

**Chapter 15d**  
**Trial Lawyers, National Education Association**

- H. Trial Lawyers, Medical Malpractice Awards, and Reform of Tort Law:** Tort Law: Serious Harm vs. Outrageous (ex. \$2.86 Mil in punitive for coffee spill at McDonalds – eventually reduced to \$480,000)
1. “tort”: damage or injury that party A does to party B through negligence or an intentional act, but not a violation of a legal contract or criminal code.
  2. Phillip K. Howard, WSJ – ramifications of outrageous lawsuit awards on nonprofits, churches (see quote, p.537):
    - a. “sue-for-anything justice” erodes freedom with each new theory of liability
    - b. Diving boards & seesaws disappear, businesses won’t give references, doctors quit, etc.
    - c. Volunteerism threatened, ex. Catholic Archdiocese liable because volunteer driving own car ran red light and caused an accident while delivering statue of Virgin Mary to an invalid. Church did not direct activities of the group, only let them hold meetings on church property. \$17 mil. awarded.
    - d. Religious institutions vulnerable. Premises used for wide range of activities (AA, Boy Scouts). High liability.
    - e. Harm is not to economy, but to freedom. “Legal fear infects social dealings.”
  3. I am not opposed to trial lawyers in general, and recognize that genuine victims of harmful behavior need to be protected and compensated. Yet, there are still problems with the current system

**4. Problems:**

- a. Awards too high – personal injury lawsuits & tort claims cost \$260 billion a year, \$3,300 for every family of four. Small businesses pay \$98 billion a year—money that could be used to hire workers, expand productivity, & improve employee benefits.
- b. Out-of-court settlements. Large costs paid by litigated parties to avoid going to court - innocent people and innocent companies will spend huge amounts of money to avoid a trial, to avoid further risk; though they often are not guilty.
  - (1) Doctors sued for malpractice, even those who are not guilty, will get a black mark for not being cleared.
  - (2) Fear of defending even frivolous lawsuit in a potentially anti-business court is great. Motivation for many Atty’s.
  - (3) The American consumer ultimately pays for out of court settlements. Companies must offset costs.
  - (4) Ex. 2005: Roy Pearson, Judge in D.C., sued dry cleaners owned by immigrant couple for \$54 mil. for losing his pants (for suit) -- eventually lost but the couple was forced to sell dry cleaning store. Legal costs were too much.
  - (5) Few Lawyers engage in frivolous suits, but for those that do, bar assoc’s & legal system have not stopped.
  - (6) Outrageous tort cases do not represent most tort cases in US. In fact, some cases do not award enough for a just grievance. Yet, there is enough of an issue that many Americans live with a vague fear of such a suit.
  - (7) Companies that provide jobs are driven out of business. Ex. Dow Corning, bankruptcy: 8000 employees, 7000 different products & services. Class action suit for silicone breast implants despite no actual proof of harm.
- c. Higher Medical Costs
  - (1) ob-gyns pay avg. \$250,000 per year in malpractice insurance, cost passed on to patients.
  - (2) Malpractice ins. rate increases in Penn. in 2003 from 26-73% - K. Thorpe, Dept of Health Policy, Emory Univ.
  - (3) Dr.’s tend to order more tests than necessary to guard against suit. Cost passed to ins. companies, then to you.
  - (4) How much money wasted? Consulting firm Tillinghast Towers-Perrin - direct cost medical tort litigation is \$30 billion annually; PriceWaterhouseCoopers – estimates that last year \$240 billion spent due to doctors ordering unnecessary procedures to protect against lawsuit risk.
- d. Cost of defending against lawsuits: Huge expense, deterrent to economic growth.
  - (1) Skilled trial lawyers’ fees are often \$500 or more per hour. (Some earn up to \$30,000 per hour.)
  - (2) Result – higher product prices for consumers
- e. Fear of lawsuits leading to a fear-driven society and preventing many good activities
  - (1) Diving boards for public pools gone. Most pool const. co.’s won’t install. TX law: *de facto* prohibition. Result of liability fear, due to cases like \$10 mil. award in a case against private home owners in Washington (p541, WSJ).
  - (2) Merry-go-rounds: fun, provide exercise, and fitness. Almost completely disappeared due to liability, though accidents leading to serious injury are quite rare
  - (3) Nothing left in playgrounds of interest to children over 4! Broward Cnty, FL banned running at recess. (!) Little leagues forbidding sliding into base, some towns ban sledding. (Phillip K Howard, WSJ)
  - (4) Libertyville, IL: Fed. gov’t mandate for trains to blow whistle at crossing, even in city neighborhoods at 2 or 4 am. Automated barriers, flashing lights, and loud bell as a warning at crossing, not enough. City Council afraid to pass “no whistle/quiet zone” ordinance due to possible liability if someone later was hurt on tracks.

## f. **Solutions**

- (1) Legal limits on awards – should still allow for adequate compensation for serious harm and/or negligence
- (2) Many states have set limits or prohibited punitive damages (while still allowing penalty compensation for specific loss) with huge success. Texas imposed malpractice caps in '03. State rewarded with fewer suits, 50% drop in malpractice premiums, & flood of new doctors (*WSJ*).
- (3) Caps on awards result in lower ins. premiums for Dr's AND lower ins. costs for med. ins. bought by individuals. 17.1% lower ins. premiums in states with cap on awards, vs states w/o such caps. (Kenneth Thorpe).
- (4) Note state differences: In states that do allow exceptionally high med. malpractice claims, Dr.'s driven out of business, retire early, move to other states. Georgia survey of physicians: 1/3 of ob-gyns & 1/5 of family practitioners will cease performing high-risk procedures. 12% will not cover the emergency room (Kenneth Thorpe). Reaction indicates need for reform.
- (5) But a new, worse problem: Health Care Reform Bill, 11/7/2009, gives federal "incentive payment" only for states that adopt "medical liability law" that doesn't limit attorney's fees or impose caps on damages! (Trial lawyers, year-to-year, largest & 2nd largest donors to Dem. Party). Once again: the few benefit (trial lawyers), the many pay (US taxpayers)
- (6) A very good system would be: "Loser pays system" in use by several other countries (OT support Deut 19:16-20)
- (7) 70-80% of Americans believe US suffers from excess litigation and supports reform of tort law. Democratic party committed to protecting trial lawyers. 2009 committee hearings for health-care bill, GOP offered 11 tort amendments. Dem's killed all on party line votes.

**I. The National Education Association:** (NEA), largest labor union in US, 3.2 mil. members. Sig political influence especially at state level. In many states, collects dues even if teachers don't join (ex Bedford, OH, all teachers pay \$713 year)

1. Problem: increasingly leftist. Never endorsed Repub. for Pres., endorsed same-sex marriage, 82% of NEA's campaign contributions went to Democrats.
2. My largest objection: consistent opposition by NEA to any proposals that give choice to parents in choosing schools.
  - a. Ex 2007 Utah legislature approved voucher program. This was ended by NEA after \$3.2 mil spent & thousands of hours of volunteer time
  - b. Prevented competition in public school system, prevented freedom to choose for parents, maintained monopoly.
  - c. NEA controlled monopoly on gov't funded schools has led to very poor academic achievement, contributed to cycle of poverty for parents that cannot afford to pay out-of-pocket for alternative schools.
  - d. Voucher program in Wash. DC, results: reading test scores improved significantly, and those who were offered scholarship performed at statistically higher levels in reading. (See movie, *Waiting for Superman*)
  - e. Free of gov't direction and union regulation, schools consistently perform better. 2002 report, by 8<sup>th</sup> grade, private & religious schools outperform public schools. 7% points in math, 11% points in English. (*NYTimes*, 2002)
  - f. US Dept. of Ed. reported in 2006: by 8<sup>th</sup> grade private school mean reading score was 18.1 pts higher and Math was 12.3 pts higher than avg. public school scores.
  - g. Not all public schools do a poor job. My own children went to public high schools. But, neighborhood was upper-middle class, parental involvement was high, property taxes were high, teacher salaries were high, & there was competition from a nearby Roman Catholic private school (privately funded).
  - h. Solution: Tuition vouchers given to every parent in every state, then they can decide where to send their children (public or private secular or private religious school). This would break the monopoly of NEA and other teachers' unions on the use of government money for education.

All of the class lessons and outlines are posted on the class website [www.christianessentialsbc.com](http://www.christianessentialsbc.com). To order CDs, e-mail tech@christianessentialsbc.com. Someone is also available in the sound booth before and after the class.