

**Weidenbaum Center on the Economy, Government, and Public Policy  
Breakfast Presentation**

May 26, 2004

***Is Litigation Good for America?***

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Thank you very much. It is really an honor to be with all of you. I welcome the opportunity to come out in the real world here but you are not going to sit through a normal tort reform speech.

My topic was supposed to be "Is litigation good for America?" I know talking to some of the people in this audience who are old friends and experts in tort reform and lawyers, people who are in the trenches on both sides of the aisle, you have heard the horror stories. You have heard the lawyer jokes. I am even going to forego the normal political jokes of the season because too many of them get elected. But I do in talking in a group like this about tort reform feel a little bit like Liz Taylor's latest husband on his honeymoon might because I know what I have to do but it's going to be a real challenge to make it interesting.

So with that said, I would really love to turn this into a conversation about tort reform, about litigation, about free enterprise, and I could go on. I'm reminded in talking about how we're doing with civil justice reform by how Mikhail Gorbachev responded when somebody asked him a question when he was head of the Soviet Union. He was asked in one word could he describe the Soviet economy. He said good. Then they

said in two words could he describe the Soviet economy. He said not good. I would probably opt a little bit more towards the not good.

Some of what we have done for civil justice reform has been like trying to plant a garden with cut flowers. I have been at this game for 27 years and my friend Connie Larcher, Washington Legal Foundation President and Administrator who is with us today, and we have been in the trenches fighting this game for a long time. I could come in here and scrape our fingernails against the blackboard and just tell you every ridiculous lawyer story in the world. I would like to look at it from a totally different perspective.

The perspective I would like to look at it from is that we are like the gorilla that just doesn't know what to do. We have a power in our free enterprise system to explain this to our customer and to the real world and I think what you have got is a runaway society where I called it OPM — other people's money. We watched the old western movies where the crowd, or the Bonnie and Clyde movie where the crowd is on the sidelines is cheering when they are robbing the bank and it takes them about fifteen minutes to realize that it is their money that they are robbing. I would like to imagine that's what's going on in the civil justice today because I don't believe that society gets it. No matter how much money you spend on one legislative battle, that's the way the corporate mentality to fight one legislative battle, to fight one lawsuit, to fight one issue. It is not a single-issue battle. It is a long-term process. It is a permanent campaign. On the other hand, I would look at what Bill Clinton said: there is no such thing as bad sex or bad tax cuts. I would say there is no such thing as bad civil justice reform or tort reform, too.

So you have got to do this incrementally. But we live in a feel good society today. Judge Judy makes seven million dollars a year on TV. Judge Rehnquist, Chief Justice of the U.S. Supreme Court, makes about \$100,000. More people learn about the law from TV and shouting heads than they do from authorities and experts. I'm not saying that I'm an expert but we have a society where you have got people who go to operas, my apologies to opera clubs, but 95% of the people that go to operas don't understand. They don't know Rigoletto from rigatoni but there they are crying. And I would submit to you, I think it's ABC news that says that there are 45 million illiterate people in America and a lot of them found their way onto juries, and a lot of them don't understand economics and I don't think they have got the expertise or the skills to sit in judgment and make some decisions that affect other people.

I just marvel that you can have a society or a political public policy process in this country where politicians are afraid to touch social security. They are absolutely terrified to get near that issue because of what that response is going to be from the senior citizen community, people who rely on social security. Yet on the other hand, you have got class actions, you have got various plaintiff's law firms that are gutting 401Ks, gutting retirements, bankrupting companies, destroying their health plans and the benefits that existed with them, destroying any investment and nest eggs they had for grandchildren and college and on and on.

You all know those stories much better than I. What they say happened. They have not organized. I'll submit to you that in a world where you can get a pizza delivered to your door faster than you can get an ambulance to come to your door to help you, we have got some work to do with public opinion.

Nothing is going to change in this country; you are not going to have significant permanent tort reform until you change public opinion. I fought the corporate world, free enterprise world for that more than anyone else, I believe that if they sold their products the way they deal with public policy, they would all be bankrupt.

It is always hire a lobbyist to start a campaign on a single legislative change. Fight a single issue. Fight a court case. I am as guilty probably as they are. The Washington Legal Foundation does a variety of things. We do fight those single issues because we don't wage massive public policy campaign coast to coast that I, the public needs to hear and understand. If you look at all the money and all the marketing skills and all the talent that exists in a company they don't use that to explain that companies or that particular company doesn't make money when it hurts its customers. It does not make money when it delivers bad, defective products or goods or services to their customers or clients or patients. They don't want to hurt their friends. They want to keep their customers around. That is not how you run a business.

But the trial lawyer has done a tremendous job of working with what I would call special interests, public interests activists throughout your community and others where there's a continual product corporate disparagement going on and they run a permanent campaign. If you look at the process, if you look at the technique, they build up the disfavor of a company or product and then they bring it into the litigation process. The example I can use that's the easiest is when Connie and I started the Washington Legal Foundation. We had a guy in Washington named John Banzhaf He used to teach a course at George Washington University Law School called Public Interest Judo Law and a lot of people would snicker whenever they heard that. John Banzhaf had filed

one of the first tobacco lawsuits in this country, and they were laughing at him in 1976 and 1977. But the Trial Bar in its persistence in its continual disfavoring of a company and a product in two decades turns around and reaps huge mega million dollar rewards and they have got the public with them.

Now I find the irony of the whole thing, along with politicians, and I'll get to the politicians who are part of this process in a minute, but just up for grabs; but the irony of this whole thing is that the settlement process doesn't work unless you create new smokers. It doesn't work unless people smoke and buy tobacco products and keep paying the judgment on them.

The hypocrisy on the part of the Claims Bar and the dysfunctional civil justice element that we are working with here says exactly what the core of it all is. It is all about the money. I find it most remarkable that you don't even have collateral estoppel in this country. You can make a settlement like that with corporate funding and then the federal government says wait a minute, looks like political headlines in here for me. We've got a few axes we can grind too, and they jump into a federal court in spite of a master settlement and they are now suing for huge amounts of settlements. Again at the end of this process what about all the employees of Philip Morris? What about all the numbers of pension funds and pensioners that rely upon investments in a company like that for income.

At some point doesn't America as a society stop and say enough is enough? The politicians blow you away and you know when I say politicians I mean congressmen, I mean legislators, I especially mean state attorney general. The

National Association of Attorneys General really should be National Association of Aspiring Governors. We've all heard that before — it is very, very true.

I respect them and I think you have got some fine people in the state attorney general's office and got several in our courts. But the bottom line is they are just like any other politician and they will go for the issue of the hour to another issue if it was in the public's disfavor.

I often see groups like this and I believe it is true that if public opinion polls told politicians that the public wanted them to act like dogs they would go on Larry King and CNN and sniff each other, lick each other, bark at each other. I believe they would barbeque Smokey the Bear. I just believe that is the political process and that is what they work in.

We need to work in bumper sticker mentalities like a campaign to create and understand for a level of knowledge with the public that would ultimately make it easier for the whole system to change because you are not going to win one battle to win the war. We have got to win a few battles if you are even going to stay in existence.

It all comes down to lawyers are now in the Forbes 500. It all comes down to they are business. It is litigation ink. Perhaps one of the approaches that you need to take is a consumer protection approach. Maybe consumers need to be protected from them. You will see in your packets that we have distributed a few ideas we have got that I could address now or later in the Q & A.

They are so good in inflaming the public and so good in defaming the product. We represented the apple growers in a lawsuit all the way to the Supreme Court. Defamation regarding the law where you had federal communications. I know someone

in communications once said, it is a great quote, “A lie can get all the way around a room before the truth gets up and puts his pants on and starts chasing him.”

I’m not referring to that being a law but that is pretty much a one phrase summary of the game here. You go out there and you just literally barrage the public. Look at the number of people who are suing. Again it is the senior citizens. You have got people joining class action against certain drugs that people rely upon. Well you know it is other people’s money mentality again. What happens when (a) they don’t develop a new drug because of the risk involved or (b) the company raises prices to pay the settlement or (c) they just get out of the business altogether or don’t want to sell in this country, or just stop.

That is another problem I had with corporate settlement. The public just isn’t educated about this. You look at what happened with shareholders strike suits. I have never seen anything so outrageous in my life. They sued the company on behalf of the shareholders, supposedly. The only people who walk away with money and in an equity sense, I don’t understand the public tolerance because in every case the only people who do good, do well, or profit every time are the clients’ lawyers, not even their own clients but they get raped twice for whatever it is they say the company did to the shareholders and then for the lawyers’ fees to some how punish the company that the shareholders are going to end up paying for anyway.

We have got a program called IPP — investment for pension programs — because we are looking at relationships where you talk about how SEC and the corporate world have manipulated stocks and they are ripping off the public. What happens when you have got lawyers, trial lawyers, who issue press releases because of

the litigation and they force companies to settle because they are attacking the corporation's reputation, driving stock prices down. They are putting someone who may be totally innocent of wrong doing in the public spotlight. They are drying up their credit. They can't get credit when they need it under certain circumstances. They make them very risky to do business with in the financial community. In essence aren't they indirectly manipulating the market? Where's the FCC looking at that? Where are the people, the pensioners, the investors, the small investor and big investor? Where are they when it comes to looking at what's going on with their money? So there are a variety of ways to look at this.

I've taken on the plaintiffs. My colleagues have had enough arrows in their back in my battle. I would suggest to you that you look at your packets and you consider a couple of other approaches. From a consumer protection approach we have started something we call SCALES, which stands for Stop the Corruption of America's Legal Ethics. The latest prong was where we tried to monitor or at least restrict judicial campaign contributions from trial lawyers, when it comes down to that's the excessive amount of money that's driving the guy's campaign and those are the major contributors. In the real world that we live in, who's to say that doesn't buy favor or curry some kind of result in the long term. If nothing else not in bribery sense but it assures that you're going to have client/lawyer approved judges that might rule your way.

The second and, I'm going backwards in a comprehensive way, a chronology sense, the second would be where the legal profession itself is begging for regulation, government regulation. Lawyers police themselves. Now we've gone to the states,

each of them, all the courts that run how, state bar associations that run how. We have lawyer disciplinary complaints and ethnic complaints and none of these proceedings are public. You can't find the complaints. You can't find the nitty-gritty. You try that with doctors, for malpractice. You've got web-sites, internet sites, you've got anyone who practices medicine right there, the number of times they've been sued, what they've been sued for, whether it's true or not. Whether it's frivolous or not, they're out there. Try it with a lawyer. You go home and you try the internet to find one disciplinary action against a lawyer. That just shows the above-it-all mentality to the public.

We've also tried to approach it from a consumer protection standpoint in a third phase where when someone goes to a law office for a lawsuit a plaintiff's action we suggested that there be a cooling off period, a period of time almost like a door-to-door sale because this is salesmanship, this is a business where you agree to a pre-agreement. You can come back in and say I don't want a contingency agreement. I want to pay you by the hour or I can take my file, take my case and I can walk it down the street to the next client's lawyer. This is very basic.

This is a competitive free enterprise system, a free market at work. I just don't think that there's a magic bullet or a silver bullet here. I also think that when you start to explain it to the public in consumer protection terms the lawyers have created something here and they're going to be victimized — the same targets and in the same bulls-eye that the corporate community faces.

The corporate community has made themselves easy targets because they don't defend themselves. They've made a lot of money in the legal profession where they'll invest it and keep investing it. They're not just buying planes and baseball teams.

They're investing in new frivolous ideas and they will come back year after year, decade after decade until it works.

If you look at the public interest groups and public interest movement, they're marinated in trial lawyer money because you'll see them developing issues with government agencies. You'll see them pushing for government regulation that automatically creates classes of victims. I call them designated victims groups, and we're all victims. We're all victims of something in this risk-free world that we are somehow entitled to live in, in this society.

Somewhere, about 40 or 50 years ago, some smart plaintiff's lawyers started working with people like Ralph Nader, who I have a great deal of respect for right now because he is a presidential candidate. Also, when I learned or read a newspaper article that described his presidential disclosure form that he's worth about four million dollars in invested stocks and various free enterprise investments, he really does believe in free enterprise. I though he might live in a Chinese commune.

All that aside, about four decades ago, they merged interest where lawyers became the legal air bags of society where they were just going to inflate to protect us from any possible harm or risk that would happen in this world. Now all that said, it's the corporate world that really should take the high moral ground. It's the corporate world that comes up with the free enterprise system comes up with should be rewarded with new discoveries, new technology, new quality of life, cheaper more efficient products. That's what the American way of life had been up until now.

Now there's a mentality, there's something wrong with the corporate world. There's something wrong with profit. Washington Legal Foundation believes the words

profit, success, economic growth are not dirty words. Folks, if the young generation today who go to campuses like this live in their la la land wants to have the same world for their kids, they better not destroy the free enterprise system. They better start rebuilding it. I see smiling from a young lady here who has "vote" across her T-shirt here and I think that's interesting, very good.

Now I could keep going here and I've got other suggestions like the litigation excise tax where over a certain amount of money for any single case a lawyer makes of \$400,000 or more you have an excise tax. You have got excise taxes on fishing products, you have got it on hunting products, you have got it on cruises, you have got it on greenmail type transactions, and you have got it on stock options. You have got them on CEO retirement packages, all of them really, let's not kid each other, with for some environmental or social or anti-business or political cause connects you. You have got it on ammunition; you have got it on buying guns. You can line the causes up and then you can line the excise taxes up.

What about a litigation excise tax? All these guys make all this money off the system. What happens with them putting back into the system? Why can't they create a fund out of those excise taxes that repairs the courthouse, make it more secure, gives to crime victims, whatever. Admirable, honorable things that lawyers should be doing that I'm sure they'd be proud to do.

I've got the good sense here, the horse sense to open this up for questions and have some fun.

## Questions and Answers

Q1. Our system is that the loser pays the fees. How do we get our system from where it is now to one that would eliminate a lot of this extortion?

A1. You can. The only difficulty with explaining that to the public is unless they're in litigation they don't care who pays because again, it's not their money. If it's not theirs they don't care. In the history of Avis and Hertz no one's ever washed one of their own rental cars, right? Because it's not their car. I don't know how you get that down to the public's level except to explain to them that ultimately it will open up the process of the system for them. It won't cost them as much in consumer goods. It's part of the broader picture. I don't think that's the easy one to start with. That's more of a business issue.

Q2. About going after the judges, we've got a class of demagogues most of whom at least are trying to be honest but many whom are clearly corrupt and we have the example of Madison County next to us. Is there some way for a civilian group to go after these guys and sue them and expose their contacts?

A2. I would rather not use the word "corrupt." I am sure there are corrupt judges and I hope they're exposed when they are corrupt. I would rather use that they are subject to accountability.

For example I could tell you a few funny stories that are true. We have had some judges removed in our time at Washington Legal Foundation. We filed a variety of complaints against judges but they were easy hits.

For example I don't know if you remember that 400 pound rapist in Kansas City that was going to prize fights and the judge let this convicted rapist out of jail because he didn't have air conditioning in his cell. He had asthma and then he is sitting in front of prize fights smoking a cigar. We got the picture, filed a brief in court, and boom here he is in jail. The national media came in. CNN put a spotlight on it and the guy was running for cover.

We had a judge resign when we filed a complaint against him for flipping coins and cards to decide whether he puts murder defendants in jail or let's them out on bail. He invited a female prostitute to come home and spend the night with him and she was literally invited at the bench in his court. She was a defendant in his court.

We took on Judge Miles Lord in Minnesota. He hand wrote me a note saying how long do I have to stay on the bench to file a complaint against you, how long do I have to stay on the bench to keep you from getting credit for me leaving. Then he resigned.

That's the one thing about plaintiff's firing judges. They are very persistent people. You have got a judge in Madison County, quoting the *St. Louis Post-Dispatch*, that we asked to have reviewed because according to the newspaper he said Griffin Bell was here to start all the trouble. Griffin Bell talked about how Washington Legal Foundation has asked the Department of Justice and various state authorities to examine propriety of non-doctors being used without prescription to x-ray potential defendants or complainants in asbestos cases.

Judge Bell came here and described some of those efforts and according to the newspaper a particular judge may have alluded according to the paper to asking if

anyone from King & Spalding law firm was in the courtroom because they're not going to be allowed in his courtroom or it's not a good place to be.

I do believe that process works. I do believe that is an honorable process. I believe facts will be reviewed. Whatever they are and I don't know what they are. But it is good for its accountability. We have had judges from various other federal courts looked at.

We have had one, there is one in Kensington. It is in your packet about a judge using certain insolvency lawyers in other bankruptcy asbestos cases, in his own matter, there maybe a conflict of interest on his part.

It is pretty tough to take on a federal judge who is sitting on a case if you are a lawyer, but that is what Washington Legal Foundation does. That is our job — to advocate to seek accountability.

Do we make the accusation? No. Do we say there's a red flag here and that someone of higher authority should look at it with proprietary review of conduct and whether they follow the rules? Yes. As you know in the real world that's very hard for a practicing lawyer in a community to do.

Q3. I'd like to go back to the British System. You made it clear that you thought it would be very hard for us because of public opinion (Popeo: level of understanding) I'm under the impression and I'd like to know whether I'm right or wrong, that the British system where the people who sue and lose they have to pay the expenses of the people who are the defendants. I'm under the impression that that system has worked so well that they do not begin to have the same degree of problem that we have. My

first question is: Is that true? The second question is: Therefore, shouldn't we find some way to adopt that system?

A3. I believe yes and yes. I also believe that there is another rule that they had that limits the recovery of a plaintiff's attorney in a successful action to a small percentage of his normal fees. I think it is called the ten percent ruling.

We have had authors, we published in seven different formats, we deliver these publications to judges and media, thinkers, decision makers, government, White House, legislators, everybody in this process. We have had authors address that very issue.

But I have to tell you in this system, change is not going to come from lawyers. I have met more than one defense lawyer's wife who has the attitude: Thank you for suing my husband's client. With all apologies to defense lawyers here, because we work with some excellent groups like PLAC — Product Liability Advisory Council, they're all defense lawyers to help reform the civil justice system. There are not a lot of good people like that out there. There are not enough people like that out there. There's no economic incentive for them to do this. It's clearly obvious why.

I had met the general counsel from St. Louis, who is still in the community. Then we said want to have some fun? Write to each of the 300 law firms around the country and ask them to describe: (1) their pro bono activities because they're using their corporate payments and fees to go out there and do anti-business pro bono activity, (2) ask them for specifics of what they have done within their bar association, the ABA, all the policy groups in the state legislature and the other things they belong to as professionals to change the civil justice system.

Out of all of them, one wrote back and gave an example. He checked his bills and he was billed for it. So it is a vicious cycle.

But I still go back to the ability to communicate. If you go into the large corporations, particularly those that deal with consumer products — let me stick to the drug companies. They're probably one of the easiest ones to look at. They do all of this dash and dime business. They do all this marketing promotion and they do such a good job of talking about why their product is good for a customer or patient. That's all good but why can't they do the same type of thing from all the advertising talent with all the marketing know how, communication know how, to explain what's going on when they have a class action to face or when they're sued or when they're deterred from new development or what it costs their shareholders or what it costs the customers to buy their product again. The public will understand that. It's very basic.

Q4. It seems to me that the one thing we are really missing are the facts. In other words it seems like a battle of rhetoric and there isn't any place for the public to hang its hat on real fact, dollars and cents, what the costs are. In the controversy over medical liability suits, one side says that the lawyers are getting rich and the lawyers are saying no, it's the insurance companies that are getting rich but nobody really knows what the economic effect is. What it costs specifically and it's not hammered home enough where the public can remember. True, you'll see the settlement terms in the newspaper and you read it and you've forgotten it in ten minutes. There isn't enough real solid fact.

A4. Well, you know you bring that up as an example. I say let's just stick with the immediate issue.

I will give you an example. Lets use malpractice as an example. Nobody likes malpractice, do they? No. Every politician, every plaintiff lawyer, all the people in the process that can change the system have a doctor somewhere. Now if you use the doctor's office as a lobbying vehicle some people explain that is what is happening to treatment and what's happening to that doctor.

It is like congressmen. Everybody says that particular congressman is terrible. It's always somebody else's congressmen, not their guy and people who talk about doctors, it's always somebody else's doctor and not their doctor whether it's true or not.

But my point is that there's a good example of where doctors themselves could be education machines either on the behalf of a pharmaceutical company or on their own behalf. Then we get down to basics. The public is selfish. It doesn't care except what's going to happen when a doctor is not available to them anymore? What's going to happen when they have to go 30 miles one way for a doctor or they've got to go to an emergency room and wait 3 hours because they don't have a doctor treatment office anymore? That's what we're coming down to. We've got a very selfish society. So break it down to the basics. That's one way of dealing with this.

Q5. Just in response, I've worked at corporate reform for many years. In terms of what it's costing corporations there are no numbers because most of the major things are settled and the settlement amounts are not released. The only information out there is one that frankly I did in which I asked people to send in to a central place without names the amount of settlements they had made in the past five years in punitive damages and 34 or 35 responded and the number was \$6.5 million. That was just a

sampling of what was out there. But to get a real number which might be half a trillion is impossible.

Why should we allow people to make these secret settlements and not disclose it? It's harmful for society.

A5. That's a very good question. Well I said that earlier and the point is the companies, the free enterprise system can't cut and run. They have the ability to fight but you see the biggest problem with the corporate general counsel offices, and I think most of you guys in the free enterprise system understand what I'm saying, is that that office doesn't produce revenue. He's the guy that always tells you no and something wrong is happening to the company so there's no immediate bottom line.

If you're fighting for your next board meeting or you're fighting for your numbers that are going to be released and you get your estimates that way this might be easier to take the settlement but in the longer term you're making yourself an easy target. You know if you make yourself a porcupine you're not going to be an easy lunch. But these guys don't do that. They'll take the easy route. Then what they'll do, and I'll say this, there are people who will say that tort reform is the longest running scam in Washington. It's not a scam with people working very hard on it but they won't fight beyond a single battle. Once that legislative battle and that term is over they don't do anything until the new battle and the new term and the new politicians start.

Q6. Can you give an estimate of what percent of actions end up in the courts versus out of court settlements?

A6. I don't know. I really don't know, and as Dick said I don't know how we would ever know. I don't even know how you'd get that.

Q7. You won't guess?

A7. Again, I don't know.

Q8. Higher than 80 percent?

A8. I've have a question to ask this audience. What do we do about business on business litigation? I have to tell you that troubles me. What happens when a company becomes a plaintiff and sues a company defendant? I'm sure there are rights to be exercised. See that's why I'm not down on the process. I believe if you have rights and you're entitled to compensation, you should get the compensation. It's the five zillion, billion punitive damages that are unrelated to the rest of it that trouble me. If you've got damages you're entitled to compensation.

Q9. In the states that have enacted limits on punitive damages have we seen a dramatic decrease in suits and do they move into the next step.

A9. There are statistics on both sides of that and I always like to say there is lies and damn lies and then statistics. I don't know. I think you could just twist them and play with them anyway you want. I hope there is. One thing is you know there's going to be less money available to fund more trial lawyer-supported candidacies or new ideas to sue.

Q10. How much of the problem is due to legislatures? These laws that nobody understands?

A10. But you see if the public were banned (?) the politicians would fall all over each other to prove to the public that they're not part of the problem. You're absolutely right. There's a legalese, there's another language. There's another game going on. I love it when these guys get elected and they'll go into Washington and say it's a cess pool and then two years later or six years later they think it's a hot tub and they're all in the game. They're all there. But it's going to be the public outrage and the public opinion that then drives the public policy process.

Q11. How do you get that started?

A11. Well that's exactly right. I believe companies have communications vehicles and the marketing talent to explain to the public what's going on. Once they understand that it's not other people's money, then the fun begins.

Q12. What if you work through the associations like the National Retailers Association and the National Grocers Association, and you get them to put on their receipts that it was a \$48.60 charge and \$7.83 of this is due to litigation against the products.

Q12. Would you like to come work with us? I cannot tell you the number of annual meetings, trade association meetings, where we have asked them to do just that. Maybe there ought to be a law, for consumer disclosure, how much you're paying for the product and how much you're paying the lawyers.

Q13. Why do you think they resist this?

A13. I don't know. That's a good question. Maybe one of you folks from a company might be able to explain. I don't know.

Q14. Do you really believe in the light of Enron and other scandals that the public believes what corporations put out?

A14. You see, let's go back to the selfish theory again. I don't think they care what companies put out. Why does it affect them?

Q15. If they don't care, why are you beating your gums saying the corporations should fight?

A15. Because they care about how much it costs them for a product.

Q16. But if they don't believe it why waste your time?

A16. It's not a question of wasting time, it's a question of whether you should. If you could explain to them it's their bottom dollar. That's the reason why. We've got a great democracy here. We've just been outgunned and out democratized. Now the trial lawyers are smart enough to put money in the GOP, on the Republican side. So you're just not going to see a lot of things happen. You've got the Republicans in charge, and I don't care who's in charge. I am not partisan. I care about the issue. But you've got Republicans in charge of the White House, the House of Representatives, and the Senate and they can't get anything through. Why? That's something to ask your own representatives, your own lobbyist. I just don't think people are fighting the game. I

think the game's there and they haven't joined it. The trial lawyers are fighting it. They're fighting non stop. They fund activist groups. We've found bureaucrats, for example, in one government agency found bureaucrats taking boxes of government documents, putting them in a car trunk and driving them over to plaintiff's law firms. That's the type of thing we didn't find appropriate — the inspector general, head of the agency. Nothing happened. That's the same problem that tort reform has. Lots of shooting but I don't see any bodies. Lots of guns, I don't see any bodies anywhere. Yes, you have some wins on the state level. You're winning on a state level because you've got immediacy and an intimacy and you're close enough to reach out and put your thumb prints on your weapon. That's why it's working and you've got people that understand local issues and how it affects them in a local sense. All of this affects you but yes it is a "me" society. You win.

Look at the senior citizens what they can do with social security. That's the best example. Yet they don't understand. You have to take them from Enron and the nonsense that went on there to this is happening every day to you in the civil justice system. The biggest mistake our society makes is that they'll take the plaintiff's lawyers who have a plane or an island or a big house and who lives this extravagant life style and they don't care. They think it's a great commercial for them because some guy's sitting home thinking you know when my turn comes to sue, that's the guy I want. He made that kind of money for somebody else. He doesn't understand that most of the money didn't go to him, more than likely most of the money went to the lawyer and they love that type of stuff. We're just not quite in the game plan.

Q17. We tried to establish a reputation of defending every case and I was dying not to sue the plaintiff but his lawyer and bar counsel insist they can't get sanctions.

A17. But that's the difficulty. You cannot punish people for frivolous lawsuits and yet we should. You've got rules that are being implemented at the state level by people who care about civil justice reform. The judges refuse. The State Farm v. Campbell case, punitive damages case that got kicked back to Utah. The top court thumbed its nose at the Supreme Court. I'm sure that ultimately a higher court is going to come back down on them again. But that's what you've got. We've had victories for example on property rights where this is an anti-business and an activist, left wing activist, radical cause. Every judge is going to be standing in line to do it but you've got to fight it house by house, court by court. Some go with you, some don't. You've got to appeal it and they force you to go through the whole process and that takes a lot of time, effort and money. But I do believe things go in cycles and I do believe that if we start this we can build a cycle and within our lifetime we'll see this thing go the other way.

Q18. The issues you make of seniors and Medicare and that. AARP has been a tremendous vehicle. Almost have hundreds of thousands of people out there signed up for some cause before you make the thing go.

A18. But you see, Social Security in and of itself by the politicians has been explained to the recipients and it's such an integral part of their lives. I love it when these guys, congressmen, take credit for people's Social Security checks. They take credit for anything that happens out of federal government as if they did it. They understand that. That's their bread and butter. But people don't understand that's their bread and butter.

Look at the number of contacts the company has of employees outside suppliers, outside company employees, contract employees, and other producers of goods they use. I don't see payroll slips in people's paychecks. I don't see people putting the cost of civil justice on the table when they talk to unions or when they talk to employees about wages or benefits. I don't see any of it. Why? It's obvious it should be part of it. Why don't people communicate better with their shareholders and stockholders about it. They don't. They want to bury it in the back. They're afraid that footnote's going to show them the stock is worth less money. If they faced up to it the other way I think that ultimately it's going to come down for them not up. Not as something they've got to worry about. But it's going to take some big thinkers and it's going to take teams of people, coalitions of people. I look at all the money that's been spent already. It's been spent by some good people. There are good people out there fighting very hard doing some very good things for tort reform. I just don't think they are fighting this game the right way yet. I wouldn't stop doing what they're doing at all. I'd just do more along the lines of what I'm saying. I think it was William Howard Taft who said 50 percent of the money you spend in every campaign is a waste, but I'll be damned if I can tell you which 50 percent. I'm just saying add 50 percent more and go in this area too.

Q19. Could you talk a little bit about what your organization is doing specifically to encourage corporations in Missouri?

A19. We are doing just what we are doing here and we litigate. We are a little bit schizophrenic because we started WLF with a \$10,000 personal loan, one room office, a hundred dollars of used furniture. We did all the things a public interest law firm would

do for the first seven years. We filed original lawsuits, unabashedly pro-business in all of this, amicus briefs, petitions for rulemaking agencies, all of the above. Third party advocacies where companies are afraid to stand up for what is right and really in the public's interest, so they have got free enterprise issues and we learned about that free enterprise issue. They don't want to be out front, we are out front. Then we publish in seven different formats and we are traditional lobbyist, those papers done by top experts around the country. Got about a four million dollar budget and we have the opportunity to get literally about twelve million dollars of in-kind support.

In the publications records there you will see some of the top legal scholars in prestigious law firms in the country. Our lawyers are writing papers that we in turn deliver thought leaders, decision makers around the country trying to sway opinions, trying to explain it.

There are two levels and the third is the communications level and that is the level of working with the system and the process and the judges and the lawyers and the plaintiffs. Then it is the bottom level of the public and the grassroots. That is our third department, our communications.

We've got *New York Times* editorials, educational advertising campaigns. Let me give you an example, we were lucky enough to have the funding to run an advertising campaign in the national editions of the *New York Times*, *USA Today*, *Washington Post*, *Wall Street Journal*, and a variety of regional papers inside the beltway, things that congress and their staff read themselves and we targeted the FDA.

We did this about nine or ten years ago and I am very proud of it, as all of my colleges are because Washington Legal Foundation is responsible for lighting the match

that put the spotlight on FDA not approving devices, drugs, and procedures. I believe that millions of people got new drugs, new treatments and new devices because the bureaucrats were forced to approve them and we forced that. They are still bad in some cases. We are representing a group called the Abigail Alliance right now in court for terminally ill patients. These are parents of terminally ill people or survivors of victims of cancer are suing the FDA trying to get them to use or the right to use experimental drugs because that is their decision. The FDA was never credited to practice medicine. That is a decision between a doctor and a patient. There are so many things out there that if people had them they would have a better quality of life and we might save a life or two.

But the response, though, when we did that was immediate because we had people like Kessler in the FDA approving every pending petition. He got out of the way. We got bags and bags of mail. We had people — liberal, conservative, Democrat, Republican — it didn't matter. They were sick. They had family members that were sick. They understood this in their own lives. Change took place and it didn't matter who was in the White House. I will submit to you it doesn't matter who's in the White House now for this either. That should be irrelevant in the long term. If the public is with it and the public understands it the change will happen. Democrats or Republicans alike go for this but until you force them to make it their priority it is going to go on and on just the way it is. It is not the best news you could hear but it is the truth.