SUING FOR JUSTICE

Your lawsuits are good for America

By Ralph Nader

As a law student at Harvard in the 1950s, I heard a professor joke that at the school they *contract* the law of torts in the morning and *distort* the law of contracts in the afternoon. We students were supposed to chuckle accordingly. We had been taught that tort law and contract law were the twin pillars of our country's privately invoked legal system, but my fellow law students and I could not then have foreseen how weakened these twin pillars would become.

The story of how tort law originally evolved from its roots in medieval England is a story of millions of actors and judicial decisions that proceeded in small but steady advances. These advances embodied the democratic principles on which our country was founded and together make up a revolutionary process of personal-conflict resolution. Tort law allows an individual who believes that he or she has been wrongfully injured in person or property to retain an attorney on a contingency fee, paid only if the plaintiff prevails. After a lawsuit has been filed, and has survived a defendant's motion to dismiss, the plaintiff's attorney may compel the defendant, be it a person, a corporation, or a city's police department, to disclose factual information regarding the claim. State and federal procedures urge the contending parties to exchange all relevant information beforehand in an attempt to encourage settlements and expedite any eventual trial. The court proceedings, should there be any, are open to the press and the public. Verbatim transcripts of the trial testimony are made. In pursuit of what is called "truthful evidence," attorneys for both sides can vigorously cross-examine witnesses. Settlement can occur at any time, but if one does not occur, the trial jury is responsible for returning a verdict and assessing damages. The judge has the authority, though it is rarely invoked, to reduce or increase the damages if he or she thinks the jury is way off base. The losing party can then appeal, again in open court. The media can track the proceedings from start to finish. No decisions by the other two branches of government come close to being so clearly refereed, so open, and so subject to public review.

Ninety-three years ago, Roscoe Pound, then dean of the Harvard Law School, remarked that "law must be stable and yet it cannot stand still." Gradually, judges and state legislatures began to adopt the rule of comparative negligence to replace the harsh rule of contributory negligence. Under the latter, if an injured plaintiff had been careless in any way, no matter how slight, and her carelessness contributed to an accident, she would recover nothing against the defendant, no matter how blameworthy the defendant's conduct was. Comparative negligence allows a jury to make a rough calculation of each party's negligence (say, 75 percent on one side and 25 percent on the other), so instead of recovering nothing, a victorious plaintiff would recover a portion of the claimed damages, reduced by the

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Illustrations by John Ritter

percentage of her fault. A celebrated 1932 opinion by the highly respected Judge Learned Hand declared that the owner of a tugboat could not avoid his negligence in not having an emergency radio aboard by claiming that no one else in the industry had one either.

In our tort class at Harvard, the case that most caught my attention was *MacPherson* v. *Buick,* which was decided in 1916 by Judge Benjamin Cardozo. The case involved a wheel that had collapsed beneath a Buick, causing the driver to be thrown from the car and injured. Judge Cardozo ruled, in a pioneering decision, that even though the injured person bought the car from an auto dealer, and had no direct contractual relationship with the car's manufacturer, the company that built the car nevertheless could be held liable by the car's owner for violating its standard of care in properly constructing the vehicle. Years later, court cases began to hold automobile and other companies liable for "dangerous defects" that led to casualties, irrespective of the manufacturer's intent. This was called the doctrine of strict liability.

After World War II, the courts, prodded by prominent plaintiffs' attorneys such as Melvin Belli in California, began to allow the admission at trial of what was called demonstrative evidence. Jurors were permitted to view, for example, exhibits of human skeletons that showed orthopedic damage to spines, knees, and hips. Photographs of accident scenes, along with mock-ups of vehicle models, factory machines, and manufacturing defects, helped jurors and judges to visualize the events that actually took place. In the 1960s, civil procedures were amended to make the filing of class actions easier: instead of individual cases having to be filed separately, collective action could now be taken on behalf of thousands of people.

The call for broader safety regulations became louder in cases involving drugs, food, and vehicles. With the rise of the environmental movement came remedies for such silent forms of violence as pollution. Following litigation and its disclosures, companies fearing lawsuits and higher insurance premiums were forced to change their injurious practices or to clean up polluted areas. Such advances reflected evolving community notions of what is fair and sensible when it comes to holding perpetrators responsible for their misdeeds. Thanks to a variety of tort cases, asbestos, lead, and vinyl chloride, among other deadly toxins, are now almost entirely prohibited. Now the residents of Flint, Michigan, are using the civil-justice system to address the contamination of their drinking water. Allison Torres Burtka, writing for the American Museum of Tort Law, reports:

> Melissa Mays and several other Flint residents who have elevated levels of lead in their bodies are leading a class action lawsuit. Some of them have suffered neurological symptoms, skin lesions and hair loss, gastrointestinal problems, aggravation of existing developmental disorders, and emotional and psychological distress from dealing with the fact that they have been drinking, cooking with, and bathing in toxic water. . . . The class may encompass tens of thousands of people. As of late January, the lawyers handling the class action were working with roughly 1,200 class members.
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> "These lawsuits are important because, when the media's gone and the story comes off the front page, these people will have to live day to day with what's happened to them, and we want to make sure funds are available to get them what they need," said Michael Pitt, who represents the plaintiffs.

CORPORATE LAW FIRMS HAVE STRIP-MINED AND TWISTED TORT LAWS AGAINST THE VERY PEOPLE MOST IN NEED OF THEM

While researching my book *Unsafe at Any Speed,* I pored over state and federal government files, as well as the archives of engineering schools. Save for a few documents in the U.S. Patent and Trademark Office, I was unable to find much acknowledgment of what, as it turned out, many industry people knew full well: namely, that there was a huge gap between the stylistic psychosexual pornography dreamed up by automobile marketing executives and feasible, life-saving devices and technology. I did, however, find useful documents in the files of plaintiffs' attorneys who had sued or were then suing the car manufacturers, their suppliers, and their dealers. Thanks to cases against General Motors as well as major tire companies, I found evidence of avoidable hazards, their origins, and cover-ups.

In 1965, Gaylord Nelson, a Democratic senator from Wisconsin, promoted a tire-safety bill by introducing on the Senate floor material that had been produced in a lawsuit against inadequate inspections and testing by a large tire manufacturer. We used other evidence revealed in litigation to expand the range of congressional hearings, which eventually led to both the passage of the Tire Safety Act of 1966 and the creation of the National Highway Traffic Safety Administration (NHTSA), which has the authority to issue mandatory safety standards, to order recalls of defective vehicles, and to conduct research and development. Although we had useful evidence from other reputable sources, including Air Force–sponsored crash research and tire-company whistleblowers, it was information revealed in courts of law or obtained through direct, sworn testimony that impressed hesitant legislators. To this day, the NHTSA, the Food and Drug Administration, and even the Occupational Safety and Health Administration (OSHA), federal agencies that are often inattentive, can be jolted into some action by the evidentiary fallout from plaintiffs claiming tortious harm in state or federal courts.

Another way the tort laws benefit society is that they can help press prosecutors to enforce criminal laws when power structures—politicians or police—otherwise would not. The criminal prosecutions of pedophile priests and other cloistered defendants have often been made possible by the disclosures that emanated from tort lawsuits brought by victims. In addition, when prosecutors decline to prosecute illegal police violence or corporate criminals—as in the case of Tamir Rice, the twelve-year-old who was shot by police in Cleveland—the victims or next of kin have often resorted to the civil-justice system for compensation and sanctions. Street protesters, minority groups, consumers, and workers in the pharmaceutical, auto, and oil industries, for example, have also resorted to civil remedies in the courts.

Standard contracts are now full of "tricks and traps" in "mice type," to quote Senator Elizabeth Warren. Often buried in pages of fine print are clauses that essentially waive the liability of vendors and surrender the right of consumers to a trial by jury in favor of private arbitration that usually favors the vendors.

The "Waiver of Liability, Assumption of Risk & Indemnity Agreement" used by the University of California, Santa Barbara, for its "Elective/Voluntary Activities" is not unlike similar waivers required by organizations and corporations:

> I, for myself, my heirs, personal representative or assigns, do hereby release, waive, discharge, and covenant not to sue The Regents of the University of California, its officers, employees and agents from liability from any and all claims including the negligence of The Regents of the University of California, its officers, employees and agents, resulting in personal injury, accidents, or illnesses (including death) and property loss arising from, but not limited to, participation in The Activity.

The 2015 "Monsanto Technology/Stewardship Agreement," which Monsanto requires farmers who buy its products to sign, limits the liability for harm caused by the company's seeds to merely the amount a customer paid for the seeds purchased:

> The exclusive remedy of the grower and the limit of the liability of Monsanto or any seller for any and all losses, injury or damages resulting from the use or handling of seed (including claims based in contract, negligence, product liability, strict liability, tort or otherwise) shall be the price paid by the grower for the quantity of the seed involved or, at the election of Monsanto or the seed seller, the replacement of the seed. In no event shall Monsanto or any Seller be liable for any incidental, consequential, special or punitive damages.

The Verizon Wireless customer agreement, like most mobile-telephone contracts, requires customers to give up their right to a jury trial:

> You and Verizon Wireless both agree to resolve disputes only by arbitration or in small claims court. You understand that by this agreement you are giving up the right to bring a claim in court or in front of a jury.

The evil creators of such across-the-board exclusions are corporate law firms, which develop and promote such compulsory fine-print arbitration clauses and other barriers to equal justice under the law. By leaving us with secret tribunals that are biased in favor of corporations, these firms have strip-mined and twisted tort laws against the very people most in need of them—those harmed who are without power and have been abandoned by both business and government. At stake are the shrinking rights and remedies that are available to the millions of people each year who are victims of defective products, medical malpractice, toxic chemicals, workplace dangers, police violence, and a host of other torts in our complex industrial society. With only a few of these victims able to achieve redress and hold perpetrators accountable, justice becomes severely rationed, and the inflicted costs, instead of being absorbed by the wrongdoers in order to encourage subsequent deterrence, are foisted on victims, their families, and taxpayer-funded social-welfare programs such as Medicare, Medicaid, and Social Security (via disability payments).

To add insult to injury, consumers now have to share the hefty hourly fee of arbitrators, those private judges whose awards, which generally cannot be appealed, lean toward the companies that can give arbitrators repeat business. Consumers are warned about the fees they would have to pay to enter arbitration; many consider this expense unaffordable and swallow their grievance. Unless more courts start to rule these fine-print restraints unconscionable, millions of people will be barred from their right to have their day in court. Some may vent their rage in the streets.

Tort lawyers, unlike corporate lawyers, are not expected to come out of Harvard, since at most leading law schools tort law seems to offer limited professional horizons. The convenient imagery is apparent to all—corporate practice is prestigious, while personal-injury attorneys are unfairly called "ambulance chasers." It is not hard to understand why so few of the 1.3 million licensed attorneys have opted to practice tort law and represent injured parties. Attorneys have been taught to zealously represent their clients. They have not been taught that as licensed attorneys and "officers of the court" they have a professional duty to look out for the overall administration of justice and not arbitrarily block the courtroom door. Corporate law firms now busily sound false alarms about the ever-expanding number of tort cases being brought by "greedy attorneys."

Business-funded think tanks release false report after false report detailing how the so-called litigation explosion in tort cases (an explosion that, according to the National Center for State Courts, does not exist) is costing jobs, retarding innovation, and generally harming our country's competitiveness in the world. This routine propaganda is hoisted on sand.

Taking their cue from the business community, political consultants spout all kinds of inaccurate nonsense about our "sue-happy" culture, advising their clients that taking a stand for "tort reform" will attract a huge outpouring of campaign contributions. That's how Karl Rove turned George W. Bush, when he was running for governor of Texas, into a fervid, but ignorant, tort reformer.

In the mid-Seventies, tort reform became a virtual sub-economy that crossed industry lines. Aggressive corporate forces aligned with political candidates to press for deregulation. These amply funded corporatists and politicians—crueler, hungrier for power, and more ruthless than their predecessors—worked to repeal laws that protected the rights of injured people to recover adequate compensation for harm inflicted by defendants. This domestic strategy, not surprisingly, fit comfortably with the larger corporate aim of escaping accountability. The legal strategies undertaken by multinationals to undermine tort law were conceived by corporate law firms. Covington & Burling, and Shook, Hardy & Bacon, are two of the more prominent firms representing "tort deformers" and working largely in the shadows, as is their tradition. Well-funded front groups such as the Manhattan Institute, the American Tort Reform Association (ATRA), the U.S. Chamber of Commerce's Institute

for Legal Reform, and the American Legislative Exchange Council (ALEC) drove tort-reform legislation at the state and national levels and shielded corporations from adverse public opinion. Large amounts of campaign cash were directed at lawmakers, especially those in charge of key committees. Multimillion-dollar advertising campaigns, heavily funded by the insurance industry, made wild accusations about outlandish jury awards assessed against innocent companies, even clergy and obstetricians, in order to raise the public temper.

The pressure to limit liability resulted in legislation that capped compensation for pain and suffering and diminished or abolished punitive damages designed to punish the most outrageous negligence. According to a 2011 report from the Center for Justice and Democracy, "Thirty-eight states have passed 'tort reform' laws that impede consumers' ability to seek punitive remedies. Legislative restrictions include: 1) outright bans on punitive damages; 2) damages caps; 3) mandatory apportionment of punitives to state funds; 4) heightened burdens of proof; and 5) bifurcated trials."

By the 1980s, a majority of states had put in place caps of some kind on damages. About thirty states have now passed arcane measures that roll back long-standing judicial precedents, catering to insurance-industry demands that verdicts be paid out over time on installment plans. In the past fifteen years, the U.S. Supreme Court has further restricted the permissible definition of consumer class actions, and a 2005 federal law moved many class-action suits from state courts to the more business-friendly federal courts. Supreme Court majorities have also narrowed the ratio of punitive damages to compensatory awards.

The American Tort Reform Association has pushed through legislation that often makes it harder for a person to pursue a tort claim. ATRA asserts that it is "the only national organization exclusively dedicated to repairing our civil justice system." ATRA claims to fight "in Congress, in state legislatures, and in the courts to make the system fairer," although people harmed by dangerous products or medical malpractice would strongly dispute this claim. The Supreme Court also has limited who can be admitted as a scientific expert witness in personal-injury (and other) cases in such a way as to make it unfairly difficult for injured parties to prove that a defendant was blameworthy or that the harm to the victim was caused by the defendant's conduct.

Shamelessly ambitious, these tort deformers have also pushed, though with much less success, legislation to limit the contingency fees paid to plaintiffs' lawyers, making these cases unprofitable for attorneys to take on. Lately they have been lobbying for a "nuclear option," which would make the loser of a case pay damages, so that, for example, a family who lost a loved one to a defective General Motors car would be required to pay for GM's expensive lawyers if GM's courtroom tactics prevailed. Some states have passed measures mandating shorter statutes of limitation, thereby shortening the time an injured party has to file suit. A federal law has already been enacted that prohibits almost all suits by victims and their next of kin against an aviation company after a plane crash if the offending aircraft is more than eighteen years old. That was a Bill Clinton special. He also signed a bill immunizing from any liability suppliers of raw materials and components used in the manufacture of medical implants. Such statutes tied the hands of thousands of judges and juries, the only people who hear, see, and evaluate the evidence in individual cases. The assault by a thousand cuts never stops, but it's hard for the public to see what is happening.

Here is what a cap on pain and suffering looked like to the parents of two-year-old Steven Olsen in California: The little boy had fallen down, and a stick became lodged in his sinus. His mother took him to the local hospital, where he was examined and sent home. When he returned to the hospital several days later, the physician did not give him a CAT scan, which his mother requested and which would have detected a growing abscess in his brain. Steven became blind and brain-damaged. After assessing the evidence, a jury awarded the then-four-year-old child $7.1 million for a lifetime of darkness and pain. The jury was never told what came next. The judge, limited by a legislated cap, reduced the award to $250,000—a sum that many an insurance-company executive earns in a fortnight. This draconian ceiling was mandated by the Medical Injury Compensation Reform Act (MICRA), which was signed into law by Governor Jerry Brown in 1975, after insurance companies sharply hiked malpractice premiums to encourage physician demand for such a restriction.

In succeeding years, Steven's utterly devoted mother, Kathy, who just passed away, and his father, Scott, were forced to turn to their own insurance plans to pay for Steven's care. And the exhilarated insurance companies, praising "liberal" California with their physicians in tow, began to push through similar caps in numerous states. The results, for victims of medical malpractice, were just as devastating. The wreckage of lives and families proved to be too much for Jerry Brown, who, in 1993, safely out of office, issued a statement repudiating MICRA and declaring, accurately, that the law had an "arbitrary and cruel effect upon the victims of malpractice. It has not lowered health-care costs, only enriched insurers and placed negligent or incompetent physicians outside the reach of judicial accountability." Elected in 2010 and again in 2014 by large majorities, Governor Brown has now turned his back on his own words, declining even to urge the state legislature, dominated by his own party, simply to adjust for inflation and move the MICRA cap to a little more than a million dollars. When I told Brown that far more people lose their lives and are injured by medical malpractice than in motor-vehicle crashes, it did not move him.

With tort deform reducing the number of cases that are filed in court, the medical-malpractice insurers have been making record profits year after year. Meanwhile, an epidemic of preventable violence continues uncontrolled. State medical-examiner boards and physicians' groups such as the American Medical Association do little to police their own ranks, despite statistics showing that 5 percent of physicians account for more than 50 percent of all malpractice payments. *BusinessWeek* saw through the propaganda in 1987: "The real crisis," it stated, "is the degree of malpractice itself." The Clinton Administration deplorably proposed weakening

patients' legal rights against medical malpractice while wooing the health lobby to gain its support for Hillarycare.

The majority of competent physicians know what the studies and their own experience in hospitals tell them. "You must understand that some of the malpractice out there is so grievous, offensive, and implausible as to beggar the imagination," declared California physician Barry S. Schifrin, in remarks before the American College of Obstetricians and Gynecologists in 1985, right in the middle of the hysteria over tort reform.

In his book *Silent Violence, Silent Death,* Harvey Rosenfield observed that "according to the medical lobby and a surprising number of political officials, the problem is not, *how are we going to reduce deaths and injuries caused by negligent or incompetent doctors and hospitals,* but, *how are we going to stop or impede victims of malpractice from suing the perpetrators of their injuries?*" Prevention is the medical profession's foremost ethic. Yet because physicians are falsely told, especially by their insurers, that the problem is frivolous lawsuits, they ultimately pay little attention to prevention. A study published in the *New England Journal of Medicine* explains: "Our findings point toward two general conclusions. One is that portraits of a malpractice system that is stricken with frivolous litigation is overblown. … A second conclusion is that the malpractice system performs reasonably well in its function of separating claims without merit from those with merit and compensating the latter."

Compared with homicides (about 14,000 in 2014), the casualties emanating largely from corporate crime and negligence are staggering. Some examples include preventable deaths from air pollution (54,000 deaths per year), workplace-related diseases and traumas (about 60,000 deaths a year), and more than 3,000 lives lost annually from processor- or vendor-contaminated food.

Of course, nobody likes to be sued. The privileged One Percent is not accustomed to being in the spotlight. Corporations have bureaucratic barriers in place that are designed to shield their executives from the consequences of their own and their companies' criminal misdeeds. Under civil tort law, however, subpoenas and depositions remove this cover and can reach, sometimes literally, into executive suites; attorneys for the injured can depose "parties of interest" under oath even if they are at the very top of the corporate ladder. From auto companies and pharmaceutical firms to energy and financial conglomerates, all can be required to hand over files, emails, and other documents that may be highly incriminating.

Institutionalized, recurring violence stemming from the activities of the business classes is now somehow

deemed "accidental" and "incidental" to the necessary production of goods and services. "Essential for business" is how Southern plantation owners justified the ultimate tort of slavery, which was legal until the mid-nineteenth century. In a report on a movement by relatives of patients who died during surgery to place cameras in operating rooms, the *Washington Post* described three cases from the "estimated 400,000 people who die each year in the United States of preventable medical errors, the third-leading cause of death after heart disease and cancer."

The cases are disturbing:

> Chris Nowakowski's wife died in Wisconsin during what should have been a routine procedure on her pacemaker. Danny Long's wife in North Carolina suffered catastrophic neurological injury during a surgery to relieve numbness in her extremities. A doctor perforated the colon and esophagus of Deirdre Gilbert's daughter in Texas, then operated on her after she was dead.

Between 1985 and 1988, consumers witnessed one of the most frenzied periods of insurance-industry bullying. State legislatures throughout the country enacted legislation to all but destroy the law of torts. Phony cases were nationally advertised and then brandished through wide media coverage by figures such as President Ronald Reagan, Assistant Attorney General Richard Willard, and William Spann Jr., a former president of the American Bar Association. Then there was this doozy: Did you hear about the lawn-mower case? A man picked up his lawn mower to trim his hedges, injured his hand and arm, and was awarded millions of dollars by a jury. This was a fictitious case, but it and other fabrications were repeated again and again, not just in advertisements but by witnesses before congressional committees. In the summer of 1986, Congressman John J. LaFalce (D., N.Y.), the chairman of the House Economic Stabilization subcommittee, held several public hearings at which witnesses argued that talk of a litigation crisis was a myth and the idea that the insurance industry was hard-pressed to provide coverage at reasonable prices was absurd. LaFalce invited some of the injured people whose cases had been lampooned in the media to testify, condemned legislation by anecdote, and demanded aggregate data on premiums, claims, and casualties—"the real facts," he declared.

In reality, few tortious victims ever file a claim or even contact an attorney. According to a study by the RAND Institute for Civil Justice, only 2 percent of those injured ever file a lawsuit. In *Freedom to Harm,* Thomas O. McGarity, a law professor at the University of Texas, Austin, reports that after the Texas legislature passed a slate of tort-reform legislation, "personal injury filing fell forty percent between 1993 and 2002." What did not fall were bills from the insurance companies, which have made it very clear that there is to be no linkage between tort reform and premiums, notwithstanding how vigorously they press for such legislation.

Despite common misperceptions, tort law is seriously underused, primarily because it is not easy to hire attorneys to litigate against wealthy commercial firms, which not only have the resources to hire expensive defense attorneys but also can deduct their expenses.

Plaintiffs' lawyers in tort cases work on a contingency basis and are not paid by the hour, so they must spend their own time and resources litigating a case. All this is needed if success is to be achieved, and if the case is lost, the attorney receives no fee. It should not have been a surprise when University of Wisconsin law professors Marc Galanter and Joel Rogers documented that Americans today file fewer civil cases per capita than their predecessors did in the 1840s.

Putting aside the large tort verdicts and settlements against the asbestos and tobacco industries, no more than $20 billion a year is being paid out in court cases to both medical-malpractice and product-liability victims. In 1999, Ernst & Young and the Risk and Insurance Management Society reported that business-liability costs, including insurance, were a mere $5.20 for every $1,000 in revenue. According to actuary J. Robert Hunter, a former federal insurance administrator, A. M. Best's 2014 data shows that medical-malpractice claims were $4.1 billion and products claims were $1 billion. The Fortune 500 alone has more than $12 trillion in revenues. That works out to $3.74 per $1,000 in revenues.

The paucity of the payouts explains why insurance companies continue to resist the publication of their claims data. When Harvey Rosenfield and I successfully campaigned for passage of Proposition 103 in California in 1988, and the insurance companies finally had to open their books, premiums for auto insurance stabilized while they soared across the rest of the country, saving motorists nearly $100 billion in the succeeding years, according to studies by J. Robert Hunter. When I shared a stage in Illinois years ago with the head of a medical-insurance company and asked him how much he took in from premiums and how much he paid out in settlements, he nervously replied that he did not have those figures at hand. That's like a baseball player not knowing his batting average.

How, then, can the tort system withstand the attacks of the vast infrastructure dedicated to its destruction? Fortunately, trial lawyers have appealed a variety of tort reforms, most prominently award caps, to several state supreme courts. The high courts in Georgia, Missouri, and Florida have belatedly declared the caps unconstitutional (though there have also been successful moves to amend state constitutions in response, as in Texas). In addition, a small but determined number of citizen-advocacy groups have exposed the truth behind the tort deformers' misleading propaganda, have opposed repressive legislation, and have informed the media. The Center for Justice and Democracy in New York, for example, headed by Joanne Doroshow, has brought a wide array of errors and distortions to light. The Consumer Federation of America, Public Citizen, Consumer's Union, Consumer Watchdog in California, and Texans for Public Justice, alongside many small unheralded victims' associations, are working together to preserve victims' right to have their day in court.

In 2004, lobbies representing insurance companies, hospitals, and physicians organized in Wyoming to enact by statewide referendum an amendment to the state constitution that historically had prohibited any legislative caps on decisions by juries regarding what compensation injured people should receive in medical-malpractice cases. One well-known attorney, the then-seventy-five-year-old Gerry Spence, took them on. In newspapers around the state he posted notices about "an emergency that affects every person in our community," and invited people to come to meetings in halls he rented in order to "defend yourselves." To packed audiences in town after town, Spence methodically unraveled the usual specious claims of these vendors about physicians leaving the state because of sky-high insurance premiums and out-of-control medical-malpractice judgments. He declared that between 1989 and 2002 only five jury verdicts had resulted in monetary damages awarded to patients, and that there was not a single million-dollar award during that period.

One man who stood tall against corporate deceit carried the day and educated the people of hard-line Republican Wyoming about constitutional guarantees of the historic right of trial by jury in open courts of law. That is what being an "officer of the court" meant to Gerry Spence.

Trial attorneys, too, have pulled strings. Through campaign contributions and ties to state lawmakers, they have helped to block bills and stem the tide of defections by politicians looking to curry favor with corporations. But they could do more: some 60,000 trial lawyers in communities across the country can reach tens of millions of people by speaking to small audiences and writing in the local media. They must cooperatively show how a robust civil-justice system can alleviate human misery and provide a safer marketplace, workplace, and environment. It comes down to a professional sense of duty. With few exceptions, the richest plaintiffs' attorneys, in Texas as in other states, have been so disorganized, inept, and fractious that they have allowed twenty-five years of nonstop attacks on tort law to roll back judicial decisions and to upend constitutional and statutory protections. That is a failure of mission.

We are at a moment in our legal history at which the tort system, built over the course of a century in courts of law by tens of thousands of plaintiffs, is in need of saving. We could have the best system of tort law in the world, but we need to restore what has been lost and keep pace with changes in our society. New technologies fraught with risk—such as robotics, artificial intelligence, biotechnology, and nanotechnology—presently provide no statutory safeguards to speak of. Only the common law of torts can hold the negligent sellers of these technologies accountable. What tort lawyers must do is decide to recognize the remarkable resilience of the few citizen groups and victim-advocacy organizations, and work to greatly expand their number in every state. The culpable companies have used this very tactic for their own purposes under cover of misleadingly named groups such as Citizens Against Lawsuit Abuse.

The tort super-lawyers, with their glorious fees, built the edifice that is tort law, but they have failed to defend it in recent decades with the necessary resources and determination. They should take the lead in strongly defending a resurgent law of torts—one that is practiced by, of, and for the people. This country is unique in having a marvelous right to trial by jury that has been lauded historically by left and right, from Thomas Jefferson to Winston Churchill to William Rehnquist. That right now requires a most robust defense. ■