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## Book Review of William Haltom and Michael McCann's *Distorting the Law: Politics, Media and the Litigation Crisis*

Richard Sherwin

*New York Law School*, richard.sherwin@nyls.edu

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**LAWYER'S BOOKSHELF; Distorting the Law: Politics, Media and the Litigation  
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**Byline:** Richard K. *Sherwin*

### **Body**

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#### **News**

#### ***Distorting the Law: Politics, Media and the Litigation Crisis***

I do believe the lawsuits -- I don't believe, I know -- that the lawsuits are causing health care costs to rise in America. That's why I'm such a strong believer in medical liability reform. -- George W. Bush

John Edwards and I support tort reform. We both believe that, as lawyers. -- John Kerry.

Everyone seems to support tort reform these days. But do people really know what they are buying into? If John Kerry and other members of his party had read William Haltom's and Michael McCann's new book one wonders whether they would have been so quick to hop onto the tort reform bandwagon. Did they realize how this popular brand of common sense was constructed, and what went into it? Did they realize that once you adopt a particular way of talking about things you inherit a whole belief system?

*Distorting the Law* provides readers with an understanding of why, when John Kerry endorsed tort reform, he unwittingly joined battle in the culture wars -- and for the wrong camp. Based on extensive

interviews and an analysis of nearly two decades of news reporting in the mass media, the authors demonstrate how routine coverage of tort litigation sensationalizes carefully targeted cases -- and in the process exploits popular negative stereotypes about lawyers, perpetuates myths about the so-called litigation crisis, and disseminates legal folktales that effectively shifts blame from corporations to irresponsible victims. The book vividly illustrates how legal lore coursing through the mass media frames the way most people speak and think about tort reform.

As Haltom and McCann make clear, the tort reform movement wasn't born overnight. It took decades of concerted and patient planning. From the 1970s on, lobbyists, policymakers, intellectuals and journalists worked together to manufacture a new form of legal lore. These populist tort reformers drilled down deep and came up with a fine-grained common sense belief system that could be embedded in and disseminated by popular tort stories. These were mythic tales, parables really, with iconic characters and vivid details. For example, have you heard the one about the psychic who lost her powers after a CAT scan and sued for damages? How about the guy who sued after having grown addicted to milk? Or what about the elderly woman who won a \$2.9 million jury verdict against McDonald's after she spilled a cup of hot coffee in her lap?

These popular (and grossly distorted) law stories could be tag lines in a Jay Leno comedy monologue. In fact, most of them have been. And that's the point. Told from a certain angle, these anecdotal tales are funny, and pathetic, but they pack a powerful moral punch. It's what they've been designed to do. They warn us about (1) slackers, self-professed victims, who insist on blaming others for their own faults; (2) greedy and unscrupulous lawyers who play the system for cash; and (3) hapless jurors who get hoodwinked in the process. These carefully chosen narratives reveal the plague of lawyers in our midst and the litigation explosion that they've unleashed.

Of course, social scientists over the years have marshaled empirical data showing there is no litigation explosion. As Marc Galanter has recently written, in most forums the absolute number of trials has undergone a sharp decline. According to Haltom and McCann, it's a familiar scenario. The experts trot out their statistical findings and expect that the truth shall set us free. The problem is, no one seems to be listening -- certainly not the public.

Why not? Part of the reason, as Berkeley linguist George Lakoff explains, is that Frames trump facts. The words we hear and use, like the images we see, make sense in reference to particular frames (including images, metaphors, and anecdotes). When Johnny Cochran tells jurors to keep your eyes on the prize he is cuing up images from the popular civil rights documentary by that name. Likewise, when prospective voters are shown a menacing image of Willie Horton or a pack of wolves, they are being cued to experience fear in connection with domestic security concerns. To comprehend or be moved by a fact, it has to fit the frame.

What, then, is the ordinary common sense frame for tort reform? In a brilliant analysis, Haltom and McCann show that it's the same frame that dominates the conservative social policy agenda championed by President Bush and the Republican Party. At its core lies an ethos of personal responsibility, self-discipline and self-reliance. As Governor Bush admonished in his State of the State Address in 1995: Discipline, strong values, and strict rules go hand-in-hand with our love for our children ... [We] must build community-based boot camps and detention centers ... Texas must lower to 14 the age at which the most violent juveniles can be tried as adults. Lakoff calls this the Strict Father frame. And it's this frame that the tort reformers have tapped into.

Backed by conservative think tanks like the Manhattan Institute for Policy Research, and using sophisticated marketing and publicity techniques through organizations like the American Tort Reform Association, tort reformers have exploited popular scripts lifted from the culture wars play book. The moral of their stories is clear: lawyers are undermining the core ethos of personal responsibility and self-reliance by fostering frivolous litigation lotteries which promise undeserved windfalls.

Haltom and McCann have made a real contribution by helping us to see the connection between tort reform and the deeper cultural movement of which it is a part. Some of this, of course, is hardly new. Public relations and the engineering of consent have been with us since the early twentieth century. For example, in 1922, Walter Lippmann wrote: A leader or an interest that can make itself master of current symbols is the master of the current situation. Over the years, spin techniques have gotten better -- the beneficiary of numerous insights garnered from social psychology, cognitive anthropology, and linguistics. In addition, the scene of spin has shifted from arenas focused exclusively upon the spoken and

printed word. Advocates must now adapt their message to new forms of communication technology, most notably the ubiquitous electronic screen.

*Distorting the Law* offers an unparalleled introduction to the social construction of meaning in the tort reform domain. Its lucid and highly informative analysis invites lawyers to rethink the role and nature of persuasion in the age of mass media. It will not do simply to rail against the media for colluding with the distortions propagated by pop tort reformers, as if the absence of a countervailing frame, with an equally compelling core ethos supported by equally vivid images and anecdotes, were not also to blame. Mass culture is not about to go away. It is incumbent upon advocates to understand its various logics, counter its distortions as best they can, and harness its unprecedented power to communicate preferred values and interests.

Richard K. *Sherwin* is the author of

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