ACTEC Law Journal

Volume 43 | Number 1 Article 4

9-1-2017

2016 Joseph Trachtman Memorial Lecture March 19, 2016: Do We Need a Canary or Did the Canary Stop Singing and We Missed It?

Dennis I. Belcher

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[Spoken introductory remarks by Bruce M. Stone]

Good morning. Welcome to Las Vegas, the 2016 Annual Meeting [and] welcome to the Annual Joseph Trachtman Lecture. I am going to read you three short emails.

The first one was sent on Wednesday, November 10, 2010, almost six years ago, 10:06 in the evening.

From Bruce M. Stone to Dennis I. Belcher: "Where are you going to be in March 2016?"

[Laughter from audience]

Dennis didn't answer me right away, but he did reply the next morning, Thursday November 11, 7:46 a.m.

From Dennis I. Belcher to Bruce M. Stone: "Watching your last meeting as ACTEC President, God willing."

I replied six minutes later, 7:52 a.m.: "Delivering the Trachtman lecture."

I'm not going to insult your intelligence or take away time from Dennis by reading you his extensive and most impressive biography. You can read that for yourself. All I want to do is tell you how special a person Dennis is. An incredibly warm, brilliant, wonderful person. Family man. Leader. Ah, Dennis. Dennis grew up on a farm. Dennis has had two wonderful fathers in his life. His father, Red Belcher, passed away when Dennis was very, very young. A renowned musician. Look him up sometime on the Internet. And another dad later on. Dennis had a wonderful family, a wonderful upbringing. Dennis knows the values of work and what it is to be a true citizen. I had the great pleasure of serving on the Executive Committee for one year with Dennis, and I just was in awe of his great intelligence. Not that I didn't know it already, Dennis. His insight, his foresight, and his ability to lead people. Not by telling us, "This is what we're going to do." Because he knew it was the right thing and that we would do it, but by teaching us and educating us and convincing us so that we would make the decision: "This is the right thing to do in so many different ways." And I knew if I ever had this opportunity, that Dennis was going to be my Trachtman Lecturer, and I want to have you join me in welcoming Dennis.

[Clapping]

[Beginning of remarks by Dennis Belcher]

I first met Bruce in the early 1980s when both of us were fairly young in the teeth and it was dealing with James Madison's ancestral home, Montpelier. It involved a fight among the siblings of one of the DuPonts, and our client was the National Trust for Historic Preservation. Thanks to the generosity and the support that Bruce and his client both gave, we now have a wonderful historical monument that I encourage you to visit. You heard Bruce state that he asked me to speak right after he had been nominated as the Chair, and I want to contrast that with my first presentation at ACTEC. In 1993, I got a call from the Program Chair, Henry Gissell, and Henry said, "Dennis, we've got a meeting in Santa Fe and there's a program on private annuities and SCINs. I understand that you know something about that, and I would like for you to be one of the speakers." And I said, "Well, Henry, I'm really in awe that you would ask me but I'm confident that there are people more qualified than me to give that presentation. I will accept on the condition that you continue to look for a speaker and if you find someone more qualified I'll step aside." Henry said, "Well, I accept that condition, but I don't think it's going to happen because I've got to turn in the speaker list in one hour."

[Audience laughs]

It's been downhill ever since. You know, whenever you give a presentation like this, it's really a true honor to do it and I really thank Bruce for giving me the opportunity. I'll do my best not to disappoint. I asked some friends for advice and, you know, I started with my good friend, Danny Markstein, and Danny said, "You know, Dennis, I've heard you talk about that website *Despair.com* that makes fun of motivational speakers. Mention that if you can. I think that would be good." I asked Turney Berry, and Turney said, "Remember, the NCAA basketball tournament start time is during your speech." And then I turned to my good friend, Ron Aucutt, and Ron reminded me that it's an election year. And he said, "Make ACTEC great again."

[Audience laughs]

But, Ron also said, "Don't mention hands while you're up here."

Then I sent an email to a friend of mine at Fiduciary Trust by the name of Ware Palmer. I've represented Ware's family for years and Ware has a great sense of humor. And he said, "I'll be glad to help with your speech." He suggested, "I would like to thank Fiduciary Trust International for sponsoring this lecture. As you know, Fiduciary Trust has been a loyal sponsor of ACTEC for many years. In particular, I would recommend Ware Palmer as a person to contact should you run into any personal or client situations for which an outstanding investment manager and/or a fiduciary is appropriate." He said, "In the middle of your talk, it really doesn't matter what you say, nobody will be listening, anyway." He said, "At the end, you should say, 'In summary I highly recommend Ware Palmer to you as a go-to person for any type of investment management or trust and estates needs.'" So, I've done my job.

[Audience laughs]

And last but not least, my closest advisor, Miss Vickie. And Miss Vickie said two things. She said, "Dennis, you remember your acceptance speech when you were taking the Presidency [of ACTEC for 2009-2010]? That lasted less than 60 seconds." She said, "Don't do that. Don't do that." And she then said, "But remember. We have luncheon reservations so let's try to get out early."

My talk is about the business of practicing law, particularly what we do. It's aimed at lawyers and financial institutions but I think there'll be some point where others can gain some insight going forward. Most of us have been around long enough to say that we joined a profession and not a business. But if you ask our spouses, children, and other dependents, they will tell you it's better be a business to keep them in the style in which they've become accustomed.

When I was a young lawyer, I was meeting with some clients with a senior partner. They were interviewing us to take on a tax matter. And, I remember when we first walked in, I'm standing there like this and they said, "Can we have a business card?" I go like this *[motioning to his pocket]* and the senior partner said, "We're not in a business. We don't carry business cards." So I scratched my butt and we moved on.

[Audience laughs]

Let me tell you about the title: "Do We Need a Canary or Did the Canary Stop Singing and We Missed It?" I was having breakfast this morning with Lou Harrison and he said that when people ask what he does, he says, "I work in an intellectual coal mine." And as you know, the canaries were used before they had safety equipment. The miners would take a canary in a cage down in the mine to smell the methane gas, which was poisonous. And when the methane gas seeped out, the canary was there, the canary would pass out, and the miners would leave and run for cover. So that's what I'm going to be talking about: Have there been significant changes in our practice that we need to take into consideration and we have we missed them or not? One thing I'm going to apologize for in advance is that I hope my technological skills will be fine, because sometimes it doesn't work quite right.

[Dennis advances slide to show Wayne Newtown and Vickie Belcher]

Oh, Lord! Where did that come from?

[Audience laughs]

Oh, yeah, I remember now. Now, it's appropriate for you all to say "Hallelujah!" at this point. That's not me on the right.

[Audience laughs]

That's Wayne Newton and that's my beautiful wife that was with him. I asked her, "Well, what transpired there?" And Vickie said, "Dennis, what goes on in Vegas, stays in Vegas." And the children, when I sent them that picture, they reminded me that Wayne Newton in "National Lampoon, Family Vacation" tried to snake a guy's wife.

So let's go to the background and now talk about some significant things. We've had significant changes in the estate tax laws in 2001 and 2010, and in response to that there was a task force on estate planning in the 21st century. Jeff Pennell and Bruce were on that, with Susan Snyder and myself, and we did a symposium. That was in 2011, five years ago. And there's been even more significant changes that have occurred since then, and what I'm concerned about is that we haven't adjusted our practice to those changes. Now, as you'll see later on, I state that we're one election away from more changes in the estate tax law. But in the last four years, we've had more stability in the estate tax law than we've had in the previous fifteen. I think that many of us rely on the estate tax law as the hook or as the enticement or as the motivation for clients to come to our office, and my point is going to be that I'm not sure that for a significant amount of the wealth that we can rely on that. I think there are a lot of other reasons that we will be very busy going forward. We'll talk about changes in the financial services industry, because that's what we are. We are in the financial services industry. You will see that a significant number of our Fellows work for financial institutions, and I applaud the Executive Committee under Bruce's leadership for opening up the College to people who are lawyers but practice in or for a financial institution. I think it's an idea that was long overdue.

So I'm going to talk about how we respond to changes and how ACTEC can help us. For those of you who have the good sense to sit in the back, let me read what this is about. We're dealing with change – and Danny, this is from *Despair.com*. "Politicians are like diapers. They need to be changed often and for the same reason."[1]

[Audience laughs]

"Financial services" encompasses estate planning, investment management, tax planning, business planning, insurance planning, and charitable planning. And what you find is that professionals who work in those areas encourage their clients to do estate planning. And they are great referral sources. But what I fear is that the more they become the primary contact for the client, the more we could very well become a scrivener. And scriveners don't get paid a lot. Now you can develop good relationships with financial institutions, and you'll see later on that an educated client is a better client. The financial institutions can actually help a great deal, and I think we need to embrace that.

The providers of financial services are lawyers, accountants, financial institutions, investment managers, insurance advisors, and charities. Many of us in this room can remember when there was talk of a team approach, and the lawyer's biggest fear was that accountants were going to take over the estate planning practice. That hasn't happened. That has not happened at all. But you know I think things are changing. On the extremely positive side, there's a significant interest in financial services. These are some statistics from the Heckerling Institute that is held in Orlando every January. In 2014, there were 2,800 attendees. In 2015, 3,000 attendees. In 2016, 3,200 attendees. I've had the pleasure of chairing the Recent Developments panel for several years, and what has happened in the last two years is that there's been very little to talk about. I think most people know that. But the crowds still keep coming, and we still run out of time with nothing to talk about. So, there's a great deal of interest in financial services. When I talk to my friends about it, they say, "Well, that's because non-lawyers are coming. That's why you've got that big attendance." And it's also because it's a great

1 Dennis I. Belcher, *Do We Need a Canary or Did the Canary Stop Singing and We Missed It?*, https://www.actec.org/assets/1/6/2016_Trachtman_Lecture.pdf at 4 [hereinafter Belcher Slides]; *Change*, DESPAIR.COM, https://despair.com/products/change (last visited Sept. 28, 2017).

networking event. And it is. It's a great networking event. But let's look at who goes. Seventy percent of the attendees are lawyers. Seventy percent are lawyers. You'll find twenty percent are accountants, eleven percent are certified financial planners, and eight percent are insurance professionals. So you have one of the largest financial services seminars in the country where the attendance continues to grow, and you have a significant number of lawyers who attend that conference. So there's work out there. There is work out there.

And my point in this presentation is for all of us to step back and think:

What type of work is it?

What will we be doing?

And primarily, what can the College do to help us do that work?

Times are changing. Primarily, it's the transfer tax system. Marketable securities wealth is increasing. There's a slide later on that I'll show you that deals with how much the Dow Jones Industrial Average has increased in ten years as compared to the price of a residential home. And you'll see from that slide that the Dow Jones has increased significantly and the price of residential homes has not. In my opinion, that explains a lot of the Trumpsters and what is going on [politically]. The wealth creation, the wealth growth in this country has been disproportionate. And, many of our clients have been the beneficiary of that.

I want to talk about significant intergenerational transfers of wealth. When I was preparing for this presentation, whenever I would look at a financial institution report, and the one I remember is State Street's report on wealth, they were saying that there will be a significant intergenerational transfer of wealth, from thirty to forty trillion dollars in the next twenty years, and investment advisors need to get a piece of that. That's why we need to cozy up to investment advisors and have them look at us as a referral source. We all get great benefits from the sponsors financially. But in my opinion, we get even greater benefits when we get to know them and they get to know us. People send business to people they know. We all do that.

Demographics are changing. And if you remember Jeff Pennell's Trachtman Lecture several years ago, he went through that in great detail. But here is a slide dealing with wealth increases and decreases. From April 2006 through March 2016, the Dow Jones Industrial Average has gone from 11,000 to 17,000, a fifty percent increase in ten years. Five percent a year. And if you think about that, that includes 2008 and 2009. I remember being at the Greenbrier during that time watching CNN with Danny Markstein, drinking a martini, getting ready to play golf, and just watching the Dow crash. So I felt like I was in "Gone With The Wind."

[Audience laughs]

But look at residential housing — the Case-Shiller Index — which is an index that compares the price of a residence in various jurisdictions, and this is the national poll. In April of 2006, the average was 184. I don't know what that means: 184,000 or 184. In 2011, it was 139. So it had gone down twenty-four percent in five years. In 2015, it was 180 – 176, so it hasn't gotten back to 2006 levels. If you step back and you look at the ninety-nine percent of the clientele out there that we don't represent, the retirement wealth of that ninety-nine percent is tied up in in two places: their residence and social security. And you can see why Bernie Sanders has been so popular. Because of that, you can also see why Donald Trump has been popular. Just because of that dissatisfaction. I'm sure there are multiple reasons but that's just one.

What are the negative change drivers? These are things that I think will affect our practice.

Decreased transfer taxes are a negative change driver. The lifetime gift tax exemption amount or the applicable exclusion amount is $5,450,000. A married couple can die with almost eleven million dollars and not pay estate tax. And contrary to what we hear, in a first marriage situation with a nuclear family marital trusts are not going to be as popular as they've been. Charging a client for a marital trust often means charging them more than charging a client just for an outright disposition.

Particularly when you're looking for the income tax play, I think a negative change driver is going to be increased income taxes. That's because we don't do income tax work. We do fiduciary income tax work, but when a client comes in and asks you, "I'm thinking about making a $50,000 charitable donation, how much will that save me in income taxes?" You know, if you haven't done the client's tax return, you just can't plug it in and say, "Well you're going to save thirty percent of it because of the phase-outs and everything else that goes with it." I mean, we've all been caught by that trap so what we generally do when the client comes in and says they want to make a $50,000 charitable contribution, we say, "Go talk to your accountant." Now, maybe an answer is that we bring the accountants in to our shops so they can do that. In my personal practice, I allowed a paralegal to depart two years ago and replaced her with a part-time accountant. And why was that? Because I found that many of my clients already had good relationships with an accounting firm that can do the estate tax returns that are not that complicated, that we don't need to do. Another thing you are going to hear me say: commodity work, commodity work, commodity work. And yet, the accountant serves a valuable purpose of running that calculation that I just mentioned. Or consider the client that has the C corporation and the client wants to know what will be the double taxation if they sell this asset? It all depends on your practice, but I think you've got to staff according to your practice. If you're doing a lot of 706s, and you can do them better than an accounting firm, then staff accordingly with legal assistants. On the other hand, if your practice is not that way, then you may be better off looking at a different type of staffing.

Another negative change driver — Increased competition from non-law firm sources. I think in the high end that's not going to affect us. Why? Because financial institutions realize that we can play a valuable role with the high-end client. We work well together with them. On the other hand, if Vickie and I have eight million dollars together, do I need to go see my investment advisor, my accountant, and my lawyer to figure out what type of estate plan I need or are we better served by being told by the investment advisor what the options are? Do we want a marital trust? Do we want an outright disposition and skip the marital trust? And then we can price it out by who will charge what to implement the plans? In our situation, that's the way I would prefer it. The damnedest thing that I think has happened is how many of us would rather go to an ATM than go to a teller. I think that's the same thing that's going to happen in our world: a client would rather deal with certainty and fewer people because you don't know what the relationship is going to be. So I think increased competition is going to serve us well, but we may have to change the way we approach it.

We all know why the significance of federal transfer taxes is a negative change driver. The exclusions are $5,450,000, the rates are forty percent. And what we're seeing time and time again is that with the ordinary income tax, you're better off of getting basis and paying estate tax, than you are not paying an estate tax and not getting basis.

Another negative change driver — the stability of transfer taxes. We've all been extremely busy since 2001 because of the instability of the tax system. But since 2012, it's been more stable. Now, we all know that we're only one election away from more change. If Hillary Clinton wins, and because of Donald Trump the Republicans lose control over the Senate, the White House, and the House [of Representatives], then tax rates may go up. On the other hand, if [Donald J. Trump] wins, and they [the Republicans] retain control, there may be elimination of the estate tax, or it may just stay exactly where it is. But for the last four years, we've had a lot of stability and you know – clients need a reason to come and see us. How many times have you sat there with a client and the client will say, "Well, I'm going on vacation." Or, "I've had a bad health diagnosis." Or, "My parent died." They don't come in and say, "Well, Dennis, I was just thinking about you and thought it would be a good time to stop in and talk to you."

[Audience laughs]

Other times, it's because the client says, "I'm working with my investment advisor, and the investment advisor suggests that I see you." But the transfer tax laws have been a great driving force, and they're not going to be as great — they may not be as great — in the future.

Portability and decreasing need for a marital trust is another negative change driver. I think we all know what that means. The number of gift tax returns filed has hovered around 300,000 since 2001. And that graph[2] *[displaying IRS Statistics of Income Division information on number of returns filed]* shows 2001 to 2014. You'll see there are a great deal of gift tax returns being filed. And that's because people are making gifts. But another important number is the number of estate tax returns being filed, not returns that pay tax. If you look at 2001, there were 120,000 returns filed. In 2014, there were 11,000 returns filed. And of the 11,000, 5,000 paid tax. There are about 2,500 ACTEC Fellows, so that's two returns a year for each of us. But yet, the number of gift tax returns being filed is significant. So there's wealth out there, and it's moving around, which creates opportunities for us. One thing that was interesting is the makeup of the estate tax returns that were filed in 2014: 6,735 [had a gross estate] between five and ten million dollars. So sixty-seven percent, or about sixty-five percent of the returns, were five to ten million dollars. If this were a marketing meeting, what would we come away with? "Hey, that's our sweet spot. There's where we need to focus." You then look at fifty million dollars or more; there were three hundred forty-five. You then look at twenty to fifty million dollars, and it's nine hundred thirty-eight. So you've got above twenty million dollars, about 1,200 returns that were filed, but between five and ten million dollars you have 6,700. And then, [gross estates] under five million dollars, there were 2,283 returns filed. And that could have been because of valuation. It could have been in returns where the gross estate was right at $4.9 million; it could have been portability; it could have been a lot of things. But when you look at the returns that are being filed, about eighty percent of them are under ten million dollars. And that is a great opportunity for us if we focus on it.

So what do we know? There's less estate planning work for the clients with less than five million dollars, more estate planning for the high net worth. There's a large population of five to ten million dollars, but we may be one election away from changes.

Competition. I think if we're afraid of competition, we should be ashamed of ourselves. We're here to serve our clients – the more com-

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2 *Id.* at 11.

petition, the better our clients are served. And if we can't keep up with the competition, we need to change our educational structure and the way we do it. So the advantages of great referral source: they screen out unwanted clients. The better educated client is a better client. The disadvantage here is we are in danger of becoming a scrivener. But most of the financial institutions that we work with defer to the lawyers, particularly ACTEC Fellows, because they know we know what we're doing in that regard. There is a danger of the lawyer not being a trusted advisor. Clients can have more than one trusted advisor and traditionally one has been the lawyer. But that is changing. Why is it changing? Billable hours. Billable hours. You know, when a client calls, what they hear is, "tick, tick, tick, tick, tick, tick, tick, tick, tick, tick, tick." And when your hourly rate is above ten dollars a minute, or even five dollars a minute, and you start the conversation off about, "How are you doing? How's your family? How are the kids?" And, the client's thinking, "God, I hope they're not charging me fifteen dollars to give a report on how my child's doing in college." And, I think that is changing significantly and will push us all even more than we're doing now to flat fee billing. And when I mention flat fee billing, I'll hear people say, "Well, you don't know what's going to happen. It's unexpected." That's it. Hell, they just built a fifty million dollar building that McGuireWoods moved into in Richmond, and they did that on a fixed contract. I mean, you can do flat fee billing. We just don't have the nerve to do it in every instance. On a personal note, I've approached several clients on this and said, "I will charge you X dollars, and I'll handle all your legal work this year in my area. You know, we always do one or two GRATs, we're always doing family loans. I'll meet with you four times a year. And I'll meet with your family four times a year." I've had one client that has taken me up on that. The others say, "Well, Dennis, I meet with you as much as I want to meet with you and I don't see any need to do that."

[Audience laughs]

It's a concept that really appeals to me but it doesn't necessarily appeal to my clients so far; I will continue to push that.

So the positive change drivers are the transfer of wealth and changing demographics, which means more specialized [estate plans]. I won't embarrass this group by asking a show of hands of how many people in here are still supporting children above thirty years old. Clients are better educated. Life is more complicated, requiring advice. How many times do we get a question about, "Well, Dennis, what do you know about Medicare?" Absolutely nothing.

And then a concept that I will talk a little bit about is robo-investing. We're now moving into my theme that everything becomes a commodity. Everything becomes a commodity. I mean, that is the great thing about capitalism. And if you don't stay ahead of it, you become a commodity provider. There's twelve trillion dollars that will be transferred from people dying who were born from 1928 to 1949. There will be transfers between 2011 and 2048, over those forty years, totaling thirty to forty-one trillion dollars. Money is in motion. That's why I think Heckerling has become such a popular seminar, because money is sloshing around and it's being transferred. And it's an opportunity to build or lose a client base.

I had a client that sold his business for one hundred million dollars. He asked me at a family meeting to explain what that meant to his five children. And so there were five children in there, we sat there and I said, "Okay. Your dad sold the business for one hundred million dollars. You know, he's going to pay a forty percent income tax, so that leaves him sixty million dollars. He's got some personal debt out there, that's ten million dollars, so after paying that off, that leaves him fifty million dollars. On fifty million dollars you can expect, if you're not spending principal, a two percent return. That's one million dollars a year. Your dad can't live on one million dollars a year. So at the time he dies, if there's fifty million dollars there left, you're going to be lucky. He's going to pay a forty percent estate tax because he's made all the gifts he can make. And so that leaves him thirty million dollars, and there's five of you. Each of you will inherit six million dollars and that will give you an additional $120,000 of income." And they'll say, "Is that all?" And, the important thing from our standpoint is that those five children will probably not hire us. They will use another law firm.

So where there's transfer of wealth, generally there is or can be a change of lawyers. Now there's one lawyer in our shop that was chairman of our firm when I was on the management committee, and he said that a client has a useful life of about ten years. And he said, "You've got to replenish your client base every ten years because you're going to have a new set of clients." If we could pick the clients that would leave, that would be okay.

[Audience laughs]

But we can't. Jeff Pennell talked about the changing demographics, and I'm not going to spend a lot of time on that, but that's a great opportunity for us. I mean, clients will come to us and they will want specialized drafting. And they will say, "I've got a child that's got a drug problem." "I've got a special needs grandchild." "I've got a son-in-law or daughter-in-law that I don't trust." And on and on. That's where, through our experience, we can add great value. I did a search for estate planning on Google. There were 11,100,000 results and ACTEC didn't show up until way down the line. But the interesting thing is the most informed client doesn't hire the best lawyer. The most informed client does not hire the best investment manager. And it's up to us to put our name out there and that's one thing you're going to hear me talk about a little bit later.

Life is more complicated but the issue is, will clients pay for that? I don't think they'll pay for it on a telephone call, but I think they may pay for it if we follow the doctor's model of concierge practice. That is one thing that I think we should look at. When I started to practice law, almost every client I had had the following type of delivery service: the lawyer was the estate planner; the accountant was a tax planner; and then there would be an investment manager or there would be an insurance agent. And the issue would always be, "Who's captain of the team?" In many instances, it was the lawyer. But if you think about it, our children do not want to deal with three people. It is the same reason they want to do online banking. The same reason they want to use an ATM and not a teller. And I am convinced that financial services is going to move more and more to one-stop shopping where you've got the client in the center, and the client only deals with one or two people and does not have to deal with everyone. And I think most of us in this room would say, "That has a lot of appeal to us personally." I mean, do we want to meet with the accountant, the insurance agent, the lawyer, and the investment person? Or do we just want to meet with one group, one person, or one institution that can handle everything?

I've become fascinated by robo-investing. And I've become fascinated by it on the basis that everything becomes a commodity. To put it on a personal level, what Carlyn McCaffrey did in 2001, we are doing in 2016. What Stacy Eastland did in 1995, we were doing in 2005. Is it because they got dumber? I don't think so. Is it because we got smarter? I don't think so. It was because [the work] becomes a commodity. We become used to it. Think of the medical profession, and you'll see the same thing. Heart transplants were done in one hospital. Now heart transplants are done everywhere. The same thing with cardiac surgery. And I think the same thing is very well likely to happen in investing. Right now, you hire an investment manager, and you will pay anywhere from one hundred twenty-five basis points to fifty basis points depending upon the size of the account you have and the investments that you're in. That's just the first cut. What are the other investment managers charging? You need to look at that. If you go to robo-investing, there are two sites that I'll mention later. What happens? The client completes a form, it [the robo-investing platform] determines the investment goals and risk tolerance, and then there will be automatic rebalancing [to achieve the goals within the risk tolerance]. And if you look at the websites, they will show (whether it's true or not, I don't know), that automatic rebalancing will generate a four percent greater return over a ten-year period then not rebalancing. We all know you should rebalance, but you don't want to rebalance when the market's doing real well. And you don't want to buy something that's not doing well, but everybody tells you that's when you need to rebalance. The robo-investing platforms don't do any wealth planning advice. They don't provide that at all. It's all online. You can talk to somebody if you want to but generally they don't. The fees of the two sites that I reviewed, Betterment and WealthFront, one charges fifteen basis points, and the other one charges twenty-five basis points, plus the ETF fees. They're all in passive investments. These robo-investing platforms are just getting going. Fidelity may consider something like this too, because what they see is the competition. These platforms are not for the ten-million-dollar client or account. These are for the clients getting started, and that's what they advertise. But, that's the same way things become a commodity.

Should you create a partnership so you can be a one-stop shop? I think as long as I am at McGuireWoods, that's not going to happen. I've only got another five to ten years in my career, and I'm hoping I can outlast all of that. But what is a future of an ACTEC Fellow? Remember the Darwin theory. Charles Darwin said, "It's not the strongest as a species that survives nor the most intelligent that survives; it's the one that is most adaptable to change."[3]

And now my next part has very little to do with the talk, but I always find it a good story. Lawn Chair Larry. Lawn Chair Larry received the Darwin Award. These awards go to people who do weird stuff and die while they're doing it. It's a little sick but it's interesting to read.

[Audience laughs]

Let me give you the write-up on Lawn Chair Larry:

> Larry Walters of Los Angeles is one of the few to contend for the Darwin Awards and live to tell the tale. "I have fulfilled my 20-year dream," said Walters, a former truck driver for a company that makes TV commercials. "I'm staying on the ground. I've proved the thing works."
>
> Larry's boyhood dream was to fly. But fates conspired to keep him from his dream. He joined the Air Force, but his poor eyesight disqualified him from the job of pilot. After he was dis-

[3] *Id.* at 25.

charged from the military, he sat in his backyard watching jets fly overhead.

He hatched his weather balloon scheme while sitting outside in his "extremely comfortable" Sears lawnchair. He purchased 45 weather balloons from an Army-Navy surplus store, tied them to his tethered lawnchair (dubbed the Inspiration I) and filled the four-foot diameter balloons with helium. Then, armed with some sandwiches, Miller Lite, and a pellet gun, he strapped himself into his lawnchair. He figured he would shoot to pop a few of the many balloons when it was time to descend.

Larry planned to sever the anchor and lazily float to a height of about 30 feet above the backyard, where he would enjoy a few hours of flight before coming back down. But things didn't work out quite as Larry planned.

When his friends cut the cord anchoring the lawnchair to his Jeep, he did not float lazily up to 30 feet. Instead he streaked into the LA sky as if shot from a cannon . . .

[Audience laughs]

. . . pulled by the lift of 45 helium balloons, holding 33 cubic feet of helium each.

He didn't level off at 100 feet, nor did he level off at 1000 feet. After climbing and climbing, he leveled off at 16,000 feet.

At that height he felt he couldn't risk shooting any of the balloons, lest he unbalance the load and really find himself in trouble. So he stayed there, drifting cold and frightened with his beer and sandwiches . . .

[Audience laughs]

. . . for more than 14 hours. He crossed the primary approach corridor of LAX, where startled Trans World Airlines and Delta Airlines pilots radioed in reports of the strange sight.

Eventually he gathered the nerve to shoot a few balloons, and slowly descended. The hanging tethers tangled and caught in a power line, blacking out a Long Beach neighborhood for 20 minutes.

[Audience laughs]

Larry climbed to safety, where he was arrested by waiting members of the LAPD. As he was led away in handcuffs, a

> reporter dispatched to cover the daring rescue asked him why he had done it. Larry replied nonchalantly, "A man can't just sit around."

[Audience laughs]

> The Federal Aviation Administration was not amused. Safety Inspector Neal Savoy said, "We know he broke some part of the Federal Aviation Act, and as soon as we decide which part it is, a charge will be filed."[4]

[Audience laughs]

Now I'm not encouraging us to be Lawn Chair Larry. But I am encouraging us to be a little adventuresome as we go forward. There are a lot of growth areas that we're looking at. The ultra-high net worth will always have needs. Income tax planning, fiduciary litigation, business planning, charitable planning, elder law planning, and international planning. So there's a lot of opportunity out there, and we can get paid to do things we enjoy. The high-net worth market is increasing. Particularly, the five to ten-million-dollar market is growing. Business planning involves transfer tax planning, income tax planning, governance, shareholder disputes, mergers and acquisitions. Charitable giving is an area that's growing. You can't represent ultra-high net worth people and not have charitable issues. One thing that we have that others don't have is independent advice. Many of our good friends, whether they are financial institutions, investment advisors, or insurance professionals, they are selling something. And they do a very good job of being transparent and showing what product they're selling. But we're the group that can come in and compare investment advisors or financial institutions or insurance professionals. We can be independent in that area.

So, how do we change? We do a strength/weakness/opportunity/threat analysis.

And I would encourage all of us to stop and think about what our strengths are. We're independent.

What are our weaknesses? Billable hours. I remember that same client that my mentor told, "We don't have business cards." I went to lunch with that client and came back from lunch and my mentor asked me, "Well, Dennis, how did the meeting go?" I said, "Well, I think it went well." He said, "Well did they ask anything?" I said, "Yeah. They asked our billable rates." He said, "You didn't tell them did you?"

[Audience laughs]

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4 *1982 At-Risk Survivor: Lawn Chair Larry*, DarwinAwards.com, http://darwinawards.com/stupid/stupid1998-11.html (last visited Sept. 28, 2017).

Vickie and I are building a second home on our farm, and you know that budget: you just blow through, you blow through, you blow through. Well, clients look at that the same way with our legal work. And that's why I am convinced that fixed fees in most of the instances are critical, with caveats for what is not covered.

What are the opportunities? There's a significant amount of wealth sloshing around that's going to get transferred, and it's going to need representation.

And what are the threats? The threats are we become a commodity.

And so what do we do? We develop and follow a strategic plan. What we've done in our shop is that we did a survey of the fifty matters that each lawyer worked on in the last year, and then did it over a three-year period. Each person had to categorize the matters as to the size of the wealth, the type of work done (whether it was just planning or administration), and as to where the work came from. It really is interesting, particularly for young people. I mean most of us in this room are going to go back and next year do the same damn thing we are doing this year. But a young person is looking ahead asking: "Do I want to be a fiduciary litigator? Do I want to work in the charitable area? Do I want to work in the business tax area?" This is a wonderful way of saying, "Where have you spent your time?" "Are your current clients the right clients for you, your staff and your firm?" "If not, what clients do you want and how do you get them?"

Now I'm going to talk about the *Beverly Hillbillies* and *Star Trek*. What can we learn from the *Beverly Hillbillies* and *Star Trek*? And I know at this point Turney Berry is humming the theme to the *Beverly Hillbillies*. "Listen to my story about a man named Jed." The *Beverly Hillbillies* was ranked among the top twenty most-watched programs on television for eight of its nine seasons.[5] I mean, think about that. We all remember Granny. And there's Jethro Bodine that became a double agent at one time. And then there's pretty little Ellie May. Then there is *Star Trek*. The original series ran three years, for a total of seventy-nine episodes.[6] So compare the two. The *Beverly Hillbillies* ran three times as long as *Star Trek*, one hundred ninety-five more episodes than *Star Trek*.

What happened to the *Beverly Hillbillies* after cancellation? Nothing. Nothing. What happened to *Star Trek* after the cancellation? It

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5 *See The Beverly Hillbillies*, IMDB.COM, http://www.imdb.com/title/tt0055662/ (last visited Sept. 28, 2017).

6 *See Star Trek*, IMDB.COM, http://www.imdb.com/title/tt0060028/ (last visited Sept. 28, 2017).

spawned another television series with *The Next Generation*.[7] There were six movies [in the original series and thirteen *Star Trek* movies]. The total box office from those movies was two billion dollars.

What is a *Beverly Hillbillies* clientele? Easy to develop. It's profitable in the short term. It's not memorable in the long term and there's little spin off work. How would you describe a *Beverly Hillbillies* lawyer's clients? Simple matters. One stop relationship. Price sensitive. Commodity clients. Pays the overhead. Pays the overhead.

All of us have both types of clients.

What is a *Star Trek* client? Complicated. Requires investments.

What issues are facing if you got a *Beverly Hillbilly* clientele? Are you a *Beverly Hillbillies* lawyer? It's a commodity practice. Price sensitive. You need to use leverage, and you can make good money by using leverage. But there's a lot of boredom. I remember that same lawyer that I was talking about earlier about the business cards and not telling the fees, he told me, "If I have to explain the marital deduction one more time, I'm going to throw up." And I think all we've been there. And you'll hear my comment: the drift to the left. Complex work becomes commodity work over time. That's why the educational programs we get at the College are so important to keep us on the cutting edge.

I don't want to be disrespectful of the *Beverly Hillbillies* because, as Bruce mentioned, I've had the great fortune of having two fathers. My first father died when I was eleven months old in a car wreck. Red Belcher. We still buy his memorabilia on eBay. Because he would do appearances, just like you go to a concert now and you can buy t-shirts, at that time you could buy a plate that would have a picture of my mother, my father, my sister, and the dog. You can buy the plates now on eBay. Vickie said we now have enough place settings to feed twelve people. I remember asking my mother, I said, "Where am I in that picture?" And she said, "Dennis, you're just a gleam in your father's eye." He played hillbilly music but now they call it "Early Bluegrass." They jazzed it up.

That was just to show that I'm not against any hillbillies.

Star Trek clients have more complex matters, whether it's assets or beneficiaries. They are less price sensitive and have multiple contacts with their lawyer. In other words, you are not just seeing the client once, and the lawyer becomes one of the trusted advisors. It takes a while to become a trusted advisor. One of the advantages of being a trusted advisor, you get more legal work, you get more sophisticated

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7 *Star Trek: The Next Generation*, IMDB.COM, http://www.imdb.com/title/tt0092455/ (last visited Sept. 28, 2017).

legal work and more lucrative work, and the relationship produces attractive work for younger lawyers.

How do you become a trusted advisor? You've got to have credibility. You have to invest in knowing more about the client. And what this does is show you why the billable hour gets in our way. You need to spend time with the client without charging. Schedule regular meetings. Get to know the family. And most of our clients will have more than one trusted advisor. Generally, it will be a financial institution, and we're fortunate that financial institutions that we work with are very good. We all see the common enemy as the client.

So what can ACTEC do to help? Increase visibility. The [ACTEC] Foundation asked the Communication Committee to study whether we should do a *MayoClinic.org*-type website. When I looked at the estate planning websites, everybody's selling something. And you can see that the American Bar Association Real Property Trust and Estate Law Section has 30,000 members. [ACTEC has] 2,200. Everybody in this room knows ACTEC, our financial institution friends know ACTEC, and we know that when we refer a matter to an ACTEC Fellow, it's going to be well-handled. But we have such limited visibility. ACTEC has been very good at being internally focused. And I think it's time that we become a little bit more externally focused. Whether the right answer is a *MayoClinic.org*-type website, where ACTEC pays people to keep up to date, is the right answer – I don't know. But I think it would help all of us in this group if ACTEC had better visibility. I remember when I was President [of ACTEC] and going around the country on site visits, Tom Overbey in Arkansas said the biggest need of ACTEC was to increase the value of our diploma. I thought about that for the last five years and I think he is exactly right. The value of our diploma is well-known in certain circles. But I think those circles need to be expanded.

In conclusion, one way of handling it is retirement. And according to *Despair.com*, "Retirement is because you've given so much of yourself to the company that we don't have anything left you can use."[8]

So, well, again I thank Bruce for asking me to do this, and if Vickie has a luncheon reservation at eleven o'clock I think we will make it.

[Audience laughs]

Thank you.

[Clapping]

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8 Belcher Slides, *supra* note 1, at 53; *Retirement*, DESPAIR.COM, https://despair.com/collections/demotivators/products/retirement (last visited Sept. 28, 2017).

[Closing comments by Bruce M. Stone]

I made the right decision almost six years ago, didn't I? Thank you, Dennis, we're adjourned.

[Audience laughs]