THE CALA FILES:

The Secret Campaign by Big Tobacco and Other Major Industries to Take Away Your Rights

BY CARL DEAL AND JOANNE DOROSHOW

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By Carl Deal and Joanne Doroshow

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Carl Deal is a freelance investigative journalist based in New York City. Joanne Doroshow, Executive Director of the Center for Justice & Democracy, is an attorney who has represented consumer interests on civil justice issues since 1986. Frank Clemente, Director of Public Citizen's Congress Watch, helped conceive and edit *The CALA Files.*

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Center for Justice & Democracy
P.O. Box 3326
Church Street Station
New York, NY 10008-3326
212/267-2801
emily@centerjd.org
centerjd.org

or

Public Citizen
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Executive Summary

For the last 15 years, insurance companies, manufacturers of dangerous products and chemicals, the tobacco industry and other major industries have been engaged in a nationwide assault on the civil justice system. In nearly every state and in Congress, corporations and their insurers have waged a relentless campaign to change the laws that give sick and injured consumers the ability to hold their offenders responsible for the injuries they cause. And in the year 2000, the corporate assault on the civil justice system has emerged as a presidential campaign issue.

The goals of these attacks on the system are clear: to insulate corporations from lawsuits for their reckless behavior and to strip the rights of injured consumers who would be entitled to compensation. Threatened by the willingness of impartial juries to penalize them where it hurts most — their bottom line — corporations and their insurers are out to convince the public that the civil justice system is "out of control" and needs to be scaled back.

The business-led effort to take away consumers' legal rights (called "tort reform" by its corporate proponents; "tort deform" by its pro-consumer opponents)* has had at its helm the American Tort Reform Association (ATRA) located in Washington, D.C. In turn, ATRA has contracted with APCO & Associates, one of the nation's leading "grassroots" lobbying/PR firms.

Among other things, APCO's job has been to build a network of local organizations that act as mouthpieces for anti-consumer tort law changes. They euphemistically call themselves any number of names, typically: Citizens Against Lawsuit Abuse (CALA), Lawsuit Abuse Watch, Stop Lawsuit Abuse, or People for a FAIR Legal System. In this report they are collectively referred to as "CALAs." While CALAs masquerade as grassroots citizens groups spontaneously manifesting citizen anger against so-called "lawsuit abuse" in their states, this report shows the CALAs to be part of a national corporate-backed network of front groups that receive substantial financial and strategic assistance from ATRA, APCO and some of America's biggest corporations.

For this report, the Center for Justice & Democracy (formerly Citizens for Corporate Accountability & Individual Rights) and Public Citizen studied CALA groups in 18 states. Drawing from the cache of tobacco industry papers released in connection with state lawsuits against the five major tobacco companies, other public documents and interviews with lobbyists, elected officials and paid consultants, this report shows how large corporations seeking to reduce their liability to consumers created and bankrolled the CALA campaign to manipulate the media, the legislative process, the electoral process, and the American public.

This report identifies many of the corporations, national lobbying groups and political consulting firms behind the state CALA groups, and exposes how the tobacco industry has concealed its leading role in order to preserve the CALAs' credibility in the public eye. Among the report's key findings are the following:

- Since 1991, "tort reform" advocates have set up dozens of tax-exempt groups in at least 18 states (currently there are 27 active groups) to plant their "lawsuit abuse" message in the media and the public consciousness, and to influence legislation, the judiciary and jurors. These groups claim to speak for average Americans and represent themselves as grassroots citizens groups determined to protect consumer interests. But their tax filings and funding sources indicate that they actually represent major corporations and industries seeking to escape liability for the harm they cause consumers — whether it be from defective products, medical malpractice, securities scams, insurance fraud, employment discrimination or environmental pollution. These organizations hide their pro-business agenda behind consumer-friendly names like Citizens Against Lawsuit Abuse, Stop Lawsuit Abuse, Lawsuit Abuse Watch, and People for a FAIR Legal System. (See pp. Xxx for more details.)

- While CALA groups tell the media, as well as lawmakers, that they are sustained by small donations from ordinary citizens, the money trail from many of these groups leads directly to large corporate donors, including tobacco, insurance, oil and gas, chemical and pharmaceutical companies, medical associations, and auto manufacturers. They are also funded by ATRA, as well as professional associations, local businesses and industries that also wish to be shielded from consumer lawsuits. (See pp. Xxx for more details.)

- A huge cache of documents made public during the state attorneys general litigation against the tobacco industry in the late 1990s that was specially analyzed for this report reveals that Big Tobacco spent millions of dollars a year (and in at least one year $15 million) supporting ATRA, state CALAs, and other activities to weaken tort laws in many states. For instance, in 1995, Big Tobacco allocated $5.5 million for ATRA, more than half of ATRA's budget. In some cases, CALAs, such as the one in Louisiana, were virtually created by the tobacco industry. Tobacco money has gone directly to ATRA, APCO, and state organizations. It has also been indirectly funneled to the cause through law firms, such as the Washington, D.C. firm Covington & Burling, trade associations and lobbyists. The industry's Tobacco Institute also played an instrumental role through its State Activities Division. In the 1980s, Big Tobacco's efforts were instrumental in the passage of legislation immunizing the industry against products liability claims in New Jersey and California. Other states in which the industry secretly worked to undermine tort laws include Hawaii, Louisiana, Massachusetts, Mississippi, New York, Pennsylvania, and Texas. (See pp. Xxx for more details.)

- The CALA blueprint was honed in South Texas in the early 1990s where the first group to carry the "lawsuit abuse" message ran doom and gloom television and radio ads warning that the legal system was out of control, affecting the economy and the pocketbooks of average people. Creating a model that was duplicated nationwide, the Texas CALA groups developed a statewide support network that included the Texas Chamber of Commerce, the right-wing Texas Public Policy Foundation, and numerous corporations wishing to shield themselves from consumer lawsuits. (See pp. Xxx for more details.)

- Governor George W. Bush, who raised more than $4 million in his gubernatorial races from corporate special interests who have benefited from his "tort reform" platform, has been one of Texas CALA's most prominent champions. One of his first acts as governor in

1995 was to meet with representatives of nine Texas CALAs after which he declared a legislative "emergency" on "frivolous lawsuits." Governor Bush subsequently signed into law a series of brutal "tort reform" measures. (See pp. Xxx for more details.)

- In 1991, then U.S. Solicitor General (and former tobacco lawyer) Ken Starr prepared an influential "Starr report" on behalf of the White House Council on Competitiveness, headed by Vice President Dan Quayle, making "tort reform" a priority issue for the George Bush administration. Quayle took the Starr report on the road in 1992, and helped encourage Texas CALA to go statewide, then nationwide. (See pp. Xxx for more details.)

- From its Washington, D.C. headquarters, ATRA helped take the CALA campaign statewide in Texas, then nationwide by making direct contributions to the groups, by providing them with material and by developing a series of cookie-cutter advertising campaigns. The CALAs' strategy and message has been coordinated by ATRA and its public relations consultant APCO & Associates, which supply the groups with strategic guidance, media training, and pre-produced radio, television, print advertising and billboards designed for maximum media exposure and legislative impact. Other regional and national political consultants and polling firms help tailor the CALA message to local concerns. (See pp. Xxx for more details.)

- Although CALAs are tax-exempt non-profit organizations prohibited from endorsing candidates or contributing to campaigns, they try to exercise considerable electoral influence, often in coordination with local business associations and Political Action Committees. A principal focus since the mid-1990s has been to ensure the election of pro-industry state judges and the defeat of judges who typically support plaintiffs' verdicts or have voted to strike down state tort law restrictions as unconstitutional. The tobacco industry has also been involved in such elections, for example, in Texas, Louisiana, Mississippi and Alabama. Such activities also became a significant focus for ATRA and APCO as well in the late 1990s as more and more state courts have struck down tort law restrictions. Their tactics have included running issue ads, distributing biased evaluations of judges records, and identifying trial lawyer contributions to judges. Some version of these activities designed to influence elections have occurred in Kansas, Michigan, Ohio, Oklahoma and West Virginia, in addition to the states identified above. (See pp. Xxx for more details.)

The CALA message is a sly deception designed to appeal broadly to patriotic, hard-working Americans, many of whom will ultimately serve on juries. At its core, the message equates "lawsuit abuse" with the efforts of injured consumers seeking to recover damages from those responsible. More broadly, the CALA message is based on the falsehoods that the legal system has spun out of control; that lawsuits tax the economy and consumers; that lawsuits create economic hardship for working people; that the tort law system is designed to line the pockets of trial lawyers; and that tort laws are anti-consumer. Unfortunately, many jurors around the country have been influenced by this erroneous message due to the marketing campaign of ATRA, APCO and the CALAs, and as a result, statistics reflect juries' increasingly antagonistic attitude toward injured plaintiffs.

Introduction

The so-called "tort reform" movement largely originated in the mid-1980s in the midst of a "liability insurance crisis" created by the insurance industry. Insurance companies began hitting businesses, doctors, non-profit groups and others with dramatic increases in insurance premiums, reduced coverage and arbitrary policy cancellations. However, study after study found that the insurance "crisis" was actually a self-inflicted phenomenon caused by the mismanaged underwriting practices of the insurance industry.

As *Business Week* magazine explained in a January 1987 editorial, "Even while the [insurance] industry was blaming its troubles on the tort system, many experts pointed out that its problems were largely self-made. In previous years the industry had slashed prices competitively to the point that it incurred enormous losses. That, rather than excessive jury awards, explained most of the industry's financial difficulties."[1]

A similar conclusion had also been reached by the Ad Hoc Insurance Committee of the National Association of Attorneys General. After studying the "crisis" in 1986 their report stated, "The facts do not bear out the allegations of an 'explosion' in litigation or in claim size, nor do they bear out the allegations of a financial disaster suffered by property/casualty insurers today. They finally do not support any correlation between the current crisis in availability and affordability of insurance and such a litigation 'explosion.' Instead, the available data indicate the causes of, and therefore solutions to, the current crisis lie with the insurance industry itself."[2] But to justify its premium-gouging behavior, the insurance industry began provoking unsubstantiated talk of a "litigation explosion" and "out-of-control" juries. Calls for "tort reform" were heard around the country.

Many states succumbed to the political pressure and passed anti-consumer tort law changes, but it was not until the late-1980s that a nationwide coordinated effort to restrict consumer legal rights emerged. Throughout the 1990s, it was coordinated in significant part by the Washington D.C.-based American Tort Reform Association (ATRA) and its "grassroots" lobbying/PR firm, APCO & Associates. A principal focus of the effort was the establishment of Citizen Against Lawsuit Abuse groups in all their various forms, also called Lawsuit Abuse Watch, Stop Lawsuit Abuse, or People for a FAIR Legal System. They are collectively referred to in this report as "CALAs."

ATRA is a coalition of more than 300 major corporations and trade associations. Virtually every industry that wants to insulate itself from consumer lawsuits — tobacco, insurance, pharmaceutical automobile, airlines, oil and gas, and chemical — have participated in the campaign by either being members of ATRA and/or by directly supporting local CALAs. Big Tobacco has played an especially pernicious role by lending substantial secret support to the CALAs.

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* For consistency purposes, this report uses the term "tort reform" throughout. However, its use here in no way implies the authors' acceptance that such laws represent positive "reforms." In fact, "tort reforms" are extremely damaging laws. The use of quotation marks around the term is meant to emphasize that point.

Since 1991, when the first CALA appeared, the CALA campaign has extended into some 18 states with at least 40 groups. (See Appendix for a complete list of CALA groups.) While many CALAs were short-lived projects designed to generate support for specific legislation, there are currently some 27 active groups. While each local group alters its agenda to address the immediate needs of its political and corporate allies, they all stick to a basic game plan laid out by APCO and ATRA. This includes trying to undermine public support for a strong civil justice system by promoting myths about the legal system, demonizing the opposition (in particular, trial lawyers who represent consumers in the court room), and generating constituent pressure on lawmakers.

Throughout the 1990s, CALAs have targeted public opinion and community leaders — and potential jurors — through expensive public relations campaigns that deliver carefully packaged messages over the airwaves, in newspapers, on billboards and in shopping malls and living rooms. As a result, CALA groups have helped make the supposed need for tort law changes a major political issue across the country, resulting in corporate immunity laws being enacted in dozens of states.

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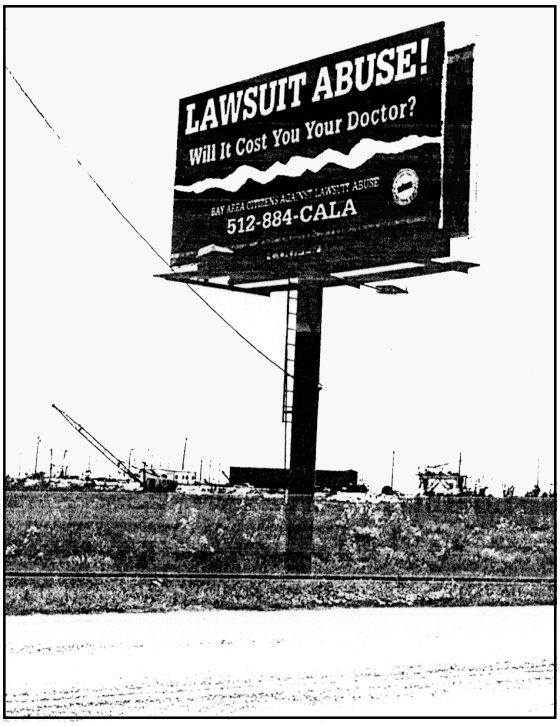
New information reviewed for this report reveals the inner workings of CALA groups, and shows exactly how they were used to complement the lobbying efforts of large corporations and their insurers. In 1999, five major tobacco companies settled lawsuits with 46 states for $206 billion over 25 years to reimburse the states for the costs of treating tobacco-related illnesses. As part of the settlement, thousands of previously secret industry documents were put into the public domain, which provided the authors with a rich cache from which to analyze the substantial role of the tobacco industry in funding CALAs and the "tort reform" movement.

To further pull back the veil of secrecy on the CALA campaign, the authors undertook an extensive review of IRS and other public documents and conducted scores of interviews with lobbyists, elected officials and paid consultants. The result is a report showing how large corporations seeking to reduce their liability to consumers created and bankrolled the CALA campaign to manipulate the media, the political process, the electoral process, and the American public.

It should be noted that ATRA and the CALAs are by no means the only corporate forces pushing for tort restrictions in the United States. The same corporate interests that back ATRA

and the CALAs have also sunk many millions of dollars into scores of other conservative, industry-sponsored organizations, such as "think-tanks," interest groups, and public relations, polling and lobbying firms that support "tort deform." These include national organizations like Citizens for a Sound Economy, American Legislative Exchange Council, Americans for Job Security, Center for Individual Rights, Federalist Society, Manhattan Institute, Competitiveness Enterprise Institute, the Washington Legal Foundation and the U.S. Chamber of Commerce, as well as state "civil justice leagues" and state business councils around the country, to name just a few.

These organizations are part of a much larger movement to enhance corporate power, which has grown exponentially in this country since the late 1970s. However, the CALAs have, in many ways, done more than any group to reach the average person, inciting public scorn for the civil justice system and the constitutional right of all Americans to jury trial in civil cases.



(CREDIT)

How CALAs Got Started - Honing the Message

In November 1990, the Rio Grande Valley Chamber of Commerce in Weslaco, Texas hired a political/marketing consultant named Jon Opelt to develop a program to counter a judicial climate it felt was too pro-consumer. The catalyst for the program was a $2.5 million jury award in September 1990 to two Mexican-American men who were illegally fired from a local sugar mill. The verdict, the Chamber said, could have shut down the mill and put hundreds of people out of work. It didn't. The mill settled the case, but the Chamber labeled it "lawsuit abuse" anyway and used the case to rally popular support for its agenda to limit people's rights to sue.

"We tried to make it a pocketbook issue. We figured that lawsuit abuse was something that people could understand."

— Political/marketing consultant Jon Opelt

Initial financing for the effort, which became the first Citizens Against Lawsuit Abuse group (Weslaco CALA), was provided by the Chamber, corporations doing business in the valley, and the local medical association seeking to stop medical malpractice lawsuits. Its chairman, Gonzalo Sandoval, was an executive with Central Power and Light.[3]

The Weslaco CALA launched its first campaign in January 1991, leasing five billboards along the busiest roads in the Rio Grande Valley with such messages as, "Lawsuit Abuse: Guess Who Picks Up the Tab? You Do." "We tried to make it a pocketbook issue," Opelt said. "We figured that lawsuit abuse was something that people could understand."[4] Indeed, several people involved in the CALA movement have told the authors that one of their dilemmas has always been how to recast the issue of "tort reform" - a term with which most non-lawyers are unfamiliar (in terms that average Americans can relate to. "Tort reform" was a difficult sell, but "lawsuit abuse," they learned, was not.

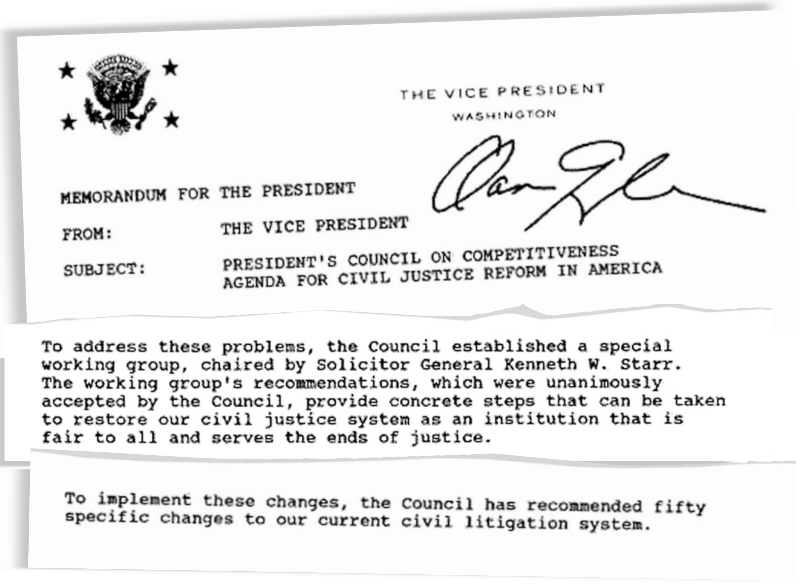
Polling confirmed this. The earliest polling of the "lawsuit abuse" message was conducted in South Texas[5] in a survey commissioned by the right-wing Texas Public Policy Foundation[6] (TPPF, whose funders include the Koch Foundation),[7] and TPPF's Center for Lawsuit Reform. The Center for Lawsuit Reform was formed to support the Weslaco CALA and a similar statewide effort by the Texas Chamber of Commerce, which lobbies for "tort reform" on behalf of thousands of Texas businesses. Conducted by Washington, D.C.-based Republican pollster Jan van Lohuizen, the survey determined that the issue of "lawsuit abuse" polled well with 67 percent of the south Texas residents surveyed. Compared to other campaigns, the study reported, "this level of awareness is quite high." (Lohuizen is currently working for Governor George W. Bush's presidential campaign.)

The first "lawsuit abuse" television ad ran in 1991 as part of the Weslaco CALA's $20,000-a-month publicity program. The ad portrayed a gloomy business environment in south Texas,

citing the "near closure" of the sugar mill that had wrongfully dismissed two workers. The Weslaco CALA also aggressively took on trial lawyers by posting ads that read: "Fairness Yes - Greed No." Opelt recalled, "It was kind of like David versus Goliath. We were David and the trial lawyers were Goliath."[8] David, it turns out, had the Vice President of the United States and an alliance of Fortune 500 companies on its side.

The Starr Report

The same year that Weslaco CALA ran its first ads, the White House Council on Competitiveness, headed by then Vice President Dan Quayle, embraced "tort reform" as a priority issue and assigned then-Solicitor General (and recent Clinton independent counsel) Ken Starr the task of developing a plan to overhaul the country's civil liability laws. Starr has represented tobacco companies and General Motors, among other clients, in products liability litigation. The "Starr report" was ready in August, 1991, and presented 50 recommendations for "tort reform" which it said were necessary to "maintain America's competitiveness."[9] President George Bush embraced the recommendations at an October White House ceremony in which he signed an Executive Order on Civil Justice Reform.



THE VICE PRESIDENT
WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: THE VICE PRESIDENT

SUBJECT: PRESIDENT'S COUNCIL ON COMPETITIVENESS
AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA

To address these problems, the Council established a special working group, chaired by Solicitor General Kenneth W. Starr. The working group's recommendations, which were unanimously accepted by the Council, provide concrete steps that can be taken to restore our civil justice system as an institution that is fair to all and serves the ends of justice.

To implement these changes, the Council has recommended fifty specific changes to our current civil litigation system.

Photo: George Bush Presidential Library

Two months later, an alliance of major trade groups and corporations, among them ATRA, American International Group (an insurance company), American Legislative Exchange Council, Eli Lilly & Co., 3M Corp., Morgan Stanley & Co., National Coal Association, National Federation of Independent Business (NFIB), Philip Morris and RJR Nabisco, joined together to give the Starr report momentum. One of the coalition's principal organizers was the Washington, D.C. law firm Covington & Burling, which for decades has represented the tobacco industry, including the now-defunct Tobacco Institute, and has been a leading force behind the "tort reform" movement. The alli-

ance called itself Citizens for Civil Justice Reform (CCJR). ATRA founder and then-president Martin Connor was designated chair of the "Grassroots Committee."[10]

Once secret documents recently made public in litigation by the state attorneys general against the tobacco industry (hereafter referred to as the "Tobacco Archives")[11] indicate that on December 17, 1991, Connor presented the CCJR leadership and Vice President Quayle with an update on grassroots recruitment efforts in the states.[12] Among Connor's assigned responsibilities was to work with another Washington, D.C. lobby firm, Valis Associates, to arrange events throughout the country at which the Vice President would stump for "tort reform."[13]

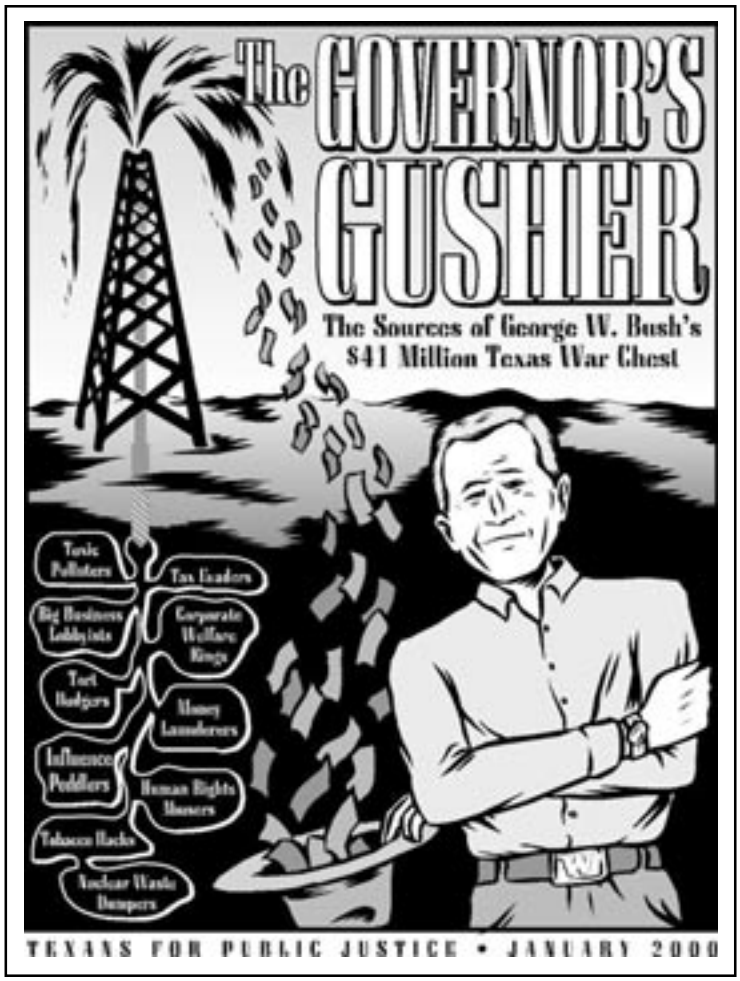
Subsequently in 1992, Vice President Quayle visited South Texas where he met with Weslaco CALA's President, Bill Summers, who is also president of the Rio Grande Valley Chamber of Commerce.[14] According to CALA documents, Quayle encouraged Summers to take the "lawsuit abuse" campaign statewide. As a result of that meeting between Quayle and Summers, the CALA documents reveal, similar campaigns were launched in San Antonio, Corpus Christi, Victoria and Beaumont, "all patterned after the Valley's highly visible and effective campaign."[15] The right-wing Texas Public Policy Foundation, and the Texas Chamber of Commerce were instrumental in helping to develop this statewide CALA network. Following that, CALAs started springing-up around the country, now existing in at least 18 states. In sum, the Weslaco CALA had become the CALA blueprint, growing from a regional campaign in the South Texas oilfields into a nationwide crusade.

The influence of the Texas CALAs continues. In the year 2000, the fate of civil liability laws has emerged as a presidential campaign issue, with Texas Governor George W. Bush one of the "tort reform" movements biggest proponents. One of Bush's first acts as governor in 1995 was to meet with representatives of nine Texas CALA chapters in a salsa factory outside of Austin, after which he declared a legislative "emergency" on "frivolous lawsuits."[16] Over his two terms, Bush signed a series of brutal bills that severely reduced injured consumers' rights, greatly reducing liability risks for Texas corporations. In June 1999, Gov. Bush took time out from raising money for the Republican presidential race to sign a bill preempting lawsuits by cities, counties and other governmental entities against the gun industry, a bill that was supported by the Texas CALAs.[17]

(CREDIT)

Bush's support of "tort reform" has reaped him some handsome rewards. Texans for Public Justice reported in a January 2000 study that "PACs, business and individuals affiliated with Texas' two major corporate tort groups contributed a total of $4.1 million to Bush's two gubernatorial campaigns. As such, these business tort interests contributed more than any other interest category besides Energy and Natural Resources.[18] The Los Angeles Times similarly

reported that, in his gubernatorial races, "Bush received $4.5 million from business, medical, real estate and other interests that waged a fight, supported by the governor, to make it more difficult to sue Texas firms."[19] At least 75 percent of the members of the Texas Civil Justice League, the oldest "tort reform" lobby group in the state, have contributed to Bush's presidential campaign. The League's President and chief lobbyist, Ralph Wayne, is a co-Chair of the Bush campaign and Chairman of the Board of the Washington, D.C.-based ATRA.[20]



The ATRA/APCO Connection

> ***"Legislators care only about three things in life, and substance is not one of them. They care about money,...votes, ... and how the media perceives them. As a grassroots consultant, ...your job is to manipulate those three things to your advantage."***
>
> —Neal Cohen, APCO & Associates

The American Tort Reform Association (ATRA) was formed in 1986 to represent hundreds of U.S. and foreign corporations in their bid to overhaul civil liability laws at the state and national levels. In his 1995 report for the Washington-based group Essential Information, John Gannon documented many of ATRA's members that sponsor the organization, often through huge financial contributions. Members are largely Fortune 500 companies with a direct financial stake in restricting lawsuits. Members have included representatives of the tobacco, insurance, chemical, auto and pharmaceutical industries. Corporate giants like Philip Morris, Dow Chemical, Exxon, General Electric, Aetna, Geico and Nationwide have all supported ATRA. Gannon found nearly 40 ATRA members are insurance companies or insurance-related organizations and six ATRA directors work for insurance companies or law firms that frequently represent insurers.[21] Legal Times also reported that, "most of [ATRA's] funding comes from large corporate donors. Insurance firms ... are each good for $50,000 or $75,000, one unnamed lobbyist familiar with the Association told the publication."[22]

Gannon and Public Citizen's earlier study, Smoke & Mirrors, authored byKen Silverstein, both document the tobacco industry's support of ATRA, directly through Philip Morris, and indirectly through the law firm for the Tobacco Institute and the major tobacco companies, Covington & Burling.[23] Newly released documents from the Tobacco Archives show that in 1995, the tobacco industry allocated nearly $5.5 million for ATRA, more than half of ATRA's $10.2 million budget according to the Associated Press. The documents also show that Covington & Burling acted as a funnel for much of this tobacco industry money which was then paid out to other organizations.[24]

But if major industries have guided ATRA's policy direction, you won't hear it from them. From the beginning, ATRA has worked hard to present a dramatically different public image of itself. While John Gannon reported in 1995 that not one of ATRA's 300 organizational members included an organization devoted to representing workers, homeowners or average citizens, ATRA calls its members "the average citizen looking for an end to the threat of being sued." ATRA wrote in an early fundraising letter, "ATRA is not a wealthy special-interest group backed by vast cash resources." Its literature mentions its "large and very diverse membership, consisting of ... non-profits, public agencies, professional societies, trade associations, large corporations and small businesses."[25]

By 1992, ATRA had hired a public relations firm to help it reach its "tort reform" goals by creating local "grassroots" front groups. The contract was with a subsidiary of public rela-

tions titan Grey Advertising called APCO & Associates, a company that had specialized in "tort reform" lobbying since the 1980s and had worked for both insurance companies, like State Farm, and the tobacco industry.[26]

APCO knew the issue well. Founded in 1984 by the beltway law firm, Arnold & Porter, and known as the Arnold & Porter Consulting Group, APCO was later sold to Grey Advertising after having been a consultant to Philip Morris and other tobacco companies on civil justice issues for years. Indeed, a document uncovered in the Philip Morris files of the Tobacco Archives indicates that APCO and Neal Cohen, its "principal account executive on the PM [Philip Morris] Family Tort Project" had been, since 1988, "assisting the PM Family [on] national and state tort coalitions and other tort reform advocates with political, communications and grassroots strategies and related programs."[27]

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In 1989, a couple of years before the first Texas CALA existed, documents show that the tobacco industry paid APCO $162,604 for its work in Texas where there was a concerted effort to get a product liability "tort reform" package passed.[28] In 1990, documents show Cohen writing to Texas lobbyists reporting on APCO's "grassroots" activities there.[29] Another document, this one dated May 1991 and written by then Philip Morris Director of Corporate Governance Affairs, Bernie Robinson, reports on the "grassroots guidance" that Neal Cohen was providing Texas lobbyists trying to get product liability legislation enacted. Robinson also encourages his colleagues in the "Philip Morris Family" to contact Austin lawmakers to help get the bill passed.[30]

Indeed, in 1991, the national "tort reform" movement made enacting a products liability statute in Texas a top priority. ATRA circulated an alert to its members and asked them to "take action today" since "a win in Texas would be a huge boost for tort reform."[31] Notably, the principal Texas lobbyist for the bill was the Texas Civil Justice League (TCJL), a group that has participated in every "tort reform" legislative battle since the mid-1980s and has taken large financial contributions from the tobacco industry.[32] TCJL's executive director, Ralph Wayne, is a former state senator who currently chairs ATRA's board of directors and is a co-chair of the Bush 2000 campaign. While the 1991 effort failed, "tort reformers" re-grouped and kept coming back until finally, in 1993 and again in 1995 with Governor George W. Bush in office, severe product liability and other tort restrictions were enacted.

This concept of corporate "grassroots lobbying" in which APCO specializes is a relatively new public relations strategy, which the New York Times described as "a technique often used to camouflage an unpopular or unsympathetic client."[33] One of the faster growing areas of corporate public relations, grassroots lobbying, which supplements legislative lobbying, involves forming a coalition on behalf of wealthy companies and trade associations and generating sympathy for legislation sought by the unsympathetic client who can then "recede into the background."[34] Or, "a few large companies may deceptively create the appearance of widespread popular support" for an issue.[35]

Sometimes called "astroturf" groups, or "stealth lobbyists," these groups are not accountable to the people they are trying to mobilize, unlike true grassroots and public interest organizations. As John Stauber, who edits the Public Relations industry watchdog newsletter PR Watch, told the Center for Justice & Democracy and Public Citizen, "A grassroots campaign must be driven by the concerns of the people at the grassroots level. The members of the organization should set the agenda. It is not a grassroots campaign if a company or a trade association sets the agenda, and then the members are recruited, but have no real input." A memo in the Tobacco Archives illustrates this point. This 1986 memo, describing the grassroots lobbying strategy long used by tobacco companies, says, "The primary purpose of [grassroots lobbying] is to substantiate and support [the] Tobacco Institute position presented [to] Congress, State Legislatures or local Councils by our lobbyists. In order to be totally effective, the grassroots effort must appear to be spontaneous rather than a coordinated effort. The goals of the Committee should be set by the Tobacco Institute. Invite suggestions and discussion, however, steer the discussion so that it ends up at our predetermined objective."[36]

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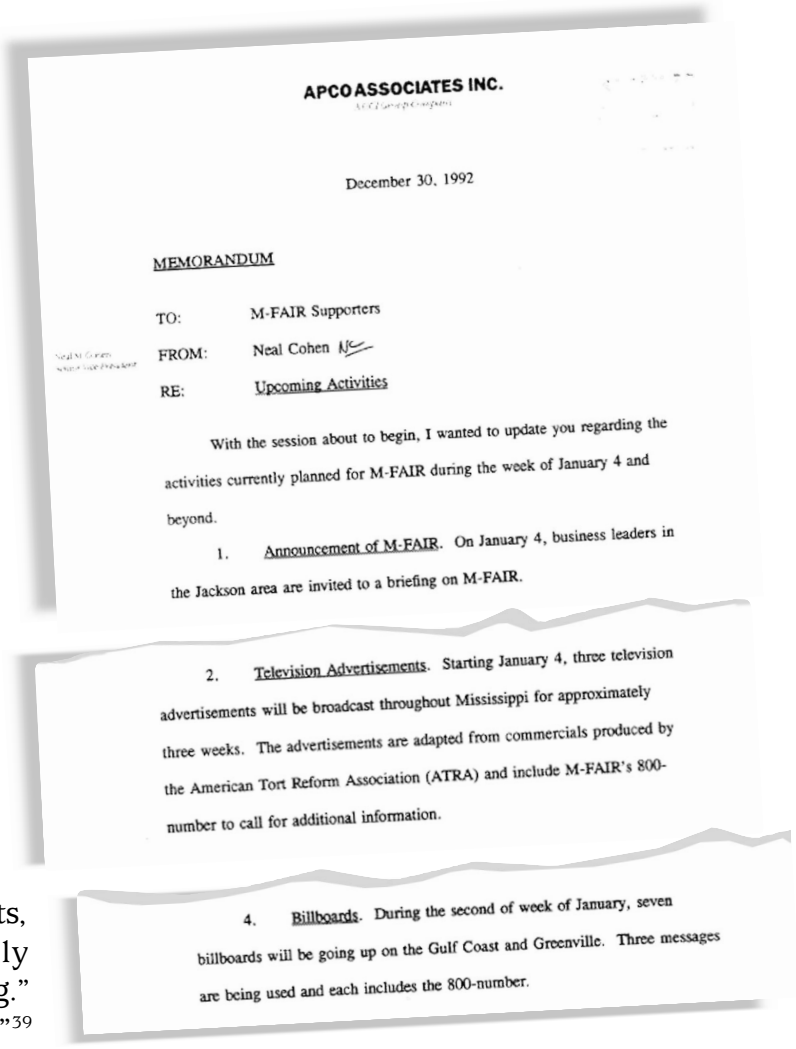
A 1996 campaign by the Louisiana CALA, which was created with the help of tobacco companies (see pp. Xxx), illustrates how astroturf lobbying works. According to Louisiana CALA Executive Director Ron Gomez, a former state representative, the Louisiana CALA generated some 4,000 constituent calls, faxes or letters urging key legislators to vote for three "tort re-

form" bills pending in the state Senate that year. Drawing from a list of 18,000 names compiled from calls to toll-free numbers advertised on the CALA television, radio and billboard ads produced by APCO, the Louisiana CALA set up phone banks to coordinate calls and letters to legislators. "That's effective," he says. "I can tell you as a former legislator."[37]

In 1994, APCO's Cohen explained the CALA "grassroots" strategy in a speech before a gathering of corporate public affairs executives sponsored by the Public Affairs Council, an organization of some 500 corporations and trade associations. "Rule No. 1 for me is stay away from substance," Cohen said. "Don't talk about the details of legislation....Talk about ...frivolous lawsuits, lawsuit abuse, trial lawyer greed...." He explained the need for front groups. "In a tort reform battle," he said, "if State Farm — I think they're here, Nationwide — is the leader of the coalition, you're not going to pass the bill. It's not credible, O.K., because it's so self-serving. Everybody knows the insurance companies would be one beneficiary of this."[38]

How effective have APCO/CALAs grassroots campaign been? At this 1994 seminar, Cohen showcased his CALA work with Mississippi for a Fair Legal System (M-FAIR), a CALA he had set up in Mississippi in 1993. APCO orchestrated a blitzkrieg public attack on trial lawyers, which included an 800 number on billboards, and TV ads. The idea was to use "every campaign tactic we had in order to bring in as many people, and we made sure that it was typical people mixed in with large employers and political contributors." Since anyone could join the coalition for free, the coalition soon had over a thousand people who had responded to the "greedy trial lawyer" message.



APCO ASSOCIATES INC.

December 30, 1992

MEMORANDUM

TO: M-FAIR Supporters

FROM: Neal Cohen

RE: Upcoming Activities

With the session about to begin, I wanted to update you regarding the activities currently planned for M-FAIR during the week of January 4 and beyond.

1. Announcement of M-FAIR. On January 4, business leaders in the Jackson area are invited to a briefing on M-FAIR.

2. Television Advertisements. Starting January 4, three television advertisements will be broadcast throughout Mississippi for approximately three weeks. The advertisements are adapted from commercials produced by the American Tort Reform Association (ATRA) and include M-FAIR's 800-number to call for additional information.

4. Billboards. During the second of week of January, seven billboards will be going up on the Gulf Coast and Greenville. Three messages are being used and each includes the 800-number.

According to Cohen, "we have 1,500 Mississippians mixed in with who are clients were" and since Mississippi had "no reporting requirements, ...they [the trial lawyers] didn't really know who was at the heart of everything." In the end, they "caved in completely."[39] The group was "instrumental" in the passage of H.B. 1270, Mississippi's 1993 "tort reform" legislation, according to ATRA.[40] Notably, the Tobacco Institute was involved

in the Mississippi effort as well, and several APCO documents documenting the M-FAIR strategy were uncovered in the Tobacco Institute's files in the Tobacco Archives.[41]

M-FAIR was shut down in 1997, its credibility shattered after Cohen's remarks were widely published in the New York Times, Smoke & Mirrors and other publications. However, far from ending APCO's grassroots program in Mississippi, M-FAIR's assets were simply rolled over to a CALA with a new name: Stop Lawsuit Abuse Mississippi.[42]

Other state lawmakers have undoubtedly been influenced by APCO/CALA grassroots lobbying efforts. In 1994, Liability Week reported that in addition to Mississippi, Neal Cohen and APCO had a "key role" in developing the system which resulted in substantial tort overhauls in Texas, North Dakota, Arizona and Michigan in 1993. Specifically, the publication explained, "In each case, the successful state tort reform efforts were preceded by extensive polling and formation of grassroots organizations, usually known as FAIR or Citizens Against Lawsuit Abuse. Polls uniformly show high levels of public hostility to personal injury lawyers, and the grassroots organizations capitalize on those findings to build public support for changes."[43] Cohen also boasted in a 1995 interview published by the PR industry magazine, Reputation Management, that CALAs have helped pass significant "tort reform" bills at the state level in California, New Jersey, Texas, Mississippi and Michigan.[44]

In 1995, the Illinois Civil Justice League, which was the principal author and proponent of the state's Civil Justice Reform Amendments of 1995 organized an Illinois CALA. It used direct mail to collect contributions and build a list of names supporting "tort reform."45 This CALA was short-lived as the bill was signed into law in March of that year. Within two years, the law was declared unconstitutional.[46]

As another example, weeks before the Ohio House considered a massive "tort reform" bill in 1996, Ohio Citizens Against Lawsuit Abuse (OCALA) appeared on the scene. The bill passed but it was later declared unconstitutional.[47] More recently, as the Alabama state legislature was debating proposals in May 1999 to, among other things, cap punitive damages, Alabama Voters Against Lawsuit Abuse (AVALA) organized pro-business demonstrations outside the capitol in Montgomery, and sent out letters to its mailing list asking people to urge their legislator to vote for the package of tort restrictions.[48] The legislation passed.

Although there is no way to gauge precisely the impact of each of these CALAs on their state's lawmakers, one thing is clear: under Neal Cohen's leadership, APCO has built a nationwide network of CALAs that have helped corporate America pursue its "tort reform" mission.

How APCO and ATRA Help and Coordinate the CALAs

At its first press conference in 1994, Los Angeles CALA's President, Bill Bloomfield, owner of a Redondo Beach company that loans washers and dryers to apartment buildings,49 unveiled television commercials and its first billboard with the message: "Help Stop Lawsuit Abuse. We All Lose. 1-800-293-CALA." Bloomfield said, "We are a group of citizens who have had enough of a system that makes us all victims."[50] Similarly, when Ohio Citizens Against Lawsuit Abuse

(OCALA) appeared on the scene in 1996, OCALA's chairman Jackie Fox, the chief financial officer and general manager of a company that runs beauty salons, stressed the group's local "grassroots" origins, saying OCALA "is relying on small business, grassroots donations to get started."[51] Neither organization gave much hint of their extensive connection to the nationwide ATRA/APCO network (although OCALA did admit that three television commercials it previewed were prepared with ATRA.)[52]

Indeed, in a 1996 memo originally obtained by the publications *Counterpunch* and *PR Watch,* Neal Cohen highlighted APCO's involvement in the formation of CALA groups. With regard to OCALA, for example, Cohen wrote, "In Ohio, we are working with the local business community to form a new citizens group focusing on lawsuit abuse." In Michigan, he said, "we are working with the local business community to form a new citizens group focusing on lawsuit abuse." He also said, "In California, we work with both a statewide group ... as well as six local CALA groups." And in Alabama, Cohen said, "we work with an extremely active statewide citizens coalition, Alabama Voters Against Lawsuit Abuse."[53] In addition to these states, Cohen's memo mentioned a number of other states in which APCO was involved, including Louisiana, Minnesota, Mississippi, Texas, and West Virginia.[54]

"In Ohio, we are working with the local business community to form a new citizens group focusing on lawsuit abuse. . . . [in Michigan] we are working with the local business community to form a new citizens group focusing on lawsuit abuse."

— Neal Cohen, APCO & Associates

In statements to the local media, CALAs typically do not volunteer information about their connection to ATRA/APCO, often going out of their way to distance themselves perhaps to hide embarrassing support from or alliances with tobacco and other major industries. For example, Skip Tucker, Executive Director of Alabama Voters Against Lawsuit Abuse (AVALA), has insisted that AVALA is not associated with APCO's Neal Cohen.[55]

Or take the case of Michigan Lawsuit Abuse Watch (M-LAW), formed in 1996 ostensibly, according to their Web site "by concerned citizens who believe it's time to stop the lawsuit lottery."[56] On October 16, 1996, M-LAW Executive Director Chip Brown, responding to criticism by the Democratic Party and others about the financing of M-LAW issue ads, released the following statement: "Michigan Lawsuit Abuse Watch receives no money from tobacco companies....APCO & Associates and the American Tort Reform Association shared some of their experiences with us early on and donated materials to us so we wouldn't have to spend our limited resources creating them for ourselves. It is very expensive to develop some of these materials, and we took advantage of their help....APCO and ATRA do not run Michigan Lawsuit Abuse Watch, we do."[57]

Brown neglected to mention that ATRA provided such huge financial support to form M-LAW in 1996 that it raised a red flag with the IRS. In its application for tax-exempt status, M-LAW reported contributions totaling $355,400, as well as "other revenue" of $284,500 that "represents expenditures that were made on behalf of M-LAW by the American Tort Reform Association."[58] The IRS, which was evaluating the group's request to qualify as a 501(c)(6) exempt business league, which would allow its "member" businesses to get deductions for political expenditures, stated in an April 15, 1998, letter to the group that "your support from what appears to be only a few sources, the large grant from the tort reform group [ATRA] ...[makes you appear] to be a single issue advocacy or lobbying group contracting for or acting on behalf of or performing services for another organizations or organizations.[59] Although M-LAW denied the allegations, the IRS deferred their application, and M-LAW agreed to accept status as a lobbying group under 501(c)(4).

Occasionally, as in the case of M-LAW, CALAs are compelled to fess up to ATRA/APCO's early involvement. For example, one persistent reporter for the Charleston Gazette was able to obtain a public admission from Cheryl Carlson of the Southern West Virginia CALA, that despite billing itself as an independent watchdog group, it is supplied by ATRA with all of their television commercials, print ads, literature, and research, as well as start-up funding.[60]

In papers filed with the IRS, the Silicon Valley CALA listed as a "highlight and accomplishment" an August 26, 1998, meeting with an APCO consultant (followed five days later by mass distribution throughout California of an op-ed attacking Ralph Nader).[61] And it was learned in a 1997 sworn deposition by Bay Area CALA Executive Director Kim Keef that a staffer at Texans Against Lawsuit Abuse (TALA), Todd Olson, provides the Texas CALAs with all the creatives for advertising, billboards, and other "propaganda."[62] TALA, which was set up in 1996 to coordinate the statewide network of 10 Texas CALAs, is now operated by an Austin consulting firm, ROSS Communications, a company with which APCO has been formally partnered to share Southwest clients since September 1998. [63] TALA's director is ROSS Communications' owner Rossanna Salazar, who is also a former journalist and press secretary for Republican Governor Bill Clements.

Bay Area Citizens Against Lawsuit Abuse (Texas)

On the other hand, while ATRA/APCO have not advertised their role in creating the CALA movement, they do admit to supplying the groups with limited guidance. ATRA President Sherman "Tiger" Joyce told a trade magazine in 1998, "On the public education side, we work with CALAs which exist in over a dozen states (we provide them with commercials, strategic guidance and assistance in developing messages so that the esoteric issues that are frequently involved are communicated in a way that can be understood by the public."[64] Likewise, in its own materials, ATRA admits to working with local groups to "set their legislative agenda and strategies," as well

as provide them with "briefing materials, model bills, witnesses and speakers," and a "communications 'took kit'" including "hard hitting television ads and radio spots as well as billboard and information handouts."[65]

In 1997, ATRA spun off a foundation to provide funds of approximately $1 million annually to local groups for purposes of conducting public education programs and other consulting services that are pursuing the ATRA agenda.[66] According to ATRA's newsletter and Web site, one of the Foundation's top jobs will be "Enhancing the communications tool kit that ATRA currently makes available to grassroots organizations across the country. This program, which includes award-winning television and radio commercials and other communications materials, helps to communicate the 'Stop Lawsuit Abuse' message in a way that avoids legalese and is understandable to the public."[67] Indeed, widespread national coordination of message and strategy, focused on developing public scorn for the civil justice system, is evident in virtually every aspect of local CALAs' activities.

"On the public education side, we work with CALAs which exist in over a dozen states (we provide them with commercials, strategic guidance and assistance in developing messages so that the esoteric issues that are frequently involved are communicated in a way that can be understood by the public."

— Sherman "Tiger" Joyce, ATRA President

Starter grants and kits

In 1996, the coordinator of the California CALAs told the Corporate Crime Reporter that ATRA provides money "to anyone in the country who wants to start a CALA.[68] Indeed, records show that ATRA has made direct cash contributions to a number of CALA groups - a convenient way for the tobacco industry, insurance companies and major corporations to conceal their support for CALAs. In addition to Michigan Lawsuit Abuse Watch's grant discussed above, ATRA provided the first California CALA, launched in January 1994 in Torrance, a Los Angeles suburb, with a $40,000 grant.[69] And in its first five years, ATRA gave the Houston CALA, formed in 1992, more than $360,000.[70] The Southern West Virginia CALA says that ATRA provided them with a start-up grant, but reportedly declined to say for how much.[71]

In 1997, the President of a Hertz car dealership in Hagerstown, Maryland decided to set up a local CALA group. He had recently settled a $350 million lawsuit brought by two injured customers and presumably sought to discourage similar suits in the future. To get the Western Maryland Citizens Against Lawsuit Abuse going, ATRA supplied a $17,000 "starter grant." In

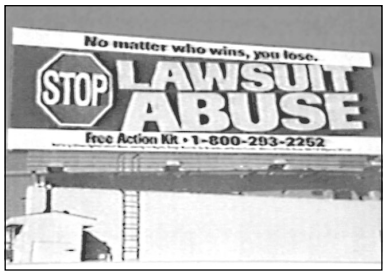
addition, in the initial filings with the IRS by Western Maryland CALA, the group attached what appears to be a portion of a generic starter kit consisting of detailed job descriptions, a fundraising manual, and a media primer.[72]

Specifically, attached to the IRS filing was a job description for an "Executive Director," which was described in generic terms as being "responsible for executing and implementing policies adopted by the CALA steering committee on a day-to-day basis." The Executive Director, according to the document, is supposed to help draft op-ed articles and letters to the editor for placement, to "devote time to cultivating reporters, 'jumping on a story' that the stop lawsuit abuse theme can piggy-back onto, etc. (See CALA media primer)." Also, 40 percent of the Executive Director's time is to be spent on fundraising, and preparing an annual fundraising plan that reports potential contributors. The job description continued, "examples: physicians for $50K, auto dealers for $25K, etc. See CALA fundraising manual for more specifics." Finally, the memo directs the Executive Director to spend 25 percent of his or her time on administrative/management tasks.

"Public education" materials and activities

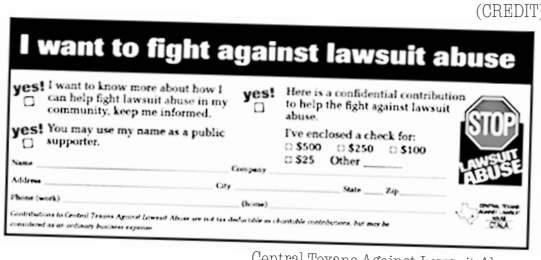
CALAs try to maintain the face of local citizens groups. For example, Skip Tucker, the Executive Director of Alabama Voters Against Lawsuit Abuse (AVALA), insists AVALA is not connected to the national CALA network or with APCO's Neal Cohen. Yet AVALA bears the same markings as all the others. AVALA uses identical language and logos as the CALAs in other states. Indeed, the slogans, brochures, websites, activities, billboards and other advertising used by CALAs nationwide are evidence of widespread national coordination.

For example, the "Stop Lawsuit Abuse" stop sign logo is ubiquitous throughout the CALA network. The authors' by no means exhaustive review of CALA materials found this identical logo, which for years has been used by ATRA (although it was recently redesigned for its website) on the following CALA materials:



(CREDIT)

- Alabama Voters Against Lawsuit Abuse (AVALA) (website, mailings)
- Bay Area CALA (Texas) (billboards)
- Central California CALA (1994 billboards)
- Central Texans Against Lawsuit Abuse (bumper sticker, brochure)
- Los Angeles CALA (on all mailings)
- Louisiana CALA (same logo, but appears homemade)
- Michigan Lawsuit Abuse Watch (website)
- San Diego Citizens Against Lawsuit Abuse (website, billboards)
- Silicon Valley CALA (website)
- Southern West Virginia CALA (newsletter)
- Texans Against Lawsuit Abuse (TALA) (website, brochures)
- Weslaco (Texas) CALA (1995 billboards)



Central Texans Against Lawsuit Abuse

Michigan Lawsuit Abuse Watch

Alabama Voters Against Lawsuit Abuse

The "Lawsuit Abuse: We All Pay, We All Lose" slogan, used by the Los Angeles CALA at its first press conference as well as in its mailings and billboards from 1994 through 1999, can also be found in other locations. For example:

Silicon Valley CALA

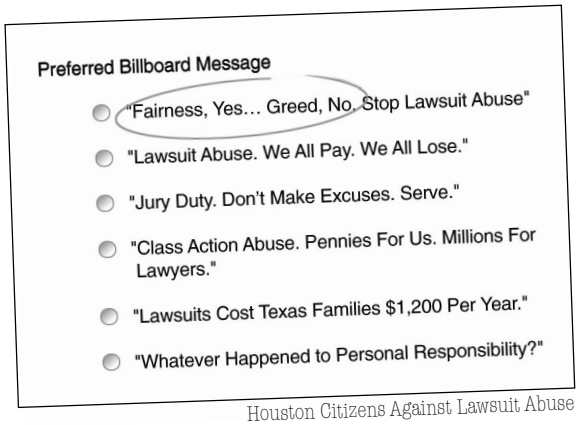
- Central Texans Against Lawsuit Abuse (bumper sticker, brochure)
- Houston CALA (five billboards in 1994, 1995)
- Louisiana CALA (key message in promotional mailings)
- Michigan Lawsuit Abuse Watch (M-LAW) (website)

- Mississipians for a Fair Legal System (billboards, uncovered in Tobacco Institute files in Tobacco Archives[73])
- Silicon Valley CALA (mailings, billboards including six posted in January 1998, website)

Silicon Valley CALA

Another common slogan, "Fairness, yes - Greed, no," has been used by at least the following CALAs:

- Coastal Bend CALA (billboards in 1993)
- Houston CALA (billboards in 1993, 1994)
- Mississipians for a Fair Legal System (billboards, uncovered in Tobacco Institute files in Tobacco Archives[74])
- San Diego CALA (website ("Justice Yes...Greed No")



Houston Citizens Against Lawsuit Abuse

In a section entitled "Help Fund the Fight for Fairness" on Houston CALA's website, donors are asked to choose messages such as "Fairness, Yes... Greed, No. Stop Lawsuit Abuse" for the Houston area billboards their contributions will fund.

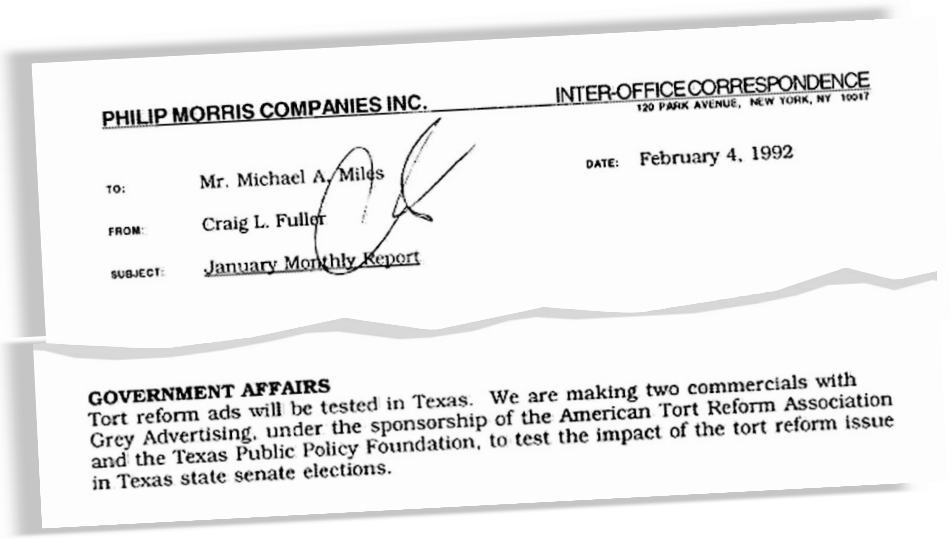
In addition, CALAs often use virtually identical brochures. For example, one brochure called "Ten Examples of Lawsuit Abuse that Happen Everyday" distributed by the Los Angles CALA in 1999, is also reprinted verbatim on the Alabama Voters Against Lawsuit Abuse website. Two brochures distributed by the Los Angeles CALA, "What Can You Do?" and "Why Should You Care?" are also reprinted verbatim on both the Alabama Voters Against Lawsuit Abuse and Texans Against Lawsuit Abuse websites.

Since 1996, several active CALAs, including those in Texas, California, Ohio, West Virginia and Maryland, have designated the third week of September as "Lawsuit Abuse Awareness Week." This week is sometimes accompanied by a so-called "wacky warning label contest" ostensibly to show how lawsuits lead to silly results.[75] At the same time each year, these CALAs obtain endorsements from sympathetic political officials, ranging from conservative Republican governors, to local mayors and legislative bodies, to members of Congress.


(CREDIT)

Indeed, one of the first official acts of Texas Governor George W. Bush was to declare a statewide Lawsuit Abuse

Awareness Week. Other Republican governors who have signed this CALA-sponsored proclamation over the last few years include former Ohio Governor George Voinovich and current Governor Bob Taft, Michigan Governor John Engler, and former California Governor Pete Wilson. For the last several years, several members of Congress, including Senator Jay Rockefeller (D-W.V.), primary Democratic sponsor of federal product liability legislation in the U.S. Senate, have commemorated Lawsuit Abuse Awareness Week in the congressional record.[76]



PHILIP MORRIS COMPANIES INC. INTER-OFFICE CORRESPONDENCE
120 PARK AVENUE, NEW YORK, NY 10017

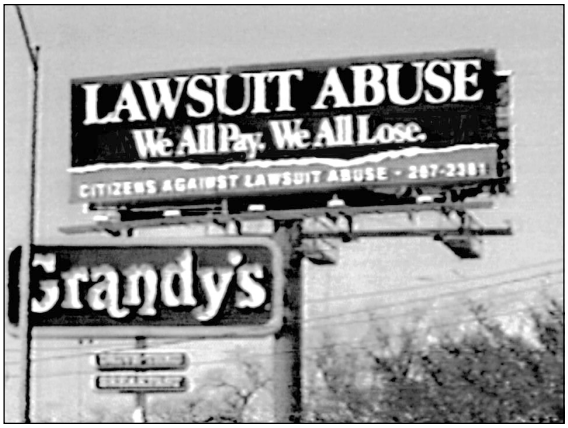
TO: Mr. Michael A. Miles
DATE: February 4, 1992
FROM: Craig L. Fuller
SUBJECT: January Monthly Report

GOVERNMENT AFFAIRS
Tort reform ads will be tested in Texas. We are making two commercials with Grey Advertising, under the sponsorship of the American Tort Reform Association and the Texas Public Policy Foundation, to test the impact of the tort reform issue in Texas state senate elections.

Paid advertising

Since 1991, when the first Texas CALA became the testing ground for ATRA's ad campaign, CALA groups have heavily relied on APCO to develop, or assist them in developing, television, radio, print and billboard advertising, as well as the messages, signs and slogans and PR materials described earlier. By 1996, APCO had said that the ad campaigns it developed had "changed the nature of the debate from a technical intangible concept to a concept more easily understood by the general public."[77]

APCO has worked with political consultants like the Republican ad agency Murphy Pintak Gautier Agency, Inc., to produce paid advertisements.[78] APCO says that the ads, among other things, are designed to help create leverage on key legislators when "tort reform" is up for consideration in the state legislatures. In addition, by sponsoring the ads, the groups that run the local CALA's toll-free numbers are able to build their own mailing lists and broaden their reach to enlist sympathetic voters and activists on the political right. Ron Gomez, Louisiana CALA's Executive Director, credits radio, television, and newspaper advertising in Louisiana with helping build CALA's list of supporters to 15,000 by 1996.[79] In Mississippi, this front group advertising strategy was so effective that a local newscast in Jackson actually plugged a local CALA in 1993, giving out the toll-free number on-air for interested viewers to call for more information.[80]



(CREDIT)

The ads tend to stir up emotions like ridicule and anger rather than generate reasonable debate. For example, in one early 1993 ad, which ran in Texas, Louisiana and Mississippi, a man attempting to change a lightbulb is forced to use a stepladder laden with safety devices and warning labels.[81] The narrator says, "Some people misuse products and then look for someone to blame," and concludes that "lawsuit abuse" increases the cost of the ladder by 20 percent. This is a completely bogus and unsubstantiated claim — liability costs for business, which ostensibly would be passed onto consumers, are miniscule.[82] The ads end with one of the ubiquitous CALA slogans as a tag line ("Lawsuit Abuse: We All Pay, We All Lose"), the name of the local CALA, and a toll-free number.

CALAs are also asked to run ads aimed at creating pressure on members of Congress to support federal "tort reform" legislation. For example, in 1995, ATRA, the National Federation of Independent Business (NFIB), the right-wing think tank Citizens for a Sound Economy (CSE), the American Council of Life Insurance, and the U.S. Chamber of Commerce and others sponsored several CALA ads to generate support for federal "tort reform" legislation, following its inclusion in House Speaker Newt Gingrich's Contract With America.

In April of 1995, ATRA, CSE, NFIB and the U.S. Chamber of Commerce anted up over $1 million to air the APCO-produced "Firefighters ad" on CNN nationally, and on stations in 11 states.[83] The 30-second spot featured firefighters

(CREDIT)

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000

TELEFAX: (202) 662-6291
TELEX: 89-593 (COVLING WSH)
CABLE: COVLING

KEITH A. TEEL
DIRECT DIAL NUMBER
(202) 662-5501

LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
TELEPHONE: 01-495 5655
TELEFAX: 01-495 3101

BRUSSELS CORRESPONDENT OFFICE
66 AVENUE DES ARTS
B-1040 BRUSSELS (CAO BOURSE)
TELEPHONE: 32-2-512-9890
TELEFAX: 32-2-502-1868

January 24, 1995

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

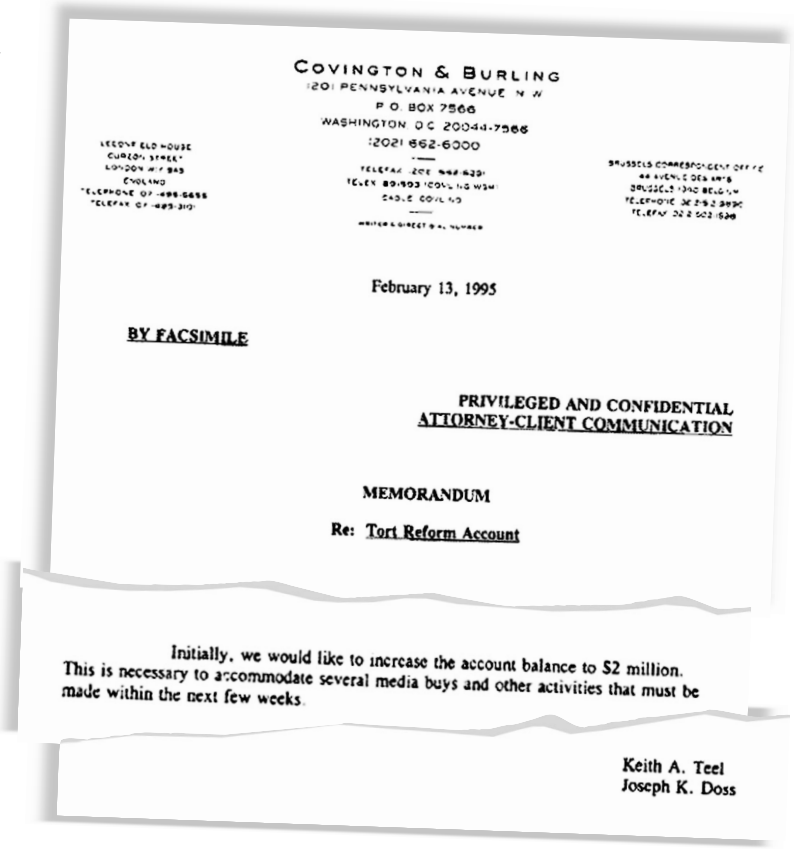
MEMORANDUM TO THE TORT REFORM POLICY COMMITTEE

Re: Possible Budget for Expanded Tort Reform Program

- The communications program is intended to enhance our ability to enact favorable legislation at both the federal and state levels. It is also intended to put the trial bar on the defensive, and to improve the legislative climate concerning tort issues, both because of pressure from constituents and through possible electoral changes in the composition of various legislatures. Because these media activities, to be effective, must not be linked to the tobacco industry, we hope that significant industry funding encourages other groups to make similar contributions to support such activities.

Keith A. Teel

who appear to have just rescued an injured person. "I didn't take this job to sit around and worry about getting sued," says one. "If we don't stop lawsuit abuse," adds a second, "I might not be able to do my job," says another. "And my job just might be to save your life," concludes the last. The ad was as misleading as it was dramatic, and was quickly attacked. Shortly after it aired, Vincent Bollon, General Secretary of the International Association of Firefighters demanded the ad be pulled and an apology from the sponsors. He complained, "America's citizens deserve to know that firefighters are absolutely not, as your ad suggests, afraid to save lives because of liability concerns."[84]



COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000

February 13, 1995

BY FACSIMILE

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

Re: Tort Reform Account

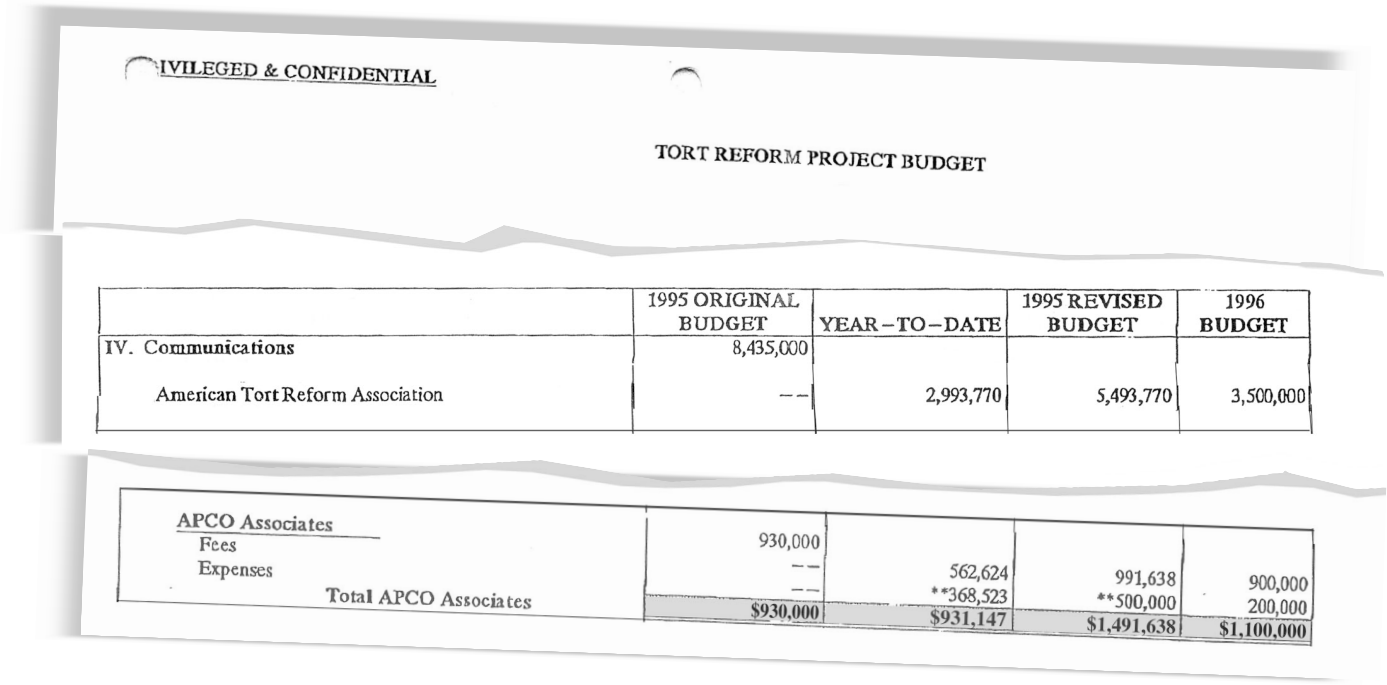
Initially, we would like to increase the account balance to $2 million. This is necessary to accommodate several media buys and other activities that must be made within the next few weeks.

Keith A. Teel
Joseph K. Doss

The named corporate trade association sponsors of these ads were not the only backers of the 1995 APCO "communications" blitz for federal "tort reform". It appears that the tobacco industry was there as well, although the public would never have known it. Keith A. Teel, a partner at Covington & Burling and the firm's point man on tobacco, wrote a January 24, 1995, memo to the tobacco industry's "Tort Reform Policy Committee" discussing expanding the industry's "tort reform" program. Among the projects mentioned was a "communications program ... intended to enhance our ability to enact favorable legislation at both the federal and state level. It is also intended to put the trial bar on the defensive and to improve the legislative climate concerning tort issues, both because of pressure from constituents and through possible electoral changes in the composition of various legislatures." Teel observed, however, that "these media activities, to be effective, must not be linked to the tobacco industry."[85] *(emphasis added)*.

Teel further said that, "if the industry were to undertake an expanded program in which APCO is an integral part, it is only fair that APCO's cost be borne industry-wide." Less than a month later, the Policy Committee agreed to "increase the balance in the industry tort reform [bank] account." Specifically, said Teel in a follow-up memo to the meeting, "we would like to increase the account balance to $2 million. This is necessary to accommodate several media buys and other activities that must be made within the next few weeks."[86] Shortly thereafter, the APCO ads advocating federal tort legislation began to air.

Tobacco's continuing participation in this effort was highlighted in an internal speech given to the Philip Morris board on April 29, 1995, by Steve Parish, Senior Vice President for World-



IVILEGED & CONFIDENTIAL

TORT REFORM PROJECT BUDGET

	1995 ORIGINAL BUDGET	YEAR–TO–DATE	1995 REVISED BUDGET	1996 BUDGET
IV. Communications	8,435,000			
American Tort Reform Association	--	2,993,770	5,493,770	3,500,000
APCO Associates				
Fees	930,000			
Expenses	--	562,624	991,638	900,000
	--	**368,523	**500,000	200,000
Total APCO Associates	$930,000	$931,147	$1,491,638	$1,100,000

wide Regulatory Affairs. Parish noted, "we will continue to participate vigorously in a massive grassroots' communications effort conducted by a nationwide coalition of businesses of which we are a part, to encourage the Senate to pass the bill."[87] By October, 1995, the tobacco industry had spent over $5 million on "communications," with nearly $3 million of it going to ATRA. In addition, the industry paid almost $1 million in consulting fees directly to APCO for "consultant costs and expenses related to media buys and other activities.". Projections for 1996 were substantial as well: $3.8 million for "communications," $3.5 million of which was budgeted for ATRA. Another $1 million was projected for APCO. [88]

Radio and TV ads with "lawsuit abuse" or anti-trial lawyer themes were run in a number of key congressional districts, typically casting the liability issue in terms of the interests of trial lawyers instead of those of consumers whose rights are taken away by such legislation. "Beware of Chicken Little!" begins one ad. "Chicken Little says if Congress passes legislation to stop lawsuit abuse, Americans won't be able to sue....So who is this Chicken Little? (not you and me. It's the wealthy personal injury lawyers."[89]

CALAs were running many ads in favor of federal tort law changes during this period. For example, in February, 1995, the Illinois CALA (I-CALA) sponsored a radio advertisement "Lawyers Disparaged" on WBBM in Chicago. That year, major state "tort reform" legislation was also passed by the Illinois legislature, but was later declared unconstitutional. In March of 1995, the Indiana CALA sponsored an APCO-produced television advertisement "Junk Lawsuits" on WTWO in Terre Haute.[90] In October 1996, Michigan Lawsuit Abuse Watch (M-LAW) sponsored a radio advertisement on "Lawsuit Abuse" on WXYT in Detroit and television advertisements ("Who Gives Judges the Most Money") directed at trial lawyers, on WNEM in Flint.

APCO's Neal Cohen told the Washington Post that beyond airing in national cable outlets like CNN, the 1995 campaign reached states where certain legislators' constituents "were thought to need more education on the issue."[91] APCO worked with lobbyists and "others" in the states to determine the targeting and timing of the ads to have maximum impact on the federal debate. According to APCO, the frequency of the ads were increased, decreased or withdrawn depending on the determinations by lobbyists of their effect on legislators.[92] In the end, the broad campaign failed. Congress has not, to this day, enacted either broad "tort reform" or a broad products liability bill. However, smaller bills did pass.

For example, in 1996 and 1997, APCO produced an ad aimed at pressuring Congress to enact a "biomaterials" immunity bill, a mini-products liability bill that would immunize from suit the suppliers of raw materials and component parts of medical implants like pacemakers. Metroplex Citizens Against Lawsuit Abuse in Dallas, for example, ran the ad in September 1996 as part of its first television advertising campaign.[93] The legislation benefited companies like ATRA member Dow Chemical Company, and was opposed by consumer groups such as Public Citizen which said the bill would jeopardize public health and safety, intrude on states' rights and in any event, was completely unnecessary as medical devices alleged to be in short supply were in fact readily available.

The APCO ad featured a mother and her young daughter in a park. "My name is Linda Ransom," the mother begins. "My daughter Tara has a silicon brain shunt....Tara has hydrocephalus - water on the brain. She needs the shunt to stay alive. Whether we can get one tomorrow, I don't know." She continued, "Lawsuit abuse has severely hampered progress in medical devices. Anybody could need an implant at any time." In closing, the mother faces the camera and says "Silicone is not the problem. The personal injury lawyers and their greed is the problem." The last shot displays the toll-free number for Citizens Against Lawsuit Abuse. In this case, the ad may have had an impact. The biomaterials bill was passed and signed into law in the summer of 1998.

Influencing juries

CALAs' advertising campaigns help them to locate individuals to carry out letter writing campaigns and to organize constituent phone calls to pressure federal and state lawmakers to vote their way on specific legislation. In addition to trying to pressure lawmakers, however, CALA advertising is aimed at an even more democratic audience: juries. In 1995, after an all-Catholic jury rejected a Fort Worth priest's claim that General Electric cheated him out of $18,000, his lawyer noted, "The first sign you see driving into Eagle Pass is a Stop Lawsuit Abuse billboard. It just shows the power of marketing."[94] Another "lawsuit abuse" billboard that a Texas CALA placed in 1996 on the Dallas/Ft. Worth Airport Freeway, was situated so that potential jurors passed the billboard on their way to the county courthouse. [95]

Most lawyers say that juror attitudes have undergone a dramatic change over the last decade, with the general trend towards "antagonism toward injury victims."[96] For example, and contrary to the rhetoric, it is getting increasingly difficult for plaintiffs to even win tort cases before juries: only 48 percent of plaintiffs in tort cases now win before juries, compared to 50 percent in 1992.

In contrast, plaintiffs win 57 percent of the time in bench trial before judges.[97]

Median civil verdicts are dropping as well: adjusted for inflation, the median award in 1996 was $35,000. In 1992, it was more than 60 percent higher, at $58,000.[98] In Texas, the drop has been even more dramatic. According to a recent Dallas Morning News investigation, the median jury award in Dallas County fell about two-thirds over the last seven years, from $68,544 in 1992 to $25,200 in 1999. Dallas juries levied punitive damages in only 19 trials in 1999, the lowest number in 20 years. The median punitive award plunged 43 percent to $31,000, twice the national decline.[99] Similarly, between 1991 and 1994, plaintiff wins in Harris County, Texas (Houston area) dropped from 57 percent to 44 percent, and median verdicts were down from $47,500 to $26,415, according to data from Jury Verdict Research (JVR), a jury verdict reporting service. JVR's editorial director said, "As soon as people start to think money is coming out of their own pockets in insurance premiums or the price of products, it preys on their mind.[100]

"The tort reformers have been incredibly effective at turning a difficult PR trick: getting working and middle-class people to side with big business despite what ... research shows is a distinct lack of empirical evidence confirming the lawsuit abuse rhetoric."

— Stephen Daniels, American Bar Association

The American Bar Foundation's Stephen Daniels, commenting on juror trends in Texas, saw a chasm between the rhetoric of "tort reform" (crooked parasites cashing in on profligate juries) and reality (juries are actually quite stingy). "Even if a lot of tort reform on its face does not appear to close courthouse doors, in practice it may," said Daniels. "Plaintiffs lawyers will look long and hard and ask: 'Can I afford to bring these cases? They're harder to win, and it's a longer road to payoff.' It will close the courthouse doors even though the law literally does not."[101]

It should be no surprise that part of the ATRA/CALA public relations effort has been a jury service campaign with slogans like, "Jury Duty: Don't Make Excuses." This slogan, for example, can be found in the brochures of the Los Angeles CALA, on the website of the Alabama Voters Against Lawsuit Abuse, and on eight billboards erected in 1997 by the Houston CALA. Some CALAs even sponsor high school essay contests on the topic of jury service, offering scholarships or other money prizes.[102] Tobacco Institute files in the Tobacco Archives included a reproduction of a billboard featuring the jury service message in Mississippi as far back as 1992.[103]

In February 1997, the "silicone ad" was running in New Orleans, discussing the "safety of silicone for use in medical projects." At the same time the ad was running, Dow Corning was facing a class-action suit in Louisiana by 1,800 women over injuries caused by silicone breast implants. Louisiana CALA sponsored the ad and bought air time during the trial to run it.[104]

The plaintiffs in the Dow case suspected the timing of the ads was designed to influence the jury hearing their case. "We were in the middle of one breast implant case, the Dow case," explained H. Price Mounger, one of the attorneys representing the women. "Behind that we had the Bristol Meyers-Squibb litigation coming up as well. And we were going to be picking juries for that case very soon. And it was just too coincidental."[105] Bristol Meyers-Squibb is also an ATRA member.

Similarly, Texas' Rio Grande Valley has, for the past decade, been targeted by an elaborate advertising campaign that promotes myths about the costs and burdens of the civil justice system. By 1995, polls in the Valley were showing residents to be increasingly skeptical of plaintiffs and more concerned about insurance and medical costs.[106] For example, in September 1998, after deliberating for less than three hours, a Texas jury rejected a Brownsville woman's claim that the manufacturer of the Norplant contraceptive implant did not notify her of the side effects. Maria Olvida Valles had sought damages from Wyeth-Ayerst after suffering medical problems following her use of the implanted contraceptive. Immediately following the verdict, jurors were quoted by local reporters as saying the case was a clear example of "lawsuit abuse." One juror said, "It was like she just wanted to hit the lotto,"[107] language reminiscent of CALA public relations materials.

As the American Bar Foundation's Stephen Daniels put it, "the tort reformers have been incredibly effective at turning a difficult PR trick: getting working and middle-class people to side with big business despite what ... research shows is a distinct lack of empirical evidence confirming the lawsuit abuse rhetoric."[108]

It should be noted that advertising by "tort reformers" targeting jurors is nothing new. For example, years before the "tort reform" movement got underway in the mid-1980s, the insurance industry, specifically Crum and Foster, Aetna and St. Paul, had direct advertising campaigns aimed at jurors. The ads claimed that large jury verdicts ultimately would effect jurors' pocketbooks through higher premiums for everyone. Ads published in the late 1950s were aimed at reaching one out of every three potential jurors-over 70 million people.[109] In the 1970s, the insurance industry spent $5.5 million on ads published in 18 national publications, including the *New York Times, Wall Street Journal, Business Week, Time, Newsweek* and *Readers' Digest* — an estimated audience of 30 million.[110]

These ads contained so many flagrant errors that even the industry trade publications, such as *Business Insurance* magazine, criticized them. For example, the magazine reported that figures cited on the number of product liability suits filed in the late 1970s-one million per year, according to the ads-were flatly wrong.[111] The figure was more like 70,000, according to the magazine. The ads also described fictitious cases, such as Crum and Foster's infamous "lawnmower as a hedgeclipper" advertisement. In that case, an individual supposedly was awarded millions of dollars by a jury for injuries sustained when he improperly used a power lawnmower to trim his hedges. Both Business Insurance and a congressional committee confirmed that the case was a total fabrication.[112]

Moreover, at least one court considered these kinds of ads "jury tampering." In the 1978 case Quinn v. Aetna Life and Casualty Co., the New York Supreme Court found that two Aetna

ads were misleading and might convince some jurors to reduce arbitrarily personal injury awards. The court held that these ads "violate[d] the state public policy against jury tampering, unduly burden[ed] plaintiffs' right to an impartial jury, and distort[ed] the trial process by providing otherwise inadmissible insurance evidence..."[113] Moreover, because the ads contained so many inaccuracies, Crum and Foster and Aetna were forced to sign consent orders with state insurance commissioners in Connecticut and Kansas, agreeing to stop publishing these ads.[114]

According to the *Dallas Morning News,* more recent ads have backfired in similar ways. In 1995, as two breast implant cases against Dow Corning were beginning in Houston, the company ran full-page ads criticizing the litigation. Just as the company was facing a contempt citation for jury tampering, it filed for Chapter 11 bankruptcy protection. The paper also reported that in 1992, a judge in Galveston ordered a new trial when a jury returned a very low verdict for an injured railroad worker. Just one day before, President George Bush had attacked "frivolous lawsuits" and trial lawyers in a speech before the Republican convention in nearby Houston.[115]

Funding and Other Backing

CALAs are incorporated locally as non-profit, tax-exempt organizations. As with other non-profit groups, a CALA is not required to disclose publicly its funders. And they choose not to. CALAs work to maintain the appearance of local citizens groups (a spontaneous, folksy backlash by ordinary citizens against a legal system that is "out of control." A typical story is the one Bill Bloomfield told the Sacramento Bee, about the founding of the Los Angeles CALA. Bloomfield said the group came into being after "organizing some friends including two attorneys, a teacher and a sheriff's detective" and then "passing the hat to raise funds."[116] ATRA's president, Sherman Joyce, concurred, telling the paper, "CALAs attract new members because they aren't funded by big business or big insurance."

However, for every CALA for which financial information was publicly available, the authors have found that while they may receive some small donations, they are sustained by local industries, large corporations or trade associations, which are generally represented on their boards, and/or support them with financial or in-kind contributions. CALAs are also often backed by the tobacco and insurance industries.

In addition to the financial and public relations support they receive from corporate-backed ATRA and APCO, CALAs are often run not by citizen activists, but by hired public relations or marketing consultants. Texans Against Lawsuit Abuse (TALA), which is operated by ROSS Communications, a company with which APCO is formally partnered, is one such example. [117] But they are not alone. In papers filed with the IRS, Alabama Voters Against Lawsuit Abuse says, "AVALA's activities ...will be conducted in the state of Alabama by independent consultants and professional research and polling firms retained and paid by AVALA".[118] In addition, several CALAs have been run by individuals who are in and out of the PR world. For example:

- Sarah Cheaure, former director of Los Angeles CALA, who before the CALA job was an executive with a local advertising and marketing firm, is now media director of Cerrell Associates;[119]
- Brenda K. Leer, who was director of San Diego County Citizens Against Lawsuit Abuse, was with local public radio before the CALA and has now moved on to Nelson Communications Group;[120]
- In addition to being active in Republican politics, Robert B. Dorigo Jones, head of Michigan Lawsuit Abuse Watch, owned a company called "The PR Advantage," which he describes as a freelance public relations firm;[121]
- Ron Gomez had been the vice president for marketing and communications for the Louisiana Association of Business and Industry before taking over Louisiana CALA.[122]

The following are just a few examples of the type of corporate support CALA's typically receive. Tobacco industry involvement in the CALAs - an industry that has been particularly supportive (is discussed in the next section (pp. Xxx).

CALIFORNIA

Public relations consultant Sarah Cheaure, who was hired as Executive Director of California's first CALA, Los Angeles CALA, told the Corporate Crime Reporter in 1996 that "most of our supporters are small business owners and individuals." When asked whether the group takes corporate contributions, she said "not very often, and when we do, it amounts only to a couple hundred dollars."[123] In truth, this CALA received substantially more than a couple hundred dollars from corporations. In addition to a $40,000 ATRA grant, the Los Angeles CALA received substantial contributions from several other companies in its first year, including the Whirlpool Corporation in Michigan.[124] Whirlpool, the world's leading manufacturer and marketer of major home appliances, was at the time a defendant in a California lawsuit brought by environmental groups charging 16 manufacturers with selling products that can leach dangerous amounts of lead into drinking water. The lawsuit was settled in 1996.[125]

The Orange County CALA, which calls itself "a grassroots, nonprofit, legal watchdog group," was founded in August 1995 with funding from the leaders of a number of companies and trade associations who served on OCALA's Board. Corporate representatives included the Irvine Chamber of Commerce, Orange County Medical Association, New Harbour Area Chamber of Commerce, the Saddleback Memorial Medical Center, Auto Club of Southern California, and the Orange County Association of Realtors.[126]

LOUISIANA

Although the Louisiana CALA was founded in 1992 primarily with the help of the tobacco industry (see next chapter), it has received additional financial support from Louisiana Power & Light, Freeport-McMoran, Pfizer, Abbott Laboratories, Union Pacific, Georgia Pacific, Texaco, and local businesses.[127] The largest initial grants to the CALA were from an organization also set up with the help of tobacco companies, Louisianans for Lawsuit Reform, which contributed $234,000 in 1992 and $75,000 in the first eight months of 1993. CALA claims that most of its contributions come from ordinary people in amounts of $100 or less.[128] Yet according to its own filings with the IRS, in 1997, fewer than 12 percent of contributors gave under $5,000. That year, the CALA reported contributions of $342,000, including one contribution of $133,125.[129]

MICHIGAN

In Michigan, a group called Michigan Voters Against Lawsuit Abuse (MVALA) was formed in January 1995 with the support of the big three auto manufacturers, the National Federation of Independent Business, the Michigan Chamber of Commerce, among other businesses and associations.[130] MVALA's Chair was Paul Boudreau, director of governmental affairs for Allied Signal Automotive. Another Michigan CALA group, Michigan Lawsuit Abuse Watch (M-LAW), was formed in 1996 with a large grant and other financial support from ATRA. (See pp. Xxx).

MINNESOTA

Minnesota Lawsuit Abuse Watch was incorporated in 1996. Its initial supporters, donating more than $100,000 in its first six months, included the Independent Business Association of Minnesota, the National Federation of Independent Business (NFIB) Minnesota, the Minnesota Civil Justice Coalition and the Minnesota Chamber of Commerce.[131]

MISSISSIPPI

Stop Lawsuit Abuse Mississippi was founded in August 1998 after some embarrassing publicity related to a speech by APCO's Neal Cohen forced the closure of its predecessor, M-FAIR.[132] (See pp. Xxx).) Tobacco Archive documents indicate that M-FAIR's members as of December 1992 were virtually all representatives of individual corporations, such as International Paper, Weyerhaeuser, and Scott Petroleum, insurance agents, realtors, and doctors.[133] Despite its origins as an APCO spin-off from M-FAIR, Stop Lawsuit Abuse in Mississippi represents itself to the public as "a grassroots organization created in 1997 with almost 30,000 members committed to achieving civil justice reform through the legislative, initiative, and election process."[134] John R. McCarty, a well-known local multi-millionaire and former CEO of McCarty Farms, Inc., which was sold to Tyson Foods in 1995, is president.[135]

OHIO

Ohio Citizens Against Lawsuit Abuse (OCALA) was founded in 1995 by the same principal as the state's largest "tort reform" lobby groups, the Ohio Alliance for Civil Justice. APCO noted in a 1996 memo, "In Ohio, we are working with the local business community to form a new citizens group to focus on lawsuit abuse."[136] Indeed, OCALA is financed mostly by insurers, manufacturers and health care providers.[137]

OKLAHOMA

In 1995, Oklahoma CALA, formed a year earlier, ran a statewide initiative campaign to put tort restrictions on the ballot. By March, it had raised $2 million, but not from average Oklahoma citizens. CALA's supporters who contributed or pledged at least $50,000 each to this effort were: CITGO Petroleum Corp. of Tulsa, Phillips Petroleum Co. of Bartlesville, The Oklahoma Publishing Co., publisher of The Oklahoman, Southwestern Bell Telephone, Boatmen's First National Bank of Oklahoma, American Fidelity Group, Kerr-McGee Corp., and State Bank & Trust Co. Other corporate backers included American Airlines, Apache Corporation (Houston, TX), Aubrey K. McClendon, BAMA Companies, BancFirst, Bank of Oklahoma, Chesapeake Energy Corporation, CONOCO, Inc. (Houston, TX), Crane-Carrier Company, Darr Equipment Company (Dallas, TX), Exxon Company USA (Houston, TX), F&M Bank and Trust Co., Flint Resources Co., Gaffey/ Overhead Cranes, Kaiser-Francis Oil Company, Liberty Bancorp Inc., Mack Oil Co., Midland Financial Co., MIDWESCO, Oklahoma Gas & Electric, Oklahoma Natural Gas Co., Parker Drilling Co., Sooner Pipe & Supply Corp., Southwestern Bell Telephone and World Publishing.[138]

TEXAS

The Houston CALA, formed in 1992, says on its Web site that it relies on the donations of small businesses and consumers.[139] But in addition to receiving more than $360,000 in contributions from ATRA during its first few years of existence, the group has received significant support from many corporations, trade associations and lobbying groups. Listed in recent IRS filings are so-called "disqualified funders" or funders with a relationship to the organization such as board membership, trustee, family connections. These include: Sterling Chemicals, First Continental, Adams Insurance, Arthur Andersen & Co., Century Builders Inc., Metro National (a real estate firm), Houston Apartment Association, Cogen Technologies, Mach Industries, and Southwest Solvents & Chemicals, as well as Texans for Lawsuit Reform and the Rio Grande Valley Partnership.[140]

In 1994, Bay Area Citizens Against Lawsuit Abuse (BACALA), which was founded in August 1993, was merged with a committee of the Corpus Christi Chamber of Commerce (later called the Corpus Christi Business Alliance).141 In January 1995, McDonalds Corporation contracted to indefinitely sponsor billboards on behalf of BACALA for $600 per month.142 Notably, some of this information was uncovered during a taxpayer lawsuit filed against BACALA, the city of Corpus Christi and the Corpus Christi Bay Area Business Alliance, alleging the misuse of public funds as BACALA once shared space with the business alliance which gets money from city taxes. While the lawsuit is still pending, the Texas Supreme Court ruled in December 1998 that the First Amendment protected BACALA from being forced to release its list of contributors.143

San Antonians Against Lawsuit Abuse (SAALA) was formed in December 1992. According to its original filings with the IRS in 1991, major support was to come from corporations doing business in San Antonio. Documents state specifically that SAALA "plans to have an ongoing relationship with the Greater San Antonio Chamber of Commerce [which] will provide continuing financial support and in-kind donations of office space and office support for a period not to exceed six months and GSACC will maintain two of its members on the board ...at all times. The Bexar County Medical Society and the Texas Public Policy Institute shall have two seats each on the board." Dr. James Leininger, who founded the TPPF was a founding director of SAALA.144

WEST VIRGINIA

The Southern West Virginia CALA was formed in August 1994 by a group of local businessmen under the leadership of industrialist Jim Thomas in Charleston, and Jack Klim in Huntington.145 Thomas was the retired president and chief executive of Carbon Industries, and Klim was president of D&E Industries, a Huntington manufacturer of industrial transportation equipment and parts. Also present at the group's initial press conference in Huntington were representatives of the automotive sales and coal industries, as well as the state Chamber of Commerce.146

The Eastern West Virginia CALA was formed in 1995 by Ken Lowe, president of Ken Lowe Management Company in Shepardstown and a major real estate developer with strong government connections.147 For example, Lowe was a member of the West Virginia Economic Development Council and selected by Senator Jay Rockefeller to participate in the Taiwan Industry and Trade Mission. Lowe was also President of the Federal Group, which houses the CALA.

The Role of Big Tobacco

Perhaps no industry has been a more covert funder of CALAs than Big Tobacco. The to bacco industry's interest in "tort reform" legislation has become all the more obvious in recent years, with juries for the first time deciding to hold the industry liable for significant damages.[148] In addition to the tort limitations advocated by most corporations and product manufacturers seeking to escape responsibility for harm, the tobacco industry has had particular interest in changing punitive damages standards and product liability laws, so as to completely immunize companies that sell "inherently dangerous or unsafe" products or those with "obvious risks." As explained in one internal Philip Morris memo, "State tort reform legislation can lead to codification of a number of defenses to product liability claims and can establish limitations on the availability of punitive damages. Tort reform can therefore serve to limit the significance of an increased number of lawsuits by reducing the possibility and significance of adverse judgements in such lawsuits."[149]

In 1983, a breakthrough case by a smoker against the tobacco industry was filed in federal district court in New Jersey, known as the Cipollone case. Antonio Cipollone had sued on behalf of his wife, Rose, a heavy smoker since the age of 16 who ultimately died of lung cancer in 1984 at age 58. Cipollone had sued Liggett, Philip Morris and Lorillard Inc. claiming that the risks of smoking outweighed their utility and therefore made cigarettes "unreasonably unsafe" and defective.[150] The case not only forced the release of previously secret documents about the tobacco industry, it resulted in the first-ever jury award against the tobacco industry for damages ($400,000. (The 1988 verdict, however, was reversed on appeal in 1992, and for years stood as the lone jury verdict against the industry.)[151]

As the Cipollone case moved forward to trial, the tobacco industry grew concerned about a possible "flood of litigation" and began secretly backing "tort reform" efforts under the direction of three companies, Philip Morris, RJ Reynolds and Brown & Williamson.[152] In 1985, the State Activities Division of the industry-funded Tobacco Institute, in conjunction with the Institute's law firm, Covington & Burling, began an effort to track and report on liability legislation. In addition, the Institute established an oversight committee called the "Ad Hoc Committee on Tort Reform" to "pursue the industry's interests in tort reform and product liability legislation being considered in the states." Neal Cohen and Margery Krause of APCO were also involved with this committee.[153]

Shortly thereafter, the industry had two tremendous successes. First, in 1987, New Jersey enacted what was considered at the time model product liability law for tobacco companies and other manufacturers of dangerous products.[154] The law wiped out future claims similar to Cipollone's.[155] Only later when the lobbying reports were filed was it disclosed that the tobacco industry had been spending heavily—more than $940,000—to get this bill passed in New Jersey..[156]

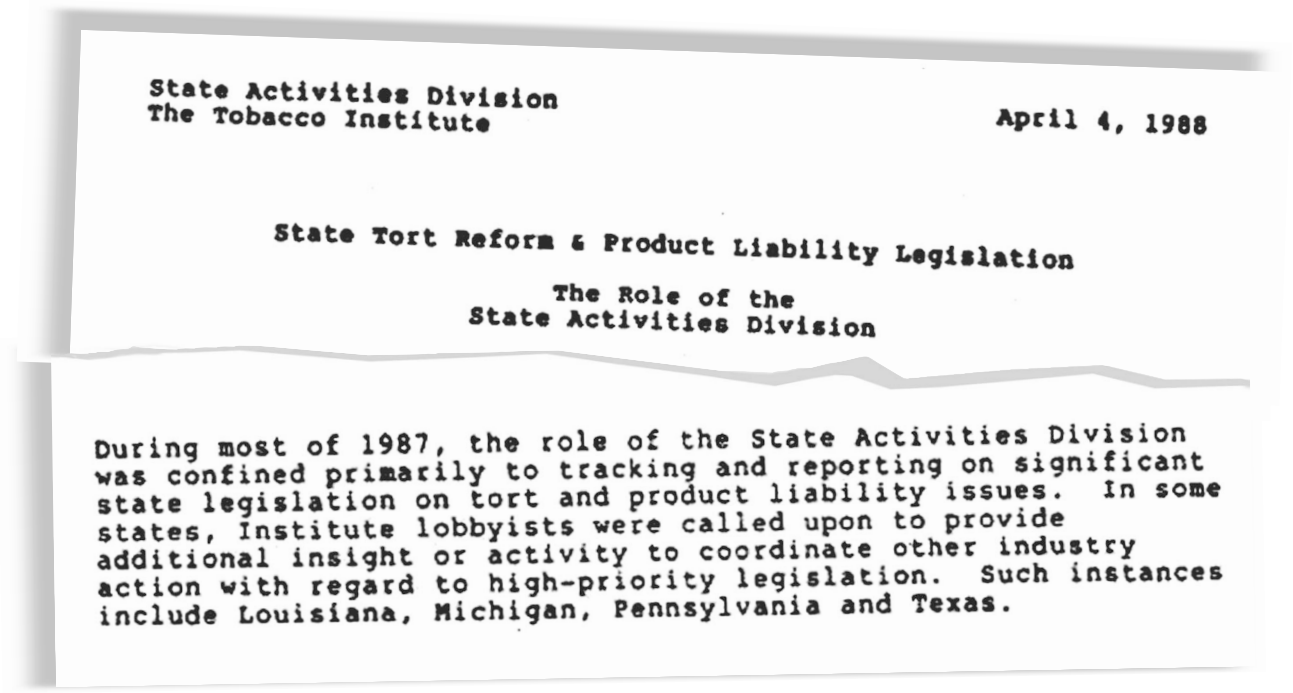
The industry's second success came in California that same year. On the last day of the 1987 legislative session, California lawmakers enacted legislation granting immunity to manufacturers of "inherently unsafe common consumer products." What was particularly unique about this law was that it specifically mentioned tobacco (along with sugar, castor oil, alcohol and butter (as an example of such a "common consumer product." The bill was part of a deal which later

became known as the infamous "napkin deal," so-named because lawmakers and lobbyists scratched it out on a napkin at a popular Sacramento restaurant called Frank Fat's.[157]

The tobacco industry was not in the room when the deal was signed - it was represented instead by other signatories like the Association of California Insurance Companies, the Association for California Tort Reform, the California Medical Association, and the California Chamber of Commerce. (The California Trial Lawyers Association also signed-on, because part of the deal was a five-year "non-aggression" pact.) However, tobacco lawyers who flew in from Washington, D.C. to Sacramento were credited with helping to write this final provision. Immediately after the vote, the industry contributed $23,750 to 16 lawmakers, according to Consumers Union.[158] When the bill passed, numerous cases against the industry were dismissed, and, according to one inside view, "virtually immunized us [i.e. the tobacco industry] from future smoking and health litigation in that jurisdiction."[159] (Notably, the tobacco immunity provision was finally repealed in 1997.[160]

Following these 1987 successes, the tobacco industry moved quickly to enhance its role in "tort reform" battles nationwide. By the end of 1987, the Tobacco Institute's State Activities Division had expanded its legislative tracking activities "to include gathering of intelligence of a more sophisticated nature... a more in-depth picture of tort and product liability reform prospects in each state..."161 By 1989, limiting tort and products liability lawsuits had become one of the tobacco industry's strategic priorities.[162] The Tobacco Institute efforts to build state-based coalitions of allies were already underway by then.

One 1988 memo from the Tobacco Institute's State Activities Division discusses the Division's focus turning "increasingly to possible participation in state tort reform coalitions in planning for 1989 activity. The Tobacco Institute has officially joined only a few



State Activities Division
The Tobacco Institute

April 4, 1988

State Tort Reform & Product Liability Legislation

The Role of the
State Activities Division

During most of 1987, the role of the State Activities Division was confined primarily to tracking and reporting on significant state legislation on tort and product liability issues. In some states, Institute lobbyists were called upon to provide additional insight or activity to coordinate other industry action with regard to high-priority legislation. Such instances include Louisiana, Michigan, Pennsylvania and Texas.

state tort coalitions, but will be seeking additional opportunities for working with other business and manufacturing interests in pursuing and protecting equitable state liability laws."[163]

In 1989, the industry spent nearly $7 million to cover the fees of Covington & Burling ($1.6 million) and consultants (lobbyists) to operate in California, Hawaii, Louisiana, Mississippi, New Jersey, New York, Pennsylvania, Texas and other states ($4.7 million). It spent $659,000 specifically for coalition efforts in several states: Hawaii, Louisiana, Mississippi, New York, Pennsylvania and Texas. Some of that money— $162,604—went to APCO for work it was already doing in Texas.[164]

The Tobacco Tort Reform Project

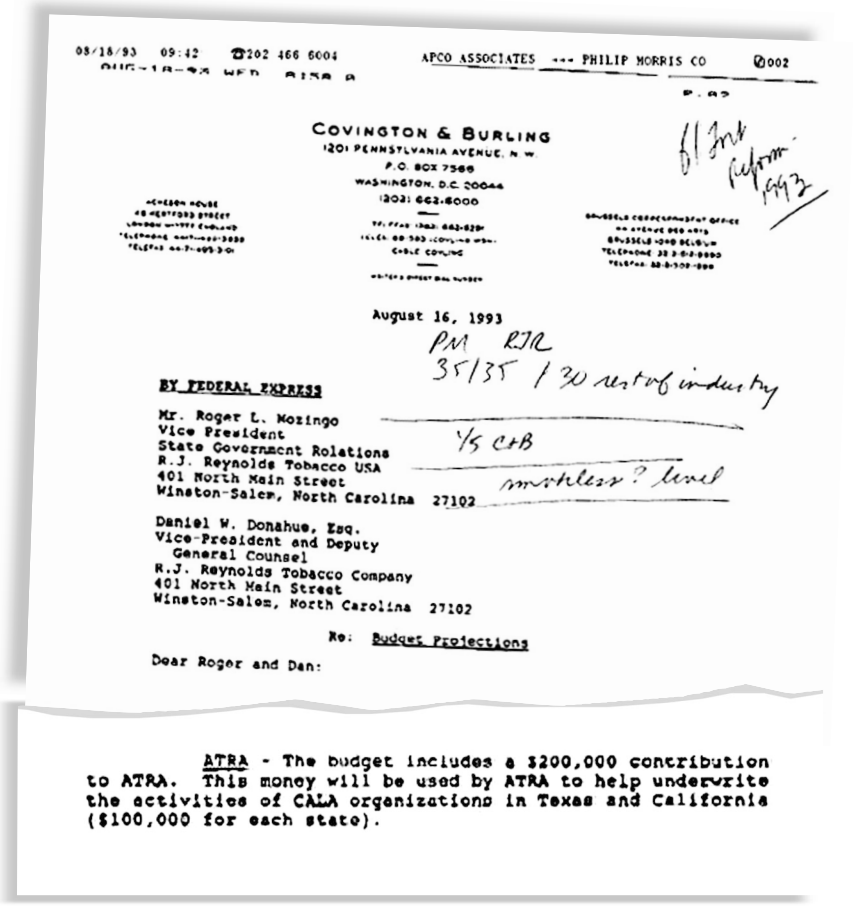
In 1989, the tobacco industry held a planning conference at a West Virginia resort to establish an agenda for what was informally referred to within the industry as "The Tort Reform Project." Among the tasks assigned the Project were coalition building, public relations, and grassroots efforts.[165] The costs of the project were shared, by and large, by American Brands, Brown & Williamson, Lorillard, Philip Morris and R.J. Reynolds.[166] The Tobacco Archives contain numerous "Tort Reform Project" budgets from Covington & Burling, as well as from individual tobacco companies, showing fees to several major law firms (Covington & Burling, Crowell & Moring and its counsel, Victor Schwartz), many local law firms, ATRA, the conservative American Legislative Exchange Council, and numerous state and local groups, including CALAs. By 1995, Big Tobacco's Tort Reform Project had grown into a sophisticated $15 million a year campaign.[167]

There are several ways ATRA, APCO and the CALAs have worked together to hide Big Tobacco's involvement in efforts to immunize the industry from suit. In 1993, for example, APCO contracted with Philip Morris for $37,000 and $42,500 a month, respectively, to work on ETS (environmental tobacco smoke) issues and to undermine scientific reports on the dangers of second-hand smoke through front groups called "sound science coalitions.168 Documents indicate that as part of the strategy, the two companies agreed that Philip Morris would aim to associate "fear studies with plaintiffs lawyer greed."[169]

Another way the industry has hidden its role in the "tort reform" movement has been working directly through ATRA, which in turn supports CALAs.[170] After the Republican Party took over California's state Assembly in 1994, there was renewed hope within ATRA and its membership that pro-business legislation could pass the Assembly. By 1995, five California CALAs had been established around the state to help achieve that goal. While the full extent of each group's financing is not public record, the cost of operating the California CALAs in 1994 alone was estimated by the tobacco industry to be $1 million. The tobacco industry set aside $100,000 that year for ATRA to use to help underwrite the activities of the California CALAs.[171] A similar estimate was made for the 10 Texas CALA groups, and as it did in California, the industry set aside $100,000 for ATRA to use in Texas in 1994. The industry also financially supported coalition efforts in Massachu-

setts, New Jersey and Louisiana to cover, in part, APCO's fees. [172]

But the industry's involvement with the "tort reform" movement has been even more direct, though equally covert, in other states.173 In 1992, the Louisiana legislature was considering bills that would have expanded the law of punitive damages in the state (punitive damages are severely restricted in Louisiana) and eviscerated a 1988 products liability statute that protected tobacco companies. The tobacco industry mobilized to stop these bills.174 The Louisiana Association of Business and Industry (LABI), the state's largest business lobby, shared this goal. In January, LABI asked its allies to join with them to fight off an effort in the legislature to expand the rights of injured citizens to sue, calling the effort "a multi-million dollar threat against you and your company."[175]



08/18/93 09:42 ☎202 466 6004 APCO ASSOCIATES --- PHILIP MORRIS CO ☎002

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, D.C. 20044
(202) 662-6000

August 16, 1993

PM RJR
35/35 / 30 rest of industry

BY FEDERAL EXPRESS

Mr. Roger L. Mozingo
Vice President
State Government Relations
R.J. Reynolds Tobacco USA
401 North Main Street
Winston-Salem, North Carolina 27102

1/5 C+B
worthless? level

Daniel W. Donahue, Esq.
Vice-President and Deputy
General Counsel
R.J. Reynolds Tobacco Company
401 North Main Street
Winston-Salem, North Carolina 27102

Re: Budget Projections

Dear Roger and Dan:

ATRA - The budget includes a $200,000 contribution to ATRA. This money will be used by ATRA to help underwrite the activities of CALA organizations in Texas and California ($100,000 for each state).

After consulting with national and local industries and its lobbyists in the state, the Tobacco Institute laid out plans to help set up and fund the Louisiana CALA to carry out the campaign. In a February 19, 1992, planning memorandum to Covington & Burling's Keith A. Teel, the Tobacco Institute's Regional Vice President, David Hooper, explained that LABI had made a strong case for "grassroots support" in the form of a "new coalition, tentatively named Coalition [sic] Against Lawsuit Abuse." A budget of $310,000 was proposed. Hooper said, "There is a clear consensus that if the business community and its lobbyists are to win the battle on the House floor, they will need additional ammunition in the form of public/constituent/legislator education. All potential coalition participants have been advised of the need to participate financially in this effort." The purpose of the plan was to "fight plaintiff lawyer-sponsored legislation in 1992, but be built to continue the campaign and increase the number of its supporters over the next three years as well."[176]

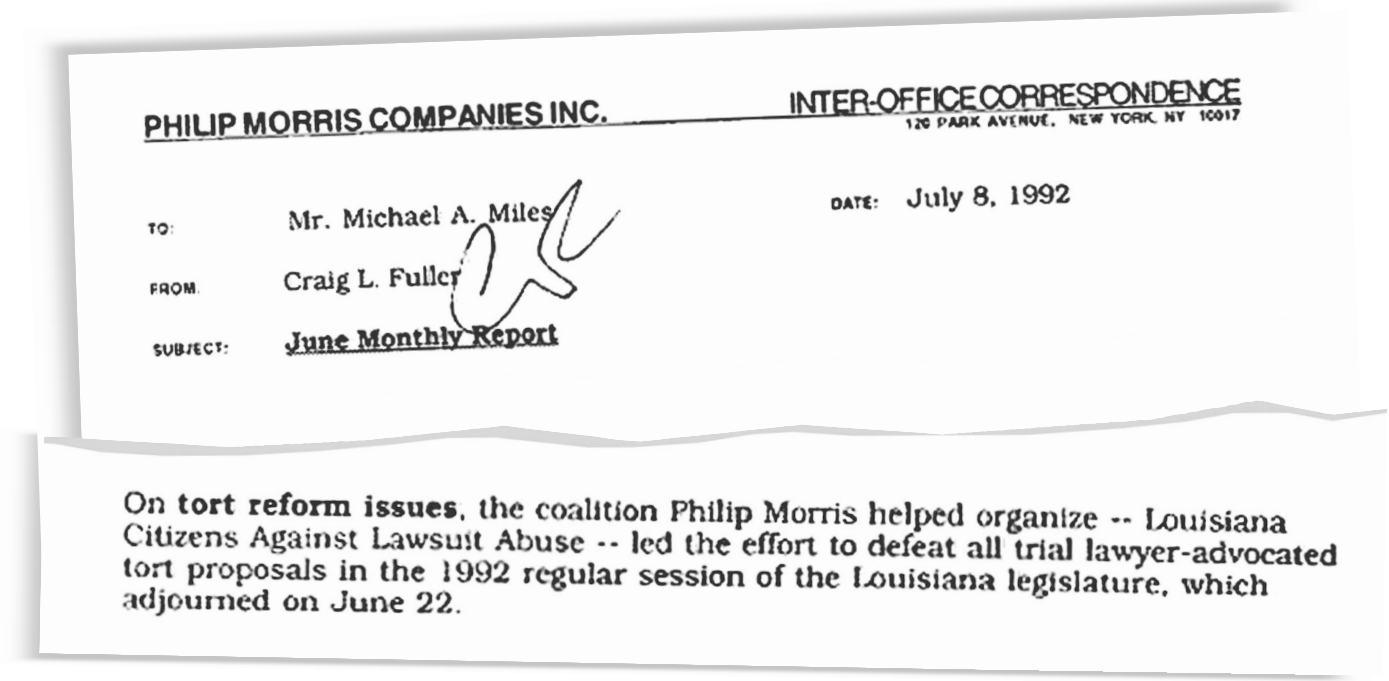
While in its first two years of operation Louisiana CALA may not have taken tobacco money, much of its funding was provided by another closely-related group, Louisianans for Lawsuit Reform (LLR), which did. LLR shared CALA's "tort reform" goals in Louisiana. It was incorporated within days of the CALA by lobbyists Randy Haynie and C.J. Blache. Both have been paid

consultants to the tobacco industry since the late 1980s/early 1990s.177 A third lobbyist, Arwin Nichols, was made treasurer of both groups.[178]

While the financial records of both of these organizations are largely confidential, it is possible to trace some tobacco funding to LLR through documents uncovered in the Tobacco Archives. For example, throughout 1992, Lorillard (a 10 percent partner in the tobacco industry's "tort reform" project (contributed a total of $24,000 to LLR.[179] That year, LLR provided Louisiana CALA with $234,000 (out of total revenue of $297,000). It also gave $75,000 during the first eight months reported in 1993 (more than three-quarters of its revenue).[180]

In 1992, the proposed legislation was defeated and the tobacco industry was secretly taking credit for its defeat. Philip Morris Vice President Craig Fuller reported to his superiors, "The coalition Philip Morris helped organize, Louisiana Citizens Against Lawsuit Abuse, led the effort to defeat all trial-lawyer advocated tort proposals" for the 1992 legislative session.181 In another memo written in November, Keith A. Teel recapped the year's successes, stating that the tobacco industry had defeated "legislation supported by the Louisiana Trial Lawyers Association, including bills that would have permitted punitive damages in all civil actions, and eviscerated the 1988 products liability statute."[182]

The tobacco industry's support for LLR continued. During the summer of 1993, when the industry budgeted another $100,000 for LLR,183 APCO's Neal Cohen was working out of Haynie's office in Lafayette.184 During that time, the group was slated to conduct



PHILIP MORRIS COMPANIES INC. INTER-OFFICE CORRESPONDENCE
120 PARK AVENUE, NEW YORK, NY 10017

TO: Mr. Michael A. Miles

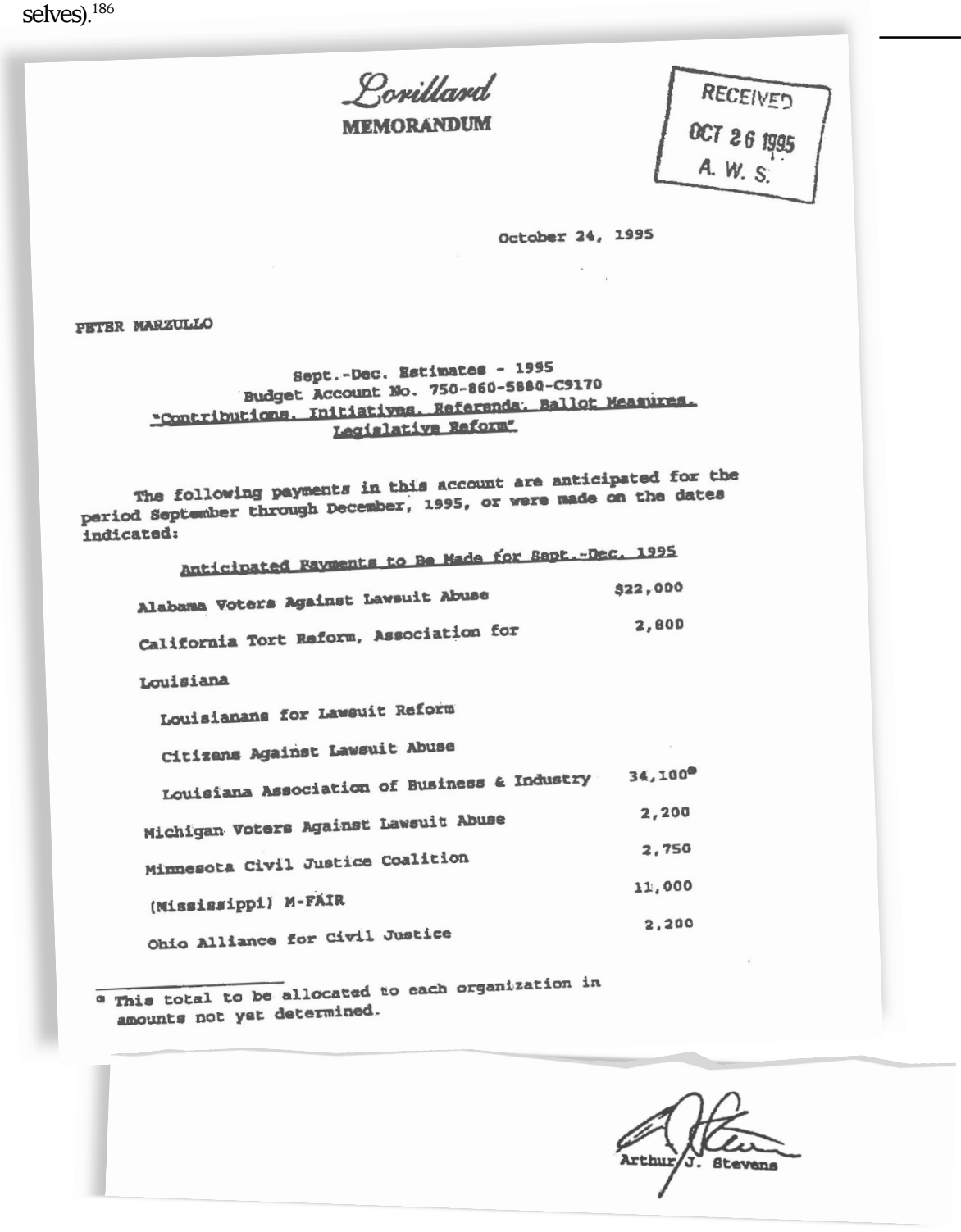
DATE: July 8, 1992

FROM: Craig L. Fuller

SUBJECT: June Monthly Report

On **tort reform issues**, the coalition Philip Morris helped organize -- Louisiana Citizens Against Lawsuit Abuse -- led the effort to defeat all trial lawyer-advocated tort proposals in the 1992 regular session of the Louisiana legislature, which adjourned on June 22.

phone banks, polling, and direct mail efforts on behalf of the Tobacco Institute's Tort Reform Project. APCO, Keith Teel wrote in an August 1993 memo to tobacco executives, was to be active in the effort.[185] For 1995, the industry projected an additional $230,000 for both the CALA and LLR. In addition, the tobacco companies were to make these payments directly to Louisiana groups, not through Covington & Burling, which was apparently the process used in other states (perhaps a way to disguise the support of the companies themselves).[186]



Lorillard

MEMORANDUM

RECEIVED
OCT 26 1995
A. W. S.

October 24, 1995

PETER MARZULLO

Sept.-Dec. Estimates - 1995
Budget Account No. 750-860-5880-C9170
"Contributions, Initiatives, Referenda, Ballot Measures, Legislative Reform"

The following payments in this account are anticipated for the period September through December, 1995, or were made on the dates indicated:

Anticipated Payments to Be Made for Sept.-Dec. 1995

Alabama Voters Against Lawsuit Abuse	$22,000
California Tort Reform, Association for	2,800
Louisiana	
Louisianans for Lawsuit Reform	
Citizens Against Lawsuit Abuse	
Louisiana Association of Business & Industry	34,100[a]
Michigan Voters Against Lawsuit Abuse	2,200
Minnesota Civil Justice Coalition	2,750
(Mississippi) M-FAIR	11,000
Ohio Alliance for Civil Justice	2,200

[a] This total to be allocated to each organization in amounts not yet determined.

Arthur J. Stevens

LLR's support for the CALA also continued. In its most recent report to the Internal Revenue Service, Louisianans for Lawsuit Reform reported a $90,000 cash grant to CALA and listed its support for CALA as its sole "program service accomplishment" in 1997. The report was prepared by LLR treasurer Arwin Nichols who was at the time also the CALA's treasurer.[187] In 1996, the Louisiana legislature finally passed several "tort reform" measures. That year, two Louisiana lawmakers received "Legislators of the Year" awards from the Louisiana CALA.[188]

Louisiana is not the only state where tobacco industry support has been instrumental in developing or supporting CALAs. One is Alabama Voters Against Lawsuit Abuse (AVALA). AVALA's executive director, Skip Tucker, publicly maintains that the group subsists on small contributions from 14,000 supporters across the state although he has admitted to receiving aid from insurance companies. Moreover, in its first year of existence, AVALA raised more than $400,000.[189] However, the group steadfastly denies any link to the tobacco industry. In September 1996, Tucker told the Montgomery Advertiser newspaper that his organization has "not taken a dime of tobacco money."[190]

An examination of once-secret tobacco industry documents, however, shows that the tobacco industry has considered AVALA an important part of its "tort reform" strategy for Alabama, noting in a January 1995 document the presence of an active "tort reform" coalition in Alabama "with which we could work."[191] Internal Philip Morris e-mails reveal that APCO was in the initial stages of doing some work on "tort reform" in Alabama the month before AVALA was formed.[192] During the first nine months of 1995, the Tobacco Institute's Tort Reform Project allocated $25,000 to AVALA, apparently funneled through Covington & Burling.[193] For the last quarter of 1995, Lorillard, a partner in the Tort Reform Project, approved a payment of $22,000 for AVALA.[194] Lorillard had been a 10 percent partner in the industry's "tort reform" project.

In Michigan, documents indicate that Michigan Voters Against Lawsuit Abuse received substantial contributions from the tobacco industry's Tort Reform Project throughout its one-and-a-half years of existence.[195] In Mississippi, documents indicate that RJR, which had been committed to paying a 35 percent share of the Tort Reform Project budget, alone poured more than $100,000 into Mississipians for a Fair Legal System in 1993, its first year.[196] Lorillard, as a 10 percent partner, paid $27,500.[197] The industry projected continued support for M-FAIR through 1996, when it budgeted $300,000 for the group.[198]

The activities of the Massachusetts Coalition for a Fair Legal System (MASS-FAIR), incorporated in 1993, were coordinated by tobacco lobbyist John Murphy.[199] Documents from the Tobacco Archives discuss Murphy coordinating "tort reform" efforts with APCO's Neal Cohen and Covington & Burling's Keith Teel.[200] And the New Jersey CALA was formed in 1994 by supporters of "tort reform," including tobacco industry lobbyists.[201] In fact, Big Tobacco's Keith Teel of Covington & Burling wrote in a 1994 memo that "a broad-based grassroots coalition has been established, and in part due to the successful efforts of the industry's lobbyist, Dale Florio, there is legislative and executive branch interest in tort issues." Teel called Florio's loyalty "substantial."[202] New Jersey CALA operates out of Florio's firm, Princeton Public Affairs Group, one of the top two lobby firms in New Jersey.

CALAs and Elections

"Beware of trial lawyer candidates"

— Billboards around Louisiana sponsored by Louisiana CALA prior to 1999 elections.

Before Louisiana's October 23, 1999 primary, the Louisiana CALA launched a "voter education campaign, including billboards and radio and print ads" urging voters to "beware of trial lawyer candidates" and to call a special toll-free number [1-800-579-5609] for information. Among other things, the group said it would provide "surveys" to voters evaluating "tort reform" views of legislative candidates. Ron Gomez, Executive Director of Louisiana CALA, told the Times-Picayune, "We're not urging people to vote against trial lawyers. We're urging people to beware of trial lawyer candidates. I know that sounds like splitting hairs. People have to make up their own mind about what they are going to do."[203]

Gomez's comments reflect awareness of IRS law that expressly prohibits non-profits like CALAs from electioneering. But as the Louisiana CALA example shows, this hasn't stopped them from trying to exercise whatever influence they can at election time.

It's been that way since the first Texas CALA was created in the Rio Grande Valley in 1991. According to an internal memorandum written in February 1992 by Philip Morris vice president Craig Fuller, Philip Morris was making two ads with Grey Advertising, which had recently acquired APCO from Arnold & Porter, sponsored by ATRA and the Texas Public Policy Foundation. The ads were to be used to test the impact of the "tort reform" issues in Texas state senate elections, he wrote, and may run in key swing elections.[204]

That Spring, the Weslaco CALA in the Rio Grande Valley sponsored "lawsuit abuse" ads on television, radio and billboards during a nasty and very expensive Texas state senate race in which Juan Hinojosa challenged pro-business incumbent, Eddie Lucio.[205] In addition to running the television ads, CALA organized a debate between the two candidates on the issue of "Lawsuit Abuse."[206] Lucio, who ran on the issue of "tort reform," won the election with 57 percent of the total vote. In Weslaco, where most of the CALA publicity was centered, his margin of victory was significantly higher.[207]

While CALAs are typically prohibited from endorsing candidates and making campaign contributions, they often work hand-in-hand with the lobbyists and Political Action Committees that do. One recent seminar by the Public Affairs Council, an organization of some 500 corporations and trade associations, advised how a corporation or industry can coordinate a "grassroots" program with its Political Action Committee.[208] It is a strategy that the "tort reform" movement has used for years.

For example:

- In 1992, when Louisiana CALA and Louisianans for Lawsuit Reform were set up with the help of tobacco companies, another organization with some of the same principals was also

created (Louisiana Civil Justice League, a Political Action Committee to contribute to the campaigns of pro-business candidates.[209]

- In 1994, ATRA officials encouraged their member corporations to donate to the Mississippi Against Crime Political Action Committee (MAC/PAC). ATRA said at the time that MAC/PAC would try to oust liberal state Supreme Court Justice Chuck McRae and would work to elect "pro-tort reform" candidates to the appeals court. ATRA officials simultaneously enlisted Mississipians for a Fair Legal System (M-FAIR) to continue to raise public awareness on the influence of the courts on corporate liability issues. [210]

- Oklahoma CALA has filed papers with the State of Oklahoma indicating that it is a PAC.[211] The CALA's director, oil executive John A. Brock, also serves as treasurer for another PAC located at the same address as the CALA, the Oklahomans for Jobs & Economic Growth. [212]

The focus on influencing elections for legislative and executive offices is nothing new. However, over the last few years, CALAs have joined the growing movement by conservative, corporate think-tanks and foundations to influence the judiciary and what should be the non-politicized election of judges. For example, almost immediately after handing down one of the most thorough decisions striking down as unconstitutional Ohio's 1996 "tort reform" law, an insuranceindustry frontgroup called "Americans for Job Security" began a viscious media campaign attacking Ohio Supreme Court Justice Alice Robie Resnick. She is one of two justices up for re-election in 2000.[213] Notably, while the "tort reform" case was pending before the Supreme Court, Ohio Citizens Against Lawsuit Abuse ran a media campaign directed at influencing the court with billboards like, "Trial lawyers gave $1.3 million to Ohio's Supreme Court candidates. Wonder why?" and listing OCALA's toll-free phone number.[214]

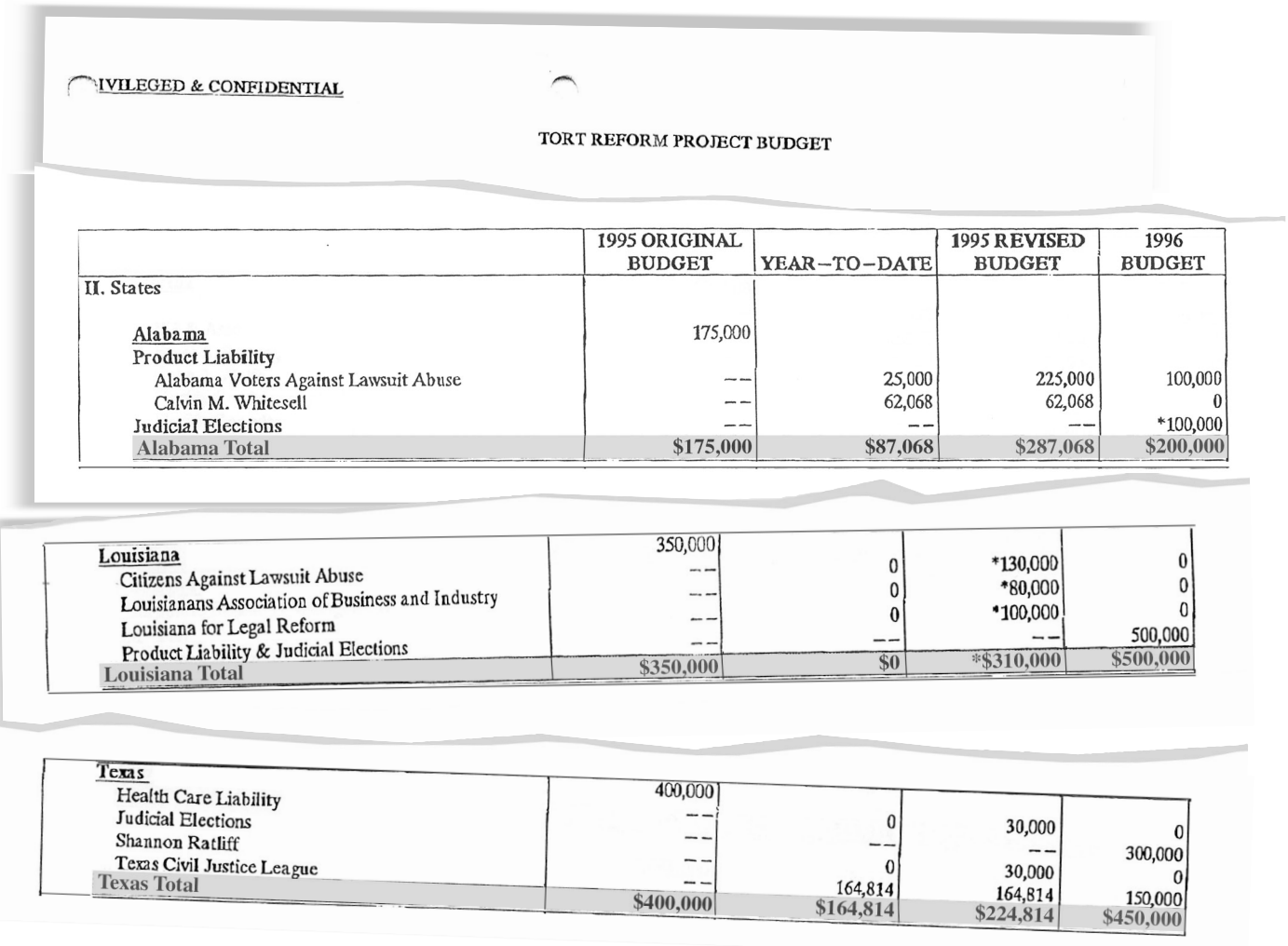
Much has been written lately about attempts by the right-wing Koch Foundation to influence judicial decisions and judicial elections through seminars, junkets and campaign contributions. Other groups including Citizens for a Sound Economy (CSE), of which Koch is a major funder, are also pumping money into states, or acting as a funnel for major corporate funds, in order to influence judges and judicial elections.[215] In 1998, an organization known as "StateSource" was contacting Florida attorneys for a survey about the performance of Florida's judges. The survey was actually being done for CSE, which was pushing hard for "tort reform" legislation, but CSE concealed the fact that it was behind the survey. Similar surveys were being conducted in Alabama.[216]

This trend can be extremely dangerous, according to many in the judicial establishment. Bill Moyers focused on the problem in a PBS Frontline documentary that aired November 23, 1999, called "Justice For Sale" in which he interviewed U.S. Supreme Court Justices Stephen Breyer and Anthony Kennedy. Justice Kennedy said, "You have to remember that we live in a constitutional democracy, not a democracy where the voice of the people each week, each year, has complete effect. We have certain constitutional principles that extend over time. Judges must be neutral in order to protect those principles." Justice Breyer said, "Independence doesn't mean you decide the way you want. Independence means you decide according to the law and the facts...The balance has tipped too far, and when the balance has tipped too far, that threatens

the institution. To threaten the institution is to threaten fair administration of justice and protection of liberty."

Despite such fundamental constitutional concerns, corporate front groups like CALAs are only broadening their efforts to strong-arm judges into voting their way and trying to defeat judges who don't. Part of the motivation stems from the fact that in states like Alabama, businesses that had succeeded in ensuring very weak consumer protection laws and regulations, were being held accountable for wrongdoing by judges and juries who were meting out justice through verdicts and judgments. Another major reason is that state courts, such as Ohio's Supreme Court, have been increasingly striking down "tort reforms" as a violation of constitutional rights - trial by jury, separation of power, access to a remedy and equal protection.[217]

The tobacco industry had long been focused on judicial elections. In June 1990, before the first CALA existed, representatives from R.J. Reynolds, Philip Morris, Covington & Burling, Arnold & Porter and APCO (Neal Cohen) met with Texas lobbyists at the Reynolds building in Greens-



IVILEGED & CONFIDENTIAL

TORT REFORM PROJECT BUDGET

	1995 ORIGINAL BUDGET	YEAR–TO–DATE	1995 REVISED BUDGET	1996 BUDGET
II. States				
Alabama	175,000			
Product Liability				
Alabama Voters Against Lawsuit Abuse	--	25,000	225,000	100,000
Calvin M. Whitesell	--	62,068	62,068	0
Judicial Elections	--	--	--	*100,000
Alabama Total	$175,000	$87,068	$287,068	$200,000
Louisiana	350,000			
Citizens Against Lawsuit Abuse	--	0	*130,000	0
Louisianans Association of Business and Industry	--	0	*80,000	0
Louisiana for Legal Reform	--	0	*100,000	0
Product Liability & Judicial Elections	--	--	--	500,000
Louisiana Total	$350,000	$0	*$310,000	$500,000
Texas	400,000			
Health Care Liability	--	0	30,000	0
Judicial Elections	--	--	--	300,000
Shannon Ratliff	--	0	30,000	0
Texas Civil Justice League	--	164,814	164,814	150,000
Texas Total	$400,000	$164,814	$224,814	$450,000

boro to discuss Texas "tort reform" efforts. "Judicial Elections, Education and Contributions" was one topic on the agenda. [218] In 1992, the tobacco documents suggest a continuing industry focus on Texas Supreme Court elections."[219] By 1994, the tobacco industry had begun efforts in the business community to help support judicial candidates in two additional states - Louisiana and Mississippi.[220] By 1996, the tobacco industry's Tort Reform Project had budgeted at least $900,000 for judicial elections in at least three states: Alabama, Louisiana and Texas."[221]

ATRA and APCO have been very focused on judicial elections as well. In 1994, ATRA officials told the group's annual legislative conference in Washington, D.C. that since substantial "tort reforms" were passed in Texas, Mississippi, North Dakota, Arizona and Michigan in 1993, their next step would be to work on judicial elections.[222] By 1998, this had become a major focus for ATRA. Clearly concerned by the number of "tort reforms" being struck down by state courts, ATRA General Counsel Victor Schwartz said that since amending constitutions and enacting federal legislation were not viable options for them, their only option was to influence judicial elections.[223] In March 1999, Schwartz emphasized at ATRA's annual membership meeting that the most effective reform strategy was ensuring the election of pro-business judges who will not overturn new legislation.

In addition, documents indicate that by at least 1996, APCO had been advising the CALAs to work for the election of pro-business judges who would be unlikely to dismantle any tort restrictions that did pass. Specifically, prior to that year, a firm called State Affairs Co. created a nonprofit, tax exempt organization called "Contributions Watch," which released a study detailing the political contributions of trial lawyers to show their alleged undue influence on the political process. According to the Washington Post, upon releasing the data, Contributions Watch hid the fact that the study was actually conducted for Philip Morris and other tobacco clients.[224] Contributions Watch (CW) consulted APCO's Neal Cohen on the best method to release this data, and Cohen advised the firm to release it in conjunction with state and local CALA efforts in various states. He also said that the primary focus should be influencing judicial elections.

Specifically, Neal Cohen said in an August 13, 1996, memo to Covington & Burling's Keith Teel, State Affairs Co. and others, "CW should release data from as many of the following states as possible, all of whom have elected judges: Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia and Wisconsin. ... Among the states listed above, we have focused on Alabama, California, Louisiana, Michigan, Minnesota, Mississippi, Ohio, Texas and WV."[225]

In Alabama, for example, the election of state court judges had become a flashpoint issue in Alabama politics. Alabama had enacted sweeping "tort reform" in 1987. But over the years, the Alabama Supreme Court declared several of these laws unconstitutional.[226] That series of court rulings led corporations to become more active in judicial politics. In 1994, for example, Kathy Bowden who was then executive director of Alabama Voters Against Lawsuit Abuse (AVALA), appeared on national network news discussing an Alabama Supreme Court

race.[227] The story focused on State Supreme Court Chief Judge Sonny Hornsby's political ties to trial lawyers, and also featured his opponent, Perry Hooper. Bowden, who had also worked for the Alabama Civil Justice Reform Committee, a pro-business lobby, attacked Hornsby.

Since its inception, AVALA has been in the thick of every "tort reform" battle in Alabama, including getting pro-business judges elected to the state Supreme Court. According to its application to the IRS for tax-exempt status, AVALA's "grassroots" public education program is specifically geared to influence the attitudes of not just the legislature, but also the courts.228 In his 1996 memo discussing the need to influence judicial elections, APCO's Neal Cohen wrote, "we work with an extremely active statewide citizens coalition, Alabama Voters Against Lawsuit Abuse."[229] Alabama was, at the time, in the midst of a Supreme Court election campaign that held important implications for "tort reform." In what would be the most expensive state supreme court race to date, Republican Harold See, backed by business, was campaigning to unseat Democrat Kenneth Ingram. It was a negative campaign in which both sides spent upwards of $5 million. See won the race.[230]

During the race, AVALA sponsored an APCO-produced anti-trial lawyer television advertisement "Want to Read the Headlines?" on WVTM in Birmingham, an NBC affiliate. The ad attacked the state Supreme Court, and, according to the Washington Post, featured a telephone number that rang at a national business-backed coalition based in California. [231] Following the election of two Republican candidates supported by "tort reformers" in 1998, the balance of the Alabama Supreme Court is currently 6-3 in favor of conservatives. In the year 2000, the Supreme Court elections are again a major fight in Alabama.[232]

Michigan is another state were the CALA has focused much of its efforts on the election of pro-tort reform" judges. In fact, distributing information about "judges records" and judicial candidates is not only part of the mission of Michigan Lawsuit Abuse Watch (M-LAW). It is also, according to the IRS, a significant part of the group's expenses, specifically "single issue advertising made during an election and the subsequent publication of the Michigan Supreme Court Judicial Evaluation."[233]

In November 1998, three seats on the seven-member Michigan Supreme Court, and several seats of the 28-member Michigan Court of Appeals, were up for election. Earlier that year, an "evaluation" of these judges was released by M-LAW, rating 4 of 7 Supreme Court justices, and 11 of 24 Court of Appeals judges, as having "records that are unfavorable to job creation and economic growth."[234]

The evaluations were conducted by an Oklahoma firm called Economic Judicial Report (EJR). EJR, according to an M-LAW press release, was called in "to do the research to eliminate the chance of bias." However, EJR (part of Sequoyah Information Systems, LTD) is part of a web of corporate front groups seeking to oust judges who do not conform to the views of its corporate sponsors. There groups had already conducted judicial "evaluations" similar to M-LAW's in Louisiana, Oklahoma, Texas and Kansas.[235] These ratings use subjective criteria that relate primarily to corporate or professional liability issues.

In the end, Michigan Lawsuit Abuse Watch's survey may have helped change the balance of the court. M-LAW-supported Republican candidates seized the majority of the Michigan Supreme Court in November 1998. All three branches of Michigan's government are now controlled by "pro tort-reform" Republicans.

Many other CALAs have focused on judicial elections as well. For example, in September 1998, the Southern West Virginia CALA released a report on trial lawyer contributions to judicial candidates.[236] And ATRA noted in its 1999 "State Tort Reform Outlook" that a "grassroots" and public education program called the Illinois Lawsuit Abuse Watch (ILAW) would be launched."[237] The focus will likely be the Illinois Supreme Court, which in 1997 struck down Illinois' brutal "tort reform" law as unconstitutional. The Illinois Civil Justice League, which had once before formed an Illinois CALA, has started a new Web site - http:www.illinoisjudges 2000.com/justice.htm.

And in Louisiana in 1996, then Governor Mike Foster actually used the Louisiana CALA to try to openly influence the election of a Supreme Court justice. Foster met with the CALA and urged them to "safeguard the legislative advances made for their cause" by making contributions and otherwise support the "right candidate." Foster made some reference to "the bad guys" and said, "I didn't do anything except point out that there were some elections going on that I felt could affect the very issue they were formed to deal with."[238]

NOTES

1 "What Insurance Crisis," Business Week, January 12, 1987.

2 Francis X. Bellotti, Attorney General of Massachusetts, et al., Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance, May, 1986. Even the insurance industry admitted this internally. In 1986, Maurice R. Greenberg, President and Chief Executive Officer of American International Group, Inc., one of the country's leading property/casualty companies, told an insurance audience in Boston that the industry's problems were due to price cuts taken "to the point of absurdity" in the early 1980s. Had it not been for these cuts, Greenberg said, there would not be "'all this hullabaloo' about the tort system." Greewald, "Insurers Must Share Blame: AIG Head," Business Insurance, March 31, 1986.

3 See, e.g., Harmon, Weimer, "Valley Becomes a Battleground for Lawsuit War," The Monitor, December 15, 1991; Citizens Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1023, Attachments, filed August 11, 1992.

4 Roman, "Lobby Effort to Curb Litigation Turns to States for Tort Reform," Washington Times, February 4, 1993; Williams, "Valley Citizens Launching Attack on Injury Lawsuits, Houston Chronicle, April 7, 1991. Interview with John Opelt, April 8, 1999. See also, Rio Grande Valley Chamber of Commerce Web site, http://www.rgvchamber.org/cala.htm;

5 "A Survey of Voter Attitudes in the Rio Grande Valley: An Analysis of Citizens Against Lawsuit Abuse," prepared for the Texas Public Policy Foundation and The Center for Lawsuit Reform by Jan Van Lohuizen, President, Voter/Consumer Research, July, 1992.

6 The Texas Public Policy Foundation (TPPF) was founded by wealthy San Antonio physician and businessman Dr. James Leininger, who columnist and author Molly Ivins dubbed the "Daddy Warbucks of Texas social conservatism." Leininger's wealth is estimated to be more than $300 million due to the success of his company, Kinetic Concepts, Inc., a hospital bed manufacturer. The Texas Lawyer wrote in a May 27, 1996 article, "It was Leininger who, to many San Antonio lawyers, has proved the hypocrisy of the lawsuit abuse movement. In 1994, Kinetic Concepts Inc. settled a patent-infringement suit for $84.75 million after receiving a favorable jury verdict." At the time, the settlement was believed to be the largest ever entered in the Western District of Texas. Leininger was also a founding director of San Antonians Against Lawsuit Abuse.

7 Koch is a name that has been closely linked to the "tort reform" movement. The right-wing Koch Foundation is run by billionaire brothers Charles and David Koch. Koch Industries, the second-largest private U.S. company, is an oil, natural gas, minerals and agribusiness conglomerate and frequently the target of environmental lawsuits. In 1999, the company was ordered to pay the federal government and the state of Texas a record $30 million civil fine for hundreds of leaks at its oil facilities and along its vast pipeline in six states. Charles and David Koch have spent many years and much money trying to influence public policy through contributions to various conservative and pro-business think tanks and organizations like the CATO Institute and Citizens for a Sound Economy, which was founded with Koch money. Lately, they have been trying to influence judicial decisions and judicial elections through seminars, junkets and campaign contributions. See, Doggett, "Koch to Pay Record U.S. Fine for Pipeline Spills, Reuters, January 13, 1999; Doucette, Hutchison, "Tulsa's billion-dollar Koch suit to begin Oct. 4 brother against brothers," The Sunday Oklahoman, August 29, 1999; Fialka, "How Koch Industries Tries To Influence Judicial System," Wall Street Journal, August 9, 1999; Marcus, "Issues Group Fund Seminars for Judges," Washington Post, April 9, 1998. (See pp. Xxx for more discussion of Koch's influence on judicial elections.)

8 Interview with John Opelt, April 8, 1999.

9 Agenda for Civil Justice Reform in America; A Report from the President's Council on Competitiveness, August 1991. Among the major recommendations were: caps on punitive damages and instituting a "loser pays" rule, as well as various rules to discourage litigation.

10 Memorandum from David L. Harfet, Keith A. Teel, Covington & Burling, to Policy Committee, Coalition for Civil Justice Reform, Tobacco Archives, January 3, 1992, Philip Morris File, Document #2023374465, et seq.

11 Many of these documents are now posted on the internet at http://www.tobaccoarchives.com.

12 Valis Associates, Citizens for Civil Justice Reform Meeting with Vice President Quayle, Philip Morris File, Document #2023374585, et seq.

13 Memorandum from David L. Harfet, Keith A. Teel, Covington & Burling, to Policy Committee, Coalition for Civil Justice Reform, Tobacco Archives, January 3, 1992, Philip Morris File, Document #2023374465, et seq.

14 Quayle mentioned the trip during the October 13, 1992 vice presidential debates.

15 CALA Memorandum, "Winning the War in South Texas; An Expose on How the Liability Crisis Has Been Turned Around."

16 News report, KHOU-TV Houston (CBS affiliate) January 28, 1995, clip reel produced by APCO; Slater, "Bush Denies Tort-Reform Push Tied to Stock; He Says his Holdings are in Blind Trust," Dallas Morning News, January 28, 1995; Ramsey, "Bush Touts Tort Reform, Answers Conflict Queries," Houston Chronicle, January 28, 1995.

17 Gonzalez, "Bush Signs off on 233 Bills," Houston Chronicle, June 19, 1999.

18 Texans for Public Justice, The Governor's Gusher: The Sources of George W. Bush's $41 Million Texas War Chest, January 2000.

19 Miller, "Texas Corporate Interests Financed Bulk of Bush Races," Los Angeles Times, July 7, 1999. According to the newspaper, campaign finance records show that Bush received $4.5 million from the Texas Civil Justice League and its officers, and Texans for Lawsuit Reform, its officers and members of its boards of governors statewide. Among these contributors were the Texas Association of Realtors ($98,473), the Texas Association of CPAs ($77,500), and the Texas Medical Association ($60,500).

20 Miller, "Texas Corporate Interests Financed Bulk of Bush Races," Los Angeles Times, July 7, 1999. See also ATRA Web site, http://www.atra.org.

21 Gannon, Tort Deform - Lethal Bedfellows, Essential Information, 1995, pp. 23-25.

22 "Proponents of Reform," Legal Times, April 17, 1995, cited in Silverstein, Smoke & Mirrors, Public Citizen Congress Watch, 1996, p. 11.

23 Silverstein, Smoke & Mirrors, Public Citizen Congress Watch, 1996, p. 11; Gannon, Tort Deform - Lethal Bedfellows, Essential Information, 1995, pp. 28-36.

24 "Report Says Tobacco Industry Quietly Backed Tort Reform," Associated Press, February 21, 1999; Tort Reform Project Budget, Covington & Burling, October 3, 1995, Document #2041201160 et seq. The budget indicates that by October 3, the project had already given about $3 million to ATRA.

25 Gannon, Tort Deform - Lethal Bedfellows, Essential Information, 1995, p. 22-23.

26 Silverstein, Smoke & Mirrors, Public Citizen, 1996, p. 12. In addition to ATRA, a sampling of recent APCO clients includes: the Advancement of Sound Science Coalition (a front group for the tobacco industry set up to counter scientific findings on the danger of second-hand smoke), State Farm, Dow-Corning, Boeing, Hoffmann-LaRoche and CSX. When Smoke and Mirrors was published in 1996, APCO was a twelve-person operation. Today, APCO claims to have 230 employees in 10 offices on three continents, according to the 1999 O'Dwyer's Directory of PR Firms.

27 Corporate Affairs Corporate Cost Reviews, July 1993, Philip Morris, Document #2046996735, 2046996747.

28 Tort Reform Project Budget Projections Summary, December 17, 1990, Lorillard Files, Document #87708908/8935.

29 Memorandum to Jack Gullahorn, Ralph Wayne, from Neal Cohen, June 7, 1990, Lorillard Files, Document #87711294/1295.

30 Electronic message from Bernie Robinson, May 20, 1991, Philip Morris Files, Document #2023387935. Robinson urged colleagues to "encourage the PM Family's friends and allies to send their supportive messages to members of the Austin Senate. Encourage polite, clear 'please pass products' types of communication." See also, Memorandum to Policy Committee from Keith A. Teel, November 7, 1991, Lorillard Files, Document #87711470, reporting on the tobacco policy committee's proposed budget for Texas, 1991 and 1992, that "reflects discussions with representatives of TCJL [Texas Civil Justice League]."

31 Memo to ATRA members from Martin Connor, President, May 21, 1991, Philip Morris Files, Document #2023387968.

32 See., e.g., October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.; Letter from Keith A. Teel, Joseph K. Doss to Rodger L. Mosingo and Daniel W. Donahue, RJR, August 16, 1993, Philip Morris Files, Document #2025773219; Tort Reform Project Budget Projections Summary, December 17, 1990, Lorillard Files, Document #87708908/8935.

33 Fritsch, "Sometimes, Lobbyists Strive to Keep Public In the Dark," New York Times, March 19, 1996.

34 Ibid.; Faucheux, "The Grassroots Explosion," Campaign & Elections, Dec. 1994/Jan. 1995. "Tort reformers" were not the first corporate interest to dream up the idea of creating "grassroots" groups to influence public policy. For years, public relations firms have been hired to create front groups for dirty industries (groups like the Coalition for Vehicle Choice, created in 1990 for the auto industry to thwart federal legislation to improve fuel-efficiency standards; or, the National Smokers' Alliance, created by Philip Morris to fight against excise taxes and smoking bans; or the US Council for Energy Awareness, established by power companies after the nuclear accident at Three Mile Island to promote nuclear energy.

35 O'Dwyer's PR Services Report, June, 1996, citing By Hook or By Crook (A Guide to Identifying and Countering "Stealth Lobbyists."

36 Memorandum to Alexander H. King from Robert J. Graham, January 20, 1986, Document # TNWL 0000095.

37 Interview with Ron Gomez, April 26, 1999.

38 Neal Cohen speech at Public Affairs Council conference, February 7, 1994 in Sarasota, Florida The speech was recorded by the sponsor, The Public Affairs Council, which made the tape available for sale. It was subsequently written about in the media.

39. Fritsch, "Sometimes, Lobbyists Strive to Keep Public In the Dark," New York Times, March 19, 1996.

40 "Tort Reformers Aim at Judicial Elections to Consolidate Gains," Liability Week, January 24, 1994.

41 See, e.g., Letter from Ronald C. Morris, Tobacco Institute, to Elis B. Bodron, The Research Group, February 18, 1993, Tobacco Institute Files, #TIMS 0006310; Memo from Neal Cohen to M-FAIR Supporters, December 30, 1992, et seq., Document #TIMS 0019783-0019779.

42 See, Stop Lawsuit Abuse Mississippi, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, filed November 26, 1997.

43 "Tort Reformers Aim at Judicial Elections to Consolidate Gain," Liability Week, January 24, 1994.

44 "Tort Reform: Lawyers' Lobby Must Deal with Groundswell of Opposition," Reputation Management, found at http://www.prcentral.com.

45 Direct mail piece from I-CALA, Tobacco Institute Files, Document #TIILBC 007975-6.

46 Best v. Taylor Machine Works (Ill. 1997), 689 N.E.2d 1057.

47 State ex rel. v. Sheward, 86 Ohio St. 3d 451; 715 N.E.2d 1062, Ohio, August 16, 1999.

48 Interview with AVALA Director Skip Tucker, April 27, 1999.

49 "California's Citizens Against Lawsuit Abuse Highlights 'Loony Lawsuit of the Month,' - But is Funded by Big Corporations Seeking to Limit Liability," Corporate Crime Reporter, December 16, 1996.

50 "New Grassroot Citizens Group to Fight Lawsuit Abuse," PR Newswire, February 24, 1994.

51 Fugate, "Group upset with abuse of legal system," The Daily Reporter, September 20, 1996.

52 St.Clair, "Angry? Talk is Cheap; Group will fight 'lawsuit abuse," Columbus Dispatch, September 20, 1996.

53 Memo from Neal Cohen to David Laufer, Jim Lindheim, Keith Teel, State Affairs Company, August 13, 1996.

54 Ibid.

55 Daniels, "Tort Reform Groups Dispute Beasley," Montgomery Advertiser, April 30, 1996.

56 M-Law Web site: http://www.mlaw.org/mlawwho.htm.

57 Release from Chip Brown, Executive Director of Michigan Lawsuit Abuse Watch, PR Newswire, October 16, 1996.

58 Michigan Lawsuit Abuse Watch, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed October 28, 1997. Notably, the supporting schedules for M-LAW's 1996 income tax return reported one cash contribution (for $354,000. See, Return of Organization Exempt from Income Tax, Form 900, 1996; Michigan Lawsuit Abuse Watch, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed October 28, 1997.

59 Michigan Lawsuit Abuse Watch, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed October 28, 1997. See also, Return of Organization Exempt from Income Tax, Form 900, 1996. See, in particular, Attachments to 1024 tax filings, including the April 15, 1998 letter to M-LAW from IRS, and M-LAW's May 27, 1998 response in which M-LAW attorney Duane Tanacki describes the grant from ATRA as 'seed money' at the request of some of ATRA's Michigan supporters."

60 Messina, "In Polished Television Commercials and Large Newspaper Ads, Citizens Against Lawsuit Abuse Preaches to West Virginians the Gospel of 'Tort Reform,'" Charleston Gazette, February 9, 1996.

61 Silicon Valley Citizens Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, filed September 28, 1998.

62 Hal Suter v. Corpus Christi Bay Area Business Alliance, Cause No. 96-4518-E, Nueces County, Texas, Deposition of Kim Keef, February 19, 1997.

63 Industry News," PR News, September 14, 1998.

64 "Focus on Tort Reform," Interview with Sherman Joyce, Metropolitan Corporate Counsel, November 1998. Confirmed by ATRA Public Education Director Mike Hotra in an interview, March 1999. Joyce was previously Republican counsel to the Senate Commerce Committee's consumer subcommittee.

65 "ATRA's Mission," materials supplied by American Tort Reform Association.

66 American Tort Reform Foundation, IRS Application for Recognition of Exemption Under Section 501(a), Form 1023, Attachments, filed November 25, 1997.

67 ATRA, The Reformer, Summer 1998. See on-line version at: http://www.atra.org/reformer/98summer.htm#nc.

68 "California's Citizens Against Lawsuit Abuse Highlights 'Loony Lawsuit of the Month,' - But Is Funded by Big Corporations Seeking to Limit Liability," Corporate Crime Reporter, December 16, 1996.

69 Ibid; Citizens Against Lawsuit Abuse, Return of Organization Exempt from Income Tax, Form 990, 1993.

70 Citizens Against Lawsuit Abuse Form 8734, August 29, 1997, includes in its list of "disqualified funders" (funders with a relationship to the organization such as board membership, trustee, family connections, etc.). ATRA's contribution was $363,204.

71 Messina, "In Polished Television Commercials and Large Newspaper Ads, Citizens Against Lawsuit Abuse Preaches to West Virginians the Gospel of 'Tort Reform,'" Charleston Gazette, February 9, 1996.

72 Western Maryland Citizens Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed February 20, 1997.

73 See, e.g., Memo from Neal Cohen to M-FAIR Supporters, December 30, 1992, et seq., Document #TIMS 0019792.

74 Ibid.

75 For example, Michigan's M-LAW and Southern West Virginia CALA both conduct these contests.

76 See., e.g., Statement by Senator Jay Rockefeller (D-W.V.), September 23, 1999, p. S11375; Statement by U.S. Rep. Brian P. Bilbray (R-Calif.), September 21, 1999, p. E1900; Statement by U.S. Rep. Robert L. Ehrlich Jr. (R-Md.), September 24, 1998, p. E1700; Statement of Senator Rockefeller, September 26, 1997, p. S10093; Statement of U.S. Rep. John A. Boehner (R-Ohio), September 24, 1997.

77 Former Web site, http://www.apcoassoc.com/html/clients_and_services/client_types/coal_cs1.html. (Web site as it appeared July 15, 1999).

78 Barnes, "Privatizing Politics," National Journal, June 3, 1995. In 1998, Pintak Gautier worked on the successful campaigns of Florida Gov. Jeb Bush, Michigan Gov. John Engler, Idaho Gov. Dirk A. Kempthorne, and Wisconsin Gov. Tommy Thompson. Hagstrom, "D-Day for the Pros," National Journal, November 7, 1998. Pintak merged with Shandwick International in 1997 to form Shandwick Murphy to

provide corporations, associations and coalitions with advertising, media relations, public affairs, grassroots organizing and online guidance. PR News, October 27, 1997.

79 Interview with Ron Gomez, April 26, 1999.

80 Neal Cohen speech at Public Affairs Council conference, February 7, 1994 in Sarasota, Florida.

81 Roman, "A PR Blitz Is Dramatizing the Public Cost of Junk Lawsuits and Multimillion Dollar Judgments," The Washington Times, February 14, 1993.

82 According to a June 1998 report by the Consumer Federation of America based on data collected by the National Association of Insurance Commissioners, in 1996, products liability insurance costs, per $100 of a retail product, were only 16¢- a tiny fraction equaling less than 2/10 of 1 percent. Adjusted for inflation, products liability insurance costs have fallen about 75 percent over the last decade. Report author J. Robert Hunter, former Texas Insurance Commissioner and Federal Insurance Administrator under Presidents Ford and Carter, said the product liability system "has costs that are so small you can't chart them. Also, even these minute costs are in steep decline.... The product liability system is not only not broke, it is an amazing system with remarkably low cost considering it takes care of all people hurt by products in our nation." Similarly, the annual survey of business insurance conducted by Ernst & Young and the Risk & Insurance Management Society calculates annual insurance and claims costs for U.S. businesses, including property damage, workers compensation, and all other liability costs. These liability costs are minimal (only $5.71 for every $1000 in revenue in 1998.

83 Barnes, "Privatizing Politics," National Journal, June 3, 1995. See also, Matthews, "Torts and a Tug on the Heartstrings, Washington Post, May 10, 1995; "Product Liability Adversaries battle for Minds of Congress, Liability Week, March 6, 1995.

84 Goldman, "Lopez Gives Tort Reform Foes a New Weapon," New Jersey Law Journal, May 15, 1995.

85 Memo from Keith A. Teel to Tort Reform Policy Committee, January 24, 1995, Lorillard Files, Document #91881092/1095.

86 Memorandum from Keith A. Teel and Joseph K. Doss, February 13, 1995, Lorillard Files, Document #91876026/6029.

87 Remarks by Steve Parrish, Philip Morris Board of Directors, April 29, 1995, Philip Morris Files, Document #2044046538 et seq.

88 October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.

89 Matthews, "Torts and a Tug on the Heartstrings, Washington Post, May 10, 1995.

90 See, e.g., Kueterman, "Tort reform package on tap for legislative conference committee," Indiana Lawyer, April 19, 1995 ("four local advertisements produced by the Indiana Citizens Against Lawsuit Abuse have aired in Indiana during the past several weeks.")

91 Mathews, Washington Post, "Torts and a Tug on the Heartstrings," May 19, 1995.

92 American Tort Reform Association entry for Cipra (Creativity in Public Relations) Award, given by PR Central, Web site, PR Central, http://www.prcentral.com/c96atra.htm.

93 The Dallas Morning News, September 29, 1996.

94 Camp, "Texas Juries Giving Less In Damage Claims Despite Reputation, State Sees Decrease In Settlements," Dallas Morning News, September 3, 1995.

95 Calve, "Poured Out," Texas Lawyer, December 16, 1996.

96 Ibid.

97 "Civil Trial Cases and Verdicts in Large Counties, 1996," Bureau of Justice Statistics, September, 1999.

98 Ibid.

99 Curriden, "Juries' bad rap; Panels rarely give big awards or buy novel defenses," Dallas Morning News, May 8, 2000.

100 Camp, "Texas Juries Giving Less In Damage Claims Despite Reputation, State Sees Decrease In Settlements," Dallas Morning News, September 3, 1995.

101 Calve, "Poured Out," Texas Lawyer, December 16, 1996.

102 E.g., contest sponsored by Citizens Against Lawsuit Abuse of Southern West Virginia. "Group sponsors essay contest for students," Charleston Daily Mail, September 8, 1997; contest sponsored by Michigan Lawsuit Abuse Watch, the winner of which had lunch with former Detroit Piston basketball player Bill Laimbeer. Business Wire, September 16, 1998.

103 See, e.g., Memo from Neal Cohen to M-FAIR Supporters, December 30, 1992, et seq., Document #TIMS 0019794.

104 Jeffreys, "A Three-Ring Implant Circus in Louisiana, Texas Lawyer, November 3, 1997.

105 Ibid.; Interview with Price Mounger. In December 1999, a federal judge approved a plan proposed by Dow Corning, which filed for Chapter 11 bankruptcy protection in 1995, to settle the 170,000 U.S. silicone breast implant claims against it as part of its $4.5 billion plan to emerge from bankruptcy.

106 Camp, "Texas Juries Giving Less In Damage Claims Despite Reputation, State Sees Decrease In Settlements," Dallas Morning News, September 3, 1995.

107 "Texas Jury Rejects Lawsuit Alleging Norplant Injury," Liability Week, September 8, 1998.

108 Calve, Poured Out, Texas Lawyer, December 16, 1996.

109 Kronzer, "Jury Tampering - 1978 Style," 10 St. Mary's L.J. 399 (1979).

110 "Aetna and the First Amendment," 8 Juris Doctor 30 (Dec. 1978/Jan. 1979).

111 Geisel, "Horror Story Ads Untrue? Can't Prove Mower Claims Assertions," Business Insurance, October 31, 1977.

112 Ibid; "The Liability Insurance Crisis," Hearings before the Subcomm. on Economic Stabilization of the Comm. On Banking, Finance and Urban Affairs, House of Representatives, 99th Cong., 2d Sess., Part 1 (July 23, 1986) at 3.

113 Quinn v. Aetna Life and Casualty, 409 N.Y.S. 2d 473 (S. Ct. 1978). The court did not rule on injunctive relief because the case was taken to federal court. In Quinn v. Aetna Life and Casualty Co, 482 F. Supp. 22 (1979) aff'd 616 F.2d. 38 (2d. Cir. 1980), the court found that the advertisements were entitled to First Amendment protection and thus did not grant injunctive relief.

114 Kronzer, "Jury Tampering - 1978 Style," 10 St. Mary's L.J. 399 (1979) at 400, n. 9.

115 Camp, "Texas Juries Giving Less In Damage Claims Despite Reputation, State Sees Decrease In Settlements," Dallas Morning News, September 3, 1995.

116 Wagner, "Crusade for Tort Reform Grows," Sacramento Bee, February 6, 1995.

117 Industry News," PR News, September 14, 1998.

118 Alabama Voters Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, filed January 26, 1994.

119 Cerrell Associates Web site, http://www.cerrell.com/bios/sarahc.html.

120 Nelson Group Web site, http://www.nelsongroup.com/corporate/leer.html.

121 Michigan Lawsuit Abuse Watch, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments (CV), filed October 28, 1997.

122 Anderson, "Lawsuit Reformers Name Head," Times-Picayune, March 16, 1996.

123 "California's Citizens Against Lawsuit Abuse Highlights 'Loony Lawsuit of the Month,' - But is Funded by Big Corporations Seeking to Limit Liability," Corporate Crime Reporter, December 16, 1996.

124 Citizens Against Lawsuit Abuse, Return of Organization Exempt from Income Tax, Form 1990, 1993. Other contributors in 1993 include: Web Service Company ($37,500), described as a "pretty big company" that loans washers and dryers to apartment buildings, according to the Corporate Crime Reporter, and is owned by Los Angeles CALA director Bill Bloomfield; Margaret Bloomfield ($5,000); Whirlpool Corporation (Michigan) ($7,000); and R.W. Thom & Company (Beverly Hills) ($6,100). In its application for tax exemption, CALA has also stated that it may "be understood as an 'outgrowth'" of similar tax-exempt organizations in other states. Citizens Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, filed April 12, 1994. See also, "California's Citizens Against Lawsuit Abuse Highlights 'Loony Lawsuit of the Month,' - But is Funded by Big Corporations Seeking to Limit Liability," Corporate Crime Reporter, December 16, 1996.

125 "Major Faucet Makers Ready to Settle Suit and Eliminate Lead Content," Fresno Bee, August 31, 1995.

126 Citizens Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, filed December 12, 1995.

127 Citizens Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed October 22, 1993.

128 See CALA brochure; http://www.toomuchsuing.com/aboutcala.htm.

129 Citizens Against Lawsuit Abuse LA Corp., Return of Organization Exempt from Income Tax, IRS Form 990, 1997. There were three principal donors of $50,000, $10,000, and $133,125, as well as $38,000 in contributions of less than $5,000.

130 Michigan Voters Against Lawsuit Abuse Hail Passage of Important Tort Reform Law, PR Newswire, September 28, 1995; Lane, "Biz Aims for Product Tort Reform," Crain's Detroit Business, February 2, 1995.

131 Minnesota Lawsuit Abuse Watch, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024. Raised over $100,000 in its first six months.

132 Stop Lawsuit Abuse, Inc., IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed November 26, 1997: "The organization is an outgrowth of Mississipians for a Fair Legal System (M-FAIR), Inc., a tax-exempt entity formed 12/4/92 and still in existence today. As soon as the affairs of M-FAIR are wound down, it will be terminated as there will no longer be a need for their services. The remaining assets of M- FAIR will be transferred to this organization upon termination." See also, "Group to Push Curbs on Punitive Damages," Commercial Appeal, April 28, 1998.

133 M-FAIR Membership List, Tobacco Institute Files, Document #TIMS 0019800.

134 Stop Lawsuit Abuse in Mississippi brochure.

135 "McCarty Heads Group Pursuing Punitive Damage Limits," Associated Press, August 5, 1998.

136 Memo from Neal Cohen to David Laufer, Jim Lindheim, Keith Teel, State Affairs Company, August 13, 1996.

137 See, Original Appointment of Statutory Agent, filed with Articles of Incorporation of Ohio Citizens Against Lawsuit Abuse; "Ohio Justices Come Under Fire," Political Finance and Lobby Reporter October 14, 1998.

138 English, "Tort Reform Advocates Raise Over $2 Million for Campaign," The Daily Oklahoman, March 15, 1995; English, "$600,000 Pledged for Tort Reform," The Daily Oklahoman, February 14, 1995.

139 CALA Web brochure, http://www.calahouston.org/fundtxt.html.

140 Citizens Against Lawsuit Abuse Form 8734, August 29, 1997. Listed as "disqualified funders" are: ATRA, $363,204; Texans for Lawsuit Reform, $45,050; Cornelius Nurseries, $10,200; Sterling Chemicals, $10,000; First Continental, $7,500; Adams Insurance, $5,400; Arthur Andersen & Co., $5,200; Pat Flynn, $5,200; Century Builders Inc., $5,100; Rio Grande Valley Partnership, $5,000; Houston Apartment Association, $5,000; Cogen Technologies, $5,000; Mach Industries, $2,500; Southwest Solvents & Chemicals, $1,500; Jack Lord, Cox & Lord, $30.

141 Hal Suter v. Corpus Christi Bay Area Business Alliance, Cause No. 96-4518-E, Nueces County, Texas, Defendants Motion for Protective Order.

142 Hal Suter v. Corpus Christi Bay Area Business Alliance, Cause No. 96-4518-E, Nueces County, Texas, Deposition of Gordon Cooper. Contract still current in 1997.

143 See, e.g., Fikas, "Court Rules Donors Secret," Associated Press, December 10, 1998; "Group's Donor List at Heart of First Amendment Debate," Austin American-Statesman, September 25, 1997.

144 San Antonians Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed January 19, 1993.

145 August 29, 1994, Kay Michael, Charleston Daily Mail, "Businessmen Form Group to Combat Frivolous Lawsuits."

146 "Frivolous Suits Move Foes to Act," Charleston Gazette, August 31, 1994. Other mining interests were represented on the group's board, including Kanawha Manufacturing and McJunkin Corp., both manufacturers of mining equipment. See also, Kabler, "Local Group Endorses Legislation," Charleston Gazette, May 4, 1995.

147 Articles of Incorporation of Citizens Against Lawsuit Abuse of Eastern West Virginia, filed October 26, 1995.

148 In February, 1999, a California jury ordered Philip Morris to pay $51.5 million in damages to ex-Marlboro smoker and lung-cancer patient Patricia Henley. Schwartz, "Jury Awards Ex-Smoker $51.5 Million," Washington Post, February 11, 1999. A month later, an Oregon jury ordered Philip Morris to pay $81 million in compensatory and punitive damages to the family of a man who smoked Marlboro cigarettes for forty years before he died. "Jury Awards $81 Million in Tobacco Lawsuit," Associated Press, March 30, 1999. And on April 7, 2000, in a Florida class action case, a jury returned a $12.7 million compensatory verdict for three smokers with cancer. Wilson, Jury awards $12.7 million to three sick smokers, Associated Press, April 7, 2000.

149 Memo from Philip Morris Counsel, March 10, 1992, Philip Morris Files, Document #2023005430.

150 See, e.g., Mintz, "Tobacco Firms' Lobbying Is Focus of Legal Dispute," The Washington Post, January 14, 1988.

151 Cipollone v. Liggett Group, Inc., 112 S.Ct. 2608 (1992).

152 Memorandum to R.J. Pritchard, et al., from Ernest Pepples, June 30, 1989, Brown & Williamson Files, Document #64051423.

153 State Tort Reform & Product Liability Legislation: The Role of the State Activities Division, April 4, 1988, Tobacco Institute Files, Document #TIFL 0066089 et seq.; Letter from Marjorie E. Powell, Covington & Burling, to Ernest Pepples (Brown & Williamson), Fredric S. Newman (Philip Morris) and Samuel B. Witt (RJR Nabisco), March 13, 1987, Document #640514372.

154 See, e.g., Memorandum to Tort Reform Policy Committee from Keith Teel, February 3, 1994, Lorillard Files, Document #91817395/7405 ("as we learned in 1987, with passage of the products liability measure, New Jersey-passed legislation can serve as model legislation for other states.")

155 Mintz, "Tobacco Firms' Lobbying Is Focus of Legal Dispute," The Washington Post, January 14, 1988.

156 Siegel, "$7.3 Million Spent in '87 to Lobby State Legislators and Administration," Philadelphia Inquirer February 19, 1988.

157 See, e.g., Lifsher, "Anatomy of a bill: It was written by lobbyists, approved by lawmakers," Orange County Register, December 14, 1987.

158 Wolinsky, Tobacco Industry Gifts After Vote Reported, Los Angeles Times, January 9, 1988; Lifsher, "Anatomy of a bill: It was written by lobbyists, approved by lawmakers," Orange County Register, December 14, 1987.

159 Presentation to Board of Directors on Post-Cipollone Strategies," March 25, 1992, Philip Morris Files, Document # 2022847932.

160 Copley News Service, October 3, 1997. Days after signing this bill, Governor Pete Wilson vetoed a measure that would have allowed victims of second-hand smoke or corporate fraud to sue for tobacco-related injuries.

161 State Tort Reform & Product Liability Legislation: The Role of the State Activities Division, April 4, 1988, Tobacco Institute Files, Document #TIFL 0066089 et seq.

162 Strategic Plan for The Tobacco Institute, September, 1989, Tobacco Institute Files, Document #TIFL 0406949.

163 State Tort Reform & Product Liability Legislation: The Role of the State Activities Division, April 4, 1988, Tobacco Institute Files, Document #TIFL 0066089 et seq. See also, Memo to TI Regional Vice Presidents and Regional Directors from Margaret Rita, June 20, 1988, Tobacco Institute Files, Document # TIOK 8019966, #TIILBC 003836; Memo to George Minshew from Bill Trisler, July 21, 1988, #TIILBC 003843. All memos are about the tobacco industry's involvement in state "tort reform" coalitions.

164 Tort Reform Project Budget Projections Summary, December 17, 1990, Lorillard Files, Document #87708908/8935.

165 Industry Planning Conference, Agenda, July 13-15, 1990, RJR Files, Document #50761 4436, 50762 9019.

166 Tort Reform and Protective Order Projects, March 23, 1993, Philip Morris Files, Document # 2023960943.

167 Tort Reform Project Budget, Covington & Burling, October 3, 1995, Document #2041201160 et seq. Notably, a year after formation of the project, Philip Morris and RJR reportedly complained that Covington & Burling was "too involved in the political aspects of the project," suggesting the Tobacco Institute take over. Others countered, saying that "CB play[s] an important role in providing 'neutral' information." Memo from J.D. Myles to E.C. Pepples, et al., July 30, 1991, Document #682438674.

168 Contracts between Philip Morris and APCO, March 3, 1993 and April 18, 1994, Philip Morris Files, Document # 2045930469, 2045930107, et seq.

169 Inter-Office Correspondence to Distribution from Ellen Merlo, February 19, 1993, Philip Morris Files, Document #2023920112.

170 1992 State Tort Reform Project, November 6, 1992, Philip Morris File, Document #2023961136. The industry says it is working in liaison with national tort reform coalitions, including ATRA, BRT [Business Roundtable], PLCC [Product Liability Coordinating Committee] and other groups.

171 Letter from Keith A. Teel, Joseph K. Doss to Rodger L. Mosingo and Daniel W. Donahue, RJR, August 16, 1993, Philip Morris Files, Document #2025773219.

172 Ibid.

173 For example, a recently uncovered 1995 Lorillard document from the Tobacco Archives notes as an "objective" in California, "Defend the 1987 product liability statute ... and support CALA groups. Memo dated January 4, 1995, Lorillard Files, Document #91880923/0972.

174 1992 State Tort Reform Project, November 6, 1992, Philip Morris File, Document #2023961136.

175 Letter from Stephen Ridley, Chairman, LABI, to Arthur J. Stevens, Lorillard Tobacco Co., January 29, 1992, Lorillard Files, Document #87709737.

176 Memorandum from David Hooper to Keith A. Teel, February 19, 1992, Lorillard Files, Document #87709724.

177 See, e.g., November 14, 1990, "Statement: Brown & Williamson Tobacco Corporation, Memorandum of Disbursements and Other Charges (Product Liability Reform)," Covington & Burling. (Blache, Perkins, & Koch, Baton Rouge, LA, for January through March, 1990, paid $13,000.); February 17, 1989, "Statement: Lorillard Memorandum of Disbursements and Other Charges (Product Liability Reform)," Covington & Burling. (Haynie & Associates, Inc., Lafayette, LA, for December 1988, paid $6,800).

178 Nichols is a lobbyist with the law firm Roedel, Parsons, Koch, Frost, Balhoff & McColister in New Orleans, which represents the Tobacco Institute. Wilkinson, "Legislation Took Steps to Lessen Business Owners' Insurance Woes," New Orleans City Business, July 5, 1999. Blache is also with this firm.

179 List of payments, Lorillard Files, Document #91880655-0669.

180 Citizens Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, filed October 22, 1993.

181 Inter-Office Memo to Michael A. Miles from Craig Fuller, July 8, 1992, Philip Morris Files, Document #2024671832. Fuller was an adviser to President George Bush, and served as Bush's Chief of Staff during the Reagan Administration.

182 1992 State Tort Reform Project, November 6, 1992, Philip Morris File, Document #2023961136.

183 Letter from Keith A. Teel, Joseph K. Doss to Rodger L. Mosingo and Daniel W. Donahue, RJR, August 16, 1993, Philip Morris Files, Document #2025773219.

184 Memorandum from Randy Haynie to Roger Mozingo, June 9, 1993, RJR Files, Document #51257 8017.

185 Letter from Keith A. Teel, Joseph K. Doss to Rodger L. Mosingo and Daniel W. Donahue, RJR, August 16, 1993, Philip Morris Files, Document #2025773219.

186 October 3, 1995, Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq. Also, an internal October 1999 Lorillard memo shows this company allocating $34,100 for the Louisiana groups, including LLR and the CALA. Memo from Peter Marzullo, Lorillard, October 24, 1995, Lorillard Files, Document #88015851.

187 Louisianans for Lawsuit Reform, Return of Organization Exempt from Income Tax, Form 990, 1997; Citizens Against Lawsuit Abuse, LA Corp. Return of Organization Exempt from Income Tax, Form 990, 1997.

188 The Advocate, September 29, 1996.

189 See, e.g., Cason, "Beasley: Tobacco Back Tort Reformers," Montgomery Advertiser, September 17, 1996; Web site http://www.avala.org/index.html. In addition, according to a March 5, 1993 Memorandum to the Tort Reform Policy Committee from Covington & Burling's Keith A. Teel, Torchmark Corporation, a health insurance company, was leading tort reform legislative efforts in Alabama, and Teel was communicating to Torchmark through Neal Cohen of APCO. Philip Morris Files, Document # 2023960944; Alabama Voters Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, filed January 26, 1994.

190 Cason, The Montgomery Advertiser, "Beasley: Tobacco Backs Tort Reformers," September 17, 1996.

191 Memo dated January 4, 1995, Lorillard Files, Document #91880923/0972.

192 E-mail message cc'd to Ted Lattanzi Director, Regulatory Affairs, Philip Morris, from Henry Turner, February 14, 1993, Philip Morris Files, Document #2024224538A.

193 October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.

194 Memo from Peter Marzullo, Lorillard, October 24, 1995, Lorillard Files, Document # 88015851.

195 October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.; October 24, 1995, Lorillard Internal Memo, Peter Marzullo.

196 Letter from Keith A. Teel, Joseph K. Doss to Rodger L. Mosingo and Daniel W. Donahue, RJR, August 16, 1993, with attached budget of RJR contributions, Philip Morris Files, Document #2025773219, 2025773225.

197 List of payments, Lorillard Files, Document #91880655-0669.

198 October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.

199 Letter from John E. Murphy Jr. to Keith A. Teel, July 6, 1993, Lorillard Files, Document #91817407.

200 Memorandum to Tort Reform Policy Committee from Keith Teel, February 3, 1994, Lorillard Files, Document #91817395/7405.

201 Richmond, "Senate's Top Democrat Says Votes Are for Sale: Lobbyists With Cash Get Results," Bergen Record, February 28, 1997.

202 Memorandum to Tort Reform Policy Committee from Keith Teel, February 3, 1994, Lorillard Files, Document #91817395/7405.

203 See, e.g., "Briefing Book, News and Views from the Louisiana Capitol, Times-Picayune, September 5, 1999; Walsh, "Issue Ads Stir Up Opposing Views; Groups Push Agendas, Not Specific Candidates," Times-Picayune, September 12, 1999.

204 Inter-Office Memo to Michael A. Miles from Craig Fuller, July 8, 1992, Philip Morris Files, Document #2024671832. The ads were produced by Grey's in-house production company.

205 Interview with Jon Opelt, April 8, 1999.

206 Citizens Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1023, Attachments, filed August 11, 1992.

207 Weimer, "Hinojosa Fought Uphill Battle, Experts Say," The Monitor, March 11, 1992; "Results indicate where candidates received support," The Monitor, March 13, 1992. Lucio, who Hinojosa accused of selling out to insurance companies and big business, spent over $222,000 on the race while Hinojosa spent $184,000.

208 See, Web site of Public Affairs Counsel, http://www.pac.org/pacfiles/members/pol/coorpac.htm - seminar topic: "coordinating a PAC with a grassroots program: potential synergy. ("To sustain an effective PAC and grassroots program simultaneously, the program administrator(s) must explore opportunities for coordinating their organization's PAC with the organization's formalized 'key contact' program.")

209 For example, the treasurer of LLR and CALA, Arwin Nichols, is also listed as the treasurer for this PAC, according to state records. http://www.ethics.state.la.us/pacs99.htm.

210 "Tort Reformers Aim at Judicial Elections to Consolidate Gains," Liability Week, January 24, 1994. McRae ended up running unopposed when his Republican opponent failed to qualify for the election.

211 State of Oklahoma, Committee Information, Citizens Against Lawsuit Abuse, Inc.; http://election.sdr.com/cgi-bin/ok97/forms/39797/.

212 Brown, "Wildcats Uniting in Firm," Tulsa World, August 8, 1997; State of Oklahoma, Committee Information, Oklahomans for Jobs & Economic Growth, Inc.; http://election.sdr.com/cgi-bin/ok97/forms/297253/

213 McCarty, "Radio Ads Target Justice Long Before 2000 Vote," The Plain Dealer, November 20, 1999. According to the article, "Resnick was joined in the 4-3 court majority by two Republican justices and another Democratic justice - although the radio ads don't mention that, targeting only Resnick. The ads are being financed by Americans for Job Security, a conservative lobbying group that supports insurance companies, tax reduction and tort reform... The Ohio ads mention several million-dollar verdicts from across the country, then zero in on Resnick. 'Our courts are already clogged by silly lawsuits,' a male narrator says. 'Now Alice Resnick wants to allow even more silly lawsuits. ... [She] fixed it for the trial lawyers and overturned real reforms proposed by the governor and the legislature.'"

214 Bradshaw, "Protectors of Tort-Reform Law Blast Contributions to Justice," The Columbus Dispatch, May 14, 1998.

215 See, e.g., Fialka, "How Koch Industries Tries To Influence Judicial System," Wall Street Journal, August 9, 1999; Marcus, "Issues Group Fund Seminars for Judges," Washington Post, April 9, 1998.

216 Hladky, "Mystery evaluation; Conservative group that backed poll lobbied hard for tort reform, Miami Daily Business Review, May 22, 1998.

217 See, e.g., State ex rel. Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, ($250,000 noneconomic damages cap, $250,000 punitive damages cap, certificate of merit, modification of the collateral source rule passed in 1996 violates separation of powers); Lakin v. Senco Products, Inc., 329 Ore. 62 (1999) ($500,000 cap on noneconomic damages in personal injury and wrongful death actions violates jury trial right); Best v. Taylor Machine Works (Ill. 1997), 689 N.E.2d 1057 (ruling $500,000 cap on noneconomic damages was a legislative remittitur, in violation of the separation of powers doctrine, and constituted impermissible special legislation as did abolition of joint and several liability and discovery statutes which mandate the unlimited disclosure of plaintiffs' medical information and records).

218 Texas Tort Reform Working Luncheon, Agenda, June 18, 1990, Document #50761 3446.

219 1992 State Tort Reform Project, November 6, 1992, Philip Morris File, Document # 2023961136.

220 Memorandum to Tort Reform Policy Committee from Keith Teel, February 3, 1994, Lorillard Files, Document #91817395/7405; October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.

221 October 3, 1995 Tort Reform Project Budget, Covington & Burling, Document #2041201160 et seq.

222 "Tort Reformers Aim at Judicial Elections to Consolidate Gains," Liability Week, January 24, 1994.

223 "Tort Reformers Focus on State Supreme Court Elections," Liability Week, October 26, 1998.

224 Ruth Marcus, "Tobacco Lobby Created Campaign 'Watchdog'; Nonprofit Group Tied to Philip Morris Monitored Trial Lawyer Donations," The Washington Post, September 30, 1996.

225 Memo from Neal Cohen to David Laufer, Jim Lindheim, Keith Teel, State Affairs Company, August 13, 1996.

226 See, e.g., Smith v. Schulte (Ala. 1995), 671 So.2d 1334 (per curiam) ($1 million cap in wrongful death cases against health care providers violates both equal protection and the right to jury trial); Henderson v. Alabama Power Co. (Ala. 1993), 627 So.2d 878 ($250,000 punitive-damage cap violates right to jury trial), Moore v. Mobile Infirmary Assoc. (Ala. 1991) 592 So.2d 156, 158 ($400,000 economic damages cap in medical malpractice cases violates jury trial and equal protection guarantees).

227 NBC Nightly News, November 2, 1994.

228 Alabama Voters Against Lawsuit Abuse, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, filed January 26, 1994.

229 Memo from Neal Cohen to David Laufer, Jim Lindheim, Keith Teel, State Affairs Company, August 13, 1996.

230 See, e.g., Russakoff, "Legal War Conquers State's Politics; In Tort Reform Fights, Alabama Court Race Cost $5 Million, Washington Post, December 1, 1996.

231 Russakoff, "Legal War Conquers State's Politics; In Tort Reform Fights, Alabama Court Race Cost $5 Million, Washington Post, December 1, 1996.

232 See, e.g., Rawls, "Business Groups Doing Better at Supreme Court than at Legislature," Associated Press, July 21, 1998 (quoting AVALA's Skip Tucker about the "importance of three seats on the Supreme Court that are up for election.")

233 Michigan Lawsuit Abuse Watch, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed October 28, 1997, associated documents.

234 Sequoyah Information Systems, Michigan Supreme Court Judicial Evaluations, Michigan Supreme Court 1987-1997 Judicial Review.

235 See, http://www.mlaw.org/judqa.htm; "Corporate Sponsored Judicial 'Ratings' - Michigan and Beyond," CCAIR Backgrounder, October 23, 1998. MLAW spent $26,000 on the report. Michigan Lawsuit Abuse Watch, IRS Application for Recognition of Exemption Under Section 501(a), Form 1024, Attachments, filed October 28, 1997.

236 Citizens Against Lawsuit Abuse of Southern West Virginia, Newsletter, September 1998.

237 ATRA State Tort Reform Outlook 1999.

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