A Bold Rethinking of “Litigious” America

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A bold rethinking of ‘litigious’ America

Think that the United States is lawsuit-happy? Think again.

A new book by SUNY Distinguished Service Professor David Engel debunks the commonly held belief that injured Americans have their attorney on speed-dial. In The Myth of the Litigious Society: Why We Don’t Sue (University of Chicago Press), Engel explores the reasons most injury victims don’t seek redress for their suffering, instead relying on their own resources, family and friends, and government programs.

“We’ve known for a long time that more than 90 percent of all injured people ‘lump’ their losses, even when there’s good reason to think the law is on their side. These people make no claim against their injurer or the injurer’s insurance company,” he says. “Approximately 4 percent hire lawyers, and only 2 or 3 percent of all injury victims end up bringing a tort action.

“We like to say that America is an exceptionally litigious society, and maybe that’s the reason we haven’t asked why the vast majority of our citizens actually avoid claiming when they could present a case. What are the social and legal consequences of our tendency to avoid using tort law, even when we’re harmed by someone else’s negligence?”

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“In my book, I don’t argue that our society would be better if we had a lot more tort litigation. This is not a brief in favor of more lawsuits. But I do think we need to get our facts right if we are going to make sound policy, deter negligent behavior, control dangerous and defective products, and provide adequate support for injury victims and their families.”

Engel’s book, written for a popular audience and drawing on research from fields as diverse as anthropology, cognitive science, rehab medicine and anesthesiology, puts forth three main reasons for the reticence of injury victims to make claims for compensation from their injurers:

• It’s difficult for people in pain to think clearly. “Pain tends to create confusion, it inhibits the use of language and communication, it restricts social interaction; often people are on medications that cloud their thinking. All of those responses to pain are consistent with the idea of people not taking action,” Engel says. One of his most striking empirical findings is the widespread tendency of victims to blame themselves for their injuries—and for others to blame the victims as well. This tendency also inhibits claiming.

• Popular culture portrays those who sue in a bad light. “There are all kinds of norms and stereotypes, spread through movies, TV and other media, suggesting that those who bring tort actions are somehow reprehensible people and that their lawyers are even worse,” Engel says. “There’s a lot of feeling among injury victims that ‘I don’t want to be that kind of person.’”

• The way we perceive our physical and cultural surroundings makes many injuries seem “natural,” even when they could easily be prevented by exercising greater care, Engel found. For example, it was long assumed that, since motor vehicles have blind spots, the tragic cases of drivers backing over young children were unavoidable. Until, that is, a parent-led lobbying campaign convinced Congress that hundreds of deaths and serious injuries could be prevented by backup camera displays – now being phased in as required standard equipment on new vehicles. But until that transition point when certain types of accidents are no longer perceived as natural, claims on behalf of victims simply appear nonsensical.

In the book, Engel argues for an evidence-based approach to the problem of injury in American society. Tort law has its place in reducing risk and compensating victims, but it should be considered in relation to other policy choices. Most importantly, sound policy can emerge only when we understand more accurately how injuries really affect individual lives and how people actually cope with the sometimes devastating losses they suffer. Vilifying injury victims as they struggle with difficult circumstances is not helpful. “I think we need a reverse culture shift,” he says, “a more honest understanding of what the problem is and what role the law really plays. If we want to find the right answers, we have to start by asking the right questions. I hope this book will persuade readers that there is already quite a bit of data shedding light on the problem of injury in American society. This would be a good time for lawyers and policymakers to take a closer look at it.”