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THE FELLOWS CLE SEMINAR:

**The Juice Isn't Worth the Squeeze: The Impact of Tort Reform
on Plaintiffs' Lawyers and Access to Civil Justice**

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The Fellows CLE

The Juice Isn't Worth the Squeeze: on Plaintiffs' La

The ABF Fellows CLE Research Seminar was held on February 9, 2013, in Dallas, Texas, during the American Bar Association Midyear Meeting. The seminar, titled “The Juice Isn't Worth the Squeeze: The Impact of Tort Reform on Plaintiffs' Lawyers and Access to Civil Justice,” featured presentations by ABF Research Professor Stephen Daniels, other researchers, and practitioners in the area of civil justice. The seminar was moderated by Texas legal journalist Mark Curriden.

Stephen Daniels began the session by explaining its title, “The Juice Isn't Worth the Squeeze.” The phrase comes from one of the lawyers interviewed in Daniels' ongoing ABF research project (in collaboration with Joanne Martin) “It's Déjà vu All Over Again: Plaintiffs' Lawyers and the Evolution of Tort Law in Texas.” That particular Texas lawyer said “the juice isn't worth the squeeze” to explain why he was no longer taking medical malpractice cases, especially those involving the elderly and women who do not work outside the home. The reason is a cap on non-economic damages imposed in 2003 as part of Texas' tort reform efforts—a cap making such cases economically problematic for the lawyer. The experience of this lawyer, as well as others like him, got Daniels and Martin thinking about tort reform as it relates to the issue of access to

justice. “If plaintiffs' lawyers aren't taking clients, those potential clients don't have meaningful access to the rights and remedies that the law provides,” Daniels explained.

As Daniels elaborated, “we're interested in tort reform's effect on plaintiffs' lawyers because they are the gatekeepers. They control access to the rights and remedies the law provides. They also shape the law through the cases they bring—either on appeal in changing the law, or through the “going rates” which set the standards that help settle most cases. You want to look at plaintiffs' lawyers, not because they're the problem, but because they're the gatekeepers.”

These gatekeepers operate under a contingency fee business model and they have to be at least somewhat rational economic actors in balancing the costs and risks of cases against

the likely reward, Daniels stated. Tort reform can diminish access to civil justice by targeting plaintiffs' lawyers and making their business so impractical that many stop taking particular cases or leave the plaintiffs' bar altogether. Daniels noted, “You can really change things in terms of access to the rights and remedies the law provides by going after the people who control meaningful access.” Plaintiffs' lawyers' existence has always been a precarious one and tort reformers are trying to make it even more so, according to Daniels, by doing things like limiting damages.

Texas is a fruitful site for a study of tort reform and its effects, Daniels explained. It has a more than 25-year history of tort reform, and in the fall of 2003 the State constitution was amended by popular referendum to allow a \$250,000 cap on non-economic damages in medical

Seminar:

The Impact of Tort Reform Lawyers and Access to Civil Justice

There was nothing going on in Texas’s civil litigation system, as opposed to the market where insurance is sold, that can account for the crisis in medical malpractice premiums that Texas experienced starting around the end of 1999.

malpractice cases. Legislation stipulating such a cap had been passed by the Texas legislature a few months before the referendum went before voters. This major legislative and constitutional change provides a hard date on which to anchor detailed “before and after” analyses. Texas also offers a wealth of reliable empirical data, collected and maintained by the State, the court system, libraries and professional associations.

Daniels outlined the study’s methodology. He and collaborator Joanne Martin have conducted 151 interviews with Texas plaintiffs’ lawyers, 100 of which were conducted in the late 1990s, 51 in 2005–2006 (including 21 repeat interviews). A final 12 will be completed in 2013—half with lawyers who were interviewed twice before and half with younger, post-tort reform plaintiffs’

lawyers. In addition to the interviews, Daniels and Martin sent out two mail surveys to Texas plaintiffs’ lawyers, one in 2000 and the other in 2006. While not exactly the same, the surveys did have a set of questions about lawyers’ practices that were worded identically, so that variations in responses between 2000 and 2006 could be examined. Since each survey was meant to be a snapshot of the plaintiffs’ bar in general at a given point in time, an independent list of lawyers was used for each survey. Nonetheless, some lawyers appeared on both lists and 163 of them responded to both surveys, allowing for comparisons of individual practices at two points in time.

The interview and survey data are being analyzed in conjunction with other materials. Included are the raw data from the 2004 Texas State

Bar Referral Survey (a project of the State Bar’s Referral Fee Task Force), which asked about the referral process among lawyers in Texas as well as characteristics of lawyers and their practices. Some of those questions were then included in Daniels and Martin’s 2006 survey to probe the referral process among plaintiffs’ lawyers. Also included among those other materials are: jury verdict data from major jurisdictions in Texas; official court statistics; archival material related to the plaintiffs’ bar from Tarlton Law Library, University of Texas at Austin, and the Texas Labor Archives, University of Texas, Arlington; archival material from the Texas Trial Lawyers Association; and the researchers’ informal observations. Daniels noted, “You learn a lot from hanging around.”

FIGURE 1A Aggregate Patterns in the Acceptance of Different Clients in Malpractice Case—2001 v. 2006

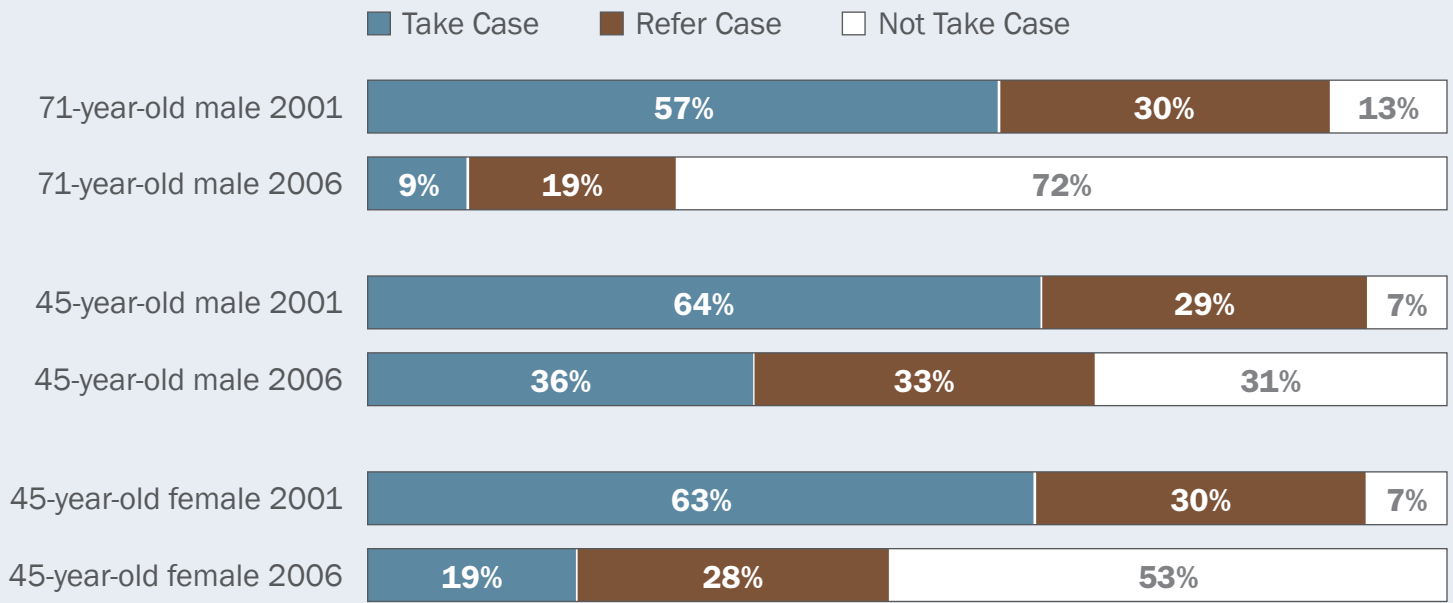
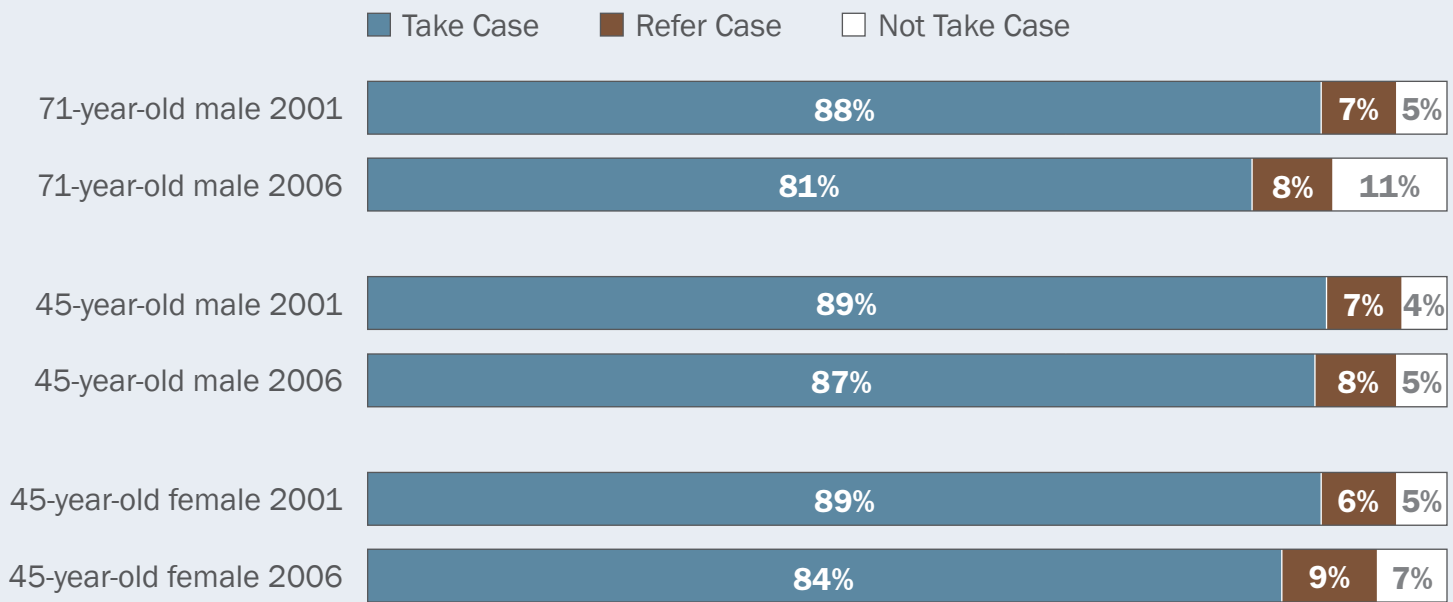


FIGURE 1B Aggregate Patterns in the Acceptance of Different Clients in 18-Wheeler Accident Case—2001 v. 2006



From page 70 of Stephen Daniels and Joanne Martin, "It is no longer viable from a practical and business standpoint': damage caps, 'hidden victims', and the declining interest in medical malpractice cases," 17 *International Journal of the Legal Profession* 59 (2010).

If plaintiffs' lawyers aren't taking clients, those potential clients don't have meaningful access to the rights and remedies that the law provides.

ANALYZING THE IMPACT OF TORT REFORM ON THE "GATEKEEPERS"

Daniels explained one particularly revealing segment of the research in more depth. In their 2006 survey, Daniels and Martin included a set of questions designed to capture changes in lawyers' attitudes and practices before and after the 2003 cap on non-economic damages in medical malpractice cases. They created two case scenarios with identical injuries and hypothetical clients, and asked how lawyers would have responded to these clients in each scenario in 2001 and again in 2006. The purpose was to test whether tort reform had a dampening effect on these "gatekeepers" to the civil justice system.

The first set of questions probed lawyers' patterns of acceptance or rejection of different clients in a medical malpractice case. Three potential clients were presented—a 70-year-old retired male, a 45-year-old fully employed male with children, and a 45-year-old female with children who did not work outside the home. The harm to each client was the same—serious injuries requiring six months of rehab with obvious permanent facial disfigurement (which would allow for an award for non-economic damages).

The responses to the first set of questions showed that even with the most "attractive" client—the 45-year-old fully employed male (attractive because there is the real potential for economic damages), the percentage of attorneys who said they would take the case declined from 64% in 2001 to 36% in 2006. Those who would accept the 70-year-old retired male as a client declined precipitously from 57% in 2001 to 9% in 2006. Those who would accept the "stay-at-home mom" also declined sharply from 63% in 2001 to only 19% in 2006. (The percentage of attorneys indicating that they would refer the cases to another attorney also declined, except in the case of the 45-year-old employed male, where it increased slightly between 2001 and 2006.)

To provide a comparative base for lawyer decisions in the medical malpractice scenario, Daniels and Martin included a second set of questions based on a different scenario, but one producing identical injuries to the same three kinds of potential plaintiffs. This scenario was designed to act as a "control" for the medical malpractice data in case it was the potential clients themselves who were unattractive regardless of the type of case. It posed those individuals as drivers of automobiles who had been hit by an 18-wheel semi-truck.

Analyzing the attorneys' responses to the 18-wheeler scenario, Daniels and Martin found only a very slight decline in the percentage of attorneys who would have accepted these cases. The percentage who would accept the 70-year-old male hit by the 18-wheeler changed from 88% in 2001 to 81% in 2006. Eighty-nine percent of the attorneys would have accepted the 45-year-old employed male in 2001 versus 87% in 2006. Finally, 89% of the attorneys would have accepted the "stay-at-home mom" in 2001, while 84% would have done so in 2006. The very slight level of change in the non-medical malpractice cases compared to the great level of change in the medical malpractice cases indicates that the 2003 cap may well be having a dampening effect on attorneys' willingness to accept certain medical malpractice clients and even malpractice cases generally, Daniels stated.

TORT REFORM AND POPULAR ATTITUDES

Daniels pointed out that, while legislation is the most obvious way in which tort reform is achieved, other forces for change are at work as well. "Tort reform has always been about much more than just the statutory changes," he said. For many years, for example, the insurance industry has been conducting a campaign to shape the American public's (and thus the jury pool's) thinking about damages in tort cases. Since at least the early 1950s, insurance companies have placed advertisements in national and local publications, warning of the dangers and "excesses" of the tort system, and the alleged effect of large jury awards on insurance rates. In addition, starting in the same

period, insurance companies have armed their staffs with briefs and other information to enable them to make presentations to community and civic groups such as local chapters of the Rotary Club. More recently, well-funded organizations such as the American Tort Reform Association (ATRA) have taken the lead in waging public relations campaigns against what they characterize as the excesses of the civil justice system—and against plaintiffs’ lawyers as the cause of those excesses. Daniels pointed to ATRA’s mission statement which states: “We want to change the way people think about civil litigation and the idea of personal responsibility.”

Typical ads highlight how the high cost of premiums for businesses—ostensibly caused by excessive jury awards—are passed on to the consumer. Others warn how large jury awards raise insurance premiums for all, including consumers. Over time, ads have worked to introduce and/or reinforce negative attitudes toward and assumptions about jury verdicts and plaintiffs’ lawyers. Without doubt, the broader nationwide ad campaign of the insurance companies, ATRA, and other organizations played a role in the passage of the 2003 Texas constitutional amendment and legislative cap on non-economic damages, and continues to play a role in shaping popular attitudes towards juries and plaintiffs’ lawyers, according to Daniels.

MEDICAL MALPRACTICE CLAIMS IN TEXAS BEFORE AND AFTER 2003

The next speaker, Professor Charles M. Silver, presented evidence from his research group’s recently

In a study of one Texas firm, the top 10% of cases produced 82% of the total fees that were earned. And the top 1% of the cases accounted for 55% of the fees.

published study that looks at different measures of the frequency of medical malpractice claims and payouts pre- and post-2003 (M. Paik, et al. “Will Tort Reform Bend the Cost Curve? Evidence from Texas,” 9 *Journal of Empirical Legal Studies* 173 (2012)). This study drew on an enormous database on closed insurance claims maintained by the Texas Department of Insurance since 1988, which includes medical malpractice claims. The database has been audited since the early 1990s and is the best, most reliable, publicly available database of closed medical malpractice cases in the country. According to Silver, the data show that, contrary to reformers’ claims, medical malpractice litigation was not responsible for the growth in medical malpractice premiums in Texas in the 1990s. “There was nothing going on in Texas’s civil litigation system, as opposed to the market where insurance is sold, that can account for the crisis in medical malpractice premiums that Texas experienced starting around the end of 1999,” Silver stated.

Tort reform in Texas did, however, have an enormous effect on the civil litigation system. After the 2003 cap on non-economic damages, there was a huge decline in both the volume of medical malpractice claims and payouts in these claims. Between 2003

and 2008, malpractice claims fell by 60%, payouts declined by 70%, and the total volume of money moving through the malpractice system went down by 75%. The dynamics of tort reform in Texas have broader implications for the nation, according to Silver. “We can ... determine whether tort reform can deliver on the promises [made by its supporters]—for example costs and number of physicians. If this effect doesn’t bring down healthcare costs [in Texas], it’s not going to happen if you enact tort reform in the nation, which was proposed,” Silver stated.

A PRECARIOUS BUSINESS MODEL

Silver speculated on why the impact of the 2003 tort reform package was so severe on medical malpractice claims. Reformers had argued that the legislation merely capped non-economic damages at \$250,000—surely a lawyer could make money off a \$250,000 award. Why would this kind of seemingly modest change have such an enormous effect on the whole system? In Silver’s view, a seemingly small change like the \$250,000 cap on non-economic damages had a big impact because: 1) plaintiffs’ law firms tend to be small and lean and cannot absorb large economic costs and risks; 2) they are contingency fee based, because that is the only way

most clients can afford to pay; and 3) they are very specialized. This business model works well under certain circumstances, but it leaves little room for error, and plaintiffs' lawyers may have difficulty adapting and changing.

Plaintiffs' firms tend to operate on a "pyramidal model," where they have a lot of small cases that bring in small fees and a small number of cases that bring in very large fees, Silver noted. For example, a study of one Texas firm showed that the top 10% of cases produced 82% of the total fees that were earned, and the top 1% of the cases accounted for 55% of the fees. The \$250,000 cap on non-economic damages can have a very big impact on the business model of the plaintiff's law firm, which depends on a small number of very profitable cases. If plaintiffs' lawyers can't make money, they close their doors, affecting access to justice, Silver concluded.

A FURTHER LAYER OF CHANGE

Professor Ellen Pryor spoke about the larger context in which tort functions within the civil justice system. She characterized tort as "one unit within a fabric of compensatory sources: Medicare, Medicaid, worker's compensation." Tort has come to operate within this fabric but, as tort has undergone changes over the last 20 years, so has the fabric within which it operates. As Pryor said, "while tort law was changing on one hand, the programs to which tort links and to which benefits are coordinated in one way or another, by subrogation, lien, reimbursement rights, in ways that are critical to the value of a tort case and to how lawyers both value the case as well as handle and settle the case—those have been changing

too." Furthermore, Pryor added, the law relating to coordination—again in terms of liens, subrogation, and reimbursement rights, is also changing. The law is "not always stable," Pryor commented, "either across the states or even in a given state." This further level of change to the system adds another level of complexity to the lawyer's task of assessing and evaluating cases, making the challenge of maintaining a viable practice even more confounding.

TORT REFORM AND PUBLIC EDUCATION

Former Texas Supreme Court Justice Deborah Hankinson shared her unique perspective—unique because she has seen the effects of tort reform from several angles—as a member of the Texas judiciary, as a practicing lawyer, and as the head of a large public education campaign against the 2003 constitutional amendment that allowed the cap on non-economic damages. Her experience heading up that campaign was particularly interesting and significant, Hankinson noted. At first glance, she would seem to be an unlikely candidate to spearhead such a campaign. Hankinson is a highly-respected defense attorney, a former Texas Supreme Court Justice, originally appointed to the Court by then Governor George W. Bush, and then elected to the Court for a full term

after winning the Republican primary. And, she is a lawyer who supports many tort reforms.

Hankinson was contacted by a number of other lawyers to help with the campaign against the amendment. She agreed because there was much she found troubling not just with the amendment but with the process. "The statute and the constitutional amendment went through the Texas legislature with very little comment... at the same time that it passed this, [the legislature] also set the election on the constitutional amendment for the first Saturday after Labor Day in September, which is a very unusual date to have an election," Hankinson commented. It would be a very low turnout election with little else on the ballot to attract voters. The general election in November was likely to bring out many more voters because "there were going to be some significant local elections in places like Houston that would've very much affected voter turnout," she noted. And, this being Texas, Hankinson mentioned one other factor: "as you all know, Texas is a very big football state, and Saturday afternoons are college football times."

The substance of the amendment troubled Hankinson because, as she said: "my concern was very much about access to justice and about how I thought we would end up with a situation where we had very unequal

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access to the courts and that we would be closing the doors to a great many citizens if we ended up with this being passed.” In 2005 she told a journalist, “this amendment wasn’t designed to cut off bad—that is, frivolous—lawsuits; it was designed to cut off lawsuits by people with legitimate claims, by restricting access to the courthouse... This tort reform went too far... I view this as something that deprives people of their constitutional rights.” (Quoted in Mimi Swartz, “Hurt? Injured? Need a Lawyer? Too Bad!” *Texas Monthly*, November 2005).

In talking about her role in the anti-amendment campaign, Hankinson highlighted the importance of public education in countering the effects of pro-amendment advertising. Following up on some earlier comments about the tort reform public relations campaigns, she worried out loud about the public’s view of the amendment “because I think there’s an aspect to this in which the public relations campaign has frankly been ceded to those who have taken over the field”—meaning the pro-amendment forces. Early polling showed the amendment to be very popular after aggressive efforts had

been made to garner support for it as necessary to ensure there would be enough doctors in Texas. Hankinson specifically mentioned “television commercials that were played down in Rio Grande Valley, we lost the Rio Grande Valley... The campaign there on the televisions had to do with the fact that there would not be any doctors in the Valley unless people voted for this.” There was nothing that alerted people to the practical effect of the amendment in diminishing access to the courts.

Faced with this challenge and with only three months until the election, Hankinson and her team hired one of the best public relations firms in Dallas, raised over six million dollars, and went to work educating the public, eighty percent of whom initially supported the proposed amendment. In this short period of time they were able to persuade the editorial boards of all but one of the major Texas newspapers to editorialize against the proposed 2003 amendment, and to persuade a significant number of physicians to publicly come out against the measure.

By the time the referendum on the constitutional amendment was held in September of 2003, they had

succeeded to the extent that they won the majority of votes cast on Election Day, but they lost the election itself because the amendment garnered just enough votes in early voting to prevail by a margin of less than one percent. Up until Election Day public opinion was trending their way, and Hankinson feels that with a few more weeks to work they would have prevailed. The success of the anti-amendment campaign in moving public opinion demonstrates the critical importance of public education regarding the courts and access to justice, Hankinson noted.

More generally, Hankinson shared what she has learned as an active mediator in civil disputes. She regularly sees Texas citizens come to realize first-hand the negative consequences of the \$250,000 cap on non-economic damages. Even some businesses that supported the reform find themselves having to rethink that position when they find themselves in the role of plaintiff. Hankinson wondered aloud why lawyers who care about access to justice are not working harder to educate the public about the civil justice system.

Hankinson concluded her remarks with a more general plea for the

need for civic education about the courts and the legal system. “I think that education is always powerful, and this is an area where it really is important. I think our courts are suffering generally because people don’t understand the court system and how important it is and because we politicized it so badly.” She specifically pointed the audience to the work of Justice Sandra Day O’Connor: “one of the most important movements going on right now is what Sandra Day O’Connor is spending her time doing...very significant work nationwide in terms of trying to work in the education system and with schools and the like to enhance civic education and make it more of a priority. It’s a root problem.”

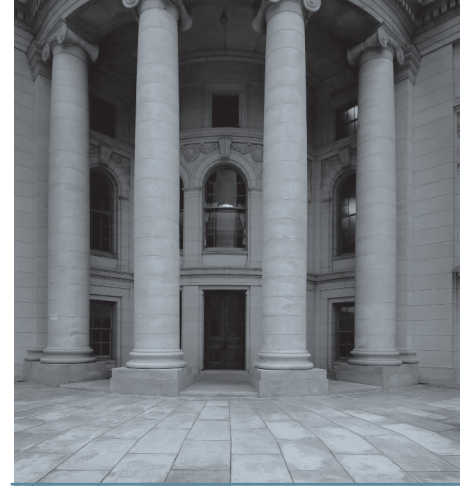
TORT REFORM, “HIDDEN VICTIMS” AND ETHICAL ISSUES

Dallas-based plaintiffs’ attorney Carmen Mitchell was the last panelist. She also spoke about the negative consequences of the 2003 amendment on citizens, sharing many stories of her interactions with clients regarding the issue. Of particular concern are the “hidden victims” of the \$250,000 cap—infants and children, the elderly, and women who do not work outside the home. These groups were not the targets of tort reform, but the negative impact of reform falls disproportionately upon them.


Mitchell’s most compelling example was that of a couple whose four-

year-old child died on the operating table during a tonsillectomy. As she met with the parents, Mitchell had the difficult task of explaining to them that her firm couldn’t even look into the case because, under the reformed law, their child had “no value.” As Mitchell related, “they were horrifically grief-stricken; any plaintiffs’ lawyer will tell you there’s no worse loss than the loss of a child, and devastating cases to work for, because you can’t make anything right. It’s not like providing wages for a widow or medical care for an injured person. And I explained to them that we couldn’t even look into the case because their child did not have any value. And they said, ‘Well, how can this be?’ And I said, ‘Well, I don’t know if you remember’ [referring to the 2003 vote on the Texas constitutional amendment] and they had voted—because, you know, there were all so many frivolous lawsuits—they had voted for the reform.”

Deceased children, of course, do not qualify for economic damages, and the \$250,000 cap on non-economic damages meant that the cost of preparing and trying the case would result in the parents receiving little or nothing even if they won. Cases like these show some of the real effects of tort reform. Such stories are common enough, and illustrate how lawyers, policy makers and the public have an “ethical obligation” to examine the possible future effects of tort reform, Mitchell commented.




If you are interested in supporting research on the civil justice system and access to justice or other important ABF initiatives, please contact Lucinda Underwood at 312.988.6573



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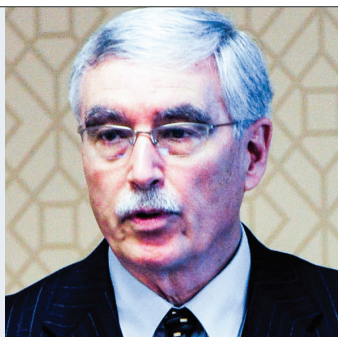


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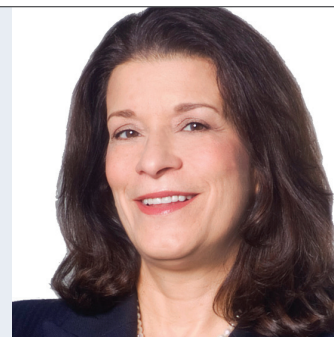
Our courts are suffering generally because people don’t understand the court system and how important it is.



Stephen Daniels is a Research Professor at the American Bar Foundation. He researches law and public policy and the American civil justice system and has written on the delivery of legal services, trial courts, juries, plaintiffs' lawyers, and the politics of civil justice reform. He is co-author of *Civil Juries and the Politics of Reform* (1995) and author of numerous articles in law reviews and law and public policy journals. He has testified before congressional and state legislative committees and served as an expert in cases dealing with large jury awards and/or constitutional challenges to civil justice reform. He has conducted studies on tort reform and the Texas plaintiffs' bar with Joanne Martin. Their most recent publication is "Plaintiffs' Lawyers and the Tension between Professional Norms and the Need to Generate Business" in *Lawyers in Practice: Ethical Decision-Making in Context* (2012). Daniels holds a Ph.D. in political science from the University of Wisconsin-Madison and serves as an adjunct professor in Northwestern University's Department of Political Science. In 2011–2012, Daniels was a visiting lecturer at the Sturm College of Law, University of Denver.



Mark Curriden is a lawyer and journalist for the *ABA Journal* and *The Texas Lawbook*. He is Writer in Residence at Southern Methodist University's Dedman School of Law. Curriden is the author of the bestselling book *Contempt of Court: A Turn-of-the-Century Lynching That Launched a Hundred Years of Federalism*, winner of the ABA's Silver Gavel Award. Curriden received his J.D. from Vanderbilt University Law School. From 1988 to 1994, he was the legal affairs writer for the *Atlanta Journal-Constitution*. He has also served as national legal affairs writer for *The Dallas Morning News*, and is a regular contributor to the *New York Times*.



Deborah Hankinson is an appellate attorney, oral advocate, mediator, and arbitrator. She is Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization, a Fellow of the American Academy of Appellate Lawyers, a member of the American Law Institute, and sits on the Board of Directors of the American Arbitration Association (AAA). Hankinson graduated from Southern Methodist University's Dedman School of Law and joined Thompson & Knight, L.L.P.. In 1995, she was elected to serve as a Justice on the Fifth District Court of Appeals in Dallas. From 1995 to 2002, she served as a Justice on the Supreme Court of Texas. The Texas Chapter of the American Board of Trial Advocates honored Hankinson as the Texas Judge of the Year in 1999. In 2002, she received the Distinguished Alumni Award for Judicial Service from Southern Methodist University. While on the Supreme Court of Texas, she was a driving force behind the creation of the Texas Access to Justice Commission, which grants low-income Texans access to justice in civil legal matters. In 2003, the AJC established the Deborah G. Hankinson Access to Justice Awards, which reward local bar associations in the cities with the highest percentage of attorneys donating to legal aid.



Carmen S. Mitchell has been practicing law in Dallas, Texas for almost three decades and during that time has been active in the legal community in a wide variety of leadership roles. She has served on the District 6A Grievance Committee; she is a Past President of the Dallas Trial Lawyers Association and is Past President of the Dallas Chapter of the American Board of Trial Advocates. Her civil trial work covers a wide range of experience including catastrophic personal injury, wrongful death, construction accidents, pipeline explosions, truck wrecks, burn injuries, traumatic brain injury, sexual abuse, product liability, and business disputes. She is a frequent lecturer on a wide range of legal education topics and has served as guest lecturer at Southern Methodist University's Dedman School of Law. In addition to authoring numerous articles on legal ethics and trial techniques, Carmen has been a frequent presenter at the Dallas Bar Association, Texas Trial Lawyers Association, and the State Bar of Texas.



Ellen S. Pryor is Associate Dean for Academic Affairs at UNT Dallas College of Law. Pryor graduated from the University of Texas School of Law in 1982, where she served as Editor-in-Chief of the *Texas Law Review*. She served as judicial clerk for the Honorable Carl McGowan of the United States Court of Appeals for the District of Columbia Circuit. She received the Dallas Bar Association's Pro Bono Award of the Year and the State Bar of Texas' Frank Scurlock Award for Delivery of Legal Services to the Poor. She joined the faculty of Southern Methodist University's Dedman School of Law in 1986 and from 2005–2011 served as an Associate Provost. In Fall 2010 she was the D&L Straus Distinguished Visiting Professor, Pepperdine University School of Law. At SMU, she received the Don Smart teaching award and the Rotunda teaching award. She was a recipient of the Altshuler Distinguished Teaching Professor Award, and was named a Piper Professor by the Minne Piper Foundation. She has been a co-author of several casebooks, and her writings in the area of torts, insurance, and compensation theory have appeared in numerous law reviews and journals. In 2006, she was named as the 20th annual recipient of the Robert B. MacKay Law Professor Award from the ABA.



Charles M. Silver holds the Roy W. and Eugenia C. McDonald Endowed Chair at the University of Texas School of Law, where he writes and teaches about civil procedure, professional responsibility and health care law and policy. Professor Silver has coauthored a series of studies of medical malpractice litigation in Texas and also writes about civil procedure, complex litigation, and the professional responsibilities of attorneys. In 1997, Professor Silver received the Texas Excellence in Teaching Award, and in 2009, the Tort Trial and Insurance Practice Section of the ABA honored Professor Silver with the Robert McKay Award for outstanding scholarship in tort and insurance law. Professor Silver is currently an Associate Reporter on the American Law Institute's Project on Aggregate Litigation and a member of the ABA/TIPS Task Force on the Contingent Fee.

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