FAMILY AGING AND THE PRACTICE OF ELDER LAW: A FINANCIAL GERONTOLOGY PERSPECTIVE

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Article:

I. INTRODUCTION: THE MULTIPLE PROCESSES OF AGE AND AGING

Financial Gerontology is an emerging field that brings applied social gerontological education to financial services professionals. These practitioners are already well educated in their primary fields, but are seeking to add aging and gerontology to their knowledge to better understand and serve a mature or "aging" clientele. Thus, Financial Gerontology parallels the legal specialization of Elder Law. Practitioners first receive education and accreditation in the fundamentals, and then go further to acquire specialized knowledge and training. It is in this context that several propositions from applied research and education in Financial Gerontology are likely to be of value to Elder Law specialists.

The central proposition that introduces the first day of all Financial Gerontology classes—from undergraduate lectures to graduate seminars—is the following: Gerontology is not the study of old people, but is the study of the multiple processes of aging.[1] Of course, the conceptual and descriptive analysis of older people is part of gerontology, but so are considerations of the family dimensions of aging and the historical-generational context in which maturation and socialization take place. Further, students are quickly reminded that the middle-aged are just as critical a part of gerontology as are older people and the process of aging.

The corollary to the central proposition (that gerontology is not the study of old people) is that there are four lenses through which the multiple processes of aging may be viewed:

- Individual Aging
- Population Aging
- Family Aging
- Generational Aging.

Individual Aging is the gerontological phrase akin to the everyday use of the word "aging." In scientific terms, Individual Aging refers to maturation and development, with a strong sense of an individual's growth and change over time.

Financial and legal professionals (and health professionals too) should be especially aware that not all attributes of an older client are solely the consequences of Individual Aging. To jump to such a conclusion is very likely to produce errors of both omission and commission.

Population Aging is the demographic accounting and analysis of the number or percentage of people of different ages in the population, as these numbers change over time, and the concomitant study of the factors and dynamics that produce historical and future projected numbers, changes, and trends. The graying of America is occurring because longevity is increasing (Individual Aging) and there are more people who are getting older (Population Aging).

[1] Neal E. Cutler, *Advising Mature Clients: The New Science of Wealth Span Planning* (Wiley 2002).

Family Aging analyzes changes in the age structure of families—changes that are the consequence of the other multiple processes of aging. Population Aging is characterized by a growing number of middle-aged families who have a variety of legal and financial concerns. Increasing life expectancy (Individual Aging) produces a greater number of middle-aged people who have surviving elderly parents with health, financial, and legal challenges: that is, Family Aging.

Generational Aging suggests that a person's chronological age "measures" more than just the consequences of individual maturation and development. A woman who celebrates her 87th birthday this year was born in 1920 and spent her teenage and young adult years in the aftermath of the Great Depression. Her current concerns about finances may reflect the fact that she is in her ninth decade of life, but it is just as logical to assume that there is a generational component to her attitudes, values, worries, and financial behavior. Consequently, both Financial Gerontology and Elder Law practitioners must be aware of this important generational component of the multiple processes of aging. In a word, "age" does not always mean "aging" – and "aging" signals more processes than maturational Individual Aging.

The present article focuses on Family Aging in which we present the concept of the Senior Sandwich Generation, and a new planning tool, the Filial Fraction. In a subsequent article we will explore how understanding of Generational Aging offers a view of chronological age that is different from, and often in conflict with, age seen simply as Individual Aging.

IL THE NEW CONCEPT OF FAMILY AGING

The dynamics of increasing life expectancy have yielded unforeseen consequences. While adult children fortunate to have parents living longer enjoy longer relationships, Financial Gerontology and Elder Law practitioners need accurate information on the consequences and complexities of the interaction between family, fInancial and legal decisions, and changing family dynamics resulting from longevity. To fully appreciate the intricacies of family aging, professionals and practitioners must be aware of how gerontological and demographic dynamics interact to reshape the financial and legal responsibilities of family members, as both the (middle aged) children and (elderly) parents are living many more years than previously experienced.

Improvement in life expectancy has added more than years to life; it has added years to a person's responsibilities in a family role as son, daughter, (daughter-in-law, son-in-law), parent, spouse, and grandparent. This longevity factor alone has bad profound consequences for family aging. Recent changes in other demographic factors—such as the timing of marriage, divorce, and fertility—are simultaneously altering the number of years spent in family roles, thereby changing the demands on families and family members and their resources. Financial Gerontology and Elder Law practitioners need to consider these factors when advising middle-aged or older clients and their families.

Current literature and media discussions frequently focus on the family aging concerns of the "sandwich generation," presenting a female family portrait of a harried 40-something mother juggling the demands of young children while providing physical care to an ill or disabled elderly parent.[2] While the intensity of such a dual care-giving experience may be great, it is not the experience of the majority. Fewer than 14 percent of women aged 45-49 are providing parental care at any given time.[3] Although nearly half of all daughters will provide care to a parent at some point over their lives, it will most likely be after the daughter's 60th

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[2] Elaine Brody, "Women in the Middle and Family Help to Older People," *The Gerontologist* (October 1981). Brody was the first to illustrate the squeeze women in their 40s faced who were pressured or "sandwiched" between competing time demands of aging parents and young children (elementary-aged or younger children). While the term has become common in the literature when discussing family caregiving issues. it does not address middle-aged men and women facing competing financial demands between aged parents and young and young-adult children.

[3] Christina L. Himes, "Parental Caregiving by Adult Women: A Demographic Perspective," *Research on Aging.* Vol. 16, No. 2 pp. 191-211 (1994).

birthday.'[4]Nowadays, with aging parents living longer, the emergence of second families, and extended "young-adulthood," the risk of being sandwiched is more likely to be felt by women (and increasingly by men[5]) in their late 50s, 60s, and even 70s—which is why we have introduced the concept of the "Senior Sandwich Generation."[6]

The historical context of the traditionally defined Sandwich Generation (that of caring for young children while simultaneously providing care to aging parents) initially was driven by the demographics of the 1960s and 1970s. Today's family structure is different. Societal changes such as later marriage, later childbearing, later divorce. and remarriage has raised the age at which men and women enter these important family roles. Increasingly, young adults are returning home to live before launching into self-sufficient adulthood.[7] Thus, the "children" being cared for by today's middle-agers range from infancy to mid-twenties, with the middle-ager's own parents being in their 80s and 90s. In this contemporary scenario of family aging, members of the sandwich generation are most likely to be in their 60s and 70s, with the more appropriate designation, Senior Sandwich Generation.

Financial Gerontologists and Elder Law practitioners need to appreciate the changing demographics that "cause" the Senior Sandwich Generation. Longer-lived parents have implications for the responsibilities and behavior of their middle-aged kids. One study of the demographic history of American families examined the proportion of time women spent in various family roles. This study found that from 1900 to 1980, the amount of adult lifetime lived with at least one parent age 65 increased from 15 percent to 29 percent, doubling the time adult children are "at risk" for caring for an aging parent.[8] Building on this research and looking ahead to the boomer experience, this suggests that the portion of a boomer's adult life with at least one parent aged 65 or older is likely to increase from the current one-third to almost two-thirds of the boomer's adult life or nearly 40 years.

Parental longer life expectancy is only part of the emerging caregiving story. An analysis of decennial U.S. census data from 1900 to 1990 reveals that the number of middle-age children with one surviving parent was 80 percent in 1990, compared to only 39 percent in 1900.[9] Furthermore, 27 percent of middle-age children had two surviving parents in 1990, compared to 4 percent in 1900 and only 8 percent as recently as 1940. Crucial to the concept of the Senior Sandwich Generation is the dramatic pattern found for "60-year-old kids." The percentage of "60-year-old kids" who had at least one surviving parent increased from 7 percent in 1900, to 13 percent in 1940, and to 44 percent by 1990.

Greater longevity for both the adult children and their parents increases the need for complex legal and financial planning. The combination of having more and older surviving parents means that, while they are legally and financially planning for their own retirement, many adult children will be helping their parents with caregiving and even financial support. Consequently, given the current political and financial realities, many Elder Law attorneys must provide an increasing number of older and middle-aged clients with advice about sophisticated asset preservation that goes beyond traditional estate planning.

Family Aging arises from longevity, but also from the age of persons at the time of first marriage, childbearing, divorce(s), and remarriage(s). The growing incidence of later marriage inexorably leads to later childbearing,

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[4] *Id.*
[5] Lenard W. Kaye and Jeffrey S. Applegate, *Men as Caregivers to the Elderly* (Lexington Books 1990).
[6] Janice I. Wassel, "Financial Planning and the 'Senior Sandwich Generation,' *"Journal of Financial Professionals* (March 2006).
[7] Many young adult children who see living with parents as a cost savings strategy make little, if any, financial contribution to the household. Comparisons of the 1990 and 2000 U.S. Censuses found that the "baby boomerangs" (age 18-24) living with parents increased from 25 percent to 56 percent for young adult sons and 25 percent to 47 percent of young adult daughters. Jason Fields and Lynne Casper, *America's Families and Living Arrangements 2000: Population Characteristics,* U.S. Census Bureau pp. 20-537 (June 2001).
[8] Susan Cotts Watkins, et al., "Demographic Foundations of Family Change," *American Sociological Review* Vol. 52 (June 1987).
[9] Peter Uhlenherg, "Mortality Decline in the Twentieth Century and Supply of Kin Over the Life Course," *The Gerontologist,* (October 1996).

divorce, remarriage, and second families, all contributing to the aging of the family structure, i.e., Family Aging.[10] Remarriage and later life childbearing are more common today than in the past. Currently, it is not unusual for men in their late 40s, 50s, and even 60s to become new fathers. Many more women delay childbearing until after age 35.[11] At age 60, the 40-something new parents may find saving for retirement, child tuition costs and parental care more overwhelming than anticipated.

Research studies show that during the past decade young adult children have become increasingly dependent on their parents.[12] Returning home to live with Dad and Mom increasingly has become an accepted (and in many cases, anticipated) experience with little social stigma attached to it. Few parents will turn out their children even if that places a financial burden on them.[13] From the perspective of Financial Gerontology, for the middle-aged the cost of such "large ticket items" as their kids' college tuition and the strains of children returning home occurs just when their responsibilities to their own elderly parents are growing, thus exacerbating their role as the supportive half of the senior sandwich—a role that can continue for a substantial number of years.

III. THE SENIOR SAND WHICH GENERATION: A 21ST CENTURY UPDATE OF A WELL-ESTABLISHED IDEA

While the traditional sandwich generation family continues to be an important part of the sociology of the American family, our gerontological and demographic research indicates that financial and legal professionals alike increasingly will be called upon to serve a growing number of families characterized as the Senior Sandwich Generation. Table 1 provides results from our recent study of the Senior Sandwich. We found that nearly half of those age 50-59 had a living parent, and slightly less than half (46 percent) had children age 24 or under living at home or to whom they were providing financial support. The Senior Sandwich Generation are those who are simultaneously in both categories. As seen in Table 1, even 20 years ago, 25 percent of persons age 50-59 were Senior Sandwiched.[14] Not unexpectedly, there were fewer 60-somethings who had both living parents and children at home. Nonetheless, 3 percent were still "60-year-old kids" who are potentially caught between two dependent generations. Today, in 2007, the percentage of those "sandwiched" is undoubtedly higher.

Table 1. The Senior Sandwiched Generation*

Middle-age (kids)	Parent(s) Living (%)	Children (%)	Senior Sandwiched (%)
Age 50 to 59	49%	46%	25%
Age 60 to 69	19%	21%	3%

*Data from The National Survey of Families and Household (NSFH), 1987)

Family Aging and boomers who are "senior sandwiched" are of concern to both Elder Law and Financial Gerontology professionals. Middle-aged adult children are providing financial help to multiple generations-40

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10 Rose M. Kreider and Tavia. Simmons, *Marital Status 2000: Census 2000 Brief* U.S. Bureau of the Census, *available at* http://www.census.gov/prod/2003pubs/c2kbr-30.pdf (October 2003). The trend in later marriage began with the early boomers delaying marriage an average of 2 years compared to their parents (who married at age 22.8 for men and age 20.3 for women in the 1950s) with boomer men marrying on average at age 24.7 and women at 22.0 years old. The later boomers (born 1956-1964) delayed marriage even further—an average of 4 years later than their parents (men, 26.1 and women 23.4 years old).

11 Katherine R. Allen, Rosemary Blieszner, & Karen A. Roberto, "Families in the Middle and Later Years: A Review and Critique of Research in the 1990s," *Journal of Marriage and Family,* 62 (2000 (4)), pp.911-926. In nearly half of all remarriages, couples chose to have children within 24 months of their marriage, making second (or third) families more common.

12 Pew Research Center, *Baby Boomers Approach Sixty, available at* http://pewresearch.org/ assets/social/pdf/socialtrends-boomers 120805.pdf (2005).

13 *Id.* The 2005 study found that 57 percent of boomers were their children's primary financial support regardless of the children's ages (under and over age 18). Another 18 percent of boomers partially financially supported their young adult children (aged 18-1). Less than 20 percent of boomers with children reported that they gave no financial help to their children over the previous year.

14 The data are from the 1987 National Survey of Families and Households (NSFH), a nationally representative sample of 13,007 men and women age 18 and over. Personal interviews collected detailed information on all family children living in the family household and elsewhere, on the respondent's parents, and on financial and social attributes of the family.

percent to parents and 80 percent to children.[15] Being a member of the Senior Sandwich Generation can have dramatic consequences for the accumulation of wealth for retirement, health costs, long-term care, and for the expenditure stage of the Wealth Span. Those "sandwiched" may be forced to defer their own retirement in order to meet simultaneous financial obligations to children and parents. Furthermore. Family Aging challenges are arising just as retirement security is decreasing because of potential and actual changes in Social Security, defined benefit versus defined contribution pension plans, and the financing of health care.[16]

Family decisions arise against the complex backdrop of existing family structures, current and perceived future needs, and competing demands placed on limited resources and family members. Increasing longevity pushes parental caregiving to older and older ages, and creates a need for decisions and demands to be made by older and older "adult kids." These extended-caregiving demands, legally, financially, and physically burden middle-agers who are preparing for their own retirement. Changing family demographics produces greater complexity for the 50- and 60-yearold as both child and parent, precipitating new challenges with push-and-pull pressures on limited resources of time and money. Financial Gerontology and Elder Law practitioners must understand and respond to these complexities affecting family dynamics, frnancial and legal decisions and family aging if they are to effectively serve their middle-aged and older clients.

IV. THE FILIAL FRACTION: A NEW PLANNING TOOL FOR LEGAL PROFESSIONALS

Saving for one's own old age, including retirement income, health, and long-term care costs during working years for an extended retirement, is essential. Since the role of Financial Gerontology and Elder Law practitioners is to prepare clients for both expected and unexpected future situations, it is critical to anticipate the additional potential impact of elderly parents on legal and financial planning. To help middle- aged clients more fully appreciate the magnitude of child-parent relationships and potential responsibilities in this age of extended longevity, we have developed a new planning tool based on the Senior Sandwich Generation research, referred to simply as the "Filial Fraction."[17]

The Filial Fraction is defined as the percentage of a person's adult life during which an elderly parent is also alive. This numerical tool provides legal and financial practitioners with a method to demonstrate in quantitative terms the client's potential -risks of providing assistance (financial, legal, health, residential, and caregiving) to an aging parent. The Filial Fraction is not a pronouncement that aging parents by definition are a burden. Rather, it is a planning device to visualize or even to dramatize the client's increasing potential responsibilities in the context of Family Aging, in general, and the Senior Sandwich concept in particular.

The Denominator of the Filial Fraction is the number of years the middle-aged child has been an adult—which we define as 20 years old. For a 60-year-old child the numerator is 40.[18] The Numerator is the number of years the elder parent has been age 75 or older. For an older parent who is 90 years old the Numerator is 15. The son or daughter is appropriately in the Denominator, as the potential burden is on his or her shoulders.

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[15] Pew Research Center, *Baby Boomers Approach Sixty, available at* http://pewresearch.org/ assets/social/pdfsocialtrends-boomers120805.pdf (2005).

[16] Cutler, *supra* n. 2. Chapter 5 provides an in-depth discussion of the historical changes in balance between the accumulation and expenditure stages. The age intervals for the accumulation stage have moved from about age 20 through age 67 in the 1930s to age 30 through age 70 in 2000. Meanwhile, the expenditure stage at old age lengthened nearly 10+ years. The Senior Sandwiched will need to adjust their accumulation stage to meet financial obligations of family while planning for retirement.

[17] Neal E. Cutler, "The Filial Fraction: A New Tool for Family Financial Planning" *Journal of Financial Service Professionals* (November 2006).

[18] For a colorful discussion of the "60-year-old kid" phenomenon in financial and legal terms, sec Lee Eisenberg, *The Number: A Completely Different Way to Think About the Rest of Your Life* (Free Press 2006), Chapter 9.

Table 2. The Filial Fraction	
Numerator = number of years parent is "old" (age 75 or older) Denominator = number of years child is "an adult" (age 20 or older)	
Case I: 2007	
Agnes, Age = 90 Years > 75 = 15 years	David, Age = 60 Years as adult = 40 years
David & Agnes' Filial Fraction in 2007: 15/40 = 38%	
Case II: 2017	
Agnes, Age = 100 Years > 75 = 25 years	David, Age = 70 Years as adult = 50 years
David & Agnes' Filial Fraction in 2017: 25/50 = 50%	

Table 2 offers two Case Examples to illustrate the calculation of the Filial Fraction. Case I, for the year 2007, describes David, the 60-year-old son of Agnes, his 90-year-old mother. The Numerator is 15 (90-75=15); the Denominator is 40 (60- 20=40), resulting in a Filial Fraction of 38 percent (15/40=38%). Although David may not have current concerns about his mother's legal, financial, or health status, the potential does exist. The Filial Fraction as a planning tool provides a quantitative method and alerts both the advisor and the client to potential responsibilities.

Fast forward to the year 2017 (Case II). David is now 70 and his mother has survived to 100 years old. The Numerator (Agnes) is now 25 (100-75=25) and the Denominator is 50 (70-20=50). David's Filial Fraction is 50 percent (25/50=50%). In other words, by 2017 David will have spent half of his own adult life with an older parent during which time he has been anticipating, planning, and saving for his own later years. The usefulness of the Filial Fraction is that it provides an instrument to help clients perceive and estimate their potential responsibilities for an aging parent, given the contexts of Family Aging and the emergence of the Senior Sandwich Generation dynamic. It provides the Financial Gerontologist and the Elder Law attorney with a research-based tool for explaining to and discussing with the client (and client's family) the complexities of family aging, and how to best prepare them for the future.

V. EPILOGUE: THE TENSIONS OF DIMINISHING FINANCIAL BALANCE[19]

As experienced Elder Law practitioners know all too well, families caught in the Senior Sandwich dilemma need advice about asset preservation and long-term care advice, and how best to use their income and savings. All counsel must be framed within the context of "who is the client." Ethics requires the lawyers to provide counsel directed to those to whom their loyalties have been established. The National Academy of Elder Law Attorneys has confronted potential tensions between family members and the client by publishing aspirational standards for its members,[20] which place a high duty of responsibility on the Elder Law Attorney.[21]

First, the attorney must maintain confidentiality and honor conflicts of interest.[22] The Academy's aspirational standards go further and direct attorneys to first identify who is the client: the family or the elderly individual. The attorney must next meet privately with the older adult to confirm competency and to reduce the potential of undue influence.[23] Of frequent concern is the financial status of the elderly person, because sometimes the family contacting an attorney is the result of the elder person's children desiring financial control of their

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[19] Any effective multidisciplinary intervention involving law and aging involves the creative engagement of both the researchers and the practitioners. In this context the authors are grateful to A. Frank Johns for this Epilogue illustrating application of Financial Gerontology to Elder Law practice. Mr. Johns is no stranger to either Elder Law or the practice considerations of Financial Gerontology, being a former President of NAELA and a current faculty member of the American Institute of Financial Gerontology,

[20] See *Aspirational Standards for the Practice of Elder Law with Commentaries*, 2 NAELA Quarterly Journal 5 (2006) (hereafter NAELA Aspirational Standards).

[21] See A. Frank Johns & Donna Bashaw, *NAELA Aspirational Standards —Ready, Set, Go! How Do We Comply with Them?,* 2 NAELA J. 65 (2006).

[22] Foe ABA Model Rule 1.18 Prospective Client, ABA Center for Professional Responsibility, *2006 10f.' Rules of Professional Conduct* (hereafter ABA 2006 MRPC), *available at ,,,:p.i,wwwabanet.org/epr/mrpc/mrpc_horne.html* (ABA 2006).

[23] See NAELA Aspirational Standards, *supra* n. 22, at 8.

parent's assets. Understanding the factors driving Family Aging helps to perceive and plan for such eventualities.

Consider the dutiful daughter, Joy. Living near her mother, she has been driving her mother to the doctor, grocery store and hairdresser, and providing increasing assistance as her mother grows feebler. Now, her mother needs a higher level of care as her memory declines, and the demands on Joy have increased. As a result, Joy has been forced to take sick days from work to care for her mother. At the same time, Joy's daughter is entering college and the stress of the competing demands– -financial and time constraints—have increased. She has limited choices: reduce work hours to care for her mother, tap into her own savings and retirement to care for her mother, increase student loan amounts for her daughter's education, or tap into her mother's resources. How to advise Joy, as well as protecting her mother, is the duty of the Financial Gerontologist and the Elder Law attorney. Understanding the sources of Joy's stress is the first step towards resolving her problems.

Advanced planning, in concert with a Financial Gerontologist and an Elder Law Attorney using the filial fraction tool to alter potential competing demands of the aging family, could have saved both Joy and her mother stress and resources. Working within the guidelines of The Academy's aspirational standards with an understanding of the four lenses of aging will result in less family and financial tensions through the aging process.