it is Tillinghast's $117 billion number, not Rand's $30 billion to $36 billion range, that represents the direct "tort tax" consumers end up paying.



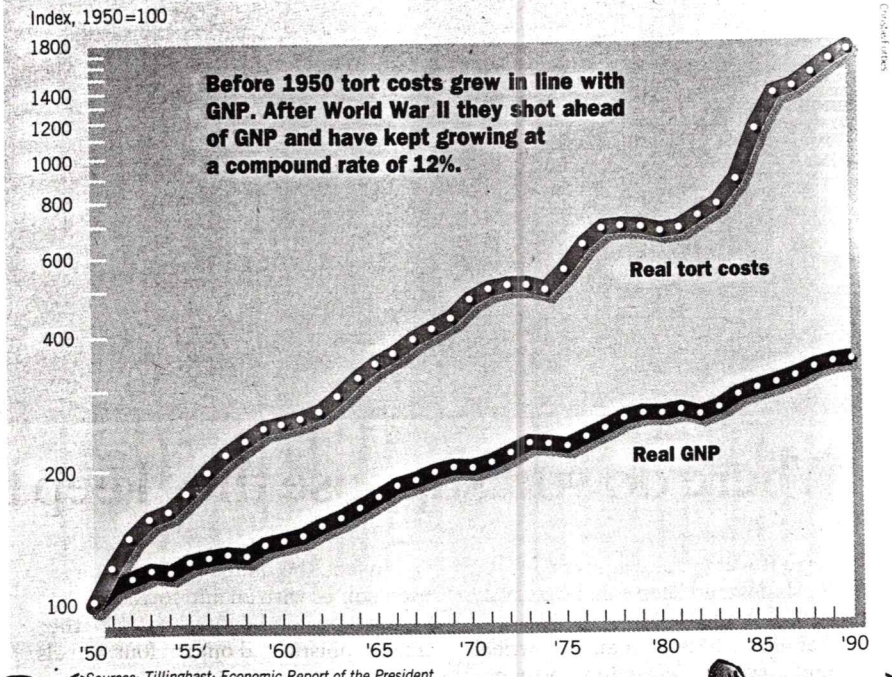
Illustrations by Patrick McDonnell

Robert Sturgis, who wrote the latest Tillinghast study, notes that from 1933 until 1950, U.S. tort costs grew in line with the overall economy. Since 1950, however, they have grown at a compound rate of 12% a year—much faster than the costs of workers' compensation, government-paid health care and welfare. Assuming that tort costs kept growing at 12% after 1987, the cost last year came to $184 billion—nearly on a par with the country's net private domestic investment.

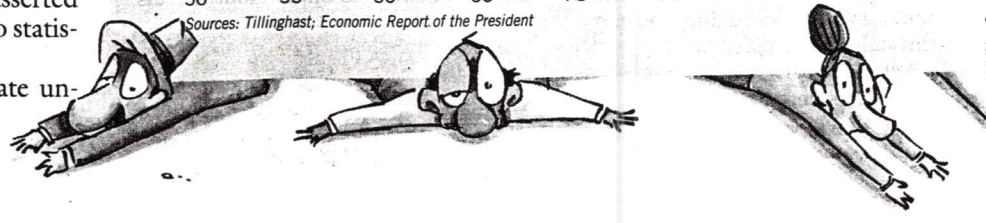
Where does all the money go? Both Rand and Tillinghast agree that injured claimants end up with only half of the proceeds from this tort tax. Further, according to Tillinghast, only a quarter compensates economic losses of plaintiffs. (The other quarter pays for plaintiffs' "pain and suffering.") The other half goes to insurers' administration costs and to lawyers to cover their fees and the expenses they incur on things like discovery and expert witnesses.

How could two studies come up with such different numbers? The Rand study set out to measure only the costs directly associated with state and federal lawsuits. The Tillinghast study went further. It took into account such costs as the payments to resolve the millions of potential lawsuits that never reach the courthouse, and the costs to insurers of processing

Torts vs. GNP



Sources: Tillinghast; Economic Report of the President



claims and defending suits.

Note that the Tillinghast and Rand studies consider only the tort system's *direct* costs to the economy. Beyond the direct costs are the harder-to-measure—but very real nonetheless—indirect costs incurred in efforts to stay out of the trial lawyers' talons.

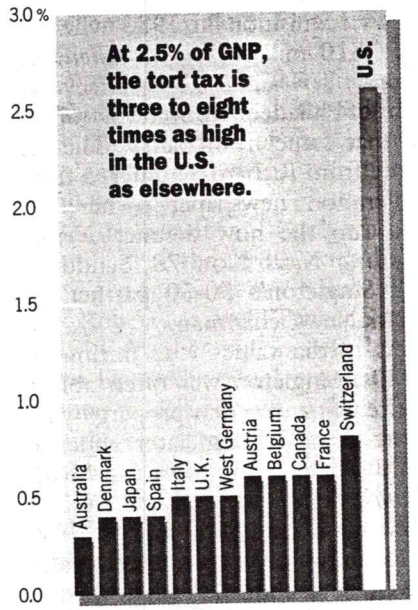
For example, a 1989 American Medical Association study estimated that for every $1 they spend on insurance premiums, doctors spend $2.70 performing often unnecessary tests and beefing up record keeping to avoid litigation; this suggests that excluding premium costs of about $5 billion to $6 billion, the indirect tort tax related to medical malpractice liability alone cost the economy about $15 billion that year.

How much of the nation's $738-billion-a-year health care bill can be laid to the tort system? Hard to say, but a 1991 study of auto injury claims in Hawaii by the Insurance Research Council gives some indication. The study reports that medical treatment of a typical neck sprain from whiplash comes to about $1,300 if handled without a lawyer, on a no-fault basis. The cost to treat the same injury if part of a tort claim comes to about $8,000.



Out front and losing

Tort costs as percent of GNP



Source: Tillinghast, 1987 study

Charts by A. Christie/Forbes

One can argue that the right of consumers to sue to recover for injury protects us against incompetent doctors, and manufacturers who make lawnmowers that cut fingers along with the grass. The problem with the argument is that the tort industry has grown so large that it is now reducing the quality and availability of many goods and services.

There are countless examples. Toxic leak detectors, useful to anyone handling toxic substances, were designed in the mid-1970s. But many were kept off the market out of fear of lawsuits should the detectors fail.

Or take small planes. Very few new, technologically advanced single- and

Tort gushers for 1991

Juries handed down these jackpot tort verdicts last year. The top ten total comes in at three times the total of just three years ago.

$127.7 million Chicago	Product liability verdict against drug manufacturer Upjohn Co., alleging that anti-inflammation drug Depo-Medrol caused blindness, which resulted in loss of plaintiff's eye.
$91.3 million Brooklyn	45-plaintiff consolidated award in case tried against Owens-Corning Fiberglas and other asbestos manufacturers. Same jury still deciding product identification, defendant's culpability and punitive damages.
$86.5 million St. Louis	Sum of verdicts against Decom Medical Waste Systems, KML Corp., Bunker Resources, Recycling and Reclamation Inc. and Raymond Adams, for accusing plaintiff of bringing AIDS virus into a hospital. Settled, amount sealed.
$84.5 million Houston	Premises liability award against an apartment complex and its management company in case of children drowned and brain-damaged in complex pool. Settled for $17 million.
$75 million New York	Product liability case consolidating 36 plaintiffs against the Manville Trust, Owens-Illinois and other asbestos manufacturers.
$62 million Santa Ana, Calif.	Insurance bad faith award against Truck Insurance Exchange and Farmer's Insurance Exchange where insurer was accused of failing to pay for insured's legal defense. Judge reduced verdict to $58 million. On appeal.
$61.2 million Anchorage	Insurance bad faith case against underwriters at Lloyd's of London for failure to pay a restaurant owner's fire insurance claim. On appeal.
$47 million Houston	Product liability case against Fibreboard and three other asbestos manufacturers for 275 plaintiffs.
$35 million Los Angeles	Finding against California for failure to maintain center barrier of interstate highway in case of accident resulting in quadriplegia to a 34-year-old man. Settled for $15 million.
$33.8 million Corpus Christi	Product liability award against Merrell-Dow Pharmaceuticals for birth defects allegedly caused by pregnant woman's use of Bendectin.

Note: Excludes civil verdicts against alleged or convicted criminals.
Sources: Jury Verdict Research; Jury Verdict Review; FORBES.

Where lawyers are prospecting

If juries go along, these hot new tort topics will make plaintiffs' lawyers and their expert witnesses rich.

Breast implants	Hundreds of cases pending against Dow Corning, other manufacturers and physicians, arising from alleged implant leaks and fibrous tissue formation.
Halcion	At least 20 cases pending against Upjohn Co.'s drug alleging behavioral side effects resulting in paranoia, suicide and murder.
Insurance policies	Hundreds of bad faith cases pending against many insurance companies and agents alleging emotional distress after the insured's claim is rejected.
Electromagnetic fields	About a dozen personal injury cases against several utility companies and electrical transmission equipment manufacturers alleging brain damage, cancer and leukemia caused by electric and magnetic fields.
Prozac	An estimated 100 cases pending against Eli Lilly & Co. Supposed adverse effects include suicidal and homicidal behavior.

twin-engine planes are manufactured today because of liability costs to the manufacturer. The perverse consequence: Older planes stay in use longer than they would if prices of new ones weren't so high.

Although impossible to quantify precisely, it's likely that the tort system's indirect costs are at least as high as the direct ones. That would put the annual tort tax at well over $300 billion today—and growing rapidly. Rand's James Kakalik thinks that the American Medical Association's estimate that medical malpractice's indirect costs are over 2½ times direct costs is a fair high-end estimate for the tort system as a whole.

Whatever its precise dimension, the tort tax is now weighing heavily on the ability of American industries to innovate and to compete internationally. At 2.5% of U.S. GNP, the tort system's direct costs (as estimated by Tillinghast for 1987) impose a burden in the U.S. five times that in the U.K., and almost seven times the level in Japan *(see chart, p. 41)*.

There are a few rays of hope. Vice President Dan Quayle is pushing tort reform, targeting such areas as frivolous lawsuits, arbitrary punitive damages, "junk science" in the courtroom (FORBES, *July 8, 1991*). Among Quayle's proposals: Ban contingency fees for expert witnesses, curb punitive damages and adopt the English Rule, whereby losers pay the winners' costs. Last October President George Bush signed an executive order mandating that all government agencies implement Quayle's proposed reforms when litigating. In his State of the Union address late last month, Bush again called for tort reform.

But effective reform remains elusive. Those who oppose it are too powerful and have too much at stake. As of Jan. 22 a loser-pays rule is authorized in most cases the government brings. But this sensible reform is toothless without budget approval from Congress, whose members are unlikely to approve.

Perhaps the only real solution lies with judges and juries. As they begin to appreciate the true magnitude and ramifications of the spiraling tort tax, they will be more likely to throw frivolous lawsuits and venal demands back at the lawyers responsible. ■

His enemies say it's only a matter of time before William Dean Singleton's highly leveraged newspaper empire totally collapses. The wait may be long.

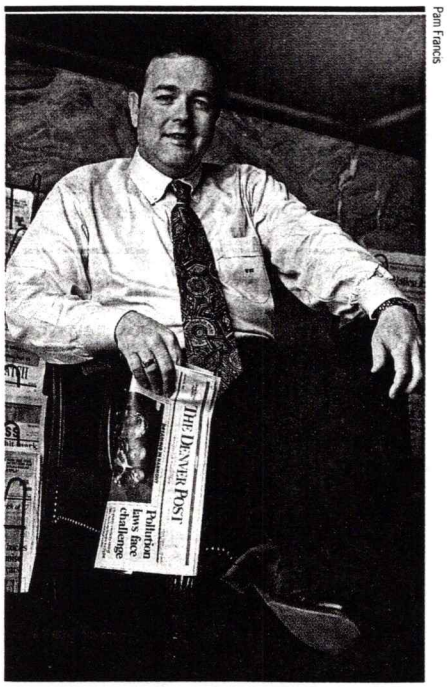
"We're the only one left"

By William P. Barrett

WILLIAM DEAN SINGLETON's first effort at owning a daily newspaper ended badly but memorably. His *Fort Worth Press*, a poorly financed revival facing an entrenched competitor, shut in 1975 after only three months. On the final day, angry reporters hurled beer cans at Singleton as he made a newsroom speech.

"I was 24 years old then," he says, clearly pained by the memory. "I've learned a lot since then."

Among the things Singleton, now 40, has learned is how to finance his acquisitions. Rule number one: Use other people's capital. Rule number two: Don't use all your assets as collateral for a loan to buy another property; that way, one piece of the empire can go down without dooming the whole empire. And never sign personal guarantees for corporate loans. Another important rule: Keep overhead down. Singleton's headquarters staff: just 14 people.



Pam Francis

MediaNews Group's William Dean Singleton
Gets a dreadful word-of-mouth.

With aggressive borrowing and diligent cost-chopping, Singleton—who tends to leave daily operations to his lieutenants while he makes deals—has built quite a business. Revenues of his privately owned parent, Houston-based MediaNews Group, were an estimated $450 million last year. Its 15 dailies in 9 states include the *Denver Post*, the *Houston Post* and monopoly papers in several smaller cities.

Singleton made his first MediaNews acquisition in 1983 when he paid $10 million for the *Gloucester County Times*, in the New Jersey suburbs of Philadelphia. Some $7 million of that came from banks. The rest came from Richard Scudder, a third-generation newspaper owner who had run the now defunct *Newark Evening News*. Now 78, Scudder is still Singleton's 50-50 partner and MediaNews' chairman.

As media values rose during the 1980s, Singleton was often able to entirely finance a new property with a short-term bank loan, later refinanced with longer-term investors. MediaNews' debt and preferred stock is down to around $400 million.

Recently, of course, media values have been falling and cash flows slowing. Singleton's many detractors—he gets a dreadful word-of-mouth within the business, partly because he often furloughs employees—predict his

THE WHITE HOUSE

Office of the Press Secretary

January 30, 1992

THE PRESIDENT'S PLAN FOR REDUCING THE BURDENS OF REGULATION THROUGH ADMINISTRATION ACTION

FACT SHEET

Regulatory reform is a key element of the economic growth package the President laid out in his State of the Union address. The President explained why in a speech he gave in Philadelphia today:

> "Every regulation that reduces efficiency slaps a hidden tax on the consumer . . . . From the tab on a bag of groceries at the checkout line to the sticker price on the showroom floor -- every American takes a hit when the government over-regulates."

Although Congress has thus far refused to pass most of the Administration's regulatory reform proposals -- including those in banking and energy -- there is much the Administration can do and will do on its own to reduce the burden of regulation. Following up on the President's request that federal agencies accelerate programs that enhance economic growth, the Administration today announced the details of several specific reform initiatives to spur growth and enhance job creation, particularly by small and emerging businesses.

Today, the President also described the comprehensive, 90-day review of federal regulation that he announced in his State of the Union address: "We will undertake a top-to-bottom review in the fields of energy, the environment, transportation, exports, financial services, and communications, among others." During this 90-day period, federal agencies will "accelerate any regulations that encourage growth and the creation of jobs." Agencies will also adhere to a 90-day moratorium on regulations that could hinder growth, to the extent they can do so without violating statutory deadlines or threatening health and safety.

I. SPECIFIC ADMINISTRATIVE ACTIONS

The President announced several concrete steps that the Administration will take within the next 30 days to promote economic growth and pare down unnecessary government red tape and other regulatory costs. These fall into two broad categories: improving access to capital, and improving the economic climate for small business.

A. Improving Access to Capital.

Passage of the Administration's proposed banking reform legislation is the best way to resolve the "credit crunch" that has impeded economic growth and job creation. However, the Administration has recently taken actions under existing law to alleviate this problem. And it has recently proposed rules to permit federal thrifts to branch across state lines (thereby enhancing these institutions' financial health) and to make more credit available for home construction. Building on these efforts, the President has asked all federal agencies with authority over financial institutions carefully to review their regulatory programs and to implement additional measures that will promote access to capital -- both debt and equity -- without weakening the Nation's financial system.

In addition to these efforts, federal agencies will take the following administrative steps to improve businesses' access to capital, and thereby create jobs and enhance economic growth:

- o Banking Reform. The bank and thrift regulatory agencies will enhance the ability of banks and thrifts to raise additional capital by:

  - promptly promulgating a proposed rule permitting financial institutions to include a greater percentage of the value of purchased mortgage servicing rights and credit card relationships as Tier One Capital;

  - phasing out the supervisory definition of "highly-leveraged transactions" for banking companies, which will enhance many businesses' access to debt capital; and

  - reducing unnecessary regulatory burdens on thrifts by streamlining application procedures for healthy institutions and by reducing financial reporting requirements from twelve to four times per year.

  At the same time, the FDIC will implement the new risk-based premium system ahead of the deadline authorized by last year's banking legislation, and in a manner that provides clear guidance to banks and does not arbitrarily expand bank examiners' discretion. Healthy banks should be rewarded with lower premiums, which in turn can generate new lending to help fuel the economy without endangering the FDIC's insurance fund.

- o Securities Reform. The Securities and Exchange Commission will undertake to simplify registration

requirements, reduce costs, and improve access for small businesses seeking capital from securities markets by proposing rules to:

- increase the maximum size for public offerings under the streamlined procedures of SEC Regulation A from $1.5 million to $5 million;

- create a simplified securities registration form designed for easy use by small businesses; and

- reduce regulatory paperwork under the Investment Company Act and expand the number of companies eligible for investment by Business Development Companies and Small Business Investment Companies.

o Clarification of Lender Liability Under Superfund. Businesses often have difficulty obtaining loans for many projects because of a fear on the part of banks that they will be saddled with liability under the federal Superfund law for environmental damage done by their borrowers. To alleviate these concerns and thereby improve the lending climate nationwide, the Environmental Protection Agency (EPA) will promulgate its final rule clarifying lenders' liability under Superfund.

o These steps will provide billions of dollars in additional capital to the Nation's economy.

B. Creating A Better Climate For Small and Emerging Businesses.

Many regulations have a disproportionate impact on small businesses, which account for a large percentage of domestic employment and have a disproportionate impact on economic growth. The President has therefore asked all major federal regulatory agencies to examine their existing regulations and weed out or modify those that impose an undue economic burden on small business.

The following steps, which will be taken by the appropriate agencies during the next 30 days, are examples of the kinds of actions the Administration will take during the next few months to spur the growth of small and emerging businesses:

o Payroll Tax Reform. One of the barriers to increased employment and higher economic growth is the payroll tax system, which imposes billions of dollars per year in compliance costs. This burden falls disproportionately on small and emerging businesses. To reduce this burden, the Administration strongly supports certain features of the payroll tax simplification legislation now pending in Congress.

- The proposed legislation (H.R. 2775 and S. 1610) would substantially simplify the payroll tax system, reduce uncertainty, and reduce the number of payroll tax deposits that small employers must make.

In addition, the Department of Treasury, in cooperation with the Department of Health and Human Services, will reduce the economic burden of the payroll tax system by:

- establishing a single wage reporting system that will eliminate the need for employers to make multiple federal and state filings;

- establishing a voluntary program that will allow businesses to verify tax information (such as employee social security numbers) by a simple telephone call, thus eliminating burdensome paperwork and correspondence with the IRS;

- establishing a voluntary electronic payment system that will allow employers, at their option, to make payroll tax contributions directly from the employer's bank account to a designated Treasury account, thereby eliminating substantial paperwork costs; and

- through the IRS's Compliance 2000 program, helping small and emerging businesses voluntarily meet their obligations through clearer guidance and increased taxpayer assistance, education and outreach efforts, thus reducing the need for after-the-fact enforcement.

o Trucking Reform. Many businesses rely heavily upon trucks to carry their goods to customers. To reduce the costs of truck transportation, and to reduce regulatory burdens on some 52,000 mostly small owner/operators currently regulated by the federal government, the Interstate Commerce Commission will begin or complete rulemaking proceedings to:

- further deregulate motor contract carriage by repealing the regulatory definition of "contract" and relying instead upon the statutory definition;

- abolish the requirement that trucking companies keep a unique set of "regulatory" accounting books in addition to standard financial and tax records; and

- deregulate truck transportation in large metropolitan areas by expanding "commercial zones."

o Together, these steps will eliminate billions of dollars a year in regulatory costs, thereby making American businesses more competitive and increasing employment.

II. REGULATORY REVIEW

The above initiatives are examples of reforms the Administration will implement as a result of an intensive, 90-day review launched today by the President. The review will be coordinated by a working group of the Council on Competitiveness, chaired by Council of Economic Advisers Chairman Michael J. Boskin and Counsel to the President C. Boyden Gray. The review will proceed as follows:

o In accordance with the President's request, the heads of the major federal regulatory agencies will set aside a 90-day period to review regulations and programs that may hinder economic growth, and to identify and accelerate action on initiatives that will reduce the burden of existing regulations or otherwise promote economic growth.

o During this 90-day period, each agency will work with other agencies and the Council on Competitiveness to identify regulations and programs that significantly reduce jobs or otherwise impose a significant burden on the economy. Each such regulation or program will be carefully reviewed to determine whether it satisfies five requirements:

- the expected benefits to society should clearly outweigh the costs to society;

- the regulation should be fashioned to maximize net benefits to society;

- to the maximum extent possible, the regulation should rely upon performance standards instead of prescriptive command-and-control requirements;

- to the maximum extent possible, the regulation should rely upon market mechanisms;

- the regulation should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation.

o To the extent permitted by law, and as soon as possible, each agency will propose administrative changes that will bring each of its existing and proposed regulations into

conformity with these standards. Each agency will report the results to the President.

- Where statutes impose regulatory requirements that do not conform to the standards discussed above, agencies will prepare draft legislation to bring the law into compliance with those standards.

- The head of each agency will designate a senior official to serve as a permanent regulatory oversight official. This official will have responsibility for conducting the comprehensive review, implementing the resulting proposals, and ensuring that new regulations comply with the standards discussed above.

- To the extent permitted by law, and without imperiling health or safety, each agency will refrain from proposing or issuing new regulations and programs that retard economic growth, while accelerating development and implementation of those that promote economic growth.

# # #

THE VICE PRESIDENT'S OFFICE

Office of the Press Secretary

FOR IMMEDIATE RELEASE JANUARY 30, 1992

PREPARED REMARKS BY THE VICE PRESIDENT
NATIONAL PRAYER BREAKFAST
WASHINGTON, D.C.

Since we last gathered here, so much has happened. Indeed, we welcome this day of prayer to once again give thanks to our Lord for the wonderful blessings he has bestowed upon us. In the word of the 77th Psalm, verse 14: "You are the God who does marvelous deeds, the Lord who brings nations to acknowledge your power."

Indeed he does. For the most dramatic events of our lifetime -- the rebirth of nations long covered by darkness, the reunion of East and West upon their shared heritage -- this was not done by the force of arms. It was brought by force of faith.

It began when a group of Polish workers insisted upon erecting a cross at their shipyard. It drew strength from those who fell -- martyrs like Father Popieluszko who, even in death, could not be silenced. Once Marilyn and I, and our children, prayed at his grave. Now, we witness his victory. Like many before him, he taught the most profound lesson of our time: that faith, family, and freedom are intertwined. Destroy any one, and the other two are threatened as well. Strengthen any one, and the others revive along with it.

That's why the bogus messiahs of this century tried to shackle religion, and ruin family life -- because they knew their monster states could never enslave believing families. Now, bells ring out again from ancient churches in the Kremlin, voicing to the heavens their prayers of thanksgiving.

Yet even at this season of rejoicing, there is still danger. People of faith should not ignore it. For the totalitarianisms of this century -- evil as they were -- were only symptoms of a deeper malady in the western world. It was an emptiness of the spirit that, by denying humanity's Creator, denied human limits and human dignity as well.

That denial built the extermination camps and the gulag. That denial remains amid the rubble of empires. It persists in our own institutions, and distorts the face of our culture. It challenges all of us. For the spiritual vacuum at the heart of

what Paul Johnson called "Modern Times" will be a revival of faith, or by some new fanaticism promising heaven on earth.

After all we have seen, after what we have been given, after so much has been done for us ... surely we should now be people of hope, with confidence in the Lord's governance of world affairs -- but equally determined that this time, this time around, the new world will be built on faith, and on family, and in freedom. Thank you, and God bless you all.

# # #

**** 75 CENTS

Legal Morass

Hundreds of Businesses Wait and Run Up Bills As Tort Case Drags On

A Lawyer Ties Them Vaguely To Steel-Plant Toxicity; Injuries Are Vague, Too

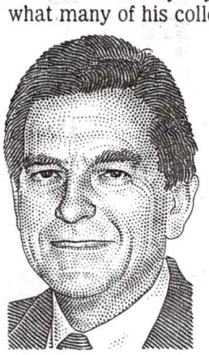
'Blackmail,' the Defense Says

By CHRISTI HARLAN
Staff Reporter of THE WALL STREET JOURNAL

DAINGERFIELD, Texas—Two of Harold Nix's neighbors dropped by his law office one day in 1987. The women wanted to know whether they had legitimate workers' compensation claims against the nearby Lone Star Steel Co. plant, where their husbands had worked for years before both died from lung cancer.

Mr. Nix suspected there might be more to it than that. "I started thinking what I could do other than filing a li'l ol' comp claim," he says.

Mr. Nix's lawyerly curiosity produced what many of his colleagues believe is the largest toxic-tort litigation pending in the U.S.: 36 related lawsuits, filed in state court here on behalf of 2,729 Lone Star Steel employees, one-time employees and employees' relatives. The suits name 372 companies as defendants, ranging from such giants as Exxon Corp. and Union Carbide Corp. to the owner of a hardware store in downtown Daingerfield.



Harold Nix

So many lawyers have flooded into this tiny northeast Texas town that one hearing, on a requested change of venue, was moved from the courthouse to the high-school gym. And they have swamped the Morris County district clerk's office with some 39,000 documents.

For Mr. Nix, the litigation is the crucible of a novel legal theory—and a chance to reap tens of millions of dollars in fees. For the defendants and even some of Mr. Nix's fellow plaintiffs' lawyers, however, the cases are something else: litigation at its worst, the kind that inspires derision of lawyers and outraged demands for legal reform by Vice President Dan Quayle and many others.

Defendants Angry

Few would dispute that there is some basis for litigation here. Some former Lone Star workers are genuinely sick, and there is some evidence of careless handling of chemicals. But defendants complain bitterly that many of the plaintiffs' claims are spurious. They see themselves as victims of a legal process in which a clever lawyer, aided by the state's vague product-liability laws, can tie them up in costly litigation for nearly five years without specifying which companies are alleged to have done what to which plaintiff.

"This is a perfect example of the abuse of our judicial system," says Brad Gahm, a vice president of the reform-minded Texas Association of Business and a lawyer who once worked on Westinghouse Electric Corp.'s defense in the case.

The lawsuits, the first of which was filed on May 15, 1987, allege that chemicals at the Lone Star plant combined to create a toxic cloud that infected workers with "chemical AIDS." "This toxic smog," one suit contends, "crept in ever so quietly like little cats' feet and did permanent damage to the bodies of the unsuspecting workers." Damages aren't specified in the suits, but Mr. Nix pegs the total potential recovery at "hundreds of millions of dollars." Mr. Nix didn't sue Lone Star Steel, but other defendants have moved to drag it into the case.

No Similar Case

Neither steelmakers nor the United Steelworkers of America can think of another steel plant involved in similar allegations. Nor can Mr. Nix, who takes credit for devising the theory. "There's not any litigation that I can think of for such a broad array of illnesses and chemical exposure," he says. That, he explains, is because "no one had recognized the causal connection" between steelworkers' illnesses and products they worked with.

But defendant companies argue that there isn't any similar litigation because Mr. Nix plucked his theory out of thin air—thin clean air, they assert. The defendants deny that their products contributed any toxicity to the atmosphere at the mill or any illness in the community. Among the companies accused of contributing to the alleged toxic smog, they point out, are makers of felt-tip markers and picnic tables. Other companies are accused of exacerbating the problem by, some suits say, "taking company vehicles, and in some cases, personal vehicles, onto the premises each day, adding to the pollution of the work environment."

If the workplace was so polluted, defendants ask, why have medical tests shown that only one-fourth of the plaintiffs suffer from work-related illnesses? They add that all of those ailments involve asbestos, a product whose hazards are well-established. At the Lone Star mill, asbestos curtains, for example, were used to protect workers at the open hearth.

The defendants suggest that most of the workers' health complaints are probably due more to old age and a diet filled with chicken-fried steak and mashed potatoes. "Whatever built up cholesterol in their blood streams wasn't the defendants' prod-

Please Turn to Page A8, Column 1

Legal Morass: Huge Toxic-Tort Suits in Small Town In Texas Are Angering Several Hundred Companies

Continued From First Page

ucts," Robert M. Martin Jr., a defense attorney, argues.

Nevertheless, the defendants' liability insurers have already had to shell out millions of dollars of fees to some 150 law firms. And the end isn't in sight: Mr. Nix doesn't expect the first jury to be picked for another two years.

Even more galling to defendants is the fact that many still don't know what they are specifically accused of; Mr. Nix has refused to narrow his allegations. Suits making similarly broad allegations have been dismissed in courts elsewhere, but state district Judge B.D. Moye hasn't granted any of the defendants' repeated requests for more specific pleadings. Appeals by the defendants have been unsuccessful. The 62-year-old judge, who was first elected to the bench 15 years ago, declines to be interviewed about the cases.

Mr. Nix says he will make more specific allegations after he completes his fact-finding, which includes combing through 40 years and 14 million pages of the mill's receipts and purchase orders. "This is blackmail," says William Wilde, counsel to a committee of defendants and insurers that is working on common defense issues. "This is a perversion of our justice system."

A Westinghouse spokesman says neither Westinghouse nor Mr. Nix has been able to produce any records showing that welding rods manufactured by Westinghouse were sold for use at Lone Star Steel. Yet the company remains a defendant.

Waiting for Specifics

Other defendants, who know that their products were used at the steel mill, are still waiting to learn which specific plaintiffs are accusing them, since not all of the plaintiffs came in contact with all of the products. "We don't know who's suing us or why they're suing us," says R.W. Blair, a co-founder of Jones-Blair Co., a closely held Dallas paint maker that supplied pipe varnish to Lone Star Steel. "My frustration limits were exceeded some time ago on this legal business."

Like most of the defense teams, Jones-Blair's lawyers were hired by the company's liability insurer, so the company isn't directly bearing all of the defense costs. And because resolution of the cases remains so distant, the company hasn't had to project the effect of potential damages on earnings. Estimating that risk wouldn't be easy, anyway: Mr. Nix is insisting on jury trials, and juries are notoriously unpredictable. So is the amount of insurance coverage for each defendant because policy limits can vary widely.

Nonetheless, the litigation is a constant irritant to defendants. Warren Nilsson, who owns one of the two Morris County businesses the litigation cites, says his warehouse, which stored alloys used by Lone Star Steel, was named in the first lawsuits filed back in May 1987. Subsequent suits have named his holding company, Irvin Enterprises Inc., which also owns oil jobbers that supplied Lone Star Steel, a couple of tire stores and the downtown hardware store.

And which business is Mr. Nilsson's insurer defending? After all this time, he still doesn't know. "Why we're in it, I don't know," he says. "It's puzzling." Mr. Nix says Irvin Enterprises is a defendant because its units "supplied many, many, many toxic products through the years"—an allegation that befuddles Mr. Nilsson. He says he was worked around those chemicals for 20 years and isn't sick. Asked about the allegations that his fellow citizens were poisoned by a toxic cloud, Mr. Nilsson says cautiously, "Everyone I know around here is healthy."

A Depressed Area

The motivation for many of the lawsuits, defense attorneys contend, relates to the declining fortunes of the steel plant. For almost 40 years, Morris County thrived, thanks entirely to Lone Star Steel. During the oil boom of the late 1970s and early 1980s, when the demand for steel pipe for drilling equipment was great, the mill employed 6,000 workers, equal to almost half of the county's population of 13,000. But the pipe business cratered with the oil industry, wiping out thousands of jobs.

"We went from a pocket of prosperity in '82—fat cats, whatever you want to call us—to a pocket of poverty in a year," says James W. Smith, mayor of Lone Star, a town close to Daingerfield and the site of the steel mill. The steel company itself, a unit of Dallas-based Lone Star Technologies Inc., agreed to bankruptcy-court reorganization at the behest of its bank lenders in 1989 and emerged from the proceedings last year. The mill now employs fewer than 1,000 people, and unemployment in the county stands at 18.7% of the work force, or more than 2½ times the Texas average of 6.8%.

The job losses created the perfect climate for Mr. Nix's litigation, defense lawyers believe. Until he filed the first lawsuit, only a handful of workers' compensation claims and asbestosis cases had been litigated on behalf of Lone Star Steel employees. That fact helps fuel the cynicism of defense lawyers; so does the lack of medical evidence linking the health complaints to a defendant's products.

Lucrative Law Practice

Mr. Nix dismisses complaints about the ambiguity as not unusual in the types of personal-injury cases in which he specializes. They're a lucrative specialty for the urbane lawyer, who employs seven of the county's 12 licensed attorneys and earns enough to be a regular donor to statewide Democratic candidates, often at $10,000 a pop. He also financed the early stages of the Lone Star Steel litigation.

You wouldn't discern his wealth from visiting his office, however. With its vinyl-covered chairs and boxes of records and charts, the nerve center of the Lone Star Steel litigation looks more like a public health clinic than a prosperous law firm.

The cases could make Mr. Nix even wealthier. Already, his firm has earned about $4.8 million from $16 million of settlements by seven defendants (it works on a contingency basis, collecting about 30% of whatever its clients win). He says the firm has plowed its share of the money back into investigations related to the cases.

With his strategy in the cases, the 52-year-old Morris County native quickly proved he isn't some bumbling backwater barrister. He didn't sue Lone Star Steel for its workers' alleged injuries: Injury complaints against employers are relegated to the unwieldy Texas workers' compensation system, where workers' recoveries could be limited. He also avoided suing in federal court, where rules are less favorable to plaintiffs in personal-injury cases. And he didn't seek class-action status—which also requires stricter proof from complainants—because "there are no two plaintiffs who have the exact same cause of action," he says.

That in itself is amazing, because Mr. Nix decided early in the litigation that he would sign up any Lone Star Steel worker with a health complaint. In most toxic-tort cases, lawyers concentrate on the strongest—and most emotionally appealing—cases. But as a longstanding resident, he says it wouldn't have been fair to turn anyone away. "That's when people, by word of mouth—the neighbors and the brothers—started coming in," he says.

Some Brief Jobs

As a result, Mr. Nix's clients include the sorts of plaintiffs that outrage defendants and critics of U.S. courts. Among them: a man who worked 15 days at Lone Star Steel 22 years ago; another who worked there only for the month of September 1964; and the family of a worker killed in a one-car accident in 1965.

But Mr. Nix insists serious illnesses are involved. He estimates that about a third of the plaintiffs are suffering from asbestos-related ailments. About 1,500 to 1,600 claimants have undergone tests required by three asbestos-makers that have agreed to compensate asbestos victims. So far, about 700 to 800 of them have some type of asbestos-related illness.

Defense attorneys have asked for mandatory medical testing of all plaintiffs by 1993, to establish once and for all what the ailments are and what may have caused them. Such tests would "eliminate those hundreds of plaintiffs who aren't sick and eliminate about half of the defendants," suggests Mr. Martin, whose clients include Martin Marietta Corp. "This should have been done a long time ago."

But Mr. Nix and his associates resist the testing suggestion. Under their "chemical AIDS" theory, some workers' illnesses won't show up for years, they contend. "They deserve medical monitoring," argued Nelson Roach, one of Mr. Nix's associates, at a recent court hearing on the defendants' request for medical tests. Such

monitoring is sometimes provided for in settlements of toxic-injury cases.

Medical monitoring might help ease the minds of plaintiffs such as R.B. Jefferson, who worked 29½ years on the open hearth at Lone Star Steel before retiring in 1982. His brother, another longtime steelworker, died of cancer, and Mr. Jefferson says "cancer's a possibility for anyone." But for now, his major health complaints are hearing loss and "slight, emphysema-like" breathing problems, and his former workplace is the most likely source of those ailments, he figures. "I don't remember seeing any chemical labeled," he says.

Another retiree and plaintiff, Pat Turner, was hard-pressed to remember any manufacturers' labels on the paint thinners and other solvents he worked with during his 20-plus years at Lone Star Steel; as a result, he spent more than three days being questioned by defense lawyers in October. During the questioning, he said he didn't think about the health hazards of his job until the first lawsuits were filed.

"I began to read and make studies on these things," he testified. "I came to the belief that [the products] could and probably were a contributing factor to my health problems." Mr. Turner has had two heart operations and other surgery. And although he hasn't consulted a doctor in connection with his work, he adamantly defended his right to sue. "I was convinced I was right," he said.

Such vague allegations and seeming lack of medical evidence rile critics of Texas' civil-justice system. "We have a drastically inadequate system for determining products' liability," says Mr. Gahm of the Texas Association of Business. Of course, Texas isn't the only state under fire for allegedly pro-plaintiff liability statutes, and Vice President Quayle seeks to limit untested medical theories and the damages plaintiffs can collect in product-liability cases. But Texas does have a reputation for breeding cases such as the Lone Star Steel litigation, and the state is a favorite target of reformers.

Lobbying Efforts

A statutory definition of a defective product would help prevent speculative cases such as the Lone Star Steel litigation, Mr. Gahm says, as would a standard for determining negligence in an injury case. Texas law lacks both, and Mr. Gahm's group has spent four years in what he calls "a fevered battle" to wrest such definitions from the Texas legislature. "What we're trying to do would directly affect Harold Nix," he says.

But the debate over legal reform, however heated in the state capital, doesn't mean much to this hardscrabble county and its efforts to reconstruct its shattered economy. Mayor Smith blames the litigation for the area's inability to attract new employers, despite such moves as establishing a tax-abated enterprise zone. "All of a sudden, we've got a reputation, deserved or not," he says.

But Mr. Smith, who retired as director of industrial relations after 32 years with Lone Star Steel, doesn't blame the workers for suing. "The people are hurting," he says. "If they can pick up $3,000 [from a settlement or verdict], that would be great. . . . If I'd been laid off and hadn't done my investments, I might have signed up."

However, he hopes that the litigation will be settled or moved from Morris County—neither of which seems likely.

"A lot of the defendants are really aggravated about being in this lawsuit, so they're not willing to pay nuisance value or any value" to settle, says Hubert Crouch, a Dallas defense lawyer and chairman of the defense steering committee.

As for moving the case, Judge Moye has declined to change the venue once and is withholding a decision on a second request until the lawyers attempt to seat the first jury. Defense attorneys contend that seating an impartial jury will be nearly impossible in a county where nearly half the potential jurors are either plaintiffs or relatives of plaintiffs. Last month, the defendants urged the judge to rule on the venue change soon, reminding him of comments by potential jurors in a November 1990 survey by the Gallup Organization.

'Fair and Impartial'

Among those comments: "It has caused a lot of cancer and has made the environment very unhealthy," said one respondent. "I heard that they didn't tell the workers that the chemicals were dangerous, and it's these chemicals causing the illness and death," said another. Still another potential juror had heard "that many people have died because of a ruthless, profit-hungry company." All of those statements came from people who also said they could make "a fair and impartial judgment" in the case.

Mr. Nix contends that an impartial jury can be seated here. Doug Jacobs, vice president of United Steelworkers Local 4134 and a maintenance worker at Lone Star Steel who is also a plaintiff, doesn't think the defendants will find any better place. "Regardless of where they go, there's going to be a certain amount of working people," he says.

Mr. Jacobs, who is seeking compensation for "lots of joint problems" and 10 years of headaches, says he isn't expecting a windfall from the litigation. "I'm not out buying a new car counting on the money," he says. "In my mind, I can see this going on quite a while."

That's putting it mildly. Defense lawyers have completed pretrial fact-finding interviews, called depositions, of just 79 of the 2,729 plaintiffs, working two weeks each month in the cavernous union hall in Lone Star. Each plaintiff is questioned by as many as 15 lawyers representing various groups of products made by defendants. And because the depositions provide the defendants' only opportunity, so far, to narrow the allegations, some plaintiffs have been questioned for three days.

"At this rate, we should finish deposing the plaintiffs in 38 years," says Jim Cowles, a Dallas lawyer representing six defendants. "My clients are being held hostage in Morris County."

Delta's January Traffic Rose

ATLANTA—Delta Air Lines said its January traffic rose 15% to 5.6 billion revenue passenger miles from 4.9 billion a year earlier.

A revenue passenger mile is one paying passenger flown one mile.

Wall Street Journal February 12, 1992

Quayle vs. Jamail

Dan Quayle owes a big thank you to Joe Jamail, the contingency-fee lawyer best known for winning $11 billion for Pennzoil against Texaco. The Texas King of Torts did it again, just as the Vice President was renewing his campaign to reform the lawyers.

Mr. Jamail's latest spin at the lottery wheel of American justice is a good example of the excesses. He won a $550 million judgment against MiniScribe Corp., $530 million of it in punitive damages, from a Galveston jury last week. This 25-to-1 ratio of punitives to actual damages is typical of a legal system out of control, which is why Mr. Quayle wants states to limit punitives to an amount equal to the actual harm.

MiniScribe is in bankruptcy, so much of the ruinous judgment would be paid by its former accountants at Coopers & Lybrand and former investment bankers at Hambrecht & Quist—who point out they were also defrauded, for much more than Mr. Jamail's bondholder clients. It's also an irony that it was an internal investigation by MiniScribe that uncovered the falsifying of records by some of its employees. So whom is the legal system punishing for what by assessing punitive damages? The jury, by the way, decided Mr. Jamail should get some $8 million for his labors.

Many lawyers are outraged by Jamail-style litigation, but the American Bar Association as a trade group is too busy circling the wagons to see the absurdities. Talbot D'Alemberte, the group's president, called Mr. Quayle's criticisms "stupid, silly, preposterous, gratuitously insulting and offensive." (*Gratuitously?*) His counterproposal is that the taxpayers provide "full and adequate funding" for the Legal Services Corp., which subsidizes litigation by making direct payments to . . . lawyers.

The Access to Justice Act that Mr. Quayle proposed last week includes a limited federal application of what he calls the Fairness Rule, which is also called the English Rule or the Everywhere-but-America Rule. This would require the losing side to pay the winning side's legal expenses. This should deter abusive lawyering. A contingency-fee lawyer would have a harder time getting defendants to settle cases for some amount less than their legal expenses to defend the lawsuit. By the same token, defendants who know they are liable could no longer simply pay lawyers to use delaying tactics in the hopes of wearing down plaintiffs.

The Quayle proposal would protect consumers in lawsuits against corporations. There is a provision that limits the amount of attorneys' fees that the losing side would have to pay to the amount he spent on his own lawyers. Judges would have broad discretion to award even less if the losing party has limited means. People with good legal claims would have better access to the courts because they'd know their legal fees would be compensated.

There is also a bill in Congress that would create new national rules for product-liability litigation. This bill, which the nation's Governors unanimously support despite federalism concerns, would begin to push the standard of liability back to where it was before the liability explosion 30 years ago. There would be a tighter definition of punitive damages, and plaintiffs would no longer be able to go after the deepest pockets regardless of fault.

There is a problem with these reform proposals. As President Bush noted in a recent speech, "There are 62 lawyers" in the Senate. The trial lawyers are also major financial contributors to Members of Congress. So the chances of new legislation are small, especially if lawyers prefer to serve as targets for the Bush-Quayle campaign rather than lead the reform themselves.

FOR IMMEDIATE RELEASE February 13, 1992

THE PRESIDENT'S COUNCIL ON COMPETITIVENESS

"AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA"

FACT SHEET

CIVIL JUSTICE REFORM MODEL STATE AMENDMENTS

As part of the Administration's efforts to reform the civil justice system, Vice President Dan Quayle today presented the Civil Justice Reform Model State Amendments. The Amendments, which include both model legislation and model rules of procedure and evidence, would implement the recommendations proposed by the President's Council on Competitiveness Report, "Agenda for Civil Justice Reform in America."

Over the past 30 years, our legal system has become burdened with excessive costs and long delays. Many features of the current legal system no longer serve to expedite justice or to ensure fair results. Instead, overuse and abuse of the legal system impose tremendous costs upon American society. Higher costs mean higher prices for American consumers for everything from household goods to medical treatment. Higher costs also reduce America's ability to compete in the global marketplace.

To address these problems, the Council established a working group, chaired by Solicitor General Kenneth W. Starr. The resulting recommendations provide concrete steps that can be taken to restore our civil justice system as an institution that is fair to all and serves the ends of justice. The Administration's proposals seek to restore fairness to our judicial system and to eliminate the economic burden placed on American society by excessive litigation. None of the reforms impairs any substantive legal rights. Instead, they will help ensure that deserving victims actually receive their compensation earlier and with less expense.

The Problem: An Overburdened System

States reported the filing of 17,321,125 civil cases in 1989. Excessive and expensive civil litigation has overburdened our court system and imposed higher costs on small businesses, professionals, industry, and Government at all levels in the form of excessive legal fees, court costs, and wasted individual time and effort. Every year, our legal system costs Americans, directly and indirectly, an estimated $300 billion.

While every State has its unique legal system, each can benefit by applying the principles of fair, efficient, and early resolution of disputes.

In order to reduce litigation costs, promote swifter justice, protect individual rights, and restore the integrity of our legal system, among the provisions of the "Access to Justice Act of 1992" are the following reforms:

Multi-Door Courthouse - To give consumers the opportunity to elect an effective alternative to court adjudication, courts would be required to foster alternative dispute resolution (ADR) procedures rather than trials to settle disputes. The parties would be free to select from different ADR procedures such as early neutral evaluation, traditional mediation, outcome determinative mediation, mini-trials, summary jury trials, and arbitration.

Core Disclosure and Discovery - Discovery consumes 80 percent of the time and money in litigation; it should be reformed to enable the parties to proceed to the central issues without extraneous, costly, and unproductive practices. The Model proposals will require automatic disclosure of basic or "core information" and mandate that the parties confer at discovery planning conferences. Discovery would also be partially governed by market incentives.

Expert Evidence Reform - Unlike ordinary witnesses who may offer only factual testimony, expert witnesses are allowed to testify as to their opinions. Therefore, it is necessary that the expert's opinion testimony be based on "widely accepted" theories instead of "junk science." The Model proposals will require courts to determine that proposed witnesses are legitimate experts in their field. The Model also bans contingency fees for experts.

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The Civil Justice Reform Model State Amendments also include other provisions to encourage settlement and reduce costs. This package of state legislation and rules changes, in conjunction with the Administration's proposed "Access to Justice Act of 1992" will greatly reduce the burdens of excessive, needless litigation while protecting and enhancing every American's ability to vindicate legal rights through our legal system.

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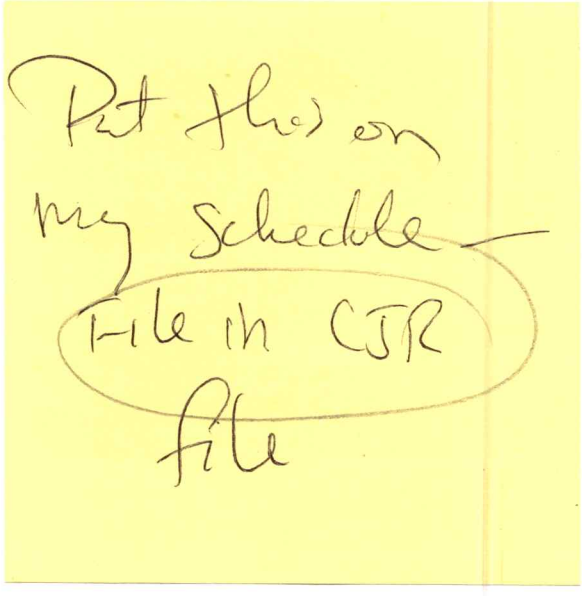
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THE WHITE HOUSE

WASHINGTON

February 10, 1992

MEMORANDUM FOR ADDRESSEES

FROM: CHARLES E.M. KOLB CEMK

SUBJECT: Shareholder Class Action Suits

John Narkin, a New Jersey attorney, has written a 500-page manuscript on the ways in which attorneys exploit shareholder class action litigation to benefit primarily themselves rather than the public or corporate shareholders. Attached is a summary of John's manuscript which I commend to you. Given our on-going interest in civil justice reform, I thought you would find his material useful.

I have arranged for John Narkin to spend an hour with us on February 18 to discuss his manuscript as well as possible reforms to shareholder class action litigation and our civil justice system in general. I hope that you will be able to join us at 2:30 p.m. in Room 180 OEOB. Should you need clearance into the OEOB, please call Peggy Smith at 456-6515.

Please feel free to invite any other colleagues who might be interested.

Attachment

ADDRESSEES:

Tim Adams
Betsy Anderson
Diana Bork
David Bradford
Diana Furchtgott-Roth
Stewart Gerson
Mark Gidley
Boyden Gray
French Hill
John Howard
Al Hubbard
Jay Lefkowitz
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David McIntosh
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William Myers
Richard Porter
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John Schmitz
Ken Starr
Wendell Willkie

FRAUD ON THE MARKET:

Inside the Shareholder Class Action Scandal

By

John G. Narkin

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Six Carlisle Drive
Voorhees, New Jersey 08043
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OVERVIEW

All across America, a shadowy group of lawyers quietly shakes down corporations, business executives, investment bankers and certified public accountants. These attorneys systematically bring class action lawsuits using the name of their friends, business associates, family members, solicited strangers and professional troublemakers - anyone but a party with an independent reason for initiating suit. Regularly manufacturing charges of corporate fraud based on inconclusive news media reports, class action lawyers claim to represent the interests of thousands of "defrauded" shareholders. While the lawyers invoke important Federal laws intended to deter "crime in the suites," the parties sued by class action lawyers - indiscriminately labelled as racketeers and white collar criminals - usually settle these cases out-of-court for millions of dollars rather than face the uncertainty of litigation that could put them out of business forever. Collecting astronomical legal fees as a reward for their "public service" in enforcing the law as "private attorneys general," class action lawyers police the nation's economic markets much in the same way that gangsters patrol their neighborhoods in exchange for protection money. Yet this bizarre "solution" to the problem of corporate crime has gained nearly universal acceptance, despite what some journalists have called a "bitter debate" and growing "controversy" about the extortionate methods used by class action lawyers.

Written by a lawyer who once made his living prosecuting shareholder class actions, **FRAUD ON THE MARKET: Inside The Shareholder Class Action Scandal** exposes the sordid underworld of lawyers who profit from their faithless representation of the public interest. In the process, the book lays the foundation for a constructive reappraisal of America's fight against white collar crime.

THE BOOK

In 1957, Oliver Fretter and his family opened a small appliance store located just outside of Detroit. Through a combination of hard work, perseverance and business savvy, the Fretter family business eventually prospered and grew, evolving into a profitable chain of retail stores in Michigan and neighboring Indiana.

By 1982, at the beginning of the video cassette recorder revolution, Oliver Fretter recognized new business opportunities for his family's company. He decided that Fretter stores would sell not only their traditional stable of washers, driers and refrigerators, but the latest consumer electronics products as well - all at the "lowest prices" in Fretter's marketing area. The conditions were also right for Fretter, Inc. to expand outside of its comfortable niche in Michigan and Indiana, a strategy that met with quick and resounding success. After years of sustained effort, Oliver Fretter and his family saw their most ambitious entrepreneurial dreams come to life.

But only four years later, Fretter's main competitor, a Michigan-based retail chain named Highland Superstores, waged a bitter price war against Fretter, a war that taxed the financial capabilities of both companies. To bolster its competitive position, Highland hired a prominent New York City investment banking firm to sell its stock to investors in a public offering, a development that provided Highland with millions of dollars in working capital. To keep pace with Highland and to reap the rewards of a lifetime of business initiative, the Fretter

family felt they had almost no choice but to follow Highland's lead by taking their own company public. In the booming stock market of the mid-1980s, many well-regarded companies raised money through public stock offerings. Since Fretter was a well-regarded company, a team of lawyers and investment bankers readily agreed to help Fretter sell its stock to the public. To comply with the S.E.C.'s registration requirements, they prepared and distributed an offering prospectus that explained the speculative risks and rewards of an investment in Fretter stock. Despite the unmistakable risks identified in the prospectus, including the risk that Fretter was captive to volatile industry conditions beyond its control, investors lined up to buy the stock.

Immediately after the offering, the trading price of Fretter stock rose sharply. But dark storm clouds loomed on the horizon. Facing the saturation of the market for VCRs and other home entertainment products, the consumer electronics retail industry soon fell into a disastrous tailspin. Suddenly, once prosperous companies foundered. Reflecting the rapidly deteriorating condition of their industry, companies within the consumer electronics retail business - Fretter and Highland included - saw the price of their stock plunge dramatically.

In the midst of the severe industry downturn, a Philadelphia law firm named Barrack Rodos & Bacine filed suit against Fretter, ostensibly on behalf of the firm's own tax counsel. Together, the lawyers claimed to be the official representatives of all shareholders who lost money in connection with their investment in Fretter stock. Recycling the same charges of

corporate wrongdoing they made in previous lawsuits against many other struggling public companies, the lawyers claimed that Fretter and its investment bankers intentionally defrauded investors and that this "fraud" caused investors to lose millions of dollars. Although this claim was preposterous in light of the risks described in Fretter's prospectus and the heavy losses also suffered by investors who bought stock issued by Highland and other consumer electronic retailers, Fretter quickly agreed to settle the case for just over two million dollars. Fighting hard to survive under desperate economic conditions, Fretter dug deep into its coffers to pay the lawyers' high price of peace. The lawyers walked away with more than a half million in legal fees, having done almost nothing to prosecute a suit they knew was absurd from start to finish - the ruthless exploitation of an entrepreneurial dream turned to nightmare.

Drawing upon the author's six years of experience in bringing this type of lawsuit, **FRAUD ON THE MARKET** exposes the everyday world of lawyers who have been called corporate ambulance chasers, blackmailers, "rapacious jackals," strike suit artists and professional bounty hunters. As members of a small but affluent fraternity of law firms throughout the United States, they are lawyers who regularly bring class action suits against corporations, corporate executives and other well-endowed denizens of the business world.

Feared and detested by the parties they sue, class action lawyers command the recognition, if not the respect, of their adversaries in the nation's elite corporate law firms. They are accorded deferential treatment by the judges

who hear their cases, most of whom believe that they provide an indispensable public service through "private enforcement" of important Federal laws and policies and, in particular, the nation's stock fraud laws. In recognition of their role in combating "crime in the suites," class action lawyers are handsomely rewarded - often through multi-million dollar fee awards.

Although they have been the subject of occasional articles appearing in nationally respected news publications, class action lawyers and their internal methods of operation remain obscure, shrouded by a cloak of well-preserved secrecy. Operating in the shadow of the legal profession, they are a mystery to virtually all who have occasion to cross their dreaded path.

What little is known, or at least suspected, about class action lawyers has upset many honest observers, including some Federal judges who have criticized the predatory conduct of attorneys practicing in what has been called "the class action industry." In stark contrast to their claim to be the professional benefactors of society's weak and powerless, class action lawyers actually engage in a variety of highly questionable activities, including:

* unethical solicitation of figurehead "clients" or sham "representation" of pliable family members, friends, business associates and professional troublemakers, all of whom merely lend their names to the lawyers' suits;

* systematic and indiscriminate filing of multi-million cases that make scurrilous charges of fraud, based

only upon stock market losses, public news reports and irresponsible conjecture - an action that routinely occurs within **hours** after public disclosure of adverse corporate information and an action that subjects even honest companies and businesspeople to years of costly litigation, extortionate settlement, or both;

* vicious warfare and corrupt deal-making among competing groups of class action lawyers, all of whom are anxious to pocket millions of dollars in legal fees by claiming to "represent" the same groups of "victimized" shareholders - conduct that truly victimizes precisely those shareholders in whose name suit has been brought;

* malicious prosecution of lawsuits designed solely to maximize legal fees obtained after the suits are settled through, among other things, unnecessary, duplicated or fabricated legal "work" and astronomical billing rates charged by marginally competent lawyers who claim to be "nationally recognized experts."

Throughout the 1980s, the proliferation of mergers, takeovers and other corporate restructurings, together with wild vacillations in the stock market, gave rise to a sharp increase in the number of suits brought by class action lawyers in the name of disgruntled investors. In 1986, the unofficial voice of Corporate America, The Wall Street Journal, authoritatively pronounced the existence of a growing "controversy" concerning shareholder class actions and class action lawyers. In 1988, The New York Times likewise reported a "bitter debate" about the impact of shareholder class actions upon American

business and about the "motivation of the small group of lawyers who specialize" in suing corporations. Now in the early 1990s, a record number of shareholder class actions have been brought in the wake of a national economic recession and the crisis in the savings and loan and banking industries. Because of the important national issues involved, the "debate" has boiled over into Congress, which is the battleground for what The Philadelphia Inquirer calls "a heavily lobbied, high-stakes struggle over reform legislation." See, Epstein, A War Over New Limits On Securities-Fraud Suits, The Philadelphia Inquirer, November 24, 1991 at D.1; Salwen, SEC's Breeden Blasts Justice's Ruling That Caused Dismissal of Securities Suits, The Wall Street Journal, November 22, 1991 at B4A; Editorial, Breeden Bashes RICO, The Wall Street Journal, November 13, 1991 at A16; Henriques, More Data, Less Time to Act On It, The New York Times, November 10, 1991 at F15; Editorial, Vengeance or Growth, The Wall Street Journal, November 26, 1991 at A14. (A copy of each of these articles is attached to this proposal in Appendix A.)

While class action lawyers like to portray themselves as "Davids fighting the Goliath of the world in defense of the little shareholders," others, including Pulitzer Price winning journalists Steve Coll and David A. Vise of The Washington Post, say that stockholder class actions "have become a cynical and highly profitable game played by and for lawyers without much regard for the interest of public shareholders."

Despite stinging criticism that has been levelled against them in the courtroom, pressroom, corporate boardroom, academic classroom and Congressional hearing room, class action

lawyers operate with impunity, bringing even more dubious "public interest" lawsuits and obtaining even more eye-popping windfall fee awards than ever before. Secure in their status as "private attorneys general," class action lawyers have been able to shrug off the criticism and go about business as usual. Unrestrained by the type of accountability that is the hallmark of almost every other kind of professional activity, class action lawyers conduct their profitable affairs with virtually unlimited discretion, accountable in the last analysis to no one. But shorn of their heroic pretensions, they are merely lawyers without clients.

In a book that lacerates pretension, the author takes readers behind the sordid scenes of the class action industry. As a one-time class action lawyer who entered the field to "do well by doing good," only to despair of the veniality and hypocrisy of his undertaking, the author honestly confronts the difficult issues implicit in the "debate" about class action lawyers. At the same time, he illustrates these issues colorfully with personal anecdotes that other class action lawyers would never dare share publicly.

FRAUD ON THE MARKET explains how class action lawyers manufacture the serious charges of corporate impropriety that are made in shareholder class actions. It candidly describes how these lawyers come to "represent" the phantom "clients" that make these cases lawyers' lawsuits. The book analyzes how judges try to distinguish between meritorious class actions (whose prosecution gives real meaning to the concept of private law enforcement) and those other class actions brought

only for their extortionate settlement value (whose prosecution substantiates charges that class action lawyers are blackmailers and and corporate ambulance chasers). The book exposes how class action lawyers prosecute their cases. It explores the cynical strategies that class action lawyers employ. It evaluates the relatively minor obstacles that class action lawyers must overcome in order to bring their cases to a profitable conclusion and it reveals how shareholder class actions are resolved. It questions the considerations that judges take into account before granting class action lawyers their much criticized "golden harvest of fees." And, above all else, **FRAUD ON THE MARKET** challenges the unexplored assumption that class actions are an effective and appropriate means of arresting the problem of corporate crime.

The issues are complicated and in them lies the fuse that has ignited what has been - until now - a vituperative but superficial debate about class action lawyers. The answers are elusive and obscure, made all the more obscure by those who successfully avoid straightforward discussion about the hard issues. Raising the level of the debate substantially while making it accessible to the non-professional reader, **FRAUD ON THE MARKET** confronts these issues, provides disconcerting answers and, in the process, shatters many long-held illusions. Written in a fluid style intended to attract the broadest possible audience, **FRAUD ON THE MARKET** will astonish and disturb a wide range of sophisticated readers who have an interest in law, business, government, economics and finance.

MARKET ANALYSIS

FRAUD ON THE MARKET is a unique book that offers the first and only "inside" account of corporate ambulance chasing among clientless attorneys - an important phenomenon that journalists have been unable to penetrate and explain comprehensively in their news media reports. See, O'Brien, The Class-Action Shakedown Racket, The Wall Street Journal, September 10, 1991 at A.20; Schmitt, Shareholder Suits Pay Attorneys Less, The Wall Street Journal, February 1, 1991 at B.1; Borden, The Shareholder Suit Charade, The American Lawyer, December 1989 at 67; Coll and Vise, Shareholder Suits: Profitable New Path For Attorneys, The Washington Post, July 24, 1988 at H 1; Kahn, The Big-Stakes Battleground of Shareholder Suits, The New York Times, January 10, 1988 at F 13; and Schmitt, Attorneys Are Often The Big Winners when Shareholders Sue Companies, The Wall Street Journal, June 12, 1986 at 31. (A copy of each of these articles is attached to this proposal in Appendix B.)

Now that high-profile Wall Street scandals and the savings and loan fiasco have accentuated the need for an effective assault on white collar crime, there is a compelling need to take an unsparing look inside the world of affluent lawyers who profit from their role as "private attorneys general." **FRAUD ON THE MARKET** fills that need and fills it in a balanced way that both enlightens and entertains its readers.

As Americans reconsider and live with the consequences of the 1980s, now commonly called "the decade of greed," there

has been no shortage of books describing the ethical permissiveness of the past ten years. As every educated reader knows, many books about greed on Wall Street have been published recently, with varying degrees of commercial and critical success. See, e.g., James B. Stewart, DEN OF THIEVES (Simon & Schuster 1991); David A. Vise and Steve Coll, EAGLE ON THE STREET (Charles Scribner's Sons 1991); Dennis B. Levine, INSIDE OUT (G.P. Putnam 1991); Michael Lewis, THE MONEY CULTURE (W.W. Norton 1991); Sarah Bartlett, THE MONEY MACHINE: How KKR Manufactured Power & Profits (Warner 1990); Dan G. Stone, APRIL FOOLS: An Insider's Account of the Rise and Collapse of Drexel Burnham (Donald I. Fine, 1990); James Sterngold, BURNING DOWN THE HOUSE: How Greed, Deceit, and Bitter Revenge Destroyed E.F. Hutton (Summit, 1990); Bryan Burrough and John Helyar, BARBARIANS AT THE GATE: The Fall of RJR Nabisco (HarperCollins, 1989); Michael Lewis, LIAR'S POKER: Rising Through The Wreckage On Wall Street (W.W. Norton, 1989);

In much the same vein, books about lawyers and the legal profession are being published with increasing frequency, a testament to the pervasive influence of the law upon modern social, economic and political affairs. See, e.g., Walter K. Olson, THE LITIGATION EXPLOSION: What Happened When America Unleashed the Lawsuit (Dutton/Talley 1991); Peter W. Huber, GALILEO'S REVENGE: Junk Science in the Courtroom (Basic 1991); David Marston, MALICE AFORETHOUGHT (Morrow 1991); Steven J. Kumble and Kevin J. Lehart, CONDUCT UNBECOMING: The Rise and Ruin Of Finley Kumble (Carroll & Graf, 1990); Kim Isaac Eisler, SHARK TANK: Greed, Politics and the Collapse of Finley Kumble

(Thomas Dunne/St. Martin's Press, 1990); Roy Grutman and Bill Thomas, LAWYERS AND THIEVES (Simon & Schuster, 1990); Robert H. Bork, THE TEMPTING OF AMERICA (Free Press, 1989); Gerry Spence, WITH JUSTICE FOR NONE: Destroying An American Myth (Times Books, 1989); Peter W. Huber, LIABILITY: The Legal Revolution and its Consequences (Basic 1988).

Within the legal profession, periodicals such as The American Lawyer and The National Law Journal enjoy a broad circulation. To satisfy the needs of the large audience within that circulation, both The New York Times and The Washington Post now publish weekly columns describing issues and personalities of special interest to the legal profession. Among general audiences, interest in legal affairs has grown so widespread that in July 1991 American Lawyer Media, with the financial backing of Time-Warner and NBC, established a cable television network providing **full-time** coverage of legal proceedings throughout the nation's Federal and state court systems. Lawyers are controversial public figures and, whether they like it or not, their activity inevitably attracts the harsh glare of national publicity. In August 1991, for example, Vice President Dan Quayle addressed a gathering of lawyers at the American Bar Association's annual convention. Citing facts and figures giving rise to serious concern about professional misuse of the nation's legal system, the Vice President challenged the lawyers to work toward constructive reform -- his comments were broadcast nationally on network and cable television news programs and they received prominent coverage in newspapers and magazines throughout the country. The issue

of legal reform is so important -- and so popular -- that some people believe it will play an appropriate role in the upcoming 1992 Presidential campaign. (See, e.g., Crovitz, Did You Hear the One About Quayle and the ABA President, The Wall Street Journal, August 21, 1991 at A.13; Crovitz, Lawyers Seek Senators as Advocates Against Quayle Reforms, The Wall Street Journal, September 18, 1991 at A.15.)

Clearly, the American public has a robust appetite for hard-hitting information about lawyers and serious legal issues. As American Lawyer publisher Steven Brill noted in his book, TRIAL BY JURY (American Lawyer/Simon & Schuster, 1990), how the legal system attempts to resolve "basic problems" relating to the "privileges and obligations of business...goes to the heart of how and whether the system works. Reporting on th[e] success - or lack of it - suggests how the system might work better." Mr. Brill's cable television venture also demonstrates that this kind of reporting is a recipe for critical and commercial success in the competitive media world of the 1990s.

While **FRAUD ON THE MARKET** has no published counterpart, it does touch upon some issues discussed in other important works. For example, EAGLE ON THE STREET by Steve Coll and David Vise describes how bureaucratic failures of the Securities and Exchange Commission contributed to the problems in the financial marketplace of the late 1980s. In exposing the rapacious conduct of class action lawyers, **FRAUD ON THE MARKET** exposes the failed system of "private" law enforcement - something that the S.E.C. itself calls a "necessary supplement" to government action and something that the Commission says is "critical" to the preservation of investor "confidence" in the "integrity" of the stock

market. Taken together, **FRAUD ON THE MARKET** and EAGLE ON THE STREET are like complementary bookends, each in its own different way discussing the same disturbing national problems.

In the same complementary fashion, both Walter Olson and Peter Huber have written books analyzing serious problems in America's system of justice, primarily in the context of personal injury lawsuits. Both authors have received well-deserved critical acclaim. Former Supreme Court Chief Justice Warren Burger praised Mr. Olson, a non-lawyer, for making a "valuable contibution to the public interest" that might "stimulate moves to control unethical lawyers." (Burger, Too Many Lawyers, Too Many Suits, The New York Times Book Review, May 12, 1991 at 12) Likewise, The Wall Street Journal congratulated Mr. Huber for his "devastating look at the [personal injury] liability crisis, which is proving ...a barrier to business innovation." (Brooks, Bookshorts: The Ones They Raved About In 1988, The Wall Street Journal, December 1, 1988 at A 20). In a theme also explored throughout **FRAUD ON THE MARKET**, both authors broadly condemn misuse of the legal system by "contingency-fee lawyers [who] descen[d] upon solvent defendants like swarms of African bees." (Kozinski, Torts are No Piece of Cake, The Wall Street Journal, October 6, 1988 at A 16). But in a concentrated focus, **FRAUD ON THE MARKET** describes these abuses in the specific context of shareholder class actions against essentially honest companies and business executives, an inherently controversial practice that makes the tort crisis "look like child's play" in the view of the editors of The Wall Street Journal. (Editorial, Disclosing The Court's Confusion, The Wall

Street Journal, March 9, 1988). In addition, **FRAUD ON THE MARKET** is written in a highly accessible style, highlighted by the human dimension of the author's own personal experience and enlivened by true inside anecdotes of a type not available in other, more academically oriented writings.

Carefully balancing the joint objectives of providing important public education and approachable entertainment, **FRAUD ON THE MARKET** exposes a festering scandal in America's system of justice. Its inflammatory subject matter alone ensures that the book will create a sensation among a large and sophisticated audience, including lawyers, judges, businesspeople, investors, financial commentators, scholars and government policy makers of every political persuasion.

THE AUTHOR

John Narkin is a 34 year old lawyer who systematically brought shareholder class actions against all types of American public companies and business executives throughout the scandal-ridden 1980s.

Following a professional apprenticeship under the Honorable A. Leon Higginbotham, Jr., a senior Judge of the United States Court of Appeals for the Third Circuit, and after a tenure as an attorney with Phillips, Lytle, Hitchcock, Blaine and Huber, a century-old law firm in upstate New York, Mr. Narkin began his membership in the class action industry in 1982. As an attorney with Barrack, Rodos & Bacine, a nationally known class action law firm based in Philadelphia, he strove idealistically to prosecute suits against bona fide stock market swindlers. But years of sustained exposure to the practices endemic in the class action industry, gained through his close working relationships with every one of the leading law firms in the securities class action bar, tempered Mr. Narkin's idealism and left his good intentions unfulfilled.

Belatedly recognizing that the concept of private law enforcement is a mirage perpetuated by affluent lawyers, guileless judges and frustrated government regulators, Mr. Narkin began research for **FRAUD ON THE MARKET** in October 1987 by spending thousands of hours analyzing litigation files, judicial opinions, court records, academic commentaries, corporate reports and news media accounts. At the same time, he continued to prosecute stockholder suits that almost uniformly resulted

in multi-million settlements - cases involving frivolous charges of corporate wrongdoing no less than cases involving blatant frauds. Two years later, in September 1989, Mr. Narkin ended his membership in the class action industry to devote full-time effort toward the writing of **FRAUD ON THE MARKET**. The result is an intensely honest book based on the direct personal experience of the author, a book that nevertheless treats its subject with dispassion and objectivity.

(As an experienced attorney, the author is acutely aware of the potential legal implications of such a book, especially one that describes activities involving a litigious group of lawyers. Although a superficial reading of the book might give rise to a concern that it might draw libel suits, such concern would be unfounded. Reporting only what is independently verifiable, without regard to facts that could be substantiated and illuminated by formal legal discovery in a lawsuit, **FRAUD ON THE MARKET** would summarily defeat any possible legal challenge. Given what legal discovery could illuminate, it is very unlikely that **FRAUD ON THE MARKET** will actually confront any legal challenges.)

Having left the class action industry, Mr. Narkin no longer has any stake in it. He hopes that publication of **FRAUD ON THE MARKET** will inspire a genuine debate about proper means of combating "crime in the suites" and that the debate will, in turn, lead to the creation of a more responsible system of private law enforcement.

A 1977 political science graduate of New York University and a Dean's Honors list graduate of Rutgers University

School of Law in 1980, Mr. Narkin is admitted to practice law in New York, New Jersey, Pennsylvania and numerous Federal courts. He is now a Vice President and Counsel of the Asia-Pacific Investment Co., Ltd., a foreign investment firm with business interests in various countries in the Far East and Middle East.

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Specifications: 522 pages of double spaced text and 62 pages of single spaced chapter notes

Manuscript is now complete, subject to editor's recommendations and revisions

CHAPTER SUMMARIES

PART ONE: THE PUBLIC DEBATE ABOUT SHAREHOLDER CLASS ACTIONS AND CLASS ACTION LAWYERS

Chapter 1: LAWYERS WITHOUT CLIENTS

Judge Henry Friendly, one of the great legal scholars of the 20th Century, admitted that token "clients" in class action suits are little more than "key[s] to the courthouse disposable once entry has been effected." Another respected Federal judge, Ruggerio Aldisert of the U.S. Court of Appeals for the Third Circuit, likewise concedes that "it is counsel for the [nominal] class representative and not the named parties who direct and manage [class] actions." According to Judge Aldisert, "any statements to the contrary are sheer sophistry."

Despite such candid observations, virtually everyone involved in the class action suit phenomenon wallows in "sheer sophistry." Pretending that figurehead "clients" are the true parties in interest in what are actually lawyers' lawsuits, judges allow class action lawyers to operate without practical restraint. The result is that class action lawyers treat the court system as if it were their own personal playground, a high-stakes casino where they sue public companies and speculate freely for their own accounts.

Without bothering to penetrate the thin veneer of illusion, some judges express outrage at the manner in which class

action lawyers file, prosecute and settle their clientless lawsuits. U.S. District Judge Charles Kocoras of Chicago decries the "base work of rapacious jackals whose declared concern for the corporate well-being camouflages their unwholesome appetite for corporate dollars." U.S. District Judge Joseph McGlynn of Philadelphia endorses a "widely-held and mostly unfavorable impressio[n] of...the class action industry": a "conspiracy" among contingency-fee lawyers to operate on "the buddy system ...at the expense of the [public]" through "needless proliferation of lawyers, wasted time and unnecessary expenses." U.S. District Judge Stanley Brotman of New Jersey sharply criticizes class action lawyers for their "blind haste" to file "premature" and factually unsupported shareholder suits that amount to a "misuse of the judicial process." Many other judges lament the "golden harvest of fees" and unearned "windfall" fee awards granted to "avaricious" lawyers who "devour" their clients' recoveries through manufactured professional activity.

Because these criticisms address merely the symptoms of clientless lawsuits, without challenging the dubious assumptions that make these suits possible, corporate officers and directors continue to find themselves indiscriminately hauled into court as white collar criminals and racketeers. The typical result is years of costly and unproductive litigation, followed by multi-million settlements and windfall fee awards to the undeserving class action lawyers. As Alan Shugart, Chief Executive Officer of Seagate Technology, truthfully explained to The Wall Street Journal, all of this can be set in motion by "[a]nybody with a law degree and a Xerox machine."

Against the backdrop of criticism levelled against the clientless lawyers who bring shareholder class actions, Chapter 1, essentially an introductory chapter, describes the general purpose and practical operation of class action litigation brought in the name of "angry" stockholders. Highlighting the public comments of businessmen, journalists, academic commentators and Federal court judges, the chapter explains, in general and simplified terms, how class actions are able to extort settlements from legitimate companies and business executives. Motivated by an insatiable lust for multi-million fee awards, class action lawyers skillfully exploit economic leverage made available to them by court rules that aggregate the individually trivial claims of thousands of private citizens. Confronted with such leverage, corporate defendants face the terrifying possibility that they will adjudged liable for damages that could put them out of business. Central to the chapter is the theme that class action lawyers are unlike any other group of attorneys and that class actions are really lawyers' lawsuits, brought by and for the benefit of the attorneys alone. Capitalizing upon a phenomenon scarcely understood even by legal experts, class action lawyers operate without regard to the interests of any real clients and in ways that cynically exploit the public interest.

(Part One of the book, "The Public Debate About Shareholder Class Actions and Class Action Lawyers," is intended to give non-professional readers a basic introduction to the issues and personalities involved in the superficial public "debate"

about class action lawyers - background information that is needed to provide a proper context for the more scintillating factual material contained in Part Two of the book, "Inside The Class Action Industry." The "inside" story of the class action industry, in turn, is told in order to provide a catalyst to the genuine debate described in Part Three of the book, "The Class Action Debate Redux.")

Chapter 2: THE PRIVATIZATION OF PUBLIC LAW ENFORCEMENT

Contrary to what many people believe, government agencies such as the Securities and Exchange Commission and the United States Department of Justice do not act alone in their enforcement of Federal laws and policies. These agencies are joined, perhaps even superseded, by class action lawyers - wealthy entrepreneurs who claim to protect the public welfare through "private" enforcement of the law. To **encourage** class action lawyers to bring their cases, courts systematically bestow ridiculously large fee awards upon lawyers who operate in the name of the public interest.

Chapter 2 scrutinizes this policy justification for class action suits and it concludes that the public record substantiates class action lawyers' repeated claim that government agencies are unable or unwilling to wage a consistent fight against "crime in the suites." Despite the high-profile stock fraud cases of the late 1980s, the S.E.C. has historically been underfinanced and understaffed. Even former S.E.C. Chairman David Ruder conceded that the Commission's skimpy budget makes it "a peanut agency doing a giant's job," a job in which it is vastly overmatched by cunning stock market manipulators. S.E.C. officials also complained for years that their ability to enforce the law is so limited that stock swindlers were "punished" through "painless settlements" that do virtually nothing to discourage the commission of white collar crime. And in recognition of its many institutional limitations, the S.E.C. publicly lauds "private" suits filed by class action lawyers as "a most effective weapon

in the enforcement" of the securities laws and "a necessary supplement to Commission action."

Having appraised the government's inconsistent law enforcement record, Chapter 2 describes how the urgent need for **some** means of extra-governmental law enforcement has frustrated meaningful debate about class action lawyers. Because there is an enormous law enforcement vacuum for them to fill, class action lawyers claim credibly that the public **needs** them to help fight white collar crime. Many respected judges and commentators agree, without mentioning the many instances where class action lawyers were found to have blatantly violated their public responsibilities. Since no plausible alternative to their brand of private law enforcement has yet been offered, class action lawyers have had little trouble deflecting their critics and in maintaining their money-making "public service" racket - even in the face of serious concerns about the motivation, methods of operation and performance of the mercenary band of clientless lawyers who call themselves private attorneys general. False assumptions have gone undisturbed and the exigency for overdue reform has gone unfulfilled. It is in this context that **FRAUD ON THE MARKET** sounds an alarming wake-up call.

Chapter 3: OF BAD APPLES AND HIGH RISK PLAYERS

Since class action lawyers justify their profitable enterprise on the grounds that they provide indispensable public services, are they **really** the type of men and women who can be counted upon to discharge important social responsibilities? Chapter 3, which summarizes the misleading and inconclusive public record compiled by professional journalists, provides no definitive answer to this question, inviting readers instead to draw their own conclusion from the "inside" story recounted in immediately succeeding chapters.

In identifying and describing the personalities of the most notable lawyers in the class action industry, Chapter 3 introduces readers to a world of exaggerated rhetoric and immodest, but essentially false, claims of professional dedication. Although these claims are usually accepted at face-value by judges and journalists alike, the public record often reflects the individual accomplishments of class action lawyers and, less frequently, it reflects the occasions when the lawyers are found to have acted out of step with their public duties. Chapter 3 gives readers a quick bath in these shallow waters and it braces them for the torrential rainstorm to follow....

PART TWO: INSIDE THE CLASS ACTION INDUSTRY

Chapter 4: INNOCENCE LOST

Formed in 1976, Barrack Rodos & Bacine began operating with three struggling attorneys attempting to practice law out of cramped offices on the trash-ridden outskirts of Philadelphia's business district. Trained under the tutelage of class action industry pioneers Harold Kohn and David Berger, Len Barrack, the founder and senior partner of Barrack Rodos & Bacine, was educated by masters in the rugged art of bringing and settling shareholder class action suits. In starting his own firm, Len Barrack was sustained by little more than driving ambition. By the end of the 1980s, however, Len Barrack was a multi-millionaire, presiding over a firm of 20 lawyers with fancy offices overlooking prestigious Rittenhouse Square - a paradigm of success in the class action industry.

In 1982, when Barrack Rodos & Bacine was still laboring to meet its expenses in the low-rent district, the author joined the firm as a bright-eyed 24 year old idealist, filled with conviction about all the constructive things that our legal system can accomplish. The impulse to "do good," in the words of class action lawyer William Lerach, has an irresistable appeal to young lawyers determined to make responsible use of their professional education and training.

The most intensely personal section of **FRAUD ON THE MARKET**, Chapter 4 traces the history of the author's membership in the class action industry, a place where good intentions

are used to justify a relentless pursuit of money and power. Instead of the "good" the author naively hoped to accomplish in the class action field, he witnessed professional behavior that would embarrass even the most profit-oriented lawyers: Falsified time reports and fraudulent counsel fee applications. "Private attorneys general" who applaud stock market crashes, recession and other economic calamity. Incompetence on a frightening scale. Sweetheart settlements that sell-out the legitimate interests of defrauded investors. Featherbedding, meaningless busywork and other made-up professional "activity," all of which sustains the hedonistic lifestyles of "public servants" who own personal helicopters, fleets of luxury automobiles and ornate oceanfront vacation homes.

Recounting disturbing events that refute that the contention that class action lawyers can be relied upon to provide important public services, Chapter 4 tells the story of the author's lost innocence. As the pages unfold, readers will discover how misplaced idealism and philosophical legerdemain could no longer conceal the reality that class action practice, as the author came to experience it, serves the public welfare only coincidentally and that in its motivation, design and execution, it is an instrument of misanthropic social expoitation.

Chapter 5: REASONABLE INQUIRY?

Milberg Weiss Bershad Specthrie & Lerach is the largest, most successful and most publicized class action law firm in the United States, with bustling offices in New York City and San Diego, California. In its West Coast practice, Milberg Weiss is led by William Lerach, a fiery lawyer well regarded for his brilliance as a Federal court litigator. He is also known for his success in suing foundering public companies based in California and other western states. In this mission, Bill Lerach is assisted regularly by Barrack Rodos & Bacine, a firm that "joint ventures" hundreds of shareholder suits brought in conjunction with the esteemed Milberg Weiss. The cooperative bond between Milberg Weiss and Barrack Rodos & Bacine is so strong and so well-established that several lawyers in the Barrack firm maintain permanent offices in Milberg Weiss' West Coast facilities.

Class action lawyers operate on the principle that every one of their stockholder suits has its "price" - an amount in which their cases can be settled for a generous award of legal fees, **regardless** of the merit of the lawyers' legal claims. The lawyers' goal is to profit from as many of these suits as humanly possible, a goal that Milberg Weiss and Barrack Rodos & Bacine strive to accomplish through their unique working relationship.

In 1987, Milberg Weiss and Barrack Rodos & Bacine combined to bring a shareholder suit against Ross Stores, a financially ailing chain of discount clothing shops based

in the San Francisco Bay Area. Using time-honored techniques employed throughout the class action industry, the lawyers asserted boilerplate charges of corporate crime lifted wholesale from allegations they made against other companies in other lawsuits; they adapted these allegations to the purposes at hand by means of scotch tape, scissors and secretaries adept at using word processing equipment. The improbable result of the lawyers' activity: (1) a $4 million settlement obtained quickly on the basis of unsupported allegation and no evidence of corporate impropriety and (2) a $1 million counsel fee award carved up gleefully among the lawyers of Milberg Weiss and Barrack Rodos & Bacine. In the peculiar world of the class action industry, every case **does** seem to have its price!

Illustrating the practical application of the "every case has its price" maxim, Chapter 5 exposes how class action lawyers actually come to bring their profitable lawsuits. By meticulously reading The Wall Street Journal and other financial publications and by monitoring the Dow Jones Wire service through sophisticated computer equipment, class action lawyers furtively search for news developments that might conceivably allow them to level charges of corporate misconduct. The chapter describes how class action lawyers compete fiercely with one another to be the first to file suit **whenever** certain types of information are publicly reported, causing a mad frenzy among the lawyers to manufacture legal complaints that incorporate warmed-over charges of corporate crime. Although the result does not usually comport with the "reasonable inquiry" requirement of the Federal court

rules and although class action suits are often filed on the basis of unsubstantiated conjecture and raw suspicion, Chapter 5 explains why class action lawyers are seldom sanctioned by judges for bringing factually unsupported lawsuits. Using startling personal anecdotes and other factual material to illustrate this point, Chapter 5 demonstrates how easy it is for honest companies and businessmen to be sued in class action cases, where they face years of ruinous litigation and the possibility of paying millions of dollars to satisfy nebulous shareholder claims.

Chapter 6: PHANTOM CLIENTS AND OTHER INTRIGUE

Almost without exception, shareholder class actions are drummed up by lawyers who recruit investors willing to serve as nominal class representatives. Because class representatives are supposed to be "vigorous" advocates who require their lawyers to display undivided loyalty to interests of victimized class members, judges expect that class representatives will operate as an "independent" restraint on the conduct of class action lawyers. In practice, however, class representatives are substantively extraneous appendages to class action cases, accommodating individuals who merely lend their names and legal standing to lawyers' lawsuits. Because few people are willing to serve in this disingenuous role, there is an unrelenting scramble among class action lawyers to "find" facially credible class representation. Many times the representation is not even remotely credible.

Steve Goldman is an unassuming bookkeeper employed by Barrack Rodos & Bacine, where his wife Maxine is also employed as the firm's office manager. Working every day in his office at the Barrack firm, Steve Goldman is paid by Len Barrack to "research" public companies and to dig up plausible claims of corporate wrongdoing against them. Although Steve and Maxine Goldman make their living by acceding to the wishes of Leonard Barrack, Barrack Rodos & Bacine has repeatedly brought shareholder suits in the "independent" name of Mr. Goldman. In many of these cases, the nationally renowned class action firm

Milberg Weiss has also claimed to represent Steve Goldman. Some of those suits were settled quietly for millions of dollars.

In one rare case, however, Steve Goldman's repeated involvement in class action litigation was called into serious question. In June 1989, Barrack Rodos & Bacine and Milberg Weiss brought suit in Mr. Goldman's name against Egghead, Inc., a national chain of discount computer software stores. After Steve Goldman's lawyers disobeyed court orders compelling Mr. Goldman to give a truthful account of his interest in the suit, Chief Judge Barbara J. Rothstein of the U.S. District Court in Seattle found that Mr. Goldman was a "sham class representative" who cooperated with his lawyers in an "abusive manipulation of the judicial process." For their "abusive litigation practices," Judge Rothstein levied a hefty monetary fine against Steve Goldman **and** his employers in May 1990.

Like Steve Goldman, a few other malleable investors consistently lend their names to lawyers' class action suits. But the class representation provided by these sham plaintiffs is hardly ever challenged successfully. Chapter 6 unmasks the "professional plaintiff" syndrome and it explains how class action lawyers are able to recruit other types of figurehead "clients" who reluctantly agree to lend their names to the lawyers' suits. Describing the particular types of figurehead clients, the author relates several personal experiences that graphically illustrate the point that class action lawyers' "clients" are, as Judge Henry Friendly observed, merely "keys to the courthouse door disposable once entry is effected."

Illuminating an anomalous departure from more legitimate attorney/client relationships, Chapter 6 emphasizes that most class action "clients" want nothing to do with lawsuits in which they have no interest and appear only nominally as class representatives.

Although the involvement of "clients" in shareholder class actions is the stuff of strange fiction, Chapter 6 shows how class action lawyers desperately **need** such "clients" in order to cut their way into high-stakes litigation action. In many cases, several different class action lawyers each claim to represent the same class of investors against the same companies and business executives. Chapter 6 recounts how class action lawyers engage in unseemly political bargaining to gain control of these suits - including the bartering of phantom "clients" like fungible cattle. Out of this bargaining comes a team of lawyers bent on lining their pockets at the expense of the class members they pretend to represent.

Chapter 7: ON THE ROAD TO ECONOMIC LEVERAGE

Having created charges of corporate wrongdoing and having "found" a willing "client" to "represent," class action lawyers face only two obstacles before they can exercise economic leverage over the defendants they sue: legal motions to have the suits thrown out of court and legal motions to certify the suits as class actions. Chapter 7 reveals how these are usually minor obstacles easily overcome by competent class action lawyers.

Shareholder class actions are seldom thrown out of court in preliminary dismissal motions. As explained in Chapter 5, class action lawyers habitually assert boilerplate charges of corporate crime that are lifted wholesale from pleadings filed in previous suits against other corporations and executives - the dubious art of allegation by word processor. Even when class action lawyers are exposed as being purveyors of assembly line justice, judges have allowed class action lawyers' suits to proceed. Under prevailing legal standards, unsupported suspicion is a viable basis for the initiation of shareholder class actions and cynically manufactured legal pleadings are the established norm rather than the impermissible exception.

Class certification "battles" are even less threatening to class action lawyers. Phantom "clients" can be liars, convicted felons, ignorant fools and self-evident props for the class action lawyers, yet judges **still** grant class certification - even when their lawyers have been publicly reprimanded

for serious misconduct in previous cases. And despite Steve Goldman's unusual experience, professional plaintiffs are almost never disapproved by the court as class representatives - the fact that they have permitted class action lawyers to level charges of "fraud" against **hundreds** of different companies is actually considered to be a positive virtue, not something that calls into question the sincerity of their repeated involvement in class action suits.

Describing legal procedures in simplified terms and citing particular examples, Chapter 7 explains how even the most thoughtlessly conceived suits usually survive the preliminary obstacles to economic leverage, with the result that corporate defendants often settle the suits rather than face the protracted ordeal and intimidating uncertainty of class action litigation.

Chapter 8: CAPITULATION, COMPROMISE AND COLLUSION

Chapter 8 addresses the issue of quick and effortless settlements, occasions when the interests of victimized class members are often disregarded by fee-conscious class action lawyers and their figurehead "clients."

Class action lawyers salivate at the prospect of easy settlements, in the clearly meritorious cases as well as the frivolous. For class action lawyers - who boast incessantly of their role as "high risk players" - an early settlement takes all the risk out of the equation. It means not having to go through years of expensive pre-trial fact-finding activity, not having to confront the vagaries of defendants' dismissal motions at the end of the suit and not having to bluff enthusiasm about bringing the cases to trial. More importantly, it also guarantees that the class action lawyers will pocket an immediate award of counsel fees. Balanced against such considerations, the amount of compensation to defrauded investors is a matter of slight concern to class action lawyers, if it is a matter of any concern at all.

In theory, judges are supposed to pass independently upon the adequacy of class action settlements. But in practice, judges consider only what is put before them. Class members almost never bring their objections to the attention of the court. And class action lawyers and corporate defendants eager to buy peace work together to tell judges what they want to hear, what will enable courts to dispose of a suit that might otherwise take years of judicial time to resolve. Then, of

course, there is the overriding matter of the class action lawyers' fee application....

Chapter 8 unveils how "confirmatory discovery" is used to maneuver doubtful settlements through the court approval process. Corporate defendants produce some of their inconclusive business records to class action lawyers, who spend weeks of their time ponderously reviewing the documents **after** settlement in principle has already been reached with the defendants. Corporate executives then appear for sworn depositions, where days of meaningless testimony is transcribed. In the end, class action lawyers tell the court that they have found no hard evidence to support their charges of corporate wrongdoing, a representation that is intended to show that the proposed settlement is an **extraordinary** deal for allegedly victimized stockholders. The defendants nod their heads in vigorous agreement. And having no idea what else to do, judges routinely approve such settlements and they reward class action lawyers with millions of dollars in fees for perfunctory "confirmatory discovery" activities. (This topic is revisited again in Chapter 10, "Endgame," and Chapter 11, "The Golden Harvest.")

Illustrated by several specific examples, Chapter 8 explores the rough terrain of confirmatory discovery, painless "sweatheart" settlements and naked exercise of economic leverage, phenomena most pronounced in suits brought by class action lawyers to block corporate mergers, buy-outs and similar transactions. Other peculiar forms of cooperation among class action lawyers and counsel for corporate defendants are also described - especially their collusive efforts to defeat the

interests of insurance companies, the ultimate "deep pocket" in American civil litigation.

Chapter 9: BOONDOGGLES, FREE-RIDERS AND LITIGATION BLACK HOLES

While class action lawyers' legal briefs sound all of the right notes about how they are the struggling champions of society's powerless, there is nothing about the lifestyle of the poor and obscure that has much appeal to the champagne tastes of class action lawyers. Class action lawyers bring their cases throughout the country, often an entire continent away from their home offices. But as private attorneys general, they travel in the type of comfort usually reserved for presidents, kings and corporate tycoons, staying in the nation's most opulent hotels and dining in the country's finest restaurants. And when they arrive to "work" in their far-flung destinations, class action lawyers dedicate themselves single-mindedly to the task of racking up as many billable hours as possible before putting their suits to a profitable rest.

Virtually all class action law firms send their young lawyers to attend depositions in which they play no role, meaningful or otherwise. It is "activity" for which these firms collect hundreds of thousands of dollars in unearned legal fees. Representing Barrack Rodos & Bacine, the author himself has engaged in this same "activity," logging countless air miles travelling to far away cities, all to sit silently and watch other lawyers question witnesses. Although it is a boring and unproductive thing for a lawyer to do - and not an ounce of benefit is conferred upon victimized shareholders - it is a time-honored way to obtain attorneys' fees in the class action industry.

Indeed, class action lawyers are at their most creative in divising ways to rack up hour after hour in feigned litigation activity: Extensive "review" of corporate records already known to be worthless. Preparation of bogus written "analyses" and other meaningless "pre-trial" documents. Proliferation of personnel and duplication of "effort" on a scale that would make even the most indolent Soviet bureaucrat blush. But unlike the Soviet bureaucrat, class action lawyers find that at the end of their "workday," wasted time is magically transformed into a pot of gold.

Class action lawyers bring their clientless suits for one reason alone: to obtain millions of dollars in counsel fees. Since these lawyers have been paid by the hour in most Federal courts and since they have no real clients to monitor how they spend their time, class action lawyers scheme to engage in a variety of pointless activities that feather their own nests, but which unnecessarily plunder the amount of money available for disposition to genuinely defrauded shareholders. Drawing upon the author's personal experience in the class action industry, Chapter 9 unmasks these activities in all their unsavory details.

Chapter 10: ENDGAME

Laventhol & Horwath was once the seventh largest accounting firm in the United States. Based in Philadelphia, just a few floors down from the offices of Barrack Rodos & Bacine, Laventhol maintained an active "litigation consulting" practice. Among other things, Laventhol made its accountants available to lawyers in need of "expert" testimony to support their charges of financial impropriety. Need an expert witness? If you had the financial ability to pay their professional fees, Laventhol was ready and willing to sell "authoritative" opinions about a broad variety of accounting and auditing issues. Like other class action law firms, Barrack Rodos & Bacine is in the business of suing corporations, businessmen and accountants based upon claims of fraudulent financial reporting. For a price, Laventhol was always eager to help the Barrack firm malign the competence and integrity of the nation's most reputable accounting firms.

But on November 21, 1990, Laventhol was forced to file a bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York. Citing the cost of defending **itself** against more than 100 suits accusing the firm of shoddy auditing work (for which Laventhol's partners remain potentially liable for tens of millions of dollars in damages), Laventhol's Chief Executive Officer lamented the fact that the firm's "inclusion in such actions was more a result of the perception of it being a deep pocket than the result of [actual] deficiencies in the satisfaction of its professional responsibilities." In

this ironic fashion, Laventhol perished by the bloody sword on which it had long prospered.

Chapter 10 details the eleventh hour maneuvering that takes place in the final stage of class action lawsuits that drag on through years of genuinely contested litigation - the stage where professional mercenaries like Laventhol play a role of decisive importance. It is here that the class action lawyers try to feign enthusiasm about bringing their cases to trial while they pay shiftless expert witnesses to testify on their behalf in sworn pretrial depositions. And it is here that corporate defendants finally have a chance, however remote, of persuading a court to throw the class action lawyers' suits out of court for lack of merit. But, as Chapter 10 notes, it is also here that judges intensify the pressure upon the defendants to settle these cases by one means or another, presaging a settlement approval process that is all but pre-ordained, even when the interests of the class members have been compromised by the class action lawyers' feckless prosecution activities.

Chapter 11: THE GOLDEN HARVEST

Harold Kohn, the septuagenarian godfather of the class action industry, once asked a court to impose monetary sanctions against his colleagues for their "conspir[acy] to produce over-staffing, overbilling, and needless busy work." Judge Joseph McGlynn of Philadelphia wrote a 189 page court decision excoriating those lawyers for their "wasted hours on useless tasks," their profligate "duplication" of effort and their "outright padding" of legal bills presented to the court. Another court officer wrote that William Lerach, perhaps the most formidable class action lawyer in the United States, submits fee applications that do not "wash" because they claim thousands of dollars in compensation for activities that are "largely duplicative" and "of questionable benefit" to allegedly defrauded investors. Detecting "the padding of hours" and a marked lack of "genius" among the battalion of class action appearing before him, U.S. Judge J. Thomas Greene of Utah ridiculed an overreaching fee application submitted by lawyers calling themselves "the most experienced class action litigators in the country."

In the strange world of class action lawyers, inventive "padding of hours" is an industry-wide practice, a normal and profitable way of conducting business. But because class action lawyers are believed to provide necessary public services, most judges look blindly the other way and award class action lawyers all of the legal fees they so avariciously request.

Analyzing numerous court decisions, Chapter 11 explains how and why class action lawyers continue to receive millions

of dollars in court awarded attorneys' fees, all for insubstantial legal "work." This has not changed despite the fact that the prevailing lawyer compensation scheme was harshly criticized by a Federal court task force in 1985 because it "encourag[es] lawyers to expend excessive hours..., engage in duplicative and unjustified work, inflate their normal [billing] rate, and include fictitious hours or hours already billed on other matters." Chapter 11 argues that in the absence of **fundamental** reform, class action lawyers are in no danger of exhausting their "golden harvest" of windfall fee awards. The ultimate losers are the supposed beneficiaries of our nation's system of private law enforcement.

PART THREE: THE CLASS ACTION DEBATE REDUX

Chapter 12: THE MYTH OF DETERRENCE

A corporate lawyer friend once asked the author for advice concerning ways that corporations and business executives might avoid getting sued in shareholder class actions. The friend asked whether there were any careful methods of drafting his clients' shareholder disclosure documents so that there would be less chance that class action lawyers would charge that the documents contained false and misleading information. It was a sensible question, one that reflected the corporate lawyer's respect for the role of class action lawyers in providing private enforcement of the law.

Wanting to be as helpful as he could, the author thought about his friend's question long and hard. But the author could be of no real assistance: the only safe way to avoid shareholders' class action litigation is for corporate clients to resist any downturns in their businesses; to keep the price of their stocks high; and to stay away from embarrassing press releases and news media stories that might arouse the interest of class action lawyers. Once the interest of these lawyers is aroused, it matters little how careful corporate clients have been to provide complete and accurate shareholder disclosure - it will never be careful enough in the jaundiced eyes of class action lawyers.

Chapter 12 contends that this type of "law enforcement" does not and cannot promote compliance with the law, and that it actually strikes terror into the heart of those who ardently desire to abide by precepts of honesty and lawfulness. Chapter 12 also asserts that this type of "law enforcement" arbitrarily punishes innocent victims of misfortune just as readily as it punishes those who flagrantly violate the rights of others. Questioning whether such "law enforcement" has any real effect in deterring "crime in the suites," Chapter 12 directly challenges the heart of the private law enforcement rationale advanced by the fee-obsessed members of the class action industry.

Contrasting the public policy justification for class action litigation with the corrupt entrepreneurial reality of the class action industry, Chapter 12 argues that the concept of private law enforcement is an expensive and ineffective mirage that American society can ill-afford in an era of burgeoning white collar crime and $500 billion financial scandals. Because America's future in the global economy of the 1990s hangs increasingly in the balance, Chapter 12 calls for a comprehensive reappraisal of our nation's current system of economic regulation and law enforcement.

Chapter 13: TRYING TO FIND A BETTER WAY

As long ago as 1977, former U.S. Attorney General Griffin Bell called abuse of the class action system "a very important problem affecting the courts of the United States and the public" - a problem that cried out for radical solution. Many other government officials agreed. As Senator Dennis DeConcini said in 1978, "Dissatisfaction with the current [class action system] is widespread, and...the need for change is compelling....[U]nless we begin to act, the basic credibility of our justice system and access to our Federal courts will be called into question. To arbitrarily close the doors of the courts to class actions gives the appearance of condoning illegal conduct...At the same time, however, we must protect honest and legitimate businesses from unwarranted attacks."

In the many years since 1978, "honest and legitimate businesses" have been under unrelenting attack from the lawyers of the class action industry. Chapter 13 maintains that the long-ignored problem is now finally exploding in the early 1990s.

A Brookings Institution task force reports that American "businesses spend too much on legal expenses at a time when they are confronted with increasingly intense international competition. They pass these costs onto consumers, who then pay unnecessarily high costs for the products and services they buy." The Brookings Institution report also says that "[t]he rising costs of litigation

are draining valuable resources from the essential functions of American business: making better products at the lowest possible cost," a phenomenon that is "hit[ting] the bottom line, cutting into profits [and] divert[ing] the time and energy of corporate officials from their business responsibilities." Echoing many of these same ideas, Senate Judiciary Committee Chairman Joseph R. Biden, Jr., complains that high costs and inefficiency in the Federal court system are slamming the courthouse door shut to the poor and middle class of the United States, who are being "squeezed out" of their legal system. And it is because of this that the Bush Administration in August 1991 proposed reforms that might eventually lead to a sweeping overhaul of America's system of civil justice. Senator DeConcini was prophetic in 1978 when he warned that failure to rectify lawyer abuses would help to undermine the "basic credibility of our justice system and access to our Federal courts."

Tying together the themes of Chapters 11 and 12, Chapter 13 traces the many problems that have plagued past attempts to effect legislative and judicial reform of the legal system. The chapter argues that recent troubles in the Federal court system (as documented by the Bush Administration, The Brookings Institution, Senator Biden and others) have underscored the necessity of addressing the recurring abuses of the class action industry through bold and radical change. Although the thrust of Chapter 13 is a call for a genuine **search** for the truth about the role of class action lawyers and class action suits in the realm of America's fight against "crime

in the suites," the chapter offers several concrete suggestions for constructive reform.

OFFICE OF THE VICE PRESIDENT
WASHINGTON

TO: Ann

FROM: Richard W. Porter
Counselor to the Vice President

☐ FYI

☐ Comment

☐ Action

File with
Civil Justice Reform
materials

ATRA Tort Reform Record

1212 New York Avenue, N.W. • Suite 515 • Washington, D.C. 20005 • (202) 682-1163

December 31, 1991

The American Tort Reform Association was organized in 1986 to bring greater fairness and efficiency to the civil justice system through public education and the enactment of state legislation. Today it represents approximately five hundred non-profit organizations, professional societies, trade associations and businesses. ATRA accomplishes its mission primarily by coordinating and supporting the activities of legislative coalitions in each of the states, by keeping its members informed of developments and mobilizing them for action, and by keeping media attention focused on the need for civil justice reform.

Tort Reform Record is published every June and December to record the accomplishments of the latest legislative year. It includes a single-page state-by-state summary of generic tort reforms enacted by the states since January, 1986, and then an issue-by-issue elaboration of what each state has done. ATRA has also, of course, achieved specific reforms in such fields as professional malpractice, municipal liability and products liability.

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SUMMARY

Alabama	Coll Srces, Puni Cap $250,000, Friv Penlty
Alaska	Jt & Sev, Non Ec Cap-$500,000, Coll Srces, Puni Evid Stand, Periodic Pay
Arizona	Jt & Sev, FDA Def to Puni
Arkansas	
California	Jt & Sev, Puni Evid Stand
Colorado	Jt & Sev, Non Ec Cap $250,000, Coll Srces, Puni Cap=Compen, Friv Penlty
Connecticut	Jt & Sev, Coll Srces, Periodic Pay, Friv Penlty
Delaware	
D.C.	
Florida	Jt & Sev, Coll Srces, Puni Cap=3 x Compen, Periodic Pay, Friv Penlty
Georgia	Jt & Sev, Puni Cap=$250,000, Friv Penlty
Hawaii	Jt & Sev, Non Ec Cap=$375,000, Coll Srces, Friv Penlty
Idaho	Jt & Sev, Non Ec Cap, Periodic Pay, Coll Srces, Puni Evid Stand, Friv Penlty
Illinois	Jt & Sev, Coll Srces, Puni Evid Stand, Friv Penlty
Indiana	Coll Srces, Friv Penlty
Iowa	Jt & Sev, Coll Srces, Prej Int, Puni Evid Stand and Bifur Trial, Periodic Pay, Friv Penlty
Kansas	Non Ec Cap, Puni Cap=lesser of def ann gross income or/$5M
Kentucky	Jt and Sev, Coll Srces, Puni Evi Stand
Louisiana	Jt & Sev, Prej Int, Friv Penlty
Maine	Prej Int
Maryland	Non Ec Cap=$350,000, Periodic Pay
Massachusetts	
Michigan	Jt & Sev, Coll Srces, Prej Int, Periodic Pay, Friv Penlty
Minnesota	Jt & Sev, Non Ec Cap, Coll Srces, Prej Int, Puni Evid Stand & bifur trial, Friv Penlty
Mississippi	Jt & Sev, Friv Penlty
Missouri	Jt & Sev, Coll Srces, Puni=Bifurcated Trial
Montana	Jt & Sev, Coll Srces, Pun Evid Stand, Periodic Pay
Nebraska	Jt & Sev, Prej Int, Friv Penlty
Nevada	Jt & Sev, Puni Cap, Puni Evid Stand
New Hampshire	Jt & Sev, Puni Prohib, Friv Penlty
New Jersey	Jt & Sev, Puni Evid Stand, Coll Srces, Friv Penlty
New Mexico	Jt & Sev
New York	Jt & Sev (for non ec), Coll Srces Periodic Pay, Friv Penlty
North Carolina	
North Dakota	Jt & Sev, Coll Srces, Puni Evid Stand, Periodic Pay, Friv Penlty
Ohio	Jt & Sev, Coll Srces, Puni Evid Stand, Periodic Pay, Friv Penlty
Oklahoma	Prej Int, Puni Cap=Comp, Friv Penlty
Oregon	Jt & Sev, Non Ec Cap=$500,000, Coll Srces, Puni Evid Stand, Friv Penlty
Pennsylvania	
Rhode Island	Prej Int, Periodic Pay, Friv Penlty
South Carolina	Pun Evid Stand, Friv Penlty
South Dakota	Jt & Sev, Puni Evid Stand, Periodic Pay
Tennessee	
Texas	Jt & Sev, Prej Int, Puni Cap=4 x Comp or $200,000, Friv Penlty
Utah	Jt & Sev, Puni Evid Stand, Friv Penlty
Vermont	Jt & Sev
Virginia	Puni Cap=$350,000, Friv Penlty
Washington	Jt & Sev, Periodic Pay, Friv Penlty
West Virginia	
Wisconsin	
Wyoming	Jt & Sev, Friv Penlty

ABOLITION OR MODIFICATION OF

THE RULE OF JOINT AND SEVERAL LIABILITY

Please note that the courts of the following states have never applied the doctrine of joint and several liability: Alabama, Indiana, Kansas and Oklahoma.

1985

Iowa

Abolished joint liability for defendants who are less than 50% responsible

Vermont

Totally abolished joint and several liability

* * * * * * *

1986

California

Abolished for non-economic damages

Colorado

Totally abolished joint and several liability (an amendment approved in 1987 allows joint liability when tortfeasors consciously acted in a concerted effort to commit a tortious act)

Connecticut

Modified to prohibit joint liability except where liable party's share of judgment is uncollectible (1987 legislation by opposition limited this reform to non-economic damages only)

Florida

Abolished as to non-economic damages in negligence actions

Also abolished for economic damages for defendants less at fault than plaintiff

This rule does not apply for:

- o economic damages for pollution
- o intentional torts
- o actions governed by a specific statute providing for joint and several liability
- o actions involving damages no greater than $25,000

Hawaii

- o Abolished for low fault defendants (25% of fault or less)
- o Applies for non-economic damages only
- o Does not apply to auto, product, or environmental cases

Illinois

- o Abolished for low fault defendants (25% of fault or less)
- o Does not apply to medical expenses awarded as damages
- o Does not apply to medical malpractice or environmental liability cases

Michigan

Limited joint and several (except in products liability actions and actions involving a blame-free plaintiff) holds defendants severally liable except when uncollectible shares of a judgment are reallocated between solvent co-defendants according to their degree of negligence; joint and several liability is abolished for municipalities

New York

Limited joint and several liability; a defendant who is 50% or less at fault is only severally liable for non-economic damages. However, the limitation does not apply to:

- o actions in reckless disregard of rights of others
- o motor vehicle cases
- o actions involving the release of toxic substances into the environment
- o intentional torts
- o contract cases
- o products liability cases where the manufacturer could not be joined
- o construction cases and other specific actions

Utah

Totally abolished joint and several liability

Washington

Abolished except for cases in which:

- o defendants acted in concert
- o plaintiff is fault free
- o hazardous or solid waste disposal sites are involved
- o business torts are involved
- o manufacturing of generic products is involved

Wyoming

Totally abolished joint and several liability

* * * * * * *

1987

Arizona

Abolished except in cases of:

- o intentional torts
- o hazardous waste

Georgia

Limited to several only when plaintiff is assessed a portion of the fault

Idaho

Abolished except in cases of:

- o intentional torts
- o hazardous wastes
- o medical and pharmaceutical products

Louisiana

Joint and several liability applies only to the extent necessary to cover 50% of the plaintiff's damages. (Current law which provided that the defendant is only liable for his/her share of damages when the defendant's liability is less than the plaintiff's remained unchanged.)

Missouri

Limited to several only when plaintiff is assessed a portion of the fault

Montana

Abolished joint liability for defendants who are 50% or less responsible

Nevada

Abolished except in:

- o product cases
- o cases involving toxic wastes
- o cases involving intentional torts
- o cases where defendants acted in concert

New Jersey

Modified the doctrine in the following way:

If the defendant is found to be less than 20% liable, the defendant is held responsible for only his degree of fault; between 20% and 60% the defendant can be held responsible for full economic damages and only his share of non-economic damages; over 60%, the defendant can be held liable for payment of all damages.

New Mexico

Codified common law application of several except in:

- o cases involving intentional torts;
- o cases in which the relationship of defendants could make one defendant vicariously liable for the acts of others
- o cases involving the manufacture or sale of a defective product (In

these cases the manufacturer and retailer can be held liable for their collective percentage of fault but not the fault of other defendants.)

- o situations "having sound basis in public policy"

North Dakota

Abolished except for:

- o intentional torts
- o cases in which defendants acted in concert
- o products liability cases

Ohio

Abolished for non-economic damages when the plaintiff is also assessed a portion of the fault

Oregon

- o Abolished joint and several liability with regard to non-economic damages
- o Abolished joint and several liability for economic damages when the defendant is less than 15% at fault
- o Exempts some environmental torts

South Dakota

Limited joint for those who are 50% or less responsible -- they pay no more than twice their share

Texas

Abolished joint liability for those who are 20% or less responsible except when:

- o plaintiff is fault free and defendant's share exceeds 10%
- o damages result from environmental pollution or hazardous waste

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1988

Alaska

Joint and several liability was abolished through a ballot initiative, Proposition 2, on the November 8, 1988, ballot

Kentucky

Codified common law rule that when jury apportions fault, defendant is only liable for that share of fault

Minnesota

Limited joint and several liability for those who are 15% or less responsible -- they pay no more than four times their share

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1989

Mississippi

Modified joint and several liability -- by applying the doctrine of joint and several only to the extent necessary for the injured party to receive 50% of his recoverable damages

New Hampshire

Abolished joint and several liability for defendants who are less than 50% responsible

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1991

Nebraska

Modified the doctrine by

- replacing current slight-gross negligence rule with a 50/50 rule in which the palintiff wins if the plaintiff's responsibility is less than the

responsibility of all the defendants

- eliminates joint and several liability for non-economic damages for all defendants in all types of cases

LIMITATIONS ON AWARDS OF NON-ECONOMIC DAMAGES

1986

Alaska

$500,000 cap (except for physical impairment or disfigurement)

Colorado

$250,000 cap (unless court finds justification by "clear and convincing evidence" for a larger award which cannot exceed $500,000)

Hawaii

$375,000 cap but cap applies only to actual physical pain and suffering; other non-economic damages have no limit

Maryland

$350,000 cap

Minnesota

- $400,000 cap on all awards based on loss of consortium, emotional distress, or embarrassment
- No cap for pain and suffering

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1987

Idaho

$400,000 cap -- adjusted for annual wage increase

Kansas

$250,000 cap on pain and suffering (not other non-economic losses)

Oregon

$500,000 cap on non-economic damages

REDUCTION OF COMPENSATORY AWARDS

BY COLLATERAL SOURCES

1986

Alaska

Admissible as evidence and offset with broad exclusions

Colorado

Admissible as evidence and offset with broad exclusions

Connecticut

Admissible as evidence and offset with broad exclusions

Florida

Mandatory offset with broad exclusions

Hawaii

- Provides for payment of valid liens (arising out of claim for payment made from collateral sources for costs and expenses arising out of injury) from special damages recovered

- Prevents double recoveries by allowing subrogation liens by insurance companies or other sources. Third parties are allowed to file a lien and collect the benefits paid to plaintiff from the plaintiff's award. The amount of damages paid by the defendant to the plaintiff is not affected

Illinois

- **Only** collateral sources for benefits over $25,000 can be offset
- **Offset** cannot reduce judgment by more than 50%

Indiana

Admissible as evidence with certain exclusions. Court may reduce awards at its discretion. Jury may be instructed to disregard tax consequences of its verdict

Michigan

- Provides that evidence that expense or loss was paid by a collateral source is admissible after the verdict and before judgment is entered
- Court will offset but cannot reduce the plaintiff's damages by more than amount awarded for economic damages

Minnesota

Admissible as evidence but only for the Court's review; offset is provided for but collateral sources having rights of subrogation are excluded

New York

Mandatory offset

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1987

Alabama

Collateral sources allowed as evidence -- reduction not mandated

Iowa

Collateral sources allowed as evidence -- reduction not mandated

Missouri

Collateral sources allowed as evidence but if used as evidence, defendant waives the right to a credit against the judgment for that amount

Montana

Collateral source rule abolished -- reimbursement from collateral source is admissible in evidence -- unless the source of reimbursement has a subrogation right under state or federal law, court is required to offset damages over $50,000

New Jersey

Mandatory offset of collateral source benefits other than workers' compensation and life insurance benefits

North Dakota

Mandatory offset of collateral source benefits other than life insurance or insurance purchased by recovering party

Ohio

Mandatory offset of any benefits received less the total of any costs paid for the benefit

Oregon

Judge is allowed to reduce awards for collateral sources

Excludes:

- o life insurance and other death benefits
- o benefits for which plaintiff has paid premiums
- o retirement, disability, and pension plan benefits
- o federal social security benefits

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1988

Kentucky

The jury must be advised of collateral source payments and subrogation rights of collateral payors

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1990

Idaho

Allows the court to receive evidence of collateral source payments and reduce jury awards to the extent that they include double recoveries from sources other than federal benefits, life insurance or contractual subrogation rights

PROHIBITION OF, OR LIMITS, ON PREJUDGMENT INTEREST

1986

Michigan

Prohibits prejudgment interest on awards for future damages

Minnesota

Prohibits prejudgment interest on awards for future damages

Nebraska

Reduces rate of interest to 1% above the rate on U.S. Treasury Bill
Offer of settlement provision allows the award of prejudgment interest for unreasonable failure to settle

Oklahoma

Prohibits prejudgment interest on punitive damage awards
Rate of interest reduced to 4% above the rate on U.S. Treasury Bill

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1987

Iowa

Repeals prejudgment interest for future damages (other interest accrues from the date of commencement of the action at a rate based on U.S. Treasury Bill)

Louisiana

Ties prejudgment interest to the prime rate plus 1% with a floor of 7% and a cap of 14%

Rhode Island

Ties prejudgment interest to U.S. Treasury Bill rate--accrues from date suit is filed

Texas

Limits the period during which prejudgment interest may accrue if the defendant has made an offer to settle

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1988

Maine

Ties prejudgment and postjudgment interest rate to U.S. Treasury Bill rate

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REFORM OF THE LAW OF PUNITIVE DAMAGES

1986

Alaska

Requires "clear and convincing" evidence

Colorado

Punitive award may not exceed compensatory award; court may reduce if deterrence achieved without award, but may also increase to three times compensatory if misbehavior continues during trial

Florida

Punitive award may not exceed three times compensatories unless plaintiff can demonstrate by "clear and convincing" evidence that a higher award would not be excessive

Illinois

Plaintiffs no longer able to plead punitives in original complaint; subsequent motion to add punitive claim must show at hearing reasonable chance that the plaintiff will win punitive award at trial; defendant must be shown to have acted "willfully and wantonly"; court has discretion to award among plaintiff, plaintiff's attorney, and State Department of Rehabilitation Services

Iowa

Punitive damages may only be awarded where "willful and wanton disregard for the rights and safety of another" is proven; 75% or more of the award goes to State Civil Reparations Trust Fund (In 1987 the evidence standard was elevated to "clear, convincing, and satisfactory" evidence)

New Hampshire

Punitive damages prohibited

Oklahoma

Award may not exceed compensatory award unless plaintiff establishes his case by "clear and convincing " evidence, in which case, there is no dollar limitation

South Dakota

Requires "clear and convincing" evidence of "willful, wanton, or malicious" conduct

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1987

Alabama

$250,000 cap requires proof of "wanton" conduct by "clear and convincing" evidence

California

Requires "clear and convincing" evidence of oppression, fraud, or malice; the trial is bifurcated allowing evidence of defendants' financial condition only after a finding of liability

Georgia

$250,000 cap -- products are excluded from the cap

Idaho

Requires preponderance of evidence of "oppressive, fraudulent, wanton, malicious or outrageous" conduct

Missouri

Bifurcated trial for punitives - The jury still sets the amount for punitive damages if in the 1st stage they find defendant liable for punitives; defendant's net worth is admissible only in punitive section of trial; 50% of the punitive damage award goes to state fund; multiple punitive awards prohibited under certain conditions

Montana

- Requires "clear and convincing" evidence of "actual fraud" or "actual malice"
- Bifurcates the trial with evidence of defendant's net worth only admissible in second section of trial

- o Requires judge to review all punitive awards and issue an opinion on whether he increased, decreased or let stand the punitive award

New Jersey

- o Requires evidence of "actual malice" or "wanton and willful disregard" of the rights of others
- o Provides for a bifurcated trial
- o Provides for a FDA government standards defense to punitives
- o Excludes environmental torts

North Dakota

- o Punitives not allowed in original complaint
- o Plaintiff has to show prima facie evidence for claim for punitives
- o Plaintiff must show "oppression, fraud or malice"

Ohio

Requires "clear and convincing" evidence; judge sets amounts; punitives cannot be awarded unless plaintiff has proved "actual damages" were sustained because of defendant's "malice, aggravated or egregious fraud, oppression or insult"; provides a government standard defense for FDA approved drugs

Oregon

- o Requires "clear and convincing" evidence
- o Provides a FDA defense to punitives

Texas

Caps punitive award at 4 times the actual damages or $200,000 whichever is greater

Plaintiff must show defendant's conduct was "fraudulent, malicious or grossly negligent"

Virginia

$350,000 cap

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1988

Kansas

Caps punitive award at lesser of defendant's annual gross income or $5 million -- if the court finds the profitability of defendant's misconduct exceeds this limit, the limit shall be one and one half times the amount of profit the defendant gained (1987 legislation had required the court, not the jury, to determine the amount of the punitive damages award and required "clear and convincing" evidence)

Kentucky

Requires "clear and convincing" evidence that conduct constituted "oppression, fraud or malice"

South Carolina

Requires "clear and convincing" evidence for punitives

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1989

Arizona

Provides a government standard defense for FDA approved drugs and devices

Nevada

- Limits punitive damage awards to $300,000 in cases in which compensatory damages are less than $100,000 and to three times the amount of compensatory damages in cases of $100,000 or more (Note: limits do not apply in cases against a manufacturer, distributor, or seller of a defective product; an insurer who acts in bad faith; a person violating housing discrimination laws; a person involved in case for damages caused by toxic, radioactive or hazardous waste; a person for defamation)

PROVISION FOR PERIODIC PAYMENTS

1986

Alaska

Allows court to order periodic payments for future damages only

Connecticut

Mandates periodic payments if future economic damages exceed $200,000

Florida

Mandates periodic payments when requested by a party to the suit if economic damages exceed $250,000

Iowa

Allows court to order periodic payments when requested by a party to the suit

Maryland

Allows court to order periodic payments for future damages only

Michigan

Mandates periodic payments if future damages exceed $250,000

New York

Mandates periodic payments if future damages exceed $250,000

South Dakota

Mandates periodic payments when requested by a party to the suit if future damages exceed $100,000

Washington

Mandates periodic payments when requested by a party to the suit if future damages exceed $100,000

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1987

Idaho

Allows court to order periodic payments if future damages exceed $100,000

Montana

Allows court to order periodic payments when in plaintiff's best interest

North Dakota

Allows court to order periodic payments for future economic damages if more than 2 years of institutional or custodial care are involved

Ohio

Allows court to order periodic payments in cases in which the future damages for economic losses exceed $200,000 and represent more than 25% of the total jury award

Rhode Island

If damages exceed $150,000, a mandatory post-judgment conference is held to determine the viability of a voluntary agreement on periodic payments

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SANCTIONS ON FRIVOLOUS SUITS OR DEFENSES

1986

Colorado

Requires pleadings to be signed and allows court to assess reasonable expenses including reasonable attorney fees for frivolous pleadings, motions, or defenses (Rule 11)

Connecticut

Court may assess twice the amount of court costs and attorney fees as the penalty for frivolous suits

Florida

Court may assess fees to the prevailing party in any action in which the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the complaint or defense of the losing party

Georgia

Court may assess court costs and attorney fees for frivolous lawsuits or defenses

Hawaii

Court may assess penalty not exceeding 25% of the losses claimed

Illinois

Court may assess reasonable costs and attorney fees for frivolous pleadings, motions or defenses (Rule 11)

Indiana

Court may assess court costs and attorney fees for frivolous conduct

Iowa

Court may assess penalties for frivolous lawsuits or deceptive tactics

Michigan

Court may assess court costs and attorney fees for frivolous actions or defenses

Minnesota

Court may assess court costs and attorney fees for frivolous claims

New Hampshire

Court may assess penalties for frivolous lawsuits

New York

In cases involving frivolous claims or counterclaims, the court is required to award the successful party court costs and attorney fees, which cannot exceed $10,000

Wyoming

Court may assess reasonable court costs and attorney fees for frivolous claims or defenses

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1987

Alabama

May assess court costs and reasonable attorney fees against parties bringing frivolous claims or defenses

Idaho

Court may assess attorney fees in frivolous suits

Nebraska

Court may assess court costs and attorney fees for alleging claim or defense which is frivolous or in bad faith

North Dakota

Court is required to award reasonable court costs and attorney fees to a prevailing party upon a finding that the claim for relief was frivolous

Ohio

Court may assess attorney fees to any party adversely affected by frivolous conduct

Oklahoma

Requires pleadings to be signed and allows court to assess reasonable expenses and attorney fees for frivolous actions (Rule 11)

Oregon

Requires pleadings to be signed and allows court to assess attorney fees, court costs, and other expenses for frivolous pleadings, motions or defenses (Rule 11)

Rhode Island

Requires pleadings to be signed and allows court to assess reasonable expenses and attorney fees for frivolous pleadings, motions or defenses (Rule 11)

Texas

Requires pleadings to be signed; sanctions may include: striking the pleading, dismissal, payment of reasonable expenses including attorney fees

Virginia

Court may assess payment of reasonable expenses including attorney fees if an action is not brought in good faith

Washington

Court may determine prior to final judgment that an action, claim, or defense was frivolous; sanctions include reasonable expenses including attorney fees

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1988

Louisiana

Court may assess reasonable expenses incurred including attorney fees for frivolous conduct

Mississippi

Court may assess transaction costs and attorney fees for frivolous claims or defenses

New Jersey

Court may assess costs and attorney fees upon a finding that a complaint, counterclaim, cross-claim or defense of a nonprevailing party was frivolous

South Carolina

Court may assess reasonable expenses including attorney fees for frivolous suits or defenses

Utah

Court may assess attorney fees to the prevailing party if lawsuit or defense was not brought in good faith

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