

BALINT'S BULLETIN

CLIENT LAW UPDATE

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The Team

Top left to right: Reno Ettienne, Brenna Holscher, David Balint, Candace Chuck. Bottom left to right: Glory Hall and Elizabeth Heath. (Not pictured: Donald Horowitz, Linda Julien and Gloria Alvaran)

Mild Traumatic Brain Injury

Over the last 42 years I have dealt with scores of different types of injuries caused by the negligence of another person. One of the hardest for me is dealing with persons who have suffered brain injuries that end up having permanent effects. To a certain extent the person with a permanent brain injury is a different person from the one before the injury. The brain is a very complicated organ. Every case I have involving a brain injury I learn more about it. Some of the language we use, especially athletes, when getting a head injury minimizes what is really happening. We should stop using language like "getting a ding" or even words like getting "knocked out." The medical term for a concussion is a traumatic brain injury. It could be characterized as mild, moderate or severe. "Mild" is a misnomer. Even if brain function is affected even to a "mild" degree it could have profound effects on the life of the person injured. Some of the symptoms include difficulty thinking clearly, difficulty with planning, problems concentrating and problems remembering new infor-

mation (short-term memory problems). The more noticeable symptoms are often headache, vision problems, loss of balance, increased sensitivity to light or noise, irritability, moodiness, sadness, sleep problems, depression and a decreased interest in life, especially social life. Do these symptoms sound "mild?" I just finished a jury trial for a wonderful woman who suffered mild traumatic brain injury. She had many of the symptoms I just described. But the case reminded me of a few truths about even mild traumatic brain injury. The victim does not have to lose consciousness. In fact 90% of concussions happen without loss of consciousness. All you have to do to prove this to yourself is watch football. The players removed from the game because of suspicion of concussion were very seldom unconscious. The victim does not even have to have a blow to the head. Just moving the head around in a rapid acceleration deceleration type movement or rotational movement causes the brain to slosh around inside the skull causing the microscopic stretching and tearing thought to be the cause of the symptoms. In a study at Harborview over 50% of the persons ultimately diagnosed with brain injury were not caught by the doctors in the emergency room, probably because they were dealing more with other injuries. Most people recover from more obvious mild traumatic brain injury within 3 to 6 months but from 3% to 20% of persons have permanent deficits. It is also not always the case that noticeable symptoms appear immediately—it may take several days. It is also true that imaging, x-rays, CT or MRI scans in common use today cannot usually

visualize mild traumatic brain injuries. I might be a minority but I had strong negative reactions to the movies like *Finding Dory* and *50 First Dates*. Call me a curmudgeon, but I don't think that the memory loss associated with brain dysfunction is at all funny.

Airbag History

It is hard to remember cars without shoulder harnesses on the seat belts and without airbags. For over 20 years the auto industry fought the idea of air bags basically classifying it as science fiction when it first was publicly discussed in 1966. In about 1973 the technology for airbags was developed. It was not until 1988 that the Chrysler Corporation first announced that they would install airbags on some of their models that year and on all of their American-made cars by 1990. The other automakers quickly followed suit so that they would not be left behind in promoting their cars to an increasingly safety conscious public.

Real Tax Fraud

I am sure that federal income tax fraud exists and is a problem. Because of

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This newsletter reports on news and developments in the law. It is offered as a service to our clients and readers and is not a substitute for legal advice.

mostly Republican inspired budget cuts to the IRS there are so few agents today that your income taxes are mostly on the honor system. Of course, fraud by low-income tax payers can cost the Federal Government badly needed revenue. This loss of revenue is a paltry pennies on the dollar when compared to the loss of revenue because the very wealthy have secured decades of tax breaks which amount to subsidies. The latest "fraud" is the effort by the current Republican Congress and the President to grant further tax subsidies to the wealthy. This comes in 2 forms each of which has an exact number attached to it. The first is their long-standing efforts to repeal the estate tax. They have framed this as a "death tax" but it is really just an effort to recoup the lifetime of tax revenues lost from the very wealthy caused by various tax breaks they enjoy. If the estate tax is repealed it will cost the Government, i.e., all of us, \$226 billion over the next 10 years. The next effort at "fraud" is the effort to repeal what is called the Alternative Minimum Tax. What is that? Basically it says that if your earnings are high enough, many deductions will be disallowed in order to ensure that these higher earner, pay at least an approximation of their fair share of the costs of government which benefits them and all of us. A good example of what this means is the recent disclosure of President Trump's 2005 tax return, at least the first 2 pages of it. The tax return says that he earned \$150 million in 2005. If all the deductions were allowed he would have paid about \$6 million in taxes which equals about 4% of his earnings. With the Alternative Minimum Tax he paid approximately \$38 million in taxes which equals about 25% of gross earnings. There are very few tax payers in this country who are able to pay at such a low rate of 4% of gross earnings. The super-rich want to keep this benefit. How much revenue would be lost if the Alternative Minimum Tax were repealed? The answer is \$460 billion

over 10 years. The repeal of these 2 taxes is being disguised with all sorts of rhetoric, but I don't want anyone to be fooled.

Political Donations

I belong to the American Association for Justice. I have been a member for most of my 42 years of practicing law. One of the tasks of the association is to support politicians who fight for Justice for injury victims. For the 25 year period starting in 1990 my association spent \$38 million for political contributions. That's a lot, right? However, the National Chamber of Commerce, which lobbies against the rights of the injured, contributed \$42 million just in the year 2015. If you read about the shrinking rights of injured people v. the growing might of insurance companies and big business, you now know part of the reason.

Bottled Water

Do you want to know an easy way to save massive amounts of energy and the save massive amounts of water pollution? Stopped drinking bottled water and make sure that all plastics you use are recycled. This is a huge problem just in the United States, for example. The sales of bottled water is now about the same as all soft drinks combined. There are almost 50 billion bottles of water sold every year in the United States. That's billion with a B. Although it might not be true in Seattle, less than a third of those bottles are recycled. In most places in the United States we don't have a water quality problem and the water from the tap is just as good as the water in bottle. If you feel queasy about it and a filter to your tap. Scientists estimate that using one bottle of bottled water consumes 2000 times as much energy as drinking water from your tap. It is even more if you buy exotic imported brands. As far as water pollution is concerned, this is a global problem. It is estimated that there are 100 million

tons of plastic floating in our waterways and oceans with 8 million tons being added every year. The numbers are so huge that someone ran this calculation: there are the equivalent of 5 grocery bags of plastic for every foot of every beach in the world. Come on! Do we really need that plastic bottle that is used only once? If you add what you pay for those plastic bottles this plain water costs you more than a gallon of gasoline. The joke is on us.

Income Inequality

No society is immune from decay and disappearance. The United States now has a lifespan of less than 250 years, far less than many other societies in world history. Perhaps, just perhaps, America has staying power. This was the conclusion put forth in a book I endorse, *The End of History*, by Francis Fukuyama. He posits that democracies are more stable than any other type of society. If we look at Venezuela, Turkey, the Philippines, Russia or even Brazil today we might not agree. In order to survive in my opinion we the citizens must nurture our democracy and resist authoritarian impulses. One danger to any society is when there is massive income inequality. This is especially true in a democracy where the super rich can and do try to buy elections. According to a study by the Institute for Policy Studies the bonuses paid to Wall Street employees was more than double the earnings of all Americans who were being paid the federal minimum wage and work full time. The bonuses paid in 2014 amounted to 28 ½ billion dollars. The average bonus for the 168,000 workers was about \$175,000. It is estimated that there are about 1 million full-time workers being paid minimum wage. Their total earnings in 2014 was about \$15 billion. According to another study by the charity Oxfam, the richest 1% of people in the world control more than half of the total wealth on the planet. The world's 80 wealthiest people are estimated to own about \$1.9 trillion of wealth which is

about the same amount as is owned by 3.5 billion people who comprise the bottom half of the world's income scale.

Latest Smoking Stats

The CDC has just published the latest statistics on smoking in the United States. The good news is that price increases, education and prevention services are working. We could probably utilize the same tools with CO2 and methane emissions. The number of smokers is less than it was in the early 60s, less than 37 million people. The percentage of adults smoking is down to 15%. The sharpest declines are in the category of very young and the very old. An eye opening statistic is that the rates of smoking are closely correlated to educational levels. Smokers include 34% of those with a GED or less, 20% of high school grads, 17% of those with Associate degrees, 7% with college degrees and 4% of those with post graduate diplomas. Another unfortunate statistic is that the people who can least afford it are the heaviest smokers. Adults living below the poverty line are twice as likely to smoke as those above it.

Informed Citizenry—Part 2

Unfortunately there are a few people who looked down on immigrants trying to become US citizens. In the last Bulletin I presented some of the questions that are asked of applicants during their citizenship exam and asked my readers to take the quiz themselves. Before you feel too superior here are some more of the questions that a new immigrant must know.

39. How many justices are on the Supreme Court?
43. Who is the Governor of your state?
44. What is the capital of your state?
47. What is the name of the Speaker of the House of Representatives now?
48. There are four amendments to the Constitution about who can vote. Describe one of them.
58. What is one reason colonists came

to America?

61. Why did the colonists fight the British?
62. Who wrote the Declaration of Independence?
63. When was the Declaration of Independence adopted?
64. There were 13 original states. Name three.
67. The Federalist Papers supported the passage of the U.S. Constitution. Name one of the writers.
68. What is one thing Benjamin Franklin is famous for?
69. Who is the "Father of Our Country"?
70. Who was the first President?
71. What territory did the United States buy from France in 1803?
72. Name one war fought by the United States in the 1800s.
74. Name one problem that led to the Civil War.
75. What was one important thing that Abraham Lincoln did?*
77. What did Susan B. Anthony do?
78. Name one war fought by the United States in the 1900s.
79. Who was President during World War I?
80. Who was President during the Great Depression and World War II?
81. Who did the United States fight in World War II?
82. Before he was President, Eisenhower was a general. What war was he in?
83. During the Cold War, what was the main concern of the United States?
84. What movement tried to end racial discrimination?
85. What did Martin Luther King, Jr. do?
87. Name one American Indian tribe in the United States.
88. Name one of the two longest rivers in the United States.
91. Name one U.S. territory.
92. Name one state that borders Canada.
93. Name one state that borders Mexico.
95. Where is the Statue of Liberty?

96. Why does the flag have 13 stripes?
98. What is the name of the national anthem?
99. When do we celebrate Independence Day?
100. Name two national U.S. holidays.

Doctors Debate Trump's Healthcare Plan

The Allergists were in favor of scratching it, but the Dermatologists advised not to make any rash moves. The Gastroenterologists had sort of a gut feeling about it, but the Neurologists thought the Administration had a lot of nerve. Meanwhile, Obstetricians felt certain everyone was laboring under a misconception, while the Ophthalmologists considered the idea shortsighted. Pathologists yelled, "Over my dead body!" while the pediatricians said, "Oh, grow up!" The Psychiatrists thought the whole idea was madness, while the Radiologists could see right through it. Surgeons decided to wash their hands of the whole thing and the Internists claimed it would indeed be a bitter pill to swallow. The Plastic Surgeons opined that this proposal would "put a whole new face on the matter." The Podiatrists thought it was a step forward, but the Urologists were pissed off at the whole idea. Anesthesiologists thought the whole idea was a gas, and those lofty Cardiologists didn't have the heart to say no. In the end, the Proctologists won out, leaving the entire decision up to the ***** in Washington.

Living Wills

Everyone should have a Living Will. It has other names, most notably, Advance Directive. This is a document preferably signed in front of witnesses that directs doctors and hospitals what your wishes are to prolong life when there is nothing more they can do and when the medical condition is such that communication is impossible. There is no magic to the language but a suggested form is available on our website for downloading and signing. Hospitals will often offer them at the

time of admission. Some religions have other requirements and so you should also consult with your spiritual leader. The idea behind this is that these crucial decisions should be made when you are still able to think clearly how you want your life to end. These documents alone are often ignored by the doctors and hospitals, however. Here are some suggestions to make them effective. First and foremost have a frank and full discussion with the family members about your wishes. It is often on spouses and close family members that the medical providers rely upon in making these decisions. Give them a copy or copies of the document. If you don't express yourself in this way and leave the decision-making to your spouse or relatives, the guilt you leave them with might be overwhelming. You should certainly have the discussion with each and every one of your treating doctors and provide them a copy of the Advance Directive and insist that they put it in your medical file. If you are going to the hospital for a serious procedure take a couple of copies with you and make sure the nurses know about them. These end of life decisions are one of the most important tasks you can accomplish. Don't treat them lightly.

Thanks to my friend Maureen O'Hara for these:

-A **paraprozdokian** is a figure of speech in which in which the latter part of the sentence or phrase is surprising or unexpected in a way that causes the reader or listener to re-frame or re-interpret the first part.
 -I asked God for a bike, but I know God doesn't work that way. So I stole a bike and asked for forgiveness.
 -Do not argue with an idiot. He will drag you down to his level and beat you with experience.
 -Going to church doesn't make you Christian any more than standing in a garage makes you a car.
 -If I agree with you, we'd both be wrong.
 -We never really grow up; we only learn how to act in public.
 -War does not determine who is right, only who is left.
 -Evening news is where they begin with 'Good evening' and then then proceed to tell you why it isn't.
 -A bus station is where a bus stops. A train station is where a train stops. On my desk, I have a work station.
 -Dolphins are so smart that within a few weeks of captivity, they can train people to stand in the edge of the pool and throw fish at them.
 -You do not need a parachute to skydive. You only need a parachute to skydive twice.
 -Hospitality: making your guests feel like they're at home, even if you wish

they were.
 -Some cause happiness everywhere they go. Others whenever they go.
 -I used to be indecisive. Now I'm not sure.
 -You're never too old to learn something stupid.
 -Nostalgia isn't what it used to be.

Quote of the Month

"Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them. [...] We should therefore claim, in the name of tolerance, the right not to tolerate the intolerant." Karl Popper, *The Open Society and Its Enemies* (1945), Vol. 1, Notes to the Chapters: Ch. 7, Note 4.

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