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He shouldn't pay for being paralyzed

My friend walked in for a routine medical test. He never walked again.

He had been working and, although he was widowed, he was a vibrant man who enjoyed life. Now he's a quadriplegic, and it's unfortunate but he realizes he always will be.

We became friends after his tragedy, thrust upon him due to medical negligence. I did not represent him. I had no dog in that fight. Every time I visit with him, however, I cannot help but think about what we read in the mainstream media now on a daily basis.

He settled the case for what many would consider a modest amount, and he is an inspiration to me in that he gets up every morning and perseveres. I doubt I would have the strength to do that.

Statistics can be played with in many different directions. When two independent studies revealed recently that payments for medical malpractice claims were as low as four one-hundredths of 1 percent in one area, and only 2 percent or 3 percent in another area, no one seemed to pay attention. We have seen a claim recently that the real reason tort reform is needed in the medical arena is that doctors practice defensively.

The argument, of course, is that more expensive testing is done, for example to make certain tumors aren't missed, so a lawsuit will not ensue.

I can't help but wonder why the testing shouldn't be done in the first place. Do we only wish to catch tumors for the sake of preventing lawsuits, as opposed to preventing more deaths by cancer or metastasis? It really doesn't make sense.

Most people in New York think lawyers get a third of a medical malpractice recovery, but that's simply not true. The Legislature changed that in the mid-1980s, then made the prosecution of a medical malpractice case difficult and expensive. The combination of the two legislative changes obviously was aimed at reducing lawsuits, regardless of who is at fault, and regardless of the seriousness of the injuries inflicted on innocent victims.

The real answer is making sure doctors have enough coverage so they don't have to lie awake nights worrying they'll have to pay for their mistakes in a disproportionate fashion. The answer is not that they should be immune from their mistakes anymore than any other person in our society should be, including lawyers.

Taken to its logical extension, the argument is that my friend, the quadriplegic, should be the one who ultimately bears the economic burden of such tragic and unbearable malpractice. That simply is unconscionable. It makes no economic sense. It is immoral, unjust and it is not what our country is about.

Unfortunately, too much hype has been bandied about in the media — lies, distortions and manipulation of statistics. The average juror is convinced those things are true, even if they're not.

If you want to look at statistics, take a look at the real statistics showing how unlikely it is that people who have been devastated by medical negligence ultimately will recover a fair amount, or anything at all for that matter. Twenty years ago the pendulum probably had swung too far in favor of the plaintiffs. Recoveries and settlements were easier than they should have been, but usually in our free democracy and great country the pendulum swings back to a neutral position of fairness. I fear that just isn't happening in this case.

The result is that when jurors turn away innocent victims for fear that their own preconceived notions, which have been manipulated by false PR campaigns, lobbyists and politicians in the pockets of big business, the insurance industry generally — more specifically the healthcare insurance companies, pharmaceutical companies and the medical industry — there no longer is an even playing field. Some feel there isn't even a chance for justice anymore.

The answer is to protect doctors financially, and ensure there is enough coverage to protect the victims of their negligence. That can be accomplished without all of the rhetoric, and at a fraction of the cost of what's being spent on all of the advertising and slick, manipulative public relations campaigns and lobbying. It certainly shouldn't be paid for by the people whose lives are ruined.

When jurors walk into a courthouse, they are suspicious of anyone who brings a lawsuit, especially those who are the victims of medical negligence. Most jurors are prejudiced to the point where they usually return an unjust verdict. We've gone too far, and must find a way to correct it.

The tort reform we really need is to reinstate a system that fully and fairly compensates victims of legal malpractice, medical malpractice and ordinary negligence. To say we need tort reform now is redundant. Based on the number of innocent victims who are tragically injured and being denied justice, we already have it.

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