

## **Kill All the Lawyers.**

### **The Rise of the New King**

So you want to be king? You want to control the greatest nation in the world—perhaps control the world as well? As we've seen, you must first own the people, own their minds. You must be able to command their prejudices like one can toot a boy's horn. And, if you are to be king, you must also destroy their warriors.

The people are always the enemy of the king, "the stupid mob," as Hitler called them. The people can rise up. They always do in the end. It is only a question of when.

But how can the people fight against the king without their warriors, without champions to fight for their causes? Destroy their warriors and the people can holler and foam but they can do no harm, for even they who are aware enough to shake off the king's propaganda like a dog shakes off fleas, even they are helpless against the king if there are none who can enter the fight for them.

The warriors for the people are trial lawyers--those villains who are not to be trusted, not even when they are shackled and held helpless in those strait jackets of hate. And we have learned to hate them because every day through the King's media we are told outrageous stories of how trial lawyers have aborted the fetus of justice, and we hear malicious jokes so that we have come to believe that the cause of every ill that befalls us lies at their feet.

"First kill all the lawyers!"

Our insurance rates go up because of trial lawyers, those tricksters who bamboozle jurors to return those crazy, bloated verdicts. Our taxes overwhelm us--the devils. They sue like ordinary people breathe. They're to blame for the high cost of medicine, for the high cost of merchandise of every description, for the high cost of drugs— they effect the cost of everything because they hoodwink the juries and buy off judges, and pocket piles of money and amass fortunes! Lawsuits are destroying our economy. Manufacturers can't survive against their foreign competition because of lawyers' suits. Lawyers are destroying America. The courts are packed to the ceilings with their frivolous lawsuits. The system is running wild.

Ann Coulter tells us.

FRONT PAGE MAGAZINE: Why do you hate trial lawyers?

COULTER: Everything you do -- from driving to earning a living to making a cup of coffee to owning a home to getting medical care -- is more expensive and difficult simply because of trial lawyers, who, at the same time, contribute absolutely nothing of any value to society...But other than the fact that trial lawyers have made every single facet of life worse, I can't think of a single good reason to dislike them.

Rush Limbaugh joined in with the same worn rhetoric. Limbaugh and Bush II as well. They are soul mates. Blistered souls. It was the second presidential campaign for George W. Bush and John Edwards was the Democratic vice presidential candidate. "After all, Edwards was a trial lawyer." That's what Limbaugh said. That's all he need say. Trust should

end there. Interestingly, Limbaugh comes from a prominent family of lawyers. His father, Rush H. Limbaugh, Jr., was a judge. His brother, David Scott Limbaugh, graduated cum laude with a BA in political science and was law review at University of Missouri. He is a practicing lawyer who has served as a member of Missouri Association of Trial Attorneys. It was a fine trial lawyer who put the constitutional cloaks around Rush Limbaugh and apparently saved him when he faced allegations of illegal drug use.

And O'Reilly. What does O'Reilly say about trial lawyers? Well, they "have a hidden agenda that is antithetical to the improvement of society." The same stale party line. It was a trial lawyer who represented O'Reilly and led him through that troublesome sexual harassment suit. You remember: The shower. The fantasies. Then a trial lawyer made it all disappear.

We remember Nancy Grace, hello there Nancy. She says, "Greedy lawyers have had their hands in the cookie jar for so long that Congress may actually enact a law to stop them," and that she always viewed them as "quick and wily, like a beautiful snake that you keep in a cage but wouldn't dare touch." The snake? What about the apple, Nancy?

Trial lawyers have been so demonized that George II did not hesitate to pile on in his bid for reelection. He was speaking at the Northern Virginia Community College. August 9, 2004. A campaign speech. The press pressing. He looked around the auditorium with that smile, the half sneer. Then he said, "By the way, you can't be pro-small business and pro-trial lawyer at the same time. (Laughter and applause.)

"You can't be pro-doctor and pro-patient and pro-trial lawyer at the same time. (Laughter and applause.)

"You have to choose.

“ My opponent made his choice, and he put him on the ticket,” he said with the still smiling grimace. (Laughter.)

“I made my choice. I'm going to work with Congress for liability reform and for tort reform.” (Applause.) Note the applause.

The man was not speaking bravely. He was speaking to a lawyer-hating audience, one created by right-wing propaganda. But George II, too, had already forgotten. They were trial lawyers who argued his case to the United States Supreme Court, who saved his bacon and put him in the White House.

Thus, according to Team Hate, the King's men and women who mouth the party line, the world would be immensely improved if we could actually kill all the lawyers. Yes. But we are able to kill them in a more subtle way than Mao or Stalin killed their enemies. Again the method is the power of propaganda. We destroy the lawyer in the minds of the people—and it becomes too clear that if the corporate King can destroy the people's warriors in the eyes of the people all power will be vested in the King. The contest is over.

Think of John Adams, Thomas Jefferson, Alexander Hamilton and James Madison. All lawyers. Ask, how could such an honorable profession then become such an object of scorn? How did lawyers become as those “parasitical blobs of absolutely worthless protoplasm who are responsible for the decline in civilization?”

The method of destroying trial lawyers has been so astonishingly simple. Pick a few cases with apparent ridiculous results that portray the greed and stealth of a few trial lawyers. Show the supposed stupidity of jurors. Then tell and retell those cases until the public comes to believe that

what they're hearing represents the character of all trial lawyers and the intelligence of all jurors and the results in all courts.

Propaganda in its glory. Goebbels would approve.

If none will trust lawyers for the people, not the people, not the jurors, not the judges, not the appellate judges, many of whom have been hoisted up to the high courts by the corporate King, our justice system is gone.

Goodbye.

Snakes and lawyers.

Can't you see it? The courts are open to all. It is our right under the Constitution to petition the courts for justice. See the judges sitting up there on their benches all stern and pompous, shrouded in their black robes ready to play the judicial game. Are they less concerned with justice and more concerned with being reelected? Do not ask such questions. Can't you see the reporters leaning forward in their seats, up front, their notebooks readied, their pencils poised to record the first bud of embarrassment that could bloom into a story.

Yes, of course, the judges wish to be reelected and assured of their retirement, and they wish to be welcomed at their clubs. And although they will never admit it, most fear the embarrassment of their rulings being reversed by a higher court. That fear has something to do with the people's assessment of them—that perhaps they are incompetent, perhaps simply stupid.

"Don't give a damn what the Court of Appeals holds. I call 'em like I see 'em."

"Yes, Your Honor."

And one thing for sure. I say, *for sure!* Under such scrutiny the judge will not let one of those slimy trial lawyers come slithering into his court and

pry open the door to the corporate King's vaults--the public out there, the voting mob, poised to pull him off the bench at the first sign the judge has let one of those "wily snakes" escape its cage.

So, like a good trial lawyer, I overstate the case to make my point. Slightly. I have known a few great judges in my day, and the others? They are not all bad. But listen to me: Today the trial lawyer could be as pure and honest as Jesus in a pin-striped suit—and still the jurors will see him through jaundiced spectacles. Or the woman, as trial lawyer, could be Mother Teresa in a conservative business dress—dark worsted wool, a small string of no-nonsense pearls at her throat, a tiny gold cross pinned at her lapel, her face that of a saint--and still the jurors would undress her to her soul to see if, indeed, she had one. Suspicion. Worse. A thin fog of hate surrounds all lawyers for the people, these warriors for the people's justice.

But in a courtroom there are two sides, are there not? What about the corporate King's lawyers--the insurance company lawyers, the lawyers for the corporations and the big money who oppose the people in their search for justice? These are the lawyers, many good, decent men and women, who fight *against* the people, who make up the huge firms in every large city, some with hundreds of partners, gangs of lawyers occupying multiple floors in the towering buildings where wealth and power are concentrated. One looks up to them, doesn't one, those who fight so valiantly against people's justice?

Groups of these silk-stockings barristers, mostly hired by insurance companies to defeat an injured person's law suit, may bill out thousands of dollars for every hour they spend in such endeavor and often they spend thousands of hours in the defense of a single case. To them it is only work, a job disassociated from justice and from the pain and devastating loss of

deserving, living persons. Too often these mammoth law firms win, not because justice is on the side of the corporation they represent but because the people's lawyers are overwhelmed by the numbers of great legal talent thrown against them, graduates from the grand universities like Harvard and Yale, the alma mater of the corporate lawyer, the brainy, clever ones. And in the end, it makes no difference what the corporate King spends to defeat the people. The King will spend whatever it takes. The King is afraid of the people. The people must be defeated, case at a time, or whole hordes of them will be pounding at the doors for justice.

You can see the corporate lawyers over cocktails after the trial. Bill Matilanan, who's been brain-injured by a piece of equipment that broke and fell on him, doesn't know who he is, or where he is. He faces the jury and hears the foreman read the verdict. But he does not understand that it is a verdict for the company that will leave Bill without money to live another day. Bill will join the crowd of beggars on the streets and sleep on a grate to catch a little warmth in the winter while the corporate lawyers laugh with each other after they've finished eighteen holes of golf at the local country club.

These are the true elitists, Ms. Ingraham, these corporations, some of whose white-collar criminals you've defended—some of the few who were finally charged with crimes, enough to make the system appear just. I am glad, of course, that you defended them. They are entitled to a defense and to the presumption of innocence. But I wish, instead, a woman of your obvious skills had defended some poor wretch charged with breaking into a liquor store to satisfy his thirst, or a mother charged with cheating on welfare trying to support her hungry children.

I have yet to hear the smooth, unctuous corporate voice denouncing corporate lawyers. They go to church regularly. Their children attend the finest schools. They are seen as leading citizens, and by all popular standards they are. Some become judges, and some go into politics. But they are the corporate strong-arms who hide behind the golden shield of power, rake in huge fees and disappear into the next case in which they ply their skills in defeating the people's justice. We have already met de Tocqueville. He warned against the sort of lawyers I describe here: "It will always be easy for a king to make lawyers the most useful instruments of his power," he observed.

So Coulter and O'Reilly and the rest demonize the people's lawyers. So what? How does such demonization affect the ordinary citizen who will one day be a juror? First, let me tell you a true story.

A young woman, Mary, lives in a small apartment with her husband and three small children. She suffered from a sinus obstruction and went to one of those specialists who said she needed an operation. A routine operation he assured her. When Mary lay anesthetized on the operating table the doctor's probe punctured her brain like an invading bullet. Utter negligence as any candid expert would testify.

After the operation Mary, once a fine skier and mountain climber, cannot walk. She must be helped in and out of her bed. Someone must feed her and assist her with her bowels. She recognizes her husband and her children, but she cannot speak to them. She has been hurled into the bottom pits of hell and seeks justice. But to get justice she must go into court before one of those judges, and she will face jurors who have been taught that the trial process is a vicious charade, and she will be represented by a lawyer, an honest, competent lawyer, who will be distrusted by the jurors.

The insurance company who insures the doctor will make an offer, yes, of course. Mary desperately needs the money for her care. The offer will *not* provide for her needs for the rest of her life. It will *not* pay anything for her suffering, for her endless torture. And the lawyer must be paid for his services. Without him the company would have made no offer at all. But the company has offered money. She can have it. All Mary has to do is give up her suit, take pennies instead of dollars and release the doctor and the insurance company and go home.

On the other hand she has the right as an American citizen to go into court and face the judge and the jury and the opposing lawyer, a very smooth, skilled, smiling, nice man whose job is to defeat her claim. Neither Mary nor her lawyer have the money to hire doctors as expert witnesses like those hired by the insurance company who will attempt to defeat her claim, doctors from, say, Harvard Medical School and the like, doctors who will take the stand and convince the jury that Mary's injury was an acceptable risk of her operation. The insurance company has put money on the table. If her husband takes it for her—he is her guardian—what will they do in the years to come when the money is gone and she still needs care? But what if she goes into court and the jury finds for the doctor and she gets nothing? Nothing. They say the insurance company's lawyer has won many cases worse than hers.

On the courthouse steps Mary's husband takes the money. He is embarrassed to take it. He feels defeated and like a coward. He thinks he should have fought for his wife. But he could not gamble the loss of the little money the company offered. Her needs. The bills. The creditors. His taking the settlement surprised no one. Everyone always knew he would. He had no choice. In the long run of the years to come the settlement was

about as helpful as a Hallmark sympathy card, but it was something in the hand. And the nightmare of a trial was over. And behind the husband's decision, in part, was his knowledge that the jurors who would try the case had been conditioned to distrust trial lawyers. The deck was stacked. Thank God it's over.

Thousands of these stories occur every year, honest cases involving death and various degrees of injury and pain due to the negligence of others, people who through the fault of others have suffered and will suffer and are entitled to justice. Simple, plain justice. Nothing fancy. Just dollars to represent all the justice that the system allows when a citizen is injured by the carelessness or intentional acts of another. Who can argue with such a noble ideal?

Most people are insured these days. The careless drivers, the negligent doctors, the slipshod, shortcutting manufactures, the polluting companies, all are insured so that the majority of personal injury cases are, in actuality, suits against the insurance companies who insure the person or corporation being sued.

When Mary or any other injured person comes into court, on the face of the suit papers it appears to be a suit against the person causing the injury—the doctor in Mary's case. But it's the insurance company that will pay the final judgment in the case. It's the insurance company that will hire and pay for the defending lawyer and pay the defense costs, and it's the insurance company that will decide how much to pay in settlement to Mary if, indeed, a settlement is offered at all. It will decide when to appeal, and it will pay for the lawyers who conduct the appeal and their costs. And if the appellate court reverses the judgment in favor of Mary and sends the case back for a new trial, the insurance company will again hire and pay the

lawyers for the new trial. Many such cases go on for years. But the insurance companies live forever and their money never runs out.

Further, a judicial fraud is being committed here. It is this: No one is permitted to tell the jury the truth, that yes, an insurance company is behind the suit and will pay all the costs of the suit as well as the final judgment. All the jury will ever see, as in Mary's case, is the doctor who is the named defendant. He sits there appearing afraid, a nice doctor, or in other cases the drunk, now sober sitting there in his Sunday suit. It looks as if any money the jury awards will come out of the pocket of the person sued. And if Mary's lawyer were to intimate—even intimate--that an insurance company is behind the case the judge will call a mistrial and assess costs against Mary.

I say it is a judicial fraud. The courts lie to juries by withholding the truth because the law says they must withhold the truth. So what we have here is an injured person, usually persons of ordinary means, sometimes the rich but more often the poor, suing the most powerful financial entities in the history of the world--insurance companies, and the jurors do not know it. And such suits require trial lawyers, lawyers for the wrongly killed, the wrongly injured citizens. And they are hated before they walk into the court house doors.

The campaign against trial lawyers, launched years ago by the corporate King through the King's media, has finally turned Americans solidly against *their own interests*. What I mean is the people have been taught that trial lawyers—the only profession that fights for people's legal rights--are evil, greedy bastards and that juries, who, by the way, are also just people, are ignorant fools who are taken in by trial lawyers like a carny takes a mark.

So when Betty Abernathy is called for jury service, even before she takes her chair in the jury box she knows that the other eleven people are not to be trusted, that the so-called plaintiff, the injured person, is probably just feigning injury and will lie, and that the greedy lawyer representing her is there to get rich off of that poor defendant sitting over there next to that kind looking, smiling man, the defense lawyer, who represents him.

In a money society, justice, of course, is defined in money damages-- money to compensate for the loss of a husband for his dead wife; money for the pain and misery of the injured, money for the people's loss of life caused by the intentional or negligent acts of others. You can't give back a dead husband or replace a once pain-free, healthy body. All the justice the law can give is money for the loss. Well, you can see where I'm going with this: If the people do not get justice, which is money, then the corporate King's insurance companies can keep the money and buy more banks with their profit, banks that will take even more of the people's money.

It is so absurdly simple.

Mark this place in this book: There will soon come a time when there are no true, skilled warriors for the people--none of those great trial lawyers of the past. The people's once proud warriors will be reduced to taking petty cases, fender-benders, rear-enders, those "nuisance cases," the insurance companies call them, because in the big damage cases like Mary's, the injured persons dare not go to trial because, among other reasons, there will be no skilled trial lawyers to fight for them.

Trial lawyers get their training in the court room in actual cases. There will be few that ever go to trial to learn the art. The courts are so crowded and dysfunctional that it sometimes takes years to get even the first hearing. In the meantime lawyers become at least good at threatening how

much they'll take the insurance company for if it doesn't pay up, and the insurance company claims persons laugh and run the case through their computers and offer half what the computer says the case is worth. Along the way somewhere the case gets settled—usually for peanuts. If some brave lawyer takes an equally brave client to the jury the odds of collecting a nickel are worse than in Las Vegas, and the immediate, the pressing needs of the injured persons are often overwhelming, even critical to life.

Already, today, the seriously injured mostly settle their cases. Most must—the man paralyzed for life from faulty equipment, the widows and children with husbands and fathers rotting in the grave from the negligence of drivers, the children hobbling on twisted legs from prenatal dangerous drugs furnished their mothers before adequate testing by the drug companies—they go without full justice because the people have been taught to despise their warriors and to distrust juries, always forgetting that *they*, the people, are the juries. And when the injured person is you, well, I am sorry. Can you find a lawyer who can overcome decades of this demonization of trial lawyers and juries and the justice system that, according to the propaganda, is running crazy like a locoed horse?

The fraud and the brainwashing does not stop there.

The insurance companies' latest and cruelest war has been to attack the right of the injured to collect "non-economic damages." Let me explain: If, for example, you are a housewife not working outside the home and you suffer a slow death from the negligence of a doctor, your unrelenting pain during your last years is a non-economic damage. If, for further example, a doctor cuts off the wrong leg but you can still work, the loss of the good leg that leaves you a crippled globule of flesh is a non-economic damage. Indeed, such damages are often the most severe that the victim suffers. A

person who suffers chronic pain, that is, never-ending pain, has been provided a first class ticket to hell from which there is no return. Pain and suffering are non-economic damages as are disfigurement and the loss of the enjoyment of one's life.

A sixty-year-old woman who loses her retired husband from the negligence of a doctor will receive nothing for the loss of her husband since he was not earning money at the time of his death. The insurance companies want to totally eliminate or cap an injured person's recovery for any non-economic damages, because there is where the real damages lie. Let's say the defendant sitting over there in the court room killed my child. But the child earned nothing. Contributed nothing. The jury will be not be permitted to return a verdict for anything except the amount of the cap (the amount limited by law). Thus, if the cap is \$250,000, which many are, that is the most the parents can recover no matter how negligent the defendant, and most cases cost more than the cap to bring to trial so that facing caps many just cases never see the lights of a courtroom. The money saved swells the insurance company's profit.

After a massive campaign in Texas financed by big Texas money voters were persuaded to eviscerate their own constitution so that non-economic damages were capped—the greedy lawyers, you know and those untrustworthy juries. After the insurance companies' victory, one of the nation's largest medical malpractice insurance company executives told Texas insurance regulators, I suspect with sinister glee, that the newly imposed caps would save the company little, if any money, maybe one percent, while the company at the same time was requesting a 19 percent rate increase from the Texas Department of Insurance. So who lost? Once

more the people lost and the profit was pocketed by the insurance companies.

"Tort *reform*" advocates use the word "tort *reform*" as part of their *oppo-speak*/ These are words that mean exactly the opposite of what the words say. Tort reformers want to cap non-economic damages as well as to shackle the justice system in other ominous ways. At least they're candid about this: "Insurers never promised that tort reform would achieve specific savings," said the American Insurance Association. "We wouldn't tell you or anyone that the reason to pass tort reform would be to reduce insurance rates," said Sherman Joyce, president of the American Tort Reform Association. "Many tort reform advocates do not contend that restricting litigation will lower insurance rates, and I've never said that in 30 years," claimed Victor Schwartz, general counsel to the American Tort Reform Association. The issue always remains the same: The *insurance companies insure one thing: their profit*.

*Remember: Under tort reform the citizen's damages are capped. The insurance company's profits are not.* And who do we remember made "tort reform" one of the priorities of his campaign for the presidency, a gift to his business buddies and campaign contributors? Do we remember George II?

One of the greatest frauds ever foisted on the American public at large has been the so-called medical malpractice crisis. Here the insurance companies have done a masterful job of terrorizing the already frightened American public. Millions of Americans do not have medical insurance. Millions more struggle each month to pay their health insurance premiums. The national insurance gouge has been going on for a long time. State by state people have been told that the cost that doctors pay for medical

malpractice insurance is so high that this crisis is “driving doctors out of our state and threatens your access to care. You won’t have a doctor there to deliver your babies. Old people will be ill without doctors.”

In my state of Wyoming, the insurance driven propaganda even claimed that “economic development efforts in Wyoming, sorely sought, depended on capping peoples jury awards. “Attracting new business and keeping our young people in the state depends on it. Making sure your doctor is there when you and your family need care depends on it.” In other words, if you don’t limit the amount *you*, the ordinary citizen can recover when *you* are injured by your doctors’ negligence, or your loved ones are killed by their wrongs, well, your doctors will leave, your state will remain economically stagnant and your kids will have to find employment elsewhere. Again, those greedy lawyers, you know. Those runaway juries. Those crazy verdicts that are destroying the medical profession.

This truck load of lies was dumped on the people in Wyoming as well as in dozens of other states. Full color brochures were sent to the homes of every Wyoming household announcing these lies. The conspiracy hit the television, radios and newspapers in the state and shamelessly blasted away with that set of utter falsehoods. The people began to panic—we have to change our State Constitution. We have to protect our doctors from the lawyers or we won’t have doctors when we need them.

Caps? Yes, cap non-economic damages. Even the *Wall Street Journal* pointed out that the losers from such legislation would be, “...most notably retired people, children and housewives.” Her is the *Journal* quoting Kim Gandy, NOW President: “When you put a cap on non-economic damages, quite literally [women’s] lives are valued lower.”

The doctors' first ethical interests must always be the wellbeing of their patients. But they had their personal agenda. They not only wanted lower insurance rates which they thought they'd get if caps were imposed on damages their patients suffered from the doctors' own malpractice, *they wanted total immunity* from law suits. They championed the insurance sham. *The New York Times*, in its sometimes opaque editorial said, "the recent spikes in insurance premiums...says more about the insurance business than it does about the judicial system."

Some states that have considered laws capping damages in doctors' malpractice suits have held such laws unconstitutional. They violate victims' protected rights to a jury trial, equal protection and due process. But this hasn't stopped the insurance companies and their conspirators. Through their influence over the legislatures of the various states, including Wyoming, they sought to *change the states' constitutions*. If caps are unconstitutional, well, so what? Change the constitution—do away with the rights that protect the people. Frighten the people enough and they'll throw in their rights. Anger them enough at the scapegoat, the trial lawyers, and they'll chuck their constitutional protections once and for all.

The fraud has done its dirty work in many states. In Colorado, for example, I had to turn down a case for a woman who was blinded by the gross negligence of a doctor simply because the woman didn't work and had no economic losses—a housewife. Under Colorado law which had capped damages, her life was substantially worthless. She could recover \$250,000, the cap, but the cost of bringing a malpractice suit against the doctor would exceed \$250,000 after paying experts and the other expenses associated with discovery and preparation. Even if we won, nothing would be left for her. And I would be in litigation for two years or more with no chance to recoup

even my overhead. The insurance company no doubt laughed as it pocketed the profit taken from a blind woman and perhaps the doctor went blithely on committing other horrors.

In Wyoming the truth was clear. Our state was not losing doctors as the doctors endlessly cried. Figures from the Wyoming Board of Medicine showed that Wyoming had a *net gain* of doctors year after year. Doctors, like many others, love Wyoming's great outdoors, its expanse of untouched landscape, and, of course, that Wyoming has no state income tax. But the doctors' false campaign backed by big business and the insurance industry had to be exposed. Remember, the people have no voice, no people's radio stations, televisions or newspapers. I took it as a personal crusade to become the voice. I spoke in person to the townsfolk of nearly every town in our state. I was on the road more than a month.

Night after night I spoke to the people at town meetings that I called to expose the lies of this conspiracy. I asked, "Do you think, as the doctors claim, that if you give up your rights to full justice that industry will come to your town?" Given three seconds of thought the people laughed. "Do you think, as the doctors claim, that if you give up your rights to justice your kids will stay in Wyoming?" Again the people laughed. The premise was silly. Then I asked, "If you give up your rights to justice, as the doctors ask, do you think your doctor will lower his fees to you?" That brought on the biggest laugh of all.

I asked my audiences how much they were making a year. Some were not ashamed to admit they were working, both mom and dad, and often making less than the poverty level (as are nearly 36 million other Americans.) Yet they were paying as much as \$700 or \$800 a month for insurance. Often more. I then asked a simple question: "Who do you think

pays more for insurance, per dollar earned—you for your health insurance or your doctor for his malpractice insurance?” Again the laughter.

The United States General Accounting Office investigated the medical profession's propaganda and found that the “supposed crisis” of malpractice insurance alleged by the American Medical Association, the insurance industry and some politicians was cooked up, that the American public was misled and that the doctors have “wildly overstated their cases.” As in any argument, the issues became complicated, and the howling high. But in the end, the truth, of course, was that insurance company *profits* were what the so-called crisis was about. Truth again: According to Weiss Ratings, Inc, an industry rating organization, HMO's were nearly doubling their profits and health and life insurers had posted their best profits in a decade.

One study in my own state showed that three officers of one of the principal insurers of Wyoming doctors received more in salaries in one year (\$4.78 million) than the same company took in as premiums paid by Wyoming physicians (\$3.83 million). Little wonder there was an insurance crisis. And in Wyoming, as well as many other states, the insurance commissioner can do little more than cast a pleasant smile at the insurance companies as the companies gouge our people, including the doctors. Our people-loving legislature had earlier taken away the power of the insurance commissioner to effectively regulate the carriers who were skinning, and continue to skin the doctors and the citizens alive.

Death by medicine is now the leading killer and cause of injury in this country, ahead of the prior champion killers, heart attacks and cancer. The latest composite figures show death by improper medical conduct of hospitals and doctors (iatrogenic deaths they are called) at 783,936 dead each year, while deaths from heart disease is 699,697 and deaths from

cancer, 553,251. The authors of this study report that, "As few as 5 percent and only up to 20 percent of iatrogenic acts are ever reported." This implies that if medical errors were completely and accurately reported, we would have a much higher annual iatrogenic death rate than 783,936. Dr. Leape, one of the first investigators of this issue, said his figure of 180,000 medical errors annually was equivalent to three jumbo-jet crashes every two days. That was in 1994. The latest report shows that six jumbo jets are falling out of the sky each and every day killing all aboard.

This same report says the number of unnecessary medical and surgical procedures performed annually is 7.5 million. The number of people exposed to unnecessary hospitalization annually is 8.9 million. Little wonder the medical profession seeks protection.

But what does the profession do about this critical crisis in health care? It wants protection from its own wrongs more than it wants to reform itself. No doctor, no lawyer, and no one else wants to be sued. But wouldn't we think that given the gravity of this crisis, which is obviously a *medical malpractice crisis*, that the medical profession would be taking powerful steps to protect the people from negligent doctors and hospitals?

Here are a set of stunning facts published in *The New York Times*: "From 1990 to 2002, just 5 percent of doctors were involved in 54 percent of the payouts — including jury awards and out-of-court settlements — according to the National Practitioner Data Bank of the Department of Health and Human Services.... Of the 35,000 doctors with two or more payouts during that period, only 8 percent were disciplined by state medical boards. Among the 2,774 doctors who had made payments in five or more cases, only 463 — one out of six — had been disciplined."

This means that the incompetent doctor, that drunk surgeon, that careless, spaced out doctor, that poorly trained hack-saw is still out there injuring patients day after day, year after year and the medical profession does little if anything to protect the people from this scourge.

So, doctors, is the best way to take care of your patients to prevent the ones you've injured or killed from recovering a just amount in damages for your negligence? Cap damages instead of capping your own negligence? Take away your patient's rights rather than becoming better, more careful doctors and weeding out the really bad ones from you profession?

In the end, in Wyoming, we defeated the attempt of the doctors, the insurance companies and their moneyed supporters from castrating our Constitution. Wyoming voters voted down the proposed constitutional amendment to allow the capping of damages in medical malpractice cases. For other states to save their own constitutions from the surgeon's knife, trial lawyers themselves must take their message, *face to face*, to the people. Trial lawyers should be proud of what they do and have done in making America safer and in bringing justice to ordinary citizens. No longer can trial lawyers silently cower as they're slandered on the corporate King's media. Since the people and the people's warriors have no public voice, trial lawyers must make a grass roots stand—*in person*--where the truth will finally win out and the rights of the people will be preserved from the endless profit raids of the corporate King.

I think of a wonderfully intelligent lawyer, another blonde one by the way, Catherine Crier, who, like our other blondes, makes her living as a television host. I've been with her on her shows several times. This woman sees it right on nearly every issue, from corporate crime, the influence of

corporate money on our government, to her despise of the death penalty—she could be a saint, a pretty one, arising from the depths and gloom of the profession. But even she, dependent as she is on the corporate media for her daily bread—at least for her daily presence on TV-- has been co-opted. In short, this woman is so incredibly right and so tragically wrong.

She advocates that we adopt the English system where there are no contingency fees and the loser pays the costs. This would end our justice system for the average citizen, what little remains of it.

Let me show you: Suppose you are a single mother who is habitually, daily, sexually harassed at work. No matter where you go in the company compound there are the pinches, the filthy comments, the offensive laughter, the vulgar jokes, the verbal rapes. You have complained and the complaints have only exacerbated the misery. Finally you're afraid to walk in the company door in the morning. Your life there has become unbearable. But you must continue to endure it to keep your job and to support your family.

You are in a state where the loser pays as is suggested by Ms. Crier. And, as she further suggests, where there are no contingency fees. (If you are under a contingency fee arrangement with your lawyer you pay him and the costs of your case only if he wins for you. Otherwise your lawyer gets nothing. Don't we wish we could put our doctors on a contingency fee—they get paid only if we get well?)

First off, you can't hire a lawyer and pay him his hourly rate because the cost in fees and expenses in any important case would amount to hundreds of thousands of dollars and the ordinary person can't find that kind of money to hire a lawyer. That luxury is reserved for the insurance companies. So you'd never get to court in the first place. But even if you could put a second mortgage on the house and get the money to cover the

lawyer's fees and the costs of the case, do you dare take the gamble? You'll be faced with company lawyers who have all the money they need to fight your case and the best lawyers money can buy. Your own lawyer, a lawyer of modest means and ability. Besides, your lawyer is a trial lawyer, one of those that juries don't trust.

You ask your lawyer what your chances of winning are. He can't say, of course. And if you lose, you pay the costs the company spent in defending your law suit—hundreds of thousands, maybe even millions. You will lose your house, your job, and you and your children will be applying for welfare and become one of those pests of society that Ann Coulter loves to hate.

Suppose you are an ordinary working person. You've been injured by a medicine or a doctor's negligence, a trucking company's negligent driver, or a libel by a local newspaper. Perhaps you've been run over by a drunk driver. Any of these injuries severely affects your life—perhaps has destroyed it. But when you take on one of these big-money miscreants, even if you have a solid case, still, if your lawyer fails, if the jury sees it differently than you, if the appeals court populated by the King's men—former insurance company lawyers—reverse the jury's verdict—if any of these legal misfortunes occurs, you lose not only your case but your life's savings and whatever you had to borrow from the bank to finance your case.

This is that wonderful English system that Catherine Crier says was instituted in that country "with great success." No ordinary person in his right mind would ever enter the courts under such a system. No citizen can throw it all down on the crap table of justice for even a small chance at winning.

Ms. Crier says, "Think of all those ridiculous suits that may seem entertaining but are actually clogging the courts and costing money to pursue. If plaintiffs had to pay the other side's fees upon losing, a large number of these cases would disappear—and rightfully so—from the docket."

Well, Catherine, you see mostly the entertaining cases, a few aberrations of the justice system, the "ridiculous suits" that come to your attention as a host on TV. But we do not see on your show, or any TV show, representative cases of those countless lawsuits brought each year by truly injured citizens, cases that don't grab the attention of the TV producers because there's nothing exorbitantly exciting about a run-of-the-mill dead husband in a car accident or one of thousands of other injured, every day mutilated or killed citizens to jack up their ratings. And if your English system were in force, no injured person would ever have the first chance at justice.

But let's get real. I cannot take a case for someone who claims to be injured unless they *are* injured and where a solid case exists against the wrongdoer, one I can honestly prove in a court of law. Even if I were one of those lawyer-crooks Ms. Crier complains of, I could not take on a case that had no merit, spend thousands of my own dollars to get it to trial, pay for thousands of pages of depositions at five dollars a page, sometimes hundreds of thousands paid to experts for their time and testimony, and compensate myself for my own work of months, sometimes years. It is hard enough to win the most meritorious of cases. I cannot win a frivolous case. Every trial lawyer knows that. Although a few fools out there might bring an occasional frivolous lawsuit, the contingency fee system eliminates nearly all of them. And judges throw them out without a jury trial under their

authority to do so—a method of eliminating such suits called “summary judgment.” And, Catherine, had you labored very long as a lawyer for the people you would know that.

What kinds of suits are “clogging the courts” as Ms. Crier claims? Take, for instance, the federal courts where suits between citizens of different states are filed: The Administrative Office of the U.S. Courts finds that only 18% of the civil cases filed in the nation were for personal injury, and the numbers of such cases filed each year have been steadily declining, as they have in the state courts as well.

And if the courts are clogged, and too many judges have calendars that are months, even years in arrears, what clogs them? We’ve seen that nearly all personal injury suits are defended by insurance companies and that the courts, in short, have simply become clearing houses for the insurance industry paid for at the expense of taxpayers. From over fifty-three years of experience in our courts I can tell you that insurance companies do not pay a just sum until they are forced to.

Almost without exception companies will not settle an obvious just claim unless they are hauled into court. Only after the injured person has endured months, maybe years of waiting and his attorney has spent thousands of dollars and more thousands of hours to get the case finally ready for trial can the insurance company be brought to the settlement table. If there is any clogging of the courts it is clearly caused by the insurance companies who use the courts to avoid payment of honest claims suffered by truly injured people and insurance company defense lawyers, many of whom suck out the last drop of fee-honey from a case before agreeing to settle a just claim.

When Ms. Crier talks about "all those ridiculous law suits that clog the courts," she fails to tell you that most of the suits are actually contract disputes brought by corporations fighting each other over money. Speaking of "ridiculous lawsuits," check out just a few of thousands:

### **GlaxoSmithKline**

Drug manufacturer GlaxoSmithKline sued two generic drug companies after learning that they were seeking approval from the Food & Drug Administration to manufacture and market a less expensive, generic version of SmithKline's anti-depressant drug Paxil. Despite the fact that after a certain period of time all companies have a legal right to create generic versions of prescription drugs and make them available to more consumers who could not afford the brand name, the litigation allowed SmithKline to delay a generic version of Paxil from entering the market by almost 3 years.

### **Enterprise Rent-A-Car**

In 1998, Enterprise Rent-A-Car filed lawsuits against Rent-A-Wreck of America (a tiny rental company) and Hertz Corporation and threatened to file lawsuits against several other car-rental companies who use the phrase "pick you up," claiming that "We'll pick you up" is Enterprise's slogan. While those suits were pending, Advantage Rent-a-Car counter-sued Enterprise, claiming that Advantage had used the phrase "we'll pick you up" long before Enterprise did. Enterprise argued in its lawsuits that the phrase means more than "we'll give you a ride;" it means "we'll pick up your spirits." Competitors said that there was no other way to say "we'll give you a ride." Enterprise attorney Rudolph Telscher said that "we'll decide in the courtroom who is correct here."

### **Victoria's Secret**

Victoria's Secret went all the way to the Supreme Court in an effort to sue Victor's Little Secret, a gift and novelty shop selling sex toys and "Everything for Romantic Encounters" from a strip mall storefront in Elizabethtown, Ky. Victor

Moseley, who opened the shop in 1998, named it Victor's Secret after himself, but changed the name to Victor's Little Secret a few months later in a futile effort to satisfy a sharply worded complaint from Victoria's Secret. In 2003, Victor was the 95th most popular baby name for a boy and Victoria was the 22nd most popular baby name for a girl.

### **Haagen-Daz**

Haagen-Daz ice cream, in a suit against Frusen Gladje, tried to lay claim to the concept of premium ice cream with a "Scandinavian flair."

### **Mattel, Inc.**

Toymaker Mattel spent five years litigating until the Supreme Court turned down their request to reopen a trademark suit against MCA Records Inc. Mattel had claimed that the preteen girls who buy Barbie dolls were duped into thinking the song "Barbie Girl" was an advertisement for the doll or part of Mattel's official line of Barbie products. The song, by a Danish group called Aqua, includes the lyrics, "I'm a blonde bimbo in a fantasy world/Dress me up, make it tight, I'm your dolly."

Mattel, Inc., the maker of Barbie, is waging an aggressive trademark war against unsanctioned use of the Barbie name, attacking the founders of the "Barbie Makes a Wish" weekend that raises money for critically ill children; artist Paul Hansen was sued for \$1.2 billion for making \$2,000 from the sale of his Exorcist Barbie, Tonya Harding Barbie, and Drag Queen Barbie...Mattel made almost \$4 billion in annual sales in 1996, but has filed copyright and trademark infringement suits against these toy enthusiasts.

### **Kellogg Co.**

In 1998, Kellogg Co. sued Exxon Corp., claiming that Exxon's "whimsical tiger" logo, which had been in existence for over 30 years, would confuse consumers who associate the tiger logo with Kellogg's Frosted Flakes mascot, "Tony the Tiger." A federal judge in Memphis threw out the suit, saying that Kellogg was "grossly remiss in failing to assert its rights"

sooner. This didn't stop Kellogg, which further clogged the courts by appealing the verdict to the Sixth U.S. Circuit Court of Appeals in Cincinnati. In its brief, Kellogg argued that the Exxon tiger, like Tony, "walks or runs on his two hind legs and acts in a friendly manner."

Do you want to read of some more? Well take a look at these:

### **Wal-Mart Stores, Inc.**

Wal-Mart Stores Inc., the world's largest retailer, is going to court to prevent wares bought at rival Kmart Corp. from going for a spin at the register. Bentonville-based Wal-Mart has a patent on its carousel that holds its blue plastic shopping bags. The cashier drops items into bags as merchandise is rung up, and spins the rack to make the effort easier for both the cashier and the customer lifting out the bags. Wal-Mart is suing in a Delaware court to keep Troy, Mich.-based Kmart from using a similar device.

### **Hormel Foods**

Hormel Foods, the maker of the luncheon meat SPAM, sued Jim Henson Productions to stop the creator of the Muppets from calling a character in a new movie Spa'am, claiming that the character was unclean and grotesque and would call into question the purity and quality of its meats. A federal court rejected Hormel's claims, and Hormel also lost on appeal.

### **Walt Disney Company**

Walt Disney Company used a lawsuit to force a public apology from the Academy of Motion Picture Arts and Sciences for an "unflattering" representation of Snow White in the opening sequence of the 1989 Academy Awards ceremony.

And I cannot overlook Fox's suit against Al Franken: Fox News sued the man for using the term "Fair and Balanced" on his book cover that called Bill O'Reilly and others a liar. Calling the matter "wholly without merit, both factually and legally," the judge, Denny Chin of United States District

Court, threw out Fox's case. Judge Chin said the case was an easy one, and chided Fox for bringing its complaint to court. The judge said, "Of course, it is ironic that a media company that should be fighting for the First Amendment is trying to undermine it."

Consider also that Caterpillar sued the Walt Disney company for portraying bulldozers in a bad light. Caterpillar tried unsuccessfully to block the release of "George of the Jungle 2," claiming that the film gave the company a bad name because its machines are used to attack the jungle.

Let me return to one of Catherine Crier's ridiculous suits that are actually clogging the courts," the most famous one, the McDonald's hot coffee burn case.

Nearly everyone, at one time or another, has been directed to this case to prove how trial lawyers are greedy charlatans and juries mindless fops. The corporate media so propagandized the case that Americans were led to believe that a woman put a cup of hot coffee between her legs, got burned by it and collected millions. This, corporate America tells us, is why we cannot trust trial lawyers or juries.

Talk show hosts frothed endlessly over this supposed example of lawsuit abuse and they knowingly or ignorantly misled their flocks while screaming rhetorical questions like Rush Limbaugh's who hollered, "Folks, isn't hot coffee supposed to be hot?" or "The lady doesn't know better than to put it between her legs?" Things like that. I was recently in New Zealand. A local there and I were comparing our respective judicial systems. He said, "Under our system no woman could get millions for spilled coffee between her legs." Half truths travel fast. Finally here's the whole truth on the McDonald's coffee-spilling case. The lawyer who represented the injured woman, Stella Liebeck of Albuquerque, New Mexico, was a student of

mine. His name is Reed Morgan and he attended my non-profit Trial Lawyer's College. He is a fine lawyer and a decent man.

McDonald's coffee was not just hot, it was scalding hot -- capable of almost instantaneously destroying skin, flesh and muscle. Stella was in the passenger seat of her grandson's car. She was 79 at the time. She ordered coffee that was served in a styrofoam cup, one designed to maintain the heat of the coffee. She was served at the drive-through window of a local McDonald's.

Her grandson pulled his car forward and stopped momentarily so that Stella could add cream and sugar to her coffee. The media concocted most of the salient facts and then repeated them ad infinitum--that Stella was driving the car or that the vehicle was in motion when she spilled the coffee. Neither is true. Stella placed the cup between her knees in her attempt to remove the plastic lid from the cup so she could put in the cream and sugar. As she removed the lid, the entire contents of the cup spilled into her lap. The sweatpants Stella was wearing absorbed the coffee and held the scalding heat firmly next to her skin.

A vascular surgeon determined that Stella suffered full thickness burns --third-degree burns--over 6 percent of her body, including her inner thighs, the region surrounding the urogenital and anal openings, her buttocks, groin, and let's just say it, the lips of her vagina. She was hospitalized for eight days, during which time she underwent skin grafting. Perhaps Rush would be more understanding had he suffered third degree burns on the head of his penis.

Stella, who underwent a series of horribly painful debridement treatments, sought to settle her claim for \$20,000. But McDonalds said, "Take it to court, Honey. Yes, isn't coffee supposed to be hot?"

During the discovery procedures in the case McDonald's was forced to produce documents showing more than 700 claims made by people burned by its coffee between 1982 and 1992. Some claims were as serious as Stella's. Such a history established that the temperature of the coffee was a hazard to which McDonalds was intentionally subjecting its customers.

Yes, coffee is supposed to be hot, Rush. But McDonald's kept its coffee between 180 and 190 degrees Fahrenheit. Coffee served at home is generally at 135 to 140 degrees. McDonalds' quality assurance manager testified that the company requires its stores to keep its coffee at 185 degrees, plus or minus five degrees. He also testified that a severe burn occurs with any food substance served at 140 degrees or above, and that McDonalds coffee at 180 to 190 degrees would burn the mouth and throat. But he testified that McDonalds had no intention of reducing the "holding temperature" of its coffee.

Stella's expert, a scholar in thermodynamics as applied to human skin, testified that liquids at 180 degrees will cause a full thickness burn (third degree) to human skin in two to seven seconds—something few of us knew, but McDonalds knew, 700 times over.

The jury awarded Stella \$200,000. This amount was reduced to \$160,000 by the judge because the jury found Stella was 20 percent at fault in the spill. The jury also awarded Stella \$2.7 million in punitive damages, which equaled about *two days of McDonalds' coffee sales*. The trial court reduced the punitive award to \$480,000--we never heard that. We only heard that she recovered millions. The judge called McDonalds' conduct reckless, callous and willful. We never heard that either.

Later Stella settled the case with McDonald's and was required to sign one of those confidential settlement agreements that keeps the exact amount

of the settlement secret. We never heard this. But one thing we can pretty well be assured of: the amount of the settlement was many thousands less than what the judge finally awarded after reducing the jury's verdict. How about something less than \$480 thousand in exchange for third degree burns on the *male* sex organ with consequent debridement? How about the jury trying to tell McDonald's by their verdict, "Please stop this? Please be careful of unsuspecting people who will get burned. Give Stella two day's coffee sales. Maybe that will cause you to care."

I doubt that the sum McDonald's likely ended up paying in the case changed anything, and that probably the jury's attempt to make McDonald's coffee safe for people in the future went for naught. I know of no investigation that has been made to determine if McDonald's changed its ways. But one thing we do know. The case gave the corporate King a story it could deform and distort and, thereby further turn the people against trial lawyers and jurors.

Today the hatred of trial lawyers seems endemic in our culture. I think of Honest Abe, who was a lawyer, as were Franklin Delano Roosevelt, Mahatma Gandhi and most of our founding fathers. The profession has changed little. But the voice of the corporate King has sucked the truth from our brains and replaced the vacancy with hatred.

After over half a century in the profession I have memories. I have watched once proud warriors wither and shrink in the endless heat, not because they lack bravery or a devotion to their client's causes, but because they have finally become exhausted in a deluding, broken system controlled by the corporate King.

Some have given up because they can no longer honestly tell their clients that there is "justice for all" in this country, because they've had to

admit that the system they are sworn to uphold has, in too many ways, become a mockery, that the cost of justice is beyond the reach of most, that the judges, many the minions of the moneyed interests, will take from their clients what the juries have given, that the legislatures of many states have wrested from the people their right to full justice by interfering with what juries can award, and because lawyers have at last had to admit to themselves, and finally their clients, that justice for all in America has become mostly a myth.

I grew up in small Wyoming towns and have practiced from these small Wyoming towns all of my life. Although I eventually fell into a national practice with my first well publicized case, the Karen Silkwood case, nevertheless, I have always seen myself as a country lawyer. People say, "Come on, Spence, that country lawyer stuff tells us we ought to watch our pockets." But we are what we are—you know, the old saw, "You can take the boy out of the country, but you can't take the country out of the boy."

I have met some bad trial lawyers in my day. But I know infinitely more good ones, decent men and women who care deeply about people. I'm not here as an apologist for the profession, for there's much about which to apologize. But I have memories.

I remember when there were only the belly-buster seat belts in cars, and people were ripped in two by those death traps that served mostly to help the medics find the dead bodies after a head-on. I remember those cases with victims still strapped into their seats, some with their backbones severed and their guts hanging out. And I remember the bodies strewn over the landscape in automobile wrecks before the advent of any seat belts at all. The cases trial lawyers championed for the dead and injured told the

automobile manufacturers to provide safe seatbelts. And they finally did, and after that, air bags that have saved untold thousands of lives.

I have memories. I remember when we used to find heads cut off bouncing around on the pavement after they were severed in a collision by unsafe windshield glass. The automobile companies knew of the hazard all along. But it was cheaper to defend suits brought by some small time lawyer for the dead and pay the occasional verdict than to correct the danger by installing shatterproof glass in their cars. And in all the cases the companies, and the insurance corporations who insured them, hired those defense attorneys from the big firms, those sweet-talkers with the kind eyes who commandeered endless money, and the support of all the eloquent experts they needed to convince the unsuspecting juries that their products were safe. But finally the cost of defending the cases exceeded the cost to the companies to change over to safety glass.

I have memories. Many thousands of cases came to the forefront in America, say, of SUV's that were roll-over traps, tires that were defective, steering wheels that failed to collapse in collisions, door handles that gouged and killed the occupants in wrecks, and endless other unsafe designs--to mention only the automotive industry. And because of lawsuits brought by trial lawyers for the injured and dead these were finally eliminated and automobiles made safer.

I have memories. I remember a certain car that when involved in a frontal collision the doors jammed shut and the gas tank often exploded. The car was aflame in the case I took for an orphaned child. After the crash the mother couldn't get the door open and knew she and her husband were going to burn to death. Somehow she broke a window and threw her child to safety. He survived but was severely burned. The company's own crash

tests showed this tragedy could be expected. Nevertheless the company made no changes in the design of its car. Worse, it knew there were many other horrors out there like this one—cases that would be brought if my case ever saw the light of day. The company paid a large sum for the child's injuries and for the death of his parents, but the company, as usual, demanded a secret settlement which his guardian was obligated to sign because the boy needed immediate care and couldn't afford years more of litigation. But eventually the dangerous design was abandoned by the car company.

I have memories. I remember a time when Ford conducted actual studies to determine which was most profitable—to continue manufacturing a vehicle with an unsafe gas tank and to pay for the death and injuries caused by it, or to correct the defect at a cost of a few dollars per unit. As usual it was a question of profit versus human lives. Ford's studies showed that it was more profitable to keep on manufacturing the dangerous fuel tank and to pay for any of the dead or injured whose few cases might get through the legal system than it was to make the product safe. The people died. So? But the exposure of the company by Ralph Nader brought this nightmare to a close.

I have memories. I remember how lawyers for people got just verdicts for dead children who choked on a dangerous toy—one the manufacturer knew was dangerous, and the toy was eventually taken from the market. I remember how millions were awarded against pharmaceutical companies for feeding pregnant mothers a drug that deformed their babies—babies born without legs or arms or tongues to speak with but with brains to suffer the misery eternally. And the drugs were finally banned. So the system began to work.

Asbestos cases were filed, thousands of them. The companies knew their product caused cancer of the lung. They knew of the unspeakable torture that is the long painful prelude to a lingering, choking death. But the companies hid the truth about their knowledge and lied about it. When trial lawyers discovered the truth and the piteous victims were paid for their misery and their lives, it was then that the companies began screaming about the lawyers, and innocents like Catherine Crier complained about the wealth of the asbestos lawyers. Yes, some plaintiffs' lawyers grew immensely wealthy. But what of the staggering wealth enjoyed over the years by the corporations that killed and poisoned and reaped their profits over the dead and cancerous bodies of their workers?

I have memories. The tobacco companies set out to addict our kids, drew up those ads that lured youngsters to the addiction that would eventually kill many of them as adults. And the companies laced their tobacco with even more drugs than the natural plant provided—then hid the fact, lied about it, lied under oath about it, and when they were exposed and were ordered to pay many millions in damages they began the chorus—those greedy lawyers! But again we hear little about the billions of profit the tobacco companies have taken from their treachery, and continue to do so.

Yes, a handful of lawyers made fortunes. And the America public was soon propagandized by the advertising experts of Madison Avenue to the conclusion that lawyers for the people were bad human beings--those hoggish, snouts-in-the-trough crooks with a license to steal. So where am I going with this? I'm saying that big business, manufacturers, insurance companies, the pharmaceuticals, the stock brokers and CEOs of those companies who cook the books, and, yes, the banks, have only one thing to

be afraid of out there—the lawyers who represent ordinary people and so, predictably, they have been demonized.

We know the best way to slow down the murderous pillage of the people and the earth by the corporate King is by clipping a feather or two from the wings of the high-flying vultures. The scissors are punitive damage verdicts, damages in an amount commensurate with the crimes the corporations commit. You can't put a corporate criminal in jail, that is, an entity that has no physical presence cannot be put in jail or the stocks or hung. Punitive damages are the only punishment that can be leveled against the corporation in cases in which the wrongdoer has been grossly, intentionally, or criminally negligent. But no matter how vile the corporate crime, the people, yes, the judges, and even those towering judges on high in the appellate courts have been taught that it is un-American to stop the injuring, the poisoning and killing of the people and the earth with massive punitive damages even when the deaths, destruction and injuries have been massive. And the United States Supreme Court has stepped in to limit punitive damages against corporations, in effect, capping punitive damage awards and protecting corporations against the living persons they injure and kill.

We are never plainly told by our leaders that people have become merely parts of the profit machinery, that they can and will be replaced as they are worn out. Congress is sold out to profit and will not protect the people. William Greider in his fine work, *Who Will Tell the People*, says that the Democratic Party has lost its function as a power base for citizens and has become merely a "mail drop for political money."

The only segment of the system that faithfully fights for the rights of people are trial lawyers. Yet they have been so besmirched that in

California the trial lawyers, hoping to avoid the infamy heaped upon them, have changed their name to Consumer's Lawyers of California. A pity. It's like honorable, careful surgeons having suffered such defamation that they are seen as butchers so they now call themselves "physiological reconstructionists." In passing I wonder: What if we trusted doctors as we have been taught to trust trial lawyers? What if we thought that doctors might steal one of our organs and sell it while we're under the anesthesia? Many operating rooms of the nation would soon be closed.

Still, even today, I know lawyers who have borrowed money and mortgaged their homes to finance just causes for their poor clients—and lost it all. They have fought for our freedoms and our justice against the tyranny of power, and they continue the fight for justice in thousands of nearly anonymous courts across the land. They do so against great odds, the worst of which is their slaughter by slander.

We have been taught to hate the forgotten and abandoned members of our society, our mentally ill, who we've thrown out on to the streets. There are laws against throwing garbage on the streets, but none to keep us from throwing the lost and helpless there. We have been taught by the dupes of power to turn our backs on whole segments of our society that are left without jobs, without pride, without hope and to consider them lazy welfare hogs. Someone said that we judge the civility of a society by the manner in which that society protects its least fortunate. We do not stand high by this test.

But trial lawyers have fought endless battles for the poor and mentally ill, and they fight, most often with little pay, to secure fair trials for killers and rapists and what the King's men and women portray as society's shameful scum. Nancy Grace mocks and scorns trial lawyers as soulless

prostitutes of the profession "just doing their job." But many are the true heroes of the profession. They are men and women who are usually understaffed, underfinanced and under-respected, trial lawyers who believe that the bottom are entitled to the same protections as the top--as, say, the CEO at Enron--and that the worst of us are entitled to the same rights as the white-collar criminals (those true elitists) that Laura Ingraham, as an elitist, once defended. These heroes of the profession understand that when the rights of the most hated are protected, the rights of the most exalted are protected as well.

With saddened ears I have heard many of those cruel lawyer jokes.

Example:

Q. Why are scientists now using lawyers in laboratory experiments instead of rats?

A. Three reasons: 1) lawyers are more plentiful than rats; 2) there is no danger the scientists will become attached to the lawyers; and 3) there are some things rats just won't do.

Or how about this one:

"All lawyers are assholes!" declared a man in a bar.

"I resent that!" someone replied.

"Why, are you a lawyer?"

"No, I'm an asshole!"

Or still another:

A man was on vacation when he ran into an old acquaintance. "Hello, Joe," he said. "I haven't seen you in years. What are you doing these days?"

"I'm practicing law," whispered Joe. "But don't tell my mother. She thinks I'm still a pimp."

Ha. Ha.

Every "I hate lawyers" joke I hear is no longer a laughing matter to me. These jokes hurt me. It's not that I have no sense of humor or that I'm blind to the infirmities of my own profession. It's not that I can't take a joke or that the jokes mock me or trial lawyers. It's that they are *against the people* who need lawyers. The jokes are not against lawyers but *against a country* in which the people's freedom will be lost because their lawyers are held in such disgrace. And, the jokes are but another form of a carefully crafted propaganda that is part of the corporate King's agenda we've been examining.

Lawyers have disappointed many, and sometimes their failure is inexcusable. Every profession has within its membership those curs, those scoundrels who disgrace themselves and their colleagues. Certainly the legal profession is not without its crooks and shysters. But the profession at its best labors in a system that is not geared to deliver justice to people. Too often it will not. And despite the fact that its function is to deliver justice, the justice system often ends up providing little more than a closing door to those who seek to enter.

Many of our young people have sought a legal education to become lawyers because they want to help, to take part in an honorable process by which people in need of justice might receive it. I have seen them, the young, their starry eyes set on the great battles they intend to fight. I have also seen them finally trudge away from today's dysfunctional system disillusioned and disappointed.

As we've seen, our blonde blasters, all lawyers, seem to hate their own profession. Nancy Grace hates those who defend our rights under the Constitution. Of defense attorneys she goes on to say: "Still, it's so

disheartening that juries are hoodwinked every day by defense lawyer just 'doing their jobs.'" How is it then, Nancy, that you have been able to win a hundred prosecutions in a row against these hoodwinking charlatans?

O'Reilly, Limbaugh and Robertson and the blonde blood-thirsty brigade and the others are all picking at the same one-stringed guitar. These conservatives love to curse trial lawyers -- until they need one. Then, they want the best money can buy. As Melville wrote: "All that most maddens and torments; all that stirs up the lees of things; all truth with malice in it; all that cracks the sinews and cakes the brain; all the subtle demonism of life and thought; all evil, to crazy Ahab were visibly personified and made practically assailable in Moby Dick." As with Ahab and the whale, so with the corporate King and trial lawyers.

As we see over and over, hateinjures the people who have been taught to hate.

Without effective lawyers and a functional justice system the profit of the corporate King will continue to swell and its power over the people will become utterly invincible. And the people?—the people will grow poorer, more desperate, more indebted, weaker and, at last, beyond the myths of freedom, they can become the new masses of American slaves, slaves not with shackles on their legs but with eternal debt over their heads, slaves not with the whip at their backs but citizens beaten by the injustices of an unfettered power core.

Lawyers are to our sacred rights as doctors are to our valued health. In the long run, I would rather be an unhealthy free person than a healthy slave. I have observed throughout a life of representing ordinary people that a person can do without adequate food, even without a decent shelter over his head. A person can live with little to cover his nakedness and be broke

to the bone. But that person cannot live without justice. Patrick Henry said it in a different time, "Give me Liberty or give me death."

Justice is the first necessity of life. The justice system must respond or people will take justice into their own hands. The injured, the damned, the slandered, the lost, the forgotten and the voiceless, all demand justice and failing its delivery the system as we know it will finally collapse.

We look upon those who are cheated of justice and somehow we are consoled that it has happened to them, not to us. But we *are* they. If not today, tomorrow. Without respected warriors for justice we will be like the sick and injured without competent doctors.

Without trial lawyers and fair courts and unbiased juries to hear our cases we will be rewarded with the same justice that people across the world experience--no justice at all, not even the empty promise of it. At last we will not be able to differentiate our system from China's or those of third world governments where people have never heard of justice. We are on that road, for without justice, and without a respected profession that can fight for it, the fate of the nation is to join the rest of the earth's enslaved. We teeter at the edge, precariously.