



## Life within the law

“WE MUST LIVE WHILE WE CAN, AND WE’LL DRINK OUR CUP OF LAUGHTER.”

As most of you can tell by now, one of my “sub-themes” for these monthly columns has been a bit of “life within the law” rather than the traditional “Presidential” column. Forgive me if, in this column, I tend to wax philosophical. According to the actuaries, I have about 10,000 good days left. And I think about that a lot. Now that I am older and my children are all out of the house, I find myself slowing down and thinking about things that, well, in my younger years just didn’t seem that important. You can see a lot in 31 years of practice, and 30 crazy and exciting years of life before that. I cannot believe that I am sitting here as president of the OCTLA, typing out a monthly column. When I was a kid, my stepfather told me in no uncertain terms that I would probably end up in jail. He was probably playing the odds at that time based on my behavior. I’m glad I proved him wrong.

Still, I find myself thinking a lot about time. I cannot believe it is the middle of June already. Are we really halfway through 2022? Where does the time go? And I’ve only got six more of these columns to write?? Woohoo! But seriously, as I get older, time seems to go by quicker and quicker. That old saying that “Time flies when you’re having fun” must be true.

They say life is short. They say life passes you by in the blink of an eye, to take every single day as if it were your last. I was listening to an old Steve Winwood song yesterday, one that I have heard a thousand times, but I never really listened to the words before:

While there is time

Let’s go out and feel everything

If you hold me

I will let you into my dreams

For time is a river rolling into nowhere

We must live while we can

And we’ll drink our cup of laughter

I made a pledge to myself this year to not waste a single day. Each day is precious, and life is slipping by like “a river rolling into nowhere.”



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But we are all, of course, attorneys and can argue either side of anything. I can play the contrarian. Isn’t it also true that life can be very long? Even though I have never practiced criminal law, I am fascinated by criminal sentencing. What does one year behind bars feel like? 10 years? 20 years? I would assume that life passes very slowly when one is locked up.

I was discussing the difference between these views with my therapist. He told me about the “Blue Zones.” I had never heard of this, but apparently there are five places in the world with the highest concentrations of people who live longer than average. The Blue Zones are Sardinia; Okinawa; the Nicoya Peninsula in Costa Rica; Icaria, Greece, and believe it or not, Loma Linda, California. Blue Zones support the ideas of healthy eating, active lifestyles and community involvement. One other basic theme is lifelong attachment to a partner.

I can imagine that life passes very slowly when one has lost a significant partner or loved one. Life must pass slowly when one is confined to a bed or wheelchair due to someone else’s stupid behavior or conduct. Indeed, isn’t this the very theme we weave when we discuss per diem damage calculations for our clients’ general damages? What is the value of one day in the life of someone suffering? We can only ask for a “reasonable dollar amount” for pain and suffering. What is “reasonable compensation” for one day of pain?

Mark Robinson uses a table during closing arguments, which sets forth each

item of recoverable general damages from the jury instructions. (I must admit, I stole that table from Mark.) Titled “A Reasonable and Fair Formula for Calculating Harm,” it has three columns. The first column lists 20 different pain and suffering components: Pain, mental suffering, loss of enjoyment and quality of life, disfigurement, physical impairment, fright, nervousness, mortification, shock, indignity, embarrassment, apprehension, terror, ordeal, inconvenience, grief, depression, anxiety, humiliation and emotional distress. You can add in or delete any category that does not fit. The next column gives an hourly figure for each category for past damage. The last column gives an hourly number for future harm.

Even assigning just a dollar or two per hour to each category, the per hour figure can add up quickly. If your client is facing the rest of his or her life in chronic pain, or in a wheelchair, or worse, those days have real value. Each hour can and should be easy for a jury to quantify if you make the right connections and argument. Mark Robinson obtained a \$46 million dollar verdict in San Bernardino using this very table. The bigger question is, was that worth it for that particular client? Would he give back that money to not have those horrible permanent injuries? I think I know the answer. “We must live while we can, and we’ll drink our cup of laughter.”

