

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE  
& DEMOCRACY  
\*\*NEWS\*\*

IN THIS ISSUE: FOCUS ON ANECDOTES

## Our Rights: Crumbling By Anecdote

Dear Friend,

At CJ&D, we are very concerned about attacks on trial lawyers, the injured consumers they represent and how they are being used this year by some political interests to both raise money and score political points.

We did a recent survey of the number of times the terms “frivolous lawsuits” or “junk lawsuits” were mentioned by our President and Vice-President in speeches and at events. So far, we have found over 300 instances, and counting.

So we have embarked on several new, exciting programs aimed at mitigating the damage this kind of relentless PR assault is having.

One of the things we have done is to create the CJ&D Leadership Council, as a way of showing thanks to those who have demonstrated significant support for CJ&D’s work to protect the civil justice system.

If you would like more information on joining our Leadership Council, please contact us.

Sincerely,

Joanne Doroshow  
Executive Director

Walk down the street, and 99 out of 100 people will tell you they believe our courts are flooded with “crazy” lawsuits brought by people seeking to win a few quick bucks from some innocent defendant.

This widely-held perception is no accident. Since the inception of the “tort reform” movement some 25 years ago, this has been the untiring message of the business community’s anti-jury advertising and public relations campaign.

“Unfortunately, much of the

## Let’s Get Real

Are Americans sue-happy? You be the judge.

**Myth #1:** “Americans sue at the drop of a hat.”

**Fact:** Very few injured Americans file lawsuits. Only ten percent of injured Americans ever file a claim for compensation, including informal demands and insurance claims, and only two percent file lawsuits. *Compensation for Accidental Injuries in the United States*, Rand Institute for Civil Justice (1991).

debate on the civil justice system relies on anecdotes and atrocity stories and unverified assertion rather than analysis of reliable data,” said Marc Galanter, Professor of Law at the University of Wisconsin Law School, in his seminal work *Real World Torts: An Antidote To Anecdote*.

Nothing brought this home more clearly than *Newsweek’s* December 15, 2003 cover story, “Lawsuit Hell,” a data-starved article about how lawsuits are out of control in this country, based almost entirely on misreported or incompletely described anecdotes,

and on widely-discredited arguments that date back as far as the 1970s.

For example, the article fails to discuss any real statistics on litigation, which actually show that tort litigation is decreasing in this country. It contains no actual data to support its theory that Americans today are “sue-happy” - in fact, the data show the exact opposite is true. It cites a number of wild exaggerations, largely discredited, about costs of the legal system and “defensive medicine.” It relies on

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**Myth #2:** “More and more tort cases are being filed each year.”



**Fact:** Tort lawsuit filings have decreased 9 percent since

1992, according to the country’s most accurate and comprehensive overview of state court litigation statistics. *Examining the Work of State Courts, 2002*, a joint project of the Conference of State Court Administrators, the Bureau of Justice Statistics and the National Center for State Courts’ Court Statistics projects (2003).

**Myth #3:** “Jury verdicts are exploding”

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## No One Likes a Hypocrite

Look who's suing:

**George W. Bush,**  
"tort reform" advocate.

In 1999, Bush filed a lawsuit against Enterprise Rent-A-Car over a minor fender-bender involving one of his daughters in which no one was hurt.

Although his insurance would have covered the repair costs, making a lawsuit unnecessary, Bush sought additional money from Enterprise, which had rented a car to someone with a suspended license.

In this case, Bush seemed to understand one of the most important functions of civil lawsuits – to deter future wrongdoing. The case settled for \$2,000 to \$2,500.

**Sen. Rick Santorum(R-Pa.),**  
"tort reform" advocate.

In December 1999, Santorum supported his wife's medical malpractice lawsuit against her chiropractor.

At trial, the Senator testified that his wife should be compensated for the pain and suffering caused by her botched spine adjustment. She asked for \$500,000 and was awarded \$350,000, a verdict the judge set aside, deeming it excessive.

**ABC News Correspondent  
John Stossel, lawsuit critic.**

When a pro wrestler hit Stossel in 1986 after he implied that pro wrestling was fake, Stossel sued. In settling his lawsuit, Stossel reportedly accepted

\$200,000 for his pain and suffering.

**Medical societies and the  
American Medical  
Association, leading the  
charge to limit malpractice  
lawsuits.**

The Litigation Center of the AMA and state medical societies have been involved in 62 cases between 2000 and 2003 as part of their mission to pursue litigation on behalf of doctors.



## Let's Get Real *continued...*

**Fact:** According to data released April 1, 2004, median jury awards in personal-injury cases "fell significantly," dropping 30% in 2002 to \$30,000, from nearly \$43,000 in 2001. "Malpractice Awards Remain Flat," *Wall Street Journal*, April 1, 2004. Jury Verdict Research is the source for this statistic, so it is likely the drop is even more significant since JVR data is highly inflated. Also, the top 10 jury verdicts dropped to the lowest total amount since 1997, and the number one verdict was the lowest in a decade. Bill Ibelle, "Top Ten Jury Verdicts Much Smaller in 2003," *Lawyers Weekly USA*.

**Myth #4:** "Civil jury trials are clogging the courts."

**Fact:** The vast majority of

tort cases are resolved by neither juries nor judges. In state courts, only 5 percent of tort cases were disposed of by trial in 2001. *Examining the Work of State Courts, 2002* (2003).

During fiscal years 1996-1997, a jury or bench trial decided only 3 percent of federal tort cases, meaning that 97 percent of tort cases were not decided by trial. "Federal Tort Trials and Verdicts, 1996-97," NCJ 172855, U.S. Department of Justice, Bureau of Justice Statistics (1999).

**Myth #5:** "The legal system's 'cost to society' is an estimated \$200 billion a year"

**Fact:** This widely-discredited \$200 billion figure is a cal-

culated based on all insurance premiums – even auto insurance for minor fender benders that never come close to a courtroom.

In other words, the figure has nothing to do with lawsuits or the legal system. It also includes the immense costs of operating the incredibly wasteful and inefficient insurance industry. Moreover, most of the costs of the system are the result of corporate wrongdoing causing injury.

More importantly, such numbers fail to factor in the cost savings, particularly to the taxpayer, of compensation and product safety. See Americans for Insurance Reform, "Tillinghast's 'Tort Cost' Figures Vastly

Overstate the Cost of the American Legal System (Jan. 6, 2004)

**Myth #6:** "Huge, multimillion-dollar punitive damages awards are routine."

**Fact:** Awards of punitive damages in tort cases are both infrequent and modest in size. According to the most recent data from the Bureau of Justice Statistics of the U.S. Justice Department, punitive damages are imposed in only 3.3 percent of cases, and the median (typical) punitive damages award is \$38,000. "Tort Trials and Verdicts in Large Counties, 1996," U.S. Department of Justice, Bureau of Justice Statistics, NCJ 179769 (August 2000).

## Our Rights: Crumbling By Anecdote *continued...*

cases that were thrown out or never filed as evidence that the system is out of control. It repeatedly calls juries overly sympathetic, emotional, and unable to handle complex issues, even though close observers of the jury system, including judges, believe the opposite. And it mentions almost nothing about the critical benefits of our civil justice system.



The media watchdog organization, Fairness & Accuracy in Reporting, severely attacked the story in the March/April issue of its magazine, *Extra!*. In a story called, “Trial by Anecdote; *Newsweek’s* ‘lawsuit explosion’ blown away by facts,” author Neil deMause wrote that the story was “based on faulty assumptions and outright misstatements – all to tout a legislative gimmick known as ‘tort reform’ that is designed to protect corporations from liability for their own misdeeds.”

Like print and broadcast media, the Internet has helped spread untrue depictions of the civil justice system. Through e-mail and websites, such as *Overlawyered.com* or “Loony Lawsuit” pages on “tort reform” sites, stories about “senseless” lawsuits can be shared by millions without a thought as to whether they’re correct or true. This is particularly irresponsible when, as is typical, cases are not cited by

name or even by date so they can be checked for accuracy. When journalists or researchers do track them down, they find in virtually every situation that such lawsuits have been misrepresented and misused.

An egregious example of this sensational storytelling is a list of six crazy “real lawsuits” circulating around the Internet since May 2001, all of which are entirely made up.

According to *Snopes.com*, a website that debunks urban legends, “All of the entries in the list are fabrications – a search for news stories about each of these cases failed to turn up anything, as did a search for each law case.”

In 2003, *Washington Post* media columnist Howard Kurtz reported on confronting *U.S. News & World Report* owner Mort Zuckerman about referencing these fictitious cases in an article about crazy lawsuits.

“Great stuff,” said Kurtz after describing two of the lawsuits cited by Zuckerman. “Unfortunately for Zuckerman, totally bogus. Two Web sites -- *www.StellaAwards.com* and *www.Snopes.com* -- say the cases ... are fabricated, and no public records could be found for them. Zuckerman has plenty of company. A number of newspapers and columnists have touted the phantom cases since they surfaced in 2001 in a Canadian newspaper.”

For years, consumer groups have been trying to bring to light the real facts about some of these fictitious or misrepresented anecdotes. As far back as 1986, consumer groups brought several victims to tes-

tify before Congress in an attempt to clear the record regarding their cases.

**“Unfortunately, much of the debate on the civil justice system relies on anecdotes and atrocity stories and unverified assertion rather than analysis of reliable data,” said Marc Galanter, Professor of Law at the University of Wisconsin Law School.**

One was Charles Bigbee, whose case was repeatedly distorted in public speeches by President Reagan, on national television by insurance industry executives, and on editorial pages of newspapers like the *Wall Street Journal*.

Bigbee testified, “I believe it would be very helpful if I could talk briefly about my case and show how it has been distorted not only by the President, but by the media as well.”

Yet use of these anecdotes has not stopped and is now so prevalent that challenging them presents a nearly impossible task. Groups like CJ&D try to correct the record whenever they can. (See article on the McDonald’s Coffee case, p.4.)

But in the late 1990s, the Washington Legal Foundation, a politically conservative law firm that files cases around the country on behalf of corporate interests, placed several advertisements on the high-

priced *New York Times* Op-Ed page. These ads, which resembled Op-Ed columns, contained a list of gimmicky characterizations of so-called “crazy lawsuits,” showing a system out of control. The descriptions were, almost without exception, completely misleading.

In early 1999, CJ&D wrote to *New York Times* publisher Arthur Ochs Sulzberger, Jr., requesting that “the *New York Times* immediately cease publication of Op-Ed page advertisements from the Washington Legal Foundation (WLF)” as “minimal research efforts on just two recent ads have found them to contain false and misleading information.”

CJ&D requested that CJ&D be permitted to submit a “letter to the editor” in response to these Op-Ed page ads. Organizations like CJ&D can not afford to pay the \$23,000 fee required to run a counter-advertisement.

The *Times* refused. And the Washington Legal Foundation threatened to sue CJ&D for libel. So it goes.



## The McDonald's Coffee Case

Everyone's heard of the McDonald's coffee case, the crazy case of a woman spilling hot coffee on her lap and getting \$3 million.

The facts of this widely misreported and misunderstood case are as follows: 79-year-old Stella Liebeck was sitting in the passenger seat of her grandson's car having purchased a cup of McDonald's coffee. After the car stopped, she tried to hold the cup securely between her knees while removing the lid, but the cup tipped over, pouring scalding hot coffee onto her. She suffered third-degree burns over 16 percent of her body, necessitating hospitalization for eight days, whirlpool treatment for debridement of her wounds, skin grafting,

scarring and disability for more than two years. Despite these extensive injuries, she offered to settle with McDonald's for her medical bills - \$20,000 - but the company refused.



At trial, the jury learned, among other things, that:

1) McDonald's sold its coffee at super-heated temperatures - 180 F° to 190 F° - which if spilled, causes third-degree burns in two to seven seconds, burns that do not heal without extensive treatments which

cost tens of thousands of dollars and results in permanent disfigurement, extreme pain and disability for many months or years;

2) For more than 10 years, McDonald's knew about the risk of serious burns from its scalding hot coffee - more than 700 people, including children and infants were burned from 1982 to 1992 - a risk leading experts found unacceptable; and

3) The company never warned customers about the risk of serious burns from spilled coffee served at McDonald's required temperature, could offer no explanation as to why it did not and had no plans to lower the coffee's temperature when sold.

The jury awarded Liebeck \$200,000 in compensatory damages - reduced to \$160,000 because the jury found her 20 percent at fault - and \$2.7 million in punitive damages for McDonald's indifference. (To put this in perspective, McDonald's revenue from coffee sales alone is in excess of \$1.3 million a day.)

The trial judge subsequently reduced the punitive damages to \$480,000 and refused to grant a new trial in the case, calling McDonald's behavior "callous." The parties ultimately settled for an undisclosed amount. The day after the verdict, the McDonald's where Liebeck was burned sold its coffee at 158 F°.

## SUPPORT CJ&D— BECOME A MEMBER!

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**Associate (currently \$500, half the usual rate of \$1,000!) and receive:** all Subscriber benefits, plus free copies of CJ&D's ground-breaking bi-monthly White Papers on critical subjects and all of CJ&D's major studies; unlimited access to the CJ&D library, which is fully accessible on an exclusive password-protected section of CJ&D's Web site.

**Fellow (\$5,000) and receive:** all Associate benefits, plus exclusive personal correspondence from CJ&D containing inside information and analyses of trends and topics.

**Leadership Council member:** Please contact Joanne Doroshow for more details.

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