BALINT'S BULLETIN
CLIENT LAW UPDATE

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Seasons Greetings

Crashes Aren't Accidents

I have been practicing personal injury law for 40 years now. It doesn't seem like that long, but it is. I have handled hundreds of personal injury cases. I can now say with near certainty that in none of the cases were the injuries truly "accidents." The term "accident" implies unavoidability. It implies acts of God. It implies the absence of personal responsibility especially when people (including jurors sometimes) use an expression which grates on my ears: "it was just an accident." In every case I have handled injuries were caused by some person or number of persons who could have and should have avoided the situation. They should have stopped at the stop sign. They should not have tried to run the red light. They should not have been drinking alcohol and then driving. They should have had their brakes checked. They shouldn't have been talking on their cell phone or texting. The list goes on and on. Injuries are caused when someone has done something they should not have done, or failed to do something they should have. When I talk with clients or with jurors, and in all my legal paperwork, I try never to use the term "accident" because I know the implications of the term are simply to avoid personal responsibility or to deny negligence. Instead I use words like crashes, collisions, injuries, incidents and other terms. This has been my long standing practice. Recently, the Federal National Highway Traffic Safety Administration (NHTSA) has banned the term "accident" from all of its publications and has asked its representatives and speakers not to use the term. Many states are also recognizing that it is an inappropriate use of this term. Arizona, for example, on its collision report forms, has changed the label on the form from "Accident Report" to "Collision Report." Our police departments have long used this descriptor. If we are going to make our highways safe then we need to change the way we think. The way we think about things affects our behavior.

Disappearing Jury Trials

I often wonder about the popularity of lawyer TV shows which have been so pervasive almost since the time TV began. They depict the most exciting feature of the practice of law – the jury trial. I have had too many jury trials to count. However, I have noticed that the frequency of trials has drastically decreased. When I communicate with my colleagues within the personal injury bar they have the same observation. Now we have some statistics to back it up. I routinely tell new clients, when they ask if their case will settle, that over 90% of the civil cases do in fact settle. There are a variety of reasons for this. One of the reasons is the local King County rule, and the rule in several other Washington counties and across the country, that before the court will let you begin a trial you have to demonstrate that you had engaged in professional mediation. This is settlement negotiations led by experienced or even full time mediators. Some of the more skillful ones are simply amazing in their ability to resolve these civil disputes. There are many other reasons for the decrease in the percentage of cases that actually go to a jury trial, not all of which are flattering to the lawyers who represent injured persons. According to a study done by the Yale Law School based on national statistics, jury trials constitute less than 1% of the way cases end. In the federal courts, less than 2% of the cases terminate with jury trials. I am not sure I believe these statistics. I agree with the proposition that if the civil case is thoroughly prepared and thought out that reasonable settlement ranges will somewhat come into focus. Assuming both sides have overlapping risk analysis then settlement is, indeed, highly likely.

Law Schools in Crisis

From early childhood I always wanted to be a lawyer. When I started at the University of Washington Law School in 1971, it was hard to get into any law school in the country. I barely made it into the University of Washington Law

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School even though I had served two years in the army and worked for a Republican Congressman in Washington D.C., had been part of the re-election staff for Governor Dan Evans, had served as president of my high school honor society, had been Northwest Regional Debate Champion in high school, had solid grades as an undergraduate with a then hard to obtain degree with honors in economics. When I say it was difficult to get into law school it's not an exaggeration. Why? For one thing it was thought to be a profession capable of earning a good living for life. Even by the time of my graduation in 1974, this belief was not totally true because a good percentage of my classmates were not able to obtain jobs requiring a law degree. Now the economics have drastically worsened. There has been a steady decline in law school attendance because everyone knows how difficult it is to find a law job and how the expenses have drastically gone up. In 2010 there were more than 52,000 law students starting law school. In 2011 that was down to under 40,000 and it is even more drastically reduced this year. By the time of graduation after three years of law school, the debt load is immense. Even in the lower-tier law schools, to finish with over $100,000 debt and no job is quite common. With some law schools fewer than 30% of the graduates EVER find work related to law. It makes me appreciate even more what I have.

Get Your Car Fixed!

If you own a General Motor's Chevrolet Cobalt or Saturn Ion, these and several other makes of GM cars have been recalled for fixing the ignition switch. Please do it! Over 53% of the owners of these cars have not yet had their ignition switches fixed. The fault in the ignition can turn off all of the car's systems including steering, power brakes and airbags. There have been a number of fatalities and serious injury accidents around the county. Do not mess around with this one! GM is so desperate to make sure that people bring their cars in for the repair they also will give you a $25 gift certificate to various retail outlets. They claim to have all of the parts available so that the fix only takes a short period of time. I do not want any of my friends or clients hurt unnecessarily. None of us should ignore safety related recall notices.

Your Car and Lightning Strikes

In today's world there are many more frequent occurrences to worry about than getting hit by lightning. But I know it sometimes really happens. I have some clients who lost a father after he was hit by lightning. But it is something to think about while we're stuck in the ever-growing traffic congestion in Seattle. I wondered what I should do if there's a lightning storm and I'm in my car. I have always believed that it is better to stay in your car because rubber tires insulate the car if it is hit by lightning. Believe it or not there is a National Lightning Safety Institute. They say that the tires are not what protects you but rather a car's "skin effect." They say that the electric current caused by lightning mostly travels on the outside of a conductive service so that when your car gets hit it's actually the metal that protects you because it conducts the electricity away from the interior of the car. What this means is that you should not be touching any metal on the inside of your car such as the door handle, radio nob or a metal gear shift. Okay, that's one more idle thought taken care of. Now I can wonder how to get out of a car if it gets shoved into a lake.

Backing Crashes

Most of the millions and millions of miles driven each year in the United States are driven going forward. There is not much distance covered by vehicles each year in the United States going backwards. However, backing is the cause of an estimated 30% of collisions. Most of these are property damage but they can be much more dangerous. We read about horrible cases were a child is run over by a parent backing out of their driveway. According to the National Highway Traffic Safety Administration, there are approximately 18,000 injuries (including 300 deaths) each year caused by vehicles in reverse. Most modern cars have backing cameras so backing into spaces can be done more easily than before. Rear cameras will be required on all vehicles manufactured in and after 2018. How can these types of incidents be avoided? One idea is to try to back into driveways and parking places if you have the skills, so that when you leave you are not backing into traffic. While getting into your car you should take a good look around for potential obstacles in the back of your car or nearby children or pedestrians walking behind your vehicle once it goes into reverse. Make darn sure you have your radio off and your window rolled down so that you can hear warning shouts or horns from people who may get in the way. Always back up slowly to enable others to see you maneuver. Check all rear-view mirrors before you initiate the backing maneuver and while you are doing it. Another idea is to beep your horn lightly a couple of times just before backing up so that others can hear you and be warned. Never back up more than necessary to make the maneuver you are trying to do. I person-

ally hate backing up but if you take all of these measures at least you will minimize the amount of harm to yourself and others.

The New Insurance Trick

Auto Insurance companies are installing a new tantalizing trick in your vehicles. They will put a device in your car that monitors exactly how you drive and when you drive. In return, if your driving is rated as safe, they will give you a discount on premiums. How does it work? They hook up a device which connects to a satellite which connects to their data center. I would warn all my clients and friends that if you cooperate in this effort you will one day regret it. Insurance companies do not do anything that does not earn them more profits. For now the participating insurance companies say they will keep the information private. That probably won't prevent a subpoena from issuing to them for the data. It also does not prohibit them in the future from cooperating among themselves with the database which basically rates each driver or each family. It also does not prohibit them in the future from expanding the database to the utilization of the car. If privacy means anything to you, please do not participate in this program. If enough people refuse to participate they will have to drop it or limit it. If too many people participate it will soon be mandatory. The United States Supreme Court has ruled that fixing even a GPS device to a car by the police is a violation of privacy rights and constitutes unreasonable search and seizure. The insurance companies are asking for much more information. This new program is called "Usage Based Insurance" and is currently in pilot programs by Progressive, Allstate, and State Farm. Again, State Farm and Allstate are two of the worst insurance companies when it comes to fairness in settling claims and therefore you are giving them even more tools to cheat you. For now the program is limited to measuring five variables: how fast you accelerate, how fast and how often you decelerate, how fast you take turns, the times of days that you are driving, and your speed. If you drive late at night or in the early morning hours you will get an increase in your premium because that is the most dangerous time to be on the road. If you occasionally go over the speed limit you will be penalized. If you take turns too sharply on occasion you will be punished. If you have to slam on your brakes too often they will assume you are frequently tailgating and will raise your rates. The same is true of rapid acceleration. In the beginning they are structuring this as a premium reduction but if too many people participate it will soon be the standard and you will be penalized for all of these items and any more variables that they can cram into a computer.

Healthcare in America

We now have a year of experience with the Affordable Care Act. I comfortably can say that the disaster scenarios forecasted by some have proven to be false. The proof is that in the most recent elections, the issue was almost ignored by the Republicans. However, we can also say that it has not worked out the way the optimists felt it would either. Instead, it is lurching along, benefiting many but not truly providing reliable universal healthcare. I do not know the answer, but it is interesting that people opposed to the law do not have any proposals to provide for universal healthcare. I was struck by a quote which resonated with me from Dr. Jack Geiger who won the Columbia University prize in Public Health for 2014. He said: "The poor are likelier to be sick. The sick are likelier to be poor. Without interventions, the poor will grow sicker, and the sick will grow poorer. And that has troubling consequences for all of us."

Ambulance Costs

The total cost of healthcare in the United States is just under $3 trillion a year. It is a completely broken system. One of the fastest rising costs is the ambulance ride from anywhere to anywhere. It is impossible to gauge exactly how much ambulance costs are in this country or what percentage they are of the total health costs but we do know that just for Medicare patients the costs tripled in 10 years to $6 billion a year. If you are lucky the voter funded Medic One service will take you to the hospital and there is no charge. Most likely, however, the fire department and other emergency responders are trained to call one of the for-profit ambulance companies and their rates are outrageous. A trip from the helicopter landing pad at Harborview around the corner, about 100 yards, will costs nearly $1,000. When you consider the patient is very seldom the one who calls the ambulance company but has to bear the charge? The situation grows even more bizarre. Our public funded 911 system will also utilize private ambulances. There are no standards for when an ambulance is even required. Heaven help you if you have no insurance to cover the ambulance ride. A lot of insurance companies have a contract with the ambulance companies that pays only about 30% of the billed amount. If you have no insurance you will get the full brunt of the bill. It is ironic that the people who cannot afford health insurance, even under the Affordable Care Act, are the very ones who get nicked for the most. These companies argue that they accentually have highly trained attendants driving a mobile emergency room. But this is not remotely true. These are staffed by EMT's not doctors. The vast majority of transports do not even require anything remotely resembling emergency care. For my injured clients I see these bills day in and day out. They never fail to bother me.

Failing U.S. Democracy

In the most recent November elections, we experienced the most expensive mid-term election cycle in our state's history – and the lowest voter turnout. Less than 40% of registered voters cast a ballot in this election. Only about 16% of registered youth, 25% of registered people of color and 18% of registered single women under the age of 50 voted. In fact, the national turnout was only 36% of registered voters which was the lowest turnout in any national election since 1942! These are the very people who will be most affected by the election results. Even scarier and more shocking is the fact that these are adults who registered to vote! What about the masses of Americans who never even bothered to register? I will be disappointed if there are street demonstrations complaining about our great county by anyone in those categories of non-voters—democracy cannot function well when huge numbers of people choose to sit on the sidelines. The shame of not voting in Washington is magnified by the fact that everyone can vote by mail. Is it possible that those non-voters would rather watch an episode of reality TV than take a half hour to participate in governance? On the other hand, maybe we are better off without them since to cast an intelligent vote requires being at least minimally informed about the issues. Even many of those who cast ballots in this county have shown in survey after survey that they don't have even minimal familiarity with the issues grounded in fact. Why is so much money spent on political ads aimed at creating fear, paranoia, and mysterious conspiracies? Because they work! If many voters only hear attack ads then their voting reactions are based on almost nothing grounded in reality. The wealthy can herd us like sheep toward their goals – not toward the country's best interests.

Poem of the Year

The computer swallowed Grandma,
Yes, honestly it's true!
She pressed 'control and 'enter'
And disappeared from view.
It devoured her completely,
The thought just makes me squirm.
She must have caught a virus
Or been eaten by a worm.
I've searched through the recycle bin
And files of every kind;
I've even used the Internet,
But nothing did I find.
In desperation, I asked Mr. Google
My searches to refine.
The reply from him was negative,
Not a thing was found 'online.'
So, if inside your 'Inbox,'
My Grandma you should see,
Please 'Copy, Scan' and 'Paste' her,
And send her back to me.

We do not stop playing because we grow old;
We grow old because we stop playing .

Quotes of the Month

"Keep away from people who try to belittle your ambitions. Small people always do that, but the really great make you feel that you too can become great." -Mark Twain

And remember, like Oscar Wilde said: "Be yourself--everybody else is already taken."

"A popular government without popular information or the means of acquiring it, is but a prologue to a farce, or a tragedy, or perhaps both." -James Madison

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