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## Book Review [America's Tunnel Vision-How Insurance Companies' Propoganda Corrupts Medicine & Law]

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## BOOK REVIEW

### **A REVIEW OF AMERICA'S TUNNEL VISION— HOW INSURANCE COMPANIES' PROPAGANDA IS CORRUPTING MEDICINE & LAW**

**Sunny Woan\***

*Introductory Statement by the Author, Michael Townes  
Watson<sup>1</sup>*

Not just a plaintiff trial lawyer's call for preserving the right to bring a lawsuit, *America's Tunnel Vision—How Insurance Companies' Propaganda Corrupts Medicine & Law* is a rational and historical analysis of how insurance companies seized the civil justice system away from victims of medical malpractice. I sought to detail the history of the imprint that some of our nation's prominent lawyers have had on the justice system by showing how those lawyers laid the groundwork for the sanctity of the jury system. Thomas Jefferson, a lawyer and the author of the Declaration of Independence, was one of the first to articulate that happiness was something that people had a right to expect, and that government should foster it. It was not until the Bill of Rights was appended to the U.S. Constitution that anyone

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1. J.D., *magna cum laude*, University of Texas School of Law, 1976. Michael Townes Watson is the author of four law books and numerous articles on law and medicine, a former adjunct professor of Medical Malpractice Law at Texas Wesleyan University School of Law, a frequent lecturer on a variety of topics in legal seminars, and a trial lawyer in Texas for twenty-five years. He now resides in New York City as a full-time writer, focusing his work on law and the U.S. health care system.

gave much thought to the concept that our personal liberties needed specific protections to ensure that they would not be compromised by the government. From that history came the right to a trial by jury, guaranteed by the Seventh Amendment to the U.S. Constitution, and part of the Bill of Rights.

Abraham Lincoln, a country lawyer with little formal education, had a gift for capturing the essence of our spirit and morality with but a few well-chosen words. He believed that every individual in this country should be treated equally, even those who believed that every individual should not be treated equally. When Louis Brandeis, one of our country's most admired and influential lawyers and Supreme Court justices, began to rise in prominence and notoriety, he did so because he sought to obtain balance on behalf of the little guy and the middle class against corporate corruption and monopoly-seeking conglomerates. His operating conviction was a single one—that morality came from within every human being, rather than from a collection of individuals gathered for the sole purpose of furthering a business venture or economic enterprise.

Despite contributions from these and many other lawyers, it has become simple for corporations and insurance companies to sell the idea of limiting the rights of individuals because they create the belief that consumers will pay for “skyrocketing jury awards” and “frivolous lawsuits.” The truth of the matter is that these words are a scare tactic designed to perpetuate the unchallenged and limitless profits from the products or services that we think are always safe, but are really not. Are the courts being used solely to line the pockets of trial lawyers, or are the corporations, their insurance companies and their lawyers trying to change the system so that they can grease the money-making machine without being required to answer for the consequences of their conduct?

Shouldn't all of us want a system that: (1) lessens the prevalence of medical errors; (2) provides an avenue for compensation for those who are injured by medical negligence; and (3) places the ultimate cost of such compensation on those whose conduct is the most reckless? To do this, we must rid the insurance companies of the notion that their bad investment decisions should be rewarded by

either soaking doctors for more premium dollars or further robbing the innocently injured victim of his day in court. Otherwise, we will be left with an unacceptable alternative—relegating crippled and brain-damaged victims of medical negligence to monetary recoveries for their life of suffering that would not even pay one week's salary of an Enron executive or our president's four years at prep school.

The idea of tort reform in the area of medical malpractice is now politically expedient. However, as Alexander Hamilton said in the *Federalist Papers*, beware of the popularity of a thought or idea that serves your advantage today, because that thought may well become a rule of law. Tomorrow, you might not be the one to make the rules, or even more ironically, your popular rules may turn to your disadvantage. Is there something that preserves inviolate rights for all people, as stated by Thomas Jefferson and repeated by Abraham Lincoln ninety years later? The answer must be that we have to take a hard look at ourselves and determine what is important to the survival of the meaning of the phrase "justice for all."

— MTW

## REVIEW

### I. INTRODUCTION

Needless and preventable medical errors in hospitals kill between 48,000 and 98,000 people each year.<sup>2</sup> The median amount of damages awarded to plaintiffs in medical malpractice suits is under \$500,000,<sup>3</sup> an amount meant to compensate for what is permanent injury or even death ninety percent of the time.<sup>4</sup> Nevertheless, tort reform advocates want to cap non-economic damages at \$250,000<sup>5</sup> to

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2. MICHAEL TOWNES WATSON, *AMERICA'S TUNNEL VISION: HOW INSURANCE COMPANIES' PROPAGANDA IS CORRUPTING MEDICINE & LAW* 42 (2006).

3. *See id.*

4. *See* THOMAS H. COHEN, U.S. DEPT OF JUSTICE, *MEDICAL MALPRACTICE TRIALS AND VERDICTS IN LARGE COUNTIES*, 2001, at 1 (2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mmtv1c01.pdf>.

5. WATSON, *supra* note 2, at 93-100 (stating that the "legislation now before Congress, strongly urged by President Bush, is to 'cap' non-economic damages in medical malpractice suits at the total sum of \$250,000"; offering a

curb payouts on what they claim are frivolous lawsuits.<sup>6</sup>

In *America's Tunnel Vision—How Insurance Companies' Propaganda Is Corrupting Medicine & Law* (*America's Tunnel Vision*), author Michael Townes Watson deluges the reader with hard statistics and gripping accounts of exploits by America's major institutions to propel his final thesis—anyone who knew the facts would be outraged by the notion of “some legislative decree about the worth of a life.”<sup>7</sup> Essentially, Watson insists that tort reform cannot be legislated into a federalized “one size fits all” law.<sup>8</sup> *America's Tunnel Vision* is a reader-friendly exposé of insurance companies, the medical profession, and corporate America, and how these three titans conspire against the everyday American in an effort to deepen their own pockets.<sup>9</sup>

## II. UNDERSTANDING THE MAJOR PLAYERS OF THE TORT REFORM MOVEMENT

Watson states that his goal in writing this book is to make the reader a more informed democratic participant in the tort reform debate.<sup>10</sup> Yet his sympathy for plaintiffs resonates throughout the book, rendering his final thesis to be plainly against capping damages.<sup>11</sup> He scrutinizes the tort reform agenda through a tripartite disquisition of insurance

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concise explanation of non-economic damages).

6. See, e.g., Citizens Against Lawsuit Abuse Press Releases, <http://www.cala.org/press.html> (last visited Apr. 16, 2007).

7. See WATSON, *supra* note 2, at 49 (“That is the purpose of this book—to inform those who would like to know how the legal system works when the subject is whether a person should receive compensation from being injured by medical error. I am convinced that those who will listen to the facts will believe that our civil justice system should not be controlled by some legislative decree about the worth of a life.”).

8. See *id.* at 364 (“The states are far better equipped to handle these problems than the federal government.”).

9. E.g., *id.* at 45 (“I will show you the full field of vision about how the insurance companies use all of their money and power . . . to the detriment of the people that they are supposed to serve.”).

10. See *id.* at 2. Watson states:

My major imprint on this book is this: if you are going to take a position on the validity of a proposal, it is incumbent upon you to know the reason for the proposal, the motivation of those making the proposal, the effect the proposal will have, and the facts, both in support of and in opposition to the proposal. It is only through that knowledge that our democracy can work properly.

*Id.*

11. See WATSON, *supra* note 2, at 84-87.

companies' propaganda,<sup>12</sup> medical institutions,<sup>13</sup> and the corporate influence<sup>14</sup> on lawmaking bodies in this country.

#### A. *Revealing the True Intentions of Insurance Companies*

*America's Tunnel Vision* takes an unmistakably cynical attitude toward insurance companies.<sup>15</sup> As the author notes: "I have a deep-seated fear and distrust of most insurance companies. I believe that, for the most part, they have prospered, and wish to continue to prosper, from the medical malpractice system, far beyond what is fair and reasonable."<sup>16</sup> To divert attention from their own accountability, Watson contends, these insurance companies use trial lawyers as scapegoats and blame the unreformed plaintiff-friendly tort system for the high cost of insurance and the shortage of doctors.<sup>17</sup> The book reveals how insurance companies have been at the forefront of the tort reform movement. These companies go to great lengths to spill well-funded propaganda favoring tort reform into the mainstream.<sup>18</sup>

One of the main contentions *America's Tunnel Vision* poses is that insurance companies deliver faulty logic to Americans and mislead them to conclude that tort reform is the answer to lowering the cost of health care.<sup>19</sup> Insurance companies suggest that health care costs are high because

12. *See id.* at 101-20.

13. *See id.* at 243-65.

14. *See id.* at 275-328.

15. *See id.* at 45, 238, 239-41 (noting "how the insurance companies use all of their money and power . . . to the detriment of the people that they are supposed to serve, and all to the detriment of the system which they use to make their own profits"; also identifying insurance companies as the real culprit behind skyrocketing insurance costs).

16. *See id.* at 22-23.

17. *Id.* at 52.

18. Wikipedia, Tort Reform in the United States, [http://en.wikipedia.org/wiki/Tort\\_reform](http://en.wikipedia.org/wiki/Tort_reform) (last visited Apr. 5, 2007) (noting that the tort reform movement is mostly funded by large insurance companies); *see also* WATSON, *supra* note 2, at 32 ("Why is our public discourse replete with arguments for 'tort reform' limiting the rights of people to seek redress through the legal system? The answer lies in . . . the propaganda of the insurance industry.").

19. *See* WATSON, *supra* note 2, at 101-29. "[I]nsurance companies believe that if they can make it look like someone else is the problem in the system, then no one will look at them to make them change. So far, their plan has been very successful." *Id.* at 209.

medical malpractice premiums are high.<sup>20</sup> Thus, under this logic, lowering the amount plaintiffs may recover from lawsuits against doctors will lower the costs doctors incur, which will lower medical malpractice premiums and ultimately, America's health care costs.<sup>21</sup> Watson argues that facts prove otherwise. Malpractice premiums have not gone down even after tort reform legislation capped damages at \$250,000.<sup>22</sup> Watson maintains that the damages are not the reason for high malpractice rates and that "less than one percent of health care costs result from malpractice premiums."<sup>23</sup>

However, the author's analysis of these facts may be a bit one-sided. In 1993, the Office of Technology Assessment issued a report summarizing the first wave of studies on the states that enacted tort reform legislation.<sup>24</sup> The results of that report seem to run contrary to Watson's assertions that caps on pain and suffering damages have little to no impact on lowering health care costs. The report found that imposing caps on non-economic damages consistently lowered premium rates for malpractice insurance.<sup>25</sup> Also, restricting the availability of joint-and-several liability, reducing statutes of limitations for filing claims and other tort reform measures were also found to be effective methods of keeping premium rates at bay.<sup>26</sup>

Whether any significant and direct correlation exists between the costs of health care and capping non-economic damages remains unclear; most analyses are inconclusive.<sup>27</sup>

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20. *Id.* at 102.

21. *See id.*

22. *See id.*

23. *Id.* Data from the Office of the Actuary at the Centers for Medicare and Medicaid Services, however, estimated malpractice costs to account for about two percent of health care spending (roughly \$24 billion in 2002). PERRY BEIDER & STUART HAGEN, CONGRESSIONAL BUDGET OFFICE, ECONOMIC AND BUDGET ISSUE BRIEF: LIMITING TORT LIABILITY FOR MEDICAL MALPRACTICE 1 (2004), available at <http://www.cbo.gov/ftpdocs/49xx/doc4968/01-08-MedicalMalpractice.pdf>. A reduction of twenty-five to thirty percent in malpractice costs would lower health care costs by only about 0.4% to 0.5%, and the likely effect on health insurance premiums would be minimal. *Id.* at 6.

24. BEIDER & HAGEN, *supra* note 23, at 5 (citing Office of Technology Assessment, U.S. Congress, *Impact of Legal Reforms on Medical Malpractice Costs*, Oct. 1993, at 66).

25. *Id.*

26. *Id.*

27. *See id.* at 1 (acknowledging that evidence of the effects of tort liability on

Recent studies demonstrate that, more than any other factor, the performance of insurance companies' investment portfolios has the greatest influence on insurance premium rates.<sup>28</sup>

*B. The Danger in Letting Medical Institutions and Practitioners Police Themselves*

The quote prefacing Chapter Seven, on state regulation and discipline of negligent physicians, reads: "Enron should teach us that one should be skeptical of highly qualified professionals who promise to regulate themselves."<sup>29</sup> Watson observes that when states rely on boards of doctors to regulate negligent doctors, the result is unregulated negligent doctors.<sup>30</sup> In 2003, the Texas State Board of Medical Examiners granted second and even third chances to surgeons who were thrown out of hospitals because they botched operations.<sup>31</sup> The Board forgave doctors who overlooked cancerous tumors, maimed infants, and mistakenly sterilized women.<sup>32</sup> In the five years preceding 2003, not a single doctor had his or her license revoked for committing medical errors.<sup>33</sup> Doug Swanson, an investigative reporter covering the story, described the situation as "state-sanctioned tolerance for serious medical mistakes."<sup>34</sup>

In addition, a New Jersey survey recounted 290 physicians as repeat offenders of medical malpractice.<sup>35</sup> Only ninety of those 290 physicians had their licenses revoked.<sup>36</sup> Out of seventy doctors in Virginia disciplined five or more times by state or federal authorities, only twenty-eight lost

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health care costs is weak and inconclusive); Posting of Richard Posner to The Becker-Posner Blog (Jan. 16, 2005), [http://www.becker-posner-blog.com/archives/2005/01/tort\\_reformposn.html](http://www.becker-posner-blog.com/archives/2005/01/tort_reformposn.html) [hereinafter *Posner*] (noting the uncertainty of the relationship between premiums and malpractice judgments).

28. *Posner*, *supra* note 27.

29. WATSON, *supra* note 2, at 243 (citing *A Medical Enron*, WASH. POST, Dec. 9, 2002, at A22).

30. *Id.* at 245.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 245, 247.

35. See WATSON, *supra* note 2, at 259-60.

36. *Id.* at 260.



their licenses.<sup>37</sup> A doctor could, in effect, kill a child cancer patient by prescribing chemotherapy at ten times the correct dosage with an antibiotic that the child was allergic to, toss a fetus into the trash instead of following proper disposal regulations, be convicted of dealing cocaine, allow a woman to lay unexamined in the emergency room overnight and bleed to death internally, anesthetize a man in an MRI machine and leave ensuing complications unattended, or sexually abuse multiple patients, and he or she would still be allowed to continue practicing medicine.<sup>38</sup>

In 2004, the media cast a public spotlight on the Houston Community Hospital, which employed an extremely high number of state disciplined doctors.<sup>39</sup> The hospital administrator attempted to excuse the medical errors in a public statement.<sup>40</sup> He asserted that the doctors at his hospital were “good doctors,” but that the surgeries in question were highly specialized and “demanding and complex.”<sup>41</sup> Watson remarks, “One would wonder whether choosing the correct leg for surgery was too demanding and complex.”<sup>42</sup>

Watson insists that he does not cite these facts simply to expose the incompetence of American doctors or justify the trial lawyer’s profession. In fact, on average, only seventeen percent of U.S. doctors are charged for medical malpractice.<sup>43</sup> Watson believes the reason for high medical malpractice payouts is repeat offenders—5.4% of all doctors cause 56.2% of total malpractice payments.<sup>44</sup> Thus, the author explains that tort reform is not the way to limit lawsuits against doctors, since the overwhelming majority of doctors are not even responsible for malpractice.<sup>45</sup> The problem lies in the ineffectual regulation of those few doctors who *are*

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37. *Id.* at 265.

38. *Id.* at 262.

39. *Id.* at 156-57.

40. *Id.*

41. WATSON, *supra* note 2, at 157.

42. *Id.*

43. *See id.* at 244 (stating that eighty-three percent of doctors have never made a medical malpractice payout, leaving only seventeen percent of doctors actually liable for malpractice).

44. *Id.* at 244.

45. *See id.*

responsible, namely the seventeen percent.<sup>46</sup> To prevent malpractice suits, Watson proposes intensifying public scrutiny of how state boards discipline doctors and strictly ensuring that negligent doctors are punished. Capping non-economic damages in malpractice suits not only hurts the most vulnerable members of society,<sup>47</sup> but further leaves blameworthy doctors with impunity. In effect, Watson contends, tort reform does not directly benefit the good doctors, but rather, reduces the liability of the bad doctors.

### C. *Corporate Influence on the Medical and Justice Systems*

Watson devotes the longest chapter of *America's Tunnel Vision* to the corporate influences on America's political system.<sup>48</sup> At the 2005 presidential inauguration, corporations such as ExxonMobil, ChevronTexaco, Cinergy, MCI, Pfizer, Hospital Corporations of America, and the Generic Pharmaceutical Association, to name a few, represented some of the biggest sponsors to the inaugural organizing committee.<sup>49</sup> The author writes:

On the night before the inauguration, the U.S. Chamber of Commerce teamed up with the American Continental Group, a Washington lobbying firm, to throw a party for a crowd that includes lawmakers, administration officials and Republicans who played key roles in financing Bush's re-election campaign. *Atop the Chamber's legislative wish list: limits on damage awards in lawsuits, which also is a Bush priority.*<sup>50</sup>

Thus, a federalized tort reform bill passed by the government would inevitably serve the interests of the hands that feed the government—the big corporations. “A government that runs with the influence of large monied interests will always work for the benefit of the large monied interests.”<sup>51</sup> On the other hand, laws that run with the influence of the people—i.e., jurors—will work for the benefit

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46. See *id.* at 245-52.

47. See *infra* note 52 and accompanying text.

48. See WATSON, *supra* note 2, at 275-334.

49. *Id.* at 278-79 (quoting Jim Drinkard, *Donors Get Good Seats, Great Access This Week*, USA TODAY, Jan. 17, 2005, at 11A).

50. *Id.* at 281-82.

51. *Id.* at 201.

of the people. "The jury is the conscience of the community,"<sup>52</sup> and thus is a more reliable body for determining a non-economic damage award than the corporate-influenced federal government. Watson further reports how the U.S. Chamber of Commerce and other corporate lobby groups launched a multi-million dollar advertising battle against trial lawyers by encouraging citizens to distrust their peers, or jurors, in awarding appropriate amounts for damages.<sup>53</sup>

The book addresses a "widely circulated e-mail from the sponsors of tort reform legislation" that contained several accounts of personal injury plaintiffs abusing the civil justice system.<sup>54</sup> Watson exposes the accounts found in this e-mail as absolute fabrication.<sup>55</sup> Snopes.com, a website with a mission of dispelling urban and Internet myths, investigated the cited accounts and found all of them to be false.<sup>56</sup> These e-mails came with a footer identifying the original sender as Mary R. Hogelmen, Esq., of Hogelmen, Hogelmen, and Thomas in Dayton, Ohio.<sup>57</sup> No such law firm exists in Dayton, Ohio.<sup>58</sup> The author decries these e-mails as part of a massive campaign by corporate America and its allies to propagandize tort reform.<sup>59</sup>

Surprisingly, the book omitted coverage of the corporate giant that may have begun the tort reform movement in 1992.<sup>60</sup> According to Public Citizen, a non-profit consumer advocacy group, Philip Morris launched a large-scale, corporate-funded effort to significantly reduce its exposure to liability law suits.<sup>61</sup> Philip Morris recruited corporate giants from other industries, including chemical manufacturers, pharmaceutical companies, automobile manufacturers, and insurance agencies.<sup>62</sup> An internal memo at Philip Morris entitled *Tort Reform Project Budget* revealed that the tobacco

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52. *Id.* at 203.

53. *See id.* at 68.

54. WATSON, *supra* note 2, at 65.

55. *See id.* at 66.

56. *See id.* at 66-67.

57. *Id.* at 67.

58. *Id.*

59. *Id.* at 68.

60. *See* SourceWatch, Ctr. for Media & Democracy, Tort Reform, [http://www.sourcewatch.org/index.php?title=Tort\\_reform](http://www.sourcewatch.org/index.php?title=Tort_reform) (last visited Apr. 5, 2007).

61. *See id.*

62. *Id.*

industry alone allocated \$21.8 million for the tort reform effort in 1995.<sup>63</sup>

*America's Tunnel Vision* further zooms in on pharmaceutical companies and how they, rather than the individual consumer with a personal injury claim, may be to blame for the rise in health care costs.<sup>64</sup> The book lampoons drug makers' mercenary ambitions to turn a profit off of consumers.<sup>65</sup> "Drug makers acknowledged, for example, that they routinely made payments to insurance plans to increase the use of their products, to expand their market share, to be added to lists of recommended drugs or to reward doctors and pharmacists for switching patients from one brand of drug to another."<sup>66</sup> These aggressive drug marketing campaigns are driving up the costs of Medicare and Medicaid, which directly harms America's elderly, disabled, and poor.<sup>67</sup>

*America's Tunnel Vision* addresses Watson's concern that capping non-economic damages in tort actions will leave injured citizens without adequate recourse against multi-billion dollar corporations. The author argues that the present tort system works better than any proposed tort reform plan. The current system has, for example, enabled injured parties to be recompensed when big corporations are liable for exposing eleven million workers to asbestos, causing 10,000 babies to be born with defects due to thalidomide, manufacturing 1.5 million combusting Pintos, or harming six million consumers who used Phen Fen (a drug found to damage the heart muscle).<sup>68</sup>

### III. TORT REFORM AND ITS ROLE IN THE U.S. LEGAL SYSTEM

In 2003, Texans passed Proposition 12 (Prop 12), which capped the amount of non-economic damages awarded to

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63. *Id.*

64. *See, e.g.,* WATSON, *supra* note 2, at 223-35 (discussing how the deep pockets of drug companies influence America's health care).

65. *E.g., id.* at 223 ("[W]e have a serious problem in this country that someone needs to talk about . . . . That problem is the amount of money that is thrown away each year on marketing drugs in order to make them the bestsellers.").

66. *Id.* at 224.

67. *See id.* at 225.

68. Dan Zegart, *The Right Wing's Drive for "Tort Reform,"* NATION, Oct. 25, 2004, available at <http://www.thenation.com/doc/20041025/zegart>.

plaintiffs in medical malpractice lawsuits.<sup>69</sup> Proponents of Prop 12 celebrated the success of the legislation by citing the reduction of insurance premiums for physicians charged by professional liability underwriters.<sup>70</sup> Yet Watson steadfastly maintains that capping damage awards will not improve the economic efficiency of America's healthcare system.<sup>71</sup> He argues that "53 percent of the 15 states with the worst access to primary care impose medical malpractice damage caps," while "60 percent of the 15 states with the best access to primary care do not have medical malpractice damage caps."<sup>72</sup>

However, these statistics may be a bit misleading based on recent findings by the Congressional Budget Office (CBO). In 2004, the CBO issued a policy brief summarizing the results of its studies on tort liability for medical malpractice cases.<sup>73</sup> The CBO studies found that no evidence definitively suggests whether tort reform would have an effect, either positive or negative, on economic efficiency.<sup>74</sup> Thus, arguments for or against capping damages hinge more on "their implications for equity—in particular, on their effects on health care providers, patients injured through malpractice, and users of the health care system in general."<sup>75</sup>

In terms of equity, Prop 12 has come with an unfortunate price for plaintiffs. For instance, Jackie Smith's case offers a heartbreaking perspective on how the law hinders attempts by victims of malpractice to bring suit against medical institutions:

Smith herself had never had reason to sue anyone, until 2:30 am on November 7, 2003, when a male nurse noticed that a patient's door at the Heritage Duval Gardens Nursing Home in Austin was closed when it should have been open. He heard crying, and when he snapped on the light, he saw a man leap from the bed of an elderly woman

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69. Matt Dougherty, *Questions Linger Over the Effectiveness of Prop 12*, WORLD INTERNET NEWS, Oct. 20, 2005, at [http://soc.hfac.uh.edu/artman/publish/article\\_288.shtml](http://soc.hfac.uh.edu/artman/publish/article_288.shtml) (noting the slim margin by which Proposition 12 passed—51 to 49 percent).

70. See Tex. Med. Ass'n, *Texas Liability Rates Dropping After Prop 12*, <http://www.texmed.org/Template.aspx?id=3868> (last visited Mar. 6, 2007).

71. See WATSON, *supra* note 2, at 405-25 (stating that caps on damages will not help access to the health care system).

72. *Id.* at 405.

73. See BEIDER & HAGEN, *supra* note 23.

74. See *id.* at 7.

75. *Id.*

[Jackie Smith's mother]. The woman was naked. The man's pants were around his ankles.<sup>76</sup>

The nursing home could have been sued for malpractice because the assault occurred during the administration of medical care.<sup>77</sup> Under Prop 12, however, the maximum amount Smith could recover for her mother's pain and suffering is \$250,000.<sup>78</sup> Even if Smith won her case, she could expect, after attorneys' fees and costs, \$50,000 at best from the nursing home for hiring a rapist to care after her elderly mother.<sup>79</sup>

One of the redeeming qualities of *America's Tunnel Vision* is its contextualization of the tort reform debate within U.S. history, rather than the politicization of it.<sup>80</sup> At the heart of his contentions, the author worries that placing a cap on non-economic damages will hurt the most vulnerable: the children, the elderly, and the stay-at-home parents who have no provable claim of economic loss.<sup>81</sup> Traditionally, states regulate tort law, but the current administration has tried at least six times in the last five years to federalize it.<sup>82</sup> Even as George W. Bush's presidency draws to an end, the tort reform debate rages on. It will inevitably be an issue that reappears in the next presidential elections race.

Finally, the book raises a significant red flag that legal professionals may appreciate—the modern-day lawyer has become less of a legal scholar and more of a businessman, to the detriment of the justice system.<sup>83</sup> Lawyers seem to haggle over trivial matters just to best their opposing counsel,<sup>84</sup> and trial lawyers generally lack a sufficient understanding of medical malpractice.<sup>85</sup> Watson invests equal efforts in criticizing attorneys and applauding their efforts of seeking

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76. Zegart, *supra* note 68.

77. *Id.*

78. *Id.*

79. *Id.*

80. See, e.g., WATSON, *supra* note 2, at 336, 341, 344-48 (discussing the history and legacy of the American legal system).

81. *Id.* at 92.

82. See generally Nat'l Conference of State Legislatures, Medical Malpractice Tort Reform, <http://www.ncsl.org/standcomm/sclaw/medmaloverview.htm> (last visited Apr. 5, 2007).

83. See WATSON, *supra* note 2, at 391-92.

84. *Id.* at 394.

85. *Id.* at 396.

justice for their clients. As can be expected of an author who is himself a seasoned trial lawyer, Watson implies that if any lawyer is to blame for the bad reputation of lawyers in the personal injury field, the corporate lawyers are the ones who sneak frivolous lawsuits into the U.S. courts.<sup>86</sup> He writes:

Corporate lawyers are the catalysts for much of the criticism of trial lawyers who bring suits to recover damages for people who have been seriously injured by defective products or errant medical care. However, the legal reforms that these [corporate] lawyers advocate do nothing to curb the ridiculous lawsuits filed by businesses against each other.<sup>87</sup>

#### IV. LACKING A GLOBAL PERSPECTIVE

Watson's book sought to criticize America's "tunnel vision" in its examination of medical malpractice and tort reform, but offered little insight on a global perspective of the issue. Offering a look at how other countries have dealt with tort law may have broadened this view. For example, the legal systems of France, Germany, Japan, and Australia discourage most personal injury actions and make it nearly impossible for individuals to sue big corporations, similar to the aims of U.S. tort reform legislation.<sup>88</sup> Yet, unlike the United States, these countries have an established national health care system or a compensation arrangement in place to provide adequate relief to injured victims.<sup>89</sup> Japan, in particular, set up specialized industry funds to cover air pollution victims or parties injured by pharmaceuticals.<sup>90</sup> Admittedly, the book focused on U.S. law, but a brief comparative study might advance what appears to be the author's purpose in writing *America's Tunnel Vision*—to present a methodical exposition on personal injury, with a focus on medical malpractice, that would be digestible to the average reader or would-be juror.

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86. See *id.* at 285-86, 293-95 (asserting that businesses sue other businesses at far greater frequencies than individuals sue businesses for personal injury; thus, corporate lawyers are the ones standing behind frivolous lawsuits, not trial lawyers).

87. *Id.* at 286-87.

88. Zegart, *supra* note 68.

89. See *id.*

90. *Id.*

## V. CONCLUSION

*America's Tunnel Vision* accomplishes its main purpose, which is to be an accessible and informative work that empowers the average American with the knowledge he or she needs to be an educated voter on the tort reform issue.<sup>91</sup> The book's two greatest elements turn out to be its two most crippling weaknesses: first, the barrage of statistical evidence without subsequent analysis, and second, the histrionic prose that pulsates particularly strong in the introduction and conclusion sections of the book.

Copious amounts of research went into the writing of *America's Tunnel Vision*, and an avalanche of compelling facts and statistics overwhelms the reader. However, the strings of numbers and surveys become more of a tangent from the main purpose of the work. By including more analysis, the author could have better articulated the relevance of the numbers and surveys to his argument. In Chapter Six, *Insurance Companies Have Created Their Own Problems*,<sup>92</sup> the author spends about one-third of the chapter deploring the pharmaceutical industry.<sup>93</sup> Watson probably included this reference to rebut claims by insurance companies that medical malpractice suits drive up health care costs. By spotlighting the pharmaceutical industry as a main culprit, medical malpractice suits appear to be a lesser offender. However, the author does not include enough analysis to bridge his original contention that insurance companies "created their own problems" with a reason why he expended over a dozen pages on prescription drug ads. This section would have fit better in Chapter Eight, on corporate influences. Thus, at times, the statistics served to detract from the book more than they helped.

Also, most chapters are penned with emotional discourse rather than academic scrutiny.<sup>94</sup> Watson writes, "Our heroes have always been the little guys whose motivation is

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91. WATSON, *supra* note 2, at 45, 49 (expressing the author's main objectives for writing *America's Tunnel Vision*).

92. *See id.* at 199-241.

93. Thirteen pages of Chapter Six, which itself is forty-three pages, wanders into great detail on drug companies and their role in skyrocketing health care costs. *See id.* at 223-53.

94. *See id.* at 25-39.



something other than personal gain"<sup>95</sup> and "[a]lthough this book is not about religion, it is about morality and the spirituality that I believe is within most Americans."<sup>96</sup> Many chapters rely on the reader's pathos for potency—the author strings together a dozen carefully crafted accounts of sympathy-inducing individuals who dealt with horrific medical malpractice suits to emotionally sway the reader against insurance companies, the medical institution, and corporate giants.<sup>97</sup> By Chapter Thirteen, *A Word About Moral Values*, the author risks being misinterpreted as an apologist against tort reform.<sup>98</sup> There is no denying the evincive power of citing personal injury cases that tug at the heartstrings and writing patriotic homilies on how preserving the jury's right to determine damages preserves democracy. Yet these aspects of the work are precisely what dilute the scholarly nature of such a book. Ironically, while Watson complains how lawyers today are becoming less "legal scholar" and more "businessman,"<sup>99</sup> his book holds more commercial appeal than it does a benchmark treatise on tort law.

If means may justify ends, then *America's Tunnel Vision* contributes to tort reform literature as a persuasive critique on tort reform and how it frustrates America's medical and justice systems. The book is especially effective as a compendium of recent events revealing the unsavory inner workings and intentions of insurance companies. At times, *America's Tunnel Vision* reads like a drawn-out appellate brief with no formal citations; nonetheless, it is a highly recommended introduction to tort reform policies and a deconstruction of corporate and political agendas.

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95. *Id.* at 26.

96. *Id.* at 24-25.

97. See WATSON, *supra* note 2, at 86-91.

98. *E.g., id.* at 445 ("Moral—those who do the damage should be the ones to pay for that damage. Immoral—secrecy and manipulation prevails over openness and honesty. Who could argue?").

99. *Id.* at 392.