

A CONSUMER RIGHTS DREAM

by William Turley

William Turley is CASD's President for 2001. In 2001, you may notice a change in direction of the topics addressed and the views expressed in the President's Column. Mr. Turley has an active political background and, from time to time, will discuss topics of a political nature. The views, opinions and conclusions expressed in the CASD President's Column do not necessarily express the official views, opinions and conclusions of CASD as an organization.

Make no mistake about it -- the manufacturers and insurance companies have spent an astronomical amount of resources to limit, curtail, and/or eliminate consumer rights. And they have been, to a large extent, successful in doing so.

The war the manufacturers and insurance companies have waged has been -- and continues to be -- on so, so many levels. Most of us see it every day in the law. We have spent year after year trying to beat back one bill after another in Sacramento that would limit consumer rights. We have all seen that battle. But that is only a small part of the war that has been waged. The war against consumer rights is much larger and more pervasive than we may have initially realized.

TORT REFORM

"Tort reform" is a euphemism for the systematic elimination of consumer rights under the civil justice system by making it more difficult, if not impossible, to hold wrongdoers responsible in court. Three groups have the sole purpose of supporting tort reform:

(1) The American Tort Reform Association (ATRA): This group is funded by insurance companies (like State Farm) and major tobacco companies (like Philip Morris) and oil companies.

(2) The Association for California Tort Reform (ACTR): This group is funded by the same

corporations which fund ATRA.

(3) Citizens Against Law Suit Abuse (CALA): Founded by millionaire business people and funded by ATRA.

Tort reform is about change: change for corporate polluters, murderers and criminals. The "change" is to make it easier to pollute our environment, manufacture dangerous products and to refuse to honor insurance contracts. The "change" is for corporations to not be held responsible when they pollute, murder, maim and plunder consumers.

CONGRESS AND THE CALIFORNIA LEGISLATURE

This is where most people assume the battle over tort reform has been and is being waged. This is only because it is easier to see the battle in the legislative arena. Interestingly, it is here -- the legislature -- that the tort reform battle has been least successful. Tort reform in the legislature has resulted in a substantial limitation of consumer rights; however, there is only so much that can be accomplished in both Sacramento and Washington due to various checks and balances imposed upon both Congress and the California Legislature. The tort reform efforts which have originated from the legislature are easier to see and identify. An obvious example is MICRA here in California. However, the legislative arenas in both Sacramento and Washington have in no way proved to be the most fertile ground to elevate corporate "rights" over consumer rights.

THE JUDICIARY

Whether or not you see it as part of an over-all strategy to promote corporations and insurance companies over consumers and victims, there is no denying the change in the judiciary over the last 20 years. This is as true -- although by different means -- at the federal level as well as at the state level.

The Rose Bird California Supreme Court tilted the legal winds in favor of consumers. The popular opinion is that the Rose Bird Court -- at least the members who were perceived as more liberal -- were ousted by the electorate because of the Supreme Court's positions on crime and the death penalty. But, it should also be pointed out that the Bird Court took on the insurance industry, manufacturers and Agri-business. All of these would, literally, greatly profit by the demise of the Bird Court.

In light of the gridlocked California Legislature and the unprecedented power of Willie Brown during the Bird Court era, changing the law in favor of corporations and insurance companies was an almost impossible task, unless, of course, you replaced four "liberal" judges with four Republican appointees. Remember, all politics are local when you get right down to it. And, all politicians fully realize that judicial appointments, especially at the Supreme Court level, are political. So what could not be achieved in the past at the Legislative level regarding "tort reform" is now seemingly routinely achieved by the courts.

Although a different means was used, the same result has been obtained at the federal level. The United States Supreme Court has seven Republican appointees. This Court is comprised of five "conservative" justices, four "moderates" and no "liberals". The appellate courts and trial courts have been greatly affected by years of Republican appointees and a Senate that blocked most of President Clinton's judicial appointees who did not share their anti-consumer ideology.

The less cynical will say that politics is as American as apple pie. The California and United States Supreme Courts are no different. That was as true with Rose Bird as it is now with Anthony Scalia. Certainly no laws were broken in the process of the California and American courts becoming anti-consumer and pro-corporation and pro-insurance industry. The courts arrived at their "conservative" bents well within campaign contribution laws. The judiciary, from the United States

Supreme Court to the lowest trial court is political. Certainly the recent United States Supreme Court decision in the 2000 Presidential Election is illustrative of how political the judiciary really is in America. The nation's highest court has been political since the days of Justice Marshall. It is no less so today.

PUBLIC OPINION

One might ask, how did the corporations and insurance companies get away with this? And here lies the basis of the "tort reform" campaign: the public. During voir dire of potential jurors, you must always ask, "How many people think that there are too many frivolous lawsuits?" and "How many people think that there are too many excessive verdicts against corporations?" In every trial that I have, every hand goes up to both questions. Every hand. Why? Because the manufacturers and insurance companies have done an almost unbelievable job in convincing the public that there are too many lawsuits. Too many frivolous lawsuits. Too many fraudulent lawsuits. Too many "excessive" verdicts. Large verdicts are bad.

In this atmosphere what chance do you think that victims and consumers have to get a fair trial? The law is increasingly against consumers. The judiciary is largely pro-corporations and insurance companies. Most jurors assume that your case is frivolous or a fraud. Other than that, consumer victims have a pretty decent chance at justice here in California.

EDUCATING AND EMPOWERING THE PEOPLE

So, what are we going to do about this? You can give up the fight. You can pretend that this hasn't really happened. You can simply go along with the system. Don't make waves. Don't speak the truth. You can be afraid that you will offend people.

Or you can fight. In California, **the fight begins and ends with the public**. You cannot count on any rapid shift in pro-consumer judicial appointees in California.

You can't change the political system without the votes. And you know what? California is dominated by the Democratic Party. The party of the people. The party of the consumers. The party of the victims. However, don't count on the Democratic Party to educate the public. Most of the "leadership" of the California Democratic Party is not going to lead the pro-consumer parade (although there are a few exceptions), unless and until we have true campaign finance reform. The corporations and insurance companies have learned too well what influence their money can and will buy.

In order to take back victims' rights in California, the battle has to be over public opinion. Very few politicians have the courage to lead the parade. The consumers' parade will be no different. We have to take the fight to the people. We have to educate the public. We have to expose this anti-consumer strategy for what it is. Politics is about values. What are we, as a society, going to value more: the right of consumers or the right of corporations to pollute, murder, and plunder? Thus, the consumer parade has to grow so large that it simply cannot be ignored.

There is the beginning of an under-current in America. People are starting to see through the lies. The deception can only be carried out for so long. The smoke and mirrors will hide the evil for only so long.

You can see the under-current in verdicts against corporate criminals, polluters and murderers which are steadily on the rise. These verdicts reflect a trend. The trend is that the public is starting to realize that corporations are murdering, maiming, stealing, polluting, and jurors are becoming more and more empowered.

It is our job to educate the public. It is our job to turn the light on the forces of darkness. It is our job to expose the evil. **We live in an incredible age.** Time was you needed a printing press to educate the public. Time was that you had to own a newspaper or a network if you wanted to

shed light on wrongdoing. But these newspapers and media networks were and are owned by the same people who profit from the corporate wrongdoing. And even if they are not, these newspapers and media networks depend on corporations for their advertising revenues. The chance that the media will fight the corporate criminals is almost non-existent.

But we live in a different age now. The Internet has, to a large extent, changed the flow of information in our world. The Internet is a tool that we must seize in order to educate the public.

The public has to learn that large verdicts are the only thing that will cause corporate America to listen. The public has to learn large verdicts are the only thing that will create responsibility in corporate board rooms. The public has to learn that consumer attorneys are the only people that can and will protect them from corporate plundering and destruction. **Instead of the public, and thus the jurors, believing that there are too many "excessive" verdicts, they must learn that there are not enough large verdicts against corporate wrongdoers.** Corporations will only stop polluting, killing, maiming, and plundering when American juries make them stop. Only a jury has the power to make them stop.

WHAT WE CAN DO ABOUT IT?

A CALL TO ARMS!

CASD works with Consumer Attorneys of California (CAOC) on political issues. And CAOC is a part of the Association of Trial Lawyers of America (ATLA). Collectively these are the only organizations that protect the right to jury trial in California and the United States. Most of us realize that political action often means raising money to support political candidates. I urge you to contribute to CAOC-PAC and ATLA-PAC. However, political action is **not** just contributing money.

I have been involved with fund-raising for years. At times, hardly anyone will take my calls

because they know I will be asking for political money. When I make these fund-raising calls, I have constantly heard that people are either tired of giving money or they are tapped-out. People ask, "What can I do besides giving money?" The answer, my friend, is blowing in the wind. The wind of public opinion.

CASD WEB SITE

CASD needs your help. We need help with our CASD web site. We must wage a battle for the hearts and minds of the California people. Once the public hears the truth about corporate criminals, corporate indifference, and corporate plundering they will join us in our fight. We have a way to reach these goals -- the CASD web site has the potential to reach the public **before** they become jurors. From content, to editors, to the technology -- we need your help with the CASD web site.

CASD OUTREACH COMMITTEE

We need help with our CASD Outreach Committee. We need help in educating the public. We need your help in reaching out and educating so many groups that share many of our values. From college students to labor unions to gay and lesbian groups to environmental groups to the disenfranchised, we must call out to these people to help themselves. **Knowledge is the key.** Let us empower those groups for consumer causes.

CASD PEOPLE'S LAW SCHOOL

We need your help with our CASD People's Law School. We have a unique opportunity. We can produce television segments for public and cable television. CASD will be applying for grants for the production of segments concerning the civil justice system. We can really take this to the next level with your help and efforts. We need help with production, content, and persons to be both "on camera" and behind the cameras.

CASD MEDIA RELATIONS COMMITTEE

We need your help with our CASD Media Relations Committee. We can educate the public through the media. Sure, it is difficult to get pro-consumer articles published in our daily newspaper. However, there are a number of more consumer friendly newspapers and television stations in San Diego that we can use to spread the pro-consumer message.

CASD needs more involvement by YOU in order to protect the rights of injured victims and to protect the public against companies dumping toxins into our environment or manufacturing dangerous products. It is our responsibility to protect the people of California. It is my dream that one day, during voir dire, a defense lawyer in one of my trials will ask, "Who here thinks that there are not enough large verdicts against corporate wrongdoers?" And every juror's hand will be raised!