



LIFEBEGINS

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Senior Lawyers Section

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May 2009 Annual Meeting & CLE Seminar Wows the 55-and-Counting Contingent

By Carole Grayson

"Unfailingly, the most interesting, useful, amusing, inexpensive and educational CLE, and this one may have been the best ever"

– Returnee

"This is one of the best CLEs I have ever attended; it is my first Senior Lawyers CLE."

– First-time attendee

The numbers: 157 pre-registered lawyers and 17 walk-ins – "a very good number for the current economy!" according to Barbara J. Konior, J.D., *WSBA Manager, Continuing Legal Education*. Yes, that many senior lawyers filled our Sea-Tac Marriott convention room on Friday, May 8, 2009, for the Senior Lawyers Section annual meeting and CLE.

By acclamation, the membership approved election of officers of the Senior Lawyers Section:

President: Steve DeForest

Secretary: John Bergmann

Treasurer: Jerry Curtis

Outgoing president Jerry Jager will remain on the Executive Committee.

Attendees heard a diverse and distinguished faculty tackle topics including life, liberty, and the pursuit of happiness. Except from some attendees expressing difficulty with hearing questions from the floor, May 8 was another great, sociable occasion with more than enough educational input to merit serious CLE credits. In other words, just what the Senior Lawyers Section is all about. Mission accomplished!

CLE Credits and Cost

The seminar was approved for 6.25 credits for Washington attorneys; 4.75 general credits, 1.5 ethics credits.

Included in the \$150 CLE cost were morning beverages and pastries, a spectacular lunch buffet in the atrium, and a reception in the atrium immediately after the CLE hosted by Sterling Bank. The lunch, which followed our established pattern, included Caesar salad and Italian-style antipasto to start; a choice of salmon, chicken, or both; assorted vegetables; and then, to top it off, scrumptious desserts.

Comments by Attendees

This year the committee again made a special point of requesting comments on the evaluation. Some speakers tackled topics that inspired controversy, proving that you can't please all of the people all of the time. *Life Begins* is publishing a wide array of comments on the CLE faculty presentations. An enduring trait of our legal system is that two positions can be advocated in good faith. Readers will also glean the same from comments about the presentations.

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If some comments generate ideas for possible topics and speakers for the 2010 CLE, please contact the Executive Committee.

**Hon. Marsha Pechman, U.S. District Court, W.D. Wa.:
ADR Has Gone Too Far**

The topic of the CLE's keynote speaker generated strong views among attendees:

- Questioning the value of alternative dispute resolution is overdue. Judge Pechman represents a welcome dissent from popular assumptions.
- Largely irrelevant. Speak to the active litigators. A waste of our time!! Talk to judges!
- Gutsy, well-presented. The debate about ADR goes on ...
- Excellent speaker (excellent judge), excellent topic, but there's a lot she doesn't know about ADR as practiced by trained, experienced professionals who have practice background in the area of the dispute, i.e., construction law.
- Great timely topic. Terrific asset to CLE.
- Remarks were interesting but not too convincing.
- Excellent presentation. Right on point! Unfortunately, it will be difficult to "un-ring" the jury trial bell. That does not mean that we should not try.
- An interesting presentation, but flawed in its central thesis. ADR from my experience is more suitable to most disputes than litigation.
- Excellent presentation of ADR procedures and changes in litigation.
- Clueless! Wrong on almost every point. Didn't do her homework.
- Outstanding! She should give this presentation widely!!
- Good smart presentation, but the topic avoided the reality that many disputes ending up in litigation involved one person who is psychologically a control-freak, egomaniac, demanding only what he wants without considering reason on the issue. Mediation is more effective than trial.



Steve DeForest, incoming chair of the Senior Lawyers Section, and Dennis Potter

- Interesting perspective for a federal judge, many of whom require some form of ADR before coming before their court!
- Off the charts! A tremendous speaker with whom I happen to agree.
- Thought provoking, but wrong on two points – arbitrators and mediators do have a code of conduct and must disclose conflicts. Federal courts may not have a backlog, but Pierce County Superior Court does have a severe backlog.
- Good presentation re: the evolution of ADR and the resulting diminution of jury trials.
- Very enlightening, but ADR is not the only cause. Cost of trial is prohibitive. Having been a defendant in a lawsuit, I respect the process and system (\$ zero verdict), but I would have gladly settled due to costs after insurance coverage ran out. The problem is not the resolution portion of the process but the costs of preparation. Reform discovery, etc.

of trial is prohibitive. Having been a defendant in a lawsuit, I respect the process and system (\$ zero verdict), but I would have gladly settled due to costs after insurance coverage ran out. The problem is not the resolution portion of the process but the costs of preparation. Reform discovery, etc.

- She made this relatively dry subject interesting to me. I would have thought it irrelevant to my practice (indigent criminal defense).
- She is biased against ADR, but state courts are backed up with criminal litigation and do not have the \$ or time to hear civil cases.

Gloria Nagler, Nagler & Associates, Seattle: What General Practitioners Should Know about Consumer and Small Business Bankruptcies

Bankruptcy did not engender as much controversy as ADR for the CLE attendees:

- Bankruptcy learning is welcome in these troubled times. It is not easy to absorb.
- Lots of info in one hour! Made the subject of bankruptcy funny.
- Great presentation, well delivered. Practical, lively and thorough.
- Great presentation of some real substance!! Excellent.
- I liked the "nuts and bolts" approach.

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- Excellent. Very clear on her subject. I wished she had finished her material.
- The mark of an excellent CLE speaker (Nagler!) is that she makes her topic interesting, important, and intelligible to someone (me!) who does not practice in this area. This area of law is filled with traps for the unwary.
- Terrific!! One of the best presentations in all respects I have seen/experienced for such a difficult subject.
- As a bankruptcy lawyer, I found her comments accurate & helpful for the non-specialist, e.g., DO NOT file a corporation into Chapter 7, and why.
- A champ – really knows her stuff.
- Picked up a few pointers here – I had not kept up.
- Good overview of Chap. 7 & Chap. 13 bankruptcy for a non-B/R attorney! Good references for follow-up if necessary.
- As a bankruptcy practitioner, I always get new insights from Gloria.
- I work in bankruptcy area. I believe this attorney is one of the best. I refer cases to her regularly.
- An effective way to present her subject. Tried to cover too much material in limited time.
- I appreciated the update in an area I had not practiced in for almost 20 years.
- Informative, interesting, energetic. Excellent presentation even for non-bankruptcy attorneys.
- Good presentation of a complex subject.
- Excellent in all aspects. Well organized, good visuals.
- Very knowledgeable, but too quick a delivery. Needs more examples or explanations on different chapters – when & why to file under different b/r chapter.
- A simplified big picture view of a complex b/r.
- Wow! So energetic and really gave me lots of information regarding bankruptcy.

2009-2010

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Jeff Tolman, Tolman Kirk, Poulsbo, *Ethical Situations Lawyers Get Into: The File by your Left Foot*

Did learning ethics have to be painful? Attendees had different views:

- Possibly the best CLE presentation – on any topic – that I have ever enjoyed.
- Very entertaining – How could we accept CLE credit for this?
- Very enjoyable, entertaining – a little light on the ethics.
- Jeff is always excellent – filled with good ethical considerations.
- Good story teller but not much ethics, directly. But did like how he talked about being an attorney who makes ethical decisions to meet client's needs.
- Great examples of problem situations with other attorneys who don't return calls or are derisive of other attorneys and their own clients.
- Clever ideas, creative & excellent inspiration.
- One good major point was well presented, i.e., understanding client's expectations at the outset.
- Good story teller. Most interesting presentation with caveat situations with new cases & clients.
- He made us laugh – and think.
- Easy to listen to – entertaining and thought-provoking.

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- Enjoyable but more importantly inspiring message re: the value of being a lawyer.
- Heart-felt, compassionate; Jeff presented an excellent perspective on being a good lawyer & reminded us to embrace ourselves & what we do for our clients.
- He humanizes us and our clients. Even when I've heard his anecdotes before, I still get tears in my eyes.
- Fresh air – the personal touch. Great story teller.
- (****) Always entertaining! Always informative! Reminds us about why we should be proud to be a lawyer and what it means to be lawyer.
- No better speaker! Always a crowd pleaser. Wonderful reminders/mentoring of what it means to be a lawyer.
- I'm afraid that I tuned out.
- Interesting presentation.
- Energetic & engaging – but we could “get the message” in less than 10% of the time. I believe “our” generation may feel this topic is a bit too “new age,” i.e., sophisticated obviousness. Sorry, but seems naïve and a bit condescending perhaps.
- Excellent.
- Too “touchy-feely.”
- Helpful ideas.
- I tried hard, but didn't get it...
- Very good at what she does – I could not see the relevance to the bar assn. meeting.

Carol Vecchio, Center-point Institute for Life and Career Renewal, Supporting Senior Lawyers in Their Practice: Transition Toward Retirement and Post-Retirement

Heraclitus rocks:

- Good presentation but I think it would be improved by focusing more on the move from active lawyer to retirement (“winter”). I would guess that 75% of lawyers in attendance are 65 years or older.
- Excellent presentation, good food for thought, but no specific examples of different paths of transition. Any successful examples? Add four 15 minute speakers who have transitioned!!
- Should have had this course 50 years ago. Good presentation with good visual aids.
- Group appropriate; presentation a little flat.
- Excellent and very practical for all attorneys who are transitioning or considering it.
- Maybe a bit too processed and not as well connected to us as a mature audience. This may work for a younger group, but it didn't connect with my idea of issues at 60 years of life – not enough focus on transition from work to post-work or reduced work environment. This segment needs to be done well as everyone in the room may be looking at how to make the changes. Presentation needs to be clear and concrete.



Carol Vecchio and Jerry Jager

- “Psycho-babble” – I was disappointed.
- Good concepts, but would have been more effective if she had communicated these through the lens of her audience: We are senior lawyers. I wish she had addressed our stage in life more explicitly.
- Very insightful presentation on life/work cycles. Good speaker!
- Holistic sophistry.
- I really liked this presentation the best. Perhaps just my station in life but none the less – [it] put things in perspective.
- Too much jargon.
- Very good – tough subject.
- Just weird – what did this have to do with law?
- Outstanding!
- Knows her subject well, articulate, but of less interest to me.
- Good presenter; relevant material but she needed a “lawyer” transitional story giving an example of a lawyer transition dilemma [&?] strategy to hook us.
- Good – helpful.
- Yawn.
- My suspicion: Most geezer lawyers have figured this out. For me, “I want to sit on a beach with lots of hair and no clocks” (Jesse Ventura).

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- What?
- Too long but some interesting points re: problems in transiting from one period in our lives to another. Good structure for taking a look at where you are & how to effect change.
- Compressed a lot into 45 minutes.
- A description of general aging, but no apparent resolutions.
- Very relevant to me, useful, helpful and informative.
- Good/ useful – could be a bit more specific re anecdotal how it works but overall excellent & a good choice.
- Good presentation, but the subject doesn't resonate with me.
- Thought provoking. Helpful. Looking at life experience as cyclical.
- Too vague and general. Need to give real life examples or what she was talking about.
- Good but pretty general about going thru phases in your life, not just the end of the road, which bothers some old folks.
- I had a hard time following but very interesting in parts.
- Very helpful & meaningful concept.
- A good review of the cycle of life, but not really helpful.



David Dorsey, Gerald Curtis, and Dudley Panchot

- Very well presented legal story, one that gives us all hope in our legal system. Even under Bush [one] can deliver Justice.
- It's a rare window on political jurisprudence.
- You can't apply US rules to the planet.
- Very interesting. Reminded me not to rely on newspapers to understand a case.
- Interesting – tragic. Should learn it, not read it.
- Fascinating presentation that I found inspirational.
- Excellent presentation. No matter your politics, Mr. East provided an outstanding rendition of a complex issue in a short period of time.
- Sad, uplifting, compelling. He's an accomplished speaker – very impressive for someone admitted to the Bar in 2001 (or any year).
- Brave lawyer. Proud of him.
- I'm not sure I'm that conservative – informative – but not practical for old lawyers.
- Excellent. It alone was worth the price of the whole seminar.
- Enthralling presentation; one of the best ever.
- Good speaker, very political.
- Extremely interesting presentation! My first clear understanding of the issues

surrounding the denial of habeas corpus (and other rights) to the detainees @ Guantanamo Bay! Good speaker!

David East, McNaul Ebel Nawrot & Helgren, Seattle:
"Terrorism" on Trial: The Hamdan Case and the Bush Administration's Flawed System for Trying Alleged "Terrorists"

This young attorney's presentation impressed the audience:

- Perfect! Principle and mechanics & pro bono together.
- Outstanding, real history and a great presentation.
- Obvious – a Bush-hater. Non-citizens not in U.S. do not have rights. Terrorists are not criminals – They are trying to destroy U.S. How do you defend against terrorists? What is assisting terror activities?

- Just an excellent tale of heroic attorneys working in our highest interests. He should get a standing ovation.
- Great and shocking presentation.
- Fascinating and intellectually deep story.
- The profession is in good hands!
- As a retired Air Force colonel with combat experience (Vietnam & Desert Storm) – found [it] interesting!
- Spell binding – all of us should be proud of what the lawyers did for Mr. Hamdan and for the justice system.

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- Fascinating presentation: new info about a bad system for dealing with POW's and how justice was finally obtained.
- What a fascinating case and articulate speaker. Someone to watch – nice to hear a young attorney.
- Extremely impressive young atty. Good ability to convey complicated subject. Excellent presentation skills.

Todd Bowers, Assistant Attorney General, Seattle, and Timothy Trageser, Trageser Law Office, Spokane: *Issues in Sexually Violent Predator Civil Commitment Cases: In Re the Detention of Kevin Coe*

Attendees had mixed opinions on the relevance of the topic but thought highly of the dual presentations:

As to Trageser:

- One appreciates his sense of duty.
- Very good – tough kind of practice.
- Effective presentation of difficult side of subject case.

As to Bowers:

- It must be great to always ride a white horse.
- Very sharp – good presentation on a complicated topic.
- Nice broad analysis of the issues.



Timothy Trageser and Todd Bowers

As to both presenters:

- Very good team presentation on complicated subjects. Great to see opposing counsel discussing their common case. Their in-depth analysis of a specific case was very constructive/instructive.
- Good presentation. Irrelevant legal topic for senior lawyers.
- Knowledgeable presentation but not useful.
- Fascinating. The idea of pitting two trial lawyers against each other was inspired. I learned a lot.
- Fairly good presentation although I stay as far away as possible from this issue so couldn't get very interested.

- An effective way to present the subject.
- Excellent dog-and-pony show by two consummate professionals in a very trying area of the law. WWKCS? (*What would Kevin Coe say?)
- Perhaps senior law seminar should focus on issues usually encountered by older lawyers.
- This was very illuminating.
- God – talk about over-abusive government. Coe is kept confined based on fear/politics not facts. 25 years! Let him out!
- Interesting give & take over a complex statute. Good topic.
- Good team approach! Illuminating expose of how the SVP statute/process works.

- Interesting presentation but this subject is not one often encountered by senior lawyers.

- Very unusual procedure – civil commitment – good job.

- Analysis of Kevin Coe case was interesting and unusual in outlining what an SVP commitment entails and difficult mental health disorders. Not my area of practice but very interesting presentation of a unique case.

- Surprisingly interesting; not enough time.

- Great presentation: format

of lawyers on both sides was good.

- Excellent; I compliment Tim and Todd's cooperation and coordination in the presentation.
- Both did a great job. They answered many questions that I wondered about. I question the constitutionality of how civil cases are handled.
- Very interesting. I'll follow the appeal.
- Impressive attorneys. An area that I will never practice but I find the elasticity of the constitutional status of the entire statute [troubling]. Certainly this conservative generated statute is not from a strict constructionist.
- These guys should be commended for working together so well.

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Bob Welden, WSBA General Counsel, Seattle: *Lawyers' Ethical Duties to the Public: Pro Bono Housing Preservation Initiative; Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*

Being the last speaker of the day, with two unrelated topics to cover, can have its challenges:

- Great forms with this presentation multiplied the value of this brief presentation.
- Should have been earlier and longer.
- Helpful info.
- Very good presentation of the pro bono housing [project] and the planning ahead issues.
- Good subject: closing my practice (untimely death) never crossed my mind.
- Not such a good speaker – could have been better; would have preferred more emphasis on retirement of sole practitioner rather than death/incapacity.
- Always a welcome speaker: Bob is a pro. Thanks for the information on the pro bono housing preservation initiative.
- This was an important subject for this group. ***
- Important topic – needs more coverage/repetition.
- Worthwhile project proposed re foreclosure help to low income homeowners.
- Important and meaningful.
- Very helpful.
- No help at all.
- Good presentation. Helpful in winding up an active practice. Thanks for the materials.
- “Planning Ahead”: Encourage law schools to include it in curriculum (preferably as 1Ls).
- Speaker was mush-mouthed to those who are slightly hard of hearing.



Bob Welden

How did attendees sum up the entire CLE?

- Do it again.
- One of the best!
- A good room rate at the hotel certainly helps.
- This is one of the best CLEs I have ever attended; it is my first Senior Lawyers CLE.
- I feel this is one of the very best facilities for this seminar. I have been there to several previous Senior Lawyers' conferences and really enjoy them & the luncheon!
- Good variety, presentations were lively & well-prepared – one of the better CLE's.
- Enjoyed program.
- Best hotel for seminar.

- Excellent program!
- Much, much better than the last Senior Lawyers conference that I went to last time.
- Some concern regarding Friday rush hour traffic might dictate a downtown venue.
- Always a highlight of the year. Keep it up. Great lunch & food & beverage in ballroom. Keep it at Marriott. Easy to get there and parking is easy. Seattle represents great effort for out of city attendees, and cost of parking is outrageous. Good value CLE – makes you want to come back.

Some attendees expressed concern that the Section raised the CLE cost from its customary \$100 to \$150 for Section members:

- It would be nice to have to old pricing – especially for those over 70 years of age.
- Cost: Too high this year. With EXTREME profits and funds by CLE Dept., there was no need or basis to charge us this much. No one from WSBA responds to issues like this. I wrote about it March 9, and WSBA goes SILENT! Annual dues are exorbitant and not justified.

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Several attendees noted difficulty in hearing questions from the floor:

- Speakers should repeat questions on the microphone from the audience.
- Have the speaker repeat the audience questions! Use the mike so the rest can hear!
- Questions from attending lawyers cannot be heard.
- Need to have a hand-held mike.
- Microphones in the audience are necessary for the question periods to be meaningful for much of the audience. Otherwise, it's like listening to one end of a telephone conversation if you're seated in the back of the room.

Asked to rank in importance "[w]hich of the following influenced your decision to attend today's program (rank in order of importance: subject, faculty, date, location, cost, credit, one attendee wrote: *"seeing old friends."* Another wrote as his most influential factor: *"Getting together with senior lawyers."*

As was emphasized at the seminar, the evaluation forms are read by the committee and help to guide us on future programs and speakers.

Suggested topics for future CLE:

Attendees suggested several topics:

- Assisted suicide legislation & how to manage the issues the law creates for lawyers in advising clients.
- Programs dealing with legal issues peculiarly affecting senior citizens such as IRA & 401(k) withdrawal strategies, impact of federal taxes on seniors.
- IRA updates and estate planning updates.
- Election law/ homeowners' associations.
- Programs of general interest such as the David East presentation.
- Presenters with a good sense of humor.

WSBA Presence

This year's seminar event manager was Barbara Konior. She and the program coordinators did an excellent job, as shown by attendees' comments such as *"a positive experience."*

Program Planning

The executive committee of the Senior Lawyers Section enjoys working as a team to brainstorm, select, and present our seminar programs. Thanks go to each committee member for his or her efforts.



Buffet Line

Editor's note: An earlier version of this article appeared in the newsletter of the WSBA Real Property, Probate, and Trust Section. This article appears with the permission of the author and the RPPT Section.

The Intersection of Medicaid and Estate Planning

By Jacob H. Menashe – Hickman Menashe, P.S.¹

Introduction

Medicaid is a huge federal government welfare program and is administered and partly funded at the state level. It is the biggest payer of long-term care for the approximately 10 million Americans who, because of a chronic illness or disabling condition, require assistance and services with their activities of daily living. In 2005, Medicaid accounted for 49% of the \$206.6 billion spent on long-term care. In contrast, private spending, including long-term care and health insurance, totaled only 26% of all spending. *National Spending for Long-Term Care* (Georgetown University Long-Term Care Project, Updated February 2007, fact sheet).

In Washington state, our long-term care Medicaid program consists of a nursing home component and a community-based component called COPES, which can pay for in-home care or for care in an assisted living facility or adult family home. All Medicaid programs have strict income and asset tests.

For instance, a single person is allowed to have only \$2,000 of "countable" assets and a married couple, together, is allowed only between \$47,104 and \$111,560 (depending on the particular program applied for and the couple's circumstances). Some assets, such as a residence (in most cases), a vehicle, and personal possessions are considered exempt. WAC 388-475; WAC 388-513-1350.

To further illustrate the gargantuan nature of Medicaid, consider that Medicaid spending in Washington, though not just for long-term care services, accounted for 30% of all state appropriations in the 2003-2005 biennium according to the State of Washington Joint Legislative Audit and Review Committee. (*Washington Medicaid Study Report 04-4*, January 2004.)

We have recently seen a tightening of Medicaid's eligibility rules. In The Deficit Reduction Act of 2005, P.L. 109-171, Congress required the States to implement a series of rule changes that has made qualifying for Medicaid harder, further tightening rules regarding transfers of assets. See WAC 388-513-1363. In addition, a rule change effective April 1, 2009 puts additional limits on when and how an annuity can be used to qualify a spouse for benefits. See WAC 388-561-0201.

With the demands that will be brought to the long-term care system by the aging of the baby boom generation, none of us should count on Medicaid as a payer of the quality care we may need in the future. We, and our clients, should seriously consider long-term care insurance when planning for the future.

Despite the limitations of Medicaid, many of our clients wish to pursue legal planning to preserve assets and qualify themselves or a loved one for the Medicaid program. This article will not be looking at Medicaid planning per se, which often involves gifts to family or transfers to a spouse who then purchases a single premium immediate annuity. Instead, this article will consider two common intersections between Medicaid and estate planning.

First, I will discuss how Medicaid should influence us when drafting financial durable powers of attorneys; not just so our clients convey the planning powers they may wish to but also to ensure that they do not inadvertently convey powers they may not wish to convey. Second, I will address how clients at their death can establish a special needs trust which can benefit a loved one without impacting the beneficiary's eligibility for Medicaid benefits.

Medicaid and Drafting Durable Powers of Attorney

To illustrate how Medicaid impacts the drafting of durable powers of attorney, consider John, an eighty year-old widower who, with his late wife Sally, worked very hard to raise their children, pay off their house, and have a small nest egg for their later years. John, while not expressive of his opinions, especially to his children, has always been against undeserving people receiving welfare and he has believed that people should pay their own way and rely on government only as a last resort.

Unfortunately, John has suffered a massive stroke and, no longer with the capacity to make decisions for himself, is facing a long-term nursing home stay which will cost \$8,000 a month. John's durable power of attorney grants broad authority to his daughter, Susan, but is silent as to whether or not gifting, for Medicaid purposes, is allowed. Susan has obtained advice that because the durable power of attorney is silent as to gifting, she has the authority to undertake Medicaid gifting to more quickly qualify her father for Medicaid. As a result, John's estate may be "preserved," and Medicaid eligibility more quickly gained, even though this is not a result John would have wanted. Had John specifically addressed Medicaid planning in his durable power of attorney, even if to forbid it, this result would not have occurred.

How can this be? Under state law, there are certain powers that are not conferred by a durable power of attorney unless specifically mentioned in the document. These powers are often involved with Medicaid planning

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issues. The statutory language on this can be found at RCW 11.94.050(1), which was amended in 2001, and now reads as follows:

(1) Although a designated attorney in fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney in fact or agent shall have all the powers the principal would have if alive and competent, the attorney in fact or agent shall not have the power to make, amend, alter, or revoke the principal's wills or codicils, and shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's life insurance, annuity or similar contract beneficiary designations, employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091; to make any gifts of property owned by the principal; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust, or to disclaim property.

However, the next subsection of RCW 11.94.050, subsection (2), says:

(2) Nothing in subsection (1) of this section prohibits an attorney-in-fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

This refers to the Medicaid program and the transfer of asset rules associated with that program.

Very arguably, this subsection can be read as authorizing Medicaid gifting when the durable power of attorney is silent on the subject. Therefore, it is possible that John's durable power of attorney can be construed as authorizing Medicaid gifting when John would not have wanted gifting.

Therefore, if a principal wishes to prohibit Medicaid gifting or planning, it is very important that he or she say so in her durable power of attorney. For instance, the fol-

lowing language could be considered: *"I do not authorize my attorney-in-fact to make any gifts of my property, including for the purpose of qualifying me for the Medicaid program."*

In drafting, then, it would be prudent, one way or another, to mention Medicaid. On the flip side, though, it would be a very poor idea to rely on statutory exception language if the principal wishes to allow the attorney-in-fact to make gifts for the purposes of qualifying for Medicaid.

Instead, if the client clearly wants the attorney-in-fact to be able to make gifts, I often use the following language to convey broad Medicaid gifting powers:

The power to make transfers of my property whether outright or in trust, including gifts to the attorney-in-fact (notwithstanding RCW 11.95.100) or family members, for the purpose of qualifying or maintaining eligibility for governmental medical assistance or long-term care coverage, or to avoid estate recovery related to such assistance or coverage, to the full extent provided by law, should there be an actual or anticipated need for medical care or long-term care. Any transfers made pursuant to this paragraph shall be deemed not to be a breach of fiduciary duty by the attorney-in-fact.

Planning with Medicaid in mind may involve more than gifting, and there are other powers that should be considered. For example, it can be a good idea for the durable power of attorney to specifically authorize the attorney-in-fact to revoke a community-property agreement. Remember, a durable power of attorney must specifically convey the power to revoke a community-property agreement – a general grant of authority is not sufficient to convey this power. Revoking a community-property agreement may be advisable to avoid or minimize Medicaid estate recovery. Including the following sample language can be advisable from a Medicaid planning perspective:

The attorney-in-fact shall have all the powers listed under RCW 11.94.050(1), including the power to revoke or change any life insurance beneficiary designations or estate planning or testamentary documents previously executed by me (other than a will or codicil), including community property agreements, if deemed appropriate by my attorney-in-fact, for the purpose of preserving my estate from the cost of long-term care or from any claims against my estate by any entity which has provided me with coverage for medical or long-term care services, provided that any such changes be reasonably consistent with my previously executed estate plan.

When such broad powers are conveyed, it will be important to take care that the attorney-in-fact is not deemed

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to have a general power of appointment over the principal's property for gift tax (IRC Section 2514) or estate tax (IRC Section 2041) purposes. I have addressed this issue through the appointment of a special attorney-in-fact, who is not related to or subordinate to the principal, or by providing that the attorney-in-fact can only exercise the powers in his or her favor in limited ways such as for the purpose of qualifying the principal or the principal's spouse for Medicaid or for avoiding recovery related to such assistance.

Also, conveying such sweeping power, of course, brings to the forefront that durable powers of attorney carry with them the potential for exploitation and misuse. Certainly, a client needs to carefully consider who to choose as an attorney-in-fact and what powers to convey to that person. For a client to make an informed choice, both the nature of the document and the potential for misuse need to be conveyed by the lawyer to the client.

In my practice, when a broad financial durable power of attorney is considered, this means a one-on-one conversation with the client where the extent of the power to be conveyed is discussed in terms the client, sometimes with impaired capacity, can understand.

Part of this discussion will normally involve a discussion about Medicaid and the risks and downsides of Medicaid gifting and planning. I explain that Medicaid planning involves, in one way or another, divesting assets. This means a loss of control over assets and can also mean a loss of independence for the principal. For instance, I ask clients to consider that they could find themselves without assets and wanting to live in an assisted living facility that is only "private pay," meaning it does not accept Medicaid, as is often the case with assisted living. That's not a problem if the children are able and willing to use what they received as gifts for their parent's care. But I ask clients to think what would happen if the children, let's assume for no financial motive, think the necessary level of care is at the nursing home across the street that does accept Medicaid. The answer is usually fairly obvious to clients.

I also point out that when a gift is made, the recipient is the owner of what is gifted. This can make a difference if the gift recipient has creditor issues or faces a divorce. Or what if the recipient dies? Did he change his own Last Will? What if he has a child as his heir? Will that house be part of the child's estate under a guardianship, with no possibility of it being used for the donor's benefit as was, on a moral level, the plan when the gift was made?

I also explain that if the principal's property is gifted to several children, those children will need to agree on how the gift proceeds are later used. Even in the most agreeable families, this can create tension.

These are all very real concerns that should be considered before authorizing sweeping Medicaid planning

authority. This does not mean that a client may not be advised to sign a DPOA that conveys broad Medicaid planning authority. Indeed, including such a power is usually the very strong wish of most clients. But having a discussion about the implications is, I think, the best way to serve our clients.

Medicaid and Testamentary Special Needs Trust Drafting

To introduce the issue of Medicaid and testamentary special needs trust drafting, consider Ann, the surviving spouse of Harry. Ann, since before her husband Harry's death, has resided in a nursing home on the Medicaid program. Unlike John, Harry and Ann have long wanted to preserve the maximum amount of their estate for their children even if that means turning to a government welfare program such as Medicaid which, in their view, they have supported over the years with their taxes.

Harry has an "I love you" Last Will which leaves his entire estate, consisting of the \$200,000 family home and \$10,000 of other assets, outright to Ann. This inheritance will impact Ann's Medicaid status in two ways. First, it will make her ineligible for Medicaid until spent down. Second, anything in Ann's estate at her death will be subject to Medicaid estate recovery.

Instead, Harry and Ann could have engaged in some relatively simple planning, involving a transfer of assets to Harry as his separate property and a new Last Will for Harry, containing a special needs trust for Ann. Under present rules and practice, this would have allowed Ann to retain her eligibility for Medicaid and preserved assets to be used, during Ann's lifetime, to supplement the Medicaid assistance she was receiving and to then pass at her death free of an estate recovery claim from Medicaid.

This is just one example of when a special needs trust can make a lot of planning sense. The other most common example involves parents who want to provide for a child with a disability.

A "special" or "supplemental" needs trust is a trust designed to hold title to property for the benefit of an individual who is elderly or has a disability. Such a trust can be used to supplement government benefits, such as Medicaid or Supplemental Security Income (SSI), for this individual. The trust can hold cash, personal, or real property, and can be the beneficiary of life insurance proceeds. These trusts provide a way to shelter and preserve assets that would otherwise disqualify the trust beneficiary from government benefits that have a cap on available assets.

"Special needs" generally refers to items or services that can contribute to the happiness and comfort of a person with a disability when such items or services are not adequately

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being provided for by a public or private agency. These needs can include specialized medical or dental equipment, and services not covered by the Medicaid program, such as eyeglasses, transportation (including vehicle purchase and maintenance), education, recreation, and travel.

A special needs trust can be established with the disabled person's own assets or by a third party for the benefit of a person with a disability. A special needs trust can be an *inter vivos* trust or a trust established through a will or other testamentary (at death) disposition.

The requirements for a special needs trust vary substantially depending upon whether the trustor is a third-party or the trust beneficiary and recipient of government benefits. For instance, if a trust is funded with the assets belonging to the beneficiary, there is a requirement that Medicaid be paid back at the beneficiary's death, the end of his or her disability or the termination of the trust. WAC 388-561-0100.

While there is no one definitive source for what constitutes a testamentary special needs trust, the best guidance about drafting a third-party special needs trust can be found in the Program Operating Manual System ("POMS") which is the manual Social Security workers use when administering SSI. For the most part, Medicaid's rules follow SSI. This manual can be found at <https://secure.ssa.gov/apps10/poms.nsf/aboutpoms>. The most on-point POMS is SI 01120.200.

Generally, though, there are only a few essential requirements for a third-party, testamentary special needs trust. First, the trust **must be discretionary**. This means that the *trustee*, not the beneficiary, has the sole discretion as to disbursements. Second, there needs to be an **independent trustee**. The person with the disability cannot serve as the trustee. Third, the trust must **not be a general health support and maintenance trust**. If the trust mandates that the trustee provide health, support, maintenance, and education of the beneficiary without qualification, the trust would be an available asset in determining eligibility for government benefits. Fourth and last, a third-party special needs trust should mandate that there be **no control by the beneficiary**. For example, the beneficiary should not have the power to remove or nominate the trustee, terminate the trust, or control distributions of income or principal. The beneficiary should not have the power to assign, anticipate, or otherwise convey the right to future payments. Including a "spendthrift" clause, by name, is advised since Social Security's POMS instruct their workers to look for such a provision.

For spouses, there is likely an additional requirement, as WAC 388-561-0100 can be read as only exempting a trust established by one spouse for the other if established

in the spouse's Last Will and not in his or her revocable living trust.

While some special needs trusts are drafted to absolutely prohibit the trustee from making distributions that could impact benefits in any way, under current law and practice such strict language is not necessary. Indeed, it may be preferable to give the trustee discretion to determine if a distribution from the trust is appropriate even if it will reduce government benefits temporarily. It is also possible that it will be in the best interest of the beneficiary to forego government benefits at some time and have the trust replace the government benefits.

To allow that flexibility, a special needs trust could include the following language:

The express purpose of the Trust is to provide for the beneficiary's special needs resulting from her disabilities. This can include assistance with care, support, education, and activities that is over and beyond and supplements other benefits which would ordinarily be received by or are being or will be received by the beneficiary. The trustee shall have the sole discretion to determine what disbursements shall be made for the beneficiary's benefit and in her best interest, and this trust shall not be considered a general support trust. No disbursement shall be made for the beneficiary that would permanently jeopardize eligibility for, or inappropriately limit the type of assistance available to her, if she is receiving or intends to apply for local, state, or federal benefit programs.

When counseling estate planning clients, it is important to ask whether any beneficiary is disabled or might be utilizing public benefits. Failing to ask this question could have a significant impact on a beneficiary if a special needs trust may have been the appropriate way to plan for that person.

Next, it is important to consider what specific benefits the beneficiary may be receiving or might receive in the future. Some benefits, such as Social Security Disability and Medicare, are not means-tested benefits. In some cases, it may be quite easy to take the entire discussion of a special needs trust off the table because of the type of benefits the potential beneficiary is now receiving or may in the future receive.

Assuming, though, that the likelihood of the beneficiary needing needs-based benefits is there, then the third-party may consider whether disinheriting a disabled beneficiary, in favor of another beneficiary who would have the moral obligation to use the funds to support the disabled beneficiary, might make sense.

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This article is reprinted with permission of the Washington State Jewish Historical Society, author Richard Hobbs, and attorney Elizabeth Asher. A shorter version appeared in the Oct. 14, 2008, edition of NIZKOR, the quarterly newsletter of WSJHS.

A Life in a Box: An Archivist's Perspective on Heinz Schwarz

By Richard Hobbs, Archivist/Historian

Archivists lead rather peculiar lives. Mine, at least, has odd moments. Amid the clutter of e-mails, CDs, hard drives, software, iPods, and digital inspirations, even the most up-to-date archivist also deals with paper records in a storage box of one size or another.

Heinz Schwarz arrived in my life in a box. On the surface, this was not peculiar. But, as I began to learn about the man whose possessions were now confined to one cubic foot, it got me thinking about some of the intersections of life and an archivist's life, about life in a box.

As the person who frequents the lone desk for the Archives of the Washington State Jewish Historical Society, which are housed at the University of Washington, I received a phone call recently that brought Heinz Schwarz into my life. The caller was Elizabeth Asher, a Seattle attorney who at one time had Schwarz as a client. She said she

had a box of old letters and photographs, and she wondered if I would want them for the Jewish Archives.

A week later, I went to Asher's office to review the box. I began to learn about Schwarz and the box that represented the remains of his life, in fact, his entire family. Heinz Schwarz died on January 24, 2005, at age 78. He had been a bookkeeper, and by temperament he was quiet and unassuming. Archivists learn not to make snap judgments about records and people, about what is important and what is not. This was a case in point.

Schwarz had no living family members. His substantial estate, settled in a landmark probate case, had been divided among several local Jewish community organizations. Most of his personal effects had gone to the Washington State

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This approach, of course, would be considered only when there is total and absolute confidence that the non-disabled child will do the right thing by the disabled beneficiary. However, even with a totally trustworthy child, there are still significant risks that the third-party making this decision should consider, not the least of which is what if the holder of the assets dies or faces an unexpected creditor.

There are special considerations when counseling married couples about special needs trusts. Often, both spouses may want to leave his or her share of their estate to a special needs trust for the survivor. In that case, it is very important that the clients understand that the surviving spouse will not have control over all of what had been their community estate. This could well mean that the surviving spouse may only own half of what had been their residence. The other half could be in the special needs trust and control over it exercised by a trustee. As explained above in the discussion about durable powers of attorney and Medicaid planning, this loss of control, and potential loss of independence, is something clients need to carefully consider.

All in all, though, a special needs trust will often make a great deal of sense to include in a person's estate plan when there is a likelihood that the beneficiary might be relying on public benefits.

Conclusion

While the future of Medicaid as a payer of quality care is far from assured, and should in no way be counted on, the program is presently a huge payer of long-term care. Many of our clients care about planning for Medicaid. When it comes to the intersection of Medicaid and estate planning, Medicaid issues should be considered when drafting durable powers of attorney and, with testamentary planning, by considering whether a special needs trust is appropriate for a beneficiary who has a disability. At the same time, it is important for us to counsel our clients about the drawbacks and risks associated with Medicaid planning so the planning our clients undertake is sound and reflects their informed wishes.

¹ Jacob H. Menashe is a graduate of University of California Hastings College of the Law and Stanford University. Jacob and his partner, William S. Hickman, opened their practice, Hickman Menashe, P.S., in January 2005. Before that, Jacob worked for Isenhour Bleck P.L.L.C., Senator Ron Wyden, and Evergreen and Columbia Legal Services. His practice emphasizes estate and long-term care planning, special needs trusts, probate and guardianship. Jacob is a past chair of the Elder Law Section of the Washington State Bar.

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Holocaust Education Resource Center. This lone box and a handful of other items remained unclaimed. The executor of the estate had contacted Schwarz's known friends regarding the last unclaimed things, but with no responses after two months he was planning to dispose of them.



Heinz Schwarz 1939

The items, including the box of letters and photos, might have landed at Goodwill or a dumpster, except for Elizabeth Asher. "I thought someone needed to go through them before they were thrown out," she said in a recent interview. "I thought that we, Heinz's friends at Temple Beth Am, should make the determination. I never felt like they were mine. I am the vessel that took them to the Temple." Asher contacted Steve Adler, chair of the Society's Oral History Commit-

tee, who referred her to the Archives.

"I felt so strongly that I did not want those things to go to the winds," emphasized Elizabeth Asher. "In Jewish culture, memory of those who have gone before is accomplished through family. It is very significant that the memory of these people be preserved, generation to generation. Heinz had no family; we became his family, the overseers of his legacy."

As I sat in Asher's office, I felt the gravity of this box and its survival. I was holding the documentary remnants of Heinz Schwarz and his 78 years in my hands. It quickly became clear that I was looking at more than some old correspondence and family pictures. It was a window on a man's life, and on an extraordinary time in world history. The window offered visions of a beautiful child, an adoring family, a whole way of life in a time never to return. It also offered a glimpse of one of the darkest, most horrific periods in human history.

The box contained photos of Schwarz as a baby, as a young man, and as an adult. There were images of his father and mother, and of village life in Weimar Germany. There was a school book from Heinz's youth and several dozen letters, most in German, written between 1939 and the 1950s. About twenty or so letters were dated 1939 to 1941. Some of this group had black-out areas from the Nazi

censors, and several envelopes bore the infamous Nazi swastika. The mailing address of the letters spoke volumes – Shanghai, China.

Heinz Martin Schwarz was born in May 1927 in Berlin, Germany. He was the only child of Jewish parents, Walter and Elizabeth (Else) Schwarz, who themselves were only children in their families. In 1930 they moved to Gryfino (Greifenhagen in German), a small town near Szczecin on the Oder River in northwest Poland. Heinz came into this world on the cusp of the Nazi era. He was six years old when Adolf Hitler rose to power, and he was 12 at the time the Nazis launched their bid to establish the Third Reich by attacking Poland, precipitating World War II.



Heinz Schwarz ca. 1980

The Schwarz family managed to flee the Nazis in 1939, leaving behind most of their possessions, as well as relatives, including Else's 75-year old mother, "all of whom eventually became victims of the Holocaust," Heinz later wrote in his mother's obituary. Walter, Else, and Heinz Schwarz became part of a small wave of fortunate Jews who escaped the Holocaust. During World War II, there seemed no hope for European Jews running from the Nazi terror.

But, Shanghai offered hope. It had been the destination of earlier waves of Jewish emigrants between 1843 and 1937, when many fled bitter anti-Semitism and pogroms in Europe. In the late 1930s, when other potential havens for Jewish refugees were closing their doors, Shanghai had no entry requirements and was known as the freest city in the world. Heinz Schwarz and his parents, and some 20,000 other German and Austrian Jews, escaped certain death and found survival in Shanghai.

By the end of WWII, Shanghai was home to approximately 24,000 Jews. Afterward, with the founding of Israel in May 1948, then the founding of Communist China in 1949, many Jews emigrated to Israel, the United States, and other countries.

By 1948, the Schwarz family had made their way to Seattle. Heinz became, in the words of Elizabeth Asher, "the

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How Senior Lawyers Can Help: Washington Attorneys Assisting Community Organizations

By Ann Merryfield, WAACO Program Manager

Washington's senior business and transactional attorneys have skills and expertise that may be especially useful to the many nonprofit and community organizations throughout the state. Nonprofit organizations provide crucial services for the neediest of our citizens, and improve our communities so that we can all enjoy a healthy and diverse society. They are often run on a shoestring by dedicated volunteers deeply committed to the organization's charitable mission, but without experience with or knowledge of the corporate, intellectual property, tax, real estate, contract, employment, and other legal issues that, like all businesses, their organizations face. Senior attorneys can proactively help them stay on track legally, so that the organizations can focus their efforts on meeting their mission rather than taking care of problems that could have been avoided.

Since 2004, Washington Attorneys Assisting Community Organizations (WAACO) has provided the vital link between nonprofits that need legal assistance but cannot afford it, and generous Washington business and transactional lawyers who are eager to donate their time and expertise to strengthen the capacity of these nonprofits and

the communities they serve. Nonprofits are now especially feeling the downturn in the economy, and, more than ever, are seeking sound legal advice that can help them keep their doors open and their programs active.

Since WAACO was launched in 2004, 234 attorneys have volunteered for our pro bono panel. These volunteer lawyers have reported donating over 3,000 hours assisting more than 160 nonprofit organizations in more than 190 distinct business legal matters. The volunteer attorneys' time, experience, and compassionate professionalism have brought welcome results to the nonprofits they have served. Our business lawyers have, for example:

- Advised an organization that provides emergency shelter and services to homeless youth on corporate restructuring;
- Helped an organization that works to expand cancer screening into underserved communities to incorporate and successfully apply for 501(c)(3) status;

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protector of his parents," as well as the main provider for the family. Heinz was younger and better able to adapt to the strange, new American culture and English language. He arrived with some experience working with numbers (in Shanghai, he had been a clerk in a British bank). He was, says Asher, "very bright and curious, very attuned to detail." In Seattle, Heinz gradually got better jobs, finished a bachelor's degree by correspondence and passed the CPA exam.

In the ensuing decades, Heinz Schwarz's life was, by some outward measures, rather unremarkable. His father died in 1953 and his mother died at age 89 in 1984. Heinz worked, attended synagogue, and lived a good, quiet life. He lived modestly, disliked spending money, and the wealth he had accumulated passed to the community. And, he left us a box. Many parts of his life are not recorded in the box, however.

"Heinz had a wry sense of humor," says Elizabeth Asher, "and his blue eyes crackled when he laughed." She describes him as a "ferocious Scrabble player—despite the fact that English was his second language." Late in life, Heinz Schwarz began to move into a wider circle. He became active with other seniors at the Northeast Jewish

Community Center. He loved to play ping pong. "He was coming out of his shyness," says Asher.

On the one hand, the box holds such a meager assembly of personal treasures. On the other, it represents a wealth of symbols, information, and history—not just one man's history, or one ethnic group's history, but our collective history, yours and mine.

I realized that the box also offered me some wisdom: we humans experience the worst from our brethren, yet we survive, and in our survival we offer hope to others. I thought of concentration camp survivor Victor Frankel, who in his 1946 classic, *Man's Search For Meaning*, wrote, "'Man is capable of changing the world for the better if possible, and of changing himself for the better if necessary.'"

I began to wonder, what will my box hold, when that is all that is left behind of my years here? (I am fortunate to have a family and children, but, they also are part of my "box.") Perhaps, I mused, there is another lesson here. It's not the size of the box, not the color and shape of the box, nor even how many boxes we leave to some university and its special collection of manuscripts. It's what's inside the box.

Thank you, Heinz Schwarz.

How Senior Lawyers Can Help: Washington Attorneys Assisting Community Organizations from previous page

- Revised bylaws for an organization that advocates for arts programming in public schools;
- Helped an organization that provides entrepreneurial training to low-income youth to develop program agreements;
- Assisted an organization that provides education, treatment, and counseling around youth drug and alcohol abuse in registering a new name, and advised it on revenue-generating activities;
- Advised a food bank on changing its corporate structure;
- Drafted an employment manual for an organization that sponsors farmers markets.

WAACO welcomes the volunteer participation of experienced retired and emeritus business attorneys. For those attorneys who are no longer actively practicing and do not have malpractice insurance, WAACO coordinates coverage for the volunteer through the King County Bar Association.

WAACO receives more than 200 inquiries per year from organizations seeking pro bono legal assistance. WAACO carefully screens each applicant to assure that each organization referred to the pro bono panel (1) is, or is trying to become, a tax-exempt nonprofit organization, (2) has a non-litigation related matter, and (3) is unable to pay for legal services without significant impairment of program resources.

WAACO also works hard to assure that its volunteer panel is up-to-date on issues that uniquely affect nonprofit organizations. It sponsors an annual CLE on the "Nuts and Bolts of Representing Nonprofit Organizations." This half-day seminar – held this year on April 9 – walks participants through the process of incorporating as a nonprofit organization in Washington state and applying for 501(c)(3) status with the IRS, and provides an overview on nonprofit compliance issues. The WSBA recorded WAACO's 2008 Nuts and Bolts CLE, and a DVD recording is available to

those attorneys who will represent nonprofits pro bono. WAACO has also launched a series of lunchtime issue-specific CLEs. In the last year, the topics covered lobbying and political activities for nonprofits, the new IRS Form 990, and ethical issues in representing nonprofits. WAACO has just launched new website – www.waaco.org – with up-to-date information on these educational seminars and other resources concerning nonprofit legal issues.

WAACO has been exploring the possibility of adding small, for-profit businesses in underserved areas to the list of pro bono clients we refer. In addition to serving communities that traditionally do not have access to legal services, WAACO believes a microenterprise project will allow us to involve a broader array of business attorneys in our pro bono efforts and provide much-needed legal services to low-income, small business owners. WAACO has been working with a local microenterprise development organization to begin referring, as a pilot project, a limited number of these matters in 2009.

WAACO is a 501(c)(3) organization that relies on donations from the legal and business community. It is grateful for the financial support the WSBA Business Law Section has provided since its founding. It has also received support from the Real Property, Probate and Trust Section of the WSBA, The Seattle Foundation, from the law firms of Davis Wright Tremaine, the DLA Piper Foundation, Foster Pepper, Garvey Shubert Barer, Perkins Coie, Riddell Williams, Stoel Rives, K&L Gates, Stokes Lawrence, the Dorsey & Whitney Foundation, from the Clark Nuber accounting firm, and from numerous individual donors and WAACO board members.

If you would like to receive notices of WAACO pro bono opportunities or notices of our CLEs, or if you have any questions regarding how you can participate, please contact Ann Merryfield, the program manager, at 1-866-288-9695 or at contact@waaco.org. Donations can be sent to WAACO at P.O. Box 2134, Seattle, WA 98111-2134, or through the WAACO website at www.waaco.org.

This article, reprinted with permission, is an excerpt from *Connecting Generations: The Sourcebook*, by Claire Raines (<http://www.generationsatwork.com/articles/millennials.htm>). You may already have millennials in your law office (as peers or underlings), or in your personal life (as your grandchildren – or children). Read up, for they respond to a different drummer. Part I appeared in the Spring 2008 issue of *Life Begins*; Part II appears below.

Managing Millennials - Part II

By Claire Raines

The Digital Divide

Federal reports show that Millennials are healthier and more economically secure than any earlier generation. They are personally conservative about issues like drinking and driving. Reading scores have improved. The rate of high-school graduates who go on to receive a college degree is at an all-time high. There's lots of good news about this newest generation of employees.

There's also one distinct area of great concern. It's called the digital divide. Never has the gap between the have's and the have-not's been so great. There is a whole group of Millennials coming of age separate from the experience we've discussed so far in this chapter.

Sixteen percent grew up—or are currently growing up—in poverty. Although every generation has members who grew up poor, never have the differences been so dramatic. The schism is about technology. While demographers debate just how influential digital technology has been on the Millennial personality, no one doubts its profound impact. It is certainly the great unifier of Millennials from places as diverse as Geneva, Japan, and Jersey. More than any other factor, it has united the generation, even globally.

Yet there's a group of young people who grew up—and are growing up—without access to a computer—at home, at school, or in the community. As responsible businesspeople, we need to reach out to those who grew up or are growing up beyond the divide. Companies like Microsoft who have donated literally millions of dollars to community programs that make computers available to low-income children are leading the way. Internships, mentoring, and training programs make a big difference. In the true spirit of diversity, forward-thinking companies will reach out to young new employees who've grown up without the benefit of the best our society has to offer—but who want to create challenging, satisfying, meaningful work lives for themselves.

Six Principles of Millennial Management

So how do you translate what you've read so far into your day-to-day life on the job? What do today's young employees want? If we're designing recruiting programs and management systems based on their values and needs, how do we proceed? What kind of work environments attract, retain, and motivate Millennial coworkers?

Here are their six most frequent requests:

1. **You be the leader.** This generation has grown up with structure and supervision, with parents who were role models. The "You be the parent" TV commercials are right on. Millennials are looking for leaders with honesty and integrity. It's not that they don't want to be leaders themselves, they'd just like some great role models first.
2. **Challenge me.** Millennials want learning opportunities. They want to be assigned to projects they can learn from. A recent Randstad employee survey found that "trying new things" was the most popular item. They're looking for growth, development, a career path.
3. **Let me work with friends.** Millennials say they want to work with people they *click* with. They like being friends with coworkers. Employers who provide for the social aspects of work will find those efforts well rewarded by this newest cohort. Some companies are even interviewing and hiring groups of friends.
4. **Let's have fun.** A little humor, a bit of silliness, even a little irreverence will make your work environment more attractive.
5. **Respect me.** "Treat our ideas respectfully," they ask, "even though we haven't been around a long time."
6. **Be flexible.** The busiest generation ever isn't going to give up its activities just because of jobs. A rigid schedule is a sure-fire way to lose your Millennial employees.

The Workplace of Tomorrow

For years, we've given lip service to *internal customer service*. It means treating employees the way we do customers. But, as far as I can tell, in most companies the idea really hasn't been put into practice. The Millennial workforce will cause us to make internal customer service a way of doing business.

"Well, maybe," you're saying. "But what if the economy takes a nose dive—or another nose dive? Then these young people won't be able to be quite so demanding, will they? It'll be a seller's market. We won't have to bend over backwards to cater to them."

I'm afraid bending over backwards is just what we're going to have to do, although I think it will be a lot more fun and rewarding than it might seem. You see, we're going to need Millennial workers **desperately** over the next

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decade—even if the economy doesn't take wings. It's those dang Baby Boomers who are causing the problems. The average age for a nurse is 47. That means she—or he—will be moving on before long. Half of all certified school teachers plan to retire within five years. Sixty percent of all federal workers are Baby Boomers who say they're on the edge of retirement. There's no getting around it. We're going to need those Millennials.

So back to the *internal customer service* idea. It's time to think of our businesses like we would a small retail venture. Just as we would consider customers, we need to consider employees. We need to ask ourselves:

- Where do our employees tend to come from and where can we get more like them?
- How can we attract them?
- What kind of experience and environment are they looking for?
- Once we've got them here, how can we keep them coming back?
- What kind of perks can we offer that will have them stick with us?
- How can we reward the most loyal of them?

Getting Ready for the Millennials

Be Prepared for...

- high expectations
- possible involvement of parents

Don't...

- expect them to pay their dues
- throw a wet blanket on their enthusiasm

Do...

- encourage them
- mentor them
- learn from them

The Handbasket Theory

"Kids. I don't know what's wrong with these kids today."

—from *Bye Bye Birdie*

As I write this, the majority of Millennials are still kids. And, despite the facts, they're getting a bad rap. You're familiar with the handbasket theory. It's as old as time. It says, "Kids just ain't no good these days." It says, "Today's kids are going to hell in a handbasket."

Ask around. You'll see what I mean. Some people will tell you that today's kids are rude. That they're not learning anything in school. That they have no respect. Frankly, I think those statements say more about the people saying them than they do about kids today. Sure, there are some bad ones, but close examination shows they're a pretty good lot.

Let's take four of the most common myths about Millennials and look at the reality: *continued on next page*

Information for Your Clients

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Managing Millennials - Part II from previous page

Myth	Reality
1. Today's kids are violent.	In the last two decades, the volume of serious teen violent crime declined dramatically.
2. Teen pregnancy is up.	Teen pregnancy is falling at the fastest rate ever recorded.
3. Kids' use of drugs is up.	According to Mike Males, author of <i>Framing Youth</i> (Common Courage Press, 1999), "every reliable measure shows that compared to adults, modern adolescents use milder drugs. Teens take drugs in lower quantities. Teens use drugs less frequently. Teens use drugs in less risky settings. Teens are less likely to mix drugs with each other and with alcohol. Teens are particularly unlikely to drive after using alcohol or drugs."
4. They're like X squared.	This doesn't say much for Gen-Xers, who, in fact, have made tremendous contributions to the success of organizations in all industries in the last two decades. But Millennials as a generation have more in common with Baby Boomers and members of the WWII Generation than they do with Generation Xers.

"In the real world, young people behave better than any generation in decades."

*—Mike Males, "Ignore Fear Mongers; the Kids are Okay"
San Jose Mercury News, April 29, 2002*

Three Cool Ideas for Managing Millennials

1. Design office space so that Millennials are set up physically to share ideas.
2. Consider assigning projects to groups of employees who are evaluated as a group for reaching a goal.
3. Set up a reverse mentoring program. Companies from Procter and Gamble to Siemens have set up tutoring for middle-aged executives. Young newcomers help

the executives navigate the Net. Jack Welch of General Electric fame says that "e-business knowledge is usually inversely proportional to age and rank." GE matched 1,000 managers and 1,000 young employees. Even though the younger cohorts had just joined the firm, they tended to understand new technologies better than GE's finest.

Millennials at Work

Liabilities

- distaste for menial work
- lack of skills for dealing with difficult people
- impatience
- lack of experience
- confidence

Assets

- multitasking
- goal orientation
- positive attitude
- technical savvy
- collaboration

continued on next page

Managing Millennials - Part II from previous page

Millennials: What They Want from a Job

- to work with positive people
- to be challenged
- to be treated respectfully
- to learn new knowledge and skills
- to work in friendly environments
- to have flexible schedules
- to be paid well

Where Employers Go Wrong with Millennials:

- not meeting their high expectations
- discounting their ideas for lack of experience
- allowing negativity
- feeling threatened by their technical knowhow

Millennial Learning Preferences

- teamwork
- technology
- structure
- entertainment and excitement
- experiential activities

Millennial Communication Preferences

- positive
- respectful
- respectable
- motivational
- electronic
- goal-focused

“A 60-something graduate recently reflected: ‘We wanted what they want. We just felt we couldn’t ask.’ Herein lies the truth: what young workers want isn’t so different from what everyone else wants. However, young workers are asking for it.”

*—Karen Cates and Kimia Rahimi, “Mastering People Management”
Financial Times, November 19, 2001*

Q&A

Dear Claire,

I always have to tell my teenage and twenty-something employees to do a task – they don’t take the initiative to get the work done. They just don’t seem to have the work ethic that my older workers do. What’s the secret to motivating them?

Eric

Dear Eric,

This is a challenge that lots of managers and supervisors face. The work ethic of older generations was different. Typically, the oldest generation was intrinsically motivated—they worked for work’s sake, and considered it an honor just to have a job. Baby Boomers characteristically have worked hard because their self-image was based on their careers. Teenagers and twenty-something employees often have a different work ethic. Most are in the *no fear* category—not motivated by threats of punishment or firing.

The key is to get to know each as an individual: find out what is important to him or her, why they’re working, what they want to get out of their jobs. Get them to teach you how to motivate them. Then ask them to do the task and sell them on the benefit to them of doing that task. It may also help to set goals with each of them for the next 60 days or so, with a reward at the end, so that when you assign tasks, they can see where accomplishing that task will take them.

I know it sounds complicated, but it’s all based on getting to know each person as an individual, something I’ll bet you’re already good at.

For information about speeches & workshops on generations and leadership, call Tammy Hughes at 940-692-1664 or email DTHMagic@aol.com.

WSBA Senior Lawyer Phil DeTurk is on a 114-day cruise.

Ce voyageur serieuse has posted beaucoup jottings on his travels.

With his permission, Life Begins will publish them.

Due to their quantity, they will appear over a few issues of Life Begins.

The Stateroom

By Phil DeTurk (5/29/09)

On January 19, 2009, I boarded the Rotterdam in San Pedro, California. I was taken to room 1846, which for the next 114 days would be my new home. Since I spent more time there than anywhere on the cruise, I would like to describe it to you.

First of all, let me tell you what it was not. There are basically six different types of rooms on the ship. Mine was not an interior room; these are about the same size as the exterior ones but have no views. It was not on the third deck. These rooms have serious obstructions with tenders (the life rafts holding over 100 people) and people doing their walking as well as infrastructure for both, blocking the eyesight.

Nor was it one on the sixth deck. Once again the rooms are about the same size as mine but they also have verandahs (about 4 x 8 feet) as well as refrigerators.

It was not a suite. Most were on the 7th deck, and a few had more than one room with all the amenities.

Room with a View

My room had one king-size bed. Since I was on a single's supplement, the room featured twin beds pushed together with hardly a crease between them. It had a firm mattress. It also took about 40% of the space. There was a table, a hard chair, and a long sofa which could be made into another bed.

There were four closets with drawers and hanging space. A small bathroom with a tub and shower as well as a sink and toilet completed the space. I had a large window from which to view the islands and other activities taking place on the port side of the ship – mostly it was just the ocean, seething at times, gentle at others.

There was plenty of space for all my clothes (four suitcases' worth since two were shipped directly from North Carolina as part of my fare), shoes, and other supplies. While there was a no liquor in the rooms policy, I soon found it was not enforced, so when I would buy a bottle of a duty-free on the trip for future cocktail parties, I had ample room for the booze and mixers. Six could fit into the space for those soirees of which there were not too many.

I had no complaint about the room. It was cleaned daily by two stewards. At night they would turn my bed down and leave a chocolate on my pillow, including news about the time for the next day. Due to the international date line, we had at least 24 such changes, mostly "move clock

backward one hour." In both Australia and India, there were occasions when it was only one-half hour.

Cricket, Soccer, Rugby

There were three elevator banks of four each on the ship which was designed for 1300 passengers (and a crew of about 800). At no time did we have more than 1,000 tourists on board. An elevator was within 50 feet of my room. I could go to the deck 8 pm for a leisurely hot tub.

Laundry was done by the ship for an additional charge, as was my pressing. Shoes were shined free. Meals – I only partook of four breakfasts en route – were served in the stateroom at the passenger's request. I had a small television set which showed not only shipboard activities but also CNN, ESPN, and TCM. My one serious complaint was that we did not get the international channels for long periods of time. ESPN was probably available only about 40 days and then the events were cricket, soccer, and even rugby. The limited number of days was due to satellite interference, we were told. The Super Bowl was available, but no basketball championships or baseball.

Since the meals were excellent with never the same menu and eight choices of entrees, I had no complaint about the ship. It was a wonderful companion.

Into the Out(back)

By Phil DeTurk (5/31/09)

Ever since I visited Australia for my first and only time in 1974, I had wanted to see more of the country than just cursory visits to Sydney, Canberra, Melbourne and Cairns (the Great Barrier Reef). This had been an airplane trip, so we spent considerable time waiting for flights.

I had also read and enjoyed Nevil Shute's A TOWN LIKE ALICE, which fed my desire to see the outback. Another book of note was THE FATAL SHORE – mostly about the Sydney area but with chapters concerning Perth, as well as the fights with the Aborigines in the 1800s.

So when I learned that a shore excursion would be available to the Outback, I signed up. Generally there are numerous such trips at each port. Most last anywhere from four to eight hours. Very few are overnight due to the location of the ship vis-a-vis where the trip will emanate and end. Thus there was one that began in Durban consisting of a three-day trip to Zimbabwe to see the Victorian Falls and ended in Capetown.

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The excursion which I decided to join started in Adelaide. We visited the city, parks, and several wineries outside of Adelaide. This is a beautiful city located almost ten miles from the dock. It had a wonderful Aborigine museum. I learned that while these natives to Australia liked to go on treks, they pretty well stayed within a given area; otherwise if they crossed into the confines of another tribe, there would be serious fighting. There was a map detailing all of the tribes and their migratory areas in Australia which were mostly honored by the other tribes.

The winery of choice had six delightful vintages. We ate lunch there in an area about 20 miles from Adelaide. That evening we went to our hotel, a Hilton, where we had large rooms. Although it was a Sunday, grocery stores sold bottled beverages. I had purchased a Jack Daniels to share with others in a brief cocktail hour overlooking a wonderful park with green grass (such was not true of all areas of this city as it was the end of their summer in February).

Australian Salute

If you examine a map of Australia, you will see that Alice Springs is almost dead center. It is south of Darwin by hundreds of miles; north of Melbourne by almost the same. Now a road connects these areas but in Shute's time they were reached only by small airplanes; the outback was a succession of distant ranches reached with difficulty. The recent movie AUSTRALIA showed some of the ranch life in 1940. Its location was in the northeast of the country, closer to Darwin than we ever reached.

Our second day began with a plane flight. It took 2-1/2 hours for the 14 of us to reach Alice Springs. It was a small airport, but this largest of any interior towns now has 25,000 residents. Quite a few are Aborigines. We viewed the area from its highest hill, which had a monument dedicated to the WWI and II deceased military. We were able to see right down the main street, which ran about ten blocks.

Soon thereafter we went to town for lunch. There were two or three streets of significance branching off of the one observed from the hill. I went down one and found an imposing tavern for a beer and lunch. This may have been the most significant of such businesses – there were five – since it housed a place for a radio disc jockey who played music all night.

When I advised a native of Sydney that I was going to Alice Springs, he asked me if I knew the Australian Salute. He showed me by raising his right hand to his brow and then moving it back and forth in front of his face. I soon learned why. There were countless flies in the outback; they were even worse the next day at Ayer's Rock (Uluru).

I took an afternoon walk from our modern motel located about two blocks outside of town across a dry river bed crossed by a full-scale bridge. I was waving flies

away all day. One place I visited was the Senior Center. It was closed on this Monday afternoon but a sign outdoors advised that bridge was played there on Thursdays and Saturdays. I also stopped at a different tavern (hard liquor was also served at such places), where I saw an Aborigine enjoying himself with white companions.

Generally this was not so. This indigenous people lounge around the parks in the shade. The women may be doing artwork, the men seemingly nothing. It is not that there are no jobs; they are subsidized by the government. They have no desire to wait tables, clean hotel rooms, or do menial work. (They were not employed as salespeople in the stores.)

Ships of the Desert

We ate dinner in a delightful atmosphere at our motel. Other visitors were also there, some probably stopping on their trip from one end of the N-S road to the other.

An early wakeup call assured us that we would be able to drive to Ayres Rock and several other rock configurations in the same general area. It is over 140 miles from Alice Springs. En route we made a stop at a camel farm. There were several available for short trips. The cafe had food and beverages as well as souvenirs. I watched the camels while learning that after WWII ended, over 500,000 of them were released to make their own way in the outback. During the entire trip I saw no wild camels, no wallabies, no bears, foxes, or any wildlife other than a few birds.

This country is quite desolate. The desert does have small trees, a type of evergreen that grows to over 10 feet, and other bushes meaning that it is not just sand as in the Namib desert. In a way AS reminded me of Ellensburg, WA, in the 50s before I-90 went through it: Not truly desert, but a place near no other (Ellensburg did not have 25,000 people then if it does now).

By early afternoon we came to the famous monolith that is called Uluru by the Aborigines. I will continue this narration later this week.

The Outback and Perth

By Phil DeTurk (6/1/09)

A few statistics before I finish Uluru and Perth. I checked in the diary which I kept for the trip in a book provided by the Rotterdam staff. The name of the first tavern was Bojangles Saloon, the dry river was the Todd, and the second tavern was appropriately, the Todd Tavern.

Alice Springs is the second largest city in the Northern Territory. Of its 27,481 residents, 17% are Aborigines, or the

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people who do little work. There are 517,000 of them in Australia. They are basically a very black people with small pinched type faces. There are no negroid features since they apparently did not come from Africa. The men are usually quite thin. The children seemed to be school-going and were associating with white companions. (This is a PhDisim not based on scientific studies or museum readings.)

It is 2,834 miles between Adelaide and Darwin. Alice Springs is truly in the middle – about a tough two-day trip from either city. There has been railroad service since 2004.

Uluru is a shrine for the native people. Climbing it is not forbidden but visitors are requested not to do so. It is a sandstone monolith but only 1,142 feet tall; 5.8 miles in circumference. It is red and the color seems to change as the hours dwindle. Mt. Olga is 16 miles away and is another picturesque formation. Mt. Conner completes the trio and from a distance as we drove westward from Alice, looked very much like the target rock. Uluru-Kata Tjuta National Park was the name of the area servicing the first two of the rocks. It cost \$25 per person to enter but that was prepaid in our package. There was no charge for the flies. Some of the time, especially in the evening, we wore nets over our faces which limited viewing but kept the insects at bay.

Striations

We had another beautiful motel with swimming pool. As it was on Tuesday in Alice Springs, the temp was around 90, but it was a dry heat which only the flies could love. We went to both Uluru and Olga on the first day after checking into our rooms and resting for a few hours. This enabled us to enjoy the sunset with the varied hues the rock manifested. Numerous tourists were at the scene having what would be called if we were in Africa, a Sundowner.

A catering service provided wines and cheese. While there may have been other viewing places, I would estimate the crowd at the one where we were located at around 300 in groups of ten or so. It was an enjoyable evening followed by a delicious buffet at a restaurant near our motel.

Early to bed and very, very early to rise. We were up at 5 AM in central Australian time in order to get to the rock. This meant an arrival as the sun rose to once again treat us to a myriad of copper toned hues. Before breakfast, we did a short trek around a portion of the rock observing it up close. There were numerous caves and other striations in the solid piece of sandstone. These revelations did not detract from the fact that Ayer's Rock is one piece, and on the many days it is observed from forty or fifty miles away across the flat desert, a true religious symbol.

How much can you write about Uluru? There was a modern museum administered but not serviced by the tribes giving its history. Gifts were available in a shop.

We took the five-mile trip back to our motel for a full breakfast. Then we went to the nearby airport for a two-hour flight to Perth. This is a great city. While it is somewhat isolated from the rest of the country – I was told natives may fly to Indonesia for specialized shopping – it seemingly has everything right there.

A Berth Outside Perth

Mainly there is a long and wide river called the Swan. This body of water runs to the Indian Ocean about 20 miles away where the city of Fremantle exists. It also winds northerly into wine country as it narrows considerably. A day on a small-water craft on the Swan would have been worth the trip with the million dollar homes facing you on both sides. The entire area is once again quite flat.

Perth has numerous museums as well as a carillon on the waterfront. Our ship was berthed, however, in Fremantle. So we spent the last day of our four in a hotel near where the ship would dock the next morning. I had a verandah which was nice to sit upon enjoying the sea breezes and a beverage of my choice. (I still had some of that bottle of Jack Daniels.)

The next morning I walked around the port city. I am guessing that it had around a 100,000 population and Perth over one million. It was the 31st day of our trip in general, so I found a barber and had my first haircut since I left North Carolina on January 10. I had a picture of the shop taken for the memory. I also took pictures of the other events, but since I am still an old-fashioned person and did not take computer types, I cannot share them with you. I suggest you pull up Uluru on your Wikipedia site for some wonderful pictures of the rock. (Also see Alice Springs and Perth.)

That last evening (the ship did not sail until 11 PM), I met Susan Moushart, who is the daughter of a golfing friend of mine. She took me to meet her teenaged children and we went out to a restaurant next to the Swan which is a local favorite. We also watched the most beautiful sunset of the trip to-date. Susan is a staff member of the country's newspaper but wants to move back to the United States. She laments the opportunities available for her young ones. For instance, the boy is very athletic and excels in water polo and rugby. An American, she married an Aussie and they are now divorced. I understand that the family is coming to the U.S. late this summer for a wedding since supposedly they share their mother's interest in the gigantic move back to her home country.

I would rate the Perth-Fremantle area as one of the three most beautiful places we visited. Unfortunately as is true in many areas I saw for one or two days, I did not have an adequate opportunity to really see it.

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Next I am going to tell you about St. Helena, which is also one of the top three. We visited this remote island without an airport but with a 5,000 population on April 28th, day 99.

St. Helena: Napoleon's Exile

By Phil DeTurk (6/3/09)

The island of St. Helena with its 162 square miles is south of the Equator and almost parallel to Sao Paulo, Brazil, in the middle of the Atlantic Ocean. It is considered one of the most isolated populated places in the world to lack an airfield. (The recent plane crash occurred north of the Equator in the same vast ocean; perhaps some remnants of that tragedy will wash ashore at St. Helena.)

My knowledge of this small island before going there was that it had served as a prison for Napoleon after he had escaped from another place (Elba?) to which the victorious British had sent him around 1815. I knew he had died there and little else. Now the rest of the story can be told.

In talking to some of the people who had taken previous world cruises, they advised that while they had been slated to visit the island twice, it never happened. The ship itself must anchor about one mile from the port of Jamestown; tenders must be used to get the passengers to shore. Most times the currents are so strong that visitors can not safely either board the tenders or disembark once to the port.

This was not to be the case on April 28, two full days after leaving Walvis Bay in Namibia (about 1,200 miles). We had a successful landing, a wonderful time on the island, and I am sure many islanders were richer due to our arrival, one of six or so cruise ships attempting a visit each year.

I watched from my window as the volcanic island drew closer early in the morning. I could see automobiles moving from the top of the island down to what I learned was Jamestown, the capital with a population of around 1,500. I noted that some of the vehicles disappeared from view about one-half way down (closer examination showed me that those drivers had an option to go directly down to the city or come in from the rear, a few miles away). It was a very winding road.

Descent by Shanksmare

The entire island's population is 4,250 with 50% of African descent, 25% European and 25% Chinese. These latter people were brought to St. Helena in the 1800s as indentured servants and used to build what later became Jacob's Ladder. I asked some islanders how many motor vehicles were on the island. "Too many" was the answer I heard thrice.

Later at the museum, the number was put at over 4,000, but then the population was also listed as 6,000.

The journey on the tender was satisfactory and the disembarkation successful, although care was taken by all of us. I had selected as my excursion a trip around the island and so boarded a large van suitable for 10 people: There was no Stop and Go bus system; actually no passenger vehicles were any larger, although trucks performed their duties as needed.

Immediately we drove back and forth ascending to the place I had seen from my stateroom over a tortuous road not seen since the Seychelles in the Indian Ocean. We stopped for a view of the ship and the town below us. The next closest island is Ascension, over 700 miles away. It is to that island the natives must go to take an airplane anywhere. However, a large ferry docks at the island every three weeks. Among other stops, it goes to Capetown.

From there we went to Napoleon's grave. This involved a 1/3 mile descent by shanksmare on a grassy roadway at 18 degrees. His bones were not there. A well-tended gravesite with a French flag was what we saw upon our arrival. His remains had been removed to Paris around 1846 and buried along the Seine.

The climb back in the pleasant sunshine was somewhat exhausting; it took me three times as long to attain the summit as it did going down. Worth it? I suppose so, as I will never be there again, but I did more or less spoil it for my trip up the Ladder (see below).

Then we visited the home called Longwood where the dictator had lived for six years. While on the top of the island, it had a limited view. It was not the kind of place you would like to have been kept a prisoner. While Bonaparte had somewhat the run of the place, there were guards. Because the British feared he might escape, they kept a full battalion on Ascension Island to answer the call if such ever became necessary. While on St. Helena, I thought that executing him as a war criminal would have been much more economical, but it was not the British way.

There was a nine-hole golf course within a mile. It was not near to any hotels or other facilities. There were small towns around the islands, some of which had bars which did not open until five.

699 Steps

Our next stop was to see the governor's mansion. It was guarded by five very large and old turtles. They had been donated by the Seychelles over one hundred years earlier. They moved slowly and would not have prevented any wrongdoing at the magnificent Georgian style home of the

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resident governor for this island, Ascension, and Tristan de Cunhna, a centralized British territory.

Later while sitting on the verandah of a run-down hotel on the main street of Jamestown, I asked a native if there was any interest in being an independent country. She answered, "We can not sustain ourselves." So Britain must maintain this out-of- the-way place over 5,000 miles away.

Before we arrived at that hotel, we came to the old fort on Mount Jacobs. This place provided ancient security for the island with its guns in place to fire on ships below. Ironically Napoleon had encountered a similar situation at Malta which he successfully conquered in the early part of the 19th century, living there for three weeks.

The Ladder ended at the fort. It is 699 steps from Jamestown. It was originally a type of railway for transporting ammunition and other supplies to the fort. The goods would be loaded in carts which would be pulled to the top by animals. There were no steps then. The Chinese built this monument to the British defense system about the time Napoleon was still alive. He did not help.

Now it is for the tourists. I don't think you will find any locals, unless they are loco, climbing these steps. Not only was it a rugged workout, the steps themselves were uneven. I went up six of them figuring that they averaged two to three inches in height over the standard step.

I only did the half dozen (for a picture) because the trek from the 'tomb' had taken its toll; 699 steps might have put me back in Capetown with my former bridge partner, the victim of the dune-buggy accident.

The town has three hotels, several other bars, and perhaps twice as many churches, mostly Anglican. The hotel at which I sat to drink my Windhoek beer offered a view over the buildings on the other side of the street, of the tourists ascending the steps, and descending, too, as there is no other way down without calling a taxi.

I think JACOB'S LADDER was one of the more unique structures I saw on the trip. It has been there for many years. Few people ever get to visit it or the island. Imagine, no air service! Ascension, which we visited two days later, is even more desolated (pop. 1,200), but it has great areas of flat terrain for a landing field.

St. Helena has mostly steep rocky sides to it with few usable beach areas. It is immensely green, living as it does on the water provided by nature. Everything else is shipped in except for some dairy products and I suppose the meat provided by the domestic animals. Crafts, a local coffee, and souvenirs provided what was available for sale.

So while Napoleon's dust is long gone, may the fierce warrior rest in peace. It was an experience I am glad we were not forced to miss due to tumultuous wave action.

What Do You Do on a Cruise When There Is Nothing to Do?

By Phil DeTurk (6/5/09)

Several people have asked me how I spent my time when the ship was not at a port – 60 days at sea actually – on this cruise.

If I had not wanted to take extensive bridge lessons and enhance my game, I would not have gone on the cruise. We had 28 tables a day divided into two groups, so that accounts for two-plus hours and more than 100 of the 600-plus travelers who were going around the world.

Here is a typical day. (I will add an * if I did not do the event at all.)

I would arise around six am or earlier on those days where we were going to have 25 hours for events. I would read in bed for an hour or so and actually read more than 15 books on the cruise, some of which I had brought with me due to my inability to concentrate on them in North Carolina, e.g., CATCH 22; PLUTARCH'S LIVES. The ship had an extensive library with many new books as well as DVDs* for those wanting them. I donated those that I finished.

Some days I would walk around the third deck four times; this was in excess of a mile. Then I would have breakfast. Many people opted for Chi Thai (or whatever the surreal movement exercise is called)* which took place around nine. Others attended the Bible Study lectures given by the Protestant minister on board.* These took place in the movie theater just before our bridge lesson at 10 AM. There were also Catholic services in the later afternoon.*

Following that card lecture, there were other choices: bingo, lectures by prominent people put on board for that purpose, lighter talks about future ports, and of course sports. On the 9th deck there was a BB court where occasionally events took place to earn 'sport dollars.' Most were stupid but well attended. Shuffle board and paddle tennis were also available.* (The paper 'dollars' were later exchangeable for nice gifts; I only had enough for a hat.)

Bridge and More Bridge

At noon a very well-organized trivia game took place. There were at least 12 teams of six people each trying to determine the name of the only dog that ever appeared in a Shakespearean play and for a bonus point, the name of the play. Yours truly yelled out (against the rules): "Spot," for Macbeth, since Lady Macbeth said "Out, out damned Spot." The answer was Crab from Two Gentlemen of Ve-

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rona. Many of the questions were equally difficult. I did not do this exercise in futility more than 20 times.

Then lunch, either a sit-down affair before one in the main dining room with different menus every day; or buffet on the Lido deck where almost anything you wanted would be available.

At two we played duplicate bridge. Others attended more lectures or casino games (the place held over 30 slot machines as well as four tables for blackjack, etc.).* More on this later. By three a formal tea took place in the Crow's Nest also on deck nine. I only went once but there were plenty of desserts as well as tea.

We finished bridge by 4:15. Other events I not only didn't attend but can't even recall the names were out there.* For sit arounds there were a number of outside decks next to one of two pools. The larger pool had a sliding roof for foul weather. A number of excellent tans were observed near the end of the cruise.* There was an exercise room on the 8th deck. I would sometimes ride a stationary bike with a wonderful view (normally of the ocean rising and falling). The room had treadmills, lifting machines, and supervised routines for those willing to pay extra.* A spa adjoined the exercise place normally for women who wanted hair work or other body improvements, including acupuncture.*

I would take a hot tub after six laps in the moderately sized pool every other day around five. Due to extensive left shoulder impairment, I was unable to do the back stroke as well as in the past.

My dinner group (one half of the tourists on board) did not meet until eight. A few days there would be cocktail hours (AAA put on five). Several small combos played for pre-dinner dancing. There was a singing pianist. The casino flourished. There were a number of Hold'em Tournaments with eight people at the table and minimum stakes.*

Live Show Nightly

Movies were shown usually at 6, 8, and 10 pm although some of them ran more than two hours necessitating a change. We were treated to all of the outstanding pictures of 2008 including *Slum Dog Millionaire* when we were in India.

I probably went to ten movies including *EASTER PARADE* on that date, *BOY IN STRIPED PAJAMAS*, *AUSTRALIA*, *QUANTUM OF SOLACE* and some others the names of which elude me.

We had a LIVE show every night. Basically the times would be 8 and 10 pm, unless it was a local show while we were in a particular port (Shanghai jugglers, Mumbai dancers, singers from South Africa). Most of the shows were of the B nature, but we did get Chita Rivera one night and had several outstanding male quartets on others.

We also had a resident song-and-dance group featuring ten young people (late 20s) who put on a new show every seven to ten days. This group came on at Singapore, the first group moving on to another cruise ship. That would also happen to the lesser shows; they would rotate from port to port: the Australian singer; the brother and sister dancing duo from a Clay Aiken touring group; the magician: they all left within days after entertaining us.

If one opted not to do a movie or a show and not go early to bed, one could go to the top deck again for partying, dancing, jazz and other events usually lasting until one.* I did go there for St. Patrick's Day and a pajama party.

There it is: life on the high seas with not a care in the world. We were pampered and well fed. Even the wheelchair patients enjoyed the many events. Dianne, a lady from Chicago of about 62, who had been in such a contraption since 17 due to polio, won a putting contest with runner-ups complaining she had an advantage being so close to the floor.

There were a few premature removals due to illness; a couple I had on a Trivia team came on board in Singapore intending to go to Capetown but left at Dubai due to the wife's sudden illness. At least two people died, their cadavers being sent somewhere later. A son of one of the women who died stayed on the cruise.

This narrative was not sponsored by any cruise line. Just a few random notes as to life abroad. If it had not been for bridge, I would have died.

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