NEW CLUES ABOUT BIN LADEN • ANSEN'S BEST MOVIES

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LAWSUIT HELL

How Fear of Litigation Is Paralyzing Our Professions

The Rev. Ron Singleton, Dr. Sandra R. Scott and Sheriff Glenn Ross

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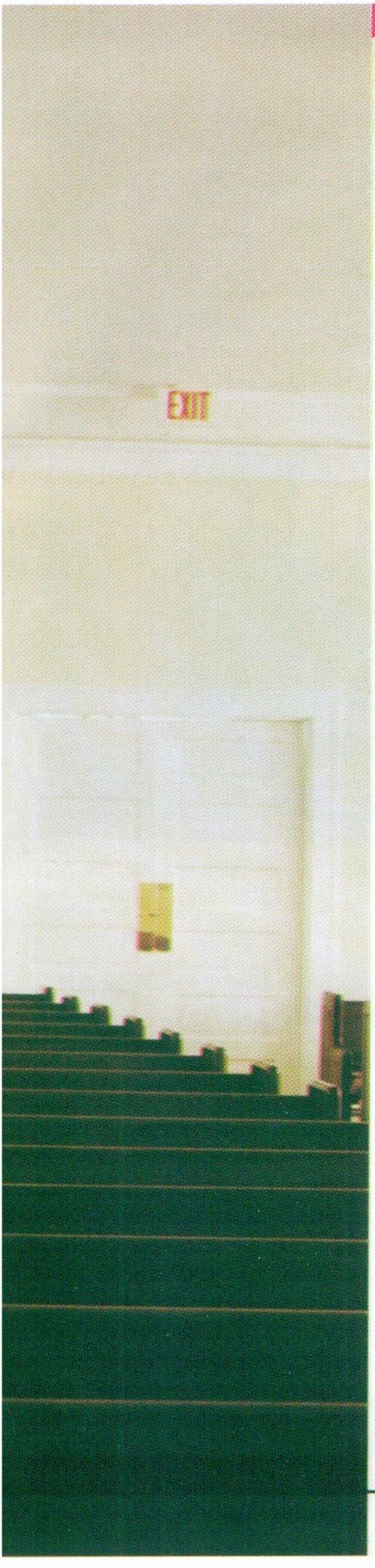


Doctors. Teachers. Coaches. Ministers. They all share a common fear: being sued on the job. Our litigation nation—and a plan to fix it.

CIVIL WARS

BY STUART TAYLOR JR. AND EVAN THOMAS

THE REV. RON SINGLETON'S DOOR is always open. That way, when the Methodist minister of a small congregation in Inman, S.C., is counseling a parishioner, his secretary across the hall is a witness in case Singleton is accused of inappropriate behavior. (When his secretary is not around, the reverend does his counseling at the local Burger King.) Singleton has a policy of no hugging from the front; just a chaste arm around the shoulders from the side. And he's developed a lame little hand pat to console the lost and the grieving. The dearth of hugging is "really sad," he says, but what is he going to do? He could ill afford a lawsuit.

Dr. Sandra R. Scott of Brooklyn, N.Y., has never been sued for malpractice, but that doesn't keep her from worrying. As an emergency-room doctor, she often hears her patients threaten law-

KEEPING HIS DISTANCE: Singleton is afraid of hugging from the front

PHOTOGRAPHS BY ETHAN HILL FOR NEWSWEEK

suits—even while she's treating them. "They'll come in, having bumped their heads on the kitchen cabinet, and meanwhile I'll be dealing with two car crashes," she says. "And if they don't have the test they think they should have in a timely fashion, they'll get very angry. All of a sudden, it's 'You're not treating me, this hospital is horrible, I'm going to sue you'."

Ryan Warner is a volunteer who runs an annual softball tournament in Page, Ariz., that usually raises about $5,000 to support local school sports programs. But not this year. A man who broke his leg at a recent tournament sliding into third base filed a $100,000 lawsuit against the city, and Warner fears he may be named as a defendant. "It's very upsetting when you're doing something for the community, not making any money for yourself, to be sued over something over which you had no control," he says. So Warner canceled the tournament.

Playgrounds all over the country have been stripped of monkey bars, jungle gyms, high slides and swings, seesaws and other old-fashioned equipment once popularized by President John F. Kennedy's physical-fitness campaign. The reason: thousands of lawsuits by people who hurt themselves at playgrounds. But some experts say that new, supposedly safer equipment is actually more dangerous because risk-loving kids will test themselves by, for instance, climbing across the top of a swing set. Other kids sit at home and get fat—and their parents sue McDonald's.

FOUL PLAY: Coach Stewart

Tammy Stewart

QUARTZ HILL, CALIF.

When Kelly Smith didn't make the cheerleading squad, was it sabotage? One of the judges says Coach Stewart changed his high score. Other judges say Smith and her partner were simply out of sync when they performed their routine. Now Smith's family has sued for unspecified damages, and to get Stewart fired. "It's enough to make me want to stop coaching," she says.

Americans will sue each other at the slightest provocation. These are the sorts of stories that fill schoolteachers and doctors and Little League coaches with dread that the slightest mistake—or offense to an angry or addled parent or patient—will drag them into litigation hell, months or years of mounting legal fees and acrimony and uncertainty, with the remote but scary risk of losing everything. And while lawsuits can be a force for good, they are also changing and complicating the lives of millions of American professionals in ways that confound common sense and cast a shadow over a system that can, at its best, offer people relief and redress from legitimate grievances (John Edwards's essay, page 53).

The onslaught of litigation is nothing new—nor all bad. Starting in the 1960s, cru-

A man broke his leg in an Arizona softball tournament and sued the city. Fearing he was next, an organizer canceled it.

sading judges and well-meaning social reformers began opening the way for the powerless and the dispossessed to assert their rights by going to court. Large corporations and authority figures were held responsible for their carelessness or callousness. Manufacturers were forced to pay more attention to the safety of their workers and consumers, and public officials were held more accountable to the people they served.

But Americans don't just sue big corporations or bad people. They sue doctors over misfortunes that no doctor could prevent. They sue their school officials for disciplining their children for cheating. They sue their local governments when they slip and fall on the sidewalk, get hit by drunken drivers, get struck by lightning on city golf courses—and even when they get attacked by a goose in a park (that one brought the injured plaintiff $10,000). They sue their ministers for failing to prevent suicides. They sue their Little League coaches for not putting their children on the all-star team. They sue their wardens when they get hurt playing basketball in prison. They sue when their injuries are severe but self-inflicted, when their hurts are trivial and when they have not suffered at all.

Many of these cases do not belong in court. But clients and lawyers sue anyway, because they hope they will get lucky and win a jackpot from a system that allows sympathetic juries to award plaintiffs not just real damages—say, the cost of doctor's fees or wages lost—but millions more for impossible-to-measure "pain and suffering" and highly arbitrary "punitive damages." (Under standard "contingency fee" arrangements, plaintiffs' lawyers get a third to a half of the take.) This year the U.S. Supreme Court tried to limit punitive damages, and judges often reduce the most outrageous jury verdicts. And the "litigation explosion" of the past 30 years may be leveling off (though one study shows a sharp recent uptick). Even so, the mere threat of a lawsuit is intimidating. Many Americans sue because they have come to believe that they have the "right" to impose the costs and burdens of defending a lawsuit on anyone who angers them, regardless of fault or blame.

The cost to society cannot be measured just in money, though the bill is enormous, an estimated $200 billion a year, more than half of it for legal fees and costs that could be used to hire more police or firefighters or teachers. Our society has been changed in a subtler, sadder way. We have been hardened

In Chicago, Mayor Daley reels from a raft of suits, but won't hesitate to use the law when he needs it

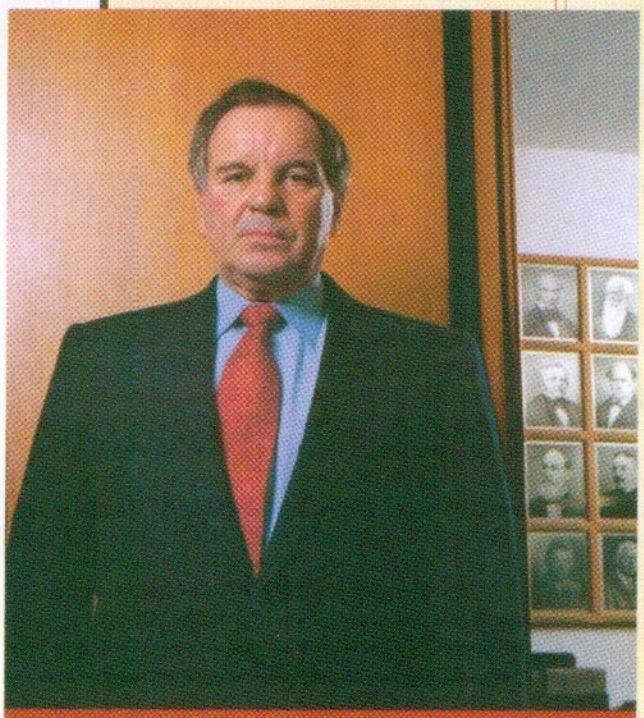
City of Deep Pockets

BY DIRK JOHNSON

It's raining in Chicago, and Mayor Richard M. Daley is worried. Slick streets and sidewalks could mean accidents—and lawsuits. "Everybody thinks the city has deep pockets," says Daley. "People ought to realize it's their pockets." Daley, a 60-year-old Democrat and former prosecutor, warns that sky-high judgments "could bankrupt some cities." He knows the costs. Chicago paid a total of $98 million in judgments and settlements in 2001 and 2002. Suits against the city range from charges of police brutality to feuds over the Public Art Committee. Even panhandlers have nicked the city coffers, though not as much as their lawyers. To settle a class-action suit over the city's antibegging statute, Chicago paid a total of $99,000 to panhandlers—divided among perhaps 5,000 people. Their lawyers, meanwhile, got $375,000. It's not unusual in class-action suits. "Wouldn't you think," says Daley, "that lawyers would send most of the money back" to the good causes they represent? Then comes the ironic smile. "From the time you wake up until the time you go to bed," he says ruefully, "you're at risk of being sued." The mayor doesn't even compliment a staffer on a new dress or hairdo. "It could be misinterpreted," he says. Anything with the faintest whiff of harassment, as any boss or public official knows, can be lethal.

Chicago used to insure itself. Now it carries an "excessive liability" policy to cover awards over $15 million. Daley also started a claims unit, so people could be reimbursed for accidents caused by the city. That way, Daley reasons, the city doesn't have to spend money on lawyers. He thinks there's enough of that already. Chicago paid outside lawyers $10.4 million in 2002 to fight its battles, nearly double the amount spent in 1998. Daley says it's the astronomical awards that can cripple a city. In one suit against Chicago, jurors awarded $50 million—10 times what the family had sought. A judge reduced it to $1 million.

Despite his complaining, Daley recognizes lawsuits can be a force for good—and doesn't hesitate to order them up if he thinks the city's interests will be served. Chicago has taken gun makers to court, charging that they are responsible for some of the mayhem their products cause. The city has also sued makers of lead paint, arguing that poor children have long been poisoned by contaminants in their homes. This year the city started suing people who harm its property. If somebody knocks down a street sign, or attacks an officer, he will be hit with a civil suit. "You cause damages, you pay for it," says Daley. "Sometimes hitting somebody in the pocketbook gets the point across better. You've got to hit 'em where it hurts." Daley has his critics, but nobody's ever called him a patsy. He seems to be making a point with a sue-happy public: if that's the way the game is going to be played, then bring it on.



PENALTY PHASE: Daley says he won't compliment female staff

Now that insurance for delivering babies costs so much, the doctor can't practice what he loves most

Hard Pill to Swallow

BY DEBRA ROSENBERG

When Dr. Brian Bachelder moved back to Mt. Gilead, Ohio, to practice family medicine in 1984, he hoped to emulate the country doc who'd treated him as a kid. The old physician had cured the sniffles, delivered babies, monitored chest pain, even taken out appendixes. Now in his own modest storefront office with Norman Rockwell prints on the walls, Bachelder cares for thousands of patients. But in recent years, Bachelder, 49, has watched litigation reshape his practice. Last December, facing malpractice premiums that soared from $12,000 in 2000 to $57,000 in 2003, Bachelder decided to lower his bill by cutting out higher-risk procedures like vasectomies, setting broken bones and delivering babies—even though obstetrics was his favorite part of the practice. Now he glances wistfully at the cluster of baby photos still tacked to a wall in his office. "I miss that terribly," he says.

Today the threat of litigation hangs over nearly every move Bachelder makes, changing the very nature of his relationship with patients. He worries that the slightest mistake could provoke a lawsuit. "Anything less than perfection is malpractice," he says. Even in confronting the most common ailments—headaches or ear infections—Bachelder must consider the possibility of a rare and devastating disease. He often orders expensive tests—not just to rule out the worst, but also to bolster his case before a potential jury. "It can't be just your opinion anymore," he says. A few years ago he installed a computer system that tracks every question he asks a patient—and often prompts him to ask more. It also notes risky patient behavior, like refusing to quit smoking.

Bachelder's fear of lawsuits isn't just theoretical—he's been sued a half-dozen times in his 20-year career. In one case, Bachelder referred a boy with a bladder problem to a urologist. The urologist operated, and the patient subsequently sued; Bachelder was also named in the complaint. He was eventually dropped from the case, but not before his liability insurance paid out $40,000 in legal fees.

Bachelder was the last doctor in the county delivering babies. When one of his patients, Paula Hall, got pregnant earlier this year, she was heartbroken to learn that she'd have to go elsewhere for both her delivery and prenatal care. "I was really looking forward to one doctor all the way through," she says. But in today's "Court TV" climate, that idea is already as quaint as the Norman Rockwell prints on Bachelder's walls.

FAMILY MAN: Bachelder, with children he delivered, misses that part of his job

and made more fearful. Friends and neighbors are more wary now. Almost anyone has to ask: if I say or do something that might be taken wrong, will I wind up in court? Mentors and teachers are restrained from offering either comfort or discipline—might that touch be misconstrued, those stern words somehow made "actionable"?

Perversely, our insistence on enforcing our "rights" has made us less free—less free to use our own judgment to make common sense or humane choices about the way we live and treat others. We are paralyzed by "legal fear," says Philip K. Howard, a legal reformer who published a 1994 best seller on the subject, "The Death of Common Sense," and more recently, "The Collapse of the Common Good" (2001). But are we truly stuck? In two of the most contentious arenas—education and health care—Howard has devised proposals to save Americans from a legal system gone mad. He says the key is to separate trivial or frivolous cases that don't belong in court from those that are legitimate, a responsibility that he says judges have abdicated.

A corporate lawyer and civic activist with a philosophical bent, Howard began wondering more than a decade ago why it was so hard to get anything done in government. As he probed into rules and regulations, he began to see that the biggest impediment was the fear of lawsuits. The son of a Southern minister, educated at Yale and the University of Virginia Law School, Howard has become a courtly evangelist for the notion that only radical reform can stop what he calls the "legal free-for-all."

HOWARD IS, TO SAY THE least, a controversial figure to trial lawyers and some public-advocacy groups. "You can't take away people's rights and call it reform," says consumer advocate Ralph Nader, who calls the civil-jury system "a gem" and describes trial lawyers as "all that is left to require wrongdoers to be held accountable. Philip Howard is a corporate lawyer who tilts his data-starved abstractions in the direction of defendants' prerogatives at the expense of plaintiffs' rights. He is a partner in the giant law firm of

Covington & Burling, which has historically represented some of the most damaging corporate behavior, from tobacco to pharmaceuticals to chemical companies." (Covington & Burling represents NEWSWEEK as well. Howard says he does no work of the type Nader complains about.)

Howard likens the medical-justice system to "cancer in its latest stage." Most Americans do not go to work every day, at least not yet, wondering if they are going to get sued. But many doctors do, especially those in high-risk specialties like obstetrics and surgery. "Every patient is a potential litigant, every family member is a potential plaintiff," says Dr. Thomas Rawlinson, a Memphis, Tenn., internist. Fear of a lawsuit would probably deter him from stopping to help a stranger injured in an accident, he says—and Rawlinson hasn't even been sued yet.

While doctors win most malpractice cases that go to trial, their insurers lose often enough to want to settle many claims. (In California recently, a couple won a $70 million judgment against Stanford University Hospital and two other health-care centers for failing to prevent their child from becoming disabled by a rare birth condition.) Sometimes, the malpractice is egregious. But then there are cases that, in an earlier era, would have been dismissed as the patient's own fault. Take the pending lawsuit by a 29-year-old drug addict who sued a Pennsylvania mental hospital for failing to prevent her from overdosing on drugs and cutting herself. The hospital should have warned visitors against bringing drugs into the hospital, the lawsuit claimed. The staff should have noticed that

Consumer crusader Ralph Nader describes trial lawyers as 'all that is left to require wrongdoers to be held accountable'

a visitor had sneaked some heroin and cocaine to her. The hospital's job, her lawyers claim, was to protect her from herself.

No wonder, according to one estimate, doctors waste $50 billion to $100 billion on "defensive medicine" to prove that they left no stone unturned, no test untried, no medication unprescribed, no specialist unconsulted. That kind of money could buy health insurance for the 40 million Americans who have none.

Medical-malpractice claims don't even do what they're supposed to do—compensate victims and deter future mistakes. Various studies have found that the vast majority of medical errors go undetected by patients and that nine out of 10 are never compensated. (And when patients do sue, their malpractice allegations are unfounded in as many as 80 percent of the cases, other studies suggest; insurance companies pay to settle the vast majority of claims anyway, rather than risk a big hit.) Countless avoidable deaths are actually caused by the system. Fear of lawsuits contribute to a culture of secrecy. Doctors avoid discussing problems and errors, lest such candor be used against them in court. The most dangerously incompetent doctors often remain in place for many years, in part because employers fear wrongful-dismissal lawsuits by fired doctors even more than malpractice suits by their victims.

"Legal fear" is just as intense in the educational system. Many Americans sense that schools have become chaotic and undisciplined over time and the quality of teachers has declined. Many teachers say that the joy has gone out of their jobs. What's not generally known is the role of courts and Congress in creating these problems by depriving teachers and principals of the freedom to use their own common sense and best judgment. Thanks to judicial rulings and laws over the past four decades, parents can sue if their kids are suspended for even a single day—for any reason—without adequate "due process." Well-intentioned federal disability laws have made it so difficult to suspend any emotionally disturbed student for more than 10 days—even if he is chronically violent and disruptive—that many schools don't even try.

In Wisconsin, a chronic troublemaker was finally expelled from high school for his role in a $40,000 vandalism spree. The student's mother hired a psychologist who diagnosed the boy with attention-deficit disorder and depressive moods. The courts

The Search for a Pot of Gold

Plaintiff-friendly courts, eye-popping jury awards and states' struggle to rein in malpractice damages have made it difficult for the courts to cope with the country's civil lawsuits.

Doctor's Orders: Capping Damages

Spurred by President Bush and the AMA, a growing number of states are eying limits on noneconomic damages in medical-malpractice suits.

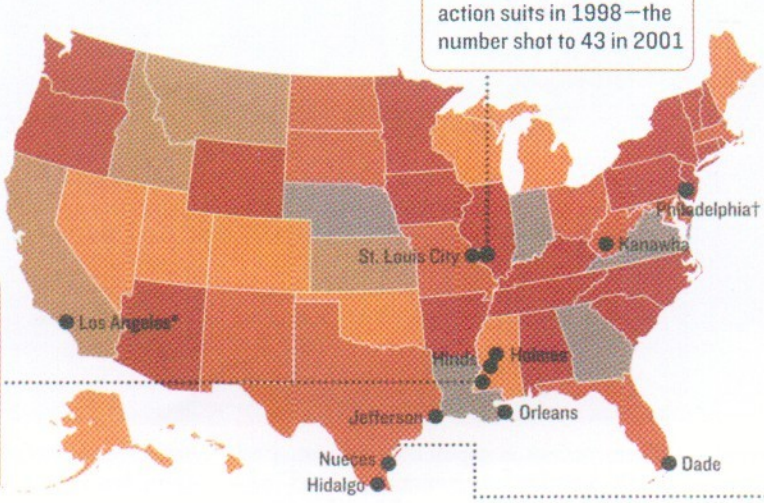
KNOWING THEIR LIMITS

- $250,000 or less
- $250,000–$500,000
- $500,000 or more
- No limit to damages
- Caps on total/punitive

HOT SPOTS

- Top plaintiff-friendly court districts, according to ATRA

Madison County, Ill.: Taking heat for $10 billion Philip Morris Inc. decision; home to only two class-action suits in 1998—the number shot to 43 in 2001



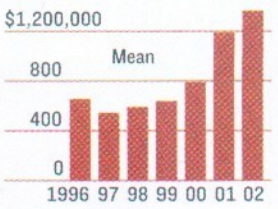
Mississippi's 22d Judicial District: FBI investigation into high jury verdicts; a trial lawyer recently indicted for funneling money in exchange for favorable treatment

Southern Texas: High jury awards make this area a magnet for hundreds of asbestos cases, but Texas Trial Lawyers Association asserts defendants often get decisions overturned on appeal

Climbing Cost

The average amount paid to plaintiffs in personal-injury cases has risen dramatically since 1995, while the number of cases has remained relatively constant.

RISING JURY AWARDS



Plaintiff Paydays

The top jury awards of the past five years. Initial verdicts are sometimes reduced on appeal.


AP PHOTO

Plaintiff Betty Bullock

1 $28,000,850,000: Philip Morris Inc. made to pay a record punitive judgment to Betty Bullock, a 64-year-old woman with lung cancer, who blamed her tobacco addiction on the company's failure to warn her of smoking risks. Court reduced verdict to **$28 million.**

2 $11,863,600,000: ExxonMobil Corp. found to have violated lease agreements it had with the State of Alabama to extract natural gas from underwater fields. The case is currently on appeal.

3 $10,100,529,196: More than 1 million Illinois smokers claim Philip Morris Inc. touted its Marlboro Lights and Cambridge Lights as lower in nicotine and tar than regular cigarettes. An appeal is pending.

4 $4,931,000,000: General Motors must pay plaintiffs who were severely burned when the fuel tank of a 1979 Chevrolet Malibu exploded during a collision. Reduced to **$1.1 billion**; GM is appealing.

5 $3,006,000,000: Philip Morris Inc. was held liable for damages for the cancer of longtime smoker Richard Boeken in this 2001 toxic tort case. The court reduced the award to **$100 million.**

TEXT AND REPORTING BY MEREDITH SADIN—NEWSWEEK. *CENTRAL CIVIL WEST DIVISION. †COURT OF COMMON PLEAS. SOURCES: AMER. TORT REFORM ASSOC.; JURY VERDICT RESEARCH; JURY SEARCH, A DIV. OF AMER.LAWYER MEDIA; AMER. MEDICAL ASSOC.

REFORM MINDED: Philip Howard argues that medical and educational disputes should be removed from the regular court system altogether

ordered the school to let him return and graduate—follow the contorted logic here—because the school had failed to prove that these previously unknown disabilities had played no part in the vandalism.

School boards now fear that parents will sue for anything. In Kentucky, a mother sued her daughter's school after the girl had performed oral sex on a boy during a school-bus ride returning from a marching-band contest. The woman blamed poor adult supervision, saying her daughter had been forced. If the case goes badly for the school system, such trips could be jeopardized.

Even if a school wins in court, these cases cast a pall. Alan Bersin, the superintendent of San Diego City Schools, calls the risk of being sued "the anaconda in the chandelier"—it hangs constantly overhead, threatening to strike at any time. Unruly students sense the teachers' fear and their own empowerment. "A kid will be acting out in class, and you touch his shoulder, and he'll immediately come back with 'Don't touch me or I'll sue,' or, 'You don't have any witnesses'," says Rob Wiel, who taught high-school math and coached football and baseball in the Denver suburbs for 20 years before retiring recently. "They have all these lines."

If, as Howard says, the educational system is a "viper's nest" of entitlements and legal fear, the playgrounds and playing fields are an absolute war zone. Parents, on behalf of their children, increasingly sue not only for physical injuries, but for "hurt feelings" when they don't make a team, says John Sadler of Columbia, S.C., who insures amateur sports leagues. Coaches and referees are caught in a kind of no man's land. If they allow a disabled kid to play, they can get sued if he hurts himself. But if they don't let him play, they can be sued for discriminating against the disabled. If a ref steps into a fight, he can be sued if one of the players he is holding back takes a punch. If the ref doesn't intervene, he can be sued for allowing the fight to go on. Even apparently innocent soccer moms are at risk. In Jupiter, Fla., one mother volunteered to pick up a pizza for the team. She drove over the foot of a child who, left unattended, had run into the road. The police did not even give the woman a ticket. But the parents of the child sued the mother and the soccer league and tried to sue the city, the refs and various sponsors.

Of course, any arena can be fertile ground for lawsuits. Big-city and small-town mayors alike know that their city governments are seen as a deep pocket to pay for almost any injury. New York shells out an eye-popping $550 million a year in court awards and settlements, thanks to sympathetic juries who think nothing of making government pay: $5 million for a girl's pain and suffering from a leg broken when the car she was riding in swerved to avoid an ambulance and hit a tree; $6.3 million to a pedestrian hit by a drunken driver who disregarded signs and mounted a curb, which the jury said was too low; $7 million to a woman who lost her leg

CIVIL WARS ON NBC

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SUNDAY, DEC. 7, AT 6:30 P.M., ET
Class-action suits
TUESDAY, DEC. 9, AT 6:30 P.M., ET

The Abrams Report: Is the civil system broken?
WEDNESDAY, DEC. 10, AT 6 P.M., ET, MSNBC

The News With Brian Williams: America's winningest litigator
FRIDAY, DEC. 12, AT 7 P.M., ET, CNBC

MSNBC: Daily reports on Civil Wars
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BEGINNING TUESDAY, DEC. 9

Didn't make the cheerleading squad? Might as well take your elementary-school principal to court.

Learn the Hard Way

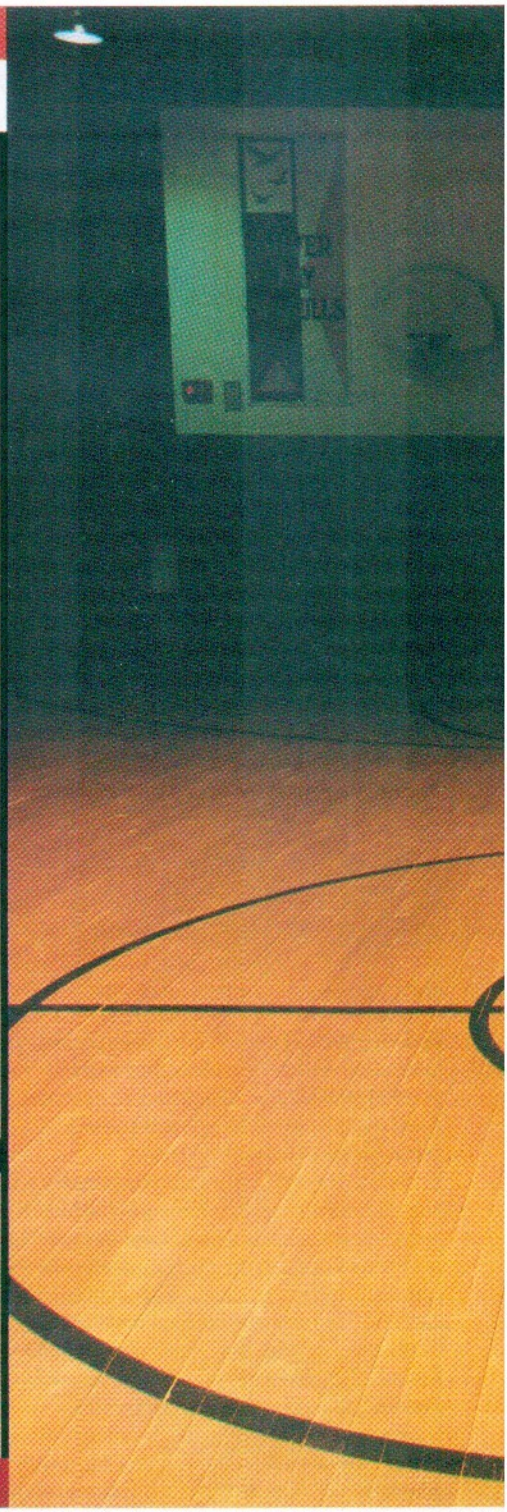
BY PAT WINGERT

Joe Pizza doesn't want to sound negative. An educator for 30 years—18 as principal of Silver Bay Elementary School in Toms River, N.J.—Pizza (pronounced Pee-sah) loves his job. But if he starts talking about what litigation is doing to American education, he can't hide his frustration. "Schools should be about what's best for the child, and secondly, we should be concerned about the law," he says. "But the law does tie our hands."

When he first started teaching, lawsuits didn't loom large in Pizza's imagination. Now, he says, schools get sued over anything, over nothing. Take the case of the group of fifth graders who were shooting hoops on the school playground one morning. The kids were breaking the rules—students aren't allowed to play on school property without adult supervisors. But when one of the boys broke his arm, his mother, who had no insurance, sued the school and the parents of all her son's playmates. She argued that her son deserved compensation because his injury meant he wouldn't be able to play baseball that summer. "The kid was not Mickey Mantle," Pizza said. Nonetheless, one of the parents' insurance companies ended up paying some damages.

Then there was the case of the fifth grader who wasn't picked for the cheerleading squad. The mom said the decision was personal—one of the judges didn't like her daughter—and took her complaint all the way up the administrative ladder, even though "this was only supposed to be a little extracurricular thing." But to keep the case from going legal, Pizza was encouraged by his superiors to hold a second round of tryouts, with different judges. After that, Pizza initiated a new requirement: any student who wants to try out for anything now must bring in a permission slip signed by a parent that specifies "that they will accept the decision of the judges." What once was obvious now requires a written waiver.

Too often, Pizza says, his job requires him to choose between what's legal and what's common sense. One example: whether to allow his older students to use toy weapons for the big sword-fight scene in the school's production of "Peter Pan." Many principals would have said no—technically, it could be construed as a violation of zero-tolerance laws forbidding any weapons, toy or real, in American schools. "But these fights were choreographed," Pizza said. "And we had lots of supervision." Similarly, Pizza decided to take an unorthodox approach when a paperwork snafu meant the school's nurse didn't have proper authorization to give a new student his routine dose of behavior-modifying medication. Rather than take a chance that the child would act out and get sent home, Pizza decided instead to call the mom, with a witness listening in, and get oral permission. "I knew I was sticking my neck out by doing that," he said. "Some people would say that was stupid, but I thought it was more important for him to have a successful day at school." No one's called to sue. So far.



TAKING CHANCES: Pizza put himself on the line, allowing fake swords in the school play

when she was hit by a taxi that may, or may not, have skidded on the ice.

The sense of legal entitlement has spread coast to coast. In Penobscot County, Maine, authorities hunted for a convicted sex offender wanted on felony charges for three days after he disappeared into the snowy woods. When the suspect was finally tracked down, he had frostbite and lost two toes. Incredibly, police say, the man threatened to sue the police for not catching him sooner. He couldn't find a lawyer, but his sheer chutzpah did not surprise Penobscot County Sheriff Glenn Ross. "We're always facing lawsuits," says Ross. "It's on our minds all the time."

Is there no end to this? President George W. Bush has signaled that he will try to make trial lawyers (among the biggest contributors to the Democrats) an issue in the 2004 presidential campaign. Legal reformers in some states have passed dozens of laws since the 1970s designed to stem the wave of personal-injury suits. In California, for instance, so-called tort reform (after the legal term for injury, "tort") has put a $250,000 cap on the damages that patients can win for pain and suffering in medical-malpractice cases. Other states have limited the contingency fees that lawyers can take. But many of these laws have been circumvented by the courts, and most have had little impact. The tort reformers are up against a politically powerful foe, the trial lawyers, who have positioned themselves as the guardian of the little man against the corporations. The tort reformers play into their hands by focusing on saving corporations money and doing nothing for deserving plaintiffs.

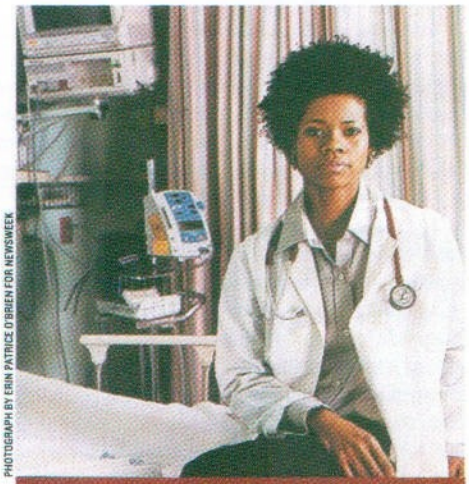
Conventional tort reform does not really go at the deeper problem. It does not bring about fundamental change in a system that affects the lives of millions by disrupting the services they depend on. Howard has suggested a more radical approach—removing disputes in education and health care from the regular court system altogether.

In the public schools, rather than running to court, aggrieved parents would have to take their disputes to a parent-teacher committee. Instead of having "a trial every time some parent is disappointed by a disciplinary decision," says Howard, educators should be free to use their common sense to protect "the rights of the 29 other students whose learning is being disrupted." Principals would be free to run schools according to their best judgment. They would have to answer to parent-teacher committees when disputes arose, but they wouldn't have to worry about getting sued or having to jump through procedural hoops to send a student home for a day, to fire an ineffective teacher or to change the curriculum. "There are very few big-dollar lawsuits in schools," says Howard. "The process is the punishment. What really troubles people is being dragged through 12 months of hearings and cross-examined as if they were criminals."

SIMILARLY, IN THE medical realm, Howard would remove most malpractice and other health-related claims to a special court of medical experts. Rather than allow juries ignorant of medical procedure to be swayed by sympathy, judges who are experts would follow established medical standards. Doctors would not have to guess at what was expected of them. A health-care court would not only shield good doctors from bad lawsuits, Howard contends, it would also give the vast majority of malpractice victims a much better chance of winning compensation for their lost wages and medical expenses, plus amounts for pain and suffering to be set by a schedule depending on the injury. Patients would be compensated within months, instead of after years of uncertainty and even impoverishment. For malpractice victims, the only loss is the remote chance of winning huge jury jackpots out of proportion to their injuries. There would be less malpractice—fewer mistakes—because doctors would be less reluctant to speak up about problems and admit error. And health insurance would be cheaper because not as many billions of dollars would be wasted on defensive medicine, legal fees and malpractice payouts.

Bringing about such fundamental changes would require political battles in Congress and the state legislatures. They are open to legitimate debate and negotiation, but they do seem to head in the right direction. The trial lawyers maintain that fictional or inflated horror stories have frightened the public, and they can point to dramatic examples where the jury system worked (such as the case of Steven Sharp, a high-school student whose arms were mangled by farm machinery that suddenly started up. After a long legal fight, he recovered $9 million). At this stage, Common Good, the legal-reform group headed by Howard (and funded in part by corporations), is only trying to raise public consciousness, not to lobby. Legal reform is a painfully slow process; over the past 30 years, attempts to require mediation before going to court have done little to stem the litigation wave. But the time may come when ordinary Americans recognize that for every sweepstakes winner in the legal lottery, there are millions of others who have to live with the consequences—higher taxes and insurance rates, educational and medical systems seriously warped by lawsuits, fear and uncertainty about getting sued themselves. One day, they may realize that their right to sue has become a trial for us all.

With SUSANNAH MEADOWS, PAT WINGERT, DEBRA ROSENBERG, MARY CARMICHAEL, DIRK JOHNSON, SARAH CHILDRESS, REBECCA SINDERBRAND, KAREN BRESLAU and HILARY SHENFELD



PHOTOGRAPH BY ERIN PATRICE O'BRIEN FOR NEWSWEEK

ON GUARD: Scott says she's only human

Sandra Scott, M.D.

BROOKLYN, N.Y.

Dr. Scott is constantly trying to prepare for when she'll have to defend her care in court. Her patients—steeped in tidbits picked up from the media and the Internet—threaten to sue as she's treating them, assuming she's negligent if they're not cured. "I'm only a human being," she says. "I'm an educated physician but the miracles are out of my hands."

The civil jury system, John Edwards argues, is good for America. He ought to know. A veteran trial lawyer on a case that confirmed his belief in the true meaning of justice.

Juries: 'Democracy in Action'

BY SEN. JOHN EDWARDS

I'll never forget the first time I met Jennifer Campbell. A charming, determined 5-year-old, she couldn't walk or feed herself, and still needed a playpen. Because of a doctor's terrible mistake, she was born with permanent brain damage. I met her loving, determined parents, who were hoping for a way to help pay for her costly care, and to make sure other families wouldn't suffer as they had. Back then, in 1985, I was a young North Carolina lawyer starting to build a name as someone willing to take cases others rejected as long shots. This case was exactly that. The insurance companies were skilled at making cases like this "go away." The Campbells had no money, and the trial would be long, complicated and expensive. If we lost, neither the Campbells nor I would receive a dime.

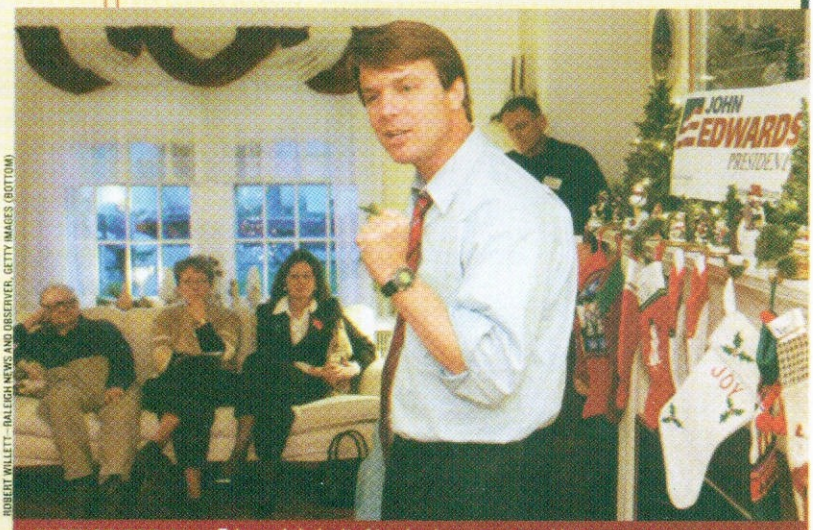
But there was no question that these were risks worth taking for Jennifer. The other side was counting on the Campbells to walk away intimidated, but they were wrong. A jury eventually agreed, and awarded the Campbells enough to make sure Jennifer's parents would never have to worry about her care.

These days it's fashionable for people to complain that the courts are clogged with frivolous lawsuits, and to dismiss the legal profession as a bastion of greed. In a nation as large as ours, it isn't difficult to find an outrageous case here and there. They draw publicity, and it's easy to come away with the impression that the court system is hopelessly broken.

I can tell you from long experience that it is not. Before I was elected to the United States Senate, I spent nearly two decades as a lawyer standing up for people who needed a voice. During that time, I worked on hundreds of cases, big and small. I'm proud of the work I did, and the people I represented. There was nothing frivolous about the families who came to me for help. Like the Campbells, many were in very difficult places in their lives. Often, they found themselves up against powerful opposition—insurance companies, large corporations—who had armies of lawyers to represent them. Giving them a chance for justice was very important to me. I was more than just their lawyer. I cared about them. Their cause was my cause.

And that's what good lawyers—I would say most lawyers—do for their clients all the time. I am a strong believer in the courts as a place for ordinary people to be heard, often when other institutions have failed them. People have criticized the jury system, saying jurors can't be trusted to consider the facts. I couldn't disagree more. Juries are a vital example of democracy in action. The people who sit on juries are the same people who decide who the president should be. People who are entrusted to choose the leader of the free world are capable of weighing evidence in a courtroom—and they do, every day across America. I found again and again that they take their service seriously, and follow the law even when the law is at odds with what they personally believe.

That's not to say the system is perfect. Frivolous lawsuits waste good people's time and hurt the real victims. That's why I have proposed to prevent them: Lawyers in medical-malpractice lawsuits, for example, should have to bring their cases to independent experts who certify that the complaints have merit before they are filed. And lawyers who bring frivolous cases should face tough, mandatory sanctions, with a "three strikes" penalty.



ROBERT WILLETT—RALEIGH NEWS AND OBSERVER, GETTY IMAGES (BOTTOM)

JUSTICE FOR ALL: Edwards's belief in the law is part of his stump speech

The solution isn't to restrict access to the courts, or to cap awards. Those steps wouldn't stop the bad cases. They would leave modest families like the Campbells struggling to pay for the negligence of others.

But it isn't just about money. Lawsuits often have results that reach well beyond the courtroom. Just one example of many: because of the Campbells' case, hospitals in North Carolina began changing their procedures to make sure the kind of mistakes that injured Jennifer were less likely to happen again. By any measure, you can certainly call that justice.

I believe in the courts as a place for ordinary people to be heard when other institutions have failed them.

—SEN. JOHN EDWARDS

EDWARDS, U.S. senator for North Carolina and a Democratic candidate for president, practiced law for nearly 20 years.

'I spent two decades standing up for people. There was nothing frivolous about the families who came to me for help.'