



MondayMonday

“The Fault, Dear Brutus”

July 10, 2017

Bathing in the warmth of the Fourth of July this year was not as comforting as it had been in the past. Sure, the burgers and hot dogs were the same, the weather cooperated, there was still Sousa, and Cagney in “Yankee Doodle Dandy, but something was amiss. There was a discomfort in the land that even the “illuminations” called for in John Adams’ letter to Abigail couldn’t cure.

True, this was the “great anniversary Festival” as Adams said. Yet, while some anniversaries are for celebrating, every so often, they become excuses for reflection. Reflection is two-fold, however. One can reflect on where they’ve been or where they are. Perhaps it’s best to do both.

We Americans are unhappy in a land which was built to allow the pursuit of just the opposite. We have things, to be sure, but along the way we have lost a bit of our soul. The country is split by a fissure that has been purposefully created by those who saw profit and power in doing so. The only difference between the actors is who won. We know very well who lost.

This country has never been undone by enemies from outside its borders, only from those within. That’s a message which the rest of the world fully understands and relies on. Therefore, when we battle with ourselves we accomplish nothing of any lasting value. All we do is avoid solving problems that are far more devastating to this great experiment than bullets, bombs or



missiles.

On this anniversary, the stuff that will take us to the next one lies in looking back to what got us here. Rather than rely on Cassius and his stars, we offer this far more pertinent analysis of the problem and, quite possibly, the solution: “You will think me transported with Enthusiasm but I am not. — I am well aware of the Toil and Blood and Treasure, that it will cost Us to maintain this Declaration, and support and defend these States. — Yet through all the Gloom I can see the Rays of ravishing Light and Glory. I can see the End is worth more than all the Means. And that Posterity will triumph in that Days Transaction, even altho We should rue it, which I trust in God We shall not.” John Adams (a lawyer, like us.)

There is, deep inside each of us, the rescuer; the righter of wrongs; the kind of person who takes a case, not because of profit, but because of purpose. Inevitably, it’s the case we work hardest on. Something’s wrong and we can’t abide the insult to justice. Ugh, the sacrifices we make to that Lady!

We grant great respect, even love and affection, to those in uniformed service to others. Many of these are first responders, those who head towards the danger, while those far saner among us head away from it. In return, we expect just that — the grit and determination to protect and defend us

when things get out of hand. But what happens when such people put person before purpose?

In *Rennix v. Jackson*, 2017 NY Slip Op 05471 (2d Dep’t 7/5/17), two uniformed EMTs and an Emergency Medical dispatcher from the NYC Fire Department were eating in a restaurant near the Dispatch Center. A worker at the restaurant, plaintiff here, was six months pregnant, suffered from asthma, and went into labor in a back room. Plaintiff became ill and could not breathe, so a co-worker, remembering the EMTs in the public area, went out to seek their help.

The problem was that the dispatcher, defendant Jackson, was not authorized to be on a break out of the Dispatch Center. Instead of the uniformed EMTs coming to plaintiff’s aid, Jackson merely called 911, and the three City employees disappeared before the ambulance even arrived. In the 13 minutes it took for the ambulance to come, plaintiff stopped breathing and died. Her baby, delivered by emergency C-section, died shortly thereafter.

In this action against the City, the court explained the law of special duty and how, since a municipal emergency response system is a governmental function, where an EMT is negligent, the municipality cannot be held liable absent such a “special duty.” While governmental immunity cannot apply to grossly negligent conduct, the City’s SJ motion was not based on such a defense at all. Instead, the City “contend[ed] that they owe[d] the plaintiff no duty of care” at all. “Thus, whether Jackson was negligent or gross negligent; in the absence of a special duty there can be no liability on the part of the City de-

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