

Outlook

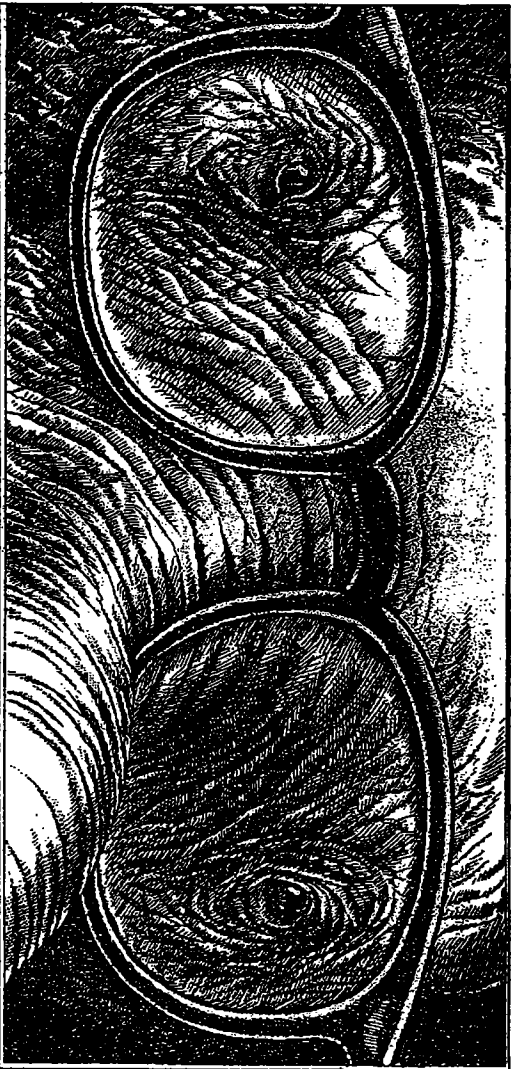
Why Texas Republicans should love the trial lawyers

By MARTIN J. SIEGEL

THE Republican majority in the Texas House has approved far-reaching changes in the civil legal system intended to defang that public menace, the trial lawyers. True, Republicans have pushed "ort reform" for years, and it doesn't hurt that trial lawyers are the financial backbone of the Democratic Party. But what's strange about the feud between Republicans and trial lawyers is how much they actually have in common.

Like most conservatives, trial lawyers are unabashed and unapologetic capitalists, exploiting the market for legal services as energetically and entrepreneurially as they can and taking great risk in the process. When consumer products or business practices start to smell fishy, trial lawyers pounce. They can spend millions to develop a case, only to lose everything when the judge or jury rules against them. But the upside can be huge, with multimillion-dollar recoveries and substantial fees.

Conservatives bash trial lawyers for this sort of sleazebuckling, but why? Conservatives believe — correctly — that the profit motive leads to better mousetraps. Greed is good, and the greed of trial lawyers, though they wouldn't call it that, has given all of us safer products and fairer dealing. Something else trial lawyers share with their Republican tormenters: They don't go crying to big government. Government is sluggish, inefficient, unresponsive. Government is the National Highway Traffic Safety Administration, operating with a third less funding than it used to as Firestone tires come apart and Ford Explorers roll off the



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road. Government is the Food and Drug Administration, under tremendous pressure to rush drugs to market and shocked at having to recall them months later. Government is the Securities and Exchange Commission, apparently clueless while giant companies committed serial securities fraud. Government is why conservatives argue that social needs are often

better met by the private sector, and why privatizing public services is all the rage in government.

Hence trial lawyers. Courts have long used the phrase "private attorney general" to describe a citizen who brings a lawsuit that advances public goals. In this conservative era of downsized and outsourced government, trial lawyers are, for better or worse, the private attorney general for us all.

Of course, justice, you might think, is too fundamental to our rights and society to be privatized. But it is way too late for that. Private security guards already perform what used to be police work, private companies run more and more of our prisons and private arbitrators and mediators have increasingly displaced courts when it comes

to resolving our legal disputes. Take a close look at your next credit card bill, and you'll see fine print requiring you to take any claim that might develop to a private forum, like arbitration, instead of the judicial system.

This is the strangest part about the tort reform bill the Texas House passed earlier this month, and which is now before the Texas Senate. In an effort to neuter trial lawyers, the bill actually expands the power of government. This at a time when budget woes will inevitably reduce government's punch.

For example, the bill requires that class action lawsuits having anything to do with a subject also covered by any state agency — which is pretty

much everything — sit and wait while the relevant state agency is notified of the case and given time to address the plaintiff's complaint. Months or years could pass while the agency plods ahead. In the end, the suit can be dismissed even if the agency, after washing all that taxpayer money, achieves less for the class members and the public than the private plaintiffs could have.

The bill also puts its faith in government by requiring juries to presume that the makers of products that meet federal safety standards are not liable, even if the product could have been made safer and the specific injury prevented. The burden would now be on the injured person to prove — not just that the product was bad — but that the regulators messed up too and gave us a standard "inadequate to protect the public from unreasonable risk of injury," whatever that means. If someone has been hurt, shouldn't the question be simply whether it was caused by a defective product — not whether the government goofed?

These provisions suggest that fear and loathing of trial lawyers has driven Republicans from their core beliefs.

Generally, private actors looking for a profit do a better job than the nanny state — except, evidently, when it comes to protecting consumers. The better and more consistently conservative approach to trial lawyers would be to keep them hungry on everyone's behalf, not subordinate them to bureaucrats and regulators.

If Republicans follow this advice and return to their roots, they may begin to do with a subject also covered by any state agency — which is pretty