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"Attorney Advertising"

NOBODY TO CARE AFTER ME

Real Life: "One night I met a stranger. Was it right to have faith in a stranger? There was nobody to care after me. Is it right to trust a stranger? I had nobody to care after me. Was it right to love a stranger when there was nobody to care after me?"

As we are living longer and in many cases we are outliving our children, these questions are very real. With the influx of home health aides and home attendants these folks are stepping into the role that used to be designated for our children.

It is a role you would like to believe your children would gladly play. But some do not want to play

that role, and thus you have to rely on the role being played by a stranger.

We cannot fault our children for not wanting to take on that role as we continue to mature and age. For they have their own lives and their own minds. There is a song sung by Sweet Honey in the Rock entitled "On Children" which captures this sentiment so profoundly:

Your children are not your children; they are the sons and daughters of life's longing for itself.

They come through you but they are not from you and though they are with you, they belong not to you.

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A TRUMPET FOR JUSTICE

We are seeing, in the world today, so much disorder and dysfunction. There is disorder in the social order. There is disorder in the moral order. And there is disorder in the psychological order. The world's orders are intertwined and one cannot be in disorder without the other being in disorder. For those who subscribe to the universe, karma, divine intervention, *ji-ji-mu-ge* or some equivalent, you will have an understanding of the connectedness of all things and events.

The world we live in is an example of a social disorder. The world has created a mentality and that mentality is dysfunction. Such a mentality impacts families, neighbors, communities and the individual.

We have read about it in books and seen it in movies: "All Quiet on the Western Front," "Stop Loss," "In the Valley of Elah," "Brothers," "Taxi to the Dark Side." This mentality creates a disorder and dysfunction all over the world. If one's community is a microcosm of the world then it is axiomatic that the world is a macrocosm of a community, a neighborhood and an individual's life. And, because our world continues to exist, life has become as Macbeth says "a tale told by an idiot, full of sound and fury, signifying nothing." So, the violence in the world has made the interactions between and among people in neighborhoods and communities more confrontational and more violent. And when there is disorder in the social order, there is

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NOBODY TO CARE AFTER ME (Continued from page #1)

You can give them your love but not their thoughts; they have their own thoughts.

You can house their bodies but not their souls for their souls dwell in a place of tomorrow, which you cannot visit, not even in your dreams.

You can strive to be just like them but you cannot make them just like you.

So, because our children have their own lives and we are advancing in age we must get our papers in order. If we choose to have others fulfill the role that we wish our children would take on, there is a good chance our children may be hurt by our decision.

And for those who have grandchildren or are expecting grandchildren, you would agree that grandchildren have always been show-stoppers. We have provided for them and cared for them forever. The only way to continue to care for them and to protect them is to make sure that you name them in your papers. If you would not choose your own children to handle your affairs should you become disabled, it goes without saying that you would not choose your own children to manage the money you have left for your grandchildren.

So, even if in your sentimental state you choose your children to play the role of overseeing the matters that you may no longer be able to oversee, you have to be smart enough to have a backup plan.

The first step in your backup plan is to hire a good lawyer. The lawyer will keep your confidence (particularly if you are having doubts about selecting your own children) and ask the people you choose "can they follow your wishes," which they may find extremely hard to do during a very emotional time. The questions have to be asked and the matters have to be discussed. If your son or daughter is unwilling or unable to follow your directives, then they may not be the person for the role. If your children take offense at the mere asking of a question about their finances, then it may raise a red flag in your mind. The lawyer can ask these questions of your loved ones without them feeling personally attacked, offended or hurt by you.

Once you have hired a good lawyer, then the papers you will need are called advanced planning directives. It is a nice way of saying that you are advancing in years and you need to have some direction about how you want someone to handle your personal and business affairs for the rest of your life. The advanced planning directives we speak of are: Powers of Attorney, Health Care Proxy and Living Wills. These are legal instruments when properly executed provide instruction for others to follow with regard to your future care in the event that you become disabled, incompetent or hospitalized on life sustaining equipment. While each instrument has power in and of itself, each one provides a different degree of protection, which is why it is important to have all three.

While each instrument has power in and of itself, each one provides a different degree of protection, which is why it is important to have all three.

It is not easy to choose a stranger for this role, for it is a huge responsibility for anyone to take on, and the stranger knows he or she will still have to deal with the person's family, firmly and respectfully if tensions arise. Sometimes the problem with choosing your own children to play this role is that they may not be managing their own lives responsibly and that may be an indication they will manage yours in the same way. Courts are equally concerned with this issue as it inquires of the prospective person's finances, educational background, and life responsibilities. The courts may require someone to get bonded and if your child's credit is not good, they cannot be bonded and the court will not choose your child to act for you.

Your lawyer will be just as diligent as the courts, whether you choose your children or a stranger. When we ask our children to tighten their game, they either get offended or say, with the arrogance of youth, "I know." Some of our children thumb their noses at us thinking that we have not managed our lives well and they perhaps have lost confidence in us and respect for us long ago. Regardless of your child's opinion and how much you love them and want them to love you, as the saying goes, you know your child, and even children with the best intentions are not the best for this level of responsibility.

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This is real life. It is not a game and it cannot be ignored. When you can no longer care for yourself, you hope that your children will show you that they were the ones who cared about you and perhaps in the end, even if you did not choose them, they will be there to take care of you.

Hope: " Today, there will be no stranger. The children called, they are on their way here, the only ones who cared after me. Now, they are back and there is no stranger. It is so much better. Now, they are back just to take care of me."

Real Life: Hire a good lawyer.

ALERT! PROTECT YOUR CHILD FROM LEAD POISONING

Lead can be found in homes built before 1978. There may be lead in paint, soil and dust in and around your home or in drinking water. If you are pregnant, avoid any contact with lead. Lead can pass from the mother's body to the baby and can cause permanent damage. Lead is a toxic metal that can have severe adverse long-term effects on your child. According to the American Academy of Pediatrics (AAP), certain levels of lead in the body can cause many problems including: Developmental delays, hearing loss, seizures, kidney problems, and anemia and growth problems.

Children who have elevated levels of lead in their body may appear healthy. You cannot tell if a child has lead poisoning until you have him or her tested. It is simple. Your doctor does a blood test that measures the amount of blood. Blood tests are usually recommended at 1 year and 2 years of age and any child between 27 and 72 months not previously tested.

Quick tips: 1) children should not chew on anything covered with lead paint such as paint chips, window-sills, cribs, toys or playpens; 2) read toy labels; 3) keep play areas clean; 4) wash toys and bedding; 5) let the professionals remove lead paint; 6) if work in a lead environment change clothes before going home; 7) test your water; 8) children should be eating iron and calcium to help them absorb less lead.

A TRUMPET FOR JUSTICE (Continued from page # 1)

disorder in the moral order.

The criminal justice system is an example of disorder in the moral order. Right is no longer right. Truth and justice are no longer held high. Lies are prevalent with the only admonition, to lie as long as you don't get caught. Police officers can and do abuse their authority and can have a major impact on your world as they can easily arrest, fingerprint, photograph and bring you before a court, at their whim. It is their word against yours and you may find that their words are laced with a version of the facts that you do not recognize. And there you are: People of the State of New York versus You.

And when it is you, you want a lawyer, and not just any lawyer. You want a lawyer who is a trumpet for justice; a lawyer who will read the papers, look for the witnesses,

When the case involves your most precious gift - - your child - - you want someone to make the argument and challenge the system.

argue with the judge, who will challenge the other side, dare to take the case to trial - a trumpet for justice. One day it will be your child and you want a lawyer who is a

trumpet for justice. Some day it will be an old person you know, someone in the evening of their life, they, too, deserve a lawyer who is a trumpet for justice. You don't want a lawyer who will leave you standing at the door when you knock at midnight. When the case involves your most precious gift - - your child - - you want someone to make the argument and challenge the system.

In the case of the People of the State of New York v. D.S. and E.G., where two academically and socially gifted young ladies were arrested because they asserted their rights and questioned the authority of the police, the police wanted to teach them a lesson. If they have not learned anything yet in life, they got this lesson loud and clear. But if the court fails to dismiss the charges against these two talented girls, then we will try this case. Try it because it is inconsistent to teach our children that they must fight for what is right and stand up against what is wrong and then when real life shows up to allow them to resolve a case for

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A TRUMPET FOR JUSTICE (Continued from page # 3)

the sake of expediency. We do not want our children to become disillusioned in life. We do not want them to become gunshy about standing strong against what is wrong. We do not want them to become passive in the face of injustice. Regardless of the outcome of this case for these young ladies, even if a jury finds them guilty, they will walk with this experience as a badge of honor. From this day forward everything they do will have this experience as a beacon in their lives. And it has already begun, as one of the young ladies said, "I felt like Rosa Parks when they fingerprinted and photographed me." What the parents know is that we used to be worried about South Carolina, Alabama and Mississippi. Now, we worry about New York and California, because what we have learned is that what happened there can happen here.

And know that when you have a lawyer who is a trumpet for justice, your lawyer will be misunderstood, criticized and told that their work is in vain. But that lawyer who is a trumpet for justice knows that somewhere at some time someone hears the trumpet and the lawyer remembers that a voice says still fight on.

BABIES ' FIRST CHRISTMAS:

- Chase Marley Etheridge — born: January 3, 2009
- Alan Earl Smith, III —born: April 9, 2009
- Rose Mary Spiropoulous —born: May 13, 2009

AND THEN HE ASKED ME WOULD I SAY YES TO SAY YES

There are two recent law school graduates in my office currently studying for the bar examination. Their tenacity, diligence and commitment to their studies takes me back twenty-five years to my own bar examination. The review course they are taking teaches them certain mnemonics in order to remember certain areas of the law. When I took the New York bar exam there were twenty-six subjects of law you had to know. One of the premier subjects was contract law. There are four very fundamental principles of contract law that everyone taking the bar exam has to know, i.e., that a contract consists of definite terms, consideration, offer and acceptance. The mnemonic for this is "TACO": T: definite terms; A: acceptance; C: consideration; O: offer.

Consideration is anything you want to sell or offer. For example, your car is consideration, your house, your granddaughter's picture plate that you want to put on E-bay, stuff in the garage or the attic; all of this is consideration. Once there is consideration there must be an offer. Someone must say I am offering to sell my car for "x" dollars, my house for "y" dollars or the picture plate for "z" dollars; the "x" "y" or "z" dollars being the definite terms. Now, you can haggle back and forth to get the seller to reduce the price, if not, then you have to decide how bad you want it. After you have decided on the price, you accept the offer and you have a deal - - in other words you have a contract. This is basic elementary contract law.

The jurisprudential scholars who founded contract law recognized the significance and importance of these principles as it allowed both sides to know what they were buying and selling.

The fundamental principles of contract law are rooted in the institution of marriage. We speak of a marriage contract and a marriage license. Both terms implicitly acknowledge that there is consideration, offer and acceptance. When you got married you probably thought it was all about love and happiness. Don't misunderstand, those thoughts, feelings and emotions are important to a marriage, and for some, are the very reasons they got married. At the time of

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AND THEN HE ASKED ME WOULD I SAY YES TO SAY YES (Continued from page # 4)

matrimonial bliss you have not said to yourself: the marriage: consideration; me popping the question: the offer; her saying I do: the acceptance. So, for instance when James Joyce’s Molly says at the end of Ulysses

... and then he asked me would I say yes to say yes. I put my arms around him yes and drew him down to me so he could feel my breasts all perfume yes and his heart was going like mad and yes I said yes I will Yes.

She may not have recognized that in the midst of this unqualified affirmative of natural life and of physical and emotional love that she has just entered into a contract.

And unfortunately for some, the temple of matrimonial bliss erodes as one begins to learn “maya” what Hindu philosophy calls the conflict between illusion and reality. This illusion gives way to reality when one spouse approaches the other and says, “I want a divorce.” At that point someone may whisper to you that you have a contract and that you have certain rights as a result of that contract. The appreciation of marriage as a contract has never been more prevalent in the world than today.

It is unusual for a top attorney to employ the vernacular of pop culture, but sometimes the use of it is important to make a point that everybody can get. “Cougar weddings” is the term being used today to describe specific types of unions of holy matrimony. Especially in “cougar weddings” both sides must be cognizant more than ever before of their contract. The 25- year old groom has bought into a pension, 401k, social security payments along with the house and a standard of living. The 40- year old bride has bought into companionship, fulfilling relationship and someone who brings blissful joy in her life. The 40-year old may not have realized that the 25-year old may have not started his career. He may not have completed his education. The 40-year old may not be prepared to step into a parenting role that may be awaiting her. The 25-year old may recognize that in 15-20 years his mate may be experiencing more limitations than he experienced at that time in his life, if it awaits him. Just as the marriage matures they may recognize there are differ-

ences in attitudes of likes and dislikes.

And if the marriage becomes irreconcilable, all contracts and writings are put on the table; not only the marriage contract, but also the prenuptials (if you were smart enough to have one) and the love letters you wrote and the “Dear John” letters you wrote. During this time nothing is sacred and nothing is private; you no longer trust each other and all each of you want to know is how do I protect my rights?

Now, you could allow your divorce to follow the path of the “War of the Roses,” where there is no winning, only degrees of losing. Or you could go out and get yourself a good lawyer; a lawyer that looks at the big picture. Because divorce is such an emotional experience, you probably would not recognize the person you become when the emotions are high. You go from not trusting your spouse to not trusting your children to not trusting your lawyer. A good lawyer is not emotionally tied to the experience and can thus see a lot farther and can make the determination when it is best to cut a deal. A deal that preserves your 401K; that allows you to make the smart move when it comes to the house or if there can be no favorable deal, when to press on. During these highly emotional times it is difficult for you to see when you have a winning hand because you always think you left some money on the table. Human nature being what it is no one wants to leave any money on the table. In divorce cases, however, if you say there is some more money you have to prove it - - you cannot just say it - - the courts know that anyone can say anything. You will need someone to let you know when you are ahead of the game and when to cut your losses and end it. You also have to be mindful that you have to spend more money to find more money.

In the end, your money may dictate how far you can go. If you are not the Trumps your money maybe short, if your money is long then you can continue to pay as you fight on. But remember, just like at the casinos, you have to pay to play. So, if you remember nothing else, remember “TACO” and call a good attorney.

“Cougar weddings” is the term being used today to describe specific types of unions of holy matrimony.

NON-ADHERENCE IS NOT NON-COMPLIANCE

On New Year's Day I had dinner with a good friend I grew up with, her sister, her mother and her grandmother, whom they call "Big Mama." The family is a family of nurses. My friend is a critical care nurse. Her sister is a critical care nurse. And their mother is a retired psychiatric nurse. One could argue that even Big Mama, as a domestic for white families in the South, was a nurse. Since I don't get a chance to see them much, we started with light banter; catching up on old times.

The conversation turned to the challenges and complexities of nursing. They were adamant: nurses are trained to assess, evaluate and above all else, take care of their patients. They were very consumed and passionate about the fact that most elderly patients are being viewed as non-compliant with their medication when in fact it was a misnomer; elderly patients were being non-adherent with their medication. They described how some patients present to the hospital and as nurses they know when someone is not taking their medication. They soon discover that the patient has not taken his or her medication because he or she cannot afford the medication. They explained that their responsibility as nurses now requires even greater acute analysis in evaluating patients. No longer is the simple triage algorithm sufficient. Now, nurses must invoke a whole new set of triage questions that take into consideration the affects of Medicare Part D coverage gap. As a result of nurses like these, people now know that there is something they can do.

Medicare Part D coverage gap, which is also known as the Medicare "donut hole" or Medicare "doughnut," is the difference of the initial coverage limit and the catastrophic coverage threshold. After a Medicare beneficiary surpasses the prescription drug coverage limit, the Medicare beneficiary is financially responsible for the entire cost of prescription drugs until the expense reaches the catastrophic coverage threshold.

Many patients present to the hospital with illnesses brought on by their non-adherence to medication. The term non-adherence is preferred to non-compliance because non-compliance implies an element of fault or

blame on the part of the patient. Non-adherence has been defined in the medical literature as a patient's passive failure to follow a prescribed therapeutic regimen. Non-adherence to medication is becoming increasingly prevalent in the advent of Medicare Part D coverage gap as it has profound implications on the patient as well as on doctor-patient relationships and interactions, plans of care, and the healthcare system.

Many patients make the choice between taking their medications and rent or food or utilities. Oftentimes patients choose the rent, the food or the utilities instead of the medications. Most elderly patients are rationing their medications, perhaps taking a daily prescription every other day so that they will not have to pay out-of-pocket to make up the difference that Medicare Part D creates. With Medicare Part D prescription programs, older adults are required to pay 100% for their medications cost once their costs reach the "donut-hole" at \$2,700.00 (their co-payments plus their insurers' payments). Patients leave the hole, after paying up to \$4,350.00 out-of-pocket for medications. As a result, many elderly patients on limited incomes begin rationing their medications or stop taking them altogether.

Without taking the medications as prescribed, the patient will not benefit from the medication, adequate drug serum levels will not be achieved, and the medication will not be an effective therapeutic intervention. Here is one example:

Ms. B. a 65-year old woman with diabetes mellitus is prescribed an oral agent but is not consistently adhering to the regimen; only suboptimal intermittent glucose control will be achieved instead of the continuous consequences of diabetes. Physicians may erroneously interpret the inadequate glucose control as indicating a need for more medication and thus potentially over-prescribe, putting Ms. B. at risk for hypoglycemia.¹

This new dilemma for older patients has made nursing assessment and evaluation more intricate as patients are

¹Latif, Syed, M.D. and McNicoll, M.D., The Warren Alpert Medical School of Brown University, Geriatrics for the Practicing Physician, *Medication and Non-Adherence in the Older Adult*, Vol. 92 No. 12 December 2009.

NON-ADHERENCE IS NOT NON-COMPLIANCE

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often not forthcoming about non-adherence because of guilt, lack of education or their financial limitations.

Nurses and other health care providers can use numerous interventions to improve adherence in the older adult. Some solutions are: patient education, obtaining help from family members, dispensing generic medications if cost is an issue, once a day dosing, asking patients to bring in pill bottles at every visit. Moreover, the physician should ensure that a medication is covered by the patient's Part D Plans before writing the prescription. There are devices for physicians to quickly access most plan formularies at the point of care. Alternatively, physicians and patients can speak with the patient's pharmacist, who will have ready access to the plan formulary. Each person involved in the patient's care can play a vital role in helping patients navigate the complexities of prescribing under Medicare Part D. When generic drugs are unavailable or not complementary with other medications taken by the patient, physicians can inform patients of the possibility that a medication will not be covered and establish a plan for such situations. The physician should also request an exception if a medically necessary drug is not covered by the patient's Part D Plan.²

The primary goal is to reduce beneficiaries' out-of-pocket prescription costs, thereby improving patients' access to medications and *ergo* their medication adherence and their overall health.

When we had ended the dinner and decided to go back to my friend's sister's home for dessert, I told them that I was fascinated by the body of information and I was going to make my community aware of it. So, even though you could not join us for the dinner, Happy New Year!

ALERT!

CAPITAL GAINS TAX

Many of our more age mature clients are embarking on selling their homes and relocating. One of the many things they learn during this process is that they must pay a capital gains tax.

We have discovered that many of our clients no longer have the receipts or other documentation required to show that they have made improvements to the home. The absence of such documentation has a tremendous impact on your capital gains tax. This issue becomes even more arduous if you become incapacitated and now your guardian, attorney-in-fact, caretaker has to comb through your personal belongings to try to find this documentation. If you are incapacitated you will be unable to communicate with anyone to advise him or her where to begin to look for papers related to the house. Without this documentation you could end up paying a higher capital gains tax.

A capital gains tax (abbreviated: CGT) is a tax charged on capital gains, the profit realized on the sale of a non-inventory asset that was purchased at a lower price. The most common capital gains are realized from the sale of stocks, bonds, precious metals and property. So, if you sold your main home and made a profit you would pay a tax on that profit.

Calculating what you owe is based on a formula. Just like calculating capital gains, the formula for calculating the gain or loss involves subtracting your cost basis from your selling price. The formula for calculating your cost basis on your main home is: Purchase price + purchase costs (title and escrow fees, real estate agent commissions, etc.) + improvements (replacing the roof, new furnace, etc.) + selling costs (title and escrow fees, real estate agent commissions, etc.) – accumulated depreciation (for example, if you ever took the office in the home deduction) = Cost Basis.

Once you have your cost basis then you calculate your profit or loss as follows: Selling price – Cost Basis = Gain or Loss. In addition, you may be able to qualify for an exclusion of two hundred fifty thousand (\$250,000.00) dollars on the sale of a main home. So, be aware of these issues when you are selling, regardless of your age.

More importantly, start today saving or gathering your receipts, invoices, bills and contracts on all of the work you have done on your home. If you pay cash, get a receipt. Remember to keep these documents with all your other important papers and don't forget to tell someone where you keep these papers in case there comes a time when you are unable to do so.

² *Federman, Alex D., M.D., M.P.H., Alexander, G. Caleb, M.D., M.S. and Shrank, William H., M.D. M.S.H.S., Mayo Clinic Proceedings, A Practical Physicians' Guide to the Medicare Drug Benefit Plan, 2006*

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Upcoming Events

March 2010: Women's Jazz Festival

April 2010: "What's Going On?" Poetry Reading

May 2010: Capital Gains Tax

June 2010: Broadway Show