



FALL 2006

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The Law Office of JASON R. SCHULTZ, P.C.

Juries protect us all

America's civil justice system has stood the test of time. It doesn't put anyone in jail. Instead, it punishes those who act with disregard for the welfare of the rest of us. It also strives to restore the health and well-being of those who have been harmed by others' actions.

Our fundamental constitutional right to a trial by jury is under attack. Special interests, such as the manufacturing, insurance, and drug industries, want to change the system to benefit their own financial and legal interests.

Here are other challenges to our justice system that many of us may not often think about:

- Inadequate juror compensation.
- Juror prejudice from public relations campaigns.
- Delayed or denied justice from court budget cuts.



- Judge shortages backlogging cases.
- Appellate courts reversing jury verdicts.
- Secret settlements hiding justice from the public.
- Refusing media access to investigate court files.
- Legislatures predetermining legal issues.
- A poisoned, partisan political landscape.

Malpractice insurance

Falling claims and rising premiums

For years, medical malpractice insurance carriers have maintained that claims payouts have increased dramatically, forcing them to raise premiums they charge doctors to cover payments.

However, a 2005 Center for Justice & Democracy study shows that the medical malpractice insurance companies have been overcharging physicians. In the past five years, while doctors' malpractice premiums have more than doubled, insurers' claims payments increased very little or have even gone down. The study showed that in 2004, insurers' premiums were about three times higher than their total claims payouts. Between 2000 and 2004, malpractice premiums increased by 120 percent, but claims increased by less than 6 percent.

Falling claims

Several insurers saw their claims payouts actually decline, but raised policy premiums anyway.

- Healthcare Indemnity raised premiums by \$173 million, 88 percent. Its claims actually dropped \$74 million, 32 percent.
- ProNational increased premiums by \$87 million at the same time its claims payouts fell by \$43 million.

Legal news from your safety and security lawyer.

Premises liability

Home or apartment fires

Every day, roughly 800 residence fires occur in the nation, with most starting overnight, between 8:00 p.m. and 8:00 a.m. More than 6,500 Americans die in home and apartment fires annually, and over half are children and older persons.

Fire safety

Taking three precautionary steps can save lives:

1. Teach everyone about the dangers of smoke and flames in a home fire.
2. Plan and practice primary and alternate escape routes.
3. Identify a post-escape meeting place.

A negligent landlord

A renter was severely injured when he had no alternative to jumping from a window during an apartment fire. The plaintiff's attorney recovered damages by demonstrating that the landlord's negligence was responsible for the client's injuries. The landlord dead-bolted a fire exit to keep trespassers out and permitted other tenants to prop open internal fire doors to improve air circulation.

Medicare claim hearings

A July 2005 change in federal policy limits Medicare beneficiaries' access to claims-denials hearings, making it harder for older Americans to obtain justice. Forty-one million Americans participate in Medicare.

When Medicare denies claims for prescription medications, in-home care, nursing home medical services, or other benefits, claimants are now required to attend hearings conducted via video-conference or by telephone with judges supervised by the Department of Health and Human Services in only four cities—Cleveland, Ohio; Miami, Florida; Irvine, California; and Arlington, Virginia.

The recently enacted Medicare drug benefit is expected to create large numbers of claims. Previously, beneficiaries petitioning personal claims-denial hearings could travel to 1 of 140 Social Security offices located throughout the nation. Now, Medicare will conduct face-to-face hearings only under very special circumstances, and those demanding personal hearings forfeit the right to a 90-day decision.

Many legislators, patients' rights groups, and Medicare attorneys claim four offices were insufficient and worried that the change would result in sick or aging beneficiaries not obtaining just or positive decisions.



FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled defective or dangerous products you may have in your home or at work:

✓ **King of Fans, Inc.**, recalled 75,000 Maxi-Heat™ Dream Tower Heaters. Interior heater wiring can short-circuit and burn consumers.

✓ **Porter-Cable** has voluntarily called back 70,000 Porter-Cable 890 Series Routers with motor coil insulation that can be worn away by vibration and shock users.

✓ **Country Home Products, Inc.**, has asked buyers to return 15,700 2005 Model NEUTON® Cordless Electric Lawn Mowers. Even when the handlebar is released, the motor sometimes continues to run, causing the blade to spin, which can harm consumers.

✓ **Fisher-Price** has recalled 614,000 Fisher-Price® Laugh & Learn™ Musical Learning Chairs™. Children may become trapped between the chair seatback and side table, which poses a strangulation hazard.

✓ **Simplicity Inc.** requests consumers to return 104,000 Aspen 3 in 1 Cribs, sold under the Graco Trademark. Support screws can loosen, allowing mattresses to fall, posing a suffocation hazard to young children.

✓ **LTD Commodities and its subsidiary, The Lakeside Collection**, have voluntarily recalled 34,600 Pilates Balls. Exercisers using the ball can be hurt by plastic clips or grommets that may loosen from rubber tubing on nylon webbing.



Auto accidents

What is "proper lookout?"

In auto accident cases, drivers may be found negligent for failing to keep "proper lookout."

A driver is obliged by law to constantly monitor all the circumstances of driving in order to prevent a car accident. Conditions include paying attention to the roadway, traffic signals and controls, and other drivers.

To keep a proper lookout, drivers also should avoid common distractions. Studies show that the most common driver diversions are accidents, slowdowns, or other events outside the driver's vehicle; changing radio stations or CDs; talking with passengers; adjusting heating or cooling controls; eating or drinking; talking on a car or cell phone; and smoking.

Younger drivers are more prone to music-related distractions. Adults have their attention diverted by passengers. Seniors attend to objects or events happening outside the vehicle.

Drive safely. Keep a proper lookout.



You can beat City Hall

Police officers and qualified immunity

The long-standing legal doctrine of qualified immunity protects police officers and public officials from unreasonable allegations or false accusations that might hamper their ability to enforce the law or perform governmental business.

Most citizens understand that police put their lives at risk during dangerous situations and believe officers deserve some tolerance for their behavior—as long as the officers obey the law and uphold citizens' civil rights.

When police overstep bounds

When police violate the law while performing their duties, our civil justice system provides citizens a way to protect their rights. An appellate court ruled that a defendant law-enforcement officer who conducted clearly unconstitutional strip searches on two suspects arrested for drunk driving, and also made racist and threatening comments, did not have qualified immunity from prosecution. The court permitted the plaintiffs to sue to recover damages.

Consumer credit-card disputes

Collusion lawsuit challenges mandatory arbitration

Credit- and charge-card marketers take away consumers' rights to dispute unauthorized use, erroneous merchant billing, and extra fees by requiring cardholders to accept mandatory arbitration clauses in disagreements.

A 2005 lawsuit filed against these marketers alleges that they met in secret numerous times between 1998 and 2003 to establish strategies for industrywide imposition of mandatory arbitration clauses for settling customer disagreements. The plaintiffs claim that the clauses "deprive cardholders of effective recourse for illegal anticonsumer and anticompetitive activity, secure an unfair advantage for defendants in the dispute-resolution process, and immunize defendants from collective action by consumers."

Defendants

American Express
Bank of America
Capital One
Chase, Bank One
Citibank/Diners Club
Discover, Household
First USA
J.P. Morgan Chase
MBNA
Wells Fargo

Plaintiffs want the clauses, which also ban class actions and let companies skirt consumer protection and antitrust laws meant to prevent corporate misconduct, declared void.

Mandatory arbitration

Credit-card mandatory arbitration puts consumers at serious disadvantage because they...

- force unknowing waivers of constitutional rights.
- do not give cardholders an opportunity to opt out of arbitration.
- screen cases from public scrutiny.
- compel cardholders to agree to biased, company-selected arbitrators.
- fast-track cases card issuers can win quickly.
- prevent legal discovery of important information about a company's disputed actions.
- limit remedies available to wronged purchasers.
- may require consumers to pay arbitration costs.



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Krista Roeper

The face of medical malpractice

Twenty-one-year-old Krista Roeper was experiencing rectal bleeding. In two years, she went to her doctor 12 times and explained her problem in all but one visit. Her doctor never referred her for any other tests or to a specialist. When later diagnosed with colon cancer, her chances of survival were reduced significantly.

When Krista's case went to trial, jurors learned that her doctor saw more than 50 patients daily and even altered her record after learning she had cancer.

Patient-safety reforms to prevent that sort of volume practice could have saved Krista's life.

The jury, which issued a verdict of medical malpractice, asked to require Krista's doctor to take a medical-ethics course and never be allowed to practice alone because of their concern for his patients' care.

The state attorney general was going to bring charges against the doctor, but the case was dropped when the best witness, Krista, died of cancer. Please contact our office for information on medical negligence.

Our Martindale-Hubbell rating

Jason R. Schultz, P.C., has earned an AV rating in the *Martindale-Hubbell® Law Directory* for our legal capabilities and devotion to professional ethics. Since Martindale-Hubbell bases assessments on surveys of members of the bar and of judges, we take pride in our colleagues' recognizing and respecting the quality of our legal work.

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Paid medical writers

Writers for some medical journals have been paid by pharmaceutical firms to omit negative information and put a positive "spin" on drug articles.

Tattoos

Ink pigments in a three-by-five tattoo may contain from 1 to 25 micrograms of lead. Arsenic may also be present. These heavy metals have been scientifically determined by the state of California to cause cancer and reproductive harm.