

Marcus was right

By Steven B. Hantler
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Retired Judge Quentin Kopp misfires badly in his broadside ["Broken system? Hardly," OpEd, Nov. 23] against Home Depot co-founder Bernie Marcus' well-documented observation that America's litigation lottery has reached crisis proportions. ["Yes, We Have A Legal Crisis," OpEd, Sept. 7].

Kopp thunders that Marcus' article is based on "error and inaccuracy." Yet it's interesting how few of Marcus' facts Kopp actually tries to refute. As Marcus notes, litigation costs consumed \$233 billion in 2002 -- a tort tax of \$3,200 for every family of four. Some 60,000 Americans have lost their jobs because asbestos litigation drove their employers into bankruptcy. And class action lawsuits -- where trial lawyers collect millions in legal fees while their plaintiffs get pennies or discount coupons -- exploded in the 1990s, with filings rising 1,000 percent in state courts and 300 percent in federal courts. All these facts are left undisputed by Kopp.

Instead, Kopp quibbles over whether the number of lawsuits filed in state courts every year is 15.1 million or 16.5 million, as Marcus contends. The facts favor Marcus. According to the National Center for State Courts, in 2002, "over 16 million civil cases were filed in state courts in 2002" -- a figure that has "risen steadily in the past two years."

Since he can't marshal facts to attack Marcus, Kopp does what any smart lawyer would -- create a diversion. For example, Kopp creates out of whole cloth the notion that Marcus insults the "integrity, selfless service and probity" of jurors. There is simply no hint of this in Marcus' article.

Instead of questioning juries, Marcus does criticize the trial bar for fighting to keep "laws that prevent juries from learning that injured plaintiffs were not wearing seatbelts at the time of an accident." Kopp counters that non-use of seat belts is "a staple in defending an automobile accident injury claim." Wrong: Currently 32 states block evidence of seatbelt non-use in assessing damages in product liability lawsuits.

Examiner readers can conclude who has more faith in the integrity of the jury system: The trial bar, which fights to prevent juries from hearing all the facts in a case, or Marcus, who believes that if jurors could hear the whole truth, not just what the plaintiff's lawyers want them to hear, they will reach the right decision.

Kopp even objects to Marcus' use of the term "trial lawyers" as somehow pejorative. This must have elicited howls of laughter over at the Association of Trial Lawyers of America, which seems unembarrassed enough by the term that it spends millions under that banner every year to block legal reform and preserve the system which has made its patrons rich.

Obviously, Marcus and Kopp bring two very different perspectives to this discussion. Marcus is an entrepreneur who co-founded one of America's most successful businesses, in the process creating hundreds of thousands of jobs, lower prices for millions of American consumers and billions in new wealth for stockholders. He fears the litigation crisis will prevent the next generation of entrepreneurs from creating the Home Depots of the future. Kopp has been, by his own account, "a trial lawyer for 43 years" who resents even the implication that system is broken, much less any attempt to rein in the litigation lottery.

Steven B. Hantler is assistant general counsel at DaimlerChrysler Corp