

LECTURE #7 – WHY SO MANY LAWYERS IN U.S.

This is one of my favorite subjects: Why are there so many lawyers in the US? 1,116,000 according to the Reading for today, # 14. I think we saw a little bit of the reason yesterday. It is that we have personal injury law as a type of law for going to court where many lawyers are able to represent people who are injured and able to receive contingent legal fees of one-third of the large amounts of money received from the car insurance companies. Most states require anyone who has a driver's license and owns an automobile to have liability insurance and that insurance pays when someone is injured by the person driving that car. So when a law student thinks of what his or her ambitions are going to be in life, what to do with a career, in many cases they think wouldn't it be nice #1) to help people with law, #2) to have an honorable respected type of profession, which is what a lawyer is in America and in most countries, and #3) wouldn't it be nice to be able to earn some meaningful amount of money. And in America there are many people who like to make money. I'm not sure we're that much different from any other country, but many people say if you look at any piece of money in the US from a 1 dollar bill all the way up to a 100 dollar bill, every bill and every coin has "In God we trust". So many people say the religion of America is money.

I. INJURY LAWYERS – Also called trial lawyers and sometimes car accident lawyers. I have seen the growing respect for injury lawyers because when I was a young lawyer attorneys for injured people were called with a negative term, "ambulance chasers". They were kind of looked down upon even though at the same time we knew they made a lot of money. But as I've gotten older and been a lawyer for almost 40 years now, I've seen that many lawyers in the injury business make a lot of money. If you can imagine, the existence of the contingent fee. What is the contingency fee? It's the fee where the lawyer gets a percentage of whatever he wins. He gets a percentage even when the insurance company gives a settlement check in advance of trial. In many cases the injury lawyer never has to go to court. So there are lawyers who are getting \$100,000 and million dollar settlements for clients from car insurance companies and receiving 1/3 of those settlements - \$33,000 every time there is a \$100,000 settlement. I had a friend who was a lawyer struggling as a sole practitioner all by himself, and all of a sudden some old friends from another state called him and said they were lawyers for a family who had been killed in a car accident in Florida and they needed a Florida lawyer to handle the claim against the insurance company of the driver of the other car. This lawyer friend of mine in Miami, Florida wrote a letter to the insurance company and within 6 months the insurance company had sent \$1.8 million to this lawyer for the children and estate of the deceased people, of which the lawyer was entitled to a third. He received a \$600,000 fee just for knowing the lawyer in another state and being involved in doing the paperwork for settling a car accident case.

A. REFERRAL FEE - Now the lawyers in the other state who knew the client and had sent the case to him received a referral fee of one-third of the Florida lawyer's fee. So he gave \$200,000 of his \$600,000 fee to the lawyers who sent him the case. So the practice and legality of referral fees and contingent fees is a major factor in the large

amount of litigation in America and the large amount of money that lawyers earn in America, especially in the personal injury field.

B. CONTINGENT - I don't want to abandon the contingent fee because it is such a major matter and major part of American law and the American person injury lawyer – especially his stock in trade and what he makes a living from. I have a real estate case, I must admit because I'm primarily a real estate lawyer, that I put in as Reading #18 under Lecture #7: A long case – trial, intermediate appeal and Supreme Court of Florida appeal, Lewis vs. Guthartz, 100 pages, 6 years. You'll see a case where I won, as a young lawyer, \$1,300,000 for 188 tenants who sued one landlord for overcharging them and charging too much for about a 5 year period in the monthly rent to them as tenants. I won \$117,000 in compensatory damages for the overcharges, \$200,000 in attorney's fees and \$1 million dollars in punitive damages. Punitive Damages are for criminal conduct, outrageous conduct, something a judge or jury is allowed to assess when the conduct is outrageous and flagrant. So I was entitled to win 40% of that \$1,300,000. Some of that was lost on appeal and the case went on for 6 years, so it's not as if I won all that in a trial that took 5 days. It took me 3 years to get to the 5 day-long trial and three years of appeals afterwards. As an American lawyer I might not have appreciated just how unusual the contingent fee was until I became friends with some Canadian lawyers, lawyers in the Anglo-American system, who think that contingent fees are outrageous. They never would accept a contingent fee or allow a lawyer to take a contingent fee in Canada. England would never allow a barrister or solicitor to accept a percentage of a case that he brought. I have a friend who is a Swiss lawyer who thinks it is outrageous. The civil code that he knows of and works with around Switzerland and around Europe would never allow a lawyer to take a percentage. Why do you think this is? What would be wrong and why would so many lawyers in so many legal systems think the contingent fee – a lawyer receiving 1/3 of a recovery in a lawsuit - is wrong? Because it stirs up litigation. It makes the lawyer a partner in the lawsuit. In fact what if someone sues for a million dollars but wants to settle the case for \$100,000? Is the lawyer who is entitled to 1/3 of that entitled to say no, he wants to make 1/3 of a million dollars? I'm not in this just for 1/3 of \$100,000. So you have a case where a lawyer has a conflict of interest because he has an interest in the case and is not just a mouthpiece or a speaker or an advocate for his client, he's almost like the client. And many people object to it. Why do you think America has defended this and allowed it for so long – at least for 100 years even though no other country permits it? It's because many poor people, and many of the people who are injured are poor and would not be able to hire a lawyer. If they had to pay him \$100 or \$200 or even \$300 an hour, or pay him an advance fee of \$1000, many people would never be able to hire a lawyer and so they would never bring a lawsuit for a car accident, being hit by a bus, slipping or falling in a grocery store or department store. Think of the number of times you go to a grocery store and the employees just leave things slippery and people fall and get hurt, or they break glass and people fall on the glass and get hurt. Think of the number of people who would not be able to hire an attorney to sue if they were required to pay money to that lawyer. That's why Americans have tolerated and put up with the contingent fee because we feel that the poor and downtrodden, the people who would not ordinarily be able to hire a lawyer, are able to find lawyers and hire them with the contingent fee. As bad as it is, as much as the

lawyers out there are competing trying to get those poor people to hire them and then to get high verdicts for them so they can retire after one or two cases, this is why we put up with it even though most legal systems do not condone the contingent fee. Does anyone know if the contingency fee is allowed in Russia? I doubt that it is, if you adopted the German civil code. I've been told that the recoveries in car accidents and injury cases are so small that there isn't enough for a lawyer to be interested anyway. But once you develop an insurance system here where people are covered by insurance that will pay someone the amount of money he's entitled to when he does get injured there will be lawyers who will be interested in trying to represent people and there will be people who will not be able to pay the lawyer unless they win.

Pardon me for getting sidetracked for so long on the contingent fee system, but contingent fees are unique to the US and I think they go a long way to explaining why there are so many more, over twice as many, lawyers in the US as in any other country. It's that carrot out in front of the face of the donkey, which in this case is the lawyer, for the lawyer to be able to make a lot of money. So not only is it his way of getting paid from someone who has no money otherwise to pay a lawyer, it's also the lawyer's way of winning a large amount of money and making himself fairly wealthy just by winning one or two cases. The contingency fee is why there are so many personal injury lawyers and why personal injury lawyers are so well off as a class and make more money than any other lawyers in the US. They don't call themselves personal injury lawyers – they call themselves Trial Lawyers. And that way they put into their class the defense lawyers on the other side of the case from them, who are insurance company lawyers. They call themselves Trial Lawyers also because they're in trial all day long, all week long, all year long. This is one of our major categories of lawyers – personal injury lawyers, trial lawyers, same thing.

II. CRIMINAL LAWYERS - There are many lawyers other than injury lawyers. In my list of lawyers, you may wonder about criminal lawyers. Criminal lawyers are an important part of the US. Maybe 10% of lawyers defend criminals and are government prosecutors in criminal cases, but you should know that only 10% of law is criminal law. In the US 90% of law is civil law – business lawsuits, divorce lawsuits, injury lawsuits and many types of business contracts and transactions and we even have lawsuits over stocks and securities, immigration and refugees, so we do not need to have a large number of criminal lawyers in the US, even though we have one of the largest jail populations in the world. We have over a million people in jail, 95% of them men and 5% women, and one of the biggest businesses in America is jails. We are even starting to hire private companies to run our jails. It is becoming a big business for private security guard companies to run jails because it's almost too big a job for government to run.

III. GOVERNMENT LAWYERS – I certainly want to talk about 2 kinds of lawyers that are very important to all of us here. One is government lawyers, which I believe are the largest number of lawyers in Russia today, and certainly a very large amount of the lawyers in the US. We have lawyers in the federal government, in Washington DC we have many many lawyers who work for our federal government. We have many state lawyers who work for the states in every state capital, which is like the capital of Karelia

is Petrozavodsk you would have many lawyers working for the state here in this state capital. For every good administrative agency there are many lawyers who work for it. Those are government lawyers. And we have ones that are municipal or city attorneys. I spent 4 years of my life as a city attorney, the lawyer managing and directing the legal department of a city, in my case a very nice and rich city, Miami Beach, Florida. I had up to 10 lawyers working for me and I hired many outside, private lawyers to defend the interest of the city. I had to worry about the police department. We had to fire people in the police department. I had to worry about the fire department. I had to worry about zoning officials, zoning inspectors, building inspectors, the city commissioners, the elected officials to try to keep them honest and keep them from making too many mistakes. I had to defend the city in many lawsuits against the city. In America we allow people to sue cities. We do put limits on the amount of money they can sue a city for. Basically we have a good 10% of those 1,100,000 lawyers in the US as government lawyers. It's an honorable profession. Let me tell you though that when I became the attorney for the city of Miami Beach Florida I was told by the mayor and the commissioners who hired me that this was a very nice position for about 3 or 4 years. But it's the kind of thing you leave in order to move into private practice and make more money. Many people will hire you in private practice to be able to deal with the city because you will understand all the city laws and how the city works and so people will hire you to deal with the city and deal with the next city attorney who comes along.

IV. REAL ESTATE LAWYERS - In addition, there's a fourth type of lawyer which is very important because that is what I am today, a real estate lawyer. Real property lawyers deal with people who build office buildings, build condominiums, build apartment buildings, and houses. There's 2 different ways of having a large ownership of apartment buildings – people can own their own apartment in a large apartment complex by making the building into a cooperative or they can make it into a condominium. Each person can own his condominium apartment or each person can own his cooperative apartment. Those are 2 different ways of owning apartments in America. I've placed some materials in the readings and you'll see them on condominiums and I've brought along some Condominium Declarations to show you how we make condominiums. If we have time at the end of this month, in my teaching (Lecture #15) I'm going to go through a transaction where someone buys a condominium. I have all the papers from the purchase and sale of a condominium unit for about \$200,000 in Tampa, Florida, USA purchased with a mortgage (Reading #25).

Real estate lawyers are about another 5% of the lawyers in the US. It's not a large percentage because most attorneys do not want to deal with the history of land ownership which they find very boring. Land ownership is one of the things I deal with. We call that title law. Titles to real property are something that a real estate lawyer deals with. We even have something called title insurance that real estate attorneys make money from in the US. Real estate lawyers also do litigation for landlords, tenants, and property owners, as you can see in my Reading # 18 on my website.

V. POVERTY LAWYERS - One of the largest areas of law that exists and has grown up in the US in the last 25 years is something that seems almost the opposite of personal

injury law, and that is poverty law. In America we have this theory that the poor are entitled to and have legal rights and they are entitled to justice just like the rich. There are many rich wealthy lawyers who feel they are not really helping society and using their abilities at law if all they represent is rich people and make money for rich people. So those lawyers will often go out and volunteer 10% of their time or a month of their year to work in storefront offices and poverty law offices to help poor people. Many poor people if injured can get a lawyer on a contingency fee, but if they're not injured, if they just need a divorce, or they have a dispute with a landlord over their rent, or if they have just a normal day to day legal problem, where do they get a lawyer? They go to legal aid lawyers because we have the government paying for large numbers of lawyers to work in offices for poor people. If you are poor, you qualify for legal aid lawyers. In criminal law we have public defenders for poor people. The government pays for criminal lawyers to defend poor people who cannot afford them. If you are familiar with the Miranda rights and know about the duty of police in America to give Miranda warnings every time they arrest a criminal. They have to tell them, "You have the right to remain silent and if you do not remain silent anything you say may be used against you. You have the right to an attorney and if you do not have enough money for an attorney, the government will pay for an attorney for you." So every criminal has the right to a public defender paid for by the government, and if there is no official public defender – sometimes there is a government office for public defenders - they will actually pay a private lawyer to defend a poor criminal just so he has a lawyer.

VI. ADMINISTRATIVE LAWYERS – There are a large number of private lawyers who deal with and fight the government lawyers in administrative agencies – these are the administrative lawyers. There are a lot of administrative lawyers in the US and one of them is the tax lawyer. In the US we have tax lawyers who specialize and do nothing but income tax. Income tax is a very very specialized type of field. Many people who are both accountants and lawyers go into income tax law. It's a very high level area of law where one can earn very much money. Income tax lawyers charge \$300 to \$500 per hour for their work. There are many companies who have to pay large amounts of income tax and so are willing to spend a lot of money with lawyers who are income tax lawyers. We have other types of lawyers who do nothing but SEC work, the Securities Exchange Commission is an administrative agency that governs stocks and bonds and investments, everything on Wall Street. There are many lawyers, in New York City especially, who deal in nothing but securities and they represent investors, companies that are insuring investments, and large stock brokerage firms. It's a very lucrative, very good field for lawyers wishing to earn a lot of money. We have environmental lawyers who do nothing but environmental law. They're an important field of law today because we have lawyers who must enforce the Clean Air Act and Clean Water Act. Many of them are on the government side, but in many cases large industries must hire environmental lawyers to ensure they're not put out of business by the laws having to do with anti-pollution, pollution in the air and pollution in the water, and they need to be sure they have lawyers who can be sure they do not violate any of these laws and can still maintain their factories and do business with their factories that do have certain small amounts of pollution in them. We also have many lawyers who are land use lawyers. One of the biggest areas of administrative law is in my personal field of real estate law. A lawyer who represents a

builder and who is going to build a high rise office building, a high rise apartment building, a condominium, needs to deal with municipalities and county municipalities as to whether or not he is allowed to build as high as he wants, as many apartments as he wants because it may be in certain neighborhoods you are only allowed to build 30 stories high and not 60 stories high. Recently I noticed in St. Petersburg, the gazprom company was given permission to build a high rise building in a neighborhood where not many highrises existed and they were able to build 40 or 50 stories high. This is the kind of administrative law that real estate lawyers practice and is very important - the ability to be able to deal with government land use and land use rules and regulations.

VII. FAMILY LAWYERS – For divorces and marital split ups. ½ of people who get married get divorced.

VIII. PROBATE, INHERITANCE, ESTATE PLANNING, AND WILLS ATTORNEYS – Is a major specialty because of income and estate taxes and planning to avoid taxes and most people want to have a Will to give their property to their families when they die.

IX. BUSINESS CONTRACTS AND CORPORATIONS – The General practitioner drafts 2 or 3 contracts a month, does a divorce, a Will, and hopes to settle an injury claim.