FEATURED: Financial Insolvency and the Elderly
By Donna J. Jackson
Bankruptcy and financial strain among a new generation of the elderly is often overlooked. Many have found themselves unequipped to handle new financial pressures due to increasing healthcare costs. Discover what factors are at play that led to the current financial landscape.
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Come one, come all, and come hungry! This holiday season we asked our Council members and Division leaders to share their favorite dishes. From a savory tenderloin to an eggplant spread almost too yummy to put down, we’ve got recipes for all levels of cooking experience.
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CHAIR’S COLUMN
To kick off the season of thanks, Marvin introduces us to "kokua," the Hawaiian word for "help, assistance, or aid." From National Philanthropy Day to Thanksgiving, discover how you can help make an impact in this month’s Chair’s Column.
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Pro bono services are the gift that keeps on giving. Discover the impact of pro bono work and gratitude this season. Learn more about ABA Free Legal Answers and how to get involved in this convenient, online pro bono platform.

Fighting Fraud Affecting Older Consumers
By Lois Greisman
FTC data shows that older adults have been targeted disproportionately by fraudsters in deceptive schemes such as phony grants, sweepstakes, housing, and anti-aging products. Learn about the FTC's efforts to combat this and what you can do to help.

By Lawrence A. Frolik
Planning for later-life healthcare can be tiring and stressful. A good resource makes the planning process and decision making smoother for you and your loved ones. In the second edition of his book, "The Law of Later-Life Healthcare and Decision Making," Professor Lawrence A. Frolik gives readers answers to their toughest planning questions. Learn more about what the book has in store for you.

SLD HAPPENINGS
Senior Lawyers Division Call for Nominations
By John Hardin (Jack) Young, SLD Immediate Past Chair
The SLD Nominating Committee will accept applications and nominations for certain elected Division leadership positions. The deadline for submitting applications and recommendations is Monday, December 10, 2018.

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.

Voice of Experience is seeking content contributors and Editorial Board volunteers. Please contact lexie.heinemann@americanbar.org for more information.
Join the SLD at the 2019 Midyear Meeting!
Join us in Las Vegas for ABA Midyear January 25-26, 2019! The SLD will have a half hour "Tech Tips" nonCLE program for anyone who’d like to attend. Learn more about the Division’s schedule of events. Register today!
View Schedule ⟷

Join the International Senior Lawyers Committee!
This new committee addresses international law matters and developments while also focusing on a fascinating array of legal concerns viewed from the perspectives of civil and common law practitioners. Learn more about the committee and how to get involved from the committee Co-Chairs, Robert Lutz and Aaron Schildhaus.
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The SLD is seeking volunteers to serve on its substantive and administrative committees. Get involved today by e-mailing your interest to abasrlawyers@americanbar.org.

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Financial Insolvency of the Elderly

By Donna J. Jackson

Introduction

People are living longer due to advances in medical care, better nutrition, and generally higher standards of living. This presents unique challenges in every area of a person's life, especially when it comes to finances. Methods of saving and planning for retirement used by previous generations no longer work for many older persons today, and the economic world has changed greatly since the current generation of senior citizens first began planning for this era of their lives. Therefore, a number of factors contribute to the precarious state of many senior Americans' financial landscape.

Health Care Costs

According to the National Center for Policy Analysis, a person age sixty-five or older who is covered by Medicare will pay out-of-pocket costs of around $4,900 annually on healthcare costs, including premiums for Medicare Part B, premiums for the Part D drug plan, and coinsurance and deductibles.

Costs for housing and food don't necessarily decrease when a person ages, which often forces the elderly to cut costs in other areas, creating problems such as sub-standard living conditions or poor nutrition.

Fixed Incomes

Fixed income consisting of Social Security and pensions often constitutes the only monthly income many elderly persons receive. An elderly person cannot just simply pick up a part-time job. Obstacles, such as health issues, lack of transportation, or the inability to adequately perform certain job functions prevent elderly persons from supplementing their income.

Financial Abuse
Financial abuse and exploitation of the elderly constitute a common problem from which many do not have the resources to recover. The National Committee for the Prevention of Elder Abuse asserts that many elderly persons often experience isolation, loneliness, numerous losses, and deterioration in their physical or cognitive health as they age. ①

This leaves them vulnerable to criminals who prey on the elderly, using fraudulent scams or deceptive sales pitches that may result in the loss of a senior’s life savings.

Sadly, many elders experience financial abuse at the hands of a trusted caretaker, relative, or in some cases, a new online “love interest.” State laws that dole out heavy punishment for those convicted of harming someone entrusted to one’s care is a way to protect the elderly from this exploitation.

The Cost of Long-Term Care

Many people assume the cost of long-term care provided either at home, in an assisted living facility, or a nursing home is provided by Medicare. But Medicare only pays for the first 100 days of skilled nursing care after a three-day inpatient stay in a hospital. ⑤

The staggering cost of custodial care can range from more than $6,000 a month for a semi-private room in a nursing home to around $3,300 a month for an assisted living facility, whereas at-home care costs about $21.00 an hour. ⑥

Those whose resources cannot support such costs may be eligible for Medicaid, but only after impoverishing oneself through a spend down process that exhausts whatever resources are left.

Bankruptcy Soars Among the Elderly

The aging of the baby boomer generation has left America with a considerably larger share of older citizens approaching, entering, or living through their retirement years than was the case several decades ago. ⑦

According to a pair of studies that cast a pall over the financial stability of the country’s aging population, bankruptcy filings among retirees have soared in recent years as widening wealth inequality leaves millions of elderly Americans in dire financial straits. ⑧ “One in seven bankruptcy filers is of retirement age, [sixty-five] years or older. This is nearly a five-fold increase over just two and a half decades.” ⑨

As of 2016, the share of elderly Americans filing for bankruptcy had ballooned nearly 480% from where it was in 1991. ⑩
Researchers at the Urban Institute assembled a recent study in an effort to project what present-day wage inequality will look like as the U.S. continues to age and workers phase into their retirement years. Filings among those between ages sixty-five and seventy-four ballooned more than 200%, while the rate at which Americans at least seventy-five-years-old or older filed for bankruptcy more than tripled from 1991 to 2016. 

For those over seventy-five, their share of the country’s total bankruptcy filings climbed by nearly 1,000%. One report found that “by 2050, almost a quarter of Americans, 88 million, will be over sixty-five. If current bankruptcy trends among seniors continue, our bankruptcy courts will be flooded with financially broken retirees.”

This report “looked into the primary reasons why elderly Americans found themselves seeking bankruptcy protections.”

Nearly 70% of older Americans analyzed by the Consumer Bankruptcy Project mentioned that financial struggles in the form of insufficient retirement income, job loss, or a decline in income were the reasons for their bankruptcy. More than half of respondents also indicated that medical expenses were a factor for filing bankruptcy as well as shifts in Social Security eligibility and a decline in pension reliability.

The report went on to say that “[c]ombined, more than six out of ten older debtors struggled for at least two years . . . before they turned to bankruptcy for help. Struggling for years to repay one’s debts is an unfortunate way to spend one’s retirement years.”

According to the study, “[p]eople who experience high wage inequality during their working years are likely to experience high retirement inequality, because Social Security benefits are tied to lifetime earnings, and people’s ability to save for retirement depends on how much they earn.”

To combat this problem, The Urban Institute report advocates for raising America's federal minimum wage and implementing a broader policy agenda to “provide all workers with . . . worker training and apprenticeship programs; financial literacy training; tax reforms that would better incentivize retirement savings for low-wage workers; and Social Security reforms, such as creating a meaningful minimum benefit or changing the benefit formula to improve progressivity.”

Meanwhile, the authors of the bankruptcy report advocate for more proactively supporting pension and safety net programs, notably referencing health care support that would help “insure the financial stability of older Americans.”
Author

Donna J. Jackson, JD, LLM, is a nationally recognized attorney, authority, speaker and educator in estate planning. Ms. Jackson is a CPA and holds a Master’s Degree (LL.M.) in Elder Law. Ms. Jackson has over 30 years of legal experience. She limits her practice to elder law, probate, and estate planning.

End Notes
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 reading the November 2018 edition of our Division’s Voice of Experience e-newsletter.

Starting with my Chair’s column in August 2018, I’ve introduced a Hawaiian word every month, and I’ve linked that word to activities in our Division. For this month’s column, I want to share the Hawaiian word “kokua,” which means “help, assistance, or aid.”

In November, as we begin the season for giving thanks, we should also note that November 15 was first proclaimed as National Philanthropy Day by President Reagan in 1986. Annually on this day, donors and others are recognized for their philanthropy—for their help and assistance.

As attorneys, we can help increase our impact through our personal philanthropy. We can do so by contributing to the American Bar Association’s Fund for Justice and Education, a 501(c)(3) charitable fund that supports about 200 public service and educational programs.

One of the Senior Lawyers Division’s premier public service and educational programs is our ongoing project on the opioid health crisis—a crisis which has been called the worst drug epidemic in U.S. history. This epidemic affects the lives and well-being of our Division members, our families, our clients, and our communities.

Our Division decided to take action. We led an Opioid Summit on May 4, 2018, in Chicago to develop specific, meaningful, and practical solutions to tackle this epidemic. The Summit was a collaborative effort organized by our Division. We brought together twenty ABA entities and non-ABA organizations, a multidisciplinary group of experts from a range of legal areas, nationally recognized speakers, ABA staff members, and volunteer law students.

Incorporating the extensive discussions and recommendations generated at the Opioid Summit, we produced an insightful report to address the opioid crisis. You can read the Summit Report (which
provides an overview of the crisis and contains 9 paramount recommendations and 45 action points) and other useful Summit documents at ambar.org/opioid.

After the Opioid Summit, our Division created an Opioid Initiative Task Force to, in part, advance the recommendations and action points from the Summit. The Task Force consists of representatives from the various collaborating entities that participated in the Summit.

On September 27, 2018, the ABA’s Section Officers Conference honored our Division with the “Outstanding Collaboration Award” for organizing the Opioid Summit. The Award recognizes significant collaboration between ABA entities on a program, project, or initiative that provides substantial value to the ABA membership, profession, or society. Here’s the link to more information about the Award.

Following up on the Opioid Summit Report, a few weeks ago on November 14, 2018, our Division introduced a Resolution to be considered by the ABA House of Delegates at the Midyear Meeting in January 2019. Our Resolution urges all courts, governmental entities, bar associations, public health agencies, lawyer assistance programs, lawyer regulatory entities, institutions of legal education, law firms, and other entities to consider the recommendations and action points in the Opioid Summit Report.

Next spring on Thursday, May 2, 2019, our Division will present a one-hour ethics program about working with clients or colleagues with opioid and other substance use disorders. For a client, this could trigger ethics rules surrounding diminished capacity, confidentiality, or conflicts of interest. For a colleague, there could be a duty to report, competency issues, or client abandonment. This continuing legal education program will be held in New York City when our Division meets with the ABA Litigation Section and the ABA Solo, Small Firm, and General Practice Division for their CLE Conference which starts on May 1. You’ll be able to find more information on our Division’s website [https://www.americanbar.org/groups/senior_lawyers] closer to the Conference.

Those are examples of our opioid initiative. And that’s just one of our Division’s public service and educational programs.

Your donation to the Program Support Fund of the Senior Lawyers Division will enable our Division to continue to produce public service and educational programs covering many timely issues.

Please join me by making a donation of any amount at: donate.americanbar.org/sld

Your kokua—your help, assistance, and aid—will go a long way to harness the power of our legal profession and our Division to make a positive difference. Thank you!
Marvin S.C. Dang is the managing member of Law Offices of Marvin S.C. Dang, LLLC in Honolulu, Hawaii and has been an attorney since 1978. He's 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. Over the past 42 years, beginning as a law student member of the ABA, he's held leadership positions in various ABA divisions: Law Student Division, Young Lawyers Division, General Practice, Solo & Small Firm Division, and Senior Lawyers Division. 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.
A New Advance Care Planning Counseling Tool for Lawyers

By Charles P. Sabatino & Louraine Arkfeld

Introduction

A chasm exists between the way lawyers and clinicians perceive and engage in health care advance planning with clients and patients, respectively. Both aim to ensure that the individual’s goals of care and wishes are known and clearly honored. But, their perspectives and processes used to reach those goals differ dramatically.

This article first examines their differing approaches and the practical problems resulting in creating advance directives. It then describes an interdisciplinary project undertaken by the ABA Commission on Law and Aging with key partners to develop a unified set of practice principles for both lawyers and clinicians in addition to an advance care planning practice checklist designed specifically for lawyers that brings counseling practices more in alignment with the clinical realities clients face.

The Problem

Advance care planning research literature strongly identifies the process of repeated, meaningful reflection and discussion among patient and family and health care providers as a critical factor in effective advance care planning.

While the existence of an advance directive makes a difference, the real driver for having patients’ wishes known and honored is the conversation before and during any clinical episode.

In other words, advance directives documents, in and of themselves, without additional preparation and discussion, have minimal effect on end-of-life decision-making.

This is where the differing approaches between lawyers and clinicians cause a disconnect.

Lawyers tend to see advance care planning primarily as a legal matter, centered on patient autonomy and the creation of legally recognized advance directives. Health care professionals see it as a clinical
matter involving not only patient autonomy, but also a pursuit of the patient’s best interests in light of evolving clinical facts, treatment options, often uncertain risks and benefits, and the goal of engaging whatever family unit is involved in the patient’s care.

The divergence in approaches has a historical root. Living wills or medical declarations emerged in legislation in the 1970s and health care powers of attorney in the 1980s. These laws created a legal transactional template for advance planning that focused on ensuring knowing and voluntary execution of the directive and imposing a multitude of legal formalities, ranging from detailed execution requirements to mandatory language and forms.

Because the culture of medicine at that time was so heavily tilted toward using new technologies in pursuit of organ-sustaining measures at all costs, almost all advance directive legislation included the carrot of immunity for health care providers for complying with patients’ stated wishes.

Since the early legislative enactments, some states have sought to ease up—at least partially—on the legal template applied to advance directives, while on the clinical side, consensus over best practices has changed dramatically. The clinical concept of advance care planning has evolved into an ongoing, holistic, shared communication process about goals of care, priorities, and wishes in the face of serious and eventually fatal illness.

In clinical practice, countless initiatives and protocols have emerged with the goal of supporting patient- and family-centered care, shared decision-making, and meaningful advance care planning. Many of these initiatives have grown part and parcel with the growth of the discipline of palliative care.

In practice, health care systems and professionals as a whole still have a long way to go to catch up to the state-of-the-art concepts and skills advocated by clinical leaders in advance care planning, but the wheels are in motion. In contrast, in the legal professional world, less progress is visible.

To impact legal advance care planning practices positively, the ABA Commission on Law and Aging, with key partners, set out to develop a unified set of usable, actionable, best practice principles for both lawyers and clinicians as well as an advance planning practice Guide specifically for lawyers that is in alignment with the best clinical practices and better addresses the realities clients will face in clinical settings.

The Project

The ABA Commission on Law and Aging collaborated with the American Academy of Hospice and Palliative Medicine, the University of California at San Francisco Medical School, and the UC/Hastings
Consortium on Law, Science & Health Policy to undertake this initiative. The project was funded by the John A. Hartford Foundation with supplemental funding from the Borchard Foundation Center on Law and Aging.

The project team identified a panel of legal practitioners, clinicians, and academics who are considered experts in advance care planning. The experts were invited to a one-day working summit to identify best practices to assist clients, patients, and their families in meaningful and effective advance care planning.

Prior to the summit, the project team conducted telephone interviews with summit invitees individually. Interviewees were asked about their current practices in advance care planning and what they thought could be done to improve advance care planning and communication with the patient’s clinicians.

The interviews were recorded and summarized for the summit attendees. The one-day summit convened in March 2018 included 35 participants, equally divided between lawyers and clinicians, many of whom brought both practice and academic credentials. The resulting principles and guide were circulated to summit participants for review and comment, resulting in several changes to content and organization before a final version was completed.

Results

A key convergence of view was that practice guidelines are most needed for lawyers and that structuring them in the form of a practice checklist would be most effective. Based on the summit discussion and consensus points, the project team developed a set of practice principles applicable to both lawyers and clinicians; a lawyer’s checklist for counseling clients on advance care planning; and a resource list of self-help advance care planning tools to be made available to clients.

These products have been combined in the project’s publication *Advance Directives: Counseling Guide for Lawyers* (Guide).

The Practice Principles

The advance care planning practice principles serve as the foundation for the checklist and resources. They provide a conceptual framework intended to align the practices of lawyers and health care professionals with the realities of health care decision-making in clinical settings. The principles, set forth below, are informed by current evidence of what makes advance care planning effective in healthcare settings and a growing body of health decisions literature.
1 **Proxy Designation:** The most important legal component of advance care planning is careful selection and appointment of a health care agent/proxy in a valid power of attorney for health care document. Persons who cannot or do not want to identify a proxy should delineate their wishes in an advance directive.

2 **Ongoing Process:** Advance care planning takes place over a lifetime. It changes as one’s goals and priorities in life change through different stages of life and health conditions. Reflection, discussion, and communication with one’s proxy and clinical professionals, along with family, friends, and advisors are essential to having one’s wishes understood and honored. These discussions should occur with patients/clients of all ages at all stages of life and health.

3 **Values, Goals, and Priorities:** Discussion should focus on one’s values, goals, and priorities in the event of worsening health rather than on specific treatments or clinical interventions for distant hypothetical situations.

4 **Advance Care Planning Tools:** Advance care planning tools and guides can provide structure and guidance to the process of reflection and discussion and help individuals identify their values, goals, and priorities, and ensure more authentic and useful conversations and advance directives.

5 **Advance Directive:** Instructions and guidance documented in an advance directive should result from the process of information sharing, reflection, discussion, and communication and provide enough flexibility in application to allow surrogate decision-makers to respond to new circumstances and complexities.

6 **More serious illness:** If individuals are facing serious diagnoses, such as cancer, or have been told they have a limited prognosis, the focus may then move to specific treatment preferences. In these cases, the person’s primary/key health care provider should also meet with the client and/or their closest loved ones to create a care plan that aligns with the client’s goals, values, and preferences. For advanced illness, medical providers should consider introducing palliative care options and the option of providing medical orders such as Physician’s Orders for Life Sustaining Treatment (POLST) to ensure the individual’s wishes are translated by medical professionals into actionable medical orders.

7 **Sharing Documents:** Documentation of one’s values, goals, and wishes in the form of an advance directive or another record should be shared with one’s proxy, loved ones, significant others, and primary/key health care providers, and be included in the medical record, so that they are adequately informed before a crisis arises.

8 **Coordination:** Lawyers and health care professionals should aim for greater coordination of advance care planning efforts with the healthcare system/medical providers through congruent
The Checklist

The Checklist is divided into three stages: pre-meeting, first client meeting, and second client meeting. The Checklist is a counseling tool and not a checklist for drafting the client’s advance directive. The latter task is too state-specific to prescribe in a nationally usable checklist.

The heart of the Checklist focuses on healthcare agent selection and client values, priorities, and wishes, borrowing from an online advance care planning tool developed by Rebecca Sudore, MD, and colleagues at the University of California San Francisco. Research on the tool, called Prepare for Your Care, has shown that it increases patient-reported engagement and documentation of advance care planning.

However, a key emphasis of the Checklist is to encourage clients to do more on their own, because an extended meeting with legal counsel is not something most clients will pay for. The Guide recommends that lawyers offer clients one or more advance care planning tools to use on their own and in discussion with family and health care providers. The resource list included with the Checklist references a variety of effective tools because no one tool will likely appeal to every client.

Also, part of the Checklist is a sample letter from the lawyer to the client’s physician to serve as a model for connecting the planning process to the client’s health care provider and getting the advance directive into the medical record. Many barriers prevent advance directives from being present in the medical record when needed, so this initial conveyance of the directive, which requires client consent, does not solve all problems. But it takes an important first step. In addition, providing multiple copies of the advance directive or an electronic copy to the client enables the client to share it with its significant others.

A final key element of the Checklist is the emphasis on the continuing nature of advance care planning. Too often, when an advance directive is signed, the client assumes that the task is done. In reality, the planning process continues throughout life as health or living circumstances change, and as the individual experiences serious illness and deaths among one’s friends and loved ones. Therefore, the Checklist uses a simple mnemonic to communicate this point. Clients should be encouraged to revisit their advance care plans and documents whenever any of the “six Ds” occur:

1. You reach a new DECADE in age.
Conclusion

It is hoped that lawyers will use the Guide (which includes the Checklist), adapt it to their practices, and even improve it as they learn what works best for them. The full Guide is downloadable for free at https://www.americanbar.org/groups/law_aging/resources/health_care_decision_making/ad-counseling-guide.

The webpage also includes a Word version of the Checklist so that lawyers can incorporate the text into their own office systems and adapt it as desired.

A published print version of the Guide can be purchased for $19.95 in the ABA Store (https://www.americanbar.org/products/inv/brochure/346598312/).

Authors

Charles P. Sabatino, J.D., is the Director of the American Bar Association's Commission on Law and Aging, where since 1984, he has served as senior attorney and then as director. He is responsible for the Commission's policy and practice research, development, and education, in areas of health and long-term care, capacity, surrogate decision making, end-of-life care, and legal services delivery to older persons.

Louraine C. Arkfeld is the Chair of the Commission on Law & Aging. She has previously served as the Chair of both the Senior Lawyers Division and the Judicial Division. She also served as the Judicial Member-at-Large of the Board of Governors. She is a retired judge from Arizona where she served twenty-six years on the bench.
“Oh, what a tangled web we weave when first we practice to deceive.”

Many people think Shakespeare wrote that; others say Robert Burns. Actually, it was Sir Walter Scott, in his poem *Marmion*.

There’s a reason the quotation is so widely known, despite confusion over its author. It speaks a truth that is undeniable: a lie can lead to a web of deceit far larger and more tangled than the liar could have imagined.

If you doubt it, take a look at *Gilead Sciences, Inc. v. Merck & Co., Inc.*, No. 162302 (Fed. Cir. 2018). The case tells the story of how a single lie led to a web of deceit so large and so tangled that it cost pharmaceutical giant Merck & Co. two hundred million dollars.

It started with a simple lie. In March 2014, Merck patent attorney Dr. Phillipe Durette wanted to join a conference call with representatives of a pharmaceutical company called Pharmasset. The only Merck personnel allowed on the call were those who were “firewalled,” i.e., not involved in Merck patent work that might relate to Pharmasset’s secrets.

With Merck’s knowledge, Dr. Durette joined the call. He lied and said that he was within the firewall. That lie that would eventually spin into a two-hundred-million-dollar web. The web started when Dr. Durette wrongfully acquired Pharmasset’s secrets on the call. It grew when he used the information in patent filings for Merck. It grew yet larger when he fabricated a cover story to create the false appearance that he had acquired Pharmasset’s secrets from a public source.

Four years later the web would completely ensnarl Merck’s patent infringement suit against Pharmasset’s successor, Gilead. Gilead had infringed on a Merck patent with one of its drugs, and the jury awarded Merck two hundred million dollars in damages for the infringement.
But when Dr. Durette’s lie and the deceit that spun from it—including his false testimony during the litigation—were revealed, the trial court ruled that Merck had unclean hands, in both its business practices and its conduct of the litigation.

As a consequence, the court held that Merck had **forfeited its right to enforce its infringement claim**, and it **overturned** the two hundred million dollar verdict. The Federal Circuit Court unanimously affirmed.

And it all started with a single lie.

**Author**

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.
Fighting Fraud Affecting Older Consumers

By Lois Greisman

Editor’s Note

The author’s views are her own and do not necessarily reflect the views of the Federal Trade Commission or any of its Commissioners. This article is based on information contained in Protecting Older Consumers 2017-2018: A Report of the Federal Trade Commission, (Oct. 18, 2018) available at https://www.ftc.gov/reports/protecting-older-consumers-2017-2018-report-congress-federal-trade-commission. See the report for additional information, including citations and references. Special thanks to Patti Poss, Emma Fletcher, Monica Vaca, and Kati Daffan for their contributions.

Introduction

The Federal Trade Commission (FTC) has broad jurisdiction to tackle unfair and deceptive practices in the marketplace and identifies and stops some of the most pernicious frauds that prey on consumers. The FTC’s enforcement experience shows that older adults have been targeted or disproportionately affected by fraudsters in the context of various deceptive schemes. For example, in the past fiscal year, the FTC has brought law enforcement actions against a range of schemes that affected older adults, which involved phony grants, sweepstakes, purported technical support, business opportunities, apartment listings, and deceptive anti-aging product claims.

In October 2018, the FTC released a comprehensive report, Protecting Older Consumers 2017-2018: A Report of the Federal Trade Commission, describing the FTC’s efforts to combat fraud affecting older adults through research, law enforcement, and education. In all three areas, a key source for information in developing effective strategies is consumer report data. The FTC collects consumer report information through Consumer Sentinel Network (“Sentinel”), an online database that provides federal, state, and local law enforcement agencies with access to consumer reports about frauds, identity theft, and other consumer protection problems.

During 2017, Sentinel took in nearly 2.7 million reports from consumers directly and through its data contributors, including 1,138,306 fraud reports. Forty-nine percent of those included consumer age
information. The FTC analyzed the 2017 complaint information received from consumers who reported their ages as 60 or older, and what follows is a summary of that analysis.

**Analysis of Older Adult Fraud Reports**

Overall, Sentinel report data suggests that older adults are good at reporting frauds they encounter. In 2017, older adults were more likely to report fraud to Sentinel than younger people, and in those reports, they indicated less frequently that they had lost money. While consumers ages 20-59 more frequently report losing money in their complaints, older adults reported much higher dollar losses, individually, than younger consumers.

To compare Sentinel fraud reports filed by seniors and younger consumers, it is helpful to look at the data for the age groups relative to the population size by age. The report refers to this practice as having “normalized” the data, using population numbers obtained from the U.S. Census Bureau.

Figure 1 shows the number of reports filed per million consumers in each age group. All three age brackets of older adults (those ages 60 and older) filed reports at a higher rate than younger age groups. In fact, consumers in their sixties filed reports at almost twice the rate of those in their twenties — those ages 60-69 filed about 3,000 reports per million people compared to about 1,500 for those ages 20-29.

![Figure 1: Consumer Fraud Reports Per Million By Age](image)

As the 2017 Sentinel data in Figure 2 below shows, when younger people reported fraud, they were far more likely than older adults to report losing money. When consumers ages 20-29 filed reports, they were more than twice as likely as seniors to indicate a monetary loss; those in their twenties reported losing money 40% of the time, while those ages 60 and older indicated a monetary loss just 18-20% of the time.
Figure 2: Percentage Of Reports Indicating A Monetary Loss By Age

Percentages calculated based on the number of fraud reports indicating a monetary loss in each age group divided by the total number of fraud reports filed by the age group.

The Sentinel data does not explain why older adults are more likely to report fraud. Seniors may be targeted more by fraudsters, be more knowledgeable about where to report, be more interested and willing to help fight fraud, or there may be some combination of these or other factors driving their relatively high reporting activity.

Further, while the data suggests that older consumers are less likely to report having lost money when exposed to fraudulent offers than younger consumers, younger consumers may also be more inclined to file fraud reports only in instances where they suffered a financial loss. Whatever the cause, the FTC remains concerned about fraud victimization across all age groups and appreciates the contributions from older consumers in reporting fraud.

None of this suggests that older consumers need fewer protections. To the contrary, the Sentinel data shows significant individual financial losses reported by older consumers, particularly those age 80 and older. In 2017, the largest individual losses to fraud were reported by older consumers. Figure 3 shows that when they reported a monetary loss, people ages 60 and older reported much higher median losses than the younger age groups. In fact, consumers ages 80 and older report the largest median losses of $1,100, over twice the median loss amount reported by each of the age groups under age 60.
Median losses calculated based on reports in each age group indicating a monetary loss of $1 to $999,999.

The 2017 reports to Sentinel show that seniors are more likely than younger people to report financial losses to certain types of schemes, such as technical support scams, prizes/sweepstakes/lottery scams, family and friend imposter frauds, and real estate and timeshare resale offers.

Figure 4 illustrates the number of reports for various types of frauds in which consumers indicated they lost money. The dark teal bar represents loss reports filed by consumers over age 60, while the narrow light green bar represents loss reports filed by consumers ages 20–59. For comparison, the data has been normalized to show the number of reports with a loss per million people in each age group.

Moreover, Figure 4 illustrates that seniors were about five times more likely to report losing money to tech support scams than younger consumers. However, seniors were less likely than younger people to report losing money to shop-at-home or catalog sales and frauds, such as government imposter scams, counterfeit checks, and others. Interestingly, younger consumers and older consumers filed complaints about losing money to romance scams at about the same rate.
Median losses reported to Sentinel vary considerably by fraud type. Higher median losses reported by seniors may be partially explained by differences in the types of fraud they experienced. For example, median losses to scams such as real estate and timeshare resale, both of which disproportionately harm seniors, are among the highest median dollar losses reported in Consumer Sentinel.

In contrast, median losses to shop-at-home offers, which are heavily reported by younger people, are among the lowest median dollar losses reported. But, even when median losses are compared by age and fraud type, seniors report higher losses for most frauds tracked in Sentinel. For example, the median reported loss to prizes/sweepstakes/lottery scams is $1,300 for seniors ages 60 and over, but only $431 for younger people.
Telephone scammers are a tremendous problem for consumers of all ages. People ages 60 and older who reported a fraud loss reported that the phone was the top method of contact by the scammers. In addition, the 2017 Sentinel data shows that seniors reported far greater median losses to phone scams than their younger counterparts.

Reports in Sentinel can also include information about the method of payment. The 2017 Sentinel data shows that seniors most often reported paying money to a fraud with a credit card, wire transfer, or gift card/reload card. In 2017, people ages 60 and older paid $104 million via wire transfer to fraudulent schemes, far surpassing the amounts they reported paying through any other payment method.

**Conclusion**

Data from the Consumer Sentinel Network highlights the enormity and complexity of the risks facing older consumers in this country. Yet, the data can also play a key role in refining our agencies’ strategies about how to use limited resources to protect the growing population of older adults in the years ahead.

On a final note, attorneys and advocates should know that the FTC recently launched a public platform to publish aggregated statistics about these consumer complaints on a quarterly basis. By visiting [www.ftc.gov/data](http://www.ftc.gov/data), anyone can interact with graphs and charts that reveal top facts about various frauds, a state-by-state analysis, dollars lost to fraud by various age groups, and other statistics. This statistical information is available for use in briefs, grant proposals, consumer education, outreach presentations, or other purposes. I hope all of this information is useful to those working to fight fraud affecting older consumers.

**Author**

**Lois C. Greisman** heads the Division of Marketing Practices in the FTC’s Bureau of Consumer Protection. Under Ms. Greisman’s management, Marketing Practices leads the FTC’s law enforcement initiatives tackling telemarketing fraud (including Do Not Call/Robocall enforcement), fraudulent business and investment opportunity schemes (including multilevel marketing), mail fraud (including sweepstakes and lotteries), illegal spam, and Internet frauds (including technical support scams). Ms. Greisman also directs the FTC’s work to curb fraud in connection with different payment systems.
Holiday Recipes from SLD Leaders

Disclaimer & Editor's Note

During the VOE Board's October meeting, we decided to solicit holiday recipes from members of the SLD Council and VOE Board. We are delighted by the submissions and are proud to include a variety of appetizers and entrees in this issue. Next month we will publish the desserts. I am grateful to the many persons who provided us with plenty of additional calories to lug around this holiday season. However, the recipes look so incredible that it seems worth the calories. So, I am pleased to present them to you for your enjoyment.

In keeping with “lawyerly tradition” and common sense, we have a few disclosures and disclaimers to include. Without further ado, here they are, and then we can get to the good stuff:

1. Nothing in this article or the included recipes constitute either the endorsement of a recipe or its contents by either the American Bar Association (ABA) and/or its Senior Lawyers Division (SLD). Rather, the contents of each recipe solely represent that of each contributor and their personal opinions. Measurements and choice of ingredients are accurate to the author’s own particular taste. I have read that the adventurous cook is one who will adjust amounts and even an ingredient to please his or her own palate, and of course, dietary issues. In that regard, butter and margarine may also be interchangeable with non-dairy products depending on your individual cholesterol and other dietary tolerances and limitations.

2. Opinions and information contained in these recipes do not replace, modify, alter, amend, or change the recommendations of a brand-name item manufacturer. Any such modifications from those of a brand-name manufacturer are those opinions of the author of each recipe and not those of the ABA or SLD. Furthermore, if a brand-name of a product is stated, we are not aware of whether any of the authors have been subsidized in any way by any brand-name manufacturer for stating that their product is being used.

3. We recommend that you read the entire recipe before starting to cook. As a further word of advice, be sure your oven is working properly and that the thermostat is accurate. It is also wise to always monitor something during its preparation to make sure it is cooking properly and to your satisfaction.
In all candor, we are very happy to share these wonderful recipes with you and wish each of you and your families a wonderful, joyous, and safe holiday season.

Best,
Jim Schwartz, Voice of Experience Editorial Board Chair

Baked Brie with Apricot Mandarin Napolean Brandy Sauce

Submitted by Carole Worthington, Secretary, Senior Lawyers Division

Ingredients

- 12 oz. - 1 lb. round of imported Brie cheese, rind removed
- Lemon leaves
- 1 cup apricot preserves
- ¼ cup Mandarin Napoleon Brandy
- 2 sheets of puff pastry
- Tart apple slices
Instructions

1. Warm oven to 400 degrees. Bring Brie to room temperature and wrap in puff pastry. Place in oven on a baking sheet. Bake until golden brown and remove from oven. Allow brie to cool to firm up.

2. Arrange lemon leaves on a platter and transfer brie to the platter.

3. In a medium saucepan, mix preserves and brandy. Do not bring to boil or simmer. Stir to mix the preserves and brandy. Pour part of the hot mixture over the Brie. Keep the rest on low heat.

4. Garnish with grapes and strawberries. Serve with crostinis. Add more of the hot mixture as you wish to keep Brie warm and enhance flavor.

**Tangy Lemon-Caper Dip**

*Submitted by Carole Worthington, Secretary, Senior Lawyers Division*

Ingredients

- 8 oz. sour cream (light or fat-free)
- ½ cups low-fat, plain yogurt
- 1 tbsp. capers
- 2 tsp. dill
- ½ tsp lemon peel
- Assorted vegetable dippers (baby carrots, zucchini slices, pea pods, yellow summer squash, red sweet pepper)

Instructions
In a small bowl, stir together the sour cream, yogurt, capers, 2 tsp. of snipped (or dried) dill or thyme, and ½ tsp of lemon peel.

Stir. Garnish with additional lemon peel and fresh dill or thyme.

Serve with dippers.

Ida's Addictive Eggplant Spread

Submitted by Ruth Kleinfeld, Division Delegate to House of Delegates

Ingredients

- 2 large eggplants, about 2-2 ½ lbs
- 1 large sweet or Spanish onion, or 1 medium yellow onion
- 3 large bell peppers, red/orange/yellow
- 1 large bell pepper, green
- 1 tbsp. EVOO
- 1 tbsp. salt, preferably kosher
- 2 tsp. freshly ground black pepper
- Garlic, powder or fresh minced, to taste

Instructions

1. Preheat oven to 400 degrees.

2. Prick eggplants all over and place on rimmed baking sheet pan or jelly roll pan, roast 1 hour.

3. Cut peppers and onion into chunks, process in batches in a food processor by pulsing into very small pieces (do not puree), about 20 to 30 seconds. Drain in colander or strainer.

4. Remove eggplants, cut off stem ends. Split open, allow to cool. Leave the peel on (or remove flesh and seeds from peel if desired, not necessary). Cut in chunks or scrape into the processor. Process in food processor about 15 to 20 seconds.
Jezebelle

*Submitted by Carole Worthington, Secretary, Senior Lawyers Division*

This sauce makes a delightful appetizer which keeps for a long time in the refrigerator. It gets hotter the longer it sits.

**Ingredients**
- 6 tbsp. Coleman’s dry mustard
- 16 oz. apple jelly
- 6 oz. pineapple preserves
- 4 oz. horseradish

**Instructions**
- Mix well and store in the refrigerator overnight.
- Serve with Triscuits or crostinis. *(Bonus: add shredded mozzarella or serve over cream cheese)*

Cranberry Sauce

*Submitted by Jeffrey Allen, Council Member, Senior Lawyers Division*

**Ingredients**
- 12 oz. fresh cranberries
- 1 cup sugar
- ¼ cup red wine
Cranberry Jelly

Submitted by Jack Young, Immediate Past Chair, Senior Lawyers Division

Ingredients

- ¾ cup orange juice
- 2 tbsp. grated orange peel
- 1½ tsp. cinnamon

Instructions

- Place all ingredients except cranberries in a saucepan and bring to a boil.
- Reduce heat and simmer for 3 minutes or until sugar is dissolved.
- Add cranberries and simmer for 10-12 minutes.
- Remove from heat and cool to room temperature, then refrigerate. (Note: the sauce thickens as it cools. Can be served cold or warmed in the microwave. Jeff’s family recommends cold.)

Cranberry Jelly

Submitted by Jack Young, Immediate Past Chair, Senior Lawyers Division

Ingredients

- ½ lemon
- ½ orange
- 1½ cup cranberry juice (unsweetened) (either from concentrate or from cooked cranberries (see above) which have been strained to remove the pulp)
- Pinch of allspice
- 2 tbsp. sugar (40 grams)
- 1 packet of Knox white gelatin
- 1 clove

Instructions

1. Zest ½ lemon.
Shoe Peg Corn Dip

Submitted by H.T. Moore, Council Member, Senior Lawyers Division

Ingredients

- 1 can of white shoe peg corn, drained
- 1 can of black beans, drained
- 1 can of minced rotel, drained
- 1 can of chopped green chilies, drained
- 3-4 roma tomatoes, chopped
- 1 dash of cumin (to taste)
- 1 dash of garlic salt (to taste)
- 1 fresh lemon, squeezed juice
- 2-3 fresh avocados

Instructions

2 Zest ½ orange.

3 In a bowl, combine lemon, and orange zest with cranberry juice (set aside 2 tbsp.), clove, allspice, and sugar.

4 In a small pot, heat 2 tbsp. of the cranberry juice.

5 Add gelatin to the small pot, stirring until completely dissolved.

6 Add the mixture from the small pot to the bowl containing the cranberry juice.

7 Remove the clove.

8 Place in a glass container and chill for 4 hours.
Spicy Crackers & Sweet Cherry Bell Pepper Dip

*Submitted by H.T. Moore, Council Member, Senior Lawyers Division*

**Spicy Crackers**

**Ingredients**

- Large freezer Hefty zip lock bags
- 1 box saltines (four sleeves)
- 1 cup of canola oil
- 1 tbsp. red pepper flakes
- 1 tsp. cayenne pepper

**Instructions**

1. Mix the corn, black beans, rotel, and chopped green chilies together.
2. Add roma tomatoes, cumin, garlic salt, and fresh lemon juice.
4. Chill overnight.
5. Remove from fridge. Chop avocados to taste and add before serving.

**Spicy Crackers & Sweet Cherry Bell Pepper Dip**

1. Mix together the canola oil, red pepper flakes, cayenne pepper, and dry ranch dressing.
2. Open and pour two sleeves of crackers into zip lock bag.
3. Pour half of the mixture over crackers and shake.
4. Open and pour out the other two sleeves of crackers in another ziplock bag.
5. Pour the other half of mixture over the crackers.
6. Shake bag every 15 minutes for an hour.
Sweet Cherry Red Bell Pepper Dip

Ingredients

- 8 oz. cream cheese, softened
- 3 sweet cherry (tiny) red bell peppers, finely diced
- 1 tbsp. dill weed
- ½ fresh lemon

Instructions

- Mix Ingredients and refrigerate for at least 1-2 hours.

Marinated Shrimp

Submitted by Leonard Gilbert, Council Member, Senior Lawyers Division

Ingredients

- 2-3 lbs. shrimp, deveined
- ½ cups oil
- ½ cup celery tops
- ¾ cups white vinegar
- ¼ cup pickling spices
- 3 tbsp. capers and juice
- 1 tbsp. salt
- 2½ tsp. celery seed
- 2 cups sliced onion
- 1½ tsp. salt
7-8 bay leaves

3-4 drops Tabasco

Instructions

1. Simmer the shrimp, celery tops, pickling spices, and salt for 5 minutes. Drain.

2. Mix remaining ingredients with the shrimp and pour into a glass bowl.

3. Add water to cover. Refrigerate overnight.

4. When ready to serve, drain and reserve liquid.

Crabmeat Appetizer

Submitted by Leonard Gilbert, Council Member, Senior Lawyers Division

Ingredients

- 1 lb. fresh lump crabmeat
- 1 cup oil
- ¼ cup white vinegar
- 1 large purple onion, chopped finely
- Lots of salt and black pepper. You cannot add too much pepper.
- Ice water
- Saltines

Instructions

- Mix crabmeat with oil, vinegar, onion, salt, and pepper.

- Pour into a glass bowl. Add enough ice water to cover the mixture.

- Refrigerate overnight. When ready to serve, do not drain.
Serve in a glass bowl with a few ice cubes on top.

Serve with a slotted spoon and saltines.

**Stuffing (Outside of Turkey)**

*Submitted by Jim Schwartz, Voice of Experience Editorial Board Chair & Council Member, Senior Lawyers Division*

**Ingredients**

- 1 bag Brownsberry (or Arnold) herb stuffing (I use this because there are no eggs in it like many others)
- 3-4 large onions, diced
- 2 green peppers, diced
- ½ - ¾ cup of celery, chopped
- 2 large boxes of mushrooms, diced
- Butter or margarine
- Garlic or onion powder

**Instructions**

- Empty bag of stuffing to a large pan. (Add about 50% of the amount of water called for by the bag.)
- Saute each of the veggies in butter or margarine separately. As they brown, add them to the pan with the stuffing, including all the juice in the pan.
- When all veggies are sauteed and added to the large pan, stir the mixture in well.
- Add some butter or margarine to the mixture and cover it with aluminum foil.
- Add garlic powder and onion powder to taste (I like more rather than less, but add what you think will taste best.)
- Place on the middle rack on a pre-heated 300-degree oven.
Leg of Lamb

Submitted by Carole Lynch Worthington, Secretary, Senior Lawyers Division

Ingredients

- ½ Leg of lamb – shank half
- Garlic powder
- Salt
- Pepper
- Cavenders
- 1 Lemon (sliced)
- Lemon pepper
- Fresh garlic
- Dry red wine

Instructions

- Rub with garlic powder, ground sea salt, ground black pepper, Cavenders, lemon pepper, rosemary, other herbs as you wish.
- Make small shallow incisions in lamb and insert small pieces of lemon and garlic. If you do not like garlic, you may wish to minimize this.
- Add ¼ cup of dry red wine or beef broth to roasting pan.
- Cook open in a lightly oiled roasting pan, fat side down. Cover with round slices of fresh lemon.
- Preheat oven to 350 degrees.
Roast lamb in the middle of oven until thermometer reaches 160-165 degrees for medium-rare or 175-180 degrees for well done. Lamb has more flavor and is moister if cooked to the lower temperature. Like most meats, it will continue to cook after you remove it from the oven.

Serve with mint sauce and/or mint jelly.

Tenderloin

Submitted by Carole Lynch Worthington, Secretary, Senior Lawyers Division

I took a good recipe and reduced the fat and sodium and other aspects to make it healthier. It should come out with medium to rare portions for a large roast. Tip: Remove tenderloin from refrigerator an hour before cooking. Season with Cavender’s, Lemon Pepper, Worcestershire Sauce and marinate. Flip twice while marinating.

Tenderloin Ingredients

- One Tenderloin – 6-7½ lbs., trimmed

Marinade Ingredients

- ½ c. olive oil (light, not heavy)
- ½ cup safflower oil
- ¾ cup Worcestershire sauce
- ¼ cup soy sauce (if you prefer not to use soy sauce, add a little water or extra wine and bit more salt)
- 2 tbsp. dry mustard (Coleman’s preferred) (if no dry mustard, use ½ Teaspoon of regular mustard)
- 1 tsp. salt (prefer sea salt)
- 1 tsp. ground pepper
- ½ cup red wine (Cab or Cab blend)
- 1/3 cup lemon juice (Minute Maid frozen or squeeze lemons)
- 1 clove garlic or 1 tsp. of minced garlic
Marinade Instructions

- Mix and pour over tenderloin or eye of round. Marinate about an hour at room temperature.
- Preheat oven to broil. (Do not put the tenderloin in the oven until the sides of the oven are very hot for even cooking.) Put meat and marinade in the oven uncovered for 2-3 minutes (maybe 4 minutes if your oven does not get consistently hot). For a more seared outside, omit marinade during searing but do not throw marinade away.
- Remove meat and marinade and cool oven to 290 degrees. (Turn off oven, leave the door partially open for heat to escape below 290, then close the oven and turn back on. Give oven time to heat evenly to 290. (If sides of the oven are too hot, the tenderloin will cook too rapidly and be less tender. The goal is a slow even heat.) Cook uncovered for about an hour.
- If time is an issue, raise the oven temperature to 325 degrees and reduce the cooking time to 40-45 minutes. Remember that meat continues to cook after it is removed from the oven and cooks rapidly if it is wrapped in foil. The goal is to remove from the oven, give a few minutes to firm up, slice and serve.

Goes well with sour cream and horseradish The tenderloin may also be divided into two parts (one frozen for later use.) This recipe also works for Eye of Round. Enjoy!

Potato Latkes

Submitted by Jeffrey Allen, Council Member, Senior Lawyers Division

Ingredients

- 3 cups grated raw potatoes
- 2 eggs
- ¼ cup flour
- 1 small onion, grated
- 1 tsp. salt
- ¼ cup baking powder
- 1 can applesauce (optional)
Instructions

- Mix the grated raw potatoes, eggs, flour, grated onion, salt, and baking powder in a bowl (or put in a blender) to create a batter.
- Fry in hot oil until golden brown on both sides.
- Serve warm plain or with sour cream or applesauce.

Pilgrim Perfect Turkey

Submitted by Norm Tabler, Voice of Experience Editorial Board Member and Columnist

Ingredients

- 1 glass (preferably stemmed) chilled chardonnay
- 1 chair, preferably recliner
- 1 laptop or another internet-connected device
- 1 working doorbell.

Instructions

1. Read through directions from beginning to end before starting.
2. Sip chardonnay.
4. Remaining on site, go to Willie Bird Fresh Free-Range Turkey, Thanksgiving Delivery.
5. Select desired turkey size, from 10 oz. to 26 oz.
6. Sip chardonnay
7. Press Add to Cart.
8. In Select Delivery section, press Thanksgiving, carefully avoiding Christmas.
Great chicken recipe. It is quick to prepare and does not require watching. The outside is crusty, and the inside moist. The flour mixture can be made up in large amounts and stored to use as needed. Serves 4-5.

**Ingredients**

- 1/3 cup vegetable oil
- 2 tsp. paprika
- 1/3 cup (2/3 stick) butter
- 1 tsp. garlic salt
- 1 tsp. salt
- 1 tsp. dried marjoram (opt.)
- 2 tsp. black pepper
- 8-9 chicken pieces – legs, thighs, breasts

**Instructions**

1. Place the oil and butter in a shallow cooking pan (a jelly-roll pan is perfect) and put in a preheated 375-degree oven to melt. Set aside.

2. In a large paper sack, combine flour and seasonings. Roll the chicken pieces, 3 at a time, in the melted oil-butter mixture, then drop them in the sack and shake to cover.
3. Place chicken in the pan, skin side down.

4. Bake for 45 minutes. With a spatula, turn over and bake 5 or 10 minutes longer, or until the top crust begins to bubble. Serve hot or cold, but the crust texture is better if the chicken is not refrigerated before eating. (If you can afford the calories, the pan drippings make an absolutely divine gravy for mashed potatoes or biscuits.)
It’s Thanksgiving in America. In Tallahassee, a pro bono hero, we’ll call him Frank, watches the Macy’s parade with his fiancée and reflects upon the devastation of Hurricane Michael. He is exhausted but gratified by the outpouring of volunteer support from Florida’s lawyers. He knows Florida will be hit with hurricanes again and again, but the lessons learned will help them be ready.

It’s Thanksgiving in America. In Austin, Texas, a mother of twins, we’ll call her Hannah, juggles her children’s homework while reviewing last year’s questions asked and answered by ABA Free Legal Answers in the wake of Hurricane Harvey. She is thankful that the Texas Supreme Court allowed licensed lawyers from all over the country to perform pro bono work in Texas and marvels at the outpouring of support from lawyers throughout the United States. As she finishes her status report to the state bar, she is grateful that Austin and her family in Houston were spared. She wonders how the thousands of clients who received pro bono advice in Texas have fared since then.

It’s Thanksgiving in America. A distinguished lawyer in Boston, we’ll call her Mary, works on an amicus brief. The purpose of the brief is to help persuade an appellate court to protect unaccompanied minor children who have come to our country. She completes her final draft just before the family lunch begins. She gathers up the brief and reflects on how blessed her nieces and nephews are to be born in America as well as how blessed she is to see them this Thanksgiving Season.

It’s Thanksgiving in America. A strong Legal Services Corporation (LSC) leader, we’ll call him Jim, enjoys an early college football game on television with his family. This Thanksgiving morning is one of the few mornings that are restful for Jim. He is thankful that LSC has avoided, thus far, existential cuts in funding, but he reminds himself that he can never, never, never let up.

It’s Thanksgiving in America. A managing partner, we’ll call her Linda, is at her Atlanta office late into the evening working on programs to train her young lawyers and to boost morale with her staff. She has spent hundreds of nights the last three years in hotels around the world. She is thankful to be back home with her devoted husband, but she is also grateful that her soul has been enriched by the thousands of military service personnel and veterans she has met and helped over the past few years. She wishes they all could be with their families this Thanksgiving Season.
It's Thanksgiving in America. A pro bono volunteer from Nashville, we'll call her Samantha, has the luxury of going to a movie with her dear husband. She reflects proudly on her work helping to develop ABAFreeLegalAnswers.org. She is also encouraged by a recent decision from the U.S. District Court in Nashville making it more difficult for states to deny drivers licenses to the poor just because they can't pay fines and fees.

It's Thanksgiving in America. A pro bono champion in California, we'll call her Julia, helps with preparations for a neighborhood lunch. She is still worried about the drought and wildfire survivors in her state. But she knows that California's lawyers will rise to the occasion—just as they always have before—to help those who have lost so much.

It's Thanksgiving in America. A loyal pro bono warrior and member of the ABA staff, we'll call her Cheryl, sighs as she reflects on the pace of the last year. The year has not been an easy one: budget cuts, hurricanes, and an ongoing immigration crisis. But the more she reflects, the more she realizes how much good she and her team members have accomplished in the past year.

It's Thanksgiving in America. The manager of a small firm in Pittsburgh, we'll call her Debbie, is in her office this Thanksgiving morning taking care of pro bono work that she was unable to finish earlier in the week because she was in hearings. She marvels at the amount of pro bono time put in by her lawyers and her staff, especially working on cases to ensure that Medicare/Medicaid beneficiaries have access to the care they need. It's tough to juggle all her responsibilities, but she knows that the pro bono work that she and her employees do make their own problems seem small and creates a wonderful culture of mutual respect within her small firm.

It's Thanksgiving in America. Asuccessful and hardworking bar leader, we'll call her Hilarie, drives to a friend's home to bring her Thanksgiving brunch. As she drives through her beloved south Florida neighborhood, she is mindful that there are homeless Americans from Miami to Juneau and from Honolulu to Maine who survive day to day on the streets and in homeless shelters. She is grateful for the many blessings the Lord has bestowed upon her and her family and quietly says a prayer renewing her commitment to bring better living conditions to her fellow Americans without a real home.

It's Thanksgiving in America. A weary road warrior, we'll call him Bob, finally gets to spend a weekend in his beloved Montana. A longstanding fighter against homelessness and poverty, he gives thanks for all that is being done to provide homes to the homeless, protect the rule of law, and provide pro bono to those whose rights depend upon them.

It's Thanksgiving in America. A lucky husband, we'll call him Buck, delights in the Christmas songs of his wife and nieces. He gives thanks for the countless unselfish acts of lawyers across America who have
given of their time and expertise to our brothers and sisters. They have cemented a stunning legacy for our profession, never to be forgotten.

During this time of giving, there are many ways to give back, and pro bono is one of them. Consider signing yourself up to answer some pro bono questions in your state through https://www.abafreelegalanswers.org/ today.

Learn more about this convenient, virtual pro bono opportunity and how to get involved here: https://www.americanbar.org/groups/senior_lawyers/publications/voice_of_experience/2018/october-2018/volunteer-to-do-pro-bono-now-through-aba-free-legal-answers/

Author

Buck Lewis is a shareholder in the Baker Donelson Memphis office and chairs the Appellate Practice Litigation Group. His practice involves solving complex business, personal injury, insurance coverage, Consumer Protection Act, health care and class action litigation problems for his clients. He is a Supreme Court Rule 31 listed General Civil Mediator. In 2013, the American Arbitration Association added Mr. Lewis to its panel of arbitrators. He is the current Chair of the ABA Pro Bono and Public Service Committee.
Tell us a little bit about your career.

Three years out of law school, I formed a partnership with Gary Skoloff, who had been my high school classmate and Army buddy. This October 1st, we celebrated our 57th anniversary together.

Gary became a nationally known expert in family law and served as chair of the ABA Family Law Section. I have spent my life litigating the value of real property, particularly in eminent domain, and property tax matters—just litigating—no transactional work.

I learned the trade as tax counsel to the City of Newark, where I handled more valuation cases in one year than most lawyers try, or settle, in a lifetime.

During my career, I have litigated the value of almost every type of property and saved our clients tens of millions of dollars in property tax.

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

Not at all. My parents were poor immigrants, who never owned a home or any other real property.

While I took tax classes in law school, I never heard any mention of property tax. My first exposure to its existence was when, after completing a judicial clerkship and doing some per diem work, a lawyer sent me to cover a real estate closing for him. There was a line on the closing statement with an adjustment for property tax. I had to ask counsel for the other party to step out of the room with me so that he could explain what that was.

What has been the highlight of your career?

It is hard to pick. I have been so blessed. I was honored to be elected by my colleagues at various times as President of the New Jersey State Bar Association and of our Bar Foundation.

I was involved in the successful effort to create the Tax Court of New Jersey with the same benefits and tenure as our Superior Court and to help in drafting its rules of practice.
I have had the good fortune to represent clients and the State Bar in numerous appellate matters, including a landmark Supreme Court ruling that certain assessing practices are unconstitutional.

**If you could go back to the beginning of your legal career, would you have done anything differently?**

No. Gary and I started with two of our state's largest and most prestigious firms: but we wanted more direct control of our destiny. It was fortunate that we were both single at the time because we worked night and day to build a law practice and a community presence we could be proud of.

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

Consider your motives and your opportunities carefully. If you are admitted to a top-ranked law school, or have what it takes to be at or near the top of your class elsewhere, and Big Law appeals to you, or if you can afford a career in public service, go for it. If not, consider alternatives.

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

I think the profession is more self-critical and less complacent than when I graduated 60 years ago.

Also, while we have a long way to go in becoming more representative of our citizenry, and impatience is understandable, the changes have been amazing. My law school class of over 500 had only 9 women. 30 years later when I became the State Bar President, our entire Board was Caucasian and there was only 1 woman. Last year, the ABA had 5 women elected as Officers, including 2 women of color. It is also impossible not to mention the advent of the computer age, e-filing, and electronic research, as among the major changes.

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

I joined in 1962, after completing active duty in the Army. The ABA was the accepted voice of the profession, and in those days, I didn't like that voice very much. I believed it was our responsibility to participate if we wanted change.

I believed and still believe that the organized bar is critical in maintaining the independence of the Judiciary, improving the justice system, and advancing the rule of law.

**What has been the highlight of your work with the ABA?**
I was privileged to serve on the ABA nominating committee and campaign for the nomination of the first three women to serve as President.

I have been in the House of Delegates for 29 years where I was thrilled to serve with my twin sons, Jonathan, a former member of the Board of Governors, and David, a former chair of the YLD, who now owns and manages our firm of 25 lawyers, and who have honored my commitment to diversity by creating a Legal Opportunity Scholarship Fund in my name.

I also served on the Board of Governors and the 8-member Executive Committee.

I also had the good fortune to help form the coalition which defeated Multi-Disciplinary Practice and to be elected Chair of the National Judicial College.

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

The alternatives were government service or teaching at the college level. I turned down a fellowship in government at the University of Chicago when, to my surprise, I was accepted at Harvard Law School.

Author

Saul Wolfe, Council Member, Senior Lawyers Division

Saul Wolfe is a member of the FJE Council, the chief non-dues fund-raising entity of the ABA, the 2003 State Bar Foundation Medal of Honor recipient for contribution toward Improving the New Jersey Justice System, the 2014 State Bar Excellence in Diversity Award for advancement of women and minorities, and was selected as the State Bar’s Senior Lawyer of the year for 2017. He just returned from his 60th law school reunion; having previously served as President of the Harvard Law School Association of N.J.
Lawrence A. Frolik, Emeritus Professor at the University of Pittsburgh School of Law, has authored a second edition of “The Law of Later-Life Healthcare and Decision Making.”

The first edition promised the reader a book that would “provide a comprehensive description of the manner in which the law regulates and reacts to healthcare and personal decision-making for the elderly.” The updated and comprehensive second edition continues to fulfill that promise as well as provides its readers with “answers to their questions about healthcare decision-making.”

Readers with questions and concerns about healthcare in later life will find answers here. At a little over 300 pages, the book reviews topics including Paying for Healthcare, Paying for Long-Term Care, and End-of-Life Decision-making. The book also covers where long-term care is provided, including a discussion of supportive housing and nursing homes.

In short, it is a one-volume book for lawyers who need answers to the common questions about healthcare that are put to them by their older clients.

After age 65, clients are increasingly concerned about their healthcare, particularly what happens to them if they need long-term care. They are confused and worried about their end-of-life rights and about who will decide their healthcare if they should lose mental capacity. This book provides the lawyer answers to those questions as well as provides the lawyer with a framework to understand the law and its implications for their clients.

The book begins with an overview of how older clients pay for healthcare, by enrolling in Medicare. Almost all Americans are eligible for Medicare at age 65, a year earlier than the age 66 regular eligibility age for Social Security. Anyone age 65 or older or any lawyer who regularly advises clients age 65 or older should have a basic understanding of Medicare and the four Medicare Parts, A, B, Medicare Advantage, and Part D. It can seem overwhelming, but Frolik guides the reader through the statutory maze and practical implications.

Next, the book reviews long-term care housing options that run from aging in place to retirement housing, and finally (both in the book and in life) to nursing homes. Most lawyers know that advising a client about housing options is usually not billable. But estate planners, elder law attorneys, and general practitioners should be aware that if they can intelligently talk to a client who is considering moving into an age-restricted community or who must move a parent into a nursing home, the client will be grateful and respect the lawyer’s acumen. Just a few words from the lawyer, such as, “If you are considering moving into a Continuing Care Retirement Community (CCRC), be sure to investigate its financial stability,” or “Before you buy a condominium unit, ask to see the by-laws. You may be surprised at what you find,” can do much to gain the confidence and future legal business of a client.

More and more clients have become aware that the cost of long-term care can be staggering. Many have seen what it costs to maintain a parent in a nursing home. They will expect their lawyer to appreciate that potential cost and have some answers on how to pay for it. Frolik’s book devotes a chapter to how to pay for long-term care. Those who read it will have a better understanding of why so many lawyers now advertise themselves as elder law attorneys. The complexity of the law surrounding eligibility for Medicaid reimbursement of the cost of nursing home care makes it obvious why so many seek legal advice.
Those approaching later life worry about the possible loss of mental capacity due to dementia, and in particular, they fear the onset of Alzheimer's disease. That fear is well founded. It is believed that over 50 percent of those age 85 or older suffer some degree of dementia, which for most persons is a progressive, incurable disease. Many begin to evidence symptoms of dementia in their 70's, and a few suffer early onset of dementia in their 60's. Others have physical problems that reduce their mental capacity or interfere with their judgment. Even the prescription drugs used to combat the problems of aging can lower the individual's mental capacity.

The book has an extended chapter on the legal implications of mental incapacity; the concepts of guardianship and conservatorship are covered in detail. Although both guardianship and conservatorship are creatures of state law, the book covers the more general, universal legal issues of these topics. Those who have questions about topics, such as what limited guardianship is or what are the powers of a guardian, will find answers in Frolik's book.

The last chapter provides extensive coverage of end-of-life decision-making. It begins with the right of a competent patient to forego life-sustaining medicine. The law recognizes the concept of informed consent that gives the patient final decision-making authority over their healthcare. As a result, case law has established that a competent patient can terminate life-sustaining treatments.

Things get more complicated if the patient is not competent. The book reviews the case history of how decisions are to be made for a dying, mentally incapacitated patient. Essentially the law has determined that under appropriate conditions, life-sustaining treatment can be terminated.

Hopefully, the patient has left instructions about their care, either in a living will or by appointing a surrogate healthcare decision-maker. The book carefully analyses the legal consequences of executing a living will. Unfortunately, living wills are popular but they are not the best choice. Too often a living will either fails to convey the patient's wishes or is disregarded. The more effective alternative is to appoint a surrogate healthcare decision-maker and for the patient to provide that surrogate with instructions on what kind of medical treatment they wish to have.

The book describes how to draft and execute a healthcare power of attorney that appoints a surrogate healthcare decision-maker. Of course, a practitioner must look to the law of the governing state for specifics, but the book outlines what the power should contain as well as the powers that the state is likely permitted to grant to an agent.

The book then describes how state law deals with incapacitated patients who did not execute a living will or appoint a surrogate healthcare decision-maker. In many cases, the parties involved, the family of the patient and the physician, simply decide what to do. Sometimes a family member or third-party files for guardianship in order to make the decision. However, state law increasingly provides for an automatic appointment of a family member as the surrogate decision-maker. All these possibilities are explained.

The book also covers other relevant statutes, such as HIPAA. Do Not Resuscitate orders (DNR) are reviewed. While a lawyer may never be called upon to draft such an order, lawyers should understand and appreciate the effect of such an order. Finally, palliative and hospice care are discussed. Even organ donation and final disposition of the decedent's remains are briefly reviewed.

Frolik's book provides the reader clear and concise coverage of the legal issues that arise from later-life healthcare and of end-of-life decision-making. Any lawyer who regularly deals with older clients will find it to be an invaluable reference book. Moreover, older lawyers may also find the book applicable to their own circumstances.

Author

Lawrence A. Frolik, Professor Emeritus of Law at the University of Pittsburgh School of Law, is a national expert on the legal issues facing older Americans. He is the author, co-author or editor of over a dozen books. He is the author of *Elder Law and Later Life Legal Planning* (ABA 2017); *The Law of Later-Life Health Care and Decision Making*, 2d ed. (ABA 2018); and *Residence Options for Older and Disabled Clients* (ABA 2008). He is the co-author of the treatise, *Advising the Elderly or Disabled Client* (Warren, Gorham, and Lamont,
2d ed. 1999 with semi-annual Supplements). He was awarded a J.D. *cum laude* and an LL.M. from Harvard Law School, and a B.A. with Distinction from the University of Nebraska-Lincoln, where he was elected to Phi Beta Kappa.
International Senior Lawyers Committee

By Robert Lutz & Aaron Schildhaus

This newly-created committee is co-chaired by two past chairs of the ABA Section of International Law: Robert Lutz, Professor of Law, Southwestern University School of Law, Los Angeles, and Aaron Schildhaus, Counsel, Scharf Banks & Marmor, Chicago.

Recognizing the importance of international legal issues in so many dimensions of the legal profession, this new committee addresses not only international law matters and developments but focuses on a fascinating array of legal concerns viewed from the perspectives of civil and common law practitioners.

The International Senior Lawyers committee hopes to draw upon the expertise and interest of other practitioners in the Division to present a series of webinars and informational sessions geared towards seasoned lawyers, whether or not they have been previously involved in an international law matter. We also want to consider possibilities of legal exchanges and other interactions with senior lawyers in foreign jurisdictions.

If you are interested in joining or serving this committee in any capacity, please send an email to: ASchildhaus@scharfbanks.com, rlutz@swlaw.edu, and Emily.Roschek@americanbar.org.

We ask for you to provide us with your contact information and a brief indication of your ideas or interest areas of the committee.

Authors

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Aaron Schildhaus, Counsel, Scharf Banks & Marmor, Chicago, IL.
Call for Nominations: Division Officers, Council Members, and Delegate

By Jack Young

Nominating Committee

The Chair of the Senior Lawyers Division Marvin S.C. Dang has appointed the following to the Division’s Nominating Committee: Jack Young, Chair, and Albert C. Harvey, Karen P. Campbell, Leonard H. Gilbert, and Donna J. Jackson, Members.

Automatic Succession

Under the Division’s Bylaws, upon adjournment of the 2019 ABA Annual Meeting, Chair-Elect Albert C. Harvey becomes Chair; Vice-Chair Michael J. Van Zandt becomes Chair-Elect; and Marvin S.C. Dang, Chair during the 2018-19 bar year, becomes Immediate Past Chair of the Division.

Request for Applications and Recommendations for Nominations

The Nominating Committee will accept applications and recommendations for nominations for the following elected Division leadership positions for terms beginning with the adjournment of the ABA Annual Meeting in August 2019. The DEADLINE for submitting applications and recommendations is MONDAY, DECEMBER 10, 2018.

Officers:

- **Vice-Chair** for a one-year term with automatic succession to Chair-Elect the following year
- **Secretary** for a two-year term
- **Budget Officer** for a two-year term
- **Division Delegate** for a three-year term
○ **Council Members-at-Large:** Four (4) Council positions for four-year terms to expire in 2023 are to be elected. The current incumbents are ineligible since they will have served full four-year terms. Additional Council positions may be open if an existing Council member is nominated for another position.

**Application and Recommendation Process**

You can recommend yourself or another person for an elected Division leadership position by sending an email or letter to the Nominating Committee. If you are recommending another person, please confirm with that person that he or she will accept a nomination and state this in your recommendation. Anyone currently holding an elected Division position can apply or be recommended for another position even if the term for the current position expires after August 2019.

**All nominations must include at a minimum a letter and a statement of the applicant’s or the recommended person’s activities within the Division, the ABA and the legal profession.**

The Nominating Committee will meet at the ABA Midyear Meeting and intends to submit its report to the Division Chair at that meeting. Additional nominations may be made by petition pursuant to Section 6.2 of the Division Bylaws, which requires receipt of such petitions by the Chair of the Division no later than sixty (60) days prior to the opening of the Annual Meeting of the Association.

All elections shall be held at the business session of the Division during the 2019 ABA Annual Meeting in August in San Francisco, CA.

**Deadline for Nominations**

Please e-mail applications or recommendations by the deadline of **Monday, December 10, 2018** to the Nominating Committee Chair or to any Committee member with a copy to Division Staff Director Emily Roschek at Emily.Roschek@americanbar.org or mail a copy to Emily’s attention at ABA Senior Lawyers Division, 321 N. Clark Street, Chicago, IL 60654.

Here are the e-mail addresses of the Nominating Committee Chair and members:

  Jack Young (Chair): young@sandlerreiff.com

  Albert C. Harvey: aharvey@lewisthomason.com

  Karen P. Campbell: karen.campbell@northfloridaopg.org
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)*
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)

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)

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
Senior Lawyers Division Schedule for ABA Midyear

All events will be held at Caesar's Palace.

REGISTER NOW!

Friday, January 25, 2019

- 9:00 AM - 10:00 AM | Book Publishing Board
- 10:15 AM - 11:15 AM | Voice of Experience Editorial Board
- 11:30 AM - 12:30 PM | Experience Magazine Editorial Board
- 1:30 PM – 2:30 PM | Opioid Initiative Task Force
- 2:45 PM – 3:45 PM | Nominating Committee

Saturday, January 26, 2019
8:30 AM - 8:45 AM | Breakfast

8:45 AM - 11:15 AM | SLD Council Meeting

11:15 AM - 11:45 AM | Tech Tips Program (nonCLE) presented by Jeffrey Allen and Ashley Hallene