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Politics

Did 'Junk Science' Make John Edwards Rich?

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(CNSNews.com) - The superstar trial lawyer accomplishments of John Edwards, which allowed this former millworker to amass a personal fortune, finance his successful U.S. Senate run in 1998 and catapult himself into the 2004 race for president, may have been partially built on "junk science," according to legal and medical experts who spoke with **CNSNews.com**.

Edwards, who with a late surge finished second in Monday's Iowa Caucuses, continues to cite one of his most lucrative legal victories as an example of how he would stand up for "the little guy" if elected president.

Edwards became one of America's wealthiest trial lawyers by winning record jury verdicts and settlements in cases alleging that the botched treatment of women in labor and their deliveries caused infants to develop cerebral palsy, a brain disorder that causes motor function impairment and lifelong disability.

Although he was involved in other types of personal injury litigation, Edwards specialized in infant cerebral palsy and brain damage cases during his early days as a trial lawyer and with the Raleigh, N.C., firm of Edwards & Kirby.

Edwards has repeatedly told campaign audiences that he fought on behalf of the common man against the large insurance companies. But a political critic with extensive knowledge of Edwards' legal career in North Carolina told **CNSNews.com** a different story

"Edwards always helped the little guy as long as he got a million dollars out of it," said the source, who did not want to be identified.

The cause of cerebral palsy has been debated since the 19th century. Some medical studies dating back to at least the 1980s asserted that doctors could do very little to cause cerebral palsy during the birthing process. Two new studies in 2003 further undermined the scientific premise of the high profile court cases that helped Edwards become a multi-millionaire and finance his own

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successful campaign for the U.S. Senate.

Dr. Murray Goldstein, a neurologist and the medical director of the United Cerebral Palsy Research and Educational Foundation, said it is conceivable for a doctor's incompetence to cause cerebral palsy in an infant. "There are some cases where the brain damage did occur at the time of delivery. But it's really unusual. It's really quite unusual," Goldstein said.

"The overwhelming majority of children that are born with developmental brain damage, the ob/gyn could not have done anything about it, could not have, not at this stage of what we know," Goldstein added.

The medical and legal experts with whom **CNSNews.com** consulted said each case of cerebral palsy had to be evaluated on its own, but that medical science was increasingly exonerating the doctors involved in the labor and delivery where cerebral palsy resulted.

Eldon L. Boisseau of the Kansas-based firm Turner and Boisseau, specializing in defending doctors' insurance companies from medical malpractice lawsuits, agreed that physician-caused cerebral palsy "occurs only rarely."

"At the end of the day, I verily believe we will find [the cause of cerebral palsy is] all genetic," Boisseau said in an interview with **CNSNews.com**.

Dr. John Freeman, a professor of neurology and pediatrics at Johns Hopkins Hospital in Baltimore, Md., also believes there is little obstetricians can do to prevent cerebral palsy during delivery. "Most cases of cerebral palsy are not due to asphyxia," Freeman told **CNSNews.com**.

"A great many of these cases are due to subtle infections of the child before birth," Freeman said. "That is the cause of the premature labor and the cause of the [brain] damage. There is little or no evidence that if you did a [caesarean] section a short time earlier you would prevent cerebral palsy," he added.

'Heart wrenching plea'

But some of Edwards' critics say that as a trial lawyer, he relied more on his verbal skills than the latest scientific evidence to persuade juries that the doctors' mistakes had been instrumental in causing the cerebral palsy in the infants.

Edwards' trial summaries "routinely went beyond a recitation of his case to a heart-wrenching plea to jurors to listen to the unspoken voices of injured children," according to a comprehensive analysis of Edwards' legal career by *The Boston Globe* in 2003.

The *Globe* cited an example of Edwards' oratorical skills from a

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medical malpractice trial in 1985. Edwards had alleged that a doctor and a hospital had been responsible for the cerebral palsy afflicting then-five-year-old Jennifer Campbell.

'I have to tell you right now -- I didn't plan to talk about this -- right now I feel her (Jennifer), I feel her presence,' Edwards told the jury according to court records. "[Jennifer's] inside me and she's talking to you ... And this is what she says to you. She says, 'I don't ask for your pity. What I ask for is your strength. And I don't ask for your sympathy, but I do ask for your courage.'"

Edwards' emotional plea worked. Jennifer Campbell's family won a record jury verdict of \$6.5 million against the hospital where the girl was born -- a judgment reduced later to \$2.75 million on appeal. Edwards also settled with Jennifer's obstetrician for \$1.5 million.

Legal expert Walter Olson, a senior fellow at the Manhattan Institute and author of the book, *The Rule of Lawyers*, said Edwards' success in court was due in large part to his mastery of one important trait.

"Edwards was clearly very good at managing the emotional tenor of a trial and that turns out to be at least as important as any particular skill in the sense of researching the fine points of law," Olson told **CNSNews.com** .

"These are the skills that you find in successful trial lawyers. They can tell a story that produces a certain emotional response. It's a gift," Olson added.

However, Olson believes trial lawyers "have been getting away with an awful lot in cerebral palsy litigation," by excluding certain scientific evidence.

"[Trial lawyers] have been cashing in on cases where the doctor's conduct probably did not make any difference at all -- cases where the child was doomed to this condition based on things that happened before they ever got to the delivery room," Olson said.

'Junk science in the courtroom'

Peter Huber, a lawyer and author of the book, *Galileo's Revenge: Junk Science in the Courtroom*, believes juries are typically manipulated with emotional arguments to aid the plaintiff's case.

"The jury sees the undisputed trauma first, the disputed negligence second, the undisputed cerebral palsy third. It is a perfect set-up for misinterpreting sequence as cause," Huber wrote.

According to Boisseau, the growing body of scientific studies showing that obstetricians are generally blameless in cerebral palsy cases has done nothing to alter the trend of multi-million dollar court settlements. Those settlements are reached, Boisseau said, even

though "a lot of the plaintiff's expert science is unsupported, essentially junk science."

Many juries never even get to hear about the medical science or the origins of cerebral palsy because "90 percent of suits for obstetrical malpractice are settled" out of court, noted Freeman of Johns Hopkins Hospital.

Huber does not expect cerebral palsy cases to fade away, despite the growing body of scientific evidence exonerating doctors.

"Despite the almost complete absence of scientific basis for these [medical malpractice] claims, cerebral palsy cases remain enormously attractive to lawyers," Huber wrote.

The judgments or settlements related to medical malpractice lawsuits that focused on brain-damaged infants with cerebral palsy helped Edwards amass a personal fortune estimated at between \$12.8 and \$60 million. He and his wife own three homes, each worth more than \$1 million, according to Edwards' Senate financial disclosure forms. Edwards' old law firm reportedly kept between 25 and 40 percent of the jury awards/settlements during the time he worked there.

According to the Center for Public Integrity, Edwards was able to win "more than \$152 million" based on his involvement in 63 lawsuits alone. The legal profession recognized Edwards' achievements by inducting him into the prestigious legal society called the Inner Circle of Advocates, which includes the nation's top 100 lawyers. *Lawyers Weekly* also cited Edwards as one of America's "Lawyers of the Year" in 1996.

'The kids and families I've fought for'

Edwards has shifted his emotionally charged speeches from the jury box to the presidential campaign trail and is fond of re-telling the story of how his firm sued on behalf of a cerebral palsy-afflicted boy named Ethan Bedrick in 1996.

Ethan, born in North Carolina in 1992, allegedly developed cerebral palsy after a botched delivery. Edwards has explained to audiences at presidential campaign rallies that suing Ethan's insurance carrier, Travelers Insurance Co., to cover the boy's physical therapy was necessary because "Ethan's family had no choice.

"[The family was] forced to go to court to get their son the care he needed," Edwards has said of the case, which his law firm won.

Edwards has repeatedly cited Ethan's case as an example of "the kids and families I've fought for," and in the minds of many political observers positioned himself as the classic David against the insurance industry's Goliath.

However, Edwards has also repeatedly failed to mention that he had represented Ethan Bedrick in a lawsuit against the boy's obstetrician a year earlier in 1995. Edwards had alleged that the doctor was negligent in failing to prevent the boy's oxygen deprivation during labor and therefore had caused the boy's cerebral palsy.

Edwards settled the malpractice case with the doctor's insurance company less than three weeks into the trial, enabling Ethan's family to get a reported \$5 million for medical and living expenses. The case was reportedly the largest medical malpractice settlement in North Carolina history.

'I'm proud of that'

Edwards is not shy about defending his legal career and says he would gladly put his record up against that of President Bush in this year's general election.

"The time I spent in courtrooms representing kids and families against, you know, big insurance companies and big drug companies and big corporate America -- I'm proud of that," Edwards told the CBS news magazine 60 Minutes in December 2003.

But Edwards' critics have a different view of the man; they say he has repeatedly acted to enrich himself.

"John Edwards' spin is always -- I am helping the little guy. But he screened his cases to the point that he only helped people that were going to make him richer," said the **CNSNews.com** source with extensive knowledge of Edwards' legal career.

Dr. Lorne Hall, one of the physicians with whom Edwards reached a confidential settlement in a malpractice case involving cerebral palsy, agreed, telling The Charlotte Observer in 2003 that "[Edwards] knows how to pick cases, and he knows the ones he can win."

Hall said Edwards was "very polished, very polite, dressed to the T's, smiling at the ladies." But the anonymous source for this story said Edwards displayed a "belligerent attitude" toward the medical profession.

"He sued nurses, doctors, hospitals. The reputation he had was -- he never wanted to hear that nobody did anything wrong. If you even walked by the door of an alleged malpractice incident, you were going to cough up money too," the source said.

But John Hood, president of the free-market, Raleigh, N.C.-based John Locke Foundation said Edwards tailored the evidence in his court cases for maximum impact.

"In pursuing his client's cases he did what many other trial lawyers

do. He bent the available evidence to fit what he wanted to say," Hood told **CNSNews.com**. "That is the nature of an advocacy system," Hood added

Hood does not fault Edwards for the strategies he used as a trial lawyer.

"He was an advocate for his clients. It was his job to make the best possible case for them," Hood said.

Many legal observers agree that Edwards was simply doing his job and doing it very well.

A North Carolina newspaper, *The News and Observer*, said Edwards "forged a reputation as one of the most skilled plaintiff's attorneys in the business."

Retired North Carolina Superior Court Judge Robert Farmer, who heard many of Edwards' arguments in court, had nothing but praise for the abilities of the former trial lawyer, turned senator.

"He was probably the best I ever had in the 21 years I had on the bench. Lawyers would come in to watch him, to see what he does," Farmer told the Chicago Tribune in December 2003.

'Scientifically unfounded'

Olson said lawsuits blaming obstetricians for cerebral palsy and other infant brain damage "may constitute the single biggest branch of medical malpractice litigation." Cerebral palsy is diagnosed in about 8,000 infants annually in the U.S.

But the recent scientific studies may make those lawsuits "scientifically unfounded," Olson explained. He contends that the medical malpractice suits that enabled Edwards and other trial lawyers to become rich and famous are crippling medical specialties like obstetrics, emergency room medicine and neurosurgery.

"A few years ago every neurosurgeon in Washington D.C., had been sued, and it can't be because the nation's capital gets only bad neurosurgeons. It's because it's too tempting to file against the competent ones because so many terrible things go wrong with their patients," Olson added.

Edwards, who opposes legislation that would cap damages in liability lawsuits, would not respond to repeated requests through his campaign offices for comment.

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