



A Broken Tort System 8/4/04

Sen. John Edwards (D-N.C.) made millions as a plaintiff's lawyer, including cases on behalf of children with cerebral palsy who were allegedly injured at birth by obstetrical malpractice.

Mr. Edwards was a successful advocate for his clients, and I do not criticize his performance, but we should criticize the system under which he practiced. I am, in fact, a supporter of the Kerry-Edwards campaign. But Mr. Edwards was able to convince juries that the obstetrician or his medical team caused or failed to prevent a child's brain injury by an action or an inaction during labor and delivery, while we now know that only a small portion of cerebral palsy is preventable or is caused by the medical team. Most cerebral palsy is due to developmental abnormalities occurring during pregnancy or due to subtle infection near the time of delivery. Despite the increase in fetal monitoring and a marked increase in caesarean sections, the incidence of cerebral palsy has not decreased.

But parents expect normal, healthy babies, and they believe that a damaged baby must be someone's fault. Plaintiffs' lawyers rely on the lack of sophistication of juries and the outdated opinions of allegedly

expert witnesses to win multimillion-dollar judgments for a handful of children. The result is that malpractice premiums for obstetricians in Maryland are projected to rise from \$116,000 a year to \$160,000. As a result, fewer physicians are willing to deliver babies.

I would challenge Mr. Edwards to come forward with a new approach to the tort system he knows so well, a system that is broken. We need better, more comprehensive care for children with cerebral palsy and their families. We need to foster truth in the courtroom, rather than using "hired guns" as experts. Perhaps we need courts with judges who have special expertise. We need a system that will review cases in which children have cerebral palsy to see if there were better ways to detect, treat or prevent such injury. Such review should identify and discipline the rare physician who has caused, or failed to prevent, such injury.

Perhaps we need a "no-fault" system.

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have resolved.

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