



MondayMonday

FWIW And A “New” Inference

July 6, 2015

This is as close as *MondayMonday* comes to a Fourth of July issue, so let's take a moment to talk about where freedom comes from. With apologies to Justice Scalia, it's not from the Supreme Court or even the Constitution. Hitler appreciated that the greatest threat to a dictator was public education. “Universal education is the most corroding and disintegrating poison that liberalism has ever invented for its own destruction.” Madison confirmed that “[a] well-instructed people alone can be permanently a free people.”

The problem is, as Diane Ravitch warns, that public education has now been hijacked by the charter school movement; by private individuals and corporate bodies whose dedication is not to public education but to profit. Public school systems are collapsing and being replaced by something else: The privately managed charter school, run by hedge funds and educational entrepreneurs. The simple elegance of a town educating its children is not the only thing that is lost in the



shuffle. What is lost is the recognition that all children are to be educated together, at the same time and in the same place. But here's the real problem: The Common Core curriculum reflects a computer-friendly model that feeds the charter school's need for an easily tested standard. Teaching only to such a standard guarantees the charter school “success.” For that reason, in the elementary grades, Common Core divides reading equally between fiction and non-fiction. But by high school, the material is skewed 70-30 in favor of multiple choice, easily testable, informational texts.

Freedom, we suggest, includes both the dream and the capacity to reach it; one without the other is no education at all. Stay vigilant.

How about another game of “For What It's Worth”, but this time, with a special prize at the end? A 65-year old Bronx plaintiff attended a cookout with her grandchildren on the grounds of a

hospital. The picnic was conducted in a courtyard playground area. Plaintiff fell when she caught her foot on a hole in a rubber mat which covered the playground. She suffered a chip (avulsion) fracture and dislocation of the elbow, with pain and limited range of motion. The elbow, a usually stable joint, her doctor explained, has to suffer a lot trauma to dislocate. Plaintiff had lost grip strength and had loose bodies (cartilage and bone) floating about her elbow, the latter of which promised a lifetime of pain. FWIW, ladies and gentlemen?

The jury awarded \$300K past/\$270K future pain and suffering, which was reduced post-trial to \$140K/\$60K. The 1st Dep't finds that reduction wrong, reinstating the jury's verdict. *Cruz v. Bronx-Lebanon Hosp. Ctr.*, 2015 NY Slip Op 05601 (6/30/15).

As to the question of notice of the worn out mat, the court, without citation until now, offers this maxim: “A ‘worn out’ section by definition occurs over the passage of time,” which “presupposes a slow process, and can support a jury inference that the defect should have been discovered.”

©Jay L. T. Breakstone, 2015. *MondayMonday* is published by PARKER WAICHMAN LLP, a National Law Firm, offering appellate counsel to the profession, together with trial counsel and referral/co-counsel in cases involving significant damages. 1.800.LAW.INFO (800.529.4636) Contact jbekastone@yourlawyer.com. For the online version, visit www.monday-monday.yourlawyer.com.