

# The Silent Litigation Crisis

By Steven B. Hantler  
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Home Depot co-founder Bernie Marcus convincingly made the case that excessive litigation has caused a real crisis in America in his Sept. 7 Examiner guest editorial headlined "America's litigation crisis." Mr. Marcus provided ample data showing that this crisis harms consumers, employees, patients and investors as well as small-business owners, nonprofits and charities. The toll on our economy is staggering, and the crisis is worsening each year.

Yet our legal crisis rarely makes front-page headlines or lead-ins to the evening news. Nor is it a frequent topic of conversation over breakfast or at the water cooler. The legal crisis is largely a silent crisis, even though it has been growing like a virulent cancer over the past decade.

Why does this crisis get such little attention? My conclusion is that Trial Lawyers, Inc. -- the nexus of special interests that is the trial bar -- has spun a cocoon of misinformation and myth to obscure what it is up to.

Corporations, for instance, are routinely condemned for putting profits ahead of safety. The plaintiffs' bar, and its cheerleaders in the media and popular culture, insist that corporate America must be brought to heel through massive damage rewards -- which, the argument continues, are almost always reduced to a pittance in post-trial proceedings. Besides that, the argument goes, corporations never settle a case unless they are guilty. Socking a company with a massive settlement is said to be a jury's civic duty.

All of which is wrong -- and ridiculous. So is the way trial lawyers portray themselves as poor little Davids taking on corporate Goliaths. Class-action lawsuits, they tell us, are all about getting the little guy his or her due, when in fact it is lawyers who reap almost all the booty. There are lawyers whose billing sometimes works out to tens of thousands of dollars per hour in these cases. Plaintiffs are lucky to get pocket change.

This self-serving litany goes so far as to insist there is no liability crisis, and anyone who says there is must be on a corporate payroll.

An unmistakable Ralph Nader tune runs through these arguments: Business is a monolithic entity that is aloof, arrogant and dishonest. Most contemporary business people agree that consumer activists once served a useful purpose in focusing corporate America -- and consumers -- to awaken to the needs of safety. After 40 years, however, Nader et al. sound like they're stuck in a '60s time-warp. Nader still speaks of a

"corporate plutocracy" that is "moving on all fronts to advance narrow profit motives at the expense of civic values."

This is the language of zealotry and conspiracy theory we often associate with the work of Oliver Stone and other sages from La-la Land. It is telling that in the remake of the Cold War movie "The Manchurian Candidate," the new villain is Corporate America. In the original, you'll recall, the bad guys were part of an international Soviet/Chinese Communist conspiracy bent on taking over the United States.

These days, the law is our culture's principal drama, much as Westerns and detective shows were in past decades. Just as the sheriff was always the good guy, so these legal thrillers are invariably told from the side of the plaintiffs' bar. In all of them -- films "A Civil Action" and "The Rainmaker," and television show "The Practice" -- the story reaches the denouement when the courageous trial attorney, in the person of John Travolta, young Matt Damon or fiery Dylan McDermott, hammers the railing and tells the jury that a great wrong has been done.

And so when an Enron-type story comes along, the refrain is, "We told you so!"

Most corporations -- like most individuals -- aren't WorldComs or Enrons. They don't need a punitive sword of Damocles to force them to do what's right. Nor do they deserve to be demonized by Trial Lawyers, Inc. for the cynical purpose of protecting a litigation industry that, as Bernie Marcus reminded us, is doing massive damage to our economy and way of life. That's the real story.

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