



The Attack on Trial Lawyers and Tort Law

A Commonweal Institute Report

David C. Johnson, Fellow

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COMMONWEAL INSTITUTE is a nonprofit, nonpartisan think tank and communications organization committed to advancing a broad moderate to progressive agenda based on the principles of commitment to future generations, environmental protection, a balance between business and society, inclusiveness and fairness, separation of church and state, personal choice and privacy, and a comprehensive and nuanced approach to national security.

“With Republicans in charge of much of Washington - and moving to put limits on litigation - the headquarters of the Association of Trial Lawyers of America (ATLA) could be described as a building under siege. [. . .] ATLA lobbyists are fighting a wave of legislation aimed at capping what juries can award, curbing class-action suits, and protecting individual industries from litigation. Similar bills are getting passed in states, and even attorneys themselves are piling on - filing petitions to limit plaintiff lawyers’ fees.

At the offices of ATLA, chief lobbyist Linda Lipsen insists the atmosphere has been hostile to their interests since Republicans took control of the House in 1994. Yet the lawyers Ms. Lipsen represents smell a new brand of retribution.

‘If you cut the legs off the trial lawyers, then you significantly weaken the Democratic Party, and that's what this is all about,’ says Jeff Wigington, product liability lawyer from Corpus Christi, Texas, who recently won a \$225 million suit against the Ford Motor Co.

In the trial-lawyer headquarters at ATLA, Lipsen, the organization's chief lobbyist, points out that they have only three lobbyists fighting for the ‘freedom’ of individual Americans from limits on their rights against 80 lobbyists on the other side. Not that a group representing the nation’s fiercest litigators minds a fight. Lipsen smiles. “We're way up there on their enemy's list.”¹

From the article “Now, trial lawyers could use a good lawyer...”
Christian Science Monitor, June 10, 2003

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Introduction

“It is no secret that, for more than three decades, business interests have invested billions of dollars to sell the public a distorted view of a legal system that is justifiably envied throughout the world. They say rampant litigiousness requires tort “reform” that restricts the legal rights of injured people, not those of businesses suing businesses, which account for most litigation. What they seek, really, is corporate welfare-assurance that their misdeeds will be paid for not by them, but by others.”²

- Richard H. Middleton, Jr.,
President, Association of Trial Lawyers of America, 1999-2000

Former ATLA President Richard Middleton, Jr., is correct in stating that “for more than three decades, business interests have invested billions of dollars to sell the public a distorted view of a legal system.” Influencing public opinion has been a key strategic aim of the business-driven campaign for so-called “tort reform,” which is designed to limit corporate liability, prevent civil lawsuits against corporations, and restrict citizens’ ability to pursue recourse in the courts.

In addition to these corporate backers of tort reform, however, there are also politically-oriented right-wing think tanks and other organizations, many not directly associated with industry, that have played a major role in promoting “tort reform.”

This Commonweal Institute Report, *The Attack on Trial Lawyers and Tort Law*, shows that, in addition to the expected corporate-front organizations like the American Tort Reform Association (ATRA) and Citizens Against Lawsuit Abuse (CALA), the “tort reform” movement is ideologically associated with a network of organizations, such as the Washington Legal Foundation, the Cato Institute and the American Legislative Exchange Council, which are part of what they themselves call the “conservative movement.” This web of “movement” organizations receives general operating support, project grants, and strategic guidance from a core group of ideological far-right-wing foundations that has been working for nearly thirty years to alter public attitudes and move the national agenda to the right.

This web of right-wing organizations funds and supports many other voices that speak on behalf of tort reform and other issues. The people who write the books are funded. The people who write the op-ed pieces are funded. The people who speak on radio and cable TV shows are funded. The people speaking to public interest organizations are funded. Even the people who initially write many of the templates for letters to the editor are funded. In addition to funding these individuals, the right-wing organizations provide them with institutional bases and access to publishers and media.

These right-wing movement organizations have a broad political agenda. They advocate an anti-government ideology that promotes privatization, deregulation, Social Darwinian competition and free markets as solutions to all social problems. By pushing underlying public attitudes ever closer to their ideology, the right-wing organizations have created a political climate favorable to politicians and public officials who advocate tort reform.

The right-wing movement has two major interests in tort reform:

1. Their ideological interest is in weakening constraints on the conduct of corporate entities, and,
2. Their tactical interest is in limiting the income of trial lawyers, thereby limiting the attorneys' ability to lobby and contribute money to what they call "the left."

Trial lawyers and the system of tort law that they support are losing ground. When one looks at major print and broadcast media, at public opinion polls, and at the positions taken by politicians of both major parties, it is clear that there has been a steady shift toward the Right's and the tort-reform movement's attitudes and policies. There is very little reaching major media that frames issues in terms that favor trial lawyers and injured parties. As a result, there is a virtual monopolization of the marketplace of ideas by the Right and tort reform advocates.

Much of the success of the Right's network of organizations comes because they are seen as "independent voices" that are not tied to the insurance industry or other businesses that benefit from the tort reforms they advocate. The independent voices function as a major means of "selling the public" on the purported need for tort reform. This tactic benefits special business interests and conservative movement organizations, and has made them formidable opponents of trial lawyers.

Trial lawyers, too, would benefit from credible independent voices educating and persuading the public of the value of a robust system of tort law. This report will help trial lawyers, and other groups under attack by the Right, recognize the power and effectiveness of the Right's message communications infrastructure. Further, by implication, the report shows the potential benefits of funding comparable organizations to serve as independent voices in the public interest.

Section 1 – Tort Reform Organizations and the Far Right

“For the last 15 years, insurance companies, manufacturers of dangerous products and chemicals, the tobacco industry and other major industries have been engaged in a nationwide assault on the civil justice system. In nearly every state and in Congress, corporations and their insurers have waged a relentless campaign to change the laws that give sick and injured consumers the ability to hold their offenders responsible for the injuries they cause. . .

Since 1991, ‘tort reform’ advocates have set up dozens of tax-exempt groups . . . to plant their ‘lawsuit abuse’ message in the media and the public consciousness, and to influence legislation, the judiciary and jurors. These groups claim to speak for average Americans and represent themselves as grassroots citizens groups determined to protect consumer interests. But their tax filings and funding sources indicate that they actually represent major corporations and industries seeking to escape liability for the harm they cause consumers -- whether it be from defective products, medical malpractice, securities scams, insurance fraud, employment discrimination or environmental pollution. These organizations hide their pro-business agenda behind consumer-friendly names like Citizens Against Lawsuit Abuse, Stop Lawsuit Abuse, Lawsuit Abuse Watch, and People for a FAIR Legal System.”

“The CALA [Citizens Against Lawsuit Abuse] Files – The Secret Campaign by Big Tobacco and Other Major Industries to Take Away your Rights,” a report by the *Center for Justice and Democracy* and *Public Citizen*³

A Network of Seemingly-Independent Organizations

Studies like the “The CALA Files”⁴ show that, since its inception in the 1980s, the industry-funded “tort reform movement” has pursued a strategy of creating and funding numerous seemingly-independent advocacy organizations that push tort-reform arguments, work to discredit opponents, and use marketing methods to change underlying public attitudes over the long term. Well-known tort reform organizations include the American Tort Reform Association (ATRA) – “a coalition of more than 300 major corporations and trade associations,” according to “The Cala Files” – and its numerous state Citizens Against Lawsuit Abuse (CALA) organizations, as well as several state Lawsuit Abuse Watch (LAW) organizations. (For examples of national and state organizations that advocate tort reform, see Appendices 4, 5 and 6)

Their strategy has included the use of phony “grassroots” campaigns designed to give an impression of widespread public support for an issue, the circulation of false or misleading lawsuit scare-stories, the creation of organizations and websites like “LawyersStink.com”⁵ that seek to defame and diminish lawyers in the public mind, and the dissemination of anti-lawyer jokes and cartoons. (See Appendix 3)

Most importantly, the tort reform movement is associated with a network of organizations, such as the Heritage Foundation, the Washington Legal Foundation, the Cato Institute and the American Legislative Exchange Council. All are part of the self-described “conservative movement.”

The Funding Behind the Right-Wing Movement Organizations

Right-wing organizations in this network all receive major general operating support, project grants and coordinated strategic guidance from a core group of interlocking, ultra-conservative foundations that has been working for nearly thirty years to alter public attitudes and move the national agenda to the right. This core group of right-wing foundations includes the Scaife, Castle Rock (endowed by the Adolph Coors Foundation in 1993), Bradley, Olin and Koch foundations. (See Appendix 4)

“Five foundations stand out from the rest: the Lynde and Harry Bradley Foundation, the Koch Family foundations, the John M. Olin Foundation, the Scaife Family foundations and the Adolph Coors Foundation. Each has helped fund a range of far-right programs, including some of the most politically charged work of the last several years.”

- “Buying a Movement,” *People for the American Way Foundation*⁶

These foundations are associated with the extreme right of the political spectrum. The Bradley Foundation's money comes from Harry* Bradley, a member of the John Birch Society.⁷ The Coors Foundation previously financed the John Birch Society.⁸ The Koch Foundations were founded by Charles and David Koch, sons of Fred Koch, founder of the John Birch Society. David Koch, the 1980 Libertarian Party Vice Presidential candidate, funds many libertarian organizations, and is co-founder of the libertarian Cato Institute.⁹ William Simon of the Olin Foundation was a member of the secretive Christian-Right Council for National Policy, and chairman of an organization set up by the Rev. Sun Myung Moon's Unification Church.¹⁰ Richard Mellon Scaife and his foundations were the primary funders of the anti-Clinton efforts of the 1990s, which included funding the vitriolic magazine, *American Spectator*.¹¹ As for today's John Birch Society, it is currently engaged in a “Get US Out!” (of the UN) campaign, a philosophy reflected across the right-wing movement.¹²

There are now over 500 organizations, of which Heritage Foundation is the most influential, all receiving funding from this core group. A 1999 study, *\$1 Billion for Ideas: Conservative Think Tanks in the 1990s*,¹³ shows how well-funded these organizations are. The study found that the top 20 of these organizations spent over \$1 billion on their ideological campaign in the 1990s, not only on tort reform, but on a number of other issues they are advancing.

Coordination and Interconnection of the Right-Wing Movement Organizations

The right-wing funders, their organizations and associated politicians are closely linked, centrally coordinated and act in concert – that is why they can be considered components of the same movement. Since these individuals and organizations owe some portion (if not all) of their livelihood to a very small core group of funders, they cannot be expected to act independently.

Right-wing funding patterns support lock-step coordination. One example of this coordination is a weekly meeting hosted by Grover Norquist, of the Scaife/Coors/Olin /Bradley (among others)-funded Americans for Tax Reform,¹⁴ and attended by representatives of the funding foundations, major right-wing organizations like the

National Rifle Association, the Christian Coalition and the Heritage Foundation, the Republican Party, House and Senate Republican leadership, right-wing associated media, and the White House.¹⁵ Robert Dreyfuss, in his *Nation* article “Grover Norquist: 'Field Marshal' of the Bush Plan,” writes, “ ‘The meeting functions as the weekly checklist so that everybody knows what's up, what to do,’ says Kellyanne Fitzpatrick, a conservative pollster who has been a regular attendee for years.”¹⁶

A *USA Today* story, “Pipeline Leads to White House” says of Norquist, “To the extent that there is a conservative network, Grover is at the switchboard.”¹⁷ Explaining how Norquist’s weekly meetings are used to keep varied organizations and individuals in line, a *Guardian Limited* story says:

“While the ostensible purpose of the meeting is to share information and coordinate strategy, they also give Norquist the opportunity to act as an ideological enforcer. When one member of the Bush administration worried to a New York Times reporter that the administration's plan to repeal the estate tax would cripple charitable giving, he was publicly warned by Norquist that this was ‘the first betrayal of Bush’, and was gone not long afterward. When a conservative pundit . . . criticized a fellow conservative . . . she was immediately informed by Norquist to decide ‘whether to be with us or against us’. She was no longer welcome at the meetings.”¹⁸

David Brock, in his book *Blinded By the Right*, described from inside this “movement” how different parts of the right-wing web and their funders interacted during the attempt to remove President Clinton from office. Brock writes that funding was supplied by Richard Mellon Scaife, with Federalist Society (partly funded by Scaife) lawyers and judges working behind the scenes assisting Special Prosecutor Ken Starr and supplying information to the (partly Scaife-funded) *American Spectator* magazine.¹⁹

The interconnectedness of these organizations – leveraging the work of individuals and organizations tied to this movement – increases their effectiveness in disseminating messages to the public through seemingly independent channels. Individuals whose education was directly or indirectly funded by scholarships from the core group of funders and obtained at educational institutions that receive funding from this core group then graduate to work at organizations that receive funding from this core group, producing work that is funded by grants and fellowships from this core group. Their research cites other research pieces, published by others similarly receiving funding from this core group. Their books are published by publishers receiving funding from or ideologically associated with this core group, promoted by media and businesses ideologically associated with this core group, reviewed by other individuals similarly associated with this core group, and sold in part through channels ideologically associated with the goals of this core group. In addition, still other organizations that receive funding from this core group then refer to this work to validate and give the appearance of credibility to their own work or messaging. (See Appendix 2)

“The overlap among members of foundations, think tanks and, increasingly, the Bush team, borders on the incestuous.”

- “Perspective: Who funds whom?” *Energy Compass*²⁰

This interconnectedness gives their “research” an aura of credibility by citing each other's work and presenting it as conducted by independent, authoritative sources. The majority of the “conservative” experts and scholars writing newspaper op-ed pieces, books and magazine articles, and even the organizations that generate the “talking points” and position papers used by TV pundits and radio talk show hosts, are directly funded by, work for organizations supported by, or receive some form of support from this core group of funders. (See Appendix 2)

This pattern of concentrated, interlinking financial backing and ideological interconnectedness is found in conservative organizations backed by the core group of funders previously described. A similar pattern is not found between the funders and organizations outside the right-wing movement.

The Ideology Underlying Tort Reform Arguments

Tort reform has been sold to the public on the bases of (1) “unreasonably” large settlements that “greedy” attorneys receive; (2) silly, unworthy (“frivolous”) lawsuits; (3) adverse impact of lawsuits on the cost of products and insurance premiums; (4) adverse impact of malpractice suits on the cost, quality, and availability of medical care; (5) adverse, “unfair” impact on certain industries (e.g., tobacco, asbestos, fast food); and, finally, (6) the purportedly unscrupulous nature of trial attorneys.

But a number of tort reform arguments rest upon a broader, underlying ideological foundation, one built around the ideas of personal responsibility, free markets, deregulation of business, and privatization of government functions. For example, the values of self-reliance and personal responsibility are evoked in tort reform arguments regarding the dangers of cigarette smoking and fast food. The free enterprise theme is frequently evoked in arguments for limiting punitive damages, because of the potential harm to a company or a whole industry. By promoting an anti-government, pro-corporate philosophy that encompasses many issues, the Right has laid the ideological groundwork for public acceptance of these tort reform arguments. The problem is that the right's ideologues have warped the values they claim to espouse, and the danger is that they have taken them to extremes.

In an article in *Capitalism* magazine, Joseph Kellard links tort reform to “personal responsibility,” using hyperbolic and ideologically loaded language such as “statist” to describe those who believe in government, “looting of individuals” to describe taxes, and “physical force” to describe laws.²¹ He decries

“...the falsehood of ‘social responsibly’, i.e., [the idea] that each individual is somehow responsible for others. This statist idea of evading and manipulating the essence of personal responsibility so as to transform its meaning to include social interdependence, on which Medicare and certain anti-tobacco crusade ‘causes’ are based, engender injustices, such as the looting of individuals to support the lives of others.

The corollary and equally crucial distinction that statist must destroy to perpetrate these injustices is between voluntary, self-responsible action and the initiation of physical force. If a company sells cigarettes – especially when warnings of their possible detrimental health effects have been forcibly placed

on each cigarette pack for over three decades, health effects of which were widely known for many decades prior to such warnings – and people voluntarily smoke their cigarettes and become ill from them, then such harm is not the responsibility of the tobacco company, any more than it is McDonald's responsibility if one often consumes their hamburgers and subsequently develops heart disease. When failure of personal responsibility for discovering the known dangers and consequences of anything one voluntarily ingests are excused, and when laws are subsequently enacted which hold others, i.e., businessmen, responsible for initiating force for what individuals have voluntarily indulged in, then irrational lawsuits are filed and justice becomes impossible.”

Similarly, an *Insurance Journal* story, “What About Personal Responsibility,”²² declares, “People bring lawsuits against other people and businesses for an almost endless variety of reasons. Some are legitimate, many are not. And most of the time, the claims that seem to be absurd or even downright frivolous may never have happened if the claimants had only used common sense or had taken the responsibility for their own actions.”

These and similar arguments have been used frequently to make a case for tort reform, but they also are the basis for right-wing arguments on other issues. A restrictive notion of “personal responsibility” also underlies the right-wing philosophy of limiting government’s ability to help people. In “*Do You Really Believe in a Limited Government?*”²³ Randall R. Rader, a Federal Judge and member of the Federalist Society, writes: “If we profess a philosophy of limited government, we profess in the same breath a faith in unlimited personal responsibility.”

From there, it’s not a great leap to eliminating Social Security (or, for that matter, any of the other entitlement or service programs designed to help the needy). Lawrence W. Reed, former president of the Mackinac Center for Public Policy, (which receives funding from Scaife/Bradley/Koch),²⁴ argues that “in a free society, responsibility for one’s retirement is too important to relinquish to the vagaries of politicized programs. . . . Social Security, make no mistake about it, will ultimately be privatized partially or wholly. . . . It’s time that Americans take back a responsibility they should never have trusted to government in the first place, one way or another, the sooner the better.”

In “*Personal Responsibility: A Brief Survey*,”²⁵ David Duff ties “personal responsibility” ideology to yet more standard conservative issues, advocating the elimination of public schools (“When parents began to delegate educational responsibilities to the government, a decline soon followed.”); government assistance for health care and welfare (“As with other services, health care and social welfare programs are most effectively provided by the private sector”); government regulation of business (“Government intervention or redistribution, in whatever form, hampers the accurate measure of a businessman’s effectiveness in these areas”); unemployment benefits (“allowing people to live off the state while taking an excessive amount of time to find employment”); and taxation itself (“Taxation makes it difficult for many citizens to meet their responsibilities. As time passes, more and more families adopt an attitude of resignation, and fall back on government aid.”)

Bringing the underlying ideology of personal responsibility back to tort reform arguments, and never missing an opportunity to ridicule attorneys, the Power-Of-Attorneys website²⁶ (see Appendix 5) writes, “Personal responsibility left the building the moment personal injury lawyers took over the show and America is none the better for it.”

What all these examples of the ideology of “personal responsibility” demonstrate is that attempts to refute tort reform arguments are likely to be effective only if they are supported by a campaign that addresses the underlying ideology that the Right has promoted for the past 30 years.

The Political Agenda – Defunding Trial Lawyers

The alliance of the tort reform movement with the far right involves an agenda that goes beyond such tort-specific issues as jury awards. These linked movements want more than just restricting litigants’ rights and weakening regulatory constraints on business. By working to limit jury awards, and thus limiting the income of plaintiffs’ attorneys, conservatives seek to “defund the trial lawyers,” thereby undermining the attorneys’ ability to lobby effectively and to contribute money to the conservatives’ political opposition.

In a candid article discussing the Right’s agenda, Grover Norquist writes, “Modest tort reform, much of which has been actively considered by committees in both houses, would defund the trial lawyers, now second only to the unions—and this is debatable—as the funding source of the Left in America.”²⁷ He has also written, “Modest tort reform would deprive pillar number three--greedy trial lawyers--of billions from American consumers. In some states trial lawyers give more to Democrats than union leaders do.”²⁸

This agenda is further illustrated in an August 10, 2003 *Seattle Times* story, “GOP using ‘tort reform’ as powerful political club”:²⁹

“The drive to limit court-awarded damages in civil lawsuits, often called ‘tort reform,’ usually is framed as a contest between accident victims’ rights and corporations’ desire to be protected from unreasonably high judgments. Increasingly, however, the battle is deeply partisan, as conservative groups try to mobilize the political right and cripple a key Democratic constituency, trial lawyers. . .

‘It’s a double kiss,’ said a key strategist involved in the battle taking place in Congress, state legislatures, bar associations and local judicial elections. ‘Republicans get to force one of the biggest backers of Democrats to spend money just to survive and, at the same time, please everybody from the Chamber (of Commerce) to the drug companies, to the Realtors, doctors, you name it.’

Ed Lazarus, a Democratic political operative who works for the American Trial Lawyers Association, said: ‘(I)t’s very clear what the program is — it is to defund the Democratic Party.’ For the GOP, he said, ‘it’s a double-header: more income for your side, and you take income from the other.’ ”

The above-mentioned Norquist stories make public what many have suspected – that the Right is not involved in advocating tort reform solely due to their concern over the insurance rates paid by doctors or damage awards paid by businesses. In a coordinated effort to weaken their political opposition, they are similarly targeting the Labor movement through “Paycheck Protection” legislation,³⁰ teachers unions through advocacy of vouchers,³¹ aid to the urban poor, and attacking voting rights.

* Corrected from Lynde

Section 2 – Reaching the Public, Legislators and Judges

Multi-Issue Think Tanks and Communications Organizations

The right-wing foundations described in Section 1 fund a coordinated network of advocacy organizations, providing general operating support rather than funding narrowly-focused programs. At the center of this network are multi-issue, e.g., tort reform, school privatization, pro-life, etc., think tanks that are marketing and communications organizations, oriented aggressively toward media relations and public communications, as well as traditional scholarly idea generating institutions. Because they address a variety of issues from the same philosophical perspective, the think tanks are able to advance an underlying ideological agenda.

“We believe that ideas have consequences, but that those ideas must be promoted aggressively. So, we constantly try innovative ways to market our ideas.”

-Heritage Foundation Website³²

The Right's Communications Infrastructure

These right-wing organizations function as an infrastructure that translates the ideas and policies of ideological think tanks into influential language, and then repeatedly disseminates those messages to the general public through a variety of communications channels. For example, the Washington Legal Foundation, which is a leading proponent of “shaping public policy through aggressive litigation [when in favor of the Right’s goals] and advocacy,” writes that their

broad-based communications outreach program disseminates our free enterprise message through print and electronic media, public education advertising campaigns, and on-site seminars and briefings.³³

The Right’s organizations use sophisticated marketing methods to “translate” – packaging ideas to appeal to people's deeper feelings and values – and disseminate messages designed to alter underlying public opinions to be supportive of their shared ideology. Even single words or phrases, selected for their effectiveness, are shared by multiple voices to reinforce the right wing message. (See Appendix 1)

This in turn leads to public support for their organizations and ideology, puts public pressure on legislators to support their issues, and elects public officials who support their agenda and appoint judges and agency officials who carry out their policies.

The National Center for Policy Analysis prides itself on aggressively marketing its products for maximum impact by “targeting key political leaders and special interest groups, establishing on-going ties with members of the print and electronic media, and testifying before Congress, federal agencies, state lawmakers, and national associations.”

- from *National Committee for Responsive Philanthropy's* study, “The Strategic Philanthropy of Conservative Foundations”³⁴

When it comes to tort reform, the strategy has been remarkably consistent. Conservative “think tanks” publish research that backs up the “tort reform” movement's claims and

develop “talking points” for distribution to speakers, pundits, writers and the media. Other organizations provide trained speakers for radio and television programs. Still others publish magazine articles, op-ed pieces, and books based on the research from the think tanks. Some organizations work to discredit opponents. Others work to disparage the legal profession in the public mind. Yet others spread misleading stories about what they call lawsuit abuse. (See Appendix 3) All of this is designed to weaken trial lawyers and liability lawsuits, while simultaneously garnering support for tort reform.

In sum, tort reform messages are amplified by the Right’s communication machine. Because conservative movement organizations share the same basic ideology, they are able to validate and leverage each other’s work, creating a multiplier effect. This enables them to operate as a message amplification infrastructure, which has been referred to as “The Mighty Wurlitzer.”³⁵ To the public, it appears that there are many diverse voices from a number of independent organizations and media outlets, giving the appearance of a widespread consensus of opinion. In truth the messages come from a core group using its network of advocacy organizations as an echo chamber, making one voice sound like many.

A Broad Campaign, Utilizing Multiple Channels

“Politics is about persuading large numbers of people.”
-Rush Limbaugh

The Right’s message amplification infrastructure has a broad reach, repeating coordinated strategic messages through multiple communication channels: conservative talk radio, Fox News, Internet sites like the Drudge Report, op-ed pieces in newspapers across the country, prefab letters-to-the-editor, books, pundits and columnists, talking points distributed to politicians and public speakers, advertisements, and newspapers like the *Washington Times* and *Wall Street Journal*.

The result, if you listen closely, is that the same words and phrases magically appear in multiple media at approximately the same time. Staying on message is a skill well-honed by the proponents of tort reform.

The tort-reform movement even utilizes such innovative messaging channels as sponsoring high-school essay contests on lawsuits. Citizens Against Lawsuit Abuse (CALA), for example, encourages students to enter their essay contest by offering, “cash prizes ... in the amounts of \$1000, \$500 and \$250 to finalists selected by a distinguished panel of elected officials, attorneys, and other civic leaders.”

“The essay,” CALA writes, “may include any of the following discussion points:

- 1) Define Lawsuit Abuse.
- 2) Give 2-3 examples of frivolous (abusive) lawsuits.
- 3) Discuss why some people & their lawyers file frivolous lawsuits.
- 4) Determine if jury service has any affect on stopping lawsuit abuse and/or
- 5) Determine if lawsuit abuse undermines principles of individual responsibility.”³⁶

In effect, such organizations are using public institutions to promote and legitimize an attorney-bashing agenda, while simultaneously propagandizing a new generation.

Coordinated Dissemination of Strategic Messages

The Right's messaging infrastructure draws effectively on communication techniques from the fields of marketing, public relations, and corporate image-management. They package their messages to appeal to people's deeper feelings and values, and they have refined their communication techniques and vocabularies to motivate their potential supporters effectively. Both the industry-sponsored "tort reform" organizations and right-wing groups coordinate their messaging to increase their effectiveness. (See Appendix 1)

The right-wing Manhattan Institute's Center for Legal Policy (CLP)'s captures perfectly the marketing and message-dissemination capabilities of right-wing think tanks.

The CLP's mission is to communicate thoughtful ideas on civil justice reform to real decision-makers. The Center fulfills this mission by publishing general-interest books and academic volumes; white papers, reports and op-eds; and a forum series on civil justice issues. The CLP also holds conferences and seminars for policy-makers, judges and journalists; CLP senior fellows make frequent radio, television and public appearances and have testified before both houses of Congress; and Senior Fellow Walter Olson manages a website, overlawyered.com, with daily updates and incisive commentary on the effects of "overlawyering" on American business and society.³⁷

The communication efforts of numerous state Against Lawsuit Abuse (CALA) organizations, coordinated by the American Tort Reform Association (ATRA), are described in the Center for Justice and Democracy's report, "The CALA Files:"

The CALAs' strategy and message has been coordinated by ATRA and its public relations consultant APCO & Associates, which supply the groups with strategic guidance, media training, and pre-produced radio, television, print advertising and billboards designed for maximum media exposure and legislative impact. Other regional and national political consultants and polling firms help tailor the CALA message to local concerns.³⁸

The Tactic of Creating Conventional Wisdom

One key to moving public opinion has been to create "conventional wisdom" through the constant repetition of simple messages through multiple channels over a long period of time. Two main examples are the claims that "Social Security is going broke" and that "public schools are failing." Both statements are at best questionable, yet both have been firmly embedded in the "public mind" by purposeful repetition in a variety of media outlets and communications venues.

Examples of conventional wisdom manufactured by the tort reform movement include:

- "Junk lawsuits" are "out of control," "strangling our legal system" and "crippling businesses."
- "Lawsuit abuse" "extorts money" from legitimate business.
- Trial lawyers are "greedy."

- The large numbers of “frivolous lawsuits” drive up insurance costs.

These are just some of the simplistic and misleading messages that the tort-reform movement has spent vast amounts of time and money drumming into the public mind. As more and more people come to believe in the existence of these “problems,” the “solutions” offered by right-wing politicians become increasingly appealing.

Shaping conventional wisdom depends on following a long-term plan. The National Association of Manufacturers’ Fair Litigation Action Group’s (FLAG) website shows their understanding of the value of a long-term approach:

...FLAG will work through the National Association of Manufacturers Legal Policy Issues Committee to initiate **a broad multi-year awareness campaign** [emphasis added] among NAM members and their employees, including more than 350 member associations located in all 50 states. The campaign will focus on the importance of fair liability laws and what legal reform measures are needed to achieve this goal.

- National Association of Manufacturers – Fair Litigation Action Group (FLAG)³⁹

In a long-term approach, strategic messages are developed and repeated as steps toward the final goal. For example, first stories about ridiculous-sounding lawsuits are spread. Once “everyone knows” lawsuits are “frivolous” and “out of control,” the public is barraged with messages about how these lawsuits are causing doctors to leave the profession. Only then does the movement introduce legislative “solutions.”

Reaching State Legislatures

The American Legislative Exchange Council (ALEC) stands as a compelling example of the political power that can result when the traditional business-oriented, single-issue organizations operate in conjunction with the multi-issue organizations of the Right. ALEC, founded in 1973 by Paul Weyrich, (also the founder of the Heritage Foundation), is a major player in state tort reform battles. ALEC develops legislation templates for tort reform laws being passed in several states.⁴⁰ In a June, 2003, commentary⁴¹ Weyrich wrote:

Fortunately, we have the organization that is playing a vital role in advancing the conservative agenda where it works best -- the state and local level -- and this organization serves as our early radar system for detecting coming trends and concerns in public policy. . .

As an example of how the states can circumvent Washington gridlock, Parde says the votes in the U.S. Senate are just not there for substantive tort reform. But approximately a dozen states have used the model legislation developed by ALEC to provide some kind of relief from "jackpot justice," unwarranted settlements that are costly to consumers and businesses and medical practitioners.

In a recent commentary, Rep. Frank Mazur of Vermont, in describing ALEC’s 2003 annual meeting, unwittingly reveals the strategic ideological interconnectedness of the Right:

In early August, I attended the annual meeting of the American Legislative Exchange Council (ALEC) in Washington, DC. ALEC is a national organization of legislators who are committed to the Jeffersonian principles of free markets,

limited government, and individual liberty. Ninety-eight members of Congress are former ALEC members.

Over 2,700 participants attended the meeting including state and national leaders, senior business executives, leading public policy experts and members of the media. Vice President Richard Cheney, Homeland Security Secretary Tom Ridge, Colorado Governor Bill Owens, former Congressman J.C. Watts, Jr. and Washington, DC Mayor Anthony Williams headlined this annual meeting.

Over three days, twelve workshops were held on tort reform, homeland security, school choice, state budgets, prescription drugs Medicare/Medicaid reform and environmental health. Experts discussed and in some cases debated these issues and presented various views for legislators to consider in their states.⁴²

In a report titled “Corporate America’s Trojan Horse in the States, The Untold Story Behind the American Legislative Exchange Council,”⁴³ the Natural Resources Defense Council and Defenders of Wildlife state that “ALEC is little more than a tax-exempt screen for major US corporations and trade associations that use it to influence legislative activities at the state level.” The report describes how, for a two-year \$50 membership fee, state legislators are given “junkets to prime tourist destinations, . . . free or heavily subsidized trips that resemble vacations for their spouses and children, and an assortment of other fringe benefits.” According to the report, ALEC also operates a Political Action Committee (ALEC-PAC) that gives contributions to state legislators. While ALEC describes itself as non-partisan, all the state legislators who serve as officers are Republicans, as are all but one of its 29 directors.

Tort Reform Organizations Work to Influence, Elect and Appoint Supportive Politicians and Judges

The right-wing movement has also taken to treating federal judges to all-expenses-paid seminars at luxury resorts and “educating” them about economics and free markets. (See Appendix 4, regarding the Law and Economics Center of George Mason University.) In a July, 2000, report titled “Nothing For Free: How Private Judicial Seminars Are Undermining Environmental Protections and Breaking the Public’s Trust,” the Community Rights Council examines the interest groups and right-wing foundations funding these junkets. According to the report, “the three organizations hosting the most trips . . . share a remarkably similar, and in some respects extreme, conservative/libertarian ideology.”⁴⁴

The extremist Right and the tort reform movement are also working to elect politicians who will pass their legislation and judges who will ultimately rule in favor of the interests of the movement and its partners. The CALA Files report discussed efforts to elect state judges who will rule in favor of tort-reform advocates:

A principal focus since the mid-1990s has been to ensure the election of pro-industry state judges . . . The tobacco industry has also been involved in such elections, for example, in Texas, Louisiana, Mississippi and Alabama. Such activities also became a significant focus for ATRA [American Tort Reform Association] and APCO [APCO & Associates, a “grassroots” lobbying and

PR firm] as well in the late 1990s as more and more state courts have struck down tort law restrictions.⁴⁵

A Dayton Daily News story further illustrates these efforts to elect state judges; it reports, “The fight is no more evident than in the campaign contributions for two seats on the Ohio Supreme Court. Whoever wins the seats Nov. 5 could be asked to judge whether capping jury awards in medical malpractice cases is constitutional.”⁴⁶

In Texas, the tort reform movement (with Enron’s Ken Lay helping start “Texans for Lawsuit Reform,” one of the first tort reform organizations)⁴⁷ was instrumental in electing George W. Bush as governor of Texas, launching his political career.

The story is often told of how George W Bush came almost out of nowhere to win the Texas governorship in 1994 from a popular Democratic incumbent, Anne Richards. It is often explained in terms of Mr. Bush’s optimistic never-say-die nature and his easy manner with ordinary Texans.

But it had a lot to do with one campaign pledge. “Probably the first and most important thing I will do when I am governor of this state,” he promised, “is to insist Texas changes the tort laws and insist we end the frivolous and junk lawsuits that threaten our producers and crowd our courts.

- “How big money buys big votes in US race,” *Guardian Unlimited*⁴⁸

Electing state judges – and now appointing federal Judges – is a key component of the strategy of both the Right and the tort reform movement. This potentially renders in-court legal arguments irrelevant.

The wins are key: In the mid-1990s, business persuaded lawmakers in several states to limit punitive damage awards, only to have the courts nullify the laws as unconstitutional. Sympathetic jurists would be less likely to reverse legal reforms the states passed.

- “Tort Reform: A Little Here, a Little There...” *Business Week*⁴⁹

Meanwhile, the Right and the tort reform movement are going on the offensive against anyone who might question their goals, including fellow conservatives. The core group that controls the right wing movement is attacking moderate Republicans, accusing them of ideological impurity, deriding them as “RINOs” (Republicans In Name Only), and even seeking to drive them from office and out of the party.⁵⁰

For their part, pro-tort reform corporate organizations are pressuring states by threatening to advise investors against investing in municipal bonds of states that do not limit punitive damage awards.

Meanwhile, the heavy hitters in the industry have come out swinging. At the Risk and Insurance Management Society Inc. (RIMS) conference in Chicago last month, AIG CEO Maurice "Hank" Greenberg came out in favor of a U.S. Chamber of Commerce scheme to target jackpot justice states by appealing to investors to not buy their municipal bonds.

- “Tort Reform Advocates Strike While Iron is Hot.” *Insurance Journal*, May 5, 2003⁵¹

Section 3 – Effectiveness of the Tort Reform Campaign

The Right Sets the Public Agenda

In recent years, the Right and the tort reform movement have enjoyed unprecedented success in influencing both federal and state legislation and policies by: 1) using organizations perceived by the public as independent, 2) repeating the anti-tort message as consistently as possible through multiple channels, 3) employing sophisticated communications methods, 4) following a coherent long-term plan, and 5) coordinating both ideologically and tactically with the Right's network of advocacy organizations.

As a result, the Right's message amplification infrastructure successfully drowns out significant opposing voices. As People for the American Way Foundation's study "Buying a Movement" has put it:

The result of this comprehensive and yet largely invisible funding strategy is an extraordinary amplification of the far right's views on a range of issues. . . They have . . . been able to keep alive in the public debate a variety of policy ideas long ago discredited or discarded by the mainstream. . . The success of the right-wing efforts are seen at every level of government, as a vast armada of foundation-funded right-wing organizations has both fed and capitalized on the current swing to the right in Congress and in the state legislatures.⁵²

Right-wing ideological premises and arguments dominate the national debate, with big money using the right-wing communications infrastructure to drown out other voices. "As one investigative journalist stated years ago in a pioneering investigation of the conservative philanthropy of Richard Scaife," wrote Sally Covington in her 1997 study, "The Strategic Philanthropy of Conservative Foundations," "layer upon layer of seminars, studies, conferences, and interviews [can] do much to push along, if not create, the issues, which then become the national agenda of debate.... By multiplying the authorities to whom the media are prepared to give a friendly hearing, [conservative donations] have helped to create an illusion of diversity where none exists. The result could be an increasing number of one-sided debates in which the challengers are far outnumbered, if indeed they are heard from at all.'"⁵³

A May *Insurance Journal* article boasts:

"In my 20-plus years in this business, I don't remember a situation where both at the federal level, where the political makeup of the House and Senate . . . were majorities for the conservative side and public sentiment have lined up at the same time," said Joseph J. Annotti, a spokesperson for the National Association of Independent Insurers. "This improves the chances of getting meaningful reforms enacted. We've all learned our lessons from the past. You've got to use your political chips when you have them."

And the chips most certainly are being played. The American Tort Reform Association has publicized the results of a poll it financed in which the 800 respondents, across party lines, overwhelmingly agreed there are too many

lawsuits, greedy lawyers are to blame, and they'd punish politicians who did not vote for reform by voting against them.”⁵⁴

The combined tort campaign and right-wing message amplification approach has, unfortunately, garnered significant public and legislative support. Although trial lawyer and pro-tort organizations have made significant lobbying efforts over the years, they are losing in the court of public opinion. The *Insurance Journal* article reports that, “83 percent of those polled agreed there are too many lawsuits in America, and 45 percent support tort reform as opposed to 6 percent who oppose it. More impressively, 67 percent of the respondents said they'd be more likely to vote for a politician who favored tort reform and 64 percent said they'd be less likely to vote for a candidate who opposed it.”⁵⁵

In June, the American Osteopathic Association's report, “Professional Liability Reform, 2002-2003 Enacted Legislation”⁵⁶ listed the following recent successes regarding tort reform:

- Alaska capped punitive damages at \$500,000
- Colorado enacted a \$300,000 non-economic damages cap
- Idaho enacted a \$250,000 non-economic damages cap
- Mississippi enacted limited punitive damages
- Nevada enacted a \$300,000 non-economic damages cap
- Ohio barred criminal offenders from receiving tort awards, and enacted a \$300,000 non-economic damages cap and sliding-scale attorney fees
- Oklahoma enacted a \$300,000 damages cap
- Texas enacted a \$250,000 non-economic damages cap with a punitive damages cap at 1.4 million, and
- West Virginia enacted a \$250,000 damages cap

Then, in July, 2003, the *Insurance Journal* reported that, “This year has been the busiest for enactment of state civil justice reform legislation since 1995, according to the *American Tort Reform Association* (ATRA). At mid-year, 20 states already have enacted laws; 19 laws were enacted by the conclusion of 1995. . . . Some states have not concluded legislative sessions and others have called special sessions in order to advance reforms.” According to the article, Texas passed far-reaching legislation that included joint and several liability reform, limits on non-economic damages, medical liability reform and punitive damages reform. Arkansas, Idaho and West Virginia have also passed comprehensive “reforms.” Additionally, “This year, eight states have enacted medical liability reforms and another 17 have considered or are still considering legislation.”⁵⁷

Influencing Jurors

Even where anti-tort legislation is not enacted, the pool of potential jurors has been inundated with tort reform messages to the point where these ideas are taken as conventional wisdom. Jurors – even when it runs against their own personal interests as consumers – are exercising personal tort reform by finding against plaintiffs.

In his report “Juror Perceptions About Lawsuits and Tort Reform” Dr. Richard Waites of the firm The Advocates, reports “a significant relationship between attitudes toward tort

reform and verdicts,” and writes that “jurors who adhere to tort reform beliefs and will apply them to achieve a more conservative verdict are also more likely to believe that individuals have a great deal of responsibility for their own conduct and outcomes. Those jurors are also less likely to hold a corporation or anyone else responsible for someone’s injuries absent clear evidence and strong arguments.”⁵⁸

The Minnesota Trial Lawyer report “Tort Reform: Perception Versus Reality” reaches similar conclusions:⁵⁹

The most notable consequence of the tort-reform media campaign is the changed attitudes of judges and jurors. The industry’s campaign to portray the legal system as out-of-control and plaintiffs’ lawyers as unscrupulous has impacted deliberations in the jury room. One study . . . concluded that 83% of jurors think that there are “far too many frivolous lawsuits,” 57% believe that “lawsuits interfere with the development of new and useful products,” and 51 % believe that “big business . . . is adequately concerned” with safety. Juries also demonstrated a reluctance to find fault in industry practices.”

Achieving Their Goals

Major print and broadcast media, public opinion polls and the positions taken by politicians of both major parties make it clear that there has been a steady shift toward the tort-reform movement’s and the Right’s attitudes and policies. Very little that reaches the major media frames issues to the advantage of trial lawyers and injured parties. The acceptance of the term “tort reform” even by its opponents shows how effectively the right wing has managed to frame the issue.

The right-wing movement, in combination with corporate interests, has been successful not only in opposing trial lawyers, but also in getting people into government office who support their ideology. As a result, they have gained control over the legislative and administrative branches of the Federal government. With resulting appointments to the Courts, the Right and the tort-reform movement are poised to achieve their ultimate goal: passage of federal tort reform legislation that effectively “defunds” trial lawyers.

Section 4 – Conclusion

This report has shown that the tort reform movement is part of a two-pronged effort to influence public opinion and gain political power. Industry tort-reform groups utilize “independent voices” – PR agencies and phony “grass-roots” front groups that appear to be independent of the direct beneficiaries of “tort reform.” Meanwhile, the Right has in place a tremendous ideological messaging infrastructure, working for the past 30 years to influence the public’s underlying social and ideological attitudes on issues, including tort reform. They have been disciplined, strategic, and patient. They have focused substantial resources on changing the underlying political and social environment, rather than focusing only on single issues.

Fighting Back

To mount an effective opposition, it is important that trial lawyers and others understand how the right-wing opposition operates. Information about the right-wing movement should be broadly disseminated to trial lawyers and others who are impacted by the actions from the Right.

Trial lawyers are not the only ones being attacked by the Right. Labor, public education, the environment and a wide range of other issues of concern are also under attack. Efforts to develop and/or strengthen relationships between organizations representing these constituencies, for the purpose of countering right-wing and corporate offenses, are important.

The Right has coordinated their efforts geographically as well as through many “independent voice” sources. The attack on the tort system is coordinated between national organizations like ATRA and state organizations like the CALAs. The effectiveness of this approach demonstrates the importance of close communication between national organizations like ATLA, and the numerous state organizations that favor a strong tort system, including organizations of other than trial lawyers.

Communication and coordination between existing organizations is not enough. One problem is that those responding to the Right’s attacks tend to focus on narrow, short-term issues, often reaching existing supporters rather than the general public. Trial lawyers, for example, have tried to explain to the public the truth about damage awards and misleading claims of lawsuit abuse, in response to the current attacks from the tort reform movement and the Right. But, because so many of the pro-tort reform arguments rest on the Right’s ideology, the effort to combat tort reform must also work to diminish public acceptance of the underlying ideology itself. Just as blackberry vines in the garden reappear until the root system is removed, tort reform arguments will continue to thrive with the public until the underlying ideology loses strength.

The Right’s success demonstrates the need – *and provides the model* – to build independent communications infrastructure organizations that reach the general public with messages that counter ideological messaging from the Right. One doesn’t have to reinvent the wheel, one need only look at the Right’s success and emulate it. Trial lawyers and other groups attacked by the Right should begin funding multi-issue

organizations with a long-term marketing/communications plan to counter the Right's ideology *as well as* specific tort reform arguments. Without independent voices serving as advocates for trial lawyers and the tort system, both the public and the politicians can be expected to support continued tort "reform."

Funding such organizations will have additional favorable effects. People and politicians who understand the need for strong consumer and patient protections are also likely to be pro-environment, pro-choice, and supportive of other issues. Similarly, pro-environment, pro-choice, etc. voters are very likely to be strongly supportive of the rights of consumers and patient and the interests of trial lawyers. And, owing to the principle of interconnectedness, over time, a funded marketing/communications infrastructure will support a growing network of credible individuals writing books, articles and commentaries, appearing on television and radio news and issues programs, speaking to public interest groups, and using their skills in many beneficial ways.

The question is how one best goes about building public support for an issue or perspective. The answer is simple, you support independent parties who will serve as independent voices, and who will make your case.

Appendix 1 – Example of Coordinated Dissemination of a Strategic Message

One of the tactics used by the Right is repetition of messages that are designed to resonate with the public and evoke a desired reaction. This appendix presents an example of coordinated use of one such strategic message, which has been repeated in various media, and by various organizations and prominent individuals. In this example the strategic message is that lawyers, lawsuits, etc. are “**out of control.**” The unspoken, subliminal implication of this phrase is that “we have to get it under control.”

- Magazine columns: “The tort system in the United States is **out of control.**” “The Tort Tax,” *National Review*.⁶⁰
- Newspaper editorials: “The editorial argued that trial lawyers are the reason civil litigation is **out of control.**” Business Councils of New York State story describing *Buffalo News* editorials.⁶¹
- Politicians: “In this state, the lawsuit industry is devastating the practice of medicine,” Bush said, drawing applause. “Too many frivolous lawsuits in this state are being filed against doctors. That’s a fact. And too many jury awards are **out of control.**” – President Bush⁶²
- Books: ‘The Emmy Award-winning host of Court TV’s “Catherine Crier Live” describes an American legal system dangerously **out of control** – and finds the lawyers guilty as charged.’ Publisher’s note for “*The Case Against Lawyers: How the Lawyers, Politicians, and Bureaucrats Have Turned the Law into an Instrument of Tyranny – and What We as Citizens Have to Do About It*” by Catherine Crier
- Advertisements: “**out of control** lawsuit system.” Health Coalition on Liability and Access (HCLA) advertisement in Roll Call magazine.⁶³
- Radio news programs: “Michael Horta, spokesman for a business-backed group pushing for tort reform says the legal process is **out of control** and money is not going to those who need it.” *BBC, World Business Review*, Feb. 21, 2003.⁶⁴
- Physicians’ associations: “Over the past several months, many ACP-ASIM members have called to express concern about **out-of-control** medical liability premiums and excessive lawsuits against doctors.” American College of Physicians-American Society of Internal Medicine (ACP-ASIM).⁶⁵
- Websites: “Lawsuit abuse is a huge problem growing out of control.” Orange County CALA. “These are sure fire signs of a legal system spinning completely **out of control.**” Power-of-attorneys website.⁶⁶
- College newspapers: “Tort law ‘**out of control,**’ lawyers to blame, say legal professionals.” *Michigan Daily*. University of Michigan. October 16, 1995.⁶⁷

- Letters to the editor: “In the end, if reform is defeated, and the current **out of control** tort system is allowed to gut the access of patients to the physicians whose care they need, the more important question to ask -- one which every lawyer in this state should be asking himself -- is: Will my doctor be there for me?” May 13, 2003. Massachusetts Lawyers Weekly Legal Services. ⁶⁸

Appendix 2 – An Example of Interconnectedness

This is a look at a portion of one individual's tort-reform work, to demonstrate how interconnectedness leverages the work of individuals and organizations tied to the right-wing movement.

Michael I. Krauss, Professor of Law, George Mason University is author of “Tort Reform, CATO Institute's Handbook for 107th Congress, 2001.”⁶⁹ Other tort reform publications at Cato include “Restoring the Boundary: Tort Law and the Right to Contract.”⁷⁰ George Mason University is covered in detail elsewhere in this report, and receives funding from the Scaife, Bradley, Koch, Earhart, Olin and Coors foundations.⁷¹ Cato, also discussed elsewhere in this report, receives funding from Scaife, Bradley, Koch, Earhart, Olin and Coors.⁷²

According to Professor Krauss' biography,⁷³ he is a Salvatori Fellow at the Heritage Foundation, described elsewhere in this document, which receives funding from Scaife, Bradley, Coors and others;⁷⁴ a member of the Advisory Board of Freedom House, which receives funding from Scaife, Bradley and Smith Richardson;⁷⁵ a member of the adjunct faculty of the Institute for Justice, which receives funding from Scaife, Bradley, Koch, Olin and Coors;⁷⁶ on the Board of Governors of the National Association of Scholars, which receives funding from Scaife, Bradley, Olin and Coors.⁷⁷ His “Past Employment and Service” lists the Competitive Enterprise Institute, which receives funding from Scaife, Bradley, Koch and Coors.⁷⁸

Krauss has made various presentations⁷⁹ to the Federalist Society, which receives funding from Scaife, Bradley, Koch, Olin and Coors.⁸⁰

Krauss' tort-reform work is cited at the anti-lawyer website Overlawyered.com.⁸¹

Krauss' tort reform paper, “Federalism and Product Liability: One More Trip to the Choice-of-Law Well,” was published in 2002 Brigham Young University Law Review 759.⁸² Brigham Young University receives funding from the Earhart and Olin foundations.⁸³

Krauss' tort reform paper, “Tort Law, Moral Accountability and Efficiency,” (“Most people agree that today's Tort law discourages personal responsibility,”) was published in Markets & Morality, a publication of the Acton Institute for The Study of Religion and Liberty,⁸⁴ which receives funding from Bradley, Koch and Coors.⁸⁵

Krauss' paper, “Smoke and Fire: Government Recoupment Suits and the Rule of Law,” was published by the Independent Institute,⁸⁶ which receives funding from Koch and Olin.⁸⁷

The Washington Legal Foundation, described elsewhere in this report, receives funding from Scaife, Olin and Coors,⁸⁸ and published Krauss' “Suits Against “Big Fat” Tread On Basic Tort Liability Principles” in their publication, Legal Backgrounders.⁸⁹ Professor Krauss also speaks at the Washington Legal Foundation.⁹⁰

Krauss' paper, "Today's Tort Suits Are Stranger Than Fiction"⁹¹ appeared in the publication Virginia Viewpoint, published by Virginia Institute for Public Policy, which receives funding from Coors, Koch,⁹² and managed by the former President of Cato Institute.

Krauss' work is cited in a pro-tort-reform column by Walter Williams, the John M. Olin Distinguished Professor of Economics at George Mason University.⁹³

Krauss' work is cited in a tort reform article by Consumer Freedom (www.consumerfreedom.com), a food- and liquor-industry front-organization.⁹⁴

Krauss is quoted in numerous newspaper stories⁹⁵ on tort reform issues.

Michael Krauss' interconnectedness with other right-wing issues:

These examples show the utility of having an infrastructure in place to support the Right's use of the interconnectedness effect to advance multiple issues. With a ready-to-go message amplification infrastructure in place, the right is able to utilize their many funded scholars, such as Krauss, to advance a broad range of causes, not just tort reform.

Krauss authored a Washington Times column, "Loading the dice for the ruling?" opposing affirmative action and diversity.⁹⁶

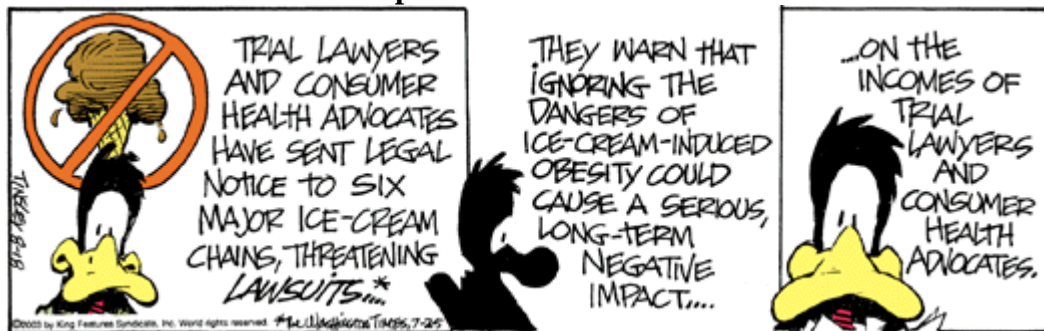
Krauss gave an endorsement of Foundation Francisco Marroquin,⁹⁷ where he had lectured, which receives funding from Bradley.⁹⁸

Krauss authored a July 23, 2003 column on conservative Fox News Online, "Just Say No To Drug Re-Importation,"⁹⁹ supporting the pharmaceutical-industry position.

Krauss signed a petition, *Don't Let The President Lie With Impunity*, (President Clinton, not President Bush). This petition appears in a Claremont Institute publication.¹⁰⁰ Claremont receives funding from Scaife, Bradley, and Olin.¹⁰¹

Appendix 3 – Examples of Ridiculing and Demeaning of Trial Lawyers

- **Mallard Fillmore Comic Strip**¹⁰²



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- **Lawyers and Other Reptiles.** ‘A California lawyer has filed a \$100,000 libel lawsuit against GTE Directories Sales Corp., alleging that the publisher listed her name and phone number in at least one yellow pages directory under “Reptiles”.’ At Citizens Against Lawsuit Abuse website.¹⁰³
- **Laughing at Lawyers, Funny Lawyer Quotes, Jokes & Cartoons, the Lawyer Joke Exchange.** Two Web collections located at a tort reform advocacy website, Power-of-attorneys.com, which also hosts Class Action Law Update, Personal Injury Lawsuits and Legal Information.¹⁰⁴
- **Lawyers Congregate To Pick Your Food (And Your Pocket).** “Listen carefully when you hear professor [Richard] Daynard and his trial lawyer friends talk about fat deposits,” cautions Center for Consumer Freedom Executive Director Rick Berman in a *Boston Herald* op-ed. “They’re really referring to their bank accounts, not your love handles.” The Center for Consumer Freedom¹⁰⁵
- **Looney Lawsuits.** A web collection of silly-sounding lawsuits. American Tort Reform Association.¹⁰⁶

An example of organizational interconnectedness, utilizing ridicule

The connections in the example: Fox News, Cato Institute, JunkScience.com

- **“Scare-Mongering Over ‘Hillybilly Heroin’ Deprives the Rest of Us.”** Published at Fox News by Steven Milloy, publisher of *JunkScience.com*, an adjunct scholar at the Cato Institute and the author of the upcoming book *Junk Science Judo: Self-defense Against Health Scares and Scams* (Cato Institute, 2001).

“The OxyContin controversy is a liberal’s dream come true. Sympathetic – almost heroic – dopeheads avenged by government agencies and trial lawyers swarming all over the greedy and malfeasant drug company.”¹⁰⁷

Appendix 4 – Examples of the Involvement and Funding of Right-Wing Organizations That Advocate Tort Reform

Heritage Foundation

Website: <http://www.heritage.org/>

Statements from the Heritage Foundation website:

“Founded in 1973, The Heritage Foundation is a research and educational institute – a think tank – whose mission is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.”¹⁰⁸

“We believe that ideas have consequences, but that those ideas must be promoted aggressively. So, we constantly try innovative ways to market our ideas.”¹⁰⁹

Example of Heritage Foundation tort-reform product:

“The Urgent Need for Civil Justice Reform” by Edwin Meese III and Paul Rosenzweig.¹¹⁰ A sample from this commentary:

“These lawyers, with the complicity of creative judges in a few states, routinely create new rights and obligations where none had existed before. The tobacco cases are merely the blueprint for a strategy of systematically transferring political power to a select few. [. . .] The next set of targets for predatory lawsuits has been identified: With the assistance of state courts, tort lawyers next intend to reform the health-care system in America. And beyond the health-care system looms the specter of other “creative” suits. [. . .] In short, if the trial lawyers can't change America through the courts, they are seeking to buy the Congress they need to enact the agendas they support. And every American, conservative or liberal, should fear the prospect. Because if we don't fix the civil justice system, we risk all that is precious in the American system -- democracy and self-government most of all.”

Heritage Foundation: Examples of recent major right-wing foundation funding:¹¹¹

| Date | Amount | Comment | Provider |
|-----------------|-----------|----------------------------|----------------------------------|
| <u>1-1-2002</u> | 1,375,000 | No comment provided | Sarah Scaife Foundation |
| <u>1-1-2002</u> | 15,000 | No comment provided | The Carthage Foundation (SCAIFE) |
| <u>1-1-2001</u> | 200,000 | General support | Castle Rock Foundation (COORS) |
| <u>1-1-2001</u> | 925,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2000</u> | 200,000 | General operating support. | Castle Rock Foundation |

| | | | |
|-----------------|-----------|--|--|
| <u>1-1-2000</u> | 1,500,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 780,000 | No purpose given | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 412,500 | To support the Domestic Policies Studies Program, Bradley Resident Fellows, and State Relations Department | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-1999</u> | 825,000 | Continued support of the Domestic Policies Studies Program, Bradley Resident Fellows, and State Relations Department | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-1999</u> | 200,000 | General support of think tank providing free-market answers to national public policy issues | Castle Rock Foundation |

Heartland Institute

Website: <http://www.heartland.org/>

Example tort-reform product:

Publication “*Lawsuit Abuse Fortnightly*,” available at website.¹¹²

Example of corporate funding source, according to Friends of the Earth:¹¹³

Funding from ExxonMobil \$90,000 in 2001

Example of interconnectedness:

From Heartland’s *Lawsuit Abuse Fortnightly*:

“Information on lawsuit abuse can be found on these Web sites:

www.heartland.org – Heartland Institute

www.alec.org – American Legislative Exchange Council

www.atra.org – American Tort Reform Association

www.fed-soc.org – Federalist Society

www.halt.org - HALT

www.manhattan-institute.org – Manhattan Institute

www.overlawyered.com - OverLawyered

www.wlf.org – Washington Legal Foundation”

Heartland Institute: Examples of recent foundation funding:¹¹⁴

| Date | Amount | Comment | Provider |
|------------------|--------|----------------------------------|--|
| <u>1-1-1998</u> | 10,000 | Educational Programs | Claude R. Lambe Charitable Foundation (KOCH) |
| <u>1-1-1997</u> | 15,000 | Intellectual Ammunition magazine | John M. Olin Foundation, Inc. |
| <u>1-1-1997</u> | 10,000 | Educational Programs | Claude R. Lambe Charitable Foundation |
| <u>1-1-1996</u> | 10,000 | Educational Programs | Charles G. Koch Charitable Foundation |
| <u>5-19-1995</u> | 25,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-1995</u> | 25,000 | POLICY NETWORK SUPPORT | Sarah Scaife Foundation |
| <u>1-1-1995</u> | 10,000 | General Program | Charles G. Koch Charitable Foundation |

Americans for Tax Reform (ATR)

ATR is not directly tied to the tort-reform movement, but is included here because it funds Grover Norquist, who leads the weekly right-wing coordination meetings, and who has written that the real goal of tort reform is to “defund” trial lawyers as a step toward defunding “the left.”

Web address: <http://www.atr.org>

Some examples of recent foundation funding:¹¹⁵

| Date | Amount | Comment | Provider |
|-------------------|---------------|--|--|
| <u>1-1-2002</u> | 100,000 | No comment provided | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 50,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 50,000 | Public education efforts on cutting taxes and reducing the cost of government | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 50,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 75,000 | Public education efforts on reducing taxes and reducing the cost of government | John M. Olin Foundation, Inc. |
| <u>1-1-1999</u> | 50,000 | no description given | The Carthage Foundation (COORS) |
| <u>1-1-1999</u> | 100,000 | No purpose given | Sarah Scaife Foundation |
| <u>1-1-1998</u> | 50,000 | No description available | The Carthage Foundation |
| <u>1-1-1997</u> | 100,000 | Public education efforts on reducing taxes and the cost of government | John M. Olin Foundation, Inc. |
| <u>1-1-1997</u> | 75,000 | PROGRAM SUPPORT | The Carthage Foundation |
| <u>12-10-1996</u> | 12,500 | To support general program activities | The Lynde and Harry Bradley Foundation, Inc. |
| <u>9-30-1996</u> | 12,500 | To support general program activities | The Lynde and Harry Bradley Foundation, Inc. |

Washington Legal Foundation (WLF)

Website: <http://www.wlf.org/>

Statements from the WLF website:

“WLF’s broad-based communications outreach program disseminates our free enterprise message through print and electronic media, public education advertising campaigns, and on-site seminars and briefings. WLF also publishes its opinion editorials “In All Fairness” in The New York Times, which reaches seventy major media markets and is read by ninety percent of America’s major newspaper editors.

WLF publishes timely legal studies in seven highly regarded formats written by expert authors. Through target marketing, our publications reach judges, federal and state legislators, executive branch officials, business leaders, the media, students, professors, and national decision-makers. To date, we have produced 1,470 publications.”¹¹⁶

“WLF is a unique institution with three essential cornerstone programs:

- shaping public policy through aggressive litigation and advocacy
- publishing timely legal studies
- educating policy-makers and the public through extensive communications outreach”¹¹⁷

Example tort reform product:

Civil Justice Reform, Online Journal.¹¹⁸

WLF Publishes the Legal Opinion Letter, a pro- tort reform publication.

Washington Legal Foundation: Examples of recent foundation funding:¹¹⁹

| Date | Amount | Comment | Provider |
|-----------------|---------|--|--|
| <u>1-1-2002</u> | 50,000 | No comment provided | The Carthage Foundation (SCAIFE) |
| <u>1-1-2001</u> | 65,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 100,000 | General Operating Support | Claude R. Lambe Charitable Foundation (KOCH) |
| <u>1-1-2000</u> | 500,000 | Litigation and legal studies programs. | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 100,000 | WLF’s Civic Communications Program. | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 75,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-1998</u> | 250,000 | A bi-weekly series of op-ed articles published in the New York Times | John M. Olin Foundation, Inc. |
| <u>1-1-1998</u> | 250,000 | Litigation and legal studies programs | John M. Olin Foundation, Inc. |

| | | | |
|-----------------|---------|---------------------------|--|
| <u>1-1-1998</u> | 125,000 | No description available | The Carthage Foundation (SCAIFE) |
| <u>1-1-1998</u> | 150,000 | General Operating Support | Claude R. Lambe Charitable Foundation KOCH |

**American Legislative Exchange Council (ALEC)
Civil Justice Task Force**

Website: <http://www.alec.org/viewpage.cfm?pgname=5.03>

“Established in 1973 by Paul Weyrich of the Free Congress Foundation, among others, ALEC's purpose is to reach out to state office holders. In the words of ALEC's executive director, Sam Brunelli,

‘ALEC's goal is to ensure that these state legislators are so well informed, so well armed, that they can set the terms of the public policy debate, that they can change the agenda, that they can lead. This is the infrastructure that will reclaim the states for our movement.’

ALEC has the financial support of more than 200 corporations including Coors, Amway, IBM, Ford, Philip Morris, Exxon, Texaco and Shell Oil.”¹²⁰

- Media Transparency description of ALEC

ALEC: Examples of recent foundation funding:¹²¹

| Date | Amount | Comment | Provider |
|-----------------|--------|---|---------------------------------------|
| <u>1-1-2002</u> | 70,000 | No comment provided | Allegheny Foundation (SCAIFE) |
| <u>1-1-2001</u> | 50,000 | General support | Castle Rock Foundation (COORS) |
| <u>1-1-2001</u> | 75,000 | General operating support | Charles G. Koch Charitable Foundation |
| <u>1-1-2000</u> | 75,000 | No purpose given. | Allegheny Foundation (SCAIFE) |
| <u>1-1-2000</u> | 85,000 | General Operating Support. | Charles G. Koch Charitable Foundation |
| <u>1-1-2000</u> | 50,000 | General support. | Castle Rock Foundation |
| <u>1-1-1999</u> | 75,000 | No description given | Allegheny Foundation |
| <u>1-1-1999</u> | 50,000 | Provides policy leaders in the 50 states with research, model legislation general support for 1998/1999 | Castle Rock Foundation |
| <u>1-1-1999</u> | 50,000 | Agency provides policy leaders in the 50 states with research and model legislation. General support of 2000 activities | Castle Rock Foundation |
| <u>1-1-1999</u> | 13,000 | General Operating Support. | Charles G. Koch Charitable Foundation |

Federalist Society

Website: <http://www.fed-soc.org/>

Example tort reform product:
Publishes *Class Action Watch*.¹²²

Federalist Society: Examples of recent foundation funding:¹²³

| Date | Amount | Comment | Provider |
|-------------------|---------|---|--|
| <u>1-1-2002</u> | 300,000 | No comment provided | Sarah Scaife Foundation |
| <u>1-1-2002</u> | 100,000 | No comment provided | The Carthage Foundation (SCAIFE) |
| <u>6-6-2001</u> | 92,500 | To support general operations (\$160,000) and a matching grant for the State Constitutions Project (\$25,000) | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-2001</u> | 60,000 | General operating support | Castle Rock Foundation (COORS) |
| <u>1-1-2001</u> | 100,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 25,000 | No purpose given. | The Carthage Foundation |
| <u>1-1-2001</u> | 45,000 | Student Education | Charles G. Koch Charitable Foundation |
| <u>1-1-2001</u> | 100,000 | General Operating Support | Claude R. Lambe Charitable Foundation (KOCH) |
| <u>1-1-2001</u> | 206,000 | The administration of the John M. Olin Fellows in Law program | John M. Olin Foundation, Inc. |
| <u>1-1-2001</u> | 225,000 | The John M. Olin Lectures in Law Series, the Citizen-Lawyer Project and the state constitutions project | John M. Olin Foundation, Inc. |
| <u>12-14-2000</u> | 92,500 | To support general operations (\$160,000) and a matching grant for the State Constitutions Project (\$25,000) | The Lynde and Harry Bradley Foundation, Inc. |
| <u>7-10-2000</u> | 80,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-6-2000</u> | 80,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-2000</u> | 206,000 | The administration of John M. Olin Fellows in Law program. | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 20,000 | The administration of the John M. Olin Fellows in Law program. | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 180,000 | The John M. Olin Lectures in Law Series, the Citizen-Lawyer Project and a conference on tort liability. | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 200,000 | No purpose given. | Sarah Scaife Foundation |

National Center for Policy Analysis (NCPA)

Website: <http://www.ncpa.org>

Statement from NCPA's website:

“The NCPA's goal is to develop and promote private alternatives to government regulation and control, solving problems by relying on the strength of the competitive, entrepreneurial private sector. Topics include reforms in health care, taxes, Social Security, welfare, criminal justice, education and environmental regulation.”

From National Committee for Responsive Philanthropy's study, “The Strategic Philanthropy of Conservative Foundations”:

“The NCPA's goal is to develop and promote private alternatives to government regulation and control, solving problems by relying on the strength of the competitive, entrepreneurial private sector. Topics include reforms in health care, taxes, Social Security, welfare, criminal justice, education and environmental regulation.”

“The National Center for Policy Analysis prides itself on aggressively marketing its products for maximum impact by “targeting key political leaders and special interest groups, establishing on-going ties with members of the print and electronic media, and testifying before Congress, federal agencies, state lawmakers, and national associations.”¹²⁴

Example tort-reform product:

“Doctors Face Soaring Malpractice Premiums”¹²⁵

Examples of corporate funding sources, from Science in the Public Interest: ¹²⁶

National Center for Policy Analysis Board of Directors

- Thomas W. Smith, Managing Partner of Prescott Investors, Inc.
- John C. Goodman, President, NCPA
- Pete du Pont, Richards, Layton and Finger
- James Cleo Thompson, Jr., Chairman of the Board, Thompson Petroleum Corp.
- Jere W. Thompson, President, The Williamsburg Corporation
- Dan W. Cook III, Senior Director of Goldman Sachs & Co.
- Robert H. Dedman, Chairman of the Board, ClubCorp International
- Virginia Manheimer, Trustee, The Hickory Foundation
- Henry J. “Bud” Smith, Chairman Emeritus, Clark/Bardes, Inc.

Supporting Foundations include:

- DaimlerChrysler Corporation Fund
- El Paso Energy Foundation
- ExxonMobil Foundation
- Eli Lilly and Company Foundation
- Lilly Endowment Inc.
- Procter & Gamble Fund”

NCPA: Examples of recent foundation funding:¹²⁷

| Date | Amount | Comment | Provider |
|-------------------|---------------|---|--|
| <u>1-1-2002</u> | 175,000 | No comment provided | Sarah Scaife Foundation |
| <u>12-13-2001</u> | 50,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>6-6-2001</u> | 50,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-2001</u> | 75,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 50,000 | General Operating Support | David H. Koch Charitable Foundation |
| <u>1-1-2001</u> | 30,000 | General Operating Support | Claude R. Lambe Charitable Foundation |
| <u>12-8-2000</u> | 50,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>7-10-2000</u> | 50,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-6-2000</u> | 50,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-2000</u> | 150,000 | The Center's research and education programs, including a study on national health insurance. | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 50,000 | General Operating Support. | David H. Koch Charitable Foundation |
| <u>1-1-2000</u> | 150,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 150,000 | No purpose given | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 100,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-1999</u> | 50,000 | General Operating Support | David H. Koch Charitable Foundation |
| <u>1-1-1998</u> | 150,000 | The Center's research and education programs | John M. Olin Foundation, Inc. |
| <u>1-1-1998</u> | 125,000 | no description given | Sarah Scaife Foundation |
| <u>1-1-1998</u> | 75,000 | No purpose given | Scaife Family Foundation |

Manhattan Institute’s Center for Legal Policy

Website: <http://www.manhattan-institute.org/html/clp.htm>

Statement from their website:

“The Center for Legal Policy (CLP) is a leading voice for reform of America’s civil justice system. Founded in 1986, hundreds of news reports have cited the CLP’s civil justice work, with The Washington Post going so far as to call Senior Fellows Peter Huber and Walter Olson the “intellectual gurus of tort reform.”

The CLP’s mission is to communicate thoughtful ideas on civil justice reform to real decision-makers. The Center fulfills this mission by publishing general-interest books and academic volumes; white papers, reports and op-eds; and a forum series on civil justice issues. The CLP also holds conferences and seminars for policy-makers, judges and journalists; CLP senior fellows make frequent radio, television and public appearances and have testified before both houses of Congress; and Senior Fellow Walter Olson manages a website, overlawyered.com, with daily updates and incisive commentary on the effects of “overlawyering” on American business and society. CLP Books such as *Liability and Galileo’s Revenge*, written by Senior Fellow Peter Huber, and *The Litigation Explosion* and *The Excuse Factory*, written by Senior Fellow Walter Olson, have permanently changed the legal landscape in the field of tort.”

Example tort-reform product:

Walter Olson’s Book: “*The Rule of Lawyers – How the New Litigation Elite Threatens America’s Rule of Law.*”¹²⁸

“A Spanking for the Trial Lawyers”
Wall Street Journal, 5-23-03¹²⁹

Manhattan Institute: Examples of recent foundation funding:¹³⁰

| Date | Amount | Comment | Provider |
|------------------|--------------------------|-------------------------------|--|
| <u>1-1-2002</u> | 150,000 | No comment provided | Sarah Scaife Foundation |
| <u>1-1-2002</u> | 30,000 | No comment provided | The Carthage Foundation (SCAIFE) |
| <u>11-8-2001</u> | 75,000 MONTHLY | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>8-10-2001</u> | 75,000 | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-2001</u> | 35,000 | General operating support | Castle Rock Foundation (COORS) |
| <u>1-1-2001</u> | 150,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 100,000 | General Operating Support | Claude R. Lambe Charitable Foundation |

(KOCH)

| | | | |
|------------------|--------------------------|---|--|
| <u>11-7-2000</u> | 62,500 MONTHLY | To support general operations | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-2000</u> | 15,000 | No purpose given. | The Carthage Foundation (SCAIFE) |
| <u>1-1-2000</u> | 400,000 | City Journal; fellowships for Heather MacDonald (Heather Mac Donald), Tamar Jacoby and Abigail Thernstrom; and the Jeremiah Project directed by Prof. John Dilulio. | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 183,449 | <i>Gaining Ground? Measuring the Impact of America's Welfare Revolution</i> | Smith Richardson Foundation |
| <u>1-1-2000</u> | 175,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-1985</u> | 30,000 | To support a fellowship for Charles Murray | John M. Olin Foundation, Inc. |
| <u>1-1-1985</u> | 150,000 | General support and publication program | The Carthage Foundation |
| <u>1-1-1985</u> | 150,000 | General operating and publication support | Sarah Scaife Foundation |

Cato Institute

Website: <http://www.cato.org>

From Media Transparency's report on the Cato Institute:

"Founded in 1977 by libertarian activists, the Cato Institute moved to Washington, D.C. in 1981 in a bid to become an influential player in Washington policy circles. Today (1997), Cato is a multi-million dollar, multi-issue research and advocacy organization with a staff of 40-plus senior managers, policy analysts, and communications specialists. It is also assisted by the work of over 75 adjunct Cato scholars. Cato's mission is to "increase the understanding of public policies based on the principles of limited government, free markets, individual liberty, and peace. The Institute will use the most effective means to originate, advocate, promote, and disseminate applicable policy proposals that create free, open, and civil societies in the United States and throughout the world."¹³¹

Examples of corporate funding sources:

"The Cato Institute has also received funding from the American Farm Bureau Federation, American Petroleum Institute, Amoco, ARCO, the Armstrong Foundation, Association of American Railroads, Association of International Automobile Manufacturers, Coca-Cola, Eli Lilly Endowment, Exxon, Ford Motor Co., Golden Rule Insurance, Grover Hermann Foundation, JM Foundation, Liberty Fund, Lynde and Harry Bradley Foundation, Monsanto Co., Pfizer Inc., Philip Morris, Phillip M. McKenna Foundation, Procter and Gamble, Sarah Scaife Foundation, Sears Roebuck and Co., Sun Refining, T. Rowe Price and Assoc., and the Vernon K. Kriebel Foundation."¹³²

Example tort reform products:

Cato's Tort Reform issues web pages.¹³³
Cato Handbook for Congress, on tort reform¹³⁴

Cato Institute: Examples of recent foundation funding:¹³⁵

| Date | Amount | Comment | Provider |
|-----------------|---------|----------------------------|---|
| <u>1-1-2002</u> | 60,000 | No comment provided | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 50,000 | General Operating Support | Castle Rock Foundation COORS |
| <u>1-1-2001</u> | 500,000 | General Operating Support | David H. Koch Charitable Foundation |
| <u>1-1-2001</u> | 250,000 | General Operating Support | Claude R. Lambe Charitable Foundation Koch |
| <u>1-1-2000</u> | 750,000 | General Operating Support. | David H. Koch Charitable Foundation |

| | | | |
|-----------------|---------|---|--|
| <u>1-1-2000</u> | 250,000 | General Operating Support. | Claude R. Lambe Charitable Foundation (KOCH) |
| <u>1-1-1999</u> | 125,000 | No purpose given | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 100,000 | To support the Project on Social Security Privatization | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-1999</u> | 500,000 | General Operating Support | David H. Koch Charitable Foundation |
| <u>1-1-1999</u> | 250,000 | Program Operating Support. | Claude R. Lambe Charitable Foundation |
| <u>1-1-1985</u> | 100,000 | Support of Domestic Studies Program | The Carthage Foundation |

Citizens for a Sound Economy (CSE)

Website: http://www.cse.org/informed/key_template.php?issue_it=2.

Statement from their website:

“An elite group of greedy trial lawyers is exploiting our legal system and turning it into “jackpot justice.” Over \$163 billion is paid each year in damages and lawyers' fees related to tort lawsuits. We want to give back our legal system to honest, decent Americans. Our grassroots army has fought and won legal reforms at the federal level and the state level in Florida, Alabama, Texas, and Illinois. We educate citizens on how frivolous lawsuits affect them personally - impacting their pocketbooks, businesses, values and way of life. CSE activists are spearheading efforts to enact real tort reform across the country. What you can do: Attend our town meetings on lawsuit abuse. And tell your elected officials that you want our legal system returned to decent, honest Americans with real grievances.”

From Media Transparency's report: ¹³⁶

“...Based in Washington, D.C., CSE describes itself as an organization of “grassroots citizens dedicated to free markets and limited government.” However, it is commonly known as what *Public Relations Quarterly* has called a “corporate front group.” The publication explained that “the use of such 'front groups' enables corporations to take part in public debates and government hearings behind a cover of community concern [in order to] oppose environmental regulations, and to introduce policies that enhance corporate profitability.”

Example tort reform product:

*Lawsuit Abuse : Issue Homepage*¹³⁷

Examples of corporate funding sources:¹³⁸

“Philip Morris (>\$1 million), US West (\$1 million), Hertz (\$25,000), DaimlerChrysler AG (\$25,000), Exxon (\$175,000), U.S. Sugar Corp (\$280,000), Florida Crystals (sugar industry; \$280,000), Sugar Cane Growers Cooperative of Florida (\$140,000), Microsoft (\$380,000).”

CSE: Examples of recent foundation funding:¹³⁹

| Date | Amount | Comment | Provider |
|-----------------|---------|----------------------------|--|
| <u>1-1-2002</u> | 175,000 | No comment provided | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 175,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 450,000 | General Operating Support | Charles G. Koch Charitable Foundation |
| <u>1-1-2001</u> | 250,000 | General Operating Support | Claude R. Lambe Charitable Foundation (KOCH) |
| <u>1-1-2000</u> | 750,000 | General Operating Support. | David H. Koch Charitable Foundation |

| | | | |
|-----------------|-----------|------------------------------|---------------------------------------|
| <u>1-1-2000</u> | 700,000 | Educational Program Support. | Claude R. Lambe Charitable Foundation |
| <u>1-1-2000</u> | 175,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 75,000 | no description given | Scaife Family Foundation |
| <u>1-1-1999</u> | 200,000 | No purpose given | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 1,000,000 | General Operating Support | David H. Koch Charitable Foundation |
| <u>1-1-1999</u> | 600,000 | General Operating Support. | Claude R. Lambe Charitable Foundation |

George Mason University School of Law's Law & Economics Center

Website: <http://www.gmu.edu/departments/law/lawecon/>

The Law & Economic Center ... “treats federal judges to all-expenses-paid, two-week seminars held at tony resorts. At these conferences, judges are drilled in advanced legal and economic theories that advocate a hands-off approach to the ‘free market.’”¹⁴⁰

“The Law and Economics Center mission is to educate judges in how to apply principles of economic analysis to the law. By 1991, the Center had provided such training -- with seminars held at resort locations to enhance their attractiveness -- to over 40 percent of the federal judiciary.

“Like the Center for the Study of Market Processes, the LEC is run independently of George Mason, with corporate and foundation sponsors covering “all travel, lodging and meal expenses for the most powerful players in the legal system -- judges.”
- *“Moving a Public Policy Agenda,”* National Committee for Responsive Philanthropy ¹⁴¹

“Put simply, this “Center” is a right-wing propaganda mill masquerading as a purveyor of academic “economics.” The “teachers” have been Harold Demsetz and others from the University of Chicago and its major academic outposts (paid at an hourly rate commensurate with the up to \$600 per hour commanded by George Stigler and the others as antitrust “experts” in court). No opposing economists have ever been allowed to appear before the judges. When I asked the Center's people why they didn't permit distinguished non-Chicago economists to share the podium at these judicial teach-ins, they laughed and said, “Let them go start their OWN seminars for the judges!”

- Charles Mueller, Editor, Antitrust Law & Economics Review¹⁴²

Some examples of recent foundation funding:¹⁴³

| Date | Amount | Comment | Provider |
|-----------------|---------|---|-------------------------|
| <u>1-1-1997</u> | 100,000 | LAW AND ECONOMICS CENTERS FOUNDED BY HENRY G. MANNE (AT THE UNIVERSITY OF MIAMI, EMORY UNIVERSITY, GEORGE MASON UNIVERSITY) LAW AND ECONOMICS CENTER | Sarah Scaife Foundation |
| <u>1-1-1996</u> | 125,000 | LAW AND ECONOMICS CENTERS FOUNDED BY HENRY G. MANNE (AT THE UNIVERSITY OF MIAMI, EMORY UNIVERSITY, GEORGE MASON UNIVERSITY) LAW AND ECONOMICS CENTER | Sarah Scaife Foundation |
| <u>1-1-1995</u> | 125,000 | LAW AND ECONOMICS CENTERS FOUNDED BY HENRY G. MANNE (AT THE UNIVERSITY OF MIAMI, EMORY UNIVERSITY, GEORGE MASON UNIVERSITY) LAW AND ECONOMICS CENTER | Sarah Scaife Foundation |
| <u>1-1-1993</u> | 100,000 | LAW AND ECONOMICS CENTERS FOUNDED BY HENRY G. MANNE (AT THE UNIVERSITY OF MIAMI, EMORY UNIVERSITY, GEORGE MASON UNIVERSITY) LAW AND ECONOMICS CENTER | Sarah Scaife Foundation |
| <u>1-1-1992</u> | 100,000 | LAW AND ECONOMICS CENTERS FOUNDED BY HENRY G. MANNE (AT THE UNIVERSITY OF MIAMI, EMORY UNIVERSITY, GEORGE MASON UNIVERSITY) | Sarah Scaife Foundation |

LAW AND ECONOMICS CENTER

| | | | |
|-----------------|---------|---|-------------------------|
| <u>1-1-1991</u> | 110,000 | LAW AND ECONOMICS CENTERS FOUNDED BY HENRY G. MANNE (AT THE UNIVERSITY OF MIAMI, EMORY UNIVERSITY, GEORGE MASON UNIVERSITY) SUPPORT FOR LAW AND ECONOMICS CENTER | Sarah Scaife Foundation |
| <u>1-1-1990</u> | 100,000 | LAW AND ECONOMICS CENTERS FOUNDED BY HENRY G. MANNE (AT THE UNIVERSITY OF MIAMI, EMORY UNIVERSITY, GEORGE MASON UNIVERSITY) LAW AND ECONOMICS CENTER | Sarah Scaife Foundation |

And:

George Mason University Foundation, Inc.

Some examples of recent foundation funding:¹⁴⁴

| Date | Amount | Comment | Provider |
|-----------------|-----------|--|---------------------------------------|
| <u>1-1-2002</u> | 325,000 | No comment provided | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 400,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2001</u> | 3,030,250 | Educational and Research Programs | Charles G. Koch Charitable Foundation |
| <u>1-1-2000</u> | 2,080,000 | Educational and Research Programs. | Charles G. Koch Charitable Foundation |
| <u>1-1-2000</u> | 550,000 | No purpose given. | Sarah Scaife Foundation |
| <u>1-1-2000</u> | 10,000 | Law and Economics Center General Operations | Philip M. McKenna Foundation, Inc. |
| <u>1-1-1999</u> | 450,000 | No purpose given | Sarah Scaife Foundation |
| <u>1-1-1999</u> | 10,000 | Law and Economics Center General Operations | Philip M. McKenna Foundation, Inc. |

And:

George Mason University:

Some examples of recent foundation funding:¹⁴⁵

| Date | Amount | Comment | Provider |
|-----------------|---------|--|-------------------------------|
| <u>1-1-2001</u> | 20,000 | School of Law Law and Economics Center <i>To provide support for the program for judges and for general support for educational programs during 2001</i> | Earhart Foundation |
| <u>1-1-2001</u> | 200,000 | The programs of the Law and Economics Center | John M. Olin Foundation, Inc. |
| <u>1-1-2000</u> | 200,000 | School of Law The programs of the Law and Economics Center. | John M. Olin Foundation, Inc. |
| <u>1-1-</u> | 20,000 | School of Law | Earhart Foundation |

| | | | |
|-------------------|---------|--|--|
| <u>2000</u> | | Law and Economics Center | |
| <u>1-1-1999</u> | 45,455 | School of Law A John M. Olin Faculty Fellowship for David E. Bernstein | John M. Olin Foundation, Inc. |
| <u>1-1-1999</u> | 200,000 | School of Law. Institutes in Law and Economics for federal judges | John M. Olin Foundation, Inc. |
| <u>1-1-1997</u> | 200,000 | School of Law. Institutes in Law and Economics for federal judges | John M. Olin Foundation, Inc. |
| <u>1-1-1996</u> | 200,000 | School of Law. Institutes in Law and Economics for federal judges | John M. Olin Foundation, Inc. |
| <u>1-1-1995</u> | 185,000 | School of Law. Teaching institutes in Law and Economics for federal judges, faculty workshops and research in law and economics | John M. Olin Foundation, Inc. |
| <u>1-1-1994</u> | 185,000 | School of Law. Teaching institutes in Law and Economics for federal judges, faculty workshops and research in law and economics | John M. Olin Foundation, Inc. |
| <u>1-1-1993</u> | 150,000 | School of Law. Teaching institutes in Law and Economics for federal judges, faculty research and workshops in law and economics, 1993 | John M. Olin Foundation, Inc. |
| <u>1-1-1992</u> | 150,000 | School of Law. To support teaching institutes in Law and Economics for federal judges, faculty research and workshops in law and economics | John M. Olin Foundation, Inc. |
| <u>1-1-1991</u> | 150,000 | School of Law. To support teaching institutes in Law and Economics for federal judges, faculty workshops and research in law and economics, | John M. Olin Foundation, Inc. |
| <u>1-1-1990</u> | 100,000 | School of Law. To support teaching institutes in Law and Economics for federal judges | John M. Olin Foundation, Inc. |
| <u>1-1-1989</u> | 100,000 | School of Law. To support teaching institutes in Law and Economics for federal judges | John M. Olin Foundation, Inc. |
| <u>12-1-1988</u> | 5,000 | School of Law & Law and Economics Center | Charles G. Koch Charitable Foundation |
| <u>10-25-1988</u> | 100,000 | Economics program for federal judges | The Lynde and Harry Bradley Foundation, Inc. |
| <u>6-22-1987</u> | 63,550 | Support the Law and Economics Center's 1987 Summer Economics Institute for Law Professors. | The Lynde and Harry Bradley Foundation, Inc. |
| <u>1-1-1987</u> | 100,000 | Law and Economics Center. To support the 1987 Law and Economics Institute for Federal Judges | John M. Olin Foundation, Inc. |
| <u>1-1-1986</u> | 63,000 | Law and Economics Center. To support the 14th Basic Economics Institute for Judges | John M. Olin Foundation, Inc. |

Appendix 5 – Examples of the Involvement of Organizations That Advocate Tort Reform (no funding data included)

Americans for Job Security (no website)

AJS is a “stealth” issue-ad organization that exists to develop and run “issue ads” against Democratic candidates. See the information on this organization at Campaign Finance Institute.¹⁴⁶

The American Tort Reform Association (ATRA) and The American Tort Reform Foundation

Website: <http://www.atra.org/>

ATRA coordinates approximately 40 state tort reform coalitions.

Tort reform product example: Publishes the weekly *Legislative Watch* and *The Reformer*, a monthly newsletter.

According to the Center for Justice and Democracy report “*The CALA Files – a Report on Tort Reform*”:

“The business-led effort to take away consumers' legal rights (called “tort reform” by its corporate proponents; “tort deform” by its pro-consumer opponents)* has had at its helm the American Tort Reform Association (ATRA) located in Washington, D.C. In turn, ATRA has contracted with APCO & Associates, one of the nation's leading “grassroots” lobbying/PR firms.”¹⁴⁷

ATRA publishes short, misleading accounts of so-called “*Looney lawsuits*.”¹⁴⁸

ATRA is also the American Tort Reform Foundation, which receives some of its funding from Scaife's Carthage Foundation.¹⁴⁹

The American Tort Reform Foundation website is: <http://www.atrafoundation.org/>

Business Roundtable – Civil Justice Reform

Website: <http://www.brtable.org/issue.cfm/10>

According to their website:

“Continue efforts for federal and state tort reform, including the judicial system. Work toward incremental reforms, including class action, punitive damage, and joint and several liability reform.”

Citizens Against Lawsuit Abuse (CALA)

A number of related state organizations, coordinated by ATRA.

California Website: <http://www.cala.com/>.

Example tort-reform products:

Lawsuit horror stories

According to the Center for Justice and Democracy report “*The CALA Files – a Report on Tort Reform*”:¹⁵⁰

“They euphemistically call themselves any number of names, typically: Citizens Against Lawsuit Abuse (CALA), Lawsuit Abuse Watch, Stop Lawsuit Abuse or People for a FAIR Legal System.

While CALA groups tell the media, as well as lawmakers, that they are sustained by small donations from ordinary citizens, the money trail from many of these groups leads directly to large corporate donors, including tobacco, insurance, oil and gas, chemical and pharmaceutical companies, medical associations, and auto manufacturers. They are also funded by ATRA, as well as professional associations, local businesses and industries that also wish to be shielded from consumer lawsuits.

- The CALA blueprint was honed in South Texas in the early 1990s where the first group to carry the “lawsuit abuse” message ran doom and gloom television and radio ads warning that the legal system was out of control, affecting the economy and the pocketbooks of average people. Creating a model that was duplicated nationwide, the Texas CALA groups developed a statewide support network that included the Texas Chamber of Commerce, the right-wing Texas Public Policy Foundation, and numerous corporations wishing to shield themselves from consumer lawsuits.”

Chamber Institute for Legal Reform (CILR)

US Chamber of Commerce.

Website: <http://www.litigationfairness.org/who.html>

Example tort-reform products:

Stories of Outrageous Class Action Lawsuits¹⁵¹
Facts & Figures¹⁵²

According to their website:

“Litigation Fairness Campaign goals:

- Reforming the class action system to make it simpler, fairer and faster
- Common-sense reforms to ensure fairness in product liability suits
- Assuring damage awards are fair and equitable
- Elimination of frivolous lawsuits
- Enforcement of legal ethics rules”

Coalition for Affordable and Reliable Healthcare (CARH)

Website: <http://www.carh.net/>

According to their website:

“CARH is a coalition of healthcare providers, professionals, and other organizations that is dedicated to solving this problem by coordinating with the Bush Administration, Congress, and the media to educate the public and see national legislation enacted that would result in comprehensive medical liability reform.”

Common Good - Reforming America's Lawsuit Culture

Website: <http://cgood.org/>

According to their website:

“Fear of litigation has undermined our freedom to make sensible decisions. Doctors, teachers, ministers, even little league coaches, find their daily decisions hampered by legal fear. Our system of justice, long America's greatest pride, is now considered a tool for extortion, not balance.”

Health Coalition on Liability and Access (HCLA)

<http://www.hcla.org/>

According to their website:

“HCLA is a national advocacy coalition united in our strong belief that federal health liability laws are needed to bring greater fairness, timeliness and cost-effectiveness to our system of civil justice. We also believe legal reform is the best way to protect medical progress and to ensure that affordable health care is accessible to all Americans.”

Junk Science

Website: <http://www.junkscience.com/>

Statement from their website:

“PERSONAL INJURY LAWYERS may use junk science to bamboozle juries into awarding huge verdicts. Large verdicts may then be used to extort even greater sums from deep-pocket businesses that may be fearful of future jury verdicts.”

Critical description of this organization:

“This is the page of Steven J. Milloy and is sponsored by the swell-sounding Citizens for the Integrity of Science, a front organization located in Potomac, Maryland, whose

WWW page directs the websurfer back to Mr. Milloy's Junk Science Page. This is not surprising since Mr. Milloy is the “Administrative Contact” of the front organization.”
- The Skeptics Dictionary¹⁵³

Steven J. Milloy is the founder and publisher of junkscience.com, an adjunct scholar at the Cato Institute, and a columnist for FoxNews.com.¹⁵⁴

(More Steven Milloy interconnectedness information is available in a short research piece at Clear Project, at http://www.clearproject.org/reports_milloy.html.)

National Association of Manufacturers – Fair Litigation Action Group (FLAG)

Website: <http://www.nam.org/secondary.asp?TrackID=&CategoryID=1031&>

According to their website:

“The Fair Litigation Action Group (FLAG) will work through the NAM Legal Policy Issues Committee to initiate a broad multi-year awareness campaign among NAM members and their employees, including more than 350 member associations located in all 50 states. The campaign will focus on the importance of fair liability laws and what legal reform measures are needed to achieve this goal. As a result of this heightened awareness among NAM members and their employees, members of Congress and other state and national leaders will better understand why the legal system needs to be reformed. FLAG will identify a priority list of fair litigation issues with the primary goal of ultimately working for the enactment of fair litigation laws.”

Overlawyered.com – *Chronicling the high cost of our legal system*

A weblog published by Walter Olson.

Interconnectedness example from Mr. Olson’s biography at the Cato Institute:

“A senior fellow at the **Manhattan Institute**, the think tank in New York City, Mr. Olson is a frequent contributor to the magazine **Reason**, and his writing appears regularly in such publications as the New York Times and the Wall Street Journal. He has appeared numerous times before Congress, federal agencies and state lawmakers and has approximately 300 broadcast appearances under his belt, including “Crossfire”, “MacNeil-Lehrer”, “Oprah”, “Donahue”, and NPR. His website **Overlawyered.com**, launched in 1999, has won wide acclaim for its mix of entertaining and serious commentary. Before joining the **Manhattan Institute** in 1985 he spent five years with the **American Enterprise Institute**, and worked before that on Capitol Hill.”¹⁵⁵

Walter Olson’s Web site has links from:

TownHall.com – operated by Heritage Foundation
Federalist Society
Hudson Institute
Reason Magazine
Manhattan Institute, and their Center for Legal Policy
Civil Justice Association of California (ATRA)
Opinion Journal (Wall Street Journal)

Support John Stossel.org
Right Wing News
Chamber Institute for Legal Reform
National Association for Business Economics
Atlantic Legal Foundation
Illinois Civil Justice League (ATRA)
Common Good
New Yorkers for Civil Justice Reform
Michigan Lawsuit Abuse Watch
JunkScience.com

Power-of-Attorneys

Website: <http://www.power-of-attorneys.com/>
also lawyersstink.com

This is a website of lawyer-hatred. “Lawyers stink” shirts and caps are for sale. The site also offers a “Lawyer joke of the day” as well as other anti-lawyer vehicles.

Sickoflawsuits.org – A CALA organization

Website: <http://sickoflawsuits.org>

Items from their website:

“Lawyers Exploiting the Mentally Ill”
Lawsuit Abuse Library

Their links include TownHall.com, which is run by the Heritage Foundation.

Appendix 6 – Examples of State Tort Reform Organizations

Georgia Public Policy Foundation

Website: <http://www.gppf.org/>

Illinois Civil Justice League

Website: <http://www.icjl.org/>

Statement from their website:

“The League, with its members, was the principle author and proponent of major tort liability reform in the Illinois General Assembly in 1995.”

Michigan Lawsuit Abuse Watch (M-LAW)

<http://www.mlaw.org>

Statement from their website:

“M-LAW's goal is to eliminate the many negative effects that lawsuit abuse has on families, job providers and communities. Excessive litigation has robbed consumers of needed products and services and has added a hidden “lawsuit tax” onto countless other products and services.”

New Yorkers for Civil Justice Reform

Website: <http://www.nycjr.org/>

Statement from their website:

“Dedicated to informing the public of the destructive and costly influence of lawsuit abuse in America.”

Tennesseans for Legal Reform

Website: <http://www.tnlegalreform.com/>

Statement from their website:

“Tennesseans for Legal Reform (TLR) is leading the fight this year for badly needed tort reform legislation, particularly medical malpractice legislation, but says it will also be a long-term organization in Tennessee.”

Texans Against Lawsuit Abuse (TALA)

A CALA organization

Website: <http://www.tala.com/>

There are many more state organizations.

Notes & References

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