



Center for Justice & Democracy
80 Broad St., 17th Floor
New York, NY 10004
Tel: 212.267.2801
Fax: 212.764.4298
centerjd@centerjd.org
<http://centerjd.org>

March 11, 2004

“Tort Reform” and Racial Prejudice: A Troublesome Connection

Today, the Center for Justice & Democracy released “Tort Reform and Racial Prejudice: A Troublesome Connection,” a new study that shows how the effort to restrict victims’ legal rights specifically hurts racial and ethnic minorities and how racial issues have been used by the “tort reform” movement to further its agenda.

The report finds:

- Recent “surveys” released by both the American Tort Reform Association and the U.S. Chamber of Commerce have specifically targeted juries in minority jurisdictions for attack.
- Limits on the rights of patients who have been killed or injured due to medical malpractice disproportionately hurt racial and ethnic minorities;
- Federal class action legislation would result in new and substantial limitations on access to the courts for victims of discrimination;
- “Tort reform” laws weaken the only available forum, in some cases, for holding perpetrators of hate crimes and hate groups accountable.

The full study is available at <http://centerjd.org/race.pdf>.

The following is the Executive Summary:

EXECUTIVE SUMMARY

Whether discussing the impact of typical “tort reform” proposals or the broad rhetoric used to support restrictions on legal rights, racial prejudice lurks behind the “tort reform” movement. “Tort reform” proponents have masked an agenda that is, without question, racially discriminatory:

- **Medical Malpractice Legislation.** Racial and ethnic minorities receive inferior medical treatment by the health care industry and are being subjected to high rates of preventable medical errors. As a result, limits on the rights of patients who have been killed or injured due to medical malpractice will disproportionately hurt racial and ethnic minorities. Complicating these issues is the fact that racial and ethnic minorities are uninsured more often than non-Hispanic whites, a status that frequently results in less than adequate care and poor health consequences. What’s more, specific limits on non-economic damages, such as “caps,” have a

disproportionate impact on low wage-earners who are more likely to receive a greater percentage of their compensation in the form of non-economic damages if they are injured.

- **Class Action Legislation.** Class actions are a critical tool used by individuals in this country to deter violations of individual rights and corporate misconduct. As a mechanism for the preservation and enforcement of civil rights, it is fundamental. Federal class action legislation would severely overburden the federal courts where most civil rights class actions are brought, create new procedural class action hurdles and result in new and substantial limitations on access to the courts for victims of discrimination.
- **Attacks on Civil Juries.** In 2003, the American Tort Reform Association, whose members come from major industries and Fortune 500 companies, released a report entitled, *Bringing Justice to Judicial Hellholes 2003*. In it, ATRA identifies 12 jurisdictions that a survey of its members identified as too “plaintiff-friendly.” Minorities make up most of the population in nine of these jurisdictions and all but one has a larger minority population than the state it is in. Moreover, in March 2004, the U.S. Chamber of Commerce released its annual survey of corporate counsels’ views of state litigation environments. For the first time, the 2004 survey asked about which local jurisdictions the corporate attorneys felt were the “least fair and reasonable.” Out of 18 jurisdictions identified, minorities make up most of the population in 15. In fact, throughout recent history, business groups have specifically targeted juries in minority jurisdictions for relentless attacks, implying that juries in these jurisdictions are rendering unfair verdicts against undeserving corporations *not* because jurors have listened to the evidence in a case, but for other reasons – they are too poor, too uneducated, too “sympathetic” to the injured victim – even though the facts prove otherwise.
- **Weakening Civil Rights Remedies.** Successful civil lawsuits against hate groups not only directly respond to the needs of those injured by providing financial compensation for losses, but also often provide the only effective means to put these dangerous entities out of business. “Tort reform” laws, which reduce the power and authority of civil juries, weaken the only available forum in some cases for holding perpetrators of hate crimes and hate groups accountable. Moreover, in 1997, Congress refused to correct a loophole in the federal “Volunteer Protection Act” that allows state volunteer immunity laws to protect from negligence lawsuits volunteers for hate groups, such as the Ku Klux Klan.