

Of course the generals, like the lawyers, prefer a booming economy to tap; one where boodles of corporate worth creates boodles of personal worth — except that, in the minds of lawyers, both money pools would nourish the lawsuit mills. Conversely then, if a recession or depression came upon us we might justifiably presume that personal assets could have a practical minimum established in order to make litigation worth a lawyer's time (perhaps factoring, as well, the reduced number of human interactions considered to be legally assailable for that year). In such a downturn we might also presume that not only would lawyers have to lighten-up like everyone else, but perhaps quit graduating so many of themselves — or maybe reduce their present work force or retrain a few of their members. Or is that a sound premise? If the economy went South, would lawyers willingly become carpenters? Would they heft bedpans for hospice or preserve quince jam or join the Peace Corps? *Pro bono* certainly couldn't feed them...so...what?

I know what other entrepreneurs do when markets get lean and they don't want to embark on a totally new venture. Assuming they have at least some of their market left, they just put that old inventive energy to work — reshaping their present product or creating new products and seeking new suppliers and new customers. Being disinclined to take an economic back-seat, our predacious "officers of the court" would be similarly motivated. Given the degree to which our government is in bed with them (and compromised of them) they would surely be allowed to be motivated. Having "pushed the envelope" in the heady times, lawyers would, in hard times, simply expand and restructure the nuts and bolts brand of lawsuits. They could fund another of their trade magazines and call it *Lawsuit Horizons*. The trouble is, allowing lawyers to take the capitalist initiative — to go out into the land, creating new litigants and new markets — is tantamount to allowing embalmers and funeral directors to go out and kill people in order to bring in business. Both practices are the antithesis of life-affirmation.

And added to the effect of lawyer inventiveness and lawyer population, there is still a third factor to fear. It is a time-worn characteristic that is solidly American — so on the surface of things it easily migrates from worthy capitalist to lawyer capitalist. And few people seem to pick up on its ruinous implications. It is simply persistence. In the questing of careers, contracts or bed partners, Americans — and lawyers — when losing the first few rounds, just keep at it until the opposition caves in and they get what they want. It's a point of national pride. And when righteously serving today's tort, personal injury and class-action endeavors, this prideful characteristic makes it difficult to convince people of its other side — its dark, insidious side — and what in an earlier time would have been defined as its un-American side. As much as anything, this persistence of lawyers will strap us to their blue sky concept of accountability and as a result, the American Dream is going to take on some very grotesque dimensions.

In 1989, after her great-nephew crashed his car in an accident, a 92 year old Vermont widow was sued for \$950,000. The suit was for lending the boy money to buy the car; an act which, for lawyering purposes, was termed "negligent entrustment." Though there was public outcry at the verdict, the terrifying aspect was not so much the fact of the lawsuit but that the lawyers tried it at all — and persisted — and got it filed and into court — and what-the-hell and why not? Our courts were already hosting precedent-lotteries.

And the jurors who were serving? Well, those poor bastards were sucked into some perverted, convoluted form of accountability propaganda — possibly oblivious to the fact that this "fault-finding" could someday soon involve their own money, depending on the focus and energies of any particular lawyer at any one moment. The claim was one more innovative step "forward" and one more building block for the freedom and empowerment of litigation attorneys.

From low-echelon ambulance chasers to supreme court pontiffs, lawyers are the single most autonomous group in this nation. Their behavior is almost exclusively their own to oversee since neither the voters, nor city councils, nor Congress, nor Senates federal or state, seem to be part of whatever self-scrutiny lawyers employ once they are licensed, admitted, elected or appointed. Their own state bar associations govern the extent of — and the manner in which — they allow themselves to extract for or from other Americans.

Be aware that "for" and "from" are the operative words here. They are interchangeable prepositions that lawyers can continually impress upon the life of a single American. As they obtain something for someone, they simultaneously take something from someone else and although many of our countrymen could and do view that phenomenon as pretty neat, they haven't yet realized how easily and frequently they can become "the someone else." With the ever-expanding population of "lawyers-as-trappers," there will soon be a time when the gains a lawyer makes for you on any one day will the next day be canceled-out by still another lawyer taking it from you; both actions producing vulgar fees, of course. The process will be a sort of perpetually-mandated equity transport. It will bear an astonishing similarity to the inner workings of governments with which we once did combat. As a portent, it would seem that those Vermont jurors — those who were told they should stick it to the widow for no logical reason — likely couldn't perceive themselves as being lured into a corruption of justice; could not envision the arm-bands of the *Hakenkreuz* being furtively slipped upon them as they listened to the woman's attackers ramble in lawyereze.

And for all the lawsuit hookers on the street (those who for a \$30 check make millions for class action pimps), this brings



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me to still another point. The perpetual pattern I spoke of won't be confined to the high-flying end of the currency flow. Confirming all the "trickle-down", "domino" and "goes-around-comes-around" norms, this thing will be thoroughly, relentlessly pervasive. It will involve a pile of dead backyard leaves that you had yet to sweep up. It will involve an incidental whatchamacallit or an imperceptible something-or-another that the neighbor's child thought she saw maybe, possibly perhaps. It will involve a potato salad that you made for an office picnic or your tone of voice when you said, "G-morning! Wha's-up?"

It will be pure balls-to-the-wall Kafka where accountability is taken to its perverse extreme and every human interaction carries with it an equalized and matching liability. And regardless of the big and lofty cases, the more prosaic ones would still carry their own litigation value. Lawyers could easily pursue them in a cost-efficient manner. They could build this category of daily lawsuits into a slick, computer based program where accusations, challenges, claims, counterclaims and judgments could all travel back and forth via the internet and be administered (with the fees auto-extracted from your account) by one of their central bureaus. They could keep the little guy in the vice-grip of their system even after industry wears down and takes-off for greener pastures abroad; even after the medical profession is operating from their own offshore republic.

(This futuristic scenario is lifted from a book manuscript entitled *2084: A Manual for Citizen Compliance in the Litigious States of America*.)

Business folk should love this work because in addressing our community of humanity it (necessarily) addresses our community of commerce. And as a retired, gray warhorse who no longer owns stocks, the author is impelled quite honestly by his conservative citizenship. The only question of him is: Why is he taking the trouble? Especially when we don't see any board chairmen out front making public statements on the subject? Where are those captains of industry, standing before Congress threatening to leave the country—or at the very least pressing for some resolution? As a first initiative they could be placing (additional) flags on their products — informing consumers as to how much of the product's price reflects the costs of lawsuits, staff lawyers and liability insurance? How about their informing the public as to how long it will be before everything made and marketed in America costs infinitely more than any item made abroad — made in countries that do not permit lawyers to work on contingency fees?

I frankly don't know but in an effort to find out I wandered into still another university and approached a chair in its school of management. I gave him the brief sketch of that proposed book, *2084*, and told him that I thought Americans were all going litigation-cuckoo — and that someday soon this would not only collapse our commerce but oppress and bankrupt the average Joe and Josephine.

Well, what I heard from his "management" lips was that contrary to being repressed by my thesis-Nazis we are indeed an emboldened people facing our adversary, which is industry. Furthermore, we are emboldened because we are endowed for

the quest — and that our friends the lawyers got us that endowment. But then, being lawyer-endowed to fight industry it is inevitable that we become lawyer-enjoined to fight industry. And enjoined we indeed are, since lawyers can conscript us into their class-action schemes without even asking our permission. We can now be forced to file lawsuits additional to being answerable to lawsuits. How's that for confiscatory Nazi policy? Hitler would formally declare countries (and companies) 'errant', then occupy them for being 'errant', then impose their capital; charging them "his expenses incurred" in the occupation. American lawyers in effect do that when they accept stock in corporations as settlements.

At the moment our assigned targets are "old-economy" firms that still make household detergents to drink, yo-yos to flail against one's teeth, and of course matches for baby to play with. (Computer barons, your turn is coming.) And additional to citing the legend of *little guy vs big guy* and all the other populist standards, he touched on the dire prospect of "ineffective and strangling regulation" (as I understand it, the only alternative he could see to the far better scenario of endless free-market lawsuits).

His references suggested that most of America was comprised of mammoth industries with huge legal departments — especially since he never once mentioned the thousands of smaller businesses — those being driven daily into bankruptcy or forced sell-offs by frivolous claims and irresponsible awards. My take-away was that industry can afford it — and that he was schooling a class of corporate weenies who would and should, in the future, fall back in the face of anything a body of lawyers throws their way.

Stockholders, are you listening? Frivolous or founded, punitive damage awards have trashed market capitalization and strangled credit across the country. Workers, are you listening? When you next delight in corporate America taking a hit, keep tabs on your retirement plan. Your future worth could be lessened by some dolt who misused your company's product — and by lawyers who care not a toot for the connection between your employer's operating capital and your job. Consumers, are you listening? Do you want to be buying your toilet paper from, say, France? As by default you congratulate the French legal system you will experience a harsh union between the terms *economy* and *personal hygiene*.

Here I must say that without being told specifically that the book *2084* conceptualized *Litigation as Popular Culture*, the professor then unwittingly confirmed the phenomenon — and the media that feeds it. Rather than citing texts to support his comments, he gave me instead the title of half a dozen movies. He loves those victim-focused flicks. He supplied synopses on three of them.

Given this brand of tutelage, we should arrive at the 11th hour fast. And with endowed plaintiffs — and yellow page advertisers — fueling the flames. I'd say that Asia and Western

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