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***READING BETWEEN THE  
HEADLINES —  
THE MEDIA AND JURY VERDICTS***

*By Emily Gottlieb\**

**INTRODUCTION**

A principal goal of the corporate lobbies behind the “tort reform” movement is to take compensation judgments away from civil juries. They seek to limit the power and authority of juries and in some cases, to replace the civil jury system with a statutory structure over which their political action committee money can have more control. Since the 1980s, when this movement largely originated, anecdotal descriptions of a few atypical or seemingly “crazy” lawsuits have been the cornerstone of its anti-jury advertising and public relations campaign.

By focusing on a few rare, anecdotal cases, instead of the majority of cases that pass through the courts each year, this campaign feeds into a false and dangerous perception that the system is overflowing with frivolous lawsuits. Often such verdicts have either been thrown out or substantially reduced by trial judges or appellate courts, which is exactly how the system is supposed to work. Yet the public is given the false impression that a plaintiff received a windfall, a defendant was financially ruined or the system failed.

Unfortunately, the media are sometimes this movement’s unwitting agents. There is a natural tendency by some in the mainstream media to publicize sensational jury awards. This coverage typically pays insufficient attention to the full facts of a case and later actions by judges and appellate courts. Repeated headlines with million-dollar jury verdicts that grab readers’ attention inevitably give the impression that such verdicts are the norm rather than the exception. More often than not, articles

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*“Fighting to  
protect the right  
to jury trial and  
an independent judiciary for  
all Americans.”*

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... a significant body of empirical evidence supports the view that civil juries are competent, responsible and rational, and that their decisions reflect continually changing community attitudes about corporate responsibility and government accountability.

emphasize the monetary aspect of cases rather than what prompted a jury to make the award. The severity of the harms suffered by plaintiffs and corporate responsibility for those injuries are often buried within the text.

Sustained attention to jury cases does not depend on whether the parties have resolved their dispute but whether the situation continues to unfold in a “newsworthy,” *i.e.*, exciting, sometimes sensationalistic way. Thus, little if any attention is paid to the fact that most jury awards are relatively small, that larger ones are usually reduced on appeal or that many plaintiffs (and their attorneys) are fortunate to see a fraction of payments owed them.

Contrary to the impression given by the coverage of many jury verdicts, a significant body of empirical evidence supports the view that civil juries are competent, responsible and rational, and that their decisions reflect continually changing community attitudes about corporate responsibility and government accountability. The consensus among academics, judges and jurors themselves has always been that the system works extremely well.

This report analyzes how the media’s reporting of jury verdicts sometimes perpetuates the misperception that our civil jury system is in a state of emergency. Part I examines how the myth of the “out of control” or “runaway” jury is a fiction fueled by headlines. By comparing news coverage with statistical data, we see the extent to which the media over-represent the proportion of disputes resolved by juries, the rate of plaintiff victories handed down by juries, the size of typical jury awards and the number (and median size) of jury-decided punitive damage awards. Part II discusses why unbalanced reporting exists and why the public should be concerned about such errors of omission. Media coverage of jury verdicts is governed more by a need to excite than to inform, assisting “tort reformers” in their on-going quest to turn public opinion against the current civil justice system. Part III offers positive steps to start minimizing the systematic distortion of jury verdict reporting. This section concludes that concerted action by the legal and media communities is not only warranted but possible.

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## **PART I: MEDIA FICTIONS VERSUS STATISTICAL REALITIES**

To explore how the media characterize jury verdicts, and how that characterization compares with objective data, we analyzed various news stories and editorials. Consistent with our expectations, the majority of coverage echoed fictions created by “tort reformers.” More specifically, we discovered that a disproportionate share of articles misrepresented facts about cases or suggested the verdicts were the result of unbridled, emotional, pro-plaintiff juries.

### **A. METHODOLOGY**

We searched the Internet and on-line news services for articles and commentaries on lawsuits, juries and the civil justice system in general. We also examined law journals and other periodicals for scholarly analyses of media reporting on tort litigation.

### **B. RESULTS**

Our review of media sources confirms a pattern of reporting with regard to jury verdicts. Depictions of juries as overly sympathetic to plaintiffs were commonplace. Large compensatory and punitive awards were mentioned with such frequency so as to significantly exaggerate their occurrence. Post-trial coverage, where the majority of verdicts are reduced or never paid, was virtually non-existent. Thus an observer, whose only knowledge of tort litigation is gleaned from media sources, could wrongly believe that the nation is being besieged by runaway juries dolling out enormous jackpot-size awards to plaintiffs regardless of the merits of a case.

Consider the following examples showing how media reporting can minimize the significance of an injury and the defendant’s misconduct, making a large jury award seem absurd:

***JURY AWARDS STAGGERING \$1 BILLION IN DAMAGES: MILWAUKEE GO-KART MAKER SUED IN FLORIDA CRASH THAT CRITICALLY BURNED WOMAN***

A Milwaukee county jury assessed \$1 billion in punitive damages Tuesday against the founder of Johnson's Park Go-Kart track, in an award that appears to have set legal history.

"I've never heard of anything approaching that," said Howard Eisenberg, dean of the Marquette University Law School. "Even in cases with high punitives, they have not been \$1 billion.

"It may exist somewhere, but I've never heard of it."

Previous cases involving legal disputes between large corporations have resulted in verdicts exceeding billions, but nothing like that figure has ever been approached in a case based on a single personal injury, lawyers familiar with the case said.

Circuit Judge Diane Sykes, who presided over the trial, called the verdict "stunning, absolutely stunning."

The lawsuit against Johnson Kart Manufacturing Inc. and its president, Melvin C. Johnson, arose from a Go-Kart accident in which a woman suffered burns nearly as incomprehensible as the jury's verdict.<sup>1</sup>

What has the reader learned from the headline and first six paragraphs of the account? A jury awarded an unprecedented amount of money that "rational thinkers," *i.e.*, academics, lawyers and judges, can't understand. Not surprisingly, closer examination of the facts of the case, which are buried much later in the article, makes the jury's verdict entirely comprehensible.

After reading six more paragraphs about the "staggering" jury verdict — one of which mentions in passing that the victim suffered third- and fourth-degree burns to over 93 percent of her body when the Go-Kart she was driving tipped and burst into flames — the reader begins to understand the basis for the award. The plaintiff, a 32-

year-old mother of two, was not only conscious while trapped in the vehicle for over two minutes as gasoline from the fuel tank burned but she also suffered unspeakable pain and suffering until her death one year later. After the accident, which destroyed her fingers, toes, ears and nose, the plaintiff underwent extensive treatment in complete isolation from her family. Her children were not allowed to see her for this entire year.

As reported in the article's 23rd paragraph, during the trial, the jury learned that the defendants, Johnson Kart Manufacturing Inc. and its president, Melvin C. Johnson, had not only altered the Go-Kart's engines, causing the gas caps to come off the vehicles, but also that Johnson himself knew the caps were coming off and did nothing. If Johnson had acted, the plaintiff's injuries and death would have been prevented. After hearing the case, the court directed a verdict for the plaintiff on liability. The jury assessed \$20 million for the victim's pain and suffering and levied \$1 billion in punitives for the defendants' willful disregard of others. Though it was heavily reported that the jury "awarded" the plaintiff's estate \$1 billion in punitive damages,<sup>2</sup> the case ultimately settled for very minimal money because the defendant was bankrupt.<sup>3</sup>

***BARTON WINS \$29.6 MILLION; WAS VERDICT FAIR? LEGAL EXPERTS CAN'T AGREE***

Depending upon who's tapped as the analyst, the jury's verdict of nearly \$30 million in the Rachel Barton case was a testament to the wisdom of the jury system, a horrible loss for society, or, in a succinct summation provided by one of the country's leading experts on tort law, simply "crazy."

"I'm really quite stunned," said Richard Epstein, a University of Chicago law professor and the author of a tort-law textbook that is familiar to law students around the country. "I thought juries had more sense than that."<sup>4</sup>

As in the Go-Kart case, the readers' attentions are immediately directed toward the size of the jury award rather than on the defendant's misconduct or the severity of the plaintiff's injuries. It is interesting to note that the

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reporter cites Professor Epstein, who was not in the courtroom and heard none of the evidence, twice — in the second paragraph mentioned above and in the latter half of the article after the reporter attempts to show this verdict as part of a “pattern” of million-dollar jury verdicts.<sup>5</sup> In both instances, the jury verdict is characterized as “crazy.”<sup>6</sup> The emphasis on Professor Epstein’s credentials as “one of the country’s leading experts on tort law” gives his assessment a strong air of credibility.

The full facts that led to the verdict, to which the article pays relatively little attention, if any, are these: the plaintiff, an award-winning violinist, exited a train, and as she was exiting, her violin became wedged and the train doors closed on the violin case strap. The plaintiff was pinned to the doors, screaming for help, as she was dragged 366 feet.<sup>7</sup> The train was finally stopped due to the efforts of a passenger, who upon hearing the woman’s cries repeatedly pushed a signal button to get the engineer to stop the train.<sup>8</sup> The plaintiff’s left leg was amputated during the accident; her right leg also suffered serious injury.

At trial, the plaintiff argued that the conductor was negligent in failing to check for passengers before leaving the station, a practice followed by other railway systems across the country.<sup>9</sup> Evidence in the case showed that the defendant knew of 14 previous accidents where riders were pinned between train doors in similar circumstances but still failed to enforce a “second-look” rule to help prevent future such accidents.<sup>10</sup> On the basis of these facts, the jury returned a verdict of \$29.6 million.

It is now almost two years after the decision and the plaintiff has yet to see any of her “winnings.” Her medical condition is considered stable but is expected to worsen in the immediate future. Her case against the railroad is still on appeal.<sup>11</sup> Many of these facts have never been reported by the news media.

### **WHIRLPOOL ORDERED TO PAY \$581 MILLION**

The Whirlpool Corporation, the largest United States appliance maker, was ordered to pay \$581 million by an Alabama jury that said three people who bought satellite television dishes were misled over a credit agreement with the company's former finance unit.

The circuit court jury in Hale County, Ala., awarded \$975,000 in compensatory damages and \$580 million in punitive damages on Friday. Whirlpool said today that it would appeal the verdicts over the claims, which total about \$2,000.<sup>12</sup>

The above report was placed on the Bloomberg Wire and reported in such publications as the *New York Times*. ABC News anchor Peter Jennings described the verdict this way:

... In other news today, another jury in Alabama has decided on another enormous damage award — the largest ever in Alabama this time. The Whirlpool Corporation was ordered to pay more than \$500 million to two customers who say they were cheated out of \$1,200.<sup>13</sup>

Based on these reports, the public might believe that a jury awarded \$581 million to two or three people to compensate them for losing \$1,200. This seems ridiculous. In fact, the case concerned serious misconduct by Whirlpool. The jury heard evidence that the company had dealers all over the state soliciting — door-to-door — poor, unsophisticated and elderly customers to purchase satellite-TV dishes for \$1,100 plus 22 percent interest. The same equipment could be bought at an electronics store for \$199, amounting to an effective interest rate of 300 percent. According to lawyers in the case, one witness who was sold a satellite dish was legally blind. Another had less than a 5th grade

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education. A former agent who later quit testified that Whirlpool specifically targeted illiterate and unsophisticated people, and that he had trained others to lie about the terms of the financing which included a deceptive credit card scheme.<sup>14</sup>

A juror who spoke to one of the lawyers in the case said that the jury was “sick” at how Whirlpool treated poor, uneducated people, misrepresenting to them from the very start. The juror also said the jury was “inflamed” that there were still “thousands of people out there” who were victims of the scheme, but that Whirlpool had not helped those people. They felt their verdict, even though it might be reduced by the judge or on appeal was important “to get their [Whirlpool’s] attention.”<sup>15</sup> The verdict was indeed eventually cut nearly in half – to \$300 million – and the parties later settled for an undisclosed sum.

Biased depictions of jury verdicts are not unique to the aforementioned news reports. Explicitly evaluative headlines are easy to find. For example, “Jurors’ emotions play large role in verdict,”<sup>16</sup> “Another Outrageous Jury Award”<sup>17</sup> and “Damages beyond reason”<sup>18</sup> are representative of characterizations the public comes across daily. The constant stream of headlines citing million-dollar-plus jury verdicts only strengthens the fiction of plaintiff windfalls before irrational juries. “\$90 Million Awarded in Car Rollover Case,”<sup>19</sup> “Fen-Phen Suit Nets Pair \$29.1 Million Jury Award,”<sup>20</sup> “Ravenwood patient awarded \$55 million,”<sup>21</sup> “Jury Hands Car-Crash Victims A Record \$5B,”<sup>22</sup> “Jury Awards Two Brothers \$105 Million”<sup>23</sup> are merely a few examples.

Even those who read beyond the headlines are not guaranteed an accurate account of jury behavior. Very often newspapers and magazines make blanket statements about juries – that they are “known to be sympathetic to plaintiffs over defendants in high-stakes civil cases,”<sup>24</sup> “have awarded punitive damages to plaintiffs over and above the compensation for their alleged losses”<sup>25</sup> and “tend to empathize with plaintiffs.”<sup>26</sup>

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The most prevalent media distortion, however, is that juror sympathy has transformed courtrooms into casinos, where the odds are good that any plaintiff with a half-baked claim will hit the jackpot.<sup>27</sup> One of the most glaring examples is an article posted on the ABC News website. At the top of the piece, “A Look at Big Jury Verdicts; Winning Big,” one immediately sees a graphic of a king similar to that found on ordinary playing cards.<sup>28</sup> The king, clearly meant to represent injured plaintiffs, has one arm in a sling and the other holding up a fistful of dollars. The plaintiff-as-“one-armed-bandit” analogy is further emphasized by the king’s encasement in a slot machine, where the reader is invited to try his hand at a game of “jackpot justice.” One click on the machine’s arm leads to a graphic of 10 playing cards, with the ace being the top jury award of 1998. Clicking on an individual card reveals the amount of the verdict, along with a cartoon-like picture and a brief description of the facts of the case. Clicking on each caption on the front of the slot machine — “The Price of Damages,” “Hit’em Where It Hurts,” “A Step Too Far,” and “Half the Battle” — leads to four more kings pictured within the article, adding to the idea that all juries play games with other people’s money.

### **C. STUDIES FIND SIMILAR PATTERNS OF UNBALANCED COVERAGE**

Recent studies confirm our hypothesis regarding selective media coverage of jury verdicts. For example, researchers Daniel Bailis and Rob MacCoun found that coverage of tort issues in five national magazines from 1980 to 1990 exaggerated the size of jury awards and the frequency of jury trials.<sup>29</sup> As part of their study, the researchers compared jury award amounts reported in *Time*, *Newsweek*, *Fortune*, *Forbes* and *Business Week* with six empirical studies — two published in 1987, one in 1989, another in 1993 and two in 1995 — that contained data from federal and state courts around the country. Bailis and MacCoun found that the median jury award discussed in the magazine articles was \$1,750,000, whereas the median jury award in the six empirical studies collectively ranged from a low of \$51,000 to a high of \$318,000.<sup>30</sup> Bailis and MacCoun also noted that, compared with a Bureau of Justice Statistics study of 75 state trial courts in 1992,

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showing that only 2.3 percent of tort suits in state courts were disposed of by jury trial, 37.7 percent of the specific resolved lawsuits mentioned in the magazine sample were disposed of by juries.<sup>31</sup> Such gross distortions about the size of jury awards, coupled with misleading rates of jury-resolved litigation, give a false impression of the civil justice system. More specifically, each mischaracterization — namely that juries always award big judgments and that a large percentage of tort disputes are resolved by juries — builds upon the other, painting a grossly erroneous picture of a jury system spiraling out of control.

Studies of newspaper coverage also show skewed reporting of jury verdicts. In one study, researchers discovered that the mean personal injury verdict reported in the *New York Times* over a six-year period was almost 16.5 times larger than the mean award recorded in the *New York Jury Reports* for New York State and 15.4 times larger than the awards recorded in the metro New York area.<sup>32</sup> In addition, median awards were reported at amounts 17.2 and 15.7 times higher than the actual amounts recorded throughout New York State and metro New York, respectively.<sup>33</sup> Similarly, *New York Newsday* reported an average jury award almost 6 times higher than those documented throughout New York State and a median jury award almost 9 times higher than the median award recorded in the state.<sup>34</sup>

Another review of newspaper reporting concludes that print media selectively emphasize big-dollar jury verdicts. Data collected from the *New York Times*, *Wall Street Journal*, *Washington Post*, *Los Angeles Times* and *Christian Science Monitor* from 1980 to 1999 indicate that newspapers often prefer drama to accuracy.<sup>35</sup> According to the study, 80 percent of reported compensatory jury awards exceeded objective median statistics; 88 percent of reported punitive jury awards surpassed the real-world median; and 85 percent of reported non-specified jury awards overshot the true median.<sup>36</sup> Such newspaper-endorsed exaggerations of jury awards, together with over-coverage of plaintiff verdicts vis-à-vis the actual rate of defendant victories, subject the public to an unbalanced view of jury behavior.

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#### D. OTHER JURY AWARD DATA

Real-world data, as opposed to media reportage, about jury verdicts also demonstrate the extent to which news coverage exaggerates information regarding the size and frequency of awards. According to the most current data available from the National Center for State Courts, which tracks state court statistics nationally, the overall median jury award for all tort cases in 1996 totaled \$30,000,<sup>37</sup> an amount far below the numbers mentioned in magazine and newspaper articles.<sup>38</sup> Median jury awards in non-asbestos product liability, medical malpractice and asbestos cases were \$379,000, \$254,000 and \$227,000, respectively.<sup>39</sup> Differences between judge and jury awards in tort cases were virtually non-existent: victorious plaintiffs recovered over \$250,000 in 17 percent of jury-decided cases and in 14 percent of judge-decided cases.<sup>40</sup>

It is also getting increasingly difficult for plaintiffs to win tort cases before juries: statistics released in August 2000 show that only 47.5 percent of plaintiffs in tort cases won their jury trials in state courts in 1996,<sup>41</sup> compared to 50.3 percent in 1992 (in 1996 dollars).<sup>42</sup> In contrast, plaintiffs won 56.9 percent of the time in state tort bench trials in 1996.<sup>43</sup> In products liability (non-asbestos) and medical malpractice cases, plaintiffs won before judges 70.3 and 38.2 percent of the time respectively in 1996, while only winning 31 percent and 23 percent in these cases, respectively, before juries.<sup>44</sup> In 1992, the rate of medical malpractice plaintiff victories in front of juries was 7.5 percent higher at 30.5 percent.<sup>45</sup> Median state tort trial jury verdicts are dropping as well: the median jury award in 1996 was \$30,000.<sup>46</sup> In 1992, it was 90 percent higher, at \$57,000 (in 1996 dollars).<sup>47</sup>

Data from Jury Verdict Research, a jury verdict publishing firm, show that the percentage of cases where tort plaintiffs recover anything has undergone a substantial decline within the last ten years studied, decreasing from 63 percent of cases in 1988 to only 53 percent in 1998.<sup>48</sup> These are cases that have gone to trial, *i.e.*, where a plaintiff has already prevailed before a judge

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on all of the defendant's preliminary motions to dismiss the case. Moreover, JVR samples are already skewed towards high-end verdicts because their data collection methods rely on verdicts that are self-reported, highlighted in the media or spread through word of mouth.

JVR data also show that million-dollar jury awards only occur in cases involving the most severe personal injuries.<sup>49</sup> Of the cases reported between 1997 and 1998, million-dollar awards were received by 94 percent of those who suffered paraplegia or quadriplegia, 71 percent of cases where a leg or arm was amputated, 42 percent of cases involving death and 24 percent of burn victims.<sup>50</sup> In medical malpractice cases, only in lawsuits that involved brain injuries or paralysis were median verdicts or settlements \$1 million or more.<sup>51</sup>

The Bureau of Justice Statistics of the U.S. Justice Department recently reported that in 1996, civil juries awarded punitive damages in only 2.5 percent of tort trials, while judges awarded punitives in 7.9 percent of tort cases.<sup>52</sup> Furthermore, the median tort punitive damage award made by a judge equaled \$75,000, \$48,000 higher than the median punitive jury award of \$27,000.<sup>53</sup> Juries are also awarding smaller punitive damages amounts to winning tort plaintiffs: between 1992 and 1996, the median jury award declined by 25 percent, from \$36,000 in 1992<sup>54</sup> to \$27,000 in 1996.<sup>55</sup>

Despite extensive media coverage of large jury verdicts, extremely large awards are rarely upheld by the trial judge or on appeal. According to a recent study of 100 jury verdicts of \$1 million or more decided in 1994, 32 verdicts were set aside or reversed and 33 were reduced.<sup>56</sup> There was also a distinct correlation between the size of the verdict and the likelihood of reduction on appeal. Of the 50 cases where damages totaled \$20 million or more, 22 were reversed.<sup>57</sup> Twelve of the product liability, wrongful death, medical malpractice, asbestos and general personal injury verdicts were reduced; 10 of the aforementioned types of cases were reversed.<sup>58</sup>

...jurors often show doubts about, and sometimes even hostility toward, injured plaintiffs.

Contrary to popular belief, the data also found that plaintiffs often see little if any portion of an award. In at least 10 of the 100 cases studied, the defendant's assets or insurance coverage was insufficient relative to the amount of money owed; in 6 cases, defendants ultimately paid nothing.<sup>59</sup>

#### **E. CREDIBLE AND OBJECTIVE JURY STUDIES FIND THAT JURY VERDICTS ARE EXTREMELY RATIONAL AND GENERALLY CONSERVATIVE**

Stephen Daniels and Joanne Martin, authors of an exhaustive analysis of juries, found there to be “little or no empirical information available regarding many of the claims made by the reformers about juries and the civil justice system.”<sup>60</sup> Similarly, in studying data from hundreds of jury trials and jury simulations, Professors Valerie Hans and Neil Vidmar found that juror incompetence is a rare phenomenon. This is because the deliberative process allows jurors to pool their collective memories, giving them the opportunity to recall and analyze the evidence and the law. One study examining jurors' memories for facts and law found that a jury's collective memory was large, recalling 90 percent of the evidence and 80 percent of the instructions. Difficulties in understanding the judge's instructions were often cleared up during deliberation. Hans and Vidmar also found “much evidence that most people, once actually serving in a trial, become highly serious and responsible toward their task and toward the joint effort to deliberate through to a verdict.”<sup>61</sup>

Professor Hans' recent book, *Business on Trial: The Civil Jury & Corporate Responsibility*, presents decade-long research on jury verdicts and finds that “jurors often show doubts about, and sometimes even hostility toward, injured plaintiffs.”<sup>62</sup> “This is not to say that jurors are *never* sympathetic,” she explains, “Rather, they have a highly differentiated reaction to the civil plaintiff that flies in the face of the conventional wisdom that jurors are nothing more than bleeding hearts.”<sup>63</sup> In countering the popular perception that civil jurors are necessarily pro-plaintiff, Hans maintains that judge and jury verdicts

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are remarkably similar, and “when their decisions diverge, juries are no more likely to favor the plaintiff in civil litigation, including litigation with business defendants,” with jurors “often suspicious and ambivalent toward people who bring lawsuits against business corporations.”<sup>64</sup> According to Hans,

...[m]ost business litigants in the cases that were part of this study were described in a neutral or positive light. In a minority of cases, jurors levied some harsh comments against particular business defendants, but to the extent that I could determine through interviews, their criticism seemed to be linked largely to trial evidence of business wrongdoing rather than to jurors’ preexisting anti-business hostility. In fact, general attitudes toward business were only modestly related, at best, to judgments of business wrongdoing.<sup>65</sup>

## **PART II: THE DANGERS OF INACCURATE REPORTING**

The media and their advertisers are constantly competing for the public’s attention. Most newspapers and magazines resort to bold headlines and sensationalistic coverage, hoping to grab the reader’s eye if only for a brief moment. As the media watch group FAIR (Fairness and Accuracy in Reporting) put it,

Profit-driven news organizations are under great pressure to boost ratings by sensationalizing the news: focusing attention on lurid, highly emotional stories, often featuring a bizarre cast of characters and a gripping plot but devoid of significance to most people’s lives.<sup>66</sup>

Coverage of jury verdicts fits the pattern. Since most information about tort litigation comes from print and electronic media, rather than personal experience, this coverage plays a significant role in molding the opinions of both the public at large and its lawmakers about the civil jury. Since the mid-1980s, when the corporate-backed “tort reform” movement largely originated, most state legislatures have enacted some restrictions on the power and authority of civil juries, restricting the rights

The American Bar Foundation's Stephen Daniels, commenting on juror trends in Texas, saw a chasm between the rhetoric of "tort reform" (crooked parasites cashing in on profligate juries) and reality (juries are actually quite stingy).

of injured consumers to sue and be fully compensated for their injuries and weakening the civil justice system's ability to hold corporate wrongdoers accountable.

In 1994, "tort reform" exploded on the federal scene with the Republican takeover of Congress and its inclusion in Newt Gingrich's Contract with America. The unprecedented enactment of federal "tort reform" since then, preempting states' ability to protect their own consumers in the areas of aviation, securities, non-profit volunteers and medical devices, has shifted the "tort reform" movement to an even larger scale. The Bush administration is expected to continue this push at the federal level.

The impact on lawmakers of news coverage about jury verdicts can be immediate. For example, within days of the Alabama Whirlpool verdict described above, the Alabama legislature passed a law to limit punitive damage awards. It was widely reported that the Whirlpool verdict prompted the legislature to act.<sup>67</sup>

Further, by the time members of the public step into the jury box, many already carry negative attitudes about verdicts and compensation for the injured. Most lawyers say that juror attitudes have undergone a dramatic change over the last decade, with increasing antagonism toward injury victims. Statistics cited above in Part D bear this out. In one notable case last year, an Illinois appellate court ruled that a juror who, during *voir dire*, expressed clear support for "tort reform" and bias against personal injury plaintiffs could not be excluded for cause. The juror ultimately served on the case, which involved a fatal auto accident. The case ended in a defense verdict.<sup>68</sup>

The American Bar Foundation's Stephen Daniels, commenting on juror trends in Texas, saw a chasm between the rhetoric of "tort reform" (crooked parasites cashing in on profligate juries) and reality (juries are actually quite stingy). "Even if a lot of tort reform on its face does not appear to close courthouse doors, in practice it may," said Daniels. "Plaintiffs lawyers will look long and hard and ask: 'Can I afford to bring these cases? They're harder to win, and it's a longer road to payoff.'" It will close the

courthouse doors even though the law literally does not.”<sup>69</sup>

### **PART III: SUGGESTED COUNTERMEASURES**

Some members of the media have been particularly responsible in their coverage of jury verdicts and other rhetoric espoused by those advocating tort restrictions.<sup>70</sup> But these reports have been the rare exception. Given the pervasiveness of biased reporting and the lack of public understanding, concerted action can and should be taken to combat inaccuracies regarding jury behavior. The suggestions below are by no means exhaustive — they are merely suggestions that may help initiate a gradual change in public perceptions about the true nature of civil jury behavior.

Media-sponsored surveys of neutral players in the civil justice system can be enormously informative and useful in helping to redefine the debate over juries and jury verdicts.

#### **A. MEDIA-SPONSORED ACTION**

Media-sponsored surveys of neutral players in the civil justice system can be enormously informative and useful in helping to redefine the debate over juries and jury verdicts. Ascertaining the views of judges, for example, who have more intimate knowledge of how juries operate than anyone, can be enormously instructive.

In 2000, the *Dallas Morning News* did just that. Joined by Southern Methodist University, the paper surveyed every federal judge in the country, as well as Texas state judges. Of the judges who responded, 76.9 percent think that, in general, juries do very well in actually reaching a just and fair verdict; 59.3 percent said that if they were personally a litigant in a civil case, they would prefer the dispute be decided by a jury; 76.4 percent have not had what they consider a runaway jury; 67.8 percent believe that, in light of the continuing debate over tort reform and alternative dispute resolution, the jury system is fine; 92.1 percent agree with jury verdicts in their cases most of the time; and 66.5 percent feel that the right of individuals to have their civil disputes decided by a jury needs to be left alone.<sup>71</sup> In other words, state and federal judges have overwhelming confidence in juries.

... most Americans know little about our judicial system, and the civil jury is one of its least-understood features.

These kinds of surveys are critically important to accurately frame the debate around the wisdom of restricting the power and authority of civil juries.

## **B. PUBLIC EDUCATION EFFORTS**

The civil jury system is fundamental to the protection of individual rights, public health and safety, and restraining abuses of power. Yet most Americans know little about our judicial system, and the civil jury is one of its least-understood features. Very little is currently being done to educate the public and to assist journalists in understanding the history and importance of the civil jury. Even groups involved with law-related education focus little attention, if any, on civil juries. This is exacerbated by the fact that with some rare exceptions, few reporters currently cover the civil justice system with any regularity. There is a need for regional media institutes to teach journalists about tort issues, including conferences specifically tailored to educate members of the media on all aspects of the civil justice system.

Consumer and victims' groups working to preserve the civil justice system have produced educational and organizing material to counter information generated by those pushing to weaken the civil justice system. But the civil jury system also needs a more focused advocate. No group would be better equipped for this undertaking than one composed of those who have actually served on civil juries. Study after study shows that immediately after a trial, jurors have very strong impressions about their experiences. Almost all will say the experience was positive and that the system worked well. Mistakes, they believe, are due to the ineptitude of the judge or the attorneys. Former civil jurors who are convinced of the system's fundamental, justice-dispensing value could become very effective advocates and defenders of the civil jury system.

## **CONCLUSION**

The mass media perpetuate three distinct yet interrelated myths about juries: they decide cases based on emotion, they are pro-plaintiff and they are creators of an arbitrary

or random “tort lottery.” While some articles tend to emphasize one myth over the others, repetition of these fictions, together with a selective group of non-representative cases, engenders widespread disrespect for and misperceptions about the effectiveness and importance of the civil jury. As objective data show, coverage by most media outlets tend to misrepresent the frequency and size of jury awards. Unless the legal and media industries work to present accurate reflections of tort litigation, the public will continue to subscribe to the “crisis folklore” which jeopardizes the foundations of our democracy.

## NOTES

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<sup>1</sup> Tom Held, *Milwaukee Journal Sentinel*, January 13, 1999.

<sup>2</sup> See, e.g., Cathleen Ferraro, “Juries Opting For Huge Awards,” *Sacramento Bee*, July 15, 1999; Warren Richey, “Billion-dollar verdicts revive fairness debate,” *Christian Science Monitor*, June 16, 1999; “Juror’s award \$1 billion for Go-Kart injuries,” *Telegraph Herald*, January 14, 1999; “Award ‘Stunning’ In Go-Kart Case,” *Wisconsin State Journal*, January 13, 1999.

<sup>3</sup> E-mail correspondence from Martin H. Levin, plaintiff’s attorney, dated June 13, 2000, regarding *Cowart v. Johnson Kart Manufacturing Inc. et al.*, No. 95CV006004 (Milwaukee County Circuit Ct., Wis., verdict January 12, 1999, settlement February 1999 for undisclosed amount).

<sup>4</sup> Ken Armstrong, *Chicago Tribune*, March 2, 1999.

<sup>5</sup> *Id.* (“In wrongful-death cases, Cook County juries have awarded as much as \$64 million”; “In November, a Cook County jury awarded...\$34 million”; “Also in 1996, a Winnebago County jury awarded \$10.23 million”).

<sup>6</sup> *Id.* (“Epstein, the University of Chicago law professor, said he did not believe the evidence supported a finding of negligence on the part of the defendants. He called the jury’s findings ‘crazy’”).

<sup>7</sup> “Woman dragged by train wins \$ 29.6M jury award,” *National Law Journal*, March 29, 1999; Julie Deardorff, “Barton Put On Defensive By Metra’s Witnesses,” *Chicago Tribune*, February 25, 1999; Tim Novak, “No violin is worth a life, Barton says,” *Chicago Sun-Times*, February 21, 1999.

<sup>8</sup> Tim Novak, “2 tell how they aided Barton; Traders used their belts as tourniquets,” *Chicago Sun-Times*, February 18, 1999.

<sup>9</sup> Julie Deardorff, “Barton Told ER Doctor She Went Back For Violin,” *Chicago Tribune*, February 24, 1999; Julie Deardorff, “Trainman Still Relives ‘95 Mishap,” *Chicago Tribune*, February 17, 1999.

<sup>10</sup> “Jury Awards \$29.6M to violinist injured by train,” *Patriot Ledger*, March 2, 1999; Julie Deardorff, “Barton Puts A Price On Accident: \$600 Million; Metra Attorney Calls Plea ‘Mind-Boggling,’” *Chicago Tribune*, February 27, 1999.

<sup>11</sup> E-mail correspondence from Robert A. Clifford, plaintiff’s attorney, dated June 13, 2000, regarding *Barton v. Northeast Illinois Regional Transportation Co. et al.*, No. 95L929 (Cook County Circuit Ct., Ill., verdict March 1, 1999).

<sup>12</sup> *New York Times*, May 11, 1999.

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<sup>13</sup> “Another Enormous Damage Award In Alabama,” *ABC News*, Transcript No. 99051104-j04, May 11, 1999.

<sup>14</sup> Press statements by plaintiffs’ attorneys; Telephone conversations with C. Lance Gould and John Gibbs, attorneys for plaintiffs and Joanne Doroshow (May 11, 1999).

<sup>15</sup> “Jurors in recent \$581 million verdict against whirlpool were ‘sick’ at company misconduct – Believed verdict only way to get company’s attention,” *CCAIR Backgrounder*, May 11, 1999.

<sup>16</sup> William Mullen, *Chicago Tribune*, July 25, 1991.

<sup>17</sup> *Omaha World Herald*, June 5, 1996.

<sup>18</sup> James J. Kilpatrick, “Damages beyond reason,” *Tampa Tribune*, February 22, 1996.

<sup>19</sup> *Washington Post*, July 9, 1995.

<sup>20</sup> *Orlando Sentinel*, June 29, 2000.

<sup>21</sup> Lon Grahnke, *Chicago-Sun Times*, May 28, 2000.

<sup>22</sup> Andy Soltis, *New York Post*, July 10, 1999.

<sup>23</sup> Mike Allen, *New York Times*, April 10, 1998.

<sup>24</sup> Sue Anne Pressley, “Texans Draw Line in Sand on Lawsuits; New Gov. Bush Declares Emergency on the Tort Reform Issue Due on Hill Soon,” *Washington Post*, February 23, 1995.

<sup>25</sup> “GOP’s Proposal for Legal Reform Points the Way to Improvement,” *Omaha World Herald*, January 22, 1995.

<sup>26</sup> Jay Finegan, “Law and DISORDER,” *Inc.* (April 1994). *See also, e.g.*, Julie Deardorff, “\$100 Million Settlement In Van Horror; Accident Near Milwaukee Killed 6 Children In Family,” *Chicago Tribune*, August 27, 1999 (“fear of presenting such a case to a sympathetic jury”); “In uneven lawsuit system, justice gets low priority,” *USA Today*, December 18, 1996 (“the amounts overly sympathetic juries can order paid”); William Mullen, “Stirring jurors’ emotions becomes the key,” *Chicago Tribune*, July 22, 1991 (“And when several of the jurors began snuffling and dabbing their eyes with handkerchiefs...”; “A weeping jury could cost millions”; “Taking their chances on a sympathetic jury seemed too risky”); William Mullen, “In U.S., court is now the first resort,” *Chicago Tribune*, July 21, 1991 (“They had a sympathetic family of survivors, including two appealing children, to tug at a jury’s heartstrings”); Daniel Moskowitz, “Have Juries Been Too Generous With Claims Against Insurers?” *Washington Post*, September 15, 1986 (“finding juries sympathetic to their complaints”).

<sup>27</sup> *See, e.g.*, Frank Murray, “‘Jackpot justice’ gets best defense; Billions at stake with right case, generous jury,” *Washington Times*, July 18, 2000; Paul Campos, “Another Example Of Insane Justice In ‘Lottoland,’” *Denver Rocky Mountain News*, July 16, 2000; Paul Carpenter, “Final Answer? Lawyers Get 40 Percent,” *Morning Call*, April 7, 2000; Sheila R. Cherry, “Litigation Lotto,” *Insight on the News*, April 3, 2000; “The Litigation Lottery,” *Investors Business Daily*, August 26, 1999; “Tort lotto,” *Washington Times*, May 25, 1999; Michael Barone, “Choosing not to gamble,” *U.S. News & World Report*, May 3, 1999; “Lawsuit lottery; Inmate settlement a symptom of litigation that has run amok,” *Cincinnati Enquirer*, January 30, 1997; “The Tort-Law Casino,” *Journal of Commerce*, March 8, 1995; John Hollingsworth,

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“Lawsuits perpetrating easy-money mentality,” *Fresno Bee*, January 20, 1996; “Step right up, place your bets in casino-style courts,” *USA Today*, March 6, 1995; Joseph Perkins, “Courtroom Casinos: Juries are dealing out absurdly huge awards” *San Diego Union-Tribune*, January 21, 1994.

<sup>28</sup> Heather Maher & Amy Sinatra, [http://more.abcnews.go.com/sections/us/dailynews/jackpot\\_justice.html](http://more.abcnews.go.com/sections/us/dailynews/jackpot_justice.html).

<sup>29</sup> Daniel Bailis & Robert MacCoun, “Estimating Liability Risks with the Media as Your Guide: A Content Analysis of Media Coverage of Tort Litigation,” 20 *Law and Human Behavior* 419 (1996).

<sup>30</sup> *Id.* at 426.

<sup>31</sup> *Id.* at 424-5.

<sup>32</sup> Marc Galanter, “An Oil Strike in Hell: Contemporary Legends About the Civil Justice System,” 40 *Arizona L. Rev.* 717, 745 (Fall 1998), citing Oscar Chase’s study, “Helping Jurors Determine Pain and Suffering Awards,” 23 *Hofstra L. Rev.* 763, 771-73, 782 (Summer 1995).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Judy Aks, Anne Bloom, Michael McCann & William Haltom, “Hegemonic Tales and Subversive Statistics: A Twenty-Year Study of News Reporting about Civil Litigation,” Paper presented at the annual Law and Society meetings in Miami, Florida, May 26-29, 2000, pp. 19-20.

<sup>36</sup> *Id.*

<sup>37</sup> *Examining the Work of State Courts, 1998: A National Perspective from the Court Statistics Project*, National Center for State Courts (1999), p. 8.

<sup>38</sup> *See, e.g.*, Catherine Ivy, “Survey Shows Soaring Jury Awards; Jury Awards Soar,” Jan 11, 2000, found at <http://more.abcnews.go.com/sections/us/dailynews/verdicts000111.html>; Deborah Vondrak, “Personal injury suits have become legal lottery; Excessive: Absurd award in General Motors case underscores need for tort reform,” *Ventura County Star*, July 25, 1999; “Congress needs to set damage limits on verdicts,” *Atlanta Journal and Constitution*, July 16, 1999; Warren Richey, “In states, a clash of titans over jury awards,” *Christian Science Monitor*, June 17, 1999; Warren Richey, “Billion-dollar verdicts revive fairness debate,” *Christian Science Monitor*, June 16, 1999; “Family sues, receives ‘jackpot’: The eye-popping \$ 581 million award is call for legal reform, some critics say,” *Des Moines Register*, May 11, 1999; Bruce Bryant-Friedland, “Trials and tribulations of reform; Settlements with high punitive damages have businesses calling for tort changes,” *Florida Times-Union*, December 15, 1997; Terry Ganey, “The Case Of The Generous Juries,” *St. Louis Post-Dispatch*, September 15, 1996; Casey Bukro, “Victims Of Liability; Corporate America Is Fighting Back, Saying The Legal System Has ‘Run Amok,’ Making Huge Punitive Damage Awards In Often Bizarre Cases,” *Chicago Tribune*, September 11, 1996; Edward Iwata, “Median jury awards higher in California; Courts: ‘There’s probably more of a lottery mentality here,’ says an attorney who represents employers,” *Orange County Register*, March 22, 1995; David Conn, “Punitive Awards Are Alive And Well,” *Journal of Commerce*, November 13, 1989.

<sup>39</sup> *Examining the Work of State Courts, 1998, supra* note 37, at 35.

<sup>40</sup> *Id.* at 36-7.

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- <sup>41</sup> “Tort Trials and Verdicts in Large Counties, 1996,” U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ-179769 (August 2000), p. 4.
- <sup>42</sup> *Id.* at 9.
- <sup>43</sup> *Id.* at 4.
- <sup>44</sup> *Id.*
- <sup>45</sup> *Id.* at 9.
- <sup>46</sup> *Id.* at 6.
- <sup>47</sup> *Id.* at 9.
- <sup>48</sup> Jury Verdict Research, *Current Award Trends in Personal Injury* (1999), p. 47.
- <sup>49</sup> *Id.* at 46.
- <sup>50</sup> *Id.*
- <sup>51</sup> *Id.* at 17.
- <sup>52</sup> “Tort Trials and Verdicts in Large Counties, 1996,” *supra* note 41, at 7.
- <sup>53</sup> *Id.*
- <sup>54</sup> “Civil Jury Cases and Verdicts in Large Counties,” U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ-154346 (July 1995), at 8.
- <sup>55</sup> “Tort Trials and Verdicts in Large Counties, 1996,” *supra* note 41, at 7.
- <sup>56</sup> Margaret Cronin Fisk, “The Way Of All Mega-Verdicts,” *The Recorder*, October 9, 1998.
- <sup>57</sup> *Id.*
- <sup>58</sup> *Id.*
- <sup>59</sup> *Id.*
- <sup>60</sup> *Civil Juries and the Politics of Reform*, Evanston: Northwestern University Press (1994).
- <sup>61</sup> *Judging the Jury*, Cambridge: Perseus Publishing (1987).
- <sup>62</sup> *Business on Trial: The Civil Jury & Corporate Responsibility*, New Haven and London: Yale University Press (2000), p. 23.
- <sup>63</sup> *Id.*
- <sup>64</sup> *Id.* at 216.

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<sup>65</sup> *Id.* at 217.

<sup>66</sup> <http://www.fair.org/media-woes/sensationalism.html>.

<sup>67</sup> *See, e.g.*, “Co-defendant in \$ 581 million verdict sues Whirlpool,” *Associated Press*, May 24, 1999.

<sup>68</sup> *Vrzal et al. v. Contract Transportation Systems Company et al.*, 312 Ill.App.3d 755 (1st Dist. Ct. of App., Ill., 2000), *aff’d*, 189 Ill.2d 703 (2000).

<sup>69</sup> Joseph Calve, “Poured Out,” *Texas Lawyer*, December 16, 1996.

<sup>70</sup> *See, e.g.*, Mark Curriden, “‘Runaway’ No More; Despite reputation, juries getting less likely to give big awards or buy novel defenses,” *Dallas Morning News*, May 8, 2000; Dan Radmacher, “Tort reform doesn’t make much sense,” *Charleston Gazette*, June 11, 1999; William Glaberson, “When the Verdict Is Just a Fantasy,” *New York Times*, June 6, 1999; David Greising, “Huge Verdicts? Maybe There’s A Place For Them,” *Chicago Tribune*, May 12, 1999; Jim Oliphant, “The big lie: Businesses and physicians say they need protection from juries too eager to hand out huge cash awards in frivolous negligence or malpractice cases. But the facts are very different,” *Broward Daily Business Review*, March 5, 1999; Steve Wilson, “Most Juries Exercise Restraint In ‘Lottery’ Lawsuits,” *Arizona Republic*, February 5, 1999; Sheryl Fagin, “Flawed Science At The Times,” *Brills Content* (October 1998); Ron Lent, “Million-dollar jury awards often slashed: Cases drag on and damages shrink on appeal; issue serves to rally supporters of reform,” *Journal of Commerce*, August 27, 1998; Robert Davila, “If A Jury Awards Millions, The Battle Has Just Begun,” *Sacramento Bee*, August 16, 1998; Wes Hills & Rob Modic, “Appeals Often Slice High-Dollar Awards,” *Dayton Daily News*, June 14, 1998; Maura Dolan, “Huge Jury Awards Seldom Live Up To Their Billing; Lawsuits: Plaintiffs Often Pocket Far Less, Study Finds. Appeals, Fees And Defendants’ Lack Of Assets Are Blamed,” *Los Angeles Times*, November 26, 1996; “The fairness and genius of juries in deciding proper damage awards,” *Tampa Tribune*, June 1, 1996; Lawrence Messina, “Figures Fail To Show ‘Lawsuit Explosion,’” *Charleston Gazette*, March 7, 1996; “Ignore legal horror stories,” *USA Today*, April 25, 1995.

<sup>71</sup> Allen Pusey, “Judges rule in favor of juries: Surveys by Morning News, SMU law school find overwhelming support for citizens’ role in court system,” *Dallas Morning News*, May 7, 2000.

Three headlines in particular caught our attention: "Bond Yields Around The World Fall To Records On Growth Outlook," "Why Big Investors Think It's Time To Hoard Gold," and "Baby Bust: 2015 Had Lowest U.S. Fertility Rate Ever, Down 600,000 Births." All of these seemingly disparate headlines have a very profound -- and sadly, negative -- message to deliver about global economic growth: Namely, the boom times are over. But it doesn't have to be this way. Start with the bond yields. But if, as the gold headline suggests, "big investors" are moving into gold, what does it also say? One thing: That nonproductive assets (gold, precious metals) are worth more these days than productive ones (stocks, bonds). That's never a good sign.