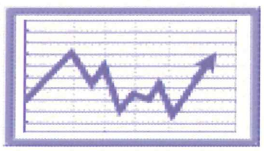
BALINT'S BULLETIN
CLIENT LAW UPDATE

Issue 77 August 2015



Murder Rates

In 2014 the Pan American Health Organization surveyed murder rates in the Americas, including the United States, and compared them to the rest of the world. The results are disturbing. In Honduras there were 104 murders per 100,000 population, a rate closely followed by Venezuela and Jamaica. Guns were the murder weapon in 75% of the cases in those countries. In the U.S. the rate was 5.3 per 100,000, 68% by firearm. The Canadian homicide rate was less than 2 per 100,000. In the rest of the world 32% of the killings were by gun. Homicides are a major health problem around the world.

U.S. Chamber of Commerce—Victimizer of Victims

The United States Chamber of Commerce has over 3 million business member organizations. It has consistently fought and lobbied to eliminate or minimize the ability of injured persons to recover from those who harm them. The organization's extreme hostility toward injured persons can be epitomized by their international opposition to anti-smoking measures across the world. For decades they led the fight against anti-smoking measures in the United States. Thankfully they have mostly lost that battle. People in other countries are now being victimized by the U.S. Chamber of Commerce which is actively lobbying against any anti-smoking measures everywhere in the world. For example, they oppose laws that restrict smoking in public places and places where people are at risk for secondhand smoke. In other countries, they continue to maintain the ridiculous position that there is no scientific evidence that smoking is harmful. They outright lie in other countries about the effectiveness of restrictions on cigarette packaging. The health insurance and drug industries are so committed to the organization that they have accepted its anti-smoking campaign and continue their membership. On its board of directors, the U.S. Chamber of Commerce has Anthem, one of the nation's largest medical insurance companies. Its board also has at least three other executives of health insurance companies, as well as the Pfizer Corporation which makes huge amount of money from cancer drugs. How these companies can continue their membership in such an organization is beyond belief. Some companies have a greater degree of morality. For example, Apple quit the Chamber of Commerce because, predictably, the Chamber of Commerce is using the same tactics against climate change regulation as they did against tobacco legislation.

The American Criminal Justice System—A Crime

In Communist China, less than one person in 1,000 accused of a crime is acquitted.. Most of the rest confess. The actual percentage of acquittals in 2013 was .007%. What other country approaches these rates of confession and conviction? The United States of America. In 2013, of the criminal cases that were not dismissed at the outset, 97% involved coerced confessions. In China they do it by torture. In the United States, we do it by means of the plea bargaining system. Since I do not practice criminal law, it took me a while to understand this system, at least a little bit. A young friend of mine was accused of a crime that, at the very most, should have been a relatively low level misdemeanor. Instead, the prosecutor charged him with a very serious crime, a felony that could have involved years in prison. The decision to charge a criminal defendant is made solely by the prosecutor. There is no judicial oversight. There is no judicial control. The net effect is that the prosecutors will charge a person with a higher level crime in order to coerce a guilty plea (in real effect, a confession) to a lower level crime. If a prosecutor loses a case there is no effect on her or his career. In contrast, if an individual charged with a crime loses the case he or she faces serious, life changing, consequences. My friend pled guilty to a misdemeanor even though I thought that it would have been difficult, if not impossible, for the prosecutor to have proved it in front of a jury. In our country we have the Sixth Amendment to the Constitution which guarantees that persons charged with a crime can have a speedy public trial by a jury 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.

our peers. This was devised as a mechanism against British tyranny, i.e., the government having control over our fate. The plea bargaining system has given government control back, not to a king, but to a prosecutor. We now give only lip service to the concept of "innocent until proven guilty." The ideal is to make it difficult for the State to win a criminal conviction because a falsely accused person will suffer lifetime consequences from such conviction.

There are a couple of more recent changes in our criminal justice system which have magnified the adverse consequences of having prosecutors engage in plea bargaining. The first change was the increased severity of criminal penalties imposed by governments across the United States in response to the fear of rising crime. For those who remember the presidential campaigns of the 70s and 80s, we can remember the "soft on crime" attacks. As a consequence of the fear of crime, penalties were increased even for relatively minor crimes. This meant that if a person did not plead guilty to a lesser crime, the penalties were immensely increased. Secondly, out of distrust of judges and to take away judicial discretion, the laws of most states and of the United States were changed to mandate certain penalties for certain levels of crimes without regard to the individual circumstances. This gave the prosecutors tremendous leverage. As a consequence, less than 3% of criminal defendants actually get to a jury trial. The rest are coerced into confessions. Whether you live in the United States or in China the results are the same.

There are two possible solutions I can think of. The first is to require all criminal charges to go to trial. This would force the prosecutors to adjust the level of the crime charged to what they can probably prove. The other change is to require judicial review of all charging decisions by a prosecutor. If we want justice in America, rather than just an efficient machine to put accused people away, then these changes should be made. If you want to read a full academic article about this issue, go online to the article by retired U.S. District Judge Jed Rakoff in the New York Review of Books, November 20, 2014 issue.

Bail, More Prosecutorial Power

Kalief Browder was sixteen years old when he was accused of stealing a backpack in 2010. The case was ultimately dismissed. When he was brought before a court he was told he would have to plead guilty or he would be imprisoned in Rikers Island unless he could post bail. The family could not post even a small amount of bail. He spent three years behind bars before the case was dismissed. He suffered brutality from the guards and fellow prisoners. He tried several times to kill himself because he could not stand it. He never recovered and committed suicide at age 22. Variations of the story can be told tens of thousands of times in the United States of America in the twenty-first century. People are arrested and if the crime charged is more than a petty crime they will often have to post bail before they can be released prior to trial. The prosecutors often offer that, if they plead guilty to a lesser charge, then they don't have to wait for trial. But if they believe they are innocent they are stuck for often extended periods of time in a jail or prison. What happens to their jobs? What happens to their family, including children of single parents? With the technology we have available today we should be able to track people enough so that only in the most serious of crimes and under circumstances of the most serious flight risks (or for people whose release might result in violence to third persons) should an accused person be held in jail or prison before they can even have a trial. People who are living in poverty often have no way of marshaling the resources even to pay small amounts of bail. The criminal judges are often way too busy to spend much time looking at bail issues and more often than not just follow the recommendation of the prosecutor. Again, the system seems broken.

Steer It, Clear It Law

I have been a driver in Washington for 52 years and a lawyer for 41 years. I always thought it was common sense for people involved in a collision that did not involve personal injuries to move their vehicles off the road as soon as possible so as not to block traffic and cause inconvenience to other drivers. I only recently learned that not only is it common sense but it's also the law. A Washington statute provides that if a collision involves only property damage, drivers are required to move the vehicles off the road as soon as possible. The law then says the drivers are to remain until they have exchanged information as is also required by the law. In case someone thinks that moving the car might be interpreted as a guilty action, the statute reads: "Moving the vehicle in no way affects fault for an accident." Whenever it can be done safely I recommend that cell phone pictures should be taken quickly and efficiently while the cars are still in their original crash condition before moving them, but the duty is the same: If you can steer it, clear it.

Meat Eating

I have to consider the source, but an organization promoting the eating of less meat has produced some startling statistics. According to them, in our lifetime the average American will consume the equivalent of 7,000 animals including 11 cows, 27 pigs, 2,400 chickens, 80 turkeys, 30 sheep, and 4,500 fish. Several people close to me are either vegetarians or vegans. My daughter, for example, will not eat anything that has a face. My grandson is an avid and knowledgeable birder. He is just 9 years old but he decided more than 2 years ago that he loved birds

too much to eat any. Nevertheless, non-carnivores are a tiny minority. 5% of Americans consider themselves vegetarians and 2% classify themselves as vegans. Regardless of how you classify yourself, I believe that knowledge is power even if the knowledge is uncomfortable. I recommend everyone watch the documentary, Fast Food Nation which documents how our meat animals are raised and processed.

The Truth About 'Caps' on Damages

Insurance companies, the U.S. Chamber of Commerce, and lobbyists for large groups of people who cause harm, have several times proposed and pushed through legislation under the guise of "tort reform," capping or putting a limit on damages recoverable by people who are injured by the wrongdoing of others. Thankfully, in Washington our state Supreme Court has ruled that such "caps" are against the Washington State constitution and therefore invalid. Most other states have come to similar conclusions. In the states that have a cap on damages, the insurance premiums have not gone down. In other words, the insurance industry says that limiting damages to persons injured will reduce premiums for liability insurance. This has not once proven to be true. It's simply a scam to increase insurance company profits at the expense of injured persons. When a wrongdoer is negligent and causes harm to an innocent victim, who should bear the loss? Should the injured person just accept their fate or should the person who caused the harm suffer the consequences? Our system of law assumes that the wrongdoer should bear the loss. What all of us should do is buy insurance so that if we cause harm, the financial consequences can be spread out to all the people paying premiums. The insurance companies know what these risks are and charge premiums accordingly to cover losses and to make a profit. The profits of insurance companies are skyrocketing.

An example of what happens when there is a cap on damages graphically was seen this last May when an Amtrak engineer of a commuter train out of Philadelphia pushed the speed of his train up to 106 miles an hour around a curve causing a high-speed derailment. Eight people were killed and 200 people were injured, many of them severely. Congress had passed a law capping liability against Amtrak at $200 million for any single train wreck. The total damages to the persons injured and the families of the people killed will easily exceed that limit. So what happens? In effect what Congress decided is that if the harms exceed $200 million, those people who were injured will not be compensated and therefore they will be paying a subsidy to keep Amtrak running. Furthermore, somebody will have to decide between injured victims how to allocate the limited pool of money. An award to one injured person will take away from another injured person or family. Several of the injured persons have been rendered totally disabled and medical bills in some cases are immense. Lives have been ruined by the wrongdoing of an Amtrak engineer and by Amtrak itself for not installing known technologies which would have prevented the derailment. In a nutshell, that's how limiting damages works. Victims are not fully compensated and insurance companies make more profit.

Beware of Wearables

Recording devices are everywhere. I have hearing aids. When I go to the other audiologist she downloads data from my hearing aids which gives her all sorts of information about usage including times of day, average per week and so on. Do you think she could be listening? One of the lawyers with whom I office just got Fitbit. Apparently it counts the number of steps you take every day. Some of these devices measure also your heart rate, monitor your sleep, and track your location (GPS). Some of them even automatically upload the data to the cloud. This is just beginning to have an impact on my injury cases, both positive and negative. We are beginning to see insurance defense lawyers asking about these wearable devices and, if the answer is in the affirmative, they are demanding the data. They hope to disprove or minimize the effects of injuries. This is especially true if they have this down-loadable data from both before and after the harm. Most new cars today are equipped with black boxes that measure all sorts of data that gets preserved if there is a collision. I have now had three cases where the actual collision was recorded on nearby business cameras. Two of them were dramatic and horrible him collisions between a car and my clients who were in crosswalks. These security cameras are ubiquitous. Is there any hope of preserving privacy?

Obituary—Magda Schaloum

My good friend, Magda Schaloum, died on June 9 at the age of 92. I met her because she was the mother of Lucia DeFunis ,who was my partner Marco DeFunis's wife. All four of my grandparents came from Hungary and so I had an affinity for Magda who was born in Hungary. When she was 22 years old, the Nazis took her and all the Jews of Hungary to concentration camps where most of them were murdered. She was twice sent to Auschwitz. Upon arrival she and her mother were quickly evaluated by the infamous Auschwitz doctor, Josef Mengele. The Nazis separated them, sending her mother immediately to the gas chamber while Magda was forced to be a slave-laborer in the Nazi war machine. Somehow she survived while all the other members of her family perished. She was freed by the U.S. Army in May of 1945. She met her husband, Izak, in the displaced persons

camps because no countries, including the United States, were willing to accept large numbers of Jews. She and her husband came to this country in 1951. In her later years she gave hundreds of lectures to school children and others about her experiences. Despite all of the things that she saw and experienced in her life she was always smiling, optimistic and cheerful. I will miss her.

Obituary—Mercia Gladstein Asher

My friend, Mercia Gladstein Asher, died in May. Although she was 91 years old, Mercia was full of life and fully engaged. She assiduously read the New York Times and could discuss any issue of current affairs or politics cogently and persuasively. Those who discussed things with her needed to be fully informed if they had a hope of participating in discussions with her. In the days when professional women were relatively rare, she became a real estate agent. She was successful in real estate and in investments, and was rightfully proud of her accomplishments and business reputation. She truly cared about me and was always interested in my practice. I am friends with her children and her extended family. We will all miss her.

Obituary—Jack Varon

Jack Varon died in June of this year at the age of 88. He was an inspiration in many ways. The son of poor immigrants, he took every opportunity to improve himself. After graduating Garfield High School, he joined the Navy where he served with honor. He was a graduate of the University of Washington at a time when it was relatively difficult to make the sacrifices necessary to go to college. His love of America knew no bounds. In college he was in the ROTC and served 20 or more years in the Army reserves. At one point he was the commanding officer at Fort Lawton here in Seattle. He lost his wife, Sally, at an early age and faced other difficulties, but he was always cheerful and upbeat. I loved sharing stories with him especially about our military experiences. He had a great reputation in the furniture business, running his own business and then working in the furniture departments of local department stores. Fittingly enough, the obituary in the Seattle Times showed a picture of him in full military uniform. He will be missed.

Food for Thought

Lao Tzu, a Sixth Century BCE Chinese philosopher, and perhaps a contemporary of Confucius, said:

If you are depressed, you are living in the past.

If you are anxious, you are living in the future.

If you are at peace, you are living in the present

Confession of a Logophile

I admit it. I am a logophile, a lover of words. Take, for example, the word 'symposium.' A friend of mine said that he was going to attend a symposium. The word struck me as interesting so I looked up its origins. It originates in Greek. 'Sym' derivers from 'son' meaning 'together' and 'potes' meaning 'drinking.' In other words, the original meaning of the word is 'fellow drinker.' The bottom line is if you're going to a symposium, you're going to a drinking party!

Quote of the Month

"The universe consists of protons, neurons, electrons, photons and … morons."

Unknown cynical scientist or comedian

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