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Pure No Fault And Wage And Price Controls

Shawn Steel

I WOULD LIKE to thank *California Political Review* for this opportunity to respond to several arguments and contentions made in Mark S. Pulliam's "Bar Wars" (*CPR*, Spring 1995) and Michael Johnson's "A Strange Amalgam Takes on the Trial Lawyers" (*CPR Update*, Spring 1995).

In his discussion of three "Alliance to Revitalize California"-sponsored initiatives, Johnson says one proposal would "limit to 15 percent the fees lawyers could charge in quick-settling cases." He goes on to make the remarkable statement, for an article in a conservative journal anyway, that this "fee limitation measure will be impossible for the trial lawyers to attack without conveying the impression that they are indeed the self-serving bunch tort reformers want to restrain." He later frets that, if the initiative fails, "lawyers' incomes would remain unrestricted." Since when are conservatives embarked on a Naderite crusade to "restrain" and "restrict" the free market earnings of private individuals? — especially on the bogus moralistic grounds that lawyers, because they make money, are "self-serving" and thus fair game for statist-imposed "restraints" on their earnings. If that's all it takes, why not control all profits — and, for that matter, salaries and wages too? Aren't they all as easily labeled "self-serving" and just as justifiably in need of controls?

One of Nixon's worst legacies, wage and price controls, brought on massive dislocation of rational market forces, as such controls always do. It may be easy to stampede the public into "controlling" attorney fees, but then why not require that they charge no more than \$25 an hour instead of just regulating contingency attorneys? Why not control other professions

for that matter? Under what understanding of conservative principles is it fair or responsible to single out one part of one profession as Johnson says we should?

Another measure, Johnson writes, would give California "the first pure no-fault auto insurance system in the country" It seems to promise less trouble and contention, I suppose, but it seems paradoxical that some conservatives would encourage this further abandonment of the Anglo-Saxon juris-prudential tradition that holds individuals responsible for their actions that injure others. "No fault," of course, means just that: No one is at fault. Everyone is a victim. This sounds more Marxist, or perhaps New Age, than conservative. This is precisely the concern Bill Bennett raises regarding America's crisis of responsibility and the decline of our culture.

People ought to be held responsible for damages and injuries they cause. Those who cannot afford car insurance should not receive driver licenses or be permitted to have cars on the road. California does it backwards. Uninsured people are penalized and may lose their license *after* an accident, but not before. A proper reform would require insurance to drive a car in California, period.

FINALLY, CONSERVATIVES should perhaps take a closer look at one of the key individuals behind these initiatives. Bill Zimmerman, chief consultant for the "Alliance to Revitalize California," was also, for many years, Tom Hayden's chief consultant. Well known in left wing circles, Zimmerman flew to North Vietnam during the '60s to donate blood to the communists. His least radical campaign was one to elect Chicago's Mayor Harold Washington, a racist, left-wing Democrat. Given his track record, Zimmerman would seem more at home working with the trial lawyers than against them, but the left has a long tradition of eat-

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ing its own. If Zimmerman and the trial lawyers had a falling out, he found a profitable means for exacting revenge. He somehow convinced several Silicon Valley entrepreneurs that California needs automobile tort reform. How that serves the interest of software entrepreneurs is hard to figure, but as chief consultant, Zimmerman stands to make considerable fees by promoting three initiatives instead of one.

Originally, the central concern of the initiatives' Silicon Valley backers' was ending vexatious shareholder class action lawsuits used against their new, vulnerable, high-tech companies. This reform would affect few people and, in fact, *would* discourage meritless suits that damage California's high-tech industries. However, the attorney fee price controls and elimination of negligent drivers' responsibility seem rooted directly in Zimmerman's socialist thinking. Republicans and conservatives have no business supporting pure no fault or attorney wage and price controls. It may seem a convenient device for punishing historical enemies among trial attorneys, but at too high a cost: supporting the very socialism we oppose.

Litigation Explosion?

Mark S. Pulliam's "Bar Wars" repeats the great myth that California suffers from a "litigation explosion." In testimony given last March, Deborah Hensley of the RAND Institute for Civil Justice told the Assembly Judiciary Committee that civil filings were down in California since 1987 and that the phrase "litigation explosion" was misleading. The state constitution requires California's Judicial Council to report to the governor annually on the business of our state courts. These reports supply the statistics most frequently cited in the tort reform debate. Civil case filings, the only relevant numbers in this case, break down by category: total civil filings, total personal injury filings, total death and property damage filings, and total motor vehicle filings.

The 1994 Annual Report of the Judicial Council shows that since the peak year of 1987 personal injury and wrongful death filings in Superior Court have dropped dramatically, plummeting from 137,379 cases in 1987 to 88,346 cases in 1993. During the same period California's population grew from 27.8 million

to 31.5 million. *Per capita* filings in personal injury and wrongful death cases have thus dropped 43 percent in six years. In 1993, civil filings for personal injuries resulting from motor vehicle accidents dropped 24 percent in one year, according to the 1994 Annual Report of the Judicial Council. Mr. Pulliam points out that despite these drops in personal injury and death cases, filings in a third category — "Other Civil Complaints" — have risen fast enough to offset the declines reported by the Judicial Council. But these initiatives do not address these "other civil" filings. Auto accident filings are way down.

The March 7, 1995, *Wall Street Journal* described several horror legal cases frequently cited by tort reform advocates. One, a widely-published tale of girl scouts sued by predatory lawyers, is disputed by Girl Scouts of USA Communications Director Bonnie McEwan. "It is not true at all," McEwan said, "that we have been barraged with frivolous lawsuits. This is absolutely not the case." The American Tort Reform Association has run radio ads throughout the country, highlighting the well-known case in

which an Albuquerque, New Mexico, jury awarded \$2.9 million to an elderly woman who spilled McDonald's coffee on her lap. What the ads ignore is that the judge slashed the award more than 75 percent and that the case settled for an undisclosed sum.

Moreover, California is not a particularly litigious state. In 1994, the Commission on the Future of California Courts reported that "on a *per capita* basis, Californians are only marginally more litigious than they were in 1960. Indeed, Californians enjoy a civil dispute filing rate of only 6,000 cases per 100,000 residence, well below the national medium." California ranks 13th, between South Dakota and Kentucky.

IT IS hard to see in such a threadbare litigation "crisis" any justification for the non-conservative, anti-free market, and anti-personal responsibility proposals currently flying under the "tort reform" banner. A system that imposes no liability also imposes no responsibility. Our legal system provides a method to encourage personal responsibility. Where reforms are needed, they should be crafted to address real problems without involving us in more government controls or in unreasoned lawyer-bashing. The temporary fun that provides will not prove worth the cost. CFR

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