

The
**LAWSUIT
LOTTERY**
THE HIJACKING OF JUSTICE IN AMERICA

Douglass S. Lodmell, J.D., LL.M.
Benjamin R. Lodmell

The logo for World Connection Publishing features a stylized globe icon to the left of the text. The text is arranged in two lines: "WORLD CONNECTION" on the top line and "PUBLISHING" on the bottom line, which is enclosed in a rectangular box.

**WORLD CONNECTION
PUBLISHING**

Phoenix, Arizona

Copyright © 2004 by World Connection Publishing

ISBN: 0-9754339-0

All rights reserved. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher.

Disclaimer

The purpose of information detailed in this book is to provide accurate and authoritative information regarding the subject matter covered and not to render specific legal, accounting or tax advice. For specific advice geared to your specific situation, please consult a licensed expert.

Contents

Acknowledgements	ix
About the Authors.....	xi
Douglass S. Lodmell	xi
Benjamin R. Lodmell	xii
Dedication.....	xv
Introduction	xvii
Chapter 1: The Law’s Transformation.....	1
Changing Rules.....	4
Early American Law	5
Law as Science	8
American Civil Law	10
Judicial Activism.....	14
Litigation Movement	17
Role of Judges	21
Chapter 2: Prowling Predators	23
Predatory Lawyers	26
Contingent Fees/No Loser Pays	28
Growing Incivility	33

Emboldened Lawyers	35
Acquiescent Bar	36
Entitlement Mentality	38
Society of Victims	40
Chapter 3: New National Pastime	45
Lawsuit 'Utopia'	47
Frivolous Lawsuits	50
Class Actions	53
Tort-Friendly Venues.....	57
Encouraging Mass Torts	60
Asbestos Litigation.....	63
Other Tort Targets.....	66
Chapter 4: Tottering Healthcare	69
Medical Malpractice Costs	72
Fear of Liability	76
Uprooting Medical Practices.....	79
Insurers Quitting	81
Physicians 'Strike' Back	84
Chapter 5: Tortuous 'Taxes'	89
Alternative Uses of 'Tort Tax'	92
Greed-Driven Litigation	94
Eroding Rule of Law	95
Legitimacy Undermined	99
Chapter 6: Protecting Your Assets	105
Asset Protection Planning	106
Alternative Dispute Resolution.....	108
Liability Insurance.....	112

Eliminating Incentive to Sue	115
Family Limited Partnership	116
Limited Liability Company	118
International Asset Protection Trust	119
Legal Pitfalls	122
Chapter 7: It's About Reformation	127
Political Pressure	132
Legislative Reform	132
Court Reform	136
Judicial Reform	140
Avoiding Overkill.....	142
Citizen Reform	144
Epilogue: For Justice in the World.....	147

Dedication

This book is dedicated to
Hawah Foryoh, Hawa Bockarie, Lucinda Bangalie,
Mary Sesay, Zainab Kanu and Ballay Kargbo.

Your courage is an inspiration to us
and we love you with all our hearts.

Introduction

“The first thing we do, let’s kill all the lawyers.”

—William Shakespeare (1564–1616)
English dramatist

There was a brief moment when we considered dedicating this book to William Shakespeare. That’s when we were reminded that, 400 years ago, the Bard of Avon penned his famous line about killing all the lawyers.

Shakespeare wrote that line in *Henry VI, Part II*. Quote it now—as it is on many occasions at conferences and seminars—and you likely will get a good laugh from the audience and a few nods of agreement from lawyers who doubtlessly have heard it many times before.

Ironically, when we think about Shakespeare’s words today, they conjure up a meaning very different from what the author meant to convey when those words were spoken for the first time.

In Shakespeare’s play, the character “Dick, the butcher” suggests killing “all the lawyers” not because they were bad guys but because, once upon a time, the public’s perception of lawyers was that they stood for justice and argued the law—something “Dick the butcher” and his cronies could not tolerate in Shakespeare’s play. My, how the times, they have changed!

Our guess is that today's anti-lawyer cynicism and derisive jokes are as plentiful and unflattering as any time in history, perhaps more so in this litigious society of ours.

Paradoxically, the public's generally negative perception of lawyers seems to persist despite the evolutionary improvement in the legal profession's *functional* value to society.

Today you hear the anti-lawyer cynicism in movies. You encounter it on radio and television. You read it in books and newspapers. There's no end to the jokes, such as: "What do you call 1,000 lawyers chained under the ocean?" "A good beginning!" Or, "What's the difference between a lawyer and a vulture?" "Lawyers can take off their wingtips!"

Some anti-lawyer jokes are even more pointed in their cynicism, such as in Carl Sandburg's "The People, Yes." There, when America's Pulitzer Prize winning poet-author asks, "Have you a criminal lawyer in this burg?" the reply is, "We think so, but we haven't been able to prove it on him yet."

Although lawyers have been the subject of jokes for centuries—if not millennia—the reasons behind the public attitudes prompting such ill-humor have changed with the times. This book examines the more recent changes and the depth of the feelings behind them.

While much has been written about the unrelenting amount of litigation in America, news media coverage tends to focus on the big-dollar lawsuits—those that drive giant corporations into bankruptcy and put thousands out of work, or the oddball court cases that make for silly headlines and titillating reading, or the powerful trial lawyers who get rich and richer by driving the litigation bandwagon to record highs year after year.

The harsh reality is that many if not most of the estimated 70,000 lawsuits filed every day in America target small business

owners and mid-to-upper income Americans with less than \$1-million in net worth. And not much is being written about that.

Nor has much been written about the trillions of litigation dollars that have been extracted as a “hidden tax” from the U.S. economy during the past several decades or the substantial social and political consequences the nation has suffered from being the world’s most litigious society.

This book attempts to shed light on trends within the U.S. civil justice system that are spreading like an insidious cancer throughout society. It is a book written by those close enough to the subject’s inner workings to write about it with sufficient knowledge and experience, yet far enough away from the system’s vested interests to be objective about its consequences.

It is a book about how the world’s costliest tort system is redistributing much of the nation’s wealth from those who have it, to a growing society of self-proclaimed “victims” who want it and believe they are “entitled” to it.

It is a book about the resulting harm being inflicted on the nation’s economy and infrastructure, the character of its people, and the legitimacy of a country once respected and, to some degree, envied by much of the world.

The book’s intent is to draw public, legal and legislative attention to the far-reaching dangers posed by a continuation of the adverse trends at work in today’s dysfunctional U.S. tort system.

An equally important goal is to help instigate suggested reforms, which, if ignored, may impose economic and social consequences well beyond the substantial damage already inflicted on the American people and the nation as a whole.

This is not intended to be a scholarly treatise on the “whys and wherefores” of the rise and fall of the U.S. tort system; we leave that to professors of law and legal scholars. They are the

ones responsible for ensuring that tomorrow's lawyers understand what is right and wrong with our legal system so they can fix what needs fixing when they come of age.

Nor is this a book about the law as a profession. Nor is it a critique of *all* lawyers, or *all* judges, nor even most of them.

Rather, this is a social commentary—an extended essay, if you will, on a civil justice system that has been stealthily transformed from one that abhorred lawsuits into what is arguably the best-oiled and most costly litigation machine in the world.

Relying heavily on industry statistics, scholarly opinions, news reports, and other documentary evidence, *The Lawsuit Lottery* describes how a growing breed of entrepreneurial attorneys abuses the original purposes of the U.S. tort system by stirring up litigation that caters unashamedly to the public's selfish sense of victimization.

Because of the highly polarized debate between opponents and proponents of freewheeling litigation in America, separating reality from competing rhetoric regarding the ultimate cost of the burgeoning U.S. tort system has been daunting, to say the least.

To avoid confusing the reader with often conflicting and widely-varying news media reports on the cost of torts, the Tillinghast Division of Towers Perrin was selected as the book's primary statistical source. This choice was made for three reasons: First, Tillinghast is one of the world's leading independent actuarial consultants to the financial services industry. Second, Tillinghast has been collecting tort cost data longer than any other statistical source (its analysis, which began in 1985, dates back to 1950). Third, and perhaps most importantly, Tillinghast's data offers the most comprehensive tort cost information available,

providing a more coherent and consistent picture of the cost of litigation in America.

This book chronicles how predator-attorneys have vested interests in the financial outcome of litigation and how they encourage the unhealthy sense of entitlement that percolates today in every corner of American society by promising everyone with a gripe a chance to get rich quick at someone else's expense in the game called *the lawsuit lottery*.

This book questions the abusive practices of those attorneys who have acquired inordinate power and riches by convincing the courts that litigation is good—much to the detriment of America.

The book puts into layman's perspective:

- How hundreds of billions of dollars a year are being extracted from the U.S. economy—much of it by legal “extortion;”
- How the astronomical and spiraling cost of litigation is harming America's infrastructure;
- How a plaintiff-friendly tort system is immobilizing risk-taking in America by making citizens fearful of a legal system they once revered; and
- How a much-abused and dysfunctional civil justice system is contributing to the decline of America's moral leadership and legitimacy.

The book suggests ways to fix a flawed legal system whose once protective shield has been re-fashioned into a sword that threatens us all.

Given the nature of the opinions expressed and the ownership of the oxen being gored herein, it should not be surprising that challenges to this social commentary may emerge, particularly among trial attorneys.

In response to any such criticism, we would paraphrase the words of George Bernard Shaw, who suggested that when confronted by truth some might at first confuse it with blasphemy. So be it.

Some might even ponder why an asset protection attorney would challenge the basis for his own livelihood. The reason is that our civil justice system is no longer civil or just.

That's not the reason we established an asset protection law firm, however. About a dozen years ago, while I was in law school and Ben was engaged in international banking, we decided that helping clients to legally shield their hard-earned wealth from frivolous and indiscriminate lawsuits would be a great opportunity for the practice of law. And we were right. (A detailed explanation of asset protection planning appears later in the book).

What we didn't anticipate at the time was just how flawed and exorbitantly costly the U.S. tort system would become, or how devastating the consequences of the *lawsuit lottery* would be for Americans and America, or how imperative would be the reforms recommended in this book.

Do away with the worst elements of the U.S. tort system, as suggested in the book's final chapter, and the need for asset protection will likewise melt away—along with the public's growing fear of the law.

Then maybe—*maybe then*—the backhanded humor sparked to some extent by Shakespeare four centuries ago also will disappear.

Until then, however, did you hear the one about the guy who walked into a bar, leading an alligator by a leash? "Do you serve lawyers here?" the guy asked. "Sure do," the bartender replied. "Good. Then give me a beer and a lawyer for my 'gator."