

BALINT'S BULLETIN

CLIENT LAW UPDATE

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David in Front of Federal Judges— 9th Circuit

I recently had the privilege of arguing a case before the Federal Ninth Circuit Court of Appeals. It can be watched in full at the link shown below. These judges have been in the news a lot lately because they are in charge of the entire West Coast including Hawaii and Alaska. The argument was part of an epic battle with an insurance company that had taken premiums from my client for almost two decades without any claims being made. When she was injured and finally made a claim to the insurance company, it fought like hell, forcing a protracted and continuing litigation. If you want to see the argument it is on the internet at: https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000013911

The 14th Amendment

The 14th amendment to The United States Constitution was ratified on July 9, 1868. A good argument can be made that it is one of the key components of our Constitution. It certainly has been the most litigated because it contains some of our most fundamental principles. I quote in full the text of Section 1 emphasizing some of the most important language. Some politicians of today and in the past have espoused positions contrary to the 14th amendment. It is ironic that many of the same politicians touted the sanctity of the Constitution. It makes one wonder if they've even read it.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or en-

force any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Your Car Can Smother You!

There are about 17 million cars sold in the United States each year. At least half of them have keyless ignition systems. Instead of using a key to turn the car on or off, all you need to do is push a button. Many cars can even be started remotely. Many of the cars do not have a failsafe or even a warning system. If such the car is turned on, it remains running even though the key fob is not near the car, or the key fob is in the car but no one is inside. When you combine this feature with increasingly quiet engines, people all over the country are dying or suffering permanent brain damage from carbon monoxide poisoning. The circumstances are varied. For example, a person drives into their garage and thinks the engine is off, but it's not. Carbon monoxide fills the house. A car is turned on remotely in the garage and then is forgotten. Carbon monoxide fills the house. Many smoke alarms have a carbon monoxide detection feature (make sure your devices do have this feature). Carbon monoxide is particularly dangerous because it cannot be detected by the human senses. It is odorless and colorless. It deprives the body of oxygen killing the brain or leaving it impaired. The fix is relatively simple but some of the car manufacturers are

resisting the change. For example, since 2013 some Ford vehicles turn off the engine after 13 minutes of idling if the key fob is not in the car. General Motors estimated it would cost \$5 per car to install the same feature but they have resisted doing so. Toyotas seem particularly dangerous, including its LEXUS brand. Toyotas have been involved in half of the carbon monoxide fatalities and serious injuries. The push button start feature was originally a 1998 option in the Mercedes-Benz. The feature was introduced in America in 2002. The Traffic Safety Administration estimated it would cost not even \$500,000 per year for each manufacturer to code their cars to turn off under the more dangerous scenarios. Thus far compliance is spotty. So please be extremely careful using these so-called "smart keys" or remote start keys when your car is in a garage. If you're buying a car, make sure to ask if it has safety features, especially the automatic shutoff.

Minimize Rear-End Collisions

Rear-end collisions are the most frequent car injury cases we handle. Yes,

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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.

in almost all cases the following driver is technically liable for all of the harms and losses caused to the victim. But there are ways to reduce the risk of being the victim. Here are some driving tips I learned from dealing with scores of these cases. When changing lanes, make sure those already in the lane still have plenty of room to stop quickly if necessary. Come to a stop as gradually as possible. This will require your constant vigilance of the traffic ahead of you to be alert to slowdowns and stops. Following drivers rely on your brake lights--make sure they are all operating. When you come to a stop don't be a creep. By this I mean don't put on your brakes and creep a few inches then repeat. Whenever brake lights go off, following drivers who are inattentive can be misled and hit their accelerator. If you must exit the freeway or make a turn, get in the proper lane well ahead of the maneuver so that you do not have to make sudden lane changes. Whenever you come to a stop in traffic make sure that you leave enough space between you and the car ahead so that if there is a collision you do not suffer secondary damages by being rammed into the car ahead. A good rule of thumb in this regard is stop with enough room to at least see the bottom of the rear tires of the preceding car. Always signal lane changes and turns because this signals a following driver that you will be slowing. I do not need more work so I want to keep my clients and friends safe and not in need of my services.

Concussion Detection Tool

Our firm does a fair amount of brain injury cases. Brain injury commonly occurs when there has been a concussion. Concussions can be caused either by direct blow to the head or simply by the head being rapidly accelerated or decelerated. Loss of consciousness is not required. These cases present difficulties in proving damages to a jury because the injured person looks normal and often talks normal. Concussions usually do not appear on any x-

ray or CT device. There may be a new way to diagnose concussions and prove that a concussion has occurred. Recently the Food and Drug Administration (FDA) approved a blood test that has proven to be highly accurate in diagnosing a concussion. The blood test is called the Banyan Brain Trauma Indicator. The test subjects were soldiers in combat zones who were suspected of suffering concussions. Brain injuries are much more common than the general public knows. Emergency rooms see about 2.8 million brain injury cases a year. 50,000 people die from head injuries a year. This is more than those who die on the roads and more than those who die by guns. Concussion is often misdiagnosed because, although many symptoms appear quickly, some develop several days or even weeks later. A friend had a concussion which manifested itself months after an injury. It could have killed him. How does this new test work? There are certain proteins that are released by an injured brain into the bloodstream which can be measured. The levels of these proteins are highly accurate in predicting concussions. In cases when there was documented brain injury the blood test would have predicted the same result 98% of the time. In less than one percent of the time there was a false positive. Use of this blood test, once it becomes known to emergency rooms and athletic departments, has huge potential. The potential is quicker, more accurate diagnosis, and avoidance of unnecessary CT scans and MRIs. It has significant potential for avoiding misdiagnosis in emergency rooms. If you or a loved one suffers a concussion of any kind, make sure that the emergency room is aware of this test.

Authority of U.S. Border Patrol
Immigration enforcement permeates the news. Different agencies of the U.S. Government are involved. The U.S. Border Patrol has the immediate

authority to monitor our borders. One might think that this is limited to our border with Mexico and Canada but you would be wrong. The U.S. border patrol has authority to act within 100 miles of the perimeter of the United States. This includes all of our coastlines--the Pacific Ocean, Atlantic Ocean, Great Lakes and the Caribbean. This area includes the homes of 200 million Americans. Eleven states are fully within this operational zone. Included in Patrol authority is the ability to establish roadblocks and ask every vehicle occupant about their citizenship status. I guess this means we should all carry proof of American citizenship for every member of our family whenever we travel.

More Car Safety--Sunroofs

My car has a sunroof. The next one I purchase won't have one. Why? Three reasons. The main reason is that they can be extremely dangerous. The statistics are not exact because the National Highway Transportation Safety Administration fails to keep statistics even though the general field of danger to the public has been known. Approximately 300 people are killed every year and another 1,400 are injured, most of them seriously, when they get ejected from a car via the sunroof. This is a problem especially with roll-overs. Good friends of mine almost lost their lives when their car hit black ice, rolled over onto the roof and continued to skid down the highway. The sunroof failed. Many of the car manufacturers have known about the problem but have done very little to engineer safety features that we expect to find in our cars. For example, some of the manufacturers are still using tempered glass as opposed to the more sturdy, but more expensive, laminated safety glass which is used in windshields. Some companies, such as Volvo, have switched to laminated glass, but others have not. Many manufacturers have not spent much on engineering issues to make the sunroof anchors stronger. The manufac-

urers have available to them technology that could deploy an air bag over the sunroof but have not done so. The second reason my next car will not have a sunroof is because I simply don't use it very often. The car manufacturers know that most people use their sunroofs only when they first purchase a car, after that sunroofs are pretty much ignored. The third reason is that they simply add a significant amount to the price of the car for very little discernible benefit.

Book Review -The Soul of America

Jon Meachum is a well-known historian and author, as well as a frequent guest on various talk shows. His latest book is subtitled "The Battle for Our Better Angels." Over the course of my life I have had bouts of despair about the future of America. Our politics at times feels hopeless. Partisan bickering at times has paralyzed our government. Politicians frequently seem not to care about what's good for America as opposed to what's good for their party and for their reelection. Meachum captures this mood and seeks to calm us all down as can be seen from the subtitle. He takes us through various periods in the history of the United States when similar crises tended to make Americans pessimistic. His basic point is that we've successfully survived these various periods. Many of those times were worse than today. He takes us through the politics during the Civil war and its aftermath. Reconstruction included the rise of the Ku Klux Klan and the rise of Jim Crow, basically robbing the newly freed slaves of any ability to participate in citizenship. Teddy Roosevelt faced the task of race relations in the early 1900s. He was severely criticized for inviting Booker T. Washington to dinner at the White House. To much of white America, especially the South, this was an impeachable offense. The rise of the Robber Barons and the huge inequality of income and the abuse of workers was part of Roosevelt's struggle as president. Woodrow Wilson was faced

with the aftermath of World War I and America's mood of isolation, tariffs and the incarnation of the America First movement. The Ku Klux Klan was ascendant. Its membership was estimated to be as high as 6 million people. The right wing railed against immigration especially as to immigration of nonwhites. The governor of Georgia, Clifford Walker, who had presidential aspirations originated the idea of a wall to keep out immigrants. At a Klan rally in 1924 he said, "I would build a wall of steel, a wall as high as having, against the admission of a single one of those southern Europeans who never thought the thoughts or spoke the language of a democracy in their lives." In 1925 as many as 50,000 hooded Klansmen staged a massive march in Washington DC in the shadow of the capital. President Herbert Hoover, and then Franklin D Roosevelt, had to contend with the massive disruption of the Great Depression which began in 1929. The racist and anti-immigrant governor of Louisiana, Huey Long, along with the vicious Catholic Priest, Father Charles E. Coughlin, promoted extreme hate. The language of hate was everywhere. Blacks, Jews, Asians, Catholics, and others were targeted. Despite the rise of the Nazis in Europe and the threat of world war, the America Firsters were totally against America entering the war or even assisting England. Charles Lindbergh, an American hero, was an extreme anti-Semite and was given honors by Adolf Hitler himself. Nazi sympathizers in America numbered in the millions and included Henry Ford. If Japan had not attacked United States at Pearl Harbor who knows what would have happened to the world with the isolationist tendencies of the American populace saturated with demagoguery?

Meachum then takes us through the era following World War II. This era included the founding by Robert

Welsh, a billionaire candy manufacturer, of the John Birch Society which promoted what we would now call "deep state" conspiracies to bring down the United States of America in favor of communism. Sen. Joseph McCarthy initiated a reign of terror based on fear of communism. His technique was to claim he had facts and evidence of deep Communist conspiracies and conspirators. He named names, yet never produced any proof of actual conspiracy. He once again proved that fear and conspiracy thinking does not depend on facts or truth but simply on fear. Following the assassination of President Kennedy, Lyndon Johnson, a Texan, assumed the presidency. When he recognized that racial hatred was tearing America apart he confronted the segregationists. Through sheer force of will he pushed through Congress both The Civil Rights Act and The Voting Rights Act.

Meachum's point is that eventually America overcame the extremists and the haters. In each of those occasions we had Presidents who were true leaders who helped correct the ship of state. Meachum ends with a note of caution that the source of the hate and divisiveness under the present administration comes from the top down. Now hate speech originates in the White House and is tolerated by a complicit Republican Party. We often have been fortunate, lucky even, to have had true leadership. The worry is that currently, unless we, the people, become aware and pull back from hate, we may not be so fortunate in continuing this great nation, the United States of America.

Too Many Lawsuits?

Eighty-seven percent of Americans surveyed believe that there are too many lawsuits filed in America. What this really means is that the decades long effort by insurance companies and big business have successfully brainwashed us. The real numbers are available for anyone who cares about

the truth. The word "tort" simply means personal injury. Tort lawsuits are now less than 5% of all civil court filings (as opposed to criminal cases). Since 1993 the rate of tort lawsuits has dropped from 10 suits for every 1000 Americans to the present time where the rate is now 2 in 1000, an 80% decline. In real numbers almost 2 million fewer tort lawsuits are filed each year. At the same time business -type lawsuits including contracts, mortgage foreclosures, collection agency lawsuits, evictions and so on now occupy more than half of the civil filings. In other words businesses advertise their hatred of lawsuits while massively increasing their own utilization of the courts. In that same period of time contract cases have grown from 18% of the filings to 51%. What about medical malpractice cases which occupy so much attention of the insurance industry? Well, in the two decades between 1992 and 2012 there has been a 57% decline in malpractice claims paid. One of the main reasons for the decline in tort cases is that the insurance industry has made litigation so expensive that many injured persons and many lawyers simply can't afford it. Americans used to believe that access to justice was a fundamental right. The insurance industry, with the complicity of the courts, has gutted access to justice. What about those runaway

verdicts? Less than 1/5th of one percent of civil cases result in judgments of more than \$500,000. The greater shares of verdicts are less than \$12,000.

How to Call the Police

My thanks to my friend, Maureen O'Hara for the following. She brightens up my day frequently with funny emails. She says this is a true story. The names and places have been removed to protect the innocent!

An elderly man was going to bed when his wife told him that he'd left the light on in the garden shed, which she could see from the bedroom window. He opened the back door to go turn off the light, but saw that there were people in the shed stealing things. He phoned the police, who asked "Is someone in your house?" He said "No," but some people are breaking into my garden shed and stealing from me. Then the police dispatcher said "All patrols are busy, you should lock your doors and an officer will be along when one is available" He said, "Okay," hung up the phone and counted to 30. Then he phoned the police again. "Hello, I just called you a few seconds ago because there were people stealing things from my shed. Well, you don't have to worry about them now because I just shot

and killed them both--the dogs are eating them right now," and he hung up.

Within five minutes, six police cars, a SWAT Team, a helicopter, two firetrucks, a paramedic and an ambulance showed up at the house and caught the burglars red-handed. One of the officers said to the homeowner, "I thought you said that you'd shot them!" He replied, "I thought you said there was no body available!"

Saying for the Month

President Theodore Roosevelt faced severe criticism in his day. But in words that are relevant today, he admonished the American people, "To announce that there must be no criticism of the President, or that we are to stand by the President, right or wrong, is not only unpatriotic and servile, but it is morally treasonable to the American public."

CONTACT INFORMATION

Call us at 206-728-7799

or fax us at 206-728-2729

dbalint@balintl.com

bholscher@balintl.com

don.horowitz@gmail.com

David's Cell/Message: 206-947-7988

Website: www.balintl.com

BALINT & ASSOCIATES, P.L.L.C.
ATTORNEYS AT LAW
5950 6TH AVE SOUTH, SUITE 200
SEATTLE, WA 98108

Return service requested

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