

THE BATTALION

MALPRACTICE MAKES PERFECT?

'damages long overdue'

Bush's proposed cap on 'pain and suffering'

Malpractice lawsuit abuse is wrecking the health care system. Given the recent national controversy over the availability of health insurance and prescription drug prices, it seems especially odd that many states continue to value the interests of their respective trial lawyers' associations more than those of ordinary citizens seeking affordable and convenient care. Indeed, that was the topic of a speech President George W. Bush gave this month in Scranton, Penn. In it, he outlined a plan currently in Congress that would, among other things, establish a nationwide cap on the often exorbitant "pain and suffering" damages awarded to medical malpractice plaintiffs. This is an excellent policy proposal that has been proven to work in several other states that have adopted similar measures.



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Bush chose to speak in Pennsylvania because the area has recently become a showcase of what can happen when greedy trial lawyers and their droves of plaintiffs, most of whom have not suffered because of malpractice, are allowed to run roughshod over the civil litigation system. According to The Wall Street Journal, three out of the five vascular surgeons that used to work in Scranton are gone, orthopedic surgeons are no longer treating trauma patients, and hospitals cannot afford insurance. In Philadelphia, more punitive damages were awarded in the last three years than in the entire state of California. And if you think this may be a problem confined to Pennsylvania, think again. According to a recent New York Times article, dozens of surgeons at several hospitals in the panhandle of West Virginia stopped

working due to high premiums and said if things do not change, they cannot afford to continue working in the state. Now patients must be transferred almost 100 miles to the next town or into neighboring states for care. This sounds more like a problem you might expect in Afghanistan, not in the most developed nation in the world.

According to an American Medical Association report, similar problems have reached crisis levels in 12 states, including Texas, and threaten to become serious in about 30 more. The Insurance Information Institute reports that doctors are refusing to perform risky procedures, retiring early, practicing without insurance and relocating.

The doctors who cannot afford to practice anymore and the patients who have trouble finding affordable care have only one group to thank for the current crisis: America's loveable trial lawyers and the not-so-maligned plaintiffs whom they conspire with in the institutionalized pilaging of health care professionals. Advertisements by ambulance-chasing lawyers seeking litigants to bring a malpractice suit are ubiquitous. They can be seen not only on television and heard on the radio but are also plastered on billboards and bus stop benches. Some even advise those who are not sure if they are hurt to contact a lawyer anyway.

After all, better safe than sorry, right? A report by the Physicians Insurers Association of America shows that only 29.4 percent of malpractice cases are settled for the plaintiff, and only 6.7 percent go to trial (of which only 19.1 percent are decided for the plaintiff). The vast majority, 62.3 per-

cent, are dismissed, dropped, or withdrawn. This clearly shows that, in today's adversarial society, merit and legitimacy are not common characteristics among malpractice claims. However, this does not mean they are not lucrative. Studies show that, when these cases are won, jury awards for non-economic damages, such as "pain and suffering," are skyrocketing. Jury Verdict Research reports that 52 percent of awards are now more than \$1,000,000, compared with just 34 percent from 1994-96. The litigation lottery sometimes pays off big-time for the trial lawyers willing to play.

The prospect of huge settlements entices lawyers and litigants to take a shot at the system more often than they otherwise would, and we are now seeing the effects materialize. Although chances of a successful lawsuit are slim, doctors, hospitals, and insurers are constantly fending off the dogs, and every one of us helps pay the bills. Not only are doctors abandoning practice and making it harder to find care, but those who really do suffer from malpractice are hurt because the ludicrous awards handed out to those who may not deserve them are depleting the pool of available money.

The solution to this problem is simple: states must place reasonable caps on malpractice "pain and suffering" awards, and they better do it fast. The bill Bush spoke of already passed the House this year, but stalled in Daschle's Senate. Now that Republicans are in control, it is very likely to become law. If states are reluctant to put their powerful trial lawyers' associations in their place, Uncle Sam will surely do it for them.

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Guns not to blame Right to privacy under attack

As the ambulances carrying the victims of the Washington, D.C., area sniper attacks sped toward hospitals, there is no doubt many lawyers were chasing close behind. On Oct. 2, 2002, John Muhammed and John Lee Malvo allegedly began a sniping rampage that left 10 dead, three wounded and millions terrified. Muhammed and Malvo were arrested on Oct. 24.



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According to The Washington Post, the families of two of the sniper victims have filed lawsuits against the alleged snipers, the store where their gun was supposedly stolen and the gun manufacturer that made the gun used in the shooting spree.

Their suit accuses the gun manufacturer, Bushmaster, of gross negligence for simply making the rifle. This is just the latest needless act of an overly litigious society hell-bent on suing anything and everything.

Bushmaster built the high-powered rifle, which is completely legal to manufacture, sell and own in the United States. However, the victims realize a lawsuit against two homeless drifters like Muhammed and Malvo would net nothing more than a crowded court docket and lawyers' fees.

Bushmaster should shoulder none of the blame for these attacks. The blame lies solely on the deranged people who committed the heinous crime. The old National Rifle Association adage is simplistic, yet holds true that, "Guns don't kill people, people kill people."

In the absence of guns, the people demented enough to crave killings will find other objects for their destruction. Prisoners have been known to sharpen spoon handles to make homemade knives, which can have the same end result as a gun. While the families of the victims justifiably are very hurt by the attacks, nothing can undo any of their pain or loss.

Although they are hurt, that does not legitimize the filing of these frivo-

lous lawsuits. These lawsuits could cost the defendant tens of thousands of dollars, for which they should be compensated.

After a rash of frivolous lawsuits in England, Parliament legislated that any one filing an unjustified lawsuit would have to pay the lawyers' fees of those who are sued.

Such a bill in America would help stifle frivolous lawsuits, allowing only those with legitimate grievances to seek justice. With corporations no longer spending precious time and money defending themselves in ridiculous suits that will eventually be dismissed, they will have fewer costs, allowing them to pass savings on to customers and spend more money on research and development.

Suits like this are a drain on society. They drain time and resources which could be better used in a place other than a courtroom. These suits in particular will play on the fear and emotions of the people who live in fear that the sniper might hit them while they were going through their day.

While the sniper shootings indirectly affected all of America, there is no excuse for blaming anyone other than those who pulled the trigger. Doing so is a perversion of justice and should be criminal itself.

Draining money from Bushmaster through legal fees will do absolutely nothing to prevent this from happening again. If the victims believe that these rifles have no place in our society, they should go about this change the right way and lobby Congress to make laws preventing the manufacture and ownership of that rifle.

Whether America or Congress embraces these beliefs will remain to be seen, but lawsuits against the company that legally manufactured the rifle should be thrown out. Our justice system is not the place for people to make a statement.

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At the beginning of the 20th century, Supreme Court Justice Louis D. Brandeis said, "The right to be let alone is the most comprehensive of the rights of man and the right most valued by civilized men." There is no mention of a right to privacy in the Bill of Rights, but it is very much implied throughout the list of fundamental rights granted to us by the Constitution, as it is also very much a legitimate and necessary freedom of our everyday lives. However, we find ourselves in the beginning of a new century, when the right to privacy has come under attack by our own government. We cannot take this right for granted.

Anyone who has been to the airport recently has surely noticed new federal airport security measures in which checked baggage receives greater scrutiny than before. In some cases, baggage is checked out of the view of the owner, a clearly unnecessary and invasive procedure. There is no reason a person cannot be present while his personal possessions are being rummaged through by strangers.

According to the Portland Press Herald, Paul Donahue and his wife Teresa Wood, a couple from Maine, decided to protest these new laws earlier this month when they placed notes in their baggage calling airport security uniformed government puppets bringing this nation closer to a fascist police state. The note was found when airport workers mistook a boot with batteries tucked inside and a power strip next to it for a bomb. The couple was arrested, but charges were later dropped when it was found the couple had not meant to create a bomb scare.

Donahue and Wood have every right to feel their privacy is being invaded every time their bags are taken out of their sight, and with them, all knowledge of who is searching their property and in what manner. The couple says they will no longer use airlines as long as their posses-



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sions are perused without their consent or presence. The current administration has been successful in passing two acts that clearly infringe on peoples' right to privacy: the post-Sept. 11 Patriot Act and the newly arrived Foreign Intelligence Surveillance Act. According to The Associated Press, with the Patriot Act, the government can demand public libraries to turn over information on the reading habits of any person who steps foot into a library. Also, authorities can more easily receive clearance to plant telephone and computer wiretaps. The powers that be may also conduct searches in secret without notifying the subject being investigated. This means free U.S. citizens must make way for the government to allow itself into your home, your computer, your telephone conversations and find out what you read without your consent or knowledge.

This is inarguably a breach of Fifth Amendment rights, which protect against unreasonable search and seizure. According to The Associated Press, with the Foreign Intelligence Surveillance Act, Americans are no longer protected by the legal standard of probable cause, but only have to be suspected of possible assistance in terrorism. Americans should not be forced to constantly wonder whether they are being observed by the government and, more importantly, feel threatened by the reality that this Big Brother-esque legislation allows the government into their private lives with no just cause.

Restrictions on the right to privacy also invade the homes of a minority in our society. Current legislation in 13 states prohibits consensual sodomy, and four of these states have harsher penalties in cases involving same-sex partners.

In the landmark decision of the 1965 Supreme Court case Griswold v. Connecticut, Justice William O. Douglas wrote that there is guaranteed by the Fifth Amendment a zone

of privacy which the government may not force a person to surrender to his detriment, essentially declaring the use of contraceptives legal. If there is a zone of privacy in one's home in which a person may choose to use contraception, sodomy must be allowed in the same zone, without any prohibitions put on by the government. These sodomy laws are said to have been created to uphold morality in our country. However, there is private morality which law has no business defining. A person should not have anyone else tell them who they may sleep with — that is a decision they should be able to make for themselves. In reality, these sodomy laws, created out of hate, fear and ignorance, are used to target the minority gay population and to deny a community its fundamental right to a consensual expression of connection and love. The gay population should share the same fundamental choice of whom to share their beds with as everyone else.

The current administration is now turning its unrelenting eyes to a right, founded on privacy, that Americans have had for a mere 30 years as of this week. President George W. Bush has made it clear that he would like to see the women in our country lose the right to choose to have an abortion. According to the Stamp Out Planned Parenthood (STOPP) Web site, a delegation sent by the Bush administration to the United Nations Asian and Pacific Population Conference in Bangkok, made some fantastic pro-life statements during the conference. This shows that the rights of Americans are not only threatened by a radical Christian fundamentalist right, but by the Republican party in general. We must hold on dearly to and fight for the woman's right to choose.

Our right to privacy is under attack. It is being lost in our homes, bedrooms, airports and elsewhere throughout the country. America will pay a price in the absence of privacy.

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