A Conversation with United States Senator John Breaux

U.S. Senator John Breaux (D-LA) is widely recognized as a leader in the Senate, particularly in regard to the issues facing older Americans. He is a senior member of the Senate Finance Committee, the ranking Democratic member of the Special Committee on Aging and serves as a member of the Senate Committee on Commerce, Science and Transportation. Senator Breaux was selected by the White House in 1998 to chair the National Bipartisan Commission on the Future of Medicare and he co-chaired the National Commission on Retirement Policy, which produced legislation to help reform Social Security. Senator Breaux was also instrumental in the recent reauthorization and expansion of the Older Americans Act.

Steven Stern would like to gratefully acknowledge the efforts of Bette Phelan of Senator Breaux’s office, Charlie Robinson, Brian Lindberg, and Vicki Gottlich in preparing for the conversation with Senator Breaux for the NAELA News.
West Group
(inside front cover)
So, the year has come full circle. When first I wrote last year I was freshly back from the exhilaration of the Philadelphia Symposium, the daffodils were blooming in my garden, and I was frantically digging out of the piles on my desk. I write with much the same to report this year.

The garden is similar but not the same. Full of promise, the daffodils and forsythia are peaking, but this year the tulips are less profuse and the “Cornell Pink” is late. A hard long, cold winter. Still, many old friends are returning. The lilacs are leafing out, the fruit trees beginning to bud, and the peonies are sprouting.

Like my garden, this time of year brings the NAELA community together, raises some new, and some long-standing issues, and commences a season of renewal. The NAELA Symposium in Vancouver was full of exciting NAELA and elder law meetings, workshops, and discussions. For the first time NAELA sponsored an international track with members of the Canadian Bar. The workshops with our Canadian colleagues were provocative. We, as well as our clients, share so many of the same issues, are working to resolve so many things in similar ways, and are approaching others differently. There is much to learn from each other.

The symposium programming was well attended, the exhibitors were busy, the business meetings significant, and the site and city could not have been more beautiful and accommodating. My thanks to Bill Browning and his committee for producing a wonderful conference, to Allan Bogutz for organizing the Canadian activities, and to our extraordinary Meeting Planner, Pam Carlson, and Janice Phillips, NAELA Account Manager, for once again producing a top-notch, professional conference.

It was my bittersweet honor to announce my President’s Award at the Symposium which went to Burton Fretz, executive director of the National Senior Citizen’s Law Center for 20 years and a good friend of NAELA’s. Burt died shortly after the Symposium following a six month battle with Leukemia. (continued on page 5)
A Conversation with United States Senator John Breaux

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Steve Stern (SS): Senator Breaux, as you know, President Bush’s tax plan is proceeding rapidly through Congress. Do you support tax cuts before our nation has a secure plan for the future of Social Security and Medicare?

Senator Breaux (JB): The aging of the baby boomer population will put an even greater burden on the federal programs that help older Americans, and none more so than Medicare. The Medicare system today is simply ill equipped to handle the aging of 77 million baby boomers, the first of whom becomes eligible for Medicare in less than a decade. Medicare enrollment in 1966 stood at 19 percent of the nation’s population, but by the year 2017 that percentage will triple.

Medicare is nearly a 40-year-old program and is clearly showing its age. Created in 1965, it is a health delivery system that was designed to confront the challenges that existed in 1965, but have changed substantially over the last 36 years. Medicare is a program that provides inadequate coverage, covering only 53 percent of seniors’ health care costs and one that does not pay for prescription drugs, vision and dental care and other important benefits. In addition, Medicare provides little access to new technologies and little preventative care.

To usher Medicare into the 21st century, Senator Bill Frist of Tennessee and I recently reintroduced two bipartisan Medicare reform proposals to modernize Medicare and dramatically improve the benefits seniors receive, including adding a long-overdue prescription drug benefit.

Our legislation includes the best of what the government does, financing and oversight, with the best of what the private sector does, creating competition and keeping pace with advances in medical technology.

Many of us are encouraged by the interest in our legislation shown by President George Bush and the new chairmen of the House Ways and Means and Senate Finance Committees, as well as by the tighter margins in Congress that make bipartisan compromise even more necessary. These are realistic pieces of legislation that can answer some of the most difficult questions facing Medicare.

The larger and more comprehensive bill (S.357), labeled Breaux-First, more closely follows the far-reaching recommendations approved by a majority of the Bipartisan Commission on the Future of Medicare, which I chaired for more than a year. This legislation would give the federal government the tools to modernize the current, fee-for-service Medicare plan to compete with private plans based on premiums, costs and quality of benefits Medicare competition in its purist sense.

The narrower Breaux-Frist II (S.350) would also guarantee that seniors, including those in rural areas, have access to prescription drug benefits, but in the context of more incremental program reforms. Both bills ensure more competition, add universal prescription drug coverage, include protections for low-income seniors and those in rural areas, create new measures to keep the program solvent and provide a competitive system managed outside of Federal Health Care Finance Agency. Both bills are modeled after the successful Federal Employees Health Benefit Plan (FEHBP), which allows all members of Congress and 9 million other federal employees to choose from a range of health care plans that best suit their family needs.

In addition, both our bills would create a new federal Medicare agency responsible for guaranteeing that all seniors, including rural residents, have access to a prescription drug benefit.

Finally, and perhaps most significantly, these two bills rely on a public-private partnership among the federal government and public plans to offer a drug benefit for fee-for-service beneficiaries, a new benefit that will not be micro-managed by the federal government. Instead, both the public and private sectors would bear enough risk to encourage private sector involvement in offering prescription drug benefits to seniors, while also ensuring deeper discounts and control utilization by the private sector.

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Most agree our Medicare system is fraught with problems and sorely in need of modernization. Senator Frist and I are eager to work with fellow legislators and the new administration to use our two proposals as a starting point to debate on how we best address Medicare reform and prescription drug coverage this year. With 77 million baby boomers on the cusp of joining 10s of millions of current retirees, the Breaux-Frist legislation prepares the Medicare program for the 21st century. America’s seniors deserve nothing less.

SS: What do you think the Bush tax cuts mean for the future of these programs? How do your recent proposals ensure that Social Security and Medicare beneficiaries continue to receive the same benefits from these programs.

JB: The Office of Management and Budget recently announced that non-Social Security surplus over the next 10 years could grow to more than twice what was previously estimated. The new surplus numbers demonstrate the continued strength of our economy.

We may have more money to spend on important priorities – educating our children for the new economy, reforming Social Security and Medicare. We must ensure all generations have a retirement safety net, providing meaningful tax relief to America’s working families, and paying down the national debt so the next generation of Americans will not be saddled with our financial irresponsibility. These budget estimates challenge this new Congress and new administration to make very wise choices about how to spend the surplus on new programs and tax cuts. The estimates are based on a number of assumptions that can change and we could be once again faced with budget deficits.

For example, one such assumption is that Congress will not enact any laws that spend more money or cut taxes beyond the current level. Adding a prescription drug benefit without first re-

President’s Message
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I also contributed NAELA’s $1,000 Leadership Award to NSCLC in Burt’s memory which will be used to enhance the NSCLC web site. Burt was a pioneer in the elder law profession and a champion of the rights of vulnerable elders. We will miss him and his passion for our work. Gerry McIntyre, NSCLC’s Acting Director, accepted the Awards for Burt, NSCLC, and Burt’s family.

The symposium Business Meeting furthered our lively discussion of two components of the NAELA Long Range Plan. After much discussion the members present voted by almost a 2/3rds majority to invite attorneys from other countries to join NAELA as members. On the other hand, those present voted against a bylaws amendment that would have had all future bylaw proposals sent out to members to vote on by mail. The discussion about this Amendment indicated that its defeat was at least in part driven by the fact that the proposal called for a 2/3ds majority to pass. Of course, it is also acknowledged that the controversial Affiliates issue would have been the first amendment to be voted on in this manner, so it is not entirely clear why the amendment was defeated. The NAELA Board will continue to consider both of these issues at its July Retreat.

The symposium also included a “Forum on the Long Range Plan” in general and the Affiliates recommendation in particular. In addition, a “Point/Counter-Point” debate was held at a general session during which Vincent Russo and Lee Holmes presented their perspectives on the pros and cons of the Affiliates proposal. I thank both of them for taking the time to do so and for articulating some of the complex issues involved. I also thank Bill Browning for re-arranging the symposium schedule to allow for this discussion and for everyone’s attention at the long business meeting. This demanded flexibility and re-thinking from many, including president-elect (or is it president?) Charlie Sabatino who graciously offered to postpone his address until the Saturday luncheon.

Speaking of Charlie and renewal: we are blessed to have his intelligent leadership and fine implementation skills to lead NAELA in 2001-2002. He has already moved NAELA forward with many projects including chapter grants, the NAELA Diversity Task Force and Internship Program, and enhancements to NAELA’s website. Charlie will continue these and other initiatives in the coming year. I am indebted to him for his ready and able help during my term. I know I speak for all when I offer him assistance and good wishes for the year ahead.

So we too look forward. My NAELA presidency has been an extreme honor for which I will always be grateful. I have had the pleasure of working and visiting with so many of you as well as with an extraordinary board, NAELA Staff, and chairs of all the various committees, SIGs, and chapters. Everyone has been willing to help and has fulfilled their agreements. I thanked many by name in my address at the symposium. I thank you all again here. It is really quite extraordinary to have so many able and terribly busy attorneys quickly say yes to requests to contribute hours of volunteer time - and then to meet their commitments and handle their tasks so effectively.

None of my accomplishments this year would have been possible without the mentoring and confidence given so generously to me by NAELA Past Presidents Rebecca Morgan and Frank Johns. Nor could I have performed my responsibilities without the exemplary, balanced partnership of NAELA’s Executive Director, Laury Adsit Gelardi and our fine NAELA staff.

I have been part of the NAELA Board of Directors in one capacity or another since 1991. When it comes time to cycle off the Board next year it will be difficult for me, but not for NAELA. We have nurtured legions of able leaders and cultivated a commitment to community, mutual respect, and thoughtful process. NAELA will continue to grow and thrive.

Thank you for allowing me to be your president.
forming Medicare to reduce costs through competition is just the type of action that could have negative consequences in the future.

I will continue to work and make sure we face the problems that we know are on the horizon as the baby boomers begin to retire, and return some of the extra revenues to those of you who have helped to generate them through your hard work and creativity.

SS: As you know, assisted living facilities are fast becoming a popular alternative to nursing home placement for seniors who need assistance. Do you see a need for regulations, and what are your ideas to protect residents of assisted living facilities?

JB: I understand that baby boomers will demand independence as they age. New industries must meet the needs of older Americans who deserve safe and affordable housing. For that reason, assisted living facilities—a step between independent housing and the institutionalized care of a nursing home—are an attractive alternative to aging boomers eager to maintain their freedom.

The Senate Special Committee on Aging of which I am a ranking member, has held congressional hearings on assisted living, examining consumer protections and quality of care issues. As a result of the hearings, I have worked with the assisted living industry to improve consumer information and encourage better care for residents through facility accreditation. This April, we will again be holding hearings on our continued effort.

SS: You served as chairman of the Bipartisan Commission on the Future of Medicare. Now you seek to create a Bipartisan Commission on the Future of Social Security. Are there any lessons you learned from your past efforts, and how will the process differ in order to ensure progress?

JB: This past election cycle saw the issues of prescription drugs and Medicare skyrocket to the top of nearly every legislative agenda as the merits of a variety of plans were debated back and forth across the airwaves. Through methods and plans vary widely, a consensus is emerging that with this new Congress we have ushered in a prime opportunity for Medicare modernization with a prescription drug benefit.

SS: Do you support partial privatization of the Social Security program, and to what extent? Where do you think this Congress will go on this issue?

JB: I have worked for the past three years to forge a bipartisan compromise to restore Social Security to sound long term financial footing. I co-chaired a year long commission that studied the issues Social Security will face in the 21st century and reported recommendations.

My goal is to work with a bipartisan group of senators to craft a moderate, mainstream Social Security plan to build support from the center out. In the last Congress, I introduced a Social Security reform effort plan entitled, the “Bipartisan Social Security reform Plan.” Our plan would keep the Social Security Trust Fund solvent for more than 75 years, with no tax increase.

Our reform plan would give all working Americans ownership of personal savings accounts and give every American child a chance to create retirement wealth by opening a savings account at birth. Finally, our plan would use our budget and surplus to boost contributions for low-income Americans, increase the traditional Social Security benefit for low-income earners and improve women’s benefits.

SS: There are more than five million disabled Medicare beneficiaries who are under age 65. How will they be affected by your proposed drug benefit?

JB: All Medicare beneficiaries will benefit for the proposed prescription drug change.

SS: On the front lines of the long term care financing issue every day, elder law attorneys know that LTCI is an important option available to meet the extraordinary costs of long term care. What are some of your ideas to make long term care insurance more available and more affordable?

JB: Today, 12 million Americans need someone around to help them with basic activities of daily living, such as eating, dressing and even getting out of bed. But contrary to popular belief, long term care is not just for seniors.

While 6.4 million Americans 65 and older require long term care, 5 million younger Americans between 18 and 64, and 400,000 children need long term care as well. This care provides a huge emotional and financial burden for their caregivers. And as the baby boomer generation continue to age, many policy experts expect the number of Americans in need of long term care to double.

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It is clear, long term care is an issue that requires serious attention. But, while some proposals may focus on a demographic group’s singular needs, we need comprehensive legislation to address all aspects of long term care.

That’s why I joined six other senators last year to introduce the omnibus Long term Care Act of 2000 (S. 2935). This bipartisan legislation, cosponsored by four democrats and two Republicans, would provide immediate relief to seniors and caregivers, and help the baby boomers prepare for their own retirement.

For seniors and caregivers, my bill would provide a $3,000 tax credit to help cover caregivers’ long term care expenses.

In addition, this legislation would restore a social services block grant to $2.38 billion, and authorize a 10 percent increase above this amount for community-based, long term care services. And, it would include a provision that gives seniors the right to return to their home facility after being hospitalized elsewhere.

To meet the needs of aging baby boomers, my bill would create a tax deduction for the premiums paid on qualified long term care insurance policies. This deduction, which is accelerated for those 55 and over, may be offered as a pre-tax benefit to employees. And, the bill would authorize the federal Office of personnel Management to offer long term care insurance to government employees through private insurers.

Other important provisions include a national public information campaign to better educate Americans on the benefits of long term care insurance; studies to determine how to meet America’s future long term care needs; a community survey to determine whether cities and countries are “elder-ready;” and a sense of the Senate resolution affirming our commitment to ensuring seniors’ physical, emotional and financial well-being in this new century.

This bill signals our firm commitment to ensure a better quality of life for seniors, their families and all other Americans who need long term care.

Spearhead by Senator Charles Grassley (R-Iowa) and Bob Graham (D-Florida), this bill was introduced in the 106th Congress ("Long Term Care and Retirement Security Act of 2000") and the language was folded into a larger omnibus bill I cosponsored later in the year. Despite large support, unfortunately, the bill did not pass.

Senators Graham and Grassley reintroduced this bill under the same name on March 27, 2001. GOP Rep. Nancy Johnson, chairperson of the Ways and Means Health Subcommittee, also introduced this bill in the House this year.

This bill would give individuals with long term care needs or their caregivers a $3,000 non-refundable, phased-in tax credit to help cover their long term care expenses. An eligible individual is one who has been certified by a physician as needing help with at least three activities of daily living, such as eating, bathing and dressing.

The bill would also provide individuals with an above-the-line tax deduction for the cost of qualified long term care insurance policies. People could claim the deduction whether they purchase a private policy or as part of a larger cafeteria plan of benefits.

SS: Senator as you know, the vast majority of caregiving in the U.S. is provided by family members. Elder law attorneys see a growing number of families where a caregiver must give up his or her employment opportunities in order to care for an ailing loved one. What do you see as an appropriate congressional response to the challenges faced by family caregivers?

JB: I have worked to bring national attention to the plight of family caregivers. These are the 22 million Americans of which, the baby boomers make up 40 percent who provide care for an elderly relative. Five million Americans are “sandwich” generation care givers, providing care for both a parent and a child. Caregiving is an important issue for boomers because they are today’s caregivers.

Congress took a major step toward addressing the needs of caregivers last year when it reauthorized the Older Americans Act to include my National family Caregiver Support Program. This program enhances support service and information for family caregivers, provide respite care, counseling, education, and training.

Earlier versions of the Older Americans Act, However, were ill-equipped to assist the millions of Americans who actively care for an emerging or ailing family member, sometimes while simultaneously raising a young child. Family care giving takes an especially high toll on women, who make up nearly 75 percent of caregivers. In fact, the average family caregiver is a 46-year-old woman who works outside the home while spending 18 hours each week caring for her mother.

The role of caregivers will only increase in upcoming years when millions of baby boomers retire. That is why we must prepare today for the dramatic increase in older Americans’ long term care needs.

This caregiver program authorizes $125 million each year for the next five years to establish a support network that provides:

- information about services and assistance available to caregivers;
- caregiver training and counseling to help families make decisions and solve problems related to their caregiving roles;
- respite services to provide families temporary relief from caregiving responsibilities; and
- supplemental services, such as home care and adult day care, to complement care provided by family and other informal caregivers.

This much-needed family caregiver program is well overdue, and its addition to the Older Americans Act demonstrates how far the Congress has come in addressing aging policy.
NAELA Members in the News

NAELA was mentioned as a resource in the following publications.


Leonard Bellavia, Esq. and Penny Kassel, Esq., have a new radio show entitled “Planning with Penny – The Penny Kassel Show.” The show can be heard on WLUX 540 AM every Tuesday evening at 9:00 p.m.

Robert Clofine, CELA, was featured in the January 21, 2001 issue of the York Daily Record, in “Senior Label Expanding In Mature Market.”

David Correira, Esq., was featured in the December 31, 2000 issue of the Providence Business News, in “Business Notes.”

Mike Erde, Esq., was featured in the January 11, 2001 issue of the Edgebrook-Sauganash Times Review, in “Critter Criteria.”

Ronald Fatoullah, CELA, wrote an article for the January 15, 2001 issue of Park Slope Courier, The Brooklyn Graphic, and the Carroll Gardens/Cobble Hill Courier, entitled “Myths Regarding Medicaid and Estate Planning.” He also wrote an article for the January 16, 2001 issue of The Queens Courier, entitled “Using Annuities To Protect A Community Spouse’s Assets” and for the February 15, 2001 issue of Healthwise, entitled “Making One’s Health Care Wishes.” In addition, he was featured in the January 15, 2001 issue of Newsday, in “Q & A,” and in the January 23, 2001 issue in “Home Care Shouldn’t Jeopardize Medicaid.”

Robert Fleming, CELA, Craig Gordon, Esq., and Kate McMillan, Esq., were featured in the February 16, 2001 issue of the Arizona Daily Star, in “Attorneys Expect to Gather More Facts At Meeting.”

John T. Gosselin, Esq., was featured in the January 25, 2001 issue of the Swampscott Reporter, in “Cut Costs By Refinancing.” He was also featured in the February 8, 2001 issue of the Marblehead Reporter, in “Contract Takes Precedence Over ‘Gentleman’s Agreement.’”

Doris Hawks, Esq., gave a presentation on “Advanced Care Planning” February 21, 2001 at a forum on End-of-Life Issues and also on March 2, 2001 at “Parkinson’s Disease: The Future Is Bright.”


Catherine M. Koshkin, Esq., was named to the board of directors of the Humboldt Senior Resource Center. She continues for her second year on the Humboldt County Estate and Elder Care Council.

Bernard Krooks, CELA, Ronald Fatoullah, CELA, and Stuart Zimring, Esq., were featured in the January 24, 2001 issue of The Wall Street Journal, in “Caregivers Begin To Raise Questions About Pay for Efforts” and in the January 25,

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**Changes in “Members in the News” Section**

Effective with the August, 2001 issue of the NAELA News, new changes will be instituted to the “Members In the News” column in order to make it more relevant to our readership.

Below are guidelines for submitting items for the “Members in the News” column:

**Do Submit:**
- Items of national importance, such as:
- being published in a national publication;
- being quoted in a national publication;
- being interviewed on a national television or radio show.
- Elections to national boards or local bar sections.

**Do Not Submit:**
- Speeches or presentations you have given.
- Articles published in a local publications.
- Items on new offices opening.
- New staff additions.

We thank you for cooperating with us. If you have any questions, please direct them to Jihane Rohrbacker at jrohrbacker@naela.com.
Tom Begley
Ad
NAELA Members in the News

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Howard S. Krooks, CELA, as special chair of a committee designated by the New York State Bar Association, testified before the Statewide Commission on Fiduciary Appointments, a committee created by Chief Justice Judith Kaye of the New York Court of Appeals, to investigate the fiduciary appointment process within New York State, on May 31, 2000 and on December 7, 2000.

Marilyn Peskin-Kaufman, Esq., was featured in the March 6, 2001 issue of the Atlanta Jewish Times, in “Older People Aren’t What They Used to Be.”

Louis Pierro, Esq., was recently elected chair of the New York State Bar Association’s Elder Law Section. He was also featured in the January 16, 2001 issue of The Independent – Southern Rensselaer Edition, in “Pierro Heads Elder Law for NY’s Bar.”

Rene Reixach, Esq., was featured in the January 23, 2001 issue of the Rochester Democrat/Chronicle, in “Court’s Refusal of Medicaid Appeal May Lighten Burdens.”


Alice Salvo, Esq., was featured in the January 27, 2001 issue of the Pasadena Star – News, in “Attorney to Give Free Lecture on Elder Law.”

Stephen Silverberg, Esq., was featured in the December 18, 2000 issue of U.S. News & World Report, in “Plan Your Estate While Your Still Here to Lessen the Tax Pain After Your Gone” and the January 18, 2001 issue of the Chicago-Sun Times, in “IRS Simplifies Retirement Plan Rules.”


NAELA Chapters Announce Outstanding Chapter Member of the Year Awards

Recipients of the National Academy of Elder Law Attorneys “Outstanding Member of the Year” awards were announced at the Academy’s Symposium on Elder Law held April 18 - 21, 2001 in Vancouver, British Columbia, Canada.

Arizona Chapter
Brian C. Bjornsdal, Esq.
The Carolinas Chapter
Patricia L. Harrison, Esq.
Southern California Chapter
Edward W. Long, Esq.
Florida Chapter
Lauchlin Waldoch, CELA
Northern California Chapter
Doris E. Hawke, Esq.
Massachusetts Chapter
Emily S. Starr, Esq.

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Free Report Shows Lawyers How to Get More Clients

CALIF.- Why do some lawyers get rich while others struggle to pay their bills? The answer, according to California attorney, David M. Ward, has nothing to do with talent, education, hard work or even luck. “The lawyers who make the big money are not necessarily better lawyers,” he says. “They have simply learned how to market their services.”

A successful sole practitioner who once struggled to attract clients, Ward credits his turnaround to a little-known referral marketing method he discovered six years ago. “I went from dead broke and drowning in debt to earning $300,000 a year, practically overnight,” he says.

He says that most lawyers get their business through referrals, but points out that one in 100 uses a referral system which, Ward says, can increase referrals by as much as 1000%. “Without a system, referrals are unpredictable,” he says. “With a system, however, you can bring in a steady stream of new clients, month after month, year after year.”

It feels great to come to the office every day knowing the phone will ring and new business will be on the line,” he says.

Ward has written a new report, “How To Get More Clients In A Month Than You Now Get All Year!” which reveals how any lawyer can use this system to get more clients and increase their income. To get a free copy of this report call 1-800-562-4627 for a 24-hour recorded message, or visit http://www.davidward.com.
NAELA News Interviews Professor Rebecca Morgan, Esq.

Rebecca C. Morgan, Esq. is a NAELA Fellow and Past President. She currently is a professor of law and director of the Center for Law and Aging at Stetson University College of Law in St. Petersburg, FL, where she also teaches a variety of skills courses and elder law courses.

Steven Stern (SS): When I think about you and your role as a leader in NAELA, my first thought is that you bring a very different perspective than the other presidents and most of the other leaders in NAELA because you come from the education world and not the private practice sector. I’m sure that must give you a unique view about both the practice of elder law and NAELA as an organization.

Rebecca Morgan (RM): I think it does give me a different perspective because as an educator I have to focus on all facets of elder law and not just concentrate on one specific area of law. I have to stay up on a lot of different areas so I may be in a position to know about things going on in a lot of different states where a practitioner might be focusing specifically on his or her state for good reason because that is the law that is going to effect his or her clients. One of the real advantages to NAELA members is the listserv, which provides information on national trends and issues. We’re so transient these days so it’s useful to know what is happening in other states. As a teacher, I have to know.

SS: Particularly in the local elder law sections of the state bar associations and the county bar associations, I see that they have very little exposure to what is going on around the rest of the country and I think that they miss out because they don’t see some of the trends that we get to spot in other parts of the country.

RM: I think that’s true and I think that it’s not only so much the law but the practice tips that are being utilized elsewhere and the approaches that they might take in presenting their case to a judge or an administrative body. I think that’s very valuable. In our state in particular one of the areas of growth is international estate planning. The ability of NAELA to have the 3,500 resources is just phenomenal. It makes it so much easier to stay abreast of what’s going on and to be a good practitioner.

SS: I hear all the time that anybody who is interested in this area of the law should come down to Florida because that’s where the action is, that’s where the population is. What do you think?

RM: Well I think that there are probably some folks from some other states who would take issue with that! Governor Chiles would always say that the state of Florida was a laboratory for the rest of the country and that what we were dealing with today would be what the rest of the country would be dealing with in the future. But I don’t think that’s true. I think the idea of folks retiring to Florida is still popular. However, there are a lot of folks who are aging in place, not only in Florida, but in other parts of the country. Just looking at the demographics of the NAELA membership shows we have attorneys from all 50 states. So I think the indication is that elder law is a growing area of importance in the practice of law and it’s not limited to the sunbelt states.

SS: Let’s talk about what an important area of practice this is for law in general and how we’re training future attorneys to become involved in elder law. Obviously you bring a unique perspective. How is elder law being taught in the schools, both within your program at Stetson University and around the country?

RM: Steve, when I started teaching elder law 15 years ago, it was really somewhat unique in that there weren’t a lot of schools that were really heavily involved in doing it. Although we don’t see all of the schools teaching elder law yet, it’s not that unusual to have a course in the curriculum any longer. We actually have students now who come to Stetson because of our elder law curriculum. We’re seeing students come to law school knowing that when they graduate they want to practice elder law.

SS: Becky, at Stetson, is the elder law program comprised of classroom and clinical components?

RM: Yes, we actually have a certificate of concentration in elder law for students who complete 18 hours in a variety of approved course work that includes their substantive courses, skills courses and also their writing requirements. We have a clinic where we place our students with the local legal services offices. The students represent the elderly who are clients of the legal services office. We also have a practicum where we place our students with the state attorney general’s office, working on elder fraud cases, we provide an opportunity for the students to go beyond the legal services office and get some hands on experience in the fraud and criminal issues as well.

SS: How long does that experience last?

RM: Our courses are designed for one semester only. So a student can (continued on page 12)
only do the class one time even though we might have different areas that we can place them geographically. So once the student has done the elder law clinic, he/she cannot repeat it. Once the student has done the practicum with the attorney general, he/she can’t repeat that.

SS: I’m sure it’s a wonderful experience.

RM: They have done some good work. This semester students worked with the attorney general on sweepstakes fraud cases. I’m really proud of one student we had working with the assistant state attorney. There were cases that based upon the investigative reports weren’t going to be able to go anywhere because the victims had some memory problems. This student worked really hard and dug up some evidence that would allow charges to be filed against the bad guys. That’s the advantage of having a student because that’s an additional resource who could do extra work that the state attorney wouldn’t have time to do. We also have a very active student organization: The Elder Law Society. They’ve done tremendous work. The group brought seniors to campus for the day from two of the local senior centers, had lunch for them, and provided a speaker on Social Security. We are really pleased with their enthusiasm, and their efforts.

SS: I was very fortunate that I knew I wanted to practice elder law before I even went to law school so I looked for a school with an elder law clinic, which was by far the best experience that I had in law school.

RM: Not only do you get hands on experience, students also learn about the problems of the poor and I hope that it gets the students used to doing volunteer work because as lawyers we can make such a difference in the lives of people, whether they can pay or not.

SS: And you really do get to see that.

RM: You know Steve, I just think that it’s important for the students to recognize early on that these are real people with real problems. Classes use a case study book, and I think it’s easy to forget that the cases involve real people.

SS: It definitely makes it real. Do you see any improvements that need to be made, both in terms of the number of elder law-related programs that are out there and the way they’re run?

RM: Elder law must be recognized as part of the substantive curriculum; it’s not just a “fluff” course. It really has developed into a specialized area of practice and it’s just as valuable a component in legal education as torts, contracts or property law.

SS: Do you think NAELA has a role to play in that?

RM: I think that NAELA has played a big role in a lot of different areas. I know that there are other legal educators who are members of NAELA. They make a significant contribution to NAELA in a lot of different ways through speaking, writing, committee work, etc. And the fact that there is an organization that can serve as a clearinghouse for inquiries is useful. There are occasions when we get inquiries from NAELA, sent to me from other educators saying, “I need to know more about this.” Most recently, they got an inquiry from a research assistant to a law professor in Australia. He’s going to try to create the first “stand alone” elder law course. There are some components of elder law in some of their other courses, but none of the law schools in Australia, according to him, have a separate course. So they contacted NAELA to see what kind of resources and publications exist that would help them so that they wouldn’t have to reinvent the wheel. We have to remember as well, that we don’t have the market cornered on aging issues. This is a worldwide issue, not unique to the United States. Although our laws may be quite different, we could learn from each other in terms of how different countries have looked at specific problems.

SS: As NAELA president, it was your responsibility to meet with other leaders. In your travels, meeting with various leaders from other aging groups, how does NAELA interact with those groups and should we be doing more? What could we do in the future to bring together some of the organizations within this umbrella of aiding seniors?

RM: Well that’s one of the questions on which the NAELA leadership has an ongoing discussion. We are a member of the Leadership Council on Aging and I think that was critical because when we became a member of the Council, I think that was a real recognition of the importance that NAELA plays in this particular area of law. That’s a terrific organization because of all these other aging organizations and so it’s very easy to have the conduit to all the other organizations. Plus when the leadership council signs on to a resolution, there’s a lot of clout because it’s so many of these significant organizations who are...
NAELA News
Interviews Professor Rebecca Morgan, Esq.
(continued from page 12)

taking positions. We have good relationships with a lot of organizations including the ABA Commission on Legal Problems of the Elderly, which is a real leader in this particular area, the National Senior Citizens Law Center, AARP, a whole host of others. How far do we go beyond? Do we expand? We have to recognize that we are actually a volunteer organization and we can only accomplish so much based upon the time and energy of our members. So I think we have to evaluate how involved we get and see what is useful to us. I think that we have done a good job of letting other organizations know we’re out there, what we stand for and what’s important to us and our clients.

SS: You serve as the chair of the NAELA Publications Committee.

RM: Yes.

SS: Obviously a wonderful way to continue your leadership role within NAELA. What do you think of the publications? How do they measure up today, particularly given your perspective and your experience reading scholarly materials everyday?

RM: What is unique about NAELA is that we have the NAELA News which is informative and is published frequently and we have the Quarterly, which is more scholarly. That’s a great combination. The biggest challenge facing publications is the utilization of technology. Today, anyone can access information in a matter of minutes from the web. So I think that we have to look at how we integrate technology in our publications. Of course, we will never see the end of the printed page, but there are other ways we can use technology to more effectively educate our members. Our folks who serve on the NAELA Technology Committee are constantly working to enhance our technical abilities. Just look at our website and our listserv. They do a great job and we’re very fortunate to have such talented members in our organization.

SS: Becky, you’re familiar with the NAELA Long Range Plan. What do you think of the hot issue right now in NAELA: the expansion of membership to include non-attorneys?

RM: I think that it is a tough issue. It’s a big issue. It’s one that the board has been actually talking about for awhile. It’s not just something that popped up one day. I was not a member of the long range planning committee, but I understand that they had spent a significant amount of time on it as well. There are a number of organizations that have non-lawyer members. In Florida, the elder law section has affiliate members. The ABA has non-lawyer members. I think that we as an organization need a dialog about this and then we need to vote. I believe that we should do voting by mail so that all of our members have the opportunity to participate in this very critical issue and so that all of NAELA’s voices are heard.

SS: Becky, you were president not all that long ago, although it might seem like a million years ago.

RM: That was last century!

SS: What do you recall as being some of your best moments as president?

RM: The entire year was terrific. Best of all was the opportunity to speak with so many members of NAELA, not only at the programs, but in their states when I would travel. No matter what kind of hurdle you’re facing or what the issue is, if you’ve got people, it’s going to get done, it’s going to get done well, and you’re going to have a good time doing it. I had a terrific opportunity to work with so many folks and that made it so much fun, but I also had it easy because I had a whole lot of really superb leaders going before me who had gotten this organization to the point where it was and as a result, I had a lot of terrific role models.

SS: What do you see then as the current state of NAELA and what do you see happening in the future? What are your hopes for the future of the organization?

RM: Well, I think NAELA is very strong and very solid. We have excellent leaders, we have terrific upcoming leaders, and we have a whole lot of very active members. So I think that we’re on solid footing and we’ve got lots of folks ready to take up the challenges of...
Who’s Who on the NAELA Staff?

There are often questions as to who is who on the NAELA staff. As you know, we have a staff of 15 people working for us, and everyone is responsible for very specific things. Our offices are located at 1604 North Country Club Road, Tucson, Arizona 85716 and are open from 8:00am. to 5:00pm., Mountain Time, Monday through Friday, except holidays. The telephone number is (520) 881-4005. The fax number is (520) 325-7925. We also have voice mail and therefore, you may leave messages 24 hours a day, seven days a week! To help you in your endeavor to get through the maze, we are listing who you should contact for what things:

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<tr>
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<td>Certification</td>
<td>Emma Walker, ext. 102 <a href="mailto:ewalker@naela.com">ewalker@naela.com</a></td>
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<tr>
<td>Chapters</td>
<td>Janice Phillips, ext. 121 <a href="mailto:jphillips@naela.com">jphillips@naela.com</a></td>
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<tr>
<td>Committee Placement</td>
<td>Janice Phillips, ext. 121 <a href="mailto:jphillips@naela.com">jphillips@naela.com</a></td>
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<tr>
<td>Executive Director</td>
<td>Laury Gelardi, ext. 113 <a href="mailto:lgelardi@naela.com">lgelardi@naela.com</a></td>
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<td>Jihane Rohrbacker, ext. 115 <a href="mailto:jrohrbacker@naela.com">jrohrbacker@naela.com</a></td>
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<td>Speakers</td>
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<td>Tapes/Manuals</td>
<td>Terri Anthony, ext. 107 <a href="mailto:info@naela.com">info@naela.com</a></td>
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Chapter Listservs—An Invaluable Resource

Are you a member of a NAELA chapter? Do you want to be connected with your fellow chapter members and keep abreast of the latest developments in the field of elder law in your state? If you answered yes, you may want to consider joining your chapter’s listserv. NAELA currently maintains listservs for the following chapters: California, Illinois, Massachusetts, and Texas. If you are a chapter member and would like to subscribe send an e-mail to:

listmaster@naela.org
subject: subscribe

In the body:

Subscribe canaela, ilnaela, manaela, txnaela

The new addresses for postings are as follows:
canaela@naela.com
ilnaela@naela.com
manaela@naela.com
txnaela@naela.com

If you have questions regarding the listservs contact Celeste Wilson at (520) 881-4005, ext. 105 or e-mail at cwilson@naela.com.
The Long Range Plan:
NAELA Continues to Lead the Way

By Vincent J. Russo, CELA, Chair, NAELA Long Range Plan Implementation Committee

I have been asked as chair of the NAELA Long Range Plan (LRP) Implementation Committee to better acquaint you with the NAELA Long Range Plan. This plan reflects the result of many NAELA leaders’ collaborative efforts. In September of last year, the plan was presented to the membership by Judy Stein, Esq., NAELA President, and Myra Gilfix, Esq., chair of the NAELA Long Range Planning Committee.

At the corner stone of the NAELA Long Range Plan is NAELA’s Mission Statement, which was revised as part of the Long Range Plan:

“The mission of the National Academy of Elder Law Attorneys is to establish NAELA members as the premier providers of legal advocacy, guidance, and services to enhance the lives of people as they age.”

Our challenge is to determine, how do we lead as an organization so that NAELA members are the premier providers of legal advocacy, guidance and services that enhance the lives of people as they age?

Background of the NAELA Long Range Plan

The NAELA Long Range Plan was developed and proposed to the board by nine NAELA members who believe strongly in the mission of this Academy. They were: Myra Gilfix, Esq., Chair; Donna Bashaw, CELA; Dennis Christensen, Esq., A. Frank Johns, CELA; Jamie Long, Esq., Vincent Russo, CELA; Dennis Toman, CELA, and Ira Wiesner, CELA.

The LRP Committee took more than two years to process a plan that would lead NAELA in the coming years. The committee brought to the meetings input from members from all over the country and received the benefit of an advisory committee consisting of Robert Fleming, CELA; Alex Moschella, CELA; Charles Robinson, Esq., Judy Stein, Esq. and Charlie Sabatino, Esq.

The LRP Committee studied the history of NAELA over the past ten years and the need of NAELA members as they struggled to maintain control of high growth practices. It inspired the committee to look at NAELA and NAELA members in light of the changing environment.

Key trends that were considered at length included:

- the current expectations of the aging baby boomers;
- the impact on technology on individuals and businesses;
- the importance of and need for education of multi-disciplinary teams;
- the survival or demise of law practices as they exist today;
- the expectation of instant resources and responses; and
- the need for lawyers to balance professional and business issues.

Core Benefits

The committee then developed core benefits to fulfill NAELA’s mission. They are the following:

1. NAELA will provide high quality information and education to be responsive to member needs.
2. NAELA will provide support to members to enable their practices to flourish.
3. NAELA will support as a key public policy advocate on behalf of older persons and persons with disabilities.
4. NAELA will promote public recognition of elder law, NAELA, and NAELA members.
5. NAELA will provide a thriving, vital community to fulfill its mission.

After an extensive presentation and discussion of the plan in detail, the Board unanimously adopted the long range plan with modifications at last year’s summer board meeting.

As part of the process, there were strong feelings expressed in favor of and against associate members. The NAELA Board by majority vote included as part of the long range plan the LRP Committee’s recommendations to expand NAELA membership to include licensed international attorneys and to allow another category of participation for associate—aging network professionals.

Judy Stein then established an Implementation Committee to coordinate the implementation of the plan with the various committees of NAELA. The implementation committee consists of members of the long range plan together with Jo Anne Jeffrey, CELA; Mary Schmitt Smith, CELA; and Thomas Begley, Jr., CELA.

The Challenges Ahead

The challenge now is to implement the long range plan’s core benefits in a real and practical way for our members. For each core benefit, there are a number of steps that will be taken to ensure that the members realize the full extent of each core benefit. These steps were outlined to you in the long range plan. Copies of the plan are available by contacting Janice Phillips at the NAELA office at (520) 881-4005, ext. 121 (jphillips@naela.com) and on the NAELA website.

The LRP Committee believes that the elder law practice paradigm is shifting to a full service, relationship-oriented approach. We want NAELA members to be at the center of that new paradigm. NAELA needs to support its members so that we can remain professional with the highest level of ethics while providing a quality service to people as they age. We must be relevant to our clients. We cannot continue to be leaders if are content with the status quo.

NAELA is in a unique position to

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The Long Range Plan  
(continued from page 15)

lead the aging network while still remaining a speciality bar association. The LRP Committee believes that we are in a position to be the coordinating guide for all aging network professionals. We can set the standards for future providers of legal advocacy, guidance and services to enhance the lives of people as they age.

We need to be open to change, we need to reshape the legal marketplace, we need to think outside the “box.” Attorneys already know that they need to pay particular attention to the changing business environment and how professional service providers are realigning their products and services to these new challenges. We must also renew our commitment to maintain the client’s interest as the focus of those services.

We need to look at the experiences of the medical profession and the activities of internet-based legal service providers. We cannot afford to sit back in a shell while other professional providers redefine their own area of practice. Consumers are driving the direction of future legal services. We need to shape the delivery of our services and we will need to meet consumer demands for high quality services. Consumers are no longer interested in just obtaining a lawyer’s advice. They want and deserve a lawyer’s assistance in crafting a solution to their problem. We know all too well that today seniors and their families have problems that go beyond the traditional boundaries of law. To be prepared to serve these needs, we must initiate and welcome change as to how we provide services.

Vancouver Symposium Update

As part of the long range plan, the committee recommended two changes to NAELA’s bylaws: allowing licensed international attorneys as members and allowing aging network professionals as “affiliates.”

International Attorneys. At the NAELA Symposium in Vancouver, the membership in attendance voted to allow licensed international attorneys into our organization as members. We will now have the opportunity to share “elder law” with our fellow attorneys in other countries so that the elderly and people with disabilities in those countries will receive legal services, guidance and advocacy that they need. At the same time, we will have the opportunity to benefit from the activities, experience, and knowledge of attorneys in other jurisdictions that are dealing with the elderly and people with disabilities, as well as from the cultures and governments of those jurisdictions.

Affiliates. The bylaw change as to “affiliates” was not on the agenda for a vote by the membership at the Symposium. The issue is complex and controversial. Since the July Board retreat of last year, there have been ongoing discussions at the board level and the LRP Implementation Committee to work out the details of what it means to be an Affiliate (initially an “associate of aging network professionals”).

As part of the long range plan, the board took on the task of defining which services would be available to affiliates. In board discussions, a motion was made and approved to request that the implementation committee propose guidelines.

Based upon several committee conference calls, the input of the board, the input of members on the listserve, chapter members, fellows of the Academy, and the members at large, the LRP Implementation Committee recommended to the Board a revision to the long range plan and proposed affiliate guidelines.

The revision was to change the classification of aging network professionals from “Associate” to “Affiliate.” This would make it very clear that this group of professionals are not members of the Academy. It is my understanding that this approach is common throughout associations, including the American Bar Association. In addition, the LRP Implementation Committee recommended guidelines that were modified in part by the NAELA Board of Directors.

At the symposium in Vancouver, in order to make the process as inclusive as possible, a Long Range Plan Forum was held to allow for members in attendance to speak to this issue. In addition, a point-counterpoint debate was held with me speaking in support of Affiliates and Lee Holmes, CELA speaking in opposition. My gratitude to the leadership and in particular, Bill Browning, CELA, the NAELA Symposium Chair, for organizing these events at the request of the NAELA members and the leadership.

There needs to be more discussion and “forward” thinking on the issue of how best to set a direction for the organization that will be best for the membership at large. The Affiliate proposal as it stands is a work in progress based upon the voice of the membership that we have heard to date. We need more input. State and regional differences must be considered. In no way do we want to ignore the issues of the “unauthorized practice of law” and “multi-disciplinary practices.” We are all struggling to deal with these issues as we consider whether to allow Affiliates into our organization.

Our mission is to do what is best for the members so that members can be in the best position to provide quality legal services to people as they age in a successful manner and with the highest ethics.

Over the next year, we have an opportunity to consider all of the ramifications of the long range plan and on behalf of the board of directors and the LRP Implementation Committee, I urge you to please take advantage of this opportunity to have your voice considered. The membership will have an opportunity to participate in the process through NAELA publications, Chapter meetings, the list serve, and direct contact with the leadership, in particular, incoming President Charlie Sabatino, the executive committee, the board and the LRP Implementation Committee. If you want to comment or discuss the Long Range Plan, please contact me at vjrusso@rusoelderlaw or by phone at 1-800-680-1717. We will also have an opportunity at the Institute in St. Louis to discuss the steps being taken to implement the long range plan and to further consider the affiliate proposal.

This is an exciting opportunity for you to have a say in an organization that has meant a great deal to all of us in many different ways. It is my hope that you will participate in this exciting process of shaping the direction of NAELA.
The New Regulations for Retirement Plan Distributions – What Elder Law Attorneys Need to Know

by Thomas J. Murphy, Esq.

On January 12, 2001, the Internal Revenue Service sent a pleasant surprise to tax practitioners in the form of newly proposed regulations that substantially simplify the minimum distribution rules of Sections 401 et seq of the Internal Revenue Code. The new regulations, which are intended to take effect immediately, are very favorable to taxpayers and are likely to cause elder law attorneys and other tax practitioners to reassess the advice given to many clients. This article will walk you through the new regulations and explain which clients are most likely to be affected.

The overriding concept that practitioners need to keep in mind is that “simplification” does not mean “simple.” Advising clients on minimum distributions from retirement plans still remains a minefield but at least the new regulations are a step in the right direction. The IRS deserves to be commended on this.

A Brief Summary Of The New Regulations. As to the owner/participant of an IRA or qualified plan, the new regulations simplify the minimum distribution (ie, post-age 70½) rules while the owner/participant is alive. The advantages of naming younger beneficiaries to stretch out required minimum payments are largely gone. Likewise, the issues surrounding the election to recalculate have now totally disappeared. The new minimum distribution table will often allow the owner/participant a longer period to make payments which will result in lower annual minimum distributions.

As to the beneficiaries of IRAs and qualified plans (such as spouses, children, etc), the new regulations provide much more flexibility and are immeasurably easier to administer. In nearly all cases, the minimum distributions for beneficiaries will be based on that particular beneficiary’s life expectancy – period. In this regard, the importance of the required beginning date is vastly diminished, the carved-in-stone aspect of the required beginning date is now a thing of the past. As a result, practitioners will now focus on who was named as beneficiary on the date of death rather than the required beginning date.

For IRAs, the IRS intends to have these regulations take effect immediately. The preamble to the regulations state that it will likely be next year before the new regulations apply to 401(k)s and other qualified plans.

As I see it, the new regulations create six major changes that practitioners are going to have to immediately grapple with. Here is my take on them:

Big Change #1 – Easier To Compute Minimum Lifetime Distributions. With the exception of certain spouses, there is now one, and only one, table used in computing the required minimum annual distribution for persons over 70 ½. That table is actually the MDIB table that has been used when a beneficiary was more than years younger than the owner/participant. In other words, while the owner/participant is alive, it no longer matters who is named as beneficiary. The only exception is an owner/participant who has a spouse who is more than ten years younger than the owner/participant. In that case, the joint life expectancy is used.

The effect of using the MDIB table is that it has stretched out the life expectancy of the owner/participant. For instance, under the old rules, a 70 ½ year old owner/participant had a life expectancy of 16 years. Generally speaking, this meant that the plan had to be paid out within a 16 year time span. Under the new regulations, that time span is now 26.2 years. This is a very significant, and favorable, change.

Big Change #2 – Forget About Recalculation. One of the great raging debates in retirement planning has been whether the owner/participant should elect to a) recalculate, b) not recalculate by using the “term certain” method or c) use a combined or “hybrid” method in determining the minimum required annual distribution. The people engaged in this debate are now going to have to find something else to talk about because, under the new regulations, recalculation is now automatic.

The concept of recalculation is pretty simple. Under the old tables, a 70 ½ year old person had a life expectancy of 16 years. This meant that, in the first year after reaching 70½, 1/16th of the plan had to be distributed. The question was what about the following years? One year later under the “term certain” method, the owner/participant must receive 1/15th of the plan and, the year after that, 1/14th. But with recalculation, the life expectancy one year later is not 15 years but rather 15.3 years. The owner/participant must take 1/15.3 of the plan in year two, which is less than 1/15th. Recalculation allowed for a longer stretch-out of the distributions. This now happens automatically under the new regulations.

Under the old rules, there was a
huge disadvantage to recalculation that has now been eliminated. The danger under the old rules was that in many cases, upon the death of an owner/participant who had been recalculating, the entire balance of the plan had to be paid out by December 31st of the year following the date of death. A huge opportunity of tax-deferral by the beneficiary was lost. This trap is now gone.

The effect of the automatic recalculation is to extend the life expectancy over which distributions must be made. This lessens the required annual minimum distribution which will result in a major benefit to the taxpayer.

Big Change #3 – It Is Date of Death, Not Required Beginning Date, That Is Critical In Naming A Beneficiary. Under the old rules, the required beginning date was the critical date for naming a beneficiary since the minimum required distributions were based on the joint life expectancies of the owner/participant and whoever was named as beneficiary as of the required beginning date (i.e., when the owner/participant reached 70½). While the owner/participant could always later change or add beneficiaries, the owner/participant was stuck with using the joint life expectancy of the beneficiary named as of the required beginning date. In other words, the owner/participant was locked into that initial determination made at the required beginning date.

This is now gone. As stated earlier, there is now basically one table that is used to determine minimum distribution while the owner/participant is alive. And, as discussed below, the person who actually inherits the plan will use his or her own life expectancy rather than the life expectancy of whoever was named as beneficiary at the required beginning date. It is now the date of death, not required beginning date, that matters for a beneficiary.

Big Change #4 – Greatly Increased Flexibility After Death. In a post-death setting, you must first deter-
of whether the new regulations will apply to distributions required to be made by April 1, 2001 for the calendar year 2000. In other words, a 2000 year required distribution that is not actually paid until 2001. The Announcement, to be released on March 5, 2001, says the new regulations will not apply to those situations.

Which Clients Should The Practitioner Be Talking To? As I see it, there are three groups of clients that practitioners need to contact. First, there are those clients who have reached age 70½ and are thereby taking required annual distributions. Since the life expectancy tables have now been lengthened, clients should be apprised that they can lessen the annual required amount by using a longer life expectancy as now authorized under the new regulations.

The second group are those clients who may wish to change their beneficiaries. For instance, a child rather than a spouse may have been named as the beneficiary in order to get a longer joint life expectancy. This may no longer be the case so the choice of beneficiaries may need to be revisited.

The third group are clients who have been named as a beneficiary of an owner/participant who died in the year 2000. That beneficiary can now take advantage of the December 31st rule by disclaiming, cashing out other beneficiaries or establishing separate accounts.

Need More Information? As is well known to NAELAns, Natalie Choate, a Boston attorney, is the foremost authority on planning for retirement benefits. She has very extensive and insightful comments on the new regulations. They are the best I have seen. Her 26 page article on this can be obtained from her website. Error! Reference source not found. Another first rate article is by Mr Noel Ice, a Fort Worth tax attorney, that can be found at Error! Reference source not found.

Thomas J. Murphy is an estate planning, probate and elder law attorney with offices in the Ahwatukee section of Phoenix.
The following members of the National Academy of Elder Law Attorneys were announced as “Fellows of the Academy” at the NAELA Symposium held April 18 – 22, 2001 in Vancouver, British Columbia, Canada.

Selections as a Fellow of NAELA acknowledges the highest degree of commitment to serving older persons and only 53 members, including newly selected Fellows, have been honored as such since NAELA’s inception in 1988. The Fellows have distinguished themselves and their elder law practices by making exceptional contributions to meeting the legal needs of older Americans; they have demonstrated commitment to NAELA of which they must have been members for at least three years and are committed to the future of NAELA, its mission, objectives and ideals.

Following are the 2001 NAELA Fellows:

**Ronald A. Fatoullah, CELA**
Ronald Fatoullah is the principal of Ronald Fatoullah & Associates with offices in Great Neck, Forest Hills and Brooklyn, NY. Mr. Fatoullah currently serves on the board of directors of the National Academy of Elder Law Attorneys, co-chairs its public policy committee and is chair of its health care decision making subcommittee. Mr. Fatoullah is Certified as an Elder Law Attorney by the National Elder Law Foundation. He also chairs the Alzheimer’s Association, Long Island Chapter’s Legal Advisory Committee. In addition, he has been elected to the executive committee of the New York State Bar Association Elder Law Section.

**Alex Moschella, ESQ.**
Alex Moschella is the co-founder of Metro Elder and Disability Law Associates (MEDLAW) in Somerville, MA. Prior to starting MEDLAW, he served as acting executive director and assistant director of the Massachusetts Bar Association. A graduate of Villanova University, Mr. Moschella received his law degree from Suffolk University Law School, where is now is an adjunct faculty member, teaching elder and disability law courses. He is also the faculty supervisor of a clinical elder law program co-sponsored with the Greater Boston Legal Services. Mr. Moschella is a past president of the Massachusetts Chapter of the National Academy of Elder Law Attorneys and a current board member. A member of the NAELA Board of Directors, he has also served on the NAELA Long Range Planning Committee and currently chairs the NAELA Multidisciplinary Practices Task Force.

**William J. Browning, CELA**
William J. Browning, CELA, is a partner in the Columbus, OH, law firm of Browning and Meyer Co., LPA. He is a member of the Columbus Bar (Probate and Trust Section, and Ohio State Bar (former chair, Mental Disability Law Committee; chair, Elder Law Committee) Bar Associations. Mr. Browning has presented at many CLE seminars on estate planning for the elderly and disabled and has served on the advisory panel for the Central Ohio Area Agency on Aging, and the Central Ohio Arthritis Foundation Board. He has also served as a director of NAELA from 1993 to 1997. He is currently serving as NAELA Vice President and is chair of the 2001 NAELA Symposium.
Repeal of the Death Tax: Debunking the Myths

by Harold I. Apolinsky, Esq. and Katherine N. Barr, Esq.

On August 31, 2000, President Clinton vetoed H.R. 8, which would have repealed (in 2010) the estate, gift and generation-skipping taxes, “death taxes,” and the step-up in basis when heirs inherit. On September 7, 2000, the House of Representatives tried, but failed to override the veto.

The President and members of Congress who were opposed to repeal, but expressed a love for the Qualified Family Owned Business deduction, explained they were trying to do the best for our country. Unfortunately, they did not have the correct factual information and understanding of these laws on which to make their decision.

As promised by his campaign, President George W. Bush has submitted a proposal to Congress to repeal the estate, gift and generation-skipping taxes for gifts made and persons dying after 2008. Until then, the rates in effect for these taxes would drop by five percentage points for 2002 and 2003; 10 percentage points for 2004, 15 percentage points for 2005, 20 percentage points for 2006, 30 percentage points for 2007, and 40 percentage points for 2008.

The same myths that surfaced and resulted in the veto of H.R. 8, are reappearing in the campaigns of those who oppose the present proposed legislation to eliminate the death taxes. These myths fail to take into account important information.

1. Arguments were made that the $50 billion anticipated from these taxes in 2010, when repeal was to have become effective under H.R. 8, would deny seniors prescription drugs, adversely affect education, Social Security, Medicare and the economy. This is myth number one. What was never said, apparently, was that the tax revenue from sales made by heirs, when they would no longer have a step-up in basis, would more than offset the loss of this revenue. Upon repeal, heirs would have kept the original cost basis of the family member rather than acquiring a new basis, as provided under current law, for the fair market value at death.

   It is virtually impossible to compare the numbers with any level of comfort in 2008 or 2010. However, a comparison can be made based on revenue generated in 1999. The estate, gift and generation-skipping taxes resulted in $28 billion being paid in 1999 by some 45,000 families. If this number continued or even grew slightly over five years, the Treasury should anticipate approximately $150 billion of revenue. The President’s budget, submitted to Congress in 2001, quantifies as a “tax expenditure” the loss of revenue from step-up in basis and the taxes not collected when heirs sell. This number for five years beginning 2001, is stated as $153 Billion, slightly more than the revenue from the estate, gift and generation-skipping taxes.

2. Increasing the deduction for the Qualified Family Owned Business under Section 2057 to $4,000,000, $8,000,000 or even $20,000,000, will not, as a practical matter, help save 95 percent of family businesses and farms. Section 2057 was originally enacted into law in 1996 as 2033A. It was subsequently changed to a deduction from an exclusion. It was not made simple. It is basically the most complex provision in the estate tax law; the only one with a web page, and condemned by the Real Property and Probate Division of the American Bar and the American Institute of Certified Public Accountants.

   Section 2057 incorporates by reference 14 sections from 2032A. Section 2032A has been law since 1976 and is widely recognized by tax authorities as a very complex and dangerous, from a malpractice perspective, provision in the law. Now it has been surpassed by Section 2057. To better understand, simply read these two Internal Revenue Code sections.

   There are over 160 reported cases challenging the correctness of a 2032A election. The Internal Revenue Service has won more than 50 percent. The second myth is that increasing the family owned business deduction will solve the problem of forced sale and liquidation of family businesses and farms.

3. Some have said that gifts to charities will be reduced when the estate tax is repealed. This third myth has attracted much press of late, as evidenced by Warren Buffet’s and The New York Times’ campaign to keep

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death taxes. The fear of reduced giving was also articulated at the time the income tax rate was reduced in 1986 from 50 percent to 28 percent. The following year, and thereafter, charitable contributions went up.

The Vanderbilts endowed Vanderbilt, the Stanfords endowed Stanford and the Dukes endowed Trinity College before this estate tax. The Vice President for Development at the University of Alabama in July called on a potential major donor. He happened to ask the donor what would be the impact on his gift if the estate tax were repealed. The donor replied that the gift would be doubled since the family would have more funds. People do not give to charity because of tax deductions. They give because it feels right, they are grateful for their success, and there will be enough remaining for their families. Without the estate, gift and generation-skipping taxes, gifts to charities should increase, even double.

4. A member of the House during the H.R. 8 debate, raised the question of the benefit that would flow to Bill Gates’ family if death taxes were repealed.

From what has been reported, his plan is to leave his assets at his death to his wife and at her death, to his charitable foundation. Under this plan, his estate will pay no death taxes. Thus, repeal of the estate tax will not help him or others like him. This is myth number four. It will not impact the planning of the vast majority of wealthy people in the country since they have the resources available to pay the millions of dollars in legal and accounting fees for sophisticated estate planning. The truly super rich as a practical matter, are not at risk. Family owned businesses, farms, lands and family capital and those in the moderate wealth class are at the most risk.

5. Some have suggested that revenue the states will lose when the estate tax is repealed, the so-called pickup tax, will be replaced by states adding separate inheritance taxes. This is our fifth myth. Since 1980, 23 states have repealed their extra state inheritance taxes. Both Montana and South Dakota did so in the year 2000. California did it by popular referendum. Citizens do not feel it is fair to tax people during life and also at death. If put to a national referendum, death taxes would be repealed. The majority of states are running at a surplus. The reason states repealed state inheritance tax was that affluent families were moving from states such as New York and Massachusetts to states such as Florida and Arizona, which have no separate inheritance taxes. States will not add a separate inheritance tax and risk losing some of their most influential and wealthy citizens to other states and to the detriment of banks, who serve as executors and trustees for these families and others who serve them.

6. The final and sixth myth is that some families will become too wealthy. History has shown us that if family members are not good stewards of their wealth, it will be lost. Just reflect on the three Hunt brothers. Each inherited, according to reports, some two billion dollars of assets. Yet, two subsequently filed for bankruptcy — the result of the American system of free enterprise and competition. Significant rewards, but significant risks. The estate and gift tax took its present form primarily in the early 30’s. The express purpose was to “break-up family wealth.” Is this consistent with a free enterprise economic system and a very competitive world economy? Many liberal econo-

mists doubt that this tax redistributes wealth. They say what it really does is penalizes thrift and savings and encourages spending.

In addition to examining facts that debunk these six myths, consider the following arguments for repeal of the death taxes:

7. Only 30 percent of family businesses make it through the second generation. Seventy percent do not. Only 13 percent make it through the third generation. Eighty-seven percent do not. The primary cause of the demise of family businesses, after the death of the founder and the founder’s spouse, is the 55 percent death tax. It is hard for the successful business to afford enough life insurance. (Premiums are not deductible and deplete working capital.)

8. A recent study by Prince and Associates (research company) for National Life of Vermont reviewed the history of 749 family businesses which failed within three years after the death of the founder. The Prince study reinforced and supported the conclusion of the deadly effect of estate taxes. The businesses could not continue as a result of the tax drain on working capital needed to effectively compete and cover errors in judgment made by new and younger management. Jobs were lost in the communities.

9. In 1999, the estate, gift and generation-skipping taxes accounted for only 1.5 percent of revenue. Factoring in the significant expense in collecting these taxes, 65 percent, the income tax when assets are sold, and income taxes from jobs saved and provided, the repeal would be revenue neutral or revenue positive.

10. The transfer tax provisions represent 82 pages of the Internal Revenue Code and 289 pages of Regulations issued by
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the Internal Revenue. The transfer tax system forces many estates, the Internal Revenue Service, and the Department of Justice to expend funds in court. The number of transfer tax cases now total over 10,000 representing over 13,000 pages of the Commerce Clearing House Tax Publication. Litigation consumes, in legal, accounting, and appraisal fees, approximately $100,000 per case.

11. Independent analyses reveal that if these transfer taxes were repealed, the Nation’s GDP level employment and capital formations would increase substantially. According to one study, repealing these taxes would increase GDP from 1993 to the year 2000 by over $79 billion, create 228,000 new jobs and increase capital by $639 billion. (Fiscal Associates, Inc.—Federal Transfer Taxation: A Study in Social Cost—1993).

12. Combined income and estate taxes may consume up to 75 percent of retirement plan accounts at death. Combined income and estate taxes often consume more than 80 percent of a family’s resources. A very few of our most wealthy citizens (4 in 1994) elected to give up their citizenship, become citizens of foreign countries, and avoid the 55 percent transfer taxes. The cover story of Forbes, November 21, 1994, was devoted to “Expatiation—As the Ultimate Estate Planning Technique.” What a loss of available capital! These are the people who give the most to charity and have the resources to seed new businesses. This should be a wake-up call that this tax is no longer appropriate. We have the highest transfer taxes in the world. Congress should step back, study the issue, and then repeal these taxes to promote jobs and the growth of family capital.

13. The Heritage Foundation researched the effect of estate taxes. It determined that repeal would cause the economy to grow by an extra $3 billion to $11 billion per year between 1997 and 2005. Jobs would grow 130,000 to 145,000 per year; housing starts increase 49,000 in the first year alone and costs of capital decrease .2 percent. (The Case for Repealing the Estate Tax, August 21, 1996.)

14. Another study concluded that ending the tax could help minorities move up the economic ladder. In a 1995 study, 58 percent of minority owners predicted their businesses would fail or have great difficulty surviving their death. Ending the tax would encourage the growth of such businesses and help others start. (A Report on the Impact of the Federal Tax: A Study of Two Industry Groups—Family Enterprise Center, Kennesaw State, July 24, 1995.) Their conclusion is chilling.

15. Australia repealed its estate and gift tax laws in 1977. The legislative body believed transfer taxes were an inhibitor on the growth of family businesses. The government of Australia sought more jobs, which it believed would come if family businesses grew larger and were not caused to be sold, downsized, or liquidated at the death of the founder to pay estate taxes.

It is contrary to the best interest of our tax practice, our teaching law school estate planning and estate and gift tax courses, and our firm (we have 15 out of 120 lawyers doing full-time estate planning, administration and probate) to urge repeal of these transfer taxes. It is the right thing to do to help grow family businesses, farms, and capital, provide jobs and investment, and encourage the entrepreneurial spirit needed for small businesses to become large businesses and family businesses of all sizes and family capital to survive death of the owner.

Without death taxes, financial planners will be even more important. Some families may have twice the resources to protect and grow. The focus will be on risk, reward, and results; not on the estate tax and planning with gifts (often stressful to elderly clients) to minimize or avoid its impact. What a breath of fresh air and a major blow for simplicity.

Harold Apolinsky is a Fellow in the American College of Trust and Estate Counsel (ACTEC), is the senior member of the Tax Department of our Firm, has testified before Congress concerning the need for repeal of the estate tax and a moratorium on tax law changes, and has practiced before the Supreme Court of the United States.

Katherine Barr is a graduate of Cumberland School of Law, where she was writing editor of the Cumberland Law Review. Her practice in the estate planning area focuses largely on planning for families with special needs family members. She is often involved in the court-created special needs trusts. Ms. Barr is program chair and moderator for a program on administration and drafting of special needs trusts to be presented at the Spring Symposium 2001 of the Real Property, Probate and Trust Division of the American Bar Association.
I am happy to report that the 2001 NAELA Symposium, “Crossing Borders,” which was held in Vancouver, British Columbia, Canada, was a success. As the chair of the committee I would like to thank the members of the committee: Allan Bogutz, CELA; Baird Brown, CELA; Janine Lawless, CELA; Brian Lindberg; Barry Meyers, Esq.; Rebecca Morgan, Esq.; Charles Sabatino, Esq.; Richard Sayre, CELA; Stuart Zimring, Esq.; Timothy Vogel, Esq.; and James O’Reilly, CELA. I also would like to offer a special thanks to Greg Wilcox, CELA and Ruth Phelps, CELA, who as usual planned an outstanding “U.S. Basics Day.” In addition I would like to thank Judith Wahl, Barrister and Solicitor, who coordinated our first “Canadian Basics Day.” All these individuals offered their expertise and outstanding effort in putting together what I believe was the strongest substantive program that NAELA has offered in the past several years.

I would also like to note that the NAELA staff as usual made the entire program appear effortless. However, having been involved in my first such effort, I was shocked to learn the amount of work and planning entailed for a successful program.

Our keynote speakers Robert Evans, Ph.D., offered an entertaining and insightful contrast between the United States and Canadian health care systems. Christopher Jennings offered his experience from the Clinton administration and his predictions as to the upcoming legislation, which effect both our elder law practice and our clients. Ira Byock, M.D., on Saturday pointedly and eloquently discussed the end of life issues which our clients and family members are facing. These keynote (continued on page 25)
speakers contributed greatly to the success of the program.

The Practice Management/Practice Development Track included an introduction to a systematic approach to the practice (Vincent Russo, CELA, and Thomas Begley, Jr., CELA), and practical issues involving mergers and partnership issues (Gary Mazart, Esq. and Barry Meyers, Esq.). The Health Care Track included the outstanding programs such as a Medicare update (Alfred Chiplin, Esq. and Vicki Gottlich, Esq.) as well as a bevy of Medicaid presentations ranging from the “Proper Use of Annuities” (Bridget O’Brien Swartz, Esq. and Dale Krause, Esq.), “Employing Spousal Refusal Techniques in Your State” (Bernard Krooks, CELA and Daniel Fish, CELA), a first time presentation regarding Medicaid waiver programs (Jason Frank, Esq. and Morris Klein, Esq.) and “Medicaid Planning by Guardians” (Edwin Boyer, Esq., Howard Krooks, CELA, and Paul Sturgul, CELA). The highlights of the Tax planning Track included three presentations regarding retirement planning tax issues, two cross-border planning presentations (Robert Keats, Benita Loughlin, Elaine Reynolds and Stephen Silverberg, CELA) as well as considerations in tax reporting on Special Needs Trusts (Cynthia Barrett, CELA and Ruth Phelps, CELA).

Perhaps the most interesting presentation addressed the placement of family members in nursing homes outside the United States (James O’Reilly, CELA, Timothy Vogel, Esq., and Joanne Bass, Esq.) and was perhaps the most intellectually stimulating presentation in years. Other international presentations included incapacity issues in other jurisdictions (Nancy Coleman, Jan Wright and Kate Mewhinney, CELA).

Several attendees commented that they faced difficult decisions in every breakout session as to which of the programs to attend and a number of tapes were sold at the program due to these difficult decisions. For those that were unable to attend I would recommend that you consider buying the materials and purchasing the tapes.

Finally, Judy Stein has completed her year (as of June 1st) as president of our organization and Charles Sabatino will soon assume the presidency. I would like to thank Judy for appointing me the chair of this committee and thank her for her efforts and fine stewardship in the past year. It is clear that the new president will deal squarely with the issues that are upcoming particularly in the long range plan in the upcoming months. Finally, I would like to thank all the speakers and the attendees, as will as the staff for making this such a fine event.
Several months ago, my friend Nikki Boone called me from her office in Stuart, FL. Nikki had a guardianship case and asked me to testify before the guardianship judge as an “expert,” on the appropriateness of the Medicaid planning Nikki was proposing. I, of course immediately agreed. She represented and continues to represent the guardian of the person, and also the guardian of the property, of an elderly incapacitated widow, Mrs. Mackey. Mrs. Mackey, a permanent resident of a nursing home, has one adult child - her daughter. In her will, Mrs. Mackey leaves everything to her daughter. She had also, prior to incapacity, jointly titled her bank accounts with her daughter. The entire guardianship estate was relatively small - less than six figures - and was being rapidly diminished by the monthly costs of nursing home care, private paytime was of the essence.

Nikki was seeking court approval for the guardian of the property to make gifts over a period of months from Mrs. Mackey to her only child - her daughter. In her will, Mrs. Mackey leaves everything to her daughter. She had also, prior to incapacity, jointly titled her bank accounts with her daughter. The entire guardianship estate was relatively small - less than six figures - and was being rapidly diminished by the monthly costs of nursing home care, private paytime was of the essence.

But, without a hearing, and without an order, the judge denied Nikki’s petition, he wrote her a letter, to the effect that he thought Mrs. Mackey should spend down all her money on the costs of her nursing home, and when she was indigent, she could apply for Medicaid. Nikki, never one to readily concede an issue, quickly scheduled a time-certain hearing on her petition. She arranged for the guardians, me, and a friend of Mrs. Mackey, all to be present at the hearing and to testify about Mrs. Mackey’s intent, and the suitability of the Medicaid planning proposal and, the necessity of the proposal, as far as the duty of the guardian of the property was concerned.

I had done my homework, and came to the hearing armed with statutory cites and case law, all in support of the reasonableness of Nikki’s Medicaid planning proposal, and the duty of the guardian to pursue it. There I sat, primed to testify, slightly anxious, a little excited. And sat. And sat.

With no preamble, the judge stated that he had read the petition and accompanying exhibits, and that further evidence and testimony was unnecessary at this point. Nikki’s partner Steve Perry, did a great job establishing the record in addition to the order the judge would issue, by proffering the testimony of the proposed witnesses, including me. I was glad my perspective got on the record, but, I must admit it was disappointing not to be able to present my views directly. Even more disappointing was the message clearly telegraphed by the judge at the outset of the hearing, “I’m going to deny this.”

Because virtually no case law addresses Medicaid planning by guardians in Florida, Nikki and Steve decided to appeal the denial ultimately issued by the trial court, and worked on the brief. Another good friend of mine, Robert Donald, an appellate expert out of Ft. Myers, agreed to prepare an Amicus Brief on behalf of the Elder Law Section of the Florida Bar. The four of us talked about the case, and how important it was to get some law on this issue. (Wouldn’t a decision like Shah out of New York be great to have in Florida!)

The 4th District Court of Appeal fast-tracked the appeal, because of Mrs. Mackey’s age, and because her assets were rapidly dwindling. Steve presented the oral argument before the Court here in West Palm Beach. Several elder law practitioners from a three county area sat in for the oral argument. Afterward, we all did a post-mortem of the case, literally on the courthouse steps. Like reading tea leaves, or deciphering the Oracle of Delphi, we compared notes on the body language of the three-judge appellate panel, and the number and type of questions asked of Steve: “Did they get it, what Nikki was proposing?” “Which standard of review will they apply, reasonable person, vs. substituted judgment?” “Have we made guardian/Medicaid planning/elder law history here today?”

Well, maybe yes, maybe no. We have seen the opinion by now, and some colleagues say it is inescrutable, others say it is good law, and others say it is a setback. I need to read it and re-read before my opinion is set. I do know, however, that in the opinion my name is spelled wrong (twice), me, the “expert” witness who never testified.

Michael Connors practices with the law firm of Roose Casey Ciklin Lubitz Martens McBane & O’Connell in West Palm Beach, and focuses on elder law, guardianships, probate estates, and trusts. He is board certified by the Florida Bar as a specialist in elder law, and a founding member of the Palm Beach County Chapter of the Florida State Guardianship Association.

For information on the NAELA Guardianship/Capacity SIG, contact Jane Coppola at (520) 881-4005, ext. 109 or by e-mail at: jcoppola@naela.com.
Rene Reixach Receives 2001 NAELA Theresa Award

Longtime NAELA member Rene Reixach, Esq., was presented with the NAELA Theresa Award recipient at the NAELA Symposium in Vancouver, BC, Canada. The Theresa Award is an annual community service award presented by the Theresa Alessandra Russo Foundation to a NAELA member in recognition of his/her advocacy and support of individuals with disabilities. Through the efforts of the selected NAELA member, individuals with disabilities are able to achieve a better quality of life, protect their rights and preserve their dignity.

Rene has devoted a considerable amount of his law career to public service—whether it’s by leaving a large New York City law firm in 1973 to be one of the first staff attorneys at the Greater Upstate Law Project, or serving as executive director of the Finger Lakes Health Systems Agency before going back to a full-time law practice, Rene has steadfastly advocated on behalf of the elderly and disabled. Most recently he wrote the amicus brief in Shah, and served as a volunteer attorney in Park Hope Nursing Home, Inc. v. Eckelberger. Furthermore, he serves as a trustee and secretary of the Monroe County Bar Association and as a boar member and president of the Foundation of the Monroe County Bar. In 1987, he received the Monroe County Bar Association’s Adolph J. Rodenbeck Award in recognition of his public service activities.

The Theresa Foundation will make a grant in Rene’s name to Mount Hope Family Center, a program which has been working with seriously emotionally troubled children for about 25 years, keeping them in the community and out of institutions.

The award was established in memory of Theresa Alessandra Russo, the daughter of NAELA Past President Vincent and Susan Russo, and is funded through a grant from the Theresa Alessandra Russo Foundation. For more information contact Theresa Alessandra Russo Foundation, 91 Biarritz Street Lido Beach, NY 11561-5101, (516) 432-0200.

Call for Powley Elder Law Award

This newly established award is intended to be presented to a NAELA member who has demonstrated a commitment to promote, in the minds of the general public, a greater understanding of the rights and needs of the elderly and how elder law attorneys advocate for those rights. This will be the second year an award is given. Last year’s recipient was Edward Long of Torrance, CA.

The award is established in the memory of Wes and Helen Powley, grandparents of NAELA Member Tim Takacs. Both Wes and Helen were active in civic affairs for all of their lives and Wes practiced dentistry well into his 80s. The award is funded by a grant from the Takacs Family Foundation.

The recipient of the Powley Elder Law Award will be announced at the NAELA Institute, November 1-4, 2001 in St. Louis, MO and a $1000 cash grant will be made in the recipient’s name to the non-profit organization of his or her choice.

Nominations may be submitted no later than September 1, 2001 to Laury Gelardi at NAELA, 1604 N. Country Club Road, Tucson, AZ 85716 or by e-mail at lgelardi@naela.com.

NAELA Executive Director Receives Theresa Foundation Community Award

Laury Adsit Gelardi, NAELA Executive Director, was presented with the Seventh Annual Theresa Foundation Community Award at the 2001 NAELA Symposium in Vancouver, BC, Canada.

The award is presented on an annual basis to an individual in recognition of his/her services assisting individuals with disabilities to achieve a better quality of life by preserving their rights and dignity. Ms. Gelardi has chosen “Camp About Face” as the recipient of a grant that will be awarded in her name from the Theresa Foundation.

“Camp About Face” is sponsored by Indianapolis based “Face to Face,” a program developed to provide support for children with facial deformities. “Camp About Face” offers a refuge for these children to escape the day-to-day pressures and become “normal” for a change.

Congratulations Laury!
NAELA Elects 2001-2002
Board of Directors

The National Academy of Elder Law Attorneys (NAELA) has announced the results of its board of directors elections, which were held by mail-in ballots. The results were announced at the NAELA Symposium, April 18-22, 2001 in Vancouver, British Columbia, Canada. Officers serve a one-year term; directors serve a two-year term.

Burton Fretz Receives
NAELA President’s Award
Posthumously

Gerald McIntyre, acting executive director of the National Senior Citizens Law Center, receives the NAELA President’s Award from Judy Stein, on behalf of Burton Fretz.

NAELA President Judith Stein presented the NAELA President’s Award posthumously to Burton David Fretz at the NAELA Symposium in Vancouver. Gerald McIntyre, acting executive director of the National Senior Citizens Law Center (NSCLC), accepted the award on behalf of Burt’s family and colleagues.

Burton Fretz served as executive director of the NSCLC in Washington, DC from 1981 until he resigned his position in January 2001. Burt passed away on April 5, 2001 after a difficult six-month battle with leukemia. Prior to joining NSCLC, Burt was directing attorney of the California Rural Legal Assistance office in Santa Maria, CA, he also served as legislative director of the Migrant Legal Action Program in Washington, DC and as a consultant to the Legal Services Corporation.

Mr. Fretz was informed about the NAELA President’s award prior to his death and was grateful for this honor. The award recognizes his two decades of leadership in the aging community.

Our heartfelt condolences go to Burt’s family, colleagues and friends. Burt was a good friend to NAELA, a pioneer in elder law, and an effective advocate for vulnerable elders. We will miss him.

The officers elected are as follows:

President
Charles P. Sabatino, Esq.
American Bar Association
Washington, DC

President-Elect
Bernard A. Krooks, CELA
Littman, Krooks & Roth, P.C.
New York, NY

Vice President
William J. Browning, CELA
Browning and Meyer, Co., LPA
Columbus, OH

Treasurer
Lawrence E. Davidow, CELA
Davidow, Davidow, Siegel & Stern
Islandia, NY

Secretary
Stuart D. Zimring, Esq.
Attorney at Law
North Hollywood, CA

Past President
Judith A. Stein, Esq.
Center for Medicare Advocacy
Mansfield, CT

The Directors elected are as follows:

Elizabethane (Betsy) M. Angevine, Esq.
Attorney at Law
Whittier, CA

Donna R. Bashaw, CELA
Elder Law Center
Laguna Hills, CA

Andrew H. Hook, CELA
Oast & Hook, P.C.
Portsmouth, VA

Julia E. Merkt, Esq.
Attorney at Law
El Paso, TX

Ruth E. Phelps, CELA
Phelps, Schwarz & Phelps
Pasadena, CA

Aimee P. Rudman, CELA
Attorney at Law
Cherry Hill, NJ

Stephen J. Silerberg, Esq.
Silverberg & Hunter LLP
Long Island, NY

Daniel O. Tully, Esq.
Kilbourne & Tully, P.C.
Bristol, CT
NAELA Long Term Care Subcommittee Activities Include Assisted Living Project and Formation of Rapid Response Team

by Tom Begley, Jr., CELA and Morris Klein, Esq.

The NAELA Long Term Care Subcommittee has begun a project of studying the assisted living industry. Our goal is to make recommendations for legislation and regulations for federal and/or state governments to enact. Assisted living is a broad concept embodying many different types of facilities and different types of service delivery. The paper that this subcommittee will draft will analyze the industry from a broad perspective. Committee members are Eric Carlson of the National Senior Citizens Law Center, Dacosta Mason, Esq., of AARP, Stephanie Edelstein, Esq., of the American Bar Association, Toby Edelman, Esq., of the Center for Medicare Advocacy, Marilyn Askin, Esq., a NAELA member who is also president of the New Jersey Chapter of AARP, Morris Klein, Esq. and Thomas D. Begley, Jr., CELA, both NAELA members are co-chairs. The paper has been divided into five sections:

1. Overview of existing state regulation.
2. Quality of care.
4. Financing.
5. Consumer fraud issues.

A project schedule has been established and it is hoped that the proposed recommendation will be available for action by the NAELA Board of Directors at its November meeting.

As an additional project, the NAELA Long Term Care Subcommittee of the Public Policy Committee is forming a Rapid Response Team to deal with proposals made by the Bush Administration in the area of long term care. Mark Heffner, Esq., Andy Hook, CELA, Jason Frank, Esq., and Michael Davis, Esq. have agreed to serve on that team. If anyone becomes aware of action by the Bush Administration that should be addressed, please contact Morris Klein at morrisk@capaccess.org, Tom Begley at tbegleyjr@aol.com or any of the other team members. It is anticipated that our policy consultant, Brian Lindberg, will be at the forefront of identifying actions to which a response is required.

The NAELA Long Term Care Subcommittee has begun a project of studying the assisted living industry. Our goal is to make recommendations for legislation and regulations for federal and/or state governments to enact. Assisted living is a broad concept embodying many different types of facilities and different types of service delivery.
Membership Application