

How Tort Law Drives Change

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Tort law is conventionally understood as a blunt, backward-looking, money-moving instrument. On the standard account, tort law promotes safety—if at all—by forcing defendants to internalize the costs of accidents. Money, in other words, is the sine qua non of tort’s deterrent effect—the system’s engine, and beating heart.

This Article challenges that view. Drawing on a trove of new evidence—including previously undisclosed settlement agreements, deposition transcripts, and internal corporate records, as well as original survey data and nearly ninety in-depth interviews with plaintiffs’ lawyers, defense lawyers, expert witnesses, and injured clients—we show that tort law can do far more than shift dollars. Instead, by stimulating organizational learning, surfacing hidden risks, activating legislators and regulators, and binding actors to new rules of conduct, tort law governs.

To see this wider landscape is to see a tort system that looks far less like a crude pricing device and far more like a multifaceted—and, at times, expressly altruistic—engine of institutional reform. This new perspective—based on a raft of new information—ought to expand the views of those who study the tort system. And, perhaps more importantly, it ought to inform the day-to-day work of those who represent the people the system seeks to help.

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INTRODUCTION

On April 10, 2018, all sixteen-year-old Kyle Plush wanted to do was play tennis after school.¹ But as he climbed onto the third row seat of his family’s van and reached back into the trunk to grab his racket, the foldaway seat suddenly flipped forward, pinning him.² In

¹ Mary McCarty, *The Plush Family Is Answering the Call*, CINCINNATI MAG. (Jan. 6, 2023).

² Emily Shapiro & Rachel Katz, *What We Know About Trapped Teen’s Mysterious Death Inside a Van After His 2 Calls to 911*, ABC NEWS (Apr. 13, 2018) (visually depicting how, exactly, the accident occurred).

his school's parking lot, trapped and struggling to breathe, Kyle managed to voice-activate Siri to call 911.³ When the dispatcher answered, Kyle screamed for help, letting her know that the situation was dire.⁴ "I'm going to die here," he said, as pounding could be heard in the background.⁵ Despite the evident urgency, it took seven minutes for the dispatcher to enter the call into the City of Cincinnati's dispatch system.⁶

Officers were eventually summoned.⁷ But even though Kyle had explained that he was trapped in a van in his school's parking lot, the officers, scanning the lot, failed to locate him, and, seeing no van, wrote the call off as a prank.⁸

Increasingly desperate, twenty-one minutes after his first call, Kyle called again, this time providing more information about where, exactly, he was parked and the specific make and model of the van.⁹ Inexplicably, this information was never conveyed to the officers on the scene.¹⁰ In the final moments of this second call, Kyle gasped: "I probably don't have much time left. Tell my mom I love her if I die. Send officers immediately. I'm almost dead."¹¹ Later that night, Kyle's father found his body inside the van, in the lot; Kyle had died of asphyxiation six hours before.¹²

³ Blake McCoy and Daniel Arkin, *Parents of Kyle Plush, Ohio Teen Who Suffocated in Minivan, Push for 911 System Changes*, NBC NEWS (Aug. 7, 2018).

⁴ Herman Wong & Lindsey Bever, *'Tell My Mom that I Love Her': A Teen's Frantic 911 Calls as He Is Crushed to Death in a Minivan*, WASH. POST (Apr. 13, 2018).

⁵ *Id.*

⁶ McCarty, *supra* note 1.

⁷ *Id.*

⁸ *Id.* Inexplicably, the officers drove around the lot but did not exit their vehicle. *Details Revealed Surrounding Teen's Suffocation Death Inside Van*, ABC NEWS (Apr. 13, 2018).

⁹ McCarty, *supra* note 1.

¹⁰ Wong & Bever, *supra* note 4.

¹¹ Shapiro & Katz, *supra* note 2.

¹² McCarty, *supra* note 1; Sharon Coolidge & Kevin Grasha, *Plush Family Gets \$6M Settlement from City; 'We Miss Our Son Kyle Terribly,' Jill Plush Says*, CINCINNATI.COM (Apr. 9, 2021); *Details Revealed*, *supra* note 8. Kyle's parents did not look for him earlier because they did not know he had dialed 911.

Initially, Kyle's parents did not file a lawsuit.¹³ Trusting authorities, they waited for the results of an internal investigation.¹⁴ But as months passed and no answers came, they began to lose hope for accountability.¹⁵ Then came the worst: in a November 2018 city council meeting, seven months after Kyle's death, the city decided to close its investigation, concluding that no one had done anything wrong.¹⁶ "It was," Kyle's dad explained, "one of the worst days of my life."¹⁷

Without answers, the Plushes asked a friend to recommend an attorney. The friend came back with a name: Al Gerhardstein, a soft-spoken former legal aid lawyer from a small firm in town.¹⁸

With Gerhardstein's help, the Plushes filed suit and, in 2021, reached a \$6 million settlement with the City of Cincinnati, the second largest in city history.¹⁹ But the real reason they sued—and the real relief they obtained—wasn't financial.²⁰ They sued because they wanted to get answers and catalyze reform, and that, ultimately, is what they accomplished. In the words of Jill Plush, Kyle's mom: "It was never about money. It was always about the change."²¹ Or, as Gerhardstein put it, when announcing the settlement: "The Plushes . . . want action. This agreement gives them action."²²

As part of the settlement, the City of Cincinnati agreed to hire an independent team of experts to diagnose what was wrong with the

¹³ Interview with Jill Plush (Oct. 2, 2025); *Parents of Kyle Plush, Their Attorney Speak on New Settlement Agreement*, YOUTUBE (Apr. 9, 2021) [hereinafter Plush Video] (quoting Al Gerhardstein as stating that Kyle's parents "had to file a lawsuit to advance their cause").

¹⁴ Interview with Ron Plush (Oct. 2, 2025).

¹⁵ *Id.*

¹⁶ *Id.*; Jennifer Edwards Baker, *FOP Leader to Council: 'Close Unending Investigation' into Kyle Plush Death*, FOX 19 (Nov. 19, 2018).

¹⁷ R. Plush Interview, *supra* note 14.

¹⁸ J. Plush Interview, *supra* note 13.

¹⁹ Jared Goffinet & Jennifer Edwards Baker, *Plush Family, City Reach \$6M Settlement in Wrongful Death Lawsuit*, FOX19 (Apr. 9, 2021); Coolidge & Grasha, *supra* note 12; Settlement Agreement and Release, Plush v. Cincinnati, No. A1903752 (Ct. Common Pleas, Hamilton Cty. June 2, 2021) (on file with authors).

²⁰ J. Plush Interview, *supra* note 13.

²¹ *Id.*

²² Plush Video, *supra* note 13.

Emergency Call Center’s practices, devise solutions, and implement them, wherever feasible and permitted by law.²³

In the years that followed, the experts determined that the city’s 911 system was beset with problems, including understaffing, outdated equipment, and low employee morale.²⁴ They determined, for instance, that, when Kyle made his second call, the call response software had frozen, impeding the dispatcher’s effort to share his location with the officers on the scene.²⁵ With this knowledge, the city budgeted for and effected real reforms, including hiring additional dispatchers, upgrading equipment, renovating the call center where Kyle’s call had been so badly botched, creating a peer support program, and revising call-routing protocols across police, fire, and EMS services.²⁶

There have been spillover effects, too: the Plushes established a foundation and, using the settlement money, travel the country to speak with 911 dispatch centers and share lessons on best practices, such as exercising caution when a voice sounds remote, as Kyle’s did.²⁷ To this day, dispatchers still tell them, “Hey, I listened to your speech a year ago, and nine months ago I got a call and I handled it this way. But if I wouldn’t have been through that presentation, I don’t think I would’ve done those things.”²⁸

Through each of these avenues, the Plushes—out of a gut-wrenching tragedy—have improved the welfare of those around them. As the director of the city’s new call center has reflected: “I wish this had never happened, but I do think that Cincinnati is a safer place than in 2018.”²⁹

The first part of the Plushes’ story is familiar to everyone who studies or practices tort law: a catastrophic accident, a death, a lawyer hired. But the second part of the story isn’t. In fact, the second part

²³ Settlement Agreement, *supra* note 19.

²⁴ R. Plush Interview, *supra* note 14; McCarty, *supra* note 1.

²⁵ *Id.*

²⁶ McCarty, *supra* note 1; J. Plush Interview, *supra* note 13.

²⁷ McCarty, *supra* note 1.

²⁸ R. Plush Interview, *supra* note 14; *Testimonials*, KYLE PLUSH ANSWER THE CALL FOUNDATION, <https://kyleplushanswerthecall.org/testimonials/>.

²⁹ McCarty, *supra* note 1.

of the story has, so far, received far less scholarly attention than it deserves. And the *implication* of the second part of the story—the fact that tort law can be a vehicle to effect far-reaching change—is profound. Indeed, we argue that to fully grasp the story’s second part is to complicate—and, in important respects, correct—prevailing assumptions about what law does, how it works, and how those who practice tort law should behave.

Tort law, the conventional theory goes, is a brutish, backward-looking money-moving mechanism. As prominent tort critic Philip Howard has put it, in the United States, “[w]e have made money a surrogate for tragedy.”³⁰ The “only remedy that the legal system can deliver as a result of a negligence action,” Hazel Genn has declared, is monetary compensation.³¹ What “motivate[s] and guide[s] the resolution of tort suits,” John Goldberg and Benjamin Zipursky tell us, is the “prospect of money changing hands.”³² Or, as another scholar has observed: “Lawsuits are about money, and what matters to the lawyers and what matters to their clients is the money.”³³

Even many who focus on deterrence believe that money powers tort’s deterrence apparatus. Tort law promotes safety, law-and-economics scholars explain, *by making defendants pay*.³⁴ “The motive force of the system,” Richard Posner has declared, “is supplied

³⁰ Lisa Belkin, *Just Money*, N.Y. TIMES MAG., Dec. 8, 2002, at 92.

³¹ HAZEL GENN, PATHS TO JUSTICE 11 (1999).

³² JOHN C.P. GOLDBERG & BENJAMIN ZIPURSKY, RECOGNIZING WRONGS 147 (2020). They further observe: “Ask a practicing lawyer or trial judge what tort law is all about and she might well give a one-word answer: ‘Money.’ Plaintiffs and their attorneys seek damages payments and monetary settlements; defendants and liability insurers aim to pay as little as possible as slowly as possible.” *Id.*

³³ Jonathan R. Cohen, *The Path Between Sebastian’s Hospitals: Fostering Reconciliation After a Tragedy*, 17 BARRY L. REV. 89, 113–14 (2011).

³⁴ Stephen D. Sugarman, *Doing Away with Tort Law*, 73 CAL. L. REV. 555, 560 (1985) (“The ‘law and economics’ view of tort law as safety-promoter emphasizes the threat of having to pay tort damages.”). Even the Supreme Court has endorsed this view. *See Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (stating, in the context of § 1983 litigation that “[d]eterrence . . . operates through the mechanism of damages that are compensatory”) (emphasis omitted). For further representations of this perspective, see *infra* notes 257–259 (compiling numerous additional examples).

by the economic self-interest of the participants in accidents.”³⁵ When motorists, hospitals, corporations, or governmental actors write checks to injured plaintiffs, or when they contemplate writing checks to injured plaintiffs, they are expected—rationally and prospectively—to invest in safety. By internalizing the costs of accidents, actors are thought to take precautions, or scale back or relocate their risky activities, up to the point where the marginal cost of prevention equals its marginal safety benefit.³⁶ Money is the star of the story.

In the pages that follow, we challenge this conventional account. Drawing on our review of previously undisclosed settlement agreements, deposition transcripts, and internal corporate documents—coupled with original survey data from forty-eight practitioners³⁷ plus eighty-eight in-depth semi-structured interviews that we have conducted with plaintiffs’ lawyers, defense lawyers, expert witnesses, and injured clients from across the country³⁸—we

³⁵ Richard A. Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29, 48 (1972).

³⁶ See generally STEVEN SHAVELL, *ECONOMIC ANALYSIS OF ACCIDENT LAW* (1987); see also RICHARD A. EPSTEIN & CATHERINE M. SHARKEY, *CASES AND MATERIALS ON TORTS* (13th ed., 2023) (stating that tort law deters by setting “the ‘price[]’ defendants must pay for engaging in their chosen activities”); THOMAS J. MICELI, *THE ECONOMIC APPROACH TO LAW* 44 (2009) (positing that tort law induces actors to exercise care “because the threat of liability forces [them] to fully internalize the victim’s expected damages”); DAN B. DOBBS, PAUL T HAYDEN & ELLEN M. BUBLICK, *THE LAW OF TORTS* § 7 (2025 update) (expressly framing tort law’s deterrent function through compensation—that people and entities choose to “act with reasonable care to avoid paying . . . compensation”); Joanna M. Shepherd, *Tort Reforms’ Winners and Losers: The Competing Effects of Care and Activity Levels*, 55 UCLA L. REV. 905, 912–14 (2008) (offering an extended discussion of “How Damages Achieve the Functions of Tort Law”); Louis T. Visscher, *Tort Damages*, in *TORT LAW AND ECONOMICS* 153, 153 (Michael Faure ed., 2009) (describing tort’s deterrent effect exclusively through the prism of monetary payments); Scott Hershovitz, *What Does Tort Law Do? What Can It Do?*, 47 VAL. U. L. REV. 99, 101 (2012) (stating that tort law deters “by extracting payment from those who fail to take cost-justified precautions”); Hensler, *supra* note 38, at 421 (“From a deterrence perspective, arriving at the proper level of compensation for accidental injury and wrongful death victims is a matter of determining what amount of damages should be imposed on wrongdoers *ex post* in order to assure that *ex ante* potential wrongdoers will weigh the costs of injury against the benefits of productive activity.”).

³⁷ That survey was circulated through various channels, including through the Inner Circle of Advocates, a group described in *infra* note 38.

³⁸ We interviewed sixty-seven plaintiffs’ lawyers, five defense lawyers, eleven plaintiffs, one medical doctor who served as an expert, one non-profit executive,

one mediator, and one consultant focused on designing conflict resolution processes. (We interviewed eighty-seven individuals but conducted eighty-eight interviews because we interviewed one lawyer twice.)

Respondents hailed from twenty states, representing all regions of the country. The lawyers we spoke to, cumulatively, have logged more than 2,300 years in law practice; of respondents, the average time in practice was thirty-one years. We both attended most of these interviews, which lasted an average of forty minutes. Nearly all of the interviews were recorded and then professionally transcribed. (Three opted against recording.) All individuals (except for the medical expert and individual plaintiffs) were offered the option of anonymity. The vast majority declined that option.

We identified interviewees: (1) by reaching out to lawyers who completed our exploratory survey and expressed an interest in speaking to us, (2) by reaching out to lawyers we knew or had read about, and (3) by using “snowball sampling” (i.e., asking interviewees who else we should speak to). We independently verified sources’ claims by consulting publicly available information whenever possible.

Lawyers’ subject matter expertise spanned the personal injury waterfront. Further, of the lawyers we spoke to, some represent individuals in one-off cases, others focus primarily on behemoth class actions, while others do some combination—or something in between. All the lawyers we spoke to, however, tend to handle large cases; no lawyer we spoke to, for example, specializes in garden-variety car accidents involving plaintiffs who have sustained only soft-tissue injuries. Further, the lawyers we spoke to tended to be particularly successful. Nearly one-third are members of the Inner Circle of Advocates, a group of 100 of the nation’s most esteemed plaintiff-side trial attorneys.

A few further notes regarding our methodology: First, since the information we assemble comes primarily from individual recollections, our descriptions should be viewed with appropriate skepticism, as they may be colored by incomplete recall or tainted by any number of biases. Aware that they were speaking “on the record,” the individuals we interviewed may have slanted their answers, including to appear particularly altruistic. However, given the frailty of individual memory, we worked to corroborate individual accounts whenever feasible by reference to documentary evidence, including settlement agreements, deposition transcripts, expert reports, internal company documents, press accounts, and public filings. Second, the data we present come from a limited number of individuals, which means that its generalizability is, by definition, uncertain. Third, we do not believe—and we certainly do not claim—that the plaintiffs’ lawyers we interviewed are “representative” of the plaintiffs’ bar. Instead of representing all segments of the bar in equal proportion, the lawyers we surveyed and interviewed come from its highest echelons and again, as noted above, all the lawyers we spoke to tend to handle large cases with significant injuries.

With this methodology—and particularly given our heavy reliance on documentary evidence, rather than practitioners’ or plaintiffs’ bare or

show that tort law doesn't just deter by moving money. Indeed, instead of just "detering," tort law can *govern*—and it can do so using a complex *range* of sometimes independent and sometimes interlocking mechanisms.

First, just as law-and-economics scholars have long explained, tort law induces *cost internalization*. Liability, or the prospect of liability, sometimes induces actors to dial up care, dial down activity levels, alter products, or relocate operations.³⁹

Second, as Joanna Schwartz and Margo Schlanger have convincingly shown, litigation sometimes triggers *introspection*.⁴⁰ Through filing data, depositions, and expert review, complex and siloed organizations can connect dots and see patterns to learn how their own systems or employees failed.⁴¹ With this reckoning,

uncorroborated recollections—we are on solid ground claiming that some litigants do certain things and describing those things. See Mario L. Small, 'How Many Cases Do I Need?' *On Science and the Logic of Case Selection in Field-Based Research*, 10 ETHNOGRAPHY 5, 22–27 (2009). But, because the lawyers we spoke to are not representative of the plaintiffs' bar, we can make no claim concerning the frequency or prevalence of the behaviors we describe. Thus, we resist the temptation to make claims about the frequency or prevalence of various change-making mechanisms. See GARY KING, ROBERT O. KEOHANE & SIDNEY VERBA, *DESIGNING SOCIAL INQUIRY: SCIENTIFIC INFERENCE IN QUALITATIVE RESEARCH* 70–72, 133–37 (1994) (explaining that non-probability samples cannot support valid population-level frequency claims).

Notwithstanding the above caveats, we believe our effort represents the largest *n* multi-state study of plaintiffs and plaintiffs' lawyers ever conducted in the United States. Cf. Deborah Hensler, *Money Talks: Searching for Justice Through Compensation for Personal Injury and Death*, 53 DEPAUL L. REV. 417, 427 (2003) (discussing the paucity of research and noting "[w]hat little we know about how tort victims think about their losses comes to us from book-length depictions of tort lawsuits and news reports" and citing, inter alia, *Bendectin and Birth Defects*, *Agent Orange on Trial*, and *A Civil Action*). For the largest single-state study, see Stephen Daniels & Joanne Martin, *It Was the Best of Times, It Was the Worst of Times: The Precarious Nature of Plaintiffs' Practice in Texas*, 80 TEX. L. REV. 1781, 1782–83 (2002).

³⁹ See *supra* note 36 (collecting citations).

⁴⁰ See Joanna Schwartz, *Introspection Through Litigation*, 90 NOTRE DAME L. REV. 1055, 1055–56 (2015); Margo Schlanger, *Operationalizing Deterrence Claims Management (In Hospitals, a Large Retailer, and Jails and Prisons)*, 2 J. TORT L. 1, 10, 20 (2008).

⁴¹ Capturing this dynamic, one lawyer explained that litigation's power lies in its ability to make actors "take a very close look at their actions and not escape them through rationalizing or excusing bad behavior." Anonymous Survey Response.

organizations can confront—and sometimes correct—systemic breakdowns that were previously hidden.

Third, tort law compels the public *disclosure of information*. By prying loose facts previously unknown to consumers, and occasionally even regulators, litigation can bring dangerous products, hazardous practices, and institutional failings into the open.⁴²

Fourth, tort law can *catalyze governmental action*. Lawsuits—and the information unearthed in the course of litigation—can trigger legislation, regulation, or administrative action.⁴³

Fifth and finally, as in the Plushes’ case, tort law unleashes what we call *injunctive effects*. As an express condition of settlement, defendants sometimes make concrete forward-looking commitments, including to redesign their products, rewrite their policies, or alter their practices.⁴⁴

⁴² See ALEXANDRA LAHAV, IN PRAISE OF LITIGATION 56–83 (2017); Nora Freeman Engstrom et al., *Secrecy by Stipulation*, 74 DUKE L.J. 99, 162 (2024); Nora Freeman Engstrom, *Facilitating the Information-Forcing Function of Tort Law*, JOTWELL (Mar. 22, 2022); Assaf Jacob & Roy Shapira, *An Information-Production Theory of Liability Rules*, 89 U. CHI. L. REV. 1113, 1148–49 (2022); Myriam Gilles, *In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies*, 35 GA. L. REV. 845, 859–61 (2001); Wendy Wagner, *When All Else Fails: Regulating Risky Products Through Tort Litigation*, 95 GEO. L.J. 693, 711–18 (2007); Benjamin Ewing & Douglas A. Kysar, *Prods and Pleas: Limited Government in an Era of Unlimited Harm*, 121 YALE L.J. 350, 375 (2011).

⁴³ See generally Timothy D. Lytton, *A Systems Theory of Tort Law: Reevaluating the Case Against “Regulation by Litigation,”* 90 MO. L. REV. 385 (2025); see also Nora Freeman Engstrom & Robert L. Rabin, *Pursuing Public Health Through Litigation: Lessons from Tobacco and Opioids*, 73 STAN. L. REV. 285, 350–62 (2021); Wendy E. Parmet, *Tobacco, HIV, and the Courtroom: The Role of Affirmative Litigation in the Formation of Public Health Policy*, 36 HOUS. L. REV. 1663, 1695 (1999); Maya Konstantino, *The Tort of Moving Fast and Breaking Things: a/b Testing’s Crucial Role in Social Media Litigation*, 99 NYU L. REV. ONLINE 178, 205 (2024).

⁴⁴ See generally Nora Freeman Engstrom & Lisa Qian, *The Injunctive Effect of Tort Law* (working paper 2026). Beyond our companion piece, which surfaces and interrogates the phenomenon, the injunctive effect of tort law has received scant scholarly attention. We have surfaced just two short articles and two short book chapters that discuss it; all four were written by practitioners. See Alphonse A. Gerhardstein, *Making a Buck While Making a Difference*, 21 MICH. J. RACE & L. 251 (2016); Joseph A. Fried, *Redefining Your Win*, in WINNING SETTLEMENTS 161 (2024); Randi McGinn, *Using Settlements to Change the*

Each of these mechanisms has appeared, in one form or another, in prior scholarship. This Article builds on and integrates those accounts, offering the first synoptic perspective. We show that, when these mechanisms are considered collectively—when the pieces of the puzzle are assembled rather than scattered—the composite *picture* of the tort system comes into considerably sharper focus. Indeed, to see the full tableau is to see a tort system that looks far less like a crude and costly post hoc pricing device and far more like an efficient, multi-faceted engine of institutional reform.

The remainder of this Article proceeds in five Parts. Parts I through III lay the foundation. Part I briefly introduces tort law’s five safety-promoting mechanisms and then situates these mechanisms alongside tort’s other functions, including compensating the injured, spreading losses, and offering victims a suite of dignitary benefits. This framing is essential because, in focusing on deterrence, we do not mean to suggest that the system *only* deters, *always* deters, or that deterrence necessarily eclipses its other aims.

World & Make Communities Safer, in WINNING SETTLEMENTS 179 (2024); Patrick Malone, *Paying It Forward*, TRIAL 44 (June 2014).

Beyond that, we have uncovered a bit more, in dribs and drabs. First, twenty-five years ago, the Dallas Morning News and the Center for Justice & Democracy at New York Law School chronicled various lawsuits that generated safety changes. Mark Curriden, *Deliberate Influence*, DALLAS MORNING NEWS (June 25, 2000) (reporting on a study that identified more than 250 cases in which jury verdicts “led to some kind of change”); Emily Gottlieb & Joanna Doroshow, *LIFESAVERS 2021: CJ&D’s Guide to Lawsuits that Protect Us All*, CTR. FOR JUSTICE & DEMOCRACY (2021) (highlighting additional examples). Second, Professor Tim Lytton and the nonprofit, Bishop Accountability, have tracked public settlements to resolve sex abuse litigation against the Catholic Church, and some of these settlements include nonmonetary terms. See TIMOTHY LYTTON, HOLDING BISHOPS ACCOUNTABLE: HOW LAWSUITS HELPED THE CATHOLIC CHURCH CONFRONT CLERGY SEXUAL ABUSE 174 (2008); *Sexual Abuse by U.S. Catholic Clergy: Settlements and Monetary Awards in Civil Suits*, BISHOP ACCOUNTABILITY, <https://www.bishop-accountability.org/settlements/>. Lastly, as discussed below, some marquee settlements, such as those in the social media, opioid, and tobacco litigation—as well as those that involve state action (e.g., prison reform litigation) feature what we call injunctive effects—and commentators have, of course, recognized their inclusion. But commentators have tended to view these provisions as *sui generis*, rather than as examples of a broader phenomenon. For social media, opioids, and tobacco, see Part III. For a discussion of consent decrees in, for instance, prison reform litigation, see Engstrom & Qian, *supra*.

Part II digs into the five change-making mechanisms. It explains what these mechanisms are, details how they work, catalogs the distinct conditions in which they operate, and offers a wealth of new data to show that these mechanisms affect conduct, not just in theory, but also in fact. Then, Part III completes the operational picture, explaining that these five mechanisms sometimes operate independently and sometimes blur or combine.

Parts IV and V step back to interrogate the broader implications of this expanded account. In Part IV, we zero in on tort and argue that the evidence we assemble challenges a familiar critique of the tort system: that it predictably “fails” as a deterrent because of the prevalence of insurance and ubiquity of settlement.⁴⁵ Even when well-insured defendants do not fully (or even significantly) internalize the *cost* of harm, lawsuits can still force change—by compelling institutional reckoning, publicizing information, and binding defendants to new rules of conduct.

Our broader account also reframes how tort law stacks up against its institutional rivals: chiefly, bankruptcy and no-fault compensation schemes. Compared to tort, these systems may deliver checks to injured individuals more quickly, with less friction, and at lower cost. And if all that matters is compensation, and the deterrence derived from that compensation, they fare fine. But, in comparison, bankruptcy and no-fault systems are one-trick ponies. Their primary goal is to move money. Unlike the tort system, which has the capacity to generate policy-relevant information, trigger institutional learning, catalyze governmental reform, or generate concessions from the defendant to change its policies, procedures, or products, these systems lack many of the structural mechanisms to do so. The safety hit from

⁴⁵ Many have offered this perspective. *E.g.*, John G. Fleming, *The Role of Negligence in Modern Tort Law*, 53 VA. L. REV. 815, 823 (1967) (“The deterrent function of the law of torts was severely, perhaps fatally, undermined by the advent of liability insurance.”); Craig Brown, *Deterrence and Accident Compensation Schemes*, 17 U. W. ONTARIO L. REV. 111, 115 (1978) (“Negligence law’s deficiency as a deterrent arises mostly from the wide-spread use of liability insurance.”); Richard L. Abel, *A Critique of American Tort Law*, 8 BRIT. J.L. & SOC’Y 199, 203 (1981) (stating that liability insurance “virtually destroys the capacity of tort liability to optimize safety”); *see also* Gary T. Schwartz, *Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter?*, 42 UCLA L. REV. 377, 385 (1994) (explaining that those who point to the “futility” of deterrence through tort “typically begin[] with liability insurance”). For further dismal assessments, *see infra* note 259.

replacing tort with these rival mechanisms may, in other words, be bigger than conventional accounts suggest.

Finally, Part V unpacks the ethical implications of our synthetic account of tort law's change-making power. The analysis proceeds against a simple backdrop: lawyers who press for institutional reform are not operating within the profession's conventional frame. The conventional view is that a lawyer's responsibility "is to maximize the financial advantage for clients."⁴⁶ Money is the metric of success. But provocatively, of the nearly seventy plaintiffs' lawyers we spoke to, the vast majority (at least 90 percent) described their work more expansively. As one lawyer put it: "[T]here's so much more to the job [than obtaining monetary compensation]. We are social workers. We are counselors. We are security details. We are the ambassador to a legal system that is foreign, impersonal, [and] slow."⁴⁷

Two key implications follow. First, in wearing these many hats, these lawyers are best seen as "lawyers for the situation." Yet, in a provocative twist, unlike Louis Brandeis—the first "lawyer for the situation," who famously promoted the public interest by remaining aloof from his clients—they represent "the situation," by their engagement. In so doing, they suggest—and embody—a new paradigm for ethical lawyering. In this paradigm, public-regarding outcomes can flow, not from detachment, but devotion.

Second, we show that three of tort's change-making mechanisms—(1) surfacing information, (2) catalyzing governmental action, and (3) securing injunctive effects—do not merely benefit the individual plaintiff. Together, these mechanisms constitute what we call "altruistic relief." They seek to ensure that the calamity that befell the plaintiff or decedent does not befall another.

But the recognition that some lawyers press for altruistic relief raises another set of questions that cut right to the heart of contemporary legal ethics: May lawyers, duty-bound to advocate for

⁴⁶ Andy Boon, *Ethics and Strategy in Personal Injury Litigation*, 22 J.L. & Soc'y 353, 358 (1995); see also *infra* notes 294–299 and accompanying text (collecting additional citations).

⁴⁷ Interview with Khaldoun Baghdadi, Walkup, Melodia, Kelly & Schoenberger (Sep. 17, 2025). Here, however, it bears emphasis, we are not claiming that plaintiffs' lawyers in general share this perspective. For the reasons described *supra* at note 38, the lawyers we interviewed are not representative of the plaintiffs' bar as a whole.

individual clients, pursue these broader, public-regarding aims? Must they? Is a lawyer who prioritizes altruistic relief, even at the expense of monetary compensation, fulfilling her obligation to her client, or betraying it?

These questions have long dogged legal ethicists; they have long seemed insoluble. Drawing on new empirical evidence about what seriously injured individuals actually want—alongside decades of psychological research about what helps or hinders healing processes—we show that the apparent conflict is overstated.⁴⁸ Plaintiffs’ interests and the public interest often align—an insight that not only dissolves a longstanding dilemma but also opens the way to a more coherent model for ethical lawyering.

I. CONTEXTUALIZING THE INQUIRY

Before turning to the five change-making mechanisms, we offer a few preliminary points to anchor the analysis.

A. Other Consequentialist Aims

First, our aim is to interrogate and integrate the various ways tort law promotes safety. Before doing so, however, we should clarify that these safety-promoting mechanisms operate alongside tort law’s *other* consequentialist functions. Some of these are familiar and have been extensively studied; others remain comparatively under-explored and theorized.

In addition to promoting safety, tort law can:

- Offer plaintiffs psychic and dignitary benefits;
- Compensate individuals (and these funds can promote individuals’ recovery and rehabilitation); and
- Spread the cost of accidents.

Below, we will briefly sketch these practical advantages.

Psychic and dignitary benefits. Tort law can assist plaintiffs in numerous ways, including by: (1) revealing to plaintiffs what exactly happened or went awry (which, prior research suggests,⁴⁹ and our

⁴⁸ As one lawyer put it: “We have a moral duty to society, but also an ethical duty to get our clients the best result possible. Often times, those duties line up.” Jason Itkin Survey Response.

⁴⁹ See, e.g., MICHAEL LEIZERMAN, *THE ZEN LAWYER* 263 (2018) (explaining that he typically asks clients what their goals are during his first meeting with them, and “many of my clients will say they want to know what happened—to

interviews corroborate,⁵⁰ is of extraordinary—and sometimes, overriding—importance to plaintiffs); (2) furnishing an opportunity for victims to tell their story (sometimes, for the first time) to an attentive and sympathetic listener;⁵¹ (3) establishing truth and assigning blame;⁵² (4) prompting the defendant to apologize to the plaintiff or otherwise acknowledge the extent of harm and the

get to the truth of *why* something happened”); JENNIFER K. ROBBENNOLT & VALERIE P. HANS, *THE PSYCHOLOGY OF TORT LAW* 18 (2016) (“In some types of cases, one of the central reasons that people pursue legal claims is to obtain an explanation for how they came to be injured.”); Gerald B. Hickson et al., *Factors that Prompted Families to File Medical Malpractice Claims Following Perinatal Injuries*, 267 JAMA 1359, 1361 (1992) (finding, in a small sample survey, that about a quarter of families that filed claims did so because they believed the physician had failed to be honest about what happened); Jennifer M. Balboni, “It’s Not About the Money:” Truth, Consequences, and the Real Meaning of Litigation for Clergy Sexual Abuse Survivors, at 190 (Mar. 2006) (Ph.D. dissertation, Northeastern University) (on file with the authors) (discussing clergy sexual abuse survivors’ desire to uncover “‘the real truth’”).

⁵⁰ In interviews with plaintiffs’ lawyers, we typically asked why their clients “came to law.” The answers are revealing. *See, e.g.*, Interview with Meg Simonian, Dillon Findley & Simonian (Sep. 2, 2025) (“Well, I think [my clients] want answers. They want to know what happened. Almost never do they come to us knowing what happened.”); Interview with Pat Buelna, Pointer & Buelna (Dec. 16, 2025) (“[A]t a very base sense, most people turn to the law because they don’t know how to get . . . an explanation of what happened to their family member.”); Interview with Bob Mongeluzzi, Saltz Mongeluzzi Bendesky (July 25, 2025) (“[M]oney is usually the last thing that [clients are] concerned with. The first thing that they really want to know is they want to know what happened.”); Interview with Charla Aldous, Aldous Law (Dec. 17, 2025) (“The wrongful death cases, in my opinion, [clients] usually want answers. ‘Why did this happen? What happened to the system? What happened with the company? How was this driver allowed to be behind the wheel?’”).

⁵¹ Timothy D. Lytton, *Tort Claims for the Coverup of Child Sexual Abuse: Private Litigation, Corporate Accountability, and Institutional Reform*, 72 DEPAUL L. REV. 289, 302–03 (2022) (explaining, in the sexual abuse context, “[p]laintiffs’ attorneys are often the first individuals to validate survivors’ allegations”); Balboni, *supra* note 49, at 162–63 (discussing the importance of disclosure and validation).

⁵² Balboni, *supra* note 49, at 164 (discussing the importance of assigning and re-assigning blame, particularly when victims have “received a variety of messages about their own responsibility for the abuse”); *id.* at 177–78 (describing survivors’ very strong desire for “the truth of the abuse, in its full extent, to be established so that history could be accurately recorded”).

defendant's responsibility for it;⁵³ and (5) having the defendant erect a physical memorial to the decedent or start, or contribute to, a charity, foundation, or scholarship in the plaintiff's honor or the decedent's memory. In addition, as we explain in Part V, tort's safety goals and psychic benefits can complement one another, as there is strong evidence that, by giving plaintiffs an avenue to press for, and obtain, altruistic relief, the tort system may promote victims' sense of empowerment and, in so doing, jumpstart plaintiffs' recovery.⁵⁴

Compensation. Tort law compensates injured individuals and their families, permitting them to recover the financial losses that inevitably accompany serious harm. When an injury results in lost income, compensation allows families to meet their financial obligations.⁵⁵ For families facing a lifetime of intensive care, compensation helps to ensure that the injured party can receive necessary treatment and also live with some measure of dignity, whether that entails modifying a home to accommodate a disability or furnishing care at an appropriate facility. Compensation is equally critical when a child is injured and parents must become full-time caregivers, leaving them unable to work.⁵⁶ True, given the prevalence of first-party insurance, compensation through tort is often not a family's only buffer against financial insecurity. Also true, compensation through the tort system can be regressive and

⁵³ There is a rich literature concerning apologies and their effect. For a useful introduction, see generally Jennifer K. Robbennolt, *Attorneys, Apologies, and Settlement Negotiations*, 13 HARV. NEGOT. L. REV. 359 (2008). For a recent discussion, see generally Benjamin McMichael, R. Lawrence Van Horn & W. Kip Viscusi, "Sorry" Is Never Enough: How State Apology Laws Fail to Reduce Medical Malpractice Liability Risk, 71 STAN. L. REV. 341 (2019).

⁵⁴ See Engstrom & Qian, *supra* note 44 (canvassing the psychological literature and compiling copious evidence that, in the face of traumatic loss, obtaining altruistic relief—so that one's hardship benefits and protects others—is apt to “jumpstart the healing process”); see also Jessica L. Gibson, *ACES Wild: Making Meaning Out of Trauma Through Altruism Born of Suffering*, Ph.D. Dissertation, Department of Clinical Psychology (Antioch Univ., July 19, 2018), at 17 (explaining that there exists a scholarly consensus “that altruism and prosocial action are potent therapeutic mechanisms”).

⁵⁵ Interview with Theo Emison, The Veen Firm (Aug. 16, 2025) (describing the importance of compensation).

⁵⁶ See, e.g., Interview with David Inscho, Kline & Specter (Sep. 19, 2025) (highlighting the importance of compensation, particularly when a family has a catastrophically injured child).

inequitable.⁵⁷ Yet, even when a family is comprehensively insured, and even though it is far from perfect, tort compensation frequently fills significant gaps.

Loss spreading. Tort law finally mitigates loss by distributing it from the shoulders of one individual, where the loss is apt to be weighty and possibly ruinous, to a larger group of actors.⁵⁸ This distribution is helpful because, as Guido Calabresi has observed: “social dislocations, like economic dislocations, will occur more frequently if one person bears a heavy loss than if many people bear light ones.”⁵⁹

Over the years, scholars have spilled barrels of ink debating which of tort’s benefits—compensation or deterrence, the dignitary or the instrumental—ought to be regarded as primary. Our view is that all of these benefits are central to understanding what tort law is and can deliver. We focus on deterrence, in other words, not because we believe it is more important than tort’s other consequentialist aims, but because any meaningful comparative accounting must begin by getting the inputs right. And, as we explain below, to date, scholars’ understanding of tort’s deterrence function has been incomplete.⁶⁰

B. Limitations of Our Analysis

Our aim is to synthesize past scholarship and augment that scholarship with a wealth of new information—drawn from surveys, interviews, court records, settlement agreements, and press accounts—to demonstrate that tort law’s deterrent capacity operates through a broader and more multifaceted set of mechanisms than others have

⁵⁷ The tort system generally overpays minor injuries and underpays serious injuries, and the tort system is also regressive, in that, all else equal, wealthier individuals tend to recover more. See Nora Freeman Engstrom, *Sunlight and Settlement Mills*, 86 N.Y.U. L. REV. 805, 838 n.153 (2011).

⁵⁸ Richard J. Pierce, Jr., *Encouraging Safety: The Limits of Tort Law and Government Regulation*, 33 VAND. L. REV. 1281, 1288–89 (1980) (explaining that tort law “reduces the secondary costs of the accidents . . . by spreading the costs of such accidents over a larger group”).

⁵⁹ Guido Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 YALE L.J. 499, 517–18 (1961).

⁶⁰ Accord Schlanger, *supra* note 40, at 50 (arguing that scholars have been insufficiently attentive to the “operationalization of deterrence”—and that, “[t]o understand the regulatory effects of the tort system . . . we need to analyze more thoroughly just how it is that the threat of litigation and liability operates on risk causing organizations”).

suggested. But before proceeding, we must be clear about what we are, and are not, arguing.

First, we show that tort law deters through five mechanisms. Tort law promotes safety by: (1) promoting cost internalization; (2) triggering what Joanna Schwartz has dubbed “introspection through litigation”; (3) facilitating what scholars have labelled the “information-forcing function of tort law”; (4) catalyzing governmental action; and (5) unleashing injunctive effects. However, we make no claims about the *prevalence* of various mechanisms. When it comes to introspection, for instance: How frequently does the discovery process surface a problem that the accident, itself, didn’t bring to light? Or, of accidents theoretically amenable to injunctive effects, in which proportion do lawyers press for, and secure, meaningful safety-enhancing commitments? These are important questions but ones we cannot answer here.⁶¹

Second, we show that tort law’s deterrent capacity is more multifaceted than others have suggested. But we cannot show, and we do not suggest, that tort law always or inevitably deters. Indeed, we

⁶¹ As noted above, because our interviewees were recruited through non-probability methods, including snowball sampling, and because we do not believe the plaintiffs’ lawyers we surveyed or interviewed are “representative” of the broader profession (they tended to come from the highest echelons), we cannot estimate the prevalence of various mechanisms we highlight below. For further discussion of our methodology and its limitations, see *supra* note 38.

Complicating matters, when it comes to certain mechanisms (chiefly, injunctive effects), to say anything meaningful about prevalence, one would need to be able to *study* settlements. One would need to get a large, representative sample of tort settlements and assess which proportion of those settlements includes some kind of binding safety commitment. But this is impossible because a very large proportion of settlements are secret. See David Freeman Engstrom et al., *Shedding Light on Secret Settlements*, 91 U. CHI. L. REV. 103, 116 n.76 (2025) (explaining that “secret settlements are, by all accounts, prevalent” and collecting evidence); Erik S. Knutsen, *Keeping Settlements Secret*, 37 FLA. ST. U. L. REV. 945, 946 n.1 (2010) (“Most cases in the civil litigation system settle. Most also settle in secrecy.”); Interview with Jerry Singleton, Singleton Schreiber (Oct. 17, 2025) (stating that “companies insist on confidentiality”).

Others have said a bit about frequency—and have indicated that it is context-specific. See, e.g., Schwartz, *supra* note 40, at 1059 (discussing introspection through litigation and observing that “most hospitals make some effort to learn from the lawsuits brought against them, but few police departments do so”); *id.* at 1085 (stating that “almost all hospitals—regardless of their financial status—review lawsuits to some degree”).

doubt it does. Nor do we suggest that all organizations are equally susceptible to change through tort law. Indeed, we doubt they are. Reflecting this fact, below, when we discuss tort's change-making mechanisms, we tend to analyze *where* the mechanisms are apt to operate.⁶²

Third and finally, this Article greatly enriches the current account of how tort law promotes change. But, of course, we aren't saying—and we cannot say—that the changes tort law promotes are inevitably (or even usually) welfare enhancing. Sometimes, no doubt, tort law over-deters.⁶³ Liability, or the threat of liability, sometimes encourages individuals and entities to take unnecessary, wasteful precautions. Defensive medicine is but one example.⁶⁴ Likewise, litigation brings information to light. But the threat of litigation can also suppress information; it can cause physicians or firms to bury safety-related information that they might otherwise have revealed—or it can induce them to put their heads in the sand, to avoid *acquiring* information, lest that information later be used against them in litigation.⁶⁵ So, too, liability, or the threat of liability, sometimes chills valuable activity; it discourages individuals and entities from doing what they otherwise ought to do, worried that, if something goes wrong, liability will follow.⁶⁶

⁶² Joanna Schwartz, for instance, has shown that police departments and hospitals differ in their receptivity to learning from litigation. *See generally* Schwartz, *supra* note 40. We have also assembled evidence indicating that “public entities (including cities, counties, and municipalities), hospitals, schools, and universities are most receptive to injunctive effects” while “Fortune 50 companies are the least receptive.” Engstrom & Qian, *supra* note 44.

⁶³ Here, many believe that “[r]isk reduction measures should be undertaken only to the extent that their benefits exceed the costs.” W. KIP VISCUSI, FOREWORD, REGULATION THROUGH LITIGATION 4 (W. Kip Viscusi ed., 2002).

⁶⁴ Just one example of this phenomenon is defensive medicine. For discussion, see generally Michelle M. Mello et al., *National Costs of the Medical Liability System*, 29 HEALTH AFFAIRS 1569 (2010).

⁶⁵ *See, e.g.*, Omri Ben-Shahar, *How Liability Distorts Incentives of Manufacturers to Recall Products* (Univ. of Mich. Law Sch., Working Paper, 2005), at 4 https://repository.law.umich.edu/law_econ_archive/art37 (arguing that “[p]roducts liability provides incentives for manufacturers to . . . invest too little in post-sale research of the possible risks”); David M. Studdert & Troyen A. Brennan, *No-Fault Compensation for Medical Injuries: The Prospect for Error Prevention*, 286 JAMA 217 (2001) (examining tensions between malpractice liability and the forthright disclosure of medical errors).

⁶⁶ Sugarman, *supra* note 34, at 581 (“One concern about tort law is *over-deterrence*: people may not enter into socially desirable activities that risk injury

Nor is it true, even, that *altruistic* tort law mechanisms are inevitably welfare enhancing. No doubt, plaintiffs sometimes secure injunctive effects or catalyze legislative or regulatory action that is duplicative, counterproductive, or apt to crowd out other, better calibrated and ultimately more beneficial, reform.⁶⁷

Lastly, no doubt, tort law sometimes promotes safety—but at excessive, exorbitant, disproportionate cost.⁶⁸ How often? To what effect? We can’t (and we believe no one can) confidently say.

Our point is simpler: To this point, many scholars, including tort law giants, *have purported to make* these calculations.⁶⁹ And, after making them—typically, after only considering tort law’s capacity to induce cost-justified precautions—they have rendered their dismal verdicts.⁷⁰ The tort system, George Priest has concluded, “provides inadequate controls on the accident rate.”⁷¹ “There is,” Steve Sugarman wearily determined, “unfortunately, little reason to believe that tort law today actually serves an *important* accident avoidance function.”⁷² The deterrence provided by the tort system, John Fleming

to others.”). A prominent example is the vaccine crisis in the 1980s that led to the creation of the Vaccine Injury Compensation Program. For discussion, see Nora Freeman Engstrom, *A Dose of Reality for Specialized Courts: Lessons from the VICP*, 163 U. PA. L. REV. 1631, 1655–58 (2015).

⁶⁷ Accord Engstrom & Rabin, *supra* note 43, at 354 (discussing catalyst theory and offering these and other caveats); Engstrom & Qian, *supra* note 44 (same, for injunctive effects).

⁶⁸ Cf. Frank B. Cross, *Tort Law and the American Economy*, 96 MINN. L. REV. 28, 38 (2011) (cautioning that any safety gains ought to be considered alongside the “high administrative costs of the tort law system”).

⁶⁹ E.g., TERENCE ISON, *THE FORENSIC LOTTERY: A CRITIQUE ON TORT LIABILITY AS A SYSTEM OF PERSONAL INJURY COMPENSATION* 89 (1967) (dismissing the deterrence benefit supplied by the tort system as, on the whole, “negligible”); Brown, *supra* note 45, at 153 (“[T]he tort liability system appears to offer at most minimal deterrence.”).

⁷⁰ For instance, Priest, Sugarman, Fleming, and Atiyah offer these assessments while saying not a word about introspection through litigation, tort’s capacity to catalyze regulatory or legislative action, or injunctive effects.

⁷¹ George L. Priest, *The Current Insurance Crisis and Modern Tort Law*, 96 YALE L.J. 1521, 1589 (1987); see also George L. Priest, *The Monsanto Lectures: Modern Tort Law and Its Reform*, 22 VAL. U. L. REV. 1, 10 (1987) (lamenting “[m]odern tort law’s failure to adequately control the accident rate”).

⁷² Sugarman, *supra* note 34, at 560.

has declared, is “exceedingly marginal.”⁷³ “On the whole,” per P.S. Atiyah, “it seems doubtful if liability for negligence operates as a useful deterrent[t], and little would be lost by getting rid of it.”⁷⁴

But, to this point, scholars have made these dismal assessments with a blinkered view of what the tort system does and how it operates.⁷⁵ They have tallied tort’s costs and benefits, in other words, while leaving big gaps on the “benefits” side of the tort law ledger.⁷⁶ Here, our aim is not to make these grandiose calculations; it is to fill in some of those missing blanks.

C. An Introduction to Tort’s Change-Making Mechanisms

Five tort mechanisms promote safety. Table 1 below introduces these mechanisms.

Table 1: HOW TORT LAW DRIVES CHANGE

Mechanism	Definition & Scholarly Lineage	Examples
Cost Internalization	Through the prospect or payment of compensation, tort law induces actors to change their products, policies, or practices.	Domino’s 30-Minute Delivery Guarantee – A Domino’s driver ran a red light and crashed into a woman’s car while rushing to complete a pizza delivery, pursuant to Domino’s 30-minute guarantee. The case went to judgment and resulted in a \$78.75 million verdict. Domino’s president publicly acknowledged that the jury verdict was a major factor in the company’s decision to terminate its 30-minute pizza delivery pledge; it was, he said, “certainly the thing that put us over the edge.” ⁷⁷

⁷³ John Fleming, *The American System in International Perspective*, in RISK, COMPENSATION AND LIABILITY: THE POLICY CHOICES 9, 22 (1986).

⁷⁴ P.S. ATIYAH, THE DAMAGES LOTTERY 165 (1997).

⁷⁵ See *supra* note 70.

⁷⁶ Sugarman, *supra* note 34, at 590 (“Given its enormous administrative costs, it is reasonable to conclude that the [tort] system is operating in the ‘red.’”).

⁷⁷ Michael Janofsky, *Domino’s Ends Fast-Pizza Pledge After Big Award to Crash Victim*, N.Y. TIMES (Dec. 22, 1993) (quoting Thomas S. Monaghan).

		Kubota Tractors – Family members of a farmer whose tractor flipped over, suffocating him, sued. After trial but prior to verdict, Kubota withdrew its tractors without rollover protections from the U.S. market. ⁷⁸
Introspection through Litigation	Through litigation, actors learn about their own behavior. With this reckoning, some voluntarily change their policies and practices.	<p>Archdiocese of Los Angeles – While mediating with plaintiffs over sex abuse allegations, the Archdiocese of LA compiled a report of 244 allegations against priests, marking a turning point in how it responded to such allegations going forward.⁷⁹</p> <p>Jennifer Comey’s Death from Unpruned Trees – In accepting fault for the death of forty-four-year-old Jennifer Comey, who died when a decaying tree limb fell on her, the City of Davis publicly shared that it had “adopted a proactive inspection and maintenance program” for trees in “high occupancy public areas, such as parks, play fields and downtown plazas.”⁸⁰</p>
Information-Forcing Function of Tort Law	Litigation causes the public disclosure of previously unknown information. Once information is public, it may stimulate governmental action (below), trigger institutional introspection (above),	Minnesota AG’s PFAS Suit Against 3M – After settling Minnesota’s lawsuit against 3M for contamination from PFAS, a “forever chemical,” on the eve of trial, the Attorney General released the state’s intended exhibit list, which revealed countless studies by 3M employees on the toxicity of

⁷⁸ THOMAS H. KOENIG & MICHAEL L. RUSTAD, IN DEFENSE OF TORT LAW 85 (2001).

⁷⁹ TIMOTHY D. LYTTON, HOLDING BISHOPS ACCOUNTABLE: HOW LAWSUITS HELPED THE CATHOLIC CHURCH CONFRONT CLERGY SEXUAL ABUSE 155 (2008).

⁸⁰ Ashley Sharp, *Following \$24M Ruling Finding Davis Liable for Park Death, Attorney Continues to Call Out City Response*, CBS NEWS (Mar. 5, 2025).

	or alter consumer behavior.	<p>PFAS.⁸¹ Prior to the release, 3M had refused to provide that information to regulators, neighboring communities and its own workers.⁸²</p> <p>Franciscan Perpetrators’ Files – Plaintiffs who brought sex abuse cases against the Franciscan Friars of California demanded and won the release of the Order’s perpetrator files, which identified forty-one clergy who the Friars themselves had found to have abused children but had failed to report to law enforcement or the public.⁸³</p>
Catalyzing Governmental Action	Litigation, and the information the litigation unearths, attracts the attention of policymakers and sparks a policy change.	<p>Libby Zion Law – Libby Zion, a college freshman, died after two residents who were working long hours without supervision administered a drug that was contraindicated for her.⁸⁴ Her case highlighted the problem of medical trainees’ exhaustion and helped spur formal limits on resident hours, imposed legislatively in both New York and via the Accreditation Council for Graduate Medical Education’s policies.⁸⁵</p> <p>SIG Sauer P320 – After multiple lawsuits over unintentional discharges of the SIG Sauer P320 pistol resulted in plaintiffs’ verdicts,</p>

⁸¹ *State’s Second Amended Exhibit List*, OFFICE MINN. ATT’Y GEN., <https://www.ag.state.mn.us/Office/Cases/3M/StatesExhibits.asp>; Deena Winter, *Toxic: 3M Knew its Chemicals Were Harmful Decades Ago, But Didn’t Tell the Public, Government*, MINN. REFORMER (Dec. 15, 2022).

⁸² Winter, *supra* note 81.

⁸³ *In re Clergy Cases I*, 188 Cal. App. 4th 1224, 1235–36 (Ct. App. 2010).

⁸⁴ Steve Cohen, *The Lasting Legacy of a Case That Was “Lost,”* 119 PENN ST. L. REV. 1, 3 (2014).

⁸⁵ *Id.* at 5, 14.

		several states banned the gun from police training programs. ⁸⁶
Injunctive Effects	Litigation directly induces the defendant to change its products, policies, or practices. The defendant expressly agrees to the change to resolve the dispute, either via private settlement or as part of a consent decree.	<p>Berkeley Balcony Collapse – To settle cases brought by the families of the six students who died in Berkeley, California, on June 16, 2015, when the balcony they were standing on suddenly collapsed, Greystar Real Estate Partners agreed that, going forward, it would conduct routine balcony inspections of its properties, with more robust inspections for sealed balconies since rot inside of them is not visible.⁸⁷</p> <p>George W. Hill Correctional Facility – After a mentally ill inmate died by suicide while being held in solitary confinement, the for-profit company that ran the prison agreed to require a psychologist’s evaluation within twenty-four hours of such a placement and that, going forward, it would perform medical visits on these individuals three times a day.⁸⁸</p>

II. TORT LAW’S FIVE CHANGE-MAKING MECHANISMS

Below, we continue to unpack the five ways that tort law promotes safety. Some are familiar, while others are newer.

A. Cost-Justified Precautions

1. *The Basic Framework*

⁸⁶ Interview with Bob Zimmerman, Saltz Mongeluzzi Bendesky (July 7, 2025); see also Isabel Funk, *Oregon Police Academy Bans Popular Handgun from Use Amid Safety Concerns*, STATESMAN J. (July 1, 2025); Frank Sumrall, *Popular Firearm Banned by WA Police Training Commission After Reports of Untriggered Firings*, MY NORTHWEST (Mar. 25, 2025).

⁸⁷ Interview with Richard H. Schoenberger, Walkup, Melodia, Kelly & Schoenberger (Feb. 6, 2025).

⁸⁸ Kline & Specter Survey Response.

First, tort law deters tortious conduct through the well-worn pathway of cost internalization. The basic idea, as discussed and refined by law-and-economics scholars for decades, is that, if an actor (for instance) sells a defective product and is made to pay for the damage the product inflicts, the actor will be induced to fix the product or to sell less of it.⁸⁹ Cost-justified precautions can also operate prospectively. Once alert to the prospect of liability, an actor may take steps to curtail future exposure. “Often,” one lawyer explained to us, “the second you bring the case, a defendant will then change its policies.”⁹⁰

Some scholars take the insight a step further in the product realm, identifying “price-mediated adjustments.” These adjustments refer to the fact that, when the product maker or seller is forced to pay through the pathway above, it will shoulder that loss by incrementally increasing the cost of the dangerous product. That price hike will predictably dampen demand for the dangerous product, thus reducing “the incidence of accidents.”⁹¹

2. *Applications and Limits*

Not all actors are equally likely to be affected by the imposition or specter of damage payouts. Indeed, we might expect cost-justified precautions to have the most bite when:

- The actor faces meaningful financial exposure, either because the actor is self-insured, the insurance is experience-rated, or the insurance policy has high deductibles such that the imposition of liability is consistently and predictably felt.⁹² If,

⁸⁹ GUIDO CALABRESI, *THE COST OF ACCIDENTS* 73 (1970) (arguing that accident costs create general deterrence by encouraging people to make activities safer by investing in cost-justified precautions); WILLIAM M. LANDES & RICHARD A. POSNER, *THE ECONOMIC STRUCTURE OF TORT LAW* 28 (1987) (“[M]uch of tort law can be explained on the simple hypothesis that it is indeed a system for bringing about an efficient allocation of resources to safety.”).

⁹⁰ Interview with Jay Edelson, Edelson PC (Aug. 7, 2025).

⁹¹ Joseph H. King, Jr., *A Goals-Oriented Approach to Strict Tort Liability for Abnormally Dangerous Activities*, 48 BAYLOR L. REV. 341, 357 (1996); see also A. Mitchell Polinsky & Steven Shavell, *The Uneasy Case for Product Liability*, 123 HARV. L. REV. 1438, 1459–61, 1471, 1480 (2010) (describing this “price signaling”).

⁹² “‘Experience rating’ refers to the practice of adjusting insurance premiums according to the experience of the person or entity insured.” Tom Baker & Timothy D. Lytton, *Allowing Patients to Waive the Right to Sue for Medical Malpractice: A Response to Thaler and Sunstein*, 104 NW. U. L. REV. 233, 251

conversely, an actor has comprehensive insurance that is not experience-rated, or if the defendant and payor are otherwise separate (as in FTCA litigation, for instance, where payments come from the federal government’s general Judgment Fund, rather than the agency that erred), tort payments are less likely to alter the insured’s behavior.⁹³

- Accidents are not caused by a split second of inattention, as, in humans, those momentary lapses are essentially hard-wired. Instead, a payment, or the prospect of a payment, is more likely to affect behavior when the accident is traceable to an individual or entity’s policies, practices, or products—i.e., the actor’s *calculated* decision to take a risk.⁹⁴
- The calculated risk-taker understands liability risk.⁹⁵ A person is unlikely to change her conduct given the specter of liability if she is not aware of liability rules.⁹⁶

n.43 (2010); *see also* Kenneth S. Abraham & Catherine M. Sharkey, *The Glaring Gap in Tort Theory*, 133 YALE L.J. 2165, 2235–39 (2024) (arguing that liability insurance can sometimes promote safety, through, *inter alia*, experience-rating, risk-based pricing, insurer coaching, and aggregation of risk information); Tom Baker & Charles Silver, *How Liability Insurers Protect Patients and Improve Safety*, 68 DEPAUL L. REV. 209 (2019) (same, in the realm of medical malpractice and patient safety).

⁹³ *See* Schwartz, *supra* note 45, at 385 (discussing how insurance muffles tort’s deterrent signal); Nora Freeman Engstrom et al., *Beyond Bivens* (forthcoming 2027) (explaining how the “Judgment Fund” mutes the deterrent effect of litigation against the federal government).

⁹⁴ Schwartz, *supra* note 45, at 383 (“[I]f the party’s conduct is not a function of her own mental choices, then liability rules that appeal to the mind will not be influential.”); Nora Freeman Engstrom, *An Alternative Explanation for No-Fault’s “Demise,”* 61 DEPAUL L. REV. 303, 330–31 (2012) (discussing this wrinkle, in the context of driving).

⁹⁵ REPORT TO THE AM. BAR ASS’N, TORTS A JURISPRUDENCE OF INJURY: THE CONTINUING CREATION OF A SYSTEM OF SUBSTANTIVE JUSTICE IN AMERICAN TORT LAW 9-5 (1984) [hereinafter ABA REPORT] (distinguishing between enterprises, which tend to be “peculiarly price conscious and accident conscious,” and “individuals” who “do not normally engage in fine economic calculations”) (quotation mark omitted).

⁹⁶ ROBBENNOLT & HANS, *supra* note 49, at 2 (“For tort law to effectively deter tortious conduct, the targets of the law must be *aware* of and understand the rules”); Sugarman, *supra* note 34, at 565–67 (discussing how actors’ ignorance of tort liability can blunt tort’s deterrent effect).

- The actor is not already comprehensively (and competently) regulated—meaning that tort law is the only, or one of only a few, checks on its careless conduct. If the actor is already comprehensively regulated, the extra regulation furnished by the tort system is less likely to alter the actor’s conduct.⁹⁷
- The risk is at least partially non-reciprocal, meaning that the actor can imperil a third party without equally imperiling herself. By contrast, when the risk is fully reciprocal (as it is for airline pilots, for instance), actors, hard-wired for self-preservation, are well incentivized to take adequate precautions, even absent tort liability.⁹⁸
- There is not an extended temporal gap between the actor’s tortious conduct, the plaintiff’s manifestation of injury, and the initiation of the plaintiff’s claim. If for instance, a company engages in tortious conduct at Time 1 but pays not a penny until Time 2—decades down the road—that time lag is apt to reduce the payment’s bite.⁹⁹
- An accident, caused by careless conduct, is likely to result in liability. If, for instance, the actor is immunized or judgment proof, if damages are too small to generate lawsuits, or if attribution is difficult (such that, for instance, injured individuals do not realize they have been *tortiously* injured or

⁹⁷ For a discussion of the regulatory systems that govern a range of products and activities and an argument that these regulations render tort law superfluous, see Polinsky & Shavell, *supra* note 91, at 1450–53; Sugarman, *supra* note 34, at 563–64; JAMES M. ANDERSON ET AL., HOW DOES AND SHOULD TORT LIABILITY AFFECT HIGH-CONSEQUENCE LIFE SCIENCES RESEARCH? 10 (RAND 2026). We return to this argument in Part II.D, where we show that tort’s informational effects do not merely duplicate regulatory efforts, but can catalyze them.

⁹⁸ See Sugarman, *supra* note 34, at 561–62 (explaining that, “[w]here conduct is likely to be dangerous to oneself as well as others,” one’s instinct to protect oneself will “control unreasonably dangerous actions independently of tort liability”); Brown, *supra* note 45, at 115 (declaring that “anyone not deterred by a risk to his personal safety is unlikely to be deterred by the possibility of having to pay damages”); see also, e.g., ANDERSON ET AL., *supra* note 97, at 10 (explaining, in the context of life sciences research, that “researchers are already highly motivated to use safe practices because (among other reasons) they themselves are the ones most at risk from a mishap”); Engstrom, *supra* note 94, at 330 (explaining, in the driving realm, that one drives safely, in significant part, owing to “simple self-preservation”).

⁹⁹ See Sugarman, *supra* note 34, at 567 (explaining that a long latency period can blunt “the deterrent function of tort law”).

by whom), there will be substantial under-claiming, and that under-claiming will predictably stunt any effect.¹⁰⁰

3. *Evidence of Cost-Justified Precautions at Work*

Once we focus on those areas where we would logically *expect* that tort payments—or the specter of tort payments—would affect safety, we see plenty of high-profile cases where tort defendants adopt cost-justified precautions, just as law-and-economics scholars have theorized.¹⁰¹

Start with Uber. In July 2025, while facing thousands of suits for driver-committed sexual assaults, Uber announced it would launch gender-based matching, which allows female passengers to request female drivers, in the United States.¹⁰² Before it was engulfed in litigation, Uber had dragged its heels, even though this matching was available elsewhere: Uber offered a female-only option in many other countries, including Mexico, Canada, and India,¹⁰³ and its chief rival, Lyft, made it available in the U.S. starting in 2023.¹⁰⁴ Drawing a connection between the litigation and Uber’s decision, one attorney involved in the cases explained: “[Women to women matching is] something we’ve been very focused on in the litigation,” and it was only months before the first bellwether trials against Uber were scheduled to start that Uber finally made the option available.¹⁰⁵

Consider also a recent episode involving Panera Bread. In May 2024, facing two lawsuits over deaths allegedly caused by its Charged Lemonade (an extravagantly caffeinated beverage, equivalent to roughly four cups of coffee), Panera initially “mov[ed] the beverage

¹⁰⁰ See *id.* at 572 (stating that tort liability is only “meaningful” if a “potential injurer[] is not judgment proof”).

¹⁰¹ Curriden, *supra* note 44 (reporting on a study between *The News* and SMU *Law Review* that identified more than 250 cases in which jury verdicts “led to some kind of change involving everything from potentially dangerous products and waste to the treatment of corporate employees and rules for police conduct”); Gottlieb & Doroshov, *supra* note 44 (highlighting additional examples).

¹⁰² Camiel Irving, *Coming Soon: Women Preferences*, UBER (July 23, 2025).

¹⁰³ Kirsten Korosec, *Uber Is Finally Letting Women Riders in the US Match with Women Drivers*, TECHCRUNCH (July 23, 2025).

¹⁰⁴ Kellen Browning, *New Lyft Feature Allows Women to Match Rides with Other Women*, N.Y. TIMES (Sep. 12, 2023); Emily Steel, *Uber’s Festering Sexual Assault Problem*, N.Y. TIMES (Aug. 6, 2025).

¹⁰⁵ Interview with Anonymous Attorney 8 (Aug. 18, 2025). Uber, for its part, denies that the decision was influenced by litigation.

behind the counter so it was no longer a self-serve offering” and “added signs cautioning that Charged Lemonade should be consumed in moderation and was not recommended for children, people sensitive to caffeine, or pregnant or nursing women.”¹⁰⁶ Thereafter, it discontinued the product.¹⁰⁷

Similar cases abound. To name just a few:

- In 2022, facing a tidal wave of litigation alleging that talc-based baby powder causes cancer, Johnson & Johnson (J&J) replaced its talc-based product with a cornstarch-based alternative.¹⁰⁸ For decades prior to the onslaught of litigation, some at J&J had worried about the cancer risk and noted that the powder sometimes contained a substance that “might be classified as asbestos fiber,” but talc stayed on drugstore shelves.¹⁰⁹
- In 2021, Outback Steakhouse rolled out a safer, wire-bristle-free grill brush after losing a lawsuit brought by a diner who ingested a metal wire along with his meal.¹¹⁰
- In 2019, after a jury returned a \$42 million verdict for the family of a sixteen-year-old boy who was killed after his car was caught in the side underride of a heavy, refrigerated trailer

¹⁰⁶ See Elizabeth Chuck, *Panera Settles Remaining Lawsuits over its Highly Caffeinated Charged Lemonade*, NBC NEWS (July 9, 2025) (detailing the litigation and stating that “Panera removed the controversial beverage from its stores nationwide in May 2024”).

¹⁰⁷ *Id.*

¹⁰⁸ See Tiffany Hsu & Roni Caryn Rabin, *Johnson & Johnson Will Discontinue Talc-Based Baby Powder Globally in 2023*, N.Y. TIMES (Aug. 11, 2022) (detailing J&J’s plans to replace the talc in its baby powder with cornstarch after facing more than 40,000 lawsuits over health risks associated with talc); Interview with W. Mark Lanier, Lanier Law Firm (Aug. 4, 2025) (discussing J&J’s decision). Prior to the global announcement (back in 2020), J&J made the switch in the United States. Hsu & Rabin, *supra*.

¹⁰⁹ Lisa Girion, *Johnson & Johnson Knew for Decades that Asbestos Lurked in Baby Powder*, REUTERS (Dec. 14, 2018) (reporting that “documents, as well as deposition and trial testimony, shows that from at least 1971 to the early 2000s, the company’s raw talc and finished powders sometimes tested positive for small amounts of asbestos, and that company executives, mine managers, scientists, doctors and lawyers fretted over the problem and how to address it while failing to disclose it to regulators or the public”).

¹¹⁰ *Outback Steakhouse Wire Brush Lawsuit and Jury Verdict Prompts Nationwide Safety Change*, YARBOROUGH APPLGATE (Aug. 11, 2021).

truck, the defendant, Utility Trailer, started to make a side underride guard readily available.¹¹¹

A confidential report from Nissan Motor Co., dated November 1985, offers another datapoint. Authored by the company's Corporate Engineering Special Projects Manager, the report explains that "product improvements resulting from P/L [product liability]" arise when the product gives rise to "[m]any lawsuits," a jury determination that the product is "defective," or "[h]igh verdict or settlement costs."¹¹² It then lays out examples of component parts that the company has altered because of verdicts or settlements:

FIGURE 1: *Nissan Memo*

NISSAN EXAMPLES

- Truck head restraints
- Clutch interlock/steering column lock
- Fuel system
- Seat strength

Ultimately, our claim is not that cost-justified precautions always induce safer behavior. Again, when the conditions aren't ripe (when actors are insured and deductibles are low and there is an absence of experience-rating; when the challenged negligence results from a split second of individual inattention; when risks are reciprocal; and/or injury victims only very rarely claim), we believe that damage payments are unlikely to alter an actor's behavior. But sometimes, and in predictable contexts, the prospect or memory of a monetary exchange induces actors to alter their conduct.¹¹³

¹¹¹ Interview with Randi McGinn, McGinn Montoya Love Curry & Sievers PA (Aug. 20, 2025).

¹¹² David R. Foust, Corporate Engineering Special Projects Manager, Nissan Motor Corp., Product Liability: The "Safety Quality" Image and The Role of Engineering (Nov. 1985), at 006292 (on file with authors).

¹¹³ Quantitative evidence lends some additional support to this idea. In particular, to assess whether tort liability deters, scholars have leveraged various interventions that predictably increase or decrease liability, and, using differences-in-differences models, have quantified accidents before and after the interventions took effect. Most relevant for current purposes, scholars have zeroed in on damage caps and assessed whether caps result in an increase in adverse events. Not all of these studies have found effects. *See, e.g.,* Shepherd,

B. Institutional Introspection

1. *The Basic Framework*

Second, tort litigation can promote safety by triggering organizational introspection—helping defendants *themselves* see risks that they had not previously understood. As Joanna Schwartz explains, in complex organizations, information is often dispersed and stratified.¹¹⁴ Frontline employees may see warning signs but lack the perspective to connect the dots.¹¹⁵ And even if a frontline employee does see the larger picture, if she is not incentivized to tell, or if the infrastructure isn’t conducive to telling, actionable information may never make its way up the ladder, to senior leadership.¹¹⁶

Litigation is well suited to bridge these institutional silos and surface what was “previously unknown, ignored, or

supra note 36, at 938–42 (finding complex associations between tort reforms and accidental death rates). But some have.

Most notably, in 2022, Zenon Zabinski and Bernard Black keyed in on five states that adopted noneconomic damages caps in the medical malpractice realm and found, consistent with expectations, that caps were associated with an uptick in adverse patient events. Zenon Zabinski & Bernard S. Black, *The Deterrent Effect of Tort Law: Evidence from Medical Malpractice Reform*, 84 J. HEALTH ECON. 84 (2022). This finding is surprising because, importing the insights above, one might predict that the medical arena would see muted cost-based deterrence. (Among other complicating variables, medical malpractice insurance, which is not reliably experience-rated, is ubiquitous, and vanishingly few injured patients actually file claims.) Still, however, at least some scholars have found that modest shifts in permissible damages result in perceptible shifts in care.

Other studies attempt to assess tort law’s deterrent effect but do not focus on damages in particular. *E.g.*, JAMES M. ANDERSON, PAUL HEATON & STEPHEN J. CARROLL, *THE U.S. EXPERIENCE WITH NO-FAULT AUTOMOBILE INSURANCE: A RETROSPECTIVE* 80–81 (2010) (tabulating eight studies that compare auto accidents in tort as against no-fault states); Jonathan Cardi et al., *Does Tort Law Deter Individuals? A Behavioral Science Study*, 9 J. EMPIRICAL LEGAL STUD. 567 (2012) (discussing evidence that the imposition of commercial host liability reduces alcohol-related motor vehicle fatalities). Given that broader orientation, these studies shed light on deterrence writ large; they say little about the particular efficacy of cost-justified precautions.

¹¹⁴ See Schwartz, *supra* note 40, at 1060.

¹¹⁵ John Ferejohn, *The Lure of Large Numbers*, 123 HARV. L. REV. 1969, 1984 (2010) (discussing challenges of “acquisition, transmission, and aggregation”).

¹¹⁶ See Schwartz, *supra* note 40, at 1058, 1060.

underappreciated.”¹¹⁷ Organizations may track clusters of complaints, as early indicators of trouble.¹¹⁸ Discovery can force the collection of documents and testimony that would otherwise remain dispersed.¹¹⁹ And the later stages of litigation often require parties to assemble and interpret the record in ways that can reveal weaknesses in policies, lapses in training and supervision, or errors in product design.¹²⁰ Once that information lands with decisionmakers, they may voluntarily reform.

2. *Applications and Limits*

As above, not all cases trigger introspection. Sometimes, there is little to learn. Other times, there is something to learn, but the organization hardly needs litigation to see it. Some incidents are so visible, and so obviously indicative of organizational failure, that they naturally prompt immediate internal review (as with so-called “morbidity and mortality conferences”).¹²¹

These dynamics suggest a useful distinction between two kinds of accidents. The first we might call “bright-blood” accidents, i.e., incidents where the accident itself is undeniable and points to an institutional lapse: A plane crashes. A surgeon amputates the wrong limb. A prisoner dies by suicide while in custody. In such instances, the calamity *itself* typically triggers scrutiny, regardless of whether a lawsuit follows. The second we call “sleeper” accidents. Here, the failure is not immediately apparent: A patient negligently discharged from a hospital may die days later from an untreated infection—or, as below, a car may crash on a lonely Georgia highway. Only careful digging will reveal that these deaths were preventable.

¹¹⁷ See *id.* at 1075.

¹¹⁸ E.g., Kathleen M. Shostek & Robert F. Pendrak, *Use of Malpractice Data in Medical Staff Credentialing*, J. HEALTHCARE RISK MGMT., at 16 (Summer 1996) (advising fellow hospital executives that, when credentialing or re-credentialing a physician, hospitals and health care organizations must carefully review the physician’s “claims history”).

¹¹⁹ See Schwartz, *supra* note 40, at 1066–70; Diego A. Zambrano, *Discovery as Regulation*, 119 MICH. L. REV. 71, 122 (2020).

¹²⁰ See Schwartz, *supra* note 40, at 1072–75.

¹²¹ Cf. Baghdadi Interview, *supra* note 47 (suggesting that, even when there is a robust M&M process, litigation confers benefits: “I think there’s a difference between being under oath. I think the adversarial process is designed to elicit what happened and what should have [happened].”).

It's our hunch that introspection through litigation is most valuable when it comes to these "sleepers" accidents. These accidents are less likely to be captured by routine institutional review and more likely to be written off as bad luck, user error, a natural complication, or inevitable decline. Litigation can change that narrative by forcing relevant facts to be gathered, organized, and evaluated. As one hospital lawyer put it: "If there's a missed diagnosis, sometimes, a lawsuit is the only way we do find out."¹²² That's especially important because, in that lawyer and others' experience, sleeper accidents are prevalent in the medical realm: "It's less often that we know that something went wrong right away."¹²³ A plaintiffs' lawyer made the same point in procedural terms. In "a significant number" of his cases, he said, he is able to show a medical error caused a patient's death or injury, even when the hospital never filed an adverse incident error report as required by state law; this implies that the hospital, initially, had dismissed the incident, or never learned of it at all.¹²⁴

To be sure, it's not always possible—even in retrospect—to disentangle whether it was the accident itself or the accident plus litigation that prompted reform. For example, one lawyer recalled that a major hospital replaced the monitoring equipment in its operating rooms after an anesthesiologist missed the dangerously low blood pressure in a child who later suffered brain injury.¹²⁵ Or, after a patient died when a physician relied on an algorithm his employer, a large healthcare system, required him to use, defense counsel admitted in mediation that the system had changed the algorithm.¹²⁶ Whether that equipment would have been replaced or the algorithm ditched absent "lawyering up" is likely unknowable. Still, the central insight holds: if introspection is about turning buried signals into institutional learning, then it is in sleeper accidents, where the signals are most easily missed, that litigation is most apt to matter.

Beyond the distinction between bright-blood and sleeper accidents, the likelihood of introspection also turns on more familiar

¹²² Interview with Anonymous Hospital Counsel for a Large Academic Medical Center on the East Coast (Aug. 15, 2025) [hereinafter Interview with Hospital Counsel].

¹²³ *Id.*

¹²⁴ Inscho Interview, *supra* note 56.

¹²⁵ Interview with Dom Guerrini, Kline & Specter (Sep. 17, 2025).

¹²⁶ Interview with Christian Jagusch, Walkup, Melodia, Kelly & Schoenberger (Aug. 14, 2025).

institutional features. First, introspection requires a genuine desire to learn from what litigation reveals—whether because an organization faces meaningful financial exposure, has professional norms that reward quality improvement, or faces external pressure.¹²⁷ Second and relatedly, senior leadership must treat the lawsuit as a credible diagnostic signal, rather than a nuisance or noise.¹²⁸ Third, for introspection to promote safety, the organization needs the internal capacity to act on what it learns. It needs personnel and infrastructure able to gather, synthesize, and analyze litigation-generated information instead of allowing it to remain siloed with outside counsel or insurers.¹²⁹ These conditions, naturally, vary across settings.¹³⁰

3. *Evidence of Introspection through Litigation*

While we cannot estimate prevalence—how often litigation tips organizations off to problems in their products, policies, or procedures—there is no shortage of examples.

Litigation has alerted police departments that their officers are conducting improper vehicle pursuits, warrantless home entries, and illegal searches.¹³¹ Further, even on occasions when the police department has possessed the underlying information that could clue them in to a problem, litigation has cut through the haze to make it legible. For example, although the New York City Department of Correction had access to excessive force data, it wasn't until a lawsuit was filed, and an expert was retained, that the expert demonstrated patterns of conduct that the Department had not appreciated.¹³²

¹²⁷ Schwartz, *supra* note 40, at 1083–93.

¹²⁸ *Id.* at 1093–95.

¹²⁹ *Id.* at 1095–1101; *see also* ANDERSON ET AL., *supra* note 97, at 14 (explaining, in the context of high-consequence life sciences research, how tort liability shaped general counsel and administrators' supervision of lab functions).

¹³⁰ Schwartz argues, for example, that, for a number of reasons, hospitals are more likely than police departments to learn from lawsuits. *See* Schwartz, *supra* note 40, at 1083. In our interviews, we heard much the same. *E.g.*, Interview with Al Gerhardstein, Friedman, Gilbert + Gerhardstein (Sep. 18, 2025).

¹³¹ Schwartz, *supra* note 40, at 1062; *see also* Schlanger, *supra* note 40, at 44 (“[I]t was . . . litigation that brought to senior officials’ attention the (plainly unconstitutional) policy in the Miami jail of performing visual body cavity examinations of all women arrested, no matter the charge or circumstances.”).

¹³² Schwartz, *supra* note 40, at 1074.

Or consider the medical realm. After tracking its lawsuits, one nonprofit hospital realized that it had a cluster of pulmonary embolism cases.¹³³ Armed with this information, the hospital responded with a battery of interventions that its risk manager described as “hugely effective” in reducing injuries.¹³⁴ At another nonprofit hospital, whenever lawyers see multiple lawsuits targeting a particular unit, the hospital convenes “focus groups with individuals in the unit to get a better understanding of why the events are occurring, what the problem is, and what the strategy should be moving forward.”¹³⁵

More generally, our interviews with hospital personnel described litigation as an occasion for connecting institutional dots that routine review misses. The General Counsel of one major hospital told us that, “in the context of litigation or at least of a claim being made,” the hospital sometimes discovered “that we did do something wrong that we had not realized.”¹³⁶ The General Counsel added, “maybe we wouldn’t have looked at it as carefully if there weren’t a claim or a litigation.”¹³⁷ Another hospital lawyer described an instance where “we only became aware that the [hospital’s] protocol was not being followed because of the case,” leading the hospital to build “a process for monitoring compliance.”¹³⁸ He also recounted instances where lawsuits revealed not only that something had gone wrong but also *why* the problem had sprung up—for instance, by showing that surgeries were being scheduled so late in the day that fatigue and limited night-shift staffing were increasing risk.¹³⁹

This kind of forced stocktaking is not limited to police and healthcare. A defense attorney who handles catastrophic trucking and car crash cases described a case where litigation revealed that his client had hired a driver after conducting only a perfunctory background check. Once confronted with the deficiency, the company committed

¹³³ Joanna C. Schwartz, *A Dose of Reality for Medical Malpractice Reform*, 88 N.Y.U. L. REV. 1224, 1285–86 (2013).

¹³⁴ *Id.*

¹³⁵ *Id.* at 1285.

¹³⁶ Interview with Anonymous Former General Counsel for a Major Hospital (Aug. 21, 2025). In his words: “[T]here are definitely cases where we did not appreciate we did anything wrong until the litigation.” *Id.*

¹³⁷ *Id.*

¹³⁸ Interview with Hospital Counsel, *supra* note 122.

¹³⁹ *Id.*

to more rigorous vetting going forward.¹⁴⁰ A plaintiffs’ lawyer, who also litigates catastrophic trucking crash cases, put the point more vividly: in some 30(b)(6) depositions with trucking company owners, “you can see on their face this epiphany, like ‘this isn’t right, like we need to change this.’”¹⁴¹

Product liability litigation can provide similar insights. Consider GM. On the heels of GM’s ignition switch debacle (detailed below), GM called Jenner & Block’s Anton Valukas in and asked him to conduct a thorough investigation of the carmaker’s processes. After conducting hundreds of interviews and reviewing millions of documents, Valukas issued a 315-page report.¹⁴² That report explained that, at GM: “Settlement offers between \$2 and \$5 million required approval of a group called the Settlement Review Committee (‘SRC’), which met monthly, and was chaired by the head of global litigation,” while settlements “over \$5 million require[d] approval by the General Counsel.”¹⁴³ The report further explained that the SRC review process *existed* “to spot trends indicating safety issues.”¹⁴⁴ “[I]t was,” one witness explained, “well recognized that a goal of the . . . SRC process was to identify potential safety issues and refer them to engineers.”¹⁴⁵

Litigation can also uncover patterns that a single incident would never reveal. Here, for instance, Margo Schlanger has written about a large retailer that actively monitors claims clusters and, according to the head of risk management, frequently responds to the signals it receives.¹⁴⁶ In one instance, a surge in claims coming from Florida alerted the company that, after rainstorms, stores were not changing floor mats quickly enough; when the mats got wet, floors got slippery, leading to a spate of slip-and-fall accidents.¹⁴⁷ Armed with that information, the company was able to correct the problem.¹⁴⁸

¹⁴⁰ Interview with Mark Barber, Baker Donelson (July 14, 2025).

¹⁴¹ Interview with Michael Leizerman II, The Law Firm for Truck Safety (Sep. 5, 2025).

¹⁴² ANTON R. VALUKAS, REPORT TO BOARD OF DIRECTORS OF GENERAL MOTORS COMPANY REGARDING IGNITION SWITCH RECALLS 12 (2014).

¹⁴³ *Id.* at 107.

¹⁴⁴ *Id.* at 108.

¹⁴⁵ *Id.*

¹⁴⁶ Schlanger, *supra* note 40, at 21–23.

¹⁴⁷ *Id.* at 22.

¹⁴⁸ *Id.*

Finally, introspection can lead the defendant to change how it treats those it's harmed. Take Michigan State's response to the Larry Nassar scandal. The university initially insisted that no one covered up Nassar's sexual assaults.¹⁴⁹ But after years of litigation, the school apologized to victims and stated that it "recognized the need for change."¹⁵⁰ Thereafter, the school invested heavily in patient and athlete protection.¹⁵¹

C. Information Generation

1. *The Basic Framework*

Third, tort law can promote safety by compelling the release of information. Once information comes spilling out, that information can alert the organization to a problem it hadn't realized (as discussed above), catalyze governmental action (as discussed below), tarnish the actor's reputation, or otherwise affect consumer behavior by steering consumers to safer, rather than riskier, alternatives.¹⁵²

2. *Applications and Limits*

Of course, not all litigation results in safety-related disclosures. First, like other mechanisms, the information-forcing function of tort law is apt to work only when the injury is traceable to a public-health hazard that is, in turn, tethered to a particular procedure, policy, or product. Second, there must be an information asymmetry driven by "privately held [safety] information" possessed by the defendant and

¹⁴⁹ *Response to Plaintiffs' Press Conference*, Nov. 22, 2017, MICH. ST. UNIV., <https://msu.edu/ourcommitment/news/2017-11-22-response-plaintiff-press-conference.html>.

¹⁵⁰ David Eggert & Ed White, *Michigan State Agrees to Pay \$500M to Settle Nassar Claims*, AP NEWS (May 16, 2018).

¹⁵¹ See, e.g., Kim Kozlowski, *MSU Makes Scores of Changes After Nassar Scandal*, DETROIT NEWS (Oct. 8, 2018); *Nassar-Related Information*, MICH. ST. UNIV., <https://msu.edu/ourcommitment/news/nassar-information.html>.

¹⁵² See *supra* note 91 and accompanying text. Some law-and-economics scholars have not entirely overlooked the role of information in promoting safety. Polinsky and Shavell, for example, have argued that manufacturers of widely sold products already face powerful reputational incentives to invest in safety, and that these market forces can shoulder the burden of deterrence without a costly litigation system. See Polinsky & Shavell, *supra* note 91, at 1443–50. But there is a critical difference between their account and ours: Polinsky and Shavell treat market discipline as a *substitute* for litigation, whereas our evidence suggests that litigation sometimes *generates* the information on which market discipline depends.

inaccessible to consumers.¹⁵³ If the public is already alert to the danger, any revelation-through-litigation won't move the dial. Third, the case must typically involve meaningful discovery—the exchange of documents, the completion of interrogatories, and depositions of knowledgeable company insiders, in-depth and under oath. A case that doesn't involve discovery—or that involves only superficial discovery—is unlikely to prove revelatory. Fourth, even if there *is* discovery, information might still remain bottled up if a secrecy mechanism (i.e., a protective order, sealing order, or secret settlement) prevents its dissemination.¹⁵⁴ These mechanisms are prevalent, and their prevalence, predictably, constricts tort's information-forcing effect.¹⁵⁵ Fifth, for litigation to surface new information, plaintiffs' counsel must be dogged. A plaintiffs' lawyer who does not dig for answers is quite unlikely to find them.

In sum, the information-forcing function is unlikely to operate in cases that settle quickly, involve minimal discovery, lack broader public or social significance, or that feature expansive protective or sealing orders, that keep the policy-relevant information that *is* uncovered under wraps.

3. *Evidence of the Information-Forcing Function of Tort Law*

Notwithstanding the obstacles above, *sometimes*, policy-relevant information comes spilling out. Take Brooke Melton. On March 10, 2010, Brooke Melton, aged twenty-nine, died when her Chevy Cobalt crossed the center line, hit another vehicle, and spun off the road and into a creek. Police initially blamed her.¹⁵⁶ Doubtful that

¹⁵³ Wagner, *supra* note 42, at 697–98.

¹⁵⁴ In some states, in some areas, secret settlements have been banned. Engstrom et al., *supra* note 61, at 121–29. But, in most states, in most areas, they are both permissible and pervasive. *Id.* at 116 (explaining that “secret settlements are, by all accounts, prevalent” and collecting evidence); *see also* Interview with Jerry Singleton, Singleton Schreiber (Oct. 17, 2025) (stating that “companies insist on confidentiality”). For the prevalence and effect of protective orders and sealing orders, *see generally* Engstrom et al., *supra* note 42 and Nora Freeman Engstrom et al., *[Sealed Record]: An Empirical Study of Sealing Orders in the Federal Courts* (forthcoming 2027), respectively.

¹⁵⁵ *See* Engstrom et al., *supra* note 42, at 161–63 (explaining how protective orders stunt the “information-forcing function” of tort law).

¹⁵⁶ Nora Freeman Engstrom, *When Cars Crash: The Automobile's Tort Law Legacy*, 53 WAKE FOREST L. REV. 293, 329 (2018) (“The police concluded the accident was caused by the fact that Brooke, who was driving 58 mph in a 55-mph zone, was ‘traveling too fast for the roadway conditions.’”).

she was really to blame, Brooke's parents hired Lance Cooper, a personal injury attorney, to investigate. Also skeptical of the official account, Cooper purchased the remains of her Cobalt for \$548, pulled its black box, and found that Brooke's key had slipped from "on" to "accessory" three seconds before impact—disabling her power steering and brakes.¹⁵⁷ Cooper then had the ignition switch disassembled and compared against a replacement purchased off a dealer's shelf. The two parts differed, which meant GM had quietly redesigned the switch without assigning it a new part number (a no-no).¹⁵⁸ In short order, that discovery revealed a defect GM's engineers had identified in 2002 and twice declined to remedy on cost grounds¹⁵⁹—and that had, for a decade, been linked to a string of fatal crashes in which airbags failed to deploy.¹⁶⁰ Federal regulators had logged those crashes for years without connecting them.¹⁶¹ So, apparently, had GM's CEO.¹⁶² It took a wrongful death suit over a single car to surface what neither the manufacturer's leadership nor its regulator had managed to see.

In other cases, litigation has been similarly revelatory. For instance, ongoing sexual assault litigation against Uber has disclosed a whole host of previously secret safety information. Among other

¹⁵⁷ Lance A. Cooper & Patrick A. Dawson, *Switched Off*, TRIAL, Nov. 2014, at 14, 15; see also Engstrom, *supra* note 156, at 329 (describing Cooper's investigation).

¹⁵⁸ Engstrom, *supra* note 156, at 329. GM's redesign without a corresponding part-number change violated the company's own internal policy. See VALUKAS, *supra* note 142, at 96–97. Cooper recalled telling Brooke's father what the comparison had revealed: "he started weeping. He just said, 'I knew, I knew it wasn't Brooke.'" *Great Trials Podcast: Lance Cooper | Melton v. General Motors LLC and Thornton Chevrolet, Inc.* (PodBean, Dec. 17, 2019), at 10:48.

¹⁵⁹ VALUKAS, *supra* note 142, at 199 (recounting that GM engineers considered the problem in 2004 and again in 2005, developed potential fixes, and then scrapped them because the "tooling cost and piece price [were] too high").

¹⁶⁰ See Engstrom, *supra* note 156, at 329–31 (describing the defect's tendency to permit the key to slip from the "on" to the "accessory" position, thereby disabling the vehicle's power steering, power brakes, and airbags).

¹⁶¹ *Id.* at 331 (reporting that, although the NHTSA had recorded numerous fatal accidents in which airbags failed to deploy, agency personnel never connected them, "apparently because they did not understand how airbag systems operate and lacked resources to investigate").

¹⁶² VALUKAS, *supra* note 142, at 199, 228 (concluding that GM's CEO remained in the dark until December 2013 and did not learn details until January 2014, and characterizing Cooper's discovery as a "bombshell").

revelations, the litigation has uncovered that, from 2017 to 2024, the ride-hailing giant received a report of sexual misconduct or assault “almost every eight minutes.”¹⁶³ Litigation also revealed that, from 2017 to 2022, 400,181 Uber trips resulted in reports of sexual assault and sexual misconduct.¹⁶⁴ Furthermore, although the company conducted background checks of its drivers, in many states, it greenlit applicants with criminal convictions, including for stalking, child abuse, resisting arrest, and assault.¹⁶⁵

Or consider ongoing litigation against Meta. Among other things, plaintiffs have uncovered—and trumpeted—evidence that the company viewed teens’ susceptibility to the “feel good effects of dopamine” as presenting “opportunities for us,”¹⁶⁶ even as, publicly, it denied this susceptibility.¹⁶⁷ Or worse: The litigation has shown that Meta’s internal research concluded that “addiction is common on IG [Instagram]” and “[o]lder teen girls are most likely to experience this issue,”¹⁶⁸ even while company executives publicly denied the platforms’ addictive properties.¹⁶⁹

Other examples abound. It was litigation against gun manufacturers that triggered the release of significant policy-relevant information, including that executives had long known about diversion into illegal secondary markets.¹⁷⁰ It was litigation against Johns Manville that documented the company’s “knowledge of asbestos hazards and its methods of concealing this knowledge from the

¹⁶³ Emily Steel, *Uber Cleared Violent Felons to Drive. Passengers Accused Them of Rape*, N.Y. TIMES (Dec. 22, 2025).

¹⁶⁴ Steel, *supra* note 104.

¹⁶⁵ Steel, *supra* note 163 (reporting on information drawn from “lawsuits and other court records”; Uber typically bars the applicant if the conviction is within the past seven years).

¹⁶⁶ *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, 2026 WL 1892681, at *10 (N.D. Cal. 2026).

¹⁶⁷ *Id.* at *5.

¹⁶⁸ *Id.*

¹⁶⁹ *In re Social Media Addiction*, Plaintiffs’ Corrected Omnibus Opposition to Defendants’ Motions for Summary Judgment, 2025 WL 4224861 (N.D. Cal. Nov. 21, 2025).

¹⁷⁰ Timothy D. Lytton, *Using Tort Litigation to Enhance Regulatory Policy Making: Evaluating Climate Change Litigation in Light of Lessons from Gun-Industry and Clergy-Sexual-Abuse Lawsuits*, 86 TEX. L. REV. 1837, 1845–46 (2008).

public.”¹⁷¹ It was litigation against Monsanto—for decades, “the sole producer of [polychlorinated biphenyls] PCBs in the United States”—that uncovered a pile of new information concerning the peril and prevalence of these industrial chemicals.¹⁷² It was litigation against Firestone that revealed a serious tire defect, ultimately linked to 271 American deaths.¹⁷³ It was litigation against the tobacco companies that “established, once and for all, what the industry knew about the danger of its product.”¹⁷⁴ And, it was litigation against Bayer that prompted a scientific journal to retract a prominent study that had claimed that Roundup, the weedkiller, didn’t make people sick.¹⁷⁵

Sometimes, the settlement *itself* compels the disclosure of damning material.¹⁷⁶ An illustration: In one of the Archdiocese of LA’s many settlements to resolve child sex abuse lawsuits, the Archdiocese agreed to stop contesting the release of clergy personnel files.¹⁷⁷ Other clergy cases have included similar terms, including the affirmative disclosure of the names of priests with credible accusations against them.¹⁷⁸

¹⁷¹ *Beeman v. Manville Corp. Asbestos Disease Comp. Fund*, 496 N.W.2d 247, 251 (Iowa 1993) (discussing the “Sumner Simpson papers”).

¹⁷² Gerald Markowitz & David Rosner, *Monsanto, PCBs, and the Creation of a World-Wide Ecological Problem*, 39 J. PUB. HEALTH POL’Y 463, 463–64 (2018) (explaining that litigation has uncovered “an enormous trove of previously private” material concerning PCBs and announcing that they had cataloged this evidence into a new publicly accessible database, <https://www.toxicdocs.org>).

¹⁷³ KOENIG & RUSTAD, *supra* note 78, at 5; Keith Bradsher, *Risky Decision: A Study of Ford Explorer’s Design Reveals a Series of Compromises*, N.Y. TIMES (Dec. 7, 2000), at A1. For the 271 figure, see David S. Sanson, Note, *The Pervasive Problem of Court-Sanctioned Secrecy and the Exigency of National Reform*, 53 DUKE L.J. 807, 815 (2003).

¹⁷⁴ Engstrom & Rabin, *supra* note 43, at 355.

¹⁷⁵ Hiroko Tabuchi, *A Study Is Retracted, Renewing Concerns About the Weedkiller Roundup*, N.Y. TIMES (Jan. 2, 2026).

¹⁷⁶ Another prominent example is the tobacco Master Settlement Agreement, described *infra* at III.

¹⁷⁷ Joe Mozingo & John Spano, *\$660-Million Settlement in Priest Abuses*, L.A. TIMES (July 15, 2007); Special Master’s Report and Recommendation Granting, in Part, Plaintiffs’ Document Production Disclosure and Publication Provision of the Clergy I Settlement Agreements, *The Clergy Cases I*, JCCP 4286 (Cal. Sup. Ct. Apr. 5, 2011). The released material is available at: <https://clergyfiles.la-archdiocese.org/>.

¹⁷⁸ Exhibit E to Global Term Sheet: Non-Monetary Undertakings of the Defendants, BISHOP ACCOUNTABILITY, <https://www.bishop->

Similarly, to reach a \$73 million settlement with the gun manufacturer, Remington, the Sandy Hook families demanded the release of thousands of pages of internal company documents, including some showing how the company deliberately used video-game-inspired military imagery to appeal to young men with violent tendencies.¹⁷⁹ The disclosures were key to the families who, according to their lawyer, stood united in the pledge: “No documents, no deal.”¹⁸⁰

D. Catalyzing Governmental Action

1. The Basic Framework

Fourth, tort law can catalyze governmental action—or, as Martha Minow has put it: “[T]he political logjam that often prevents action by the elected branches may be dissolved by journalistic and political pressure unleashed through judicial action.”¹⁸¹ Litigation can catalyze government action through various mechanisms.

First, tort litigation can draw attention to a problem and place it on the public agenda.¹⁸² Lawsuits can make harms salient. Pleadings, filings, hearings, and trials can generate sustained media attention, and the narrative structure of tort claims—grave injuries to real people caused by institutional wrongdoing—can frame the underlying harm as evidence of a systemic failure rather than isolated misfortune.¹⁸³ That publicity, in turn, can shift political incentives,

accountability.org/OSFS/chapter_11/2011_08_Delaware_OSFS_Nonmonetary_Undertakings.pdf.

¹⁷⁹ Rick Rojas, Karen Zraick & Troy Closson, *Sandy Hook Families Settle With Gunmaker for \$73 Million Over Massacre*, N.Y. TIMES (Feb. 15, 2022); Abbe R. Gluck et al., *Against Bankruptcy: Public Litigation Values Versus the Endless Quest for Global Peace in Mass Litigation*, 133 YALE L.J.F. 525, 557 (2024).

¹⁸⁰ Robert J. Spitzer, *The Sandy Hook-Remington Settlement: Consequences for Gun Policy*, ROCKEFELLER INST. OF GOVT., Mar. 21, 2022.

¹⁸¹ Martha Minow, *Judge for the Situation: Judge Jack Weinstein, Creator of Temporary Administrative Agencies*, 97 COLUM. L. REV. 2010, 2023 n.73 (1997).

¹⁸² Engstrom & Rabin, *supra* note 43, at 354; Lytton, *supra* note 170, at 1842; Parmet, *supra* note 43, at 1695–96.

¹⁸³ Engstrom & Rabin, *supra* note 43, at 354; Timothy D. Lytton, *Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law*, 39 CONN. L. REV. 809, 820 (2007).

making it harder for officials to ignore the problem and easier to justify enforcement, regulation, or statutory reform.¹⁸⁴

Second, as discussed in Section C, tort litigation can surface information that regulators and legislators would not otherwise obtain. Discovery can pry loose concealed risks, internal communications, and operational data that clarify the problem's origin, scope, and character. Once public, those disclosures can prompt investigations, recalls, enforcement actions, or the development of new regulatory standards.

Finally, in part through the pathways above, litigation can shift public opinion and mobilize new constituencies. Media attention to ongoing lawsuits, fortified by damning disclosures, can erode public trust in defendants and make political action against a powerful industry more palatable.¹⁸⁵ Litigation also supplies focal points for advocacy, helping victims and their families organize and lobby for reforms.¹⁸⁶

To be sure, tort litigation can also be counterproductive, triggering backlash by government actors. A series of successful lawsuits may spur legislators to grant defendants statutory immunity, as in the firearms context.¹⁸⁷ Or federal regulators who view state tort suits as misaligned with agency priorities may respond by issuing rules (or accompanying preemption statements) that displace such claims. In this sense, the change tort law catalyzes can include both reformist and counter-reformist responses by public institutions.

2. *Applications and Limits*

Of course, not every tort suit is well-positioned to catalyze governmental action. For tort law to have this effect, first and foremost, the litigation must demonstrate that the accident occurred because of some kind of legislative or regulatory failure. As above, one-off inattention won't do. Second, there must be a receptive governmental actor. Third, the plaintiff and plaintiff's lawyer must have the wherewithal, appetite, and stamina to advocate for broader change.

3. *Evidence of the Catalyst Theory of Change*

¹⁸⁴ Engstrom & Rabin, *supra* note 43, at 354; Fred C. Zacharias, *The Politics of Torts*, 95 YALE L.J. 698, 714–15 (1986).

¹⁸⁵ Engstrom & Rabin *supra* note 43, at 354.

¹⁸⁶ Lytton, *supra* note 43, at 409.

¹⁸⁷ Lytton, *supra* note 170, at 1838 & n.6.

Over the years, many government actions are traceable to tort litigation. For starters, recall Lance Cooper's eureka moment during the GM ignition switch litigation, discussed above. Once Cooper made his findings public, NHTSA fined GM its maximum penalty, Congress convened hearings, and GM ultimately recalled 8.7 million vehicles.¹⁸⁸

Non-headline-grabbing litigation can also spark governmental action. Tom Baker and Charlie Silver report that, in the medical realm, for instance, because "malpractice settlements send reliable, if noisy, signals of provider quality, state medical boards often use them to trigger investigations of physicians."¹⁸⁹

On other occasions, affirmative attorney outreach snaps regulators to attention. For instance, when Philadelphia lawyer Shanin Specter realized that a Daisy firearm had a knack for appearing empty even though a BB was lodged inside, Specter took the time to pen an eight-page letter to the Director of the CPSC's Division of Corrective Actions. It provided in part:

Dear Mr. Schoem:

We write at the request of the parents of Tucker Mahoney, a 16-year-old boy who is in a near vegetative state as a result of being accidentally shot in the head by his best friend with a BB fired from a Daisy PowerLine model 856 airgun. The gun which was used in the shooting was thought to be empty by the boys after it had fired numerous times, producing only air (dry-fired) after it had been shaken, with no BB audible.

We have discovered startling information, which Daisy has kept from the CPSC, about a defect in this gun and the millions like it which are in the hands of children across the country, which makes the gun appear empty when it is not. . . .

These guns pose a serious hazard We urge you to take immediate action in this matter to spare others from the horrible tragedy visited upon Tucker Mahoney and

¹⁸⁸ Engstrom, *supra* note 156, at 331.

¹⁸⁹ Baker & Silver, *supra* note 92, at 219.

the Mahoney family. We are happy to provide any additional information you seek.¹⁹⁰

Thereafter, the CPSC requested, and Specter supplied, videotapes of all the depositions in the case and all documents received in discovery. After reviewing this information, the CPSC then sent a lawyer to Philadelphia to review additional files at Specter's firm.¹⁹¹ Some time later, the CPSC filed a lawsuit seeking a recall of 7.5 million PowerLine Airguns.¹⁹²

In other litigation, the story is similar. Litigation has prompted the recall of, among other things, defective hoverboards,¹⁹³ faulty lighters,¹⁹⁴ IKEA dressers,¹⁹⁵ dangerous baby slings,¹⁹⁶ and electric saws.¹⁹⁷

Other times, litigation can spur changes at the local level. For instance, after Dayna and Eric Quanbeck's seven-year-old son was killed when an unsecured gate fence fell on him, they began a quest to change the law to require tip-over prevention hardware on all gates of a certain size.¹⁹⁸ They prevailed, and now, in Marin County, where they live, an ordinance imposes this requirement.¹⁹⁹

Sometimes, litigation prompts changes to state law. After representing parents who lost their son during a hazing incident at the

¹⁹⁰ ROBERT ZAUSNER, *TWO BOYS: DIVIDED BY FORTUNE—UNITED BY TRAGEDY* 138–39 (2009).

¹⁹¹ *Id.* at 139–40.

¹⁹² *Id.* at 249–51.

¹⁹³ *Get Your Legal Questions Answered & Special Guest Tom Kline*, COURT RADIO (Apr. 15, 2023); *Jetson Electric Bikes Recalls 42-Volt Rogue Self-Balancing Scooters/Hoverboards Due to Fire Hazard; Two Deaths Reported*, CPSC (Mar. 30, 2023).

¹⁹⁴ Gottlieb & Doroshow, *supra* note 44; *CPSC Issues Federal Safety Standard for Multi-Purpose Lighters*, CPSC (Dec. 10, 1999).

¹⁹⁵ *Ikea Paying \$50 Million for Dresser Tip-over Deaths Lawsuits*, PHIL. INQUIRER, (Dec. 22, 2016).

¹⁹⁶ Interview with Alan Feldman, Feldman Shepherd (Aug. 19, 2025); Mark Memmott, *One Million 'Infantino' Baby Slings Recalled*, NPR (Mar. 24, 2010).

¹⁹⁷ Gottlieb & Doroshow, *supra* note 44; *CPSC, Emerson Tool Co. Announce Recall of Craftsman Saws Sold by Sears, Roebuck and Co.*, CPSC (Nov. 14, 2000).

¹⁹⁸ Schoenberger Interview, *supra* note 87.

¹⁹⁹ Richard Halstead, *Marin County Moves to Mandate Gate Safety Measures*, MARIN IND. J. (May 22, 2023).

Beta Theta Pi fraternity at Penn State, the parents' lawyer, Tom Kline, worked to beef up Pennsylvania's criminal and civil laws with respect to hazing injuries. The resulting Timothy J. Piazza Antihazing Law requires Pennsylvania schools to publish a written policy against hazing and enhances institutional penalties.²⁰⁰ The law also makes hazing punishable as a third-degree felony if it results in serious bodily injury or death.²⁰¹ Buoyed by his success in Pennsylvania, Kline has expanded his advocacy to neighboring New Jersey, which passed a similar bill in 2021.²⁰²

For attorney David Bianchi of Florida, the story's been similar. Bianchi represented the family of Chad Meredith, a University of Miami student who died in 2001 in a fraternity hazing incident, all the way to a trial that culminated in a large verdict—indeed, according to press reports, it was “the largest jury verdict in a fraternity hazing case ever in the United States.”²⁰³ On the heels of the verdict, he resolved: “Maybe I can do more for [the family] than just get money. Maybe I can accomplish something else here . . . Maybe we can make improvements to Florida's existing criminal statute.”²⁰⁴ After receiving the clients' consent, Bianchi drafted amendments to fortify Florida's relevant prohibitions, lobbied for the amendments' enactment, and, in 2005, then-governor Jeb Bush signed the “Chad Meredith Act” into law.²⁰⁵

Yet that was not the end of the story. As Bianchi's firm represented more families whose children had died in hazing incidents, the firm's lawyers realized that, even when it was clear that a fraternity pledge was imperiled, fellow students wouldn't call 911 for fear of

²⁰⁰ *Pennsylvania Anti-Hazing Law*, STOP HAZING, <https://stophazing.org/policy/state-laws/pennsylvania/>.

²⁰¹ *Id.*

²⁰² Interview with Shanin Specter, Kline & Specter (Mar. 11, 2025). *See also* ROBERT ZAUSNER, UNCONVENTIONAL WISDOM: HOW TWO OF AMERICA'S TOP TRIAL LAWYERS WIN CASES 115 (2025); Emily Shapiro, *Anti-Hazing Law Named After Penn State Fraternity Pledge Goes Into Effect in Pennsylvania*, ABC NEWS (Oct. 19, 2018).

²⁰³ Kristina Bugante & Ari Odzer, *How Chad Meredith's Death Propelled Florida's Anti-Hazing Law*, 6 SOUTH FLORIDA (Mar. 1, 2024).

²⁰⁴ Interview with David Bianchi, Stewart Tilghman Fox Bianchi & Cain, P.A. (Aug. 18, 2025).

²⁰⁵ Bugante & Odzer, *supra* note 203.

criminal prosecution.²⁰⁶ With the blessing of his new clients—the parents of Florida State student, Andrew Coffey, who died from alcohol poisoning in 2017—Bianchi drafted a new law that makes hazing a felony and simultaneously furnishes immunity to whoever summons emergency assistance.²⁰⁷ Known as “Andrew’s Law,” this bill also passed the Florida legislature; it took effect in 2019.²⁰⁸ Now, Bianchi is taking his efforts on the road. “So I’m going to start looking for some more states to keep doing this with. That’s the bottom line.”²⁰⁹

Or, consider the case of Elizabeth Garcia. On January 16, 2002, while working alone during the graveyard shift at an Allsup’s gas station in Hobbs, New Mexico, Garcia, a twenty-six-year-old single mom of three, was abducted, raped and brutally murdered.²¹⁰ This was the twelfth homicide at an Allsup’s store in thirty years, but, until Garcia’s murder, nothing was done.²¹¹

Garcia’s family sued Allsup’s for wrongful death and, with the help of their lawyer, Randi McGinn, simultaneously petitioned New Mexico’s Environmental Improvement Board (the state’s version of OSHA) to change the rules that govern all-night convenience stores to provide store clerks better security.²¹² After a series of hearings, it did; thanks to this change, all-night convenience stores in New Mexico now must have security cameras and, between 11:00 pm and 7:00 am, the stores must be staffed with at least two employees or provide a bullet-resistant enclosure for anyone working alone.²¹³ Furthermore, as part of its settlement with Garcia’s family, Allsup’s—which had vigorously opposed and then appealed these new regulatory

²⁰⁶ Interview with Larry Stewart, Stewart Tilghman Fox Bianchi & Cain, P.A. (Aug. 7, 2025).

²⁰⁷ Bianchi Interview, *supra* note 204.

²⁰⁸ *Id.*; Byron Dobson, Gov. DeSantis Signs ‘Andrew’s Law’, *Enacting Tougher Hazing Measures*, TALLAHASSEE DEMOCRAT (June 26, 2019).

²⁰⁹ Bianchi Interview, *supra* note 204.

²¹⁰ RANDI MCGINN, *CHANGING LAWS, SAVING LIVES: HOW TO TAKE ON CORPORATE GIANTS & WIN 1* (2014); *State v. Lovett*, 286 P.3d 265, 268 (N.M. 2012); *Settlement Reached in Lawsuit over Death of Clerk Prior to \$51 Million Jury Award*, LAW.COM (Apr. 9, 2008).

²¹¹ Malone, *supra* note 44, at 44.

²¹² *Id.*; McGinn, *supra* note 44, at 197.

²¹³ MCGINN, *supra* note 210, at 100; McGinn, *supra* note 44, at 197.

requirements²¹⁴—promised to never again “challenge convenience store safety regulations.”²¹⁵

E. Injunctive Effects

1. *The Basic Framework*

Finally, tort law sometimes effects change via what we call injunctive effects—meaning that, as part of a settlement agreement, a defendant explicitly pledges to alter its products, policies, or practices.²¹⁶

2. *Applications and Limits*

Cases most amenable to injunctive effects tend to share three features: An accident (1) caused by a defective product or deficient practice or policy, (2) injures at least one person but typically not hundreds or thousands of people, and (3) that injury results in severe harm or death (but not necessarily astronomical out-of-pocket losses).

First, only certain kinds of accidents are ripe for this kind of resolution. Continuing a now-familiar refrain, good candidates are those that aren’t the result of fleeting or momentary inattention but, rather, those traceable to deficient staffing, lax screening, inadequate training, defective products, dangerous policies, or hazardous physical spaces. As one lawyer explained, injunctive effects do not make sense “where there’s just a one-off act or omission that leads to harm.”²¹⁷

Second, individual cases appear more amenable to injunctive effects than their aggregate counterparts. In the former, the attorney-client relationship tends to be personal, and that personal interaction facilitates bespoke solutions. In the latter, by contrast, representation gets routinized, and injuries are often evaluated using grids, schedules, matrices, or formulas.²¹⁸ This routinization is not particularly conducive to creative or personalized remedies.²¹⁹ Additionally, when a defendant faces enormous liability—as J&J does when it comes to

²¹⁴ MCGINN, *supra* note 210, at 101–02, 136.

²¹⁵ *Id.* at 204.

²¹⁶ See Engstrom & Qian, *supra* note 44.

²¹⁷ Interview with Perry Buckner, Yarborough Applegate (May 8, 2025).

²¹⁸ Nathaniel Donahue & John Fabian Witt, *Tort as Private Administration*, 105 CORNELL L. REV. 1093, 1123 (2020) (describing this dynamic).

²¹⁹ However, even within this sphere, we see some such activity. See, e.g., Edelson Interview, *supra* note 90 (explaining that he has settled numerous mass tort cases with meaningful nonmonetary terms).

baby powder and Uber does when it comes to sexual assault—the possibility of further liability sometimes encourages the defendant to make changes independently (as both J&J and Uber did), long before a settlement agreement is ever inked.

Third, for those one-off cases *possibly* susceptible to an injunctive effect, the gravity of injury—and extent of out-of-pocket loss—is relevant, although dynamics are complex. On one end of the continuum, if the injury is minor, fleeting, or transitory, there seems to be little push to think outside the box. In those cases, lawyers move quickly, leaving little time for the reflection and investment needed to devise a meaningful change.²²⁰ At the opposite extreme, because clients who opt for injunctive relief frequently do so at the expense of maximizing their financial recovery, when the accident takes a huge financial toll, injunctive relief may become less palatable.²²¹ Meanwhile, plaintiffs seem to *particularly* prioritize injunctive effects in two kinds of cases: (1) injury claims involving sexual assault,²²² and (2) wrongful death cases, and particularly those involving children.²²³ In both, probably non-coincidentally, the financial loss is often negligible.²²⁴ Yet the losses themselves are undeniably severe.²²⁵

3. *Evidence of Injunctive Effects*

As above, we cannot speak to prevalence—we do not know how often litigation yields injunctive effects.²²⁶ What we can say is that examples abound, in cases both prominent and obscure.

²²⁰ See Engstrom & Qian, *supra* note 44.

²²¹ E.g., Gerhardstein Interview, *supra* note 130 (making this point).

²²² E.g., Interview with Courtney Winston, Allen, Allen & Allen (Mar. 11, 2025) (noting that, for sexual assault plaintiffs, preventing future harm is often “much more of a concern”).

²²³ E.g., Randi McGinn Survey Response (“Particularly for parents who have lost a child, the changes are often more important than the monetary compensation they receive. It is very difficult for parents to take money from the death of their child.”); Gerhardstein Interview, *supra* note 130 (“[I]t’s easiest to [pursue injunctive effects] with wrongful death cases.”).

²²⁴ In sexual assault cases, compensatory damages are often, but not inevitably, negligible. See Engstrom & Qian, *supra* note 44.

²²⁵ *Id.*

²²⁶ For further discussion, see *id.*

Start with the prominent.²²⁷ The August 2026 settlement between Meta and state attorneys general secured a raft of injunctive effects that will reshape how Facebook and Instagram operate. Among other concessions, Meta agreed to default teenage users to a two-hour daily limit, to lock their accounts overnight, to beef up its age-assurance measures, and to open its compliance to review by a jointly selected independent auditor.²²⁸

But our interviews revealed that injunctive effects are not confined to marquee litigation.²²⁹ In one case, involving the sexual assault of four young children, lawyers learned that the assailant, the maintenance man at a low-income apartment complex, had been hired even though he was a registered sex offender. As part of the settlement, the landlord pledged that, going forward, it would conduct thorough background checks on all employees.²³⁰

Or, after a young couple, John Wesley Heathco and Abby Lutz, died from carbon monoxide poisoning at a Hyatt hotel, the Heathco family successfully demanded that the hotel chain install and maintain hard-wired carbon monoxide detectors in all its properties, worldwide.²³¹

Or consider, finally, the 1996 death of Albuquerque resident, Larry Harper.²³² Suffering from mental health challenges, Harper contemplated suicide; he called his brother to say his life was not worth living and “headed out the door with a handgun.”²³³ Alarmed, Harper’s brother called the Albuquerque Suicide Prevention Hotline and then the police.

²²⁷ Famously, the tobacco and opioid litigation also culminated in significant injunctive effects. We discuss those *infra* at Part III.

²²⁸ Settlement Agreement, *In re* Soc. Media Adolescent Addiction/Personal Injury Prods. Liab. Litig., No. 4:22-md-03047-YGR (N.D. Cal. Aug. 26, 2026), ECF No. 3451-1 [hereinafter Meta Settlement Agreement], at 20–24.

²²⁹ To this point, as noted previously, only a handful of reports have ever addressed tort law’s capacity to directly effect change, outside of marquee litigation. For discussion, see *supra* note 44.

²³⁰ MCGINN, *supra* note 210, at xiv (foreword by Roxanne Barton Conlin).

²³¹ Interview with Chuck Wesley Heathco (Sep. 18, 2025).

²³² Rebecca Trounson, *Deaths Raise Questions About SWAT Teams*, L.A. TIMES, (Nov. 1, 2000).

²³³ MCGINN, *supra* note 210, at 89; Timothy Egan, *Soldiers of the Drug War Remain on Duty*, N.Y. TIMES (Mar. 1, 1999).

Unfortunately, the police responded to the call, not with a modicum of compassion, but with overwhelming force. A SWAT team (including nine men wearing camouflage and carrying automatic weapons) was assembled, Harper was located, and, from forty-three feet away, Harper was fatally shot.²³⁴

A wrongful death suit ensued. Ultimately, the family decided to take less by way of compensation (only \$200,000) in exchange for the Albuquerque Police Department's pledge that it would fundamentally overhaul its practices, including that it would dismantle the SWAT team, create a crisis intervention unit composed of officers specifically trained to assist suicidal citizens, and record all future encounters with distressed individuals.²³⁵

III. SOMETIMES DISCRETE, SOMETIMES OVERLAPPING

Above, we show that tort law's capacity to promote safety extends beyond the old workhorse of cost internalization. It, additionally, can surface policy-relevant information, stimulate introspection, catalyze governmental action, and, via settlements, prompt organizations to adopt sweeping reforms. In this Part, we show that, rather than always operating independently, tort law's five safety-promoting mechanisms can blur, blend, or overlap.

Some multi-mechanism cases are familiar. Consider the tobacco litigation, initiated by the states and settled for \$206 billion in 1998. The settlement included what we would call injunctive effects, including a pledge to end youth-targeted advertising and shutter three research groups that had long worked to discredit evidence about the danger of smoking.²³⁶ At the same time, the settlement mandated the disclosure of millions of pages of documents (an information-forcing mechanism).²³⁷ And these disclosures helped to draw attention to the health risks of smoking and spurred legislative action, including a tax hike on cigarettes, place-of-use restrictions, and government-initiated educational messaging.²³⁸ And, all these efforts *ultimately* culminated

²³⁴ Egan, *supra* note 233.

²³⁵ *Id.*; MCGINN, *supra* note 210, at 93.

²³⁶ Master Settlement Agreement (MSA), NAT'L ASS'N OF ATTORNEYS GENERAL, <https://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/1msa.pdf>.

²³⁷ See LINDA S. MULLENIX, OUTGUNNED NO MORE: THE NEW ERA OF FIREARMS INDUSTRY ACCOUNTABILITY 69 (2025); Stanton Glantz, Opinion, *Lawsuits Against Companies Aren't Just About Getting Money. They're About Revealing the Truth.*, WASH. POST (Sep. 9, 2019).

²³⁸ Engstrom & Rabin, *supra* note 43, at 350, 354–58.

in the enactment of the Family Smoking Prevention and Tobacco Control Act, which gave the FDA authority to regulate tobacco products, “after forty years of otherwise failed efforts to regulate the industry.”²³⁹

Opioid litigation is similar. Initiated in 2014 by a slew of cities, counties, municipalities, and Tribes against a range of opioid manufacturers, distributors, and retailers, that litigation has, among other things, compelled the disclosure of the Drug Enforcement Administration’s Automation of Reports and Consolidated Orders System (ARCOS) database, which provides granular data on opioid shipment volumes and supply patterns (an informational effect).²⁴⁰ Meanwhile, various settlements that resolved strands of the litigation featured clear injunctive effects.²⁴¹ For instance, when settling with plaintiffs in 2023, CVS agreed to implement a prescription validation process that requires pharmacists to investigate suspicious prescriptions, such as those where the patient insists on paying in cash.²⁴² Manufacturers Allergan and Teva agreed to stop rewarding or disciplining employees based on their volume of opioid sales.²⁴³ And, in its 2022 settlement with plaintiffs, J&J agreed to exit the opioid business altogether.²⁴⁴

In other instances, information about an injunctive effect at Company 1 can come spilling out, and this disclosure can prompt *other* companies, that hear about changes at Company 1, to alter their own conduct. That we might denominate an injunctive/information hybrid. As an example, a Dallas-based attorney told us about a case involving a high schooler (denominated Jane Doe) who had been groomed and sexually abused by a teacher at her private school. To settle Doe’s case, the school ultimately pledged, among other things, that it would reform its teacher-student contact policies, including by banning teacher-student texting.²⁴⁵ Doe’s lawyer recalled that, after the

²³⁹ MULLENIX, *supra* note 237, at 70.

²⁴⁰ Brian Mann, *Federal Judge Orders Release of Dataset Showing Drug Industry’s Role in Opioid Crisis*, NPR (July 16, 2019). For further discussion, see Engstrom & Rabin, *supra* note 43, at 347.

²⁴¹ See Engstrom & Qian, *supra* note 44 (offering additional detail).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Family Awarded Millions in Lawsuit Against Episcopal School*, NBC DFW (Sep. 21, 2011); Aldous Interview, *supra* note 50.

agreement containing the injunctive effect was inked, “virtually every private school [in Dallas] contacted me and asked me to come and give a speech at their school about what happened [and] what policies they did not have in place that could have prevented what happened to Jane Doe.”²⁴⁶

A Georgia lawyer experienced something similar. This lawyer, who focuses on truck accident cases, recalled that, in “several” instances, he has fielded calls from corporate defendants who say: ““Hey, I heard from the safety director at such and such company that you did this in the settlement of your case. Would you mind talking to me about that? Because I’m trying to get buy-in for that [safety change] at my company””²⁴⁷

Or sometimes, a case may lead to introspection plus an injunctive effect. Consider Omegle, a site that randomly matched two people to chat by video. Founded in 2009, by 2023, Omegle was wildly popular, boasting some 60 million visits per month.²⁴⁸ Yet, in the midst of this explosive growth, the site matched a young girl, called A.M. in court filings, with a predator, who groomed her and then pressured her to send explicit photos of herself, which he proceeded to sell and trade.²⁴⁹ A.M. ultimately sued and, as part of the settlement, as Figure 2 demonstrates, the founder agreed to shutter the website, a direct—extremely powerful—injunctive effect.²⁵⁰

FIGURE 2: *A.M. v. Omegle Settlement Agreement*

2. Shutdown of Omegle.com. At the moment of execution of the Agreement, and in perpetuity, Omegle.com will cease operating a website other than as provided in Section 3, below.

Additionally, the founder’s goodbye letter also highlighted that A.M.’s lawsuit had promoted introspection. As Figure 3 demonstrates, the letter specifically thanked A.M. for “opening my eyes to the human cost of Omegle” and acknowledged that “[t]here can be no honest

²⁴⁶ Aldous Interview, *supra* note 50.

²⁴⁷ Interview with Joseph A. Fried, Fried Goldberg (May 1, 2025).

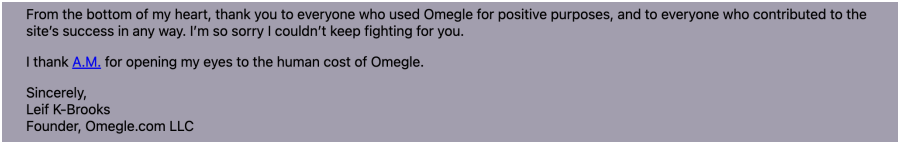
²⁴⁸ Eduardo Medina, *Omegle Shuts Down as Founder Acknowledges Crime on Video Chat Site*, N.Y. TIMES (Nov. 9, 2023).

²⁴⁹ *A.M. v. Omegle.com, LLC*, 614 F. Supp. 3d 814, 817 (D. Or. 2022).

²⁵⁰ Bill Chappell, *Video Chat Site Omegle Shuts Down After 14 Year—And an Abuse Victim’s Lawsuit*, NPR (Nov. 9, 2023).

accounting of Omegle without acknowledging that some people misused it, including to commit unspeakably heinous crimes.”²⁵¹

FIGURE 3: *Good-Bye Message on Omegle’s Website*



From the bottom of my heart, thank you to everyone who used Omegle for positive purposes, and to everyone who contributed to the site's success in any way. I'm so sorry I couldn't keep fighting for you.

I thank [A.M.](#) for opening my eyes to the human cost of Omegle.

Sincerely,
Leif K-Brooks
Founder, Omegle.com LLC

Or, consider a 2006 settlement between the Roman Catholic Diocese of Spokane, Washington, and seventy-five sexual abuse survivors. In addition to a hefty financial payment, the diocese agreed to publish the survivors’ accounts of abuse in its newspaper each month for three years and further pledged that Bishop William Skylstad would “visit every parish where abuse occurred and disclose to parishioners that an abusive priest had served there.”²⁵² Through one lens, this settlement showcases tort law’s informational effects. But *the precise way* the Diocese agreed to furnish the information leans toward the injunctive. Indeed, that same settlement between the Spokane Diocese and sexual abuse survivors included, not just the terms above, but *also* a pledge that Bishop Skylstad would lobby lawmakers to eliminate statutes of limitations on child sex crimes.²⁵³ We might sensibly characterize that lobbying as an injunctive effect that attempts to catalyze governmental action.

Finally, recall the Plushes’ case against the City of Cincinnati. As part of the settlement, as explained above, the City agreed to hire an expert team to diagnose the issues that led to Kyle’s death, a direct injunctive effect.²⁵⁴ But beyond that, the expert team released a *public* report with its findings, which found that the accident was caused by a toxic mix of outdated technology, low morale, and lax employee supervision—thus demonstrating the information-forcing effect of tort law.²⁵⁵ And armed with this information, the City implemented real reforms—and, indeed, overhauled practices beyond the four corners of

²⁵¹ Leif K-Brooks, OMEGLE.COM (last accessed Jan. 29, 2025).

²⁵² LYTTON, *supra* note 79, at 179; Sarah Kershaw, *Rare Kind of Scandal Accord in Spokane Diocese*, N.Y. TIMES (Feb. 2, 2006).

²⁵³ Kershaw, *supra* note 252.

²⁵⁴ Settlement Agreement, *supra* note 19.

²⁵⁵ Kyle Plush QSF Expert Team, *Kyle Plush Settlement Agreement Report* (on file with authors).

the actual settlement.²⁵⁶ One case, then, can drive change across multiple avenues.

IV. IMPLICATIONS: EXPANDING OUR CONCEPTION OF TORT LAW

Above, we challenge the familiar—and we argue, incomplete—assessment of tort law’s deterrent power. In Parts IV and V, we unpack the implications of our analysis.

To start, in Part IV, we detail how our findings complicate and enrich the conventional account of tort law—and, in particular, we contend that scholars’ myopic fixation on cost internalization has obscured tort law’s broader safety-promoting capacity and skewed assessments of how tort law stacks up, as against both no-fault systems and bankruptcy.

A. The Crabbed View of Tort Law’s Deterrence Effect Has Outlived Its Usefulness

First, our discussion ought to expand scholars’ and policymakers’ assessment of whether and how tort law promotes safety. For decades, scholars and policymakers have focused primarily—and, in some cases, exclusively—on tort’s capacity to induce the defendant to internalize the cost of accidents.²⁵⁷ With that crabbed conception (the view that tort law *only* promotes safety by shifting costs), scholars and policymakers have fretted about tort’s inability to achieve this end, particularly when claiming rates are low, insurance coverage is high, and experience rating is marginal.²⁵⁸ Indeed, thinking that cost-justified precautions are the alpha and

²⁵⁶ McCarty, *supra* note 1.

²⁵⁷ E.g., Pierce, *supra* note 58, at 1289 (contending that tort law promotes safety “by forcing individuals and firms with theoretical control over safety to internalize the costs of accidents”); Steven Shavell, *Strict Liability Versus Negligence*, 9 J. LEGAL STUDIES 1, 2–3 (1980) (similar); *see also supra* note 36 (collecting additional citations).

²⁵⁸ E.g., ATIYAH, *supra* note 74, at 162, 165 & 189 (considering *only* the financial piece of the tort law pie and concluding that, because tort law does not deter, “[t]he action for damages for personal injuries should simply be abolished, and first-party insurance should be left to the free market”); Pierce, *supra* note 58, at 1307 (similar, while declaring: “The limited effectiveness of tort law as a means of encouraging safety has given rise to suggestions that this putative goal be abandoned entirely in favor of a system designed only to provide compensation”); *see also supra* note 45 (collecting additional sources).

omega of deterrence, scholars have concluded that, if these precautions don't work, the broader tort law project is a bust.²⁵⁹

These accounts err by failing to recognize that, in a meaningful if unquantified subset of cases, tort law's capacity to effect change extends well beyond cost internalization. This Article, then, should spark a broader and more rigorous accounting of tort law's deterrent power.

B. Tort Versus Alternatives

Second, our inventory of how tort law effects change may alter how tort compares to rival mechanisms.

The tort system has long been criticized for all manner of shortcomings. Tort law, critics contend, is slow, costly, cumbersome, unduly adversarial, and unpredictable; it overpays certain people and underpays (or neglects to pay) others; and, arguably worst of all, clogs courts with too-often meritless claims.²⁶⁰ Ultimately, critics charge that, given tort's many deficiencies, the [fill-in-the-blank tort law alternative du jour] is apt to be vastly superior. Indeed, prominent tort law critic Jeffrey O'Connell has quipped: "Almost anything is likely to be better than the common-law tort system that lawyers have devised."²⁶¹

These days, bankruptcy is much in vogue, and, following this script, bankruptcy's backers insist that, when harm is widespread, Chapter 11 bests tort because it can furnish compensation to plaintiffs at greater speed and lower cost.²⁶² In the 1960s and 1970s, no-fault

²⁵⁹ E.g., John G. Fleming & Stephen D. Sugarman, *Perspectives on Compensating Accident Victims*, in PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICS, at 179–80 (1983) (stating that, particularly in light of insurance, which "distributes [any loss] among a large pool of premium payers and thereby 'socializes' the loss . . . one must be skeptical about the effectiveness of tort law in promoting accident prevention"); Daniel P. Kessler, *Evaluating the Medical Malpractice System and Options for Reform*, 25 J. ECON. PERSP. 93, 95 (2011) (declaring that the medical malpractice system has not "provided incentives for appropriate care" because, inter alia, "malpractice insurance is typically not strongly experience-rated"). For additional, similar, assessments, see *supra* note 45.

²⁶⁰ Engstrom, *supra* note 57, at 814 (cataloging these criticisms).

²⁶¹ Jeffrey O'Connell, *Alternatives to the Tort System for Personal Injury*, 23 SAN DIEGO L. REV. 17, 35 (1986).

²⁶² See D. Theodore Rave, *Bankruptcy v. Multidistrict Litigation for Mass Torts*, 114 CAL. L. REV. 839, 842 (2026) (explaining that bankruptcy is ascendant,

systems were all the rage; reformers, similarly, boasted that, compared to tort, no-fault systems could deliver compensation more quickly, more consistently, and with less friction and expense.²⁶³

Thus far, this debate has unspooled with tort law (mostly) holding its own. Tort's champions, for instance, have conceded that bankruptcy bests tort along some dimensions but countered that tort outperforms bankruptcy when it comes to "transparency, accountability, participation, [and] law development."²⁶⁴ Others, similarly, argue that, while bankruptcy might have an edge on tort when it comes to efficiency, judicial economy, and finality, it lags tort on other key metrics, including that it robs victims of agency.²⁶⁵

Years ago, when comparing tort against no-fault, tort's critics and champions stuck to a similar script. Tort's critics harped on efficiency, consistency, and predictability, while its champions argued that, among other shortcomings, no-fault mechanisms sacrifice deterrence and run counter to Americans' individualized conception of fault.²⁶⁶

Yet, for all the articles authored, briefs filed, and ink spilled, we suggest that *all* these comparative tallies are incomplete because the recognition of tort law's *various* safety-promotion mechanisms forces a recalculation of the tort-versus-alternatives ledger.²⁶⁷

fueled by the idea that, compared to litigation, "bankruptcy is a *better* procedural system" to resolve mass tort claims); *see, e.g.*, Lawrence Ponoroff, *Mass Tort Litigation, Chapter 11, and Good Faith: Let Not Perfect Be the Enemy of Pretty, Pretty Good*, 74 DUKE L.J. ONLINE 1, 21–22 (2024) (touting bankruptcy as a comparatively superior mechanism for the "equitable and cost-effective closure to mass tort liability" and that, given these advantages, "bankruptcy . . . offers a made-to-order solution to the otherwise vexing problem of mass tort liability"); Anthony J. Casey & Joshua C. Macey, *In Defense of Chapter 11 for Mass Torts*, 90 U. CHI. L. REV. 973, 994 (2024) ("Moving mass torts to Chapter 11 offers significant advantages for resolving the claims fairly and efficiently, thus ultimately benefiting all parties.").

²⁶³ Nora Freeman Engstrom, *Exit, Adversarialism, and the Stubborn Persistence of Tort*, 6 J. TORT L. 75, 75–76 (2013).

²⁶⁴ Gluck et al., *supra* note 179, at 528–29.

²⁶⁵ Pamela Foohey & Christopher K. Odinet, *Silencing Litigation Through Bankruptcy*, 109 VA. L. REV. 1261, 1315 (2023).

²⁶⁶ *See* Engstrom, *supra* note 263, at 77–80.

²⁶⁷ This is particularly true because some tout the advantages of bankruptcy by stating, *inter alia*, that the tort system "fails to deter undesirable behavior," given that tort claims are often processed in MDLs "where there are no trials, and no

Consider information. As we show above, tort law sometimes surfaces information, and these disclosures sometimes catalyze broader regulatory and institutional action. It's fair to say that these informational disclosures are a prime benefit of the tort system; we believe they sit at the center of tort's deterrence apparatus.

By contrast, no-fault systems, which tend to jettison *all* forms of defendant-side factfinding, are *terribly* positioned to surface information. Bankruptcy's capacity is similarly stunted: Disclosure statements and first-day motions in Chapter 11, which are *written by the debtor*, are no match for adversarial discovery, and, although Chapter 11 requires debtors to disclose information about their operations and the events precipitating the bankruptcy, those disclosures are neither contested nor contextualized as they would be in tort.²⁶⁸ Further, in the tort system, policy-relevant information sometimes does not come spilling out until trial. But both no-fault and bankruptcy systems put the kibosh on trials, often indefinitely.²⁶⁹

Or consider injunctive effects. Again, in the tort system, these effects sometimes result in far-reaching changes to the defendant's processes, procedures, and products. Yet, no-fault systems never induce injunctive effects, and Chapter 11 plans rarely do.²⁷⁰

attempts are made to investigate malfeasance.” Samir D. Parikh, *The New Mass Torts Bargain*, 91 FORDHAM L. REV. 447, 478 (2022). This statement is difficult, if not impossible, to square with the evidence that we assemble. For concrete and policy-relevant evidence of wrongdoing surfaced in mass tort MDLs, see *supra* notes 102–105 and 163–165 (regarding Uber) and 166–169 (regarding Meta) and 240 (regarding opioids).

²⁶⁸ Gluck et al., *supra* note 179, at 557 (explaining that the “kind of financial information that most courts focus on” in bankruptcy is a pale imitation of the information divulged through the tort process); *but cf.* Anthony J. Casey, Joshua C. Macey, *Bankruptcy by Another Name*, 133 YALE L.J. FORUM 1016, 1041–44 (2024) (suggesting that, sometimes in bankruptcy, additional information is divulged).

²⁶⁹ See Rave, *supra* note 262, at 879.

²⁷⁰ The primary exception to this general rule is child sex abuse bankruptcies; these reorganization plans typically include extensive non-monetary commitments. *E.g.*, Third Amended Joint Chapter 11 Plan of Reorganization, *In re USA Gymnastics*, No. 18-09108-RLM-11 (Bankr. S.D. Ind. Oct. 25, 2021), ECF No. 1655, at 62–67 (detailing the debtor's extensive nonmonetary commitments); Exhibit L to Notice of Filing of Debtors' Third Modified Fifth Amended Chapter 11 Plan of Reorganization and Blackline Thereof, *In re Boy Scouts of America and Delaware BSA, LLC*, No. 20-10343-LSS (Bankr. D. Del. Feb. 15, 2022), ECF No. 8814, at 2–7 (similar).

Of course, we are not saying that tort law *inevitably* bests other alternatives. Our claim, instead, is that, when tallying tort's advantages, it is critical to tally them accurately, and no tally is accurate without evaluating—and crediting—tort's *broad* capacity to alter individual and organizational conduct.

V. IMPLICATIONS: ENRICHING OUR UNDERSTANDING OF THE LAWYER'S ROLE

Our expanded account of tort's change-making power has implications not only for how we evaluate tort *law* but also for how we understand tort *lawyering*. Our argument unspools in two parts. First, we argue that plaintiffs' lawyers who pursue institutional change act, quite literally, as "lawyers for the situation"; they treat a client's case not as an isolated dispute, but as a lever for correcting broader institutional failures. Yet, in so doing, they invert—and challenge—the conventional view of what "lawyering for the situation" entails. Second, the richer picture of what the tort system does forces a reconsideration of how the professionals who toil in the system ought to behave. The conventional view is that plaintiffs' lawyers must choose between narrowly serving their clients or broadly serving the public. But we show that, often, these aims are not in tension; rather, in important and underappreciated ways, they overlap.

A. "Lawyer for the Situation," Revisited

When we think of a "lawyer for the situation," we tend to think of Louis Brandeis. In Brandeis's 1916 confirmation hearings, a witness coined the phrase to capture Brandeis's mode of practice. According to that witness and others, Brandeis believed that his ultimate obligation was to the public, and so he represented clients even while jealously guarding his own autonomy and maintaining his "steely independence" therefrom.²⁷¹

In the intervening decades, the phrase has taken on a life of its own. Now, it is understood that "[t]o be 'counsel for the Situation' is to resist . . . the traditional notion that lawyers should have a single client to whom they owe unqualified loyalty."²⁷² In modern parlance, the words are shorthand for an attorney who represents a client but, with an eye toward serving the public interest, remains deliberately

²⁷¹ Clyde Spillenger, *Elusive Advocate: Reconsidering Brandeis as People's Lawyer*, 105 YALE L.J. 1445, 1451 & 1474 (1996).

²⁷² *Id.* at 1502.

detached from—rather than wholly enmeshed in—the client’s cause.²⁷³

Our account sharpens and revises that picture. The lawyers we interviewed are, quite literally, “lawyers for the situation.” And, though no less public minded than Brandeis, they pursue the public interest by radically different means. Where the Brandeisian model locates the pursuit of justice in a lawyer’s cultivated distance from a client’s cause, these lawyers seek systemic change through their proximity to it, turning the client’s case into a vehicle for reform. Through their work, in other words, they offer a different model of effective advocacy and a different vocabulary for describing it.

Across our interviews, “lawyering for the situation” took many forms. Some of the lawyers we spoke to pressed regulators to acknowledge and address the risks that litigation surfaced, as Shanin Specter did in alerting the CPSC to the danger of the Daisy Powerline model 856 airgun. Other times, they used a client’s case to press for new legislation, as Tom Kline and David Bianchi did through their multi-prong campaign to enhance hazing laws in Pennsylvania, Florida, and New Jersey. On other occasions, they pursued change through administrative rulemaking, as Randi McGinn did in urging New Mexico’s Environmental Improvement Board to revise the rules governing all-night convenience stores.

For another vivid example, take Shawn Kasserman, who represented Linda Ginzel and Boaz Keysar after their sixteen-month-old son, Danny, was killed when he was suffocated in a defective crib while at daycare.²⁷⁴ The wrongful death lawsuit against the crib manufacturer was quickly resolved.²⁷⁵ But Kasserman’s dedication to Ginzel and Keysar—and to their commitment to make systemic change—lasted “decades.”²⁷⁶

Following Danny’s death, Ginzel and Keysar founded a nonprofit, Kids in Danger, to push for tougher standards for children’s

²⁷³ See David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 862 n.280 (1992) (“The classic formulation of an independent approach to lawyering that attempts to reconcile the client’s goals with larger public values is Brandeis’s famous injunction that lawyers should be ‘counsel to the situation.’”).

²⁷⁴ Marla Felcher & Ellen Liberman, *Silent Recall*, MOTHER JONES (Nov. 1998).

²⁷⁵ Interview with Boaz Keysar (Oct. 6, 2025) (explaining that “the whole legal part with [Shawn] was like, what, two months”).

²⁷⁶ *Id.*

products, and, through that organization, notched a series of legislative wins. Most notably, Kids in Danger helped secure passage of the Consumer Product Safety Improvement Act of 2008, which requires companies to test children's products before bringing them to market.²⁷⁷ (Surprisingly, before that, testing was mostly optional.) Section 104 of that Act, named the Danny Keysar Child Product Safety Notification Act and codified at 15 U.S.C. § 2056a, also mandates safety standards for cribs and other durable infant and toddler products and requires manufacturers to supply product registration cards so that they can notify parents of recalls.²⁷⁸ In the course of these efforts, Kasserman was (in Ginzel's words) "all-in."²⁷⁹ Indeed, after Ginzel stepped down as the president of Kids in Danger's board, Kasserman stepped in.²⁸⁰ Said Ginzel, "I think [Kids in Danger] became part of his identity, also."²⁸¹

Lonita Baker's representation of Breonna Taylor's family offers another exemplar. After Taylor was gunned down by police executing a no-knock warrant in March 2020, the family quickly reached a \$12 million settlement with the City of Louisville.²⁸² At Taylor's mother's insistence,²⁸³ that settlement included not only financial compensation but also "unprecedented" nonmonetary relief.²⁸⁴ Among other provisions, the City of Louisville agreed: to implement a new system to flag officers accused of excessive force; to provide new incentives for officers to live in the community; and that,

²⁷⁷ Stefano Esposito, *U. of C. Couple Whose Son Died in Crib Accident Have Spent 25 Years Trying to Prevent Similar Tragedies*, CHI. SUN-TIMES (Jun. 7, 2023).

²⁷⁸ See 15 U.S.C. § 2056a; Lisa Parker, "Danny's Law" Changes World of Recalls, 5 CHICAGO (Jul. 22, 2010).

²⁷⁹ Interview with Linda Ginzel (Oct. 6, 2025); Esposito, *supra* note 277.

²⁸⁰ Interview with Shawn Kasserman, Tomasik Kotin Kasserman (Aug. 19, 2025).

²⁸¹ Ginzel Interview, *supra* note 279.

²⁸² Rukmini Callimachi, *Breonna Taylor's Family to Receive \$12 Million Settlement from City of Louisville*, N.Y. TIMES (Sep. 15, 2020).

²⁸³ Of why she fought for these injunctive effects, Taylor's mother, Tamika Palmer, explained: "This is something that should never happen to anyone, ever." Errin Haines, *Breonna Taylor's Mother Remembers*, 19TH NEWS (Mar. 12, 2025).

²⁸⁴ Callimachi, *supra* note 282 (quoting community organizer Christopher 2x).

going forward, approval for search warrants would be conditional on the acquiescence of a judge *and* a commanding officer.²⁸⁵

But the settlement was only the first chapter in Baker’s enduring relationship with Taylor’s family. In the years since the representation formally “ended,” Baker has continued to ensure that the City fulfills its promises and has also worked with the family to pursue additional objectives.²⁸⁶ Among other things, Baker has guided the family through the twists and turns of the criminal prosecution of the responsible officers,²⁸⁷ and pushed for the enactment of “Breonna’s Law,” which bans no-knock warrants.²⁸⁸

Reflecting on her long journey with Taylor’s family, Baker explained, “It’s not that I’m still the lawyer.”²⁸⁹ “But I’m more of a support system in helping to explain what’s going on.”²⁹⁰ According to Baker: “[T]hose wraparound services for me come because I want to change the system, and you can’t do that with just one client at a time.”²⁹¹

For decades, the prevailing wisdom has held that lawyers must choose between serving the client well and serving the public well, and that, following Louis Brandeis’s example, advancing the public interest requires professional detachment. We show that some lawyers reject that binary and refuse that tradeoff. By offering what Baker calls “wraparound services,” they articulate and enact a different model of ethical lawyering—one grounded, not in distance, but devotion.

For his part, Al Gerhardstein continues to meet with the Plushes and actively monitor Cincinnati’s reforms. As Jill Plush

²⁸⁵ *Id.*

²⁸⁶ Interview with Lonita Baker, Baker & Westbrook (Sep. 9, 2025).

²⁸⁷ *Id.* For the many twists and turns in the criminal prosecution, see Tesfaye Negussie, *Ex-Officer Brett Hankison Sentenced to 33 Months in Prison in Breonna Taylor’s Death*, ABC NEWS (July 21, 2025); Richard A. Oppel Jr. et al., *What to Know About Breonna Taylor’s Death*, N.Y. TIMES (Aug. 23, 2024).

²⁸⁸ Callimachi, *supra* note 282. Kentucky’s law curtails no-knock warrants; Virginia’s bans them. Rachel Treisman, *Kentucky Law Limits Use of No-Knock Warrants, A Year After Breonna Taylor’s Killing*, NPR (Apr. 9, 2021); *Breonna Taylor’s Family Praises Virginia Ban on No-Knock Warrants*, PBS (Dec. 7, 2020).

²⁸⁹ Baker Interview, *supra* note 286.

²⁹⁰ *Id.*

²⁹¹ *Id.*

explained: “So we’re four and a half years after the settlement, and he’s still involved, and he’s not getting paid for it. He’s just still involved because he wants to make sure that they hold up their end of [the bargain].”²⁹² “[I]t’s an honor to stay involved,” Gerhardstein told us. “And it’s good work, it’s honorable work.”²⁹³

B. Altruistic Relief and the Ethical Lawyer

A full inventory of tort law’s change-making capacity not only provides a distinct model of lawyering. It also forces us to grapple with what it means to be an ethical personal injury lawyer, especially in cases where the client may have nonmonetary aims.

1. The Traditional View: Compensation Is King

The conventional view is that a personal injury lawyer’s job is to maximize the client’s compensation.²⁹⁴ Indeed, it is thought that by doing so, the lawyer can serve both sides of the tort law coin: The more zeroes on the settlement check, the better the client will be financially (of course) and also the stronger the deterrent signal. Capturing this conventional perspective, Tom Tyler explains:

Lawyers typically believe that clients evaluate their legal experiences by the size of the outcome upon settlement and the speed with which the outcome is delivered; they do not think clients are concerned with how the problems are solved or how the favorable outcomes are reached.²⁹⁵

As another puts it: “Achieving the goal of justice for an injured client typically translates into maximizing compensatory damages.”²⁹⁶ Or, to quote a third: “Lawyers generally talk[] about money as the best way

²⁹² J. Plush Interview, *supra* note 13.

²⁹³ Gerhardstein Interview, *supra* note 130.

²⁹⁴ *E.g.*, A. HAROLD FROST & MARVIN V. AUSUBEL, PRACTISING L. INST., PREPARATION OF A NEGLIGENCE CASE 148 (6th ed. 1967) (advising lawyers: “Most every client who has been injured wants to secure an adequate financial compensation for his injuries and losses. . . . What concerns him the most are concrete questions of dollars and cents.”).

²⁹⁵ *E.g.*, Tom R. Tyler, *A Psychological Perspective on the Settlement of Mass Tort Claims*, 53 LAW & CONTEMP. PROBS. 199, 199 (1990).

²⁹⁶ Ira H. Leesfield, *How to Maximize Compensatory Damages in a Personal Injury Case*, 11 PRAC. LITIG. 7, 7 (2000).

to achieve justice. The calculus of ‘more money, more justice’ [is] the yardstick” many lawyers utilize.²⁹⁷

A couple of lawyers we spoke to also echoed this idea. One, for instance, observed:

[E]thically speaking, I do not have duties and obligations to a cultural movement. I have duties and obligations to an individual person and our system, our civil justice system, offers one kind of justice generally, and it’s compensatory in nature. And so when I’m considering my ethical duties and the advice that I’m giving to a client, the most important thing is to advise them in what way will enhance their compensation.²⁹⁸

Another perhaps more bluntly explained: “If I got very little money for my client, I haven’t done a very good job for them. If I got a lot of money for them, I did a good job for them. That’s the metric we use.”²⁹⁹

Yet, of the sixty-seven plaintiffs’ lawyers we spoke to, the vast majority (at least 90 percent) said that they do not use this metric.³⁰⁰ They think far beyond the monetary. Articulating this conception, one explained: “[T]rying to get money for a client is just one piece of [being a plaintiffs’ lawyer], but it sure is not everything. . . . [Y]ou don’t go to law school just to get money for people. I mean, you ought to answer to a higher calling.”³⁰¹ In the words of another:

²⁹⁷ Balboni, *supra* note 49, at 207 (describing many lawyers who represented individuals sexually abused by Catholic priests and observing, of her interviews: “Most attorneys I spoke with focused on the monetary amount of settlement; most survivors I spoke with talked about the intangibles.”).

²⁹⁸ Interview with Anonymous Attorney 13 (Feb. 26, 2025).

²⁹⁹ Interview with Anonymous Attorney 8 (Aug. 18, 2025); *see also* JENNIFER M. BALBONI, CLERGY SEXUAL ABUSE LITIGATION: SURVIVORS SEEKING JUSTICE 120–21 (2011) (explaining that, in clergy sexual abuse litigation, even though most survivors had non-monetary aims, “[l]awyers generally talked about money as the best way to achieve justice”; “[t]he calculus of ‘more money, more justice’ was the yardstick they held out to determine equity”).

³⁰⁰ We stress, however, that this estimate should be taken with a grain of salt because the lawyers we spoke to are not representative of the plaintiffs’ bar. For discussion, *see supra* note 38.

³⁰¹ Bianchi Interview, *supra* note 204.

The reason that a lot of folks like me do what we do is . . . not only to help our clients, [although] that's important, but also try to make the world a safer place I'm more concerned about preventing these tragedies from happening than I am purely money for the client.³⁰²

These warring perspectives are getting at foundational questions about the lawyer's role. Suppose that, in the course of representation, a plaintiffs' lawyer encounters a dangerous practice that will hurt others if it's unaddressed. Is the lawyer duty-bound to push for altruistic relief—by, for example, insisting that the danger be disclosed—even if doing so is apt to compromise the client's compensation? Or is the lawyer ethically obliged to forbear, to prioritize the client's monetary recovery, full-stop?³⁰³

These questions have been extensively—even exhaustively—debated. In these debates, some have argued that the lawyer's obligation begins and ends with her client.³⁰⁴ And, accepting that vision, many have also assumed that to serve one's client well *is* to maximize that client's monetary compensation; that, in the personal injury realm, compensation and competence go hand-in-glove. Reflecting that perspective, Judge Jack Weinstein has observed: “Since the ethical rules require that attorneys obtain a swift and optimal recovery for their clients, the plaintiffs’ attorney seems to have little choice but to accept a favorable settlement offer on secrecy terms.”³⁰⁵ Lawyers, too, have invoked clients’ overriding (though perhaps un-interrogated) monetary interest to defend their decisions to counsel clients to take settlement offers that demand secrecy. Steven Nemeroff, who settled a Zomax suit that concealed information about the drug’s risks, explained: “The client is concerned about being compensated in full. The lawyer must abide by the

³⁰² Interview with Brandon Peak, Peak Wooten McDaniel & Colwell LLP (Aug. 20, 2025).

³⁰³ As is likely implicit, the dilemma is particularly stark because it involves settlement—the area of litigation thought to be most clearly reserved for the client. See MODEL RULES OF PRO. CONDUCT r. 1.2(a).

³⁰⁴ Fred C. Zacharias & Bruce A. Green, “*Anything Rather Than a Deliberate and Well-Considered Opinion*”—Henry Lord Brougham, *Written by Himself*, 19 GEO. J. LEGAL ETHICS 1221, 1221 (2006) (quoting 2 TRIAL OF QUEEN CAROLINE 3 (1821)).

³⁰⁵ Jack B. Weinstein, *Ethical Dilemmas in Mass Tort Litigation*, 88 NW. U. L. REV. 469, 511 (1994).

concerns and wishes of his client . . . not the fact that [information will remain secret or] other victims may be injured.”³⁰⁶

On the other side of the debate are those who emphasize the lawyer’s responsibility to the public—the obligation, as Bill Simon has put it, to “promote justice.”³⁰⁷ Applied here, *that* perspective entails an affirmative obligation to pursue altruistic relief (perhaps by resisting an NDA or obtaining an injunctive effect, say), if doing so would predictably protect others from injury.

Who should lawyers serve? What kind of morality ought to govern their activities? So far, these core questions have been much discussed but have come to something of a stalemate. One reason is that both sides typically proceed from a shared, albeit unstated, premise: that the client’s interests and the public interest are in sharp conflict, and it’s zero sum. Yet, our and others’ research reveals that, when it comes to a client’s decision to press for altruistic relief, very often, no such conflict arises. The recognition of this (frequent) alignment causes the otherwise vexing ethical dilemma to dissipate.

2. *The Underlying (and Under-appreciated) Alignment*

The dilemma dissipates because many—arguably most—seriously injured clients want to couple their compensation with some form of altruistic relief.³⁰⁸

Researchers, who have surveyed injury victims, at different times, using different methodologies, and in different places, have found, again and again, that *many*—and arguably most—seriously injured clients come to law with nonmonetary aspirations.³⁰⁹ And a

³⁰⁶ Benjamin Weiser & Elsa Walsh, *Drug Firm’s Strategy: Avoid Trial, Ask Secrecy*, WASH. POST, Oct. 25, 1988, at A1, A12 (alteration in original).

³⁰⁷ See WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS’ ETHICS* 138 (1998); see also DAVID LUBAN, *LAWYERS AND JUSTICE* (1988); DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 67 (2000); Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589, 643 (1985).

³⁰⁸ Here, as the text makes clear, we are speaking of seriously injured individuals. We do not weigh in on the interests of those who have sustained minor or fleeting injuries.

³⁰⁹ See, e.g., TAMARA RELIS, *PERCEPTIONS IN LITIGATION AND MEDIATION: LAWYERS, DEFENDANTS, PLAINTIFFS, AND GENDERED PARTIES* 62 (2009) (surveying plaintiffs in Ontario and reporting that “virtually all plaintiffs vehemently stressed they sued not for money, but for principles”); Merle H. Weiner, *Civil Recourse Insurance: Increasing Access to the Tort System for Survivors of Domestic and Sexual Violence*, 62 ARIZ. L. REV. 957, 988–91

high proportion specifically want to protect others from injury. Jennifer Moore and Michelle Mello found after researching the goals of medical malpractice victims in New Zealand: “Nearly all . . . underscored the importance of institutions making efforts to prevent recurrences.”³¹⁰ Jennifer Balboni found, based on interviews with clergy sexual abuse survivors, “[s]urvivors, in most cases, were looking for things outside of money,”³¹¹ and many specifically prioritized “implementing prevention strategies so that others would not be similarly abused.”³¹² Surveying med mal victims from the United Kingdom, Charles Vincent and co-authors found that the most commonly cited reason for taking legal action was “so that it would not happen to anyone else.”³¹³ Maureen Balleza found, after interviewing rape survivors and counselors, that survivors who filed civil suits were frequently driven by “a need to protect other women.”³¹⁴

Our interviews with nearly seventy experienced plaintiffs’ lawyers from all corners of the country fortify this strong scholarly consensus. *Nearly all* stressed that, for the vast majority of their catastrophically injured clients, money is distinctly secondary—and sometimes, barely part of the conversation at all. Many clients’ dominant goal, these lawyers report, is to protect others from injury.³¹⁵

As Al Gerhardstein put it: “Nobody comes in and says, ‘Give me as much as I can get for my dead son.’ They come in lamenting how the system . . . failed them and their family. And the only thing

(2020) (compiling “[f]ive empirical studies” from “Canada, the United States, the United Kingdom, and Australia” that “have explored what survivors of domestic and sexual violence” want when they go to law and reporting that these studies consistently show that “[m]ost survivors are not motivated by money”); *see also* Engstrom & Qian, *supra* note 44 (collecting additional evidence).

³¹⁰ Jennifer Moore & Michelle M. Mello, *Improving Reconciliation Following Medical Injury: A Quantitative Study of Responses to Patient Safety Incidents in New Zealand*, 26 BMJ QUAL. SAFETY 788, 792 (2017).

³¹¹ Balboni interviewed twenty-two survivors and thirteen advocates. Balboni, *supra* note 49, at 207; *id.* at 223–24 (underscoring the point).

³¹² *Id.* at 208–09.

³¹³ Charles Vincent et al., *Why Do People Sue Doctors? A Study of Patients and Relatives Taking Legal Action*, 343 LANCET 1609, 1611 (1994).

³¹⁴ Maureen Balleza, *Many Rape Victims Finding Justice Through Civil Courts*, N.Y. TIMES (Sep. 20, 1991).

³¹⁵ According to the lawyers we interviewed, another high priority is learning what, exactly, went wrong. *See supra* note 50 and *infra* note 321.

they can hold on to is [the idea] that this death can have meaning [by creating] reform.”³¹⁶

Many others concurred. As one lawyer put it: “In my experience, people want to make sense out of tragedy, and in particular, don’t want to believe that their loss was senseless. Virtually all plaintiffs I represent in catastrophic injury or death cases express the hope that the lawsuit will ‘keep this from happening to someone else.’”³¹⁷ Said another: “I’ve just never met a client in 40 years of practice that didn’t feel strongly about not wanting to have whatever bad thing happened to them, not happen again in the future.”³¹⁸ Another declared: “[T]hey come to me and they say, ‘I never want this to happen to anybody else,’ and that is the underlying, motivating factor for almost all of my clients.”³¹⁹ In the words of another: “It’s like, how do we stop this from occurring again? That’s what comes up over and over and over again.”³²⁰ As another recounted: “In cases where there is a serious injury or death, no one has ever come into my office and asked how much money the case is worth. . . . Having experienced the worst thing in their lives, they want you to find the reason the unthinkable has happened and find a way to prevent it from happening to anyone else.”³²¹ Or, finally, as Jill Plush put it: “We just wanted to make sure it never happened again to another person. That was really all we wanted.”³²²

3. *The Ethical Implications*

When you put the puzzle pieces together, the implications of these findings are profound. In particular, the fact that injury victims frequently want to “prevent a recurrence” means that, to the extent the lawyer pushes for altruistic relief, designed to prevent a recurrence, the lawyer is frequently *advancing* the client’s objective.³²³ And that means: (1) To be a zealous advocate for the client often *entails* serving the public interest; and (2) the long-hyped “conflict” between the

³¹⁶ Gerhardstein Interview, *supra* note 130.

³¹⁷ Richard Friedman Survey Response.

³¹⁸ Specter Interview, *supra* note 202.

³¹⁹ Interview with Roxanne Conlin, Roxanne Conlin & Associates (Aug. 5, 2025).

³²⁰ Interview with René Haas, Haas & Perry (Aug. 6, 2025).

³²¹ MCGINN, *supra* note 210, at 86.

³²² J. Plush Interview, *supra* note 13.

³²³ Moore & Mello, *supra* note 310, at 792.

public's and the client's interest is thus at least partly imaginary; it is not real.³²⁴

How should these insights be operationalized? Start at the beginning. At the time of retention, a lawyer should actually *ask* the client what the client wants to achieve through the litigation—and the lawyer should treat the client's actual answer, not some preconceived notion of what the answer might be, as the north star.³²⁵

As California lawyer Khaldoun Baghdadi put it:

[Y]our job is to hear your client out and to find a path forward that fulfills their needs, their interests, and their wishes. We are in the restorative business, period. And there's more to it oftentimes than simply how much? You can also ask what? What if? And why not?³²⁶

For how he navigates this situation, Michael Leizerman, who represents victims in serious trucking accidents, told us that, whenever he meets a new client, he asks: “‘what is your goal? What do you want me to do for you?’”³²⁷ In this conversation, he explained, many of his clients do stress their need to be compensated. But frequently, they respond: “What's most important to me is that this doesn't happen to other families.”³²⁸

New Mexico lawyer Randi McGinn said much the same. Years ago, she “began asking the client what they really wanted from the case. Over and over again, out of their profound grief or loss, the same unselfish answer came back: ‘I want to make sure this never happens

³²⁴ Cf. Balboni, *supra* note 49, at 207 (describing the pain many sexual assault victims felt when their lawyers, some of whom “recognized that survivors were looking for a different type of justice,” nevertheless “felt constrained to work within the traditional tort model” and prioritized the clients’ financial recoveries, rather than their non-monetary aspirations).

³²⁵ Some refer to this model of lawyering as “client-centered.” Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 507 (1990) (explaining that, to practice law consistent with the client-centered model, one must work to “foster client-decisionmaking” and work, “not only to provide opportunities for clients to make decisions themselves but also to enhance the likelihood that the decisions are truly the client’s”). Accord LEIZERMAN, *supra* note 49, at 263 (offering this admonition).

³²⁶ Baghdadi Interview, *supra* note 47.

³²⁷ Leizerman Interview II, *supra* note 141.

³²⁸ *Id.*

again to anyone else.”³²⁹ Given that, she explains, she has come to believe: “If you truly want justice for your seriously injured clients or those who suffer a wrongful death, you need to ask for more than money. You need to ask for change.”³³⁰

Al Gerhardstein concurred. In his view, many lawyers push only for compensation—and believe they are supposed to push only for compensation—because they “just assume that they are doing a contingency case, and the goal is to get as much money as possible.”³³¹ And, they blunder ahead with this misconception because they neither ask clients about their desires nor educate clients about the full range of remedial possibilities.³³²

Offering a slightly different spin, California attorney Brian Panish reported: “I would say your ethical obligation is to” fulfill your client’s objectives.³³³ “And that means full compensation to the best of your ability. [But] compensation doesn’t always have to be monetary.”³³⁴ Some lawyers, he noted, fall back on the “excuse” that prioritizing non-monetary aims is “unethical, I can’t do that. I got to just get the money.”³³⁵ Those lawyers, he said, are selling themselves—and their clients—short. The lawyer’s job, he insisted, is to advise “the client of all [the client’s] options,” and, when so advised, clients’ objectives expand.³³⁶

Still, a skeptic might say: “Yes, clients—whether in surveys or in attorney-client conversations—might *say* they want to help others. But what if a client’s stated desire is not the client’s *real* desire because of social desirability bias?”³³⁷ How, then, should the lawyer proceed?”

³²⁹ McGinn, *supra* note 44, at 183.

³³⁰ *Id.*

³³¹ Gerhardstein Interview, *supra* note 130.

³³² *Id.* (explaining: “if you don’t educate the client, you can’t expect the client’s goals to reflect this broader notion of our duties”); *accord* Kline & Specter Survey Response (“Once made aware that remediation is possible, many Plaintiffs are as interested in reform as they are financial compensation.”).

³³³ Interview with Brian Panish, Panish Shea Ravipudi (Sep. 17, 2025).

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *See, e.g.,* Anton J. Nederhof, *Methods of Coping with Social Desirability Bias: A Review*, 15 EUR. J. SOC. PSYCH. 249, 264 (1985) (explaining that people

The answer is again simple. If the client insists that she wants to maximize her financial recovery, full stop, the lawyer must, eventually, acquiesce to that demand.³³⁸ While we believe the lawyer can (and we believe, should) encourage the client to think more broadly,³³⁹ and while we believe lawyers can offer carrots to nudge clients toward pursuing certain nonmonetary aims,³⁴⁰ eventually, if the lawyer chooses to take the client's case, the client's interests are the interests the lawyer must satisfy.³⁴¹

tend to deny socially undesirable traits and claim socially desirable ones based on what constitutes a good impression in a given situation).

³³⁸ See MODEL RULE OF PRO. CONDUCT. R. 1.2(a) (specifying that the client controls the objectives of representation).

³³⁹ See *id.* r. 2.1 (authorizing the lawyer to counsel the client and, in so doing, to reference “other considerations such as moral, economic, social and political factors”); W. Bradley Wendel, *Legal Ethics and the Separation of Law and Morals*, 91 CORNELL L. REV. 67, 110–11 (2005) (arguing that, “[u]nless the lawyer bullies or deceives the client into changing her mind about the ends of the representation, there is nothing wrong with persuading the client to give up a planned course of action”); Jean Sternlight, *Lawyers’ Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Non-Adversarial Setting*, 14 OHIO ST. J. DIS. RESOL. 269, 294–95 (1999) (explaining that “it is entirely appropriate for attorneys to attempt to convince their clients that a particular course of action is unwise or immoral”). Not all ethicists agree. See, e.g., DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* 166 & 197–203 (1977) (encouraging lawyers to refuse to offer personal opinions and admonishing lawyers to “consciously make every effort to communicate neutrality” unless the client is on the verge of making an “extremely detrimental decision”).

³⁴⁰ Here, we believe that it is appropriate to state, in a retention agreement, that the client's contingency fee will be discounted if she pairs her financial recovery with altruistic relief. For why, see L.A. Cnty. Bar Ass'n Formal Op. 505 (2000) (authorizing discounts, to encourage clients to resist secret settlements). However, this principle comes with two caveats. First, while a discount can permissibly nudge a client toward a particular course of conduct, it cannot be so large that it *coerces* the client in one direction or the other. See GEOFFREY C. HAZARD, *THE LAW OF LAWYERING* § 6.10 (2025 update) (cautioning against coercion). Second, while we recognize that discounts and penalties are two sides of the same coin, it is fairly clear that, under prevailing ethical rules, while discounts are permissible, the converse is not; lawyers cannot financially *penalize* the client for refusing to pair her recovery with altruistic relief. See *Culhane v. Thovson*, 34 N.W.3d 740, 755 n.7 (S.D. 2026) (observing that “it is generally held that the lawyer may not burden the client's ability to make settlement decisions”) (quotation marks omitted).

³⁴¹ See MODEL RULE OF PRO. CONDUCT. r 1.2(a).

But, if the client articulates broader aims—or is uncertain—competent counseling requires exploring those aims and the tradeoffs among available options, rather than assuming that money is the only metric.

Furthermore, even if the client seems ambivalent, we believe that the lawyer should err on the side of steering the client toward coupling a financial recovery with altruistic relief. That’s because, if the lawyer really is driven by a desire to do “right” by her client (rather than her desire to maximize her own compensation via the contingency fee), there is good reason to think that many clients are better served when their financial recovery is paired with altruistic relief. Three considerations, drawn from a robust empirical literature, help explain why.

First, the evidence shows, quite convincingly, that once the victim’s material needs are covered, the psychic benefits that come with extravagant compensation are limited.³⁴²

Second, when it comes to acquiescing to secrecy, there is a growing body of evidence that, when a traumatized client becomes bound to an expansive NDA, that *binding* is apt to exacerbate the client’s injury.³⁴³

Some NDAs limit victims’ ability to talk about the traumatic event, even though evidence from a range of domains suggests that communication is often a critical component of healing.³⁴⁴

³⁴² See, e.g., Paul Dolan et al., *Do We Really Know What Makes Us Happy?*, 29 J. ECON. PSYCH. 94, 97 (2008) (summarizing research that tends to show positive but diminishing effects of income on subjective well-being measures); accord BALBONI, *supra* note 299, at 150 (reporting, in clergy sexual abuse litigation, the fact that “closure came with a check—however much it might be—was deflating to many survivors”).

³⁴³ Engstrom et al., *supra* note 61, at 112 & 189–93 (discussing the “liberation effect” and explaining that many sexual assault victims who become bound by NDAs come to see the NDA as a “persistent perpetuation of their abuse”).

³⁴⁴ E.g., Boaz Kahana, Zev Harel & Eva Kahana, *Predictors of Psychological Well-Being among Survivors of the Holocaust*, in HUMAN ADAPTATION TO EXTREME STRESS: FROM THE HOLOCAUST TO VIETNAM 171, 180–81 (John P. Wilson et al. eds., 1988) (finding, among Holocaust survivors, that a propensity to “share[] their Holocaust experiences extensively” was associated with a more positive affect and summarizing that research “underscores the potential value of sharing and disclosing traumatic experiences with willing and interested parties”); Charlotte Strauss Swanson & Dawn M. Szymanski, *From Pain to Power: An Exploration of Activism, the #MeToo Movement, and Healing From Sexual Assault Trauma*, 67 J. COUNSELING PSYCH. 653, 654 & 657 (2020)

Summarizing this research, psychologist Ronnie Janoff-Bulman explains: “In speaking about an event, survivors can revise it in ways that make it more tolerable [and] they can impose some order on the experience, which may be far more reassuring than the disjointed images often forced upon them.”³⁴⁵ Evidence shows, conversely, that silence, and particularly compelled silence, stunts healing by exacerbating feelings of shame and isolation,³⁴⁶ and can, additionally, “stir[] a sense of powerlessness” and “constrain[] victims’ ability to make their experiences fully intelligible both to themselves and also to others with whom they consult or commiserate.”³⁴⁷

Furthermore, when victims agree to an NDA in return for a larger payout, the trade can breed a sense of guilt—particularly if the victim feels that, in so doing, he or she has become complicit in some kind of deception or coverup.³⁴⁸

Reflecting these dynamics, Jennifer Balboni found, based on interviews with clergy sexual assault survivors:

Survivors yearned to be able to have a voice, and to be dealt with honestly and ethically, without stigma or shame. Because of this, it is imperative that attorneys . . . understand that implementing “secrecy” clauses which serve to make the victim feel he/she has done something wrong or has taken part in something

(compiling evidence that “healing from adulthood sexual assault trauma is related to” among other things “sharing stories about the assault”).

³⁴⁵ RONNIE JANOFF-BULMAN, SHATTERED ASSUMPTIONS: TOWARDS A NEW PSYCHOLOGY OF TRAUMA 108 (1992); *id.* at 109 (explaining that evidence indicates “disclosing a traumatic life event is associated with better health outcomes over time”); MARTHA WOLFENSTEIN, DISASTER: A PSYCHOLOGICAL ESSAY 139 (1957) (similar).

³⁴⁶ See JUDITH HERMAN, TRAUMA AND RECOVERY 197 (1992) (discussing the corrosive effect of isolation).

³⁴⁷ Engstrom et al., *supra* note 61, at 189; see also JAMES W. PENNEBAKER, OPENING UP: THE HEALING POWER OF CONFIDING IN OTHERS 37 (1990) (“[T]alking about a trauma is a natural human response. When this response is blocked or inhibited, stress and illness result.”); Leah Lipton, *Cutting Out Her Tongue: The Impact of Silencing Trauma Through a Nondisclosure Agreement*, 55 CONTEMP. PSYCHOANALYSIS 373, 386 (2019) (concluding that NDAs exacerbate the shame sexual assault victims tend to experience and deprive victims of “the relational processes necessary for recovery”).

³⁴⁸ Engstrom et al., *supra* note 61, at 193.

shameful can re-traumatize survivors. Such actions represent a final insult³⁴⁹

Third, a large and growing body of research suggests that, on the heels of a traumatic event, engaging in affirmatively altruistic acts—such as demanding the disclosure of policy-relevant information, catalyzing governmental action, or obtaining injunctive relief—can jumpstart victims’ recovery by restoring individuals’ sense of purpose, rebuilding confidence in human benevolence, and enhancing perceptions of agency.³⁵⁰ Beyond that, research also shows that, after enduring a traumatic event, humans have a powerful need to feel that “[i]t didn’t happen for nothing; it served some purpose.”³⁵¹ Using one’s personal tragedy to protect others can serve that end.³⁵²

³⁴⁹ Balboni, *supra* note 49, at 244.

³⁵⁰ See Ervin Staub & Johanna Vollhardt, *Altruism Born of Suffering: The Roots of Caring and Helping After Victimization and Other Trauma*, 78 AM. J. ORTHOPSYCHIATRY 267, 274 (2008) (describing these effects); Jessica L. Gibson, *ACES Wild: Making Meaning Out of Trauma Through Altruism Born of Suffering*, Ph.D. Dissertation, Department of Clinical Psychology (Antioch Univ., July 19, 2018), at 17 (“There is a strong body of international research that [finds] that altruism and prosocial action are potent therapeutic mechanisms in and of themselves through which trauma survivors can heal.”); Stephanie L. Brown et al., *Coping with Spousal Loss: Potential Buffering Effects of Self-Reported Helping Behavior*, 34 PERSONALITY & SOC. PSYCH. BULL. 849 (2008) (reporting, among study participants who have lost a spouse, that pro-social behavior to help others was associated with an accelerated decline in depressive symptoms).

³⁵¹ JANOFF-BULMAN, *supra* note 345, at 135 (describing the powerful human need, in the aftermath of a traumatic event, to be able to answer the question “‘For what end?’”); see also Philip Brickman & Dan Coates, *Commitment and Mental Health*, in COMMITMENT, CONFLICT AND CARING 222, 233 (Richard Sorrentino & Camille Wortman eds., 1987) (explaining that there is a scholarly consensus that “being able to find meaning in our suffering allows us to cope more successfully with that suffering”).

³⁵² Capturing this idea, in one study involving interviews of victims of childhood sexual abuse, many victims reported struggling with “why” questions, including “why me?” and “why wasn’t I protected?” Afnan Attrash-Najjar & Carmit Katz, *Meanings of Anti-Sexual Assault Activism Among Adults Who Underwent Child Sexual Abuse*, 161 CHILD ABUSE & NEGLECT 1 (2025). The researchers found that “[a]ctivism provided some answers, bringing relief and a feeling of purpose.” *Id.* at 7. As one put it, when he used to become gripped by questions, including “why was I abused,” “the only reason that seems to calm me down and comfort me is that I was abused so that I could help others.” *Id.*

Our interviews lend support to this robust literature. As one lawyer explained, when a plaintiff can secure meaningful changes to a defendant's products, procedures, or policies, "it does make you feel strong. It makes you feel empowered."³⁵³ Another lawyer explained that, in her experience, when families achieve altruistic relief, it "brings people a lot of healing, just knowing that they maybe in a small way they made a difference."³⁵⁴ "It makes them feel . . . the tragedy was not just in vain."³⁵⁵

Another explained that, when clients can make real, robust structural change, they feel like they have "altered the course of the legal arc."³⁵⁶ He recalled telling clients: "You got something that no judge or jury could do, and all my powers and all my capabilities, on my best day, I could never make a judge or a jury do that. And you did."³⁵⁷ That, he said, is "really meaningful. It's not quantifiable, it's not taxable, it's not tangible, but it is incredibly meaningful."³⁵⁸

Various clients we spoke to echoed these ideas. Dave Flanagan, whose wife, Kim, died because of a series of egregious medical errors, explained that, even once it was clear that the error would condemn her to death, they kept pushing for tangible change. "I was fixated and Kim was fixated on 'how do we fix this and how do we get some level of good out of this?'"³⁵⁹ Shelley Pritchett, whose son was permanently disabled as a result of another diagnostic error, also fought for far-reaching policy changes. She described the consolation in knowing that, by doing so, she and her family were able to make "something good . . . out of a terrible situation."³⁶⁰ Indeed, even when the idea of pursuing change was first proposed, she recalled, she and her family all felt a wave of relief—"once there was the mention of the policy change, we're like, 'Okay, that's a good to come out of this.'"³⁶¹ Now, she says, "the changes are something

³⁵³ Guerrini Interview, *supra* note 125.

³⁵⁴ Aldous Interview, *supra* note 50.

³⁵⁵ *Id.*

³⁵⁶ Baghdadi Interview, *supra* note 47.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ Interview with Dave Flanagan (Dec. 17, 2025).

³⁶⁰ Interview with Shelley Pritchett (May 9, 2025). For a detailed discussion of the Pritchett's case, see Engstrom & Qian, *supra* note 44.

³⁶¹ *Id.*

we're very, very proud of.”³⁶² Janet McGee, whose two-year-old son was killed by a defective product, likewise, explained that the injunctive effects she was able to obtain—and the advocacy efforts she has continued—have given her “a real sense of purpose in this life.”³⁶³

For Ron and Jill Plush, the story is similar. Of their work to overhaul Cincinnati's 911 system, Jill explained: “I think it plays a really big part in dealing with grief.”³⁶⁴ Kyle's death, Ron agreed, “wasn't in vain. I mean he still is having an impact today, and I think he'll have an impact forever.”³⁶⁵

Ultimately, we do not argue that lawyers should ignore clients' financial needs. Nor are we arguing that lawyers ought to coerce clients concerning the objectives of representation. Our claim is narrower, and more fundamental. Plaintiffs' lawyers are duty-bound to “abide by a client's decisions concerning the objectives of representation,” and they are obligated to “consult with the client as to the means by which they are to be pursued.”³⁶⁶ To fulfill those duties—to be an ethical practitioner—the lawyer must ensure that the client's choice is informed.³⁶⁷ And that, in turn, means: If a client opts for an NDA, when she could disclose a public-health hazard, or if she chooses to maximize her financial recovery, in lieu of pursuing a common-sense remedial measure, that choice should be made with eyes wide open, only after she is made aware of the significant drawbacks of that approach.³⁶⁸

Summarizing, Al Gerhardstein offers this advice:

Well, it goes back to whether we are problem solvers or whether we're a business. . . . I've always viewed lawyers as problem solvers. And if we do a tort case

³⁶² *Id.*

³⁶³ Interview with Janet McGee (Aug. 28, 2025). For a detailed discussion of the McGee's case, see Engstrom & Qian, *supra* note 44.

³⁶⁴ J. Plush Interview, *supra* note 13.

³⁶⁵ R. Plush Interview, *supra* note 14.

³⁶⁶ MODEL RULE OF PRO. CONDUCT. r 1.2(a)

³⁶⁷ *Id.* R. 1.4.

³⁶⁸ See Arno J. Akkermans, *Reforming Personal Injury Claims Settlement*, Amsterdam Interdisciplinary Centre for Law and Health, Working Paper Series (2007), at 6 (explaining that, if a lawyer focuses “almost exclusively on financial compensation” when the victim actually has non-pecuniary needs, the lawyer's “failure to fulfill these non-pecuniary needs” will be “not only experienced as frustrating but also as an impediment to recovery”).

and we discover the root of a problem, and we don't do anything to solve that problem so that somebody else is going to get injured next time, shame on us.³⁶⁹

CONCLUSION

Tort law has long been caricatured as blunt, backward-looking, and money-obsessed. “Money,” one leading scholar has explained, is what “makes tort liability go round.”³⁷⁰ For more than half a century, that picture has shaped scholarly debates, influenced reform efforts, and driven comparative assessments. We have shown that that picture, although broadly accepted, is glaringly incomplete.

By tracing how tort law *actually* drives change—not *just* by internalizing costs, but also by stimulating organizational introspection, surfacing information, catalyzing governmental action, and promoting injunctive effects—this Article reframes tort law’s regulatory role. It unifies disparate mechanisms that prior scholarship had examined in isolation and grounds them in extensive new evidence.³⁷¹ Through this new, synthetic lens, tort law no longer looks like a mere pricing device. It looks instead like a complex, multi-faceted system of governance: one that forces organizations to reckon with their own failures, discloses risks, mobilizes public oversight, and binds actors to safer modes of operation.

Seeing tort law this way alters how tort stacks up, as against various alternatives. And it meaningfully reshapes how we ought to assess the work of plaintiffs’ lawyers and the aspirations of their clients.

Tort law’s deterrent force is not singular; its currency is not merely monetary. Tort law is, instead, plural, layered, and deeply human. Any serious effort to assess tort law—whether to reform it, replace it, defend it, or (most importantly) how ethically to practice it—must begin there.

³⁶⁹ Gerhardstein Interview, *supra* note 130.

³⁷⁰ Anita Bernstein, *The Enterprise of Liability*, 39 VAL. U. L. REV. 27, 31 (2004).

³⁷¹ Certain scholars, for decades, have recognized that the field has been impoverished because too few have “analyze[d] . . . just how it is that the threat of litigation and liability operates on risk causing organizations.” Schlanger, *supra* note 40, at 50.

