BALINT'S BULLETIN
CLIENT LAW UPDATE

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Seasons Greetings

I want to express my gratitude and appreciation to all of my clients and friends. If you are receiving this newsletter this note of appreciation includes you. Your support of us during the past year has been phenomenal. We truly appreciate your trust in referring yourself, your family and your friends to us when they are in need of legal help. We do no advertising and depend exclusively on our base of support. On behalf of myself, Don Horowitz, Brenna Holscher, Kish Underwood, Glory Hall, Linda Julien – thank you!

Movie Review – Hotcoffeethemovie

In nearly every jury trial I have, the insurance defense lawyers ask the jury about so called frivolous lawsuits and always mention the McDonalds hot coffee case. The insurance industry has grossly distorted the facts of the case and has used it as the poster child for an all out assault on the right of injured persons to sue or otherwise seek redress for their harms. The US Chamber of Commerce and its local affiliates together with right wing demagogues decided about 20 years ago to attack in various forms the rights of persons to seek compensation for the harms caused by others. Obviously, if companies and insurance companies in particular can get away with causing harm without fear of paying for their harm, they will get even richer at the expense of the injured person. When a person is injured somebody pays. In our system a person who pays should not be the one injured rather the one whose negligence caused the injury. When we hear politicians scream about "frivolous lawsuits" it is interesting that they are forced to use the same few examples over and over again with the McDonald's case being the leading example. Why can't they use updated cases? Because lawsuits that could be characterized as "frivolous" are few and far between. No lawyer wants to waste time on a case that, if truly frivolous, will be lost when it gets in front of a jury or judge.

The attacks on our civil justice system takes several forms. The first is to repeat the big lie of "frivolous lawsuits" enough times that people begin to believe it. The second is by pouring huge amounts of money into judicial races across the country, especially at the Supreme Court levels to elect judges who are pro business. The movie documents one state where juries have awarded damages for personal injuries against wrongdoers (and their insurance companies) or against corporations where nearly every single appeal was successful and the jury verdict is thrown out. The amounts of money being poured into judicial races is phenomenal especially when you realize that judges usually make far less than the often successful attorneys that appear before of them. The next assault is by outright forcing people to contract to agree not to sue. These so called "arbitration clauses" require that you resolve disputes by arbitration and the arbitrators are preselected to give favorable rulings. More and more businesses are requiring arbitration clauses. Banks, credit card companies and your telephone company and your lender and many others have had these arbitration causes but they are now showing up in doctor's offices, insurance contacts and everywhere. This is an outright denial of the right to a jury trial. So-called "caps on damages" is another big business/insurance company strategy being employed in most states. These are legislatively imposed limits on types of damages, taking away the jury determination of damages based on the facts of each case. For example, a person rendered permanently disabled could sue for lost income and medical bills but only for an artificially set level of damages for their decreased quality of life. Think of blindness or brain damage or loss of limbs. Who wins? The insurance companies for those who caused the injuries.

Hospital Infections

Several times a year potential clients call me with a complaint that they acquired a sometimes horrible infection while hospitalized. The response from the medical insurance industry is usually something along the lines that hospital infections are just a part of the risk of hospitalizations. What the medical insurance companies are saying, really, is that there is nothing that can be done about infections in hospi-

INSIDE THIS ISSUE

Movie Review—Hotcoffeethemovie	1
Hospital Infections	1
Poverty in the US	2
Reality Check	2
Book Review—Outliers	2
Huge Honor for Brother In-Law	3
Word Games	3
Rating Charities	4
Will Rogers Quotes	4
Thought For the Month	4

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.

tals. A 2009 report from the Joint Commission accrediting hospitals found that staff compliance rates within hospitals nationally with hand washing requirements between patients was only at 40%. There have been various campaigns, some more successful than others, to encourage compliance 100% of the time. In my observation some hospitals like Swedish here in Seattle are very good at hand washing. Nationally, however, the findings are dismal. This is disturbing because it is well documented that simple hand washing (and washing of hospital garments) do drastically cut hospital infection rates. Hand washing campaigns to doctors and nurses centered on washing hands for the protection of the healthcare workers has had little effect. Many healthcare workers think that because they are around sick people all the time they have acquired immunities. When the approach has been to get them to focus on the vulnerable patients rather than their own safety, hand washing rates immediately improved. What can you, the patient, do about it? I urge everybody to look carefully what their doctors and nurses do and insist that they wash. The same is true of visitors. One cannot be too shy in being responsible for ones own health.

Poverty in the US

The Census Bureau has finally compiled its figures for 2010 regarding family and personal income in the United States. The results are truly disturbing. In 2010 2.6 million people became newly impoverished, defined by the Bureau as earnings below $22,113 for a family of 4. Could you live on $22,113 a year? But that is the poverty line. What is worse is that this represents over 46 million people now living in poverty which is over 15% of the population. The Census Bureau also has a category called "deep poverty." Deep poverty is defined as having an income at half or less than half of the figure for poverty. There are now 20.5 million people in this country, 6.7% of the population, living in deep poverty. The pain is being spread around because median family income has declined by about 2.5% just in 2010. Here is the real statistic, however. In 2010 about 86 million people of working age did not work at all during the entire year. All of these people are defined as ready, willing and able to work but unable to find jobs. The burden is especially difficult on those entering the labor force, i.e., those under age 25. Besides the number this is a disturbing figure for another reason. Once people are out of work for extended periods of time the likelihood of getting back into the job market is greatly diminished. When employers are hiring, despite record corporate profits, they are hiring college educated people because they can get such people with the same pay they use to give to high school graduates or those even without a high school degree. We are the richest country on earth, but the wealth is being spread upward and not broadly through the middle class or those in poverty.

Reality Check

Regardless of where most people stand politically, reality doesn't always matter. Beliefs are firmly held. Politicians pander to these belief systems and they ignore reality. Here are some disturbing facts about the direction of our economy. In the second quarter of 2011 (April-June) the economy significantly worsened for individuals but substantially improved for corporations. The net worth of all Americans dropped .3% in that quarter. Retirement portfolios fell .5% and home values decreased .4%. Household income, even adjusted for inflation, has fallen 6.4% since 2007 which was just before the beginning if the recession. The average homeowner who still has housing has dropped to just under 39% equity in homes which is down from 61% a decade ago due to the falling housing values.

One of the mantras being heard is that if we give more tax breaks to corporations and the wealthy this will trickle down to the rest of us. Well, during the second quarter while the entire economy was continuing to rush downward, corporations held a record of $2 trillion in cash by the end of the quarter, an increase of 4.5% in the one 3 month period alone.

Book Review – Outliers

I strongly recommend Outliers by Malcolm Gladwell whose previous books I have also recommended. The subtitle of the book is "The Story of Success." Gladwell is such a good writer that even this book, which explains why many people are successful, is an easier read than many novels. He explodes the myth that successful people are only successful because of innate ability combined with hard work and a bit of luck. A good example is his analysis of hockey players that make it into the rarified atmosphere of professional hockey. Professional hockey players, like people successful in any field, must have the mental and physical tools it takes. His point is that huge numbers of people have these innate abilities but do not end up being successful. A study of the top amateur hockey players, as well as professional players, ends up amounting to birthday plus natural talent. The vast majority of successful hockey players are born in January February and March. Why does that make a difference? Because January 1 is the cutoff birthdate for players at various levels in the hockey system, beginning in grade school. From a very early age kids born in the first 3 months of the year are compet-

ing against kids almost a year younger who were born in the last part of the previous year. Since they are bigger and more mature, coaches give them more attention, they get more playing time and more experience and eventually compete against even better players who have similarly been "chosen." Similar clusters of birth dates can be found where there are cutoff dates for particular sports seasons.

His next chapter analyzes what he calls the 10,000 hour rule. He points out that the single most predictive factor in any activity demanding high performance and skill, are those who practice 10,000 hours or more. Without the opportunity to refine skills to that huge extent, the others fall into lower tiers of success. He points out that Bill Gates and Paul Allen had parents who could support them and send them to a private school, Lakeside, which had one of the first computer terminals connected to a main frame in the country. Through a series of other circumstances they were given the opportunity to program for endless hours at Lakeside, at the University of Washington (at 3am to 6am) which background gave them opportunities to be in various start-ups continuing their programming skills. Similarly the Beatles took a job at the grueling circuit in the Hamburg, Germany strip clubs where they played 8-10 hours a night 7 nights a week for months on end. Similarly once any musician practices their instrument for about 10,000 hours or more they can reach high levels of professional skill and recognition. The rule here, Gladwell points out, is practice. Lots of it makes for success and the level of success is dependent on the hours invested.

He has several chapters relating to success being measured by reason of cultural or ethnic background. Rice farming in Southeast China, he says, is one of the most demanding physical and mental occupations in the world. In order to be successful, farmers often put in 360 days a year of long days and need to gage exactly which of hundreds of varieties of seeds to plant, watering levels and temperature levels, infestation and weed control and on and on. People in that culture immigrating to the United States have shown huge capacity for hard work and concentration. Similarly Jewish refugees during the late 1800s and early 1900s to the United States came from European cultures that excluded them farming or anything relating to land ownership forcing them into trades and occupations that were perfectly suited for the industrialization which occurred in America and well suited to take advantage of the business opportunities that America presented.

I think the most interesting chapter is his analysis of cultural backgrounds as it related to analysis of major airplane crashes. This analysis, which the airlines finally recognized in the 1990s, resulted in even safer airline travel than ever before. Korean Air had a huge number of extremely large disasters. So did airlines run by other particular countries. What was the one determining/predictive factor for high crash rates? It was people from cultures who gave huge deference to authority. When copilots saw something dangerous they were afraid to challenge the captains from these cultures or gave too much deference to other authority figures such as air traffic controllers. In other words, the crew failed to work as a team which meant that small accumulated failures lead to these huge disasters. What makes people successful? Read Outliers.

Huge Honor for Brother In-Law

John Sidles is my brother in-law. He is a professor of Orthopedics and Sports Medicine at the University of Washington Medical School. He is not a medical doctor but rather was hired by the University a number of years ago as a PhD in physics. John has already done some wonderful things in medicine. For example, thanks to his advances, replacement surgery for various joints is far less invasive than it used to be. Since 1991, when he was challenged by the head of the Orthopedics Department to come up with better diagnostic tools for various then un-diagnosable conditions, he began work on what is now called "magnetic residence force microscopy." I do not really understand it but he was able to combine MRI imaging with atomic microscope technology so much so that they can now see individual atoms in living tissue. He improved the ability to see these tiny structures so that diagnosis can be definitive. He is still hoping to be able to utilize his technology to manipulate these small structures which would enable medicine to cure virtually any disease. His invention is not yet out of the laboratory but there is no stopping progress. For his achievement John has just been awarded the prestigious Laukien prize, the highest honor given in the MRI field. You can read the full article at: http://www.orthop.washington.edu/Portals/21/www/Patient%20Care/Newsroom/eNews/eNews_July2011.pdf

Word Games

I think I knew this at one time. The word 'snafu' was coined by US Army soldiers in World War 2. It is really not for polite conversation but is widely used today. It is heavy with irony and means "situation normal all fouled up!" I have substituted the word "fouled" for this family bulletin and newsletter.

Rating Charities

America is an exceptional country in many respects. One of the ways we are most exceptional is our generosity.

Despite this awful economic climate in which we find ourselves it is expected that Americans will donate over $300 billion dollars to charities this year. Fundraisers know this so we are bombarded with solicitations in the mail, by telephone, by television ads and, more recently, by internet advertising. We give generously but do we know how effective our gifts are? Usually we have no idea if our donation goes into administrative costs or the charity. Even further we do not know the extent to which the money that reaches the charity is really an effective charity or not. The bottom line is that for most of us there is no accountability or even a decent measurement of "effectiveness."

When called by telephone solicitors I urge you to do what I do in 100% of the cases. I ask what percentage of the gift goes to administrative costs as appose to the ultimate charity. In Washington they must answer that question. If they don't, hang up. Usually the answer is that around 80% to 90% goes to the fundraisers and almost nothing goes to the charity. It is helpful to know if the charity is even legitimate. In order to be properly registered for tax deductibility purposes the government has a website, GuideStar.org. On that website you can review the annual filings of registered charities and fairly quickly determine how much their receipts go to administrative costs. Another strong resource can be found at charitynavigator.org. They also rate charities and have a very thorough tips and recourses sections to help you make intelligent decisions on charitable contributions. It includes information on common frauds, on the best way to give donations when there is a national or international crisis, tips on the best practices of intelligent donors, questions to ask solicitors and so on. We all want to continue the American tradition of generous charitable contributions. Each dollar should count. Be careful and be purposeful.

Will Rogers Quotes

My thanks to my friend Maureen O'Hara for sending me some observations from Will Rogers. Rogers died in 1935 in a plane crash but he left us with many astute observations. Some of them are:

-Never squat while wearing your spurs

-Never miss a good chance to shut up

-If you find yourself in a hole, stop digging

-There are three kinds of men: The ones that learn by reading, the few who learn by observation and the rest of them that have to pee on the electric fence and find out for themselves

-Good judgment comes from experience, and a lot of that comes from bad judgment

-After eating an entire bull, a mountain lion felt so good he started roaring. He kept it up until a hunter came along and shot him. The moral: When you're full of bull, keep your mouth shut.

Thought For the Month

"Not only is the universe stranger than we imagine, it is stranger than we **can** imagine."

Sir Arthur Eddington, English astronomer (1882 - 1944).

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BALINT'S BULLETIN

Movie Review—Hotcoffeethemovie	1
Hospital Infections	1
Poverty in the US	2
Reality Check	2
Book Review—Outliers	2
Huge Honor for Brother In-Law	3
Word Games	3
Rating Charities	4
Will Rogers Quotes	4
Thought For the Month	4