



Book Business on Trial

The Civil Jury & Corporate Responsibility

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Recommendation

Valerie P. Hans has written a thorough, carefully designed study of jury behavior in civil trials. While presenting information cautiously and academically, she thoroughly explodes several common myths about civil juries and makes a powerful (if understated) case for the preservation of the civil jury system. She begins with surveys and quotes, preferring to let her data speak for itself, until she draws final conclusions and points out areas for further scholarship. Hans does not over-generalize, but the book is often repetitive, in part because some of the studies and issues overlap. Even so, the information is trimmed to a manageable length. This is not an entertaining read, but *BooksInShort* finds the information and interviews clear, useful and accessible. This is a particularly helpful book for law students and professors, litigators, reporters covering the courts, corporate legal departments and anyone involved in civil litigation, especially if you have a voice in selecting a jury.

Take-Aways

- Current arguments in favor of tort reform and jury reform are often based on untested ideas.
- Anti-jurists say that juries are pro-plaintiff, anti-business and influenced by deep pockets.
- Juries are committed to individual responsibility and are skeptical of plaintiffs in injury cases.
- Jurors tend to judge the individual and the evidence, not the missing corporate "person," who is often not represented in the courtroom.
- Jurors prefer small business and individuals to large business and corporations.
- Most jurors say they are not anti-business.
- Evidence does not show a major increase in civil litigation.
- Media reports and corporate ads create a misconception of a litigation crisis.
- Jurors try to treat corporations as they would individuals, but they expect a higher level of conduct and responsibility.
- Jurors do not usually give larger awards against wealthy defendants except when imposing punitive damages, so the "Robin Hood jury" is a myth.

Summary

Lawsuits against Businesses

Lawsuits against business have become more frequent in United States courts. These lawsuits, especially product liability cases, can have enormous impact. They have fueled a debate about the soundness and future of the civil jury system.

In the 19th century, lawsuits against business were rare. Social attitudes put individual responsibility first and experts feared that excessive lawsuits would strangle the economy. Americans were used to living with risk and adversity and assuming individual responsibility. Gradually, as industrial-related accidents, injuries and deaths became more common, responsibility shifted toward corporations and business. Today, juries decide many cases involving corporations, where the businesses are typically defendants but can also be plaintiffs. Most cases are settled prior to a jury decision, but lawyers and litigants look to prior jury decisions when making their decisions about when to file suits and when to settle.

Are Juries Pro-Plaintiff?

The civil jury serves an important political role. It reflects public expectations about corporate responsibility in the marketplace and sends messages about standards of business conduct. But, juries and the jury system are under fire. Some critics believe experts should resolve disputes, not juries. Others question the fairness of juries, or believe they act like Robin Hood, redistributing wealth from the rich to the poor. Some say that the unpredictability of jury verdicts interferes with business and innovation, and that this threat against innovation prevents risky but useful products from reaching the market. The U.S. Supreme Court recently imposed some limits on civil juries and gave judges more control. Yet much of the debate on juries has been fueled by anecdotes, not by study or careful analysis.

“The widespread belief that juries are more favorable to plaintiffs than judges are, finds no clear support in the verdict data on jury trials versus judge trials.”

A factual examination of statistics, juror surveys, mock juries and experimental evidence is a better way to determine how contemporary juries really treat business and corporations. For instance, the public widely believes that juries are naturally sympathetic to injured plaintiffs, especially those who were injured by the actions of a business, and that this sympathy makes juries more likely to rule on behalf of the plaintiff. This belief is wrong. Jurors are often suspicious of plaintiffs, skeptical and even hostile toward them. Jurors often tend to blame the victim, looking for ways that the injured individual was responsible by way of his own actions. Jurors hold plaintiffs to high standards and respond to arguments that place responsibility on the victim-plaintiff. Jurors look for ways the victim chose to contribute to the injury, such as by staying in a dangerous job or smoking cigarettes.

“By jury verdicts or by the threat of them, the citizens on the jury control (albeit imperfectly) corporate and business conduct.”

Jurors often discredit plaintiffs’ attorneys because of their high fees and doubt the plaintiffs themselves, labeling them ‘money-hungry.’ Jurors also bring their own life experiences to bear as they judge claims. In fact, many jurors have themselves been negligently injured at some time in their lives without bringing a claim, and they may consider their own decision when they evaluate others’ decisions. A juror may find it threatening to be similar to a victim and, thus, may search for ways that the victim caused her own injuries.

“The low ratio of claims to lawsuits at least casts some serious doubts on the notion that Americans litigate at the drop of a hat. More commonly, we do nothing, or we try to resolve a problem outside the legal system.”

The facts of a case have an impact on jury sympathy, of course, but lawyers can affect jury sympathy positively or negatively. Plaintiffs’ attorneys can downplay the victim’s control in the situation. Defense attorneys can inadvertently increase sympathy for the victim by badgering him. This research found only two demographic factors that related to general views toward plaintiffs: racial identification and whether the juror is a Protestant. Whites and Protestants were more likely to doubt plaintiff claims.

Is There a Litigation Explosion?

Many Americans think the civil justice system is in real trouble. Much of the debate around the alleged litigation crisis says that people sue too much and too easily, and that there has been an explosion of litigation. People point to the case of Stella Liebeck as an example of lawsuits run amok. Liebeck won millions from McDonald's after she put her cup of coffee between her legs in her car, spilled hot coffee in her lap, and was burned as a result. In the Liebeck case, the details are more complicated than the news reports show. McDonald's had settled many similar claims, knew it had a safety problem with very hot coffee and had been slow to respond. Liebeck's injuries were quite severe. The "outrageous" award was based on two days' coffee sales for the chain.

“Many jurors resist the expansion of responsibility to business and corporate entities, insisting that plaintiffs be held accountable for the ways their own actions may have contributed to their injuries.”

In fact, statistical evidence does not demonstrate a litigation explosion. Americans do not sue more readily now. As has always been the case, the vast majority of potential claimants do not file lawsuits. The number of cases is up, but population growth and changes in government policies can explain the increase. More suits gain a high profile, particularly in product liability, but some categories of lawsuits have actually declined. The courts are clogged more with criminal cases than civil cases

“The Robin Hood jury appears to be nearly as mythical as the character on which it is based.”

Several factors drive the public perception of a litigation crisis. Jurors who describe themselves as assertive and willing to complain, and who have a high degree of claims consciousness and a low belief in a just world, were also likely to believe in a litigation crisis. Older jurors also believe in a litigation crisis. Contributing factors include sensational, incomplete news reports and advertising campaigns run by businesses and insurance companies as they lobby for public support for tort reform. People tend to judge the frequency of an event by how well they can remember examples. Media reports and advertising campaigns make it easy for people to recall legendary cases like Stella Liebeck.

“Jurors' suspicions about plaintiff's claims led them in most cases to dissect the personal behavior of plaintiffs, with seemingly no limits.”

This affects the outcome of legal cases. The more a jury collectively believes in a litigation explosion, the lower the award in the case. Citizens are deeply attached to the values of individual responsibility. Plaintiffs must often argue against those values. Claims like Stella Liebeck's make people feel that social standards of individual responsibility are declining.

The Juror's View of Corporations

Since 1886, corporations have had status as a "person" under American law. Yet the corporation is like a ghost in the courtroom, not embodied in any single person, often not embodied at all. How do jurors see corporations? In contrast to jurors' strong views about personal injury plaintiffs, the jurors surveyed showed no especially strong views about corporations in their cases. Jurors tend to focus on the evidence and the specific individuals involved, rather than on the corporate "person." Jurors say that having a corporation in the case did not affect them. When they had to assess corporate responsibility, they used the same template they would use for an individual.

“The ghostliness and diffuse nature of the corporate entity makes it difficult to conceptualize that entity as an actor.”

In response to research questions, jurors often invoked analogies like a parent and child, or an owner and a dog, to show the greater power and responsibility of a corporation in a relationship with a customer. Many people impose different standards on corporations than on individuals. People expect corporations to be responsive to consumers and to keep a high level of business conduct. The role of a corporation as an employer and authority figure incurs obligations in the public eye. Jurors seem to construct a specific model of corporate role responsibility, depending on what the company does and what kind of injury is in dispute. In surveys, some jurors pointed to the higher level of organization in a corporation, which gives it access to experts and other resources beyond most individuals. Jurors with less social status, such as minorities, those with less education and those who feel politically disempowered, tend to favor higher standards of corporate responsibility. Jurors do look at the size of a corporation and the potential impact of its actions, as well. They view small and family owned business more favorably than large corporations.

Juries and Business

Business leaders often believe that jurors are anti-business. In studying how attitudes toward business shaped jury decision-making, one might expect to find the greatest hostility toward business defendants in punitive damages cases. I found that punitive damages were seldom awarded. Even when punitive damages were given, jurors did not especially condemn business defendants afterward. In one case, jurors said they awarded punitive damages to "make it hurt" so the company would know it had done something wrong. In cases where large awards are assessed, juries tended to be neutral-to-positive toward the defendant. Jurors took very negative attitudes toward companies in some cases. Those attitudes came from evidence presented at trial, not from pre-existing attitudes toward a particular business. Even in cases won by the plaintiff, jurors did not usually conclude that corporations were malicious or criticize the defendant or the business community harshly.

“Jurors and others often hold specific, and higher, expectations of corporate entities.”

In fact, jurors’ attitudes toward business are generally positive. In a survey of jurors’ business attitudes, three demographic factors made a difference: self-described conservatives were more pro-business than liberals, people with more education were more pro-business than people with less education and men were more pro-business than women.

Is Robin Hood Still Alive?

Belief in the Robin Hood jury is especially widespread. Lawyers, business leaders and policy makers take it for granted that jurors expect to take money from someone who has a lot of it and give money to someone with less. Some studies bolstered this deep-pockets hypothesis by seeming to show that juries gave larger awards when the defendant was a business. Yet you have already seen that jurors expect higher standards from corporations. Also, judges specifically instruct jurors in punitive damages cases to consider the wealth of the defendant, so that the punitive damages will be an effective deterrent.

“Critical commentary about the deep-pockets effect focuses attention on the supposed inflation of awards against wealthy business defendants. But my research hints that the empty pockets of a defendant (business or individual) are more significant.”

One experiment tested the deep-pockets hypothesis. Researchers gave mock juries the same case, but gave them different estimates of the defending company’s wealth. Jurors who were told that the company was worth more money did not grant higher awards. In interviews, only a minority of jurors said they considered the plaintiff’s and the defendant’s financial condition. Overall, research found no support for the deep-pockets hypothesis.

“As our collective understanding of the line between individual and corporate responsibility shifts, expanding corporate responsibility in some domains and contracting it in others, the jury’s verdicts embody that changing understanding.”

Jurors often expressed concern about the impact of jury awards on business costs and insurance rates. Jurors avoid ruining a business by granting a high award. Juries often consider the defendant’s and the plaintiff’s insurance in deliberations and are often frustrated when they do not have full information about it. In some high-award cases, pro-defense jurors explicitly considered the defendant’s deep pockets. They were more willing to give awards, knowing the company wouldn’t be ruined.

Responding to Charges Against the Civil Jury

The civil jury system faces three main negative charges: that it is pro-plaintiff, anti-business and motivated by deep pockets. Research findings did not support any of these three charges. Some reformers also charge that judges would be more competent as fact-finders than juries are. Many who argue in favor of changing the jury system use untested beliefs to support their positions. Research findings showed that judges almost always concur with jury verdicts. This research is very positive toward juries and jury competence. However, some problem areas do exist. For example, jurors have trouble with complex statistical evidence and technical or expert testimony, especially when presented in an adversarial setting.

Still, overall, the jury system brings the community’s values into the courtroom. It educates jurors and improves their familiarity with the legal system. It gives citizens a voice in shaping business practices. Others can decide if it is good or bad to give people that voice.

About the Author

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