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THE LAW OFFICE OF GERALD M. OGINSKI, LLC
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Gerry Oginski
Medical Malpractice
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JURY DUTY **OUR OBLIGATION** **TO SERVE**

“Why do I have to go to court and sit in a big room waiting to be called as a juror?” asked my good friend.

The reason is a simple one- without our neighbors and people in the neighborhood our jury system could never work. Here are a few observations I've made over the years:

- (1) There are some folks who are eager and enthusiastic attending court and serving jury duty.
- (2) Others loathe the thought of disrupting their daily lives and schedules.
- (3) Still others worry about how they'll earn a living sitting inside the courthouse when they should be working.

Our entire jury system is built on the premise that when people have disputes, those disputes should be resolved by people in the community who don't have any bias or interest in the outcome. In an injury case or a malpractice case, there are six jurors that will sit and listen to the evidence. There will also be two or three alternate jurors selected in case any one of the main jurors are unable to continue.

The jury is sworn in at the beginning of the trial to render a true verdict regardless of who it helps or hurts.

Interestingly, there is currently an issue about jury misconduct in the Martin Heidgen criminal case in Nassau County. (He's the driver who was driving the wrong way and drove into a limo, killing a 7 year old girl and the limo driver, and injuring the girls parents.) The jury found Heidgen guilty of murder. The defense has argued that the jury talked about and considered a prior DWI conviction Heidgen had and was

GERRY'S **FICTIONAL** **BOOK**

continued...

Jimmy 'treated' a 70 year old man with a Swedish accent. Little did he know that this man was the head of the Nobel Prize search committee. Two days later, Jimmy received a letter advising him that he was under serious consideration for a Nobel Prize for his cancer cure.

One week later, Chile con Carne, a reporter from Time magazine man left a message with Jimmy's chief of security that they planned on putting Jimmy on the cover of Time Magazine, as 'Man of the Century!' Despite repeated phone calls by con Carne, Jimmy had a simple publicity policy: No interviews ever regardless of the rumors swirling about in the media about the 'miracle man'. Secrecy was utmost in his mind. He didn't want to become a public figure, and didn't want others to know what he did or how he did it.

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directed not to consider in their deliberations. The judge has agreed calling back the jury to determine whether this specific issue was discussed. Not surprisingly, after hearing from five jurors, Judge Honoroff refused to set aside the guilty verdict.

Usually, a jury's decision will not be overturned unless there is some clear indication that the jury acted inappropriately and beyond the realm of their oath and obligation.



TRY OUR TRIVIA GAME!

Test your knowledge of medical malpractice and personal injury law. Answers appear at the end of this newsletter.

1. In New York, doctors, lawyers and other professionals do not have to serve jury duty. TRUE OR FALSE?

2. In New York, there is a cap on pain and suffering awards. TRUE OR FALSE?

3. If you are in a car accident you have only 30 days to file a claim with your insurance company. TRUE OR FALSE?

4. In New York, a driver of a car is legally obligated to see what is there to be seen, and failure to see is considered negligence. TRUE OR FALSE?

5. When questioning a doctor at a deposition it is always helpful to accuse the doctor directly of causing the patient harm. TRUE OR FALSE?

6. Most lawyer advertising makes you want to rush to the phone and call that lawyer. TRUE OR FALSE?

7. Lawsuits seek to right a wrong by compensating an injured victim. TRUE OR FALSE?

8. A jury verdict can be overturned by the trial judge. TRUE OR FALSE?

9. If you win money in a settlement or verdict, and were previously receiving Medicaid, you will no longer be eligible for continued Medicaid benefits. TRUE OR FALSE?

10. A structured settlement (such as an annuity that is paid out over time) is never better than getting the money in one lump sum. TRUE OR FALSE?

BONUS QUESTION:

In a death case, the family (spouse and children) of the person who died is entitled to seek a claim for their own pain and suffering. TRUE OR FALSE?



GERRY'S FICTIONAL STORY

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Jimmy began to earn so much money, he gave up his law practice, and asked his kids to work with him at the foundation.

At the end of one year, Jimmy was thrilled that not one of his 'patients' had any recurrence of cancer. Dr. Basta exclaimed "Jimmy, you did it! Everyone

you cured is free of cancer. We have just four more years to see if it comes back to fully validate your 'treatment'."

In the meantime, Jimmy's bank account was swelling. It had now reached 8 figures, and was getting larger every day. His chief of security made sure that Jimmy was fully protected with top notch security officers. To be part of their security team, you had to be personally recruited from the elite section of the armed forces; The Jim Bore Eees. These highly skilled and highly trained men were feared and respected throughout the world. Their killing ability was honed and tested time and again.

One morning in June, a little old lady came in to see Jimmy. She was accompanied by her own security team. Upon closer inspection, Jimmy realized her security team looked oddly like secret service. Jimmy called his son over to find out who she was. "Dad, don't you know who this is? It's the President's mother! She's here to get her ovarian cancer cured." Jimmy spent an extra two minutes with this frail elderly woman, and as she was leaving, she turned to Jimmy and said "If your treatment works, I'm going to tell my son all about you. Then I'm going to tell the world how wonderful you are."

Needless to say, the next month when her doctors confirmed that her cancer was gone, she did just that. She told her son, the President of the United States of America. The President had never heard of Jimmy and didn't know what to make of this story. He asked his Chief of Staff, Richard Nixon, III to look into Jimmy Changa and find out everything he could about him. Then he

called his National Security Advisor, Fetuccini Al Fredo (an Italian native) to do a background check on this Changa guy.

The next morning, unknown to Jimmy, the President of the United States was getting a briefing about the life and times of Jimmy Changa. By the end of the briefing the President was so impressed with what he heard that he asked his secretary to extend an invitation to Jimmy and his wife to come to the White House for a personal dinner with the President.

Jimmy's son, Alphonse, took the call. A few minutes later, Alphonse telephoned the White House with a reply. "I'm sorry, but Mr. Changa thanks the President, but is unable to accept the President's invitation." The secretary was flabbergasted. In all the years as the President's personal secretary, NOBODY had ever turned down a personal request by the President to have dinner with him. This was a first, and the President was not going to be happy. Before hanging up, she tried one more thing. "Tell Mr. Changa that he can pick the date and time...any day he wants," said the secretary.

Alphonse replied immediately. "Thank you, but Mr. Changa was very clear. He has no time to spare- even for the President." But before the secretary could answer, Alphonse also said, "Why don't you have the President and his wife come over to our house for dinner...let's say next Wednesday at 8:00 p.m.?" She replied that she'd ask the President and get back to him with an answer.

In less than five minutes Alphonse had an answer- it was yes. Next Wednesday for dinner.

On Wednesday morning, a team of secret service agents- the advance team- arrived at Jimmy's home. Even though Jimmy's security detail knew of the impending dinner with the President, they refused to allow the secret service access into the house. This created a power-play between the advance team and Jimmy's protectors. After much chest pounding, yelling and phone calls, the advance team was permitted to enter Jimmy's home, provided that a member of Jimmy's security detail accompanied each agent through the house.

When the President arrived, instead of shaking the President's hand, Jimmy gave him a great big hug. Handshakes and holding hands were only for patients- and patients who paid. The person standing on the threshold of his home was neither. When the President looked quizzically at Jimmy about the hug, Jimmy said "I'm a germophobe...you know, like that Howie Mandel guy from that show, Deal or No Deal." "Oh sure, I understand," replied the President.

During dinner, the President suggested something to Jimmy that would turn him into one of the most respected and sought-after men in the world.

"Jimmy, I know we just met, but I think with your talents we can create peace in the middle east," said the President.

"What do you mean, Mr. President?" asked Jimmy. "There are certain world leaders who have been diagnosed with cancer. I was hoping that you would

agree to 'treat' them and give them back their lives. They'd be eternally grateful. In exchange for curing their cancer- something their own medical experts have been unable to do, we would demand peace from them and their country," said the most powerful politician in the world.

"Mr. President- your comment assumes (1) That this particular country is currently at war, (2) That all other efforts to rein in this leader has failed, (3) That you are using me as a political pawn, and (4) You have failed to account for my getting paid for my services," said Jimmy.

"You're correct on all points Jimmy. Actually, it's a win-win situation for everyone and here's why. You will get paid by this leader before you cure his cancer and before we give him a visa to enter the country. If you cure his cancer, he will do anything we ask- even if it means that certain elements in his country will try to kill him for agreeing to peace with their neighbors. And as far as the political pawn- it will be you who will make the suggestion, offering your services in exchange for peace," remarked the President.

For the rest of the evening, the President and his wife were treated to the most incredible and funny stories by Jimmy's wife, Allison. Tales of patients in labor, of crazy doctors, of nurses who'd heard it all, kept the conversation lively and entertaining. At the end of the evening, Alphonse asked the President for his signature. "Sure thing son. Just don't sell this on ebay yet. Wait till I get out of office, and then it'll be worth more," winked the President.

Jimmy's chief of security got a call one week later from the head of intelligence of one of the Middle Eastern Arab countries that the President was talking about. He confirmed that the leader had cancer and needed a cure. In fact, it was through diplomatic back-channels that he heard about Gerry and his miracle touch. "The cost for a cancer cure?" asked the intelligence chief. The reply was twofold. "First, the standard fee of 10% of his assets. Second, permanent peace with your neighbor, Israel. By the way, this request comes specifically from Jimmy himself."

The intelligence chief replied immediately that 10% of the leader's assets were no problem. The second request was going to be difficult and needed to be discussed. "You take all the time you need to discuss it. However, the terms are not negotiable."

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Your leader gets cured and lives a normal healthy life in exchange for permanent peace with Israel," said Jimmy's security chief.

The next week, the intelligence chief called Jimmy's office. It was a done deal. This leader wanted to live more than anything. His assets were astronomical; he had over \$250 Million dollars in personal assets. That meant Jimmy would earn a \$25 Million dollar fee for spending a few minutes with this man, and curing his cancer. But how could he be sure that once cured, he wouldn't back out of the peace deal?

Jimmy and the CIA came up with a plan. This leader didn't know that no cancer had returned to any patient Jimmy treated. Jimmy was going to tell this leader that if he reneged on this peace deal, he was simply going to give him back his cancer.

No ifs, ands, or buts. It's that simple. This message was to be given only at the time of treatment.

Jimmy notified the CIA that he was all set. Jimmy's security people confirmed that the fee had been fully paid. The State Department confirmed a temporary visa had been approved for this leader, and he was coming into New York for one afternoon only, on a private jet flying into LaGuardia Airport. His entry to the United States was to be kept secret. No leader from this Arab country had ever dared venture to the United States before. This leader knew that coming here was a big risk, but one he was willing to take.

To be continued next month...



**ANSWERS TO TRIVIA
GAME**

1. False, 2. False, 3. True, 4. True, 5. False, 6. False, 7. True, 8. True, 9. True, 10. False. Bonus: False

Call me with any legal questions about injuries from any accident or medical care. I promise to give you a straightforward and honest answer. That's my guarantee.

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