

Conscious Aging: Elderlaw Attorney as Navigator for the Ages

A Discussion Offered as a Polemic

Prepared for NAELA 2004 Advanced Practitioners' Program
by

Ira Stewart Wiesner



wiesner associates
Advocates in Aging

a law firm

1800 Second Street, Suite 870
Sarasota, Florida 34236
941-365-9900

One who changes is often a traitor in the eyes of those who can never change.

multi-dimensional

another country

"Death is our eternal companion," Don Juan said with a most serious air. "It is always to our left, at an arm's length . . . The thing to do when you're impatient," he proceeded, "is to turn to your left and ask advice from your death. An immense amount of pettiness is dropped if your death makes a gesture to you, or if you catch a glimpse of it, or if you just have the feeling that your companion is there watching you . . . Death is the only wise adviser that we have.

– Carlos Castaneda, Journey to Ixtlan.

How one lives life is, in great measure, a correlate of how he or she confronts death. If death is something to be avoided at all costs, then one will neither address it nor adequately deal with it. This will show up in estate planning/elder law counseling by reluctance to address end of life or post-mortem planning, ambivalence as to outcome, or extra-ordinary efforts to control every minutiae for the next three millenniums. According to psychologists such as Erickson, Maslow and Jung, the elder years are the time when person needs to maturely and realistically confront the inevitability of death and the meaning of life. Certainly, such contemplative work is inappropriate during youth and adolescence and too time consuming to engage in during middle age. The lessening of work and child rearing responsibilities in retirement are supposed to provide the opportunity to resolve these issues.

However, the client unwilling to deal with issues of mortality effectively turns their back on the future. As described above, the looking back, in today's culture, has taken on new meaning. For some it suggests that through pill and scalpel, they may not (yet) stop the enemy *time* but to fool the grim reaper (and they believe their friends as well) by changing their appearances, hence their identities. If they look (and parenthetically, eat, exercise, travel and spend) like they're still forty, they might just sneak by without being noticed. Despite this sarcasm, no judgement is being made that that is not ultimately the

best approach. Dionysus may still have the best answer how best to live one's life in the face of inevitable death.

Nevertheless, for others, the looking back at life, instead of ahead at death (and how best to live out the remaining life), creates its own anxiety and pain. For those individuals, this journey brings them "...face to face with a chorus of self-recriminating voices that tempt [them] to reject [them]selves and disparage [their] achievements." As noted by one researcher in this field, the life review process exposes an individual's predisposition to be his or her own biggest critic. When in this state of mind, the person's ego makes sure that they only see their lost opportunities, mistakes and a host of "should haves". This can create, when coupled with a confrontation of mortality, the appearance that the past was a failure and the future is an extinguishment. This is a situation of pain and one in need of repair.

The technique for working out these issues is a life review and exploration of the concept of forgiveness. This encompasses re-contextualizing and repairing, or healing, the pasts. It is based on possibly developing compassion for the other person, or in many cases, learning to have *compassion* for ourselves. Writers in the field have characterized the process of forgiveness work as one that challenges us with the evolutionary tasks of ennobling our sufferings and transmuting tragedy and sorrow into understanding and the capacity to love. Forgiveness has the power to ripen forces of purity such as love, and affirms the qualities of patience and compassion. It creates space for renewal and a life free from bondage. By forgiving we refuse to let past experiences drain our life energy and taint the present.

These situations come up frequently in the elder law practice, when carefully listening to a client's expression of what they want to accomplish or how they want to dispose of an issue or property. Often the pain manifests itself in anger, resentment, retribution or punishment. However, understanding the process behind the emotion that "appears" to motivate the client's choice, may enable the practitioner to empower the client

to see the “reality” not only of the *thing* they are addressing, but also the consequences and ripples of their actions.

Elder Law attorneys have seen the “scorched fields” left when there is something, or someone, against which our client harbors un-forgiveness. Too often we are having to deal with people who live out their last years calcified by broken relationships and un-met punishments for past offenses or slights, large and small. They often use their estate plans as vehicles to express those un-healed hurts, a means that leaves a “legacy of hate.” Understanding the dynamic that is occurring can enable the counselor to help a client confront the situation that causes this anger and reconsider and re-contextualize it in a new reality.

By new reality, I suggest that often a client acts with regard to a “reality” (the event or whatever that justifies the anger) that did not actually occur but is constructed by them. The theory, referred to as constructivism, basically holds that through individual experience and cultural, collective symbolization, we “construct” a reality which enables us to function, respond, react, anticipate and relate to our environment and others we construct our world around us on a daily basis. This construct is a system of interpretations of the sensory data we receive and it forms our reality. Whether there is an objective “truth” at all is a philosophic discussion that is not germane to this paper. Nevertheless, this understanding helps the Elder Law attorney better counsel the client through better understanding their motivations, the “realities” they present to justify them.

For example, two sisters are discussing their aged mother’s care and the need to dispose of her personal items. One sister suggests disposal of certain items. The other reacts adversely. It is not that what the sister said had any positive or negative power in and of itself. However, processing the bare words through a history of sibling rivalries and childhood memories (which may not be of events but construct of the mental and emotional imprints of multiple events) creates or confirms a “reality” that the sister is greedy, self-centered and only cares for herself. The “reality” now colors the relationship,

the ability to process information regarding the mothers' estate etc. Years later, in consultations regarding the drafting of her estate planning documents, the now estranged and bitter sister wants to leave everything to charity, and leave her ill and impoverished sister with nothing (with or without vituperative language inserted in the document).

Another case is of an older client who has always been a vibrant, articulate, self-confident and active woman. She has recently suffered an illness which has forced her to give up her car and is now homebound. Still competent and clear, she nevertheless requires significant assistance with her ADLs and IADLs. In discussing her situation with her, she states that she is now worthless and wants to die. She sees no future. In responding by reminding her of her history, prior achievements and continuing abilities, despite the setback, to continue many of her activities, she replies that she really had few accomplishments and in truth had acted horribly and hurt many people throughout her past.

In Hebrew, the word for forgiveness is **mokheil**, which means to forego, to get beyond. Perhaps not coincidentally, the same root letters form the word **makhal**, which can mean illness or disease- which is where you'll be if your stuck in your resentment. Forgiveness is like pressure point massage for a tight, painful muscle - if pressure is applied in the right place, the muscle miraculously releases its tension and goes back to its natural state. Emotionally, when one is in a state of un-forgiveness, he or she is like a wound up spring - tense, hardened and unable to function. It not only impacts the person internally -shaping how they see the world; it impacts how they appear in the world, and how their interrelationships manifest. When they allow themselves the gift of forgiveness, the spring is let lose and the tension and anger dissipate.

When we speak of forgiveness, we are generally speaking of forgiving others as well as ourselves- outward, but also inward. Interestingly, forgiveness of others has two dimensions: 1) clearing the air "in the world", meaning reconciling with the person; and 2) clearing the air inside of us; letting go internally, not allowing ourselves to be possessed by

the anger. Often, individuals confuse forgiveness with acceptance of what occurred. Since the anger is fueled by the ego's self-righteousness, letting a real or constructed villain off the hook is strongly resisted. Forgiveness works can work only on the inner dimension, how the person allows himself or herself to be effected.

There perhaps are some among us who, because their family, community or own spiritual search, have become accustomed to identifying the concept of forgiveness as inextricably woven into a particular spiritual tradition and regard it as fundamentally a religious concept. However, over the last ten years social science researchers have begun to seriously address the concept of forgiveness as a subject of scientific interest. Numerous studies have explored the science of forgiveness for its neurobiological foundation, as well as the health benefits (both physical and psychological) for promoting forgiveness and in reducing the state of un-forgiveness. There is a Forgiveness Institute, as well as an International Campaign for Forgiveness Research.

In that research, forgiveness is defined as a motivation to reduce avoidance of and withdrawal from a person who has hurt us, as well as the anger, desire for revenge and urge to retaliate against that person. In genuine forgiveness, one who has suffered an unjust injury chooses to abandon his or her right to resentment and retaliation and voluntarily offers forgiveness to the other.

IV CONCLUSION

Despite its rhetoric, Elder Law has to a great degree lost the unique perspective that accompanied its inception. It has become, in many respects, just another area of legal specialization. An occasional spattering of practice management and development topics add some life to otherwise routine programming focused on technical enhancement. The concern is not that the practice stopped thinking "out of the box". Rather, the horizon of its vision obscures it from recognizing the box itself. If it fallen into believing the future will continue to provide the same, albeit modified, substantive exclusivity, a major change in the law may not be manageable. In that case, the clients who once "centered" the

practice will be left in the wings, stripped of their lucrative planning needs, trying desperately to get the attention of their former champions practice, now fleeing for some new area of attention.

What is interesting is that many practitioners have identified a practice pattern that, upon examination, harks back to the exclusivity that dominated Elder Law in its early days. The phenomenon that is being reported is an increase in the frequency of encountering clients expecting Elder Law attorneys to have answers to many of their concerns, which, to a great measure, fall outside the “four corners” of elder *law*, but in which they nevertheless expect the attorney to hold expertise. The exposure Elder Law has given to the multi-variate needs of the aging adult, and the a priori need for a professional advisor capable of organizing this multitude of data and issues, has created in the public an expectation that Elder Law attorneys are the primary knowledge base and information source regarding all issues of aging.

From a marketing perspective, this would appear to be nirvana: an existing and growing market of older adults who already identify you as the primary purveyor of what they want. This discussion will not address directly the question of *how* those services are to be provided, whether that be by the elder law attorney’s expansion of their own expertise, or the establishment of multi-disciplinary practice models (an issue that has been bantered about since the 1985 San Francisco panel discussion). The question is whether Elder Law is prepared to provide the services its market is demanding. The answer will depend on whether the initial vision of establishing a “client-centered” approach to service delivery is to be carried forward or abandoned. The testing ground will be the response to changes in the Medicaid arena.

It comes down simply to this: you have a road side stand selling oranges and everyone coming to you expects you to sell the other “eat’n fruits”, apples and pears. What are you going to do? Profess your status as an “eat’n *fruit*” seller but stand on your specialty in oranges and turn them away? Or are you going to go learn about apples and

pears and get you some to sell. The question today is: Are you moved to reconsider your decision if you discover that the forecast is for bad weather and a big freeze that is going to wipe out your orange market for the foreseeable future? Consider whether you can draw a distinction between the facts and your conclusions.

Having raised the issue for consideration by those most appropriate to do the consideration, I close by paraphrasing a popular comedian: that's just my opinion, I could be wrong.