

Dear Jim,

10/10/04

After reading the Post's Federal Report column today, the article "Administration Targets Legal Fee Awards," I wrote the enclosed Letter to the Editor. Then I thought that it might be a good idea to speak to the reporter, and I did. He may phone you.

As I say in the letter I told him in greater detail that the litigating costs to the government, costs incurred because it has violated the laws only, are ever so much greater than the payments to plaintiffs' counsel. And I illustrated with some of our cases.

He seemed interested in going further, in ways the public interest people to whom he spoke apparently never even indicated to him.

I told him that while I am not an authority on it, my belief is that most of the cases do not involve prestigious and expensive counsel, that for the most part people who cannot afford a lawyer cannot reach these eminences, and that more typical and perhaps informative to him would be people like Mark Lynch and Cornish Hitchcock.

It will not be up to him to decide whether or not to go into the actual costs, so enormously greater than plaintiffs' counsel fees. But maybe he can interest his desk.

Best,

Editor
Washington Post
1150 15 St., NW
Washington, D.C. 20005

10/16/84

Dear Editor,

If the "Reagan administration cares at all about litigating costs "at the taxpayers expense"(Post, 10/16/84, "Administration Targets Legal Fee Awards") it would not have incurred millions of dollars of costs to the taxpayers - much, much more than it has been required to pay to the lawyers of successful plaintiffs.

My experience is extensive but is limited to the Freedom of Information Act (FOIA). In my many FOIA lawsuits, all forced to litigation by the government's determined violations of the law and all lost in varying degrees by the government, its litigating costs greatly exceeded mine. The cost to the taxpayers thus is the direct responsibility of the government and is enormously greater than the awards of the courts to plaintiffs' counsel.

While all administrations, fearing embarrassment from disclosure of what the law says the people have a right to know, have been in deliberate violation of FOIA, none has gone to the extremes practised by the "Reagan administration. There is no limit to its abuses of litigants and their counsel, no burden it will not create for the courts, no dirty trick too dirty for it, and in none of this has it had any concern for "the taxpayers expense."

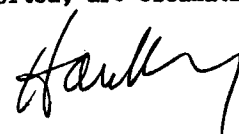
If private citizens were to misbehave before the courts as it has never failed to misbehave in any of my cases we would be subject to criminal prosecution.

There is so much totally unnecessary litigation forced by the government in its efforts to rewrite in the courts the laws it does not like it is a practical impossibility for the press to even be informed, leave alone report on these cases.

Aside from the enormous and unreported costs in money there is a greater cost, the cost of the violation of rights and of subverting the courts whose constitutional independence is undermined by official misrepresentations. With Reagan activists now sitting as judges, all litigating costs, reported and unreported, are escalating.

Sincerely,

Harold Weisberg
7627 Old Receiver Rd.
Frederick, MD 21701



FEDERAL REPORT

QUIZ:
What percentage of full-time federal workers are members of a minority group? (Answer below)

Administration Targets Legal Fee Awards *Public Interest Advocates See Caps as Assault on Social Policy Laws*

By Keith B. Richburg
Washington Post Staff Writer

When female academics filed a class-action suit against the University of Minnesota in the mid-1970s, it took half a decade to resolve the case in their favor and nearly as long to decide what to pay their lawyers. In the end, the court told the state to pay the lawyers \$1.8 million in fees and bonuses.

Similarly, when noted constitutional lawyer Laurence Tribe challenged a state zoning law in winning a battle over a liquor license for a restaurant near Harvard University, he billed the state of Massachusetts \$332,000 because the court found that the state had violated the Constitution.

Such large settlements may be the exception rather than the rule, but they provide statistical fodder for a Reagan administration assault on what it views as exorbitant awards of attorneys' fees in successful suits against the government.

In its view, a range of well-inten-



CAROL E. DINKINS
... seeks to curb "excessive awards"



MICHAEL J. HOROWITZ
... circulated 1983 proposal on fees

tioned social policy laws—covering everything from civil rights to consumer protection to environmental policy—has turned into a kind of “Lawyers’ Relief Act” for attorneys who sue Uncle Sam.

The administration is supporting legislation, introduced in the last Congress, that would limit what the government has to pay winning attorneys in such cases. It also would help out states that are sued successfully in connection with violations of the Constitution or civil rights laws.

But opponents, especially civil rights and public interest lawyers, see the effort to limit fees as an assault on the laws themselves. They say that if the administration succeeds in limiting attorney awards, lawyers will no longer be willing to take on the cases, which often can prove long and costly.

What makes the issue particularly sensitive is that many of the cases involved fall under broad civil rights laws. In particular, many states and cities have been sued for violations of the century-old Ku Klux Klan Act. The law, for instance, was used when lawyers for Linda Brown sued the Topeka, Kan., School Board in the case that led to the 1954 Supreme Court decision on equal education.

In 1976, the law was amended to provide that attorneys may recover their fees for the wide variety of cases brought under the law, a provision that administration officials argue has been exploited ever since.

The National Association of Attorneys General, representing state attorneys general, agrees that something needs to be done. Referring to the 1976 changes, it said in a report issued earlier this year: “Rather than simply facilitate the vindication of meritorious civil rights claims, as Congress intended, the act has operated to foster a

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—Nan Aron of the Alliance for Justice

flood of litigation on the entitlement to and amount of attorney's fees.”

But others see it differently. “It's an effort specifically to cut back on civil rights,” said Nan Aron, executive director of the Alliance for Justice, a coalition of public interest groups. “But I think it's more pervasive than that. It's an across-the-board attempt to cut back on the whole range of social policy statutes.”

“This is a liberal-conservative issue because most of the cases in which attorneys' fees are granted are citizens bringing civil rights cases,” said Herman Schwartz, a civil rights lawyer and American University professor.

“Obviously, the more restrictions

and limitations you impose on legal fees, the fewer of these cases will be brought,” he said.

But administration officials say their efforts are part of their crusade to cut government costs and save taxpayers' money.

The administration first floated the idea of capping legal fees when it issued its annual budget in February 1982. In August of that year, Michael J. Horowitz, general counsel of the Office of Management and Budget, began circulating a draft of a proposal to make fees comparable to the price of a federal lawyer's work—calculated then at about \$53.16 an hour.

More, recently, Sen. Orrin G. Hatch (R-Utah) introduced legisla-

tion that, in the words of Deputy Attorney General Carol E. Dinkins, would "rein in the excessive awards to attorneys at the taxpayers' expense." The bill would cap attorneys' fee awards at \$75 an hour, bar the award of bonuses or multipliers on top of that, and require that the winning party not deliberately prolong the proceedings and that the total fees not be "excessive."

The bill also would force plaintiffs who win monetary awards in suits against the government to pay as much as 25 percent of their lawyers' fees out of the settlement.

Courts generally are instructed to award legal fees based on the "prevailing market rate" for lawyers. But some consider the market—particularly, in the Washington, D.C., area where many of the cases are filed—too high, resulting in skyrocketing, often unpredictable fee awards. Dinkins told a Senate subcommittee in September that bonuses and multipliers often inflate the awards even more, to upwards of \$300 an hour.

Shwartz, Aron and others, however, contend that the administration has failed to prove its case that the fees, all told, are too high. For every case where the fee award is high, they say, there is another where a civil rights lawyer—particularly in the South—is awarded a fee that is too low.

Part of the problem is that there is no accurate accounting of how much fee awards cost the government. Estimates by administration officials run as high as \$20 million a year, but opponents say the figure is no more than \$3 million.

"I'm amazed they can't show any abuses," said Schwartz. "All they can show are claims."