

New York Medical Malpractice Attorney Gerry Oginski presents

NY INJURY TIMES

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IN
THIS
MONTH'S
EDITION...

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- GERRY'S FAQ'S & ANSWERS**
- GERRY'S NEVER ENDING STORY**
- NEW TRIVIA GAME**
- PHOTO GALLERY**



Atlantis Hotel Lobby; Nassau, Bahamas

**More frequently asked
questions inside...**

WOMAN HAS CATARACT SURGERY; LOSES VISION. SETTLES CASE 1 WEEK BEFORE JURY SELECTION

My client, Muna Odetalla had cataract surgery in Brooklyn three years ago. She had near-perfect vision but was told she needed surgery to fix the cataract. A cataract is a clouding of the lens of the eye.

After surgery she was unable to see. Within two weeks, the doctor took her back to the operating room to remove the lens, known as an intra-ocular lens, and switch it out with a new lens with a different strength. Hopefully that would give her the ability to see again.

Unfortunately for my client, this did not work either. After multiple follow-up visits, she lost all faith in her eye doctor and went to a well-known eye hospital in Manhattan. She was told she had permanent damage to her cornea and would ultimately need a corneal transplant.

We were set to start her trial this month, but agreed to mediate her case one week before jury selection. After three hours of...



Atlantis Aquarium; Nassau, Bahamas



Seagull in flight; Nassau, Bahamas

hard-fought negotiations, we were able to successfully resolve her case.

Mediation is where both sides come before an impartial judge who sits and listens to arguments from both sides. Each side has some 'skin' in the game since each party has to pay the mediator for his time. The mediator does not care what the outcome is. Rather, he is there to try and facilitate a negotiated settlement that is favorable to all sides. If he is unsuccessful, the case simply proceeds to trial.

Even with the best case, going to trial in any venue is a risky proposition. There are many factors that an experienced trial attorney takes into account when deciding whether to proceed to trial. In some cases, we have no choice but to proceed to trial when the defense takes an unrealistic position and refuses to offer any money to settle. I often remind clients that even if they have a great case with terrific experts who support our claim, it is still possible to lose at

trial. Unfortunately, there are no guarantees at trial.

Litigants should be mindful that even if they win their case at trial, the defense will do everything possible to try and reduce the award using post-trial motions and appeals. That process takes years to resolve.

With an appeal, there many different outcomes possible. (1) A higher court may agree that you are entitled to the jury award. (2) They can disagree and dismiss your case. (3) They have the ability to reduce the award. (4) Another alternative is to send the case back to trial and start all over again.

In this case, the only reason we were able to settle Muna's case was because we were ready for trial and it allowed both sides the opportunity to see what a trial would look like if we started jury selection next week. Congratulations to Muna Odetalla on her settlement.



JIMMY CHANGA GOES DONKEY DRIVING IN MEXICO

If you remember from last month's newsletter, Jimmy was forced into an immediate vacation because of WikiLeaks and their data dump that identified him as the United States Governments' most powerful weapon in their efforts to determine when foreign leaders would die.

He stayed in the White House for a few days trying to play X-box with the secret service agents and swimming in the President's pool. He even tried bowling, but just couldn't get into the spirit of it. He was allowed to sit in on a few Cabinet meetings, but just couldn't pay attention. He needed to get away and fast. His CIA appointed private jet was to take him to an undisclosed hideaway in the mountains of Mexico, three hours from the nearest airport. This was more than just a safe-house. It was an ultra-secret underground facility used by the CIA that looked like a little cottage as you approached it.

The CIA jet flew into a secret airport and he was given a GPS unit and told that the donkey attached to the cactus was his only way in or out. A jackass is what the CIA was using. There's more of a double entendre there than he thought. This was desert and mountain country.

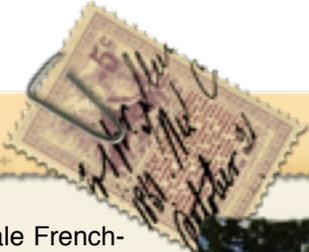
He hopped onto the donkey, turned on his GPS unit and was tempted to punch in an address in downtown Mexico, but instead decided to follow the coordinates already programmed in. He turned the mule around and began his five mile trek. He wondered how you steered a donkey and was fortunate that the GPS unit simply said "In 100 yards kick the donkey's right side with your heel." Thirty minutes later, the GPS unit

said in a slightly sadistic female French-accented voice, "In 50 yards, kick the donkey on the left side and then whip his ass with your hand."

Jimmy found himself heading toward a footpath that was never used. The area surrounding the airport was totally deserted. No sign of life anywhere. The donkey followed the path as if on autopilot. Ten minutes later a huge German Shepherd appeared out of nowhere and came right up to Jimmy. No barking, nothing aggressive, just looking and following the donkey. Five minutes later the GPS unit announced in a voice clear and keen "Get the hell off my donkey and follow the dog!"

Jimmy hopped off the trusted donkey and began following the dog. He followed the dog for 15 minutes up multiple winding uphill paths. Through the bushes and overgrowth. He couldn't believe that a donkey and a dog were taking him to a secret place. He glanced down at the GPS unit. It said loudly "You have arrived. Look up and pat the dog on his head." He did as instructed. The dog sat down, and Jimmy walked up to what could be described as a large outhouse. It had that run-down, dilapidated and unkempt look as if it was an abandoned and deteriorating outhouse. "Great, just what I was looking for," Jimmy thought; a place to go to the bathroom in the middle of nowhere.

Continued, next page...



Cable Beach, Nassau, Bahamas



Atlantis aquarium



Cable Beach, Nassau, Bahamas

He opened the creaky and flimsy bathroom door. There was a toilet. He had to go. He pulled his pants down and sat down. That triggered an elevator platform to move the entire toilet platform down an old mine shaft. He didn't know whether to stand and pull his pants up or finish what he started. He figured he had a few minutes so he did what he needed to and flushed. Three minutes later the toilet elevator came to a stop and Jimmy hopped out.

He was greeted by the two Israeli Mossad operatives he had met at the White House. This time, they were wearing shorts and t-shirts. They had an apple martini for him. They kissed him on the cheek and both said "Come with me..."

The corridor looked like it was from an executive club. Wood paneling. Thick red pile carpet, and windows with vistas of snow-capped mountains on one side and Caribbean-blue waters on the other. It appeared like total daylight with bright streaming sunlight in this hideaway. "How could this be," he thought? They're deep underground. Probably a CIA trick.

They walked into the underground hangar and Jimmy's mouth dropped. Sitting in this hangar was one of the most advanced stealth fighter airplanes in the world. "Holy cow!" he exclaimed.

Find out next month if Jimmy gets a chance to take a ride in the most advanced, top-secret stealth fighter in existence.

FAQ's and ANSWERS!

Q: In a jury trial, what is the 5/6 rule?

A: In medical malpractice and accident cases in New York, when the case goes to the jury, they must answer specific questions about who is more likely right than wrong. The court gives an instruction that 5 out of 6 jurors must agree on every question. That is the required number of people necessary in order to reach a decision on any given question. Importantly, for each question there does not need to be the same five people who agree or disagree on a particular question. That is known as the 5/6 rule. If all six agree, then it is a unanimous decision.



Skiing at Camelback

Q: What is a "charge conference?"

A: A charge conference is a detailed meeting with the trial judge and the attorneys on your case to determine what law the judge is going to give to the jury after closing arguments.

Typically, the attorneys for both sides will request that different areas of law be given to the jury. The judge will hear arguments from both sides as to whether certain provisions in the law are applicable. After hearing argument, the judge will make a

decision about which sections of law he or she will read to the jury. In order to protect their client's rights, a lawyer will make their objections known on the record and the reasons why certain sections of the law should or should not be given.

The judge "charges" the jury with the law in a particular case. In New York, this is known as a "charge conference," and is done outside the presence of the jury.

I did something tonight I haven't done in a long time. I sat down and read my son a story. It's been a long time since I sat down on his bed, picked up a book and began to read. I love reading stories to my kids, especially bedtime stories.

If you asked my kids what their favorite stories are, they will tell you that my fictitious stories about Little David, Little Harry and Little Samantha are the funniest, most memorable stories they can remember. These characters come to life with antics, adventures and never ending stories (sound familiar?) that would leave them in hysterical laughter wanting more and more each time.

My kids encouraged me to write a book filled with these stories. Although I've written six books about law and I'm working on a seventh book now, I never found the time to put those stories to paper. I did however record a few of those stories for my kids to listen to one time when my wife and I went away on vacation years ago. I think it actually upset them listening to me on tape knowing I wasn't at home.

Anyway, getting back to the story... My son was lying down on his bed after a long day. He was pretty tired and I had wanted him to read a book I gave him months ago. Surprisingly, that book remained in the same place as when I put it there. Despite my attempts to get him to crack this terrific book, he just couldn't bring himself to open the book and start reading. He was just too busy.

I decided I had to take drastic action. I was going to do something I hadn't done with him in a long time; **read to him.** I grabbed the book off of his dresser, sat down on his bed and started to read. It was 11 o'clock at night and although we were both tired, this was the perfect opportunity to get him interested in this book. Before he had a chance to object, I began reading the preface and quickly got to chapter 1. He was hooked after the first two sentences.

I read three chapters tonight. I have personally read this book 3 times. This book has changed my life. I was now trying to get my son to read it so it would help him too.

As I was reading page by page, memories of the bedtime stories I would tell my kids kept returning to my mind and how animated and excited I would get when describing details of my made-up stories. I decided to inject some fun and liveliness into reading this book.

As I did so, I saw a glimmer and sparkle in my son's eyes along with a smile as he recalled the stories I used to tell him.

After 25 minutes of reading to him, I handed him the book and dog eared the page for him to continue reading into the next chapter. He promised he would do so and then promptly put the book on his night table and went to get his laptop to video chat with his friends.

Oh yes...I forgot to tell you that my son is 19 years old and a sophomore

in college. He's an EMT and works as a volunteer for our local fire department. He's done CPR, saved lives and made us proud. He's an entrepreneur and a real go-getter.

I also forgot to tell you that the book we were reading is called "No B.S. Time Management for Entrepreneurs," by Dan Kennedy, a marketing genius. I left my son's room tonight with great memories of telling him bedtime stories and reading books like Harry Potter and Dr. Seuss to him.

My youngest son still loves listening to my outrageous stories. My other kids are just too cool to have dad sit down on their bed and read to them.

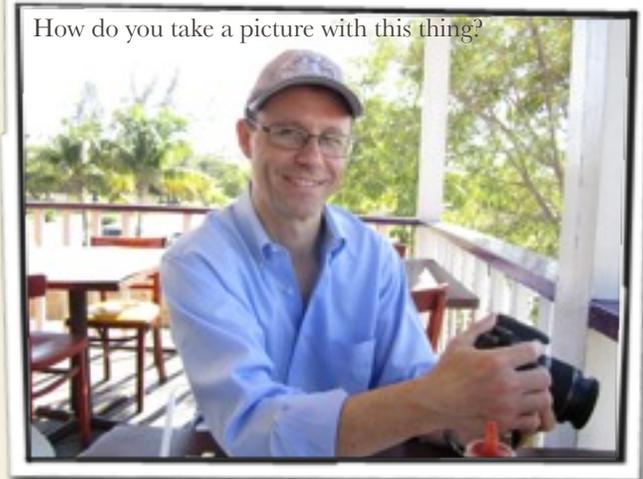
Well, it's been many years since I sat down on my eldest son's bed and read a book to him. I had a blast and I think he did too!



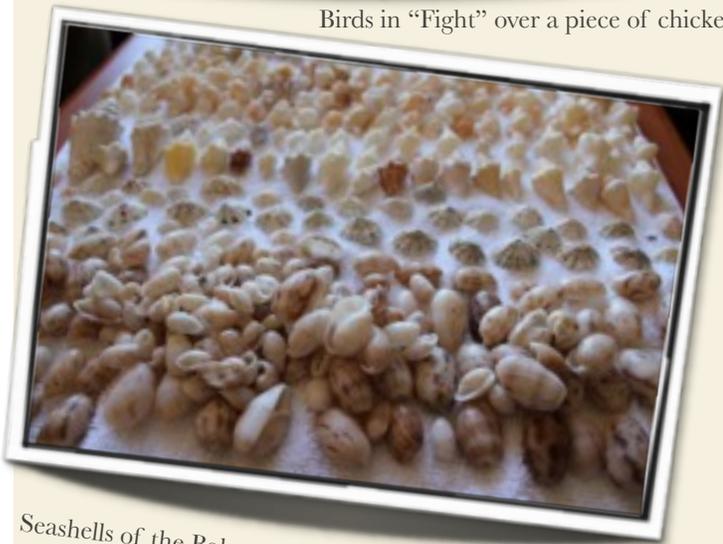
"Excuse me sir, which way to the lodge?"



Birds in "Fight" over a piece of chicken



How do you take a picture with this thing?



Seashells of the Bahamas



Skiing at the top



Cruise ships-Bahamas



Bahamas

Gerry's Trivia Game

TEST YOUR KNOWLEDGE OF NEW YORK LAW

TRUE OR FALSE?

1. In a criminal case in NY, there are 12 jurors who sit in judgment.
2. Moot court is where clowns put on skits to entertain the jurors waiting to be selected during jury selection.
3. A "Brief" is only one page long.
4. The trial level court in New York is called the Supreme Court.
5. Mediation is where both sides try to settle a case without having to go to trial.
6. Arbitration is binding on both sides.
7. In a personal injury case, the compensation you receive for your pain and suffering is tax-free.
8. In a medical malpractice case in NY, a certificate of merit is required to start your lawsuit.
9. Telling a "little white lie" during your case is no big deal.
10. All personal injury lawyers are trial lawyers.

BONUS QUESTION

"Polling the jury" at the end of a trial means that you get to take a survey to see how the jury liked spending their time listening to your case.

Answers are on the back page.



A large paddle boat for a person with very long legs.



His cousin, The Love Boat, got all the fame and notoriety. Nobody wanted to create a show called "The Mail Boat."

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Gerry Oginski, NY Medical Malpractice Trial Lawyer

HAVE LEGAL QUESTIONS?

Call me: 516-487-8207 or

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Give this newsletter to your best friend. They'll thank you for it, and so will I.

----- Answers to Trivia Game -----

1. True, 2. False, 3. False, 4. True, 5. True, 6.

True, 7. True, 8. True, 9. False, 10. False,

BONUS: False

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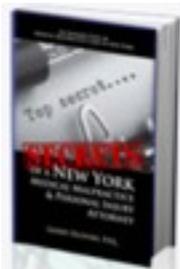
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