

NEW YORK INJURY TIMES



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INJUSTICE- RIGHTING A WRONG

Have you ever felt that you were wronged? Maybe you noticed it when you went to the store and the cashier didn't give you the right change. Maybe you went to a restaurant, and the waiter failed to bring you what you actually ordered. How about when you went to buy an expensive appliance, and before you had a chance to ask all your questions, the salesman was already ringing up your sale. Here's a better one: You order an item online, and what you get delivered is totally different than what you actually ordered. You then spend the next hour on the telephone arguing with some faceless clerk, explaining yourself, wasting your time, trying to right someone else's wrong.

How about a drunk driver, driving on the wrong side of a highway recklessly driving home after a night of drinking and partying? Can't you just see the crash about to happen? Don't we read, all too often about tragedies like these? What about a doctor that operates on the wrong side of a patient's brain? Or a hospital that fails to recognize a cardiac arrest, resulting in massive heart damage? How about the driver that blows through a stop sign and destroys

the lives of a family on their way home from a holiday party?

How do we right the wrong that others have committed?

Unfortunately, we cannot turn back the hands of time. "All the kings men, all the kings horses, couldn't put Humpty Dumpty back together again." I know reciting Humpty Dumpty sounds corny, but it's true. "OK" you say, so what do we as a society do to right a wrong?

The only thing the law in New York allows a person who has been wronged is to obtain compensation. In my last newsletter, I talked about compensation being a debt that must be repaid to the injured victim. The wrongdoer has taken something that should never have been taken. A life; the freedom to be free of pain; the ability to do daily activities without disability. Repaying the victim with compensation is what is expected and demanded.

What about those skeptics who believe that there are frivolous lawsuits? While I would like to tell you that there are no frivolous cases, I would be remiss to do so. Unfortunately, there are a small percentage of cases in the court system that simply do not have merit. There, I've

Gerry's (Never Ending) Fictional Book Continued...

Jimmy's day started at 8:00 a.m. each day, and after dressing and eating, he started seeing his 'patients' at 8:45 a.m. He continued until 1:00 p.m. and took a 20 minute lunch break. He then continued his healing touch routine until 6:30 p.m., when he ended his workday.

Most evenings were taken up with hospital visits, usually a different hospital each night. A cameraman and his security contingent (about eight people) accompanied him to each of these outings. The patients fawned on him. The doctors and nurses couldn't do enough for him. The hospital administrators would do anything to kiss his butt to generate publicity for their hospitals.

Jimmy wasn't interested in anyone except the patients who had cancer. He thrived knowing he was curing something that nobody else could cure. What made it so surreal was that he didn't even know how
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said it. However, the vast majority of cases, especially those brought by experienced medical malpractice and personal injury lawyers in New York do have merit. The reality is that our judicial system is designed to allow someone who has been wronged to 'right that wrong' in court. Our civil liberties, our constitution, and our democratic belief that we are free to choose how to live our lives is what makes New York, and in fact the United States, the best place to live in the world.

Compare what we have to countries in Asia, the Middle East and other Third World countries. How about countries with dictators? It wasn't that long ago that Russia and East Germany restricted the lives of every citizen in those countries. Do you think citizens of North Korea, Afghanistan or even Iran have the type of freedoms we do?

The purpose of this article is not to preach about how great our State or Country is. Rather, it's designed to show that our system of justice, our democratic beliefs and our sense of doing the right thing requires that wrongdoers fix the wrong they've committed. The shattered lives, the broken bones, the disabled victims demand compensation.

I have to share an observation I made the other day. (Just the other day...) I was reading a magazine and it had an ad. It was a full page ad. A photograph took up half the page. In the photograph was a young boy, maybe 10 or 11 years old. The boy was in a wheelchair. The boy's arms and legs were severely contracted leading to the conclusion that the boy suffered some type of spastic condition. Looking at the boy's face he appeared to have a blank look that simply stared into space. His mouth was twisted, and his body tilted to the side. His hair was beautifully combed.

The title of the ad said simply: "This is what the winner of a multi-million dollar verdict looks like."

The ad explained that this young boy was a passenger in his parents car when it was hit by a truck that went through a stop sign. The young boy was on his way to school that morning. As a result of that accident, that young child will never walk, never talk normally, never

play sports, never know the kiss of a girl, never complete school, never be able to get a job, never learn the joys of exercise, never have friends, never have privacy to go to the bathroom, never know life's treasures- both big and small.

That young boy will know his caregivers; the three nurses that must attend to him 24 hours per day, seven days per week. He'll get to know his wheelchair- he'll be spending the rest of his waking life in it. He'll get to know his doctors really well, as he'll be a frequent visitor to their offices. If he's really lucky, he'll only have to go to the hospital for really bad infections and wound control. If he's unlucky, he's going to need half a dozen surgeries to fix the muscles and bones in his legs and pelvis.

So, how was his "wrong" righted? By awarding his family money to pay for his medical expenses. Money to pay for his caregivers. Money to pay to modify his house to accommodate a wheelchair. Money to pay for his health insurance premiums. Money for a specially modified van for his parents to drive him to the doctors, and around town. Money for physical rehabilitation. Money for a new wheelchair every five years.

Did you know that paralyzed people in wheelchairs get sores from sitting in the same place all the time? Those sores get bigger and bigger and tend to get infected often. The problem is that a normal person would feel the irritation, the rubbing and the pain from the sore. In a paralyzed victim, that person feels nothing and is unaware of any problem- usually until it's very severe.

Just looking at the photo in the ad, knowing what happened to the young boy created a strong sense of injustice. That injustice can never be fixed. No amount of money will ever turn that destroyed and broken child into the vibrant, happy-go-lucky kid he used to be. I'll bet if you ask his parents which they would rather have, millions of dollars, or a healthy young boy, what do you think the answer would be?

Injustice- righting a wrong. It's what we have to do.



TRY OUR TRIVIA GAME!

Test your knowledge of New York medical malpractice and personal injury law. Answers appear at the end of this newsletter.

1. In a medical malpractice trial, there are 12 jurors that sit in judgment.
TRUE OR FALSE?
2. After a jury renders a verdict, the trial judge has the ability to throw out the jury's verdict.
TRUE OR FALSE?
3. When a lawyer fails to prove a 'prima facie case' it means that he has failed to prove all of the elements needed to present the case to a jury.
TRUE OR FALSE?
4. When a lawyer objects to a question during trial, proper courtroom procedure requires him (or her) to stand when objecting.
TRUE OR FALSE?
5. A deposition can be read into evidence by actors during a trial.
TRUE OR FALSE?
6. During a settlement conference, the trial judge will exert pressure on both sides to settle, or suffer the unknown consequences of a jury verdict.
TRUE OR FALSE?
7. A lawyer who is offered money to settle a case by the defense attorney or their insurance company does not have to tell the client about the offer.
TRUE OR FALSE?
8. A structured settlement is an agreement to make periodic payments over many years, with the total amount being much larger than the 'present-value' of the settlement.
TRUE OR FALSE?

9. When a judge yells out "Order in the Court" it's appropriate to yell out your lunch order for the day.
TRUE OR FALSE?

10. Most lawyer advertising is uninformative and says the same thing.
TRUE OR FALSE?

11. When choosing an attorney, it is preferable to turn to the yellow pages and select an attorney the same way you select a plumber.
TRUE OR FALSE?

12. The lawyer's fee in a medical malpractice case is less than in a negligence case.
TRUE OR FALSE?

BONUS QUESTIONS:

1. When cross-examining a doctor at trial, it is acceptable to let him (or her) explain their answers.
TRUE OR FALSE?

2. When a witness at trial is supposed to testify at 9:30 a.m., testimony will usually begin on time.
TRUE OR FALSE?

Answers appear at the end of this newsletter.

GERRY'S (NEVER ENDING) FICTIONAL STORY

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he was able to cure these people. He had little free time to contemplate this. He was in demand. From the housewife, to the financier, to the chief executive to heads of State, they all wanted him. He made sure to devote time to his family each morning and each night.

Before bed, he would pray that tomorrow he'd have the strength and ability to continue to help these sick people.

Jimmy was intrigued with the prospect of being an international phenomenon who could influence global politics. The suggestion that he should go in disguise to meet a world leader who was hated and despised excited him. Despite his instinct to stay in the United States, he told his security chief to set up the meeting where he'd be in disguise.

Two months later, he was on a private jet to Israel. He was going to stay at the Tel Aviv Hilton. On his arrival he met with the head of the Israeli secret service, The Mossad. "Tank you fer koming heere and helping us vit dis problim. I know yur time is valuable, so let's get started." Jimmy was taken to an unmarked building outside of Haifa. There he met some incredibly talented make-up artists. It looked like an elaborate hair salon with wigs, styles, colors, plastics and make-up. After two hours he looked in the mirror and didn't recognize himself. Part of the agreement was that his security contingent would always be nearby, regardless of where he was going.

Jimmy couldn't help but feel excited that for the next few hours he'd get to pretend to be someone that he wasn't. However, instead of devising a cover story for him, the Mossad decided to let him tell people that he was a lawyer from New York who was doing research for a book on Middle Eastern politics. Keeping to his original persona before he became 'The Man Who Could Cure Cancer' was better than inventing an entirely new pedigree.

Join me next month when we continue our never-ending fictional story!



INTERESTING CASES WE' VE HANDLED

A woman slipped on black ice while walking in the parking lot of her apartment building. She fractured the largest bone in her body- her femur. She needed surgery with pins, plates and screws, she endured a 3-week hospital stay, rehabilitation and extensive physical therapy. The case successfully settled at a mediation hearing after showing a creative power-point presentation.

An elderly man tripped and fell across a ditch that was dug by a construction crew, fracturing his elbow. I was able to prove that the recently worked-on road had no barriers to prevent people from walking across. It was a clear hazard. Had there been barriers or warning signs, my client would not have been injured. The case was successfully settled before filing a lawsuit.

A young man put his arm through a glass window, cutting an artery. In the emergency room the doctor, while stitching him, tied off the ulnar nerve, and never realized it. All the doctors ignored the patient's complaints of pain, numbness and tingling in his hand and arm, claiming that it was normal. He needed two corrective surgeries and is left with a permanent nerve injury. I was able to successfully resolve the case during jury selection.

If you have an interesting case we should know about, please call and let me know.

Give this newsletter to your best friend. They'll thank you for it, and so will I.

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(I hate spam as much as you, and your name & email address will never be given out or sold for any purpose.)

Answers to Trivia Game: 1. False, 2. True, 3. True, 4. True, 5. True, 6. True, 7. False, 8. True, 9. False, 10. True, 11. False, 12. True, BONUS: (1) False, (2) False.

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SEND TO:

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I promise to give you a straightforward and honest answer. That's my guarantee.**

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