

LIFE BEGINS

Senior Lawyers Section Newsletter



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LETTER from the CHAIR

This is my last month in the position of chair of the Executive Committee of the Senior Lawyers Section, with the new membership cycle beginning on October 1. I will continue to participate on the Committee as immediate past chair. I have served as chair since February 2020, just as the COVID-19 pandemic arrived on the scene and changed all our lives. I believe the Senior Lawyers Section has weathered the pandemic well, successfully pivoting to the virtual environment and carrying on. In addition, this year the Senior Lawyers Section initiated changes to WSBA and Section bylaws to now allow Bar members with inactive status to fully participate as voting members of the Senior Lawyers Section and Executive Committee, in recognition of the important contributions from all our Section members, even those no longer actively practicing law.

I am passing the baton now, as other endeavors in my life require more of my time and energy, but I make

this transition at a time when our Section is in a strong position. This newsletter “Life Begins” is now being published regularly, with expanded content for a wider audience thanks to the efforts of our editor Jim Riehl. Our webinar offerings have been well attended and have been

an important way to generate interest in joining our Section. In addition, new members have joined our Executive Committee for the coming year, and we welcome Jenny Rydberg, William Cameron, and Young Lawyers Liaison Sabiha Ahmad. We recognize that a generational shift is

taking place in the Section, as more of the Baby Boomer generation makes the transition to retirement and is looking for creative ways to do so.

We have a challenge ahead, which I am confident we can meet as a Section, just as we have met the challenges posed by the pandemic. This coming term, our Executive Committee officer positions are filled, with the exception of the chair position. The Executive Committee has

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2022-2023

SENIOR LAWYERS SECTION EXECUTIVE COMMITTEE

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Letter from the Chair

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decided on an interim strategy to rotate the chair position quarterly among members of the Executive Committee, and we are grateful to those members who have stepped up to fill those shoes, starting with Carole Grayson for the rest of 2022. Ultimately, we wish to fill the position on a more permanent basis. Even if you do not see serving as chair in your future, I nonetheless ask all Section members to think about how you might participate in Section activities to strengthen our foundation. Consider contributing an article to “Life Begins” or work on our CLE offerings, because that is how we grow and thrive. //

TRAVELING COURT

The two-year eviction from the Temple of Justice became official on July 1. With our temporary home in Tumwater delayed until after the new year, we are now officially a traveling court! Turns out this is not a new status. In 1985 the court initiated the first traveling court project as part of a plan to bring court proceedings to the public. The first traveling court oral argument was held at the University of Washington Law School. The early venues were the state’s three law schools, U.W., Gonzaga and Seattle U. What began as outreach soon became a necessity when the court began a multi-year project in 1987—seismic retrofitting of the Temple. From 1987 to 1989 the court held hearings around the state.



After two years, travel fatigue set in, and the court did not travel again until 1995. Since resuming our travels, we have held oral arguments in every corner of the state and in nearly every city. Although we give preference to colleges and universities, we have sat in grade schools, high schools, and historical county courthouses. Western Washington visits include Aberdeen, Auburn, Bellevue, Bellingham, Centralia, Des Moines, Forks, Kent, Longview, Montesano, Port Orchard, Port Townsend, Redmond, Seattle, Tacoma, and Vancouver. In Eastern Washington we have heard arguments in Ellensburg, Moses Lake, Omak, Pullman, Richland, Spokane, Toppenish, Walla Walla, Wenatchee, and Yakima. It is safe to say that many people who attended arguments in the remote locations would likely never make the drive to Olympia to see the court performing live!

When we travel, we schedule two days in the community. The hosting location generally organizes student guides for each justice, and we tour the campus or other facility. If the venue is not an educational institution, we work with local schools to bus students to the arguments, along with members of the bar and the public. Our visits always include lunch with students, teachers, and staff. This is a unique opportunity for students to interact with the justices. In the afternoon justices make guest appearances in classrooms, sharing information about the court, their individual path to the bench, and the appellate process. The students ask great questions! Our traveling court committee works with the local bar association and our evening is often spent with local attorneys and judges.

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MEMBER SPOTLIGHT

DAVID SPRINKLE



One of my earliest introductions to the practice of big city law at my first job out of law school was being taken aside by two senior partners and being told, “You need to upgrade your wardrobe.” Here I was, a new associate who had just moved to Seattle from Boulder using my entire \$900 moving stipend, broke, with student loans (that would not be forgiven by Ronald Reagan), wondering what I had gotten myself into. Still, when senior partners speak, associates listen, and I immediately tripled my suit and jacket inventory with significant damage to my brand new Nordstrom card. I may still have one of those jackets, although I would not pretend that it fits my 63-year-old self as well as it did that 28-year-old fresh-off-the-farm lawyer.

At the University of Colorado law school I made the decision as a 3L to

Most senior attorneys can look back at their careers and think of one or more attorneys who were instrumental in making us the lawyers we are today.

focus on securities law, which led to my other “uh oh” moment at my new law firm—right after I started I was told the firm would no longer practice securities law because of the sky-high insurance premiums. The Enron debacle would certainly prove that decision to be prescient but it left me adrift in my new suits with no practice emphasis. Mentors to the rescue!

Most senior attorneys can look back at their careers and think of one or more attorneys who were instrumental in making us the lawyers we are today. For me, it was Carrie Rehr, a

CU grad and partner at Davis Wright Tremaine, who taught me some class (R.I.P., Carrie, I miss you) and Shannon Sperry, a partner at Lasher Holzapfel Sperry and Ebberson (she was not one of the partners who told me to update my wardrobe). Shannon took a young adrift associate under her wing and taught me real estate law, launching my career-long love affair with real estate law. Thank you, Shannon.

36 years later, after 16 years at LHSE, four years as general counsel for a private commercial and residential developer (another victim of the Great Recession), and 10 years at Plum Creek Timber Company/Weyerhaeuser as a timber attorney, I am now state underwriting counsel for Fidelity/Chicago/Ticor Title Companies. It fulfilled a dream I always had of being an underwriter someday. That is written in jest; hopefully no attorney dreams of being an underwriter.

I could drone on and on about underwriting and title endorsements, but I would lose at least half my readers. Instead, I promised the editor of the newsletter to share a few reflections as an “essential worker” in the financial industry who went to the office every day during the pandemic. When COVID-19 first washed ashore in late February/early March 2020, the real estate industry was hit hard. As any senior real estate attorney can attest, this industry is extraordinarily cyclical, with boom times (think about all those construction cranes) followed by bust (think about the S&L debacle and the Great Recession). But the

COVID-19 bust was unlike anything we had seen. Overnight buying/selling/financing/construction activity stopped dead and FUD ruled. My company was forced into massive layoffs and work-from-home orders from HQ. Of the 22 people in my office in February 2020, seven were laid off and only five of us were allowed in the office at any one time.*

Downtown Seattle became a ghost town, especially after the unrest during the summer of 2020. Empty or boarded up storefronts ruled the streetscape. It felt particularly unsafe walking the empty streets, at least until the construction workers were allowed back on the job. I have never been so happy to see hard hats and reflective vests.

It is hard to know whether there will ever be a return to normal during the remainder of my career, and whether there will be a coming boom after the latest recession. While there are some signs of recovery downtown, and fewer sidewalk encampments since the election of Mayor Harrell, there are still many boarded up and empty storefronts. It is actually difficult to find a restaurant open for lunch in the vicinity of the Columbia Tower.

Looking back at my career I am grateful for many co-workers, friends, clients, and business associates I met over the years. My legal career has been incredibly fulfilling, even those many stressful sessions at the Lake City Neighborhood Legal Clinic and

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doing pro bono legal work as a young lawyer. //

*As part of the financial industry, title and escrow functions were considered essential and exempt from the Governor's stay-at-home emergency order.

David is underwriting counsel for the Fidelity National Financial Group, which issues title insurance policies under the Fidelity Title, Chicago Title, and Ticor Title brands. He lives on Bainbridge Island with his chocolate Labrador "Kahlua" and is a daily ferry commuter and avid Mariners' fan.

WSBA Sections

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BENEFITS

- Continuing education
- Professional networking
- Resources and referrals
- Leadership opportunities
- Career advancement
- Opportunities to affect change in the legal system

WHO CAN JOIN?

Any active or inactive WSBA member or law student can join and participate in the Senior Lawyers Section. Some sections also accept public members. Learn more about membership eligibility and join today at:

<https://www.wsba.org/aboutsections>



WSBA Sections

TRAVEL

Where in the world is LADAKH?

Stephen E. DeForest

Globalization is upon us. The world is shrinking. Fortunately, there are lands and cultures that are still relatively untouched. One such place is Ladakh, which my wife and I visited in August 2005. It was one of our most fascinating travel experiences. Though politically a part of India, Ladakh's culture and religion are enduringly Tibetan. Some of its

early morning flights, because of the effect of high altitude on lift. Leh is at 11,000 feet. As we left Delhi at 5:40 a.m., the pilot must have been in a hurry, because he pulled away three minutes early before all of the passengers were seated, sending those standing stumbling rearward, to the merriment of the flight attendant and the seated passengers. The population of Leh is about 50,000, but as it has

no satisfactory hotel accommodations, we were taken to a

"resort" 20 minutes away. It became our base for the next 16 days. The

three of us occupied two yurts ("ger" in Mongolia). Each yurt had a connected

small bathroom with

running water, toilet,

wash basin and shower-

curtained enclosure. As

the water was heated by solar panels, showers were most comfortable at the

end of the day. Summers in Ladakh are short and

relatively hot (70's and low 80's during the day). Winters are brutal.

We traveled within Ladakh by "jeep"—a diesel powered Toyota wagon. About 60 percent of the

roads were asphalt surfaced, but poorly made road beds made for an uneven and bumpy ride. There

were an endless number of curves, many of them blind. With a few minor exceptions, the "highways" were a narrow two-lane road, or a

wide single lane. Whenever we met a vehicle (mostly trucks) coming from



monasteries and the palace in Leh, Ladakh's main city, are nearly as old and impressive as Lhasa's Potala Palace. Since 1948 Ladakh has been a part of the Indian state of Jammu and Kashmir, lying at the northern most tip of India.

Road access to Ladakh is limited to five months of the year. The preferred method of travel is by Boeing 737 from Delhi to Leh. The principal carrier is Jet Airways, which has only two flights in and out each day, weather permitting. These are

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the opposite direction, or in passing another slower vehicle, both would have to pull over on to the shoulder. Since much of our travel was on the side of a mountain, frequently with a precipitous drop-off on the outer edge, and no guard rails as such, I tried very hard not to pay attention to the driving. This was a difficult task, because of an ingrained habit of maintaining continuous awareness of the road even when I am not behind the wheel. We were comforted by the fact that our driver had driven for a number of years and had a wife and two small children at home.

With one exception, our eight nights not spent in the yurt near Leh were in tents. As Ladakh has no improved camping facilities, out tents were usually pitched in small fields. A separate latrine tent afforded privacy for a shallow trough that had been dug for our use. After four days of exploring a number of monasteries, visiting with local families, and admiring the beauty of the landscape, we returned to Leh for one night (and a hot shower!), before heading to the Nubra Valley via the Khardung-la pass. The last 10 miles on either side of the pass were a miserable excuse

near Leh, we had a long drive to Lake Tso Moriri, a salty lake about the size of Lake Washington. Our tent that night was set up along a small stream outside the tiny town of Korzok, at about 15,000 feet. The wind came up in the early evening, and with it frigid air. While our tent remained upright, the latrine tent blew over in the night, with obvious challenges for those seeking relief.

From Korzok we drove back toward Leh, but stopped off to spend the night in a tent in a farmer's field, in order to get an early start for the Takthak Monastery and the one-day festival that was a cultural treat and one of the highlights of our trip. The courtyard was packed with the local people, the women all in their native dress. The masked dancers wore brightly colored clothing and moved very slowly and deliberately, accompanied by the beat of drums and the dissonant sounds of a variety of local instruments.

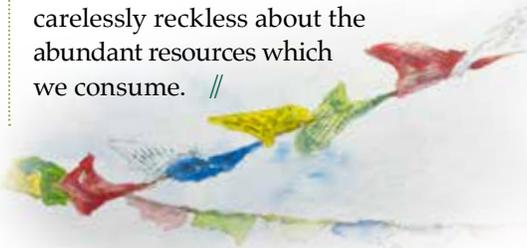
As we boarded the plane in Leh to return home, we were saddened to leave this land of mountains, monasteries, markets, and monks. The place where prayer flags fluttering in the high mountain passes provide

"We have such admiration for their self-sufficient life, their strong religious beliefs, and the closeness of their multi-generational families."

for what is reputed to be the highest "motorable" road in the world. We stopped at the pass, with its glorious views in all directions only partially obscured by clouds. We had our photograph taken next to a sign that recorded the elevation as 18,383 feet. We spent two nights in the Nubra Valley, along the Shayok River which roughly parallels the Indus River on the Leh side. On the second day we watched three bactrian endangered (two hump) camels grazing near the river bed.

After spending one night at our yurt

constant reminders of the cultural heritages of Little Tibet. Although the people are very poor, there is no begging. We have such admiration for their self-sufficient life, their strong religious beliefs, and the closeness of their multi-generational families. It causes one to ponder about the true values of life, and whether we are carelessly reckless about the abundant resources which we consume. //



Members Present at the National Council of Juvenile and Family Court Judges

July 2022 | Reno, NV

Judge James Riehl, ret. and Miek Failey presented at the annual conference of the National Council of Juvenile and Family Court Judges (NCJFCJ) on July 19, 2022, in Reno, Nevada. Miek Failey is Director of Legal Services of the LGBTQI+ Center Long Beach, California and Judge Riehl is a member of the Executive Committee of the Senior Lawyers Section of the WSBA and co-editor of the section's newsletter, Life Begins. They presented on the topic of **"LGBTQI + and Domestic Violence: What a Judge Should Know."** Judge Riehl has trained attorneys and judges for over 30 years, not only in the state of Washington but nationally and internationally as well. //

PRESENCE, PERSPECTIVE & IMPERMANENCE: LIFE LESSONS FOR WELLNESS

Dr. Charles Ericksen

My mother planted many of the seeds that would resurface in my wellness work. The seeds grew out of her love for art and her world view shaped by the crucibles of her life. A serious bout of scarlet fever as a child, two years in a tuberculosis sanitarium while in her twenties, and suddenly finding herself single and without a college degree in her fifties; she developed the confidence to persevere in the face of adversity. She graduated from Evergreen State College with a degree in art therapy at the age of 60, made new friends over the internet at 70, and hiked Mount Rainier at 80. Her two favorite lines were get over it, and get on with it! She was an eternal optimist, who adjusted to the

Surrendering to situations we cannot change. Discovering ways within ourselves to balance loss with joy. Finding quietude in the chaos around us. These are skills that lead to the resiliency.

many challenges and changes that time springs upon us.

Surrendering to situations we cannot change. Discovering ways within ourselves to balance loss with joy. Finding quietude in the chaos around us. These are skills that lead to resiliency.

In existing research studies, the construct "resilience" has varied meanings. In the early days of resiliency research the terms "invulnerable" and "invincible" were used to describe individuals who did well despite adversity. However, these terms are limiting as they imply an absolute resistance to damage. First, no one has absolute resistance. Some individuals are more resistant than others, but everyone has their

limits. Second, the term suggests that the characteristic applies to all risk circumstances. That's an implausible suggestion. Finally, these concepts seem to imply that resiliency is an intrinsic, unchanging characteristic. That too is wrong because developmental changes can influence resiliency just as they influence any other personal characteristic.

Walsh (1998) describes resiliency as an active process of endurance, self-righting, and growth in response to crisis and challenge. In describing the severe challenges that often forge an individual's personality, Walsh observed, "Resilient persons became more substantial because they were sorely tested, endured suffering, and emerged with strength they might not have otherwise developed."

As I ponder resiliency in the wake of COVID-19 and this increasingly wired world, I am drawn back to the lessons my mother taught me. She was an accomplished artist throughout her life who also taught oil painting classes in our home. She had a gift for teaching students, young and old alike, to be present and see a landscape or sunset with the inner eye, to recognize that every scene has a *perspective* just as waves diminish in the horizon, and the *impermanence* of all things.

Being Present.

All creative artists know that being present is intimately tied to being inspired and producing anything of quality. Mom taught that it was difficult

to enjoy art, let alone create art, if you were perpetually distracted. In life, being present is intimately tied to the quality of life and the perception of reality.



In the resiliency workshops I conduct, we explore how to develop the skill of being present through self-reflection. I encourage participants to engage in a daily practice of noticing their thoughts as they

wake up, and practice mindfulness followed by moments of reflection and journaling throughout the day to notice triggers and tensions. Then, before sleep to notice thoughts, reflect on the day, and once again practice some mindfulness to go deeper within the days' learning. This requires practice to find out what works best so each day informs the journey towards greater self-reflection.

The personal narrative exercise is a learning journey to become more awake within ourselves. In this exercise, you are asked to recall major turning points in your life and describe what it was that made that a definable period. Each milestone represents an event that contributed to who you are now in a significant way. The central questions in the personal narrative exercise are: *When you look back, how do you feel about that experience? What are your reflections? What did you learn?*

Mindfulness in this sense is about nurturing a set of habits and an environment intended to help you be present and keep the right perspective in turbulent times, thus allowing your knowledge, skills, energy, and rational mind to make the most out of any given situation.

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Perspective

Perspective, simply put, is one's point of view. In terms of perspective in art, it is a technique for creating the illusion of depth and space on a flat surface. Perspective is what makes a work of art appear to have form, dimension, distance, and space.

In other words, it makes the work of art look realistic. Mom taught that by first learning perspective, it actually fostered creativity. Without it, we are restricted to a rather limited, flat view of the world.

In life, our perspective molds, shapes, and influences our experience of our personal reality. Perspective is merely a lens or mindset from which we view people, events, and things. One of the most important areas requiring attention is how perception shapes our ability to cope with the disturbances of life. Over the last decade, I have observed how individuals in Afghanistan, Liberia, Ukraine, and the Balkans dealt with the aftermaths of war, poverty, pandemics, and loss. Some individuals show remarkable resilience in the face of tremendous odds, some do not. When you sit and listen to these personal narratives you hear the difference in perspective. Like a thorn lodged deep under the skin, wounds hurt. We are all walking around with lots of thorns. Something touches them, and we feel the pain again. Some folks build elaborate protection devices in order to shield themselves from the pain. But of course, that only masks the underlying wound.

As we engage in personal reflection, we enter into a more intimate relationship with ourselves. We start to become conscious of how we engage with reality. Like an artist, we develop our ability to see the world and view the events and challenges of our lives. Self-reflection quiets the voice within our own head that is constantly talking all the time. Gaining

perspective on this voice in the head is an important part of a journey towards resilience. Meditation, body-work like yoga or Tai Chi, reflective practices like journaling or free-writing, are all useful tools to gain perspective on this voice in the head and help ease its stranglehold over us.

The crucible of transformation is life itself, and self-reflection is life's

"It is a silver morning like any other. I am at my desk. Then the phone rings, or someone raps at the door. I am deep in the machinery of my wits. Reluctantly I rise, I answer the phone or I open the door. And the thought which I had in hand, or almost in hand, is gone. Creative work needs solitude. It needs concentration, without interruptions. It needs the whole sky to fly in, and no eye watching until it comes to that certainty which it aspires to, but does not necessarily have at once. Privacy, then. A place apart — to pace, to chew pencils, to scribble and erase and scribble again.

But just as often, if not more often, the interruption comes not from another but from the self itself, or some other self within the self, that whistles and pounds upon the door panels and tosses itself, splashing, into the pond of meditation. And what does it have to say? That you must phone the dentist, that you are out of mustard, that your uncle Stanley's birthday is two weeks hence. You react, of course. Then you return to your work, only to find that theimps of idea have fled back into the mist."

learning ground. The unreflective life tries to avoid or collapse tensions to keep us safe, yet in so doing, undermines us. Hence, we need to cultivate a life of being still and present, gaining awareness of our perspectives and learning the law of impermanence. The last lesson is perhaps the hardest ... we never stop having lessons in impermanence.

Impermanence

Mom passed away eight years ago after a long bout of cancer. I was working in Kosovo when I received

a call from my daughter that I should come home quick. I came as fast as I could, memories of her many aphorisms flooding my mind. I recalled the times we sat on the Oregon dunes watching the sunsets vanish over the horizon. I arrived in time to hold her hand and feel her gently squeeze as if to say once again, get over it, get on with it, keep on living, loving and learning ... enjoy every sunset.

Those lessons have stayed with me through the years. They sustained me as I hunkered down in Albania during COVID-19. After two years of isolation and virtual birthday parties, we all came out of hibernation. It was time to wake up. I came home in March and decided it was time for a family reunion. I planned a hike in the North Cascades with my kids and four grandchildren. My eldest grandchild Lenore, who will be entering kindergarten this fall, had learned to read during the pandemic. She loves the sciences, particularly astronomy. While sitting on a rock watching a waterfall, she shared her recent discovery from an astronomy book she was reading. I learned that Makemake is a vibrant red dwarf planet and that it was named after a god of the Rapa Nui people of Easter Island (very cool). I am sure I am not doing justice to the lesson

I received that day. I tried!

I shared with Lenore that when her great grandmother passed away, a friend of hers had a star named after her. I promised to send her the coordinates: 724, 730, 4612, 4615, 13. I am quite sure Lenore can figure out Google Sky faster than I did. After a few minutes of pondering the idea that you could have a star named after yourself, Lenore softly responded that stars don't last forever. Somewhere high in the midnight blue I heard a whisper: That is why we should cherish them while we can. // ★ ★ ★ ★ ★

ELDER ABUSE: I KNOW IT WHEN I SEE IT... OR DO I?

Vicki Levy Eskin

We have all heard the stories of adult children abusing their elderly parents physically, emotionally, and financially. We hear about these children pocketing their parents' social security payments, leaving elderly parents unattended despite clear safety issues, intimidating seniors either physically or more frequently through withholding affection or visits, threatening to put the parent in a nursing home against their will, or making other threats designed to scare the senior into submission. But sometimes there are less subtle, but equally tragic

examples that elder lawyers, bankers, accountants, law enforcement, or others see and may feel inadequate to resolve.

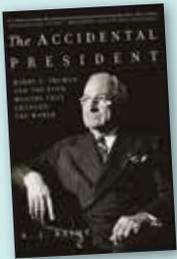
This writer has observed the following abuses: A Holocaust survivor with increasing dementia was threatened that if she did not comply with her daughter's demands, she would be cremated—something terrifying to most Holocaust survivors. More than one elderly parent was threatened to “be put away” or moved to another state to be placed in a home away from other family members if they did not perform as demanded. And this year has seen

a plethora of individuals, ages 90 or older, persuaded to invest in vehicles that have absolute penalties for withdrawals made in the first eight or 10 years after placement resulting in huge financial penalties. (Perhaps the most stunning matter involving a highly speculative investment that caused a loss of over five million dollars in two days—leaving the elder without any available assets for their final days of care!)

Countless parents, some past 90 years of age, continue to work or do without to manage the demands of their adult children, often themselves

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LOOKING FOR A GOOD BOOK?

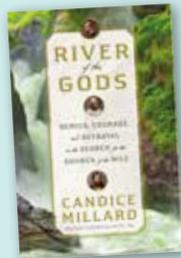


THE ACCIDENTAL PRESIDENT

By Albert Baime // Published 2017

ON APRIL 12TH, 1945, President Franklin Roosevelt died resulting in

Vice President Harry Truman becoming president; a man who had no college degree, never governed a state and never served as mayor of a city. As he famously declared at the time, “I became president by accident.” This book follows the first four months of one of the most historic and momentous periods of world history.

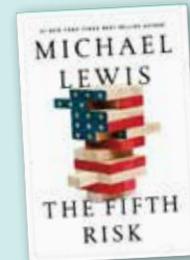


RIVER OF THE GODS: Genius, Courage and Betrayal in the Search for the Source of the Nile

By Candace Millard // Published 2022

SET AGAINST THE backdrop of the

race to exploit Africa by the colonial powers, this story is one of courage and adventure bringing to life the rivalry between two enemies, a decorated soldier and a young aristocrat/Army officer, as they set out to find the mysterious headwaters of the Nile River.



THE FIFTH RISK

By Michael Lewis // Published 2018

LOOK AT THE TRANSITION from the Obama Administration to the Trump Administration

in regards to the risks posed in maintaining the nuclear arsenal and protection from nuclear threats as monitored by the Department of Energy. The risks at the time were listed as the possibility of accident, action by Korea and/or Iran, failure of the electric grid, and the fifth risk was labeled “Project Management” also known as competency in management. Lewis examines the “fifth risk” in a way that reminds us of all the tasks government takes on that we take for granted ... until it fails. //

Oral arguments are scheduled for the second day. The court tries to select cases of particular interest to the local population. A great example of this was *Demetrio v. Sakuma Brothers Farms*, which asked whether farm employers were required to pay 'piece rate' workers for rest breaks. While the farm was in Burlington, the arguments were held at Heritage College in the Yakima Valley, where many migrant workers would be affected by the decision. There was standing room only.

Traveling court requires months of preparation, including finding a "courtroom," conference room, parking, security, scheduling

classroom visits, student forums, motel reservations, contacting local media and coordinating with TVW, which always travels with the court. It is the enthusiastic comments by students, the public, and the local press that make it all worthwhile. Nothing beats hearing students call us "rock stars" and describe our visit as awesome!

Traveling court will reconvene on October 6, 2022, at Gonzaga. You are all invited! //

Elder Abuse: I Know It When I See It ... Or Do I?

senior citizens. Adult children threaten to move in with elderly parents (who most definitely do not want their children as roommates) if the parent does not help the child or children out financially. You'll be pleased to hear that most situations were resolved through appropriate interventions, but others defied remedies and continued to haunt those who were unable to bring about the removal of a bad fiduciary.

An elder's problems may be exacerbated by medical, legal, or financial advisors who listen to the wishes of an adult child who may produce a valid power of attorney and insist upon documents to ensure control or obtain results detrimental

concerns about the capacity of the elder, the next move may well be that the client is whisked off to another professional who is more willing to accept at face value the views expressed in the presence or under the direction of an adult child. If the client goes elsewhere, the original lawyer may well face repercussions for attempting to "interfere" with the new lawyer by expressing concerns about the client's capacity for decision-making.

While it may be possible to file various causes of action to reverse financial mismanagement, if there is no valid party to complain, if the government will not step in, or if a different family member attempts to act, then there are myriad defensive tactics that can be taken to shutdown efforts to remedy bad fiduciary acts.

What preventative steps might an elder lawyer take to avoid exploitation, abuse, or neglect of an elder client?

This writer has found clients to be very receptive to the suggestion of annual checkups to review estate plans, insurance, contracts, or changes in laws which might impact previous plans. Setting up such annual visits and charging a nominal consultation fee where the lawyer and client look through estate plans, insurance coverage, or changes in health or family status helps the client maintain

confidence in the attorney, gives the attorney an opportunity to suggest changes that may improve upon legal plans, and gives the attorney greater credibility in assessing changes which seem harmful to the client. Often the practitioner who sees the client annually may be in an advantageous position to note any changes in demeanor, finances, and lifestyle through establishing a long-term relationship with the client and they are in a better position to stave off the beginnings of financial or emotional abuse. Annual visits with the elder client should elicit the following information:

- 1 Where do you live and who else resides in the home?
- 2 Do you own the home (include a check of the county property assessor site to ensure deed has not changed since previous visit)?
- 3 What is your current income and what is the source?
- 4 Are you receiving any governmental benefits? Specifically, are you receiving Medicaid or Veterans disability assistance?
- 5 Is your income sufficient to cover your current spending habits?
- 6 Are you financially "helping out" a friend or family member on a regular basis? Who and to what extent?

An elder's problems may be exacerbated by medical, legal, or financial advisors who listen to the wishes of an adult child who may produce a valid power of attorney...

and contrary to the elder's needs or desires. If the elder has hearing, visual, or cognitive impairment, but is quiet and happy in the presence of their child, even saying, "I want whatever my child says. I trust him or her completely," the professional advisor may effectively wring their hands of the situation and try to determine the next course of action.

If a doctor, lawyer, or other professional correctly expresses

7 What debts do you have? Were credit card purchases made mostly for you or for other family members?

8 Have you gifted any significant amounts to any friends or family members in the past year? How much and why?

9 What are your current assets? Is that a notable change from last year?

10 Have you suffered the loss of any family members or close friends in the past year? (Hopefully, they would have called the attorney's office in the event of such a loss.) How has this changed your personal care habits?

11 Have you inherited any assets in the past year? Did you keep the inheritance or did you "share it" with another family member?

12 What vehicles do you own? Who routinely drives that vehicle? Who is insured to drive the vehicle? Evaluate the insurance coverage to determine sufficiency of policy.

13 Evaluate insurance on any family home or other property.

14 Do you own any new properties other than your homestead? Are those properties in another state? Do you regularly visit that property or is someone else living there or extensively using the property? Evaluate whether the property should be deeded into a trust for ease in transition or even liquidated to provide funds for elder care rather than preserved for the benefit of one's children or other heirs.

15 Do you have any new health issues or are you having significant problems with any health issue? Who is your primary physician? Do you see any specialists, and if so, for what?

16 What types of medication do you regularly take?

17 Consider using a short mental health screening device to establish a baseline and evaluate any changes in cognitive ability.

18 Do you have any concerns about your agent under your power of attorney? How are you having a good relationship with your designated agent? Is it time to consider naming someone whose decisions will comport with those you would make, or do you feel obligated to designate someone who you do not completely trust?

19 Go through the listed heirs. Are there any changes or new concerns about existing plans?

20 Look at the client. Is the client clean or wearing clean clothes? Do their clothes appear to fit properly? Is the client shakier than you recall or having issues communicating?

21 Has the client considered organ donation, cremation, or burial? Is there an existing prepaid funeral plan and is that plan in the client's portfolio? Is a funeral trust appropriate to exempt assets from Medicaid issues?

22 Are all appropriate property tax deductions utilized? Are local property tax payments up to date? Is there a possibility that the senior is in danger of losing their home due to unpaid property taxes, code enforcement issues, unpaid mortgage issues, or other financial issues?

23 Has the client signed for a new mortgage on the homestead and, if so, were the funds misappropriated by someone other than the senior client?

24 If the client has a trust, have assets been properly reassigned? If POD designations are in place, is proof of same in the estate portfolio, along with beneficiary designation for assets passing outside of probate?

25 Is it likely that the client will soon be a candidate for an assisted living or skilled nursing facility? If so, would Medicaid planning be appropriate? What concerns does the client have about in-home or out-of-home care?

26 Do you have a gut feeling that something is not right? Follow your instincts until you are sure the senior is safe!

Preventative planning is the best way to protect clients from elder abuse, but it should not be a one-time event. Ongoing checkups and maintenance are the best way of ensuring that appropriate checks and balances are in place and that the senior client is not being steered into a course of action that is detrimental. Showing genuine care and concern beyond simply constructing a plan to disburse

As Americans live longer, elders should be encouraged to retain and use sufficient assets to live well...

assets beyond death should be an intrinsic part of the estate planner's job. Make it clear to the client that you are as interested in ensuring the person and property of the elder client before death as the client is about heirs after death. Acknowledge the elder client has built an estate based upon demanding work or good luck and that the clients' assets should be used primarily to ensure that the remaining years are well lived. The elder client should know that just because one is aging does not mean that assets must now be set aside in favor of heirs rather than used by the senior to enhance ongoing quality of life issues. As Americans live longer, elders should be encouraged to retain and use sufficient assets to live well before ensuring loved ones are left a

Continued on page 11...

particular inheritance.

Changes in laws related to inheritance of IRAs and other retirement plans initially seemed to penalize secondary nonspousal beneficiaries. But it is time to evaluate retirement plans as they were

intended: to provide for and protect the elderly – not to satisfy greedy heirs who may not genuinely care about their parents’ needs or wishes.

Do you really know elder abuse when you see it? Are you doing your part to protect elder clients? Have

you implemented your own end-of-life strategies to avoid being a victim yourself? Take charge and empower yourself and other seniors to “live long and prosper,” in the words of Mr. Spock! //



CAN'T BELIEVE I'M REALLY RETIRED!

Jeff Tolman

My journey into a retirement plan started with an old client of mine I like very much. She is a lovely lady who was born without a filter. For example, I greeted her for an appointment years ago, “Good morning, Joan, how have you been?” Generally neither are an uncommon or provocative entrance. She replied, “Better than you. God, you have gained weight.” Did I say I like her?!

Just after COVID-19, I saw her again. Our appointment went smoothly with no discussion of her—or my—current weight. At the end of the appointment I made a common query: “Do you have any questions, Joan?” “Yes,” she replied, “when are you going to retire or die?” I smiled and simply said, “I don’t have a day set aside for either.” And didn’t.

Her question, though, ignited the spark of a plan. My lawyer partner of 35 years, Mike Kirk, had retired. My law partner of 11 years, Matt Clucas, had been appointed Superior Court Commissioner. I was, as I had begun four decades earlier, a sole practitioner.

My first challenge was to find a brilliant, inclusive, caring, competent lawyer to join the firm. I scoured my brain and the same name kept popping up: Amanda Grossman. I had known Amanda for some years and liked her very much. Her competence was shown by the fact she’d clerked for 6 federal judges in San Diego and Seattle. Her compassion was shown by her passionate representation of Social Security Disability claimants.

We partnered up and I set a tentative retirement date for July 1, 2022, which gave us a couple of years to share knowledge, experience Amanda’s firm culture.

Amanda and I worked together nearly three years. It became apparent that with me gone, another lawyer would be needed to cover my caseload. Maureen McKeeman began practicing with the firm in spring 2022.

As the end of my life as a lawyer appeared on the horizon, I asked clients and friends and acquaintances for their thoughts and experiences. Different advice regarding retirement I received include:

If you are bored in retirement it is your own fault.

The big adjustment is that most of your adult life you have graded yourself and others have graded you by what you produced. Now you need to grade yourself by the joy you can find, and give.

You will lose track of what day it is, because whether it is Tuesday or Thursday matters less. I gauge everything by “thick paper day,” the one day of the week that has certainty – the Sunday *New York Times* comes to the paper box.

Many times in my probate work I have said to surviving spouses, in hopes of getting them to start looking toward the future,

“Mrs. Norwegian, now you need to ask yourself a very simple question that can have a very complicated answer: ‘What do I want to do?’ You can, and need to start thinking about your future, and how you can get the most enjoyment out of it.”

One widow – who had cared for her siblings, then her husband, then kids, then her parents – rocked back in her chair, pointed her index finger at me, and said, “Young man, that has to be some kind of a sin!”

Part of the retirement process is asking ourselves that question.

My official retirement began with the online news caption: Economy recession inevitable. My timing, as often is the case, is imperfect.

Things I have discovered in retirement (though I still hold down my part-time Pousbo Municipal Court judgeship):

Like AM and FM radio, there are co-existing societies – the working and the retired.

Workers go to Costco on the weekends, or after work. The retired can go to Costco midday, mid-week.

The retired can go to breakfast anytime in the morning they choose, with no office hours to be governed by.

The retired sleep better, not waking in the night worrying about a client issue or statute of limitation. Instead, they can worry about which child or grandchild to spend time with.

The retired can set a weekly 11 a.m. tee-time, for a golf round that eats up most of the day.

The retired can catch up on yard work they have been ignoring, putting off for years, and discover the joy of one’s first harvest of five green beans.

The retired can help their working children transport grandchildren to and from activities, and weed and lay bark for a house being put on the market.

The retired can stay up as late as they choose and get out of bed whenever the spirit moves them.

The retired can read the Sunday *New York Times* cover to cover – on Tuesday!

The retired can catch up with old friends – any day, any time.

The retired can start every day asking “What do I want to do today?”

Jeff Tolman has practiced law in Pousbo since 1978 and been Pousbo Municipal Court Judge since April, 1994. When not lawyering or judging, he golfs, flyfishes and spends as much time as he can with his kids and grandkids.

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