

BACK TALK

Advertising Material

February / March 2004

Spin or Facts?:

A Look Behind Newsweek's Series 'Lawsuit Hell'

In its sweeping attack on the civil justice system, Newsweek magazine does little more than incite unwarranted fears of doctors, teachers, and ordinary people about the legal system. Because Newsweek refused to provide any documentation, ATLA and other supporters of the civil justice system have prepared a factual refutation. The following are confirmed instances in which Newsweek chose to report "Myths" rather than "Facts".

SPIN: "In Kentucky, a mother sued her daughter's school after the girl had performed oral sex on a boy during a school bus ride returning from a marching band contest. The woman blamed poor adult supervision, saying her daughter had been forced." (p. 49)

FACTS: According to an article in

the Lexington Herald Leader, the girl was suspended by the School Principal for ten days for having consensual sex on a school bus. When the mother appealed the ruling, the Board of Education ruled that the act was forced and the girl had been sexually assaulted. But the Board then suspended her for two days for not promptly reporting the assault. The



mother's suit did not seek money, but rather demanded that the Board set up a training program for its employees

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Announcing Utah's Best Chiropractic Seminar:

The next installment of **Utah's Best Chiropractic Seminar** has been scheduled! Mark your calendar now for **May 20, 2004** at the Miller Campus of Salt Lake Community College.

We already have a great group committed to give presentations.

We will release more details soon, but be sure not to miss it!

Objective Evidence of Ligament Injury After Whiplash Trauma

A review of the latest studies from Dr. Keith Hansen

Over the past few years, a great deal of research has been done on the anatomical basis of injury from rear end collisions. The majority of this literature has been focused on the ligaments of the cervical spine, and, more specifically, on the facet capsules.

These studies have consistently found that rear end collisions result in abnormal motion of the cervical

spine, and that this abnormal motion can cause harm to the tissues of the spine.

The problem, however, is that these injuries can be difficult to identify with 100% certainty. Flexion-extension x-rays can be useful in identifying ligament injury in some cases, range of motion can help identify problem areas, and nerve injections can aid in pinpointing the exact location of nerve irritation. These techniques have all been useful, but, until now, there hasn't been a way to view objective evidence of ligament damage using imaging techniques.

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"Lawsuit Hell" continued from pg. 1

about how to deal with the sexual assault. 1

SPIN: "In California recently, a couple won a \$70 million judgement against Stanford University Hospital and two other healthcare centers for failing to prevent their child from being disabled by a rare birth condition." (p. 47)

FACTS: While Newsweek reported the verdict at \$70 million, the present value of the award was \$8.3 million (\$6.3 for medical expenses, \$1.8 for lost wages, \$250,000 for non-economic damages), meaning the verdict required the insurer to set aside a total of \$8.3 million to cover the out-of-pocket costs of the injury to the child. The victim in this case is a young boy who had a genetic disease that was proven to have not been properly diagnosed at birth by the hospital and the boy's pediatricians, resulting in permanent brain damage and a need for lifetime care. 2

SPIN: The cover of Newsweek reported features three people who claim to have changed their ways due to the fear of lawsuits: Ryan Warner canceled his softball tournament. The Rev. Ron Singleton never hugs people. Dr. Sandra R. Scott is constantly berated by patients threatening to sue her.

FACTS: Ryan Warner (the softball organizer), Dr. Sandra Scott (the emergency room doctor) and the Reverend Ron Singleton (the minister) have never been sued.

"There is no 'litigation explosion' in personal injury cases. Litigation is down and awards are steady."

Warner enjoys immunity from suit. Under the Volunteer Protection Act of 1997, volunteers for non-profit organizations or government programs around the country— even those dealing with children— cannot be held responsible for their negligence.

As for Singleton, no cause of action for

clergy malpractice (ie: negligent counseling) exists in South Carolina. 3 Furthermore, state courts have considered this theory of liability, have universally rejected claims for clergy malpractice.

SPIN: Parents sue McDonald's ...Convicted sex offender threatens to sue police for failing to find him... Cheerleader's parents threaten to sue the school... They sue local governments when struck by lightning on city golf courses... They sue ministers for failing to prevent suicides... They sue their Little League Coaches...

FACTS: The McDonald's obesity cases were dismissed... The sex offender could not find a lawyer willing to take his case and never filed suit... The Cheerleader's parents never filed suit... The lightning strike case was lost at every level due to governmental immunity. 4... Every state court that has considered the question of Clergy malpractice has rejected these claims... Under the Volunteer Protection Act of 1997, volunteers for non-profit organizations, including Little League, cannot be responsible for their negligence.

SPIN: "(T)he 'litigation explosion' of the past 30 years may be leveling off (though one study shows a sharp recent uptick)." (p. 45)

FACTS: There is no "litigation explosion" in personal injury cases. Litigation is down and awards are steady. A recent analysis from the National Center for State Courts found that since 1992: personal injury tort filings have declined by 9%; automobiles tort filings, which make up the majority of all tort claims, have fallen by 14%; and medical malpractice filings per 100,000 population have fallen by 1%. 5

The same holds true in federal courts. Federal civil filings are not only down, but the percentage of civil filings that are personal injury cases has also declined. 6

SPIN: "The cost to society cannot be measured just in money, though the bill is enormous, an estimated \$200 billion a year, more than half of it for legal fees and costs that could be used to hire more police or firefighters or teachers."

*"Law suit Hell"**continued from pg.*

FACTS: Tillinghast Towers Perrin's \$205 million estimate, paid for by the insurance company's and tort "reform" groups, is the cost of the entire property/casualty insurance industry. The "legal fees and costs" include plaintiff and defense attorneys fees, insurance industry salaries, overhead, and investments. Nowhere in its report does Tillinghast suggest that \$100 billion can be cut anywhere. The estimate also includes non-tort claims, like property damage caused by a storm, and almost 40% of the claimed \$200 billion goes to insurance industry overhead. 7

SPIN: "According to one estimate, doctors waste \$50 billion to \$100 billion on 'defensive medicine' to prove that they left no stone unturned, no test untried, no medication unprescribed, no specialist unconsulted." (p. 49)

FACTS: In its study of the causes of rising health care costs, the Congressional Budget Office took the position that "defensive medicine is probably not a major factor in the costs of medical care." 8 Another study found that statistics used to determine these costs are "suspect because physicians have a direct financial incentive to overstate their costs." Even with the use of suspect figures, the costs of "defensive medicine" are, at the most, 1/6 to 1/3 of what Newsweek claims. 9

SPIN: "Thousands of lawsuits by people who hurt themselves at playgrounds." (p. 44)

FACTS: In 1991, the Consumer Product Safety Commission (CPSC) issued its "Handbook for Public Playground Safety", which has become "the state-of-the-art source for accident claims." Concerns of legal liability arising from failure to meet the recommended guidelines of the CPSC have led to a widespread upgrading of playgrounds in schools, public parks, and day-care centers." In many situations, insurers have played a large role in forcing compliance with CPSC standards and other safety changes. 10 All of these changes make playgrounds safer for children.

SPIN: "In Penobscot County, Maine, authorities hunted for a convicted sex offender wanted on felony charges for three days after he disappeared into the snowy woods. When the suspect was finally tracked down, he had frostbite and lost two toes. Incredibly, police say, the man threatened to sue the police for not catching him sooner. He couldn't find a lawyer, but his sheer chutzpah did not surprise Penobscot County Sheriff Glen Ross.

'We're always facing lawsuits,' says Ross. 'It's on our minds all the time.'" (p. 50)

FACTS: The basic facts of the story are true—the man was wanted for a probation violation in FL, ME cops got a tip that he was in the state, attempted to interrogate him and he turned and ran. 11 Harvey Taylor has not filed a suit in ME or FL, because most lawyers refuse to take cases without merit.

SPIN: "Take the case of the group of fifth graders who were shooting hoops on the school playground one morning. The kids were breaking the rules—student's aren't allowed to play on school property without adult supervisors. But when one of the boys broke his arm, his mother, who had no insurance, sued the school and the parents of all her son's playmates. She argued that her son deserved compensation because his injury meant he wouldn't be able to play baseball that summer." (p. 50)

FACTS: Newsweek claims that the mother sued the school, but there is no record of any cases filed against the elementary school listed in the article. An interesting note, however, is that an internet search on Joseph Pizza, the principal of the school, found that the Citizens for a Sound Economy website highlights his removal of the monkey bars and metal swings from the school playground. 12 CSE is an advocacy group for the corporate tort "reform" lobby under the guise of a grassroots, citizens' campaign. CSE was founded by David Koch of Koch Industries, one of America's leading corporate polluters, and its most influential figure today is C. Boyden Gray, heir to the Reynolds tobacco fortune, and a partner at Wilmer, Cutler & Pickering in Washington, DC13

SPIN: "And when patients do sue, their malpractice allegations are unfounded in as many as 80 percent of the cases, other studies suggest; insurance companies pay to settle the vast majority of claims anyway, rather than risk a big hit." (p. 48)

FACTS: There is no empirical evidence that 80% of malpractice claims are unfounded. Professor Neil Vidmar of Duke University, author of *Medical Malpractice and the American Jury*, states that "In interviews with liability insurers that I undertook, the most consistent theme from them was: 'We do not settle frivolous cases!'...(Insurers') policy on frivolous cases is based on the belief that if they ever begin to settle cases just to make them go away, their credibility will be destroyed and this will encourage more litigation." 14

Footnotes for this article are at the top of pg. 4

Whiplash injury*Continued from pg. 4*

jective evidence of torn ligaments when compared to a group of control subjects. For patients with chronic, intractable whiplash pain, permanent ligament damage may be the culprit and an MRI of the upper cervical spine may be useful in diagnosing such injuries.

Krakenes J, Kaale BR, Moen G, et al. MRI of the tectorial and posterior atlanto-occipital membranes in the late stage of whiplash injury. Neuroradiology 2003; 45 (9):585-91.

Write or call us with your suggestions, criticism, feedback, or ideas.

Refer to us those who are injured and innocent.

News Flash: Important Notice

Effective 2004, Bryan A. Larson, P.C. will publish *Back Talk* every other month as opposed to 'every month or whenever we get around to it'. The need for this change is very simple: we are not in the newsletter business, we are in the business of helping people who are injured and also the doctors who treat them. Publishing *Back Talk* continues to be a privilege and an honor, but it is time consuming and costly to produce. We will still release the newsletter and will always have the most valuable information available to help you be a better doctor and maintain a profitable business. We thank you for your continued support and for trusting us with your great patients.

⇒ Bryan Larson is one of the keynote speakers at this year's Seminar for the National Business Institute (NBI) to be held at the Wyndam Hotel in Salt Lake City, UT. The Seminar is entitled "How to win your next soft tissue trial in Utah" and is scheduled for April 20, 2004. Anyone interested in attending can register online at www.nbi-sems.com or by phone at (800) 930-6182. The same number works for more information.

Remember to set aside Thursday, May 20, 2004 for our next seminar. We will include more details soon.



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This newsletter is published bi-monthly, or *whenever we get around to it*, by Bryan A. Larson, P.C.,

1. Taylor, Louise, "Lafayette student alleges assault: School board sued over bus incident," Lexington Herald Leader, 12/18/2002.
2. Michael Cook v. Stanford Health Services, et.al., San Francisco Superior Court, No. 324905, Sept. 26, 2003.
3. Brown v. Pearson, 326 S.C. 409, 483 S.E. 2d 477 (March 10, 1997)
4. Paula Moore, Denver Business Journal, July 2000
5. Examining the Work of State Courts 2002, p. 25 National Center for State Courts.
6. Federal Judicial Caseload Statistics, March 31, 2002, Administrative Office of the U.S. Courts.
7. A.M. Best. "Aggregates and Averages."
8. Economic Implications of rising Health Care Costs– Congressional Budget Office, 1992.
9. Lewin– VH1 Study, 1/27/93.

10. Wallach, Frances, found at the World Playground Park & Recreation, Products and Services Web Directory, <http://www.world-playground.com/Article.htm>. Gilchrist, Julie, Schieber, Richard A. & Davis A. Sleet, "Legislative and Regulatory Strategies to Reduce Childhood Unintentional Injuries," 10 Unintentional Injuries 111, Spring/Summer 2000.
11. "Man wanted in Florida says police tardiness cost him some toes," Associated Press, 2/27/02.
12. JV Schwan, J.D., "Save Our Schools from the Trial Lawyers," May 15, 2000, Citizens for a Sound Economy website, www.cse.org.
13. Note: Stuart Taylor, author of "Civil Wars," was an attorney at Wilmer, Cutler & Pickering, a large corporate defense law firm in Washington, DC that was also one of the major players in the tort "reform" movement. Some of their current clients include Hartford Financial, American Home Products, Citigroup, Dell, Merrill Lynch, Provident Financial and TYCO.
14. Medical Negligence, the Litigation Process and Jury Verdicts in Medical Malpractice Cases: Implications for Indiana, Neil Vidmar, Ph.D., Russell M. Robinson II Professor of Law at Duke University Law School, December 2, 2002.

Whiplash trauma ***continued from pg. 1***

A new study from Norway set out to see if they could detect ligament trauma after whiplash injuries. They obtained sagittal proton density weighted MRI images of the craniovertebral junction from 92 whiplash patients and 27 uninjured control subjects.

Three radiologists who were blinded to the status of the patients examined the MRIs. The radiologists graded the images on the tectorial membrane thickness and elongation or rupture of the posterior atlanto-occipital membrane /dura mater complex. The MRIs were again evaluated four months later to test for consistency in the interpretation.

The following chart summarizes the findings:

Type of Injury	Whiplash Patients	Uninjured Controls
Tectorial Membrane Lesions	26.5%	11%
Posterior Atlanto-Occipital Lesions	17%	4%

The lesions were graded from 0 (no sign of lesion) to 3 (most severe type of lesion). When the researchers

compared the whiplash patients to the uninjured control subjects, they found that there were no Grade 3 lesions in the uninjured group— only Grade 2. The authors write, "Only minor changes we found in a control group, indicating that the abnormalities are caused by the only known neck injury in the study group."

The authors discuss the importance of these findings:

"The tectorial membrane plays a substantial role in maintaining stability in the craniovertebral junction,

especially by limiting flexion. During whiplash trauma hyperextension, hyperflexion and translation take place in the upper cervical spine. Hyperflexion alone or combined with anterior translation is the presumed mechanism for damage to this membrane. We saw all grades of thinning of the tectorial membrane. Partial thinning can represent a normal variant. However, complete absence of the membrane, with normal or partially ruptured dura matter, was never found in the control group and we therefore regarded it as trauma-induced."

"In hyperflexion trauma all posterior cervical ligaments and membranes are subject to strain forces." When the atlanto-occipital membrane is stretched beyond its elastic limit, these forces are transmitted to the adjacent dura mater. Rupture of the latter therefore

indicates a sprained membrane. To establish consistent criteria for assessment of the posterior atlanto-occipital membrane, it was necessary to include the adjacent dura mater. We regarded a dural hump of thinning as signs of partial which could be seen as an ill-defined or invisible membrane."

In this study, the researchers found that a significant percentage of whiplash patients had ob-

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