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# Ruminations on life and 30 years of elder law: Holding the line

Six days into “sheltering at home,” ...it is more important than ever to be engaged, joyful, and grateful that we plaintiffs’ attorneys are in service to others by choice

**BY SANFORD HOROWITZ**

I was pleased when *Plaintiff Magazine* invited me to write an article for this April 2020 issue, since I thoroughly enjoyed penning two other articles: “Musings of an elder-abuse attorney” (July 2012) and “Memory loss and end of life” (April 2015). The first article focused on the fact that each client’s story is unique and needs to be heard as it was lived, while the second addressed my own personal journey as an elder-law attorney navigating my father’s 10-year experience with Alzheimer’s and eventual death from this most unforgiving disease.

Six years have passed since my father’s demise, and when I was recently contacted by *Plaintiff Magazine*, I found myself in a particularly contemplative mode regarding the crossroads of my law practice and, more importantly, my life. Consequently, I have decided to double down on my previous articles (which were more personal than usually featured in this magazine) and continue to write in the personal vein in hope and trust that my thoughts will resonate. As it so often goes with writing projects, a degree of inertia/procrastination initially set in, and I finally find myself sitting down to write on the first day of “sheltering at

home” per official mandates addressing the coronavirus pandemic; more contemplative/introspective I could not be.

Other than when I “disgraced the family name” and, just out of law school, took a job for 23 months at a downtown San Francisco law firm, I have been self-employed for 30 years, and for 25+ years the vast majority of my work, income, purpose, and professional satisfaction has been derived from prosecuting long-term care corporations and companies for neglecting the elderly. I am proud of this work and grateful for the independence it has granted to me and my family.



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I am particularly thankful that, as a baby lawyer, I decided to leave the hustle-bustle and more profitable opportunities of the big city to set up shop in Sonoma, where I have been blessed to live more in tune with nature and with less emphasis on wealth and status. Growing up on Long Island as a third-generation New Yorker (a heritage I deeply value), attending college in New Orleans, and subsequently traveling the USA and numerous foreign countries in a bohemian fashion, not to mention mind-expanding adventures (thank you 1970's New York, older sister, literature, and Grateful Dead with all its permutations!) made it abundantly clear to me that "Wall Street and status" were not the prizes I was after. Rather, having learned that irony and absurdity are nothing to fear because they fuel greater understanding of the beauty and heartbreak of life, I have made it my goal to create a circle of love of Mother Nature, family, and friendship.

Distracted by so many shocking world events, yet with the clock ticking on my deadline for submitting this article, I offer the following musings of an elder-abuse attorney contemplating where he's been and where he's heading next.

### **I am very good, but not the very best**

I am a very good plaintiff's attorney, but I am not the very best. I know the very best, I have worked with the very best, I have even taught the very best. I have never been – and never will be – as laser-focused, ambitious, obsessed, hard-working, or interested as they. Rather, my "focused ADD" has led me to be interested in and take deep dives into numerous and varied subjects, activities, and relationships.

At age 59, I have come to peace with my perceived shortcomings, since I know that I fight hard for my clients (and for myself), and I know from positive feedback that my efforts are deeply appreciated. Moreover, in addition to legal matters, I effectively *counsel* my clients about life, death, mortality

(perhaps even their own), relationships, money, and what the law can and cannot provide; and doing so is something at which I excel. As a much more experienced lawyer with whom I worked many years ago once told me, "Anybody can get money for their clients, but it can be just as important, or more important, how it is you make them feel throughout potentially bruising litigation and how they will feel about you, themselves, and the entire experience for the rest of their lives."

I believe these words to be particularly applicable to elder-abuse litigation during which so many clients' pain is so great, quite possibly magnifying other hurts, regrets, and holes in family fabric in addition to the family legacies and stories with which clients are left when each individual case finally resolves. Continually improving my ability to listen, empathize, and realistically assess each client's big-picture needs while determining necessary and/or possible habitual and cognitive shifts has helped me stay engaged and excited as opposed to burned out or stale.

While positive client feedback and the monetary rewards of a job well done keep me motivated on a professional level, my ability to maintain excitement about my work and avoid burnout (make no mistake, I have had some serious burnout chapters) has undoubtedly been enhanced by my aforementioned personal explorations and travels; experiences which I believe have greatly contributed to the honing of my emotional intelligence and great appreciation of my blessed life with my wife, kids, and extended family. A recent six-week trip to India – a thought-provoking country/experience – once again reaffirmed this observation regarding the benefits of changing things up now and then. For me, the cliché that very few die wishing they had spent more time at the office rings true.

### **A clearer mind**

The clearer your mind and the more equanimity you have, the better

for appreciating your craft, accurately hearing and identifying each client's needs, and deflecting the often unreasonable defense tactics that stem from the adversarial system, not to mention corporate mentality and greed – and the king motivator of most negativity – fear. After being a specialist for so many years, I've acquired the ability to often "see the end at the beginning," and as long as one does not blindly rely on such intuition, having a realistic idea of where a case is going is quite calming and effective in playing the best chess moves as the legal "game" plays out as well as gracefully living with business and personal risk. Like all skills, there is muscle memory to build, and you've got to get knocked down and humbled if you want to learn how to better advocate/fight another day.

### **Enjoying and learning from others**

Despite my fierce independent streak, I genuinely enjoy other people. Co-counseling, learning from, and teaching my colleagues is satisfying. Working with other skilled lawyers who bring different talents and perspectives to the table allows me to concentrate more on what I do best, not to mention the fun of camaraderie, the synergy of bouncing around strategic ideas, and the comfort of having someone to cover things when I am out of town. Co-counseling is also great for sharing the risk, providing different effective client communication techniques and methods of handling defense attorneys as well as sharing the emotional highs and lows. Further, developing relationships with experts (doctors, nurses, economists, nursing-home administrators, etc.) is also quite satisfying and a true service to clients.

Presently, there are numerous experts with whom I have worked well for many years, and together we have developed mutual trust and admiration. And, of course, there is much to learn from clients, especially because mine come in all socio-economic, racial, international, religious, and gender, stripes. With



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clients, the relationships are exponential since I am most often dealing with multiple siblings (and, unfortunately, their non-client spouses who might try to assert themselves into the litigation process). It is rare, but very satisfying, when I am able to breach long-simmering fissures in sibling relationships.

### Being part of the plaintiff community

For a solo practitioner who hung a shingle in a small town in Northern California as a freshly minted attorney, being part of a community of plaintiffs' attorneys via state and national organizations, big-hearted nonprofits, and for many years now the online groups associated with such, has been extremely rewarding and invaluable for sharing information, emotional support, and even the development of a few friendships, which I highly value since the majority of my closest peoples' avocations and emotional makeup are far from the legal world. I especially value my brother and sister elder-abuse attorneys and non-profit advocate friends.

### Holding the line against the long-term care industry

The battle to change the long-term care industry is daunting. Backed and driven by serious deep pockets with real estate investors and financial advisers being the vast majority of the decision makers, the serious shortcomings of this industry offer a true indictment of our crippled health care system and utter lack of priorities when it comes to caring for our vulnerable elders. This is a truly lamentable situation because these decisions directly affect care of the vulnerable elderly as health care professionals are frequently put in positions requiring them to compromise their personal and professional integrity all for the sake of the corporate bottom line.

Thus, the application of a corporate business model (backed by insurance money, lobbyists, and high-powered on-the-clock defense law firms) to an

area of health care that should be all about compassion and service basically guarantees callousness. Unfortunately, this corrupted mentality has also crept its way into government oversight.

The Department of Public Health is close to criminally ineffective, and I have been waiting a long time for that *60 Minutes* segment! Having personally seen millions and millions of dollars paid pursuant to settlements and verdicts without significant industry change is discouraging, is proof of how profitable the long-term care industry is, and highlights how extremely difficult it is to change the system.

For many years, I have told my clients who tell me they want to sue because "I just don't want this to happen to anyone else," that they are part of a much bigger and longer fight for a social justice cause, such as women's suffrage or civil rights. Hopefully, before I die, we will see a big change for the better in elder care, but for now the challenge is to effectively hold the line until society evolves on this critically important issue. In this regard, I am perplexed as to why the majority of judges, who have great discretion, have not acted as stronger advocates for the vulnerable elderly as clearly set forth in Welfare & Institutions Code sections 15600 et.seq.

### On defense attorneys

I generally do not like defense attorneys. I know this sounds harsh, but this is my reality. Certainly, there are a handful of defense attorneys I respect and with whom I have repeatedly worked well over the years. In my experience, a good relationship with the other side almost always leads to faster and less acrimonious resolutions, along with some genuine human interaction. I firmly believe that when lawyers on both sides can be authentic and transparent in getting to a fair and just resolution, all involved will benefit. Lawyers who get along well do not give each other better deals than they necessarily would have otherwise; they just get there faster

and with less game-playing and waste of resources, time, and emotion.

Unfortunately, I find the majority of the defense attorneys I know to be somewhat "soulless mercenaries" doing the same old dance for the obvious reasons (as discussed in my July 2012 article) such as: the golden handcuffs, an overly technical practice of law, a dismal lack of empathy and introspection, etc. To a great extent, the longer their corporate masters hold the money and the more they bill, the happier the defense attorneys are. Not surprisingly, most of the defense attorneys I have met throughout the years are type A win-at-any-cost achievers. By way of example, I have said many times, "There aren't a lot of defense-attorney poets."

### Advocating for stronger elder laws

I enjoy the big picture of advocating for better legislation, especially regarding fighting for the preservation of our jury trial system as the corporate world increasingly pushes to move every lawsuit towards arbitration. I also advocate fighting for stronger laws that may help to rein in the greed present in the long-term care industry. The legislative arena and the media are critical instruments in the big picture needed to educate those in power.

### Creativity and passion

I take great enjoyment in speaking at and participating in legal seminars, interacting with the media, and observing the ongoing development of elder-abuse litigation. The creativity and passion the growing elder-abuse bar has sown also brings me a good amount of satisfaction because I know that my own work has made significant contributions to the cause while so many others (those "very best" lawyers mentioned above) have significantly raised the level of advocacy. Also, I find speaking with the citizenry about elder abuse to be hugely gratifying as almost everyone can viscerally grasp the import of the issue and most people are, at least in theory, supportive of a better societal model.





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## Fighting the good fight

I enjoy mentoring others, although I am definitely not known for my patience. Four years ago upon the retirement of my 20+-year assistant, in order to push myself to grow as well as give back, I purposely hired a young new paralegal, who I am pleased to say has grown into the job. She is now a second-year law student with a passion for plaintiff's elder-abuse work and professes a sincere desire to represent the underdog. Sadly, as she recently wrote, "Have our government agencies simply become ineffective and weak to the corporate power and duplicity of nursing home companies?" She is also concerned that, in today's political climate, the potential for the rolling back of nursing home regulations will cause elder-abuse lawsuits to be stifled and watered down in ways similar to what has happened in California with medical-malpractice law. All I can tell her is that for us, young and old alike, these concerns are our reasons to keep on fighting the good fight.

## Some final contemplation

I close as I began, with contemplation/introspection and the issues on which I have been ruminating for the last six months or so. Since my last *Plaintiff* article of five years ago, my son left home to attend the family touchstone, Tulane University in New Orleans; his older sister graduated from Tulane and left New Orleans to travel the world to then land at Naropa University in Boulder, CO where she studies to be a therapist; our beloved dog of 15 passed, our beloved cat of 18 passed, and on the law front, after 25 years of being based around the Sonoma Plaza, I sold ownership in my office building and

moved my office to the "big city" of Santa Rosa, where I now share space with a new cast of characters. Although I do miss the sweet mellow community of Sonoma, I find it invigorating to be around more activity and a diversity of people, places, and types of legal practice.

No longer distracted with caring for my dad's Alzheimer's, and free of the daily responsibilities of building ownership, raising children, and caring for pets, the last five years have gone well, and I find myself in the enviable position of working because I wish to – albeit working less – as I am more selective in terms of which cases I am willing to accept. Thus, recently, when two "larger" cases into which I expected to put hundreds of hours of work resolved unprecedentedly early (with me negotiating from India and the Arab Emirates no less), I find myself in the ironic position of being the best lawyer I have ever been with fewer avenues to practice my craft. This is a bit unsettling. Have I fulfilled my promise? Are there better/different avenues to pursue in service of self and others? Will there be fallout from the coronavirus pandemic from which I cannot walk away?

As I write, oversight by federal agencies regarding the pandemic is sorely lacking, and family, friends, and advocates are barred from visiting the long-term care facilities where their vulnerable loved ones reside. This is a new and most unexpected area of rumination and a reminder of the unpredictability of life and the need for elasticity if we are to face the future with grace and humility. Truthfully, to ruminate deeply on what I really want to do with my life and freedom from this

day forward is a tremendous privilege for which I am deeply grateful. For my part, I will do my best to take inspiration from this advice from the Talmud which says: "Do not be daunted by the enormity of the world's grief. Do justly now. Love mercy now. Walk humbly now. You are not obligated to complete the work, but neither are you free to abandon it."

As I submit these pages, we are a mere six days into sheltering at home from the coronavirus, and it is clear to me that it is more important than ever to be engaged, joyful, and grateful that we plaintiffs' attorneys are in service to others by choice and are fortunate to possess the ability to make our livings helping people in numerous impactful ways.

Perhaps in a few more years I will fill you in on the paths I have traveled and the ones not yet taken.

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