

THE AETNA ARTICLE: A COMMENT

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Aetna's essay—"Enhancing Juror Effectiveness: An Insurer's Perspective"—is both an unusual and puzzling piece. It is unusual in that it is a corporate position paper on a controversial public policy issue appearing in an academic journal. Such pieces are not the stuff of most law journals. In response to a request by the editors of *Law and Contemporary Problems* for permission to reprint Aetna's eight advertisements, Aetna sought the opportunity to reply to my article; the editorial staff of the journal accepted their piece for publication.¹ Their contribution provides an excellent illustration of the main theme underlying my analysis in "The Question of Jury Competence and the Politics of Civil Justice Reform: Symbols, Rhetoric, and Agenda-Building."² That theme speaks to the need for a political analysis of the current attack on juries emphasizing the importance of agenda-building in the public policy process and the roles played by key interest groups in that process. With regard to civil justice reform and the issue of jury competence, the most important role played by interest groups has been in creating and fostering a negative characterization of the civil justice system in order to define a set of policy problems that will justify solutions that inure to their benefit. Aetna's article is compelling evidence of agenda-building because it demonstrates a special interest group's effort to promote its own characterization of the jury competence issue.

Aetna's essay is puzzling because as a corporate position paper it reflects a much milder tone than the one found in the company's advocacy advertising. The advocacy advertising—with its appeal to fear, anxiety, and a sense of crisis—would appear to be a call for fundamental and drastic change in the civil justice system. In contrast, the reforms suggested by the essay—such as juror note-taking—are not new. They are little more than incremental adjustments to a basically sound jury system. Perhaps Aetna's position on the civil justice system and juries is softening, and things are not really as bad as we were led to believe.

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1. Daniels, *The Question of Jury Competence and the Politics of Civil Justice Reform: Symbols, Rhetoric and Agenda-Building*, LAW & CONTEMP. PROBS., Autumn 1989, at 269.

2. *Id.*

