



SPECIAL REPORT

AN IN-DEPTH STUDY, ANALYSIS OR REVIEW EXPLORING THE MEDIA

THE MEDIA RESEARCH CENTER • 325 SOUTH PATRICK ST. • ALEXANDRIA, VA 22314 • WWW.MRC.ORG

February 28, 2005

Media Malpractice

Journalists Ignoring Tort Reform to Report One-Sided Stories Against Business

EXECUTIVE SUMMARY

With a sweep of his pen, President George Bush signed class-action reform into law and earned an early second-term victory. The new law, approved February 18, forces large class-action suits into federal court, limiting the mega-dollar awards popular in some local jurisdictions. It was the latest round of a long fight over runaway litigation that has swept through states across the nation. Rather than seize on this issue, the major news media have ignored tort reform, embracing one-sided, anti-business stories that promote lawyers as fighting for “Davids” against the “Goliaths” of industry. The media didn't acknowledge tort reform as an issue even when a man running for vice president was a career trial lawyer.

To see how the media addressed runaway litigation, the Free Market Project analyzed 276 civil litigation stories in news magazines including *Time*, *Newsweek* and *U.S. News & World Report*, as well as coverage of news magazine TV programs and the evening news on ABC, NBC, and CBS from November 1, 2003 to October 31, 2004. Among the findings:

- **Media Ignore Tort Reform 85 Percent of the Time:** Even with nationally known trial lawyer John Edwards running as a Democratic vice presidential candidate, the media only had a prominent discussion of tort reform in 6 percent of their stories. Nine percent of the time they simply made passing mentions of the issue.
- **Class-Action Stories Barely Discuss Reform:** Class-action reform has been in process for years, but only one story about class-action lawsuits (out of 30) had a major discussion of remedies to this aspect of the legal system.

For more information or to set up an interview, contact Tim Scheiderer at 703-683-5004 x126

- **Defendants Get No Face Time in One-Third of Stories:** Defendants, typically businesses, were denied comment in 36 percent of all stories. Reporters didn't even include a statement from the defendants saying they had refused to comment in most of those stories. This contradicts basic journalistic principles of fairness. *U.S. News & World Report* was the worst of the media we studied, allowing no comment from defendants in 57 percent of its stories.
- **Stories Take Plaintiff's View Far More Often Than Defendant's:** Stories were skewed toward the plaintiff's viewpoint. They were reported from the plaintiff's perspective 49 percent of the time, more than three times as often as they took the view of the defendants. Only 36 percent were balanced. CBS told the story from the view of the defendant 64 percent of the time. *Newsweek* was the most balanced media with close to a perfect balance between the two sides.
- **Liberal Groups Unidentified, Conservatives Labeled:** Liberal groups were quoted almost twice as often as conservatives or industry spokespeople (74 times to 43 times). When they were cited, liberal activists were identified as such only 31 percent of the time. Conservatives or industry representatives were labeled 47 percent of the time. That fails to take into account good journalistic practices at ABC. Without that network, the remaining five media labeled liberals only 25 percent and conservatives 75 percent.
- **ABC the Best, NBC the Worst:** ABC had the most tort reform coverage of any media studied. The network was also the best about labeling conservatives and liberals in a consistent manner. NBC had a huge tendency to tell the story from the view of the plaintiff and a clear bias in labeling only conservative or industry spokespeople. It labeled liberal activists only 8 percent of the time (1 out of 13) and conservatives or businesspeople 86 percent (6 out of 7 times).

In an op-ed co-written by FMP National Chairman Herman Cain, recent Senate candidate and former CEO of the National Restaurant Association, Cain commented on the results: "Virtually everyone in America understands that the nation is a litigation battleground. Businesses are under constant attack by lawsuits that cost the economy hundreds of billions of dollars each year. Unfortunately, 'virtually everyone' means everyone except the mainstream media has a clue."

The study's analysis ended with five recommendations for the media to improve coverage of runaway litigation: 1) Look at lawyers as critically as businesses; 2) Examine the issue of tort reform 3) Cover lawsuit stories in a balanced fashion and stop relying on always presenting the story from the side of the "victim"; 4) Create a consistent policy for labeling experts; and 5) Note who the paid advisers are so readers and viewers understand the agendas of all involved in the story.

Media Malpractice

Journalists Ignoring Tort Reform to Report One-Sided Stories Against Business

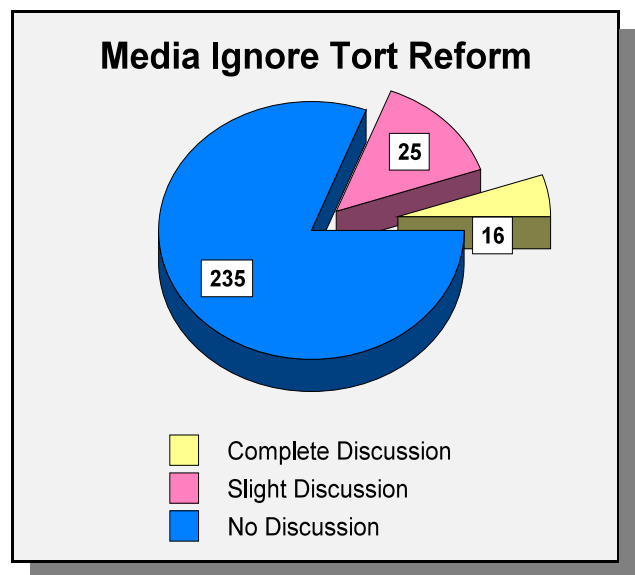
BY DAN GAINOR
DIRECTOR, FREE MARKET PROJECT

CHARLES SIMPSON
RESEARCH ANALYST

In 2004, runaway litigation pitted businesses and trial lawyers against each other as never before. In early 2005, the issue ran straight into a roadblock – class-action reform. Legal critics had long argued that America was a nation besieged by trial lawyers. This was the first step to rein in a system costing businesses more than 2 percent of the Gross Domestic Product each year as the result of lawsuits.

President George Bush declared that “tort reform” would be a key component of his second-term agenda and it took him less than a month to prove it. He aimed to pass “meaningful liability reform on asbestos, on class action and medical liability.” Congress responded quickly and favorably with class-action reform. On February 10, the Senate passed a bill that restructured rules for class-action lawsuits and it was passed by the House of Representatives and signed into law by the president just a few days later.

The Association of Trial Lawyers of America reacted with venom, calling the new law a “brazen and shameless attack on Americans’ legal rights” that “was well-funded by the insurance, drug and other industries.” ATLA vowed to spend millions of dollars battling tort reform. Their allies included a long list of liberal advocacy groups, from the ACLU and National Organization of Women to the AFL-CIO and the Natural Resources Defense Council.



Together, they argued that litigation is essential to correct wrongs and the only way ordinary citizens can compete with big business or government.

“President Bush unashamedly advocates legislation that would protect insurance industry profits and prohibit any punishment for the makers of dangerous drugs,” claimed an ATLA press release. Todd A. Smith, ATLA’s president, was more strident in his criticism of the class-action proposal, calling it “a shameful attack on Americans’ legal rights.”

This major change to the legal system received relatively little coverage. *CBS Evening News* did address the new law, but their story was slanted, calling it, “what may be the first in a hoped-for series of big wins for big business.” The February 18, 2005 broadcast also emphasized other potential reforms including changes to medical malpractice and bankruptcy.

Reporter Thalia Assuras warned that “businesses stand to improve their bottom line by billions of dollars,” while focusing on the tribulations of a woman who had declared bankruptcy rather than pay her bills. Assuras added that, if bankruptcy reform passed, “many people who file for bankruptcy could be forced to pay back some of their debts rather than having them wiped out.” According to Assuras, “that could save businesses and banks from eating millions of dollars in losses.” She left out the fact that it’s pretty common to expect repayment of debts.

While that type of anti-business slant was common, an even bigger problem was the fact that the American media have done little reporting about the clash over runaway litigation. Only now that major changes are in process have journalists turned some attention to reform. When trial lawyer John Edwards was picked for the second spot on the Democratic ticket, that analysis was hard to find.

John Stossel’s ABC’s of Good Reporting

The best thing about ABC’s coverage of runaway litigation was *20/20*’s John Stossel. He was both straight-talking and balanced. He went after everyone with equal vigor.

Stossel tackled liberal lawyer John Banzhaf over a battle to end ladies night in New Jersey bars and restaurants. He also called asbestos attorney and Baltimore Oriole owner Peter Angelos a “parasite” who feeds “off the productive members of society” for suing business for a living.

But the reporter of “Give me a break” fame doesn’t just target one side of the issue. Stossel attacked lawyers and big business with equal vigor. One of his stories took aim at DuPont over the hidden dangers of Teflon.

In the March 29, 2004 edition of *20/20*, Stossel gave out his “Give Me A Break Idiocy Awards,” and one of the best defenses of free enterprise saying: “I discovered the ruthless competition of the free market already protects consumers pretty well. ... [W]hen people sell bad products, word gets out and those businesses don’t last.”

ABC's John Stossel made an important point missed by most of the media: "Lawyers were the biggest contributors to Edwards' presidential campaign. And now they're the biggest givers to the Democratic Party. Bigger than labor unions, bigger than anybody."

Stossel's point only scratched the surface of the problem with journalism. Civil litigation is a popular and newsworthy topic, but the flaws in the system and any attempts to repair them were rarely considered newsworthy. For instance, the media made no mention of tort reform in 85 percent of the stories studied in this report. Only 6 percent of the stories included a prominent discussion of the topic. Another 9 percent made slight mention of tort reform despite its status as a campaign issue.

Class-action suits, like those targeted in the new law, were only about one-ninth of all civil litigation stories analyzed. However, those stories contained even less information about reform than the other lawsuit stories. Only one class-action story contained a serious discussion of reform and that story featured a defense of the current system.

Calls to reform that system have spread across the United States. More than 20 states voted on tort reform legislation in 2004. A malpractice crisis in Maryland was so overwhelming that doctors vowed to stop delivering babies and the state legislature had to attend a special session to try to solve the problem. Ever-increasing malpractice-insurance premiums have hit doctors in high-risk specialties such as neurosurgery and obstetrics. In Virginia, obstetrical services at rural hospitals have shut down.

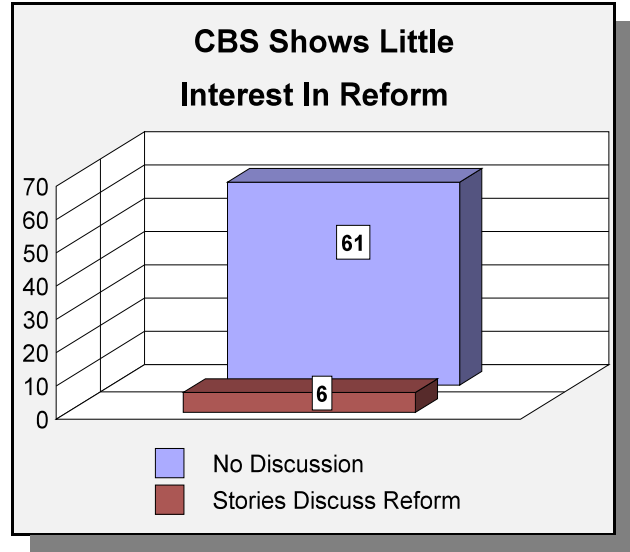
Neither Edwards' initial candidacy nor his appearance on the final ticket caused more than a ripple in the news coverage. In fact, the media made no mention of reform in 85 percent of the stories we studied.

On the West Coast, California passed Proposition 64, which closed a loophole allowing lawyers to file frivolous "shakedown" lawsuits against small businesses. The new law limits an individual's right to sue to times when the person was actually injured by an unfair business practice. That means they must have suffered a financial loss as well.

In June, Mississippi, long a popular venue for class-action suits because of generous jury awards, passed several laws to rein in runaway litigation. A dozen states limited civil liability for businesses involved in the food industry. The House of Representatives followed this up by passing the Lawsuit Abuse Reduction Act of 2004, which included a wide range of reforms aimed at "frivolous lawsuits."

All of this concern about runaway litigation generated surprisingly little news. Media organizations - print and broadcast outlets - failed to take the issue seriously even with a trial lawyer running for vice president.

To understand how the media were addressing the issue of runaway litigation, the Free Market Project analyzed 276 civil litigation stories in news magazines including *Time*, *Newsweek* and *U.S. News & World Report*, along with coverage of news magazine TV programs and the evening news on ABC, NBC, and CBS from November 1, 2003 to October 31, 2004.



NBC and CBS did, by far, the most coverage of the topic. NBC had 67 stories on civil litigation, as did CBS. ABC was next with 54. *Newsweek* had the most among the print outlets with 47 stories. *Time* magazine ran 24 stories and *U.S. News & World Report* was last with just 17.

Tort Reform Aims to Limit Awards

“Tort reform” is a broad term that covers a host of proposals to limit lawsuits and address the growing burden of jury verdicts. Some measures place a cap on non-economic damages, commonly known as “pain and suffering awards” or “punitive damages.”

Much of the unpredictability in jury awards comes from these intangibles, which vary from jury to jury.

Another tort-reform strategy is the removal of certain types of suits from state to federal jurisdiction. Because federal juries are picked from voter rolls as opposed to driver license databases, they tend to be better educated. Also, witness testimony is more heavily scrutinized in federal trials.

As a result, awards typically are lower. This step also discourages “venue shopping”: the habit of suing in favorable places like Madison County, Illinois, known for its generous juries. The new law on class-action lawsuits follows this strategy and makes it difficult for certain types of litigation to go through the state courts.

A third reform concept is granting broad immunity from liability suits. While Congress fell short of exempting gun manufacturers from wrongful death liability in 2004, it passed legislation that protected food producers from some obesity lawsuits.

Tort reform is not just a national issue. After being ranked as the worst litigation climate in the nation, Mississippi implemented reform that integrated all three concepts - limiting punitive damages, defining proper state court venue, and protecting innocent retailers from liability. Meanwhile, in Maryland, legislators wrestled with how to keep doctors practicing despite rapidly escalating malpractice costs. Malpractice premiums went up 33 percent in 2004, following a 28 percent increase the previous year. Michigan and Illinois were among other states weathering similar crises.

The push for tort reform followed years of seven-figure-or-higher verdicts. Triumphs over the tobacco and asbestos industries were worth billions of dollars to trial lawyers who naturally loved the huge payday. To the plaintiffs' bar, the degree of justice was directly proportional to the amount of the jury award.

Lawyer Willie Gary is a fine example. He made so much money suing others that he's a multi-millionaire. His website, www.williegary.com, claims he "won more than 150 cases valued well in excess of a million dollars each."

In one of these, he represented a client who sued the *Pensacola News Journal* claiming that the paper had portrayed the man in a false light. Gary won \$18 million for his client over an article that even the alleged victim reportedly conceded was factual. Gary was denied punitive damages but vowed to try for a new trial so he could sue for \$2.5 billion. Gary's website flaunts nice cars, an expensive home and a custom-built 32-passenger Boeing 737 called the "Wings of Justice II." According to the site: "The aircraft, which sports an interior renovation that cost more than \$11 million, includes an 18-karat gold sink, plush leather seats, carpet, a \$1.2 million sound system, and a full-service kitchen."

Gary isn't the only lawyer to take the role as poster child for legal reform. According to Pittsburgh Tribune-Review columnist Celeste Whiteford, personal injury attorney Martin Lazzaro drives a \$325,000 Rolls Royce Phantom with a tag in front spelling his name and one in back that says 1-800-I GOT HIT.

N*ewsweek*, which mentioned tort reform only twice in 47 stories, did a July 19, 2004 profile of Edwards that was so positive it never discussed the tort reform controversy in its 1,608 words. Instead, it portrayed Edwards as "cagey, relentless and driven."

Attorney Peter Angelos made so much money from the billions of dollars in asbestos litigation that he bought a Major League baseball team, the Baltimore Orioles. At last count, the total for asbestos litigation was \$70 billion and still climbing.

When you buy a ladder, a quarter or more of the cost you pay is just for the insurance," Tilley President Robert Howland explained.

The downside of these awards - the impact on businesses and consumers - gets substantially less press than the awards themselves. Retailers, manufacturers, restaurants, doctors, churches, and schools are vulnerable to even the most hysterical claims. The John S. Tilley Ladder Co. was family-owned for 149 years. Fears of litigation drove it out of business in early 2004, even though the company was still profitable and says it never lost a lawsuit. "When you buy a ladder, a quarter or more of the cost you pay is just for the insurance," Tilley President Robert Howland explained.

Media Ignore Tort Reform in 85 Percent of Stories

Tort reform has been a major issue for years, but the 2004 presidential election brought it into sharp focus. First, trial lawyer and Senator John Edwards was one of the rising Democratic candidates. Then eventual nominee Senator John Kerry chose him as his running mate.

Neither Edwards' initial candidacy nor his appearance on the final ticket caused more than a ripple in the news coverage. In fact, the media made no mention of reform in 85 percent of the stories we studied. Only 6 percent of the stories included a prominent discussion of the topic. Another 9 percent made only slight mention of tort reform despite its status as a campaign issue.

The trial lawyer background of John Edwards made tort reform especially relevant. But when the media profiled him, they largely or entirely ignored the issue. *Newsweek*, which mentioned tort reform only twice in 47 stories, did a July 19, 2004 profile of Edwards that was so positive it never discussed the tort reform controversy in its 1,608 words. Instead, it portrayed Edwards as "cagey, relentless and driven." According to *Newsweek*, even "Edwards' courtroom opponents came to regard him with ungrudging awe."

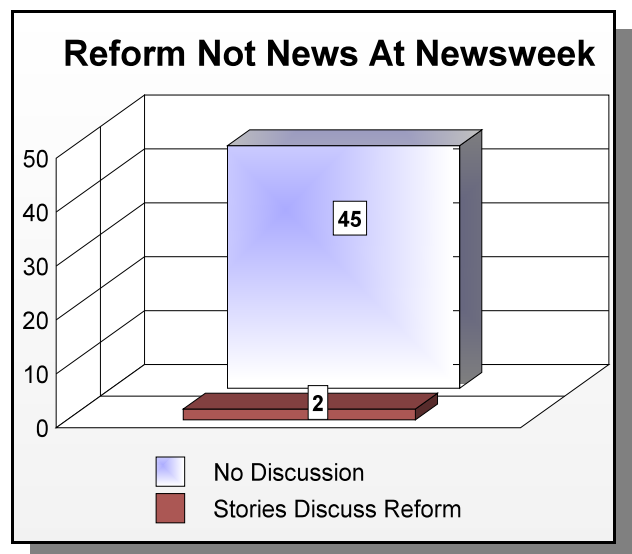
Time magazine hit newsstands the same day with an equally flattering profile of Edwards. Likewise, it ignored tort reform and painted Edwards as "one of the best regarded lawyers in the U.S."

Both stories discussed bank-busting judgments he won against companies he had sued. Neither paid any attention to the effect of those judgments on the companies or their insurers. No one from those companies was quoted in any of the stories.

At least *Time* magazine addressed the Edwards background in a sidebar story in the same issue. That story explained how Edwards had won \$152 million in 63 lawsuits. It also mentioned that “Edwards has voted against most tort-reform legislation, bills that would put limits on the right to sue or impose caps on jury awards.” It even mentioned his memorable victory in the case of a child born brain-damaged. It didn’t interview any of those involved from the other side except lawyers.

Only ABC’s *20/20* treated the appearance of a trial lawyer on the ticket as significant. Reporter John Stossel used his July 23, 2004 broadcast to view the impact of the profession on society: “Today, the trial lawyers may be the most powerful profession in America. We always hear how they help the little guy. But we rarely hear about the unintended consequences of what they do. And they can be nasty.”

NBC Nightly News reporter Kelly O’Donnell did July 7, 2004 briefly discuss the issue of tort reform as it applied to the Kerry/Edwards ticket. O’Donnell: “Now as Kerry sets out to fashion himself as more business-friendly, another conflict: tort reform, the move to limit huge jury awards in civil lawsuits. Not a big issue for Kerry, but Edwards takes a stand.”



Edwards: “No, I don’t support caps.” That’s nearly the entire comment. Five words on the Edwards position. O’Donnell did acknowledge that “Edwards made millions as a trial lawyer and is now delivering big legal donors now to Kerry.” The report added that Edwards “agreed to sign on” to Kerry’s views. It just never says what those were.

Had the media done a little digging, they might have found Dr. Brian Sherrington, interviewed by the *Raleigh News and Observer* on July 19, 1998. According to the *News and Observer*: Sherrington was “a Southern Pines pediatrician, who was sued along with an obstetrician and Moore County Regional hospital when a baby was born prematurely with severe respiratory problems and with brain damage.”

Coverage of Vaccine Crisis Shows Good, Bad of Media

The vaccine crisis gave the media opportunities for good and bad reporting of healthcare and free-market issues. *Newsweek* and *Time* magazine delivered detailed accounts of the problem and pointed out some of the flaws in the current vaccine market that contributed to the crisis. *NBC Nightly News* and *U.S. News & World Report* used the problem to attack companies or even the free market system.

At *NBC Nightly News* on October 14, 2004, reporter Kerry Sanders did a story about “price gouging” on vaccines.

Sanders openly took sides in the story: “The attorneys general in both Kansas and Florida have now filed suits against a Fort Lauderdale company, Meds-Stat, to stop the alleged gouging. The defendants are part of an unconscionable ‘gray market’ vaccine distributorship, now seeking a 10-fold increase in price.”

On November 1, 2004, *U.S. News & World Report’s* Jodie T. Allen used the opportunity to criticize private industry’s ability to produce flu vaccine and that, according to Allen, “is a bitter pill for dyed-in-the-wool free marketers to swallow.”

Allen took a decidedly pro-government approach, asking, “How many competitors do we want in each field?” Allen never pointed out that limited competition is a large part of the problem in the first place. There are only two U.S.-approved manufacturers.

Both *Newsweek* and *Time* magazine did a better job explaining the actual nature of the crisis. The November 1, 2004 *Newsweek* article by Geoffrey Cowley and other staff even discussed the problem in terms of tort reform. “By President George W. Bush’s account, the vaccine crisis is a reminder of the need for liability reform, but no cause for alarm.”

The story then cited several reasons for the vaccine crisis including: “narrow profit margins,” “Liability costs really are higher here than in other countries,” and “the cost of conducting the huge trials needed to secure FDA approval for a product used in healthy people.”

Time magazine’s Christine Gorman got to the heart of the issue in her Nov. 1, 2004 piece: “The bottom line is that the flu vaccine, as it is designed and manufactured, is too expensive to make in the U.S. for the price at which it is usually sold.”

She added: “Manufacturers cannot factor in to the price of their vaccine the cost of a potential lawsuit the way they can with blockbuster drugs because no one would buy the vaccine. But that means they are assuming some hard-to-measure level of risk.”

Gorman’s article also pointed out that “One of the reasons Germany has so many competing flu manufacturers is that the law shields them from product liability.”

Manufacturers cannot factor in to the price of their vaccine the cost of a potential lawsuit the way they can with blockbuster drugs because no one would buy the vaccine.

The story continued: “Sherrington was not involved in the baby’s delivery. But after the baby was born, he was called by a nurse for a brief telephone consultation when he was the only doctor the hospital could reach. He told the hospital to get a chest X-ray.” For that, Sherrington spent three years battling Edwards in court. He also stopped practicing neonatology, which deals with sick newborns.

That was just a part of the issue that the media failed to address. Researchers analyzed each story to determine if the subject of tort reform was discussed. If so, then researchers categorized the stories into two types: prominent discussion or slight mention. Stories that focused on other topics and only included brief mentions of tort reform (up to two paragraphs) fell into the second category. Anything more extensive than that was counted as a complete discussion of the topic.

CBS was similar to the other media studied. Only six tort reform stories cropped up on the network out of 67 pieces involving civil litigation. That 9 percent result tied NBC for the largest number of stories that focused prominently on the issue (5). When CBS wasn’t ignoring Edwards’ trial lawyer background, it was demeaning the people supporting reform.

For example: The network’s Oct. 27, 2004 edition of *60 Minutes* had reporter Steve Hartman go to his Ohio hometown to discuss issues with voters there, including tort reform. Following footage of Hartman and his old neighbor Mert McCrae drinking beer, came this exchange:

Hartman: “The Mert I remembered only got fired up over a good burp. But now...”

McCrae: “What do they call it – the tort reform – where...”

Hartman: “I’ve never heard you use such a big word like ‘tort reform.’”

That’s how *60 Minutes* handled tort reform only a few nights before the presidential election.

U.S. News & World Report included six stories about tort reform (out of 17), but each was only a slight mention. Though it covered tort reform in 35 percent of its stories, the result is somewhat misrepresentative. NBC had the largest number of tort reform stories with 10 (five prominent mentions and five slight mentions) but that was just 15 percent of the stories the network covered.

ABC was nearly as bad as its broadcast competitor CBS. ABC had the most depth on the topic with 12 stories, including four prominent discussions of tort reform out of 54 stories. *Time* magazine had only one prominent discussion of the topic, as well as four slight mentions out of 24 stories.

The Class-Action Debate

It's no secret that one of the major benefits of class-action lawsuits has been the ability to look for a favorable court. States like Mississippi or local jurisdictions like Madison County, Illinois gained nationwide reputations as places friendly to large lawsuit verdicts. The new class-action reform is supposed to prevent precisely that kind of venue shopping.

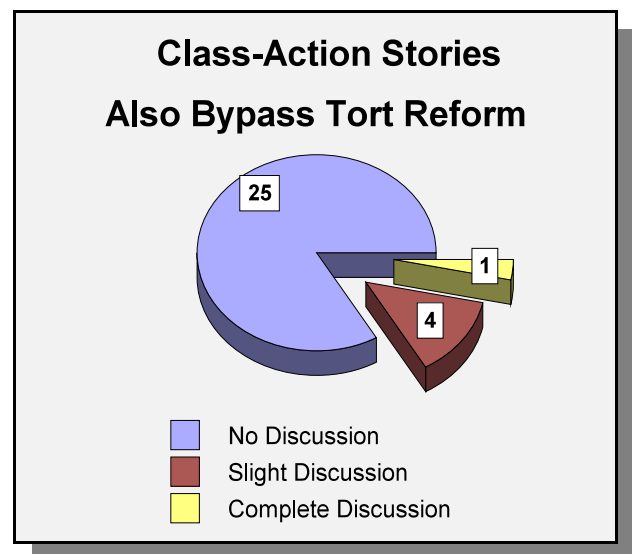
According to a June 11, 2003 *Wall Street Journal* piece by Jim Copland, Dickie Scruggs, "one of the nation's foremost plaintiffs' lawyers," described picking the best location for trial this way at a 2002 conference: "[W]hat I call the 'magic jurisdiction' ... [is] where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected. ... They've got large populations of voters who are in on the deal. ... And so, it's a political force in their jurisdiction, and it's almost impossible to get a fair trial if you're a defendant in some of these places. ... Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or the law is."

Class-action lawsuits were a small, but important piece of the media coverage of runaway litigation. Thirty stories explicitly involved class-action suits. Only five of those mentioned any sort of reform and only one of those included a significant discussion of the topic.

The rest of the stories were filled with often one-sided accounts of victims like Kelsey Stringer, the wife of a Minnesota Vikings football player who died during practice. The story goes on interviewing the "outraged widow" at great length about her husband's death.

Buried deep in the story is the admission by reporter Sara James that "a judge threw out her claim against the Vikings, but she did receive an undisclosed settlement from the training camp physician, though he admitted no wrongdoing." After that loss, Stringer is suing the NFL and "asking for millions in compensation," according to James.

At the very end of the story, Stone Phillips explained that the original case hadn't just been thrown out. The judge had considered it so frivolous that he had ordered Stringer to pay the cost of the Vikings' legal expenses - \$47,000.



A story in the March 22, 2004 copy of *Newsweek* addressed the issue of class-action suits and asbestos. According to the piece, companies have already paid out \$70 billion. The story read like a press release from the left-wing Environmental Working Group and emphasized their hope to ban asbestos entirely. Nowhere did the story mention any attempts by Congress to rein in asbestos lawsuits, even though that remains one of the major targets for reform.

Defendants Given No Face Time in One-Third of All Stories

Presenting both sides of any debate is crucial to balanced journalism. Yet that didn't stop journalists from ignoring that some stories even had two sides. Defendants, for instance, were given no face time in 36 percent of the stories studied. *U.S. News & World Report* was the worst at this practice. Out of 14 stories, defendants were given face time only 43 percent of the time (six stories).

The worst example of this among the stories studied was the Aug. 9, 2004 *U.S. News & World Report* story on 3M. The report compiled a long list of complaints against 3M over the manufacture of its respirator mask. The story mentioned 3M numerous times, but never allowed the firm to respond to the complaints, nor did it even say that 3M declined to comment. Instead, the reporters cherry-picked comments from memos, advertisements, and other documents to contrive 3M's view.

According to the story: "In a four-month investigation, *U.S. News* found serious problems with the safety and reliability of the company's mask, plus inadequate oversight by accommodating federal regulators." The story was so obviously one-sided and inaccurate that the magazine's editors issued a lengthy correction a month later saying that the article had "failed to meet *U.S. News's* acknowledged high standards of fairness and balance." [See sidebar, Page 18]

Stories in this section were assessed as to whether they provided representatives for the defendant in the case. If the defendant chose not to speak because the case is under litigation, that was categorized as a "no" because reporters could have interviewed industry representatives for balance. (Use of an industry spokesperson in a story counted as a "yes.") Roughly 11 percent of all "no" results were stories where the defendant declined to comment (10 out of 92). These included situations where the stories were so unbalanced, that businesses refused to comment, as well as times where the case had not yet gone to trial.

In other cases, news stories buried the position of the business and failed to get any other industry expert to comment. Those stories didn't offer legal experts to explain why companies couldn't comment prior to trial and they often didn't present experts who gave the side of industry.

The *Nightline* story about slavery on Dec. 3, 2003 is a fairly typical example of the media targeting companies. *Nightline's* Ted Koppel and John Donovan spent more than 21 minutes explaining the battle for slavery reparations. The story focused heavily on a lawsuit against 19 businesses that allegedly profited from the then-legal slave trade. It used heart-rending images of slaves and quoted heavily from the activist who brought the suit. The only balance the story offered was criticism of the suit from columnist Deroy Murdock, an African-American.

Abercrombie & Fitch encountered similar coverage. On Dec. 7, 2003, *60 Minutes* targeted the clothier with a lengthy piece drawn almost entirely from a class-action suit. Co-host Morley Safer introduced the company as: "Abercrombie & Fitch, which once reeked of old money and waspy pretention..." He then spoke with several former or would-be A&F employees who claimed they had been discriminated against because of their race. He also interviewed their lawyers blasting the firm.

Eight-and-a-half minutes into the 13-minute report, Safer mentioned the company was unwilling to talk and had released a written statement that included a brief defense and this typical statement: "Abercrombie says that, because of pending litigation, the company will not comment any further."

A&F understood that there is a major similarity between the court of public opinion and criminal court, that "anything you say, can and will be used against you."

The story was so obviously one-sided and inaccurate that the magazine's editors issued a lengthy correction a month later saying that the article had "failed to meet *U.S. News's* acknowledged high standards of fairness and balance."

NBC Nightly News did a negative story about McDonald's on March 3, 2004. Reporter Bob Faw had this to say: "To some, McDonald's is McFrankenstein." Faw then quoted various activists who target the fast food company, including Morgan Spurlock, of the movie "Super Size Me," liberal lawyer John Banzhaf and anti-corporate nutritionist Marion Nestle. Unsurprisingly, McDonald's only released a recorded statement.

Since McDonald's was reluctant to be interviewed for such an unbalanced story, at least NBC could have contacted another expert, like Rick Berman, executive director of the Center For Consumer Freedom. Berman appeared on CNN's *Crossfire* on December 15, 2004 to discuss obesity issues, which his organization tracks.

Here's what he said: "The fact is lawyers, lawyers are in fact, terribly invested in legislation today. And they are looking for laws that do provide them with platforms for lawsuits. And nobody who's got a room temperature above - excuse me - an I.Q. above

room temperature – would make that mistake. They understand that the trial lawyers are very much involved in this.”

Newsweek was one of the worst media about getting defendant comments. It had no defendant responses in 39 percent of its stories (18 of 46). *Time* magazine was the best of all six media outlets. It had no response in only 17 percent of its stories (4 of 23). The three networks came up with very dissimilar results. CBS had the highest total of stories where the defendant had no face time – 47 percent (30 out of 64). NBC was much better with 32 percent (20 out of 62) and ABC did better still with 25 percent (12 out of 47). CBS’s results were almost twice that of ABC.

Roughly Half of All Stories Took the Plaintiff’s View

Reporters aren’t supposed to take sides in a story. But, to tell a compelling story, that concept is sometimes set aside. Reporters told the story from the plaintiff’s point of view in almost half the stories – three times as often as they took the defendant’s point of view (128 stories compared to 42).

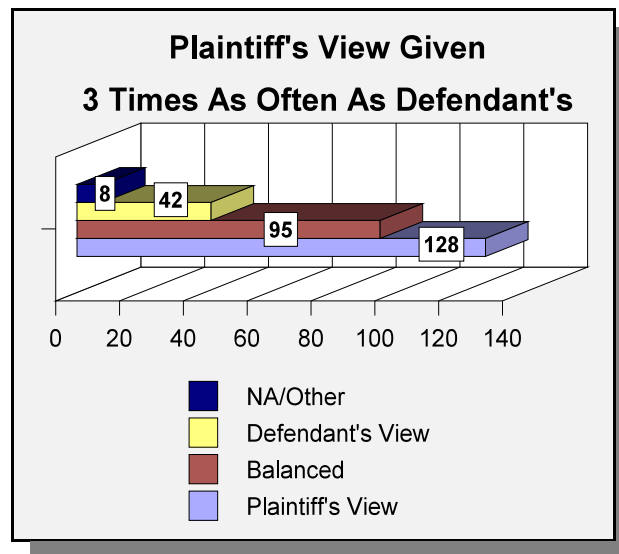
The stories in this section of this Special Report were filled with harrowing tales of workers wronged, patients who had been “mistreated” by their doctors, prisoners unfairly treated by the state and blacks suing for slavery reparations.

Forty-nine percent of the stories (128 of 263) were told from the viewpoint of these “victims.” Only 36 percent of the stories (95 out of 263) delivered a balanced view, while taking a defendant’s perspective only 16 percent of the time (42 out of 263 stories).

The frame of reference for a story can determine how the facts are perceived by the reader or viewer. Stories that included content in a ratio of more than 2-to-1 of one side to the other were categorized as being from that point of view. Stories that did not have that large of a range were considered balanced.

Some stories, while discussing lawsuits, did not fall into the plaintiff/defendant categories and were listed as N/A or not applicable.

CBS took the plaintiff’s view 63 percent of the time (42 out of 67 stories). The network only took the defendant’s position



twice or 3 percent. In one instance, the network's news-magazine show *60 Minutes* emphasized the side of women prisoners battling the state of Connecticut over a book deal.

The three women were in prison for first-degree murder, manslaughter, and fraud, respectively, and they wrote stories about their lives. The state of Connecticut tried to bill them for the \$75,000 they made from the sale of a book.

The May 9, 2004 broadcast showed how reporter Steve Kroft felt about the situation: "But what's truly amazing is the state of Connecticut's reaction..." to the book. Kroft went on to criticize the law that set this all in motion: "The attorney general invoked a vaguely worded law that allows the state to charge inmates for their own incarceration."

What's missing from Kroft's story? Comments from the families of these women's victims to balance his portrayal of these women.

CBS Evening News reporter John Blackstone took the plaintiff's side with his July 12, 2004 report. Blackstone referred to Bryco Arms as "the leading maker of cheap handguns known as Saturday Night Specials." According to the report, the guns were priced at \$164, but that was still "cheap" to Blackstone.

Koppel didn't conceal his own position: "And the answer to the HMOs and the insurance companies? I mean, what ultimately is gonna' take their hands out of the pockets of the Congress people?"

A few weeks before, he had shown how to make a story appear balanced without that truly being the case. On June 21, 2004, Blackstone did a story on mattresses as fire hazards. He spoke with victims, their attorneys and government officials. But only one industry representative was quoted and that spokesperson came from Serta, which had already made a decision to change how they made their mattresses. No opposing voice was heard.

CBS Evening News reporter Sharyl Atkisson was part of a "CBS News investigation," on Nov. 7, 2003 to follow up on reported problems with the Firestone Steeltex tires. Apparently, "investigation" is a code word for a one-sided story at CBS. Although the story made it clear that the federal government had twice found nothing wrong with the tires, CBS disagreed and interviewed reported victims who are suing the company, as well as a representative from a liberal consumer group. There was no comment from Firestone. Atkisson did do a good job on a story about corrupt tow truck operators. She made a point of getting an association spokesman for the Aug. 9, 2004 segment since it was highly unlikely any tow trucker operator would speak to her.

ABC was much better than CBS at taking a fair approach. It took the plaintiff's perspective in 30 percent of its stories (15 out of 49). Stories were told from the defendant's perspective just 22 percent (11 out of 49). The network was balanced in 47 percent of its stories (23 out of 49). Still, there were some obvious examples of taking the side of the plaintiff.

On the July 7, 2004 broadcast of *Nightline*, host Ted Koppel told viewers about those with little money and no health insurance: "Would you assume that not-for-profit hospitals charge these people less, the same, or more than those who are covered by insurance? Remember now, I said almost nothing about this story makes much sense." Koppel was shocked that Medicare and private insurance companies "have a lot of bargaining power with the hospitals" because they represent millions of customers.

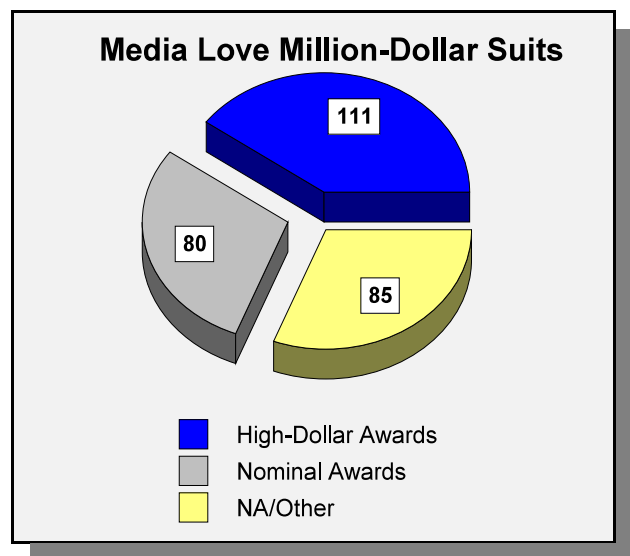
Koppel didn't conceal his own position: "And the answer to the HMOs and the insurance companies? I mean, what ultimately is gonna' take their hands out of the pockets of the Congress people?"

An earlier *Nightline* was devoted to the subject of slavery and "can modern companies be held accountable?" The Dec. 3, 2003 story included multiple errors that helped enforce the plaintiff's position. According to Koppel: "The U.S. government never delivered on the commitment it made immediately after the Civil War to grant each freed slave 40 acres and a mule."

Actually, the United States never made any such commitment. General William T. Sherman issued a military order to that effect, but Congress never approved it. Some land was confiscated from former Confederates and given to newly freed slaves, but President Andrew Johnson overturned that action and the land was returned.

Reporter John Donovan compounded the error by telling viewers about "a growing list of American companies, 19 in all, that they say profited from this, the crime of slavery." Donovan ignored the fact, however repugnant, that slavery was legal for most of the time it was practiced in the U.S.

ABC's *World News Tonight* was almost as bad and used an argument straight from the plaintiff's attorneys. On March 10, 2004, anchor Peter Jennings painted a one-sided picture of the obesity



battle: “The debate about obesity moved to Congress today. It wasn’t so much about the threat to public health, as it was how to protect the food industry from any lawsuits. This is now reminiscent of earlier tobacco wars.” Jennings bought into the claims made by the food critics quoted in the ABC story, that food is somehow similar to tobacco.

NBC told the story from the plaintiff’s view 58 percent of the time. The network liked to compare lawsuits to battles of biblical proportion. Plaintiffs played the role of the heroic “David” and corporations were cast as the evil “Goliath.” NBC told stories from the defendant’s viewpoint only 6 percent of the time (4 stories out of 66).

In a June 4, 2004 *Dateline* story about a lawsuit against the estate of Dr. Robert Atkins over the famous diet, reporter Edie Magnus said: “Jody Gorran is playing David to the Goliath empire of books and products bearing the Atkins name.”

Newsweek did a good job of balancing stories between plaintiff and defendant. Eighteen of its 50 stories were from the plaintiff’s viewpoint and 16 were from the defendant. Unfortunately, they weren’t always fair. The Dec. 15, 2003 story on a lawsuit against the gun manufacturers by the city of Chicago led Dirk Johnson to write that gun makers are being sued “for some of the mayhem their products cause.”

Clearly, Johnson decided that guns are the problem, even though many journalists might be tempted to let a court decide. *Time* magazine wrote its stories from the plaintiff’s view 38 percent of the time (9 out of 24) compared to 29 percent for defendants. *U.S. News & World Report* had the highest percentage of balanced stories – 47 percent (8 out of 17).

Another way stories were skewed toward plaintiffs was a focus on lawsuits seeking millions of dollars. Nothing is a more stereotypical portrayal of the legal culture than the million-dollar lawsuit. Forty percent of all civil litigation stories studied were about high-dollar award cases (111 out of 276). That was more than two-and-a-half times as often as the media even made any mention of tort reform. It was almost seven times more common than the number of prominent discussions of tort reform.

Certainly, million-dollar lawsuits are both newsworthy and of importance to viewers and businesses. The problem here is that these stories were again lacking in context. Only eight of these stories included a significant discussion of reform. It is this back story that is the missing key element.

Without it, stories about million-dollar awards only serve to promote the very culture that reform aims to rein in. By focusing almost exclusively on million-dollar suits, the reporters are almost ensuring that the problems continue.

Time magazine was the most involved covering million-dollar lawsuits out of the media studied. *Time* reporters wrote 63 percent of their stories on high-dollar suits (15 out of 24). *Newsweek*'s coverage was nearly as high. It focused 53 percent of its stories on million-dollar lawsuits (25 out of 47). *U.S. News & World Report* had only 29 percent of its coverage on similar stories (5 out of 17). The networks dedicated close to a third of their stories or more on million-dollar lawsuits. NBC led the way with 39 percent (26 out of 67). ABC was next with 35 percent (19 out of 54). CBS was last of the networks with 32 percent (21 out of 67), although *60 Minutes* focused three-fourths of its coverage on such suits.

Liberal Groups Unidentified, Conservatives Exposed

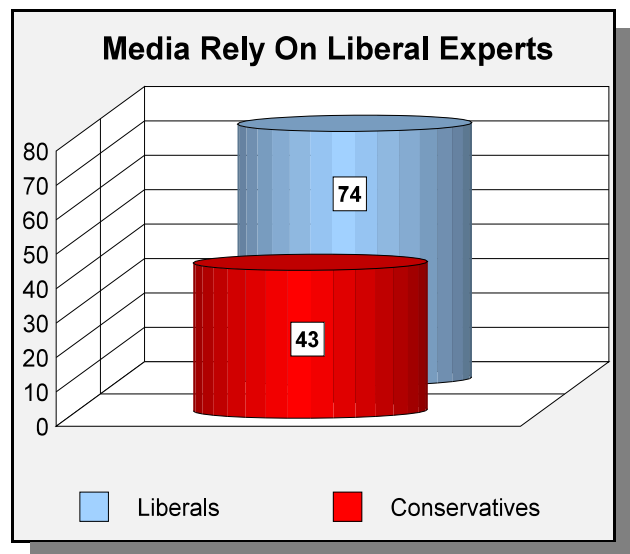
It's pretty easy to see why so many stories take an anti-corporate position. When reporters aren't soliciting information from plaintiffs' attorneys, they are relying on left-wing experts who are anti-corporate for a living. Liberal activists from groups like the Center for Science in the Public Interest, the Environmental Working Group, or the Public Interest Research Group were quoted nearly twice as often (74 to 43) as conservatives or industry spokespeople.

Those liberal activists were seldom labeled so readers and viewers could understand the background agenda of the "expert" commentary. Liberal activists were labeled only 31 percent of the time. Conservative or industry spokespeople were labeled 46 percent of the time.

But those statistics are skewed by the good policies at ABC. The other five media labeled liberal activists just 25 percent of the time. Conservative results in those media were the exact opposite with conservative or industry spokes-people labeled 75 percent of the time.

Those labels included "Christian," "industry" or even "libertarian" to explain the leanings of the speakers. NBC was consistently the worst media outlet about labeling. While the network only labeled liberal activists once out of 13 times or a mere 8 percent, it labeled conservative spokespeople six out of seven times, or 86 percent.

Both *Time* magazine and *Newsweek* were nearly as bad. *Time* labeled liberal activists only 25 percent of the time (2 out of



8 times) and labeled conservatives both times they were used. *Newsweek* labeled liberal activists only 27 percent (3 out of 11 times), but it labeled conservatives 80 percent of the time (4 out of 5 times).

Despite ABC's strong showing, it still had some significant problems with labeling. Some of the labels for the liberal activists were either overly positive or even deceptive. On Sept. 8, 2004, ABC's *World News Tonight* anchor Peter Jennings called a representative from an anti-tobacco group, "one of the most trusted public health advocates in the country, Matt Myers." Myers is president and CEO of the Campaign for Tobacco-Free Kids, a Washington-based anti-tobacco lobbying group, a point the show didn't make.

U.S. News and 3M: A Case Study

The typical litigation story starts with a tale of life gone wrong, seen almost entirely from the side of the "wronged" party. It might be about anything - car accidents, failed medical procedures or product liability. If the other side is contacted at all, their comments are buried or they are unable to respond because the case is still in court.

The *U.S. News & World Report* piece on 3M on Aug. 9, 2004 was a classic. Reporters Christopher H. Schmitt, Ann M. Wakefield, and Monica M. Ekman targeted a company "which produces everything from Post-it notes to Scotch tape." One of those products was a filter mask, designed to keep workers safe from breathing in foreign substances. According to the story, "*U.S. News* found serious problems with the safety and reliability of the company's mask, plus inadequate oversight by accommodating federal regulators."

It continued: "The inquiry is based on interviews, company documents, court depositions, government records, and an exhaustive examination of worker-safety records." What the article didn't say is that it relied heavily on information from the plaintiff's point of view. Readers had to catch the correction to tell that it was riddled with errors and skewed reporting.

The error-filled story resulted in an eight-paragraph correction: "A subsequent review of the article by the editors of the magazine, requested by 3M, disclosed several significant shortcomings and inaccuracies."

Those errors included misreading test results, failing "to offer a fully balanced presentation of the issues raised by the cases," and even an unfair headline. The correction also pointed out that four people cited by the article criticizing the masks were also "paid advisers to plaintiffs' counsel in litigation against 3M." It also mentioned that 3M had won six of the seven court cases involving the mask and was appealing the seventh.

U.S. News concluded: "'Secrets Behind the Mask' failed to meet *U.S. News's* acknowledged high standards of journalistic fairness and balance. Throughout its long history, *U.S. News* has enjoyed a reputation for honoring both qualities. That we failed to do so in this case is a cause of deep regret."

In a story about displaying the Ten Commandments, ABC used especially deceptive labeling. The Oct. 12, 2004 *World News Tonight* interviewed Rev. Barry Lynn, the executive director of Americans United for Separation of Church and State, a left-wing group that works to eliminate religion from any public endeavor. Instead of making it clear that Lynn was a diehard opponent of displaying the Ten Commandments on public property, his organization was identified merely as “Americans United.”

Nightline’s Dec. 3, 2003 piece on slavery-reparations advocate Deadria Farmer-Paellmann called her a “researcher” and “the leading investigator and cataloger of American firms whose corporate ancestors, it is alleged in the Chicago case, profited from the slave trade.” Reuters news service was more direct, calling her an “activist” in a Sept. 2, 2002 story.

ABC’s *World News Tonight* was especially slanted when reporter Pierre Thomas interviewed Prof. David Cole of Georgetown University Law School as an expert to comment on President Bush’s constitutional authority in the war on terror. The Dec. 18, 2003 broadcast neglected to point out that Cole is the legal affairs correspondent for *The Nation*, a left-wing publication that regularly skewers conservatives.

World News Tonight interviewed Rev. Barry Lynn, the executive director of Americans United for Separation of Church and State, a left-wing group that works to eliminate religion from any public endeavor. His organization was identified merely as “Americans United.”

World News Tonight was nowhere near as generous when dealing with conservatives. Reporter Jake Tapper did a story on abortion for the February 26, 2004 broadcast and introduced Rep. Melissa Hart with, “Abortion rights opponents agree.” Tapper used the terminology of the pro-abortion side by saying Hart was against “rights” instead of abortion.

Reporters typically have a hard time classifying the Center for Science in the Public Interest. The left-wing group is a major advocate of regulations against the food industry and called Hardee’s new “Monster Thickburger” “food porn” in an official statement. Still, on April 24, 2004, *Newsweek* reporter Laura Fording called them “a Washington-based nutrition advocacy group.” *Dateline* NBC’s November 16, 2003 broadcast called them simply “a food safety watchdog group.”

Even controversial lawyers were given deferential treatment. Anti-tobacco lawyer Richard “Dickie” Scruggs received a wide variety of labels, including this rare but overt definition in *Time* magazine’s September 27, 2004 issue: “the dart-board face of tort reform.” Apparently, *Time* wasn’t bothered by that since it still called him “courtly” with a “gentle Mississippi drawl.”

Even stories that included advocates from both sides of the political spectrum were openly biased, labeling conservative or industry spokespeople while leaving their left-wing counterparts unlabeled.

Time magazine's April 26, 2004 issue is a good example. Reporter Margot Roosevelt was covering a story about Superfund and toxic waste dumps. In one paragraph, Roosevelt delivered the typical media approach. She quoted Julie Wolk of the Public Interest Research Group and failed to mention that PIRG is anti-big business and didn't label them in any way at all.

Then, later in the same paragraph, Roosevelt mentioned Michael Steinberg of the Superfund Settlements Project, "an industry group that includes General Electric, DuPont and IBM." In the same *Time* article, liberal Harvard law professor Laurence Tribe was simply called a "high-profile attorney."

Newsweek followed the identical formula with its Oct. 4, 2004 issue. Reporters Vaness Juarez and Claire Sulmers did a story about political T-shirts at school and left the ACLU unlabeled while it defended a student with a shirt that called President Bush an "INTERNATIONAL TERRORIST."

Another student whose shirt said "ABORTION IS HOMICIDE" was defended by a "Christian law center."

On those rare times that CBS sought conservative or industry voices, they labeled them more than twice as often as liberals. The latter were labeled just 21 percent of the time (3 out of 14) and conservatives 50 percent (2 out of 4).

Sometimes reporters got it right. *Newsweek's* Mary Carmichael covered the Physicians Committee for Responsible Medicine in her Feb. 23, 2004 piece. "PCRM is a sort of anti-Atkins foundation, with attention-grabbing press conferences and a list of patients who blame the meaty diet for their poor health."

There was no mention that PCRM is at the forefront of the groups suing the food industry. However, Carmichael followed up the initial description by pointing out that only 5 percent of PCRM members are actually physicians. In addition, she added that founder of the group signed a letter with the leader of an animal rights group that "the Department of Justice calls a domestic terrorist threat."

The media commonly threw around the term advocate when discussing left-wing groups. On the June 21, 2004 edition of the *NBC Nightly News*, Ron Pollack was called simply a "patients' rights advocate." He is with Families USA, which advocates socialized medicine.

60 Minutes reporter Steve Kroft used similar terms to describe a liberal consumer group in its April 4, 2004 telecast: "Consumer Federation of America, which is the largest consumer advocacy group in the United States, with more than 50 million members." When asked, the CFA says they have more than 300 member organizations. When pressed, they claim those groups represent about 50 million people.

Conclusions

In a year where a trial lawyer first ran as a primary candidate for president and then ended up on a national ticket as a vice presidential nominee, it should be safe to assume that tort reform would be a major story. It wasn't. The Free Market Project tracked six different major media outlets and 276 stories over the year and found a pitifully small amount of coverage of this major issue. Only 16 stories had a prominent discussion of tort reform. Why? Because the media were doing their own version of ambulance chasing, with stories skewed against industry.

The problem barely began there. Stories overwhelmingly focused on the view of plaintiffs – three times as often as defendants. This "David vs. Goliath" reporting, as NBC liked to call it, skewed stories in favor of plaintiffs and against business. And who are the plaintiffs that media focused on? Individuals were the ones suing in 68 percent of the stories (194 out of 284) and they were suing businesses more than half the time (52 percent).

Unfortunately, this is in keeping with a journalistic mindset that big businesses are the bad guy and anyone who sues them – lawyer, individual or nonprofit group – is seeking justice. That mindset needs to change. Journalists need to emphasize balanced coverage to give readers and viewers the best possible stories. Class-action stories are perfectly valid and often quite newsworthy, but to present them without the context of the issue of tort reform is to ignore the political and legal climate.

Another problem that cropped up in some of those rare times the media discussed tort reform was a tendency to blame rising malpractice costs on the insurance industry. Just as NBC blamed the insurance companies for the high cost of hurricane coverage, other journalists, such as NBC's own Kevin Tibbles, credited "weak insurance regulation" for "skyrocketing malpractice premiums."

This is nothing more than a smokescreen for the incredible costs of runaway litigation and fails to delve into the root causes of the problem.

Overall, our study found three areas where journalists were in direct conflict with the Society of Professional Journalists Code of Ethics. These included:

- Giving the subjects of stories the opportunity to respond;
- Identifying sources whenever feasible with “as much information as possible on sources’ reliability; and
- Supporting the open exchange of views, even views they find repugnant.

Here are five ways to accomplish better coverage of runaway litigation:

1. **Look at Lawyers as Critically as Businesses:** All too often, journalists report stories that help plaintiffs’ lawyers make a business or organization look bad. The business can’t respond because it will help the case against itself if it does. The media swallowed the claims of plaintiffs’ lawyers, instead of covering these stories in a balanced way. In the case of *U.S. News & World Report*, that strategy resulted in a wildly biased and inaccurate story. Reporters cannot rely solely on plaintiffs’ lawyers. They need to find industry experts to comment when businesses cannot. Journalists need to use their natural skepticism and apply it in equal parts to lawyers as well as business.
2. **Examine the Issue of Tort Reform:** Just as the global warming debate is the backdrop to environmental issues, the tort reform debate should be an issue whenever big-dollar lawsuit stories are written. Journalists need to look at the lawsuits in context rather than simply as solutions to individual problems. Intelligent and ongoing coverage of tort reform is necessary.
3. **Cover Lawsuit Stories in a Balanced Fashion:** Reporters need to ensure that their stories aren’t choosing sides. This is accomplished in part by including experts for both the plaintiffs and the defendants. If the business or organization refuses to comment, it is the job of the reporter to find an industry expert who can accurately reflect the organization’s opinion without putting them in legal jeopardy.
4. **Create a Consistent Policy for Labeling Experts:** Time after time, Free Market Project studies show that the media fail to apply the same standard of labeling to liberal and conservative activists. Their bias creates a skewed view that liberal activists are mere “advocates” who have no agenda. Nothing could be further from the truth. The media need to ensure that experts are labeled fairly and consistently.
5. **Note Who the Paid Advisers Really Are:** *U.S. News & World Report* learned a tough lesson with its 3M story, but the correction raised a key point for all journalists. Plaintiffs’ lawyers often make it easy for reporters to do a story, including providing experts where needed. However, many of those experts are actually paid by the attorneys. Reporters need to note this because it has a serious bearing on what the expert has to say.

Litigation Resource List

Academia

Richard A. Epstein
Professor of Law and Director, Law and Economics Program
University of Chicago Law School
1111 East 60th Street
Chicago, Illinois 60637
Tel: 773.702.9563
<http://www.law.uchicago.edu/faculty/epstein/repstein@midway.uchicago.edu>

Richard A. Epstein is the James Parker Hall Distinguished Service Professor of Law at the University of Chicago, where he has taught since 1972. He has also been the Peter and Kirstin Bedford Senior Fellow at the Hoover Institution since 2000. Prior to joining the University of Chicago Law School faculty, he taught law at the University of Southern California from 1968 to 1972. At present he is a director of the John M. Olin Program in Law and Economics. He has written numerous articles on a wide range of legal and interdisciplinary subjects. He has taught courses in civil procedure, communications, constitutional law, contracts, corporations, criminal law, health law and policy, legal history, labor law, property, real estate development and finance, jurisprudence, labor law; land use planning, patents, individual, estate and corporate taxation, Roman Law; torts, and workers' compensation.

Walter Olson
Senior Fellow
Manhattan Institute
52 Vanderbilt Avenue
New York, N.Y. 10017
Tel: 212.599.7000
Fax: 212.599.3494
www.overlawyered.com
www.manhattan-institute.org

"Perhaps America's leading authority on over-litigation." That's what Investor's Business Daily has called Walter Olson, whose books and writings have helped set the terms of debate about the excesses of the nation's civil justice system. Olson's book *The Litigation Explosion* was reviewed favorably in the *New York Times* by the late Chief Justice Warren Burger and subsequently cited by Justice Sandra Day O'Connor in a major Supreme Court opinion; the *Washington Post* dubbed Olson an "intellectual guru of tort reform."

The Excuse Factory, his book on litigation in the workplace, earned accolades from *The American Lawyer* (“engaging, witty and provocative”) and the *London Times* (“riveting”) to the *A.B.A. Journal* (“wittily scathing”) and *The American Spectator* (“devastating and eloquent”). His new book *The Rule of Lawyers* has been hailed in the *American Lawyer* as “wry, amusing” as well as “provocative and enjoyable.”

A senior fellow at the Manhattan Institute, the think tank in New York City, Mr. Olson is a frequent contributor to the magazine *Reason*, and his writing appears regularly in such publications as the *New York Times* and the *Wall Street Journal*. He has appeared numerous times before Congress, federal agencies and state lawmakers and has approximately 300 broadcast appearances under his belt, including *Crossfire*, *MacNeil-Lehrer*, *Oprah*, *Donahue*, and NPR. His website *Overlawyered.com*, launched in 1999, has won wide acclaim for its mix of entertaining and serious commentary.

Attorneys

Stanton D. Anderson
Executive Vice President and Chief Legal Officer
U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062-2000
Tel: 202-659-6000
www.uschamber.org

Stanton D. Anderson is executive vice president and chief legal officer, leading the Chamber’s efforts on legal reform and defense of business interests in the courts. Anderson oversees the National Chamber Litigation Center, the public policy legal arm of the Chamber; the Institute for Legal Reform, a Chamber affiliate dedicated to restoring fairness, efficiency, and consistency to the U.S. civil justice system; and the Chamber’s Office of General Counsel. In addition to his duties at the Chamber, Anderson is a partner in the D.C. law firm of McDermott, Will & Emery.

John Beisner
Partner
O’Melveny & Myers
1625 Eye Street, NW
Washington, DC 20006
Tel: 202.383.5370
Fax: 202.383.5414
www.omm.com
jbeisner@omm.com

John Beisner, head of O'Melveny & Myers LLP's firm-wide 120-attorney class-action practice, specializes in the defense of purported class actions, mass tort matters, and other complex litigation in both federal and state courts. Over the past 20 years, he has been involved in defending numerous major U.S. and foreign corporations in upwards of 400 purported class actions filed in the federal and state courts of 37 states at both the trial court and appellate level. Those class actions have concerned a wide variety of subjects, including antitrust/unfair competition, consumer fraud, employment discrimination, environmental, product-related and securities.

Industry and Associations

Dr. Richard E. Anderson
Chairman and CEO
The Doctors Company
185 Greenwood Road
Napa, California 94558
Tel: 707.226.0247
www.thedoctors.com

Dr. Anderson is chairman of the board of governors and chief executive officer of The Doctors Company, the first national physician-owned medical malpractice insurer. He is a noted authority on medical malpractice insurance and jurisprudence. Anderson's opinion on medical liability reform has been sought by President George W. Bush's administration and by a subcommittee of the U.S. House of Representatives tasked with investigating this growing crisis. Serving as a doctors' advocate in defense of the practice of good medicine, Anderson has worked with numerous national and industry media outlets discussing the crisis and his experience with the proven solutions embodied in California's 1975 MICRA legislation.

Herman Cain
825 Fairways Court
Suite 303
Stockbridge, Georgia 30281
Tel: 678-565-5335
Fax: 678-565-5338
www.hermancain.com

Herman Cain is the National Chairman of the Media Research Center's Free Market Project and the former president and chairman of Godfather's Pizza, Inc. He was elected to the board of directors of the National Restaurant Association in 1998. In 1994-1995, he served as the chairman of the board of directors. While leading this association, he developed the organization into a pro-business voice concerning health care reform, employment policies and taxation.

Sherman Joyce
President
American Tort Reform Association
1101 Connecticut Avenue, NW
Suite 400
Washington, DC 20036
Tel: 202.682.1163
Fax: 202.682.1022
www.atra.org
sjoyce@atra.org

Graduate of Princeton University and Catholic University Law School, he served as Legislative Assistant to U.S. Senator John C. Danforth until 1984. In 1987, after being admitted to the Virginia Bar, he became minority counsel to the Senate Committee on Commerce, Science, and Transportation, where he worked on product liability legislation. Mr. Joyce assumed his current position in August 1994.

Lisa Rickard
President
U.S. Chamber Institute for Legal Reform
1615 H St., NW
Washington, D.C. 20062
Tel: 202.463.5742
www.legalreformnow.com
ilr@uschamber.com

Lisa Rickard is president of the U.S. Chamber Institute for Legal Reform (ILR), providing strategic leadership to ILR in its efforts to restore fairness, efficiency, and consistency to the U.S. civil justice system. Rickard has spent 25 years as a public policy advocate, most recently as vice president, federal and state government affairs for The Dow Chemical Company. Rickard was a partner in the Washington, D.C. law firm of Akin, Gump, Strauss, Hauer & Feld where she has represented corporate and public sector interests before Congress the White House, and regulatory agencies. She currently serves on the board of directors of the Women's Research and Education Institute. Additionally, she is a member and former director of the Business Government Relations Council and was formerly a board member of the Business-Industry Political Action Committee.

Lawrence E. Smarr
President
Physicians Insurers Association of America
2276 Research Boulevard
Suite 250
Rockville, MD 20850
Tel: 301.947.9000
Fax: 301.947.9090
www.piaa.us

The Physician Insurers Association of America (PIAA) is a trade association of more than 50 professional liability (medical malpractice) insurance companies owned and operated by doctors and dentists. Collectively, these companies insure approximately 60 percent of America's private practice physicians, as well as dentists, hospitals, and other healthcare providers. In addition, international affiliate members provide indemnification and other services to more than 400,000 healthcare professionals around the world.

THE FREE MARKET PROJECT
is a division of the Media Research Center
Dan Gainor, Director
Charles Simpson, Research Analyst
www.freemarketproject.org

The Media Research Center
325 South Patrick Street • Alexandria, Virginia, 22314
(703) 683-9733 • www.mediaresearch.org

L. Brent Bozell III, President
Brent H. Baker, Vice President for Research and Publications
Richard Noyes, Research Director • **Tim Graham**, Director of Media Analysis
Michael Chapman, Director of Communications • **Kristina Sewell**, Research Associate
Geoff Dickens, **Jessica Anderson**, **Brian Boyd**,
Megan McCormack, **Brad Wilmouth** and **Ken Shepherd**, News Division Analysts
Eric Pairel, Director of Information Systems • **Mez Djouadi**, Webmaster
Ian Crafford, Intern