



# We're All Going to Die (and Other Happy Thoughts of an Estate Planner Turning 50)

*First you forget names; then you forget faces; then you forget to zip up your fly; and then you forget to unzip your fly.*

— Attributed to Branch Rickey

Death is the destiny of everyone; the living should take this to heart.

— Ecclesiastes 7:2

No one here gets out alive.

— The Doors

*Since death is inevitable,  
I want to be like those I  
have watched deal with  
that fact head-on.*

## An Uncomfortable Truth

I think the paradigm shift started the time I realized that my teenage son let up during play wrestling because he was concerned he might hurt me. Since then, exercise has become less about competition and trying to look good, and more about managing blood pressure and hoping to be able to play with my future grandchildren. This year I treated myself to invisible trifocals, which will be of no use during my first colonoscopy. When someone says something is true for “men of a certain age,” the age increasingly is mine. The Battle at Bristol will be on my 50th birthday.<sup>1</sup>

During my 40s, I delivered my father's eulogy, watched a good friend my age waste away from cancer, was the primary caretaker for my mother during her final months on earth, and helped a friend and her sister administer their mother's estate, immediately followed by helping the friend administer the sister's estate. Last week, I watched my mother-in-law take her last breath.

All of this has made me acutely aware of my mortality. You need to be aware of yours, too, because we're in the same mortal boat. We're all terminal; it's simply a question of how long each patient has (which only occasionally can

be estimated with any certainty).

## Facing the Reality of Decline and Death

I have observed personally (family and friends) and professionally (planning and administering estates) several options for how to react to the prospect of your own death. Some spend a fortune trying to cheat death through anti-aging treatments and futile medical attempts to delay reaching room temperature. Many try to ignore death, and our culture has formulated ways of thinking and talking, and entire industries, out of our desire not to be confronted with death. Some are overwhelmed with anxiety or depression when facing inevitable physical and mental decline.

While each of these approaches has its own logic and appeal, I am striving for a different tack as I head into my 50s.<sup>2</sup> Since death is inevitable, I want to be like those I have watched deal with that fact head-on, in both how they live and how they die. Trying to do so raises many questions for me.

What makes a good life? How can I get to the end of life with few regrets, few coulda's, woulda's and shoulda's? What is lasting and deserving of my time and talents and what is only a

vapor in the grand scheme of things? How can I positively impact the lives of others? What important things have I failed to say to key people in my life? What can I do to serve those who are dying and their families?

What makes a good death? What can I learn from how others handle the loss of a loved one or their own decline? What can I learn from the ways doctors approach their own deaths?<sup>3</sup> What are my children learning from watching how I deal with deaths of parents and my creeping age? What do I think about CPR, breathing machines, tube feeding and treatment of new conditions in the context of a terminal illness, advanced dementia, a permanent coma, or being completely unable to care for myself? What about moving to assisted living or skilled nursing facilities versus dying at home?<sup>4</sup> Do I want to be an organ or tissue donor? Do I have thoughts about my funeral or obituary? Embalming or cremation? How does my spiritual perspective inform decisions on these issues? Have I communicated my wishes to anyone?

In the legal and financial realms, there are important questions related to aging and death. Have I purchased disability insurance and life insurance if my family depends upon my ability to produce income? Should I purchase long-term care insurance to try to avoid outliving my financial resources? Do I have a well-thought-out estate plan that includes a will, financial power of attorney and advance directive?<sup>5</sup> Have I left accessible (i.e., not on a computer with a password only I know) information and instructions to allow the right persons to manage my personal and financial affairs before and after my death? Have I implemented a succession plan for my business or professional practice?

Good lawyers are skilled at educating and motivating their clients and identifying and addressing problems. Are we discussing with our clients their need to address these issues in their lives? As

officers of the court and advocates for our clients, are we on the lookout for signs of verbal, physical and financial elder abuse? Do you know what to do if you become concerned someone is taking advantage of a senior?<sup>6</sup>

### Is It Appropriate to Focus On These 'Soft' Issues?

There is little technical or legal in this installment of "Where There's A Will." Perhaps I've wasted your time with nothing more than the midlife crisis/spiritual wanderings/existential ramblings of a guy looking past his prime.

However, my hope is that we are moved to face our mortality with honesty and determination, to value each day more than the last, to contemplate how we want our lives defined and remembered, to seek ways to contribute personally and professionally to the lives of others, and to begin conversations and planning centered on end-of-life issues. As lawyers, we can serve our clients by helping them face these realities in their estate and business planning and other legal matters. As we seek to do all the above, consider the words of Michael Weiner, former head of the Major League Baseball Players Association, while dying of brain cancer: "What I look for each day is beauty, meaning and joy, and if I can find beauty, meaning and joy, that's a good day." <sup>7</sup>

**EDDY R. SMITH** practices trust and estate law with Holbrook Peterson Smith PLLC in Knoxville. He is a fellow of the American College of Trust and Estate Counsel and past chair of the Tennessee Bar Association Estate Planning and Probate Section. He can be reached at [edsmith@hpestatelaw.com](mailto:edsmith@hpestatelaw.com).

### Notes

1. Those who know that I have degrees from both of the fine institutions represented, and that I have been known to place an unhealthy level of importance on the outcomes of contests involving the football teams of said institutions, have said, "It's Virginia Tech and Tennessee on your 50th birthday; you have to go!" I have not arranged to go because I worry I'd be frustrated, wanting neither team to lose. Another risk is that my aging eyes would be unable to see the teams from my seat 200 yards away, allowing my aging brain to forget who was playing.

2. According to the Social Security Administration, the average male on his 50th birthday has a life expectancy of another 32.3 years. See <https://www.ssa.gov/OACT/population/longevity.html>. Better flip me, because I am 60 percent cooked.

3. See Ken Murray, "How Doctors Choose to Die," *The Guardian*, Feb. 8, 2012, available at <http://www.theguardian.com/society/2012/feb/08/how-doctors-choose-die>. Other resources recommended to me (I have a lot of reading to do): Atul Gawande, *Being Mortal: Medicine and What Matters in the End*, Henry

*continued on page 24*

**APPELLATE BRIEFS AND ARGUMENTS**  
State and Federal Court

---

**JOHN D. KITCH**

---

More than 39 years in private practice, including an emphasis on appellate work. Former instructor in legal research and writing, Vanderbilt Law School; current faculty member, Nashville School of Law.

---

Of Counsel, Cornelius & Collins • 511 Union Street, Suite 1500 • Nashville, TN 37219

---

**615-244-1440 • [jdkitch@cclawtn.com](mailto:jdkitch@cclawtn.com)**

## Where There's A Will

continued from page 23

Holt & Company (2014); Paul Kalanithi, *When Breath Becomes Air*, Random House (2016); Elisabeth Kübler-Ross, *On Death and Dying: What the Dying Have to Teach Doctors, Nurses, Clergy and Their Own Families*, Scribner (1969); Bronnie Ware, *The Top Five Regrets of the Dying: A Life Transformed by the Dearly Departing*, Hay House (2012); Yoel Hoffmann, *Japanese Death Poems: Written by Zen Monks and Haiku Poets on*

*the Verge of Death*, Tuttle (1986).

4. I have watched, and have been one of, many children who struggle to serve a parent well when the parent's needs cannot be met by family, but the parent has decreed that he wants to die at home and never wants to be in a facility. That can become untenable, causing frustration, feelings of guilt, an inappropriate physical and emotional burden on the child, and inadequate care for the parent. In my experience, most children want what is best for their parents, and prefer to see their potential

inheritance spent on the best available, appropriate care. Do your kids a favor: educate yourself about available levels of care, visit facilities near your home or your kids' homes, and then tell your kids that, even though you prefer to remain at home as long as it makes sense, the following facilities look good to you. This almost always works better when talked about openly and honestly in advance, rather than when parents are in immediate need and not thinking clearly because of decline or fear.

5. See Tennessee Advance Care Plan, available at <http://tn.gov/assets/entities/health/attachments/PH-4194.pdf>.

6. A good place to learn more is the TBA's *The Legal Handbook for Tennessee Seniors*, available at [http://www.tba.org/sites/default/files/TBA-The\\_Legal\\_Handbook\\_for\\_TN\\_Seniors-February\\_24-2014.pdf](http://www.tba.org/sites/default/files/TBA-The_Legal_Handbook_for_TN_Seniors-February_24-2014.pdf). When faced with a potential abuse situation, personal and professional ethics and the law might require contacting adult protective services or law enforcement.

**BRYAN S. JONES**  
Partner, CPA, CVA, CFP™

**CPA CONSULTING GROUP, PLLC**  
CERTIFIED PUBLIC ACCOUNTANTS

CPA Valuation Group a division of CPA Consulting Group, PLLC

- Purchase or sale of a business
- Marital dissolution
- Estate & Gift tax planning
- Income tax planning & compliance

615.322.1225 • [www.cpacg.com](http://www.cpacg.com)

*The Certified Valuation Analyst (CVA) designation is the only valuation credential accredited by the National Commission for Certifying Agencies (NCAA), the accreditation body of the Institute for National Credentialing Excellence (ICE).*



bryan@cpacg.com



## GO BEYOND eDISCOVERY

Wiped laptops, deleted cellphone texts, hidden computer files...

Extract, Analyze and Preserve hidden computer evidence all in one place...

*Forensic Investigation gives you a Digital Discovery Tool*

*the other guy won't see coming*

### SERVICES INCLUDE

- Computer forensics – Laptops, Desktops
- Mobile Device forensics – Cellphones, Smartphones, Tablets
- Forensic evidence imaging and data preservation
- Expert consultation
- Data recovery
- Litigation support

### WITH SOLUTIONS ON POINT, YOU GAIN

- Over 20 years of computing industry experience
- Expert certification by the International Association of Computer Investigative Specialists
- Adherence to strict code of ethics and experience for legal admissibility
- Expert witness testimony

**solutions  
point** LLC  
an investigative research group

Now serving the  
entire state of  
Tennessee

**615.403.1052**  
**[www.SolutionsOnPoint.com](http://www.SolutionsOnPoint.com)**  
PI License #001786