

And if that sounds like science/social-fiction, then be advised of the new automatic payroll deduction plans for legal service. They are presently being installed in public and private institutions all over our map, the assumption being that employees will now spend their lives needing this insidious (deducted) item displayed on their pay vouchers alongside income tax, hospitalization, long-term medical care and life insurance. And what a deal for lawyers, eh? The fear of litigation they have installed in our consciousness is now right up there with the fears of aging and illness — and just as taken for granted as the taxes. And of course our new "protectors" will get their pre-deposit piece of our gross salaries before their predatory brothers go after what remains, or rather because their brothers will go after it. The Mafia understands such procedures as did Stalin. The Nazis most certainly did. ("Schutz" or "Protection" is the first 'S' in SS.) With some resolve, we might make it to the grocery store before we get stung and need that newly deducted service. Then again we could probably return at least the durable goods if too many judgments went against us in any one week.

Such vulnerability is quite probable. The case histories are with us now. To list a few does a disservice to the thousands that are ever more frightening. But I will nonetheless: A doctor in California ceases to deliver babies. Another cedes all possessions in order to practice, penniless. A photographer is told by her contractor not to touch any children in the process of taking their pictures. A navigational chart in Florida printed disclaimers that begin "Due to the abundance of greedy lawyers in America". A slap-suit is filed against Oregon townfolk who testify against future development. In a neighboring hamlet the voters are sued as individuals for the inaction of their elected town council. In a San Francisco women's shelter a woman is struck by another resident and sues the case worker who obtained the struck woman's lodging. In North Carolina the originator of soft play-port equipment — having substantially reduced play-activity injuries in America, yet besieged by absurd claims — sells out to a rival having a larger legal staff. Across the country ministers have been advised to curtail either their spiritual or their secular advice, and most times both.

The scenarios are legion. They could at present fill greater volumes than all the histories of America combined. Our legal news is like some apocalyptic, doomsday chronicle that now heralds and multiplies its bulletins on an hourly updated basis. Given this then, how do we build awareness of its dire meanings and what do we do with the awareness once we've shaped it? How does a flock of ordinary citizens have their fears formalized and made presentable without having to shuffle hat-in-hand to a pack of you-know-whos? And how do we then carry our proposals past an even larger pack of you-know-whos in order to lay them before still another omnipotent, all pervasive pack of...those people?

Initially, I understood that the highest-placed of "those people" — the courts and judges — were supposed to be helping us with such problems; that is, when they weren't busy reeling out more line to their little brothers. But such is not often the case. Like medieval priests they noodle their "angels on the head of a pin" thing and maunder about the consummate wisdom (*immaculate wisdom? Infinite wisdom?*) of our copper-plated snuff-snorting, flea-wigged forefathers who, using this grand and rustic cryptography were supposed to have anticipated and commented upon this and all the other jams that we're in — and have from the grave charged us (charged our lawyers, that is) to ferret the answers out of all their rhetoric. Lawyers, of course, simply use that charge as fodder for their interpretation scams. It's how violent criminals are able to use their victims.

A dissenting campaign would be a horror to mount, since lawyers and lawsuits are often the midwives for social-political change. Our watchdogs need them, obviously — the responsible ones need them, surely. But our grievance politics are propelled by so much litigation these days that the predators can mix it up with the crusaders and infuse their schemes with an unsusited righteousness. If suing your (heavily insured) barber for a mediocre haircut seems as noble a pursuit as nailing Enron for shareholder fraud, then the issue of "rights" has been subversively capitalized. It allows for lawyers to forge new shackles around the legs of society as they go about breaking all our other "chains" real or imagined. And to this point our pioneering civil rights leaders should be piqued. "Due process" has been appropriated from their legitimate quest and trotted by tort attorneys over to the equity shakedown arena. The stratagem has obscured real issues, as the greed of opportunists now equate with the needs of the underprivileged.

And translating this style of "protection" to the marketplace and our health, it's a toss as to which is more detrimental to our well-being: a tobacco company suggesting that we smoke, or a pack of lawyers telling us that should we dare to start a tobacco company we're dead meat. Surely, it's the latter. With the overtures from cigarette billboards we are still in control of our lives and served by our educated perspective. But how does one crusade for that right?

Surely, a way to *not* crusade is to bother getting one's arms around the word "tort." That perpetually unmanageable definer, "tort reform" is the reform of *what again?* And who in the Sam Hill would care or even be *made* to care? Elusive meaning aside it doesn't even pass muster in euphony — certainly doesn't have that mellifluous, multisyllabic and promotional ring of, say, "an-i-mal rights" or "nu-cle-ar fam-il-y." Having been an adman in some of my lives, I have a feeling for word power or its lack. And by way of the same job history I have knowledge of devious minds. As a result, I am thoroughly convinced that somewhere in the star chambers of Attorneyana there holds forth a gathering of lawyer-hucksters who, hands down and for the very reasons I've stated, just love the word and want to perpetuate its usage. This way should Americans ever get a handle on what's happening to them, they would adopt the least perceptible rallying cry in history.

Assuming it laid a media egg, we could nevertheless save the movement. We could distribute good books. I am uninformed as to how many copies of the Gideon Bible grace



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the hotel rooms of America. But if we are truly interested in saving this country we live in and fought for, we might consider complementing those Bibles with copies of Walter Olson's *The Litigation Explosion* and Phillip K. Howard's *The Death of Common Sense*. By themselves these two texts synthesize our dilemma and moreover tell us what can be done about it. Their newest books, equally as powerful, Olson's *The Rules of Lawyers* and Howard's *The Lost Art of Drawing the Line*, could also be purchased and distributed via a national endowment. It would be necessarily funded by concerned professionals, older capitalists and ordinary workers.

But before tort lawyers' public relations teams start to counter what I've said here — before their admen drag out photos of the doe-eyed children lawyers have saved from bugging, strap-wielding yahoos; or the beach fronts and forests they've helped snatch from developers — let's be mindful of how the statistics *really* stack-up. In truth, for every humanist Morris Dees there is now a battalion of predaceous hunters soliciting likely claimants by cold-calling from registries as one would do in an inquisition. For every thoughtful reform-minded Phillip K. Howard, there is a veritable corps of errands who will, if they can get away with it, transgress every one of a few ethical canons that the A.B.A. still maintains.

Any dedicated attorney attempting to cleanup or at least un-complicate human existence is offset by a vast countervailing army of ambulance chasers, tort blackmailers and marketplace extortionists, all stalking the public because they have been given the legal right to sift through our lives of circumstance, hard times, desires and risks, scant information and natural mistakes in order to tear-out the bits of potential liability they can chew on.

In a recent article on the new industry of electronic litigation discovery (*a harbinger of electronic what-else-to-come?*), the *Portland Oregonian* spoke of the paring-down of our internet economy and of the many high-tech firms that were going to go under. Implying the business failure as a matter of course bred lawsuits, the interviewed of the article cited some of the many inverse legal opportunities from the fall-out. Roundly quoted was one of the movers-and-shakers of the "discovery trade" who had this to say about the anticipated victims:

"There will be lots and lots of files that will be used to sue lots and lots of people."

That isn't just a contemporary conceit. It is the ages old voice of the *deletér*. It is a philosophy and an omen. And though commerce-specific in its origins it stands ready to be transported to all strata of human involvement in this country. It is a Pied Piper melody that will not only be utilized by the electronic service to the legal trade, but later used to lure ordinary people and shape their desires and expectations in the fashion of pyramid letters, slot machines and contest shows. And the terrifying fact is that this attitude has the support of bar associations that have the sanction of many politicians, ostensibly because their lawyer-fraters, through legal pursuits, help our government remain anchored to various plains of reason. Realistically, it's because their litigation fraternities are as tight as crime families, and about as concerned with *legitimate* sources of wealth as are crime families.

So they rape the country at will. Though we have *habeus corpus* to protect us from *arrest* without reasonable *explanation*, we seem to have no viable survey system to protect us from civil lawsuit initiatives that lack reasonable *foundation* — leaving the foundations (if there be any) to fall into place only after citizens have been dragged into various proceedings and forced to engage a defense lawyer at their own expense. To solidify this arrangement, *judges* have muzzled the judges who would say: "I have before me a frivolous, rapacious claim that not only corrupts the public mentality but demeans my vocation and trivializes my office."

As Americans, we need to be constantly reminded that in the sometimes messy marriage of capitalism and democracy we are fundamentally good people who are perpetually within a hair's-breadth of crawling into bed with the devil. And the devil can have a strange semblance to an authoritarian father figure. The right to sue indiscriminately opens the door to being sued indiscriminately. Litigation lawyers, seeking to prosper, will circulate among our numbers and facilitate this pattern only to the extent we allow it to happen.

And if it seems to readers that I have unfairly maligned this profession, then I would ask them — the younger ones especially — to read the book or see the movie *Judgment at Nuremberg*. They will understand that in the German era I've resurrected here were collectives of men (*die richterschaften*) who sat at court benches and rubber-stamped Hitler's policies as he needed them implemented. Their second-tier tribunals tried and executed *their fellow Germans* for "damaging the interests of the people." Trained for their jobs, these men were righteous in their practice and assured in their minds. By way of their heritage these men were scholars. By way of appointment they were judges. By way of a trade they were *lawyers!*

The point is that we can never assume that the legal trade has an integral moral gyroscope that needs no monitoring from outside the system. If it has one, it has not shown itself in America for years. And lawyers are now too intrusive to ignore; their presence in our lives occurring too frequently — and too abusively.

If in the future I am charged to take a third party lawyer to bed with me each time I am intimate with someone — or if I am to need a lawyer on call every time I either contract for, or fulfill the creation or maintenance of a shelter, an invention or a soul — then something in this country has gone very very awry. If I can be sued randomly because no one has to bear financial responsibility for a claim against me, then civil rights have, in fact, auto-inverted themselves. And if a lawyer need be present every time I make a simple value judgment or interact with a fellow American in any endeavor — simply because from day to day I have no knowledge and no assurance of what constitutes right and wrong — then I have a tragic and horrific commentary for all those poor (but not dumb) bastards who lost their blood, flesh and beings in the dirt of battlefields.

Certain dictators could have saved us all the trouble and the lives. They had a similar plan for our country.

Tom Burgess is a recent arrival to Astoria, lastly from Portland. He has been in both news and advertising. He offers an explanation of his article that it "reads as an issue that's beyond partisan politics," and said his intent "is to view this matter from different perspectives and that includes even a nod to the commerce end of things."

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