

## Of Storytelling, Advocacy and Image

**"The law firm was unequivocal. It refused to take the case against General Motors involving a car crash that killed 18-year-old Natasha Weigel, saying that the value of her life was too small to justify the expense and risk of litigation. Her family was stunned." (Meier, Barry and Hilary Stout, "Victims of G.M. Deadly Defect Fall Through Legal Cracks," *New York Times*, December 29, 2014, <http://nyti.ms/1rwdt3w>).**

by Timothy Blood, CASD President

The case, which was never brought, involved a 2006 accident where an 18-year-old woman died because the airbags in her G.M. vehicle never deployed. Her passenger, a friend of the same age, also died. We now know the airbags failed to deploy because the ignition switch was defective and that G.M. covered up the defect for over a decade. The regulators, once again, missed it. At least 42 people are known to have died in crashes linked to G.M.'s defective ignition switch. The actual number of deaths and injuries is certainly many multiples more.



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The family of the passenger also could not find a law firm to bring suit to hold G.M. responsible because tort reform made the claim economically unviable. The father, describing his frustration, explained, "[i]f we had gone to litigation, this would have gone to the forefront. We could have saved lives". Id. Of course, the father is correct. If they had their day in court, lives would have been saved. And that is exactly how the tort system is supposed to work.

As trial lawyers, we know that regulators often do not do the job they are tasked with because they are underfunded, at times incompetent and, to varying degrees, controlled by those they are supposed to regulate.

We also know that in our democracy, the tort system is supposed to empower the harmed individual to seek redress by holding accountable those responsible. The tort system also exists to fill the void left by regulators who do not do the job they are supposed to do, or, because of political pressure or affiliation, cannot do that job.

We know that the tort system also is an important part of maintaining a healthy free market economy. A properly functioning tort system realigns the economic consequences of actors in a capitalist system so that those actors who cause an economic consequence bear those costs – if G.M. must pay the true cost of its products, including the costs associate with the harm it causes, then G.M. will make different and more economically efficient decisions. That is, it will be incentivized to find and fix defects early on, rather than spend years covering them up.

The tort system is supposed to act like crowdsourcing. A number of lawsuits, or the possibility of lawsuits, results in safer and better products, better businesses, more responsive and more fair institutions, less financial fraud, properly working insurance industries, safer nursing homes, better workplaces, more truthful commercial dealings, and on and on.

But the tort system is coming apart. In the article about the two young women, the *New York Times* summarized some of the reasons:

**Companies, lawyers and judges have long faced criticism for suppressing information contained in lawsuits about product dangers. However, legal experts said that factors such as tort reform and rising lawsuit costs might be further dimming the legal system's role in bringing such risks to light. Id.**

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By now, you may be saying to yourself "Okay, I get it, but tell me something I don't already know." And that brings me to the point of this month's column. As trial lawyers, we know that a well-functioning tort system leads to more responsible conduct and safer products. We know that regulators often fail to regulate or, worse, act to shield wrongdoing companies from liability. We know that the world is a far better place because people have had a meaningful right to sue. But we're not the ones who need convincing. Instead, it is the public and, more immediately, the politicians, who need to be convinced. And that's where we come in.

Trial lawyers are great storytellers. We need to use those skills to identify situations that readily illustrate the virtues of a properly functioning tort system and highlight the consequences of an improperly functioning system. Better yet, we need to identify our clients or would-be clients who are able to tell these stories.

But who is the audience? To be most effective with the limited resources at hand, I think we should start with elected officials.

Over the years, we have seen many efforts to combat the corporate public relations campaign to deni-

grate trial lawyers. A lot of time and money has been spent attempting to counter the decades and multi-tens of millions of dollars spent demonizing us. Yet, trial lawyers have never been able to fully counter these efforts in an effective, sustained manner. It simply costs too much money to have an impact.

Where we have been most effective, especially given the lopsided resources, is in the legislature. There, we have been able to explain our issues and educate our audience. But with a large number of new legislators with no legal training, our task is much more difficult. Right now, these new, non-lawyers are being told repeatedly that the tort system only enriches the lawyers, that there is a litigation crisis and that trial lawyers are ruining the economy.

We know this is nonsense, but we need to figure out how to educate lawmakers who have very little understanding of the legal system and often come to the legislature with presumptions created by the anti-lawyer public relations machine. Nonetheless, through real-life examples told by regular people, we can convey the complex and often nuanced role the tort system plays in our democratic, capitalist society and

illustrate the true harm caused by tort deform. Through these real life examples, we will best be able to explain the human impact of Howell and damage caps and the foolishness of passing statutes without private rights of action, which now happens routinely. We can also show why laws benefitting "job creators" are good, unless those job creators are also widow makers.

So if you have a case that vividly and easily illustrates the way the tort system is supposed to work, a case that shows how tort deform has warped the system or a case that you could not take because of tort deform, but society would have been better off if the case was brought, then send an email to CAOC to let them know. Lea-Ann Tratten is always looking for good anecdotes because Sacramento is a place that runs on anecdotes. Send your stories to [ltratten@caoc.org](mailto:ltratten@caoc.org), and up the good fight!

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