

EDITORIAL
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IN DEFENSE OF THE JURY SYSTEM

Our legislatures do not represent the people of this republic. Rather, they represent pressure groups.
H.L. Mencken, American Mercury, 1919

How true! Witness the inertia of Congress and state legislatures across the country on tobacco and guns. The courts, through the application of sound common law principles and the frustration of the public, reflected in jury verdicts, have brought about reform and imposed accountability on corporate America that was not possible through the legislative process.

But who, or what, is responsible for this development?

Trial lawyers have been accused of bringing this about, and in the process skirting the very fundamental precepts of our democracy - the legislative process.

In our view, it is not the trial lawyers, nor the courts, but the public that has wrought this change. The principles of the common law relied upon by the courts in the tobacco, asbestos, lead, and gun cases are not new, or recent developments in the law. Melvin Belli got to the jury in his tobacco case twenty years ago and lost. Other litigants tried and lost their cases. Not so long ago the tobacco industry touted the fact that it had never lost a case.

The change is not in the law, the courts, or in "activist" judges. It is juries that have brought about change, and brought the tobacco giant to its knees.

The reasons are clear: the gradual disclosure of cover-ups, misrepresentations, fraud, and downright lying to the public, to Congress, and to the courts have turned the tide in the mind of the average American against the tobacco manufacturers.

It is not only tobacco, but lead paint and asbestos manufacturers who have also been held accountable for the same reasons.

The gun cases that have been successful are based on the public's attitude, reflected in a jury's willingness to impose liability or place restrictions on irresponsible marketing practices of gun manufacturers. The violence in our schools, on our streets and in our homes brought about by easy access to, and unsafe safety measures of, handguns has shifted the national mindset to focus on the role and responsibility of gun manufacturers, and has resulted in a willingness to hold them accountable.

Congress, the White House, governors' mansions, and the state legislatures are so dependent on special interest campaign contributions and so mired in counterproductive political gridlock that it is often impossible to get anything done. Big business and tort reformers argue that it is trial lawyers who are highjacking social issues that should be resolved in Congress or state legislatures. They argue that trial lawyers have become an unelected fourth branch of government.

The fact is, however, that trial lawyers are only representing the public, and are the only force in public life today who can be counted on to stand up for everyday Americans. We are the last line of defense for the average American. In the last ten years, Connecticut trial lawyers have successfully opposed over 500 immunity bills offering immunity to all manner of conduct, from equestrians to Christmas tree farms - and a litany of other business seeking to shirk their responsibility and accountability for wrongful conduct. In the coming 2001 legislative session there will be 50 or so immunity proposals to defend against again.

The trial lawyers are not alone in their opposition. Their source of strength is the American public and its sense of fairness. It is the public who make up our juries, and the trial lawyer efforts in bringing about change and opposing business and corporate welfare would fall on deaf ears were it not for widespread public support.

It is the jury system that has kept the balance in our society and has brought accountability to the excesses of our free market system. Justice Douglas got it right in 1954 when he described the American Jury in *The Anatomy of Liberty*:

A jury reflects the attitudes and mores of the community from which it is drawn. It lives only for the day and does justice according to its lights. The group of twelve, who are drawn to hear a case, makes the decision and melts away. It is not present that next day to be criticized. It is the one governmental agency that has no ambition. It is as human as the people who make it up. It is sometimes the victim of passion. But it also takes the sharp edges off a law and uses conscience to ameliorate a hardship. Since it is of and from the community, it gives the law an acceptance which verdicts of judges could never do.