# 2020 MCLE

MINI-MARATHON

2:50

## SHADES OF GRAY

PERSPECTIVES ON AGING ATTORNEYS

1 HR COMPETENCE

# WRITTEN MATERIALS


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# Aging Attorneys: Dealing with Dementia & Related Issues

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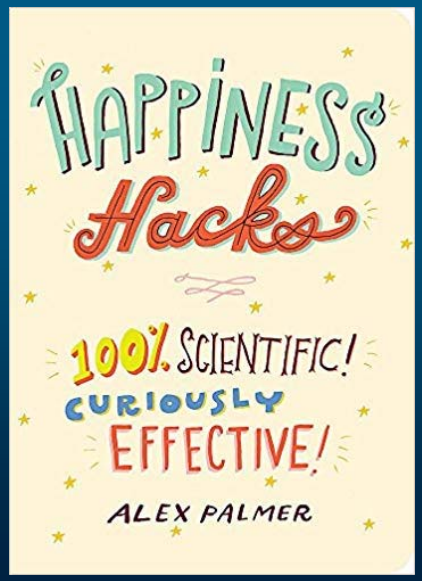
# Don’t retire early, buy a home, or be a lawyer if you want to be happy, researchers say — here’s why

**Published Fri, Aug 16 2019**

**Alex Palmer, Contributor@THEALEXPALMER**



## 5. Don’t be a lawyer

Maybe it’s all the lawyer jokes, but those who practice law have been found to be particularly unhappy. A 1990 study from Johns Hopkins University found that lawyers were 3.6 times more likely than non-lawyers to suffer from depression.
Researchers point to three main reasons as to why lawyers have a hard time finding happiness:
Prudence is one of the main qualifications for lawyers, which can often translate to skepticism or pessimism.

The high pressure put on and low influence given to young associates are the sort of work conditions that result in low morale in other workplaces.

The work — at least in the U.S. — is often a zero-sum game where your win is someone else’s loss, creating a hyper-competitiveness that also drains one’s sense of workplace satisfaction.

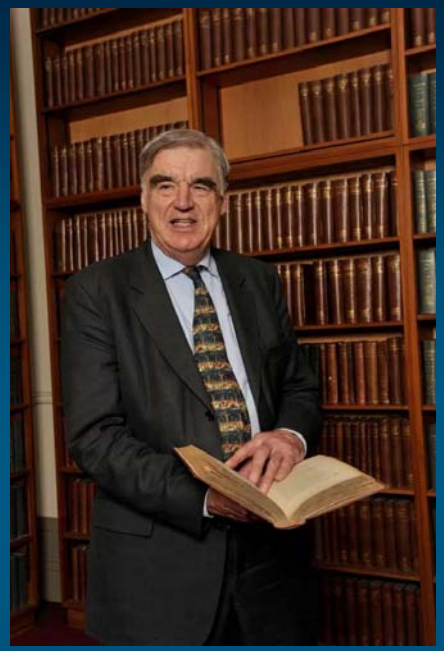
A 2016 study conducted by the American Bar Association, concluded that attorneys “experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations.”

# Ripped from the headlines:

**Life Tenure for Federal Judges Raises Issues of Senility, Dementia**

- Issues related to aging and dementia increasingly plague the federal court system, where judges in their 80's and 90's are shouldering a larger portion of cases.
- by ProPublica Jan. 18, 2011, 7:30 a.m. EST

Judge 'lost the will to live' after dementia diagnosis, inquest hears
A letter found after Sir Nicholas Wall, 71, killed himself at care home stated he had ‘no hope for the future’, says police officer

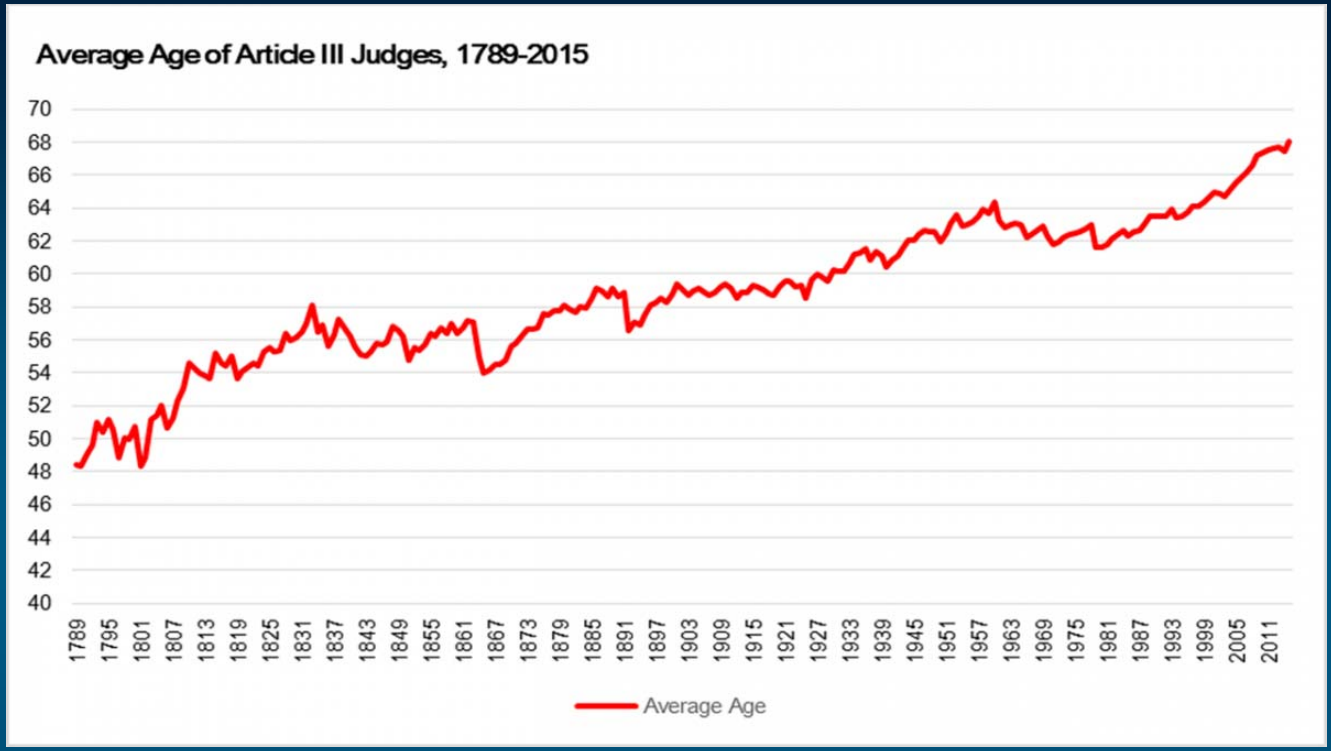


Press Association

Wed 7 Jun 2017 07.29 EDT Last modified on Mon 27 Nov 2017 18.07

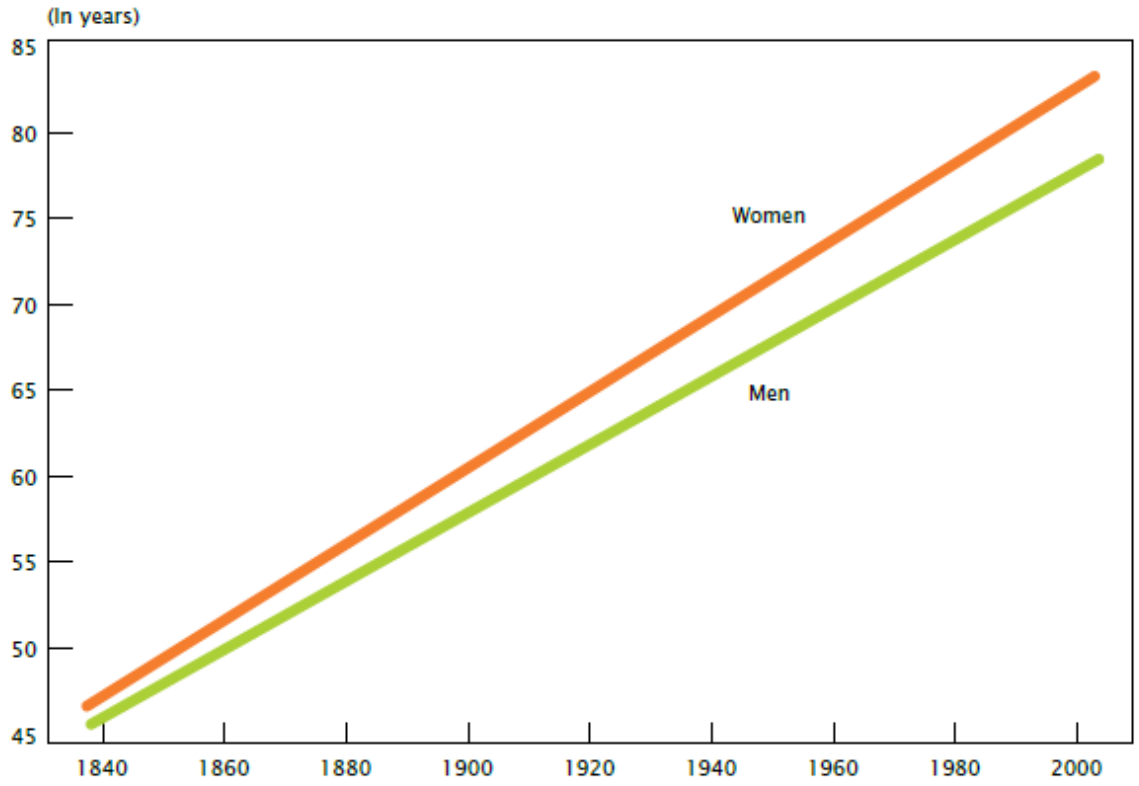
In the next decade, the number of lawyers continuing to practice beyond the traditional age of retirement is likely to increase dramatically. The factors contributing to this include:

1) the steady increase in the past fifty years in the number of lawyers admitted to practice each year;
2) the demographic shift in the elderly population;
3) dramatic improvements in health care which have extended professional work lives;
4) the strong desire among many senior lawyers to continue making positive contributions to society; and
5) economic necessity, which will compel lawyers to continue working because their pensions or savings are insufficient to support themselves and their families.



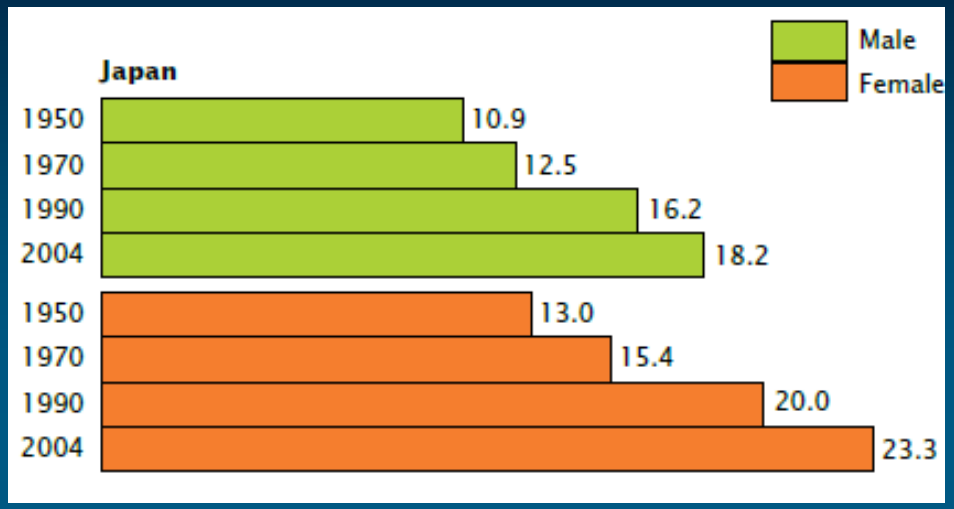

The average age of serving Article III judges has generally risen over the course of American history. This trend appears to reflect both the age at which judges were appointed and broader external changes such as increasing life expectancy.

# Consistent Rise of Life Expectancy at Birth




Note: This figure shows linear-regression trends for annual male and female life expectancies at birth from 1840 through 2000.
Source: Adapted from Oeppen and Vaupel, 2002.

# Increased Life Expectancy after Age 65




- Life expectancy after age 65:
  - 15+ years for men
  - 20+ years for women
- How will memory hold up?

# What is Dementia?

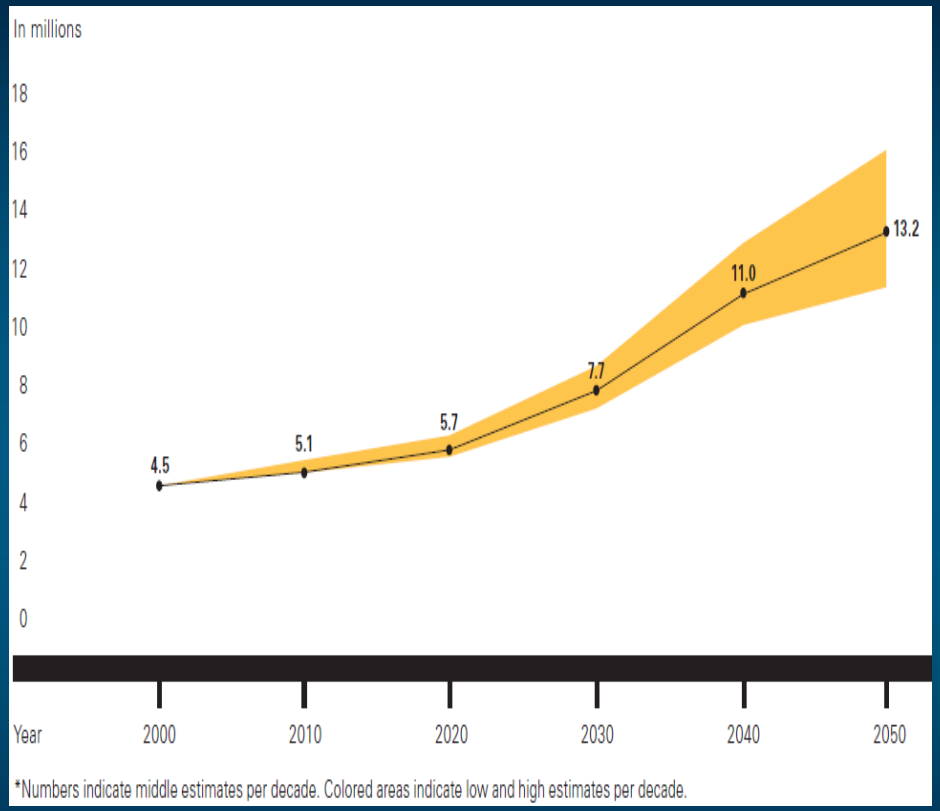
**Symptoms**

Dementia symptoms vary depending on the cause, but common signs and symptoms include:

**Cognitive changes**

1. Memory loss, which is usually noticed by a spouse or someone else
2. Difficulty communicating or finding words
3. Difficulty reasoning or problem-solving
4. Difficulty handling complex tasks
5. Difficulty with planning and organizing
6. Difficulty with coordination and motor functions
7. Confusion and disorientation

# Dementia: Facts and Figures



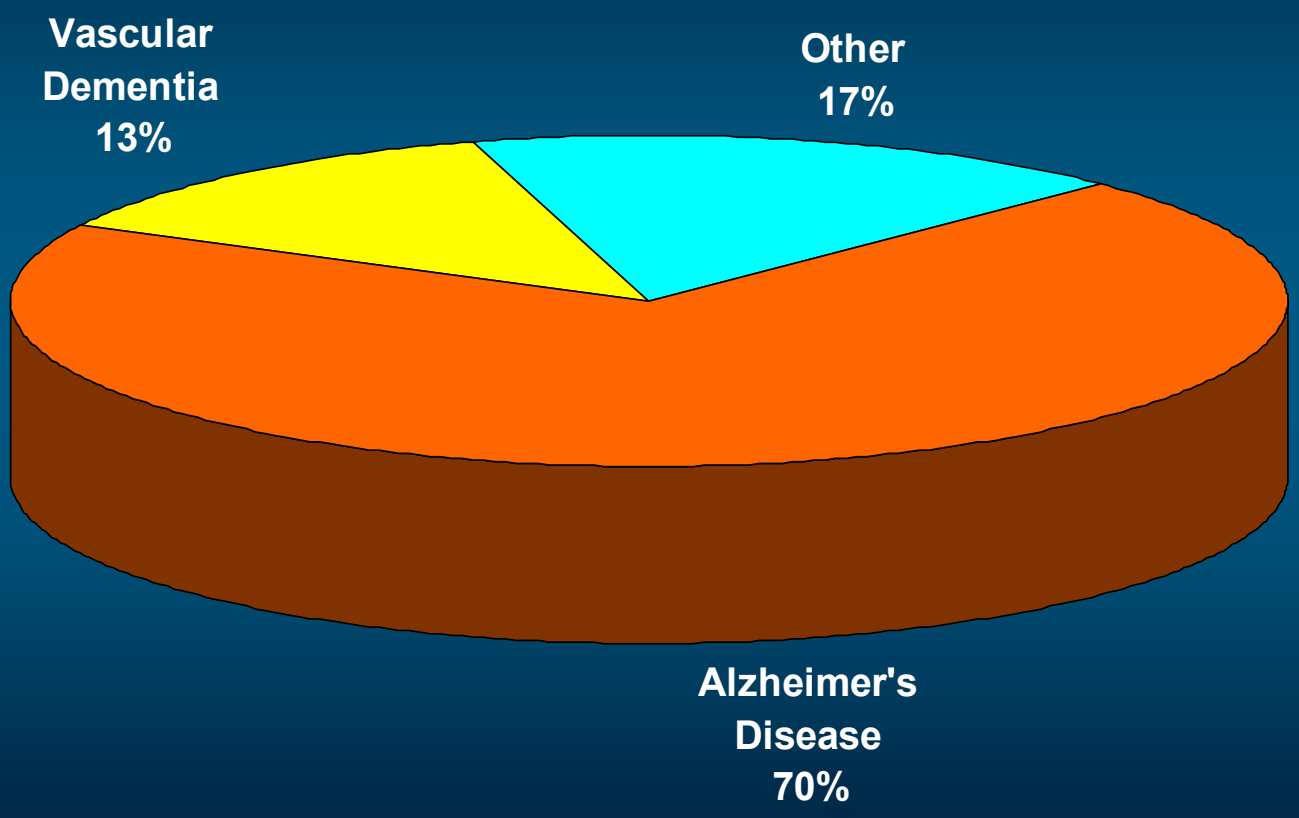

**Alzheimer's Association: 2012 Alzheimer's Disease Facts and Figures. Hebert et al., 2003. Alzheimer's Disease International, World Alzheimer Report 2010: The Global Economic Impact of Dementia.**

# Dementia: Facts and Figures

- Cases in US:
  - 5.4 million
  - 7.7 million in 20 yrs
- Cases worldwide:
  - 35 million (0.5%) in 2012
  - 65 million by 2030
  - 115 million by 2050

**Alzheimer's Association: 2012 Alzheimer's Disease Facts and Figures.**
**Alzheimer's Disease International, World Alzheimer Report 2010: The Global Economic Impact of Dementia.**

# Frequencies of Dementia Types

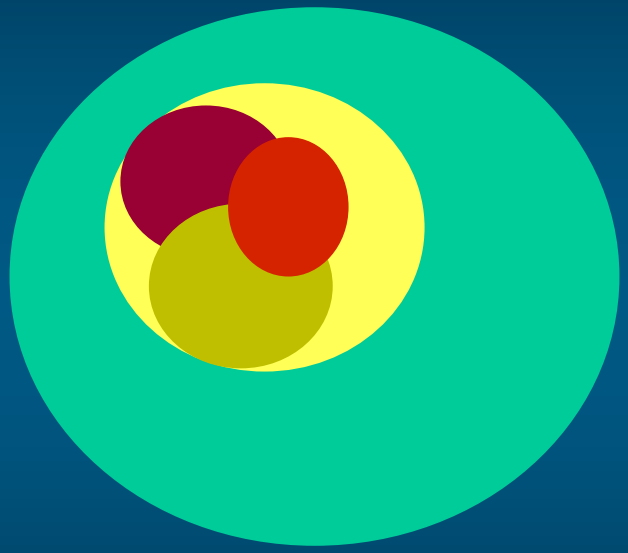


# About Alzheimer’s and dementia

Alzheimer's disease is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in thinking and other brain functions. It usually develops slowly and gradually gets worse as brain function declines and brain cells eventually wither and die. Ultimately, Alzheimer's is fatal, and currently, there is no cure.

# What *is* Memory?

- "Memory" is a mental process:
  - Learning
  - Storing
  - Retrieval
    - Recognition
    - Recall



- "Memory" is part of "Cognition"
  - The mental process of knowing
  - Awareness, perception, memory, reasoning, judgment

# Cognitive Changes: Normal Aging

- RECALL
  - Affected by age
  - 10% decline per decade beginning in midlife
  - Still a relatively small effect
- RECOGNITON
  - Generally remains stable across lifespan with normal aging

# Causes of Memory Loss

- Normal aging
  - Changes in Memory and Cognition
  - AD risk 1% per year
- Mild Cognitive Impairment (MCI)
  - Changes in Memory and Cognition
  - Neuropsych testing deficit(s)
  - AD risk 10-15% per year
- Dementia
  - Changes in Memory and Cognition
  - Neuropsych testing deficit(s)
  - With functional deficits

## Stress can impair memory, reduce brain size in middle age

October 25, 2018

Summary:
Stress may be causing impaired memory and brain shrinkage in middle-age adults, even before symptoms of Alzheimer's or other dementia begin, according to a new study.

Adults in their 40s and 50s with higher levels of cortisol -- a hormone linked to stress -- performed worse on memory and other cognitive tasks than peers of the same age with average cortisol levels, research found. Higher cortisol in the blood also was associated with smaller brain volumes, according to the study, published Oct. 24 in Neurology, the medical journal of the American Academy of Neurology.

# Mild Cognitive Impairment (MCI)

MCI is a condition in which and individual has mild but measurable changes in thinking abilities
That are noticeable to the person affected and to family members and friend but that do not affect
The individuals ability to carry out everyday activities.
Memory problems are greater than normally excepted with aging but no other symptoms of dementia are present, such as impaired judgment or reasoning.

# MCI and Dementia are *NOT* Normal Aging

- Memory loss **+** other cognitive decline(s):
  - Aphasia
    - Difficulty producing or comprehending spoken or written language
  - Agnosia
    - Loss of ability to recognize objects, persons, shapes, etc.
  - Apraxia
    - Loss of ability to carry out learned purposeful movements
    - Despite having desire and physical ability intact
  - Executive dysfunction
    - Abstraction, judgment, planning of complex tasks

# MCI and Dementia are *NOT* Normal Aging

- Declines **must** interfere with daily living:
  - Mild-Moderate:
    - Working, finances, shopping, cooking, driving
  - Moderate-Severe:
    - Bathing, dressing, toileting, eating, transferring

Are you a slow walker?
It may be early sign of dementia.

The researchers concluded that older adults with slower walking speeds, and those who experienced a greater decline in their walking speed over time, were at increased risk for dementia.

Ruth A. Hackett, Hilary Davies-Kershaw, Dorina Cadar, Martin Orrell, Andrew Steptoe. Walking Speed, Cognitive Function, and Dementia Risk in the English Longitudinal Study of Ageing. Journal of the American Geriatrics Society, 2018;

Women with high physical fitness at middle age were nearly 90 percent less likely to develop dementia decades later, compared to women who were moderately fit, according to a new study. The study measured the women's cardiovascular fitness based on an exercise test.

Helena Hörder, Lena Johansson, XinXin Guo, Gunnar Grimby, Silke Kern, Svante Östling, Ingmar Skoog. Midlife cardiovascular fitness and dementia. Neurology, 2018;

Alcohol use disorders are the most important preventable risk factors for the onset of all types of dementia, especially early-onset dementia.

The findings indicate that heavy drinking and alcohol use disorders are the most important risk factors for dementia, and especially important for those types of dementia which start before age 65, and which lead to premature deaths,

Obesity increases dementia risk

People who have a high body mass index (BMI) are more likely to develop dementia than those with a normal weight, according to a new UCL-led study.

Archana Singh-Manoux, Markus Jokela. Body mass index and risk of dementia: Analysis of individual-level data from 1.3 million individuals. Alzheimer's & Dementia, 2017

Ruth A. Hackett, Hilary Davies-Kershaw, Dorina Cadar, Martin Orrell, Andrew Steptoe. Walking Speed, Cognitive Function, and Dementia Risk in the English Longitudinal Study of Ageing. Journal of the American Geriatrics Society, 2018;

# High-intensity exercise boosts memory, new research suggests

The health advantages of high-intensity exercise are widely known but new research points to another major benefit: better memory. The findings could have implications for an aging population which is grappling with the growing problem of catastrophic diseases such as dementia and Alzheimer's.

Bernadeta Michalski, Suzanna Becker, Margaret Fahnestock. The Effects of Physical Exercise and Cognitive Training on Memory and Neurotrophic Factors. Journal of Cognitive Neuroscience, 2017; 29 (11)

A new study, published in the open-access journal Frontiers in Human Neuroscience, shows that older people who routinely partake in physical exercise can reverse the signs of aging in the brain, and dancing has the most profound effect.

Anita Hökelmann, Notger G. Müller. Dancing or Fitness Sport? The Effects of Two Training Programs on Hippocampal Plasticity and Balance Abilities in Healthy Seniors. Frontiers in Human Neuroscience, 2017

# Skiers have lower incidence of depression and vascular dementia -- but not Alzheimer's

November 26, 2019
Lund University
Half as many diagnosed with depression, a delayed manifestation of Parkinson's, a reduced risk of developing vascular dementia -- but not Alzheimer's. These connections were discovered by researchers when they compared 200,000 people who had participated in a long-distance cross-country ski race between 1989 and 2010 with a matched cohort of the general population.

# Feeling loved in everyday life linked with improved well-being

Researchers find that people who experience higher 'felt love' -- brief experiences of love and connection in everyday life -- also have significantly higher levels of psychological well-being, which includes feelings of purpose and optimism, compared to those who had lower felt love scores.

Zita Oravecz, Jessica Dirsmith, Saeideh Heshmati, Joachim Vandekerckhove, Timothy R. Brick. Psychological well-being and personality traits are associated with experiencing love in everyday life. Personality and Individual Differences, 2020; 153:

# Dog ownership associated with longer life, especially among heart attack and stroke survivors

Dog ownership was associated with a 33% lower risk of early death for heart attack survivors living alone and 27% reduced risk of early death for stroke survivors living alone, compared to people who did not own a dog. Dog ownership was associated with a 24% reduced risk of all-cause mortality and a 31% lower risk of death by heart attack or stroke compared to non-owners.

Mwenya Mubanga, Liisa Byberg, Agneta Egenvall, Erik Ingelsson, Tove Fall. Dog Ownership and Survival After a Major Cardiovascular Event. Circulation: Cardiovascular Quality and Outcomes, 2019; 12 (10)

Mandatory Retirement Policies Fading, but Tensions Remain
"It's like going to high school when the seniors never graduate and the seniors are the partners," said Terrence Tarver, a personal injury lawyer in New York.

Herb Rubin is a 100-year-old attorney who still practices in New York. (Photo: David Handschuh/ALM) When Herb Rubin's partner died, he was recruited by a big law firm with a mandatory retirement age. Rubin, 100, the name partner at Herzfeld & Rubin in New York, is glad that he turned that offer down. Otherwise, he would have been forced to retire 35 years ago.

92-year-old lawyer not the retiring kind
Kate Leckie News-Post Staff Mar 28, 2010
Now living in a retirement community in Adamstown, the nonagenarian has no plans to stop working.

"I don't know what else I would do," he said.

# Summary

- Aging results in significant changes in body & brain
- Dementia is common in the elderly
- Alzheimer's disease accounts for 70% cases
- Significant progress on pathogenesis, clinical distinctions and earlier diagnosis
- Effective treatments to slow progression and treat psychiatric symptoms exist, but not satisfactory
- Treatment to dramatically change course of illness does not exist
- Prevention currently most feasible strategy

# Thank you very much!

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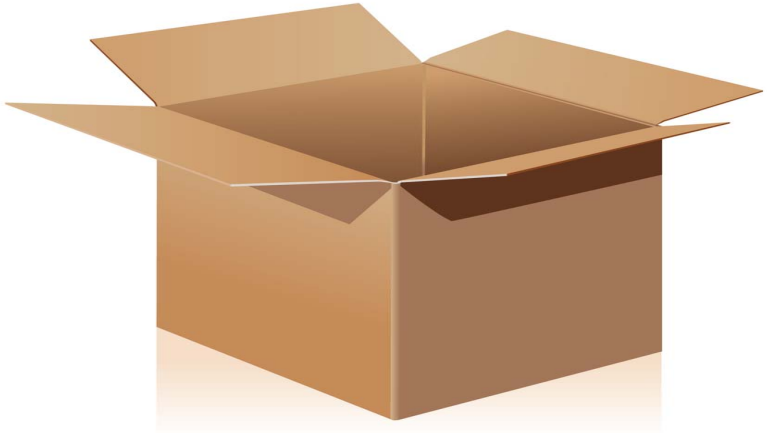
LAP-213-765-1357

# Shades of Gray: Perspectives on Aging Attorneys

TRACY L. KEPLER
DIRECTOR OF RISK CONTROL CONSULTING - CNA

# Speaker Disclosure Statement



# Overview

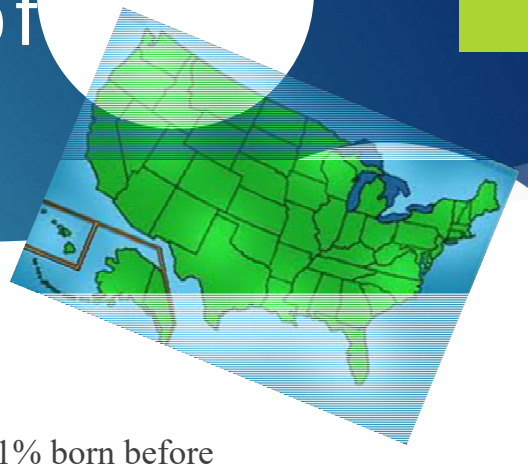
- Demographics
- Identifying & Addressing the Cognitively Impaired Attorney
- Ethical Responsibilities
- Possible Responses & Ideas for the Future
- Resources

# Demographics

# There are Lots & Lots of Attorneys In the US

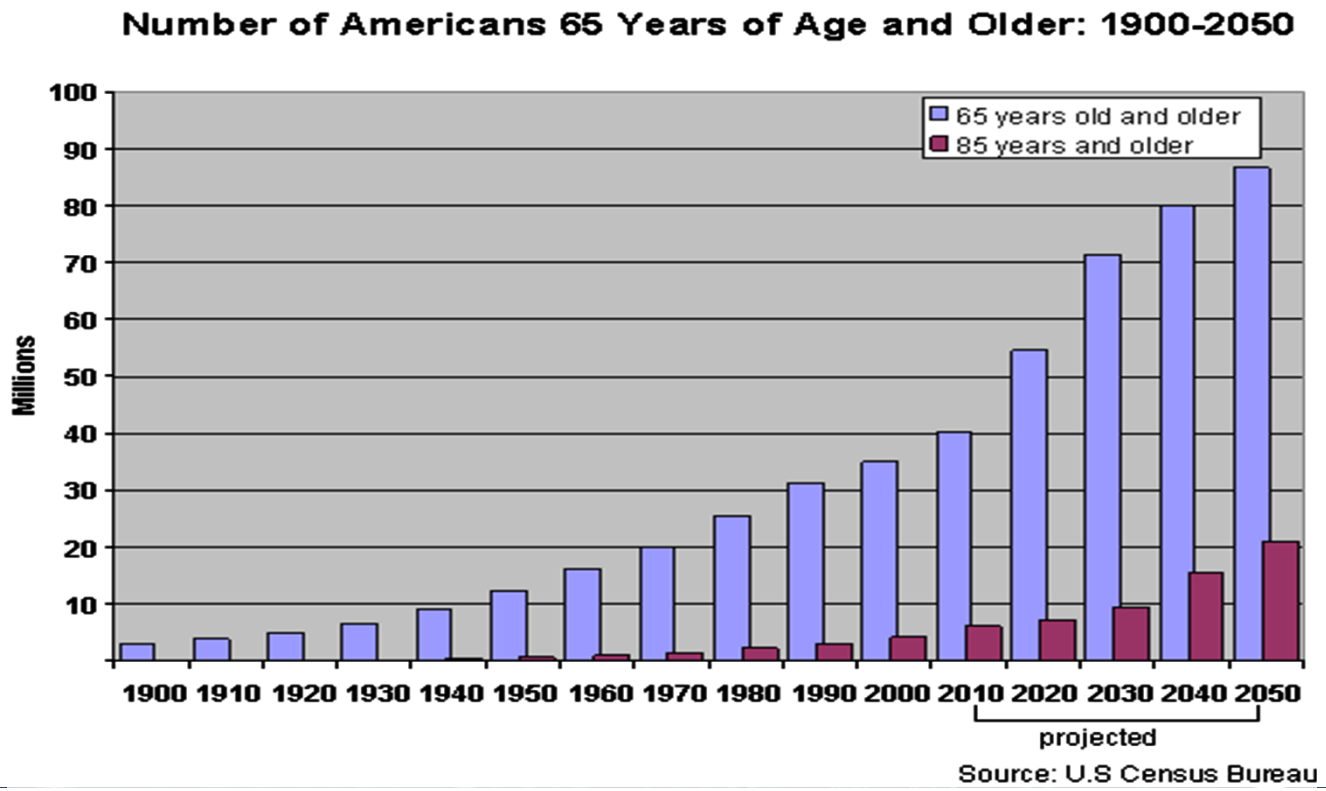
- Approximately 1,352,027 lawyers
  - As of December 31, 2018 – ABA
  - 
  - 
  - 
  - 
  - 21
  - 4
  - in 2018 – 2.7%

# There are Lots & Lots of Attorneys In the US



- "Senior Tsunami"
  - Michigan – 2016
    - 57.9% of the active members of the State Bar were born before 1961, 11.1% born before 1944
  - Washington – 2015
    - 71% are 50 or older, 21% are 61 or above
  - Florida – 2015
    - 33% are 55 or older, 21% are 60 or older and 11% are 65 and older
  - Maine – 2014
    - 47% of lawyers are 55 or older

# Aging Lawyer Population



# This is Happening

- Increasing percentages remaining in workforce beyond “retirement age” – disincentives to retire
- From 2005 to 2015, the % of state bar members over 65 has nearly doubled
- Of the 9,000 lawyers over 70 in TX, only 20% reported being retired

# Obstacles to Seeking Care

- Attorney believes they can handle the problem on their own
- Concern that seeking treatment might have a negative consequence on their professional reputation among peers, judges and potential clients
- General concerns about confidentiality

# Workplace as the Sentinel

- High cognitive demands
- O nce markers
- difficulties
- ld scripts and
- work
- ngoing
- s to

SENTINEL

# The Key:
# Departure from Baseline

- *What is atypical for that individual?*
  - Do not jump to conclusions, but do not ignore your "gut" response
  - Seek convergent information
  - Be aware of the cognitive buffer
  - Watch for specious rationales
  - Many non-dementia causes of cognitive difficulty

# Potential Warning Signs

- Broadly – Performance decline
- Forgetting significant elements from recent conversations or events, decisions or conclusions, routine/established procedures
- Repetition
- Difficulty or confusion when shifting topics/tasks; blending

# Warning Signs (outside of memory loss)

- Reduced ability to manage complexity
- Struggle when facing novelty, new learning, or change
- Jumbled sequencing
- Significant word-finding difficulty with substitution errors, fillers, or dead ends
- Disoriented to day of week, date, or year (calendar reliant)
- Becoming lost or turned-around when navigating familiar places
- Misplacing and hunting
- Impulsivity, poor judgment, disorganization

# Personality Warning Signs

- Frustrated, irritable, or defensive/blaming
- Inappropriate behavior/reduced social tact or impulsivity
- Indecisiveness
- Quiet, withdrawn, peripheral
- Dependent; loss of confidence
- Vague reason giving
- Poor insight

# Depression versus Dementia

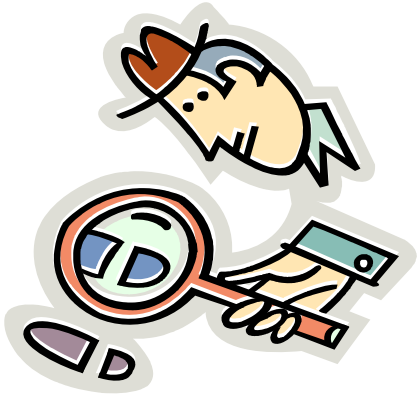
Since depression and dementia share many similar symptoms, including memory problems, sluggish speech and movements, and low motivation, it can be difficult to tell the two apart. There are, however, some differences that can help you distinguish between the two. See table below:

| Symptoms of Depression | VS. | Symptoms of Dementia |
|---|---|---|
| 1. Mental decline is relatively rapid | | 1. Mental decline happens slowly |
| 2. Maintains orientation | | 2. Confused and disoriented |
| 3. Difficulty concentrating | | 3. Difficulty with short-term memory |
| 4. Language and motor skills are slow, but normal | | 4. Writing, speaking, and motor skills are impaired |
| 5. Notices or worries about memory problems | | 5. Doesn't notice memory problems or seem to care |

Unrecognized and untreated depression may have fatal consequences. Suicide is more common in older people than in any other age group. The population over age 65 accounts for more than 25 percent of the nation's suicides. Suicide attempts or suicidal thoughts or wishes by older adults must always be taken seriously.

# Potential Clues to Cognitive D

- Late payments/poor business decisions
- Loss of skill (bad outcomes, legal errors)
- A failure to remediate skills following competency assessment
- Office staff concerns (or turnover)
- Lawsuits or complaints to regulatory agencies
- Dissatisfied clients
- Professional boundary problems (judgment)
- Irritability, impatience, mood swings
- Family, institutions, colleagues may collude with impaired one because of:
  - -Power differential
  - -Fear of loss (practice, license, prestige)
  - -Hesitancy to "betray" colleague
  - -Social Stigma of dementia/other illness



# Why Early Detection Matters

- People and their families want to know
- Early and accurate diagnosis needed to optimize treatment windows
- “Crisis then react” model inherently flawed
- Planning: personal and professional
- Opportunity to enact accommodations
- Can obtain needed psychoeducation
- Preserve reputation, dignity, and identity

# Controversies

- Commercial pilots must undergo health screening at 40 and must retire at age 65
- Air traffic controllers must retire at age 55
- Should health screening be included in maintenance of competency requirements for physicians and attorneys?

# Supreme Court Justices Are Seated for Life

# Cognitive Screening: The Challenges

- There is no single universally accepted screen that satisfies all the needs in the detection of cognitive im
- ut few have been well validated
- for mild levels of impairment
- ases in score
- y dysfunction
- differential
  designed to
  dementia

# Rule Out Reversible Causes of Cognitive Impairment

- CNS Infections
- Hypothyroidism
- Vitamin deficiencies (Vit D, B12 and Folate)
- Tumor
- Polypharmacy
- Psychiatric Illness
- Substance Abuse/Dependence
- Sleep Disorders……to name a few!

# The Approach - Imagine it is you:
## *What would you want for yourself?*

- Scenario 1: Letter from HR
- Scenario 2: “I think you have Alzheimer’s”
- Scenario 3: Ignore, pretend, cover up
- Scenario 4: Expression of concern

# Goals When Broaching the Topic

- Establish a space for open and safe communication
- Convey concern and desire to support
- Enhance mutual understanding; listen openly
- Emphasize shared objectives (optimization of a potentially difficult situation)
- Uncertainty underscored, engendering motivation for evaluation by a specialist
- Create a clear and viable initial path forward
- Know that the default reaction is often to feel (wrongly) accused and threatened

# An Effective Stance

- Emphasis is your concern and their value
- Legally sound AND compassionate
- Maintains appropriate uncertainty
- Cite specific, directly observed instances of difficulty
- Open, supportive, and collaborative
- Not demanding explanation or agreement
- Expect and allow for a range of responses

# Preparing for the Meeting

In preparing for the meeting:

- Consult with your local LAP to help develop a plan
- Partner with someone the lawyer trusts and respects
- Include a witness
- Plan to meet in a non-confrontational and private setting

# Approaching the Impaired Lawyer

Adopt an attitude of respect and gentle concern, rather than one of judgment, when meeting with the lawyer. Act with kindness and with regard for preserving the lawyer's dignity. If possible, try not to treat the situation as a crisis. Other tips include:

- Reviewing their good qualities and shared happy memories
- Talking about what you have observed and what other members of the profession are saying
- Being direct and specific, but avoid being harsh and judgmental
- Reviewing their good qualities and shared happy memories
- Avoid lecturing and acting as an authority figure
- Then, letting him or her speak
- Listening closely and respectfully

# If Cognitive Decline Confirmed

- Problem solving to establish informed and reasonable accommodations, when possible; the presence of some cognitive limitations does not eliminate capacity for meaningful and contributory work
- Acknowledge workplace implications and expectations
- Acknowledge relevant realities of the workplace culture
- Ongoing and dynamic
- Identify and provide support resources (in and out of the workplace)

# Compensatory Measures

- Avoid solo practice
- Work fewer hours
- Increase staff assistance
- Monitoring (Lawyers Assistance Programs)
- Reorganization of a practice
  - Utilize knowledge/experience of the professional
  - Encourage continued professional involvement
  - Maintain respect for the professional

# Suggestions for the Workplace

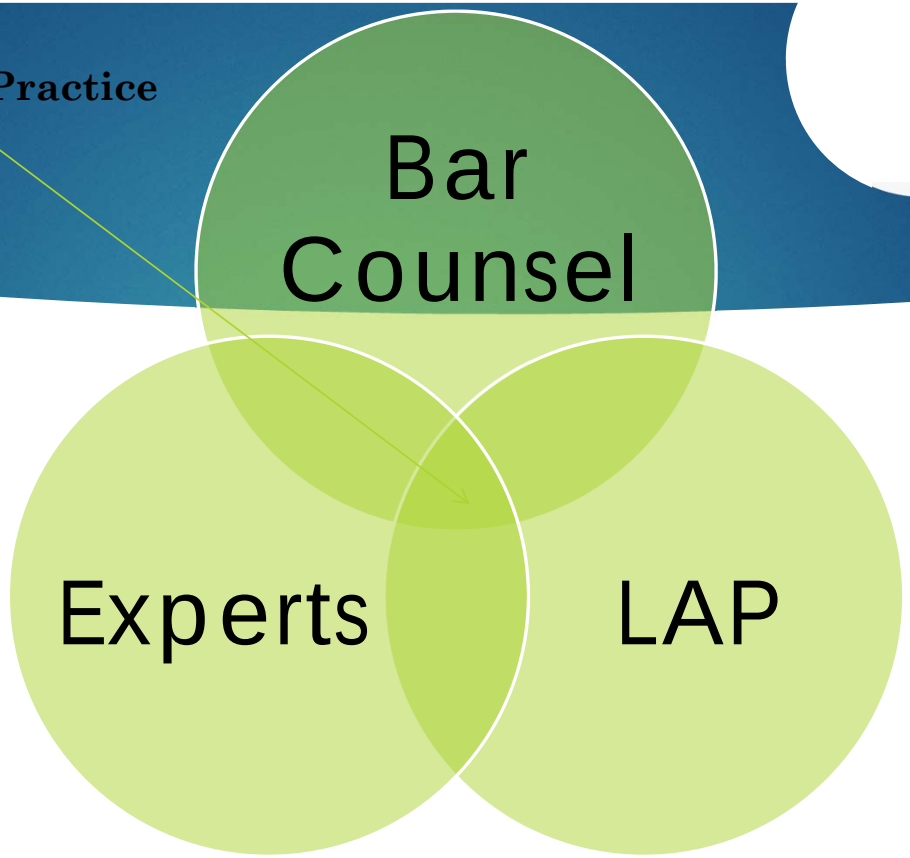
# Improve Workplace Culture

- Collaboratively establish and disseminate a plan/policy for addressing cognitive problems before they arise
- Identify and provide medical/support resources; encourage use
- Diminish fear, stigma, and gossip
- Ensure all staff can express concerns without fear of retribution; no duty to cover-up or differential treatment
- Safe/supportive versus competitive/cut-throat
- Workplace efforts to promote well-being, including mitigation of risk factors for dementia

# Key Points

- Learn about the early signs of cognitive impairment
- Pay attention to your intuition if you detect instances of uncharacteristic mental lapses
- Be open and collaborative; Don't jump to conclusions
- Does your workplace have an established clear plan/policy for addressing cognitive decline?
- Know your plan and identify available resources ahead of time!

# Ethical Implications


Fitness to Practice
Bar Counsel
Experts
LAP

# Safety Sensitive Employment

The underlying principle for fitness-for-duty assessment is the protection of the public

- Health Profession
- Legal Profession
- Transportation Industry
- Other (i.e. nuclear power plant operator)

# Age and Disciplinary Action

- Length of time since graduation predicts greater risk of disciplinary action among physicians:
- There is a positive association between aging and disciplinary action but unable to ascertain whether this is related to :
  - Greater number of patients seen over time
  - Risk due to more complex patients (an aging practice)
  - Cognitive deficits
  - Other

Morris and Wickersham, JAMA 1998;279:1889-1894

# Ethical Obligations of Impaired Lawyers

- The same as any other lawyer!
- An impaired lawyer owes a duty to represent a client competently and with diligence and to communicate with the client.
- Lawyer's impairment does not excuse the lawyer from compliance with the Rules.
- Lawyer's impairment is not a defense, nor excuse, for ethical breaches

# Rules Implication

- 1.1 – Competence
  - Legal Knowledge & Skill
  - Thoroughness & Preparation
  - Maintaining Competence
- 1.3 & 1.4 – Diligence & Communication
- 1.6 – Confidentiality of Information
  - Communication with EAP and LAP Programs

# Prepare for Disability

- To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability or determine whether there is a need for immediate protective action. *Rule 1.3, Cmt. 5.*

# Rules Implication

1.16 – Declining or Terminating Representation

1.17 – Sale of a Law Practice

5.1 – Responsibilities of Partners, Managers, & Supervisory Lawyers

8.3 – Reporting Professional Misconduct

# Decline or Withdraw Representation

- A lawyer's mental or chemical impairment may require the lawyer to decline or withdraw from the representation.

- "[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if… (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client." *Rule 1.16(a)*

- "A lawyer is impaired if, as a result of mental or chemical illness, he or she is unable to provide competent representation to the client, which requires "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation". *Rule 1.1*

# RULE 8.3 - REPORTING PROFESSIONAL MISCONDUCT

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

# Ideas for the Future

**Traditional Discipline Models**

- Permanent Retirement Status
- Transfer to Disability Inactive Status
- Motions to Compel Evaluation
- Receiverships

**Alternatives to Discipline Models**

- Inactive, Retired and Emeritus Status
- Succession Planning
- Education/Outreach

# Discipline *does not* mak[illegible]ck professional well

- Peer assistance programs
  - Fewer professionals go “underground”
  - Confidential assessments by (true experts)
  - More self referrals
  - Earlier intervention
  - Less harm to the public
    - Unlike a complaint driven investigation
  - Leverage for assuring compliance (reporting)
  - Advocacy for the professional’s health
    - Preserve dignity, reduce shame/fear, protect public without disciplinary measures

# Graceful Exits…… The Transition to Retirement

- Ideally, a gradual, stepwise process *before* impairment develops
- It usually takes a few years to do this
- Ways to Accomplish This:
  - Begin to integrate more hobbies
  - Reduce workload
  - Consultation with:
    - Other retired professionals
    - Executive Coaches/therapist
    - Financial experts

# Graceful Exits…… Suggestions for Coping with Change

- Find interests outside of profession
  - Clarify personal values
  - Activities that make the professional feel valued
  - Activities that have meaning
    - Reestablish humane and altruistic connections to society
  - Physical Activity
  - Creativity
- Enhance social support
  - Church/Synagogue
  - Family/Friends
  - Volunteer work

# Graceful Exits…….

Health may actually improve during retirement

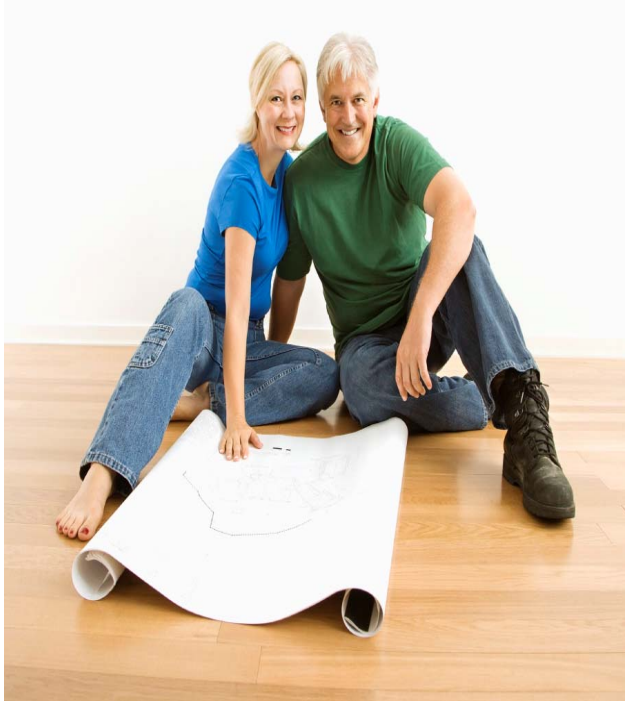
-Better nutrition

-More exercise

-Less stress

-Greater balance

-Spousal relationships tend to improve



# Law Firm Accommodations

- Depending on the nature, severity and permanence of the lawyer's impairment, the firm may have an obligation to supervise the work performed by the impaired lawyer or may have a duty to prevent the lawyer from rendering legal services to clients of the firm, until the lawyer has recovered from the impairment.
- Reduce the impaired lawyer's workload
- Require supervision or monitoring
- Remove the lawyer from time-sensitive projects
- Assign lawyer to supporting roles including research and drafting

# Law Firm Impairment Policy

- Enforceable policy that would require that the impaired lawyer seek appropriate assistance, counseling, therapy or treatment as a condition of continued employment.
- Consult with professional medical or health care provider for advice on how to deal with and manage an impaired lawyer including options for an “intervention”
- Recommend, encourage or direct that the impaired lawyer contact local Lawyer Assistance Program for an evaluation and assessment of condition and referral to appropriate medical or mental health care professionals for treatment and therapy.
- Make a confidential report to Lawyer Assistance Program

- *Emeritus Division*

Consider advancing the goal of creating an Emeritus Division of your State Bar to work together on these, issues.

In addition to collectively solving and addressing these issues, the Division would provide important input to issues on the horizon faced by other state bars such as mandatory retirement and mandatory cognitive testing.

Additionally, the Division could work in conjunction with your state's Young Lawyer's Association to support the initiative of establishing a reverse mentoring program.

*Model Rules for Local Courts*

Consider volunteering to develop model rules for local district and county courts to create a guide to local support and services to assist lawyers in transition or to create a clear paradigm for lawyers exhibiting signs of impairment.

- *Build Community with Law Schools*

  Consider partnering with law alumni associations to work with law schools to assist in supporting senior lawyers with technological and other support staff changes through a 'Return to Law School' program.

*Voluntary Physical and Mental Checkups*

Encourage colleagues to consider a voluntary annual physical checkup that includes a routine baseline evaluation.

- *Self-evaluation by the Bench & Bar*

  Encourage judges to evaluate the conduct of lawyers who practice before them. Be aware of functional support and evaluation available in local communities and determine whether any treatment or remedies are available to mitigate an attorney's condition or reduce the probability of recurrence. In the event any suggested modifications are not unduly burdensome, support mentoring relationships through your state bar to monitor attorneys to ensure compliance with designated treatment plans.

RESOURCES

# Lawyer Assistance Programs

- Who we help –
  - Lawyers
  - Judges
  - Law students

- For caller -
  - **Confidential** support 24/7
  - Participation is **voluntary**
  - Calls can be **anonymous**
  - Referrals:
    - Licensed professionals
    - Group support
  - Peer support

# American Bar Association

- ABA Center for Professional Responsibility (CPR) – Lawyers in Transition
  - Aging of the Bar Data
  - Succession Planning
  - Intervention and Impairment Assistance

# American Bar Association

- ABA Center for Professional Responsibility (CPR) – Lawyers in Transition
  - Regulatory Issues
  - Practice Opportunities for Transitioning Lawyers
  - Senior Lawyer/Young Lawyer Opportunities
  - Articles

# American Bar Association

- ABA Commission on Lawyer Assistance Programs (CoLAP) – Senior Lawyer Assistance Committee
  - Education
  - Collaboration with Other Entities such as CPR, NOBC, APRL, and NAN
- CoLAP Working Paper

# American Bar Association

- ABA Commission on Lawyer Assistance Programs (CoLAP) – Senior Lawyer Assistance Committee
  - NOBC/APRL/CoLAP Paper
  - Collaboration with the National Academy of Neuropsychology
  - Articles

# Around the States

- Interventions and Transition Counseling
  - Training volunteer lawyers
  - Finding good providers
- Task Forces/Commissions

# Around the States

- Work on Succession Planning Requirements/Assistance
- Encouraging Voluntary Assessments
- Retirement Planning Seminars
- Articles/CLE programs/Videos
- LAP/Disciplinary Collaboration (without violating confidentiality!)

# Helping Senior Lawyers

THE SENIOR LAWYER

## TRANSITIONING WITH DIGNITY

### ABC'S OF HELPING THE SENIOR LAWYER

**IDENTIFY THE PROBLEM**
(be alert for small changes to intervene early)

- Denial of any problem
- Cannot function without assistant present
- Frequent irritability
- Changes in work routine or behavior
- Deteriorating performance at work
- Memory decline, consistently forgetful
- Increasingly misplacing everyday objects
- Perfunctory answers
- Loss of control of emotions, crying at work
- Grievances or suits for malpractice

**APPROACHING THE SENIOR LAWYER**

- Consult TLAP at (800) 343-8527
- Meet in a non confrontational manner
- Partner with someone the lawyer trusts
- Include a witness

**Starters:**
*"I am concerned about you because..."*

*"We have worked together a long time, so I hope you won't think I'm interfering when I tell you I am worried about you..."*

*"I've noticed you haven't been out much lately, and am wondering if you're okay..."*

- Get the lawyer to talk
- Listen not lecture
- While listening, add responsive and reflective comments
- Express concern with gentleness and respect
- Talk about what other people are saying
- Review the lawyer's good qualities and happy memories
- Respect the lawyer's dignity and privacy
- Be yourself, not an authority figure
- Suggest assessment by a specific professional and have contact information ready
- Offer assistance and make recommendations for a plan that provides oversight (such as a buddy system or part-time practice with co-counsel)
- Remember that this is a process, not a one-time event

**DO'S & DON'TS**

**Do's**
- Be direct, specific, and identify the problem
- Speak from personal experience; state your feelings
- Report what you actually see
- Be respectful and treat the lawyer with dignity
- Act in a non-judgmental, non-labeling, non-accusatory manner
- Offer to call the lawyer's doctor with observations
- Refer for evaluation, have resources at hand
- Suggest alternatives; inactive status, disability leave
- Suggest the potential consequences: grievance investigation or disability proceedings

**Don'ts**
- Ignore and do nothing
- Include family, unless requested
- Insist if lawyer says "back off" (attempt to discuss again at a later date)

TEXAS LAWYERS' ASSISTANCE PROGRAM
Confidential. Respectful. Voluntary.

(800)343-8527 | TexasBar.com/TLAP

All communication with TLAP is confidential pursuant to Texas Health & Safety Code §467.

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TEXAS LAWYERS' ASSISTANCE PROGRAM

*Confidential. Respectful. Voluntary.*

CALL 1-800-343-8527 (TLAP).
GET HELP WITH SUBSTANCE ABUSE
AND MENTAL HEALTH ISSUES.

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# COGNITIVE DECLINE

As attorneys age, some develop a loss of cognitive abilities, which impacts their competency in handling client matters. Unfortunately, some lawyers are finding themselves in the disciplinary system often because of some of these health issues, which go deeper than just having a forgetful memory. Missing deadlines, forgetting court dates, losing case files, and lack of comprehension of facts are just a few examples of problems that have resulted in grievances being filed against an attorney in these circumstances. TLAP can help through education and other resources.

# Resources

**Articles**

Recognizing Signs of Impairment

The ABC's of Helping the Senior Lawyer

Aging and Transitioning With Dignity

Transitioning Your Law Practice

Planning for Aging Well

Concerns About Cognitive Impairment

Existing Options When You Have a Problem

What to Do When You Can't Practice

Mental Health Issues in Older Adults

Lawyer in Transition Resources

**Videos**

Identifying Cognitive Impairment

Courage, Hope, Help—TLAP Is There