



CHICAGO LAW

Malpractice attorneys Barry and Barth Goldberg, two of Chicago's legal top guns.

By Richard Lindberg
Photography By Eric Klein

Pssst . . . What do you call 200 lawyers at the bottom of the ocean? Answer: A pretty good start.

America has a love-hate relationship with attorneys. We joke about them. We scorn them. And ironically, in a country where people increasingly believe that someone else must inevitably pay for their own misfortune, we produce more and more demand for them.

In lawsuit-happy Cook County, there are nearly 34,000 practicing attorneys, according to the Attorney Registration and Disciplinary Commission. That's more lawyers than in the entire country of Japan. Pick an area of the law—corporate, real estate, probate, criminal defense, family law—and you'll find an army of attorneys employed in it.

It's not just sheer abundance that has brought lawyers under fire. Professional ethics have played a major role as well. Perhaps no area has prompted as much public anger and reformist frenzy as personal injury law, which has a long, proud and checkered heritage in Chicago.

Just last year, more than \$182 million was awarded in personal injury and malpractice verdicts in Cook County, according to the law division of the Cook County Jury Verdict Reporter. And that doesn't include the thousands of cases that each year are settled out of court. In each of these cases a monetary value is placed on an individual's pain and suffering—a value that some say has become unreasonable.

Unquestionably, the reputation of personal injury law has come a long way from the days of ambulance chasers handing business cards to grieving widows. Still, the reality of overcrowded court dockets, multimillion dollar lawsuits and rising legal insurance costs have given these litigators a public relations headache that just won't go away.

It seems the more we use lawyers, the less we like them.

"One day you're the savior of the common guy, and the next day you read the *Chicago Tribune* and you're the guy that's picking the pockets of corporate America," says Robert A. Clifford, one of the top personal-injury lawyers in Chicago.

"We don't do well polishing public images," admits veteran city attorney Joseph R. Curcio. "But far and away, [law] is one of the more ethical professions known to man. By and large the guys I have practiced against have been really good guys. You can take their word to the bank. I am still in awe of this

On trial for overpriced lawsuits, litigators argue their innocence while the public pleads for a bargain

great profession we have, and the manner it is played out in Chicago."

But while Curcio and others plead "not guilty," the public perception persists that there are simply too many lawyers creating too many lawsuits asking for too much money.

Malpractice is unquestionably the fastest growing area in personal injury/negligence law today. Critics maintain that the seven-figure judgments won by personal injury lawyers mean big insurance premiums that are inevitably passed on to consumers in the form of higher fees. Since the mid 1980s, many leading obstetricians, neurosurgeons and gynecologists have been paying five- and in some cases six-figure premiums to protect themselves from lawsuits. As a result, each year \$20 billion is added to America's doctor bill.

In its recent series, "A Right to Sue," the *Tribune* played upon the growing opinion that high-rolling attorneys and big lawsuits are driving doctors and insurers to the bread line. And at the American Bar Association convention in Atlanta this year, Vice President Dan Quayle echoed that sentiment, stating that "our system of civil justice is at times a self-inflicted, competitive disadvantage."

E. Michael Kelly, a malpractice defense attorney and president of the prestigious Chicago Inn of Court, a fraternal organization of the city's top lawyers, says excessive lawsuits are straining the entire system. "When a jury comes back with a silly award, the whole system becomes suspect," he says, adding that many judgments are "more akin to what you would expect from the Illinois Lottery, rather than from an Illinois court that was supposed to be dispensing justice."

In part, it is the success of courtroom gunslingers like Chicago attorney Phillip Corboy that has fueled the debate. Named one of the nation's top 15 trial lawyers by the *National Law Journal*, Corboy has enjoyed success on such a scale that his firm, Corboy & Demetrio, is nicknamed "the Corboy College of Law" by colleagues and opponents alike.

Corboy & Demetrio has handled 125

cases that have resulted in judgments or settlements of \$1 million or more. In 1990, Corboy convinced a Cook County Circuit Court jury to award \$22.3 million to Keva Richardson of Texas, who in 1987 was rendered a quadriplegic after a semi-trailer smashed into her car at Clavey Road and I-94. The previous Cook County record of \$16.7 million, also established by Corboy & Demetrio, was shattered.

The mammoth success of litigators like Corboy has played to mixed reviews. In a case the *Tribune* called a "ridiculous spectacle," and one that provided grist for reform advocates, Corboy also won a \$208,000 judgment for retired Illinois Supreme Court Justice Thomas E. Kluczynski after he was "bumped" from a Delta Airlines jet bound from O'Hare to Florida in 1976. The suit had the positive effect of revealing the airline industry's then-secret practice of overbooking flights. Still, one asks, was Kluczynski's inconvenience worth \$208,000?

Large firms handle only a fraction of the cases filed. But they often are the target of public lawyer-bashing, Corboy and others argue, because big settlements make big headlines. "We're in a community where there is a lot of opportunity," Corboy explains. The problem, he says, is not that there are too many lawyers; rather "there are too many lawyers who are not good lawyers."

Regardless of the cause, some say the joke simply isn't funny anymore. Members of Congress, such as Rep. Richard Gephardt (D-Mo.), have introduced legislation each year since 1980 to reform the malpractice system and "streamline" the damage recovery process, thereby breaking the logjam in the courts. And on May 15, President Bush sent his own bill to Capitol Hill that would cap pain-and-suffering awards at \$250,000.

On the state and national levels, these changes are called "tort reform." But is it reform or deform that would jeopardize Americans' right to seek compensation?

Legal advocates argue that only two percent of the instances of malpractice in this country are ever even brought to trial.

"The insurance industry has begun a terrible attack on the tort system at the expense of the small man," explains Chicago attorney Barry Goldberg, who, with his twin brother, Barth, represents plaintiffs in malpractice suits. "The reality of it is, malpractice is not caused by malpractice attorneys but rather by malpractice."

Early in this century, medical malpractice suits were almost unheard of, and the general public was virtually powerless to collect damages from many institutions. Today's image of personal injury is deeply rooted in the culture of post-World War II America.

In the early 1950s, personal injury and divorce law in Chicago were considered low-ball, practiced by men wearing baggy flannel suits with wide ties picturing hula girls and palm trees. Plaintiff lawyers often hung their shingle outside a storefront next to a local tavern, and they found new clients by pressing their business card into the hands of grieving widows at funeral parlors.

Sometimes the art of rustling up business wasn't even that benign. The shadiest attorneys were notorious for bribing doctors and insurance adjusters to assist them in faking accident claims. Some employed an army of "runners" who would cruise city streets in search of the next auto accident. Armed with a specially equipped police radio and a flash powder camera, the runners, or in some cases the lawyers themselves, were the first ones to arrive on the scene to solicit new business. Others would simply hire tow-truck operators and emergency room orderlies to refer victims to them in return for the payment of a finder's fee.

These tactics dealt the legal profession an enduring black eye, although the image slowly improved throughout the 1960s, in part because societal attitudes toward large institutions—including health care specialists—were changing. These authority figures, previously considered above reproach, increasingly became targets of costly litigation brought on by their former patients. Negligence lawsuits also proliferated with the rise of the contingency fee arrangement, in which the plaintiff pays nothing unless the case is won. A few big award judgments began appearing as early as 1972, although the growth of "reasonable compensation," as Corboy defines this specialized area of law, began in the early 1980s.

Today, "reasonable compensation"



Phillip Corboy's firm leads the personal-injury attorney pack with 125 settlements over \$1 million.

can translate into big profits, considering that lawyers generally receive 33 percent of the judgment plus expenses. But the attorneys are not without risk of their own. The odds against winning a major settlement in a negligence suit are 3-1. Negligence lawyers rely almost exclusively on contingency fee arrangements with their clients, and in some cases may be guilty of exaggerating the extent of their client's injuries to collect more money. Consequently, many big firms reject 40 to 60 percent of the cases that cross their desks, with many more referred to independent lawyers or smaller firms.

Still, the financial rewards and prestige to be gained from a win has been enough to give rise to elite lawyers like Corboy and the Goldbergs. On trial 30 to 40 weeks each year, the Goldberg brothers have achieved a level of success representing malpractice victims that is unparalleled by many large firms. Over the past 24 years, Barry and Barth have gone from selling encyclopedias door-to-door in Rogers Park to winning 60 multimillion-dollar cases for their clients.

At a time when law firms are forced to re-examine new partners relative to their ability to bring in lucrative new accounts, the city's top litigators have established a standard that many bright and ambitious young lawyers seek to emulate.

Today, at age 39, Robert Clifford is considered heir apparent to his onetime employer, Phillip Corboy, as Chicago's premier personal injury counsel. When Clifford was a sophomore at DePaul

University Law School, Corboy guest-lectured the class on civil procedure. Eager to tap into that charisma, Clifford went to Corboy's office and stormed past the buffer zone of protective receptionists and clerks. On the pretense of asking Corboy a question about the lecture, Clifford demanded to know: "How do I get a job with you?"

Intrigued by Clifford's spirit, Corboy's Irish eyes twinkled. "Send me a resume."

Clifford is only one of many Chicago lawyers who are setting the standard. In 1988, Terrence K. Hegarty was the first personal injury lawyer in Cook County to win three judgments in excess of \$1 million in a single year. His secret? In a profession that often discourages flamboyance, Hegarty is a skilled orator. He studies Cicero, Demosthenes and Gestalt psychology, and he preps with a drama coach as part of his pretrial ritual. "The speech that you give at the end of a case is much like Lear's soliloquy. You must be prepared for it mentally and physically," Hegarty explains. "It is a performance. The courtroom became a theater for me."

In the high-stakes poker game of litigation, the rules are simple: To survive you must win. To win you seek out those cases where the stakes are high and the risk minimal. Go for the throat. But afterward, shake hands and move on. "This is a game—a serious game—and it's no different than the Super Bowl," explains Phil Taxman, who resigned his post as attending surgeon at Skokie Valley



Robert Clifford, a one-time Corboy protege, is now a big success in his own right.

Hospital in 1987 in order to become a plaintiff attorney.

"You're gonna knock that guy on the ass as hard as you can. But you're not angry at him," he adds.

In fact, these lawyers can be downright civil. When the courtroom smoke has cleared, Chicago's top personal injury lawyers convene in cozy forums, such as the Chicago Inn of Court and the Inner Circle of Advocates, an exclusive national organization where attorneys exchange confidential ideas, expert witness information and trial arguments. Members, a select group of attorneys, address each other as "dear brother" in their business correspondence. Membership is limited to the giants of the plaintiff bar: the lawyers who have won judgments of \$1 million or more for their clients. The logo of the organization is a seven-point circle-star denoting the coveted seven-figure award.

When public expectations of the legal profession are based more on Perry Mason, Judge Wapner and *LA Law* than on economic reality, the positive contributions of personal injury law are obscured. They do, after all, serve the essential function of helping people recover damages where fault is involved.

And their cases can right other wrongs. As a footnote to the Keva Richardson tragedy, an overpass was constructed at the intersection where the accident occurred. And several highly publicized lawsuits with million-dollar verdicts inevitably have heightened public awareness about the dangers of drunk driving.

In a similar vein, the State of Illinois Public Works and Transportation Departments mandated that median dividers be placed on the north end of Lake Shore Drive in response to the 33 fatal accidents that occurred between 1970-80 when vehicles crossed the median strip into oncoming traffic. This came, in part, after plaintiff lawyer Charles A. Pat Boyle uncovered evidence that the city failed to construct the guard rails as early as 1967, though the funding legislation was approved at that time.

Yet the profession's public relations woes persist.

Boyle, who volunteers his time at West Side soup kitchens, says the only way for attorneys to regain public trust is to give something back to the community. "It's time for lawyers to put aside their gray suits and look within a four-block radius where someone can be helped," he asserts.

Perhaps it is unrealistic to imagine that grandiose changes have much chance in the frenzied personal-injury law business of 1991. This is, after all, a land ruled by the dollar bill, where the work week for certain lawyers in town extends from Monday to Sunday.

And, after all, on the eighth day, as all lawyers worth their pin stripes will tell you, God created golf courses. ■

Richard Lindberg is the author of To Serve and Collect: Chicago Politics and Police Corruption. His next book, An Ethnic Guide to Chicago, will be published in the spring by Passport Books.