

## POINTS OF VIEW

# Don't trust the jury too far; it isn't sacred

To begin with, there was nothing sacred about the jury — certainly nothing as sacred as Democrats and Republicans in the Michigan Legislature make it appear.

Justice O.W. Holmes Jr., in his classic *The Common Law*, traces the jury's origins to 12th Century England, the time of King Henry II and Robin Hood. A trial by jury was a new form of trial: "It was at first an inquest of the neighbors most likely to know about a disputed matter of fact. They spoke from their own knowledge, but they were selected by an officer of the court instead of by the interested party, and were intended to be impartial," Professor Holmes wrote.

That's pretty practical, not what you hear in the partisan chambers of the State Capitol these days.

"Let the jury decide," say Democrats, supported by the Michigan Trial Lawyers Association. In tort cases, they want juries to set the limits on how much one may recover from a doctor, corporation or government — preferably a sky-high limit.

"Gotta contain costs," reply the Republicans. They like the figure \$250,000 for non-economic damages, also known as "pain and suffering," as an upper limit for juries to bump

against. Republicans abhor the way oily-tongued plaintiffs' lawyers twist and manipulate the emotions of jurors to get multi-million-dollar verdicts, with one-third going to the plaintiff's counsel, of course.

It's quite another thing, however, when the subject turns to capital punishment.

Here, as we saw in the House Judiciary Committee in mid-July, Republicans are willing to place the life of an accused in the hands of 12 people whom they wouldn't trust to spend \$250,000 of Citizens Mutual's reserves. It is amazing that a party which professes to oppose big government would give the biggest power of all, the power to snuff out human life, to an inept agency of government.

Democrats, in contrast, voted against bringing a capital punishment resolution to the House floor. This time it was Democrats who didn't trust juries. Chief reason seems to be that juries sock it to black males much harder than to white males, in proportion to their numbers, in the three dozen or more states that have legalized the death penalty.

A jury is an arm of government. Jefferson was fond of saying government



Tim Richard

**Republicans are right when they argue that juries need to be limited on the emotional, subjective question of assessing 'pain and suffering' damages. Democrats are right when they argue that juries ought not to be allowed to condemn someone to death, even if their argument is tinged with anti-white bias.**

should be "chained by the constitution."

Republicans are right when they argue that juries need to be limited on the emotional, subjective question of assessing "pain and suffering" damages.

Democrats are right when they argue that juries ought not to be allowed to condemn someone to death, even if their argument is tinged with anti-white bias.

I was impressed with the testimony of Eugene G. Wanger, a Republican from Lansing who served in the 1961-62 Constitutional Convention. That was just after the era of Eisenhower and just during the rise of Romney, when the Grand Old Party made considerably more sense that it does today.

Wanger said society's greater duty is "to protect the innocent." He goes on: "For capital punishment has and will continue to occasionally execute the innocent, for reasons which no procedural or appellate safeguards can prevent. Mounting evidence shows this risk is substantial. An examination of over 350 cases of mistaken conviction for capital crimes (collected by Professors Bedau and Radelet) shows why."

"The most common cause is perjured testimony, often supplied by jail

prisoners in exchange for lenience in their own cases. Sometimes there was a deliberate frame-up. In a few cases, the murder victims even turned up alive, and in many others, there was honest mistaken eyewitness identification.

"Hardly a month goes by without a new case being discovered. More often the error is brought to light outside the formal criminal justice process — by pure good luck."

Every time the death penalty is brought up, it's aimed at the crime of the moment. In the late 1960s, it was to be aimed at rioters who killed cops and firemen. Next it was targeted to assassins of the elderly. The current proposal is aimed at terrorists — those who kill multiple times or attempt to influence government action by killing.

Wanger deplored it: "House Joint Resolution N only makes this risk of error worse because the sensational trials are where the risk of error is greatest."

Holmes in 1881 had it right: A jury is a useful tool, but it can't be trusted too far, any more than one should trust a Democrat or Republican too far.

Tim Richard reports on the local implications of state and regional events. His Touch-Tone voice mail number is (313) 953-2047, ext. 1881.

## LETTERS

## About Edison

My sincere thanks of appreciation go out to Detroit Edison for yet another miserable weekend in total darkness without air conditioning or electricity, and total loss of much costly food due to no refrigeration.

This condition is the third time so far this year. There is no possible excuse for this total neglect by Edison since theirs is a multi-trillion dollar monopoly operation, and the public is a captive but unwilling money-paying victim.

However, we are not completely helpless. I am fed up enough and know enough people in important positions to do the proper, honest and ethical thing as regarding the good and honest, taxpaying, voting, hard-working people

of all our surrounding and involved communities.

Leon I. Scholchit, Farmington Hills

## About outages

We at Detroit Edison know it was difficult, uncomfortable and inconvenient for our customers to be without electricity following the severe series of storms that swept through Southeastern Michigan last week.

The devastation that hit our area was widespread in spite of your editorial's description — "Powerless People," July 20 — as "a few minutes of fury."

We were not alone. Our neighboring utilities in Ohio also lost service to about one-third of their customers as a result of the same series of storms.

These storms brought with them more than 11,000 lightning strikes that damaged equipment and gale-force winds that caused massive trees to fall across our power lines.

Unfortunately, no amount of tree trimming could have prevented the kind of damage we experienced. By law, we are permitted to trim no more than 10 feet on either side of the wires.

Only cutting 50 feet or more on either side could have made a difference, but the aesthetics of such clear-cutting would, I am sure, be unacceptable to those of us living Farmington Hills' scenic tree-shaded neighborhoods.

More than 7,400 Detroit Edison field and support people responded to the storm emergency to protect the public from downed lines and to restore service.

Joined by 500 linemen from as far

away as Kentucky and Maryland, they worked around the clock in stifling humidity and record-breaking heat to get us through this crisis safely and soundly.

During the past three years, our customers have benefited from the \$300-million effort to improve service reliability while at the same time residential rates were reduced 7 percent. The result has been a nearly 50 percent reduction in power outages.

Some neighborhoods still suffer from excessive outages, and we are working to resolve those problem areas.

As for the Observer's suggestion to bury the power lines, we have put lines underground in all residential developments since 1970. But it is expensive — about 10 to 20 times more expensive than overhead lines.

But there are other reasons to con-

sider. Undergrounding utilities in existing neighborhoods would mean tearing up streets, sidewalks, driveways, lawns, shrubs, patios and pools in order to hook up every home and business.

Detroit Edison's ideal would be for no customer to be without service for even an hour.

As it was, the company is proud that it was able to restore service at a faster rate — nearly 100,000 customers per day — than in any other similar storm in its history.

Nevertheless, I want to assure you that we at Detroit Edison will continue to work harder to provide our customers with the service they expect and deserve.

Robert A. Dobkin, director, Public Information, Detroit Edison, Farmington Hills resident

## From coercion to curves, school suits boggle mind

Question: It seems like every time one turns around there is another lawsuit. Are school districts getting sued more now than in the past?

Answer: It is obvious that education has experienced a tremendous increase in lawsuits, as has every other profession. Some lawsuits are legitimate but many cases bend my reason. Without going into any lawyer jokes, let's review a couple examples and let you draw your own conclusion.

Headlines in the local newspaper described a lawsuit against a middle school teacher for "hitting and seriously injuring" a student. According to the parents' lawyer, the boy was up on a ladder, told to get down by the teacher and depicted the teacher as grabbing the boy and throwing him through a window.

What played out was, the boy refused to get down, and the teacher grabbed him by the shirt, whereupon the boy threw his head back, striking the window.

Classmates supported the teacher. The case was settled out of court for thousands of dollars. Why? So that the judge, caught up in the infinite wisdom of our judicial system today, could waive the accusing student's rights to sue again once he became an adult. That's justice in the new age.

Courts generally apply the "assumption of risk" philosophy, especially in high school sports.

The assumption is that if you play, you must assume there are risks. And there are risks — as in major lawsuits. Parents sought \$4.5 million against 10 defendants in one school district. The superintendent, assistant superintendent, principal and coaches were all included. The boy broke his neck in prison using a football tackling machine while under the direction of an assistant coach.

The suit stated failure to give proper instruction; that is, instruction by other than the head coach, on the use of tackling machines. The case was settled for \$100,000.

Rather than relate endless stories, let's look at some less dramatic education lawsuits — some not without reason — and you be the judge.

How would you rule in the following cases?  
Case 1 — Using grades to coerce a student's A



Doc Doyle

student endlessly kept misbehaving in a first-year teacher's middle school math class and the teacher lowered his grade. Question: Should a "B" student's academic performance be lowered to a "C" because of continual disruptive classroom behavior?

The court ruled in favor of the child, and, painfully, I suppose this decision. Grades shouldn't be used as weapons.

Move the obnoxious kid into coach Jones' math class. And follow up by helping the first-year teacher develop some sound classroom management techniques.

Case 2 — Grading students on a curve: A parent sued because her college freshman daughter received a "C" based on a 92-percent average on all her tests. The professor's position was, "I only give out five A's and five B's; the rest are C's or lower. An A was probably 96 to 100 percent, the B 93 to 95 percent, and the C, 92 percent."

Although some universities put pressure on their professors to grade on a curve, this is really a malpractice. Indeed, some educational researchers have renamed the bell-shaped curve to the discrimination curve.

Case 3 — Providing a classroom learning situation completely different from the testing: It is totally incomprehensible to test students on material that hasn't been covered in class or assigned as ancillary research.

Imagine sitting down to take your social studies test and seeing questions regarding information that has never been discussed or may be in some future chapter.

Teacher was found innocent, too difficult to prove.

To answer your question, however, the number of lawsuits in local school districts has increased in direct proportion to the number of lawyers being pumped out of our law schools.

# FRANK'S®

## Buy One, Get 2nd At 1/2 OFF

### Every Evergreen Tree, Shrub & Perennial

Every Variety Every Size Every Selection  
Reg. 2.49 to \$299.99

Buy one at regular price, get the 2nd of equal or lesser value for 1/2 off. Store stock only.  
Selection may vary by store.  
Garden mums not included.

**Only 1.99**  
2-COL. FT BAS OF DECORATIVE PINE BARK  
24 Muggets, Mini Muggets Or Much More Stock Only

**Extended Thru Sunday!**  
DON'T MISS OUR \$30 MILLION SUMMER CLEARANCE SALE!  
Hundreds of beautiful plants, shrubs, trees, and garden mums at 50% off.

**Save 50% ON EVERY SUNK FLOWER STEM, PICK & BUSH**  
Hundreds Of Varieties Reg. 2.99 to 19.99

Kids? Enter to be a Detroit Neon First Fan!

Win a family pack stickers to a Neon home date and more! No purchase necessary. Details at stores.

STORE HOURS: Monday thru Saturday 9 to 9, Sunday 10 to 6. Sale Ends 7:30-9:30.