

# NEW YORK INJURY TIMES



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## FRIVOLOUS LAWSUITS

ARE THEY FAIR GAME DURING JURY SELECTION?

**How often do we hear the drum beat of "frivolous lawsuits" and "tort reform" from big businesses and from doctors and hospitals?**

Look in your newspaper and you're bound to find articles and advertisements trying to beat down the injured victim and their ability to recover compensation.

Importantly, compensation is the right to be paid for something that is owed. It's not a handout. It's not a give-away. It's not a winning lottery ticket, or a slot-machine jackpot. Accountability is the obligation to account for one's actions. Most people will agree that each person should be held accountable for their actions. In our society of justice, if a wrongdoer is not held accountable for their actions, there is a good chance that person will do that wrongdoing again and again. If we are a society of people who require that individuals take responsibility for their actions, then a wrongdoer is responsible not just for the happening of an accident, but also the injuries that arise from that accident. That's what compensation is about.

## GERRY'S FICTIONAL BOOK

The tests came back. They showed that Jimmy was 100% healthy. His wife was thrilled and the cancer doctors were thrilled.

Just the other day, Jimmy's security chief got a call from The Tonight Show's director. They wanted him to appear on the Tonight Show with Jay Leno. As a matter of policy, the automatic response was "Jimmy doesn't do any interviews." Then he added, "If you can get John Stewart's producer to get Jimmy on The Daily Show, that might be a different story, he chuckled with humor.

One hour later, the Chief got a call from Giuliani's campaign chief. "Would Jimmy be willing to walk through a hospital for a photo op with Rudy?" "You must be kidding," came the immediate response. No chance.

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When picking a jury in an injury or medical malpractice lawsuit in the State of New York, an attorney representing an injured victim must learn what prejudices or biases a potential juror has, before deciding whether that person is the right juror for that case. How is a lawyer supposed to find out what feelings a juror has about a topic, if he doesn't ask during jury selection?

Some lawyers in New York feel that the mantra of 'frivolous lawsuits' and 'tort reform' puts this topic in the jurors' minds, and creates ill-will toward the lawyer bringing the case. On the other hand, other lawyers (myself included) feel that it is the lawyer's obligation to ask jurors about their feelings toward frivolous cases. I want to know whether these jurors feel that every case entering the court system is frivolous, or whether they can have an open mind and listen to these specific facts, and judge the case for themselves. I make it a point to tell the jurors that if they feel that we have not proven our case, the way the judge explains we are required to, then it is their obligation to turn my client away. However, if we have proven our case, then they

are obligated to compensate my client for his injuries.

If a lawyer fails to inquire whether jurors have good or bad feelings toward organizations that seek to limit a person's right to recover compensation, it is my opinion that an injustice is being done to the client's case. Why? Because a juror might feel that caps on pain and suffering are acceptable. That juror may not want to award a significant award, simply because it sounds like a large number, even though the victim may be fully entitled to it. If the lawyer doesn't ask about this, how would they ever know the answer? To allow a juror with such a bias onto the jury without knowing about it, dooms the client's case from the start.

I often will hear defense attorneys ask whether a juror can be "fair & impartial." In 19 years of practice, I have yet to hear a single prospective juror admit that he was not fair or impartial.

That's why I always advocate asking potential jurors about their thoughts regarding frivolous lawsuits and whether they have a limit on what they could award, before they've heard any of the evidence. The answers always surprise me.

## ☆ TRY OUR TRIVIA GAME!

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

1. If I want my medical records, I can take the original records from my doctor's office.

TRUE or FALSE?

2. If I didn't suffer an injury, but my car was totaled, I can still bring a lawsuit for personal injury, right?

TRUE or FALSE?

3. Lawyers like to bring frivolous lawsuits.

TRUE or FALSE?

4. The McDonald's Coffee case, where the woman was awarded \$3 Million dollars by a jury for burn injuries to her legs, took home only a small fraction of that award.

TRUE or FALSE?

5. MRSA is not treatable by any known antibiotic.

TRUE or FALSE?

6. A dentist who has been sued 40 times means that the treatment you received was improper.

TRUE or FALSE?

7. Podiatrists (foot doctors) cannot be sued for malpractice since they are not "medical doctors."

TRUE or FALSE?

8. Chiropractors can be sued for malpractice if they deviate from good and accepted chiropractic practice causing injury.

TRUE or FALSE?

9. A surgeon's poor bedside manner is a tell-tale sign that something was done wrong during your surgery.

TRUE or FALSE?

10. A doctor's failure to write a note about an event, is the same as saying there was a departure from good care that caused physical harm.

TRUE or FALSE?

BONUS QUESTION:

A lawyer with an excellent track record can guarantee the outcome of your lawsuit.

TRUE or FALSE?



**Note: If you would like more information about any of the trivia questions, send me your question through my website, [www.oginski-law.com](http://www.oginski-law.com) on the "Quick Contact" form on the home page. I promise to reply.**

# GERRY'S FICTIONAL STORY

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Half an hour later, another call came in from Romney's campaign, followed by a call from Obama's campaign chief. "This is ridiculous," thought the security chief. He immediately made a voicemail recording for all Presidential campaign directors. This is what it said: "Welcome to the Cancer Center. Jimmy is busy curing people of cancer right now, and cannot stop his humanitarian efforts to help potential candidates with their campaign for President. If you or any family member requires Jimmy's help, please contact your oncologist for a referral.

The voicemail worked, for 2 hours. When the chief checked it after lunch, there were 16 messages from campaign personnel. He didn't plan on calling back any of them. He then got a call from the White House Chief of Staff. "Sir, I think you need to take this call. It's the president's chief of staff." After brief introductions, the White House chief asked Jimmy's chief for a favor. "I'd like Jimmy to endorse the Republican candidate for President for 2008. I only need 15 minutes of his time, so we can film a commercial," he said.

The security chief knew Jimmy's response. "In case you didn't know, Jimmy has just decided to endorse the Democratic candidate for President. He's already filmed a commercial with his endorsement, and by the

way, the Democrats only took 10 minutes of Jimmy's time!" The only sound on the phone after that statement was dead silence. So, he hung up and started laughing hysterically.

He knew that within 10 minutes the head of the Democratic National Committee would call, asking for an endorsement. Right on the dot. "I'm sorry to say, but Jimmy has already agreed to endorse the Republican candidate for President. Thanks for calling and have a great day!"



## NEWS HEADLINES

To see the stories behind each headline here, go online to my website,

[www.oginski-law.com](http://www.oginski-law.com)

and click on the NEWS section. It's riveting reading.

*Family Awarded \$50 Million Against Drunk Driver*

*Jury Awards \$4 Million For Arm Broken By Bully*

*Jury awards \$100,000 to man for lemon Jaguar*

*Hawaii jury awards \$850,000 for dog bites*

*The 10 Most Ridiculous Lawsuits of All Time*

ANSWERS TO TRIVIA GAME

1. False, 2. False, 3. False, 4. True, 5. False, 6. False, 7. False, 8. True, 9. False, 10. False. Bonus: False

# IT'S OFFICIAL!

## GERRY LAUNCHES HIS VIDEO TUTORIAL WEBSITE



Video is rarely used on websites. That's why I've created a new innovative website designed to help consumers learn about medical malpractice and injury law here in the State of New York.

For regular readers of this newsletter, you'll recognize familiar themes in these helpful instructional videos. You can view the videos at [www.medicalmalpracticetutorial.blogspot.com](http://www.medicalmalpracticetutorial.blogspot.com). In the last two months, the videos have been watched over 4000 times. (That's not a misprint). I've developed over 40 short video clips that help people understand what lawyers do, and how we can help

solve their problems. The videos are also on Google Video, YouTube, and many other video sites.

If you've visited my website lately, [oginski-law.com](http://oginski-law.com), you've seen an entire video library filled with my video clips. "FREE MEDICAL MALPRACTICE VIDEO TUTORIALS"

Enjoy the videos, and if you have questions, comments or critiques about how to make the videos better, I'd love to hear them.

If you want the written version of many of the videos I've made, you can view them on my blog, [www.nymedicalmalpractice.blogspot.com](http://www.nymedicalmalpractice.blogspot.com)

When you're done reading this newsletter, hand it to someone you know, so they can enjoy reading it too! HAVE A GREAT NOVEMBER, AND I'LL SEE YOU AGAIN IN DECEMBER!

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**Gerry Oginski- Trial Lawyer**

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