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CLIFFORD'S NOTES

In my many talks to law students on tort law, I often raise the question, "Why don't we just give hugs? Why is it that society has decided to compensate wrongfully injured victims with money?"

No better example exists than the violent ouster of Dr. David Dao from an overbooked United flight that captured headlines for weeks in April. How many "I'm sorrys" have passengers been forced to endure over the years before this injured passenger who needed to get home and simply wanted the seat for which he paid?

It takes me back to when I graduated from DePaul University College of Law 40 years ago. Then, as an associate with Philip H. Corboy, upon getting my letter of having passed the bar examination, I immediately was sworn in as a member of the Illinois bar so that I could represent retired justice Thomas E. Kluczynski at his deposition. In 1976, he and his wife Melanie were bumped from an overbooked Delta Airlines flight to Orlando, Fla.

Delta executives were so sure that they were right, the case went to trial. It took a jury five hours to come back with a then-record verdict of \$208,000, which was reduced to \$7,000 by the trial judge. Kluczynski had been spared the bloody ordeal, but in today's dollars, that still wasn't a loud enough message to the airline industry that continued to overbook flights to the point that it has become a common practice today.

Certainly there is something to be said about a corporation being allowed to make money, but bullying someone to the point of sending three airport police officers to physically remove an unwilling passenger to exit the plane is the international lesson necessary to teach corporate America, which is what takes me back to my initial question — why don't we just give hugs?

Would a hug satisfy Dao? Would it put him back in the position he was before he boarded that ill-fated flight? Never. Even the undisclosed amount of money for which the parties settled can't do that.

Corporations have become more impervious to large verdicts and settlements. It merely becomes a cost of doing business or a part of their insurance line item. What corporate executives appear to fear more is the lingering bad publicity that can cut into the company's pockets for an unknown period of time.

No matter how empathetic United's CEO Oscar Munoz appeared on national television, neither the corporate board of directors nor their shareholders could endure the endless airing of footage graphically showing a doctor pleading to be left alone. With every national, even international, sto-



THE CASE AGAINST HUGS

Why tort law relies on cash, not apologies

By BOB CLIFFORD

ry on the incident, the company could just stand by and watch its bottom line slip away.

It is important that remedies exist for wrongs so that wrongdoers are deterred from repeating their actions, even if it's 40 years later. An examination of Anglo-American history shows that the Magna Carta set out a system of laws giving English citizens many of the freedoms Americans enjoy today: trial by jury, personal remedies and a free and unbiased system of justice.

Today, every American expects to be secure against harm and interference, not only as to one's physical integrity, but also to be free in the rights guaranteed in the U.S. Constitution and the Bill of Rights: freedom of thought, of expression, of economic gain, of relations with others, of "the pursuit of happiness."

In order to redress grievances against these rights, it has been demonstrated over and over that the civil justice system can only respond in dollars. Money damages are the only form of punishment that will cure the defect or deter future actions. Hugs simply aren't sufficient.

Hugs do not achieve the goal of compensation nor deterrence of future actions. Over the years, American justice has demonstrated that it is mon-

ey that is the most practical and objective method of putting the unfortunate event behind the victim as well as the leverage to seek out the best means possible to cope with losses and to regain one's independent self worth, as guaranteed by the Constitution.

And as in the United Airlines incident, it obviously takes money and overwhelming public attention to try to right the serial wrongs committed by airlines. It has been shown that monetary damages imposed on companies is the only way to change sometimes abhorrent practices so that the American people's safety is put first.

Dao, a reluctant victim, is certainly going to need more than hugs. Rules were violated, common sense wasn't followed, not even a bit of compassion could be sensed. It was just an utter disrespect for an individual. And in the case of overbooking, the need to change fixed corporate policy that has been tolerated for decades, it took more than \$208,000 for a multibillion-dollar industry to finally listen. [CL](#)

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