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Medical Courts

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The Texas jury that ruled the prescription drug Vioxx was responsible for the death of a 59-year-old jogger, Robert Ernst, may have been duped by a questionable scientific theory introduced by the plaintiff's attorney, Mark Lanier. The theoretical sequence of events concocted by him to link Vioxx to Ernst's death -- a blood clot leading to a heart attack and then to a fatal arrhythmia (irregular heart beat) -- was contrary to Ernst's autopsy. The pathologist who performed the autopsy had found no blood clot and no heart muscle damage from a heart attack when Ernst died: She had attributed the death to arrhythmia. Vioxx has been linked to increased risk of heart attacks and strokes in a clinical trial but no study has linked it to arrhythmia.

The jury's verdict shows that our system is failing to provide justice reliably in medical cases. The remedy? Specialized state medical courts, where judges stop lawyers and hired-gun witnesses (for the plaintiff or the defendant) from misleading juries with theories disguised as science, something Judge Ben Hardin failed to do in the Ernst case.

Before the trial began, according to the New York Times, Mr. Lanier knew that the autopsy was a problem, and he told his legal team that he was going to "browbeat" the pathologist into supporting his theory linking Vioxx to Ernst's death. How plausible is that theory? "To say that Vioxx did it because a blood clot you didn't find caused a heart attack that left no evidence of heart muscle damage is absolutely speculative," says Dr. Jeffrey Borer, chief of Cardiovascular Pathophysiology at Weill Cornell Medical College. According to an expert on arrhythmia, Dr. John Somberg, professor of Medicine and Pharmacology at Rush Medical College in Chicago. "It is more likely that [Ernst] had a primary arrhythmia" without suffering a heart attack first. Blaming the death on Vioxx, he says, "is very far fetched."

How could a jury believe such a far fetched tale? The jury may have been swayed somewhat by Mr. Lanier's fondness for quoting the Bible and his star quality in Texas as a Baptist preacher, populist Republican, and anti-abortion, anti-corporate crusader. But the fundamental problem, in every state, is that juries drawn from the general population, as wonderful as they are in most cases, lack the expertise to decide medical questions accurately. They often fail. How often? Up to 80% of the time, according to the Harvard Medical Practice Study of litigation in New York state. Similar studies in Utah and Colorado show that verdicts against defendants in medical malpractice

cases are seldom justified by evidence. The same lack of expertise hampers juries from reaching fair decisions in trials involving medical products. The results conflict with our commitment to justice and fail to provide fast, fair remedies to actual victims.

In state medical courts, the right to a jury trial, which is guaranteed in most state constitutions, would be preserved. The difference is that medical cases would be assigned to a few judges, who would hear similar cases again and again, recognize the same patterns of fact, and become expert at keeping "junk science" out of the courtroom. Judges would also be given training in scientific evidence and call neutral expert witnesses to help jurors assess conflicting testimony. In many states, this reform could be achieved administratively, without legislation. (New York, for example, has already established 170 specialized courts without legislation.)

Is this reform radical? Yes, compared with the usual reform proposed -- caps on damages. Caps merely limit the size of the injustice. They don't get to the heart of the problem: an unjustified verdict. Texas law already caps damage awards, and that in the Ernst case will be whittled down to about a tenth of its current magnitude. But why merely cap an injustice when you can correct it?

Experienced medical court judges will help juries understand the technical issues and reach a verdict fair to all parties. A fair trial. Who can argue with that?

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