

# CORPORATE CRIME REPORTER

## **Gerry Spence: Americans Being Lied to About Lawsuit Crisis**

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Americans are being lied to about the civil justice system.

That's the message veteran trial attorney Gerry Spence brought to Washington, D.C. this week.

Spence, who last year led a successful fight to defeat a medical malpractice cap initiative in his home state of Wyoming, came to the National Press Club in Washington, D.C. as part of an effort to beat back a similar proposal being pushed by President Bush in Congress.

The national drive to cap injury awards is being led by the insurance industry, doctors, and the Bush administration.

They claim that the country is being overrun by "frivolous" medical malpractice lawsuits that are driving up insurance rates for doctors.

But Senate Majority Leader Bill Frist (R-Tennessee) admits that he lacks the votes to pass legislation through the Senate this year.

Spence spent the better part of an hour ripping the insurance industry, the national media, negligent doctors and the Chamber of Commerce.

"In my 53 years of practice, I have never seen a frivolous medical malpractice case that has made it to trial," Spence said.

"It costs \$250,000 to \$300,000 to bring a case to trial," Spence said. "You just can't get into the courtroom for less money than that. And that money comes straight out of the lawyer's pocket."

Spence told the story of a woman who wanted to hire him to file a lawsuit against her doctor.

"A beautiful woman came to me at my office and sat down in a chair across

from my desk,” Spence recalled. “She was a mother with three children. And she said – I’d like you to represent me for my injuries. I couldn’t see any injuries. She was a healthy looking woman. I said what are your injuries? And she said – I can’t see. I’m blind.”

“As I began to talk to her, I found out that she had been blinded by a simple operation to clear out her sinuses. But a doctor who didn’t know what he was doing had punctured into her brain and destroyed her vision.”

“And I said – you want me to sue. Where do you live? She said I live in Colorado. I immediately knew what the problem was. No Colorado attorney would take her case. Do you know why? Because Colorado has caps of \$250,000. It would cost a good deal more than \$250,000 to hire the experts and to do the years of work that would be necessary to even get the case to trial. And I said to her – I’m sorry, but I can’t take the case. I cannot take your case. You have a just case. But I cannot take it.”

“So, you ask me what does the doctor want? He wants immunity from lawsuit. He doesn’t want lower rates. If he wanted lower rates, he would be attacking the insurance industry. He wants immunity from lawsuits and a cap that makes it impossible for children who don’t work, for mothers who don’t work, for retired people who don’t work, for any human being who has no economic loss, to recover for their injuries. And that gives the doctor practical total immunity.”

Spence said the insurance industry and doctors are pushing for caps on non-economic damages.

“What are we talking about when we talk about caps on non-economic damages?” Spence asked. “The cap says that you can’t recover anything more than \$250,000 for non-economic damages. If you are a mom and staying at home, and somebody runs over you and leaves you crippled in a wheel chair for life, you haven’t lost any economic damages. Because you don’t work. So guess what you get? What do you get? You get nothing.”

“If you are a retired worker and you are not working, you are home hoeing the garden and taking the grandkids fishing, which is what you have always wanted to do all of your life, that is what you worked for in those stinking factories, and now you have your free time, and a drunk runs over you, or a doctor destroys your last days by his negligence because he’s drunk, well, what do you get? Nothing.”

Spence said that caps aren’t necessary because “every judge in the country has the power to throw out every lawsuit before it gets to a jury.”

"I have never seen a frivolous lawsuit in a malpractice action in 53 years," he said. "And there isn't a single bit of evidence that there is any frivolity going on – it is a lie."

Spence read from a *Wall Street Journal* from earlier this year that reported that "lawyers are turning away cases involving victims that don't represent big economic losses, most notably, retired people, children and housewives."

"But you don't see ads from children, and women and older people saying – with caps on non economic damages, we have no value," Spence said. "We have been silenced. It is time for a revolution of truth. There is a crisis. There is no question about that. It is a horrible crisis. It is the best guarded secret in America. It is a crisis in medical malpractice."

"If you are covering a crisis of a profession that is causing as many deaths than are caused by heart attacks and cancer, and you want to cover that up, what do you do? You create a crisis on the other side against the people's lawyers who will fight for them."

One reason the people aren't hearing about this crisis in medical malpractice is because "we don't have a free press in the country – the press is owned by those who pay for their advertisements and regular people don't have the money needed to advertise for their rights," Spence said.

Spence helped defeat caps on non-economic damages in Wyoming by traveling around the state and speaking to packed town meetings.

"We had town meetings across the state of Wyoming," Spence said. "And I asked the folks in attendance – do you think that if you save your doctors some money on his insurance policy that he'll deduct it from the bill that he gives you? Will he reduce his fees? Do you think the hospitals that charge these ungodly, outrageous bills that break most people if they have even a tiny little injury of any kind – do you think that the hospitals will reduce their fees, or their charges to you if you are injured or hurt? Do you think that your children will stay in Wyoming now that the doctors have a break on their insurance rates? What do you think about these statements? Do you think people are telling you the truth, or do you think these are dastardly lies?"

Spence made the case that doctors are more dangerous than gun owners.

"Mr. Bush is a gun-toting president," Spence said. "I'm a gun-toting lawyer. We have a lot of guns in Wyoming. I grew up with a gun. We hunted for our food when I was a kid. I hunted for food when I was a young beginning lawyer in Wyoming. I raised my family on wild game."

"I went to 14 of these towns in Wyoming to carry this message that I'm trying to

give to you today. We had huge crowds. People would come out. They know they are being lied to. They are yearning for the truth.”

“I would say to these people – how many people here own a gun? Every hand went up. There isn’t anybody who doesn’t have a gun in Wyoming. I suspect it would have been the same in President Bush’s state.”

“There are 700,000 physicians in the United States. Accidental deaths by physicians per year are 120,000 – that’s being conservative. So, the accidental death rate per year by physicians is 0.171. That means a doctor only kills 1.7 persons in ten years.”

“The number of gun owners in the United States is 80 million. The number of accidental gun deaths per year for all age groups is 1,500 per year. So, the accidental death rate per year by gun owners with guns is 0.0000188.”

“So, statistically, doctors are approximately nine thousand times more dangerous than gun owners.”

Despite this, Spence said that he loves doctors.

“When you get to be my age, you love doctors,” he said. “The warranty that came with this old body has expired. Everything goes wrong and you spend as much time talking with the doctors as you do talking with your spouse. I can’t talk with you today, honey, I’m off to see the doctor. We love doctors. We all love our doctors. We all need our doctors. And most of our doctors are good doctors.”

“We have to be careful not to do to the doctors what the insurance industry has done to us,” Spence warned. “Trial lawyers are the fighters and the warriors for the people of this country. There are a few trial lawyers that we look at with disdain. There are bad lawyers, just like there are bad doctors. And if there are bad lawyers, they get disbarred, even if they are the President of the United States, they get disbarred if they are bad lawyers.”

“What about bad doctors? Five percent of the doctors in this country are causing 55 percent of the payouts by insurance companies. I was just reading this in the *New York Times*. Of the 2,774 doctors who had made payments in five or more malpractice cases, only 463 – one out of six was disciplined.”

“When I ask doctors in my home state – why don’t you do something about the bad ones – they say – we know who they are. And I say – why don’t you do something about it? And they say – we don’t want to do that. We might be next. We are afraid to do anything. It is politics. I don’t look at your mistakes and you don’t look at mine.”

“The first thing doctors might do to help would be to discipline their own. Why do we injure people and then say we have to take their rights away? Why don’t we say – when doctors injure people, take away the doctor’s rights? Isn’t that what makes sense? How about a three strikes and your are out law for doctors? On the third one you are out doctor. Get out.”

But Spence professed no love for the insurance companies.

“They own America,” Spence said. “We are taking on the king when we take on the insurance industry. They own the banks. We are taking on the king and all of his troops when we take on the insurance industry. And what kind of power do they have? They have the power that says we don’t even have to be subject to the antitrust laws of this nation. We are so powerful that we got an exemption for our industry from the antitrust laws of this nation. Every other corporation and business is subject to the antitrust laws of this nation, but not the insurance companies.”

“What would happen if the people rose up into a revolution of truth and said – we want protection from this industry? We want you subjected to the antitrust laws of this country. And then we need to have them subjected to scrutiny on the state level for every attempt they have made to increase rates. We need open rate hearings and they have to show that they have a need for a rate increase. Not because they are entitled to these kinds of profits, and these kinds of excesses in the billions, but that they actually deserve and are entitled to the rate increase.”

Spence said that the insurance commissioner in Wyoming is like the insurance commissioner of many other states – “he has no power.”

“He has the power to smile,” Spence said. “And the insurance companies come in and they say – we want a rate increase, and he smiles. That’s all he does. He can’t hold hearings. He can’t reject rates. He can’t do anything.”

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