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**THE FEDERALIST SOCIETY, CONFERENCE: CIVIL JUSTICE AND
THE LITIGATION PROCESS: Do THE MERITS AND THE SEARCH
FOR TRUTH MATTER ANYMORE?, CONFERENCE DIALOGUE, DAY
TWO, OPENING**

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THE FEDERALIST SOCIETY

CONFERENCE: CIVIL JUSTICE AND THE LITIGATION PROCESS: DO THE MERITS AND THE SEARCH FOR TRUTH MATTER ANYMORE?

DAY TWO

OPENING

THE HONORABLE DICK THORNBURGH*

Every time they have a big act in Las Vegas or any one of the centerpieces of show biz, a warmup act always comes out to get the crowd in a receptive frame of mind. I feel as if I am fulfilling that role this morning, given the distinguished panel that you are about to hear. I am delighted to be here, and I am particularly pleased to be involved, once again, with the Federalist Society, which does such a superb job in keeping issues of public concern out front. And, certainly, one of those issues today is the area of civil justice reform, which you will be looking at this week here in Washington.

As you have heard and will hear, this has been quite a year for those of us interested in civil justice reform. For the first time ever, the Congress of the United States passed comprehensive product liability reform with bipartisan support.¹ Additionally, in *BMW of North America, Inc., v. Gore*,² for the first time ever, the United States Supreme Court—on constitutional grounds—struck down as grossly excessive a punitive damage award.³ At the same time, substantial progress has been made at the state level in enacting reforms that are designed to bring our civil justice system into balance.⁴ Most notably and most recently, after

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1. See Product Liability Reform Act of 1995, H.R. 956, 104th Cong. (1995). The Act was vetoed by President Clinton on May 6, 1996. See 142 CONG. REC. H4425 (May 6, 1996) (veto message from the President of the United States); see also *Tort Reform Legislation Since 1994*, West's Legal News, Dec. 6, 1996, available in 1996 WL 699299.

2. 116 S. Ct. 1589 (1996).

3. See *id.* at 1598-99.

4. See, e.g., Civil Justice Reform Amendments of 1995, Pub. Act No. 89-7, 1995 Ill. Legis. Serv. 224 (West); 1996 Ohio Laws 244; 1996 Ohio Legis. Bull. 2046 (Anderson). See generally *Tort Reform Legislation Since 1994*, *supra* note 1.

a protracted struggle, the State of Ohio passed a reform agenda in their legislature this week.⁵ There is, obviously, much more to be done in the race for distinction in the field of punitive damages, and it has to begin in Alabama—the home of the *BMW* case and the current NCAA champions in this area.

I was struck recently by some research that showed the total punitive damage awards during a recent six-year period in Alabama to exceed \$100 million.⁶ That is about six times the combined total of punitive damage awards in the neighboring states of Tennessee, Georgia, and Mississippi.

The plaintiffs' trial lawyers are well mobilized to resist reform, as they always have been, and they have every motive for preserving the status quo. They have also built up a substantial war chest to put their plans into action. However, my sense is that across the country today, both in legislative halls and among the populace, the tide is definitely turning. The tide is turning because the reforms that are being proposed are common sense reforms. No radical agenda is being proposed; the agenda is designed merely to bring back into balance what is otherwise a well-functioning civil justice system. The reforms are designed to deal with lawsuit abuse, and I think the fact that progress is being made to the extent it has should embolden those of us who are interested in this agenda to move it forward.

So now you will have the opportunity to listen to, and participate in, the debate today, and I hope that we can all work together to try to figure out precisely how we can make our civil justice system work better for all Americans. That is the essential challenge; it was the goal we set forth in the Department of Justice when we produced the agenda for civil justice reform that was prepared for the President's Council on Competitiveness under the direction of then Solicitor General Ken Starr.⁷

As I indicated, public opinion, in my view, has shifted toward the reform agenda, and I think it is up to those of us who are here today, and our counterparts across the country interested in reform, to keep that momentum going. So I am delighted to be here to join with those of you who are examining in detail this important aspect of our American legal agenda. I wish the panelists well, as well as all of you who are here today, and I hope that we will be able to chalk up another year of progress when we gather next.

5. See 1996 Ohio Legis. Bull. 2046; see also *Tort Reform Legislation Since 1994*, *supra* note 1.

6. See Dick Thornburgh, *Want to Win a Big Suit? Go to Alabama*, USA TODAY, June 27, 1996, at 13A.

7. See PRESIDENT'S COUNCIL ON COMPETITIVENESS, AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA (1992).