

Business on Trial: The Civil Jury and Corporate Responsibility

By Valerie P. Hans
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REVIEWED BY MICHAEL FOSTER

The American civil jury system is at the epicenter of a debate that will shape public opinion and legislative agendas for years to come. Two powerful opponents are intent on winning the hearts and minds of the public, hoping to reach both policy-makers and those who will serve as jurors.

One view, held by the business community, is that juries are out of control, awarding outrageous verdicts for frivolous claims. They argue that "Robin Hood" juries are driving businesses out of the country and forcing up the price of goods. Business leaders are convinced that jurors can be manipulated into unjustified and excessive verdicts by clever lawyers who play on sympathy for injured plaintiffs and suspicions about big business, persuading jurors that the deep pockets of large corporations can easily bear the losses. Opposing these views are the plaintiffs' personal injury lawyers and consumer groups, who see corporate greed and irresponsibility putting profit above human safety and trying to close the doors of the courthouse to all but the elite.

Is the corporate world's view correct, that the only way to curtail runaway juries is through extensive tort reform? Or are the plaintiffs' lawyers and consumer groups right, that this is a David and Goliath fight and David is about to have both hands tied behind his back?

In *Business on Trial*, Valerie P. Hans seeks answers to these questions by examining "the contemporary jury's treatment of businesses and corporations." She studied three groups to evaluate attitudes toward business defendants: (1) civil jurors who decided cases against corporate and business defendants, (2) members of the public who were chosen to participate in a public opinion poll, and (3) participants in a mock jury exercise. Readers are sure to find some of their most

firmly held views challenged by this interesting and informative book.

The civil jurors used in the study served in 28 tort cases and eight contract cases. They were interviewed to see how they reacted to the evidence and the parties in their cases. The 216 mock jurors were presented with different scenarios, with the defendants changed from private individuals to corporations varying in size from small to large to see if the status of the defendants affected the mock jurors' analyses of liability and damages. The 450 participants in the statewide opinion poll were asked to respond to questions that would reflect their attitudes toward civil litigation and business defendants.

One common assumption that fell victim to Hans' study is the belief that juries are swayed by sympathy for the injured party. The data derived from the study indicated just the contrary — jurors often blame the victim or see the machinations of a greedy lawyer behind the litigation. Individual responsibility is a theme that plays well with them. Jurors from both the cases and the mock jury exercises were often highly skeptical of plaintiffs' claims, and respondents in the public opinion polls shared those views. In attempting to discover why the commonly held view that juries harbor sympathy for the injured party should be so resoundingly shattered by her study, Hans considers a likely explanation to be the tendency of jurors to feel threatened when faced with the reality that bad things can happen to people for no apparent reason. This challenges their sense of security and control over their own lives. They feel that the plaintiffs must be responsible for what occurred to them and that the plaintiffs seek to blame someone else for their misfortune. This concept — called "defensive attribution" — reflects our need to distance ourselves from threatening occurrences. Not surprisingly, this psychological need to blame the victim is greatest when the injury is most severe.

Demographics in jury selection are considered poor indicators of jurors' attitudes, but there are instances when they correlate well with attitudes. For example, Hans found that whites,

Protestants, and older people were most likely to have strong doubts about plaintiffs' claims. One attitude proved to be the best predictor of jurors' conduct: If study participants felt strongly that the nation is in a "litigation crisis," they were more likely to be skeptical of plaintiffs' claims. This belief goes hand in hand with the view that many lawsuits are frivolous and that jury verdicts are often unwarranted and excessive.

To find an explanation for the prevalence of the belief that a litigation crisis exists, Hans reviewed three studies that examined accidents, injuries, and lawsuits. All three reached conclusions that challenge the notion that Americans are "sue crazy." The first, the Civil Litigation Research Project, conducted in 1981, found that only about one in 10 households with an actionable grievance contacted a lawyer, and only one in 20 filed a lawsuit. The second study, conducted by the Rand Corporation in 1991, found that 87 out of every 100 accidentally injured people took no action to obtain compensation for their injuries, and an average of only two of the 13 who took some action filed suit. The third study, the 1991 Harvard Medical Practice Study, found "an eight to one ratio between the number of patients who suffered an injury from medical negligence (as assessed by a team of medical experts) and the number who filed a malpractice claim."

Much of the public knows little about this debate and hears only the horror stories about frivolous cases that are offered to support the belief that the system is out of control and that only draconian reforms will protect us. In Hans' study, four out of five jurors and mock jurors agreed that there are too many frivolous claims filed, and nine of 10 of the opinion poll respondents agreed. Fewer than 6 percent of the three groups disagreed with this assessment. Most people studied believed that personal injury law suits are exceeding the rate of population growth and that the awards are increasing faster than the rate of inflation. Lawyers who represent plaintiffs fared no better in polls

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