FEATURED: Game Not Over
By Wendy C. Lascher
Learning new skills and overcoming obstacles is part of life. If you survived a plane crash when you were the pilot, would you fly again?

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IN THIS ISSUE

By Carolyn L. Rosenblatt
A good lawyer stays current with legal trends and the needs of their clients. From mediation to diminished capacity, author Carolyn Rosenblatt provides an overview of how to work effectively with aging clients.

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Adventures in the Law: Reflections on a Dog’s Reflection
By Norman Tabler
Just like Aesop’s fable of a dog losing his bone dropping it to bite on what he thinks is a larger bone in his reflection in a stream, this adventure in the law explores how a law firm with the right to attorneys fees loses it for overreaching.

Read More →

How To Video Chat Over Skype
By Jeffrey Allen and Ashley Hallene
Sometimes a phone call isn’t as personal as we’d like it to be for catching up with loved ones. With video-calling technology like Skype, it’s easier than ever for us to connect. Learn the quick ins and outs of Skype from our tech columnists.

Read More →
Financial Exploitation by Conservators: A Series of Eight Background Briefs
By Brenda K. Uekert, PhD, Kathryn Holt, Kathyrn Genthon, Erica Wood, Lori Stiegel, Dari Pogach, Pamela Teaster, Karen Roberto, Chris Grogg, Cate Boyko, and Stepheni Hubert
Little information is known on the extent or consequences of conservators (aka "guardian of property" or "guardian of the estate") being exploited. This article surveys the landscape of data on its impact and potential remedies to address it.
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SLD HAPPENINGS

SLD Opioid Resolution Adopted by ABA House of Delegates
Hard work pays off! On January 28, 2019, Resolution 108 was adopted by the ABA House of Delegates during the ABA Midyear Meeting, urging the adoption of the recommendations and action items included in the Division’s Opioid Summit Report.
Learn More →

SLD International Law Committee Call
By Aaron Schildhaus and Robert Lutz
The International Senior Lawyers Committee invites all interested SLD members to participate in our first committee conference call on February 5th at 11 AM EST.
Learn More →

Tech Tips: Things You Need to Know About Technology (nonCLE)
Presented by Jeffrey Allen and Ashley Hallene
SLD tech experts, Jeffrey Allen and Ashley Hallene, presented 30+ must-know tech tips to those attending the ABA Midyear Meeting. Didn’t make it to Vegas? Good news: the program is available to listen to on our website.
Listen Now →

Call for Nominations! John H. Pickering Award Nominations Now Open
The Senior Lawyers Division is now accepting nominations for attorneys you think deserve to be recognized for their contributions to the profession and dedication to access to justice for all. The award celebration will take place during ABA Annual Meeting in San Francisco on August 8, 2019. Nominations are due February 28, 2019.
How to Navigate Emeritus Pro Bono Practice Rules
FREE! CLE Webinar | April 15, 2019 | 1-2:30 PM ET | 1.5 General Credits
Learn how emeritus pro bono practice rules can make volunteer legal assistance easier when you have transitioned your law license to retired or inactive status.

So It’s Time: Responsible Planning for Closing the Law Office
On-Demand CLE | 1.0 General Credit
Succession planning for your law practice in the event of injury, disability, or death.

ABA Travel Excursions
The ABA offers travel opportunities to exotic locales through two trusted travel partners, AHI Travel Inc. and Go Next.

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Editor's Note: This article is adapted from a chapter in an upcoming book to be published by the Senior Lawyers Division.

My mother, who is 92 and a lawyer herself (but that's not what this story is about), would never fly in a small airplane — certainly not a single-engine plane. When my dad was alive, he cautioned about the dangers of such modes of transportation as small planes and motorcycles. I listened, so it was a surprise to me when my adventures in online dating (also not what this story is about) led me to Art Friedman's hangar at Santa Paula Airport. Our second date was a flight to the “Airport in the Sky” at Catalina Island, and our third or fourth date was my first motorcycle ride.

I do not have a motorcycle license yet, but last July I earned my private pilot's license. Flight training is full of acronyms and mnemonics, including “ABC” for in-flight engine failure. “A” is for airspeed; you should trim the elevator to pitch the airplane for the speed that will allow you to glide the farthest. “B” is for best place to land, which of course includes “off airport” sites. “C” is for checklist: several steps to see if the engine will restart, followed by several others to set up for an emergency landing if it won't. The last item on the list is, “unlatch doors just prior to touchdown.”

The training syllabus uses all capital letters to remind student pilots that “THE FIRST RESPONSIBILITY IS TO CONTROL AND FLY THE AIRPLANE TO A SAFE LANDING,” but most pilots remember the colloquial version, “fly the airplane all the way to the crash.”
Last fall, Art and I, along with his Australian Cattle dog, Zero, took off from Santa Paula on a busy Saturday morning to visit my mother. Art’s Cessna T210 could get us across the mountains to an airport near her home in about 30 minutes. When we were eight or ten minutes out, at about 4,000 feet over Sespe Creek north of the city of Fillmore, we were discussing the best spot to cross the 8,000-foot ridge when the plane’s nose suddenly dropped. I yelped, “What are you doing?” I assumed Art had leaned on the yoke, either accidentally or as a bad practical joke.

![Image of Zero](image)

Art has been a pilot for 34 years. Despite a career in motorcycle journalism that started with fifteen years as a professional motorcycle road racer, he is not a daredevil. He pitched the nose back up as he said, “the engine quit.” There hadn’t been any roughness or other warnings. Because of the noise from the still-windmilling propeller, I thought he had managed to restart the engine as we turned back toward the valley. But there was no power, and it was evident we could not glide all the way back to Santa Paula. There was a sense of urgency and alertness, but neither of us believed we were going to die. Contemplating landing on the highway, Art had me hand-pump the landing gear down.

Sespe Creek is a tributary of the Santa Clara River. The river runs east and west past Fillmore, parallels the runway at Santa Paula Airport, and joins the Pacific Ocean about twelve miles west of Santa Paula. It is dry much of the year. Bushes grow in parts of the riverbed, but other parts are just wide expanses of sand. It is one of the places I practiced simulated engine failures during my flight training; the instructor would close the throttle without warning, and I would go through the ABC procedure and line up to land — but we never did an actual power-off landing, except at the airport itself.

There were a lot of cars on the highway, so landing there would have endangered other people; we later realized that it would have been a bad choice because hard-to-spot wires crossing the road might have snagged us on the way down. Art decided it would be better to go for the riverbed. He had made a Mayday call on the Santa Paula frequency. One plane in the air with a student pilot and flight instructor said they would fly out and circle overhead as we landed. A friend listening on a handheld radio heard Art’s Mayday and alerted 911 that a plane was going to be landing in the riverbed.

We were very lucky the engine had quit when it did because there are far fewer landing options once you’re over the mountains. As we lined up to land in the sand, Art reminded me to tighten my shoulder belt and I reminded him to unlatch the doors. Then we were feeling the relief of rolling along as the plane slowed from
its 65-knot touchdown. I was thinking about the paint damage from flying sand when the nosewheel thudded against a rock. The nose gear collapsed and the weight of the engine forced the nose down. As it dug into the sand, the relief was replaced by a still-not-panicky sense of “Oh, I guess something bad is going to happen after all.” And then, as the plane somersaulted over, I had the same “game over” feeling you get when the pinball slips away between the flippers.

But the game was not over. Hanging upside-down in the shoulder harness, I realized that I was conscious and had only a slight bump on my head. Art said he was okay, though his scalp was bleeding. I had indeed remembered to unlock my door, so I figured out how its handle worked upside down, clambered out (weird to be standing on the bottom of the wing), and walked around the plane to help Art get out.

We feared the worst for Zero, who had not moved or made a sound. But when I climbed back into the overturned plane to turn off the fuel valve (we didn't quite remember everything on the emergency checklist), I felt in the back seat and found Zero trapped under a blanket that had flipped over him. He was
very much alive, uninjured, and calm until the Sheriff’s rescue helicopter arrived. We persuaded the deputies to let us take a dog in the copter and we persuaded Zero to come with us.

My phone had vanished when the plane flipped over, but I used the iPad that had been on my lap to text my kids that I was okay. Because there was no major trauma, the helicopter took us to a waiting ambulance. When the ambulance arrived at the hospital, my son and a friend held up an Olympics-gymnastics style sign reading “7:5.” It was a successful landing, but they dinged Art for the dismount.

Yes, I have flown again. The next day, in fact, and several times since — so has Art. (The T210 was totaled, but we had just bought a Cessna 172, a less complicated plane that his kids and I could fly.) However, my mother won’t fly with us still. I think she should. Inevitably, the game will be over for both of us. Meanwhile, why not have as much fun as we can?

Author

Wendy Lascher is a California certified appellate specialist who was 67 when she earned her pilot’s license. She is a partner in Ferguson Case Orr Paterson in Ventura, California. The National Transportation Safety Board is in the process of determining why the engine quit.
Aloha (greetings) from Honolulu, Hawaii!

As the Chair of the Senior Lawyers Division for the 2018-2019 bar year, I want to thank you for perusing the January 2019 edition of our Division’s *Voice of Experience* e-newsletter.

Commencing with my Chair’s column in August 2018, I’ve monthly introduced a Hawaiian word or phrase which I’ve linked to activities in our Division.

This month’s word is “hana hou,” which means “to do again, repeat, or encore.”

One of the many successful activities and events organized by the SLD is our annual trip to the U.S. Supreme Court Trip.

In my column last month, I urged you to consider participating on June 2-3, 2019, with our U.S. Supreme Court Trip in Washington, D.C. Lawyers who meet the qualifications to be newly admitted to the Bar of the Supreme Court of the United States (SCOTUS) will be sworn in during a ceremony at the Court session on Monday, June 3, 2019. To qualify for admission to the Bar of the Court, a lawyer must have been admitted to practice for at least three years before the date of application, must not have been the subject of any adverse disciplinary action within the past three years, and must be of good moral and professional character.

Last year as part of the SLD’s U.S. Supreme Court Trip package, 40 lawyers from 20 states and the District of Columbia applied for admission and paid a registration fee to participate. Many lawyers also brought a guest.

On Sunday June 10, 2018, the lawyers and guests gathered for an orientation session led by Los Angeles lawyer and former SLD Chair, Charles (Chuck) Collier. I explained my role as the movant for the admission ceremony to occur the next morning before Chuck and I discussed pending SCOTUS cases. Later, everyone networked during a splendid dinner, which was included with the SLD package.
At the hotel on Monday morning June 11, 2018, the lawyers and guests enjoyed a breakfast which was part of the SLD registration. After a short walk, we assembled in the front of the Supreme Court at 8:00 a.m. Once past a security checkpoint in the building, we were guided to a conference room exclusively reserved for our SLD group. We were personally welcomed by the Clerk of the Supreme Court who briefed us about what to expect in the courtroom.

Before the Court convened that morning, our group of lawyers and guests passed another security checkpoint to enter the courtroom without phones or cameras. The lawyers being admitted and I were directed to sit in assigned rows in the front of the courtroom behind the counsel table. SLD guests were seated toward the rear of the courtroom. (Because of limited seating in the courtroom, only one guest per admittee is permitted inside but even that is not guaranteed.)

Chief Justice John Roberts presided when the Court convened at 10:00 a.m. Three decisions were announced by Justices Elena Kagan, Samuel Alito, and Ruth Bader Ginsburg.

The admission ceremony was next on the Court’s agenda. Having been admitted in the same courtroom in 2014, I had the honor to be the movant for our group. Chief Justice Roberts called my name. While standing at the lectern facing the Justices, I moved the admission of the 40 lawyers. Each lawyer stood as I announced the lawyer’s name and state. After I confirmed that each lawyer possessed the necessary qualifications, the Chief Justice granted my motion. Other groups of lawyers were similarly admitted that morning. A few individuals were also admitted by family members who acted as their movant.

When the Court adjourned, our SLD group returned to the West Conference Room for a luncheon. After Chief Justice Roberts entered the room, he welcomed the new admittees and commented about the portraits of some of his predecessors in the room. Next, Justice Ginsburg came to the room and patiently joined us for a group photo. Then, we gathered around her as she spoke and answered our questions.

After the lunch, the new admittees and their guests toured the historic building, took photographs, and purchased souvenirs.

Everyone was responsible for their own travel arrangements. Last year, many of the lawyers and guests from outside Washington, D.C. arrived a few days before the Sunday and Monday activities. Some extended their stay past the Monday admission ceremony. While the SLD registration fee didn’t include the cost of airfare and hotel, the SLD did have group hotel rates for those who wanted to stay at the designated SLD hotel.

As members of the Bar of the Supreme Court of the United States, the new admittees received a certificate in the mail. Not only can they practice before the Court, but there is an additional perk: they have preferred admission and a special seating section (subject to availability) in the courtroom when the Court is in session.
After that well-received and memorable 2018 U.S. Supreme Court Trip, we're saying “hana hou” – we're organizing an encore event in 2019.

If you're interested in being admitted to SCOTUS, please mark your calendar for the SLD's 2019 U.S. Supreme Court Trip, which is planned for Sunday, June 2nd and Monday, June 3rd. The format for this unique opportunity will generally mirror the 2018 trip. We've again invited a Justice to meet with us in the Conference Room after the admission ceremony. And we're planning an additional networking and sightseeing activity for the lawyers and guests.

More information about the 2019 U.S. Supreme Court Trip will be in upcoming issues of our Voice of Experience e-newsletter and on our website at this link https://www.americanbar.org/groups/senior_lawyers/ or at this link https://www.americanbar.org/groups/senior_lawyers/events_cle/supreme-court-trip/

US Supreme Court Trip 2018 Admittees with Justice Ruth Bader Ginsburg

During the U.S. Supreme Court Trip organized by the Senior Lawyers Division of the American Bar Association, newly admitted lawyers to the Bar of the Supreme Court of the United States gathered on June 11, 2018, for a photo with Justice Ruth Bader Ginsburg (front row, center, in white). On her left (with a yellow
(necktie) is Marvin S.C. Dang, current Chair of the Senior Lawyers Division, who was the movant during the admission ceremony earlier that morning at a session of the Supreme Court.

Author

Marvin S.C. Dang
2018-19 Chair, ABA Senior Lawyers Division

Marvin S.C. Dang is the managing member of Law Offices of Marvin S.C. Dang, LLC in Honolulu, Hawaii and has been an attorney since 1978. He's currently the 2018-2019 chair of the ABA Senior Lawyers Division, a member of the ABA Nominating Committee, a delegate in the ABA House of Delegates, and a commissioner on the ABA Commission on Racial and Ethnic Diversity in the Profession. During the past 42 years, he's held leadership positions in various ABA divisions and sections. A former legislator in the Hawaii State House of Representatives, he's now a registered lobbyist. His law firm's practice areas include legislation, lobbying, creditors' rights, and real estate matters. He received his law degree from the George Washington University Law School in Washington, D.C.

Related links:

- Chair's Column: August 2018
- Chair's Column: September 2018
- Chair's Column: October 2018
- Chair's Column: November 2018
- Chair's Column: December 2018

By Carolyn L. Rosenblatt

With our aging population, more and more people are working with older clients across all areas of practice. There are many things we need to know to best serve them—things we did not learn in law school. Declining mental capacity, dementia, and age-related impairments of all kinds appear in our clients, and most lawyers are not well-equipped to manage these problems.

The nexus between health and legal issues has never been more important than it is now with clients living into their 80s, 90s, and beyond. Working with Aging Clients, written by a nurse-attorney, delves into the sticky problems of how to decide when a client is competent to make decisions about money, case direction, and even participation in conflict resolution.

The worst mistake a lawyer can make is to ignore the warning signs of diminished capacity and to carry on as if everything is fine. That puts both the lawyer and the client at risk. How do we approach this issue of diminished capacity with an older client? What are the red flags every lawyer needs to see and act upon? You will find the answers in this book. The author, Carolyn L. Rosenblatt, shares key insights from a healthcare professional's view alongside an understanding of how to represent aging clients.

The book also describes common elder-specific issues and the problem areas lawyers are likely to encounter. You will learn the definition of “financial decision-making capacity” and how to judge whether your client has that capacity or not. There are illustrations of specific elder-client situations from real cases and what went right or wrong with them. You may see your own clients in some of these stories.

Another important topic addressed by this book is financial abuse of the elderly—a $36 billion a year problem in the U.S.—and how lawyers can intervene to keep clients safer. Lawyers have a role to play in prevention, given our close connections to and extensive knowledge of our clients as well as our clients' trust in us. You will learn that there are steps we can take to stop abuse in its tracks.
Additionally, the book delves into communication issues we encounter with older clients, such as fear, resistance, and what we can do about them. The older client’s perspective will differ from that of a younger person. You will learn how to anticipate and respect the differences in order to get your job done most effectively. You will also learn how to make your office more “age-friendly” and accessible to accommodate any disabilities and/or impairments often seen in aging clients.

Since many elders may be accompanied by family members in our dealings and transactions with them, the book also addresses family conflicts. It suggests using elder mediation as the best approach to resolving family issues when managing our aging clients.

This book will increase your expertise and confidence in meeting the challenges of representing older clients, no matter what your area of practice may be.

Click here to learn more about the book and order a copy.

Author

Carolyn Rosenblatt has more than 45 years of experience in her combined professions of nursing and legal practice. She has direct experience in caring for elders in nursing homes, hospitals, and their homes. Together with her husband, geriatric psychologist Dr. Mikol Davis, she founded AgingParents.com, a resource for families, and AgingInvestor.com, offering education and training about aging clients for financial and other professionals. She has a special interest in preventing elder financial abuse. She is a consultant in aging and has been quoted in the New York Times, the Wall Street Journal, Next Avenue, Financial Planning.com, AARP’s publications, the National Safety Council journal, and many other sources, as well as appearing on radio shows discussing questions about aging parents and clients.
Adventures in the Law: Reflections on a Dog’s Reflection

By Norm Taber

Share this:

Remember Aesop’s fable of the dog crossing a stream with a bone in its mouth? Taking its own reflection for another dog with a bigger bone, it opens its mouth to bark. The result is that the dog not only fails to get the bigger bone but loses the one it was carrying.

A Third Circuit opinion brings this fable to mind. It tells the story of how a law firm with a right to collect attorneys’ fees from the opposing party forfeited that right by overreaching.

The firm represented a client in an uninsured motorist claim, as well as a claim under Pennsylvania’s Bad Faith Statute, against an auto insurer. The parties settled the underlying claim for $25,000. After four days of testimony, the jury awarded the plaintiff $100,000 for the bad faith claim.

The Bad Faith Statute provides that the court may assess attorneys’ fees against a losing insurer. The plaintiff’s firm submitted a bill—for $1,122,156, including $48,050 for the underlying claim, $827,515 for the bad faith claim, $175,631 in interest, and $27,090 for preparing the fee request!

Astounded by the size of the bill, the trial court demanded documentation. The documentation proved woefully inadequate. For one thing, the firm had maintained no contemporaneous time records. For another, the records that it presented had been reconstructed by a single attorney, who acknowledged “guessing” at the amounts of time expended by various personnel over the six years of the engagement.

The court’s 100-page opinion began by invoking the purpose of the right to attorneys’ fees: to make the prevailing client whole. That was an ominous sign for the law firm because its fee arrangement called for one-third of recovery before trial and 40% after trial. In other words, the client owed the firm at most $48,375—a pittance next to the $1.1 million-plus fee request.
The court found the documentation wholly inadequate and the size of requested fee outrageous. But it didn't simply reduce the requested fee by the amount it considered excessive. It denied the firm any recovery whatsoever, ruling that when a fee request is “outrageously excessive,” the court has “discretion to deny a fee request altogether.” The Third Circuit affirmed, commending the trial judge in the process.

Like the dog that not only failed to get the bigger bone, but lost the one it had, the law firm failed not only to collect the excessive fee it requested but lost the right to even a modest fee.


Author

Norman G. Tabler, Jr.
Columnist and Editorial Member, Voice of Experience

Norman G. Tabler, Jr., is a retired partner with Faegre Baker Daniels, where he led the firm’s health law practice. He serves on the editorial advisory boards of the ABA Senior Lawyers Division’s Voice of Experience, the ABA Health Law Section’s The Health Lawyer, and Law360 Health. He is the host of the American Health Lawyers podcast The Lighter Side of Health Law. He was educated at Princeton (A.B.), Yale (M.A.), and Columbia (J.D.). He may be reached at Norman.Tabler@FaegreBD.com.
It is important to stay connected with loved ones, and one way to do that is by using Skype to video chat. A phone call is a great way to check on people and get up to date on what is going on in their lives. Adding video means you can see for yourself that they are doing okay and vice versa. Most smartphones have a form of video chat (Apple has Facetime, Android has video calling capability without a special name). You can still have video calls even if you don't have a smartphone by using a video communication software like Skype.

Skype is a free software program that allows anyone to make video and audio calls to other Skype Users or even groups of users. With Skype, you can send instant messages and share files with anyone you would like to converse with, no matter where you are in the world. All you need is a computer [or a tablet or smartphone] with a camera capable of capturing video, an internet connection, and a free Skype account. Many computers (and essentially all tablets and smartphones) come equipped with a camera, but it's important to verify whether it is functioning the way you want it to before you start a call. If it does not, there are many webcams on the market today that are plug-and-play, meaning all you have to do is set the camera where you want it and plug it in. You can be up and running in minutes.
Once you have all your equipment in place, go to www.skype.com to download the free software and set up your account. You can also download Skype as an app for your smartphone or tablet through the app store or Microsoft Store. The people that you want to call will need to set up an account as well. Since Skype was purchased by Microsoft, you will need to set up a Microsoft account now. The good news is if you are a Microsoft user, you already have an account. Once the software is downloaded and you have an account and are signed in, it is time to test your camera settings.

**Step One:** Open the software and sign in to Skype.

**Step Two:** Check your camera settings:
On a PC, click on the gear icon (pictured on the right, above), then select the Tools menu, and then select “Video Device Settings.”

On a Mac, from the Skype menu, select “Preferences,” then click on the Audio/Video tab.

**Step Three:** Select the contact for who you would like to call.

If this your first time using Skype and you do not have contacts populated in your list yet, then you can start by adding contacts. Notice in the bottom right corner of the image above, a symbol of a person with a “+” sign next to it. Click on that icon to add contacts. To set up the contact, you will need their Skype ID or the email they used to set up their Skype account. Once the contact is in your contacts list, you can select that name and five buttons will appear next to the contact:

| Skype Icons: Chat, Telephone, Video, ID Card, Ellipsis |

These icons represent the following options:

- **Chat:** Allows you to send a private instant message to the contact.

- **Telephone:** Allows you to call the contact over the internet. You will need a microphone set up to use this feature.

- **Video Camera:** This is the icon you will select to initiate a video call to the contact.

- **ID Card:** This allows you to see the contact’s details.

- **Ellipsis:** This allows you to access more options, such as sending an email to the contact, setting up a meeting, add the contact to your favorites list, etc.

Select the option with the video camera to initiate your video call. Once the call is initiated, a window pops up in which you will see your contact with a smaller window in the bottom right showing what your contact will see. Also, take notice of the red phone icon at the bottom of the call window; this is the button you will click when you are ready to end the call.

Have some big news that you want to share with the whole family? You can set up group video calls and include up to 25 people — so long as they all have Skype accounts. One way of doing this is to hold the “Ctrl” key on your keyboard and select all of the contacts you wish to include in the video call. Once everyone you wish to include is selected, right-click one of the contacts and select “Start a video call.”
With friends and family being all over the world, it is nice to have a feature like Skype's Video Call to stay in touch. Even nicer that it is available to anyone for free, and all you need is a computer, webcam, and wireless internet to get started.

Authors

Jeffrey Allen is the principal in the Graves & Allen law firm in Oakland, California, where he has practiced since 1973. He is active in the ABA, the California State Bar Association, and the Alameda County Bar Association. He is a co-author of the ABA book *Technology Tips for Seniors*.

Ashley Hallene is a petroleum landman at Alta Mesa Holdings, LP, and practices Oil and Gas law, Title Examination, Due Diligence, Acquisitions and Oil and Gas Leasing in Houston, Texas. She frequently speaks in technology CLEs and is Deputy Editor-in-Chief of the Technology and Reviews Department of the GPSolo eReport.

American Bar Association

Tell us a little bit about your career.

I was fortunate to clerk in New York City after my first year of law school and in Chicago after my second year. Both firms offered me full-time employment upon graduating from the University of Michigan. I chose Chicago, but its courts were so backlogged that I would not have had the opportunity to work on any lawsuits until seven years later. Consequently, I left after two years of trial practice for the oldest firm in Miami.

I did trial work with Shutts and Bowen for forty-three years — forty as a full equity partner. I argued over 200 cases to verdict, including over 150 jury trials. I argued in the United States Supreme Court, two federal courts of appeal, the Florida Supreme Court, and all five of Florida’s appellate courts. I am still practicing, mainly with my three trial lawyer sons and trial lawyer daughter-in-law, for longtime clients, including mediation and arbitration.

Is it what you had planned when you started law school?

When I started law school I didn’t know what kind of law I wanted to practice, but two summers of clerking showed me that I wanted trial practice.

What has been the highlight of your career?

Two highlights of my career were arguing before the United States Supreme Court and winning a two-month trial with a no liability decision when my client had been sued for over $500,000,000.

If you could go back to the beginning of your legal career, would you have done anything differently?
Thankfully, I would not do anything differently if I could go back to the beginning of my legal career.

What advice would you give to someone considering law school today?

My advice to someone considering law school would be to go to the best law school available, work in the summers for the best law employers, and do your best for your clients throughout your career.

What were the biggest changes you saw in the legal profession over the course of your career?

The biggest changes I saw in the legal profession over my career were it becoming "the business of law" around 1985 and the invention of the internet and cell phones.

When did you first become a member of the ABA, and why did you decide to join?

I became an ABA member when I first started practicing law in 1961. I joined because that was the right thing to do for your profession.

What has been the highlight of your work with the ABA?

The highlights of my ABA work have been serving 18 years in the ABA House of Delegates and being elected to the Councils of the Senior Lawyers Division and the Tort, Trial, and Insurance Practice Section (TIPS).

If you had not become a lawyer, what do you think you would have done?

I don't know what I would have done if I hadn't become a lawyer.

Author

Richard Leslie is a trial lawyer who has argued before the Supreme Court of the U.S., the 5th and 11th Circuit Courts of Appeal, the Florida Supreme Court, and all 5 of the Florida Courts of Appeal. He has tried to verdict over 200 cases, including over 150 jury trials. He received his undergraduate degree is from the University of Florida and obtained his law degree from the University of Michigan. Richard has been practicing law for 58 years and has been a member of the ABA for 55 years. For the past 20 years, Richard has served on the ABA House of Delegates (currently on behalf of the Miami-Dade County Bar) while also serving on the ABA Senior Lawyers Division Council for the past 4 years. He also serves as a liaison between the ABA Tort, Trial, and Insurance Practice Section (TIPS) and the Senior Lawyers Division.
Financial Exploitation by Conservators - A Series of Eight Background Briefs

By: Brenda K. Uekert, PhD, Kathryn Holt, Kathryn Genthon (National Center for State Courts); Erica Wood, Lori Stiegel, Dari Pogach (American Bar Association); Pamela Teaster, Karen Roberto, Chris Grogg (Virginia Tech Center for Gerontology); Cate Boyko, Stepheni Hubert (Minnesota Judicial Branch)

Despite the financial and psychological impact of conservator exploitation on victims and their families, there is little information on its extent and consequences. Thus, the U.S. Department of Justice Office for Victims of Crime funded the National Center for State Courts (NCSC), in partnership with the American Bar Association Commission on Law and Aging (ABA Commission), the Virginia Tech Center for Gerontology (VTCfG) and the Minnesota Judicial Branch, to assess the scope of such exploitation and explore its impact on victims. The project team produced eight Background Briefs released in November 2018 (see http://www.eldersandcourts.org/Other-Resources.aspx):

- Examples of Conservator Exploitation: An Overview
- Conservator Exploitation in Minnesota: An Analysis of Judicial Response
- Detecting Exploitation by Conservators – Court Monitoring
- Detecting Exploitation by Conservators – Systemic Approach
- Court Actions Upon Detection of Exploitation
- Innovative Programs that Address Financial Exploitation by Conservators
- Data Quality Undermines Accountability in Conservatorship Cases
- Supporting Victims of Conservator Exploitation

NCSC in 2016 estimated, based on projections, that there are approximately 1.3 million active adult guardianship or conservatorship cases in the United States and at least $50 billion in assets under conservatorships (see Data Quality Brief). Also in 2016, the U.S. Government Accountability Office (GAO) found that “the extent of elder abuse by guardians nationally is unknown due to limited data.”
While many conservators are trustworthy, dedicated, and provide critically needed services, multiple media accounts over many years profile instances in which conservators have breached their fiduciary duty – taking advantage of those they were charged with protecting. As early as 1987, the Associated Press landmark report, *Guardians of the Elderly: An Ailing System*, found “a dangerously burdened and troubled system that regularly puts elderly lives in the hands of others . . . then fails to guard against abuse, theft, and neglect.” Subsequent media stories have made similar observations.

The OVC-funded project collected information on conservator exploitation, as well as the laws and practices in place to prevent, detect and act on such exploitation. The project’s series of Background Briefs is intended to bring about greater public awareness and understanding of the issue. The briefs are aimed at a broad audience including practitioners, advocates, and policymakers, as well as courts and judicial staff.

**Background Brief Terminology**

Because state terminology varies, it is important to clarify key terms used in the Briefs:

- Conservator is defined as an individual or entity authorized by a court to make property or financial decisions for an adult who the court determines is not able to make those decisions. State statutes may use other terms such as “guardian of property” or “guardian of the estate.” Court-appointed conservators include family members and other non-professionals, attorneys, private for-profit and non-profit professionals and agencies, and public guardianship programs.

- A guardian is an individual or entity authorized by a court to make health care and other personal decisions for an adult who the court determines is not able to make those decisions. Sometimes “guardianship” is used as a general term covering both guardians making personal decisions and conservators making financial decisions. A conservator may also be appointed as a guardian.

- A conservator is a fiduciary – someone entrusted with the management of property of another, and who owes a high duty of trust, honesty, care, confidence, and good faith.

- Exploitation is defined by the National Center on Elder Abuse as the illegal or improper use of a person’s funds, property or assets. State definitions vary.

**Background Brief Summaries**

An introduction to each of the eight Background Briefs follows. The project also produced a list of key resources on conservator exploitation.
Brief #1: Examples of Conservator Exploitation: An Overview

One objective of the OVC Conservator Exploitation Project was to “determine the consequences of conservatorship abuse.” The Virginia Tech Center for Gerontology (VTCfG) led this component of the project, compiling descriptions of recent conservator exploitation cases that received media attention and analyzing nine individual cases that presented the dynamics, processes, and impacts of conservator exploitation on victims and their families.

While media attention to exploitation by guardians continues to appear in news accounts, the investigation by the VTCfG was a systematic search of national media outlets for reports of conservator exploitation cases that appeared in online media outlets from the period of July 1, 2015, through December 31, 2016. The project identified twenty-two such conservatorship exploitation cases.

Brief #2: Conservator Exploitation in Minnesota: An Analysis of Judicial Response

Minnesota is the only state in the country that mandates that conservators record and submit all financial transactions through its software application (MyMNConservator). This innovation is coupled with a centralized professional auditing team—the Conservator Account Auditing Program (CAAP)—which is located in the Minnesota Judicial Branch.

The project team reviewed and coded court documents associated with CAAP audits denoting a “concern of loss” to determine court responses. A “concern of loss” includes a variety of issues, such as loans given by the individual subject to conservatorship, comingling of funds, large and/or unusual expenditures made without court approval, and expenditures that are not in the individual's best interest. This Background Brief focuses on 139 adult conservatorship cases with recorded court outcomes audited between June 2012 and November 2015.

Brief #3: Detecting Exploitation by Conservators – Court Monitoring
Financial exploitation by conservators often goes unchecked by courts. This Background Brief outlines judicial monitoring practices that could enable judges and court staff to spot exploitation. Specifically:

- What state and local court actions would increase timely and accurate conservator filings (inventories, accountings, and financial plans)?

- What national, state and court actions would improve the ability of courts to review, examine, and audit conservator accountings, and to identify and target those that may involve exploitation?

- What can courts do to ensure fees are reasonable and appropriate and will not unnecessarily drain the estate?

4 Brief #4: Detecting Exploitation by Conservators – Systemic Approach

Courts alone cannot fully detect conservator exploitation. A broader set of “eyes and ears” and robust court-community partnerships may raise detection to a higher level. Courts have begun to recognize that to make real change in the guardianship and conservatorship process, they need to collaborate with involved stakeholders.

Such a collaborative approach – whether a formal partnership or an informal communication path – can galvanize a focus on detecting conservator exploitation. An array of “third parties” can use their unique vantage points to expose conservator exploitation so the court can take action. This Background Brief explores such systemic approaches. The Brief also examines practices that promote transparency, court integrity and impartiality in conservatorship cases.

5 Brief #5: Court Actions Upon Detection of Exploitation
Once a court detects exploitation, it should be the first line of action to address, mitigate, and prevent further harm. Yet courts often lack the resources, infrastructure, and statutory authority to address financial exploitation by conservators. This Background Brief explores what laws and practices can enable courts to consistently and effectively address and prevent further exploitation. Specifically:

- What changes in state law, court rule or court practice can best protect and restore assets subject to conservator exploitation?
- How can courts best investigate allegations of wrongdoing in conservatorship cases?
- Are there legal or ethical impediments for the court in making referrals upon detecting conservator exploitation?
- If courts make no response upon allegations or detection of exploitation, what policies and practices can best prompt them to act?

### Brief #6: Innovative Programs that Address Financial Exploitation by Conservators

Nationally, there is a dire need for guardianship/conservatorship reform, as relatively few courts have the resources, staffing or expertise to actively monitor conservatorships. Despite these limitations, several programs and courts have engaged in promising reform. To identify such programs, the project team queried multiple guardianship-related email discussion lists, performed an internet search, and identified well-established programs mentioned in previous reports and articles. After compiling a list of programs, the project team interviewed program directors.

The availability of data to document program activities and/or outcomes was a key factor in the final selection of innovative programs highlighted in this Background Brief. None of the programs had “evidence-based” results; their effectiveness in detecting and responding to conservator exploitation had not been measured. For this reason, the programs described in the Brief are referred to as innovative programs rather than national models.

### Brief #7: Data Quality Undermines Accountability in Conservatorship Cases
In November 2016, the Government Accountability Office (GAO) issued a report, *The Extent of Abuse by Guardians is Unknown, but Some Measures are Being Taken to Help Protect Older Adults*. The report concluded that “the extent of elder abuse by guardians nationally is unknown due to limited data on the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian.” This Background Brief reports the project’s effort to document barriers to state court data collection, national estimates of caseloads based on the limited data available, and potential next steps to improve data collection and reporting.

### Brief #8: Supporting Victims of Conservator Exploitation

Court detection, monitoring, and action are necessary to protect individuals subject to conservatorship, but not sufficient without support for victims of exploitation. This Background Brief addresses:

- What are the essential characteristics of a user-friendly and effective court process for complaining about conservator exploitation?
- What steps can enhance the use of bonding to recoup a victim’s assets from conservator exploitation?
- What actions can strengthen access to civil justice for victims of conservator exploitation?

### Primary Authors

This article is taken directly from the project’s Introduction and eight Background Briefs at [http://www.eldersandcourts.org/Other-Resources.aspx](http://www.eldersandcourts.org/Other-Resources.aspx). The primary authors include:

- National Center for State Courts: Brenda K. Uckert, Ph.D., Kathryn Holt, Kathryn Genthon
- American Bar Association: Erica Wood, JD, Lori Stiegel, JD, Dari Pogach, JD
- Virginia Tech Center for Gerontology: Pamela Teaster, Ph.D., Karen Roberto, Ph.D., Chris Grogg, MPH
- Minnesota Judicial Branch: Cate Boyko, Stepheni Hubert
For the first time, an Opioid Summit was convened as a collaborative effort of ABA and non-ABA entities to address the opioid crisis permeating our country. Led and organized by the Senior Lawyers Division, the Summit entitled “Experienced Lawyers, American Families, and the Opioid Crisis” was held at the ABA Headquarters in Chicago on Friday, May 4, 2018.

The Summit brought together a multidisciplinary group of experts from a range of legal areas for a holistic approach to the opioid crisis. The Summit involved 30 people from ABA entities and non-ABA organizations, 5 nationally recognized speakers, 17 leaders of the Senior Lawyers Division, as well as 6 ABA staff members and 2 volunteer law students as recorders.

A final report of the Summit recommendations can be found below.

While the ABA in the past has adopted resolutions addressing attorney well-being, the Summit’s planners used the Opioid Summit’s report and recommendations to collaborate with other ABA entities to develop a policy resolution addressing the opioid crisis. It was filed by the Senior Lawyers Division on November 14,
2018. You can view the resolution here. The resolution (108) was adopted by the ABA House of Delegates during the ABA Midyear Meeting on January 28, 2019.

We are pleased to share the following recommendations from the Opioid Summit as well as the transcripts of the presentations, powerpoints, and referenced materials.

**Opioid Summit Documents**

- Opioid Summit Report (including recommendations and action points)
- Agenda & Speaker Bios
- Background Materials
- ABA Policies Related to Substance Abuse

**PowerPoints**

- Dr. Mary Carter | History and Scope of the Epidemic
- Link Christin | Overview of the Opioid Treatment Landscape

**Presentation Transcripts**

- Link Christin | Overview of the Opioid Treatment Landscape
- David Hoffman | LSC Opioid Task Force
- Francine Ward | Personal Perspective
- Admiral Winnefeld, USN, Ret. | S.A.F.E. Project
International Committee Organizational Call

The International Senior Lawyers Committee invites all interested SLD members to participate in our first committee conference call on February 5th at 11 AM EST. Call-in information is as follows:

Dial-In Number: 866-646-6488
Conference Code: 786-395-4455

For those of you who have not yet joined the Committee, we invite you to do so by sending an email to Aaron, Bob and Emily at the following email addresses:

aaron@schildhaus.com, rlutz@swlaw.edu and Emily.Roschek@americanbar.org

We will distribute an agenda before the call to all who have signed up.
Tech Tips: Things You Need to Know About Technology

Presented by Jeffrey Allen & Ashley Hallene

Share this:

Note: This program is not for CLE. This program was presented on January 26, 2019, as part of the Senior Lawyers Division's events at the 2019 ABA Midyear Meeting in Las Vegas, NV.

Senior Lawyers Division's technology gurus, Jeffrey Allen and Ashley Hallene, share 30+ tips designed to help all levels of tech users how to use technology more efficiently.

Similar to their well-known 60-Tips programs—short discussions on a variety of technology-related topics—Jeff and Ashley discuss topics and tips of things you must know and some bonus tips for things you might not need to know (but probably should).

Download the program materials.
The ABA Senior Lawyers Division is now accepting nominations for the 2019 John H. Pickering Achievement Award, which will be presented on Thursday, August 8, 2019, during the ABA Annual Meeting in San Francisco, CA.

The award honors the life and accomplishments of John H. Pickering, an outstanding lawyer who was involved in a wide variety of pro bono activities and law-related societal issues affecting the elderly.

Qualifications

The award nominees shall have attained the age of 55 years; must be a lawyer or judge (not necessarily a member of the American Bar Association); shall have demonstrated throughout his or her career outstanding legal ability; shall have compiled a distinguished record of dedicated service to the profession and the community at large and made significant contributions to the furtherance of access to justice for all.

Nomination Process

- Nominations can be completed (1) online, (2) emailed, or (3) sent by mail.
- The deadline to submit nominations is February 28, 2019 at 11:59 PM ET. The deadline will not be extended.
- 2019 nominees will receive an email notification of their nomination that includes the name(s) of the individual(s) who nominated them.

Requirements

1. **Nomination form.** The cover page of nomination materials should be the completed nomination form. Click the button below to download the necessary documents. *(Required)*

2. **Biography.** The second document should be the nominee’s resume or biography, on a single typed page. *(Required)*

3. **Criteria.** In no more than three (3) typed pages, a description of the nominee’s activities and accomplishments that demonstrate how they relate to the high standards of achievement set by John H. Pickering. *(Required)*
4 Supporting materials. Additional materials relevant to the criteria for selection may be submitted, such as letters of support (limit 5), articles (limit 3), publications, awards, and recognitions received (all materials limited to 8½ x 11 only.) Please do not submit binders, bound, bulky or repetitious materials. (optional)

5 Only applications that include all required documentation will be considered. Please submit nomination by no later than February 28, 2019, either online via the link below, by email to Lexie Heinemann at lexie.heinemann@americanbar.org, or by mail at ABA Senior Lawyers Division, 321 North Clark Street, Chicago, Illinois 60654, or online.

DOWNLOAD NOMINATION FORM

EMAIL NOMINATION

Submit the nomination online below.

To complete the online form you must fill out the questions on page 1 and you will be asked to upload the following documents:

1 Biography. This should be the nominee’s resume or biography, on a single typed page. (Required)

2 No more than three (3) typed pages, a description of the nominee’s activities and accomplishments that demonstrate how they relate to the high standards of achievement set by John H. Pickering. (Required)

3 Supporting materials. Additional materials relevant to the criteria for selection may be submitted, such as letters of support (limit 5), articles (limit 3), publications, awards, and recognitions received. (optional)

SUBMIT YOUR NOMINATION ONLINE

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