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# Businesses' fear of U.S. jury system is irrational

By Tom Melsheimer and Craig Smith

**W**ith no shortage of real threats to keep U.S. executives awake at night, it's surprising that so much time and energy is wasted trying to make sure that 12 average citizens in a jury box are not allowed to hear their business grievances. This fear of the jury system has become a pervasive phobia for many in corporate America.

Take former Halliburton subsidiary KBR, which spent four years and no doubt an enormous amount of legal fees fighting tooth and nail to keep a jury from hearing Jamie Leigh Jones' claims that she was drugged and raped by a KBR coworker while working for the defense contractor in Iraq. Like many of its business peers, the Houston-based KBR instead preferred to have the claim handled discreetly, behind closed doors, in what is widely believed to be a more business-friendly arbitration venue. In fact, the case wound up in a federal courtroom in Houston only after U.S. Senate intervention that made a sexual assault exception for the standard employee arbitration clauses for defense contractors.

Funny thing, when jurors were finally allowed to weigh the evidence earlier this month, they agreed that Jones' claims were not supported by the evidence and testimony. Meanwhile, the



public airing of the allegations in open court revealed key holes in the evidence and gaps in Jones' account of what happened. The jury also heard compelling evidence that she had exaggerated and embellished her claims, among them that KBR locked her in a shipping container and restricted her access to a telephone after she reported the attack.

Had this case been resolved in arbitration as KBR had originally hoped, the outcome likely would have been the same. But the lack of transparency inherent in arbitration proceedings would have done nothing to resolve doubt about the allegations and the final outcome. KBR's favorable outcome would have been additional ammunition for those inclined to think the worst of its parent company at the

time, Halliburton, whose former CEO, former Vice President Dick Cheney, was one of the Iraq war's most vocal supporters.

Of course there are plenty of examples of individual jurors behaving badly, but as the KBR case and so many others show, jurors do take their oaths seriously and there's good reason to support the unbehind jury system guaranteed by our Founding Fathers in the Bill of Rights.

The long and admirable fight of Jones to remove her case from arbitration and take it to a jury had a prominent role in the *Hot Coffee* documentary now in regular rotation on HBO. The film's namesake case, the 1994 verdict by a New Mexico jury against McDonald's for serving dangerously hot coffee and causing disfiguring burns to an 81-year-old woman, is another popular, if misguided, reference point for those who want to criticize our jury system.

A look at the facts shows the outcome to be another example of the system working, as opposed to a poster child for tort reform. Everyone blamed Stella Liebeck for spilling coffee on herself, but no one, until the jury, considered that the company might bear some responsibility for ignoring repeated warnings and a documented string of injuries. This notion of shared responsibility doesn't let the individual off the hook. It

just doesn't put them on the hook alone.

Jurors make a solemn pledge, whether it's a civil or criminal matter, and it's reassuring to know that that still means something today. The seriousness with which juries take their pledge was underscored in the latest "trial of the century," the Casey Anthony murder case. Instead of embracing the predetermined decisions of vitriolic talking heads in the news media and blogosphere, the jury actually weighed the evidence and concluded that, though it was perhaps likely that Ms. Anthony played some role in her daughter's horrible death, the state had not proven her involvement beyond a reasonable doubt. Such an outcome, which doesn't bring closure to a child's death, vindicates the oath that jurors take to listen to all the evidence and apply the law dispassionately. There is little

reason to believe that most juries don't do precisely the same thing when the conduct of corporations is at issue.

And yet the jury system cannot thrive and be defended from those who would criticize it without those of us who participate in it speaking out. With regard to the Anthony trial in particular, we don't know a lay person who has agreed with the verdict, but we can't find many trial lawyers who don't. It is up to those who understand and appreciate the system to defend it to the public at large.

Our jury system, enshrined in our Constitution, works better than almost any other public institution. That's why a jury could rule against a woman who claimed KBR was responsible for her sexual assault. That's how a jury could hold a business partially responsible for knowingly selling coffee so hot that it caused disfiguring burns. ■

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