



PAGE 1

Most people don't know these kinds of things about their lawyers

PAGE 2

What do these people have in common?

BenGlassLaw.com honored by Disability Networks

Proper estate planning with Attorney Tom Campbell

Pap smear screening

PAGES 3 & 4

Ben Glass's letter to Virginia State Senator Ken Cuccinelli

PAGE 5

Auto accidents.

Continue all therapies

Accidental death insurance policies

Jury waivers.

Beware giving up your rights

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The Road to Justice Starts Here...

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Malpractice - Accidents - Insurance Disputes

Most people don't know these kinds of things about their lawyers

By Attorney Sandra M. Rohrstaff

When I joined Ben's firm last February, I looked forward to getting to know more about his practice. I had known Ben for many years when I practiced in Alexandria, but it's always different when you change a relationship where you work with each other on professional goals and see each other irregularly, to one where you work on cases together every day. For one thing, you learn things about each other that you never knew before.

So, I'm going to share five things about Ben that I now know are true. Some may surprise you, some may not.

1. Ben loves his work. For many lawyers who have been in practice as long as Ben has, going to the office every day is a grind. Dealing with other lawyers and judges and (some) clients is difficult, and some lawyers get worn down by what they think of as a daily rut. Ben's different. He loves coming to work. He's so enthusiastic, it's truly contagious. When I first started talking to Ben about our working together and he asked me what I wanted to do in my practice, I listed a number of things. I evidently left off one that was important to Ben, because he asked me, "Don't you want to have fun?"

2. Ben shares. Ben shares a lot. Ben knows things that other lawyers don't know. He knows how to do things that other lawyers don't know how to do. Ben has never been reluctant to help other lawyers. He answers their questions. He does a lot of education for lawyers in Virginia and elsewhere. In fact, Ben shares so much that now he's sometimes hard to get in touch with because he has had to restrict access to himself. When you can't reach Ben immediately, it's because he has set aside time so he can work on his cases.

3. Ben values his family relationships. This one is probably not a surprise to you if you've been getting Ben's newsletter for a while. How many other lawyers do you think have written in their newsletters about important events in their

families' lives? I've not read such things anywhere else. But people who have received Ben's newsletters over the last two years met his niece Rachel when she came home from China, and his son Kevin when he came home from China a year later, and rejoiced with Ben and his family over Kevin's successful cleft palate surgery.

4. Ben values relationships with colleagues and clients. Ben works very hard at establishing and maintaining good relationships with his clients and other lawyers and judges. One of the things I have noticed is that everyone likes Ben. You know how some people work very hard to get you to like them? Well, Ben isn't like that. People like Ben because Ben likes them, including attorneys who work on the other side of cases against him. Does that help his clients? You bet it does. (Maybe this has something to do with #1 at left.) Ben works very hard for his clients, and avoiding personal conflicts with other lawyers and judges enables him to keep his focus on his clients.

5. Ben makes noise. If you read his newsletter, you know he feels strongly about working hard to keep insurance companies from taking advantage of individual clients. That's one way he makes noise. But, here's a secret. Ben also hums and whistles and every now and then turns his stereo up real loud. When that happens, we are sure that Ben has had a good day or a good week and is, in fact, having a good time at work.

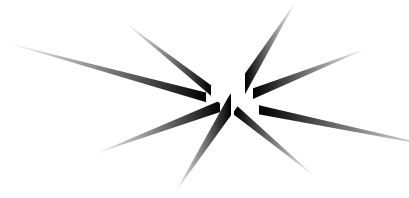
Ben doesn't know I'm going to do this, but I'm taking a chance that he won't read this article all the way through. (He's really busy, you know.) I want to find out what other tidbits you know about Ben. I'll choose six and publish them in six upcoming newsletters. I'll send each person whose tidbit we publish a copy of a book full of useful and fun facts—1003 Great Things About America. You can send your Ben tidbit to me at srohrstaff@benglasslaw.com, or mail it to our office address. Shhh. Don't tell Ben.

What do these people have in common?

Here is an interesting list that we came across. What two things do the following people have in common?

Michael Dell (Dell Computer)
Thomas Monaghan (Domino's Pizza)
Walter Cronkite (CBS News)
Steve Jobs (Apple Computer)
Ted Turner (Turner Networks)
Wayne Huizenga (Blockbuster Video)
Peter Jennings (ABC News)
Rosie O'Donnell (Actress/talk-show host)

The first five people to send an email to **Ben@BenGlassLaw.com** with the correct answer get a free copy of Keith Harrell's book *Attitude is Everything*.



BenGlassLaw.com honored by Disability Networks

On January 1, 2005, we were honored to have our firm's Web site honored by Disability Networks as being a site that "offers a tremendous benefit to those who access and use the Internet on a daily basis."

Proper estate planning with Attorney Tom Campbell

(Keeping your assets in your family's hands after death)

In this issue, we want to recognize our good friend, Fairfax estate planning attorney Tom Campbell. We want to publicly thank Tom for referring a lot of people to our office to have their questions and concerns about malpractice, personal injury, and insurance addressed.

Tom Campbell is a very experienced estate planning attorney in our area. Now, before you decide that you aren't wealthy enough to need an *estate planning attorney*, consider this: If you and your spouse died and you added up everything you owned, including *real estate* and *insurance policies*, would your total assets exceed \$1.5 million? If the answer is "yes," then, under current tax law, the government will take a significant portion of that money for itself. When you are totaling up your assets, don't forget to include any group term life insurance policies. You know, the insurance you may have with your employer (the one that most of us forget about). These policies are often a multiple of your annual salary and, when added to any individual life insurance you own, can be substantial.

The second thing Tom mentioned to me when I talked to him was this: If you have children, what happens if you become temporarily incapacitated due to an accidental injury? Many of us have guardianship directions in our wills, but did you know that there is a way to plan, in advance, on who would make critical decisions for you if you were temporarily incapacitated?

Finally, Tom Campbell says that with many people on second marriages, questions often arise as to how assets will be divided at death amongst the deceased's current and former families. It's not real fun to think about this, but Tom says that it is terrible to see what happens to families after a family member passes **if they have not thought** about these issues.

Tom Campbell practices at the law firm of Yates, Campbell & Yates, LLP, and you can call him at 703-273-4230. If you have any questions about estate planning, give him a call and tell him that Ben Glass says hello.

Pap smear screening

Named for its advocate, Dr. George Papanicolaou, Pap smear screenings are performed quickly, cheaply, and with minimal discomfort. Medical experts believe that failure to obtain screenings represents a significant risk factor for cervical cancer.

The screenings are believed to be responsible for up to an 80 percent decrease in cervical cancer deaths. As many as 50 million women obtain Pap smears annually, with about seven percent receiving diagnoses of irregularities requiring further evaluation.

Screening is not perfect. Even the best labs misjudge results in up to five percent of all cases. In a 1993 Rhode Island case, a patient died of cervical cancer after receiving four false-negative misreadings in seven years.

Litigation is increasingly common, as about one in ten pathologist lawsuits involves misread Pap smears. Some insurers have withdrawn their coverage for such readings.

For more information on Pap smears and the steps patients can take if they suspect errors in screening readings, please contact our office.



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January 24, 2005

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To the Editor:

Senator Ken Cuccinelli's proposal to "cap" non-economic damages in medical malpractice cases is a slap in the face to Virginians who sit on juries and the judges who oversee medical malpractice trials. Virginia already has a cap on malpractice awards that often prevents even full repayment of medical expenses. His proposal that the government further limit such awards says to juries and judges: "I don't trust you to do your job." Ironically, these are the same judges and juries that he does trust to impose the death penalty in criminal cases.

Despite popular rhetoric that attributes the high cost of medical care to "runaway juries," the truth is that outrageous awards are simply not a problem in Virginia. Virginia juries tend to be among the most conservative in the country when it comes to medical malpractice claims. In the rare instance in which a jury may make an award that is unreasonably high, Virginia judges have the power to decrease the verdict. The truth, however, is that the Senator would be hard-pressed to show even one case in Virginia in the last decade where a jury in a medical malpractice claim returned a verdict for what he calls a "ridiculous monetary claim." If the Senator were to speak to Virginia's judges, he would probably also hear that in addition to conservative monetary verdicts in cases where there is an award to the patient, Virginia juries also tend to side with the doctor in all but the most egregious cases. In other words, if Virginia doctors are paying more for their insurance, it's not because of high verdicts.

While there is no "medical malpractice crisis" in Virginia, there is no doubt that doctors are caught in a real squeeze between health insurance companies who set incredibly low reimbursement rates and their malpractice insurance companies who charge increasingly exorbitant premiums. This is a very serious issue for doctors and their families, but it is not one that can reasonably be attributed to jury awards in Virginia's malpractice trials.

What Senator Cuccinelli and the doctors need to do is to ask this question of the malpractice insurance companies in Virginia: Where are the big, "runaway" verdicts in Virginia? They simply don't exist and Senator Cuccinelli, instead of limiting recovery to the most seriously injured in Virginia, would do well to spend his time investigating just

* NOTE: The Senator's
bill died -
One of the bills that did pass
was a modified "Three Strikes"
Law for bad doctors -
We'll write about that next time!
Ben

Editor
The Connection Newspapers
January 24, 2005
Page 2

why doctors pay so much for their insurance in a state where “runaway” verdicts just don’t happen.

The “doctors are leaving” message is a scare tactic to convince people that their access to health care is in danger and to relinquish their rights. Remember President Bush’s campaign message that doctors were leaving Pennsylvania because of insurance prices? When investigative reporters in that state’s newspaper, *The Allentown Morning Call*, investigated the claim, they found that not only had doctors not left the state in droves in 2002, but that their numbers had actually increased by 800 and in the previous eight years had expanded by nearly 2,000.

The Senator is proposing a very serious law change on [his words] the “hope that this bill will help doctors, which in turn would provide you and your family with more access to affordable medicine.” Before proposing legislation which takes away the legal rights of Virginia families on the “hope” that health care costs will be reduced, he ought to read the report of the non-partisan Congressional Budget Office that concluded that even if all the costs of medical malpractice—all the payouts, all the insurance costs, all the medical expenses—were eliminated, the savings would be no more than one-half of one percent.

The truth is, even if there were a “malpractice crisis” in Virginia, the overwhelming evidence is that imposing damage caps is not the answer to rising insurance premiums. First, the insurance industry has made it clear that it makes no promise of lower premiums in those states that impose caps. Second, according to the Medical Liability Monitor, states with caps on damages have average insurance premiums that are 9.8% higher than insurance premiums in states without caps on damages. In the five states that recently passed new medical malpractice caps (MS, NV, OH, OK, and TX), premiums rose at nearly double the rate as states that did not pass a damage cap.

Still, the people of Virginia are free, on an individual basis, to give away their rights to the insurance industry. For those who think that tort reform is a good idea for their families, forms for entering an agreement with their doctor are available at www.tort-reform.com.

Very truly yours,



Benjamin W. Glass, III

BWG/tgp

Full disclosure: The author is a medical malpractice attorney in Fairfax. Further information is available at www.BenGlassLaw.com.

AUTO ACCIDENTS

Continue all therapies

Individuals suffering injuries in auto accidents should continue medical therapies prescribed by their physicians.

Accident victims should obtain required x-rays or diagnostic tests. They ought to report for all prescribed physical therapies. They should take all pain-control and other medications as directed.

Discontinuing medical therapies, no matter how well recovery seems to be progressing, can reduce one's ability to recover for damages. The other driver's insurance company attorneys can claim that a victim's failure to continue treatment demonstrates that his or her injuries were never serious.

Drivers who suffer injuries in auto accidents may forfeit a variety of damages by prematurely ending treatment, including...

- Disability
- Dismemberment
- Emotional distress
- Interference with marital and/or parental relationships
- Loss of opportunity to enjoy life
- Pain and suffering
- Permanent disfigurement
- Wrongful death
- Recovery for special damages, such as medical bills, lost wages, loss of earning potential, and other out-of-pocket expenses.

Accidental death insurance policies

No matter how careful we try to be, accidents happen. Accidental death insurance provides coverage when an insured dies from unexpected injuries, but not illnesses. Insurers make payment to the policy beneficiary upon the insured's passing. Many death insurance policies also provide coverage for bodily injury, known as dismemberment insurance coverage, such as the loss of a limb or vision in an eye, in which the insured receives a predetermined amount. Combined policies are commonly called AD&D coverage, which stands for accidental death and dismemberment insurance.

AD&D exclusion

When insurers refuse to pay on policies, consumers can obtain satisfaction of their rights through our justice system. When a policyholder's illness contributed to a fall and his death, his accidental death insurer balked. It argued that the death by accident resulted from illness and should be excluded from coverage. The insured's beneficiary sued, and an appeals court held that accidental death insurance policies should provide coverage even when a fall and the resulting death were caused in whole or in part by an illness.

Jury waivers

Beware giving up your rights

Mandatory arbitration has become increasingly expensive, and arbitrators have become less predictable.

In response, some businesses that formerly asked employees to sign employment contracts with mandatory arbitration clauses have now switched strategies. So have some marketers that required consumers to agree to mandatory arbitration clauses in product warranties.

They are now asking their employees and customers to agree to jury-waiver clauses. They want everyone to take their grievances back to court. However, businesses and marketers again want judges—not juries—to make final decisions.

Jury-waiver clauses may turn up in auto loans, employment contracts, residential leases, mortgage contracts, and many other legal documents.

We're encouraging all of our clients to be on their guard about jury-waiver clauses in contracts. Anyone asked to sign a contract should ask if there are mandatory arbitration clauses or jury waivers in the document. If so, one should then seek legal counsel to protect his or her rights.

"I won't sue"

Some physicians are requiring new patients to sign waivers promising not to initiate "frivolous," or any other, lawsuits before they will see patients.

Think carefully before you agree to give up your rights.

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judge call a chiropractor
a hired gun?*

*Toll-Free Recorded Message
1-800-561-1670, ext. 703*

Open to Read How Sen. Ken Cuccinelli Insulted Virginia's Judges



Our team, together with attorney Sheri Abrams, decided to do away with traditional gift-giving amongst ourselves and, instead, prepared gift baskets to be distributed to families in the Lorton, Virginia, area.