

“The First Thing We Do, Let’s Kill All the Lawyers”

SHAKESPEARE’S TRIBUTE TO TRIAL LAWYERS

The great trial lawyer Daniel Webster said: “Justice is the greatest concern of man on earth.” There is no greater professional calling than to stand as a lawyer at the bar of justice and breathe life into the Constitution, the Bill of Rights, the statutory law and common law by defining, asserting and defending the rights of citizens. Lawyers play many vital roles on the world’s stage but none more important than preserving, protecting and perpetuating the rights of citizens, both individual and business. Since lawyers play such a vital role in our democracy, why has lawyer-bashing increased exponentially in recent years and how should we respond to it?

One of the many enigmas to arise out of the corporate dominated decade of the eighties is the advent of lawyer bashing. The adversaries of our proud and noble profession continue to misquote the law, distort case results and unjustly attack judges and juries in a mass media onslaught designed to silence the victim’s voice - the trial lawyers of America.

Ironically, the rallying cry of the lawyer bashers has become Shakespeare’s quote from Henry VI: “THE FIRST THING WE DO, LET’S KILL ALL THE LAWYERS.”

Those who use this phrase pejoratively against lawyers are as miserably misguided about their Shakespeare as they are about the judicial system which they disdain so freely.

Even a cursory reading of the context in which the lawyer killing statement is made in King Henry VI, Part II, (Act IV), Scene 2, reveals that Shakespeare was paying great and deserved homage to our venerable profession as the front line defenders of democracy.

The accolade is spoken by Dick the Butcher, a follower of anarchist Jack Cade, whom Shakespeare depicts as “the head of an army of rabble and a demagogue pandering to the ignorant,” who sought to overthrow the government.

Shakespeare's acknowledgment that the first thing any potential tyrant must do to eliminate freedom is to "kill all the lawyers" is, indeed, a classic and well-deserved compliment to our distinguished profession.

Today's Jack Cades can readily be found throughout the insurance industry and in manufacturing, pharmaceutical, and chemical companies. They want to dismantle the tort system. They want to disrupt the judiciary and abrogate the common law, to the detriment of the rights of individual citizens, consumers, and injured persons who deserve competent representation and adequate redress for harm done to them.

Over the centuries tyrants and demagogues have come in many forms. In today's context, it is not the "army of rabble and a demagogue pandering to the ignorant" who cry for the demise of the lawyers, but rather modern demagogues who manipulate our governmental institutions to their own ends. Why? Because trial lawyers are the first line of defense to prevent irresponsible elements within the insurance, manufacturing, and chemical companies from dismantling the tort system, disrupting the judiciary and abrogating the common law to the detriment of the rights of individual citizens, consumers and tort victims.

Doubtless, if Shakespeare could put quill to parchment to script analogous phrases for modern corporate tyrants, he could couch their refrain thusly:

If America's democratic institutions of right to trial by jury and election of judges are to be abolished, first let's discredit all the lawyers;

If American citizens' common law rights to full recovery of legal damages are to be abrogated for the benefit of profit-motivated corporations, first let's defame all the lawyers; and

If America's judicial system of tort reparations is to be remolded into a profit mechanism for the insurance industry, first let's degrade all the lawyers.

The adversarial nature of the judicial system of which we are an integral part, dictates that we will never be loved by the public, due to the high level of misunderstanding of the advocacy system. Our protection of individual rights

often postures us as the foe of government and business with resulting enmity against us from those quarters. If enduring lawyer bashing is the price we pay for protecting individual freedoms, then so be it. It is a small price to pay as long as we do not allow the degrading of lawyers to interfere with the performance of our professional obligations by poisoning professional pride or reducing the zeal with which we represent our clients.

One major danger of lawyer-bashing to our profession is the effect which it can have on us, individually and collectively, as lawyers and as a profession. If we lose our professional self-respect, America loses far more because our effectiveness in the democratic process will be damaged.

The seminal point in maintaining our self respect when confronting lawyer bashing is for those of us in the profession to review our historical precedence in order to understand the role which our legal ancestors played in establishing and defending America's democratic institutions. Through this historical perspective we can better understand our position as the primary defenders of democracy.

As lawyers, we are the beneficiaries of a rich and unparalleled heritage from the past, the bearers of a huge mantle of responsibility in the present and the preservers and protectors of the individual rights of American citizens for the future. Reduction of that effectiveness is a major goal of our detractors since the power of the people has always been tied inextricably to the influence of lawyers. As Alexis de Tocqueville stated in *Democracy in America* in 1835: "I cannot believe that a republic could subsist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people".

We are currently engaged in a major power struggle over whether power in America shall remain with the people, through the exercise of individual freedoms, or whether power will continue the shift to government, corporations and the judiciary and away from the people. Therefore, if power is to be transferred from the people to governments and corporations, it is necessary to reduce the powers of lawyers. As part of this power struggle we confront an exponential growth in a well orchestrated regimen of lawyer-bashing which is designed to silence our voices and reduce our ability to stand between the abuse of governmental power and the individual, the abuse of corporate power and the individual and the abuse of judicial power and the individual. The effects of this well designed and carefully implemented campaign of lawyer bashing resound in the

legislative halls, the jury box and the voting booth. While we are fighting this battle daily in the legislative halls and our public relations efforts are directed toward those who occupy the jury box and the voting booth, we must not allow the lawyer bashing to reduce our own self esteem, either as individual lawyers or as a profession.

The idea of silencing lawyers in order to destroy individual freedom has been around for centuries. But it has been raised to a new art form by corporations without consciences. Heedlessly they compound their wrongs against consumers and workers with assaults on lawyers and crass distortions aimed at the mass media. Trial lawyers are the first—and perhaps only—defense against such perfidy, and history tells us we will prevail.

In seventeenth century England, Oliver Cromwell, in an effort to thwart individual freedoms, decreed that no more than three barristers could congregate outside of court. He recognized that the greatest threat to his own tyrannical dictates was the collective commitment of the London Society of Barristers to the principles of freedom expressed in the Magna Carta.

In eighteenth century France, the Revolution altered the political face of the world by moving the focus of government from the rights of royalty, tyrants, and dictators to the rights of individuals. Three major political principles emerged—liberty, equality, and fraternity. From these evolved the social and political systems we know today as democracy, socialism, and communism. Only one of these, democracy, granted the individual freedoms now under attack. Paradoxically, the assault on individual rights in the United States is recurring at the same time that a tidal wave of individual democratic freedom is sweeping through Eastern Europe. The ascendancy of democratic institutions abroad enjoins us to guard our own individual freedoms more closely against assault from within.

In twentieth century Europe, Adolf Hitler, the quintessential despot, asserted “I shall not rest until every German sees that it is a shameful thing to be a lawyer.” In the entire history of this planet, individual rights were never more threatened. Hitler’s mantle of destroying lawyers as a predicate to destroying rights of individuals is carried forward today by a carefully calculated campaign of libelous tyranny against lawyers and the rights of American citizens. Hence, the concept of silencing lawyers by those who seek to subjugate freedom of individuals has been attempted for centuries but has been successfully resisted in

America by strong willed citizens represented by the legions of lawyers who have successfully preserved and protected the Constitution and Bill of Rights against such attacks. After each tyrannical attack, our legal ancestors have emerged like the Phoenix from the ashes, to redefine individual rights and freedoms. We too must prevail, because we are right, our cause is just and the perpetuation of freedom is inextricably interwoven with our continued protection of individual rights.

If tort deformaters prevail, American citizens will suffer the ultimate irony as England has, that at the same time the world is attempting to emulate America and its democratic institutions, American citizens, in the name of international business competitiveness and insurance profits, will lose those same institutions which make us the exemplar of freedom for the world. This must not be allowed to occur and occur it shall not as long as the legal profession stands guard at the gates of democracy, accompanied by judges and legislators who respect the cornerstone of American democracy: the rights of individual citizens.

But, lest our adversaries underestimate us, and we forget our own heritage, we must all recall that before there was an insurance industry, lawyers were defining the rights of free citizens under the Magna Carta.

When the Robber Barons of nineteenth-century America sacrificed the lives of their employees in unsafe workplaces throughout the country, lawyers and judges in courtrooms across America were breathing life into the Constitution and gradually and painstakingly protecting, on a case-by-case basis, the individual rights of American citizens. Therefore, as we carry forward the mantle of responsibility for protecting those hard-won rights, we must not shirk from the media and legislative attacks on our noble profession. Just as elements of modern corporate America perpetuate the principles of its forefathers, the nineteenth-century Robber Barons, so must we follow our legal ancestors, Jefferson, Madison and Lincoln, in preserving the freedoms which lawyers have defined and have defended for centuries.

Both as professionals and as individual attorneys, we must never lose sight of the respect which we deserve for the role we play in society, a role which extends far beyond the courtroom. We must bring our individual and collective talents to bear to defend freedom with pro bono work for the disadvantaged, consumer protection advocacy for those not yet killed or maimed by defective products, protection of the civil liberties of every individual whose rights are threat-

ened, and legislative advocacy, both offensive and defensive in state and federal legislative halls.

While the insurance industry and other powerful interests aim to discredit lawyers, only America's legislators can effectively silence them. Before legislators silence America's voices of freedom, intellectual integrity dictates that they examine the cultures that have no independent lawyers and determine how these lawyerless societies have fared. Today it is American trial lawyers who are pouring into the Eastern European countries to spread democracy and establish the right to trial by jury, ironically a right which is under corporate attack in our own country.

Since the past is prologue, every trial lawyer should examine the antecedents of our great profession in order to better understand our role in society today and our obligations to the citizens of tomorrow.

When we think of those who preceded us in this noble profession, we become imbued with the spirit, the virtues and the values which we are called upon to preserve, protect and perpetuate. A review of our antecedents, whether gestalt or collage, establishes that greatness was the hallmark of our legal ancestors, and the mantle which they passed is worthy of nothing less than our best efforts to bear it, in all its glory, improve it with devotion and dedication to its principles, and pass it to our successors, draped in greater dignity than when we received it.

Even a cursory review of the vital role that lawyers have played in America's history reveals a discernible common thread: our legal predecessors have steadfastly refused to stand silent in earlier power struggles which threatened individual liberties, regardless of the enormity or the source of the threat.

The self esteem of our profession increases when we consider who are the forefathers of today's American lawyers and how did they respond to attempts to silence lawyers and thereby stifle individual freedoms:

We see lawyers in the philosophical forefront of our great country: we see him with quill in hand in Monticello and Philadelphia and in Washington as he defined in writing the rights of American citizens. His name was Thomas Jefferson and he was a lawyer.

We see him at that miracle in Philadelphia, the Constitutional Convention of 1787, fighting for the Bill of Rights which became the credo of American freedom, and at his desk drafting the Federalist Papers to lead the land he loved in the right direction, towards individual freedom. His name was James Madison and he was a lawyer.

We see him addressing the delegates of the Second Virginia Convention, exhorting the battle cry of the republic, "Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!" His name was Patrick Henry and he was a lawyer. Where would America be today if these lawyers had been successfully silenced?

We see them at the birth of America: defying the tyrannical dictates of King George III at the risk of their lives as they lead the revolution against the Stamp Act of 1764; we see twenty-five lawyers among the fifty-six signers of the Declaration of Independence; we see them drafting the Articles of Confederation and as leaders of the Constitutional conventions of the new states. Their legions include John Jay, Alexander Hamilton and John Marshall and they were lawyers. Where would America be today if these lawyers had been successfully silenced?

We see them occupying the Presidency, leading America through the crucial formative years of our Republic as thirteen of our first sixteen Presidents from Washington through Lincoln were lawyers. In addition to Thomas Jefferson and James Madison, their numbers include such shapers of America's destiny as John Adams, James Monroe, John Quincy Adams and Andrew Jackson. As the forty-second President occupies the White House today, he is the twenty-seventh member of our distinguished profession, which makes it all the more ironic that much of the recent lawyer bashing emanated directly from the White House.

We see lawyers leading the country in wartime: at Gettysburg with tears in his eyes rededicating our country to the principles of equal justice for all. His name was Abraham Lincoln and he was a lawyer.

And speaking to us from his wheelchair, lifting our spirits, making us stronger with his inspirational philosophy, "The only thing we have to fear is fear

itself.” His name was Franklin Delano Roosevelt and he was a lawyer. Where would America be today if these lawyers had been successfully silenced?

We see lawyers in the Criminal Courts of twentieth century America: at the bar of justice from Chicago to Dayton, Tennessee, breathing life into the Constitution and helping define and defend individual rights. His name was Clarence Darrow and he was a lawyer.

We see lawyers crying out for the civil rights of their black brethren, demanding equal justice for all: as we see her addressing the Democratic National Convention as its keynote speaker and capturing the hearts and minds of those who heard her extolling the virtues of democracy and individual freedom in the halls of Congress. Her name is Barbara Jordan and she is a lawyer.

And we see him at the Bar of justice of this great land and finally, on our highest bench, reminding us all that justice is colorblind and that all citizens of this great country, regardless of race, creed or color, are equal under the law. His name was Justice Thurgood Marshall and he was a lawyer.

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We see lawyers in recent years at the helm of the Association of Trial Lawyers of America: we see him in the courtrooms and classrooms of Connecticut and at lectern after lectern across the land, lecturing to the lawyers he loved. His name was Teddy Koskoff and he was a lawyer.

Teddy reminded us that, if you are a lawyer, you stand between the abuse of governmental power and the individual, the abuse of corporate power and the individual and the abuse of judicial power and the individual. And if you are a lawyer, you are helping to preserve the precious freedoms of our past, defending the individual citizen's rights today and protecting the rights of America's citizens for generations to come.

We see him in the Congressional halls: testifying, cajoling and demanding that the rights of America's consumers and citizens not be rent asunder in the name of corporate profit and political expediency. He is the consummate consumer advocate, his name is Ralph Nader and he is a lawyer.

We see him at the Southern Poverty Law Center: we see the son of tenant farmers as he emerges from the cotton fields in rural Alabama to become one of the great civil rights lawyers in history, confronting death threats to himself and his family in order to bring the klan, skinheads and other hate groups to the bar of justice. His name is Morris Dees, he is a lawyer.

We see them at the bar of justice in Texas: representing the halt and the lame, the widow and the orphan and the catastrophically injured whose future quality of life rests on their immense skills and unswerving sense of justice. We listen as they teach us how justice can best be achieved in the face of overwhelming odds, doing battle with corporate America. We watch in awe as they show us how David, armed only with a stone of justice, can bring down today's gargantuan Goliath, manufacturers of defective and dangerous products. Their numbers are legion but their names include Scotty Baldwin, Bob Gibbins, Joe Tonahill and Joe Jamail and they are lawyers. They are our leaders, our friends, and our inspiration as they remind us of the mantle of responsibility which we carry as lawyers today. Where would the victims of defective products be if these lawyers had been successfully silenced?

We see them as women lawyers, inspiring others as role models: in the courtrooms, leading others through example and exhortation in the battles for equal justice for all, including women and minorities. As their ranks are constantly increasing to the great benefit of our profession and those whom we represent, their leaders include former ATLA President, Roxanne Conlin, and she is a trial lawyer.

As has been often proven over the centuries, Shakespeare was right: if tyranny is to prevail, tyrants must first kill all the lawyers. Equally relevant today, if corporate tyranny is to prevail, corporate tyrants must defame, degrade, and thereby discredit all the lawyers. Once again, the timeless wisdom of Shakespeare is proven. He would have made a great trial lawyer.

It will serve us all, legislators, judiciary and lawyers, to recognize that the ultimate aim of the tort reform movement is the abrogation of those individual rights and liberties of American citizens, consumers and tort victims which are the bedrock of American democracy. As Newsweek magazine stated: "The war

against the lawyers is at bottom a camouflaged aggression against the jury system”.

Fortunately, there are multitudes in our society who recognize our role and respect us for it. As his holiness, Pope John Paul II, stated:
As trial lawyers, you are committed to the resolution of conflicts and the pursuit of justice through legal and rational means. This work is indispensable to the construction of a truly humane and harmonious social order, as the centuries old judicial experience of the West bears eloquent witness.

Therefore, let us never forget the mandate which we assumed upon taking the oath at the bar of this great country: as long as trial lawyers continue to preserve the independence of our judges and juries; as long as trial lawyers uphold by due respect, daily practice and distinguished conduct the dignity of the bench and bar, and most importantly, as long as trial lawyers continue to vigorously and unselfishly answer our noble calling of protecting the inalienable rights of tort victims, abused consumers, and the downtrodden in our society, then the profit motivated prattlings of that unholy alliance of tort deformeders will take their proper place in the alleyways of anonymity.

The role of each of us is to accept the mantle of those who led us through example and exhortation in the past, who inspire and imbue us with a sense of our vital role in society in the present, and to carry the mantle as the men and women of the American trial bar who, through our daily activities in the courts of this great land, preserve, protect and defend the Constitution and the rights of America's citizens for the future.

Our obligation to America is to accept the Bard's compliment as a challenge and so conduct ourselves as to assure that, as long as the bench and trial bar continue to breathe life into the common law and Constitution, those respected and revered principles upon which our democracy is based shall continue to carry the indelible imprimatur of the legal profession and be closely guarded by the true sentinels of freedom, the judiciary and the trial lawyers of America.

I am extremely proud to be a member of this great profession and I urge each of you to reflect on the mantle of responsibility which we bear, the challenges we face and the level of complete commitment to individual rights which has been the hallmark of our profession for centuries. Indeed, we must conduct

ourselves so that for centuries to come the refrain of the tyrants and demagogues must remain: “the first thing we do, let’s kill all the lawyers.” Thank you, Mr. Shakespeare, for the compliment. We shall strive to deserve it.