Competence: Is Senility Reversible?

By H. Amos Goodall, Jr., CELA

Older persons suffer a variety of conditions that may mimic senility or dementia. Some are potentially reversible. It may be that treating these conditions can restore competence and actually return years to their useful, productive life spans. Assuming that all persons who appear to be suffering from senility cannot ever recover can rob them and their family members. Identifying and treating these medical problems can actually restore confidence and add years of productive life. Elder lawyers are in a unique position to help.

This defines the problem: Symptoms of hazardous drinking may mimic other irreversible conditions such as Alzheimer’s Disease. Successful treatment may or may not reverse deterioration of brain function, but the absence of treatment will certainly lead in only one direction. It is our privilege to be alert to the problem in order to make a referral to a treatment professional, such as a certified addictions counselor or other geriatric specialist.

For some folks, patterns of alcohol consumption which have continued without problems for years can result in a condition which appears to an uninformed world to be senility. This article examines one such alternative condition, called “hazardous drinking” for purposes of discussion. For physiological reasons, patterns of alcohol consumption that complimented a healthy lifestyle for younger adults may itself result in deleterious consequences for older persons, beginning as early as age sixty. Moreover, senior citizens are often receiving medication that may itself interact negatively with even a small amount of alcohol, either separately or in unexpected combination with other prescribed substances. Finally, the lifestyle of a senior citizen may mask alcohol’s cumulative toxic effects until too late.

Family members may be too close to

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Getting Old & Driving
by Billie M. Castle, Esq.

In addition to concerns about health and finances, professionals who work with elderly clients face yet another issue. At what point does it become unsafe for a client to continue driving?

It’s a sensitive subject because the elderly understandably fear losing the ability to drive and the freedom and independence driving affords. Moreover, there are few convenient alternatives to driving. But at the same time, it’s driving habits and skills. Acute and chronic illnesses, including dementia, impair driving ability. So do eye diseases that limit the ability to see. Medications also can have side effects that hamper driving.

Warning signs that could signal that a driver is having difficulty include inappropriate speeds, failure to observe signs or signals, slow or poor decisions, a pattern of getting lost and near-misses or actual accidents.

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President’s Message
By Stuart D. Zimring, Esq.

Our Mission
NAELA’s Mission is to establish NAELA members as the premier providers of legal advocacy, guidance and services, and to enhance the lives of people with special needs and people as they age.

Our Challenge - Our Opportunity
The challenges we face in fulfilling that Mission are multifaceted; they require examining the definition of who we are, who our clients are, what our needs are as an organization and as individuals, what our clients’ needs are, and how to turn the answers to those questions into positive results.

In addressing these challenges I am reminded of one of the first Talmudic quotations my parents - (of blessed memory - and without whose guidance and teachings I wouldn’t be here today) - taught me. Rabbi Akiba poses a 3-part question in Sayings of the Fathers, Pirke, Avoth:

“If I am not for myself, who will be for me?
“And if I am only for myself, what am I?
“And if not now, when?”

If I am not for myself, who will be for me?
We can only succeed in helping our clients if we start by helping ourselves; by building strong, stable, ethical law practices, focused on each of us being the premier provider of legal advocacy, guidance and services to the members of our communities.

Much as some of us would like to believe that the practice of law is a noble profession, independent of the mundane aspects of “business,” it is not and never has been. But it is not only a business; it is more. And because of who we are and maybe, more important, who our clients are, elder law attorneys must be more than legal technicians or business people selling Medicaid Plans or McTrusts, in cookie-cutter fashion, by the dozen, through 2-in-the-morning infomercials.

I believe we must maintain a level of integrity and ethical standards that make us stand out; head and shoulders above the crowd; that make us those premier providers.

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President’s Message  
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Thus I believe those of us who are more experienced practitioners need to share with newer, less experienced practitioners not only our forms and business models, but also to share our ethics, our mission statements, our devotion to causes and beliefs and that essential integrity which in many cases led us to this practice area in the first place.

NAELA offers many opportunities and venues through which we can all share that knowledge, wisdom and experience: Our Committees, Task Forces and SIGs all offer opportunities for members of every experience level to become involved, to share, to learn and to help NAELA and each other grow. I urge all of you to roll up your sleeves and get involved.

If we do that, we will all naturally progress to the next question Rabbi Akiba poses:

But If I am only for myself, what am I?

We cannot stay insular. We must reach out, individually and as an organization. We must advocate, educate, train and support.

We must continue to advocate at the state and federal levels for our clients. We must support the legislators and candidates for elected office who share our values and we must participate in the electoral process.

We must continue to work to educate those governmental employees whose task it is to administer the programs serving our clients so that they too are not only bureaucrats and technicians, but also citizens of our country who understand how their jobs and the decisions they make impact the lives (both positively and negatively) of our clients and themselves.

And, if necessary, we must be prepared to litigate on behalf of our clients, to hold government accountable.

Toward those ends, I am pleased that NAELA’s Political Action Committee, the Senior Rights PAC, is up and running. It needs your support. Your Board of Directors, Executive Committee, myself and other NAELA members have already made their first contributions. I urge each of you to contribute an amount equal to at least 3 to 4 hours of your billable time each year to the PAC. If we are serious about our mission, then we must literally put our money where our mouths are.

However, those dollars and skills will bring results only if the organization standing behind them stands for something more than a checkbook.

I believe that when NAELA comes to the table and advocates for its members and their clients and the question is asked, “Who is NAELA?” it is no longer enough to say “4800+ licensed attorneys who write a check every year.” It must be more.

Our Goal

And therefore, it is my goal as your President to raise the bar. Beginning last year and continuing through the next two years, Gregory French and his Professionalism and Ethics Committee have been and will continue to develop a set of Aspirational Standards for the Practice of Elder Law. It is my goal that we will all join together in incorporating these Aspirational Standards as part of what it means to be a member of NAELA - to put into concrete and tangible form the values that we believe make us different.

Rabbi Akiba’s third question is: “And if not now when?”

It begins now. And it will continue. Because I believe it is imperative that we weave the subject of Professionalism and Ethics into the very fabric of NAELA, I am pleased and honored to be the one to announce the creation of the Clifton Kruse Annual Lecture on Professionalism and Ethics, which will take place each year at the NAELA Institute. Professor Geoffrey C. Hazard, Jr., will deliver the first lecture this coming November at the joint conference with the National College of Probate Judges and the National Guardianship Association in Colorado Springs, CO, Clifton’s hometown.

Conclusion

We are facing many challenges this year. I believe that NAELA is ready to meet each of them head-on. We may not prevail in all of them, but our presence will be felt and our message will be heard. I am looking forward to working with each of you this year and thank you for the opportunity to do so. If you have questions or issues you would like to discuss with me during the year, feel free to contact me at zimzim@ElderlawLA.com or call me at 818-755-4848.

2003-2004 NAELA Outstanding Chapter Member Awards

Arizona Chapter
Bridget O’Brien Swartz, Esq.

Florida Chapter
Alice Reiter Feld, CELA

Maryland/DC Chapter
Nomiki B. Weitzel, Esq.

Massachusetts Chapter
Mark W. Worthington, CELA

Missouri Chapter
Anita B. Butler, Esq.

Northern California Chapter
Kathryn S. Korn, Esq.

South Carolina
Kathryn Cook DeAngelo, CELA

Texas Chapter
Renée Colwill Lovelace, CELA

Virginia Chapter
Joan J. Corderman, CELA

Washington Chapter
Julianne Kocer, Esq.
How Does NAELA Do That?
By Laury A. Gelardi, Executive Director

Many of you have asked how NAELA determines its priorities for the year. Establishing the priorities of a prestigious organization, such as NAELA, is no simple task. The reality is: a great deal of thought, intuition, insight, planning, and elbow grease go into forming the Academy’s Long Range Plan, Budget and President’s Goals for any particular year.

NAELA is currently operating in the second year of a three-year long-range plan. The plan was developed by the NAELA Long Range Planning Committee and revised and adopted by the NAELA Board of Directors in July 2003. The plan covers the period from January 1, 2004 – December 31, 2007. Nine members of the Academy are currently serving on the 2004-2007 Long Range Planning Committee, chaired by Daniel Fish, CELA. The committee includes: Kerry Peck, Esq., of Illinois, Howard Krooks, Esq., of New York, Harriet Onello, Esq., of Massachusetts, Donna Bashaw, CELA, of California, Alfred Chiplin Jr., Esq., of Washington DC, Scott Severns, CELA, of Indiana, Mark Shalloway, CELA, of Florida, President Stuart Zimring, Esq., of California, and Past President Bernard Krooks, CELA, of New York.

After a great deal of research into the history of the Academy and into the legal, societal, businesses and technological trends within the United States, the Long Range Planning Committee met for a full weekend to determine and debate issues relevant to NAELA’s future. If you have ever participated in a weekend of strategic planning, you know how exhausting it can be and planning the future of the Academy is an awesome task that is taken very seriously.

So...now we have a three-year plan. Each year has a specific emphasis and is designed to lead from one year to the next year. The current plan has three areas of emphasis:

Year One (2004): To advocate for our clients by advancing NAELA’s influence on national and state legislation and being ready to litigate to protect the rights of seniors and those with disabilities if necessary.

Year Two (2005): To advance the quality and professionalism of elder law attorneys and of NAELA members, in particular.

Year Three (2006): To launch a public relations campaign to brand elder law and specifically, NAELA elder law attorneys.

Each NAELA President knows his/her charge and sets out an agenda and goals for that year’s board, committees, special interest groups, and task forces. NAELA has always been a board-directed, staff-driven organization and thus, the staff’s mission is to assure NAELA is working, budgeting and progressing in the fashion defined. They assist and guide the board as well as every committee, task force, and special interest group in working towards and in accomplishing their goals for the year.

William J. Browning, CELA, 2003-2004 President, did a terrific job directing the Academy’s efforts to focus on Public Policy. Not only did he focus on national and state legislation, he also took over in a year when the Academy raised its dues to assure NAELA would have the necessary funding to pursue litigation if necessary. Public Policy Chair Charlie Sabatino, Esq. and Public Policy Consultant Brian Lindberg did a great deal of work in positioning NAELA as a spokesman on issues that affect seniors and those with disabilities. NAELA has participated in a number of coalitions and is now recognized as a force to be reckoned with. The NAELA Senior Rights PAC was initiated during 2004 (continued on page 6)
How Does NAELA Do That?
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and a SR-PAC Board of Directors has been appointed.

Bill also “set up” programs to assist the Presidents who will come after him. The appointment of Gregory French to shepherd the Professionalism and Ethics Committee got the committee off to an early start on developing NAELA’s Aspirational Standards. Bill also pushed for a new publication, entitled “Eye on Elder Issues,” which is now being sent monthly to members of the aging network, educational programs, legislators, media, and insurance companies. This publication is also available to members on the NAELA website (www.naela.org). The purpose of this publication, which is presented as a public service, is to address issues for which elder law is sometimes criticized and to set the record straight.

Stuart D. Zimring, Esq., 2004-2005 President, has gotten off to a running start! At his first board meeting in July 2004, the board approved the committee’s draft of the NAELA Aspirational Standards. These standards will now be added to the membership fees and input. A vote will be taken to require a commitment from all members to adhere to the Aspirational Standards as a condition of membership in the Academy.

Stu also achieved agreement of the board to move forward with a professional effort to brand elder law and NAELA attorneys. This is a 39-month public relations plan that will be implemented by the Kellen Company out of their Tucson, New York City and Atlanta offices. This is an exciting endeavor for the Academy and one that many past leaders of the Academy could only dream of.

Our 2005-2006 President, Lawrence Davidow, CELA, will have two hard acts to follow. Lawrence has always said his main priorities for the Academy were to establish name recognition of NAELA and its members.

Lawrence foresees a competitive advantage of being a NAELA member and wants the public to recognize that NAELA attorneys bring quality, care and compassion to their work and to their clients. There is no doubt: this President will have a challenging and productive year!!!
2005 NAELA ADVANCED PRACTITIONER’S PROGRAM

Embassy Suites Atlanta, GA
March 11-13, 2005

On-line registration will open on Wednesday, October 20, 2004 at 3:00 p.m. ET on a first-come, first served basis to the first 120 people who meet one or more the following criteria:

- A Certified Elder Law Attorney
  or
- A Fellow of the National Academy of Elder Law Attorneys
  or
- A published author in a NAELA Quarterly (Journal), similar law review/journal, or state elder law treatise in the last three years.
  or
- A full time law professor, for at least two years, who teaches a subject that falls within a LLM/advanced law degree in elder law, estate planning, property trust law or tax planning.

For more information, visit the website at www.naela.org or contact the NAELA Office at 520/881-4005
Competence: Is Alcohol Induced Senility Reversible?

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notice critical changes. Other involved persons may not be sensitive to these subtleties until too late. Traditional screening tools may not disclose hazardous use, with the effect that family and person himself or herself may accept dementia, delirium, mood disorder, and personality problems as irreversible effects of aging when treatment could restore health. There is a window of opportunity to reverse these toxic effects or at least to suspend further deterioration.

There are substantial differences between older and younger adults’ physical responses to alcohol. Many of these differences are caused by the natural process of growing older. The body changes as it ages. Three characteristics seem naturally to occur.

- Decrease in metabolism of alcohol as part of the digestive process
- Decrease in body water
- Increased sensitivity and decreased tolerance to alcohol.

Indeed, it seems to be an international recommendation that older adults (over age sixty) limit their routine consumption of alcohol to one drink per day (with allowance for up to two drinks on special “drinking” occasions, e.g. weddings, etc.), with somewhat lower levels for women. National Institute on Alcohol Abuse and Alcoholism, 1995. A “drink” is defined as 0.5 ounces of alcohol, 12 ounces of beer, or 5 ounces of wine. O’Connor P.G. and Schottenfeld, R.S. “Patients with Alcohol Problems”, New England Journal of Medicine 592-602 (1988).

Metabolism is the major process by which drugs and alcohol are eliminated from the body. Chemicals in the digestive system begin to break down alcohol when it is first ingested. An enzyme which plays a role in metabolizing alcohol is gastric alcohol dehydrogenase. This substance, found naturally in the lining of the stomach, begins to break down alcohol in the stomach before it enters the bloodstream. As individuals age, this enzyme begins to disappear.

Renal clearance rate changes also contribute to this effect, since older persons may not eliminate alcohol from the system as efficiently. The result is that if an individual who is sixty matches the drinks of an individual who is thirty, more alcohol will be released into the body quicker and stay longer, producing a stronger effect and further taxing the liver which may already be impaired as well.


As editorialized in Benshoff, “The increased presence of substances in the body at higher concentration levels suggests that older adults may be significantly more susceptible to substance abuse problems at low dosage levels. The threshold between use and abuse for the average adult may simply be too high for the aging adult.” Ibid.

As persons age, they tend to develop medical problems. Some 80-86 percent of persons over 65 suffer at least one chronic disease or condition, and at least 83 percent take at least one prescription drug. In our society, people tend to medicate themselves, and physicians often prescribe for these problems. Studies suggest that although they presently make up less than 13 percent of the population, over one fourth of persons aged 65 and over regularly receive prescribed drugs; one study reported that 20 percent of older adults use a tranquilizer daily. In fact one study suggested that 30 percent of those over 65 take eight or more prescribed drugs daily. Over half of the adverse drug reactions requiring hospitalization take place among sixty-five or older persons.

Benzodiazepines, sedative and hypnotics users are particularly susceptible to abuse (Gomberg, HHS Chapter 1), 1992, particularly Diazepam, Codeine, Meprobamate and Flurazepam are the most commonly abused agents. Widlitz, M. and Marin, D., “Substance Abuse in Older Adults, An Overview” Geriatrics, Mount Sinai School of Medicine, December 2002 29, 30. Seventeen to 23 percent of drugs prescribed to older adults are benzodiazepines (D’Archangelo, HHS Chapter 1) 1993, including Xanax, Librium, Valium and Atavan. “These agents, especially those which may be more slowly eliminated from the body, often interact with each other and with alcohol to change the person’s apparent functional capacity and cognition. Two of the most commonly prescribed, Temazepam and Lorazepam, have a half life of 10-20 hours; another, Quazepam, has a half life of 25-41 hours, with long-acting active metabolites. Older persons experience greater effects, and the HHS, Chapter 2.

Traditional screening techniques may not be effective. On the other hand, an educated, concerned third party who does not interact with the older person on a daily basis—such as an elder lawyer—actually may be the person best equipped to begin the analysis, even though there may be a tendency to want to avoid doing so. A well dressed elder does not fit the classic misconception that alcoholics are “bums” or “homeless.” The professional may feel uncomfortable in prying into a client’s “personal” life...
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to be conservative. “If he drinks like I do, he couldn’t have a problem, could he?”

Classic testing instruments (including the ubiquitous Ann Landers questions) may not disclose hazardous drinking. The client is likely to be retired and not engage in as many activities as a younger adult. Substance use may not interfere with social or occupational functioning. Widows and widowers may not have close family members who observe behavioral changes; other relatives may be biased against recognizing that drinking or prescription drugs, rather than age or disease, may be a cause or chief contributor to mood changes, memory deficits, sleep problems, falls, anxiety or confusion.

In recent proceedings of the Philip E. Heckerling Institute on Estate Planning, Professor Lawrence Frolik wrote: Be alert to the possibility of depression or dementia. . . . Dementia’s most common symptom is diminished short-term memory . . . . Dementia is also characterized by mood swings, changes in personality, uncharacteristic acts and exhibiting greater confusion when placed in new surroundings.” “Old Age with Fears and Ills: Planning for the Very Old Client”, Institute Materials at 16.4-16.5 (2004). These observations are also consistent with the effects of hazardous drinking.

As trust and estate professionals, we are not equipped to give definitive diagnoses of hazardous drinking. We do have a duty to preserve the sanctity of the estate plans we suggest and implement. Attorneys, under Rule of Professional Responsibility No. 1.14 have a duty to maintain the traditional attorney-client relationship as long as possible, and a number of ethics committee interpretations as well as recent modifications to the Rule contemplate an active role. Here indeed, an older person’s lawyer may be the only professional who has had a continuing confidential relationship with the older person who does not have the potential for ulterior motives in advising the older person.

A variety of fairly simple screening test instruments are available. While these may not provide a definitive diagnosis, they may assist the estate planner in focusing the client and family on the problem. In fact the Department of Health and Human Services recommends that every sixty year old be screened for alcohol and prescription drug abuse as part of his regular physical examination–and more often if suggested by circumstances of the patient’s life. Substance Abuse Among Older Adults Treatment Improvement Protocol, Chapter 4.

A screening test simply suggests the need for further professional help. Its results do not, by themselves, allow any conclusions to be drawn. It is no substitute for a formal assessment if needed.

The MAST-G, a modification of the Michigan Alcohol Screening Test, was specifically developed for older adults. It has a high sensitivity and specificity among adults in a variety of settings including primary care clinics, nursing homes and living environments. It can be reviewed at an independent website. www.hartfordign.org/publications/trythis/issue17.pdf.

Developed by the World Health Organization, the AUDIT (Alcohols Use Disorders Identification Test) is not specifically designed for older adults. However, it has been validated cross culturally. Because there are few culturally sensitive screening instruments, the AUDIT is recommended by the HHS as useful for identifying alcohol problems among older ethnic minority individuals. It can be reviewed at the following website, and training manuals are available. www.prodigy.nhs.uk/clinicalguidance/releasedguidance/webBrowser/pils/plaudit.htm.

Elder law practitioners should consider keeping a copy of these tests on hand so that clients can take them on their own or have them administered.

Symptoms of hazardous drinking may mimic other irreversible conditions such as Alzheimer’s Disease. While successful treatment may or may not reverse deterioration of brain function, the absence of treatment will certainly lead in only one direction. It is our privilege to be alert to the problem in order to make a referral to a treatment professional, such as a certified addictions counselor or other geriatric specialist. We may be able to add years to our clients’ lives and help them to return from the abyss!

Endnotes

1 The author is H. Amos Goodall, Jr., Esq., a principal of Goodall & Yurchak, PC. Goodall, who is a Certified Elder Law Attorney, practices at 328 South Atherton Street, State College, Pennsylvania. Goodall@centrelaw.com

2 Since 1952, alcoholism has been recognized as a disease. Currently, the Diagnostic and Statistical Manual of Mental Disorders, 4th ed ("DSM-IV") lists criteria for Substance Abuse and Substance Dependence. Clearly, these terms have pejorative connotations, especially for use by elder law attorneys dealing with their clients. Furthermore, a wealth of literature is critical of the applicability of these criteria to older persons, particularly

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those who are retired or isolated from frequent social interaction, e.g., Rigler, “Alcoholism in the Elderly”, American Family Physician (3/15/2000). The AMA, in guidelines for primary care physicians has recommended that a special definition be added for the elderly: “The onset or continuation of drinking behavior that becomes problematic because of physiological and psychosocial changes that occur with aging, including increased sensitivity to alcohol effects.” The International Classification of Diseases-10 of the World Health Organization has added an additional category “hazardous drinking” to describe an individual’s self destructive pattern of alcohol use which may not meet the strict criteria for alcohol dependence or abuse. The U.S. Department of Health and Human Services has published best practice guidelines as a part of its Treatment Improvement Protocol Series, Substance Abuse Among Older Adults, 1998 (2002 reprint) (hereinafter “HHS”).

3 See e.g., VHI Healthcare, Ireland, The Elderly and Alcohol Abuse (http://www2.vhihealthcare.com/sopic/sralc).

4 Consensus Panelists of the Department of Health and Human Services recommend the use of two structured assessments with older adults: the Structured Clinical Interview for DSM-III-R (SCID) and the Diagnostic Interview Schedule (DIS) for DSM-IV. The former takes a trained clinician approximately 30 minutes to administer, while the latter is a highly structured interview which may be used by non-clinicians. It is available in a computerized version and has been transmitted into a number of languages including Spanish.

5 The CAGE test is as follows. In the author’s opinion, the creator of the test took a certain poetic license in creating the acronym.

1. Have you ever felt you should Cut down on your drinking?
2. Have people Annoyed you by criticizing your drinking?
3. Have you ever felt base or Guilty about your drinking?
4. Have you ever had a drink first thing in the morning to steady your nerves or get rid of a hang-over (Eye-opener)?

PAID ADVERTISEMENT

How to Enjoy Greater Income, Respect, Prestige and Satisfaction in Your Elder Law Practice

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On a recent vacation in Vermont, Brian Lindberg, NAELA’s public policy consultant, found himself reflecting on the past few years of NAELA’s advocacy efforts, specifically the creation of the Senior Rights Political Action Committee (SR-PAC). Foremost in his thoughts was Charlie Sabatino, Public Policy Committee Chair and Past President of NAELA. Charlie and Brian started the dialogue about creating a PAC about four years ago. Charlie shepherded NAELA members through the prerequisites of information gathering, evaluation, and analysis until a decision could be reached. Others who have helped along the way include Past Presidents Bernie Krooks and Bill Browning, current President Stu Zimring and President-elect Lawrence Davidow, Executive Director Laury Adsit Gelardi, and Mark Heffner, Chair of the State Waiver Task Force.

The NAELA Board of Directors voted to create the SR-PAC on July 12, 2003 and elected a PAC Board of Directors on April 26, 2004. The new SR-PAC Board of Directors held its first meeting on May 22, 2004.

As part of the public policy consultant’s summer to-do list, Brian was asked to interview the new SR-PAC manager, who happens to be none other than ... Brian Lindberg.

Brian, public policy consultant: Well, Brian, I have been trying to track you down for days to talk about the hottest NAELA news item – the NAELA Political Action Committee! This is the talk of many of the members and we need to get more information to them as soon as possible. Brian, to make this less confusing, may I call you Pac Man?

Pac Man: Sure, that’s fine.

Brian: Let’s start with a few basics about PACs – how would you define a PAC?

Pac Man: A PAC, or political action committee, is a legally sanctioned organization created to provide funding to candidates for elected office. The Federal Elections Commission is mandated by federal law to monitor the financial activities of the political system, including PACs. Specific rules govern the ins and outs of PACs.

The goal of the SR-PAC is to assist candidates who support the goals and objectives of NAELA and advance our interests and those of our elderly and disabled clients. For example, the SR-PAC will look at the candidate’s record of commitment to our goals, the candidate’s ability to help move or support our agenda, the candidate’s likelihood of election, and the candidate’s likelihood of becoming a key player in the political arena.

Brian: I know that there are rules for making contributions to PACs; perhaps you could explain those to our readers.

Pac Man: For specifics on rules of that type, I’d like to turn to NAELA’s legal counsel, Hugh Webster.

Brian: Thanks to the wonders of modern technology, we can have Hugh Webster deposable in a matter of moments. Hugh, are you there?

Hugh: I’m Hugh Webster and I’m reporting for duty, to coin a phrase.

First, NAELA may ask only NAELA members for contributions to fill the PAC’s coffers. Family members of NAELA members, and anybody else for that matter, are eligible to donate to the PAC, but NAELA is not allowed to solicit donations from them. The maximum donation an individual can make to the PAC in a calendar year is $5,000 (note: a husband and wife each have separate $5,000 limits). In addition, individuals, partnerships, and LLCs that are taxed as partnerships may contribute to the PAC, but corporations and Professional Corporations may not.

Brian: Would you please explain what kind of PAC NAELA’s SR-PAC is?

Hugh: The SR-PAC is a connected PAC. The SR-PAC has a separate Board of Directors from the NAELA board. The NAELA board does elect the PAC board. A very important aspect of a connected PAC is that NAELA is allowed, under the law, to pay for the administrative and fundraising costs of the PAC.

Pac Man: This allows SR-PAC to spend every dollar it raises on the candidates who are running for office.

Brian: Okay, Hugh, that seems pretty straightforward. Now could you explain the other side of the PAC equation – the rules for PAC contributions to candidates running for elected office?

Hugh: This is an area where we have to follow to the letter – and number – of the law. Currently the PAC may contribute up to $1,000 per candidate per election. Once the PAC qualifies as a “multi-candidate” PAC, it may contribute up to $5,000 per candidate per election. A committee becomes a multi-candidate PAC when it has been in existence for at least six months; has received contributions from at least 51 persons; and has contributed to at least five federal candidates. In addition, there are rules regarding contributions to candidates in primaries and general elections.

Brian: By the time our readers see this article; will it be a multi-candidate PAC?

Pac Man: Yes, the SR-PAC is a connected PAC and will be a multi-candidate PAC shortly.

Brian: Pac Man, please tell our readers how far we have come since the SR-PAC was created.

Pac Man: Let’s turn to Mary Alice Jackson, the President of SR-PAC’s Board of Directors, for that information.

Mary Alice: I am pleased to announce that we have raised more than $40,000 already and we have achieved 100% participation from the SR-PAC board and the NAELA Board of Directors.

Brian: Congratulations! That’s a great start. Please tell us who wrote the first check to the SR-PAC.

Mary Alice: That would be Craig Gordon. His check was for $1,000, which makes him our first “Friend.” The PAC board has determined four initial categories of contributors: Pacesetter: $5,000; Benefactor: $4,999 – $2,500; Friend: $2,499 – $1,000; Benefactor: $400 – $199.

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$2,499 - $1,000; Supporter: $999 - $500; Other: $499 - $1.

Brian: I understand that many of the contributions have been in the $1,000 range.

Mary Alice: Yes, but the SR-PAC board is working on fundraising plans to encourage contributions at higher levels and participation by more members.

Brian: Mary Alice, please describe for us the composition of the SR-PAC board and its duties.

Mary Alice: Sure. Given the goals of the SR-PAC, the board is bipartisan and includes members from states with large NAELA membership and geographic diversity. Also, there is a significant fundraising expectation for each board member.

The SR-PAC Board of Directors elected the officers of the board and they are: me, the Chair; Ford “Chet” June, the Vice President; Dan Tully, the Secretary; and Anthony Falco, the Treasurer. The SR-PAC board votes on all major policies and procedures governing funding, solicitations and disbursements to candidates and campaigns, and methods for recommending endorsing or not endorsing candidates.

Brian: Everyone is probably wondering whom the PAC board has funded so far.

Mary Alice: By the time that our readers see this article the SR-PAC will have selected about 30 candidates to receive contributions. So far we have chosen six: Senator Charles Grassley, Chair of the Finance Committee, Tom Daschle, Minority Leader of the Senate, Dennis Hastert, Speaker of the House, Nancy Pelosi, Minority Leader of the House, Nancy Johnson, Chair of the Health Subcommittee of the House Committee on Ways and Means, and John Dingell, Ranking Minority Member of the House Energy and Commerce Committee. These are all members that we have worked with in the past and who have an interest in the programs serving our clients.

Brian: That is a pretty bipartisan group from both the House and Senate.

Mary Alice: We plan to be bipartisan and open to helping those candidates that have already supported our interests and those that might benefit from learning more about NAELA and our clients’ needs. The PAC board will determine when and how much we give to each candidate and try to make the most of the funds we raise.

Brian: Thank you, Mary Alice. I’m hopeful that when NAELA members become familiar with the SR-PAC and its connection to the Public Policy Program, participation will increase quickly.

Mary Alice: Let me turn the tables, Brian, and ask you – why are you so interested in the SR-PAC?

Brian: NAELA’s Public Policy Program has been evolving steadily and the creation of a PAC adds a significant dimension to the program. Having a PAC brings NAELA into a part of the political process that many other successful organizations participate in. Our public policy strategy will continue to include NAELA member (constituent) contact with members of the House and Senate, which we believe to be an effective tool in educating Congress.

The PAC is a part of the larger NAELA organization and not a part of the Public Policy Committee. The Public Policy Committee does not make contributions and does not decide who receives contributions.

By now many are familiar with the work of the Public Policy Program – following legislation, educating members of Congress and federal agencies about our clients and our issues, and working with like-minded coalitions to achieve common goals. We testify at congressional hearings, write letters, submit amicus briefs, and visit Washington and district offices. Having a PAC allows NAELA to continue its communication and education efforts in a different, often less formal, setting.

Pac Man: In fact, this fits perfectly

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with our strategy to expose Members of Congress or other candidates to more NAELA members from their states and districts and to you, Brian, our DC contact person. We’ll have some NAELA members attending fundraising events back in the state or district, while you cover many of the DC events. We will make opportunities for SR-PAC board members and various SR-PAC contributing leaders to attend functions, as well.

For example, Mary Smith Schmidt recently met Representative John Dingell (D-MI), Ranking Minority Member of the Energy and Commerce Committee, at the home of a friend. She explained personally to the congressman what she does as an elder law attorney.

I recently had breakfast with Senator Chuck Grassley from Iowa, who chairs the Senate Finance Committee. He knew of NAELA’s work with the Elder Justice Coalition and we talked about a number of key legislative proposals.

Pac Man: It sounds like the SR-PAC gives NAELA and our issues more exposure.

Brian: Exactly. The SR-PAC underscores our public policy efforts and broadens our reach. Now we need to get this exciting news out to all NAELA members and get them to join the PAC Attack today!

Thank you, Hugh and Mary Alice and Pac Man, for your time and information today.

The purpose of the SR-PAC is to help elect candidates who will support the goals and objectives of NAELA. SR-PAC funds are used to make contributions to candidates for public office. The contribution amounts listed are only suggestions; more or less may be contributed (subject to a limit of $5,000 per donor per calendar year). The amount given, or the refusal to give, will not benefit or disadvantage a member. You may refuse to contribute without reprisal. Only members of NAELA may be solicited to contribute. We may not accept contributions from corporations, foreign nationals, federal government contractors, or by one person in the name of another person, nor may we accept contributions of more than $5,000 per calendar year from any one contributor. Contributions are not tax deductible. Federal law requires us to obtain and report the name, address, occupation and employer of each contributor who gives more than $200 in any calendar year.

Pac Man: It sounds like the SR-PAC gives NAELA and our issues more exposure.

Brian: Exactly. The SR-PAC underscores our public policy efforts and broadens our reach. Now we need to get this exciting news out to all NAELA members and get them to join the PAC Attack today!
Disposable Humanity – Do Elders Have a Duty to Die?¹

By Clifton B. Kruse, Jr., Esq.

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The loss of biographical status,² the disappearance of importance as persons, is a reality in this country’s community of frail³ elders - the congregation⁴ that we are dedicated to professionally serve.

Professor David Lyons, in his essays on law, justice, and political responsibility, collectively entitled, Moral Aspects of Legal Theory,⁵ suggests that “[f]or more often than not, law has served oppressive, unjust, [and] inhumane social arrangements.... [While law is not] inherently evil, it serves injustice as well as justice.”⁶ We define “justice” to mean the satisfaction of values that we personally admire, however idiosyncratic such values may appear when measured by populist ethics and politics.⁷

In defining the purpose of Law, Lyons observes that some writers posture “… that life without law would be nasty, brutish and short. The trouble with that argument is that life [is] like that for [many, older persons currently] living under [our country’s] Law.”⁸

Barbara J. Logue writes in her excellent text, Last Rights - Death Control and the Elderly in America,⁹ that the nation’s seven million chronically ill elders share the last rung when the country’s needs are prioritized.¹⁰ She writes, “When the United Nations asked governments to identify major issues of concern for mortality and morbidity policy, none of the eighty-three countries mentioned the aged.... Of twenty-nine Economic Commission for European Nations surveyed in recent years... only Norway responded that the illnesses of the aged population [are] of special concern.”¹¹

Such inattention suggests the conclusion that their humanity is presumed unimportant and as such, is disposable.

Laws that our country enacts which affect the elderly among us may be unjust, brutish¹² and socially destructive to them. The Omnibus Budget Reconciliation Act of 1993 (OBRA)¹³ ‘93, for example, with its harsh insistence on estate recovery,¹⁴ and repayment of public benefits received at the death of disabled trust¹⁵ beneficiaries is illustrative unlike other benefits programs, such as Aid to Dependent Children (ADC), Supplemental Security Income (SSI), and Medicare, which do not extract repayment from the deceased recipients’ estates or from their families.

The elders’ values - the desire to be independent, to be cared for in their own homes, their place of familiar security, and their desire to leave something of theirs behind - an inheritance for those who follow them - social immortality for the donors,¹⁶ are ruptured when elders are economically dependent, i.e., when they have insufficient funds for necessary long term care. These desires, not politically recognized as deserved, are secondary to national mores seen as more worthy. Frailty resulting in social and economic unproductively make near moribund persons who are considered valueless, politically unimportant. Quality of life issues, including the recognition of the importance of responsbly satisfying such persons’ reasonable end-life expectations, are unnoticed. While the government in passing recognition of humanity may design “… a plethora of [institutional] regulations [to] ensure that bedpans are counted and clocks are punched, no one [in government] seems to know how to measure quality of life, let alone produce it, for frail elders[,]” whose vitality as social persons has gone.¹⁷

We are not necessarily experiencing an abandonment of human values as a new phenomena. American towns in the colonial period “weaned out,” denied settlement for persons anticipated as dependents and who had little to contribute. Frail older persons were perceived as unworthy of care.¹⁸ “Excessive longevity (survival beyond one’s ability to make positive contributions to family or society) is universally disvalued.”¹⁹ This impulse may be increased in prominence where a community feels the pressure of competing applications among those that must share the country’s fisc,²⁰ as we now do in a country where some politicians are determined to reduce its current federal budget by one trillion dollars.²¹

Families, as well as communities, have limited endurance for decrepitude. Tolerance of frailty equates to the disabled elders’ economic independence. Where the elders’ wealth has not yet been consumed or relinquished or lost by appropriation, they are endured. Older persons, particularly those who are feeble, tend to be valued in direct proportion to what they can still do for younger generations, including their (continued on page 15)
Disposable Humanity – Do Elders Have a Duty to Die?1

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family members.22 Prolonged dependency, irreversibly declining health, and the disappearance of their own sources of economic independence, recasts the importance of the dependent elder both to his or her family as well as to the communities in which such persons live.23

Our awareness of this animality feature of our humanity may cause us to be better lawyers, more insightful family counselors, and more protective agents for our charges whose values and biographical importance should not end with fragility. Hastened death because elder care is not a national priority should not be quietly tolerated. Our fragile ancestral community, however unproductive they may be, has no duty to die.

Endnotes

1. A suggestion by Colorado’s former governor; Richard Lamm, arguably misinterpreted by the popular press, implied that there is a moral duty to die when one reaches a certain degree of decrepitude.

2. Dementia patients particularly “... often are the defenseless targets of long-term care staff who, guided by the belief that loss of cognitive ability diminishes a person’s humanity, dismiss residents with dementia as beyond help and unworthy of care.” Jennifer Foote, “Dementia - Abuse and Neglect Compound the Suffering of Many Elderly,” Sunday Star-Ledger, New Jersey (May 7, 1995), p. 1.

3. By frail is meant physically fragile and delicate; significantly demented, feeble and dependent. “Today nursing homes and other long term care facilities [where our frail elder clients may be housed] are defacto psychiatric wards.... [T]he facilities are failing in many cases to deliver even marginal care to elders with dementia...[Patients] are taken care of the way we [cared for] psychiatric patients 150 years ago...[and] measures specifically designed [by the federal government] to improve the quality of care for dementia patients have largely failed.” Id.

4. For purposes of this text, congregation is defined as the collection of elders in our various communities, not necessarily congregated together.


6. Id. Preface, p. IX.

7. At least for purposes of this article, “justice” is defined in this way, perhaps fairer than the philosophers wry suggestion that “[m]ight is right and justice there is none.” Walther von der Vogelweide (1170-1230), Millennium, (no publication date available). Bartlett’s Familiar Quotations, Little Brown & Co. (1992). This statement in an apparent corrupted version reads, “might is right and justice is the stronger of the two.”

8. Id. p. X. Lyons uses “most persons” rather than “many older persons.” It does not appear to the author of this essay that this modification depreciates Lyons’ broader assertion.


10. Id. pp. 56, 54.

11. Id. pp. 56, 55. In this country, “[t]ypically, it is the most vulnerable who are the first to suffer when cost considerations arise. The most explicit rationing efforts to date - those associated with Diagnosis Related Groups (DRGs) -are aimed at elderly Medicare patients. Enacted in 1983 under the Medicare program, the DRG prospective payment system was designed to contain costs by paying hospitals a fixed amount per patient, based on ... diagnosis and other factors. If a hospital keeps a patient an unnecessarily long time or performs unnecessary tests, it loses money. Other incentives in the system encourage earlier discharge - ‘quicker and sicker’ - and so entail a risk of inadequate care. Alternatively, since payment is the same for simple and complicated cases in the same diagnostic category, hospitals may cut corners or even refuse admission to sicker patients, whose costs of care threaten to exceed the payment rate. Most important, both Medicare and Medicaid are increasingly reluctant to finance long-term care, and nursing homes select against heavy care cases that are more costly in terms of staff time as well as monies. For example, when Frank Robinson tried to find a suitable nursing home for his ailing mother, the social worker told him, ‘Let’s face it, nobody wants her. She’s too heavy. They prefer the little skinny, eighty-pounders. And she can’t go to the bathroom to relieve herself. She needs too much nursing.’ Hence the lives of the frailest continue to be low priority, and little community fuss is made about it. [citations omitted].” Id. pp. 53-54.

12. By brutish is meant, at best, unpleasant and, at worst, violent.


15. 42 U.S.C. § 1396p(d)(4)(A) and (d)(4)(B) and (d)(4)(C).


18. Id. p. 32.

19. Id. p. 30.


22. Id. pp. 29, 24.

23. Id. pp. 22-25. “Popular opinion in preindustrial France held that ‘old age was a horror and old people a great nuisance.’” Id. p. 29.
Schedule of Events

October 07, 2004
13th Annual Virginia Chapter Elder Law Seminar
Co-Sponsored by the National Academy of Elder Law Attorneys (NAELA) and the Virginia Chapter of NAELA
Waterford at Fair Oaks, Fairfax, VA
For more information, a complete schedule of events and/or to register, call Nancy Kern at Virginia CLE at 1-800-223-2167 ext. 145

October 14 - 17, 2004
National Association of Professional Geriatric Care Managers’ Annual Conference
Marriott at the Capitol, Austin, TX
For more information contact Jenifer Mowery at (520) 881-8008.

October 20 - 23, 2004
Fifth Annual National Aging and Law Conference
Hilton Crystal City, Arlington, VA
For more information e-mail NALC@aarp.org

November 11 - 14, 2004
2004 NAELA Institute
A Joint Meeting with the National Guardianship Association and the National College of Probate Judges
The Broadmoor Hotel, Colorado Springs, CO
Early Bird Registration Deadline: October 1, 2004
For more information contact the NAELA Office at (520) 881-4005 or visit www.naela.org for complete registration information.

January 28 - 30, 2005
2005 NAELA UnProgram
Doubletree Guest Suites, Houston, TX
For more information contact the NAELA Office at (520) 881-4005 or visit www.naela.org for complete registration information.

March 11 - 13, 2005
2005 NAELA Advanced Practitioner’s Program
Embassy Suites Hotel, Atlanta, GA
Registration: Wednesday, October 20, 2004 at 3:00 p.m. ET
For more information contact the NAELA Office at (520) 881-4005 or visit www.naela.org for complete registration information.

May 18 - 22, 2005
2005 NAELA Symposium
The Fairmont Hotel, San Francisco, CA
For more information contact the NAELA Office at (520) 881-4005 or visit www.naela.org for complete registration information.

September 29 - October 02, 2005
2005 NAELA Advanced Elder Law Institute
A Joint Meeting with the National Association of Professional Geriatric Care Managers
Sheraton New Orleans, New Orleans, LA

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NAELA Members in the News
(continued from page 1)

- “Are All The People Selling Living Trusts Trustworthy?” in the June 20, 2004 edition of The Times-Reporter.

NAELA Members in the News include:

- Alyssa Adams, Esq., was quoted in “Balancing Act-Giving a Loved One Power of Attorney Is An Important But Risky Step,” which was published on June 28, 2004 in the Wall Street Journal.
- Thomas Begley Jr., CELA, was noted for winning the Alfred C. Clapp Award for Excellence in Continuing Legal Education in “Clapp Award to Begley, Others Cited for Service,” which was published May 31, 2004 in the New Jersey Lawyer.
- Dana Breslin, CELA, was quoted in “Modern Love—Are Men at Sea?,” which was published July 1, 2004 in AARP The Magazine.
- Bill Brisk, CELA, was quoted in “Preying on the Elderly: Herald Series: Part Three; Lifetime Savings Make for Tempting Targets,” which was published in the Aug 24, 2004 edition of The Boston Herald.
- A letter to the editor by Andrew Hook, CELA titled “Pay for Long-Term Health Care” was published June 10, 2004 in the Daily Press.
- Robert Kurre, Esq., and Charles Sabatino, Esq., were quoted in “Experts: Living Wills Often Flawed,” which was published on June 21, 2004 in Newsday.
- An article by Vincent Russo, CELA titled “Medicaid Under Attack,” was published in June 2004 in 50 Plus Senior News.
- Theresa Varnet, Esq., was quoted in “Trust & Obey,” published in the July/August 2004 issue of the Bloomberg Wealth Manager.
- Stu Zimring, Esq., was quoted in the AP article titled “Frugal Generation Finding Itself in Debt,” which was published on July 7 in over seventeen daily newspapers across the country including the Arizona Daily Star, Chicago Tribune, Dallas Morning News, Detroit News, New York Times, and the San Francisco Chronicle.

New CELA’s

Certification validates the lawyer’s specialty. A certified Elder Law Attorney is more than just an attorney who specializes in the field of elder law. CELAs are committed, through certification, to maintaining and improving their proficiency through continual practice and continuing legal education.

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Las Vegas, NV

Sanford J. Mall, CELA
Farmington Hills, MI

Tina R. Green, CELA
Texarkana, TX

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
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