

Saving Main Street and Its Retailers

**The Facts You Must Know – and 3 Plans - to Pro-
tect Your Town and Its Employment and Business
Opportunities, Property Values, Tax Base, and
Standard of Living**

Carl E. Person

Attorney at Law

Attention Local Retailers and Residents. Here is an opportunity for you to **Fight Back**. This book needs distribution in each community in the United States, and local retailers can help the fight and help themselves by carrying the book. Trade-book discounts are offered. See Chapter 28. Also, the author wants to put together a group of persons interested in making door-to-door sales and wants to set up link exchanges to generate website ordering of the book, with appropriate referral compensation or trade-book discounts. See Appendix H for text of website being used to coordinate distribution of this book.

SAVING MAIN STREET AND ITS RETAILERS

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Books by Carl E. Person

The Save-by-Borrowing Technique (Doubleday, out of print)

A Law Career Is the Smart Way – to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living (2004)

Self Employment – to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living (2004)

Saving Main Street and Its Retailers (2004)

Dedication

This book is written for and dedicated to the **small-business owners on the front line of the ongoing business and economic battle** between

(i) the nation's past and present independent retailers, jobbers and wholesalers, and

(ii) the nation's major retailers and the manufacturers from whom they buy their goods at low (even below-cost), discriminatory prices, which practices are driving the independents out of business.

There is hope for the individual independent retailer, jobber, wholesaler and community being injured by these practices, and the basis for such hope, including three specific plans I have developed, are detailed in this book.

One of the three plans is to distribute this book widely throughout towns, villages and other communities in the United States, as a new type of news medium, similar to the 40,000 farmer-oriented "lecturers" who toured the United States in the Populist Era and were able during 1896 to see one of their own (William Jennings Bryan) nominated as Presidential Candidate by the Democratic Party. See Chapter 28 and republication of my book distribution website at Appendix H (particularly pages 196-203).

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Foreword by the Author

This book is written to provide the information and insight which hundreds of persons throughout the United States have sought from me during the past 10 years to help them save their businesses or communities from the devastating effects on them which some major retailers will have, predictably, when opening a store in the area.

I have had small retailers plead with me to try to save their businesses after Wal-Mart, Sam's Club and/or other major retailers opened their mammoth stores in or near the small retailer's place of business.

The information which the small retailer needs to understand and deal with his problem is substantial, and not available anywhere (other than perhaps in my various websites, written as a series of website articles over a 10-year period).

The simplistic solution of letting local government handle the problem through restrictive zoning provisions has an exceedingly low percentage of success, perhaps less than 1 out of a hundred or 1% success rate. The other 99 major retail stores wind up as planned.

This book provides a different solution, but requires a much greater understanding of the problems and available alternatives.

I, the author, am a graduate of Harvard Law School (1962) and a member of the New York bar since 1962. I spend most of my professional time representing plaintiffs in antitrust cases against major retailers and the manufacturers who sell to them, and in representing plaintiffs suing prosecutors and governmental agencies for prosecutorial abuse under various civil rights laws.

For years (since the first days of internet) I have been writing and publishing website materials on these and other topics, at www.lawmall.com, the first website by a lawyer or law firm providing legal information to the public.

While writing this book, I am keeping in mind the needs of owners and employees of small businesses and small professional firms that are injured by major retailers; the local communities; and their property owners that are also hurt by the practices.

The solution to these problems created by major retailers and their supplying manufacturers is found in the book, and the reasons which support my solution are set forth throughout all of the chapters in the book. By reading this book, you could easily become a leader in your community to stop the destruction of your local community, local businesses, and the value of property caused by the increasing expansion and growth of major retailers. This growth has lead to a monopolistic position which economists call “monopsony power”, or the power to dictate prices by a purchasing monopoly.

The Author's Educational, Professional and Business Background

The Author, Carl E. Person, is an attorney at law admitted to practice in the State of New York and in the federal courts in New York. He is a commercial litigator and civil rights litigator, with most of his time spent in major antitrust litigation against major retailers and their manufacturer-suppliers under the federal Robinson-Patman Act (see Appendix D for the text), and a much lesser amount of time spent in civil rights litigation involving claims of prosecutorial abuse. To put it another way, his law practice deals with the monopoly problems of big business and the often-related monopolistic and unconstitutional practices of government. He is a sole practitioner of law, with no secretarial, paralegal or other employees. Mr. Person's c.v. can be seen at www.lawmall.com/files/res_cep3.html

Attorney Person is a graduate, *magna cum laude*, of Long Island University (Brooklyn campus, government-history major, 1959), and a 1962 graduate of Harvard Law School. He makes himself available to speak to interested groups in communities that are interested in preventing a specific major retailer from opening up its first, or another, store in the area.

Person is one of the founders of the paralegal field, through the paralegal school he founded in 1972 (Paralegal Institute, located in New York, New York). The school, which was the second paralegal school in the country, ceased operations in 1990.

Person wrote a best-selling book published by Doubleday, entitled *The Save-by-Borrowing Technique*, and is the author of numerous website articles at Person's website, www.lawmall.com. (See Appendix B for a list of Person websites of probable interest to readers of this book.)

Carl Person has been on numerous radio and television shows, and in numerous newspaper and magazine stories and articles, and is the author and publisher in 2004 of two other books: *SELF EMPLOYMENT – to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living*; and *A LAW CAREER IS THE SMART WAY – to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living*. Both of these books are available through Carl Person’s website, at www.lawmall.com/lawbook .

When he’s not litigating, Person is answering questions concerning his 65 websites; writing websites or website material and, recently, writing books to help individuals and small businesses cope with the ever-increasing concentration of the economic and resulting decline, for most Americans, in business and employment opportunities and in their standard of living.

Chapter 1 – How to Stop Destruction of Your Town or Village and Its Small Businesses

This book describes what can be done, by one or more residents, property owners, small business owners or other concerned persons in a town, village or municipality, to stop the financial and other injuries to them being, or to be, caused by the existence of Wal-Mart, Sam's Club and/or other major retailers in their area.

Wal-Mart has dealt with the problem, successfully, from its standpoint, in most cases, more than 3,000 times. You, on the other hand, may be facing the problem for the first time and have no idea what to do.

This book will give you more relevant and useful information about the problem than is available anywhere else. There are things you can and should do to fight back, but you cannot adequately understand or make the choices without a full understanding of the problem.

What should expect when Wal-Mart and/or Sam's Club or other major retailer opens its first store in your area? Before telling you what you can expect, I need to discuss the meaning of "area". By area, I mean a geographic territory from 15 to 50 miles in radius from the center of your town's business center. The area could be more or less than described, and the adverse effects will be much greater when the store is a short distance away. Also, the existence of competition will have to be considered, as long as such competition can remain viable, which sometimes is not very long. One of my clients went out of business, necessarily, within several weeks after a major retailer opened up its store across the street.

The adverse effects your town, local businesses, local property owners and others will experience include:

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An increase in municipal costs including police, fire, sewage, sanitation, prison, courts, healthcare and social services. The public has been unaware of this problem (not having read my various websites over the past years).

Recently, publicity has surfaced through CNN, CBS and Business Week, based on an August 2, 2004 publicity release from the University of California (Berkeley), confirming this problem. The release states that, in a study by Arindrajit Dube of UC Berkeley's Institute for Industrial Relations, and Ken Jacobs of the campus's Center for Labor Research and Education, based on 2001 figures, the researchers concluded:

*Employment policies at Wal-Mart, the nation's largest employer, cost California taxpayers approximately \$86 million a year in public assistance to company workers.... Wal-Mart workers in California rely on the state for about \$32 million annually in health-related services, and \$54 million a year in other assistance such as subsidized school lunches, food stamps and subsidized housing. "When workers do not earn enough to support themselves and their families through their own jobs, they rely on public safety net programs to make ends meet,"..... The researchers said they conservatively estimate that the approximately 44,000 workers at 143 Wal-Mart and its sister Sam's Club stores in California earn about 31 percent less than workers in large retail as a whole, and that 23 percent fewer Wal-Mart/Sam's Club workers generally are covered by employer-sponsored health insurance than workers in large retail. * * * ... Wal-Mart essentially "is shifting part of its labor costs onto the public".*

Based on such study and other information becoming known there is a developing awareness by local officials that Wal-Mart's presence comes with a lot of extra baggage, enough to warrant a major effort to keep Wal-Mart from opening up any new stores in the area, and perhaps to consider what should be done with respect to existing Wal-Mart and Sam's Club stores.

The first problem with a new Wal-Mart or other major retailer such as Target is an immediate lowering of prices for many commonly purchased goods, below the prices at which existing local businesses are able to sell such goods and remain in business profitably.

A diversion of 30% to 50% of sales from local businesses to Wal-Mart and/or Sam's Club or similar percentage from local competitors of specialized major retailers such as Home Depot and Barnes & Noble.

Destruction or devastating financial injury to more than 50% of the businesses competing with Wal-Mart and Sam's Club or other major retailer, and to others not in direct competition because of the diversion of traffic flow away from Main Street and to the new Wal-Mart store, and the reduced local spending of the businesses involved.

Reduction in demand for the commercial real estate being used by local retail businesses, with resulting declines in rentals and land values.

Reduction in the town's tax base (even if Wal-Mart or other major retailer opens up a few miles outside of the town's boundary).

Diversion of sales tax revenues away from a town if the major retailer opens its store on the other side of the town line (to avoid the sales tax and town zoning requirements). See www.lawmall.com/rpa/rpa_tax1.html for a proposed statute, which would require allocation of sales taxes based upon credit-card purchases in the store.

Decrease in revenues for local radio and television stations, cable operators and newspapers as their existing advertisers are forced out of business or are required by financial adversity to reduce their advertising

Decline in the dollar amount of sales made by businesses concerned about the welfare of the community in which they live and operate.

Decline in charitable contributions.

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Immediate withdrawal of the sales proceeds from the community which prevents any accelerator effect to provide additional sales for the community for other businesses.

Loss of business profits, officers' salaries, and employee salaries as to the businesses injured by the new store of the major retailer.

A major shift in average income for residents from one enabling them to maintain their current standard of living to a level substantially lower and always within the poverty level – jobs at \$7.00/hour, 28-hour work week maximum, and no overtime, and no significant benefits – a maximum pre-tax income of \$190/week or take-home pay of about \$160/week.

Reduction in purchases from non-competitive businesses such as theaters, restaurants, accountants, new-car dealers.

Increases in municipal expenses to pave the way for the major retailer to open up, including the costs to improve or build roads, extend electrical, sewage, water and fire services; even the costs of training Wal-Mart's new employees and the costs of construction in whole or in part.

You must be wondering whether there is any benefit at all? The answer is "Yes", the land owner selling or leasing to Wal-Mart and the attorneys and real-estate firms anticipate income and profits from the Wal-Mart deal, as do the recipients of any secret or not-so-secret promises made by the major retailer or its agents or business associates to obtain local approval.

In one instance in which I was involved (Hanover, PA 12/24/03), Wal-Mart or someone representing Wal-Mart promised the local volunteer fire department \$25,000 if it was able to overcome local resistance and push the deal through. The firemen, using 3 fire trucks, obstructed the entrance to the unused firehouse (in nearby West Manheim, PA) where I was to speak against the proposed Wal-Mart deal, and urged persons not to attend the meeting.

Officials of the fire department admitted this to the local newspaper reporter who I asked to question them about their startling admission to me. They said the reason they agreed to Wal-Mart's \$25,000 offer is that the volunteer fire department needed the \$25,000.

The main benefit, of course, is the lower prices to be expected, at least at the outset (until the competition is blown away) on some of the items offered by Wal-Mart or other major retailer – but in exchange for the lower prices the town commits economic suicide, which is not a good bargain for most persons in the town. In fact, it could easily be characterized as “a bargain with the Devil”.

The public generally is unaware that purchase from Wal-Mart results in economic suicide through the list of adverse effects described above (and something less than total economic suicide when involving other major retailers). But there are also these factors at work:

The public doesn't factor in the cost of traveling to and from Wal-Mart or other major retailer (gas, oil, tires, vehicle wear and tear), which could add up to \$10 or so for each trip.

The immediate (often apparent) saving of \$5 to \$10 today, in the mind of the Wal-Mart customer, is more valuable than the non-calculable losses which may be suffered by the customer in the future by reason of the adverse effects described above (sort of a “one in the hand is worth two in the bush” analysis).

The convenience of being able to buy everything at a single store (even though the choices as to each type of item are drastically reduced).

The Stockholm Prisoner Concept: Once the customer has been taken prisoner, with far fewer competitors available, and having one or more family members working for Wal-Mart at poverty-level wages somebody needed to stay alive, the customer now identifies with his captor and embraces whatever the captor has in store for

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him/her, to avoid antagonizing the captor and to hope that the captor may throw a few crumbs his/her way in gratitude.

The problem in trying to stop Wal-Mart is that it has been exceedingly difficult for any concerned person to put and keep together a group of persons in the community to resist Wal-Mart at great costs of time, especially when Wal-Mart is able to undermine any group by a variety of means, including promises, payments, political support, costs to develop favorable arguments in any required impact reports, and costs to come up with future tax revenues which Wal-Mart claims the community can expect due to the new Wal-Mart store.

Wal-Mart has about \$250 billion in market value, assets of about \$105 billion, annual sales exceeding \$260 billion, \$96 billion in profits for 2003, and more than 1,500,000 employees throughout the world. Wal-Mart can use a miniscule part of these assets to purchase skilled persons in any community to obtain local approval for a new Wal-Mart location in spite of some community opposition, although recently Wal-Mart has suffered an occasional location defeat. Usually the opposition is by a small group of wholly unknowledgeable patriots trying to stop Wal-Mart's planned community assault and destruction, without understanding as much as they should know about the Wal-Mart problem.

It is interesting to note that Wal-Mart is the purchaser of 4% of the total export sales of China, the country with the world's largest population and fastest growing economy. Wal-Mart is selling these Chinese-made goods into the American local markets, in what amounts to a most inhospitable practice from the standpoint of local residents seeking to be productive American workers.

Wal-Mart distributes these Chinese-made goods throughout its "3,500 facilities in the United States" including "1,470 discount stores in the United States (called "Wal-Mart Discount Stores"), 1,430 "Wal-Mart Supercenters" (which started in 1988), 60 "Wal-Mart Neighborhood Markets", which first opened in 1998, and "more than 530 SAM'S CLUBS", "the nation's leading members-

only warehouse club” – in which the “public” is not permitted to make any purchases, only the club’s 46 million members! Source: www.walmart.hospitalityjobs.hcareers.com and, as to club membership numbers, www.samsclub.com .

Wal-Mart, Sam’s Club and the other major retailers can be stopped, but three plans are needed (and are provided in Chapters 26, 27 and 28). The Plans, to be appreciated, require that you learn a lot more. For example, see Appendix A, for a list of website resources, which may be useful to you in trying to exclude a new Wal-Mart store in your community.

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Chapter 2 – Solving a Problem Can Be Easy – after You Learn Its Cause

All of us know, instinctively, that the more we know about a problem the more able we should be to deal effectively with the problem.

Even legislators who have no intention of dealing effectively with a problem, such as the members of Congress, will go through the charade of a hearing or investigation, with witnesses, to present an often inaccurate, misleading and ineffective biased view of the problem – such as the 911 Commission – in trying to show obedience to the general rule that to deal with a problem we should know as much as possible about it.

Farmers had a problem and millions of them lost their farms because of such problem, never understanding what the problem really was. Farmers complained that they couldn't survive on the prices they received for their crops, and were unable to pay their expenses and as a result saw their farms sold off from under them to pay the farmer's debts.

In one of my websites (www.lawmall.com/farmgate), I discuss the plight of farmers and explain that the solution was always there, but never used. The problem was not the price received for the farmer's crops at market (which price generally was the same price received by the large farming combines), but the prices which the farmer paid for the goods used in farming, including seed, fertilizer, agricultural vehicles, oil and gasoline. The farmers under law would have recovered treble damages for their injuries suffered by reason of the overcharges, under the federal Robinson-Patman Act (enacted in 1936), but not a single farmer ever did sue under the Act, to this day, as far as I can tell.

Problems are often not what they seem to be, or to put it in another way the facts you need to know to resolve a competition

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problem are often not at all what you think they are. Competitors hide what they are doing and you really don't know things you think you know. Competitors will hide ways of doing business for at least two reasons: (1) because the practice may be of questionable or unquestioned illegality; and (2) if legal, the competitor does not want others to do the same thing and eliminate the competitor's advantage over the others.

When it comes to business practices, and problems arising out of business practices, don't ever jump to the conclusion that you or anyone actually knows the facts. After years of litigation about business practices, I learned such things as most major retailers do not know the prices at which they buy their goods, and that manufacturers selling to them also do not know the prices at which they are selling goods to the major retailers.

This is most surprising, even to me, but it is true, and the fact will be most useful to remember in trying to analyze the problem of why main street and its businesses are being put out of business, and why many local property values, local small businesses, employment and business opportunities, and standard of living for most local residents are heading downward, with no apparent floor to stop the fall.

This book will provide you with the information and insight you need to understand how the major retailers are growing relentlessly and putting the nation's independent distribution system (including independent retailers, jobbers and wholesalers) out of business; how this is causing the tax base for communities to decline; how local property values are adversely affected for most residents; and how job and business opportunities are substantially decreased; and inevitably how the town and nation is suffering from a declining standard of living for 95% of us, while the other 5% are steadily increasing their ownership and control of the nation's wealth.

This may seem like rhetoric, especially since the major media do not report adequately or at all on this growing economic outrage.

In fact, there is no book of which I'm aware (by Ralph Nader, William Greider, Michael Moore, David Korten or other person with similar viewpoints) which has explained the problem or even suggests that the problem exists as I am presenting it.

This book, as a first time for any book or magazine article or website material (other than my own – see www.lawmall.com/rpa, for example) will provide you with the facts you need to know to understand how Main Street and its retailers are being destroyed (together with the community's tax base and local property values, and local business and employment opportunities), and based on such facts what obvious solutions there are to the problem as described.

In summary, solving your problem is easy, after you learn its cause. I know the cause, but you don't, and the general failure by all persons in your community to understand the problem has prevented everyone to date from doing what needs to be done.

I have put together three Plans for you. See Chapters 26, 27 and 28 – but don't bother to look at the Plans at this moment. They will not make much sense to you without your full understanding of your problem. Continue reading, instead.

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Chapter 3 – The Achilles Heel of the Nation’s Major Retailers

A federal statute known as the Robinson-Patman Act (see Appendix D for its text) prohibits manufacturers and other suppliers from selling goods (but not services) to competitors at different prices, because of the destructive effect such difference in prices could have upon competition.^{fn}

The retailers paying the lowest prices for their inventories will be able to lure the customers away from the disfavored retailers and put them out of business.

FN. The statute has some defenses (some contained in the statute, and some created by the courts), which often are the issues requiring resolution by a jury.

These defenses are: “meeting competition” (i.e., matching but not exceeding the price of a competitor), changing conditions (i.e., bargain sales of discontinued or obsolete items, going-out-of-business sale); “cost justification” (i.e., passing on no more than amounts actually saved by the seller by reason of the quantity purchased by the major retailer); functional discounts (i.e., discounts to pay for services performed at a specific functional level, such as a higher discount for wholesalers); and availability defense (i.e., the lower price was available to the plaintiff but it chose not to take advantage of it).

Of all these defenses, the “meeting competition” defense is generally the best argument presented by the major retailers and their supplying manufacturers to justify the discriminatory prices.

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Also, it is unlawful for the major retailers to induce manufacturers and other suppliers to sell to the retailer at discriminatorily low prices or to knowingly receive such discriminatorily low prices.

The possible defenses in Robinson-Patman Act litigation seldom can be asserted by summary judgment, and instead require discovery and a trial by jury (or judge) to resolve.

During the Nixon administration, starting in 1969, our United States government stopped its rigorous enforcement of the Robinson-Patman Act with the predictable result that the retailers with the most purchasing power would put pressure on the nation's manufacturers to give lower and lower prices to the major retailers (in violation of the Act), enabling them to grow dramatically.

The retailers who got the largest discounts were able to resell at the lowest prices, thereby attracting customers and providing a means for opening up additional stores. The retailers (such as Kmart) which apparently during the first few years after Nixon got into office tried to stay within the law and pay the same price as competitors (other than for legitimate volume discounts – the “cost justification” defense or “functional discount” defense) started losing their customers and sales, and were forced to seek relief from their obligations by periodic bankruptcy filings, which for Kmart continues to this day.

The important thing for you to know is this: Every major retailer is purchasing its goods from manufacturers at prices substantially lower than the prices for the same goods sold by the same manufacturers to the smaller competitors of the favored major retailers (or to their wholesaler-suppliers).

Also, it can be accepted that the major retailer is inducing these discriminatory prices and knowingly receiving them from the manufacturers, which makes the major retailers liable (together with

the manufacturers) for violation of Sections 2(a) and 2(f) of the Robinson-Patman Act. See Appendix D.

The effect of the discriminatory prices at which goods are sold to Wal-Mart, Sam's Club and the other major retailers is that, when they open up in your area, your local merchants are unable to compete.

In one instance a client of mine has been buying automobile tires of a certain type from a major tire manufacturer as one of its dealers, at \$17.95 per tire. But recently my client stopped buying the tire from the manufacturer.

Instead, the client went to Sam's Club and bought 30 dozen of the same tire (stamped with Wal-Mart's private-label name, Douglas, but made by the same manufacturer) at the devastatingly low retail price of \$5.95 per tire. Obviously, as anyone in business can tell you, my client cannot survive in business when paying a wholesale price three times the retail price of its competitor. The manufacturer should sell the same type of tire to my client for \$5.00 or so, instead of \$17.95.

You have a major advantage in knowing that all major retailers are buying at these low, discriminatory prices, because there is a sound legal basis presented to you for excluding the unwanted major retailer from your area. The remedy is to file a suit against the major retailer for an injunction prohibiting the major retailer from opening up a new (or another) store in the geographic area (such as perhaps 25 miles surrounding your town) unless and until the major retailer stops purchasing its inventory at low, discriminatory prices [or the major retailer gets the manufacturer to give the same low prices to the smaller competitors].

There is no legal objection to the activities of Wal-Mart as sound as this. A related argument exists for conspiring with the manufacturers to sell goods to the major retailer at predatory prices (i.e., below the manufacturer's direct cost), in violation of the Robinson-Patman Act and the Sherman Act, injuring competitors of the retailer as well as competitors of the manufacturers.

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The way to block Wal-Mart or other major retailer from opening up a new (or another) store in your area is to file a federal action for injunctive relief prohibiting the major retailer from opening up the store, and then moving right away for a preliminary injunction. More about this will be said later, including the necessity for speed in filing the complaint and making your motion, to avoid loss of the motion. Also, in some states (such as California) it may be better to bring suit in a state court under the California statutes analogous to the Robinson-Patman Act and Sherman Act, for reasons discussed elsewhere in this book. See Appendix E for sources listing and providing a copy of the state antitrust laws.

If a plaintiff doesn't seek damages in the action, it is likely that the federal judge will decide the preliminary injunction motion and the other issues in the complaint at the same time, and render a final judgment. This is important because if the judge does not render a final judgment, but does grant you the requested preliminary injunction, the judge will require the plaintiffs to post an undertaking (similar to a bond) to ensure that the major retailer that it can recover its losses incurred by reason of the injunction, up to the amount of such undertaking, if a higher court should decide later that the lower court judge erred in granting the preliminary injunction motion.

Such undertaking is at the discretion of the judge, and could involve a dollar amount far more than any plaintiff is willing to risk. Also, this type of bond would not be available from a bonding company because of the risks involved, unless the plaintiffs posted with the bonding company more than 100% of the amount of the bond.

As far as I can ascertain, no community or local resident or businessperson has sued Wal-Mart for violation of the Robinson-Patman Act to try to stop Wal-Mart or Sam's Club from opening up a store in the area. The same is true as to all other major retailers.

I'm describing to you the most powerful tool you have to keep Wal-Mart and other major retailers from opening up a new (or another) store in your area. There is no guaranty, of course, that you

would win the suit, but the claims are meritorious and should receive a fair hearing before the federal or state judge.

Hopefully, this type of litigation would encourage the major retailer to withdraw its plans for your community and prey upon another, distant community instead.

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Chapter 4 – Why Main Street Businesses Are Unable to Compete with Major Retailers

I have represented hundreds of retailers and know how dedicated most of them have been to their businesses and customers, and have seen them nevertheless fall victim to the powerful forces of the major retailers. The independent retailers have more heart, devote more time to satisfying customers, and have more knowledge and experience than their major-retailer counterparts. Why is it that they are losing their businesses to the major retailers?

One clue is that many customers will call the independent retailer for information about which specific auto part they need to buy, obtain the price for such part, and then buy that part at lower-priced AutoZone or Advance Auto. Although this is strictly anecdotal and not proof of the general rule, but common sense tells you that many people buy according to price, and the competitor, which offers the lowest price often, gets the sale.

But this doesn't provide a satisfactory explanation. If the major retailer's price is so low, how can it afford to remain in business, especially when locating its stores on expensive real estate? Where does it get the money to advertise? Where does it get the money to offer highly advertised specials, at rock-bottom prices?

Another question is why doesn't the small business competitor of the major retailer get the same price. Does the small competitor ask for the same price? Does the manufacturer refuse to give the same price? Why would a manufacturer sell at different prices to competitors, understanding that the disfavored customer will probably not be able to continue in business?

Another big question is why would a manufacturer knowingly sell to major retailers at prices that are below the manufacturers' direct costs?

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After years of litigation about these matters, I have arrived at my own conclusions, which I will share with you.

These conclusions below explain why small competitors are unable to compete with major retailers, and why the small competitors are being driven out of business by the practices of the major retailers combined with their manufacturer suppliers.

The key to understanding the problem is Price, Price, Price. By purchasing their inventories at substantially lower per-unit prices, the major retailers are able to compete successfully in the following ways:

By offering substantially lower retail prices than the independent competitors;

By offering better, more expensive locations for their stores, enabling the major retailers to make it easier for customers to reach them by paying more for rent;

By carrying larger selections of goods, in some instances (such as bookstores);

By spending more money and devoting more store space to displays to make it easier for customers to purchase the offered goods;

By not paying for their purchased goods until many months after the goods have been sold to the retail public, unlike the independent retailer competitors (and their wholesalers) who are required to pay for their goods in 30 days, or get cut off by the manufacturer;

By receiving huge amounts of advertising and promotional money, which is not made available to the independent retailer competitor;

By data processing ordering systems paid for with the lower prices at which the major retailers buy their goods;

Offering customers a more expensive, more attractive, cleaner, and more satisfying purchasing environment, using the lower purchase prices to fund these customer amenities which draw customers away from independent retailers and into the stores of the major retailers; and

Offering customers free parking very close to the major retailer's store.

On the other hand, the major retailers have found out that their customers are willing to buy at stores where salespersons are not as knowledgeable or helpful; where customers are pretty much left to their own devices to find what they want; and where waiting in line is part of the purchasing experience.

The independents cannot compete with the major retailers because the prices at which the independents (or their wholesaler suppliers) buy their goods provide them with insufficient profit margins to afford the amenities, which the major retailers use to steal or lure away the independents' customers.

In some industries, new stores are opened up regularly because the major retailer does not have to pay for its goods until 180 to 360 days after the goods are received, which gives the retailer a cash flow of 180 to 360 days of selling such goods to retail customers without having to pay for such goods.

This additional cash flow helps to finance the setting up of additional stores, many of which surround targeted independent retailers and obviously put them out of business. The independents cannot compete with price, location, or services, and wind up being driven out of business, with their customers being inherited by the major retailers at no cost to them. This inherited business appears on

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their balance sheets and in the nation's financial press as "productivity gains". Of course these are not productivity gains. They are merely inaccurate record keeping which fails to take into account the losses suffered by non-public companies when recording the gains made by public companies.

One of the major problems faced by independent retailers, jobbers and wholesalers is the lack of knowledge about the problem they were facing. Manufacturers routinely denied that they were giving any preferential prices to the major retailers, and many independents believed this to be true.

One of the reasons this occurred is that in some industries the salespersons servicing the independent distributors (which includes jobbers, retailers and wholesalers) were not permitted to service the major retailers, and when independents asked their salespersons if the manufacturer was giving preferential prices to the major retailers, the salespersons truthfully answered that they were unaware of any preferential prices. This helped to put independents off guard, and not realize the seriousness of the problem they were facing.

The seriousness of the problem is measured by the percentage difference in price between an independent wholesaler and a major retailer, both purchasing the same items from the same manufacturer.

I have been assured by my clients that they would be willing to give major retailers a 10% advantage in purchase price, and still be able to wipe the major retailers out in the marketplace. Thus, a 10% price advantage is not serious. We are talking about prices which are about twice as much for independent as they are for major retailers, which allows the major retailers to "discount" their goods, when in fact there is not much real "discounting".

AutoZone boasts about a 45% gross profit margin in its financial statements (while purchasing at far lower prices), whereas many independent competitors of AutoZone are working on a 25% profit margin on their re-sales. Major retailers in the long run will not

be discounting anything. If the major retailer is the only store around, it will sell its goods for whatever price it can charge to maximize its profits, which probably won't be at a discount, but at a premium because of the lack of competition.

At the same time, there will no longer be any need to offer as many services to attract customers. After all, when you are the only store in town, the customers will have to shop when and where you say, and pay whatever you ask.

The title of this chapter states that Main Street retailers are unable to compete with major retailers. You have seen part of the problem above. Another more subtle but highly important part is whether the Main Street retailer has any reasonable possibility of obtaining relief from its plight in the courts.

This depends on judge and jury, and the costs of litigation. When an independent retailer has been put to the wall by its major-retailer competitor, the independent has very little money or stamina left to open up a new battle front, through the filing of an antitrust action.

Furthermore, would the plight of the independent be understood by the average Joe and Mary serving on a jury? Is there enough time for Joe and Mary to understand the problem and decide appropriately?

To the extent that there are these additional difficulties for the independent, the major retailer will continue causing injury to independents with impunity. But if a community makes it a point to educate its members about these problems, there is more apt to be one or more jury members who can lead the way and help decide a tried case appropriately, with such insight. The more persons in a community who understand the plight of the retailers, the less likely the major retailer will be able to remove all of such knowledgeable persons from the jury panel.

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The answer, in the long run, seems to be that an educated public (or more specifically an educated community) will provide the right milieu for independents to flourish, and this milieu is described as part of Plan 2 in Chapter 27 below.

Chapter 5 – The Destructive Effect of Wal-Mart and Other Major Retailers

The Standard Oil Trust and John D. Rockefeller

In 1878, John D. Rockefeller, worth twice as much as Bill Gates, controlled the Standard Oil Trust (a product of years of mergers and acquisitions), which finally held about 90% of the oil refinery capacity in the United States.

In 1911, his company was broken up by historic court decision into eight main companies: (1) Standard Oil of New Jersey (Esso, which became Exxon), (2) Standard Oil of New York (Socoy, which became Mobil, and then ExxonMobil), (3) Standard Oil of Ohio (Sohio now part of BPAmoco), (4) Standard Oil of Indiana (now Amoco, which became part of BPAmoco), (5) Standard Oil of California (Socal, which became Chevron and then ChevronTexas), and (6) Atlantic and Richfield - merged to form Atlantic Richfield or Arco - now part of BPAmoco, with the Atlantic operations spun off and bought by Sunoco), (7) Standard Oil of Kentucky (or Kyso, which was acquired by Standard Oil of California - now part of ChevronTexaco), and (8) Continental Oil Company (or Conoco, now known as ConocoPhillips).

In addition there were numerous other smaller pre-1911 Standard Oil companies including Standard Oil of Iowa, Standard Oil of Minnesota, Standard Oil of Illinois, Standard Oil of Kansas, Standard Oil of Missouri, Standard Oil of Nebraska, Standard Oil of Louisiana, Standard Oil of Brazil and Standard Oil of Colorado.

Because of the development of the Rockefeller Trust and other business trusts, Congress enacted the Sherman Antitrust Act in 1890 to declare various practices illegal, including predatory practices resulting from monopolization.

Rockefeller's Standard Oil Trust was able to destroy and take over its competitors by engaging in dubious or illegal transpor-

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tation deals with the nation's railroad companies which because of its lower costs enabled the Trust to undercut the delivered oil prices of its competitors. The evils of discriminatory pricing became well known to many small businesses by the 1880's.

It became known that Rockefeller used his monopolistic profits in markets where the Trust had little competition to finance the lowering of the Trust's prices in competitive markets, to prevent the competitors from competing successfully. They did not have the assets to sell below cost for as long a time as the Rockefeller Trust (which had a seemingly never-ending source to finance its predatory pricing practices).

Enactment of Clayton Antitrust Act of 1914

These tactics by Rockefeller and other major trusts of that era, followed by a major lawsuit by the United States Justice Department to break up the Standard Oil Trust into numerous smaller companies, resulted in the enactment in 1914 of the Clayton Antitrust Act, which attempted to outlaw these Rockefeller practices, including mergers and acquisitions tending to monopolize, and discriminatory pricing.

The Clayton Act of 1914 did not succeed in its purpose to stop discriminatory pricing because the wording was insufficient to understand what duty was being imposed by the statute.^{fn}

FN. Perhaps some legislators friendly to the Rockefeller interests drafted the statute in this way intentionally to undermine its effectiveness; this type of activity would readily occur today if the Clayton Act were first being drafted by Republican legislators wanting to give the appearance to voters that they are not friends of the monopolists).

The Great Depression and Roosevelt's New Deal

It may well be that excessive monopolization brings on depressions, and after some wild years of high flying stock issuances generally bought on margin, the financially irresponsible years of the Roaring 20's were brought to an end with the collapse of the stock market prices followed over the next several years with a closing down (or failure) of many businesses and banks throughout the nation. President Hoover, elected in 1928 (prior to the start of the Depression), did not believe it important or possible to make use of the government's powers to try to stop the Depression, and at the 1932 elections an angered electorate voted Franklin Delano Roosevelt and his New Deal into office.

FDR's New Deal resulted in a series of statutes, which collectively tried to resurrect the economy. Among those statutes were (1) the Banking Act of 1933 (commonly known as the Glass-Steagall Act, which required banks to either be commercial banks or investment banks, but not both, and created the Federal Depositors Insurance Corporation or FDIC), (2) the Securities Act of 1933, (3) the Securities Exchange Act of 1934, (4) the Maloney Act of 1938 pursuant to which the NASD securities-firm regulatory agency was created, (5) the Public Utilities Holding Company Act of 1939, (6) the Investment Company Act of 1940, (7) the Investment Advisors Act of 1940, and of course (8) the Robinson-Patman Act of 1936, as an amendment to the Clayton Act of 1914, with a more effective statutory wording to outlaw price discrimination.

Enactment of the Robinson-Patman Act in 1936

By reason of the Robinson-Patman corrections of some of the deficiencies of the Clayton Act, the statutory prohibition of price discrimination became enforceable, and from 1936 to 1969 (when Nixon took office) the statute was enforced, manufacturers were serious in their efforts to comply with the statute's requirements, the FTC aggressively enforced the statute with its investigative and quasi

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judicial power to hear cases brought by FTC staff members and issue findings and injunctions.

Soon, the problem of the massive purchasing power of Atlantic & Pacific Tea Company, the nation's largest chain of grocery stores (A&P) and other large retailers to eliminate competition was kept under control and business soon prospered for independent retailers, jobbers and wholesalers (perhaps as a result of World War II, as well).

Startup of Wal-Mart and Kmart in the 1960's

During this same period, mergers and acquisitions were not commonplace, probably because of the limitations on them already contained in the Clayton Act.

Wal-Mart and Kmart stated commencing operations during the 1960's, but were not immediate competitors of each other. Kmart believed there were more potential customers in cities and urban areas and focused their store operations in those areas. Wal-Mart took a wholly different approach, building its chain of stores in and around towns and villages, but not in major cities.

Both chains prospered, and didn't seem to be in any substantial competition with each other during the first few years.

Meanwhile, starting probably during 1981 (www.lawmall.com/bookcase, section entitled "The Probable Origin of the DNA Code – Wal-Mart – in 1981"), Wal-Mart issued a directive to its suppliers which I remember was discussed by manufacturer representatives throughout the United States. (Manufacturers' Reps are non-employee, independent salespersons who carry multiple non-conflicting product lines of two or more small manufacturers, unable to afford their own sales staff.)

By the 1970's, Wal-Mart and Kmart were in competition with each other to a significant extent. Wily Sam Walton figured out

how to prevent Kmart from effectively competing with Wal-Mart, by getting Wal-Mart's suppliers to sell to Wal-Mart at lower prices. To do this, Walton had to figure out a way by which he could have secret meetings with the owners and presidents of the vendors selling to Wal-Mart. He hit upon a unique way to accomplish this, by announcing that Wal-Mart would not meet with vendor representatives who did not have the authority to conclude deals with Wal-Mart.

Sam Walton's 1981 edict was that Wal-Mart would no longer discuss selling to Wal-Mart with any salesperson or manufacturer's representative. Walton said Wal-Mart would only discuss purchasing with an officer or other authorized official of the vendor who had authority to enter into an agreement on behalf of the vendor with Wal-Mart.

Looking back, with hindsight, Wal-Mart was implementing a policy of demanding and getting secret, negotiated price breaks from the highest officials of the vendors selling to Wal-Mart, which price breaks were not at all contained or referred to in the price lists which the manufacturers circulated to all of their customers.

For years, Wal-Mart obtained a price advantage over its competitors including Kmart. I know this to be true because a client of mine had been the sales manager for Milton Bradley (game publisher, now part of Hasbro), a supplier to both Wal-Mart and Kmart. My client had the responsibility for making sales of Milton Bradley games to both Wal-Mart and Kmart, his top two customers.

His experience was that Kmart paid whatever price was indicated on the Milton Bradley price list without discussion, whereas Wal-Mart always haggled and demanded and got lower prices. Over the years, and assuming the pattern was the same for most suppliers to Wal-Mart and Kmart. Wal-Mart was receiving a large monetary advantage and could sell its products at a lower price than Kmart (also become Wal-Mart's operations were in lower-cost areas to operate) and derive higher profitability than Kmart at the same time.

I tried running the numbers to see what the difference in outcome could be between Wal-Mart and Kmart and found that Wal-

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Mart's current size in comparison to Kmart (when Kmart was still the number two retailer behind Wal-Mart) was justified. As I wrote at www.lawmall.com/bookcase,

Or to put it another way, one retailer (Retailer A) by complying with the RPA has \$10,000,000 in invested capital earning a 10% compound return, and in 30 years is able to turn the \$10 million into \$174.5 million. But a competitor (Retailer B) obtaining a 20% compound return during the same 30-year period (by taking economic steroids: RPA violations), the \$10,000,000 in invested capital becomes \$2.374 billion, which is 13.6 times more in value than Retailer A. Of course, Retailer A never had a chance to compete, from the moment it started out in competition with Retailer B. Retailer B's huge value has been taken from the hundreds or thousands of "competing" Retailer A's.

Today there is no effective competition for Wal-Mart. Wal-Mart is of a size (similar to the Rockefeller Standard Oil Trust) at which it can do whatever it wants to drive competitors out of business, such as by spending millions of dollars to open up nearby to successful independent retailers and drive the retailers out of business through lower prices (lower, that is, until the competitor goes out of business). Of course, it is in Wal-Mart's best interests not to act too quickly in driving its competitors out of business. It would be better from Wal-Mart's standpoint to do this in 5 to 10 years than in 0-2 years (to be able to argue that the small retailer went out of business by reason of its own mismanagement rather than by any unlawful activities of Wal-Mart).

The Specialty Major Retailers

For your information, the top 10 specialty retailers are:

1. Best Buy
2. Gap
3. Staples
4. Office Depot

5. Toys “R” Us
6. Circuit City
7. Limited Brands
8. Auto Zone
9. Barnes & Noble
10. CompUSA

A list of the top 100 specialty retailers in the United States (which are the “Major Retailers” about which this book is concerned) may be seen at [//retailindustry.about.com](http://retailindustry.about.com).

To compete with Wal-Mart, it was believed that one could set up a miniature Wal-Mart (from a purchasing standpoint) but carrying only a specialized type of goods. The various specialized major-retailer stores you are familiar with (see the list of 100 Specialty Retailers) include specialties of hardware and home improvement (Home –Depot), drug stores (Rite Aid, CVS), houseware goods (Bed Bath & Beyond), books (Barnes & Noble and Borders), music and DVDs (Best Buy), toys and games (Toys “R” Us, KB Toys), office supplies (Staples and Office Max), auto parts (AutoZone and Advance Auto), computers and software (CompUSA).

What is becoming clear to me is that these miniature, but specialized, Wal-Marts are all vulnerable to Wal-Mart because Wal-Mart is purchasing its goods at substantially lower per unit prices than the prices being paid by the top specialty retailers. The president of Barnes & Noble complained about this to the press, that Wal-Mart bought fewer books but received lower prices; and currently Toy-R-Us had admitted that it cannot compete against Wal-Mart in price, and that it was closing 64 stores and eliminating 1,900 jobs, and taking a \$280,000,000 expense deduction for the store closings. www.aurorawdc.com/ci/000088.html .

Toys “R” Us is not alone in having difficulties retailing toys and games in competition with Wal-Mart. FAO Schwartz, Zany Brainy, KB Toys and many others have experienced the same difficulty, which difficulty will be experienced by whatever specialty retail group which Wal-Mart decides to go up against. Currently, Wal-Mart is taking on the nation’s grocery chains (and selling about

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28% of all food sold in the United States and increasing daily). In the future it might open up auto-parts sections carrying the parts used to repair automobiles. Currently, Wal-Mart carries auto “accessories” including filters, spark plugs and other consumables, and has sales of this type of auto-related business three times the size of AutoZone’s sales. The 3 main discount general merchandisers, Kmart, Target and Venture have no hope of survival. Kmart is in its last throes. Already, Ames, Bradley’s, Caldor, Jamesway and Lechters went into bankruptcy, and grocery-chains starting with Kroger Stores and Safeway and going down to regionals such as Albertson’s have no hope of competing with Wal-Mart, and will be forced out of business.

What Does this Mean for the Independent Retailers in Your Area?

The independent retailers in your area receive a death sentence when Wal-Mart comes to town. All too often the retailer tries to stick it out, reasoning that his loyal customers for the past 30-40 years will stick by him, but this does not usually work out that way, for the prospective customer to go out of his/her way. The independent retailer puts on a good face and doesn’t go about publicizing that he’s going broke, for fear that he will lose needed lines of credit and customers (who will figure that it’s now time to flee a sinking ship).

All too often the salesman to the independent retailers says that Wal-Mart is paying the same prices for the same items, but this is false. Instinctively, I know this is not true when looking at Wal-Mart’s retail prices, which are often less than the independent (or its wholesaler) pays the same manufacturer for the same goods.

With the savings realized by Wal-Mart through the lower prices it pays for its goods, Wal-Mart is able to obtain high-traffic locations, build new big boxes, demand that the new store be filled with products at no immediate cost to Wal-Mart, and proceed to put all competitors out of business or wish that they were out of business.

There is no beating of Wal-Mart because price is King. People apparently want a lower price more than they want the prospects of a better job, profitable business opportunities or higher standard of living. The saving of a nickel today is apparently worth a lifetime of declining standard of living to most persons.

Wal-Mart carries a wider range of goods than any other retailer. It has 21,000 suppliers, all of whom either sell at lower and lower prices to Wal-Mart, or lose Wal-Mart as their top customer. During 2004, Wal-Mart announced that its "lower and lower" practice was not resulting in sufficient additional sales, and relaxed its practice to some extent.

The directly competitive independent retailers in your community which are or would be adversely affected by Wal-Mart include auto-parts stores, book stores, grocery stores, drug stores, beverage stores (excluding liquor stores), magazine, newspaper and candy stores, variety stores, hardware stores, music and DVD stores, online music websites, children's stores, clothing stores, toy and game stores, appliance stores, computer stores – stores which sell virtually anything which a consumer or small business person wants to buy, although with much less choice at Wal-Mart in most instances. Specialty retailers, however, would have a far greater choice.

There are other persons who will feel the adverse effects, including:

The employees fired because of the drop off in demand for the goods and services of local businesses;

The owners of business properties on Main Street and elsewhere in the business section of town because of a decline in the value of rental income for their business properties;

The companies servicing the independent retailers lose the independent retailers as customers and the related income and profits, including lawyers, accountants, engineers, private instructors,

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clergy and their houses of worship, non-profit civil organizations, doctors, temporary agencies, employment agencies, radio and television stations, cable operators, insurance firms, local banks, new car dealers, and securities firms.

Basically, Wal-Mart can be viewed as a financial disease or plague, which will wipe out or severely injure many persons and businesses in the communities in which Wal-Mart operates. Wal-Mart currently has 3,500 outlets in the United States.

What about the Specialty (Major) Retailers?

The specialty (major) retailers have a Wal-Mart effect on the independent retailers against whom they compete, with similar ripple effects, but the devastation is like a narrow swath severely adversely affecting only one or two types of business for the most part. The entry of AutoZone or Advance Auto into the community will not wipe out the local independent bookstore, but it can be predicted to materially adversely affect the independent auto-parts retailers, jobbers and wholesalers operating in the area, as well as the parts department of local new-car dealers.

What Can Be Done?

The Plans (two in number) for curing these problems are set forth in Chapters 26, 27 and 28 below. The Plans require an educated community, so that the first thing a community needs to do is to learn about the problem it's facing, and when the problem is clearly stated and understood, the solution will become readily apparent.

Chapter 6 – Politics Is Not the Solution: It’s the Problem

It is a fair question, to ask why the solution to try today should not be political. After all, politics created the Robinson-Patman Act and it could do something to encourage greater enforcement, privately (through civil lawsuits) and through government (civil or criminal actions and proceedings by the FTC and Justice Department).

Actually, until 2000 or so, the Robinson-Patman Act was considered dead by many antitrust attorneys, both private and governmental. The statute itself was considered to be quite different from the other United States antitrust statutes (primarily the Sherman Act and the Clayton Act) because instead of promoting competition, it “prevented” price competition by requiring all manufacturers and other suppliers to sell their goods (not services) at the same price per unit to competitors whether large or small, with various defenses. (For a summary of the defenses, see the footnote at p. 13 above.)

Although the Robinson-Patman Act was enacted in 1936, its predecessor (part of the Clayton Antitrust Act, enacted in 1914) attempted to require equality in prices, but was worded too loosely so that its intended purpose was not achieved, and the statute was disregarded and quickly became unenforceable.

During the Great Depression, four years after Franklin Delano Roosevelt was first elected to office (in 1932), the Robinson-Patman Act was enacted to prevent the purchasing power of the A&P chain, then the largest food retailer in the nation, from using its purchasing power to force suppliers to give A&P lower prices, because of the obvious adverse impact this would have on A&P’s smaller grocery-store competitors. Thus, the Robinson-Patman Act was enacted to prevent destruction of small business, because of congressional belief that small business opportunities were important in the

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United States, and had to be protected by statute from the evils of discriminatory pricing.

From 1936 to 1969 (the year President Nixon took office), the Robinson-Patman Act was enforced, primarily by the Federal Trade Commission, which even issued “Guidelines” thereunder generally followed by business even though the Guidelines did not have the force of law. The text of the 1990 FTC Guidelines may be seen at www.napaa.org/legal/guides.aspx – and a summary of these Guidelines is available in an 8/22/90 article entitled “NAPAA Bulletin: FTC Revises Guidelines for Promotional & Advertising Allowances”, published by the “Promotional Allowance Association or NAPAA, at www.napaa.org/legal/guides2.aspx

Although these Guidelines have existed for years, Nixon gave word to the FTC and Justice Department to cease aggressive enforcement of the Robinson-Patman Act. In fact, the Justice Department was even directed not to enforce the statute at all, and to turn all Robinson-Patman Act matters over to the FTC, where any complaints from injured small businesses fell on deaf ears.

From 1969 to about 1995 or so, there was little governmental enforcement of the Robinson-Patman Act and as a probable result there was little private enforcement. This led many people to believe that the Robinson-Patman Act was dead and unenforceable in the courts, but this was wrong.

The federal courts were willing to enforce the statute, but weren’t getting many cases.

Interestingly, during this same time frame antitrust enforcement of the Sherman Act and Clayton Act was diminishing because of the desire of the nation’s Presidents (starting with Nixon in 1969) not to have much enforcement. This enabled large companies to grow even larger, and the judges (more and more being appointees of Nixon, Reagan and Bush I), began tossing out of court many of the antitrust claims which before Nixon would have obtained relief.

In spite of judicial disparagement of claims brought under the Sherman Act and Clayton Act, the federal judges were and to this day remain willing to permit Robinson-Patman Act claims to be made, even while limiting other antitrust claims in the same complaint.

I have mused about this oddity and have finally arrived at this explanation, of why Robinson-Patman Act claims are treated substantially better by federal judges than Sherman Act and Clayton Act claims.

As I see it, claims under the Sherman Act and Clayton Act depend on vague terms such as “market power”, “monopoly”, “unreasonable restraint”, and “tendency to monopolize”. The meaning of these words and terms is not very clear and is generally interpreted through the federal judge’s right to define terms, which are not clear. This affords judges the chance of defining the vague term against the plaintiff and in favor of no relief. Many judges using this right to define (which is almost judicial discretion) find nothing wrong with alleged facts which between 1936 and 1969 would have been grounds for antitrust liability.

The Robinson-Patman Act is not as imprecise. The vague wording found in the unenforceable 1914 Clayton Act was not carried over into the 1936 Act. The 1936 Robinson-Patman Act states that if you allege that your competitor is paying less than you for the same product and that you have been injured (both concepts have mathematical proof), you have stated a Robinson-Patman Act claim (with some additional allegations, of course). Thus, the beauty of the Robinson-Patman Act is that its application is clear (or a lot clearer than the other antitrust statutes) and the defenses are murky, such as “meeting competition” and “cost justification” and “functional discount”, requiring more of an explanation than the simple plaintiff’s allegation that it paid more per unit than its competitor.

Politics have virtually eliminated governmental enforcement of the Robinson-Patman Act, which accounts for the dramatic growth of major retailers, especially Wal-Mart and Sam’s Club, and it is too much to expect that there is any future administration which

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would or could reverse this growth by enforcement of claims of liability under the Robinson-Patman Act.

It is important to note at this point that a level playing field, in which Wal-Mart would pay the same per-unit prices as its competitors, would result in the destruction of Wal-Mart and Sam's Club and most of the other major retailers who depend on lower purchasing prices to be able to beat their competitors. These businesses are based upon non-compliance with the intent and purpose of the Robinson-Patman Act, and if the statute were suddenly enforced by the government against them, they would be unable to sell their goods at the prices at which independents could sell the same products, and would be unable to deliver better service, it should be added.

At least some of the specialty retailers got started through their principals' background in food distribution and their familiarity with the slotting allowances paid by manufacturers to major food retailers to get their products onto these retailers' shelves. These allowances reduce the per-unit price of the goods, and ordinarily can be viewed as a violation of the Robinson-Patman Act if not made available to all competitors. These specialty retailers raised capital based on their business plans, in effect, to violate the Robinson-Patman Act by having substantial purchasing volume as soon as possible to be able to negotiate much lower per-unit prices than existing competitors were paying at the time. The manufacturers apparently went along with these plans and gave the lower prices to the startup specialty retailers before they even put in their first orders, I suspect, thereby ensuring that the specialty retailers would drive the existing, independent competitors out of business sooner or later.

Without help from the government, there is another way of curing the price-discrimination problem, but it takes more time. This other way is to have a sufficient number of private Robinson-Patman Act lawsuits so that the cost to the major retailers and their manufacturer-suppliers for their continued violation of the statute exceeds whatever theoretical benefits they thought they might get from selling to major retailers at substantially lower prices, even below the manufacturer's direct cost.

The manufacturers are in a serious predicament, because of the monopsony power (see Appendix F for some articles about monopsony power) of the major retailers, insisting that ever-decreasing prices be given to the major retailers, which requires that the manufacturer sell at much higher prices to its other customers (to find some area of gross profits for the manufacturers) as long as these disfavored customers continue in business (or continue buying from such manufacturer). The manufacturers are experiencing great financial pressure and are being required to transfer a significant part of their assets and net worth to the major retailers to prevent the major retailers from buying elsewhere.

Why are the manufacturers doing this? Well, some of them have stopped the practice, learning that they can't win. The well-known purchasing practices of Sears in earlier decades was sufficiently instructive for manufacturers, who were continually threatened with loss of Sears as their customer if they did not lower their prices to Sears, until dealing with Sears finally put many manufacturers out of business or threatened to do so.

The manufacturers' hope, I suspect, is similar to a company which purchases market share at any price, meaning at current losses, to be able to own a large part of the market, driving competitors out of business, and then with such market control, dictate retail prices.

The nation's manufacturers have learned, belatedly, that they are no longer competing with only American manufacturers. They are competing with manufacturers from all over the world, which means that no matter how hard they try (by selling below cost to the major retailers) they will never be able to eliminate this competition world wide. Their best bet today, it seems, is to stop selling to major retailers on discriminatory terms, or at least to reduce that amount of the discrimination (which my clients see is actually happening, to an appreciable extent, as I write this book in July, 2004).

When deciding to protect market share by selling below cost or near-cost prices to the major retailers, the manufacturers did not calculate their exposure to antitrust liability for violation of the Rob-

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inson-Patman Act, and putting hundreds of thousands of their independent customers out of business. Because of renewed use of the Robinson-Patman Act by private litigants (starting with myself), manufacturers hopefully see that they made a mistake, because the costs of selling below cost to the major retailers could be a lot higher. The manufacturers not only have lost many of their profitable customers, but they may wind up paying a lot of them treble damages for the antitrust injuries the manufacturers have caused them.

Although politics is of little help today for the nation's independent distributors, the courts do appear to provide a solution to injured persons that is better than not doing anything at all, and it would be of material help to this cause if communities lent their support, perhaps by issuing releases, holding hearings and by holding courses to alert residents to the problem and what needs to be done to protect the community. After all, the communities often spend a lot of time telling residents how to sort and lay out their garbage, and if the communities devoted as much time to this more serious problem, the communities would be able to prosper, with a variety of attractive benefits to their residents. See Chapter 24 below.

In this way, local politicians could well come to the rescue and undo what national politics has created.

I see how small communities in the United States can be the primary movers in a grass roots program to take back the economy of our country. Plan 3 in Chapter 28 below provides a new type of news medium to make this happen. The news is this book, and the medium is the manner of distribution described for this book in Appendix H.

Chapter 7 – Understanding and Dealing with the Problem of Outsourcing

Let's start off by defining outsourcing, to ensure that we are talking about the same thing.

There are various types of outsourcing, the most common one of which seems to be the hiring of temporary workers employed by a local temp agency.

Another type of outsourcing is to find suppliers (i.e., businesses, local or non-local) which will supply the company seeking outsourcing with goods and services not considered part of the company's "core" functions, to enable the outsourcing company to concentrate on its higher-profit core activities and send out to other companies the non-core, less profitable activities.

For example, wireless companies might decide that wireless transmission is their core function and that manufacturing cell telephones for use by customers is not a core function, and therefore something which should be jobbed out to Motorola, Samsung, Nokia or another of the numerous cell telephone manufacturers.

The company providing the outsourced goods and services will hire its own employees, and in turn do its own outsourcing, to make the goods and perform the services being purchased by their outsourcing customer.

This type of outsourcing started in the United States but has spread to other countries, such as India, where American companies contract with companies located in India to provide services performed by residents of India, such as telephone service centers to answer customers' questions and to take orders in response to direct-response advertising in the United States.

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While writing this chapter my EarthLink DSL service stopped functioning, and I called EarthLink tech support, which without much ado referred me to a person with a British accent, who calls himself “Steve”. Obviously, I had been referred to an EarthLink call center in India. Steve spent 1.5 hours walking me through various tests, until we concluded that we don’t know why the DSL service stopped working. Steve gave me a ticket number (referring to a report by Steve of our 1.5 hours of conversation and tests) and said I should call a domestic (U.S.) tech center to see if it can solve the problem. Apparently, foreign call centers do have their limitations.

Another type of outsourcing is the importation of workers from other countries to come to America and work (for lower wages) performing tasks, that other Americans could perform. This type of outsourcing reduces the cost of labor for the outsourcing company, but reduces the employment opportunities for persons already residing in the United States.

Finally, many businesses in the United States are outsourcing their need for technical services (such as creating websites, reviewing and summarizing litigation documents, inputting medical records received daily from U.S. hospitals) by hiring individuals to perform such outsourcing tasks or groups of individuals put together by a foreign company (or perhaps put together by a U.S. company as a foreign-based division or company), usually in India, to substantially reduce the costs of such type of work, in comparison to the costs of using persons located in the United States.

Outsourcing does have some disadvantages for the U.S. outsourcing businesses, including the increased difficulty in maintaining control over the work; the difference in time zones, so that the workers in India are sleeping when the manager in America is available to discuss the work and vice versa; the difficulties in establishing effective outsourcing; and some language and pronunciation differences; and increased American hostility to companies which are outsourcing. These are not the only problems, but they are representative.

Nevertheless, in spite of these problems, outsourcing is taking place increasingly, at fast growth rates, because of the perceived savings and effect on the profitability and competitiveness of American businesses.

Businesses are able to outsource to save money, but employees of a business do not have a similar choice. If outsourcing is chosen by business management, some of the company's employees are going to receive a pink slip, often without being told that their job has been outsourced. Even though the replaced employees have suffered major losses, through the elimination of their job and supposed job security, the outsourcing company often profits immediately and handsomely, which is why the outsourcing took place.

The larger a company is, the more apt it is to outsource. On the other hand, the smaller a business is, the less likely it is to outsource. Because of this fact, it would seem that a community interested in protecting employment and business opportunities for its residents should do something to penalize outsourcing, and not reward outsourcing through patronizing the companies which are destroying American jobs, but trying to continue selling their goods and services to the replaced persons and others in the community which help to pay the costs of caring for the replaced, jobless workers.

Not purchasing from outsourcers is the employee's way of counter-outsourcing, to fight against the business practices, which are depriving American workers of their jobs, homes, security and standard of living. Employees as such do not have other outsourcing rights, except one big one, which I have discussed in my recent book, *Self Employment – to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living*.

A person who is self-employed (or to put it another way, a person who owns his or her own business) can outsource, and in fact may be required to do so to remain competitive.

This is the basic problem of outsourcing, that without governmental controls on outsourcing (through tax penalties, such as

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reduced or zero deductions for money spent on outsourcing), outsourcing is a fact of life and will take place out of the self interest and self-survival motivation of businesses.

Because of this fact, it appears that outsourcing will grow, and jobs as well as high-paying jobs, will become increasingly scarce in the United States, and that the best way for an individual to cope with this economic reality is to become self-employed.

If a community wants to protect itself from the evils of outsourcing, it should consider doing the following:

Develop and maintain what I call "Friend or Foe Software" and related databases to enable any interested resident to determine the extent that any business is acting responsibly to the communities in which they are located or selling their goods or services. A local civil group or governmental office would be useful in coordinating the identities of the companies to be included, and the types of information to be collected and used, for individuals in the community to determine for themselves which companies are acting responsibly towards the community and which are not.

Do whatever you can to help local retailers, jobbers, wholesalers and manufacturers to remain in business, and resist their big business competitors, because small local businesses do less outsourcing and tend to be far more responsible to the community and their friends, relatives, neighbors and business associates.

One of my retailer clients told me that he turned down a multi-million dollar offer for his business because the purchaser would not guarantee to keep all of his employees; instead, the client sold his business for substantially less to someone else, who agreed to keep all of his employees. This is the America we know and of which we want to be a part, instead of being a financial item sold and bought around the world by the large, monopolizing, globalizing countries trying to take over business in all parts of the world.

By protecting local businesses, a community will be helping to provide better paying jobs and more profitable business opportunities for members of the community.

It should be remembered that the larger a company becomes, the more it turns to outsourcing to reduce its costs, increase its profitability and stock price, put itself in a position to buy out smaller companies, and pit one community in the United States against a community in India, to squeeze out the last penny of profit from everything it touches.

The major retailers fit into outsourcing because they are the ones who put the squeeze on all manufacturers to lower their prices, which requires that the manufacturers look for low-cost, almost slave labor in other countries, to be able to deliver the low prices demanded by the major retailers.

The winners of outsourcing are the persons doing the outsourcing, who make huge, immediate profits from firing American workers and hiring low-cost workers from other countries, using any one or more of the outsourcing techniques described above. The losers are the fired workers, others who thought that these jobs would in due course be available to them, and the rest of the residents of America who are suffering from a declining standard of living due in part to outsourcing.

The rhetoric you read or hear in the nation's major media (other than CNN's Lou Dobbs) is often contrary to what I am saying. They claim that outsourcing is good for the United States because it lowers the price of goods for all Americans, and lets Americans perform the more difficult, higher-paying jobs. But outsourcing is more like a camel poking its nose into America's economic tent. Once the camel's nose is inside (which it clearly is), the rest of the camel will come through the tent. It is clearly the job of right-thinking Americans to get behind efforts to limit outsourcing.

If the objective of outsourcing is to equalize the world's resources and create opportunity for all impoverished persons in other countries, it can only do so by reducing most Americans to the low

level to which the others are going to be raised. There is one exception, the brokers of this economic equalization project – the globalizing companies – make enormous profits today and are not worried about tomorrow, perhaps because their human leaders know that as human beings profiting from outsourcing, they have to take what profits they can get today because they may not be around tomorrow to live with the consequences of what they are doing. Perhaps they are doing no more than following the lead of the nation's Senators and Representatives who continue to sell out American interests for a paltry amount of campaign contributions.

Our standard of living in America requires that we have jobs to pay for our consumption. Without jobs, we will have less consumption and a decline in our standard of living, more Hoovervilles (groups of poor persons living in tents outside the White House during the Great Depression in protest to the government's economic policies), civil unrest and, God forbid, some type of attempted revolution or domestic terrorism from the increasing ranks of the have nots.

A Quick Measure of the Nation's Economy – 500,000 Applicants for 3 Thousand \$21/Hour Part-Time Dangerous, Stevedoring Jobs Offered during August, 2004

Seldom does one get a chance to see an anecdotal instance of an economic condition which can be projected to the nation as a whole. What I mean is that in doing research and in having discussions with people you come across hard-luck stories, such as an unemployed engineer having to go to work for Home Depot at \$8.00 per hour or so. But that one instance leaves open too many issues, and cannot be projected to reach any conclusions about engineers, \$8.00/hour jobs or Home Depot's hiring policies.

But I think I have come across an anecdotal example, which can be extrapolated beyond the amazing number of persons apparently involved. (I say apparently involved because there is a possibility that some job applicants submitted multiple applications, or that 1

applicant went so far as to submit 100,000 applications, although I doubt this to be the case).

During August, 2004, the Longshoreman's Union covering the docks for Los Angeles and Long Beach (both in Los Angeles County, California) made an announcement that it needed 3,000 persons to start work on unloading a huge backlog of containers of goods shipped into the United States from foreign countries. The work was part-time (20 hours per week), no benefits and no long-term union membership or benefits, \$21 per hour, and the work was to be strenuous and dangerous.

The announcement made it clear that anyone submitting multiple postcard applications would be automatically disqualified from obtaining one of the offered jobs.

Five hundred thousand (500,000) persons responded to the announcement, which is an amazing number of persons.

I wanted to figure out how many persons in the United States would have responded if the announcement had been made with equal publicity nationally, and if the work was something which could have been done anywhere in the United States (which obviously was not the case).

I learned through research that Los Angeles County has about 3% of the nation's population, and when multiplying 500,000 times 33-1/3, the extrapolation suggests there are 16,670,000 unemployed and underemployed persons in the country today who are looking for a job paying \$420/week (i.e., \$20,160 to \$21,840, depending on whether the worker takes an unpaid vacation) or more.

What is also important to note is that the poverty level for a family of four is about \$18,500. Apparently, the nation has a very large number of persons who are at or below the income poverty level, which to a significant extent is being caused by outsourcing, globalization and the destruction of American small businesses by the discriminatory pricing arrangements between manufacturers and

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major retailers, which is forcing independent distributors and retailers out of business, and is stripping manufacturers of their net worth and turning it over to the major retailers (especially Wal-Mart, which has grown to be the largest corporation in the world) as a result.

One last note about outsourcing. Most of the cities and states in the United States are trying to deal with the loss of jobs by purchasing jobs from other cities and states, by offering huge dollar amounts in payments (really, bribes) to the companies which will move their business out of one town and into the other. This is sort of the reverse or counterpart of outsourcing, in which we in America are fighting over the remaining jobs by paying huge sums of money (sometimes \$100,000,000 or more) to the large corporation which agrees to steal those jobs from their present community and deliver them to the purchaser. I filed a complaint against New York City for engaging in this type of activity, which you can see at www.lawmall.com/jobtheft.

Not surprisingly, some of the companies selling jobs from one city to another can be dishonest in another way. After several years they will re-offer the jobs to a third city, depriving the second city of its bargain. Of course, the real problem is that jobs involve human beings with roots and jobs shouldn't be sold in such fashion. We have outlawed the sale of babies, and we should do the same with the sale of jobs.

Also, it should be observed that the sale of jobs involves no worthwhile economic purpose. Nothing additional is being created. Both cities involved lose. Society loses as a whole. The workers in the first city lose. And the company selling jobs has cynically made off with perhaps \$10,000,000 to \$100,000,000 or more in undeserved, ill-gotten proceeds of a highway robbery staged by the large company and its political benefactors.

Chapter 8 – Understanding the Economic Tidal Wave of Globalization

“Globalization” in time will be assigned its place with other events of tidal-wave proportions such as invention of the printing press, the Industrial Revolution, invention of the microchip and personal computer, and development of Internet.

Definitions of Globalization

Definitions of globalization include:

The increasing integration of world markets for goods, services, and capital. It has also been defined as a process by which nationality becomes increasingly irrelevant in global production and consumption. www.agtrade.org/defs.cfm?letter=g

the movement toward markets or policies that transcend national borders www.wcit.org/tradeis/glossary.htm

Generalized Historical Background

For centuries, the rulers of geographic areas known as or equivalent to countries generally took under control and demanded a personal interest in whatever business activities went on inside the country. The ruler took his cut through taxation of all businesses generally; and with licensing and payoffs, partnership interests or other means for obtaining compensation for granting the right to do exclusive or monopolized business to a limited number of favored interests.

The ruler’s revenues were used for military and police to defend the country and protect the ruler and his entourage, construct buildings, provide a lavish living style for the ruling elite, and for

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payments to favored friends, relatives and business associates for helping the ruler to govern.

As long as a country's borders were effective barriers to the free movement of commercial goods, businesspersons pretty much had to do what the ruler ordered or face the loss of their businesses, property, liberty and perhaps lives.

Each country in its own way, by democratic government, monarchy or tyrant, created and enforced rules so that the ruler with his friends, relatives and business associates obtained at least a fair share of the nation's gross national output.

Some rulers even tried to stimulate the nation's citizens to work harder to create more wealth for the ruler and others, which additional income was predictably confiscated in part through various tax schemes or other payoffs, including costs imposed on employers to protect or otherwise benefit workers.

Regulation and taxation of business differed from country to country together with the costs, and businesses started to grumble, thinking it might be better for the business to be regulated in another country by some other ruler.

The employees of businesses in more progressive and prosperous countries began to realize that they could bring pressure on the employers through unions, strikes, political parties, elections, and the press for improved pay, benefits and working conditions, which added to the costs of doing business in countries such as the United States. This encouraged some businesses (usually the larger ones) to find areas in the world where they could operate at less cost (i.e., lower levels of taxation, regulation and employee benefits).

Meanwhile the largest companies in the United States were increasing their wealth and power, including their power over government, by financing the elections of government officials who, in turn, as a quid pro quo, no longer enforced the antitrust laws against these companies.

This enabled the companies to grow dramatically, by transferring the wealth of small businesses and the nation's residents to these large corporations through the government's approval to an ever-increasing concentration of the economy with higher profits for major corporations as their size and concentration increased.^{fn}

Violations of the Robinson-Patman Act were perhaps the most common violation of antitrust laws because a company did not have to have monopoly power to be in violation of the law.

With this growth of big business in America came the desire of such businesses to continue their expansion, but to other countries. Having taken the United States and its residents for trillions of dollars, these major corporations were well financed to complete their work in other countries, as part of what we call globalization.

Perhaps outsourcing should have been seen as the advance guard of globalization, with more alarms being sounded to warn Americans of the tidal wave, which was heading toward them.

FN. Some examples of the government's ongoing program of transferring jobs out of the United States include (1) the North American Free Trade Agreement or "NAFTA" (effective 1994); see "Broken Promises - More than 400,000 lost jobs later, media still selling NAFTA", at: www.fair.org/extra/9709/nafta.htm; and (2) GATT. See the book *The Case Against Free Trade: Gatt, NAFTA and the Globalization of Corporate Power* written by Ralph Nader, William Greider and Margaret Atwood; and (3) America's visa system under which many technical workers are brought into the United States to perform jobs at 15% to 33% less than being paid to Americans for such work; see article "How L1/H-1B Visas Steal US jobs", at www.astreet.com/article.php?sid=228

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Many states have tried to deal with the outsourcing problem by passing statutes or rules which attempt to place limitations on purchasing from countries not meeting American labor standards, but the United States government has advised the states they cannot interfere with federal policy. See article entitled "Global Fights Go Local" in The Nation magazine, 8/30/04-9/06-04, page 22, which states:

... Pennsylvania Governor Ed Rendell, noting that his state has suffered job losses in manufacturing for forty-four consecutive months, says he can't live up to his promise to bring prosperity and stability "without taking action to ensure that Pennsylvanians have a fair shot at remaining employed and that companies based in our state can compete in an increasingly unfair international trade system."

Rendell and Iowa Governor Tom Vilsack have merged as key players in a revolt against federal trade policies that would deny state and local governments the authority to give preferences in contract awards to firms that create jobs where the tax dollars that pay for those contracts are collected. ... Under pressure from unions, more than three dozen states have begun exploring legislative remedies that prevent offshoring of state jobs and give preferences to firms that create jobs at home, employ union workers or pay a living wage.

Thus, to some extent the states and local governments cannot join in the fight. This leaves the individual consumer and voter, who still have the right, without conspiracy, to choose which companies he/she will patronize. We must develop that right out of self-protection of the U.S. economy from the U.S. government.

Unrestricted International Movement of Financial Information, Contracts, and Digitalized Forms of Intellectual Property

When financial information, contracts, and intellectual property and other property capable of being digitalized and transmitted throughout the world became an important part of commerce, a country's borders could no longer require the businesses to pay the taxes and other regulatory costs demanded by the country in which the business was operating.

International markets enabled the transfer of valuable intellectual property and digitalized work through computers, radio communications, satellites and Internet to anywhere in the world.

As an example, the exceedingly well-enforced laws against unlicensed casino gambling within a short period of time could not stop digital gambling in hundreds of internet gambling casinos which were created to compete with the world's licensed (and to some extent monopolizing) casinos.

Confusion about the right or ability to impose sales tax collection upon interest transactions is one more border regulation which has fallen into disuse, releasing many billions of dollars of interstate sales from the burdensome sales tax as a result, and having a growing adverse impact on local bricks and mortar retail stores.

Increasingly, commerce has been allowed to take place without regard to country borders, which has enabled businesses to avoid the country costs imposed on the types of business which could be restricted to a country's borders.

Business, investments and other assets could be securitized and sold electronically, thus enabling businesses to be the subject of electronic commerce and avoid the regulatory costs of the government which happened to regulate the area in which the computer was located.

Businesspersons throughout the world began to reach the inevitable conclusion that governments were asking too much as a condition for business to operate legally from their country. After all, the business owner thought, I'm providing some jobs to the country, shouldn't that be enough?

Business increasingly found ways to escape the border costs imposed on their business activities by fleeing the country such as by outsourcing, foreign operations, partnerships with foreign companies, transfers of technical information and know-how to other countries in exchange for favorable business regulation in such countries.

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Accordingly, businesses throughout the world, especially the larger businesses (but I might add most if not all of the toy and game manufacturers in the United States) took advantage of less costly business (labor, taxation and regulatory costs) to avoid these higher costs in the United States, but with no intention of turning their backs on the American market, which is still the most lucrative market of all.

Business Objective: Inconsistent Rules

Businesses wanted to play America from an inconsistent standpoint: do as much as possible to keep business expenses in low-expense, third-world countries, but sell as much of your output in America at the highest prices possible.

The Desirable United States Market

Almost every significant business in the world wants to sell to the United States market at high prices^{fn}, especially if they are permitted by the United States to manufacture their goods and perform their services outside the United States. And no businesses want this more than the largest businesses already in the United States and selling to Americans.

Fn. "High prices" is not always the objective when foreign companies export their products to America. In some cases they sell at lower prices than they charge in their own country (called "dumping" as to the sales made in the United States), which enables them to obtain additional revenues here, at the expense of companies trying to sell their products at higher, but competitive, prices. In this way, the foreign company's excess products can be dumped for additional revenues, but in a way which injures existing competition in the United States.

Killing the Golden Goose

But this is a recipe for making these businesses richer, and making Americans poorer, and in the long run killing the Golden Goose of the lucrative American market. The threat of killing the Golden Goose of the lucrative United States market is no problem to businesses trying to maximize their profits currently under the leadership today of the current corporate officials. These corporate rulers are waiting to take their annual percentage of the corporate profits as incentive compensation.

Causes of Globalization

Globalization seems to be the result of the disparity of government taxation and regulation of business and related costs, together with the standard of living of the persons living within a country and the increased ease with which business can be conducted across country lines without interference of, or even knowledge by, the host country.

It seemed easy to outsource components of an American business to other countries, and the practice grew as companies learned how to expand their outsourcing, and companies new to outsourcing got in on the act.

Part of the responsibility for this devastating evil of globalization has to be assigned to the unbelievable culpability of the United States government in creating and financing opportunities for American and foreign businesses to move jobs out of America (through NAFTA, GATT and CAFTA, the Central America Free Trade Agreement), but still be able to sell their products and services to Americans with no penalty for their hostile business practices.

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Globalization is a War on the U.S. Economy

In effect, globalization is a war on the American economy, permitted by the multinational business interests, which control the United States government through continual campaign contributions.

To some extent Americans through their tax dollars are providing the money for American and foreign businesses to pull American jobs out of the United States. The rationale by proponents of globalization in support of such evil practices is that this makes the corporation stronger and better able to compete in the world market.

Globalizing American Corporations Should Have Their American Passport Taken Away

Yet, this movement into the world market makes the corporations less American to such extent and less important for Americans that it be able to compete (and instead when losing its pro American character, the globalizing corporation should have its American passport taken away as a corporation which has given up its United States citizenship). American companies, with the support of American money, are becoming non-American and responsible to no government.

There should be no right to move jobs to foreign countries and then sell the foreign output to Americans without payment of an appropriate penalty, for use in compensating the persons in America injured by such practices. The argument about making American corporations more competitive fails to recognize that such increased competitiveness only deprives Americans of more of their wealth, at least it seems to me.

**A Use Tax Should Be Implemented to
Compensate the United States for Use of
Foreign Labor in Products Sold to Americans**

Companies which make sales to the United States of foreign output should be required to pay what could be defined as a “use tax”, in an amount corresponding to the amount lost by the United States by reason of the foreign outsourcing, including income taxes and payroll taxes.

The failure to do this is making our country head into financial decline, and a decline of the American standard of living.

Globalization is a man-made disaster and can and should be stopped, especially with appropriate imposition of this use tax.

Some Basic Facts for You to Understand

The person controlling globalization want globalization and are encouraging and financing it, so don't expect anything but begrudging relief; expect denials that government can do anything to stop the forces of globalization.

The elected politicians who could do something to offset globalization have been paid off with campaign contributions - to do nothing to interfere with the large business corporations except if there develops substantial public opinion demanding change, which is unlikely to occur because the same interests own the nation's major media.

As long as the public is unaware of what is happening there will be no significant public demand for change; and whatever demand there is will be based on misinformation and call for unworkable solutions.

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We Should Take Back Our Country

Self-employed persons, as owners of small businesses, and others in your community can fight back. See my three Plans in Chapters 26-28 below. In fact, owners of small businesses can and should lead the grass roots movement to take back the economy, government and country from the multinational forces looking to rob all countries of their assets without paying appropriate dues and allegiance to any country.

Also, my concept of Friend or Foe Software (to identify businesses not deserving of your support – see Chapter 7 above) should be developed and put into use by interested persons, perhaps various communities working together on the project, with each community having its own civic group or governmental office coordinating the project from the community's standpoint and interest.

Chapter 9 – Understanding the Economy, “Productivity”, and Declining Standard of Living

It is important to the interests promoting and profiting from globalization to be able to keep American voters in the dark about the problems they are facing.

A useful technique would be to conjure up some story about (1) how globalization cannot be stopped; and (2) how globalization will actually work to the benefit of U.S. residents because it will enable them to buy their goods (at Wal-Mart or other major retailers) at lower prices.

Of course, many people are beginning to ask how they can buy these goods if they have no jobs or are working for starvation wages and the government has taken away, or threatened to take away, most of the safety net which had been provided by legislators many years ago.

Another technique I would use, if trying to defend the evils of globalization against public exposure, is to own the major media (such as the nation’s daily newspapers, and most of the nation’s important radio and television stations and cable operations serving major urban areas, or at least make sure one or more of my fellow multinational and globalization companies owned the media (the fewer the better, of course).

Let there be a common message sent out to the people, after concocted by the government agencies, that “productivity” is increasing in the United States. This means that America will be able to compete more effectively in the growing world market, and that in due course the benefits of such improved competition will trickle down to Americans who now have no job, or a poverty-level job, no insurance, no healthcare, and no hope for the future other than this vague, often-repeated assurance by the major media that “increased productivity” will mean a better standard of living for Americans.

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This is how trickle-down economics is sold to the public. Give all of the money to the few people at the top of the economy; let them employ the money in the way they have learned how to do to increase their concentration of the economy; and with such employment of capital by increasingly monopolized industries the public is to expect that the monopolies, out of the sudden goodness of their greedy corporate hearts, will let a few dollars trickle down to the 138,000,000 workers of the country and the 13,000,000 self-employed and small business owners.

Trickle-Down Economics Is Really Trickle Up Economics

Don't be fooled by "trickle-down economics" for a minute.

Trickle-down economics, upon analysis, is really trickle-up economics, where the working people in America (whether employees or self-employed persons) do the work and turn over a large share of the proceeds of their work, through the government control by the rich and powerful, to the persons who control the economy, in what is a steady upward torrent of wealth from the working people into the hands of the monopolists sitting at the top.

A very important point to remember about this argument is that "productivity" as defined and publicized by them, means that through their injurious practices their multinational businesses are more profitable and their stock prices go higher as a result. But where are the higher profits coming from which are the basis for those claimed productivity increases?

They come from your pocket, in the following ways:

Reduction of taxes by claiming their sales are made in foreign countries whereas their expenses are incurred in the United States, leaving them with no U.S. income to be taxed by their friendly government, which gives them extra capital to help them make their business even more profitable (i.e., more productive, at your expense).

Reduced wages, benefits and jobs for American workers and the outsourcing of such jobs to other countries at costs equal to about 1/5th to 1/10th of their cost in the United States, which provides a healthy improvement of earnings (i.e., productivity), but taken directly out of the pockets of American workers.

Aggressive mergers and acquisitions which enable the surviving corporation to terminate extra employees, reduce the wages and extend the hours of others (at reduced benefits costs), which shows up as increased profits and productivity, but once again paid for by the American workers.

As a result of the mergers and acquisitions, there is a reduction of competition and the surviving company is able to increase its prices and profits, paid for by the Americans who continue to buy their products from such companies.

Also, as a result of mergers and acquisitions, the elimination of smaller competitors including the retailers of Main Street and other small business throughout America, and without paying anyone; taking over then outsourcing of business for a huge immediate and continuing profit, at the expense of the small business owners and their higher-paid employees, who lose their good jobs and go begging to the major retailers for jobs paying 1/3 to 1/2 as much per hour, with virtually no benefits – in what amounts to productivity at the expense of almost everyone except themselves.

Taking handouts of your tax dollars from state, local and federal governments, which has to be taken from you the taxpayer to give to the multinationals, which take money from the U.S. government rather than give money to it in many cases – all at your expense.

So, remember that “productivity” is a code word for the rich. The rich do not usually call themselves rich in front of persons outside the club. They like to call themselves “comfortable” or something like that, a code word that obscures their wealth.

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The term “productivity” is similar. Purely and simply, increased “productivity” means that the rich have found additional ways to take money out of your pocket and turn it into higher profits and higher stock prices for the multinational companies, including the major retailers. Don’t hold your breath waiting for this productivity of theirs to ever trickle down to you or your grandchildren.

The productivity increases of the major corporations are generally based on non-prosecuted violations of the nation’s antitrust laws and will continue as long as we fail to enforce our antitrust laws.

My 3 Plans (outlined in Chapters 26, 27 and 28 below) take all of the foregoing into account.

In summary, productivity increases are ultimately accomplished by a decline in your standard of living.

Chapter 10 – The New Economy: No College; No Job; Self-Equity in Your Work and Home; and Credit Card Borrowing

Now that you see what you are up against, you should be able to figure out what you should do. Remember that the more you know about a problem the easier it is to figure out what to do.

Let's take one problem alluded to in the chapter title above, the problem of the high cost of higher education together with the declining expectations of compensation through jobs you expect to get by reason of your college education. Also, consider that you will be paying up to \$200,000 or so for college and an additional amount represented by interest on the student loans taken out, as well as loss resulting from not being gainfully employed at something during the 4-year period of fulltime college.

What solution do you see when the problem is described in such way. I see the solution. Don't go to traditional 4-year campus college. Don't seek a college-type or other "job" being employed by a major corporation (or other person, for that matter). Become self-employed immediately after high school. But do take time out to load up on credit cards as an employee of someone. Get about 10-15 credit cards and don't abuse them. Pay promptly and establish good credit with your hoard of credit cards.

After becoming self-employed, you will no longer be qualified to get any more credit cards (unless you have a trust fund to fall back upon). Borrow on the credit cards to finance your self employment and to buy your own dwelling (bearing in mind that you may have to represent that your down payment was not borrowed money – so think of how you can do this, such as by establishing some money in a savings account for a period of time). Remember, that it is far easier to eliminate or substantially reduce credit-card debt through bankruptcy filing than any student loans made under federal student-loan laws. Thus, if your business plans do not work out, you

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will be better able to eliminate your credit-card debt in bankruptcy than a person having an equivalent amount of student loans. Student loans have a special rule which states that you cannot discharge student loans unless something has happened by accident such as the loss of both your arms and legs and for such reason you cannot ever pay off your student loans. Credit-card debt does have some restrictions as to cancellation in bankruptcy, but not as onerous. [These restrictions were the imposed in the first statute signed into law by President Bush II shortly after taking over from President Clinton, as a thank you to the banking industry which contributed heavily to Bush's election campaign.]

Thus, the way for you to cope with these economic forces, and continued direction of the U.S. government, is to avoid spending large amounts of time and money to acquire a degree which employers no longer want. They would rather pay 1/10th as much for someone in India who speaks English with a British accent, knows how to program and write websites, and probably is a high school graduate (but who cares?). Don't depend on a job for your livelihood. You can expect to be shortchanged from day one to the day you are fired and get no retirement benefits. Become self-employed at the outset of your career to have the equity in your work; and own your own dwelling to have equity in your home. Do this right away.

While in high school preferably or immediately upon graduation, get a job in a field of interest to you – perhaps real estate, or a needed service business, or auto repair (and remember you can own an auto repair business or repair and resell used cars without having to do the repairs yourself), and learn as much as you can. Use the job to load up on credit cards. Don't worry about the rate of compensation. You might even consider paying the employer for the right type of job. (Actually, I'm saying this half in jest, and half in reference to non-paying internship programs.) The problem with a non-paying job would be that you could not obtain the credit cards you need. Ten to 15 credit cards properly maintained should give you borrowing power in excess of \$100,000, right out of high school. [I'm not sure what the minimum age for credit cards may be, but it probably relates to the age of majority, at which a person can first enter into binding contracts for other than necessities).

The changes in our economy require most persons to take these defensive measures. In fact, I would recommend such measures even if there were no globalization and outsourcing problems.

My book *Self Employment – to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living* describes the same remedies for the economic evils which are out there but not understood by most persons.

The rule to follow, as I see the problem, is to cut back on your expenses as much as possible (because sufficient income through employment and/or self employment cannot be counted on at the outset of your career), and there is really no reason to carry an excessive overhead during the early years of your earning activity. Many attorneys are prevented from becoming self-employed because they become too dependent on the high earnings of a job with a top law firm for the first 8 years out of law school, and have taken on too many obligations (including a family, mortgage, car loan) to be able to risk self employment.

In following the rule, you should purchase your educational requirements through low-cost sources, such as adult education programs, books and self study, on-line courses, non-credit evening courses in community or other colleges, and through your own work experience. This will save you an enormous amount of money, as well as the 4 years of non-employment, which accompanies most fulltime college attendance.

Don't pay rent! It's not deductible from a practical tax standpoint and you never get the money back. There is no equity, which you can obtain. Accordingly, purchase your dwelling at the outset, as your first order of self-equity business, with the resulting "income" to yourself of the amount of rent you would otherwise pay. The monthly expense of servicing your mortgage or the loss of interest on the money used to pay for the dwelling will be returned to you through tax deductions and the increased value of your home over the years. Later you borrow money against the increased value of your real estate, which money is not taxed (as income) upon your

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receipt of the loan proceeds, and with proper estate planning may never be subject to income taxes.

You don't need to load up on an expensive car, especially one, which costs you \$1,000 down and \$500 per month for 60 months. Buy a used car for \$1,000 to \$2,000, and save yourself 60 times \$500 (or \$30,000) plus postage, occasional late charges, and monthly annoyance or anxiety.

In self-employment you will face several troubling questions. The first is to determine what is your "core business"(i.e., the part of the business which you know and which will provide the greatest profit margin and potential for growth). The other parts may be candidates for "outsourcing", and you will have to decide whether you are going to try to remain competitive with others by maximizing your profits (which could mean outsourcing some parts of your business to persons in other countries) or pay substantially higher amounts to persons in the United States out of principle. You may find in many instances that outsourcing is not worth the trouble for small business operations, and not have much of a problem in deciding what to do.

The other problem you will have is in keeping your expenses down, both living and business, and this will require you to choose at times between major retailers and local independent businesses. You will have to decide what to do. You might want to speak with the local businessperson, and you could decide that the added cost of travel and wear and tear on your vehicles, and loss of a good relationship with your small-business supplier and friend, is not worth the dollars you might save.

Many independent retailers have made a decision to buy some of their inventory at Sam's Club (such as oil products) because the oil company prices to Wal-Mart and Sam's Club are so low that Sam's Club resells oil to gas stations and auto parts companies at lower per unit prices than the manufacturers charges these smaller customers for the same item.

There are many problems to learn about and decide how to face, but you will prosper by undertaking the challenge, a lot more so than by becoming an expendable, underpaid employee which an employer is always looking to replace with a low-paid (also replaceable) employee in another country.

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Chapter 11 – Avoiding the Outrageously High Costs of Higher Education

One of the themes in this book is that, because of the economic ravages of outsourcing, globalization and declining standard of living, it behooves most persons to be cautious about the expenditures they make. It is possible that you may not be able to replace the expended funds as quickly as you now expect.

I continue to hear horror stories about college graduates with degrees indicating great intellectual capacity (such as degrees in math or physics) and many other types of degrees, from top colleges and others, who were unable to find suitable employment after graduating from college and a diligent search for work. They have wound up disillusioned and broken as a \$10/hour worker at Home Depot or other major retailer.

They have a right to be disillusioned, having spent four years or more and student loans ranging up to \$150,000 or so, and an inability to obtain the guarantee of employment which such education deserves, was impliedly promised to graduates, and which is sufficient to pay off the student loans and leave the graduate employee with a decent standard of living.

At \$10 per hour, there is virtually no extra income to be used to pay any principal or interest on the student loans. The loans will be an albatross across the graduate's neck for a long period of time, especially because student loans are no longer allowed to be discharged in bankruptcy proceedings.^{fn}

FN. In contrast, credit-card loans are more readily eliminated through bankruptcy (but you should seek counseling on this matter before filing for any bankruptcy), a difference which you always should keep in mind. See Chapter 10 as to credit-card borrowing for financing your self-equity activities of self-employment and home ownership.

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The Costs of Higher Education

The foregoing I believe is adequate justification to have a short look at higher education.

Higher educational institutions have the distinction of being beneficiaries of a protective license from one of the states. A college or university (or law school, medical college, or business school for that matter) is not allowed to confer a “degree” unless the school is licensed to do so by one of the states. The “license” is some type of charter or permission to operate granted by the State Department of Education or its equivalent in each state.

If a person tried to set up a college or university to compete with the established colleges and universities, he would have to tell the students that they will not get a “degree”, only the education. How many students would go for that type of higher education, one without a degree?

What is the purpose of a degree? Historically there should be trails of educational accomplishment rewarded by the conferring of a degree and as to others the conferring of an “honorary degree”, without any educational requirements at all. I wonder whether the honorary degrees are really “degrees” or are not degrees, but then what difference does it make? One doesn’t hire a person because of an honorary degree, and it is possible that honorary degrees are meaningless except the persons who receive them often let people know about the award by attaching the appropriate degree abbreviation such as ‘LL.D” (Doctor of Laws) after their name.

Getting back to earned degrees, why does someone want an earned degree, as distinguished from the education required to obtain such degree?

It seems that an earned degree has become a necessary ticket to punch, rite of passage or a caste identifier to enable certain types of organizational functionaries (with a degree, of course) to limit

their choices for the organization to the select group of persons having an earned degree.

If you have a 1939 Packard convertible automobile for sale on eBay Motors, nobody questions whether you have an earned degree or an education, and you can obtain your profit from a good investment without having any degree.

If you buy real estate, you do so without the embarrassment of having to tell the seller that you don't have a degree, and you are able to do some improvements and resell the real estate without proof of a degree.

You can become self-employed and do your business without any significant obstacle for failure to have a degree, although I will admit I can see where a degree might be helpful on your c.v. or resume, but it's not totally necessary, and you might ask yourself whether you would rather have the \$150,000 spent for the degree, or the degree, assuming that you got to retain your education either way.

Degrees seem to be important in today's society for the corporations of America and educational institutions to choose and promote their employees. And if you have no interest of becoming an employee or college professor you can go through life without a degree, but with the \$150,000 at work on your behalf in a more constructive way than attaching an earned degree abbreviation to your name on your c.v. (of course, a degree is necessary and desirable for some persons such as prospective doctors, lawyers and dentists and unlicensed scientists of many types).

Remember, this discussion is for persons for whom the \$150,000 is material. If money is no object, pick the top school, if you can get in.

I do have some insight into the problem of educational certificates and degrees. I dropped out of high school at age 15 (prior to my 16th birthday) and still do not have my high school diploma. I had

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to locate the representatives of my high school class I deserted and rejoin the group 52 years later, as a current member of the class to ensure that I could be with them at their reunion this year, 50 years after they (without me being present) graduated from high school during June, 1954.

Nevertheless, I have a college degree (A.B., 1959, *magna cum laude*) and a law degree (LL.B., 1962, Harvard Law School). The college degree was needed to be accepted by a law school, and the law degree was needed to be admitted to the bar as a practicing attorney, to obtain employment [i.e., a job] as an attorney with several Wall Street law firms, and to practice law as an individual practitioner of law.

Now that I am self-employed, I find that the quality of my work is what helps me obtain, deal with and keep or lose clients rather than the name of the law school from which I received my degree.

For 18 years, I signed “certificates” indicating that students in my school, the Paralegal Institute, had met the academic requirements which I established for the school (and were approved by the New York State Department of Education, Bureau of Proprietary Schools). The “certificate” was authorized by the Department of Education, but it is my impression that even an unlicensed training program or school could issue a “certificate” as long as the school or training program does not falsely represent to students that the school or training program is licensed by the state (assuming of course that it is lawful to operate the school without a state license).

With 41 years of being a student, instructor and school owner, I understand the costs of instruction from the student’s standpoint and from the school’s standpoint.

Many of the nation’s colleges and universities charge tuition which in a free market would invite major competitive challenge, which challenge in fact is taking place through the low-cost online colleges which seldom see their students in the flesh.

Let me explain some of the costs involved in giving and in obtaining a college education. Basically, at a minimum, the school needs a classroom, some chairs and an instructor. A classroom for 1 hour in a day probably has allocable rent of \$10-\$20 for that one hour of instruction. I paid my instructors (all attorneys, I should add) \$18-\$22 per hour (15 years ago), before applicable payroll deductions. Let's see, as I see it from my experience, one hour of instruction (for a group of students) could cost the school as little as \$22 in direct cost of instruction and \$10 in allocable rent for the classroom. The other costs are overhead and can be anything a school wants to spend, which is where the basic problem of high educational costs should be attacked.

How much do the expensive colleges charge for their instruction? You'll be surprised. [A College Board analysis of college tuition for the more expensive colleges for 2003 is available at www.collegeboard.com/article/0,3868,6-29-0-4494,00.html.

The College Board reports that the more expensive colleges are charging "\$27,000 or more for yearly tuition and fees". The editors of CNN and Money Magazine reported that 2004-2005 tuition at 12 top colleges is an average of \$29,371. These 12 colleges are Cal-Tech, Duke, Harvard, Haverford, Northwestern, Sarah Lawrence, Smith, Stanford, Vanderbilt, Washington University (St. Louis), Williams and Yale.

As college students know, a student takes about 16 credit hours per semester, and each semester last about 16 weeks, which means that the student is supposed to attend about 512 hours of class per year. \$29,371 in annual tuition divided by 512 amounts to \$57.37 per hour of instruction, as to tuition alone. When adding books, living costs and transportation expenses to the equation, the cost of one year of higher education is often \$40,000 or more, which raises the hourly cost of instruction to more than \$78 per hour for students who upon graduation may be forced to accept employment at \$10 per hour.

But let's continue looking at costs and revenues from the school's standpoint.

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Schools are similar to airlines, in that it is a business of filling seats, and once the flight has left or enrollment window has ended, the unsold seats have no value.

Colleges and universities are in the seat-filling business, and in some instances may have more than 100 to 200 students in a large lecture hall with a single professor (or teaching assistant).

But let's look at the economics of a class with 35 students. The 35 students attending 1 hour of class provide $35 \times \$57.37$ (or \$2,007.95) in tuition to the college, but the college has direct instruction costs of only 1 hour of instructional time, which could be as little as \$5 for a teaching assistant or \$100 for a professor. As I said previously, I paid between \$18 and \$22 for the lawyers who taught in my school. Then, you should add the \$10 or \$20 for allocable rent for the classroom, to show total costs ranging between \$15 and \$120 for the single hour of instruction, but with tuition revenues amounting to \$2007.95. What a business! No wonder the state won't permit competition in the business of granting degrees.

Thus, for each hour of instruction, the college has an extra \$1,900 or so to pay for the college president's salary; the office, equipment, telephone and staff for professors who run their consulting businesses from their offices in the university and often teach only a token number of hours per week; a team of salespersons who attend college nights in the thousands of high schools throughout the United States to recruit students to fill the seats; the low wages generally paid to maintenance and kitchen workers; and whatever else the college decides to do with the excess money, such as the Chancellor's or President's luxurious on-campus home and any staff.

Of course, to be fair, the college does not get the full amount of tuition from all of its students. There are scholarships awarded which if not funded by contribution of alumni (in which case the college gets the money), the college will receive less than the full amount of calculated tuition for that one hour of instruction.

Student loans are a convenient way to shift the high costs of college upon the student and student's family, without having to provide unfunded scholarships.

The problem, however, is why should a student commit himself/herself to paying \$57.37 per hour (tuition costs) or more than \$78 per hour in overall college expense when the student can expect in many instances to accepting employment at \$10 per hour, with less than 25 cents per working hour available to pay off \$150,000 in student loans.

It is mathematically impossible to pay off the loans at that rate of repayment because the 5% average interest on \$150,000 amounts to \$7,500 per year, which alone would require 30,000 hours of work per year at \$.25 per hour to pay off. Of course, I have taken the worst case.

If a student's loan obligation upon graduation is \$25,000, the figures would be 1/6th as much, or 5,000 hours of work per year at \$.25 per hour to pay the interest on the \$25,000 in outstanding student loans.

Alternative Educational Opportunities

The cost of higher education is so high that it makes no sense for many persons to pursue their dream of attending college. College costs (the result of monopolistic college forces), with the inevitable annual increases in price, have priced college beyond the pocketbooks of most Americans, and alternative means of education must be considered.

Through appropriate purchasing considerations, you should be able to purchase your educational requirements at 1/10th to 1/40th of the costs of attending an expensive college. Instead of \$160,000 in costs for attending an expensive fulltime college, you can obtain an equivalent education for costs ranging from an estimated \$4,000 to \$16,000.

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Self teaching – by purchasing and reading textbooks in areas needed by you in your self employment

Adult education programs offered by your local high school

Online courses obtained through website offerings of numerous colleges and universities (paying very close attention to whether an earned “degree” can be obtained), and ensuring that any such “degree” you expect is permitted to be granted by appropriate state authority

Non-degree or audit evening courses at a local community college

Non-degree or audit evening courses at a local college or university

On-the-job experience.

Obtaining the highest quality of course materials online, free, courtesy of MIT and all of its professors and instructors, pursuant to MIT’s “CourseWare” program, started in 2001, described by MIT’s President Charles M. Vest: “We are not providing an MIT education on the Web. We are providing our core materials that are the infrastructure that undergirds an MIT education.” See <http://web.mit.edu/newsoffice/2001/ocw.html> for the MIT release describing the program and its purpose, and <http://ocw.mit.edu/index.html> for the OpenCourseWare Program.

The evils of outsourcing, globalization and declining standard of living, and resulting decline in the number and quality of jobs, make it imperative the persons without wealth purchase their educational products and services on the best available terms, so the student can use the savings to buy equity in his or her self employment and obtain equity in his/her home. My advice is to hunker down, especially with education costs, which are probably the most expensive thing a person will buy other than a home or business.

Chapter 12 – Jury Duty Can Make You More Powerful than the President – Don’t Throw Away the Opportunity

Many persons perceive jury duty as a waste of their time and some jurors act accordingly, by encouraging the other jurors to get rid of the case as quickly as possible, which often means by finding for the defendant in a civil case.

This is more so when a major case is divided into two parts, with liability usually being tried first when the trial is “bifurcated”. Jurors realize that unless they find for the defendant, the jurors will have to return and hear another trial on damages. This bifurcation procedure works to the extreme prejudice of plaintiffs in many instances.

Jurors should look upon their service as triers of the fact as an opportunity to truly serve their country. The importance of the jurors’ service in all cases should not be minimized, but there should be a great emphasis placed upon jury service in antitrust cases, the type of case which judges and juries often dislike because of the length of time it takes for some of the trials.

Jurors serving on antitrust cases have a most valuable opportunity to help the economy and their community and themselves and their families, or to hurt everyone. If jurors listen to the facts and study the evidence they will find that the plaintiff was injured by the practices complained about and that such practices are unlawful. I say this with some degree of certainty because judges generally throw out good antitrust cases and don’t allow non-existent (bad) cases to go to trial.

Thus, if a juror winds up on a jury for an antitrust trial, the juror can be fairly safe in concluding that there is a case, and should work hard at trying to understand the case, and also work hard at

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conveying this understanding to the other jurors, to enable the jury to uphold the antitrust law and render a verdict for the injured plaintiff.

I am not saying that a jury should always find for the plaintiff regardless of the facts. Instead, what I am saying is that the degree of screening of antitrust cases by federal judges is so extreme, that any case which goes to trial will probably be replete with evidence in the plaintiff's favor, and that any doubt by jurors will be the result of their lack of understanding of the issues.

If a knowledgeable juror can run with those issues and lead the other jurors to arrive at a just decision (which generally means for the antitrust plaintiff), the major corporations in America will take heed, to a far greater extent than the public statements by the President of the United States, because the activities of a jury in finding for the antitrust plaintiff could occur hundreds or thousands of times for a major corporation whose policies have injured independent retailers, jobbers and wholesalers all over the country.

You as a juror could be responsible for many billions of dollars worth of changed conduct, and movement of that amount of money from the monopolies into the hands of the small business owners, their employees, others servicing small business, and your community itself, and create additional business and employment opportunities for Americans throughout the country.

Imagine being responsible for one hundred billion dollars of the economy. Very few people are put in charge of that amount of money or value.

There is an important doctrine of law, which no judge will ever let you know. It is called the doctrine of nullification (of the judge's jury instructions). This doctrine is that it is lawful for a juror and jury to disregard the instructions to them from the judge, which the judge instructs them to follow. There is no penalty in rendering a decision contrary to such instructions, even if you believe that you are acting against such instructions. Remember, you could be wrong about the instructions, but that is not the point. You have the right to

render any decision you want, and you have the right to, and should be, just in your decision, even if this is or seems to be contrary to the judge's jury instructions.

You might be interested in reviewing my website on jury nullification, entitled "Jury Nullification Website; How the Constitutionally-Guaranteed Jury System Is Being Threatened with Irrelevance and Destruction by the Ever-Increasing Concentration of the Economy", located at www.lawmall.com/jurynullification.

The judge has no right to sanction a juror or jury for failing to follow the judge's instructions. The judge does have the right to overrule the jury verdict if the judge feels that it is contrary to law, and may do so, or may not. Generally, most jury verdicts are upheld if there is any basis in the evidence to support the jury's verdict. In other words, the verdict would be upheld if all evidence in favor of the plaintiff is sufficient to uphold a plaintiff's verdict. The jury is assumed to have found all disputed facts in favor of the plaintiff. But if these facts are insufficient, then the judge would reverse the verdict. The jury's problem is not knowing what evidence is sufficient under law to uphold a verdict, and it seems to me the jury should come down on the side of justice rather than trying to figure out legal niceties, where there is a high possibility of error.

The important thing for you as a juror is to try to get a just result for the antitrust plaintiff, as well as any other type of plaintiff against the major corporations, because you may be the only person who can dispense with justice in the situation. Persons who go to court usually have no other way to obtain relief, and too often jurors fail to understand or accept the responsibility, which is given to them.

In the area of antitrust law, the jury decision can be 10 or 100 million times more important than the award of damages for a broken leg.

Another thing you have to understand is that the cost of obtaining justice is far more than 95% of small business can afford, and very few cases are brought as a result, especially considering a judi-

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cial tendency to throw out antitrust and other commercial cases by grant of a defendant's motion for summary judgment (which also means that the judge has one case less in his/her pile of 100 case files needing trial or other judicial attention).

Don't be fooled by the awarding of justice for the plaintiff in broken-leg cases. The availability of justice for tort (i.e., civil wrong) cases is not extended to antitrust cases. The reason for this is that insurance covers the broken-leg cases and without the threat of awards there would be no reason for businesses, homeowners and properties persons to buy insurance protection. This means that insurance companies are not badgering politicians with requests to shut down broken-leg litigation.

In contrast, antitrust cases have no insurance carriers picking up the legal expense or any award, and the defendants and their counsel fight antitrust cases vigorously, usually spending 10 to 100 times as much in the fight as the plaintiff ever wins or receives in settlement. The claimed justification for this is that unlike a broken-leg case, the antitrust violations claimed by the plaintiff are a source of huge (illegal) profits for the defendant and the defendant will spend anything to protect such profits from destruction by a single antitrust litigant. Just look at the value of the stock of the largest retailers in the country, and you can see the dollar amount of the business practices they are called upon to defend in antitrust litigation.

The justice system increasingly awards damages for a broken leg but because of all the judicial restraints placed on business lawsuits the justice system generally fails to award damages in a high percentage of business cases where relief should be granted.

As a juror, you would be getting a case, which has survived all sorts of challenges, which can tend to assure you that the case is highly meritorious. Take Robinson-Patman Act price discrimination cases, for example. Each manufacturer selling goods to a major retailer is violating the Act. I know that. The manufacturer and major retailer know that. Perhaps the judge knows that. But jurors do not understand that. They have the mistaken belief that major retailers

have earned their dominant position by offering lower prices while the smaller competitors were somehow asleep at the switch for years and failed to offer equally low prices. The jury really doesn't consider that the manufacturer may have been selling to the major retailer and 50% less per unit than the price it was charging to the independent competitor, which makes it totally impossible for the independent to compete by offering the same price. If you as a small retailer are paying the manufacturer \$18 for a new tire, how can you compete with Wal-Mart which is selling the same type of tire, made by the same manufacturer, at a retail price of \$6?

If and when you get on a jury, which deals with price discrimination issues, you may have far more knowledge than the other jurors, and you will become the critical factor in having the jury reach the right result. You should look forward to undertaking this civic responsibility, and you and others similarly minded can be far more effective than Congress and the President. You can actually solve the problem they have created through their system of campaign financing. That is something which you would remember and tell to others for the rest of your life – The Day You Became President of the United States!

Juries can clean up the mess created by Congress, and as part of your civil duty you should try to be selected for antitrust jury trials if given the chance. This is not to say that you should make false statements to get on the jury. You should be mindful of what you say, make no false statements, and of course have an open mind even though you have some insight into antitrust matters.

The attorneys for the antitrust defendants would try very hard to identify someone like you, through various questions during "voir dire" proceedings for the purpose of preventing you from serving on the jury, either by a challenge for cause (claiming you are prejudiced and could not render a fair verdict on the evidence) or by peremptory challenge, not requiring any explanation to the judge. Also, they might ask prospective jurors if they read this book, which would possibly interest some of the 50 prospective jurors in reading the book, and turn this country ever so slightly into the proper direction.

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During the past 10-20 years a new type of consulting field has developed called jury consulting. During the trial the retained “jury consultant” will sit at the table with the attorneys (usually the defense attorneys) and try to figure out which prospective jurors would be useful and who should be eliminated. To some extent, based on the knowledge obtained during jury selection, some consultants even do Internet research of the prospective jurors to find out what they can about the person, to help the consultant and attorneys decide whether they want the person to sit on the jury.

You should be mindful of the ways in which traps are set to prevent you from becoming the President for a Day. Don't let them make a fool of you and prevent you from doing your needed civic duty.

If I were a lawyer getting set to try a case to a jury, I would be most interested in knowing whether a specific prospective juror is aware of the doctrine of “jury nullification” and, if so, whether the juror believes in it. It is possible that the attorneys for both sides might want to exclude such a person from the jury, or that one or both attorneys might want such a person on the jury. I remember accepting a lawyer on the jury panel because I believed the attorney knew about the doctrine, and was temporarily rewarded when the lawyer took over as foreperson of the jury and tried to swing the jury over to my side (without success, as it turned out).

If this book is read by enough persons, it will probably result in having trial lawyers ask prospective jurors whether they have read *SAVING MAIN STREET AND ITS RETAILERS* to determine if a follow up question is needed about jury nullification and the prospective juror's understanding and intention concerning such doctrine. Hopefully, if enough persons are asked whether they read the book, in due course many of such persons might wind up reading the book. I like to think of such prospects as a type of viral marketing. My door-to-door and party-plan distribution program for the book is set forth in my website for the book, at www.lawmall.com/salesmen, which website is republished as Appendix H to this book.

The monopolized main media, control of which is winding up with fewer and fewer persons, has an agenda to tell citizens of the United States that most litigation is frivolous and that the country is better off not having courts and lawsuits. Without courts and lawsuits there would be higher corporate profits for everyone to enjoy.

Of course, the problem with this argument is that courts are increasingly needed to obtain relief for the oppressed, when the nation's other institutions fail to provide or protect the Constitutional minimum.

The jury nullification doctrine is an important tool for the public to offset its disadvantage of having the main media convince American jurors that most litigation is frivolous. The jury should try to do justice for the parties, whether corporate giants, or individual victims of anyone large or small, and not be worried about trying to understand and apply all of the technicalities of a lengthy charge which even the judge and opposing counsel probably would not be able to agree as to its full meaning.

After all, a jury could be mistaken about the meaning of a jury instruction and reach a wrong verdict when misinterpreting the instruction. It seems to make sense to let the jury hear the jury charge or instructions, and then try to deliver a just verdict, and let the judge and lawyers work out whether the jury acted within the boundaries of the relevant legal principles.

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Chapter 13 – Politics Depends on Your Ignorance and Makes You an Economic Slave to the Rich and Powerful

Although the chapter title is obvious in part (“Depends on Your Ignorance”) and rhetorical and argumentative in another part (“Economic Slave to the Rich and Powerful”), I am using the title and chapter to re-enforce my viewpoint that that you have a better chance to solve a problem by acquiring information and coming to a full understanding of it. If you remain in ignorance about important things such as the causes of your problem, you will have less likelihood of solving it.

The information I present in this book, I believe, will give you the information needed by you, others and most of the nation’s people to cure the problem. This is so because the normal way of curing our problem has been bought off with campaign contributions and political payoffs (such as policy of not enforcing the antitrust laws), which makes elected officials and politics creators of the problem.

In such a case, a national focus upon a legislative or political solution is really whistling Dixie, and the country will remain subject to the ever-increasing concentration of the economy and related decline in the American standing of living while persons without knowledge think that something is being done. Ignorance undercuts a demand for an effective solution, and permits many bogus solutions to be discussed and presented to create false hope and no action.

I’ve learned in 34 years of litigation experience against major corporations and against government agencies that things are seldom what they appear to be. What you think you know is often the reverse of the truth.

An example of this will make my point. It's safe to say, I believe, that you are aware that federal ("Article III") judges have a lifetime appointment to their judgeships, which immunizes them against the pressure which could be brought upon most state judges who depend upon reappointment every so many years. Thus, federal judges do not have the pressure of some state judges because of the Constitutional protection (in Article III of the U.S. Constitution) making the judge's appointment a lifetime job, and therefore not subject to any pressure from persons who dangle possible appointments or other benefits in front of the judge.

Right? You know this to be true, because of the lifetime appointment?

Wrong! Because federal judges at all 3 levels remain in the position as a federal judge only until they are appointed by the ruling forces to a higher court or to become head of a Commission (such as the Warren Commission) or a governmental agency (such as the FBI or CIA).

Federal Magistrate Judges are in a worse position. They are appointed only for 10 years and usually seek to obtain appointment as a "lifetime" Article III federal judge during that 10-year appointment, unless they do something stupid and irritate the appointing powers that be, such as by being too liberal in their decisions if the ruling group is conservative, or vice versa. Magistrate Judges have a difficult job, as I see it, to always be fair and just and at the same time not commit professional suicide, and I must applaud them for how, generally, they seem to be handling this tricky situation.

Other examples come to mind, such as the daily published view, in the major media, that "productivity" is good for the nation, when in fact upon analysis it is devastating for 95% of the nation's people. (See Chapter 9 above).

Another example is how experienced economists respond to my evidence and argument that manufacturers are selling below cost to the major retailers. The economists laugh at the thought that any-

one would do that, asking what benefit could they get from selling below cost. Actually, the benefit is to buy or protect market share, hoping that competitors will leave the market as a result, and then allow the below-cost selling manufacturer to enjoy a monopolistic share of the market, at which time it would increase its prices and obtain monopolistic profits.

My point is that you should wait for the evidence to come in before jumping to a conclusion.

“Globalization” May Mean, but Disguise, Corporate Plundering on the Largest Scale Ever Taking Place

Here’s a final example, in the form of a question for you to consider. Is it possible that “globalization” is no more than a term used by monopolists and their owned or controlled major media to give an apparently believable cover story to what is no more than the massive corporate crime of plundering wealth from the United States and other countries with the connivance of the governments which the plunderers control?

Accordingly, don’t accept everything you hear or read as true, and instead adopt a “judicial” approach and wait until you get the facts and understand the matter before deciding what is true and what is not.

Politics Depends on Your Ignorance

Once again, the ability of politics to pull off the greatest heist the world has ever seen, a plundering of the assets and opportunities of 95% of Americans, and cause an ever-decreasing standard of living for them, has occurred because the major media either never learned the truth, or the major media learned and exercised its First Amendment Freedom of the Press and decided not to report what was going on.

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Your continued ignorance appears to be a condition to curing the problem, giving you back your assets and opportunities, and increasing your standard of living.

If politicians were candid and admitted to supporting legislation, which they knew would reduce your standard of living, they reasonably could expect not to get your vote (if the media reported the matter properly). What elected officials have to do to get in office, function as an elected official and get reelected would be difficult to explain to 95% or more of the voters, who expect and get no political favors. The voters have to be kept in ignorance of the politicians' dealings to have the voters remain as a political base for reelection of the politicians.

By keeping voters in the dark about what the politicians have done and plan to do, the politicians remain in office, and give support to statutory provisions which favor the rich and impoverish the rest, to get the comparatively small amount of funds needed to run their recurring reelection campaigns.

If I have stated the problem accurately, what solution becomes apparent? I believe the answer is public financing of all federal elections, limitations on private financing, use of the nation's airwaves as of right by persons seeking federal elected office, and a short, defined duration for campaigns.

Of course, the solution is not going to happen and we have to turn to a secondary solution, which is what this book is about – a workable plan (with different parts) to take back our economy from the plunderers. See Chapters 26-28.

Chapter 14 – Many Criminal Prosecutions Are the Modern Equivalent of the Bloody, Weekly, Roman Spectacle of Imprisoned Gladiators Fighting Each Other with Only One to Survive

Government needs to provide reasons for the public to believe the government is acting on behalf of its people instead of the top 5%, enforces laws fairly and equally, is honest, and that its elected officials are deserving of reelection.

One of the best ways is to have criminal prosecutions, and to publicize them in the major media. The prosecutors, by the way, use a string of convictions to start up their intended political path of appointment to a higher prosecutorial office, and then appointment as a judge or a run for elective office.

The government has virtually unlimited funds and other resources, plus a rigged set of rules involving criminal procedure, which enables the prosecution to win in more than 99% of the cases brought.

In the Southern District of New York, 98% of the persons subject to a federal indictment plead guilty, whether or not they actually are guilty, and the other 2% usually lose at trial, not realizing that innocence does not necessarily become apparent in a criminal system which is skewed so heavily in favor of the prosecution. For those interested in reading more about shortcomings of the criminal justice system, I refer you to four prosecutorial-abuse websites of mine: (i) www.lawmall.com/abuse; (ii) www.lawmall.com/criminal; (iii) www.lawmall.com/forfeit; and (iv) www.lawmall.com/pleabarg.

With all the criminal prosecutions taking place in the United States, resulting in a higher proportion of persons in jail than any

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other country (and 7 times the rate of China, the country with the 2nd highest prison population)^{fn1}, you would think there is no criminal in the United States not in jail or being prosecuted. But once again, forget about appearances, and go for the facts.

The major corporations for years have been taking the public's money in a variety of ways, many of which in violation of law, but prosecutors do not go after these violators of law because they are the ones who provide the campaign contributions. Only as a last resort, to make the public believe that the justice system is fair and impartial, do a relatively small handful of the rich and powerful get prosecuted. One of such prosecutions was of Martha Stewart (someone who caused no injury to anyone, even though she did apparently lie to a federal official).^{fn2}

FN1. The Straight Dope, in 2/6/04 article entitled "Does the United States Lead the World in Prison Population?" reports that:

According to the International Centre for Prison Studies at King's College London, the U.S. currently has the largest documented prison population in the world, both in absolute and proportional terms. We've got roughly 2.03 million people behind bars, or 701 per 100,000 population. China has the second-largest number of prisoners (1.51 million, for a rate of 117 per 100,000), and Russia has the second-highest rate (606 per 100,000, for a total of 865,000). Russia had the highest rate for years, but has released hundreds of thousands of prisoners since 1998; meanwhile the U.S. prison population has grown by even more. Rounding out the top ten, with rates from 554 to 437, are Belarus, Bermuda (UK), Kazakhstan, the Virgin Islands (U.S.), the Cayman Islands (UK), Turkmenistan, Belize, and Suriname, which you'll have to agree puts America in interesting company. South Africa, a longtime star performer on the list, has dropped to 15th place (402) since the dismantling of apartheid. www.straightdope.com/columns/040206.html.

FN2. Martha Stewart was convicted of the newly discovered crime of making a false but unsworn statement to a low-level federal investigative employee. Why not extend the principle underlying her prosecution to others? Why not prosecute members of Congress and the President for the unsworn intentional misrepresentations they make to each other and to congressional investigative committees?

Then there is the prosecution of Leona Helmsley, the real estate holding billionaire Queen of Mean, for taking improper tax deductions amounting to perhaps 1% of the amount of taxable income reported on her tax return for the year.

Recently, we've seen the prosecution and conviction of Adelphia founder John Rigas for taking a billion dollars from the public company he controlled (which amount makes you wonder why no criminal action was brought after the first \$10,000,000 or \$100,000,000 was taken).

Also, recently, we've read about Richard Grasso who, while C.E.O. of the New York Stock Exchange, paid himself executive compensation of more than \$100,000,000, with no prosecution yet.

What about the hundreds of billions of dollars some companies are making from Globalization? There have been no crimes charged against anyone relating to the largest taking of property in the history of the world; surely someone must have done something in violation of law (which elsewhere in this book is spelled out).

Behind the world's greatest fortunes there are crimes, but you seldom see any prosecutions for such crimes. The crimes could easily be found by any prosecutor wanting to find a crime, but instead of looking at the rich and powerful as the source of persons to prosecute, it is much safer to seek execution of penniless, illiterate minority persons in Texas to show (to those not yet in jail, and still entitled to vote) that the prosecutor is deserving of higher office.

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In substance, the prosecution of alleged criminals and publicity for such prosecutions is no more than the present counterpart of the Roman weekly spectacle in which prisoners were thrown to the lions, or slaves were forced to fight each other to the death of one or both, as "gladiators". You never saw the persons in power being thrown into the ring, and the same is true today about criminal prosecutions, you seldom see prosecutions of the persons most deserving of prosecution.

Chapter 15 - How Your Elected Representatives Are Bought Off and Help Destroy Your Main Street

Any specific elected official you could get to speak with you truthfully would probably be unable to explain why he/she is “helping to destroy your Main Street.” Ignorance or plausible denial is a useful technique for not understanding how much damage you are causing, as an elected official, to the people being served. The official might argue in defense that he/she couldn’t be expected to know everything that goes on and has to rely upon the good faith of colleagues. Or, more candidly, the official might point out that he/she wouldn’t be there at all but for campaign contributions provided by special interests and within that restricted framework is doing as much good as possible.

Whatever the excuses, the elected officials are failing the country in the area of our economy, and by failing to provide sufficient jobs and high-paying jobs, sufficient business opportunities, for permitting excessive and ever-increasing concentration of our economy through mergers, acquisitions and failure to enforce the nation’s existing antitrust laws, by permitting and encouraging monopolization and especially in the media, and permitting development of a more serious problem of monopsony purchasing power by major retailers to destroy the nation’s independent distribution system which took many decades to establish; permitting increasing lack of job security and lack of adequate healthcare for most Americans; while providing to themselves at the same time excessive salaries and perks as payment for their shameful political activities.

Our elected officials are not stupid. They recognize who has the power and money and join such forces while maintaining an acceptable level of political rhetoric of being for the people.

By permitting media concentration in the hands of a few people, our elected officials have sealed our fate by sealing off the

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opportunity for most members of the public to learn the facts needed to understand their plight. Instead, they are given rosy predictions that the economy is becoming more and more “productive” without being told that the productivity is what is killing off jobs and business opportunities, and making the rich and powerful more rich and powerful. Productivity increases can be identified as no more than stealing from the rest of the country.

The problem is always complicated, or at least can be made to seem so.

The simple truth seems to be that adequate public financing of elections with adequate controls to prevent cheating would enable robust political debate and enable a significant change away from the present way of running our government and transfer of the wealth of the country into the greedy hands of the world’s richest people.

Because the country has lost the institutions which would resist economic oppression (such as an effective press, effective judiciary, effective Congress and effective Administration) which could resist economic oppression, the country and its people have little hope that future national elections will do anything more than march further along the path to poverty for most, and vast riches for a few.

The most amazing thing about the deals made by politicians to obtain campaign funding from donors is the paltry amount your legislators receive in exchange for what the donation purchases. A campaign contribution of \$5,000 to each of 100 Congresspersons (or a total of \$500,000 plus postage) is probably able to purchase political favors (or transfers of your tax money) amounting to \$10 billion to the donor by tax breaks, non-competitive purchasing arrangements, monopolistic licenses, government imposed restrictions on competitors and other undesirable practices.

I would much rather see something like 5% of the nation’s gross national product turned over to candidates, to enable the other 95% of the economy to function properly (competitively). The pie

would be much larger and would be more equally divided if this were to happen.

However, because it is too ideal to imagine any successful implementation of what obviously should be done to cure the campaign-financing problem, we have to figure out some other way to win the economic battles. My three Plans are fully described in Chapters 26, 27 and 28 below, and state that we should fight back at the local town and village level, in the way I describe, as sort of a grass roots approach to cleaning out the weeds which are strangling our economy.

Chapter 16 – How to Determine Which of the Local Media Are Your Friends and Which Are Your Foes

The major media in the United States are not on the side of equal opportunity, truth, justice or a level playing field. The major newspapers, television networks, radio networks and cable systems are owned by major corporations (even by an identifiable person, such as Rupert Murdoch, owner of the largest worldwide media empire of them all) and cannot be expected to be sympathetic to someone injured by a large corporation. All of us are injured each day by large corporations and that is how the world works.

The large corporations are part of a system in which all potentially hostile elements are immunized or bought off, or bought up, including the major media and politicians. The duty of the major media is to ensure that the public does not learn what it needs to know, if such knowledge would undermine the owners of the major advertisers in the media. This interest results in a policy enforced by the editors upon reporters and others so that reporters are quick to learn that Freedom of the Press under the 4th Amendment is for the owners not to report the news, or freedom to distort and lie about the news, and is not a freedom for the reporter, who either accepts the restrictions or finds another employer (of which there are far fewer today because of the wave of media mergers in the past 20 years).

You may not be aware but because of the campaign contributions made by media interests to various politicians (and more important favorable exposure in the media), the politicians have allowed a relaxation if not abandonment of restrictions on the ownership of radio and television stations, enabling Clear Channel Broadcasting, Inc. to acquire 1,225 radio stations and 39 television stations in the U.S., and Viacom, Inc. to acquire 185 radio stations (mostly in the top 50 markets, operated by Viacom's Infinity Broadcasting division) and 39 television stations in the U.S. (operated by Viacom Television Stations Group), with 2 persons (C.E.O. Lowry Mays in

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the case of Clear Channel Communications, Inc. and C.E.O. Sumner Redstone in the case of Viacom, Inc.) determining editorial policy. Lowry made \$50,000 in contributions to George W. Bush's 1998 campaign, and Clear Channel gave more than \$1 million to Republican candidates between 2000 and 2002, according to a 1/30/04 release by the AFL-CIO.

There is a bright side to this from our standpoint, which is that independent local media including local weekly newspapers, local radio stations, local television stations, local cable operators and low-power radio and television stations are generally owned and managed by persons who are inherently against major retailers including Wal-Mart and Sam's Club, because such major retailers do not advertise to any significant extent in the local media and instead have put out of business many of the local independent media's best advertisers.

Accordingly, you have an inherent ally in these local media, even if some of them may choose for sound business reasons not to prominently advertise that fact that they agree with the concept of a level playing field.

Small business is more efficient than the major retailers for a variety of reasons and would be able to spot the major retailer 10% in the costs of goods and still be able to beat the major retailer in the marketplace. The problem is that our laws requiring equal prices are not being enforced, with the predictable result that independent retailers, jobbers and wholesalers throughout the United States are becoming systematically driven out of business, in this land of ever-decreasing opportunity.

The independent local media can be expected to be your ally and give you favorable publicity, and you should cultivate and use them in your efforts to save your community, the employment and businesses opportunities for residents, local property values, and local small businesses from being destroyed by major retailers in your area.

Chapter 17 – Globalization Is Based to A Great Extent on Continued and Increasing Violation of the Robinson-Patman Act

I want to make a point without having it buried elsewhere, in a longer chapter. The point is that part of the business activities, which result in globalization, is the violation of our nation's antitrust laws, including the Robinson-Patman Act, and resulting lack of enforcement of government and by injured businesses.

Globalization occurs because a system for dramatic business growth has been created by the nation's rich and powerful, and the elected officials they own, based upon business practices outlawed by the nation's antitrust laws. Because of the inability or unwillingness of the governmental institutions to enforce these laws, the nation's business leaders are able to grab hundreds of billions of dollars in profit knowing there is no likelihood of either criminal charges or material civil liability for the violations.

If the nation's antitrust laws were enforced, there would be no Wal-Mart, Sam's Club, Barnes & Noble, AutoZone, Home Depot, Bed Bath & Beyond or other major retailer because if they paid the same price for their goods as their small business competitors, the major retailers would have to go out of business, downsize, and work at remaining in business in America and forget about trying to extend their business practices into other parts of the world.

Let me explain. Let's assume an independent retailer in your community pays \$2 for each item it sells, and that the competing major retailer across the street pays only \$1 for each of the same items and resells the items for \$1.67 or a 40% profit margin on sales (whereas the independent retailer across the street resells the same item at the retail price of \$2.67 - with only a 25% profit margin).

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The major retailer is actually getting a discriminatory subsidy of \$1 per item from the manufacturer, instead of being charged the same \$2 per item, and the major retailer in effect has been selling the item at retail for \$.33 below the price it should be paying. If suddenly, the major retailer and manufacturer were required to obey the law (i.e., the Robinson-Patman Act and possibly the Sherman Act), the major retailer would have to increase its price to \$3.20 to maintain the same 40% profit margin whereas the independent competitor is able (barely) to sell the same item at \$2.50.

The independent retailer would be in a position to undercut the price of the major retailer and provide better service in addition, and be able to compete effectively with the major retailer, which would prevent the major retailer from expanding, and also prevent the major retailer from trying to compete in other countries when it has a hard time surviving in the United States.

Small businesses are inherently more efficient than major retailers for several reasons. The first is that the owner usually has through self interest and experience and ownership an intimate knowledge of the whole business and only a few employees to train and supervise (unlike the major retailer which may have hundreds or thousands of persons doing the same thing on a much larger scale, with perhaps 200 different types of employees doing the work which the small-business owner does himself/herself. The result is that the level of experience and ability and knowledge of small business employees is vastly higher than the employees of the major retailer. Major retailers in the retail bookselling industry found that their employees were unable to receive books at the retail stores and place them on the shelves accurately and quickly, whereas the independent owner of a chain of 9 bookstores (Wallace Kuralt) was able to do this job in each store with his own small staff. Kuralt died in 2004, having devoted the remaining years of his life fighting the nation's major retailers.

The major expense of a small business retailer is the amount paid to its owner, which expense can go up or down dramatically, according to business conditions and competition, which enables the independent retailer to remain in business with apparent profits be-

cause of the willingness to work for less, or even nothing or less than nothing (when the owner has to lend money to his company to keep it going). Major retailers have not yet succeeded in paying its employees nothing, but they are coming very close.

Independent retailers provide a degree of service with their expertise, which cannot be matched by the major retailers. In fact, various prospective customers visit or call independent auto parts retailers to talk over their auto parts problem and needs with the employees, including the price being charged by the independent retailer – and then buy the part at a competing major retailer at a lower price, which practice drives the independent store owner crazy. If the retail price were the same, most retail customers would buy at the independent store.

The major retailer buys its goods at about half the price paid by the competing independent (assuming direct purchasing from the same manufacturer), which gives them sufficient extra money to take away the competing independent retailer's customers, cause a dramatic growth and expansion of the major retailer's chain. This puts the major retailer into a position of being able to outsource its parts requires more readily to other countries (by bringing pressure on manufacturers to do that or cease selling to the major retailer), resulting in even lower prices to the major retailer and ultimately expansion by the growing major retailer into other countries to wipe out the independent retailers there as well.

But this can only be done if they start off in America with a non-level playing field by reason of the lower price at which they buy their goods. In absence of such favorable pricing, they could not remain in business. Take a look at Kmart and Toys "R" Us, which can't compete with Wal-Mart and can't remain in business – even with favorable prices from the manufacturers. The problem is that even though they get favorable prices in comparison to the independent retailers, their prices are not favorable enough to compete with Wal-Mart and Sam's Club.

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As I see it, and I could be wrong, a national policy of effective enforcement of the nation's antitrust laws would go far in curtailing the economic evils of outsourcing and globalization.

Private lawsuits are the next best things, and should be pursued to stop the systematic destruction of independent retailers, jobbers and wholesalers in the United States and the American Main Streets they serve.

Chapter 18 – Importance of the Sarbanes-Oxley Corporate Governance Act of 2002

I see how communities can use a new federal statute to help in deterring major retailers from injuring their communities. The federal statute is the Sarbanes-Oxley Act of 2002, which became effective in September, 2003.

The nation's leaders recognized that the public is beginning to see that corporate crime is occurring but going unpunished, and that something has to be done to make it appear that the government is enforcing the criminal laws fairly and against rich and poor alike. Also, the government recognized that the standard of living for many persons is declining, that jobs are paying less and declining in number, but at the same time the persons who head up the merger-created multinational corporations are taking hundreds of millions of dollars or even a billion dollars for themselves in "compensation".

Enactment of the Sarbanes-Oxley Act of 2002 was the government's answer. Let's stop the excesses in the future (but nothing said about prosecuting for the thefts of the past).

It is interesting to observe that Sarbanes-Oxley is not directed to the crimes or alleged crimes of the major corporations, but only to the collateral crimes of the individuals who wanted to take some of the spoils for themselves. In other words, if you can view a specific corporation as a thief for violation of certain laws, Sarbanes-Oxley tries to prevent the corporate president (a thief) from stealing from the thief. The corporate president must be amazed that anyone could argue that as the person in charge of the thief he is not entitled to steal some of the ill-gotten proceeds for himself.

Importance of Sarbanes-Oxley

The importance of Sarbanes-Oxley, as I see the statute, is that it not only stops the president from stealing from the multinational corporation, but it also creates a mechanism for determining when the multinational corporation is stealing from small business or the public, and enable a community to set up standards for permitting major retailers to obtain required approvals to open up a new store (or expand an existing store) in the community. See Appendix C, entitled “Representations and Warranties Which a Community Should Require a Major Retailer to Sign as a Condition to Obtaining Requested New-Store Approval(s)”, and related discussion in Chapter 26.

The way it works is like this. Sarbanes-Oxley requires all domestic companies which report to the Securities and Exchange Commission (called “reporting companies”) to appoint to a newly formed “Audit Committee” members who are independent of the management of the company. Thus, none of the company’s attorneys, accountants, consultants, officers, employees, suppliers or others with a business relationship can be appointed to the Audit Committee. One or more minority shareholders can and should be appointed.

The duty of the Audit Committee is to ensure that the Company has controls in place to find out all information which the company is required to report in its filings with the SEC, and to ensure that the people and procedures are in place to ensure that the controls are being used, and that the controls in fact are producing the required information.

The information required to be reported includes material information about the company’s relationship with its top customers.

Thus, if a company is selling to its top customers below cost, this is a material event which should be reported because it has the material problems of antitrust liability and the spectra that such activities will drive other, profitable customers out of business, and

make the company dependent on the top customers who are producing no gross profits for the company.

Also, a related issue is whether the company is selling at discriminatory prices to competing customers, in violation of the Robinson-Patman Act, which would have the same possible economic consequences for the company.

The audit committee is required to deal with these problems because they could materially affect the financial performance of the company and cause it to go bankrupt.

Accordingly, these issues are being taken away from the present management of the company, which for years has been allowing such unlawful practices to take place, without ever reporting them in filings with the SEC, and requiring an independent body to look into these matters and set up controls to insure that the practices are not taking place.

The hook is that the members of the Audit Committee run the risk of a 20-year jail sentence for willful violations of Sarbanes-Oxley, including willful certification to the SEC and public that the required controls are in place when in fact they are not, or the Audit Committee covered up the results by failing to have the company report what it is required to report.

As I see it, Sarbanes-Oxley (sometimes referred to as "SOX" or "Sox") could be viewed as the first meaningful amendment to the nation's antitrust laws since 1936 (the year of enactment of the Robinson-Patman Act), even though nobody apparently thought of its relationship to antitrust enforcement when voting for Sarbanes-Oxley.

Each community should be inventive in requiring major retailers to provide information required to be disclosed by Sarbanes-Oxley as one of the conditions to obtain requested approvals to open or expand a store within the community. See Appendix C.

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Chapter 19 – Merger Mania and Its Impact on Business Opportunity, Employment and Standard of Living

Since 1914 it has been the law that acquisitions of stock or assets by one company of another is a violation of the Clayton Act if such activity, in any line of commerce in any section of the country, “may be substantially to lessen competition, or to tend to create a monopoly”.

Section 7 of the Clayton Act, 15 U.S.C. Section 18 provides in part:

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

Broadcasting and Entertainment Industries

In spite of this statute, recent administrations have permitted Lowry Mays, a friend of Bush I and Bush II and who is the C.E.O. of Clear Channel Communications, Inc., to proceed without significant restraint on a merger/acquisition binge to put together a conglomerate consisting in the United States alone of 1,225 radio stations, 39 television stations, 130 live entertainment venues, including 41 amphitheaters in the U.S. (representing 65% of the concert revenues in the U.S. at more than 6,000 concert events in 2002), 776,000 advertising displays (i.e., billboards) and other interrelated businesses enabling Clear Channel to cross promote interested artists in various venues and not promote others. Through this interrelated marketing

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approach, Clear Channel during 2002 staged 29,000 events attended by a total of 65 million people.

Needless to say, the price of tickets to live entertainment has increased significantly because of these mergers, including the inter-related industry mergers.

Banking Industry

From 1980 to 1998, according to a Staff Study of the Federal Reserve Board, approximately 8,000 bank mergers occurred, resulting “in a very large decline in the number of banks and banking organizations” and, as a result, “concentration increased substantially in many local banking markets, especially in large metropolitan areas, where concentration tended to be relatively low”. This August 2000 study by the Federal Reserve Board proves beyond any doubt the activity intended to be prohibited by the Clayton Act has taken place with apparent governmental blessings. The relevant Clayton Act wording is: “where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly”.

Now you can understand why you are paying higher banking fees for monthly-statement service charges, returned items, insufficient funds fees, late fees, unwanted insurance charges for overdraft privileges designed to eliminate the fees charged when an account is overdrawn, excessive ATM fees, and the paltry interest rates offered and the restrictive, begrudging terms under which banks give anything to their customers.

Mergers resulted in a restriction of your choice, and made it less necessary for the remaining banks to offer attractive banking terms to obtain and retain banking customers. With all these mergers in place, customers feel constrained to deal on unfair terms because of the difficulty in finding and switching to a convenient bank offering substantially more attractive terms.

8 Years of Credit-Card Mergers into Bank One Followed by Morgan/Chase Bank's Acquisition of the Bank One Credit-Card Giant

Here is a good story. Bank One, essentially a credit-card company, spent 8 years acquiring credit-card operations from other companies (such as Circuit City Stores, Inc.), enabling Bank One to put together a collection of credit-card receivables amounting to more than \$76 billion.

But Bank One will no longer be making credit card business acquisitions. During January, 2004 Bank One announced that it was being acquired by J.P. Morgan Chase & Co. (itself recently merged) for the princely sum of \$58.7 billion (or to put it another way for 77% of the amount of money owed to Bank One by its millions of credit-card holders).

There are many additional mergers which brought these parties to their present position, including Chemical Bank's acquisition of Chase (but calling itself Chase because of the perceived greater value of the name Chase in the marketplace).

Another merger involved took place last year, in which Banc One (note the spelling of "Banc") merged with First Chicago NBD, and as newly-named Bank One became the fifth-largest U.S. bank in terms of assets, and the largest online issuer of credit cards. Of course, all of this is now owned by J. P. Morgan Chase & Co., eliminating the need for J. P. Morgan Chase & Co. to compete with Bank One for credit-card, bank-account and other types of customers by offering better prices and terms.

Effect of the Merger Mania Policy

I'm not going to trace the history of mergers in the numerous industries. Instead, you should realize by now that growth of the major corporations occurs through mergers on one hand (using inflated stock values to "purchase" these companies without any need to pay

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money for them, usually), and that such enlarged acquiring corporation is then in a better position to wipe out smaller competitors, and take over their customers cheaply (through merger) or inevitably by being the only business of that type remaining.

The nation's policy of permitting almost any proposed merger (with slight adjustments, to make it look like there is some regulatory activity by the government) has allowed if not encouraged a dramatic increase in the concentration of our economy (and relentless march toward the monopolization which the nation's antitrust statutes were enacted to prevent), with the consequences that Main Street and its retailers have become victims of this policy.

Communities have suffered by a decline in their tax base, and by having a decline in the standard of living of their residents, with the consequent increase in healthcare and other social services.

More persons feel compelled to resort to their own type of lesser crime to survive, with resulting dramatic increases in prosecutions, sentence lengths and prison populations.

Of course, with increased concentration of the economy there is a necessary decline in business opportunities, employment opportunities and salaries and benefits, and a necessary decline in the standard of living for most while the proponents of Merger Mania siphon off your assets and put them into their own pockets, the few remaining banks in the U.S. or more likely some Swiss or other off-shore accounts.

What You and Your Community Can Do

The economic problems caused by the nation's policy of permitting virtually all mergers (with minor restrictions) results in less competition and higher prices for you and the other residents of your town.

When you choose to patronize the monopolists, as all of us do to one extent or another, you are validating their activities and committing economic suicide to some extent.

I suppose the trick is to be a concerned consumer and, as much as possible, try to patronize the responsible businesses, and avoid patronizing the others, where the cost is not too great.

This is something which should be personal to each individual, who could use my imagined Friend or Foe Software to try to decide who to patronize and who to avoid as much as possible.

By dealing with monopolists when you have a reasonable alternative you probably are doing a disservice to 95% of the residents in the U.S., and making the excessive concentration of the economy more profitable for the other 5%.

I think that the most effective thing you could do is to disseminate what you are learning in this book to others in your community, to enable you to multiply your forces and have a much larger impact. See Appendix H and Plan 3 (in Chapter 28). Maybe in this way you can extend the concept of being President for a Day into being (together with the others doing the same thing) President for Your Lifetimes, and bring an end to the activities which are robbing you and the rest of the 95% of your just share of the economy.

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Chapter 20 – The Role of the Judiciary Is Overseeing the Destruction of Your Main Street

I want to start this chapter by stating that I do not believe our nation's judges are meeting in secret and planning how they are going to destroy Main Street and its retail businesses, and turn the customers over to Wal-Mart, Sam's Club and other major retailers. Of course, 3-judge panels of United States Courts of Appeal meet on each appeal, and 9 Supreme Court Justices meet in whatever fashion on various matters brought to their attention. But they would not view they are destroying Main Street by their actions. Instead, they are, according to them (I would conclude), upholding the law as enacted by Congress and the President, and you can't blame the judges for what's happening to the economy.

Actually, I have to disagree with the argument I presented for the judges. The nation's Supreme Court Justices are being appointed with great consideration being given to their views and expected decisions, such as whether they are for or against antitrust law enforcement.

At the time, the Supreme Court is populated mainly by Justices who are against antitrust enforcement (or at least against aggressive enforcement of the nation's antitrust laws), and by their decisions since 1977 (8 years after Nixon came to office in 1969), the Supreme Court has made a series of antitrust decisions which mean less antitrust enforcement, and more concentration of the economy, and resulting injury to Main Street and its retailers.

I won't bore you with a lot of examples but will give you two representative decisions which are devastating to antitrust enforcement.

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In *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993), the Supreme Court held that “Evidence of below-cost pricing is not alone sufficient to permit an inference of probable recoupment and injury to competition” and that to recover damages for predatory pricing a plaintiff must show that the manufacturer had a reasonable prospect to recover (or recoup) the amount of the discriminatory undercharges. By adding various conditions to recovery under the antitrust laws and observing that the requirements being imposed by the Supreme Court are “not easy to establish, these prerequisites are essential components of real market injury”.

Anyone interested in seeing why antitrust laws are not enforceable should read the *Brooke* decision. A copy of the *Brooke* decision is available at: caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=509&invol=209.

Another bad Supreme Court decision is contained in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), which held that retailers who do not buy their goods directly from the manufacturer are not entitled to damages when the wholesalers from whom they buy their goods are paying discriminatorily high prices to the manufacturers. This is called the “indirect-purchaser” rule. Fortunately, the rule only applies to price discrimination, and not to the manufacturer’s failure to provide proportionate advertising and promotional programs to all levels of distribution of the manufacturer’s products. A copy of the Illinois Brick decision is available through www.findlaw.com, at: Library.lp.findlaw.com/articles/file/00312/008885/title/Subject/topic/Antitrust%20and%20Trade%20Regulation_Price%20Fixing/filename/antitrustandtraderegulation_1_79.

To see Charles Mueller’s “Dirty Dozen List” (consisting of 8 decisions instead of 12, I should add) go to: www.metrolink.net/~crueler/dirty.html.

In his website, Mueller concludes in no uncertain terms that there is no effective antitrust law in the United States today:

This body of theory, now incorporated into nearly a dozen decisions by the U.S. Supreme Court, currently kills virtually all cases except for the

rawest kind of explicit price-fixing. Monopoly by merger--and by the coercive exclusion of more efficient competitors--is now routinely approved on the basis of these "dirty dozen" Supreme Court precedents.

The U.S. judiciary, assuming the power to set the country's "industrial policy", has opted for the "consolidation" of U.S. industry into 2-firm (and even 1-firm) monopoly, a policy which is spelled out in this set of decisions that, together, constitutes a gauntlet no serious anti-monopoly case can survive in 1997.

In Internet list communications by Mueller concerning *Illinois Brick* (which is not but would be on his Dirty Dozen List if updated), Mueller nicely summarized the status of antitrust law today:

You [referring to the major-corporate defendant] win solely under the gun of a biased judiciary--via summary judgment, rigged jury instructions, directed verdicts, and overturned jury verdicts. To suggest that you win antitrust cases anywhere on the 'merits' reflects the kind of hubris that currently disgraces American antitrust law. You don't believe the number of antitrust cases filed in the U.S. courts has shrunk from 1,600 to 400? That the membership of the ABA Antitrust Section has shrunk from 25,000 to 5,000?

There are many such decisions by the Supreme Court, which have totally undermined the Congressional intent to have private plaintiffs enforce the nation's antitrust laws with private antitrust litigation, as a supplement if not backup to governmental enforcement, recognizing that politics could cause some administrations of government not to be very interested in commencing and maintaining antitrust lawsuits against their political supporters.

Because of this antitrust posture of the nation's top 9 Justices, the death sentence for antitrust law enforcement has filtered down to the 12 United States Courts of Appeal immediately below the Supreme Court and 164 Circuit Judges, and then to the 100 some odd District Courts and 665 federal District Court Judges. It is the District Court Judges who do most of the judicial work for whatever antitrust cases are still being brought.

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Getting back to your Main Street and its present state. It is clear to me that the failure to enforce the nation's antitrust laws in general and the Robinson-Patman Act in specific has enabled the major retailers to destroy many retail businesses on Main Street, which in turn has injured many related businesses as well, including jobbers, wholesalers, manufacturers, manufacturers' representatives, local newspapers, local radio and television stations, local cable interests, and small professional firms of lawyers, accountants, engineers and architects through loss of their small-business clients. Opportunities for residents of your community are reduced accordingly, and increasingly the choice for even college graduates is to take a job in a major retailer at \$7 to \$12 per hour.

No one District Judge would believe he/she has done anything but his/her duty. The same is true of all judges in the Courts of Appeals, and the highest Justices understand they are not judges as much as they are a legislative body looking to create needed law and have the discretion to do whatever they want, including issuing orders to cease aggressive enforcement by lower-court judges of the nation's antitrust laws, because such enforcement would cripple growth of major corporations which need to expand their operations into other countries and will be able to do so if they are large and global rather than small and concerned with the interests of United States residents.

Federal judges at all levels have a great degree of discretion when it comes to antitrust enforcement because the Sherman Act and Clayton Act particularly use weasel words such as "power" and "unreasonable" which a judge could say exists or not through taking part of the evidence and saying "Clearly there is no power" or taking other evidence in the case and saying instead "Clearly monopoly power exists". Judges today are unwilling to exercise their discretion in favor of antitrust enforcement because the claims will be reversed by the higher courts, which would mean that most of the judge's time in trying to render justice would have been for naught. The safe way for a judge is to conserve the judge's judicial resources by throwing out most antitrust cases, and let the higher courts decide if the case was thrown out erroneously or not. Of course, most antitrust plain-

tiffs would not waste their time appealing from the adverse decision, so that the lower-court's decision is the final word in most cases.

I want to add that what I have described is a tendency and in no way reflects any absolute rule. There is a tendency for antitrust cases to be dismissed as a "matter of law" just as there is a tendency for Robinson-Patman Act cases NOT to be dismissed.

When all the facts are put together, it suggests that antitrust remedies (other than under the Robinson-Patman Act) should be sought for the most part in the state courts, to avoid as much as possible the Supreme Court cases limiting antitrust enforcement. See Appendix E for a website, which lists the antitrust laws of each state, and a book, which contains a copy of the state antitrust laws.

My considered judgment is that my Plans 2 and 3 (see Chapters 27 and 28 below) if implemented would create an environment where judges and juries would be in favor of private antitrust law enforcement and have a tendency to rule in favor of antitrust plaintiffs when appropriate under law. This is so because in the long run judges do have a tendency to follow the elections, and local judges in the area would tend to be influenced by the local residents and their concerns about effective antitrust law enforcement.

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Chapter 21 – Why the Political-Party System Has Failed to Save Main Street

It seems clear that the nation's 2-party system has failed to save Main Street because the system has been created, maintained and financed by the same interests (rich and powerful), giving the public little choice in the critical areas of the economy.

Instead, the choices given to the public are diversionary (directing voters away from economic issues), with voters making their decisions because they favor or disfavor abortions, or stem cell research, or putting more or fewer people in prison. The parties carefully avoid going to the mat on economic issues and instead pussy-foot around the issues to pretend that are or intend to be active in trying to bring about the public-desired changes in the economy when in fact they have no such intention.

The political party system is responsible for the injury to Main Street and can hardly be expected to reverse its role.

Saving Main Street and its retailers is up to the people in the community, and can be done by following my 3 Plans. See Chapters 26-28 below. The 3rd Plan is so important that I pulled it out of the 2nd Plan and created it as a separate Plan. I'm going to give one hint about my 2nd, more long-range Plan. What would you put in such a Plan to make a community inhospitable to major retailers, and encourage them to leave the area?

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Chapter 22 – How a Community Can Recreate Itself, Revitalize Main Street, and Restore Local Retail Businesses to Profitability

Any favorable change in competitive conditions for local retail business in a community will not come from the United States Congress, the President, or the President's administration. These interests are owned lock, stock and barrel by the corporate interests whose retail presence in your town you do not wish to have.

Congress, the President or the President's appointed department heads could take action to restrict the excesses of the major retailers, and the manufacturers, which supply them. But this did not happen under President Clinton's administration and is less likely to happen at this time with any future administration. Instead, the needed change has got to result from activities of the individual communities.

The community wanting to improve the living standard for its residents, by establishing and maintaining conditions which are conducive to creation of good business opportunities and good jobs, should make plans to do a complete makeover, including the following aspects to the community:

Educate residents in what needs to be done and the reasons therefor, to gain political support for the Plan (included in Plan # 2 in Chapter 27 below).

Reduce the staggering costs of higher education by encouraging one or more for-profit schools to be set up in the area, which will provide the equivalent of a college education but without the state-licensed "degree", and without the high costs associated with campus living and attendance at many 4-year colleges. A college-equivalent school could be set up and run profitably on \$3 per hour (per student) for the instruction, whereas NYU (for example) charges

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more than \$60 per hour (per student) for its instruction, not including campus living expenses.

Residents who are stuck with huge student loans become overburdened trying to pay off the loans with extra work, and would seem to be less satisfied as employees because so much of what they earn, after taxes, has to be aid to service the student loans. Elimination of student loans for these persons would be eliminating a terrible burden lasting perhaps 15 years, for which they would be grateful and become better employees and self-employed persons.

The community should provide counseling to its residents concerning educational opportunities and their costs, and at this stage of the nation's economy it makes no economic sense for most persons to attend a costly 4-year campus college (whether or not on scholarship) because the jobs needed to justify such expense of time and money are disappearing. Instead, local residents should be given free adult education courses on Internet, computer technology and use of applications software, entrepreneurship and how to be a successful self-employed person.

The threats to the community created by the major retailers should be explained to community members, and software and databases developed and maintained (a good self-employment business for some members of your community, with a national market for such software) to help residents decide which major retailers are good citizens (and deserving of community support and patronage) and which are not, and would be appropriately disregarded by the individual using the "Friend or Foe Software" I envision. Local government should probably assist in financing and planning for the development of such software and related databases.

Financing of the business activities of all town residents is possible through a local bank, by discounting accounts receivable and selling packages of such loans to investors (as securitization of such loans), with the accounts receivable collected by a town department, and charged back to the business if uncollected. Alternatively, individuals should load up with credit cards (while temporar-

ily employed in a menial job prior to starting your self employment) and later borrow funds through these credit cards to jump start their self-equity program of self employment and ownership of the place in which they live.

The local library should become in effect a country club for the residents, where they can discuss business and other matters; interchange ideas; obtain leads to solving business problems; have access to broadband lines for rapid internet work; have access to a library for self-employed, entrepreneurial persons; have access to computer, internet and software technicians – all at the town's expense, to be able to save substantial amounts of money for each of its residents, and give them access to others similarly situated to facilitate teaming up, exchange of suggestions or solutions, and to provide continuation of relationships which is difficult to do in a large city.

The important thing about this community remaking activity is that community members be knowledgeable about the injurious business practices of major retailers (and their manufacturer suppliers) which the community wants to avoid. When most residents are aware of these evils, the appropriate results can be obtained from local judges and juries in the litigation needed to compensate businesses which are injured by the unlawful business practices of the major retailers and the manufacturers which supply them on discriminatory terms. This is a most important part of the makeover program, and will ensure that undesirable retailers will steer clear of your community if you make them pay the penalty for their bad business practices. You'll find that they will leave you alone and pick on other, less knowledgeable communities.

If I were in charge of a community trying to recreate itself, I would appoint a Director of Community Re-Creation who would develop plans along the lines I suggest and as indicated by the special needs of the community. An appropriately educated community is the community's best defense against companies, which would steal the community blind.

The success of your community will generate an interest by other communities to do the same thing, which ultimately should

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enable the problem of Main Street to be handled by each community in America, and force the major retailers and supplying manufacturers to return to the lawful business practices of yesteryear. By curtailing these excesses of major retailers and their supplying manufacturers, the community would be reducing the capacity and motivation of the companies to globalize their operations. They would find that competing with hard-working independent businesses in your community might be more than they can handle.

The community makeover I propose would create the good paying jobs and good business opportunities which your community needs to enable its residents to maintain a good standard of living, especially at a time when the largest corporations are absorbing more and more of the assets of the nation, and leave communities with lesser employment and business opportunities and a lower standard of living.

Inasmuch as it is clear that government is unable to do the job (because of its obvious conflict of interest with the re-election campaigns of its elected officials being financed by the major corporate interests), the job falls upon the community, as it should in any event.

One last point about the makeover. Your community will be well equipped to compete in the nation and international markets through Internet.

My program is not one of economic isolation generally, but one of defending against injurious business practices of major corporations intended to deprive your residents of gainful employment and business opportunities and the fruits of their labor.

Chapter 23 - A Local Government Can Have Its Own Attorney General and Does Not Have to Wait for the State Attorney General to Act

Most persons are reluctant to take action. It is much easier for most of us to let someone else do the work and then reap the benefits of that other person's work. We do this all the time. We let others run for office, and then wait (forever) to receive the benefits. Towns and villages are no different.

They are run by persons who lack the sophistication (they think) of the higher elected or appointed officials in their state, and naturally wait for the highest officials in the State to act to cure a problem, such as the Governor or Attorney General.

Recently, the Attorney General of New York has been quite active, surprisingly, in going after corporate wrongdoers, almost as if there is nobody else in the country wanting to be the originator of aggressive law enforcement against corporate wrongdoers.

But even with New York Attorney General Eliot Spitzer commencing an amazing number of civil lawsuits against alleged corporate wrongdoers, you will find that the cities, towns, villages, municipalities and other political subdivisions of New York do nothing, except hope that some economic benefits from the Attorney General's work trickles down to the local level.

The people who wait for this trickle-down effect are probably the same persons who believe in trickle-down economics, and are going to wait a long time for both trickle-down effects to have any significant favorable economic impact on their lives or their towns.

But there is something, which a local government can do. This is to become its own attorney general, and commence the same type of litigation which Attorney General Spitzer is commencing, but

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to do so as to matters directly relating to the community and its residents, rather than to issues affecting the entire state or nation.

In the same way that a jury or juror can become President for a Day, and achieve more with a just decision than the President achieves during 4 years in office (perhaps I'm exaggerating too much here), a town or village can become or appoint its own local attorney general (perhaps naming such person the "Town Attorney General" or "Civil Prosecutor") to achieve for the town or village (on a proportional basis) many times as much as Attorney General Spitzer has achieved for New York State.

Remember, Attorney General Spitzer's suits are for 15,000,000 persons, and the recovery of perhaps \$1 billion from wrongdoers when divided up among 15 million New York residents only amounts to about \$67 per person. I am not intending to comment adversely about Spitzer's accomplishments. They are needed and successful, but they can be extended and made even more successful when highly focused at the local level.

It seems to me that a local or town Attorney General could achieve results amounting to \$1,000's of dollars per resident of the community. If a community (with a local government) has 5,000 residents, a recovery of \$10,000,000 in a single lawsuit would amount to \$2,000 per resident, or 30 times more than the New York Attorney General accomplished per person as to all of his litigation.

Under state and federal law, the local government of a community is a person and is entitled to sue for damages done to itself, and possibly (as protector of its residents, under the ancient legal doctrine of *parens patriae* - "in place of the parent") could bring suit for recovery of moneys due to its residents.

As to federal antitrust lawsuits, the Supreme Court held in 1990 that *parens patriae* litigation could not be brought (on behalf of injured persons) because only the injured person himself/herself (or itself) could commence the action.

This means that as to antitrust lawsuits, the town would have to receive an assignment of the antitrust claim, and then sue as the injured person. The Supreme Court's decision was in *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199 (1990).

If the persons in charge of the local government, often for some unexplained, dark reason, don't want to have the community commence suit against a major retailer which has damaged the community and its residents, a local taxpayer or other resident could bring such a suit as a derivative suit, exercising the community's right to sue when the community refuses to commence a suit. See my website discussion of this taxpayer-suit possibility at www.lawmall.com/classact.

Thus, it is possible for a single taxpayer to bring about the desired change in a small town, except that the costs of the suit would initially be borne by the taxpayer. If the taxpayer prevails in the suit, the costs (or a substantial part of them) will be charged to the losing defendants or the prevailing community.

Look at the power of a single person to obtain relief in a town or village in comparison to trying to capture the United States government to make the desired changes in all towns, villages and cities in the United States. The former is very possible; the latter seems to be wholly impossible.

Chapter 24 - Local Government Can Eliminate Local Taxes, Pay for Healthcare for All Uninsured Residents, and Fund Sports Programs for K-12 Students

The amount of damage being caused by major retailers to local communities is staggering, if anyone wants to start adding up the total.

A Look at the Damages

What are some of the damages? Well, let's start with the additional costs which the community has been required to pay through the major retailer's failure to pay a living wage, or to provide equal employment opportunities to women and certain minorities, resulting in higher healthcare, welfare and police costs for the community. These amounts could be recovered in a lawsuit, with appropriate legal theories to support such claims.

The amount of taxes lost through a declining tax base could also be recovered, once again with appropriate legal theories.

The loss of employment opportunities in the area with resulting consequences to the community could be another claim.

The destruction of local businesses could be another claim, especially if the former owners assign their claims to the local government, reserving an appropriate interest in the litigation to encourage the former owner of the defunct business to assist in discovery and in proving damages. [Such assignment may be essential to ensure that the person suing is the "injured person" or real party in interest under the federal antitrust statutes.]

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Losses to local businesses, which have not yet gone out of business, are additional claims, which could be assigned to the government.

Additional expenses to the community caused by any misrepresentation by the major retailer when seeking local approval to open a store in the area.

Damages for failing to pay a living wage to employees, which results in externalizing or pushing the costs of operation of Wal-Mart off onto the local community; the legal theories could include nuisance, unjust enrichment, negligent misrepresentation, breach of implied contract and various other common law claims, and perhaps some statutory claims, as well. [Was Martha Stewart's statement to a public official more damaging economically to any group of persons than the repeated representations or willful omissions of material fact made by major retailers to the towns they plan to invade?]

Appointment of Special Prosecutor or Local Attorney General

The local government could appoint a special prosecutor or local attorney general to handle the civil litigation, and could fund the lawsuit through the sale of bonds, possibly with an interest in the outcome of the lawsuit(s) to the bondholders. See my website article (and SEC-accepted offering circular) concerning the sale of shares in lawsuits, at www.lawmall.com/lm_finan.html and (for the offering circular) see www.lawmall.com/files/suit_oc2.html. The Offering Circular offering shares in a lawsuit was filed with the SEC by a designer alleging copyright infringement, fraud and breach of contract.

Local Community's Use of Litigation Proceeds

The proceeds of this governmental litigation to recover the various types of damage done to the town and its businesses and other residents could be used to pay for the following:

A. The Local Taxes of All Residents

All local taxes (sales, real estate, special assessments), so that residents would have an extended tax holiday, instead of the 1-day tax holiday which some states (New York and Massachusetts, for example) provide for their residents (near the end of the summer, to lower the cost of return-to-school purchases).

B. Healthcare Insurance for the Uninsured or Underinsured

Healthcare insurance premium for a group policy to cover all uninsured or under-insured residents or direct coverage at local municipal healthcare facilities for all residents [Note: Maine has enacted legislation which by 2008 will provide universal healthcare for all Maine residents, by providing healthcare coverage for all uninsured Maine residents – see the comprehensive Common Dreams News Center release dated November 14, 2003, entitled “Health Care Reform: Maine Becomes the First State to Enact Universal Health Care,” at www.commondreams.org/views03/1114-13.htm - it seems possible that Maine may change the flow of retired persons and others from destination Florida to new-destination Maine, in spite of the extreme weather differences].

C. K-12 Sports Programs and Related Facilities

Sports programs for all levels of community schooling including the facilities needed for this program.

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D. Community Day Care Center

A day care center for the young children of working parents.

E. Entrepreneurial Library with Free Broadband Service

Library facilities including broadband Internet facilities for use by all residents from their homes, without charge, through appropriately equipped computers.

Community Should Poison the Well for The Destructive Major Retailers

Not only does the community obtain a return of some of the local assets and opportunities wrongfully taken by the major retailers, but it creates a local environment for the non-responsible major retailers inconsistent with their needs and desires.

In effect, this type of action by a concerned community is equivalent to poisoning the well and driving the major retailers to other areas where the local yokels haven't yet learned how to defend themselves from the corporate community killers and other purveyors of injury to the community and its residents.

This chapter is an important part of Plan 2 in Chapter 27 below, which discusses ways in which to make your community repulsive to major retailers which act against community interests.

As part of this plan to turn the community against these anti-community major retailers, you want as many residents as possible to become part of the solution, because the solution may well be found in jury trials, with local residents being on the juries. For example, local residents need to learn about the doctrine of "jury nullification".

Teaching and Use of Jury Nullification Doctrine Is One of the Most Important Elements of the Poison-Well Approach

If I were a lawyer getting set to try a case to a jury, I would be most interested in knowing whether a specific prospective juror is aware of the doctrine of “jury nullification” (discussed in Chapter 12 above) and, if so, whether the juror believes in it. It is possible that the attorneys for both sides might want to exclude such a person from the jury, or that one or both attorneys might want such a person on the jury. I remember accepting a lawyer on the jury panel because I believed the attorney knew about the doctrine, and was temporarily rewarded when the lawyer took over as foreperson of the jury and tried to swing the jury over to my side (without success, as it turned out).

If this book is read by enough persons, it will probably result in having trial lawyers ask prospective jurors whether they have read *Saving Main Street and Its Retailers* to determine if a follow up question is needed about jury nullification and the prospective juror’s understanding and intention concerning such doctrine. Hopefully, if enough persons are asked whether they read this book, in due course many of such persons might wind up reading this book. I like to think of such prospects as a judicial type of viral marketing. Plan 3 is to obtain widespread distribution of this book, so that the major retailers may run, but they will not be able to hide from the wrath of an educated jury anywhere in the country.

Use of the jury nullification doctrine by a community and its members creates the climate for providing justice to local people who wind up in litigation with major retailers, to recover large amounts of money for the damages caused to them by the unlawful practices described, in spite of the often gargantuan efforts by the major retailers to prevent any court success by the plaintiff.

**Antitrust Technicalities Prevent Plaintiffs from Winning Trials
and More Importantly Prevent Their Cases from Going to Trial**

There are all sorts of technicalities in litigation, especially antitrust litigation, which deprive plaintiffs from “proving” their case under numerous decisions of the U.S. Supreme Court, and lower federal courts following the lead of the Supreme Court, including the Dirty Dozen cases listed by Charles Mueller. You have to realize that the defendant has no obligation to prove anything until the plaintiff proves its prima facie case, and because of the various legal doctrines imposed on antitrust plaintiffs, most defendants never have to prove anything, including any defense, because the standards imposed on plaintiffs in antitrust cases are almost 100% unworkable.

What I have said applies to the few antitrust cases, which reach the trial stage. What is a national disgrace is the number of antitrust cases which are thrown out by the judges before the cases ever reach trial, because of the 100 or so technicalities which have to be met, including new ones pulled out of the judicial hat if the first 100 technicalities are met, if a case is going to be set down for trial. The one case which goes before a jury may represent only 1% of all antitrust cases filed, with most of such cases being dismissed by the court without any trial.

The jury nullification doctrine is needed by antitrust plaintiffs to get around these huge hurdles, and enable the plaintiff to get justice when it proves to the jury it is entitled to relief, without all the technicalities thrown in. If the judge let's the case go to the jury, this ought to be sufficient for a jury to be able to render a decision in favor of the antitrust plaintiff, if the jury believes that such a verdict would be just under the circumstances. The judge has the power to take away any such verdict, whether resulting from nullification or resulting from careful application of each point of law provided by the judge in his instructions. This means that for a jury to have its maximum impact, it has to render a decision in favor of the antitrust plaintiff (when the jury believes it is just to do so), and let the judge

and attorneys worry about all the technicalities if the verdict is rendered in favor of the plaintiff.

Antitrust Damages – Another Technical Minefield for Antitrust Plaintiffs and Their Lawyers

Another thing must be remembered about the closely related issue of antitrust damages. The proof of antitrust damages has all sorts of judicially imposed limitations that make it very difficult to recover the amount lost. I won't bore you with the technicalities and in any event wouldn't be able to spell them out in the available space. Various doctrines limiting antitrust damages have been announced by the federal courts over the past 30 years or so which enable defendants to get by with murder (i.e., the killing of local businesses with virtual impunity).

Jurors should be aware of this and provide the maximum verdict which they feel is just, knowing that anything the juror does will have to be approved by the judge, and could in fact be reduced or completely overturned by the judge. Because of this, juries in antitrust cases should try to render a just decision, based upon what they have learned about the issues at trial, and not worry about the technicalities.

Some Antitrust Horror Stories

I'd like to give you some antitrust horror stories. One hundred persons each swearing in an affidavit that they started buying from the major retailer who opened up across the street from the antitrust plaintiff were not allowed to testify as proof of any lost sales.

The opening up of a store 10 times the size of the plaintiff's store across the street is not sufficient proof of loss of any of the plaintiff's customers who disappeared starting at the opening of the major retailer's store.

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Only an expert in economics can testify about the amount of damages caused to an antitrust plaintiff, especially an expert who was not there and knows nothing at all about what happened except from economic theory (which of course can be designed to fit the needs of the highest bidder, or should I say the only one of the two parties which has any money). The owner of the business who knows what happened to his business is often not allowed to explain what happened, even though he/she was a witness and saw it happen.

So, remember, when thinking about enforcing the nation's laws against major retailers, a jury should be result oriented, and try to give justice based on common sense, and not on various technicalities contained in "jury instructions" which will make it unlikely that they could find their way through the thicket of instructions to wind up with a verdict in favor of the antitrust plaintiff.

The Dollar Amount of Antitrust Damages Is High

As to the amount of damages, a jury should recognize that large sums are involved, and be open-minded and willing to render a verdict for many millions of dollars.

An antitrust plaintiff is entitled through various technicalities to recover the amount of profit margin which it lost on sales lost to the major retailer, so that if a local merchant lost \$1,000 in sales each day for 365 days per year for the four year statutory period for damages, and if the merchant had a 40% gross profit margin, then the merchant's damages would be $\$400 \times 365 \times 4 \times 3$ (for trebling of the damages), amounting to \$1,752,000.

The jury will not be asked to treble the damages, so that the jury would hopefully find damages of \$584,000. But this is only as to lost customers. The merchant also had to lower his/her profit margin to compete with the lower prices of the major retailer, which reduction of price and profit margin could have cost the merchant \$200 per day times 365 days times 4 years, for pre-trebling damages of \$292,000. Also, there would be the loss of sales of other items, per-

haps with damages of \$200,000 (for example a local gas station might lose customers for gas because of price discrimination, but these lost customers also would have bought cigarettes, candy, and other items, and the major retailers would be liable for such damages as well.

Total pre-trebling damages, based on the foregoing, would be \$1,076,000, and after trebling the judgment would be in favor of the plaintiff for \$3,158,000 (plus an additional \$500,000 or so for attorneys' fees), amounting to a final judgment of \$3,658,000.

A jury should award damages along this line of reasoning as applied to the facts. The larger the plaintiff's business, the larger the plaintiff's damages. An important point to remember is that the plaintiff does not have to be profitable to have damages. Many or most small businesses are not "profitable" in the sense of a major corporation. Major corporations try to show profits even if they are not there, to keep their stock price high and existing management in power. Small privately owned companies try to have little in profits as a way of reducing taxes, and it is not uncommon for small businesses to have low profits.

Antitrust Damages Are Based on Loss of Gross Profit Margin

Antitrust damages are not based on the type of profits reported for accounting or tax purposes. Instead, it is the gross profit margin on lost sales, or the reduction of gross profit margin on sales actually made, which is the basis for the antitrust damages. If the plaintiff had actually made such lost sales and had not reduced his/her profit margins to meet the illegal competition of the major retailer, the merchant would have had profits over the four years approximating the pre-trebling damages of \$1,076,000.

I'm taking the time to explain damages because of the importance they have in obtaining relief in an antitrust price discrimination suit. If juries do not understand how damages should be awarded, antitrust plaintiffs will not be bothered to go into court to seek relief, because miserly relief from a jury is worth less than noth-

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ing. There is so much time and energy spent in antitrust litigation that the awards have got to be substantial to encourage injured merchants to pursue litigation to obtain damages.

Recently, it has been suggested by the American Antitrust Institute or one of its members that treble damages for antitrust violations is inadequate because of all the difficulties in trying to win a private (non-governmental) antitrust case, and the announcement suggested that Congress enact an amendment to provide a higher multiple. I would suggest a multiple of 10, so that the merchant who lost \$1,076,000 would get a judgment of 10,760,000 plus \$500,000 in attorneys' fees.

Chapter 25 – Why Everyone Does Not Want Equal Opportunity, Justice, and a Level Playing Field for All

In every society there are winners and losers. Usually, the winners are comparatively few in number, and they obtain increased wealth by taking the money and property of others, directly by selling products and services to the public, or indirectly by government taxation with the government turning over some of your tax money to the large corporations in what has been commonly called corporate welfare.^{fn}

The winners often want no change that would or could adversely affect their role, and take steps to prevent things that could cost them a loss of their winning position and revenues.

Then, there are persons who believe that they are winners when clearly they are not, except in their own minds, but will talk and act as if they are winners.

Also, you have a category of persons who may be ignorant and have no rational basis for supporting the winners, other than possibly to be accepted by the winners and thought of kindly by them when the winners are dispensing their form of patronage.

FN. Each year, New York City gives about \$1 billion to 3 types of companies: (1) major newspapers and radio and television networks; (2) sports teams; and (3) financial firms. The payments are made to supposedly induce these successful organizations not to move their businesses out of New York City. See my 2001 complaint against New York City relating to its proposed billion-dollar financing of a new stadium for the New York Yankees, at www.lawmall.com/jobtheft/jt_comp1.html.

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What I'm driving at is that there are persons who believe that the status quo is best for them, and do not want everyone to have "equal opportunity", "justice" in the courts, or "a level playing field" in business because this would tend to reduce the wealth and power of the winners.

It is important to your goal of saving Main Street, including your opportunities and property values, and improving your chances to succeed in business, that you understand as much as possible about where a possible ally is positioned, as to supporting the winners, or wanting to help others join the winner's circle.

Let's talk about specific persons you may be dealing with. The mayor or manager of your town, for example. He or she may have dealings or promises for major retailers seeking to open up a new store, or an additional store, in your area. Perhaps there is a promise of a good-paying job for the mayor's wife or child if the desired approval is obtained. Or, perhaps the mayor has been given a bag of cash to ensure that approval is given, by an agent for the major retailer, or by the owner of the land involved, or even by the architect, attorney or publicist for someone wanting the deal to go through.

Some residents of the town may want the major retailer to open up in the area because of the expected savings to be realized by the resident, and wholly disregard the costs and injuries to the community, and eventually to the resident himself or herself. Some people want a simple existence without having to make complicated decisions based on facts that they would like to ignore. Thus, not every resident of your town would be your ally, even when the facts are presented to them.

The attorneys, accountants, real estate firms, architects, road paving firm, construction firm, foundation builder, parking lot leveler, paver and line-drawer, and owners of the land proposed for use by the new store have obvious financial interests which would be difficult if not impossible for them to overcome, even though what they do will be hurting the community and most of its residents. The

immediacy of the money they receive for the deal today is worth a lot more to them than having a community that gives greater business and employment opportunities to all its residents.

The leaders of the town may have family, business, financial, political and other ties to persons supporting the proposed new store, and you should try to determine this, to the extent possible.

In any given community, there are many people who will want the new store to be approved, for a variety of reasons, including the possibility of getting a job for an unemployed husband, wife or child, having a single store to buy almost anything; expectations of increase in certain land values; expectations of increased gas and oil sales by a local gas station near the proposed new store; increase in tax revenue which the politicians can divert to their own projects and friends today (while leaving uncovered the huge costs the community will have to meet in the future because of the new major retailer), immediate saving on many popular items; and a 24-hour store in an otherwise quiet area.

Also, there is the problem when organizing a group of persons to fight the opening up of a new store. The interest of most persons in the group can be expected to die out, within days, weeks or months after the group is formed, for a variety of reasons, including pressure from friends, relatives and business associates; no longer interested in the matter; has been bought off secretly with money or promises; pressure from someone having an economic hold (such as an employer, bank, attorney, prosecutor, accountant, or landlord as to a lease about to come up for renewal).

Because of this problem of the disappearing group, one should conclude that the expectations of a group to succeed against the major retailer in the long run are not very high. This is true. The major retailer succeeds about 99 times out of a hundred.

There is, however, one area in which a large group of concerned residents need not be organized and need not be kept together. This is when commencing a lawsuit. All you need to commence a lawsuit is one interested person (with several others if you

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can get them, to share the costs). You do not need consent of the mayor or zoning board or residents to commence a lawsuit, and the only person you need to convince about the merits of your suit is the judge, and later (hopefully) a jury.

Even if the mayor opposes commencing any action against a major retailer, the mayor does not have the final say. An individual taxpayer could commence an action to challenge the town's expenditures on behalf of the major retailer, and a member of the community could bring a derivative suit against the major retailer on behalf of the town, in what is known as a derivative suit, where the resident is said to sue "derivatively" to exercise the rights of the town. See my website at www.lawmall.com/classact.

The reason that everyone does not want equal opportunities, justice and land value protection for all is that this would cost the current winners some of their winnings, or perceived winnings, and it is unreasonable to expect that the group of winners is going to come out in support of the 95%.

The role of the court is impartial, or at least it is supposed to be, and even if the judge wants a Wal-Mart store in the area, he or she is expected to rule according to the respective rights of the parties and not because he/she wants one side or the other to win for personal reasons.

If the judge has a financial interest in the outcome of the litigation, such as by being a stockholder of the major retailer, or by being the owner of the land being proposed for use by the major retailer (or even adjacent land would could go up substantially in value), the judge has a duty to "recuse" (sounds similar to "excuse") himself/herself from the case, and have a different judge appointed at random by the court clerk (if the case is in federal court).

One final note, you might think that community organizations or local trade associations might be in your favor, but often this is unreasonable to expect. The executive director or other head of the organization of association wants as many dues-paying members as

possible, to enable the director to pay higher salaries and greater expense reimbursement for "business trips", and would fear losing paying members if the organization took a position in your favor. For example, the American Booksellers Association had Barnes & Noble and Borders as members for years, and finally, in order to bring suit against them for alleged violation of the Robinson-Patman Act, threw them out as members.

Chapter 26 – 1ST PLAN - What You Can Do to Save Your Community and Business from Injury by a Specific Major-Retailer Threat Threatening to Open a New Store

This chapter spells out the actions you can take to resist efforts by a major retailer to open up a first (or another) store in your area.

In the event of a specific threat by an identifiable major retailer to open up an unwanted store in your area, you have the following options to consider:

Organize Group of Concerned Citizens to Oppose New Retail Store

Organize a group of concerned citizens, including local businesspersons, to obtain financing and help you will need to carry out the publicity and zoning battles which will occur. Committee work should be divided up among members, with group members being assigned responsibility for financing, legal, dealing with the Mayor's office and the Zoning Board, membership, and issues, to name a few.

Distribute Copies of This Book Widely throughout Community

Consider making copies of this book available to group members or potential members to bring such persons up to date and let them see what options are available. Try to obtain as much distribution of the book as possible, within a short period of time, to bring as many people as possible up to speed on the problems being faced by the community. The author will provide a substantial quantity discount to facilitate such intended distribution of this book.

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Set Up Public Hearings and Meetings on the Issue

Seek and attend public hearings and meetings on the new-store issue. The author is interested in speaking at public meetings involving these issues.

Prepare Position Paper or Fact Sheet Explaining the Harm to the Community Which Will Result If the Major Retailer Is Allowed to Open Its Proposed Store

Assemble a fact sheet, which details the harm the major retailer has caused elsewhere and the probable harm it will cause in your community if its plans go through. Assemble material for an impact statement in response to any impact statement required to be submitted by the proponents of the new store.

If Money Is a Problem – and It Usually Is – Try to Obtain the Services of a Lawyer and Any Others on a Contingent-Fee Basis, Payable If the Retailer Is Not Able to Open Its New Store

Get adversely affected businesses, including competitors, to promise compensation to attorneys and others (such as experts) which would be payable if the major retailer withdraws its application or intention to open up a new store in the area. This may require some negotiations and difficult-to-read language to cover the various possibilities upon which compensation would, or would not, be payable. How much would it be worth to you if the competitor does not open up its proposed new store? This question could be the key to obtaining the funding needed to mount effective opposition.

Try to Get the State Attorney General to Intervene on the Community's Behalf

Try complaining to the Attorney General, County Attorney, and others about how the proposed store of the major retailer would

destroy existing businesses and cause injury and additional expenses to the community. Also, ask for help and invite the officials to look into the problem for you and intervene on behalf of the community. This might create some delays that the major retailer might want to avoid. There have been some recent instances where a state attorney general has intervened to prevent the major retailer from destroying the character of the town and injury its local businesses.

Pull Out the Zoning Card, but Be Cautious Not to Violate the Civil Rights of the Major Retailer

Determine the extent to which zoning obstacles can be created, but bear in mind that obstacles created for use against this one major retailer could cause the town to wind up as a defendant in a lawsuit brought by the major retailer, the land owner or others, for infringement of the civil rights of such persons (such as denial of due process, and creating legislation applicable to a single company).

Require the Major Retailer to Complete, Sign and Deliver a Verified Statement of Representations and Warranties along the Lines Provided in Appendix C

Require the major retailer, land owner and other proponents of the new store to sign and file a verified Statement of Representations and Warranties (see Appendix C for suggested provisions) pursuant to which such persons would be required to state various facts (similar to a set of interrogatories in antitrust litigation) to find out information which the town should know, such as any promises or payments or special deals made or offered to anyone with respect to this proposed store or any possible store in the area; the major retailer's history in its dealings with other towns, including projections of tax or other payments to be made to the town and the actual payments received by the town; the identification of each person who on behalf of the major retailer or the proposed store has contact with any governmental officials of the town during the preceding 3 years; and other questions which come to mind, to try to provide leads for

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wrongdoing and facts which could be used to justify your opposition to the proposed store.

The appropriate requirement and enforcement of disclosures through the suggested Statement of Representations and Warranties (Appendix C) will enable your community to become as powerful, in its area, as the Securities and Exchange Commission, which requires (but generally does not enforce) these disclosures which I assert are needed by the Community.

Make Request for Sarbanes-Oxley Information

Also, as part of the request for Verified Representations and Warranties, make a request for information about the major retailer required to be assembled by it in compliance with the Sarbanes-Oxley statute, especially concerning the prices at which the major retailer is purchasing its goods from its manufacturer suppliers (with such information to be provided in confidence and used only as permitted in the agreement under which the information would be supplied).

Sarbanes-Oxley (2002) requires each public corporation to have an audit committee made up of independent individuals which makes sure the corporation is in compliance with various laws, including the Robinson-Patman Act. It seems clear to the author that none of the major retailers will be able to pass an audit of the issue of whether the manufacturers are selling to the major retailer at discriminatory, unlawful prices, and at prices which are below the manufacturers' direct cost.

Look into State Antitrust Statutes and Other State Laws Regulating Business

Look into applicable state law including any antitrust statutes specifically and any statutes governing commerce generally, to

find areas of law that might be used to stop the proposed store. See Appendix E for a list of state antitrust statutes (which list probably is not complete, will omit newly enacted statutes, any does not describe the type of “antitrust” statute).

Appoint a Local or Town Attorney General (or Civil Prosecutor) to File Suit against the Major Retailer

Start the ball rolling by having a local or town Attorney General (or Civil Prosecutor) appointed to represent the community in a lawsuit to prevent the major retailer from opening up in the community, unless certain conditions are met.

You could hire such person on a contingent-fee basis, especially when you give the attorney added status by such title. Who wouldn't want to take the first case in the United States brought by a Town Attorney General, even though (or especially because) it would be brought on a contingent-fee basis? Of course, if the town wishes, it could pay the attorney by the hour, but one of the main obstacles in a town to opposing the opening of new stores of major retailers is the high cost of legal services in a litigation context.

Taxpayer Action to Stop Community from Spending Money to Induce Retailer to Open up a New Store in the Community

In some instances, the mayor or manager of a local community will actively seek to bring in one or more new major retailer stores, particularly by offering inducements to the major retailers that require community expenditures.

Consider whether the group or one or more of its members should commence a taxpayer action against the community to stop it from spending any money relating to the proposed new store.

Many retailers seek expenditures from the target community, such as training of employees, extension of sidewalks or sewer sys-

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tem or water pipes. In such case, a taxpayer action to stop these expenditures might be able to stop the proposed store.

On the other hand, the major retailer might be willing to go ahead without any of such community perks. In fact, the climate is beginning to turn against major retailers, and it is likely than increasingly major retailers will be demanding less in their efforts to rip off another local community.

See my website at www.lawmall.com/jobtheft for the federal complaint in a taxpayer action brought by me against New York City to try to stop New York City from giving away money to owners of baseball teams, major media (including newspapers, radio, television and cable interests) and to major financial institutions, if they promised not to leave New York City. I withdrew the claims against New York State because of an immunity possessed by the state

Derivative Action to Assert Rights of the Community if the Community Refuses to Enforce Its Rights

A derivative action is one in which a shareholder of a corporation sues on behalf of the corporation when the corporation itself refuses to bring suit.

Some communities are incorporated, and residents or taxpayers would probably qualify to commence a derivative suit against the major retailer to maintain claims for relief against the retailer as to rights of the town that the town refuses to enforce.

One or more residents could commence a derivative suit on behalf of the town, if the town refused to commence the action itself, against a major retailer threatening to open up a new store in the area. See my website on derivative actions by community residents, at www.lawmall.com/classact.

Commence an Action and Move IMMEDIATELY for Injunctive Relief

Commence a federal or state action for injunctive relief and move immediately for injunctive relief to stop construction of the proposed store. Generally speaking, the action and motion should be made BEFORE any digging has been done at the site (i.e., before construction has commenced), the doctrine of equity requiring that to get equity (an injunction) one must do equity (move promptly to avoid the major retailer from incurring unnecessary expenses).

If the injunction action does not work out, you could amend the complaint or file another complaint to obtain damages. You would probably **not** want to include a request for damages in the first complaint (for an injunction) because it would prevent the court from granting a permanent injunction in connection with grant of the preliminary injunction, thereby resulting in possible bond or undertaking requirements too expensive for your group to meet.

In Summary

The foregoing paragraphs are the 1st Plan, which I believe is most suitable to stopping an unwanted major retailer. As far as I know, nobody has ever sued a major retailer under the Robinson-Patman Act to try to stop construction of a proposed new store.

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Chapter 27 – 2ND PLAN – How to Make Your Community Unattractive to Major Retailers Which Would Threaten Your Town and Its Employment and Business Opportunities, Property Values, Tax Base, and Standard of Living

This chapter discusses a long-range Plan to immunize your community against unwanted major retailers, or should I say inoculate your community against the deadly diseases of price discrimination, outsourcing and globalization.

Community Must Poison the Well to Live in Peace from Major Retailers Seeking to Destroy the Community's Way of Life

Earlier I discussed my complaint filed in federal court to try to stop New York City payments to 3 types of major corporations ostensibly to purchase jobs for New Yorkers. I withdrew this complaint because, as the case was developing, it was clear that no general ruling from the court was going to be obtained which would preclude such corporate welfare and job purchases generally. I did not want to be in a position of having to go into court each time New York City decided to bestow taxpayer money on any of these three major-entity recipients of the city's largesse.

The same could be true of efforts to stop major retailers from coming into your town. You could succeed in stopping Wal-Mart once or twice, but sooner or later, unless something new is added, Wal-Mart will probably prevail. Wal-Mart works 24/7 to squeeze every penny it can from every nook and cranny in the country, whereas you and I have to eat, sleep, play, have quality time and do other things which remove us from the single pursuit of maximizing our financial position.

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Your town needs to do something more than the 1st Plan above. It needs to undertake this 2nd Plan, which is to do certain things which will make your town go to the top of the list of towns to avoid by major retailers.

Here are the things your community can do.

Help Injured Local Businesses to Start Lawsuits to Recover Their Damages Inflicted by Major Retailers and the Manufacturers Violating the Robinson-Patman Act

Encourage injured local businesses to bring lawsuits against the major retailer and its manufacturer suppliers for violations of the Robinson-Patman Act and the Sherman Act, and any applicable state statutes. Under federal antitrust law, all proven damages are automatically trebled.

The amount of damages (including treble damages) which a single business could recover can be calculated roughly by the following formula (applicable to a 7-day business that continues in business after commencement of the lawsuit): 9,000 times the amount of gross profits lost on an average day. My mathematics for this damages formula is set forth in my "RPA" website at www.lawmall.com/rpa/rpa9000x.html. This means that if on an average day a business lost \$1,000 in gross profits by reason of the new store, the injured owner could obtain up to but not more than \$9,000,000 in total damages and attorneys' fees.

Community Can Acquire Local Failed Businesses and Bring Suit to Recover Damages against Manufacturers and Major Retailers for Destruction of the Acquired Businesses (No Longer in Business)

There is one thing that any town could do to ensure that it would be avoided by major retailers. This is to purchase from its in-

jured retailers, jobbers and wholesalers the claims they have against major retailers and bring suit, on behalf of the new owner of the claim (i.e., the town or village itself) for recovery of treble damages for the injuries which occurred to the small business or businesses.

The owner of the business should probably sell its whole business to a corporation set up by the town to acquire such failed companies. The town's corporation would not acquire any hard assets such as inventories, building, abandoned sites, real estate or the like. All that would be acquired is the good will and other intangible assets of the company that is no longer in business. Among the intangible assets so acquired would be the contingent asset consisting of a claim for money against the major retailers for injuring and/or destroying that person's business.

A town engaging in such activities would soon learn that there was no need to levy taxes on local residents, until after the last major retailer left the area for more hospitable areas to fleece.

The town should give the seller of the failed business a percentage, such as 20%, of the recovery, out of fairness to the seller and to ensure his/her cooperation in discovery and trial proceedings.

If you are interested in additional information about this, please look at my articles at www.lawmall.com/growtown; also www.lawmall.com/rpa/rpa_2003.html/#TypeofLawsuit07; also see www.lawmall.com/rpa/rpa_2003.html.

One additional thought, if the present elected officials of a town are unwilling to engage in the activities which could restore the town to its rightful owners, some other group seeking election could offer voters this plan.

Educate Residents about Their Rights and Responsibilities

The town should do as much work to educate its small businesses as the town does in trying to get tourists to visit the town, if

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for no reason other than to keep its small businesses alive so that visitors have something to visit.

To further this goal, someone from the community should take a copy of my book SAVING MAIN STREET AND ITS RETAILERS (see Chapter 28 below) to each of the independent bookstores and college bookstores in the area and see if they will order the book to make it available to local residents.

Oppose Re-Election of Officials Siding with Unwanted Major Retailer

Identify and work at defeating the reelection of any town official siding with the unwanted major retailer. Threats of such opposition may well be more convincing than the receipt of money from the major retailer or its friends.

Disseminate Information to Residents to Encourage Them to Buy from Local Independent Small Businesses as Much as Possible and Not to Buy from Any Major Retailers Which Are Injuring the Town and Its Small Businesses

Disseminate information to residents to encourage them to buy from local businesses as much as possible, being careful to avoid any calls or agreement for boycotts or concerted refusals to deal, which would enable the major retailer to consider filing an antitrust action against the town and the persons behind any such alleged boycott or concerted refusal to deal.

Educate Your Town to Treat Jury Duty as a Possible Opportunity to Be, for a Day or So, More Powerful than the U.S. President

Educate the residents of your town to treat jury duty as if it were appointment of the resident as “King” or “Queen for a Day” or Acting President of the United States, when the right type of case comes along. If local juries do the right thing when given a chance, the major retailers would have to change their practices and could become welcome businesses in the area, but this won’t happen unless they are forced to do so, either by government (which is not likely to happen) or by the injured citizens, town by town (which is more likely to happen). See Chapter 12 for further ideas for use in Plan 2.

Create and Use “Friend or Foe” Software to Help Individual Residents Determine Which Corporations, If Any, Not to Patronize

The community should create and maintain software to enable interested residents to determine individually whether a specific business in the area is acting responsibly from the standpoint of the community. Data including pay levels, average hours of work per week, treatment of women employees, portability of pension, outsourcing, purchasing goods at discriminatorily low prices, and other information of this type should be assembled with an opportunity for residents to assign weights to the factors and arrive at a statistic which helps to decide for the individual whether the business is acting responsibly to the community. I call this “Friend or Foe”. Some persons might want to call it “Boycott Software”, but as envisioned it could only lead to individual decisions (instead of group decisions) not to patronize, based on information, perhaps with an opportunity for businesses to put in their arguments to the contrary. A local civic group or governmental office should be the focal point of community activity for the development and maintenance of such software. See Chapter 16 for further ideas for use in Plan 2.

Another Type of Friend or Foe Software Could Be Utilized to Reduce Prosecutorial Abuse in a Town or County and Subject Criminal Law Enforcement to Market Forces

For persons wanting to reduce the amount of prosecutorial abuse in their community or county, and have the community enforce criminal-law justice without the excesses which have been escalating in the United States, a type of Friend or Foe Software might be a solution.

Prosecutorial abuse occurs because there is little that a defendant or his lawyer can do to prevent such abuses. The prosecutor is often driven to obtain convictions at any cost, even though extortion is commonly used (to force a witness to swear falsely against a criminal defendant to be able to obtain, for the witness, exemption from prosecution for crimes that the witness never committed).

It appears that a high percentage of persons are forced to plead guilty who would have been able to convince a jury of their innocence if given an opportunity for a fair trial. What constitutes a fair trial would include the right to depose the prosecution's expert witnesses; the right not to be confronted with witnesses who are being paid through a favorable plea bargaining, especially one dependent on the testimony of the witness; and the threat of 30 years in jail if the accused does not accept the prosecutor's offer of 2 years in jail (a deal which the most innocent of defendants have to accept).

Also, there is an inherent abuse in the "prosecutorial discretion" of a prosecutor which allows him/her to prosecute the poor and powerless instead of the rich and powerful, especially when the prosecutor's motivation is out-of-bounds for consideration and attack. There is prosecutorial abuse in a system which enables the prosecutor to take all of a defendant's assets in advance of trial, leaving the defendant with no assets, unpaid bills, threatened home foreclosure, often no job, and obviously no ability to pay for any defense of the charges – thereby requiring the defendant to plead guilty, even though the defendant is not. Also, it is abusive for a prosecutor to have unlimited, secret discovery for years, while the criminal defendant has no opportunity to do the same.

The national press calls for more and more criminal law enforcement, as a strategy to get voters to believe that the government is fair and honest, and that every perceived criminal is brought to the bar of criminal justice. Actually, as you and I know, this is not the case. The rich and powerful with few exceptions continue on their merry way doing what they do with little or no interruption, even though we see that what they are doing is stealing money from investors in a variety of ways for which prosecution seldom results.

The public doesn't realize that the criminal justice system is oppressive, unfair, unconstitutional, wholly unjust, too costly and becoming worse every day, as prosecutors (working with the press) make a name for themselves to climb up the political ladder to higher office.

Part of any effort to remake a community should be to have an overhaul of its criminal justice system. For one thing, the costs (meaning expenditure of tax dollars) are getting out of hand. Oh, there is a hand which gets those tax dollars. Private prison companies (and of course governmental agencies) get a significant amount of those tax dollars, for creating little towns which incarcerate and care for the millions of incarcerated persons in the United States. There is far more political demand for more prisoners from the government-employee prison lobby and private-prison lobby than there is by the public for criminal law reform.

Yet, there is something which citizens can do to fight prosecutorial abuse as citizens, and not as criminal defendants for whom any resistance could extend their incarceration by 10 to 20 years in some cases.

Friend or Foe Software could be developed for the criminal justice system in a city, county or other political area, for use in pointing out and then correcting the worst abuses. This is what can be done.

A group of concerned citizens should meet to identify and describe what abuses need to be corrected in the criminal justice system. Then, with these standards, various state prosecutorial offices

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should be analyzed to determine the extent of prosecutorial abuse in specific offices. [Note: county prosecutors, for example, are state officials, but the abuse really occurs at the local level; and it is assumed that local pressure can be brought to bear at the local level to require the prosecutor to change his/her ways.]

Here are some of the factors which I believe would be useful in determining the extent of prosecutorial abuse: (1) civil rights actions which have been commenced against the local prosecutors; (2) the percentage of indictments for felonies which result in a plea bargain; (3) the average difference between the years of incarceration at risk by reason of the indictment and the number of years resulting from the plea bargaining; (4) prosecutorial use of “perp walks” (where the newly-named criminal defendant is paraded before the television cameras as part of the prosecutor’s efforts to build his own career at the expense of hapless criminal defendants); (5) evaluation of the compensation paid to indigent counsel to determine to what extent any meaningful defense can be obtained; (6) the difficulties in qualifying for and obtaining indigent counsel; (7) the extent the prosecutor over-charges in his/her indictments (which forces the innocent defendant to plead guilty to avoid having to go to trial on wholly meritless excessive charges); (8) use of denial of bail to force criminal defendants to plead guilty; (9) the career path of prior prosecutors in the area, including any current relationship with the present prosecutors, and any taking of jobs with corporations which should have been prosecuted; (10) complaints by criminal defendants to various authorities about their treatment and complaints by criminal lawyers to various bar associations committees and the press; (11) the use to which criminal defendants are put when they are incarcerated or subject to community work (often used by communities to finance the community by obtaining work from persons without having to pay them – cleaning streets, washing vehicles, orderlies in hospitals; teaching assistants; taking care of the warden’s and mayor’s yard); (12) and whether the budget for the criminal justice system requires the community to collect taxes today to pay for the incarceration of convicted criminal defendants for the next 1 to 50 years; if the community had those figures before them in the year in which the prosecution is taking place, there would be a more business-like approach to prosecutions, with the weaker ones being

dropped instead of having them result in extortionate plea bargains. It is a no brainer for a community, when given a choice, to vote for more healthcare and more recreational facilities than to vote for more prosecutorial abuse; (note: because some of the expense of the prosecutor is a state expense, the local budget would have to be crafted carefully to pull in the local expenses relating to criminal law enforcement, and to merely mention the amount of expense which is allocated to the state level).

The county or town would be rated for its criminal justice system (one dependent on the activities of the local prosecutor, even though he/she is a state official), and the rating would be published by press release and by website created for that purpose, with an email sent to interested persons alerting them to the rating. The Friend or Foe Software for the criminal justice system would rate many prosecutors (or offices of the local prosecutor), enabling interested persons to see which offices are the best and which are the most abusive.

To the extent that a community has bad marks, a citizen concerned about the local criminal justice system would be encouraged to penalize the town by not purchasing in the town, by not seeking to obtain housing in the town, by not advertising in the local media (unless the media had an editorial policy to try to prevent, and not to participate in or generate, prosecutorial abuse).

What is needed to cure prosecutorial abuse, which results from "prosecutorial discretion" and the "secrecy of grand-jury investigations and proceedings", is a marketplace force, in which persons who want to stop prosecutorial abuse put economic pressure on the town and its media. Either stop the abuse, or we'll take our money elsewhere.

A list of suggested improvements for most criminal justice systems could be put together, and one main item is to have the future costs of present prosecutions charged as a current expense, so that voters will see the outrageous costs which are being incurred to finance the increasingly abusive system of criminal prosecutions.

Local College-Equivalent School

The town should try to immunize its residents as much as possible from the ultra-high costs of higher education, including excessive tuition and excessive student loans. This could be done by setting up equivalent colleges with evening courses, at low cost, and without interfering with the student's plan to start self employment as soon as possible after high school.

Student loans taken out by parents and/or students to pay increasing costs of higher education no longer make much sense, because the expectations of employment are diminishing, which leaves the college graduate with no job but with unpaid loans, or having to get a low-paying job at a major retailer.

The better bet is to do the following: No college; No job; Self employment immediately after high school; Continuing education in the evening taking courses designed to help with the self employment; purchase of one's home right away; and credit card loans taken out to pay for this self-equity program to cope with the uncertain economy. See Chapters 1 and 11 for further ideas for use in Plan 2.

Influencing Judges Properly

Once in a rare while you read about an errant judge who has been improperly influenced, by women, money, liquor or whatever, and has paid the price through investigation, public disclosure and humiliation, and disrobing. I'm not talking at all about that kind of influence. Judges in the area cannot help but be affected by these changes and will become part of the solution.

Instead, as you can see, I am talking about making serious changes in the community which will affect the lives of everyone in the community, including the all-important judges from every court

who reside or perform their judicial services (I didn't say "work", because it doesn't sound very dignified or judicial) in the area.

Judges have children and, more than you can imagine, financial difficulties in trying to pay for the high costs of a college education for several children especially. I would suspect that my college-equivalent school idea would sound as good to a local judge as it would to a local non-judge.

My ideas have a great degree of interrelationship. By that I mean, for example, that the college-equivalent school works best if employers in the area accept the equivalence of the school and hire persons who have attended the school when given a chance. My own thoughts about this are that a "graduate" of such equivalent school would be a better employee because his/her costs of schooling were substantially less (perhaps 1/10th as much) and as a result the equivalent graduate has no burdensome student loans to pay off over a multi-year period and will be able to spend more of his/her employment income to maintain a higher standard of living and not be forced to moonlight to meet ends meet.

Yes, I believe judges would come around readily to accepting community values and would be more inclined to rule in favor of the community, or less inclined to rule in favor of the major retailers, if there ever was with any specific judge any hidden bias which could result in any such tendency.

When judges function without hidden bias; when juries function to provide justice, and when injured persons seek relief from the courts instead of seeking relief from legislators who daily sell themselves to the dark interests, you will have a community with maximum potential in most good ways, including a higher standard of living, a higher satisfaction level for its residents, employees and employers, and a maximizing of the right types of productivity for the benefit of all, not just the few on top.

Yes, judges are that important. This undoubtedly is the reason that every incoming President in recent years has been open and notorious in wanting to appoint federal judges meeting certain litmus

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tests to ensure they will have a judicial bias (hidden or otherwise) desired by the new President or the persons advising him.

You Might Be Interested in My E-Book Proposal for a “Drop-pout” Community

For additional information about this plan to revise a local community (having anywhere between 3,000 and perhaps 10,000 residents), see my partially completed e-book located at www.lawmall.com/droppout.

If anyone is interested in attempting to convert his/her town into a “Droppout Community”, please give me a call (see Chapter 29 for instructions on how to reach me).

Using Mergers and Acquisitions as a Tool to Fight the Monopolistic Mergers and Acquisitions Which Are Destroying Our Communities

Mergers and acquisitions have been taking place without any serious enforcement of the nation’s antitrust laws since the days of the Nixon administration. The effect has been to create monopolies or near-monopolies in every area of commerce. At the local level, it creates real monopolies when the resulting major retailer winds up with no competition for 20 miles or so.

But what is worse, a major retailer with only a 5% or 10% market share nationally can force a manufacturer or other supplier to give it substantially lower prices than the smaller competitors, which drives the local small competitors out of business, and leaves the community exposed to the major retail store with no small-store competitor – often turning the single major retail store into a local monopoly.

My unique merger-acquisition program is a most important part of Plan #2. Businesses injured by violations of the Robinson-

Patman Act are often reluctant to file a suit, perhaps because they have run out of money or have run out of faith, or a combination of both.

This leads to the newest form of merger-acquisition activity, in which a knowledgeable person could acquire for \$1 companies which were driven out of business, and then file an action on behalf of the company.

I suggest that the old owner be given perhaps 20% of the acquiring person's net recovery, especially because the services of the old owner will be needed for document storage and retrieval, and for disclosures to be made during discovery.

You might want to read the text of my 29-minute infomercial entitled "1,000,000 Fortunes Looking for Their Rightful Owners", at www.lawmall.com/rpa/infomer6.html.

Better, the town itself should have be in the business of buying up local wholesalers, jobbers and retailers who have gone out of business, and bring a Robinson-Patman Act lawsuit against any major retailers and manufacturers which, through violation of the Robinson-Patman Act, caused such local companies to go out of business.

If the town did this, the town would probably be able to stop any taxation of its residents, until years after the last major retailer left the area. See Chapters 22 and 23 for further ideas for use in Plan 2.

Businesses, which have gone out of business, are not an eyesore and shame, but a valuable asset by reason of its antitrust claims. Instead of a town dwelling upon speeding and parking tickets, it should spent its time and money protecting its local businesses, and this can and should be done by bringing suit to recover appropriate antitrust damages, and paying over some to the old owner of the business (who will assist you with record keeping and discovery),

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and the rest will be kept by the town and be a replacement for taxation of residents.

This is a dynamite political platform for someone seeking support of the 95%, and not the 5%. See Chapter 24 for further ideas for use in Plan 2.

In Summary

As you can see, the above 2nd Plan would truly discourage major retailers from trying to exploit the area, in absence of making some radical changes to their business practices. These practices will have to change, and any local community can be on the forefront of creating these changes by adopting all or part of this 2nd Plan.

Chapter 28 – 3RD PLAN – How Your Local Retailers, Jobbers and Wholesalers Can Fight Back and Beat the Major Retailers - By Making This Book Available to Everyone in Your Community

Major Media Fail to Report on the Problem

The main reason that Main Street and its retailers and other businesses are hurting is that the major media are unwilling to report on antitrust violations by major corporations, except when antitrust charges are brought (and this means rarely) by the Justice Department or other governmental officials (such as New York Attorney General Eliot Spitzer). What politicians do is newsworthy, but what they fail to do is not.

The major media are owned by major corporations (including GE, Disney, Viacom, Fox/Murdoch, Time-Warner, New York Times Company, The Washington Post Company) and obviously do not want to create any trouble for their subsidiaries and other major corporations which jointly control the country and are taking more than their fair share of the nation's economy.

By not reporting on the reasons that local retailers, jobbers and wholesalers are being driven out of business, together with other small businesses in most communities throughout the United States, as well as major retailers such as Kmart, Ames, Bradley's, Toys-R-Us, the persons adversely affected (community residents and even investors) are unable to know what to do to protect their interests. They don't know enough about the problem to have the solution become obvious.

This 3rd Plan, an Afterthought, May be the Most Effective Component of the Overall Plan (Other than the Town Attorney General Element – See Final Chapter)

Finally, after nearly completing this book, it has become clear to me what should be done, as a 3rd Plan.

Local retailers, jobbers and wholesalers should ensure that everyone in their community has the information provided in this book by putting the book in their distribution system and making sure that it is available and prominently displayed in many retail stores in the community.

Retailers should read the book and then be in a position to discuss and recommend the book to customers, and explain how the community is being hurt by the business practices of the major retailers and the manufacturers that sell to them at unlawfully low prices.

The book should be prominently displayed at or near the checkout counter, to ensure maximum visibility, sales and education of your community, and to enable you to readily engage in conversations about the book with your customers.

This will be our small-town equivalent of the major media, and more effective, I believe. See Appendix H for information about how the Populists were successful in their political movement using 40,000 “lecturers” to carry important facts concerning farming and farmers to millions of American farmers which the mainstream media in the United States refused to publish.

I wrote the book for self publication to ensure that the book could be created, published and offered quickly, without all the delay inherent in the book publishing industry, and a fatal delay which might occur by a major publisher getting cold feet about publishing a book which could help to create major, beneficial changes in the nation’s economy.

When writing the book, I did not know how I was going to get it read by the persons who need the information most.

Local Distribution System Can Fight Back

But now it is quite clear. The persons most injured by the major retailers have the ability and means (if they are still in business, and contacts to assist in distribution otherwise) to use their businesses to fight back, and offer an educational product and plan to the public which explains how the whole community is being hurt and what the community can and should do to fight back, to increase the employment and business opportunities and standard of living for its residents.

Standard Trade-Book Discounts Offered

I, as the author and publisher, am offering higher than the standard book industry discounts to retailers and wholesalers. The book retails for \$19.95, and wholesalers can purchase the book in volume at a discount of slightly more than 60%. Retailers may buy the book at a discount of slightly more than 50%. See Appendix H.

It would be most helpful to our common cause if retailers could contact their wholesalers and ask the wholesalers to carry the book and offer it to their retail and jobber customers. In this way, a single retailer can have a great impact throughout a large geographic area.

Profitable for Retailers to Fight Back

Here is a clear situation where it is profitable for retailers, jobbers and wholesalers to fight back.

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You will be able to educate your community about these business practices, which are injuring local businesses and the community, and have plans available for discussion and implementation to get rid of major retailers, which are not acting responsibly to the community.

Take Copy of Book SAVING MAIN STREET AND ITS RETAILERS to Each of the Independent Bookstores in the Community and Request Each Bookstore to Stock the Book for Purchase by Concerned Residents of the Community

Plan 3 in Chapter 28 below discusses at length my plan to market this book in non-traditional ways. The traditional approach is through bookstores, but non-traditional publishers have a difficult time getting their books into bookstores, which do not want to open up new accounts and instead want to purchase their inventory from the wholesalers they are now dealing with. With this in mind, someone from the community should visit each bookstore in the area and bring this book, SAVING MAIN STREET AND ITS RETAILERS, to the attention of the book buyer, and alert the buyer to the community problem of Wal-Mart or some other major retailer trying to open up a new store in the area. Tell the bookstore buyer that there are hundreds of persons in the community who should be interested in buying the book.

Take Message into Luncheon Clubs and Trade Associations to Get Other Retailers to Follow Your Lead

Retailers should talk with other retailers during club lunches, trade association meetings, and civil and social gatherings to get them to carry the book. The more people in your community who understand the problem, the easier it will be to beat the major retailers. Their worst enemy is an educated consumer.

**Exchange Links Wanted to Refer Book
Purchasers – for Referral Compensation**

Also, if any retailer, reader or other person wants to set up an exchange link to refer customers for this book to my website, please communicate with me. Appropriate compensation will be provided for referred purchases.

If you have any questions, please give me a call (212-307-4444), or send me a fax (212-307-0247) or send me an email (carlpers@ix.netcom.com).

**A Lesson from Another Country – Japan’s
Largest Insurance Company Resulted
from a Door-to-Door Sales Effort**

We have a job ahead of us, in the marketing of our economic and business plans to members of each of the thousands of communities throughout the United States. This is so especially because the information being provided to these communities by the major media is pretty much diametrically opposed to our view, or glosses over the issues completely. As a result, the public generally is unaware of the problem, which adversely affects them as well.

When trying to solve a problem, you should have an open mind, and not be afraid to draw upon prior experiences or recollections.

I remember that, more than years 40 ago, a company in Japan was able to start from nowhere and become Japan’s largest insurance company, through a sales force of door-to-door salespersons. I checked to see what happened meanwhile, and have determined that the company remains no. 1, with its door-to-door selling method. According to Hoover’s Online,

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Nippon Life Insurance, one of Japan's Big Three life insurers, ... leads the Japanese market. A door-to-door sales corps peddles its plain-vanilla products, including individual and group life and annuity products. Deregulation has allowed the company to move into such areas as corporate and residential lending. Other activities include real estate development and management and a variety of educational and philanthropic projects. www.hoovers.com/nippon-life-insurance/--ID_52016--/free-co-factsheet.xhtml

As someone open to new ideas, I am interested in trying to market this book through door-to-door sales (both residential and business), even party plan selling, if anyone would like to try it out. This could be an excellent part-time self-employment activity for senior citizens, students, and unemployed persons. The same discount schedule is available. More importantly, this may be part of the solution needed to stop the decline in standard of living for Americans.

If anyone is interested, please give me a call (212-307-4444), or send me a fax (212-307-0247) or send me an email (carlpers@ix.netcom.com).

Let's Join Forces and Beat Them

If all of us join forces in this way, instead of licking our wounds separately, I don't see how we can fail to take back our country.

Chapter 29 – The Author of this Book Invites Questions, and a Response by Him to All Questions Can Be Expected

For many years I have been responding to questions from persons who have read my website material at www.lawmall.com. I try to help each caller and never for a fee. In many instances, I try to give help when the caller or a close relative or spouse is caught in the criminal process. Usually, this is where some element of prosecutorial abuse is apparent and, predictably, the criminal attorney is refusing to do anything to help.

Once in a great while a caller may turn into a paying client, but rarely. As a lawyer in the field of antitrust, other commercial and civil rights litigation, I don't have time for more than a few active cases at any one time. But I do try to put my knowledge, training and experience to work to give some valuable assistance.

For example, some callers need to learn how to find an attorney. I have developed an unusual way by which this can be done. Essentially, to find an attorney willing to work on a contingent-fee basis, which for many cases is difficult, and I recommend that the caller hire an attorney (someone other than me) for several hours, paying the attorney's hourly rate to prepare a complaint for the caller.

The attorney will be able to cut through the substantial amount of irrelevant facts supplied by an anxious or over-eager caller and will put the caller's claim into legalese which another lawyer can read quickly and without wasting his or her time pouring through a lot of irrelevant documents and facts. The retained attorney may perhaps decide to put his/her name on the complaint and file it, now that the preliminary work has been done.

This filing attorney hopes that perhaps the case will result in a quick settlement for him and a comparatively high hourly rate.

Usually, this is not the case, but you never can tell.

I'm offering that same free service to you, as a reader of this book (within limits of course, including my need to avoid conflicts of interest and disclosure of information imparted to me under confidentiality agreements or an attorney-client relationship).

Consider me as another resource to you. Of course, after a certain amount of assistance I would probably start imposing limitations or obstacles, or say, "I have no idea what you should do."

I invite you to communicate with me to discuss any of the matters raised in the book or in any of my websites. You can reach me by email, at carlpers@ix.netcom.com or by telephone (at my office in New York City), 212-307-4444. Don't be surprised when I, instead of an intermediary, pick up the telephone.

Chapter 30 - Putting It All Together – Some Observations and Insights by the Author

The ideas in this book are new and many were conceived and developed while writing this book during the summer of 2004.

After “completing” the book (i.e., Chapters 1-29 and all of the Appendixes), I came up with additional observations and insights which I would have placed in appropriate places within various chapters above, but have decided will make a useful conclusion to this book, for readers and myself.

The problem which caused me to write the book is the nation’s inability to protect its economy and “human” citizens, because of the effective takeover of our most important national institutions by the largest non-human “persons” (i.e., the major corporations) and their highly paid representatives in prominent positions in various fields or institutions (such as law, accounting, politics, think tanks, universities, press, judiciary, administrative agencies).

Thus, the nation’s main media companies, the President, the federal administrative agencies, and to some extent some federal judges or courts are using their power to withhold information and services to the human citizens, as part of an overall program of turning over as much of the nation’s power and wealth as they can to the largest non-human persons, and their non-human and human representatives. Of course, we have seen this coming ever since the parting days of former General of the Armies, outgoing President Dwight David Eisenhower, who warned the nation of the ominous, growing power of the “military-industrial complex”. Of course, without any plan to follow, the complex increased its power and concentration, permitting its members to do pretty much anything they pleased, including (or should I say “especially including”) growth which wiped out smaller competitors, by having a supposed government stand by and do nothing about the dismantling of America.

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The problem I've tried to solve with this book (and I do believe I've created a workable solution for some of the major problems I tried to address), is how to change the system to enable the human citizens (by which term I mean to include appropriate human residents who are not citizens - without trying to jump into that political thicket) to obtain their fair share of the economy, and to reduce the adverse impact of excess concentration of wealth, power and the media.

My insight is that the failure by the above institutions to enforce the nation's antitrust laws has increased the problem and that effective private enforcement of the antitrust laws is the solution, one which can be implemented on a case-by-case, town-by-town basis, without the winner-takes-all results of our national elections. This is a most important conclusion, leading one to concluding that a grass roots solution may be the best, or perhaps only practical, solution.

My insight is that to attempt to cure the problem through the present political process (elections every four years, winner takes all) is a somewhat hopeless undertaking, especially because the persons playing that game become dependent on campaign contributions and sell out in advance of the elections to be able to gain office, and it's all down hill from there. It has been clear to me that President William Clinton was the last hope for any positive change through the political process at the national level. Clinton had the chance to reverse the increasing concentration, but failed. Instead, the concentration accelerated under his stewardship.

Something else needs to be done. H. Ross Perot came close, possibly, but pulled out. Ralph Nader continues to be a symbol to convince many voters that if they wait long enough (possibly 50 to 100 years), the political process will itself make the needed changes. Of course, this plays into the hands of persons wanting the system to appear to be workable to cure the problem, when in fact it is not.

My work as an attorney is at a local level, trying to cure the legal problems of specific clients who are being driven out of business by the problem I'm now addressing in this book, by going into a

specific court and asking a specific judge and jury for relief for my clients.

I believe that the government's failure to enforce the nation's antitrust laws can be offset by vigorous attempts by individuals and their small businesses to obtain damages from the nation's major corporations for violations of the antitrust laws (which are occurring because of the federal government's abandonment of its role of enforcing the nation's laws and protecting its human citizens).

When thinking about the problem of major retailers opening up new businesses in towns and villages throughout the United States and putting long-term existing businesses out of business, it became clear that it would be desirable for some governmental help, which I believe can occur by following my 2nd Plan (see Chapter 27 above).

The idea to appoint and use a Town Attorney General or Civil Prosecutor came to me after this book was "completed" for the first time. I went back and made appropriate changes in the preceding chapters.

The concept of having a Town Attorney General is a big idea, which will make it much more possible to achieve the goals envisioned in this book.

The reasons for my optimism are the main reason I'm writing the last part of this last chapter in the book, because it is important, I believe, to state my case, in its most compelling terms, for my positions in this book.

First of all, the courts and press have always favored a governmental agency that goes into court to stop some unlawful practice, including antitrust violations. It becomes big news and encourages the defendant to resolve the problem. The government's lawsuit coupled with the government's use of its bully pulpit results in having the government get all or most of what it seeks, in a democratic

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counterpart to the total power of a foreign despot to achieve the same results by command.

On the other hand, suits by injured small-business plaintiffs are seldom discussed in the main media (which do not want to offend their major corporate advertisers or encourage other suits against their main benefactors or owners), and the courts seem to treat such plaintiffs and their lawyers as second-class citizens, whereas the federal or state government bringing essentially the same claim into court seems to be treated much better (or perhaps it's just the impact of the favorable press which makes the difference).

New York Attorney General Eliot Spitzer, whose family had a large real estate fortune, became New York Attorney General in 1998, and has used his office during recent years to commence actions against major corporations where the federal government and its various agencies have failed to act. Spitzer is comparable to Olympic gold in the constant efforts by elected officials to do something valuable to the human citizens and thereby obtain reelection. The federal government has pretty much abandoned what Spitzer has started to do, and the thought occurs to me that enforcement of the antitrust laws at the local (town and village) level by a Town Attorney General would be more effective than private enforcement and should be encouraged and facilitated. Private suits, of course, should continue, but Town Attorneys General could fill the void left when the federal government dropped out of the picture in preserving the rights of small business to compete.

A second reason is that antitrust enforcement needs money to accomplish and since the benefits of antitrust enforcement at the local level will benefit the town and its human citizens, it seems appropriate to have the town pay for such enforcement, including the purchase of failed local businesses to maximize the amount of litigation by the Town Attorney General. Each purchase of a failed local business would provide a continuing interest in the company to its injured owners by a percentage of any recovery, such as 20% to 50% of the town's net recovery. The former owner is needed in the litigation to provide the evidence, work with experts, maintain files, give deposition testimony and be a witness at trial.

The benefits of local enforcement of law against irresponsible, law-violating major retailers are potentially staggering, and overwhelm all other parts of my various plans, I believe. The Town Attorney General, by filing meritorious suits against major retailers injuring the town and its small businesses and human citizens, can expect to recover amounts of money which will be small to the defendant corporation but huge when looking at the number of human citizens involved. The antitrust laws provide for treble damages, which makes the prospects for meaningful recovery much greater than without treble damages.

For example, a failed company purchased by a town (for \$1 plus 25% of the net recovery), might have a claim for \$3,333,333 in damages, or \$10,000,000 after trebling. The town may have only 5,000 human citizens, so that a recovery by settlement of \$4,000,000 (after giving \$1,000,000 to the former owner) would result in \$3,000,000 for the town, or \$600 per human citizen. Five successful suits each year in that amount would be \$3,000 per human citizen, enough to eliminate local income taxes (if any exist), reduce or eliminate real estate taxes, and provide healthcare for the uninsured, plus free broadband service, free daycare service, and pay for athletic programs for the town's K-12 students.

A third reason is that there are more than 10,000 towns, villages, hamlets and other municipalities in the United States that should implement the Plans in this book. I have estimated this number based on the following internet-provided statistic: "The U.S. Bureau of the Census (part of the Commerce Department) has identified no less than 84,955 local governmental units in the United States, including counties, municipalities, townships, school districts, and special districts." The sentence quoted above came from www.fact-index.com/p/po/politics_of_the_united_states.html

With my 2nd Plan, only one town, village, hamlet or municipality (actually, a school district might well have standing in federal court) can start the ball rolling, to show that the "grass roots" approach is workable. Granted there will be some doubts expressed in a town as to whether the ideas should be pursued – in some cases the town will decide to wait and see, or so nothing at all; and in other

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cases the town will decide to go ahead, and thereafter additional towns will follow suit. One town at a time, the human citizens of the United States can take back their country from the non-human citizens – by starting at the bottom and working up.

I can see that it is impossible to make this kind of change at the national or even the state or city level, but the change is easy to make at the level where only a small number of human persons are involved (voters). Any individual seeking to become, or be reelected as, mayor or town attorney (who I've renamed Town Attorney General) or appointment or reappointment as town manager could raise these issues in a more democratic setting with the ability to be heard in spite of the monopolization of the main media.

Within the confines of a small town, there are workable media not controlled by the national power brokers, such as: flyer distribution, telephone solicitation, public meetings, parties and other get-togethers, word of mouth, non-monopolized, small weekly newspapers and small radio stations. This book can now be added to the mix, and distributed widely in a small town at very little cost because of the small numbers involved.

Here is an interesting, relevant anecdote. This morning, on September 13, 2004, I purchased a copy of the *New York Post* (one of 3 major daily newspapers in New York City) and found inside a FREE hardbound unabridged copy of *The Adventures of Huckleberry Finn*, by Mark Twain, being given away free to 500,000 New Yorkers on such date to promote a series of 14 similar books which the newspaper will be publishing and selling each week for a 14-week period.

The net result will be that some humans seeking to implement my Plans at the town level will success (which political scientists will recognize as part of the nation's almost forgotten political test tube or incubator past – as revealed by Alexis De Tocqueville in his famous 1835 book *Democracy in America*), in contrast to expectations at the national level, which are clearly zero.

My fourth reason is that the cost is small in relation to the anticipated benefits, and could even be done on a contingent-fee or partial contingent-fee basis in some instances, with only the out-of-pocket expenses having to be paid for by the town. Of course, there is a way to reduce this cost. Years ago I obtained a federal judgment declaring it lawful to sell shares in a lawsuit, and I filed an offering circular with the Securities and Exchange Commission, which declared the offering effective. See the offering circular at www.lawmall.com/files/suit_oc2.html. The money raised could also be used to buy injured businesses and to pay for lawyers to assist the Town Attorney General.

The types of claims which I envision the Town Attorney General should bring include: (1) breach of contract to recover for any binding promises which a major retailer made to the town and failed to keep when obtaining local permission to open the store; (2) fraud and misrepresentation to the extent the breach of agreement was part of a prior plan to deceive the town; (3) injury to the town's property interest in real-estate taxes and the value of any real estate owned by the town; (4) claims of destroyed or injured businesses, after the claims or better the businesses themselves have been purchased by the town for a \$1 plus a percentage of the net recovery; (5) failure to pay a living wage to the major retailer's employees, which amounts to unjust enrichment for the major retailer at the undeserved expense of the town; (6) failure to pay state and local taxes due to inappropriate or fraudulent expense or income allocation formulas, to the extent the town suffers financial loss; (7) other claims based on the ingenuity of the Town Attorney General and local residents including possibly such claims as nuisance, revocation of town permissions or licenses, unfair competition, intentional destruction of the town's property interest in its current configuration, misleading advertising or activities to obtain approval, and violation of various state statutes regulation business; and (8) failure to have equal employment opportunities, in some cases by hiring older persons who have federal healthcare coverage to avoid hiring persons between 40 and 62 or 65 who do not have federal healthcare coverage.

As stated above, the moneys obtained through these law enforcement activities by the Town Attorney General could easily

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eliminate the need for local real estate taxes. Also they could pay for the healthcare of all uninsured residents of the town, and whatever other benefits the persons seeking elective office can plan as the responsible and appropriate way to compete for office.

My sixth reason is that the town and its Town Attorney General can provide the protection of property, jobs and opportunities which ordinarily Congress and federal administrative agencies are supposed to protect, but do not.

The town can be its own (local, but fully empowered) Securities and Exchange Commission to ensure through enforcement litigation that the major retailers (and others, of course) do not mislead the town or its residents or local businesses from being injured through fraudulent or false and misleading disclosures in their filings with the SEC or through public announcements.

Also, the town can enforce employment standards designed to provide an adequate minimum wage and minimum working conditions (although this may be somewhat tricky, and could result in state or federal officials challenging such efforts to improve conditions, as activities preempted by statutes or rules of the higher governments).

The town and its Town Attorney General can penalize major retailers and others which are outsourcing to the detriment of the town's residents (perhaps by maintaining and/or offering a database to enable residents to determine for themselves which companies are not acting responsibly to the town and its residents, or which fail to pay their fair share of taxes and provide a fair share of jobs to Americans).

With all of these possible areas for local enforcement of the nation's antitrust laws (and other laws), through a Town Attorney General, it has become clear to me that the heart of curing the nation's economic and excessive concentration of wealth problems have to be handled, and can be handled well, at the local town and village level. Good results will encourage larger towns and cities, and eventually, the federal government, to catch up with the reforms.

When looking at antitrust claims, a town should review the “standing” requirements of the antitrust laws and ensure that it has standing (or a meritorious legal argument for standing) for each of its claims. For this reason I suggest that the town purchase the businesses of local failed companies, to give the town standing to file suit for the antitrust injuries to such failed companies.

Upon reflection, the book is a counterpart to a party platform, and provides a proposed course of action which can become the platform for various local officials running for office and various local groups seeking to reform the nation’s economy and to do so starting at the local level.

I have tried to have everything said in one book that needs to be said. The reason is that unlike a magazine, newspaper, radio or television station or cable system, I have to put down everything at one time, because there may not be another chance for the reader to obtain follow-up information. This book competes with the mainstream media which is supposed to provide the information in this book, but does not, and upon reflection this book in effect is a potential major media, or alternative medium, to tell the public what it is not being told by the monopolized media.

The distribution of this book is important to achieve the purpose described in this book, which has caused me to add my 3rd Plan after my 1st or 2nd “completion” of the book. The distribution of this book by use of market forces and by providing a good opportunity for meaningful self employment is no more than the distribution component of this alternative medium, in its competition with the nation’s monopolized media to tell the public what it needs to know to obtain the needed economic and political reforms.

Because I want the book to be self contained as an alternative medium for the needed reforms, I include a copy of the website I created after the book was “completed”, to enable the whole plan to be seen and evaluated by interested persons. Without the whole book there is no workable plan.

As a seventh reason, towns and villages are an appropriate place to begin the job of retaking the nation's economy. Towns and villages have an asset that is seldom discussed, but widely used. This asset is federal and state policy that pays governmental employees such as postal workers the same compensation regardless of where they work or live, which results in higher effective compensation to persons living in areas having a lower cost of living. Also, tax policy does not take cost of living differences into account, so that residents of a city pay more of their earnings needed to stay alive (cost of living) than persons living in towns and villages. One effect is that a person can live comfortably in a small town or village with little or no income taxes (assuming the person owns his/her own home), but a city-dweller would have to earn perhaps 10 times as much (much of which is taxes) to achieve the same standard of living (setting aside the differences between city and town living, such as museums, sports arenas, legitimate theatres, coastal offerings such as entertainment parks, beaches, deep-sea fishing).

The federal and state governments' "one size fits all" approach to compensation of their employees and taxation of their human citizens imposes too much in taxation on city dwellers and provides too much compensation for government employees living and working in towns and villages. This means there is a substantial economic advantage in living in a town rather than a city, and towns having such economic advantage are better able to afford the time, money and effort to obtain reform than are residents of a major city.

Towns and their inherent financial strength (including the ability of residents to provide support services to each other which are not taxed by money-starved governments who give too much of what they collect to undeserving major corporations) are the best place to start the needed economic reforms.

One of the problems in towns and villages is the attitude of residents to Wal-Mart, which offers food, clothing and a huge variety of other items to the local people at less than they can purchase the same items from any local competing businesses, if any are still in business by this time. It is difficult to tell someone that saving 25 cents on the purchase of a tube of toothpaste (or saving \$15/week on

all purchases) is harmful to the town and the person wanting such saving.

This book deals with that problem and perhaps is the only way that this problem can be addressed, through instruction on all parts of the problem, to enable the reader to determine for himself/herself what reforms are needed.

Wal-Mart's activities in selling at a low price are readily classified into the problem created by outsourcing, in which certain things in a nation or community are injured to the extent someone chooses to pay a lower price by outsourcing to India or by buying at Wal-Mart.

It is difficult to tell residents of a town that they should avoid the bargains because other persons are going to suffer losses as a result.

You can view Wal-Mart similar to a circus or amusement park with a wide opening, unattended by guards, through which townspersons of a certain mind might avail themselves of the benefits inside at lower cost, but in the long run (if the opening is not closed up) the circus or amusement park will cease doing business. The paying patrons will be insufficient to cover the costs of operation for the total group of paying and non-paying visitors.

The solution, for thousands of years, is to enact and enforce laws which prohibit conduct which is deemed detrimental to the group at large, with a penalty for violation of the prohibition which makes a proposed wrongdoer think several times before violating the law. Until President Nixon came into office, the federal government was enforcing the nation's Robinson-Patman Act and other antitrust laws that discouraged violations and prevented excessive concentration of the economy. Starting with Nixon, the federal government relaxed its enforcement (thereby creating an unguarded opening for large companies to violate the nation's antitrust laws with impunity, and obtain huge amount of the economy which they turned over, in very small part, to the candidates for federal office to encourage them to continue such policy).

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The cure for this problem is easy, and done at the local (town and village level, at the outset). Distribute this book widely in the town to give the town residents the information they need to improve local jobs, business opportunities and standard of living; and appoint a Town Attorney General to prevent major corporations from going through the “opening” created by federal inaction.

If this is done, the town will prosper within a year or two, even to the extent of having full healthcare coverage for all residents, better jobs, better business opportunities, and, yes, higher prices at Wal-Mart and the other major retailers, if they choose to stick around and become responsible corporate “citizens”.

In due course, the town and village reforms will catch on, through a grass-roots approach, with nearby towns adopting the same policies, and in due course these areas will be sending responsible legislators to Congress, where needed reforms can be achieved. We know this is true from Populist experience and from the writings of Alexis De Tocqueville.

Once again, after the book was “completed” for the 1st or 2nd time, I realized that the obvious way to have the book get into the hands of the human citizens of the nation’s towns and villages was to get the nation’s injured retailers to carry the book, out of self interest and as a service to their town residents. In return, I have included a discount schedule for the book that is slightly more favorable to retailers than provided by established book publishers. [I might add that I know of know competing book, but would consider it a victory if books, magazine and newspaper articles and talking heads on television were to produce works or shows with similar ideas.]

The injured or threatened retailer in the town’s Main Street that carries this book can only better his/her position and that of the town. The retailer after reading the book, and obviously understanding its impact for the retailer, can be the book’s best salesperson, to encourage as many persons as possible in the town to buy and read

the book, or perhaps offer the book for reading without purchase as a miniature public-service library.

A new twist is developing, which is that some of the major specialty retailers and general-merchandise retailers are announcing that they cannot compete with Wal-Mart and in some cases have filed for bankruptcy (Kmart, several times) or are getting out of business by selling their stores (Toys-R-Us) or have announced that Wal-Mart is unfair because it is getting its product at lower prices (an announcement by Barnes & Noble CEO Riggio).

This raises an interesting question, which is why these injured stores do not bring suit against Wal-Mart to recover their damages caused by Wal-Mart purchasing its inventory at lower per-unit prices.

Every store of Kmart, for example, would have the prospects of recovering say \$10,000,000 and with 1,420 stores currently Kmart would have the prospects for recovering as much as \$14 billion in damages from Wal-Mart. With numbers such as that, one wonders why Kmart is struggling so hard to remain in business.

Why is it that the individuals at the helm of the large retail corporations injured by Wal-Mart do not bring suit? I think the answer is that the individual wants to be able to get a job another job after riding his/her present employer into the ground. A lawsuit exposing and complaining about the practices which drove the company under would make the complaining C.E.O. a pariah and unemployable. Yet, a single shareholder could do what the C.E.O. cannot do.

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APPENDIX A – Useful Books, Websites and Other Resources for Dealing with the Wal-Mart and Sam’s Club and Globalization Problems

2004 Petition to the Republican Party Relating to Wal-Mart

An Open Resolution That the Republican National Committee Include Corporate Reform in the Election 2004 Platform, and That Wal-Mart Stores, Inc. be Selected to Model True Constitutional Republicanism in Corporate Governance, to be found at <http://members.aol.com/vtpa/rncresol.html>

Recommended Books on How to Stop Wal-Mart and Other Superstores from Coming into Your Community

SLAM-DUNKING WAL-MART! - How You Can Stop Superstore Sprawl in Your Hometown, by Al Norman, hardcover, Raphael Marketing (Atlantic City, NJ), 1999, \$29.95

IN SAM WE TRUST - THE UNTOLD STORY OF SAM WALTON AND WAL-MART, THE WORLD'S MOST POWERFUL RETAILER, by Bob Ortega, paperback, Times Business/Random House, NY NY, 2000, \$16.00

HOW WAL-MART IS DESTROYING AMERICA (and the World) - And What You Can Do About It, by Bill Quinn, paperback, Ten Speed Press (Berkeley, CA), 2000, \$10.95

NICKEL AND DIMED - ON (NOT) GETTING BY IN AMERICA, by Barbara Ehrenreich, hardcover, Metropolitan Books/Henry Holt, NY NY, 2001, \$23.00

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Recommended Books Exposing the Evils of Globalization

THE CASE AGAINST THE GLOBAL ECONOMY (AND FOR A TURN TOWARD THE LOCAL), edited by Jerry Mander and Edward Goldsmith, published in paperback by Sierra Club Books, San Francisco, 1996, \$17.00

WHEN CORPORATIONS RULE THE WORLD, by David C. Korten, paperback, Kumarian Press/Berrett-Koehler Publishers, 1995, \$19.95

THE CASE AGAINST FREE TRADE - GATT, NAFTA, AND THE GLOBALIZATION OF CORPORATE POWER, by Ralph Nader, William Greider, Dick Morris and others, published by Earth Island Press / North Atlantic Books, 1993

CORPORATION NATION - HOW CORPORATIONS ARE TAKING OVER OUR LIVES AND WHAT AND WHAT WE CAN DO ABOUT IT, by Charles Derber, with an introduction by Ralph Nader, published in paperback St. Martin's Griffin, New York, 1998 (and 2000), \$14.95 (with comments by Jonathan Kozol, Ralph Nader, Senator Edward M. Kennedy, Noam Chomsky, Senator Paul Wellstone and David Korten

ONE WORLD, READY OR NOT - THE MANIC LOGIC OF GLOBAL CAPITALISM, by William Greider, published by Simon & Schuster, 1997, \$27.50

OPPOSING THE SYSTEM, by Charles A. Reich, hardcover, published by Crown, 1995, \$23.00

AMERICA: WHO STOLE THE DREAM?, by Donald L. Barlett and James B. Steele, paperback, published by Andrews & McMeel, K.C., Mo., 1996, \$9.95

WHO WILL TELL THE PEOPLE - THE BETRAYAL OF AMERICAN DEMOCRACY, by William Greider, hardcover, Simon & Schuster, 1992, \$25.00

Other books opposing the globalizing economy are listed above and at www.lawmall.com/droppout/dropprop.htm

Recommended Websites on How to Stop Wal-Mart and Other Superstores

www.pbs.org/storewars/, PBS Website 2001 TV Broadcast

“STOREWARS - When Wal-Mart Comes to Town”, a television documentary by the PBS network involving Ashland, Virginia, with valuable resources for persons interested in opposing Wal-Mart, other superstores and globalization; includes list of websites and other communities opposing Wal-Mart

www.walmartwatch.com/, Wal-Mart Watch Website published by a union representing employees in competing stores. This is an important website for persons gathering information to oppose Wal-Mart

www.sprawl-busters.com/slamdunk.html, Al Norman's Slam-Dunk Website on How to Stop Wal-Mart. This is an important website for persons gathering information to oppose Wal-Mart, and to obtain low-cost information pamphlets

www.petitiononline.com/Walmart/, Stop Wal-Mart from Destroying East Spartanburg [SC]. This website is for an online petition by local residents to stop Wal-Mart from entering their town; the host website www.petitiononline.com provides the interactive programming to enable any community to put up a similar online petition for residents to sign electronically

www.ufcw324.org/nowalmart.html, Stop the Wal-Mart Threat, a union website with valuable information

www.innercitypress.org/wal-mart.html, Website for Stopping Wal-Mart from Entering into Branch Banking Business based

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on Wal-Mart's alleged violations of the Robinson-Patman Act and other alleged bases - this is the administrative counterpart to attempting to stop Wal-Mart by going into federal court for injunctive relief

www.econ.iastate.edu/research/abstracts/NDN0065.html,

Abstract of Research Paper entitled "The Impact of Wal-Mart on Retail Market Structure in Maine" by Georgeanne M. Artz, May 1999, thesis for master's of science degree with several abstracts of research papers by Prof. Kenneth E. Stone in the same /abstracts subdirectory; a good place to start looking for the type of research and experts you may want to consult when dealing with the Wal-Mart/superstore problem

www.walmartsucks.com/, Wal-Mart Sucks Website, a website with various bulletin boards to register complaints about Wal-Mart

www.farmfoundation.org/pubs/increas/97/stone.pdf, Impact of the Wal-Mart Phenomenon on Rural Communities by Kenneth E. Stone, 1997, part of a Farm Foundation conference and series of papers by various experts on farm and rural matters; this is not the famous 1995 Stone study referred to above

www.aflcio.org/aboutaflcio/magazine/0604_walmart.cfm – very useful article “Closing the Doors on Wal-Mart” in Inglewood, California.

APPENDIX B – Related and Other Websites Created by the Author of Possible Interest to the Reader

The following websites created by the author, Carl E. Person, may be of interest to readers of this book:

www.lawmall.com/lawbook/index.html, Website for Book by Carl E. Person published in July 2004, entitled "A Law Career Is the Smart Way -- to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living"

www.lawmall.com/growtown/index.html, Website: entitled "How To Grow Your Town or Village By Providing Low-Dollar Financing and Litigation Center Assistance to Merchants Injured by Wal-Mart, Home Depot and/or other Major Retailers"

www.lawmall.com/jrynullification/index.html, Website entitled "Jury Nullification Website: How the Constitutionally Guaranteed Jury System Is Being Threatened with Irrelevance and Destruction by the Ever-Increasing Concentration of the Economy"

www.lawmall.com/budgcure/index.html, Website entitled "How Cities and States Can Cure Their Budget Deficits - 1,000 Times the Value of the Tobacco Litigation"

www.lawmall.com/jryduty/index.html, Website entitled "How the Constitutionally-Guaranteed Jury System Is Being Threatened with Irrelevance and Destruction by the Ever-Increasing Concentration of the Economy"

www.lawmall.com/govwaste/index.html, Website entitled "Inadvertent Waste - Government Waste Commission - Citizen Pro-

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posals to Make Local Government More Efficient - NYC's Yellow-Cab Follies - \$ 1/4 Billion Annual Loss for NYC”

www.lawmall.com/abuse/index.html, Website entitled "Website - To Expose Prosecutorial Corruption and Related Loss of Constitutional Rights and Report on Relevant Cases Imposing Liability for Prosecutorial Misconduct”

www.lawmall.com/andersen/index.html, Website entitled “Don't Cry for Arthur Andersen”

www.lawmall.com/autopart/index.html, Website entitled “240 Plaintiffs against Wal-Mart, AutoZone, Others for Alleged Price Discrimination in Auto-Parts Industry”

www.lawmall.com/bookcase/index.html, Website entitled “Epic RPA Fight of Intimate Bookshop against Barnes & Noble and Borders”

www.lawmall.com/classact/index.html, Website entitled “Using One Person (or a Small Number of Persons) as Plaintiff(s) to Sue on Behalf of a Robinson-Patman Act Public or Publicly-Owned Victim Whose Officials Are Not Willing to Commence an RPA Action for the Victim Such as Ashland VA, and Kmart and Other Chains Unable to Compete with the Leading Superstore Chain”

www.lawmall.com/criminal/index.html, Website entitled "Criminal Prosecution Reform Website: A List of the Worst Abuses Being Committed by Federal Prosecutors and in Federal Prosecutions - with Suggested Remedies”

www.lawmall.com/doomsday/index.html, Website entitled "Doomsday Notice! - Analysis and Forecast for Retailing Business; Major Chain Retailers Cannot Compete against Wal-Mart and Are Doomed”

www.lawmall.com/droppout/index.html, Website entitled "Insight to What Will Happen If Level Playing Field Cannot Be Re-created"

www.lawmall.com/ecopolit/index.html, Website entitled "First Website on Globalization"

www.lawmall.com/enron/index.html, Website entitled "Enron - Significance of"

www.lawmall.com/farmgate/index.html, Website entitled "Application of Robinson-Patman Act to Farmers and Farming Industry"

www.lawmall.com/jobtheft/index.html, Website entitled "How State and Local Governments Are Giving Away \$ Billions to Major Corporations as False and Misleading 'Job Development' Programs"

www.lawmall.com/lm_finan.html, Website entitled "Financing Litigation by Selling Shares in Lawsuits"

www.lawmall.com/pleabarg/index.html, Website entitled "Plea Bargaining: an Unconstitutional Delegation of Judicial Power to the Executive Branch of Government; a Free-Market Solution to Unconstitutional Plea-Bargaining"

www.lawmall.com/rpa/index.html, Website entitled "an Information Mall for Business, Consumer and Town/Village Victims of Price Discrimination or Service Discrimination under the Robinson-Patman Act"

www.lawmall.com/sherman.act/index.html, entitled "Website on Sherman Antitrust Act"

www.lawmall.com/smallbiz/index.html, entitled "Website for Small Business, including List of Top 60 Small Business Problems"

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www.lawmall.com/speakers/index.html, Website entitled "Lecture and Speakers' Bureau Website"

www.lawmall.com/tortmall/index.html, Website entitled "Legal Actions for the Tortious or Other Destruction of Business - A Checklist for Litigators"

www.lawmall.com/violgram/index.html, Website entitled "Sending Your Own Notice of Violation of the RPA to Your Super-Store Competitors or to the Manufacturers - As Evidence for You and Others"

www.lawmall.com/wal-mart/index.html, Website entitled "How to Stop Wal-Mart, Other Superstores, and Globalization - a Unique Antitrust Website for Fighting Unlawful Price Discrimination (under the Robinson-Patman Act), Wal-Mart Expansion, Globalization Concerns and Related Matters"

www.lawmall.com/rpa/rpa_whk1.html, Website page entitled "Wallace Kuralt, Owner of Failed Bookstore Chain, Tells All and Recommends a Simple Reform Which Could Help to Level the Playing Field - Wallace Kuralt's Astonishingly Simple Proposed Reform to Reduce the Appeal and Impact of Superstores"

www.lawmall.com/rpa/rpahowto.html, Website page entitled "YOU ARE NOT ALONE! - How to Put Together a Small Group of Injured Persons to Start a Single Action under the Robinson-Patman Price and/or Service Discrimination against a Superstore, Major Wholesaler or a Manufacturer - or Against a Newspaper, TV Network or Show or Magazine for Group Libel or Industry or Product Disparagement"

www.lawmall.com/droppout/dropmenu.htm, Website entitled "Fight Monopolists, Politicians and Globalization by DROPPING OUT - a Self-Help Strategy to Increase Your Standard of Living and Quality of Life - DROPPING OUT to Grass-Roots DROPPING OUT COMMUNITIES - no new laws or federal/state government approvals needed"

www.lawmall.com/rpata/index.html, Website entitled "FORMER HIDDEN Website for Small Businesses to Associate with Each Other Based on a Specific Issue (Such as Price Discrimination) Rather than as an Industry, Where Major Competitors Can Prevent Meaningful Assistance" [shows how secret websites can be used by small businesses to get together to fight a common problem].

www.lawmall.com/lm_finan.html, Website entitled "Financing of Litigation by Sale of Lawsuit Shares"

www.lawmall.com/lm_exper.html, Website entitled "Expert Witnesses on Contingency"

www.lawmall.com/lm_virtu.html, Website entitled "The Virtual Law Firm Described"

www.lawmall.com/lm_maga2.html, Series of "Self-Help Pamphlets for Dealing with Legal, Economic, Business and Political Problems"

www.lawmall.com/lm_maga2.html, Series of e-Magazine entitled "LOSERS MAGAZINE for Downsizees, Underemployed, Unemployed and Unprofitable Small Businesses - homepage and Articles"

www.lawmall.com/lm_draft.html, Website entitled "Drafting of a Civil Complaint: the Highest Leverage Obtainable in a Lawsuit"

www.lawmall.com/files/lm_npc1.html, Website entitled "The National Private Court for Resolving Disputes"

www.lawmall.com/lm_tortr.html, Website entitled "Tort Reform"

www.lawmall.com/lm_jappr.html, Website entitled "Solving Japanese Trade Problem"

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Organizations and Individuals Highly Involved in Trying to Stop Wal-Mart

John F. Morrison, State Director
Missouri Grocers Association
315 North Ken Avenue
Springfield, MO 65802
417-831-6667
Fax - 417-831-3907
Oegamga@aol.com

Stacey Mitchell
Institute for Local Self-Reliance
and its "The Hometown Advantage Bulletin"
1313 5th Street SE, Minneapolis MN 55414
Tel: 612-379-3815 - Fax: 612-379-3920
Web: www.ilsr.org
Email: smitchell@ilsr.org

Thomas K. Zaucha, President and C.E.O.
National Grocers Association (NGA)
1005 N. Glebe Rd.
Arlington VA 22201
Tel: 703-516-0700 - Fax: 703-516-0115
www.nationalgrocers.org
"Working Agenda" of 10 Points including:
Effectively Compete Against Supercenters
and other Power Buyers
3. Create a Level Playing Field
5. Win Back Center Store Sales

**Joe Hansen, International President
United Food and Commercial Workers International Union,
AFL-CIO/CLC (UFCW)
and its more than 900 local unions in the U.S.
1775 K Street, N.W.
Washington DC 20006
Tel: 202-223-3111 - Fax: 202-446-1562
See website material at:
www.aflcio.org/aboutaflcio/magazine/0604_walmart.cfm**

**Gil Harris, Executive Director
Richard T. Healy, Past Executive Director
James Quinten, Past Executive Director
Coalition for a Level Playing Field, L.L.C.
c/o Virginia Automotive Parts & Service Association
227 Belt Blvd.
Richmond VA 23224
Tel: 800-468-6654 – Fax: 804-231-1021 (Gil Harris)
Tel: 603-924-9449 – Fax: 603-924-4490 (Richard T. Healy)
Tel: 800-375-2968 – Fax: 512-339-4477 (James Quinten)
www.robinsonpatmanact.com/coalition.html
Email: gph7928@aol.com; dick_healy@awane.com; and
jim.quinten@austintx.net**

**APPENDIX C – Representations and Warranties
Which a Community Should Require a Major Re-
tailer to Sign as a Condition to Obtaining Re-
quested Approval(s)**

The following provisions are suggested for inclusion in a document, which should be required of major retailer and other applicants for approval to construct a new store in your area. It is highly recommended that you have your town or other attorney review the form and put it into an appropriate form for use by the town with all such applicants (to avoid charges of discriminatory treatment). The document should be prepared so that the applicant is representing as material representations and warranting (i.e., promising to be true), the statements or other information provided in the form by the applicant. Material representations can be the basis for an action for fraud to be able to undo any approvals granted by reason of the fraud; and warranties can be the basis for an action for damages based on breach of promise (or warranty). Wouldn't it be great if the legal principle underlying Martha Stewart's prosecution (non-sworn lying to a government investigator) applied to these applicants, especially because their statements are going to be required under oath.

Some of the recommended provisions to be considered are:

An interrogatory asking for a description of any promises or payments or special deals made or offered to anyone with respect to this proposed store or any possible store in the area

An interrogatory asking for information about the major retailer's dealings with other towns, including any projections of tax or other payments to be made to the town and the actual payments received by the town, and about any projections of town costs relating to the project and the actual costs incurred by the town, both as to construction and as to the post-construction period

An interrogatory asking for the identification of each person who on behalf of the major retailer or the proposed store has had contact with any governmental officials of the town during the preceding 3 years.

An interrogatory asking for a copy of any studies showing the criminal rate in a town before and after the opening of a new Wal-Mart or Sam's Club store (or store of other applicant).

An interrogatory asking for a copy of any study of local property values before and after the opening of a new Wal-Mart or Sam's Club store (or store of other applicant).

An interrogatory asking about the annual number of suppliers which went into bankruptcy after starting to deal with Wal-Mart or Sam's Club and any procedures with which Wal-Mart tries to avoid bankrupting its suppliers.

An interrogatory asking about the total number of retail buildings which have been vacated by the applicant and the status of such building at the end of 1, 2 and 5 years. The town might wish to require a performance bond to ensure that if the building is vacated and not put back into full use by the end of 12 months that the performance bond can be used to either demolish the building or make it more presentable for new use, whichever is more suitable.

An interrogatory asking for information about the major retailer required to be assembled under the Sarbanes-Oxley corporate governance statute, especially concerning the prices at which the major retailer is purchasing its goods from its manufacturer suppliers (with such information to be provided in confidence and used only as permitted in the agreement under which the information would be supplied. Specifically, you might ask for a description of the controls to ensure that the applicant is not purchasing its goods at discriminatory or, worse, below-cost prices in violation of the Robinson-Patman Act or Sherman Act. The Sarbanes-Oxley Act (2002) requires each public corporation to have an Audit Committee made up of independent individuals which committee makes sure the corporation is in compliance with various laws (where the violation of which

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could be materially adverse to the company's financial interests), including the Robinson-Patman Act. It seems clear to me that none of the major retailers will be able to pass an audit of the issue of whether the manufacturers are selling to the major retailer at discriminatory, unlawful prices, and at prices which are below the manufacturers' direct cost.

Also, you might want to add interrogatories designed to elicit information about:

Healthcare costs of the community for employees of the applicant

Whether female employees and employees over 40 years of age are given equal opportunities

The average wage for the lowest-paid workers and the average number of hours worked per week

The average benefits if any paid to the lowest half of the applicant's employees

Any promises made by the applicant to towns that sales taxes would revert to the town after so many years, where the applicant moved out of the town within a year or two before or after such provision was to kick in for the town, thereby depriving the town of its expected sales tax revenue. See the Cathedral City, California controversy involving Wal-Mart. A description of what transpired together with a warning about dealing with Wal-Mart is set forth in American City & County, as follows:

For example, only about half of Wal-Mart's employees receive benefits. Worse, Wal-Mart's "culture encourages employees to turn to taxpayer-funded assistance," according to a recent episode of the television program, "Bill Moyers Now." One former Wal-Mart manager who was interviewed by Moyers said that the company expects its managers to direct employees to seek public assistance. He said the company taught its managers how to "take full advantage of

the ministries, the civic organizations, tax-based organizations, and subsidy organizations” for food or health care.

The Moyers report also featured a chilling story of how Wal-Mart closed its Cathedral City, Calif., store and reopened in another community close by — only after the city completed its end of an agreement to pay the retailer \$1.8 million for the building and other expenses. Now, instead of receiving an anticipated \$1 million annually in sales tax revenues, the city expects only to see about \$500,000 total. See:

http://www.americancityandcounty.com/mag/government_dont_scrooged/

Finally, any other questions which come to mind, to try to provide leads for wrongdoing and facts which could be used to justify your opposition to the proposed store.

APPENDIX D – Text of the Robinson-Patman Act

Sec. 13. Discrimination in price, services, or facilities (§ 2 of the Clayton Act)

(a). Price; selection of customers It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing herein contained shall prevent price changes from time to time where in re-

sponse to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b). Burden of rebutting prima-facie case of discrimination
Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c). Payment or acceptance of commission, brokerage, or other compensation It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d). Payment for services or facilities for processing or sale It shall be unlawful for any person engaged in commerce to pay or con-

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tact for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e). Furnishing services or facilities for processing, handling, etc. It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f). Knowingly inducing or receiving discriminatory price It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

APPENDIX E – State Antitrust Statutes

An excellent website by attorneys Fraser Trebilcock Davis & Dunlap P.C., sets forth for each state separately the citations to all or most of the state's antitrust statutes. See:

www.gamingip.com/AGContactsA-H.html.

A discussion of the website material is found at www.gamingip.com/StateAntiLaws.html.

The American Bar Association, through its ABA Section of Antitrust Law, publishes a hardcover book (most recent edition September 2004, price-\$487.38) entitled State Antitrust Practice & Statutes, Third Edition. Used copies of this book (including earlier editions) may be available at:

www.fetchbook.ca/State_Antitrust_Practice_Statutes.html

APPENDIX F – Articles on Monopsonies and Antitrust Damages; and the Keynote Address by Wal-Mart Chairman S. Robson Walton at June, 2004 American Antitrust Institute Conference on Buyer Power

“Beware Buyer Power”, draft of article by Robert H. Lande, Venable Professor of Law, University of Baltimore School of Law, published in July, 2004, see:

<http://www.antitrustinstitute.org/recent2/331.pdf>

“Buying Power and Merger Analysis—The Need for Different Metrics”, Statement of Professor Peter C. Carstensen (Professor, Wisconsin Law School) prepared for and presented at the Workshop on Merger Enforcement held by the Antitrust Division of the Federal Trade Commission during February, 2004, see www.usdoj.gov/atr/public/workshops/docs/202606.htm

Keynote Address by Wal-Mart Chairman S. Robson Walton delivered on June 22, 2004 at the 5th annual conference of the American Antitrust Institute on Buyer Power; to see what Wal-Mart is willing to state about its purchasing practices, see <http://www.antitrustinstitute.org/recent2/330.pdf>

“Why Antitrust Damage Levels Should Be Raised”, by Robert H. Lande, Venable Professor of Law, University of Baltimore School of Law, published in 2004, see <http://www.antitrustinstitute.org/recent2/332.pdf>

APPENDIX G – Reference to One of the Best Studies about the Evils of Wal-Mart, by Professor Edward B. Shils, Entitled “Measuring the Economic and Sociological Impact of the Mega-Retail Discount Chains on Small Enterprise in Urban, Suburban and Rural Communities”

A copy of the Shils study is located at www.lawmall.com/rpa/rpashils.htm.

The table of contents for the Shils study is at www.lawmall.com/rpa/toc.html.

Appendix H – Copy of Author’s “Salesmen” Website for Door-to-Door and Party-Plan Distribution of SAVING MAIN STREET AND ITS RETAILERS [updated at www.lawmall.com/salesmen]

Opportunities for Unemployed, Underemployed, Retirees, Senior Citizens, Housewives, Students and Others to Earn Money by Full-Time or Part-Time Selling of 3 Related Books on Avoiding the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living - Valuable Economic Information which the Major Media Misrepresents or Refuses to Publish

First Published on 8/6/04; Last Update: 08/13/04 12:05

Publisher's 3 Related Books to Increase the Middle-Class Share of the Economy Now Ready for Distribution by Individuals in Each Community in the United States

Attorney Carl E. Person, antitrust and civil rights attorney, has written three related books providing valuable information not generally known to the public. These books explain why the public cannot expect much help from the government and that self help is the only way for individuals to fight and overcome the evil economic trio of outsourcing, globalization and declining standard of living.

The Cure for a Problem Often Becomes Apparent When the Causes of a Problem Become Known

Outsourcing, globalization and declining standard of living are problems which have a cause, and the nation’s major media have been diligent for years in preventing the public from learning about the cause or causes, because such knowledge by the public could

well result in a cure for the problem. Somebody is benefiting from the Evil Economic Trio, and you know that it is not the public generally. It must be someone else.

In my 3 related books, I discuss at length the causes of the Evil Economic Trio, the persons who benefit from the problem, and present 3 Plans designed to cure the problems. These books require distribution to the nation's voters and others injured by the Evil Economic Trio, to be able to fight back. A quick look at a similar situation during the end of the 19th Century (see section below entitled "Successful Efforts during the Populist Era - 1873-1896") will show you how powerful an alternative information network has been to fight the same problem the country was having 125 years ago.

The information requiring distribution is contained in my 3 related books, which are available for distribution in your community.

The Three Related Books Available for Distribution in Your Community

The three related books available for distribution in your community are:

A Law Career Is the Smart Way - to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living. It is intended for persons who have been thinking about the possibility of attending law school, as well as their parents, and for persons attending law school, as well as recent graduates of law school. I, Carl E. Person, am the author, and I'm a graduate of Harvard Law School and a member of the New York Bar for more than 40 years. In this book, I provide an insight to the legal profession that few others could duplicate, and this insight will enable the intended readers to increase their possibilities of success.

My second book is entitled Self Employment - to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living. This book is intended for high school juniors and seniors and persons attending college, and their parents and advisors.

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Also, the book would have substantial interest and utility to recent college graduates, including persons having a difficult time seeking meaningful employment. The book covers much of the material contained in my first book except that it advocates not going to college, and not getting a job. Instead, I advocate a lifetime of self equity through self employment and self-ownership of one's dwelling from the start of his/her career; heavy credit card borrowing if necessary to jump start the self-equity program; and a lifetime of hard work and financial success, in comparison to a college student looking forward to a lengthy period of paying back student loans, with the few dollars left over from a job having reduced income expectations, little if no financial security and especially no equity in one's lifetime work, and a loss of working years while attending college. This book is needed by most households in the country, and will provide the support many families will need to convince their children that attendance fulltime at an expensive campus college is not everything, and might well amount to less than nothing.

Finally, my third book, entitled Saving Main Street and Its Retailers - 20 Things You Should Know - and 3 Plans - to Protect Your Town, Local Property Values, Local Employment and Business Opportunities, and Your Standard of Living. This book is essential reading for every retailer in your town trying to compete with the major retailers already in town, or making plans to come to your town, such as Wal-Mart, Sam's Club, BJ's, Home Depot, Bed Bath & Beyond, Barnes & Noble, Borders, Rite Aid, Target and others which put the smaller independent retailers out of business, and injure the town, the remaining businesses, the tax base, and drive wages and employment and business opportunities down, and pretty destroy much of the town. There are things that can be done by the people in such a town to make the town inhospitable to these corporations, and encourage them to take their evil business practices elsewhere. This book should be read by everyone in your town, and you can bet that among the first readers of the book will be these major retailers, getting to learn as much as they can about their competition.

Book Covers

Each of the three books is in paperback form, retailing for \$19.95 (US) and \$26.95 (Canada).

A copy of the cover for the books can be seen at: (i) [**Law Career Book Cover**](#) ; (ii) [**Self Employment Book Cover**](#); and (iii) [**Saving Main Street Book Cover**](#) [links not provided in this Appendix].

You might be interested to note that book covers are traditionally used by salespersons and publishers' representatives as their sales material for the book. They take covers of the new books to bookstore ordering personnel, who look at the covers and based on that together with information provided by the salesperson or representative (and information about the book obtained from trade publications) decide which books to order, and in what quantities.

The chapter titles for each of the three books give persons a pretty good idea what the books are about. These chapter titles are on the back cover of each book, and may be seen at: (i) [**Law Career Book Chapter Titles**](#); (ii) [**Self Employment Book Chapter Titles**](#); and (iii) [**Saving Main Street Book Chapter Titles**](#) [links not provided in this Appendix].

The 3 Books Present Valuable Information Being Withheld from the Public by the Nation's Major Media

The 3 books are interrelated and provide information of value to you and your community that the nation's major media refuses to provide. This failure to provide the information is willful, to ensure that public demands for economic reform are not made, or made effectively. The information needs to be made available to all communities in the country, including yours.

What the country is currently facing is not new. The major media historically will not publish such information, out of the self-interest of the wealthy owners of such media and their wealthy

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friends, relatives and business associates. In other words, the wealthy protect the members of that elite group throughout the nation's institutions they own or control. Publication would have an adverse economic impact on the largest corporations in the world and their share of the United States economy, and cause a decline in value of the stock of the owners of such major corporations.

As the author and publisher of the 3 books, I have put together a list of the types of persons I think may be interested in becoming part of a new medium for disseminating this vital information. This new medium is a modern variant on the overwhelmingly successful army of Populist editors and lecturers (see section immediately below).

The persons I describe in a list (see section below entitled "Types of Individuals...") should join forces with each other in the distribution of these 3 books, for their own personal benefit and profit, and to help others in the community increase their standard of living and to increase employment and business opportunities in your community.

But first, I want you to learn more about this interesting historical precedent. It is quite instructive and compelling. Amazon currently has 32 new and used copies of the book for sale, starting at \$4.99, see [Amazon.com - Goodwyn Book](#) [link not provided in this Appendix]. . Reviewer Jim, in his review of the Goodwyn book published by Amazon, states:

Genuine mass movements cannot be top-down driven. The formation of a mass movement that can achieve political viability must proceed from the ground up. Key to any such movement is the establishment of an independent institution that through the participation of its members develops an ideology and strategy that counters prevailing authority. The counter organization must educate and recruit new adherents. The agrarian movement was based on the sub-alliances and their cooperative ventures and achieved extensive recruitment and education through a lecturing system. The politicization step is often difficult to take and sustain because member activ-

ism takes on an indirect element in that it is geared to electoral success allowing party elites to then fully engage in the governmental process. Populism was ultimately unable to successfully take the political step.

Successful Efforts during the Populist Era - 1873-1896

What I'm doing today has a successful precedent from the Populist Era (specifically 1873-1896), in which information was disseminated throughout the United States by editors of 150 farmer-oriented newspaper and 40,000 traveling "lecturers", as a unique alternative communications system, who brought the word to the nation's farmers about the need for changing the system so that farmers ceased being slaves to the industrial capitalists and their banks in New York City.

The editors and lecturers toured the United States and gave lectures in every part of the United States explaining why the country needed to have the federal government establish warehouses in each of the nation's farming counties (referred to by the Populists as a "sub-treasury system") which the farmers could use to store their crops after harvest, in exchange for warehouse receipts - the equivalent of a cash loan until the crops were sold - and be free of the company store, which generally kept farmers in perpetual poverty. The warehouse receipts were the equivalent of money, paid against the harvested crops, and enabled the farmer to obtain payment for his crops without having to sell them immediately. The warehouse system would enable the farmer to store the crops until market conditions were favorable for sale of the crops. Otherwise, the farmer was generally dependent on the cash and credit provided at great cost by the greedy, monopolistic company store.

As one historian, Lawrence Goodwyn, has written in his inspiring 18-page Introduction to his abridged edition of his DEMOCRATIC PROMISE: The Populist Movement in America (Oxford University Press, 1976):

Introduction

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This book is about the flowering of the largest democratic mass movement in American history. ... Finally it is about why Americans have far less democracy than they like to think and what would have to happen to alter that situation.

The passionate events that are the subject of this book had their origins in the social circumstances of a hundred years ago when the American population contained huge masses of farmers. A large number of people in the United States discovered that the economic premises of their society were working against them. These premises were reputed to be democratic--American after all was a democratic society in the eyes of most of its own citizens and in the eyes of the world--but farmers by the millions found that this claim was not supported by the events governing their lives.

The nation's agriculturalists had worried and grumbled about "the new rules of commerce" ever since the prosperity that accompanied the Civil War had turned into widespread distress soon after the war ended. During the 1870's they did the kinds of things that concerned people generally do in an effort to cope with "hard times." In an occupation noted for hard work they worked even harder. When this failed to change things millions of families migrated westward in an effort to enlist nature's help. They were driven by the thought that through sheer physical labor they might wring more production from the new virgin lands of the West than they had been able to do in their native states of Ohio and Virginia and Alabama. But, though railroad land agents created beguiling stories of Western prosperity, the men and women who listened, and went, found that the laws of commerce worked against them just as much in Kansas and Texas as they had back home on the eastern side of the Mississippi River.

So in the 1870's the farmers increasingly talked to each other about their troubles and read books on economics in an effort to discover what had gone wrong. Some of them formed organizations of economic self-help like the Grange and others assisted in pioneering new institutions of political self-help like the Greenback Party. But as the hard times of the 1870's turned into the even harder times of the 1880's, it was clear that these efforts were not really going anywhere. Indeed, by 1888 it was evident that things were worse than they had been in 1878 or 1868. More and more people saw their farm mortgages foreclosed. As everyone in rural America knew, this statistic inexorably yielded another, more ominous one: the number of landless tenant farmers in America rose steadily year after year.

I urge you to read the rest of the Introduction and the rest of the abbreviated edition of the book, *The Populist Moment: A Short History of the Agrarian Revolt in America*, by Lawrence Goodwyn (New York: Oxford University Press, 1978).

What happened to the farmers during the last quarter of the 19th century seems to be repeating itself to a much larger group of victims, most of the non-farmers of America as well as the few remaining individual farmers.

Goodwyn teaches us that through specialized communications, bypassing the major media controlled by persons not wanting the public to understand what is happening to them, it is possible to educate the public and create a political change for the better.

My 3 books, but especially the third book, *SAVING MAIN STREET AND ITS RETAILERS*, provide the information which the public needs to know to be able to bring about the changes needed to create more favorable employment and business opportunities for the public and, as a result, to halt our declining standard of living, and enable it to climb once again.

Excerpt from two book reviews by Todd Basch of *Another Populist Moment?* - *The Populist Persuasion: An American History* by Michael Kazin (New York: Basic Books, 1995); and *The Populist Moment: A Short History of the Agrarian Revolt in America*, by Lawrence Goodwyn (New York: Oxford University Press, 1978). Source: ***Basch Review***.

POPULISM as a persuasion pales in comparison to the democratic culture that 19th-century Populists created. Starting with a handful of farmers in Lampasas, Texas, in 1877, the National Farmers Alliance and Industrial Union grew into an institution with 150 newspapers and 40,000 lecturers. Farmer editors and lecturers first educated themselves and then spread out to educate the masses, explaining the large economic context of a crop-lien system that held small property owners and the landless in an endless cycle of labor and debt.

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Newspapers, lectures, Alliance meetings, picnics and parades were the constituents of a self-made culture that allowed the farmers to speak and learn in a protected atmosphere out of reach of the conservative, mainstream press or corporate power brokers. Because the farmers owned their own culture, a culture of democratic discourse, they were able to develop the economic and political strategies -- a sub-treasury system to give farmers access to currency; a cooperative system for the storage of wheat and cotton that was a tool for political recruitment -- that enabled them to challenge established centers of political and economic power.

Goodwyn emphasizes that the most important aspect of Populist culture was its ability to become collectively self-confident enough to challenge the culturally enforced system of deference -- the first line of defense for the powers that be. Over a period of 15 years, the Populists organized, educated, recruited, and politicized themselves. They developed a democratic culture in which people learned self-respect and mutual respect, the character traits of real democracy, culminating in the creation of the People's Party in 1892.

This era was between 1870 and 1896. After the defeat of William Jennings Bryan (with his rousing Cross of Gold Speech on July 9, 1896 before the Democratic National Convention), the movement ended, a few years later, upon enactment in 1913 of the Federal Reserve Act which created 12 regional banks as part of the Federal Reserve System in the United States, and took away the power of the one Federal Reserve Bank in New York which was considered to be anti-farmer in its monopolistic, deflationary policies.

Populist/Democratic candidate Bryan concluded his nomination-acceptance speech advocating a dual gold and silver monetary standard (instead of a single Gold Standard), to increase the nation's money supply for the nation's cash-strapped farmers, as follows:

No, my friends, that will never be the verdict of our people. Therefore, we care not upon what lines the battle is fought. If they say bimetallism is good, but that we cannot have it until other nations help us, we reply that, instead of having a gold standard because England has, we will restore bimetallism, and then let England have bimetallism because the United States has it. If they dare to come out in the open field and de-

fend the gold standard as a good thing, we will fight them to the uttermost. Having behind us the producing masses of this nation and the world, supported by the commercial interests, the laboring interests and the toilers everywhere, we will answer their demand for a gold standard by saying to them: You shall not press down upon the brow of labor this crown of thorns, you shall not crucify mankind upon a cross of gold.

Source: **Text of Bryan's 7/9/96 Speech.**

Door-to-Door and Party-Plan Sales as Today's Equivalent of the Unique Alliance Lecturer Network

The populist Farmer's Alliance understood the problem they faced in the last quarter of the 19th Century. The main media was not providing information about the farmers' problems and farmers became unable to deal with their problem. The Farmer's Alliance solved this communications problem by setting up a network of 40,000 lecturers who carried the information directly to the farmers. The lecturers gave lectures to groups of farmers throughout the United States and told them what the press was failing to tell them, and gave the farmers sufficient information and motivation to be able to mount a serious political movement, known as the Populist Movement, which culminated in the nomination of their candidate, Williams Jennings Bryan, for the United States Presidency, by the combined forces of the Democratic Party and the populist 3rd party.

The main historian of this Populist movement, Lawrence Goodwyn, in his abridged book entitled *The Populist Movement - A Short History of the Agrarian Revolt in America*, observed:

... The organizational base of the agrarian revolt was an institution called the National Farmers Alliance and Industrial Union. Created by men of discernible self-possession and political self-respect, the Alliance experimented in new methods of economic self-help. After nine years of trial and error, the people of the Alliance developed a powerful mechanism of mass recruitment--the world's first large-scale working class cooperative. Farmers by the hundreds of thousands flocked

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into the Alliance. In its recruiting phase, the movement swept through whole states "like a cyclone" because, easily enough, the farmers joined the Alliance in order to join the Alliance cooperative. The subsequent experiences of millions of farmers within their cooperatives proceeded to "educate" them about the prevailing forms of economic power and privilege in America.

This process of education was further elaborated through a far-flung agency of internal communication, the 40,000 lecturers of the Alliance lecturing system. Finally, after the efforts of the Alliance at economic self-help had been defeated by the financial and political institutions of industrial America, the people of the movement turned to independent political action by creating their own institution, the People's Party.

All of these experiences, stretching over a fifteen-year period from 1877 to 1892, may be seen as an evolutionary pattern of democratic organizing activity that generated, and in turn was generated by, an increasing self-awareness on the part of the participants. In consequence, a mass democratic movement was fashioned.

The medium used so successfully by the Alliance to pull together many millions of exploited American farmers from all states in the United States was a group of 40,000 lecturers (human beings) who took their message to the farmers, individually (to set up meetings) and then in group meetings, in what was the Populist equivalent of what we call today "door-to-door" selling and the "party-plan" method of selling.

This type of selling worked, because it brought a vital message to persons who up to that point were being kept in the dark about economic matters of importance to them. When they learned about the importance of the information which they were not getting from the major media, they willingly responded in the millions to obtain the information from the 40,000 lecturers, with the result that the recommended economic changes had millions of people demanding such changes.

My third book, *Saving Main Street and Its Retailers* contains information similar to the information being conveyed by the 40,000

lecturers. The book contains the information needed to be known by the successors in economic position to the farmers and farming communities (i.e., the independent small business in local communities and the people who live and work in these communities).

Saving Main Street and Its Retailers tells the whole story and does not need any live lectures to provide the information. Retailers and community members are able to obtain the information the need to protect their economic interests from this one book. As with the Alliance lecturers, there is no substitute. You need to read the book to find out what is happening to your businesses and communities, and in doing so you will understand the problem and be better able to arrive at the solution. The book provides 3 Plans to help solve the problem.

Door-to-Door and Party-Plan selling are today's equivalent of the Lecturer getting his townspeople interested in learning about the information they need to know to protect themselves and their community. Today's "lecturer" is to motivate his/her audience to purchase and read the book, which conveniently is available to them through the "lecturer" (i.e., the door-to-door distributor, or the guest lecturer at a party-plan event).

The regular news channels cannot and will not take the time to report fully on the information contained in the book, and certainly will not do any full reporting on a periodic basis, to keep the public informed. Instead, a book does the job, by providing all of the information in a single place, and by enabling the information to be reviewed by persons already familiar with the book contents, or be available to persons who never had a chance previously to learn about or read the book.

The persons who help distribute the book will not only be part of a nationwide news network, but they will be able to better themselves and their community in the process, and earn reasonable compensation at the same time, and probably an effective hourly rate two to five times more than being paid by major retailers to most of their employees. Their activities might be compared to the door-to-door representatives of ACT - Americans Coming Together, who are

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attempting to get the nation's voters to show up at the polls, through a national door-to-door selling campaign (without a book).

Types of Individuals and Businesses Which Should Consider Distributing the 3 Books to Their Own Community

There are many types of persons for whom the distribution of my 3 books could be quite rewarding. I have put together a list of the positions or description of these persons I see could be the modern-day equivalent of the 40,000 very successful Populist-Era Alliance "lecturers" and hundreds of farmer-oriented "editors". These are the people needed by each of the communities in the United States to disseminate this needed information to the public. In no particular order, these vitally important persons are:

Independent retailers, jobbers and wholesalers;

Former owners, officers and employees of now-defunct retailers, jobbers and wholesalers;

Manufacturers' and publishers' representatives;

Former manufacturers' and publishers' representatives who were driven out of business;

Former owners, officers and employees of other local businesses driven out of business;

Former employees of local businesses who lost their jobs because of cutbacks caused by one or more major retailers opening up in the area;

Present underpaid, underutilized employees of major retailers;

One of the 500,000 persons who responded during August, 2004 to an announcement by the Longshoremen's Union in Los Angeles that the union had 3,000 job openings (\$21/hour; dangerous work unloading shipping containers; 20-hours per week to avoid payment of union benefits); Los Angeles has about 3% of the nation's population, which suggests there are 16,670,000 unemployed and underemployed persons in the country today who are looking for a job paying \$400/week or more;

Sales persons;

Door to door sales;

Party-plan sales;

Recruiting a sales force;

Telephone sales;

Website exchanges and links;

Convention sales;

Fair sales;

Street sales;

Flea market sales;

Flyer distribution and sales;

Senior citizens and retired persons;

Unemployed persons;

Underemployed persons;

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Welfare and social service recipients;

Physically handicapped persons;

Persons on vacation;

Persons wanting to make a political statement;

Actors and actresses between gigs;

Musicians between gigs;

Persons in present low paying positions;

Persons seeking a portable self-employment opportunity that can be taken anywhere in the United States;

Persons wanting to create, own and run a small business;

Bored housewives or husbands;

Persons seeking a challenge;

Persons wanting to work hard and push this new opportunity as far as it goes;

Persons wanting to get out and meet new people and make new friends and associations;

Persons needing a change;

Persons needing to be busy at something worthwhile;

Persons wanting to fight back at the forces which are causing them a declining standard of living and an increased amount of work to survive;

Persons wanting to make anywhere from \$10 to \$500 or more per day;

Persons wanting to sell a unique product, i.e., one without any, or any significant, competition;

Victims of any major retailer;

Persons doing nothing else at this time;

Wants to fight for a better standard of living;

Looking for an effective political movement to make the changes that are needed;

Wants to be paid while improving the country;

Wants to be an important part of a fledgling new organization trying to bring about needed economic reforms;

An extra "product line" to sell to existing customers;

Wants to get in something new on the ground floor;

Wants to be a mover and shaker;

Want to exercise some of the power that always seems to be exercised by others;

Just curious, that's all;

I want to know why elections never seem to cure any of the major problems faced by me and others;

Persons believing there is some truth to the saying that "Money isn't everything, but it's way ahead of whatever else is in 2nd place"; and

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Interested in self-employment performed at beaches and with cell telephones.

Terms and Conditions for Each Distributor of the 3 Books

The following terms and conditions are applicable for each person (called the "Distributor") who undertakes distribution of any one or more of the three books (or any additional books published by the Publisher):

Distributor must be at least 18 years of age or have reached age of majority in state in which the Distributor resides;

Distributor pays for books in advance by credit card or PayPal through Publisher's website or sends a check or money order to the Publisher;

Distributor provides Publisher with a resale certificate or resale exemption certificate to enable Publisher to sell books to Distributor without any sales tax complications (see section on Resale Certificates below); just print out, complete and execute the form of Resale Certificate provided by the Publisher, then fax it to the Publisher (fax no. 212-307-0247). The New York form of Resale Certificate can be seen and downloaded in a section below entitled **Authorization to Collect Sales Tax; and Resales Tax Certificate Requirement;**

Minimum order for any one title is 2 copies;

Distributor purchases the books at a discount of slightly more than 50% (or a purchase price of \$9.95 for the book with a retail cover price of \$19.95). Publisher pays shipping costs.

The Distributor will be paid a Distribution Commission of \$2.00 (or slightly more than 10% of \$19.95) for each copy sold through you by a retailer, whether you provide the book inventory to the retailer or the retailer orders its inventory directly from the Publisher. Such commission is intended to be a functional discount for the Distributor's level of distribution to retailers. The Distributor must notify the Publisher right away by fax or email that the Distributor is to receive the Distribution Commission on all purchases made by such retailer, subject to repayment upon to the extent of any returns by the retailer;

the Distributor is to email or fax an invoice to the Publisher for such Distribution Commission, identifying the retailer to whom the books were sold, the number of copies of each title, and the dates covered by the invoice. The invoice will be subject to verification, to ensure that no Distribution Commission is paid on any books not sold for resale.

All books are returnable within 6 months for a 100% refund. Distributor pays for shipping costs on any returns.

Distributor is an independent contractor and is not an agent, employee, joint venturer or partner of or with the Publisher.

No territorial protection is being offered, but the right to impose territorial and customer restrictions is reserved, and may be imposed at the discretion of the Publisher. The Publisher will make an effort to coordinate sales activities of any Distributors located in the same area.

The Distributor agrees to the terms as set forth herein, as they may be amended from time to time.

The agreement between Distributor and Publisher is an at-will agreement, terminable by either party at any time (with continuation of the Distributor's right to return any unsold books in accordance with the return provision above).

Any disputes arising between Distributor and Publisher will be submitted to the American Arbitration Association, Commercial Division, in New York, New York, or to any appropriate court located in New York, New York, and the forum selection of either arbitration or the courts by one party does not preclude use by either party of the other forum.

This agreement is to be interpreted and construed under the laws of the State of New York.

This agreement shall not be amended other than in writing signed by the party to be charged.

Any notices under this agreement shall be sent (a) to the Publisher: by mail to Carl E. Person, Publisher, 325 W. 45th Street, New York, NY 10036-3803 and by fax to 212-307-0247; and (ii) to the Distributor: by mail to the shipping address of the Distributor.

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How to Contact Carl E. Person, the Publisher and Author

If you want to contact me for any reason, you may do so by calling me at 212-307-4444; by sending me an email to carl-pers@ix.netcom.com; by faxing a letter to me at 212-307-0247; or by mailing a letter to me addressed as follows:

**Carl E. Person, Publisher
325 W. 45th Street - Suite 201
New York NY 10036-3803**

The Benefits of Becoming a Distributor and Distributor of Record

There are many benefits in becoming a distributor of the books, which include

- You immediately become self-employed in distributing a needed product, having no competition, with minimum outlay by you, and no risk of loss at all;
- As a self-employed person, you have the right to deduct on your income tax returns any and all expenses relating to such self employment;
- You would become self-employed with the least amount of money imaginable (the cost of purchasing your book inventory);
- This up-front expense is 100% refundable within a 6-month period;
- You will meet new people every day and be able to discuss with them the reasons why they should buy and read one or more of the three books, being careful not to lose sales by antagonizing some of your prospective customers (whose cherished beliefs may be called into questions by parts of the books);
- You will acquire an education about and understanding of the economy as controlled by the few and having a lifetime adverse impact on you and your community, unless you are part of the top 5%;

- You will learn and use techniques for selling each of the three books, and increase your daily earnings in proportion to your selling abilities;
- The sale of 1 copy of any of the 3 books will provide you with gross income before expenses of exactly \$10.00;
- You should experiment in door-to-door residential sales during appropriate hours to see what type of hourly income you can generate for yourself. Having the book on hand for immediate sale is a big plus, especially with the attractive covers for the three books;
- Also, you should concentrate during the day on making sales to retailers. You might want to try consignment of 1 or 2 copies of 1, 2 or all 3 titles and go back periodically to the retailer to keep track of your investment, collect payment for copies sold and to replace sold copies. A consignment form for the retailer to sign can be downloaded at www.lawmall.com/salesmen/lb_consi.html;
- You will be paid a distribution fee of 10% (\$2.00) for each copy sold through you by a retailer, whether you provide the book inventory to the retailer or the retailer orders its inventory directly from the Publisher. Make sure that you notify the Publisher right away by fax or email that you are to receive the Distributor's commission on all purchases made by such retailer, subject to repayment upon to the extent of any returns by the retailer;
- You might be interested in experimenting with what is known as "party-plan" distribution. You or someone (perhaps for a fee or commission to be paid by you) should arrange for a group of 5 to 25 persons to attend a meeting at someone home or place of business or other meeting place at which time you will be able to show and discuss the three books, and encourage each of the persons at the meeting to purchase one or more of the titles (perhaps multiple copies of a title). The title most apt to be of interest for party-plan distribution is ***Self Employment***, because it advocates that families no longer spend money sending their children to college, and that they use the funds instead to finance the self-employment and home ownership of their children instead. You might want to use telephone solicitors to encourage persons to meet, and offer refreshments to those who show up. If you sold 20 books at one of these sessions, you would be obtaining nearly \$200 in gross profit, from which you would have to deduct your telephone-calling expenses and refreshments;

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- Telephone sales to individuals should be tried, although I am not sure whether it would work out.
- You should definitely try to have local independent bookstores carry the book, and become Distributor of Record for such bookstores;
- Also, go to any college, university or law school bookstores and try to get them to carry the book, and become Distributor of Record for such bookstores. You could overcome any reluctance they may have to carry the book by offering to supply it to them on a consignment basis.
- The best thing for you to do, I believe, is to plan how you are going to spend your day, or the time you are going to devote to book selling, and then do as you outline. Become disciplined in your selling habits and you should be well-rewarded in your efforts;
- Remember, your efforts are part of a distribution network to disseminate valuable information to members of your community which the major media will not provide to them. This information is needed by you and most other members of your community to increase the employment and business opportunities available to residents of your community, and to improve your standard of living. If you can be well paid for doing this important service you have the best of both worlds.

How to Sell the 3 Books, and How to Counter any Objections

Selling has its techniques, and each Distributor will be kept informed on specific selling techniques which seem to work better than others, including the way in which to begin your sales presentation with a prospective customer (such as a local resident or a local retailer).

One of the main techniques of selling is to learn about the typical objections you may expect from prospective customers, and how you can counter the objections and make the sale.

Together with your first book purchase you will be sent a copy of a pamphlet I wrote entitled "How to Encourage Residents and Retailers to Purchase the 3 Related Books; and How to Counter Typical Objections Raised by Prospective Customers".

The pamphlet will be amended from time to time to reflect new selling techniques and objection-counteracting experiences of you and other Distributors. All Distributors will be kept updated on these amendments by email or fax.

Go Ahead, You Know What to Do - Submit Your Order and Become Self-employed with a Meaningful Mission

You have learned what this opportunity is about. It is about what you can do to oppose the economic forces which are taking your share of the economy and converting it into higher prices and profits for themselves, protected by the media they own which keep you in the dark and tell you that everything keeps looking better.

You and I know this is not true, and the three related books tell the story. Get behind the books and get the story out to others in your community so that collectively we can take back our fair share of the economy.

You could probably be an effective businessperson if given the chance, and needless to say this is your chance. Don't wait for trickle-down economics to dribble down to you. It won't. As said in the 3rd book (*Saving Main Street and Its Retailers*, in Chapter 9, entitled "Understanding the Economy, 'Productivity', and Declining Standard of Living"):

This is how trickle-down economics is sold to the public. Giving all of the money to the few people at the top of the economy, let them employ the money in the way they have learned how to do to increase their concentration of the economy, and with such employment of capital by increasingly monopolized industries the public is to expect that the mo-

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nopolies, out of the sudden goodness of their greedy corporate hearts, will let a few dollars trickle down to the 138,000,000 workers of the country and the 13,000,000 self-employed and small business owners.

Trickle-Down Economics Is Really Trickle Up Economics

Don't be fooled by this for a minute.

Trickle-down economics, upon analysis, is really trickle-up economics, where the working people in America (whether employees or self-employed persons) do the work and turn over a large share of the proceeds of their work, through the government control by the rich and powerful, to the persons who control the economy, in what is a steady upward torrent of wealth from the working people into the hands of the monopolists sitting at the top.

Take Action and ORDER Now. Hit the Order button and order your inventory right now. We look forward to having you join the growing group.

My Order:

____ copies of A Law Career Is the Smart Way - to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living at \$9.95 per copy, total of \$ ____.

____ copies of Self Employment - to Avoid the Evil Economic Trio of Outsourcing, Globalization and Declining Standard of Living at \$9.95 per copy, total of \$ ____.

____ copies of Saving Main Street and Its Retailers - 20 Things You Should Know - and 3 Plans - to Protect Your Town, Local Property Values, Local Employment and Business Opportunities, and Your Standard of Living, at \$9.95 per copy, total of \$ ____.

Which method of payment: Credit card or PayPal. [add choices] What about debit card payments, how are they handled, same as credit cards?

Please input your name, address and ZIP Code, and your Distributor Number (which will be assigned to you when your first shipment is being shipped to you). In connection with your first book order, please make sure that you have downloaded, completed, signed and faxed back to me a Resale Certificate. The New York form of Resale Certificate can be seen and downloaded in a section below entitled **Authorization to Collect Sales Tax; and Resales Tax Certificate Requirement**.

Helpful Articles on Door-to-Door, Party-Plan, Telephone and Other Methods of Making Sales

The following are useful articles to read if you want to learn more about workable selling techniques as to door-to-door sales, party-plan sales, selling by telephone and other methods of making sales.

11/10/03 CNN.com published an article entitled "Do-not-call list revives door-to-door sales", which began:

Now that the national do-not-call list makes it impossible to reach millions of potential customers, some marketing companies are returning to an old-fashioned alternative: door-to-door salespeople.

That puts Michael Mullen on marketing's new frontier. He knocks on doors in the Nashville area, makes his pitch and, in a good week, earns about \$650 selling discount coupon books.

source: **CNN Article on Revival of Door-to-Door Selling**

For persons wanting to learn how to develop highly effective door-to-door selling techniques, I direct you to a list of direct-sales books, entitled "Door to door sales books I suggest", compiled by

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[Ms.] Penny, Senior manager, direct sales of Amazon.com, see **Penny's Door-to-Door Book List** (or to make it easier for you, do an internet search for "door-to-door listmania" and you will see the link).

I came across an interesting publicity flyer, entitled "Hand-out...Toyota Calling In Japan's Car Market", which stated:

Half of cars are sold door-to-door. This is shrinking due to environmental changes. Toyota has more than 100,000 door-to-door sales people.

If you want to see the different activities which a door-to-door salesperson may be doing, see CareerPlanner.com's "Job Description for: Door-To-Door Sales Workers, News and Street Vendors, and Related Workers", at **Door-to-Door Job Description** [link omitted] (or to make it easier for you, do an internet search for "door-to-door careerplanner" and you will see the link).

A report of the Better Business Bureau report on the FTC 3-day rule (for a 3-day cooling off period with respect to door-to-door sales), states in part:

The Federal Trade Commission's (FTC) regulations concerning a "Cooling-Off Period for Door-to-Door Sales" allow you to cancel certain types of door-to-door contracts. The "cooling-off period" gives you three days in which to change your mind about purchases of \$25 or more made in the home or in a place other than the seller's normal place of business.

See **BBB Report on FTC 3-Day Cooling Off Rule** [link omitted].

An interesting article for you to read is the origin of party-plan selling, or the history of the Fuller Brush salesman, entitled "People & Events: The Business of Direct Selling", History of Party Plan and Fuller Brush Selling [or search "wgbh stanley fuller"].

Various Federal and State Laws Regulating Sales

The Federal Trade Commission has a 3-day cooling off rule applicable to certain door-to-door sales (away from the purchaser's main place of business, and exceeding \$25). The FTC's explanation of such rule for consumers is set forth at **FTC Comments on 3-Day Cooling Off Rule** [link omitted]. The FTC Rule itself, called the "Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations", 16 CFR Part 429, can be found at **Text of FTC 3-Day Cooling Off Rule** [link omitted].

The rule itself does not apply to sales made door-to-door to a retailer's main place of businesses. Nor does the rule apply to sales made of less than \$25, which means that single-book sales (selling for \$19.95 plus sales tax) would not be as much as \$25, and therefore would not be subject to such rule.

I think, however, that the best practice would be to provide every purchaser with a 3-day option, which I have built into a form of receipt that I strongly suggest you use, with each of your sales. This receipt can be downloaded and copied for your use as a Distributor at **Form of Receipt Including 3-Day Cooling Off Notice**.

There are numerous laws, statute or case law, which place limitations on techniques used to make sales. Needless to say, fraud and intentional and negligent misrepresentation are high on the list of prohibited sales techniques.

A useful website for persons engaged in direct sales, including door-to-door sales, is published by attorneys Grimes & Reese, P.L.L.C., which covers various legal requirements and issues concerning door-to-door sales. See **Legal Issues Relating to Door-to-Door Selling - Grimes & Reese Law Firm**.

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Be honest, and make sure that you conform to the highest standards of selling. Don't use questionable shortcuts. Create good will for yourself and your products wherever you go.

Authorization to Collect Sales Tax; and Resales Tax Certificate Requirement

I, the Publisher, am located in New York, and am required to obtain a Tax Resale Certificate from persons (i.e., Distributors) who buy any of the 3 books for resale.

New York Distributors

If a Distributor plans to resell the books in New York, the Distributor should obtain a permit to collect sales taxes in New York by completing and filing the New York State form, which can be downloaded at **DTF-17 New York Application for Registration as a Sales Tax Vendor**.

Also, the Distributor should complete and fax back to the Publisher the New York form of Resale Certificate, which can be downloaded at **New York Resale Certificate Form ST-120 Dated 06/99**.

The multi-state resale certificate (referred to below) is **not** acceptable to the New York State sales tax authorities.

Distributors Outside of New York State

Distributors who plan to resell the books outside of New York State must determine whether they are required to collect a sales tax as to each of the states in which they plan to sell the books, and obtain authorization to collect sales taxes in each such state having a sales tax. Multi-state sales tax information can be obtained at **AICPA State Sales Tax Forms and Information**.

Also, but to a much lesser extent, you may find some useful information at **CCH Website for Sales Tax Information**. Otherwise, you should do a web search using search terms such as "Florida Sales Tax Form" or "Alabama Sales Tax Form" to find information about collection of sales taxes in your state (the name of which you should substitute for "Florida" or "Alabama" in the search terms). If you are unable to resolve your sales tax problem, please let me know and I'll try to solve the problem for you. It would be best to email to me what you have learned and what you think your problem is.

After obtaining and completing the appropriate form, you should file it in the state(s) in which you plan to sell any of the books, and don't forget to make your regular sales tax reports with payment on a timely basis.

Also, you should complete and fax to the Publisher a copy of the New York Resale Certificate (paying particular attention to Part 2 thereof). This certificate will allow the Publisher to sell books to you without collecting any New York sales taxes.

For your information, I'm including a link to the Uniform Sales & Use Tax Certificate which is accepted by most states as a Reseller's Certificate, but unfortunately not in New York State. See **Uniform Sales & Use Tax Certificate - Multijurisdiction - Revised 07/2000**.

How to Determine If a Major Retailer Deserves Your Patronage - My "Friend or Foe" Software, as Envisioned

A main part of the third book, *Saving Main Street and Its Retailers*, is to make the community an unhealthy and unprofitable climate for major retailers that are not responsive to the needs of your community. On the other hand, you want responsible retailers, whether major or otherwise, to be rewarded for their community responsiveness.

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I envision that software can be readily created which will take data concerning major retailers and others (such as manufacturers) and with a weight to the data components assigned by the individual user of the software, the user can determine for himself/herself whether the company in question is responsive to the needs of the community, as such needs are assigned weight by the user.

I am interested in obtaining some help on this project, in the following areas:

Creating the software based on a analysis of the steps which the user should take when using the software, including the selection of material data variables, and selection of the weight to be assigned to the data variables, and making sure the weights add up to 100%;

Determining what data is relevant and available for use in the system, and the cost of acquiring and updating the system; and

Determining what factors should be offered to users as factors that they should consider when determining whether a specific major retailer is responsive to community needs. For example, one factor probably should be whether the major retailer covers the healthcare costs of its employees or shifts such costs to the local community and the extent of such shifting of costs.

Summary

Let me try to summarize the points I want you to remember.

First of all, you have to comply with the sales tax requirements of the various states by registering with the state(s) in which you plan to make book sales (and collect the state's sales tax), and you have to provide a certificate to me, as the Publisher, that you are purchasing the books for resale (so that I don't have to charge you a sales tax).

Secondly, you must comply with the FTC 3-day cooling off rule (and probably should do so with consumer sales even if they are exempt as a sale of less than \$25). You can do this by using the form of receipt I have prepared, which provides the information (or space for you to provide the information) which you should give to the consumer purchaser at the time of the sale to the consumer. **Form of Receipt including 3-Day FTC Cooling-Off Language**. The cooling off period was intended to permit home owners to get out of expensive home repair contracts, and not intended to any great extent to cover sales of politically-oriented books, which might in fact be protected from regulation by the 1st Amendment. But let's not worry about asserting such Constitutional rights. It's easier to comply with the 3-day cooling off period and related requirements.

You purchase your books from me through website transactions (using either a credit card or PayPal to make payment; or if this is not feasible, you can use check and money order mailed to me).

You create a plan for you to follow, and then follow it.

When your first order is shipped out, I'm going to send you a list of Objections which I'm sure you'll meet, such as "I like things the way they are and want no change", and responses I recommend to counter various objections and encourage your prospective customers to purchase one or more of the books from you.

An important point for you to remember is that the books fill a substantial need, and there is no competition for any of the books.

Today (8/12/04) I showed a copy of my first book, *A Law Career Is the Smart Way...* to a young lawyer I met in court (who has been practicing for about 5 years), and after reading each of the 34 chapter headings - and commenting that they were "great" or "just what I was thinking" - he asked if he could buy the book [without my attempting to sell the book to him]. P.S. I gave him the book without payment, and asked if, after reading the book, he would write a review for publication in my website.

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Carl E. Person, Publisher, carlpers@ix.netcom.com

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**[End of Appendix H, Website for Door-to-Door and
Party-Plan Distribution of SAVING MAIN STREET
AND ITS RETAILERS]**

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