



The Shocking TRUTH about the U.S. Legal System! Discover the Hidden Secrets of Litigation that Plaintiffs' Lawyers Pray you Never Learn!

presented by Lodmell and Lodmell, Attorneys

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Inside this controversial report, you will learn the well-guarded and unspoken secrets of the biggest racket in America—The Legal System! You will be Shocked and aghast when you learn:

- **How the Plaintiffs' attorneys have 'rewritten the rules' over the past 30 years to make it easier, and more profitable, for them to sue you.**
- **How Lawsuits REALLY WORK, and how lawyers use the 'no loser pays' system as a tool for LEGAL EXTORTION!• How we moved from a system where 'contingent fees' were immoral and illegal for lawyers to use, to one in which they are virtually the only way plaintiffs' attorneys now work!**
- **How clever attorneys removed the prohibition against 'attorney advertising' and created an industry of TV, Phonebook, Internet, and Billboard lawyers designed to stir up conflict—just for profit!**

Section 1. The Law of Fear!

Let me ask you a question. Have you ever wondered why it feels like you need to consult a lawyer before talking to the parents of your children's friends about why their kid came home with a bruise from your house? Do you notice how you feel when someone slips and falls, or even bumps their arm in your home or office building? Or, if you own a business or have employees, why even a loose comment or risqué joke around the office now makes you cringe with fear?

Why is that? Why is it that even normal minor accidents or casual conversations can trigger a deep sense of fear and insecurity in you? What do you attribute this to? Why do you think that is?

I bet until now you thought that it was normal to feel guilty or at fault if something happens around you that maybe you *could* or *should* have prevented. That it was natural to have a visceral fear of *consequences* for actions and results that you don't really control.

Listen! That is not *normal* and you were not born feeling that way! But I know that you do feel that way, and that this feeling has been growing bigger not getting smaller. As you read through this report, you're going to find out why some things trigger an almost instant fear in you. Why when someone threatens to call a lawyer or SUE you it is almost guaranteed to make your body immediately go cold and clammy. You'll discover why when you try to 'talk yourself out of' irrational thoughts and fears they just get worse and grow bigger. Why when you try to ignore certain areas that seem to hold the most risk or uncertainty they just keep coming up in your life over and over.

See, you know what it feels like to be confident and secure in what you do. You know when you have done the very best that you can and that after your job is finished it is truly out of your hands. You know how good that feels and I want to tell you something – THAT IS THE WAY YOU SHOULD FEEL!

So does it make sense to you that once you have finished your part, and done the very best you can, that you should then have FEAR of a particular outcome? Or that you should be in a constant state of fear in certain situations or environments? Have you ever asked yourself if that makes any sense at all? Does it make any sense to you?

NO-IT DOES NOT! Just because you have *learned* to feel that way doesn't mean that it makes sense. It also doesn't mean that you have to stay in that place of fear!

By the way, when you hear what I am about to tell you, when you hear these previously hidden, dark secrets of the legal system, you must understand that it applies to everyone. It doesn't matter what you are told by the press, or by lawyers in the system – the entire system is corrupt and run by one single over-riding issue, controlled by one group. In fact, when you hear the undisputable FACTS about how our legal system works and what part YOU play in it (and I absolutely challenge anyone to dispute these facts) you are likely to go through the classic stages of grief. You will be tempted to first DENY that this is true and want to put this report down because it is too scary or unbelievable. Then you will likely get ANGRY at what I am saying because there is simply too much damning evidence,

and I GUARANTEE that you will SEE IT by reading this report! Finally you are likely to ACCEPT what I am saying because you will see for yourself the source of the oppressive fear you had not previously noticed. But keep reading, because I promise if you read to the end I will reveal the SOLUTION for you that puts the choice and control back into your hands!

Let's face it. We have all learned to take on a sense of guilt if anything goes wrong in our own lives AND in the lives of those around us. In fact, this guilt has been around far longer than the problems with our legal system. It is rooted deep in our country's identity. And while this underlying feeling of guilt is in itself a major issue, it is not what I am here to talk about. What I am here to talk about is how a small group of lawyers and judges has taken that sense of guilt and used it against the very people they are here to serve to create the biggest money making scheme in history and in the process have turned our legal system into a sham!

Just like Cold War Russia or North Korea of today, we are now ruled by the Law of Fear! What this law says is that you better not take any risks, hurt anyone or even be around when something goes wrong in someone's life, because there is an army of lawyers that will be there to serve the *victims* of your negligence and find JUSTICE! And since this is America, justice is measured in terms of COLD, HARD CASH – so you will just PAY! (***Incidentally, this is also creating a country of victims who are learning that it is easier to not take responsibility for what happens in their lives and to simply point the finger at someone else – but that is another story!***)

This my friends, is what has happened to the legal system in America and it is shameful. A few self-appointed rulers telling the rest of us when we are guilty of some action that we don't control and didn't create and how much we should pay for getting it wrong. Oh, and by the way, those same self-appointed rulers have also decided to take a cut of the action (a big cut!) for their services – makes sense right?

WRONG! It's B.S. if you really want to know what it is, and unless you know what I am about to tell you then you have absolutely no say whatsoever about **when** someone comes in and tells you **where** to send the check. (More accurately when they simply come in and *take the money* right out of your account!)

This is NOT how our legal system began and it is absolutely NOT what the founding fathers expected it to develop into. It is a perversion of the concept of the Rule of Law. A perversion which began about 40 years ago, and until now only a very few have had the insight to understand what is really happening or had the guts to take on the interests that rule this new system and challenge the corruption of it. That means to this day there is still no one being held accountable for the destruction of the very rule of law that protects the freedoms we all value so highly and, until now, no one has exposed what is REALLY going on!

Why is that? And for that matter, why have the few people that have raised the flag before this point not been heard, or been silenced so quickly? Good questions.

And I have the answer. But, I have to admit, in all candor, that my answer makes me feel a bit foolish. It makes me sad because as an insider to the system I just didn't want to admit that it was

happening. The truth is that I went through the same stages of grief that I mentioned above and that I got stuck at DENIAL. You see, I have a very deep faith in this country and in the people who make it great. I just couldn't believe it was as bad as it is. Even though I KNEW that there was a small group of predator lawyers out there and I saw them feeding on the victim mentality of people who had been unfortunate enough to get sick or have an accident, or lost their job or whatever difficult parts of life have come their way. I still didn't want to believe that I could not TRUST the legal system to see when there was a real problem vs. when someone was just being opportunistic.

I also had intimate access to the system, even for a lawyer. I had a unique opportunity that *only one in a thousand* attorneys have. I clerked for *Federal District Court Justice, Jack B. Weinstein*, in the Eastern District of New York, one of the countries most respected and honored FEDERAL judges! I seriously understand our system and believed in it!

However, I now see that even with my insider knowledge and access to the system, and even though I had spoken with thousands of clients and seen countless examples of how broken the system was, I still held on to the belief that 'it wasn't really that bad.' And it is this denial that keeps the corruption going!

NOT ANYMORE! There is no more sleep in my eyes and as you read I am going to tell you exactly what finally made me realize how fundamentally broken our legal system really is. How the interests are far more deeply rooted than you can imagine and how YOU and I are just pawns within the system unless we take ourselves out from under its mercy– which is exactly what I will show you how to do!

The truth. A concept that our justice system was built to honor. But even that system is capable of being distorted if a lie is repeated often enough. Eventually it becomes confused with the original truth. And at some point after the lie has been repeated so often, and become so embedded, it actually becomes harder to believe the truth than it is to believe the lie! This is the power of a consistent message – true or not!

This is especially true in our legal system. Why? Because it was based on a solid foundation of honoring the truth. In fact, if you look at how our legal system was developed, it was one of the most respected and fair systems ever created, and it STRONGLY discouraged litigation! The way the U.S. legal system was designed, litigation was seen as a pariah, an absolute last resort and a failure of the system!

In fact, *President Abraham Lincoln*, a lawyer by training, and to this day the most respected President ever to have governed these United States once said:

***"Discourage litigation.** 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 peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."*

Lincoln saw lawyers as PEACEMAKERS! Can anyone honestly say that this is true today? This is why it becomes even more difficult to believe that our legal system could fall so far the other direction. It's like the year after Larry Bird retired from the Celtics, or when Michael Jordan left the Bulls. Both teams were so bad the following year it was almost hard to believe!

Well that is where we are today – last in the league! For someone like me who regularly travels all over the world, I am often embarrassed to even admit that I am a lawyer in America. I mean there is an honest disbelief of how we sue each other over anything and everything. I find myself explaining how it happened and why it has gotten so bad. I explain that America has left the fox to guard the henhouse and that in clever response the fox has redesigned the legal system to accommodate nothing less than *extortion!* (I will explain what 'Legal Extortion' is later in this report)

More than once I have heard someone say, “we used to do business in the U.S. but the litigation risk became too great.” In fact, if we look at everything from foreign investment to currency reserves held in dollar, everything is down with no sign of stopping. Why is that? It's because America is no longer the safest place for people to live, work or do business.

In fact, along with terrorist and currency risk, 'lawsuit risk' is now something that investors must consider when investing in any company that does business in the U.S. Ask anyone who was invested in or worked for any one of the 70+ companies– that have filed bankruptcy in the nationwide asbestos litigation scandal!

Asbestos litigation is a poster-child for what lawyers can and will do to a company, or in this case an industry, if given free reign. What is so grotesque about the asbestos scandal is that a great many people were actually made very sick, or died, from asbestos. In such a widespread national crisis, it would make sense to create a master plan that would help to compensate ALL of those injured in some reasonable fashion. This is what England did, where the lawyers do not yet own the system. But here, WE SOLD OUR LEGAL SYSTEM TO THE LAWYERS!– What ended up happening?

What ended up happening is that a few who were injured, who acted early while the companies were still in business, got HUGE awards! The lawyers that represented them also got HUGE FEES! These awards were *justified* to a jury, not as compensation for actual injury, but as punishment to the companies. Once these lawyers had killed the goose that laid the golden egg, by bankrupting over 70 U.S. Companies, the rest of the injured people got little or NOTHING! The lawyers then turned to the 2nd tier companies who didn't even produce asbestos, but those that had only installed it or delivered it. They then bankrupt them! And all the while under the mantle of JUSTICE for the injured.

Is that true, is it really serving a greater purpose of justice? Because if it was, then this report should be balanced against the good that the lawyers would be serving. The problem is that it is NOT TRUE! The stats are that in 2003, 100,000 new asbestos claims were filed, the MOST EVER in a single year! But here's the rub! 80%-90% of the claimants have NO ILLNESS!– (For those of you who really like the details please read the footnote below researched and written by a lawyer in a Law Review Article! This is not mass media but a peer review journal using empirical research!)

All this does is leave the 10% who do end up with a problem left out in the cold after all the money has been scooped up by the corrupt lawyers. And even in cases where there was real damage, only 22% of the award ever goes toward the real losses! Where do you think the rest goes? – to the lawyers and to the dysfunctional system!

It is simply not in the interest of those initial lawyers to consider anyone who was to come next. It was in their interest to simply make the case that the biggest possible award against a big fortune 500 company was justified to punish them and make sure they get the message not to do it again! (Tough to do when you are out of business!) It didn't matter that this would leave nothing left for the thousands of other's who were injured, or that an entire section of the U.S. economy would be devastated.

You see, in this system there is no JUSTICE, there is only economic reward for the most aggressive and ruthless and connected attorneys! Why are we letting TRIAL LAWYERS set the rules about issues that should be considered as a whole? Why didn't we see this as a public policy issue and simply cut out the middle men (lawyers) and fairly apportion the resources while still allowing those companies to stay in business and contribute to the reparations? The answer is that THE LAWYERS CONTROL THE SYSTEM! Why would they cut themselves out?

We all saw it again in the Tobacco litigation. The lawyers were compensated at an extreme rate! (One study found that one firm of 33 lawyers were paid over **\$22,000 per hour each!** That is assuming that they all worked 24 hours a day, 7 days a week for over 3 years!) And this hot streak of mass tort litigation that affects us all is not over! The next hot topic is the *sub-prime lending market*. Look for the lawyers to start putting as many banks, brokers, agents and lenders out of business as possible as they milk their next victims taking home huge fees and leaving us with a coupon for \$75 off of the closing costs for our next mortgage!

In fact, if we look at the overall economic impact of litigation in the U.S. it is now measured in TRILLIONS of dollars. Forget the 60,000 jobs directly lost, with \$200 million in wages sucked out of our economy, or the 128,000 future jobs lost due to canceled investments by the now bankrupt defendants. Let's look at the annual cost as EACH YEAR lawsuits are directly responsible for the redistribution of OVER \$300 BILLION dollars, of which less than 22% goes to those actually injured!

Add to that the indirect costs and economic impact of the hundreds of thousands of Americas who have lost their jobs and their pensions and the hundreds of thousand more who have been devastated by the trickle down effect of massive bankruptcies, and you can see why in the past 25 years plaintiffs' attorneys have become some of the richest people in America. Where exactly did all that money come from?

But Doug, you are talking about big business and giant class action lawsuits, this doesn't really affect me – right? WRONG! Of the 50,000+ lawsuits filed EVERY DAY in this country, the vast majority of them are NOT big class action suits. In fact of the over 1 million attorneys in the U.S. today, the vast majority of them work for small firms or are solo practitioners. And it doesn't take many of them to saturate the market as they troll for cases to feed their litigation machine!

And where do they go to get them? Just take a look at your **yellow pages**, or at the **billboards** that grace your streets. Or type in “injury lawyer” or any number of possible themes on this phrase in **Google**.™ Who is advertising? And who are they advertising too? Does it sound to you like they are targeting just the big companies when they say:

“Injured at Work? Call us for a Free Consultation”
No FEE unless we collect!

“Call “The Hawk” after ANY ACCIDENT. Aggressive Attorneys that work for YOU!”

“Medical bills piling up? Understand your Options and get \$\$ Now!”
(Se Habla Espanol)

In fact, if we click on any of these links we begin to see the wide variety of injuries and cases that these lawyers are fishing for:

- Truck Accidents - Auto Accidents
- Defective Products - Medical Malpractice
- Wrongful Death - Dangerous Premises
- Traumatic Head and Brain Injuries - Burn Injuries
- Work Injuries - Nursing Home Abuse and Negligence
- Bicycle Injuries - Swimming Pool Injuries
- Cruise Ship and Boating Accidents - Wrongful Termination
- Airplane Accidents - Premises Liability and Falls
- Vehicle Rollover and Tire Defect - Construction Site Injuries
- Birth Injuries - Headaches from Work
- Stress Disorder - Carpel Tunnel Syndrome
- Hostile Work Environment - Workplace Harassment
- And on, and on, and on!

In the end it all comes down to a numbers game for every one of those one million attorneys (one for every 292 Americans). How many cases can I start, how much is my average collection per case, and how much time must I spend on each one. FOLKS – Law is a Business! Nothing more and nothing less! Lawyers are not the defenders of justice and they do not adhere to an ethical code that is greater than that of the people they sue. They are not bad people because of it, but they *are human!*

They are businesspeople and will exploit every available opportunity to make their numbers. And if you continue to let the fox guard the henhouse of your personal finances you can hardly be surprised if he ends up with feathers in his mouth.

I'll end this introduction with a brief, but enlightening story. When I wrote my first book about the Litigation Explosion in the U.S. called "*The Lawsuit Lottery: The Hijacking of Justice in America*," I sent a copy to a select group of attorney colleagues for comment. Without exception they were all stunned and shocked. They wrote me back: "Doug, are you sure this is a good idea for you to be revealing this much information. I mean you are an attorney, and you do know who controls your profession – Don't you?" Of course, they meant the *Trial Lawyers*, the controlling Family in the Brotherhood of attorneys. (I will be telling you much more about the Trial Lawyers and their dubious practices later in this report!)

I can only imagine what they would say if they see how much more I am about to reveal in the following pages about what is really going on! I am sure we shall see.

Section 2. The Truth About Lawsuits!

The lawsuit. Never has man created a more cleverly crafted tool to bring out the least desirable qualities in the human experience. The lawsuit has been despised even from the beginning. The French satirist of the 17th century, Jean de la Bruyere advised: "*Avoid lawsuits beyond all things; they pervert your conscience, impair your health, and dissipate your property.*"

We all know it too. Conflict brings out the worst in us. This is especially true when we feel that we are right! It is because of this instinctual understanding, that throughout the entire world (the United States Notwithstanding) lawsuits are actually a relatively rare phenomenon. In fact this was true for America as well up until the 1960's. But something here changed around then. This is the time when lawyers started thinking like businesspeople.

As I stated above, this in itself is not the problem. It is difficult to begrudge anyone for a desire to be financially successful at what they do. The problem comes about in HOW the lawyers have done it.

My goal in this report is to help you understand not only what the effects are, but HOW and WHY we have gotten there. You see, until you understand this, it will be emotionally difficult for you to consider taking back the control that has been stolen from you.

If you are like me, then you *want* to believe that you can depend on the system and trust that if you are ever in front of a judge and jury that they will see through the lies and find the truth. That in the end they will come to a fair and reasonable result. And as long as you believe that, then you will actually feel bad taking the power of that judge and jury away from them. But if you want any sense to be brought back into YOUR PERSONAL life then taking back that power is exactly what you will need to do – and by the time you reach the end of this report, you will know exactly how to do it.

As we move through this report, I'll be telling you not only what's wrong with the current system, but much more importantly I'll be telling you WHY the emperors of the system do what they do and HOW that impacts you directly every single day of your life, even if you never get sued! I'll explain the EFFECT of what they do, so you understand far more than just what the problems are. You'll understand why you spend more money than you have too (even though globalization is making costs less expensive than ever) on everything from groceries to cars, and why all this is happening at a time when you are less secure about your financial future than ever before.

I will also be showing you how the rules have been changing to support *creditors*! That is not just the people you borrow money from, but that also means anyone who gets a court award or judgment against you! You see when you are sued, and you lose, the judgment is entered into the court records and that plaintiff turns into a *creditor*! That means they have all the remedies to collect against you that your bank has if you default on your mortgage. That includes seizing your assets, garnishing your wages and even forcing you into bankruptcy! All by someone that you never volunteered or agreed to pay a penny!

I wrote this report because I want you to be educated about the systematic dysfunction occurring in this country, because it absolutely affects you, me, your children and mine! I feel so strongly about this that I am willing to tell you EVERYTHING, so you know what I do! From lots of experience I know that some percentage of you reading this will work with me, and I look forward to meeting you. For other's this will be an educational experience and will increase the overall awareness of the real problems in our legal and judicial system, and that is very important to all of us.

By increasing our collective literacy of the real issues, I know that you will have a much better understanding of a problem that affects us all. And that one day this information will be very important to you. I also want this information spread around as much as possible. I called this an "Insider's Report" not a *Confidential Report*, because I no longer want this information to be 'Confidential.' We are not being served by the current dysfunction and this report is one way in which I am choosing to participate in its reform.

I have also found that the only things of true value in life are the ones that increase by giving them away. That is what I am doing here. I sincerely hope that you find this information valuable and share it with as many people as you can.

Let's get back to the story, to the place where it all begins. It's time to dissect what has really happened to our legal system and why it is in the shambles it is today. So let me start with some specific examples of things I know you have never heard about on *Court TV* or *Judge Judy*.

A. Legal Ethics.

Let's talk about *legal ethics* and its relationship to how our legal system was designed to function. Our legal system is based on English law. It began first with a functional *criminal* code. This code was then designed to be administered using our court system. Under that system we decided to use an "adversarial" approach to adjudicate cases. What the "adversarial" system means is that if you are accused of a crime, you have a right to an attorney who, even if they KNOW you are guilty, will still defend you to the end and try to prove your innocence. In other words, who will be your adversary – no

matter what. I think most people today are familiar with how that works by watching the O.J. Simpson murder trial on TV.

This *adversarial* concept was, and is, based on the fundamental assumption that you are innocent until proven guilty. The concern was that if the system were going to ‘make a mistake’ it would be better to error on the side of innocence.

While occasionally this can and does lead to an incorrect result in a criminal case, it also creates far less of a chance that innocent people will be put in jail or even executed. (Notwithstanding the evidence that has come to light in the past 30 years that shows that a significantly disproportionate number of minorities are sentenced to jail and death, many of whom are indeed later proven to be innocent – but that is a whole other story.)

So what does this have to do with lawsuits, which are not criminal? Good question. The answer is that when the civil law began to originally develop it became clear that adopting the “adversarial” system in its entirety would definitely be a bad idea. *Can you imagine a lawyer who was encouraged by the very legal system itself to take on civil cases in which he KNEW that his client was lying, just to extort money from someone else using the system!*

The thought of that was repulsive to the founding fathers, to the Constitution and to the very idea of liberty and justice! In a civil lawsuit there is NO presumption of innocence until proved guilty, because there is no crime. There is only a dispute, which the courts assent to become a part of to resolve if necessary.

The problem was that it was also those same “adversarial” lawyers who would be hired for these civil claims and we needed a system that reflected the “*peacemaker*” and “*resolution*” attitude the courts wanted to take in these cases, NOT the adversarial nature of a criminal case. To accomplish this the designers of the legal system relied on “legal ethics” to ensure that lawsuits were definitely not encouraged and that the system did not become an “*instrument of corruption and evil.*”

These legal ethics were the set of rules by which lawyers governed themselves. Yes, you heard correctly, I said, by which lawyers ***govern themselves***. It is a system set up and designed by the lawyers to modify their own behavior. Well this set of rules basically said that civil lawsuits were bad, that as a lawyer you could not encourage them, and that doing so got you kicked out of the brotherhood of lawyers.

And if you did something really over the line, like chase down an ambulance and hand the person inside a business card, that could even get you thrown in jail!

To accomplish the formidable task of discouraging lawyers from stirring up litigation just for their own selfish desire for increased fees, the Bar Association implemented four primary restrictions. These acted as the four pillars of the courthouse which held up the entire legal profession, image and all.

Firstly, attorneys were forbidden from accepting clients on a ***contingency fee***. This acted as a strong deterrent for both attorneys and plaintiffs not to bring cases which were not well grounded. Contingent fees have long been seen as being easily corruptible, since they encourage lawyers to seek

only the result, which pays them their fees. That means if you need to hide evidence, lie, tamper with witnesses, or whatever to get paid as the attorney on the case, then there is a far greater chance you would do so if you are being paid with a contingent fee.

Second, Lawyers were forbidden from *advertising*. This was part of the ethics rules that distinguished lawyers from other, less reputable, forms of business. Lawyers didn't want to be seen as chasing business and definitely not stirring up lawsuits. Advertising would by its very nature encourage more litigation and therefore was strictly prohibited. Lawyers were there for when you needed them, and everyone knew where to find one. We didn't need to see their names all over the place drumming up unnecessary conflicts and problems.

Third, the *ethics rules*, promulgated by the Bar Association, governing lawyers were very strict regarding such things as ambulance chasing, stirring up litigation, taking questionable cases and many, many related details which made it inadvisable or downright dangerous to a lawyer's career to take on bogus cases. Specifically prohibited was taking on a case in which there was not a solid legal basis for a lawsuit (which the lawyer –not the client – was responsible for identifying). As one great jurist once said: *“much of the job of a lawyer is often to advise your clients that they are being a damn fool and to stop!”* Of course, that was said over 40 years ago when indeed that was the feeling among lawyers.

Fourth, the *Court Attitudes and Procedural Rules and Standards* for beginning and continuing a lawsuit strongly discouraged “fishing expeditions.” The rules and court standards defined exactly how a case must be brought. This included a statement of the facts and circumstances sufficient to state a cause of action. It also included the rules of discovery and procedural processes that kept a case moving along. The attitudes and standards of the courts were clear in their discouragement of lawsuits. The purpose was very clear, to stop cases which were begun simply to try harass, or to get into the discovery phase to dig up something worth suing over later on. It was widely recognized and accepted that this would be an easy tactic used to harass and terrorize someone with a purpose to use the system to extort a settlement with no real basis for a lawsuit, and that was not wanted!

All of these rules and restrictions made sense, particularly given the incredible power and responsibility the courts and lawyers who administer them held. And, believe it or not, this actually worked, more or less, for quite a long time. In general, lawyers were very buttoned up about civil lawsuits and they were extremely rare. In fact, even as late as the 1960's, the *feeling* within the legal profession about going to trial was extremely negative. Lawyers who went to trial on a civil issue were seen as having failed at their job, which was to help the parties work it out, not to sue!

Of course, this was also a time when courtesy among lawyers was absolutely expected, and where the appearance of impropriety was as important as the doing of something wrong itself. Image was everything and no one wanted to look bad, or appear to be stirring up a lawsuit just to create more billable hours.

So what happened? Where did the civility and honor in law go? And more importantly, HOW did this happen? I mean, if the lawyers were so good at governing themselves out of this despicable behavior, how did it all change?

The WHY is easy to see – money! Law as a business took hold about the time that everything American was turned toward the almighty dollar, and lawyers were no exception. They controlled the very system that kept them in check, so why not just change it.

The HOW is really where our story picks up. How to defeat the 4 pillars of legal ethics that kept the lawyers from taking over and corrupting the very legitimacy of our system itself. The answer is with 4 changes in our system. Four changes that began in the 1960's and culminated in the 1980's—just over 20 years! 20 years that unleashed a litigation monster and changed everything! These 4 changes were:

- 1) *Contingent Fees Allowed,*
- 2) *Attorneys allowed to Advertise,*
- 3) *Ethics Rules dramatically relaxed,*
- 4) *Court Attitudes and Procedural Rule changes to encourage litigation.*

I am sure you have already noticed something very interesting about those 4 things. They are the same four pillars of the legal system which held the demon known as lawsuits in check. We have now let that demon out of his cage and are reaping the consequences. *The Lawsuit Lottery* is on! Here is what happened.

1. Contingent Fees Allowed.

In virtually every civilized society in the world the contingency fee has been expressly avoided for professionals like doctors, accountants and lawyers. There is simply too much temptation to allow those entrusted with our health, taxes and personal freedoms to be influenced by a contingent fee. English common law, German and French civil law and even Roman law all agreed it was ***unethical for lawyers*** to accept a contingency fee!

Why does this make sense? All we need to do is look at what Mr. Morris Eisen did to see. Mr. Eisen ran one of the biggest personal injury law firms in the country employing 45 lawyers up until 1990. That was the year it unraveled for this multimillionaire legal success story. Mr. Eisen and his firm became so successful by promoting the use of the contingency fee. He was famous for “no fee unless we are successful.”

Successful he was, maybe too successful. In fact in the end when Federal Prosecutor Andrew Maloney detailed the charges against Eisen, he identified over \$9 million in judgments which were collected by Mr. Eisen's firm, resulting in over \$3 million in contingency fees, plus reported expenses. The problem was that these “fees” were earned by winning cases using such lawyerly tactics as *bribing witnesses, bribing court personnel, suborning false expert testimony, doctoring photographs and manufacturing physical evidence!*

This included Mr. Eisen producing eyewitnesses whom were not only not at the accident scene, but whom were actually **serving jail time** at the time of the accident! In another case Mr. Eisen had someone from his firm use a pickaxe to widen a pothole so it could be blamed for a supposed slip and fall incident.

The case of Mr. Eisen is no exception either. There are regular cases all over the country of lawyers who simply cannot avoid the temptation to outright abuse the system for financial gain. BUT WE ALREADY KNEW THIS! That is why we didn't allow contingent fees at all – It is just too tempting. I mean, who better than the lawyers, who use and control the system, know how to *misuse and abuse* that same system!

Nevertheless, the contingent fee was the first of the four pillars to fall. The lawyers successfully argued (or should I say, they used the excuse that) too many people were being denied access to the legal system and that it was necessary to introduce a contingency fee model to help those poor “innocent victims” find good lawyers. Ignore the fact that there were no complaints from aggrieved victims who had failed to find legal counsel. It seemed that only the lawyers had been concerned that nameless minions were being underserved by their talents.

But of course, it worked! But why wouldn't it? I mean who has the friends and influence in the state legislatures to make such a change? That's right, the lawyers. So state-by-state contingency fees were legalized, and in 1964, Maine was the last state to fall.

Down went pillar number one! Lawyers were now free to become partners (in crime?) with their clients. Now instead of the lawyer encouraging their clients to stop being *damn fools*, and to settle, they would do just the opposite—encourage more litigation. Their livelihoods (or should I say profits) now depended on it!

2. Attorney Advertising.

With the pillar of contingency fees down, the prohibition on advertising became all that much more important. It is one thing to be able to offer a contingent fee arrangement to a client who is already in the market for an attorney and who has walked in the door. It is another to “stir up” the conflict itself by advertising!

Advertising was simply not allowed. That is until 1977, when an Arizona law firm decided to place an ad in the *Arizona Republic*. Sure enough, that was it. The Supreme Court got involved and decided that it was unfair to not let the poor lawyers advertise just like everybody else.

However, even the Supreme Court was concerned with what that could mean for the legal profession, and specifically admonished the state bar associations to put “strict limitations” on the type of advertising that lawyers were allowed to do. Specifically that meant only the name of the firm, the type of law practiced and a list of services with standard fees could be advertised. That's it!

Now, let me ask you, is that what we see on television and billboards today? NOT EVEN CLOSE! Instead what we see is a direct solicitation, using sleazy tactics and false promises to induce people with the lure of financial gain! The shackles are off and lawyers are now able to do the unthinkable! A case in point is Florida lawyer Craig Goldenfarb, who has taken legal advertising to an

arresting new low—cardiac arrest that is. His ad states “Personal Injury, Medical Malpractice, Nursing Home, and Liability for Heart Attacks in Public Places.”

Did you get that? He is implying in his ad, that if you have a heart attack in a public place then he will sue the store, restaurant, city or town in which you had it for you! Yes, that sounds like we have lawyer advertising under control and we haven’t slid into the gutter that the Supreme Court was worried about!

The founding fathers would be turning over in their grave to even think this is where we have come. But wait – there’s more! We haven’t even gotten to the best part. With pillar one and pillar two down, the lawyers really got serious and took aim at the heart of what would start the dollars really rolling – MORE WINS! You see, the 3rd and 4th pillar were still taking too many claims off the table, meaning the lawyers weren’t winning enough. So when you can’t win by the rules, what do you do? CHANGE THE RULES! Especially if you control them!

I think at this point you are getting the picture. But even now you may still be saying: “yes that sounds bad, but it is just business. Lawyers have a right to get paid however they want and advertise for clients just like everybody else. What’s the big deal? I mean the system is still fair right. The courts aren’t getting paid for all these lawsuits. If I get sued I will still get a fair trial. And that’s all I really care about right?”

Let’s move on and you can answer that question for yourself as we go.

3. Ethics Rules.

Let’s talk about what ethic rules really are. The ethics rules are the written codification of what is **okay** and what is **not okay** for a lawyer to do. These rules are much stricter than the standard rules of business in general. They are the “Moral Code” of the legal profession and since their inception in the 1800’s they have been taken very seriously!

In 1969 these rules were standardized by the American Bar Association in the **Model Code of Professional Responsibility**. This codification was VERY detailed and gave a great amount of guidance and specificity as to which conduct was acceptable and which conduct was not. For example *Ethical Canon 7-10* said:

“The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.”

In fact, if you were to read the full Model Code, you would have a very clear picture of what a lawyer should and shouldn’t do. The Model Code was also divided into Ethical Canons and Disciplinary

Rules. This was helpful in seeing what the moral reasoning was behind the actual rules themselves. Additionally there were Notes to help further clarify any misunderstanding and help put forth the underlying *purpose* of the rules.

Remember, we are dealing with LAWYERS. These guys definitely know how to read between the lines and create alternate meanings when it serves them. They are also not stupid, so when the ABA put together the Model Code – it was specifically drafted to avoid the type of “interpretation” that lawyers do so well!

This WAS the third pillar that held up the courthouse that the legal profession inhabited. But there was a problem for this new breed of lawyer/entrepreneur – It was too strict! It was too clear! And it didn’t give these guys the room they needed to really take advantage of their newfound freedom to *advertise* with a *contingent fee* since doing so under the current Model Code might get them disbarred.

Once again, when faced with a system where you can’t win by the rules, what do you do? CHANGE THE RULES! Especially if you control them! And that’s just what the lawyers did. Here’s how they did it!

To get around the detail of the Model Code the lawyers in charge got together and proposed that these rules were too long and that they should be streamlined to be easier to use. So a commission was commenced to propose an alternative to these rules. What emerged in 1983 where the *Model Rules of Professional Responsibility*.

Before I continue I am going to warn you in advance that I have to give a small lesson on legal construction for you to understand the trick that these lawyers used. You see, there is a fundamental premise that every first year law student learns, which says; “The more detailed the rules, the more clear (and more fair) they can be, but the more difficult they are to use and enforce.”

Basically what this means is that if you make a simple rule that says “NO DOGS ALLOWED” it will be very easy to enforce, but it might not be totally fair, for example if someone walks in with a seeing eye dog. To make it more fair we need to make it more complex, which means adding an exception, in this case: “NO DOGS ALLOWED (EXCEPT SEEING EYE DOGS).” If we want to continue to make it more and more specific and include police dogs, or dogs under 12 pounds, or any other exceptions it will continue to become more complicated.

This is exactly why the I.R.S. code is so ridiculously complicated. It tries to cut out exception after exception to tax exactly who and how the government wants. But it is so difficult to use that we all need to hire accountants just to file a simple tax return. If we went to a flat tax it would be very easy to use, but would also likely not be very fair to many.

The original **Model Code** was far more complex than the new and “improved” *Model Rules*. That was because back in 1969 the ABA wanted it to be very specific and CLEAR so that it could be followed. It was, after all, for lawyers, so a little complexity was not only a very good thing, but a necessity!

The new **Model Rules**, on the other hand, were extremely simple and gave virtually no guidance. The rules did away with the distinction between the reasoning and rule and had no notes! Basically, they simply opened up the field and gave every lawyer in the country a blank check to argue what was ethical and what was not. It was a coup! The new ethical rules became, if there was no rule specifically against it (and those were mostly all gone), then you could make a reason for it!

Of particular importance was the new RULE 3.1. This was the icing on the cake that gave every sleazy lawyer all the reason he or she needed to sue anyone at anytime with no fear whatsoever of being disbarred for bringing a frivolous lawsuit. Rule 3.1 of the new Model Rules says:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

To make the point of how much more “streamlined” the new rules were, we should note that this one sentence rule replaced: *Ethical Canon 7-1, Ethical Canon 7-4, Ethical Canon 7-5, Ethical Canon 7-14, Ethical Canon 7-25, Disciplinary Rule 5-102, Disciplinary Rule 2-109 and Disciplinary Rule 7-102!* That’s right, all of these rules, (which I will spare you from the details of) were replaced with a single sentence!

But that is not the worst part. It was replaced with a single sentence that used one of the most cherished and favorite of all lawyer tricks – *The Double Negative Injunction!* Bear with me for just a few more minutes of legal construction class, because it is critical that you understand how tricky, how low, and how patently unethical this change really was.

The Double Negative Injunction goes like this: “Don’t do this (bad thing), unless there is any reason that you can cite for doing it that is not bad.”

Did you get that? Now let’s read Rule 3.1 again:

*A lawyer shall **not** bring or defend a proceeding, or assert or controvert an issue therein, **unless** there is a basis for doing so that is **not frivolous**, which includes a good faith argument for an extension, modification or reversal of existing law.*

Do you see it now? Are you even clear what the rules are trying to accomplish? For sure I know what they were trying to make it LOOK LIKE! They want it to *look like* there is a prohibition on lawyers bringing frivolous cases. Well if that was what they wanted to do, why didn’t they simply say: “*it is unethical to bring or defend an action that is frivolous.*” In fact this is exactly what the effect of the original **Model Code** was!

So why didn't they just say that? THE ANSWER is that they didn't want to make it unethical to bring a frivolous case! They actually wanted to give the lawyers any possible reason they could come up with to do just that. So instead of simply saying NO FRIVOLOUS LAWSUITS, they said don't UNLESS you can point to ANY BASIS that it could be brought which is NOT frivolous.

DO YOU GET IT NOW! This is a HUGE legal distinction and completely obliterated the pages of canons, rules, notes and guidelines from the original **Model Code** with this one sentence!

To top it off, they even included the most liberal and all inclusive of all reasons by saying: "*which includes ...a good faith argument for an extension, modification or reversal of existing law!!!!*" That means that you can bring a completely frivolous case and simply say: "yes, I know this case is frivolous, but there is ALSO a reason to bring it that is not frivolous because we are arguing for a change in the law (which they don't care about and know they won't get anyway) and therefore it is OKAY!!

Can you say (please excuse my French) BULLSHIT!!!

4. Court Attitudes and Procedural Rule Changes.

Okay, so we are down to the final pillar (if you can call it that by now). Clearly the courthouse has already collapsed and is laying on the ground. I hope by this point you can see that we have all been hoodwinked. The legal system is now little more than a scam run by some of the most clever scammers of all – lawyers! And there is no one watching them but themselves. The foxes have finally figured out that they were the only ones guarding the henhouse! The lure of easy money has won the day and you and I are left with a crooked legal system controlled by the very people who have turned it into an extortion racket!

So we have now seen how the lawyers have *given themselves* the right to become part of the action directly with a contingent fee. We have seen how they have *given themselves* the permission to aggressively advertise and spark up the litigation frenzy we are now all in. And we have seen how they have *dismissed* the ethical rules that would have prohibited them from using the legal system as a tool for extortion. The only thing left was to figure out how to keep their cases "in play" even longer for their pressure cookers to really start heating up their profit machine!

So let's take a look at the final pillar – *Court Attitudes and Procedural Rules*. To help you understand what this pretty big topic is all about and why the attitudes of the court and their procedural rules are so CRITICAL in keeping our legal system from corruption, I need to first explain how the legal system is REALLY used today by the predator lawyers, and what a far cry it is from its original design.

This is the REAL SECRET of lawsuits! This is the heart and soul of the aggressive, sleazy tactics, predator attorneys are using to literally EXTORT your money using our, once cherished, legal system!! HERE IS THE REAL STORY!

Just for the sake of argument. Let's say that you are someone who is willing to get money any way you can, using any method or system available. You don't care how it works, where the money

comes from, or who it hurts, as long as doing it isn't going to get you thrown into jail. You just want as much cash as you can get your hands on. Granted 95% of the people out there do not fit this description, but unfortunately we all know that some do!

So what if you are that person, AND you happen to be a lawyer who understands how the legal system works. The question becomes: "Is there a way to use the legal system that is technically 'legal' to essentially extort money from someone?"

As I am sure by now you have figured out, the answer is YES! The question then becomes, what would that "scam" look like? Here it is!

The SCAM goes like this:

1. FIND someone with money that you would like to extort.
2. Create a REASON that you are entitled to the money.
3. Get in front of a judge who has the POWER to forcibly take the money and give it to you.
4. And then to somehow CREATE a legitimate incentive for that person to voluntarily GIVE you their money, and
5. Do it all without getting into trouble for doing it!

That's it right? Now do I really care what the 'reason' is? NO I don't! Do I even care if it is a legitimate reason? No! In fact, it is better if I can use ANY possible reason, since finding legitimate reasons would only make my job harder.

The trouble comes in at step 4 – which is that I need to create a legitimate incentive for the other party to actually GIVE me their money. That part sounds difficult.

Here is where the trial lawyers who reshaped our legal system into its current distorted form knew something that you probably didn't. The REASON that someone would *voluntarily* give you their money is if it actually cost them less time, energy and money to do it than it would be just beating your phony reason outright in court.

Did you get that? The challenge in this scam is that the lawyers had to make it MORE EXPENSIVE for you to fight, than to simply PAY THEM OFF! So HOW did they do that? This is where the trial lawyers got organized and started taking aim at the attitudes of the courts and the procedural rules that they employed to keep lawsuits in check.

You see, in order for this scam to work, the lawyers need the lawsuit itself to be a long and drawn out process, which in turn makes it emotionally and financially expensive! This is the key in the *Legal Extortion* racket. The case, even a bogus or frivolous one, needed to be expensive and create fear. If not, the extortion wouldn't work since the phony claims would eventually be found out.

The judge, in conjunction with specific court rules and the Rules of Civil Procedure are what determine which cases get in and how long and drawn out they will be. Well, up until around the 1970's the attitude toward litigation was decidedly negative. As such, judges and the Rules created a high barrier

to instigating just any old lawsuit. They also created strict procedures around the discovery process, which kept cases moving along, and didn't allow them to stray from their original issues. It didn't do the lawyers any good to get into court just to get thrown right back out.

Once again, when faced with a system where you can't win by the rules, what do you do? CHANGE THE RULES! Especially if you control them! And yet again, that's just what the lawyers did.

Now I need to take a moment and stop here to make sure that you understand exactly who the players are in this scheme so you will understand exactly how they did it. In 1977 (does this date seem at all coincidental to you?) these aggressive trial lawyers decided that in order to affect such a large scale change in the attitude toward lawsuits, they needed to get some serious clout in Washington. So in that year they created the Association of Trial Lawyers of America (ATLA). This was not a social club or even a study group – it was a lobby. A Political Action Committee (PAC), designed for one thing—to influence Capital Hill!

Now what did the trial lawyers care so much about in Washington? Laws, that's what. You see, the trial lawyers not only wanted to influence the courts and procedural rules, but they wanted to control which laws were passed and HOW they were passed. More laws make more lawsuits! Remember, their motto even to this day, is that lawsuits are good and that we need more of them! (Please tell me I am not the only one who thinks this is insanity!)

And they absolutely wanted to STOP any attempt whatsoever to limit their right to sue or the amount of money they could seek in damages. It doesn't matter to them if as a society we are suffering and creating an untenable legal morass in which only *they* really win. As the middlemen, they want lawsuits at all costs! And if you want to know who someone is, just look at what they say. Past president of the ATLA, Roxanne Conlin, said about even the prospect of some type of tort reform:

“The system works just fine...That is a fact. What those who seek to limit the rights of the innocent injured seek to do is make it not work. So we don't think of these as reforms; we think of them as deforms.”

Indeed it DOES work just fine if you are a TRIAL LAWYER! These are the guys (and girls) we are talking about. They are the ones that sue and the ones who want the system to be a stacked in their favor as much as possible (remember they are now part of the action with the contingent fee). And they are good at what they do! In fact, Lester Brickman (a professor at my alma matter law school in New York, *Cardozo Law*) said:

“The Association of Trial Lawyers of America has achieved an unparalleled track record on Capital Hill. While other special interests regularly sacrifice losses on one front in order to win on another, and occasionally leave Capital Hill licking their wounds, ATLA has never compromised and never lost. Ever! No other lobbying group can make that claim.”

Can you say POWER! I really want you to get this. The Trial Lawyers are stacking the game! Why do you think that we are the ONLY country in the entire world with a litigation crisis? Really? It's not because we are more fair, it's because we are more UNFAIR. We have created a country of victims who have an army of hired guns using unethical tactics to capitalize on someone else's misfortune, creating yet another misfortune by suing to death someone else, regardless of merit!

Now I want to be very clear, Congress could end this crisis in a SINGLE DAY! And they could do it AND create a fair system where compensation for misfortune would not run by lottery. They could do it and create MORE money for *real* victims by cutting out the middlemen (LAWYERS!) One simple shift in one simple rule would bring it all to an abrupt end! Britain, Canada, France, Germany, Switzerland, in fact every other civilized country in the world – none of them have SOLD the keys of their county to their lawyers! We are the ONLY ONES, not one single other country has the killer combination of allowing contingency fees, advertising, removing ethics and court and legislative consent! No one! Doesn't this seem odd?

Everyone but the lawyers are punished in our system. Not only do the victims not come out ahead for being used as pawns in this ridiculous charade (studies show that the people who receive their share of these ridiculous awards are *worse off* and *less happy* after receiving their awards than before they won the *Lawsuit Lottery*), but our entire system has become a joke! And a small group of exceedingly powerful lawyers are laughing all the way to the bank. They don't care that we are bankrupting not only our system, but our legitimacy as well. They want to ride this horse until it's dead – period!

Forgive the polemic rant, but this really is infuriating, because it affects us all. It also points out how much power our system has given to so few and how money runs it all! Well let's get back to the meat of the story.

What the trial lawyers have been so successful at doing by changing the overall attitude of courts and their respective rules of procedure is *give themselves* more leverage at step 4 of the *Legal Extortion* scam. Let's look at the stats of the average med mal case (I am using a malpractice case since the best stats are available; however, it is very representative of the overall legal system).

- The average time to complete a lawsuit is 45 months (almost 4 years!)
- The average cost of a lawyer is \$400 per hour
- The average cost for expert testimony is \$5,000-\$10,000 (per expert)
- The average cost to defend BEFORE TRIAL is \$46,000
- The average cost of a TRIAL \$180,000
- Average cost to SETTLE a claim is \$260,000
- 57% of all malpractice fees go toward paying attorneys
- 43% of all insurance defense costs go toward claims that have NO MERIT

Now let me put these stats in context with how our *Legal Extortion* scam above really works. If I sue you with a bogus or frivolous reason, I will most probably (although not certainly) eventually get thrown out of court. But I will also create a significant amount of expense, and more importantly fear in your life for as long as I can keep the lawsuit going. If I can count on at least a couple of years of

dragging the case out (remember the average is almost 4 years) you will have to factor in the overall cost for you to defend the lawsuit.

This is the trick. If I then come to you and offer to ‘settle’ my claim with you for something that approximates your overall cost to defend, AND give you the added bonus of having all the pain end right away, would you take it? The answer for most people is yes! And this is just as true for a frivolous lawsuit as it is for a real one. That, my friends, is LEGAL EXTORTION!

As one humorist once wrote:

"If a man stopped me in the street, and demanded of me my watch, I should refuse to give it to him. If he threatened to take it by force, I feel I should, though not a fighting man, do my best to protect it.

If, on the other hand, he should assert his intention of trying to obtain it by means of an action in any court of law, I should take it out of my pocket and hand it to him, and think I had got off cheaply."

- Jerome K. Jerome

Is this racket beginning to make sense to you now? Some of you are probably moving from the resistance or denial phase to the anger stage, and I understand that. These are very infuriating facts! And I want to warn you that there is more. It actually gets worse. When I tell you specifically the reforms and changes beneficial to us all that ATLA has been successful in lobbying against you will be truly astounded! You will understand how fundamentally corrupt our legal (and political) systems have become. You will see how the lawyers continue to strike down anything that will affect their ability to increase their fees, no matter how good for the country it might be.

But first we need to wrap up our conversation about Legal Extortion. You might have noticed one small detail that has left an open question for you in our scam. Doesn't it make sense that the loser of a lawsuit, especially a frivolous one, would have to pay back the legal expenses and costs that they forced the winner to incur as a result of their failed attempt?

YES, it does. This is called the “*loser pays*” system, and it is employed in virtually every other developed country in the world. How it works is simple. If I sue you and I lose, then I am responsible to pay you back the costs and expenses you had to incur because of my lawsuit. The idea is to put you back into the position you were in BEFORE I sued you! That's it. As I am sure is completely obvious to you, not only is this FAIR, but this makes TOTAL SENSE! It absolutely discourages me from suing you unless I have a very solid reason, by creating a financial risk for me to begin the dispute. And if I do have a good case, I have every encouragement to still bring it.

In fact, this one feature alone can be credited to a great extent for the reason that no other country in the world has the litigation crisis we have here in the U.S. And, guess what? WE DON'T USE IT!

This is that **one single change** I was referring to above that would end this ridiculous scam overnight. It would immediately topple the billboards and make the onslaught of television commercials disappear. Why? Simple – Money! That's right, it would turn the tables on the trial lawyers because they would then have a **financial risk** for taking on bogus cases. It would be their client, not the defendant they dragged into the case, who would pay the winners 'ridiculous fees' if they lost. And to top it all off, if the plaintiff was not able to pay, then the lawyer would be responsible! Does anyone think that might change things around a bit?

YOU BET IT WOULD! But don't hold your breath. Not only is this the holy grail of features that the trial lawyers will die defending, but there isn't even a conversation around changing our "No Loser Pays" system. Not even a conversation! That means that ATLA has killed even the mention of any changes in this!

Again, I would like to ask you: "Does this make any sense?" I sue you with a frivolous claim, you run up \$82,000 in legal fees, not to mention that you have to live with the stress and uncertainty of a lawsuit for several years and then YOU WIN! In fact, let's say that you win on ALL COUNTS and I get flatly thrown out of court with a strict admonishment by the judge not to bring this kind of junk in his courtroom again. But guess what? YOU ARE STILL OUT THE \$82,000 and I don't have to pay you back a cent! DOES THAT MAKE ANY SENSE!

Okay, we are almost done with this section. But before we move on I want to give you what I promised earlier and take a look at the list of 'accomplishments' by the TRIAL LAWYERS (ATLA) since their inception in 1977. Here is what you can be proud your system in Washington is doing for you:

1. In the 1977, ATLA killed federal no-fault automobile litigation, which would have eliminated hundreds of millions of dollars in lawyers fees, **each year!** It would have also eliminated one of the most common types of lawsuits, thus relieving tremendous pressure from our legal system and providing a built in remedy for EVERYONE (not to mention a strong incentive to buy your own auto insurance)! In fact, NO FAULT is one of the most respected, developed and proven ways to create a FAIR system and cut out the HUGE expense of the unnecessary middleman. It would have also DIRECTLY led to decreased insurance premiums for EVERYONE, which would have come directly out of the lawyers' pockets! So yes, of course the lawyers killed that one!
2. Since 1977 to the present day, ATLA has successfully warded off dozens of attempts to reform the Medical malpractice arena, usually killing any bills before they even leave a Congressional Committee. As a result doctors are facing their own malpractice insurance crisis and in many states insurance is now unavailable, or ridiculously expensive. (This has produced so many negative effects in our system that a separate report could be written on this issue alone!)
3. From 1977 to the present ATLA can be most proud of their relentless crusade to kill any legislation which attempts to reform product liability laws. Some of the proposed changes would have capped 'punitive' damages against manufacturers and forced the loser in the case to pay all

the legal costs! (DID YOU GET THAT? They have been massacring any attempt to change to a “loser pays” system).

4. ATLA has been successful at killing any reforms around any of the mass torts like; asbestos litigation, breast implant, tobacco, etc. Basically any proposal that would have created a sensible compensation package for victims has been killed in favor of a case-by-case winner takes all approach that *maximizes* the trial lawyer fees.
5. ATLA stopped the Montreal Protocols, which would have created a system for compensation on airplane crashes, creating sustainable predictability. (Jonnie Cochran was famous for being on the ground “to support victims” in an Alaska Airline crash before most of the victims had been seen in the hospital by their own relatives!)
6. They have consistently killed attempts to introduce more Alternative Dispute Resolution (ADR) systems like mediation and arbitration since these produce faster, less expensive results and require less attorney involvement, meaning less fees!
7. ATLA has been successful at killing reforms of the *Joint and Several Liability* laws. Currently these laws say that a co-defendant, which is 1% responsible, can be made to pay 100% of the award. Reforms would have limited that to only the percentage of their fault (1%). This would have limited the lawyer’s ability to find the ‘deepest pockets’ regardless of fault, and thus was summarily killed!
8. ATLA has been hugely successful at keeping the FORUM SHOP open. *Forum shopping* is where lawyers choose a jurisdiction to bring the case, which has the most favorable rules for THEM. Reforms would have required the cases to be brought in the jurisdiction in which they are connected, not the best jurisdiction for the lawyers.
9. ATLA has been successful at killing any attempts to reform the jury selection (*voir dire*) process. Currently we don’t have a jury of our peers, we have a hand-selected jury, which is *most likely* to return the largest awards. Reforms would have limited the Trial Lawyers from their ridiculous hand selection process and given them the luck of the draw instead of allowing them to stack every jury using a team of trained specialist who are free to use everything from questionnaires to videos to face reading experts to dissect the reactions of the possible jurors and find the ones most likely to support their case and bring back the biggest awards.
10. ATLA has killed any legislation designed to identify and address ‘fraud and abuse’ of the litigation system by plaintiffs’ and attorneys. (This is so self-serving and patently absurd that it is hard to comment. So much for them governing themselves).

Even when individual States have been successful in introducing some form of Tort Reform, ATLA has often been successful in using its influence to reverse or overrule these reforms as unconstitutional! And always with a cynical smile and the line that they are “protecting innocent victims.” Please! Give me a break! How about looking at the legal system as an extension of our social and governmental systems and think about what is best for everyone, not just the lawyers.

In fact ATLA has been so successful in the last 30 years that their name has become synonymous with POWER POLITICS in Washington. It has also attracted a lot of attention from those who would like to see reform and even the mention of “Trial Lawyers” now creates some seriously negative press and bad feelings.

These guys are so bad that they have even **soiled their own name!** So what do you do when you can't win by the rules? Change the rules of course! Especially if you control them. This strategy has worked so well that they decided to try it again to get the huge negative publicity off of themselves. So in 2006, the *Association of Trial Attorneys of America* officially changed their name to the ***American Association for Justice*** (AAJ)! Now doesn't that even sound more humane? Right!

So what has all of this JUSTICE really gotten us? Well let's just look at it this way. All this money has to come from somewhere to pay the lawyers. Guess where?

- The cost of the U.S. tort system⁴ for 2003 (last available stats) was \$246 Billion dollars, or \$845 per citizen or \$3,380 for a family of four. 2008 estimates are over \$5,000 a year for a family of 4!
- This cost is paid by YOU in increased prices for everything from a ladder to a car to your medications. It's like taking \$5,000 out of the average families pocket in a TORT TAX every year! (The average family in America makes approximately \$48,000 a year, making their tax a whopping 10.1% of their total income!!!)
- U.S. Tort costs increased 35.4% from 2000-2003!
- The U.S. Tort system is inefficient; it returns less than 50 cents on the dollar and less than 22 cents for actual economic loss and damages. (Which is to say, even if you agreed with the premise behind the system, it still DOESN'T WORK! There is simply too much FAT in the middle!)

This is how each of us is affected **even if we never get sued!** In fact, if you make over \$200,000 a year, then for your family, the estimated TORT TAX for 2008 is going to be more like \$20,750! Did you get that? You will pay over \$20,000 next year in increased prices for products and services just to cover the costs of the ravenous lawyers in our legal system.

Okay, I think we have made the point. Our legal system is broken! And we know why! We have **SOLD** our legal system to the lawyers and they are squeezing it for all its worth. It really doesn't make any sense to keep beating this horse. Right now that is the way it is, and there is no foreseeable change in sight. The interests at hand are just too strong and until we have a major nationwide crisis, or a real change of heart in the American people, then this is the way it is likely to stay.

Our challenge is not to continue to get angry but to simply ask; "is there anything I can do personally that helps me live within this type of system?" Because, unless you are considering opting out altogether, and moving out of the country, then you are in the *Lawsuit Lottery*, like it or not!

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D. III

1 A partial list includes: # GAF Corporation, Johns-Manville Corporation, Raybestos, Eagle-Picher, Celotex, UNARCO, HK Porter, Keene Corporation/ Baldwin-Ehret Hill, Nicolet/ Keasbey & Mattison, Asbestospray, US Minerals Corporation, US Gypsum Corporation, W.R. Grace, AP Green, Harbison-Walker, North American Refractories Corporation (NARCO), National Gypsum, Babcock & Wilcox, Owens Corning Fiberglas, Armstrong World Industries, Phillip Carey Corporation, Pittsburgh Corning Corporation, Fibreboard Corporation, 48 Insulations, Kaiser Aluminum, Federal Mogul, EJ Bartells, Morrison Knudsen, Rutland, AC&S.

2 The dramatic shift in the overall environment around litigation is not a new premise. In fact it has been discussed at great length in many legal journals and articles. For example the Connecticut Insurance Law Journal, Vol 12, P. 35, Fall 2006, states: "*In previous published writings on asbestos litigation, I discussed how the litigation underwent a radical shift in the mid-1980s from the traditional model of an injured person seeking a lawyer to an entrepreneurial model under which plaintiffs' lawyers and their agents actively recruited hundreds of thousands of*

potential litigants who could claim workplace exposure to asbestos containing products. I concluded that a substantial percentage of the nonmalignant claimants thus recruited had no disease caused by asbestos exposure as recognized by medical science and no loss of lung function.”

³ *Pepperdine Law Review*, Vol 31, No. 33, 2004. To quote: “The core of the article is an empirical analysis of attorney-sponsored asbestos screenings which account for approximately 90% of claims being generated. On the basis of that empirical research, I conclude that asbestos litigation today largely consists of former industrial and construction workers:

- (1) **recruited** by an extensive network of entrepreneurial screening companies which are employed by lawyers to “screen” hundreds of thousands of potential litigants each year at local union halls, hotel and motel rooms, shopping center parking lots, and other locations throughout the country;
- (2) asserting claims of injury though they have **no medically cognizable injury** and cannot demonstrate any statistically significant increased likelihood of contracting an asbestos-related disease in the future;
- (3) in a civil justice system that has been **significantly modified to accommodate the interests** of these litigants by dispensing with many evidentiary requirements and proof of proximate cause;
- (4) mostly in **forum-shopped jurisdictions**, where judges and juries often appear aligned with the interests of plaintiff lawyers;
- (5) often supported by **specious medical evidence**, including: (a) evidence generated by the **entrepreneurial medical screening enterprises** and B-readers - specially certified x-ray readers that the enterprises or plaintiff lawyers select, who fail to exercise good faith medical judgment but instead conform their findings and reports to the expectations of the plaintiff lawyers who retained them, and (b) pulmonary function tests which are often administered in **knowing violation of standards** established by the American Thoracic Society and result in findings of impairment which would not be found if the tests were properly administered; and
- (6) who frequently **testify according to scripts prepared by their lawyers** which include **misstatements** with regard to: (a) identifications of and relative quantities of asbestos-containing products that they came in contact with at work sites, (b) the information printed on the containers in which the products were sold, and (c) their own physical impairments.”

⁴ Stats are from Tillinghast-Towers Perrin. U.S. Tort Costs: 2004 Update, (New York, New York, 2005). It should also be noted that these stats DO NOT include the overall costs to society such as the economic impact of the bankruptcies, lost jobs, decreased GNP and other related costs and expenses. These are only the DIRECT costs associated with the Litigation Machine. It is estimated that the overall impact is 3-5 times the direct costs! That’s a TRILLION dollars a year!

⁵ See Trial Lawyers, Inc. California: A report on the Lawsuit Industry in California 2005 at www.triallawyersinc.com/ca

⁶ *Circuit City Stores, Inc. v. Adams* (99-1379) 532 U.S. 105 (2001)

⁷ The most famous case on point is *FTC vs. Affordable Media*, otherwise known as the “Anderson Case.” I am including this footnote only because some very uninformed advisors, will still cite this case as an example of how asset protection using an International Asset Protection Trust didn’t work. The facts are just the opposite, and the Federal Trade Commission (i.e. the U.S. government) got thrown out of the Cook Islands court for the 3rd and final time in December of 2005. The Trust worked despite the fact that the Andersons were crooks and the Trust was very poorly drafted. For a more detailed look at the case you can see my article called “*Planning and Drafting Considerations for Offshore Trusts in light of Recent U.S. Litigation*” By Douglass and Gary Lodmell, *Asset Protection Journal*, Winter 2001 issue.

⁸ *Reichers v. Reichers*, No. 21833-94 (Weschester Cournty Supreme Court., June 30, 1998) N.Y.L.J. (July 8, 1998)