

# BALINT'S BULLETIN

## CLIENT LAW UPDATE

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### Don Horowitz Feted

Recently my partner, Don Horowitz, was honored by the Washington State Bar Association with the "Award of Merit." This is the highest award given by the Bar Association and is given to the lawyer in the state who most contributes to the justice system. Don is also on the Board of Regents of Seattle University and has been active in the Seattle University Law School. Seattle University threw a reception for him in recognition of his honor. Many dignitaries including a past governor, Bar Association Presidents, Professors, Supreme Court Justices and others were there to recognize Don and his commitment to justice. In his words, he has tried during his life just "doing what is right." The photograph was taken at the reception. Portrayed is our paralegal, Kish Underwood, Attorneys Brenna Holscher, Don Horowitz, and David Balint.

### Eyewitness Testimony vs. DNA

In the last few years, the Innocence Project has used DNA evidence to overturn 265 convictions for murder and/or other serious crimes. These convictions resulted in death sentences or long prison terms. Three fourths of the 265 convictions were based upon eyewitness testimony, i.e.,

witnesses came to the courtroom and identified the accused as being the perpetrator of the crime. However, in each of those cases, the eyewitnesses were wrong, and innocent persons went to jail. In my 36 years of practice, I've dealt nearly every day with conflicting testimony from witnesses who are describing the same incident. In very few of these situations do I think that anyone is lying. Rather, the problem of conflicting testimony is caused by the fact that our brains work in funny (and frequently unreliable) ways in creating memories of our experiences. That said, hired "professional witnesses," usually hired by insurance companies who don't want to pay, *do* often intentionally manipulate facts in order to best support the insurance company's case.



### Head Injuries

A regular part of my personal injury practice over the last 36 years involves people who suffered brain injuries. These are somewhat euphemistically known as "head injuries" or "closed head injuries." This is often a major component of an injured person's damages. It can be easily overlooked by a lawyer who is not familiar with the symptoms and circumstances that can lead to brain injuries. According to the Centers for Disease Control and Prevention, there are about 3.8 million Americans who suffer *reported* concussions

every year. There is undoubtedly a multiple of that number that goes unreported. There is growing attention to the problem because of the well documented cases of professional football players and boxers who have died prematurely, showing accumulated brain injuries on autopsy. There are about 100,000 high school football players who are fully knocked out every year. It is not like the old western movies. When a person is knocked out there is almost inevitably some degree of a brain injury. But the real problem is that a lot of brain injury cases involve situations in which the person does not lose consciousness. Turning to college football, it is estimated that the average college football player suffers almost a thousand subconcussive head injuries each season. "Subconcussive" means there is damage to the brain but not enough to cause symptoms. Often these repeated blows cause accumulative damage. In fact, the experts estimate that only 10% of real concussions include loss of consciousness.

Damages to the brain often get caused when there isn't even a blow to the head. This is because of the phys-

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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.

ics of the causation of brain injury. Whenever the head is jerked suddenly the soft tissue of the brain bounces back and forth inside the skull creating damages. Obviously this can be when the head hits something and gets stopped by a windshield or by another football player's body but it often occurs when there is a whiplash of the head as when a car is hit from any direction. Football coaches are learning that a good way to diagnosis a head injury is when a player complains of neck pain.

Sometimes there are symptoms that develop immediately or very rapidly following a head injury. Symptoms include a loss of consciousness, even momentary, headaches, vomiting, dizziness, problems with balance, hypersensitivity to outside stimulus such as light or noise, confusion, loss of emotional control such as anger and especially, amnesia. If a person cannot remember being in an accident it is a sure sign of brain injury.

Over time there is a whole list of symptoms of brain injury. Short-term memory loss is one of the most significant. This means persons cannot remember things they just heard, saw or read. Usually long-term memory is not affected by a head injury but the ability to learn new things and remember recent events is affected. An inability to focus is another symptom. So is loss of emotional control including spontaneous crying or anger. Word finding problems or problems remembering a person's name that one should know are additional signs of brain injury.

As one neuropsychologist said in regard to head injuries suffered by young people: an injury to their brain is not like a knee injury or an injury to any other body part, it is an injury to their future.

### Too Many Lawyers?

In 1974 when I was sworn in as a lawyer there were exactly 5,881 lawyers in Washington. Now there are about 36,000 that have been sworn in and are still alive and active. I was told in 1974

that there were too many lawyers and not enough jobs for them. In 2009 there were about 43,000 law degrees handed out by the accredited law schools in our country. Because opening a law school is relatively cheap nowadays, there were 9 new law schools inaugurated in 2009 alone and many more in the pipeline. Many people borrow money through student loan programs in order to go through the 3 years of law school and then can't find jobs. Student loans are not dischargeable in bankruptcy as a general rule so what many of these people are stuck with is a huge debt and no ability to pay for it.

The law schools consistently mislead potential students about job prospects. I saw one statistic generated by the law schools that represented that 94% of graduates of law schools are employed. What they don't tell you is that the 'employment' could be at a McDonald's or working a few hours a week. A few years ago when I advertised for a part-time receptionist, I had over 50 résumés of highly qualified people apply—including 3 lawyers willing to work as a receptionist.

One of the downsides of so many new lawyers without jobs in established law firms is that they make it up as they go. They have no guidelines or mentors for examples. This alone is one explanation for why the practice of law has become so much meaner than it was in 1974 when I knew by name and face most of the trial lawyers in King County. It has also had the unfortunate effect of allowing insurance companies to run cut-rate defense firms, substantially reducing the incentive that many of these insurance companies have to negotiate in good faith and to compromise cases. Does the reality of dim prospects for legal work matter to prospective law students? Apparently not, because there are many more applicants for each available slot than there are seats in the law schools. It is still highly competitive

to get into law school.



### What's Your Sign? Allstate Wants to Know

Allstate Insurance conducted a study of its 2010 car accident database to see if there was a correlation between astrological signs of the drivers and accident frequency. Someone must have thought it was a good idea so that they could increase rates for those drivers born under the wrong astrological sign. Sure enough they found that Virgos were 7 times more likely to be in a car accident than Scorpios. Someone leaked the study to the press. Allstate issued an apology saying that it was all a misunderstanding and a joke. However, insurance companies do not spend money doing studies unless they hope to capture a business advantage from it. I wonder what they will do with the new astrological sign, Ophiuchus?



### Shoe Bomber Sentencing

Below are the proceedings in court when Richard Reid, the notorious shoe bomber, was sentenced on January 30, 2003. It is worth reading in full. Prior to sentencing, Judge William Young asked the defendant if he had anything to say. After admitting his guilt to the court for the record, Reid also admitted his 'allegiance to Osama bin Laden, to Islam, and to the religion of Allah,' defiantly stating, 'I think I will not apologize for my actions,' and told the

court 'I am at war with your country.'

Judge Young then delivered the following statement: "Mr. Richard C. Reid, hearken now to the sentence the Court imposes upon you. On counts 1, 5 and 6 the Court sentences you to life in prison in the custody of the United States Attorney General. On counts 2, 3, 4 and 7, the Court sentences you to 20 years in prison on each count, the sentence on each count to run consecutively. On count 8 the Court sentences you to the mandatory 30 years again, to be served consecutively to the 80 years just imposed. The Court imposes upon you for each of the eight counts a fine of \$250,000. That's an aggregate fine of \$2 million.

This is the sentence that is provided for by our statutes. It is a fair and just sentence. It is a righteous sentence. Now, let me explain this to you. We are not afraid of you or any of your terrorist co-conspirators, Mr. Reid. We are Americans. We have been through the fire before. There is too much war talk here and I say that to everyone with the utmost respect. Here in this court, we deal with individuals as individuals and care for individuals as individuals. As human beings, we reach out for justice.

You are not an enemy combatant. You are a terrorist. You are not a soldier in any war. You are a terrorist. To give you that reference, to call you a soldier, gives you far too much stature. Whether the officers of government do it or your attorney does it, or if you think you are a soldier, you are not—you are a terrorist. And we do not negotiate with terrorists. We do not meet with terrorists. We do not sign documents with terrorists. We hunt them down one by one and bring them to justice.

So war talk is way out of line in this court. You are a big fellow. But you are not that big. You're no warrior. I've known warriors. You are a terrorist. A species of criminal that is guilty of multiple attempted murders. In a

very real sense, State Trooper Santiago had it right when you first were taken off that plane and into custody and you wondered where the press and the TV crews were, and he said: 'You're no big deal.' You are no big deal. What your able counsel and what the equally able United States attorneys have grappled with and what I have as honestly as I know how tried to grapple with, is why you did something so horrific. What was it that led you here to this courtroom today?

I have listened respectfully to what you have to say. And I ask you to search your heart and ask yourself what sort of unfathomable hate led you to do what you are guilty of and admit you are guilty of doing? And, I have an answer for you. It may not satisfy you, but as I search this entire record, it comes as close to understanding as I know. It seems to me you hate the one thing that to us is most precious. You hate our freedom, our individual freedom. Our individual freedom to live as we choose, to come and go as we choose, to believe or not believe as we individually choose.

Here, in this society, the very wind carries freedom. It carries it everywhere from sea to shining sea. It is because we prize individual freedom so much that you are here in this beautiful courtroom, so that everyone can see, truly see, that justice is administered fairly, individually, and discretely. It is for freedom's sake that your lawyers are striving so vigorously on your behalf, have filed appeals, will go on in their representation of you before other judges. We Americans are all about freedom. Because we all know that the way we treat you, Mr. Reid, is the measure of our own liberties. Make no mistake though. It is yet true that we will bear any burden, pay any price, to preserve our freedoms. Look around this courtroom. Mark it well. The world is not going to long remember

what you or I say here. The day after tomorrow, it will be forgotten, but this, however, will long endure.

Here in this courtroom and courtrooms all across America, the American people will gather to see that justice, individual justice, justice, not war, individual justice is in fact being done. The very President of the United States through his officers will have to come into courtrooms and lay out evidence on which specific matters can be judged and juries of citizens will gather to sit and judge that evidence democratically, to mold and shape and refine our sense of justice. See that flag, Mr. Reid? That's the flag of the United States of America. That flag will fly there long after this is all forgotten. That flag stands for freedom. And it always will.

Mr. Custody Officer. Stand him down."



### Our Declining Ability to Compete

The U.S. educational system is in free fall just at a time when more education is essential for the ability of each individual to compete as well as for the U.S. economy to compete. Here is a shocker. 40 million Americans do not have a high school diploma or its equivalent. Any person without a diploma can get the equivalent by taking the General Educational Development test (GED). This takes preparation and preparation takes time and money. Some states fail to offer any training even though their high schools fail to graduate these people. Not only that, some states require a \$400 fee to take the test. The State of Iowa, which does invest in its people, had a 98% pass rate on the GED. In many states less than 60% pass. When will America wake up to this looming crisis?

**Guns In America**

Over the last few decades in this country, after every murderous rampage there is hand wringing over the easy availability of guns. So just how many guns are out there? Well, here are some facts I found. In the USA there are 90 guns per hundred households. This is the most of any country in the world. Yemen, for instance, has 61 guns per hundred households. 30% of all known guns in private hands in the world are in the hands of US citizens. Lastly, and to me this is the most interesting fact, currently, while the US constitutes 5% of the world's population, we are buying 50% of all new guns manufactured every year.

**How Measurements Work**

- Ratio of an igloo's circumference to its diameter = Eskimo pi.
- 2000 pounds of Chinese Soup = won ton.
- 1 millionth of a mouthwash = 1 microscope.
- Time between slipping on a peel and smacking the pavement = 1bananosecond.
- Weight an evangelist carries with God = 1 billigram.
- Time it takes to sail 220 yards at 1 nautical mile per hour =knotfurlong.
- 365.25 days of drinking low calorie

- beer = 1 Lite year.
- 16.5 feet in the Twilight Zone = 1 Rod Serling.
- Half a large intestine = 1 semicolon.
- 1,000,000 aches = 1 megahurtz.
- Basic unit of laryngitis - 1 hoarsepower.
- Shortest distance between two jokes - a straight line.
- 453.6 graham crackers= 1 pound cake.
- 1 million microphones = 1 megaphone.
- 1 million bicycles = 1 megacycle.
- 365 bicycles = 1 unicycle.
- 2000 mockingbirds = two kilomockingbirds.
- 10 cards = 1 decacard.
- 52 cards = 1 deckacard.
- 1 kilogram of falling figs = 1 Fig Newton.
- 1000 mls of wet socks = 1 literhosen.
- 1 millionth of a fish = 1 microfiche.
- 1 trillion pins = 1 terrapin.
- 10 rations = 1 decaration.
- 100 rations = 1 C-Ration.
- 2 monograms = 1 diagram.
- 8 nickels = 2 paradigms.
- 28.5 statute miles of intravenous surgical tubing at Yale University Hospital = 1 I.V. League.



**Quotes of the Month**

Unless someone like you cares an awful lot, nothing is going to get better. It's not.

-Dr. Seuss, The Lorax

The only way you can hurt the body is not use it. Inactivity is the killer and, remember, it's never too late."

-Jack LaLanne (9/26/1914 - 1/23/2011)



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