

## "Justice In America"

Presented at The People's Law School

By George Allen Moore

Johnston, Moore & Thomspson

400 Meridian St. Suite 301

Huntsville, AL 35801

256.533.5770

<http://www.jmmtlawfirm.com/>

Justice in America is under attack like never before. Big corporations seeking to eliminate accountability have spent billions of dollars to convince the public that the civil justice system is broken and is even a burden on our health care system, economy and society as a whole.

These big corporations, their front groups and phony think tanks - some of the most powerful and well-funded in the country - are working to eliminate the right of Americans to hold wrongdoers accountable. Their ultimate goal is to evade responsibility for negligence to increase their bottom lines. They will stop at nothing to achieve their goal.

For the past 200 years, America's civil justice system has provided every citizen, both rich and poor, with a fair and impartial way to redress wrongs. Our courts are the great levelers of our society. In our courts, all men are equal. We all hold these truths as self evident. We believe that if wrongdoers injure us, that we can turn to our courts for a fair way to redress wrongs.

Most of us try to settle our disputes without use of the courts. In fact, many clients that come to see me say things like "*I did not want to have to do this*"; "*I never thought I'd have to file a lawsuit against my own insurance company*"; "*I never thought my employer would mistreat me*"; and "*I'm sorry that I'm going to have to file a claim.*" Most of us think that if we suffer from the acts of a wrongdoer, that our laws will protect us. Americans believe that our system is fair and that we can get justice and hold wrongdoers accountable for their actions.

Let me give you a few instances of when people need our courts. Let's suppose your own insurance company refuses to pay a just and fair claim. People like that have a legitimate reason to use our courts. Let's suppose that a member of your family has been injured by an unsafe product. Remember that unsafe products are in our market place. Only a few years ago, new Firestone tires would blow out because they were defective. This caused automobiles to wreck and resulted in people being severely injured or dying because of the defective tires. If a defective product results in an injury, that family is reasonably entitled to seek justice in our court system.

For another example, let's suppose that a company pollutes a drinking stream. There is a small farm north of Meridianville with a small creek that runs along the edge of the farm. If an industry upstream pollutes the creek and the cattle on the farm drink from the polluted stream and die, it would be very reasonable for the farmer to make a claim for the value of his cattle.

Let me give you another instance. Let's say that you have worked all of your life and you're nearing retirement. Your retirement funds are invested in your company stock and you think your retirement is secure. Shortly before retirement, you discover that the company's books have been falsified and the company's stock is almost worthless. If the CEO of a large corporation swindles you out of your retirement by falsifying the company books, you would be reasonably entitled to take that wrongdoer to court to get justice. These examples are what we think about when we talk about getting justice in the courtroom. We all believe that justice can be had and that wrongdoers can be held accountable.

I'm here to tell you, ladies and gentlemen, that justice in America is under ferocious attack by big corporations. Large corporations are seeking to have laws passed and regulations implemented that will restrict accountability for their actions. They are seeking to avoid being held accountable for wrongdoing in many instances. These corporations have spent billions of dollars to convince you that the civil justice system is broken, and in fact, that it's even a drain on society or a burden on society.

How do big corporations do this you might ask? They do it through phony front groups. They use names like the Institute for Legal Reform, American Justice Partnership, Safety and Prosperity Coalition, and one that's recently been used in Alabama is called Alabama Voters Against Lawsuit Abuse. Their purpose is to convince you that our justice system is broken and that juries, who have served our country so well for over 200 years, can no longer be trusted in civil cases.

For the past 20 years or more, this tort reform message has gone largely unchallenged. There have been few organizations actively representing consumers, but we've all heard about "*greedy trial lawyers*" and "*frivolous lawsuits*." Well I'm here to tell you that finally people and organizations are questioning the motives of large corporations who seek to evade responsibility for their actions.

The American Association for Justice (AAJ), a leader in protecting every American's right to seek justice and hold wrongdoers accountable, has worked tirelessly to advocate for policies and initiatives that protect and improve the civil justice system, including helping to elect candidates who support justice.

The goal of the AAJ's Fight for Justice Communications Campaign is to educate the public about the serious threat to justice, the motives of those who want to destroy it and the efforts of trial attorneys to ensure that any person who is injured by the misconduct or the negligence of others can get justice in the courtroom, even when taking on the most powerful interests.

Our efforts are more important now than ever, because the drug and oil industries, big insurance companies and other large corporations dominate our political process, and thus, people cannot depend on the political system to hold corporations accountable. When corporations and their CEOs act irresponsibly by delaying or refusing to pay fair and just insurance claims, producing unsafe products, polluting our environment or swindling their employees or shareholders, the last resort for Americans to hold them accountable is in our courts.

We're seeking to maintain a level playing field in the courts. We've all heard the story of David and Goliath. Well, the courtroom is one of the

only places where David can be equal to Goliath. All of us are Davids at some time during our life. In our courtrooms, we must have a level playing field and the laws must be equally applied. The second thing we're seeking is to maintain laws that hold wrongdoers accountable. When you and your family suffer because of the actions of a wrongdoer, the wrongdoer must be accountable.

Corporations seeking to evade responsibility for negligence have spent billions of dollars misinforming the public about the civil justice system. Despite their efforts, polling and research show that the public supports a fair civil justice system that allows any person to hold a wrongdoer accountable. The following is some of what we know from polling conducted by Hart Research for AAJ:

- By a margin of 68-13, the public feels that large corporations and their CEOs put a higher priority on *"looking out for the bottom line financially and doing what's necessary to make a profit"* than on *"being fair and responsible in looking out for the interests of consumers and employees."*
- By a margin of 58-32, the public feels that when it comes to reforming the civil justice system, *"making sure individuals can get the justice they deserve when they have been harmed by the actions of an irresponsible corporation"* is more important than *"limiting the amount of damages that juries can impose for pain and suffering, so that lawsuits do not cause as big a burden on our economy."*
- By a margin of 55-30, the public feels that when it comes to reforming the civil justice system, *"making sure individuals can get the justice they deserve when they have been harmed by the actions of an irresponsible corporation"* is more important than *"reducing the number of frivolous lawsuits and penalizing those who file frivolous lawsuits."*
- By a 58-17 margin, the public trusts the legal system more than the political system to hold negligent corporations accountable.

When asked which statement about the civil justice system is more compelling, by a margin of 47-37, the public chose STATEMENT B below:

STATEMENT A: The civil justice system today is out of control and is having more of a negative effect on our country, by burdening our economy and driving up the cost of health insurance. The lawyers who file these lawsuits are a big part of the problem. These lawyers take on frivolous cases, they convince juries to hand out outrageously large judgments, and keep large shares of what their clients have been awarded, with no limits on their fees.

STATEMENT B: Today, the pharmaceutical and insurance industries, big oil companies and other, large corporations dominate our political process. So when they abuse their power by producing unsafe products, when they pollute our environment and endanger public health, or when they swindle their employees to pad their profits, the last resort for Americans to hold them accountable is in our courts. Lawyers play a valuable role in this system, by standing up for the average person against these powerful interests, and by ensuring that, at least inside that courthouse, the playing field is level and everyone gets a fair shake.

Opponents of justice have been heavily involved in defeating candidates, especially trial attorneys running for office, who support the right of every American to get justice. In the 2006 elections, opponents of justice spent \$10,810,751 on television advertisements attacking pro-justice candidates. In addition to television advertisements, they ran radio ads, sent direct mail and issued press releases attacking pro-civil justice candidates. But, they got little return on their investment. In the 2006 elections for federal office:

- 14 of the 18 trial attorneys who ran, won
- 248 of the 306 candidates who support justice won

And while Iraq and corruption were the top issues on voter's minds in the 2006 elections, AAJ conducted polling in Iowa's First Congressional District, a race in which civil justice issues played heavily, to assess its effect on voters. In the race, AAJ member Bruce Braley beat Mike Whalen to replace U.S. Representative Jim Nussle.

Braley's successful candidacy provided an important real-world test of how voters respond to issues involving trial attorneys and the civil justice system. In that election, Braley's opponents invested substantial resources in attacking him on the basis of his record as a trial lawyer. While Braley's comfortable victory in this swing district speaks directly to the ineffectiveness of these attacks, the American Association for Justice commissioned post-election polling to more fully probe the dynamics of this election, particularly with regard to the impact of the focus on civil justice issues. The interviews for this survey were conducted from November 10 to 12, 2006, among a representative cross section of 505 Iowans who cast ballots in the Iowa 1<sup>st</sup> congressional district election this year. The key findings from this survey are:

- In electing Bruce Braley, the vast majority of voters were aware that he is a trial attorney. Overall, 64% report having heard a lot about his profession and another 20% report having heard something about it. No difference exists between Democrats and Republicans in the frequency with which they report to have heard a lot about Bruce Braley being a trial attorney.
- Voters who heard the most about the fact that Bruce Braley is a trial attorney supported him for Congress by 56% to 42% and were more likely than other voters to say they felt strongly that he was the best choice in the race.
- Bruce Braley was seen as the superior choice in the race on a series of important qualities, including on issues that opponents often use as attack points against trial attorneys. On the issue of health care, for example, voters thought Braley was a better choice than Mike Whalen by 41% to 21% overall, and by 44% to 20% among those who had heard a lot about Braley's work as a trial attorney. On economic issues, including jobs, Braley had a 43% to 31% advantage over Whalen among all voters, and a larger advantage of 45% to 29% among those who had heard a lot about Bruce Braley being a trial attorney.
- Large majorities of voters say they were aware of the attacks on Bruce Braley's record as a trial attorney, but most voters who heard these attacks dismiss them as unfair criticisms. For example, among the

72% who say they remember the charge that "*lawsuit abuse by trial lawyer Bruce Braley is making things worse for expectant mothers*" by driving obstetricians out of the district, nearly two-thirds reject the attack and say it is an unfair criticism of Braley. Interestingly, women are less likely than average to give any credence to the attack that Braley's involvement in medical malpractice cases somehow hurts expectant mothers.

- Perhaps the most important reason why the attacks on Bruce Braley fell flat is that defenders of the civil justice system have the high side of the debate when they offer a clear and compelling message. This is most clearly seen when voters are offered descriptions of two opposing approaches candidates take on the issue of civil justice and legal reform.

CANDIDATE A favors restricting lawsuits and says that they hurt patient care, drive up the cost of insurance, and drive jobs overseas when doctors and American business are forced to spend billions of dollars on unnecessary legal bills. Candidate A will put top priority on real tort reform to curtail frivolous lawsuits because the only ones benefiting under the current system are trial lawyers.

CANDIDATE B favors protecting the legal right of average Americans and strengthening the civil justice system so that deserving individuals can get justice, wrongdoers are held accountable, and insurance companies are required to pay legitimate claims. Candidate B will put top priority on ensuring that any person who is injured by the misconduct or negligence of others can get justice in the courtroom, even when taking on the most powerful interests.

Given this choice, voters prefer the candidate who emphasizes protecting the legal rights of average Americans over the candidate who emphasizes the need for "*tort reform*" by 54% to 31%. There is much more unity on this point among Democratic voters (who favor Candidate B by 72% to 12%) than among Republican voters (who prefer Candidate A by the narrower margin of just 52% to 35%). Independent voters side more with the pro-trial attorney position by 46% to 38%.



The bottom line from this research, and from the election results themselves, is that while opponents of the trial attorneys and the civil justice system work hard and spend a lot of money to get their way, there is far less political power in their attacks than is often suspected. Moreover, there is a potent framing for the valued role of trial attorneys and the civil justice system that overcomes the negatives of the other side in this debate.

What we're faced with tonight is a very simple question. **Should we have a system where wrongdoers are held accountable for their actions, or should wrongdoers be allowed to evade the consequences of what they have done so that their companies can make more money?**

What are the consequences if tort reformers continue to get their way and continue to get laws passed that eliminate the rights of the average Americans? First, it shifts the responsibility for their wrongdoing to the families that have been affected. Every time a terrible wrong occurs, you say to yourself "*Thank God that's not me*"; "*Except for the grace of God, that would be me*"; "*Except for the grace of God, there go I.*" Remember, we are in this together and it could be any of us. So, if corporations continue to pass more tort reform, they're shifting the responsibility for their wrongdoing first to the people who are injured.

Let me tell you what happens to the families. First, they can't afford to pay all those giant medical bills. They lose their job and their income stops. After a few months, their Blue Cross is cancelled. Soon they can't pay the mortgage on their house and it is lost. They lose their car. The wife and husband get a divorce. They can't afford to provide properly for their children. The husband, if he's the breadwinner and the injured person, ends up on Social Security or on Medicare or Medicaid. Guess who pays for Medicare, Medicaid and Social Security? Every citizen in this room. Tort reform shifts the burden from those who are wrongdoers to the people that are injured and once it takes all their assets, it shifts the financial burden to the general population. It allows the actual wrongdoer to evade responsibility for what they have done. I think that is wrong. In America, responsibility for your actions



is a primary tenant. It's an article of faith. It's what we all believe in. We believe that every person is responsible for what they do and what they have done.

I want to tell you a few truths about the civil justice system. First, for the past 15 or 20 years, big corporations and their political allies have engaged in what I consider very overbearing tactics and vicious tactics when attacking our jury system. Another truth is that when these corporations and their CEOs act irresponsibly by swindling somebody or putting an unsafe product into a consumer's hand and a child is injured or killed, or when your own insurance company refuses to pay a just and fair insurance claim, the last resort for an American family is to hold the corporation accountable in our courts. That's a tenant, an article of faith that we as Americans live by. That's our last chance. Another truth about the civil justice system is that trial attorneys seek to insure that every person can seek reasonable justice and hold wrongdoers accountable for their actions. Trial attorneys seek to have a level playing field where 12 jurors from our community make decisions, even when individuals go up against the most powerful corporations in our society. Trial attorneys are committed to strengthening our civil justice system and will not let it be destroyed. Tort reformers are trying to destroy a very precious right. It's your right to have justice. Trial attorneys want deserving individuals to find justice in the courtroom and they want wrongdoers to be held accountable.

The existence of the civil justice system and a courthouse with open doors acts as an incentive for wrongdoers to act responsibly. If a potential wrongdoer has a plan to swindle somebody out of their retirement funds, knowing that they can be held accountable for their actions serves as a strong incentive for them to act responsibly, and in many instances, prevents someone from becoming a wrongdoer.

Let me tell you how a trial works. What I'm going to say to you is no different than what you already know. This will show how unreasonable the arguments are that are made by tort reformers. A trial operates in this way. The person that's injured tells his story and has a lawyer who helps him. The defendant also has a lawyer and he

tells his client's side of the story. The judge is neutral. He acts as a referee and he tells the jury what the rules are that they have to apply to the case. Who makes the only decision in the case? Is it the judge or lawyers? No, it's the jury. It's a 4-step process: the plaintiff tells his side; the defendant tells his side; the judge tells the jury the rules; and the jury makes the decision. It is the jury that tort reformers are really complaining about. If you listen to the tort reformers, you would think that there is only one lawyer in the courtroom, that the judge is asleep and that the plaintiff's lawyer is sitting with the jurors as they deliberate telling them what to do. Well, of course, none of that is true. Now may I ask you a few questions? Do tort reformers think that the juries are not trying to do justice? Do you think defendants hire incompetent lawyers? Do you think defendants hire lawyers that are unable to expose frivolous cases? Of course not. Defendant corporations and insurance companies hire the very best lawyers. The lawyers that work for the insurance companies and big corporations are the best paid lawyers. Do tort reformers believe that the average juror cannot understand what the witnesses are saying or that the average juror is incapable of being fair? The real answer is that tort reformers have no respect for or faith in the average person. That is obvious from the way they attack the jury system under the guise of attacking "*unscrupulous*" lawyers.

Large corporations and tort reformers don't want to be held to the same standards that you and I must live by. Democracy for them is simply an obstacle in their path to power and profit. It is something to be overcome.

I want to show you the difference between a criminal case and a civil case. I'm going to give you some facts. This involves George Bush when he was Governor of Texas. During the six years he was Governor of Texas, 152 people were executed. That's an average of approximately 2 people per month during the six years he served as Governor of Texas. The great majority of the 152 people, after they had been sentenced to death, petitioned Governor Bush to commute their death sentence to life in prison. During 6 years, Governor Bush never commuted one person's sentence. All 152 people were put to death. His standard answer was that the jury had made the decision.

Governor Bush refused to overturn a jury verdict or to go behind what a jury decided in criminal cases.

Now compare the idea that a jury is empowered to sentence somebody to death with the argument made by tort reformers that a jury should not be empowered or trusted to award money damages against a fraudulent corporation. It doesn't wash in my mind. If jurors are smart enough to serve on a case where somebody can be sentenced to death, they are surely smart enough to serve on a case where fraud and money damages are involved.

I'm going to tell you tonight a story about a man named Frank Cornelius. Frank Cornelius, in 1975, was a highly paid lobbyist for the insurance industry. He lived in Indiana. The insurance industry hired him to persuade the Indiana legislature to pass a law capping medical malpractice damages at \$500,000. No matter what happened to you, the most you could get was \$500,000. We have those kinds of laws in Alabama. Frank Cornelius was really good in his profession. He persuaded the legislature to pass the law in 1975 and the Governor of Indiana signed it into law. Frank Cornelius argued that such limits would reduce health care costs and encourage physicians to stay in Indiana.

Fifteen years later, in 1989, Frank Cornelius was at his office when he fell out of a chair and injured his left leg. He had routine arthroscopic surgery. He came out of that surgery in a terrible condition and was diagnosed with RSD (reflex sympathetic dystrophy). That's a condition that normally occurs because of trauma or infection. It often occurs because of surgery. Shortly after the surgery and in the same hospital, a physical therapist shocked him while he was in rehab. Then he had to have more surgery because he developed a blood clot. Shortly after that, his doctor punctured his lung. By this time, he needed an oxygen tank to breathe, was confined to a wheelchair, and was addicted to painkillers. Several months later, this man filed a medical malpractice case. He got \$500,000, the maximum. Frank Cornelius committed suicide about 2 or 3 years ago. I'm sorry to tell you that, but he did. His life had become so horrendous. This is the kind of story we don't even want to read about.

Before Frank Cornelius' death, *The New York Times* published an article about his life. Mr. Cornelius wrote "*At age 49 I am told I have less than 2 years left to live. My medical expenses and lost wages, projected to retirement if I should live that long, come to more than 5 million dollars. Claims against the hospital and the physical therapist have been settled for a total of \$500,000, the limit on damages for a single incident of malpractice. The legislature has raised that cap to \$750,000 and I may be able to collect some extra damages if I sue those responsible for the August, 1990 incident that nearly killed me. But apparently because of bureaucratic inertia the state medical panel that certifies such claims has yet to act on mine. The kicker, of course, is that I fought to enact the very law that limits my compensation. All my suffering might have even been worthwhile, on some cosmic scale, if the law had accomplished its stated purpose, but it hasn't.*" Tort reformers said it would reduce health care costs and help doctors stay in the state. It didn't do anything but make big corporations, in this case insurance companies, millions of dollars. The man that actually pushed for this law paid the ultimate price. He was a victim of his own reform. His name is Frank Cornelius. That is a true story and illustrates what tort reform can do to the average citizen.

Now let me tell you another real life story. I was in Washington several years ago and met Senator Trent Lott from Mississippi. I have tried to follow his career since meeting him. I think he's one of the most talented and good public servants that we have in the United States Senate. Senator Lott had a beautiful home in southern Mississippi that was destroyed by Hurricane Katrina. Before Katrina, he was an outspoken critic of those who filed lawsuits. He believed that tort reform was needed, the more the better. After his house was destroyed by Hurricane Katrina, guess what Senator Lott has done. He has joined the legions of Katrina victims who are in the same boat. He has sued his insurance company for refusing to pay for the damages to his home. He sued them just like you might do if your house had been destroyed by Hurricane Katrina. This is mind-boggling.

Senator Lott has a different focus now, after Hurricane Katrina. He now talks about his own lawsuit and about the "*insensitivity and outright meanness*" of insurers, saying "*They have abused my people,*

*my friends, the people I love."* This is from a man who was the majority leader of the Republican Party just a few years ago. He is a very powerful, very eloquent, very competent public servant.

Senator Lott, it seems, may have seen the light. He has inserted a provision into legislation directing that a fraud investigation be conducted of the insurance industry by the Department of Homeland Security. Senator Lott may find out if insurance companies defrauded his friends in Mississippi. I think that's a wonderful thing. This story shows you, ladies and gentlemen, that tort reform will come home to you. Senator Lott's situation should be a reminder to all of us that insurance companies who abuse their policyholders must be held accountable and that open access to courts is the best means to do that.

Everything I'm talking about tonight comes from the greatest book on earth and that's the Holy Bible. Before I came tonight, I looked up a few verses regarding justice. There are lots of them. I'm going to read just a few to you.

**Micah 6:8**, which I think is one of the best verses in the Bible, says:

*"What does the Lord require of thee? To do justice, to love mercy, and to walk humbly with your God."* The very first thing that God requires of all of us is to do justice.

God's command in **Isaiah 1:14-17** is to *"seek justice, correct oppression, defend the fatherless, plea for the widow."*

**Psalms 82:3** says to *"Defend the poor and fatherless, do justice to the afflicted and needy."*

**Exodus 23:6** tells us *"Do not deny justice to your poor people in their lawsuits."*

I can go on but my time is almost up. Let me go back to where I started, ladies and gentlemen. We think we've got a right as Americans to have justice when we suffer at the hands of wrongdoers. I'm telling you right now your rights are under attack like they have never been attacked before. You have the opportunity to weigh this

question. Do you want to give up your rights so corporations can make more money or do you want to keep the right to hold wrongdoers accountable for their actions? I encourage you to keep the courthouse door open. Justice is a very precious right. Most of us are like the people who come to see me. They never think it'll happen to them. They don't want to sue anyone. They never see themselves as a plaintiff. When it happens to you or to citizens like Frank Cornelius or Senator Trent Lott, pray that the tort reformers have not totally closed the courthouse door on the American citizens. Pray that you still have the right to take a case with merit and present it to 12 of your fellow citizens and see if wrongdoers can be held accountable for their actions.

I love speaking at The People's Law School. I love doing what I do and want to thank you for the opportunity that you gave me tonight. Thank you very much.

- The Mission of the American Association for Justice is to promote a fair and effective justice system - and to support the work of attorneys in their efforts to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in America's courtrooms, even when taking on the most powerful interests.