

MY
WISHES

MY WISHES

Your Plan
for Communicating and Organizing
the Essential Information
Your Family Needs

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*To my beautiful family—my wife, Phyllis, and my children, Cliff and Allison.
Thanks for all your love and support, and for always making me smile.*

To the memory of my father, with all my love and respect.

*To my high school teacher and mentor, Thomas Lovely.
You gave me the wisdom to find the words.*

And to my Uncle Milton. The case is closed!

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PREFACE

When I announced to my wife that I was writing this book, she replied, “Why not a love story, or a book on travel? This is gruesome.” She went on to say that she would never buy such a book. Her response is typical of how most people first react to the thought of someday not being here. We live in a society where dying is not freely discussed. No one wants to think about it—let alone plan for it—but dying is inevitable. It is something we all must face. The goal, of course, is to put off the event as long as possible. However, planning for the inevitable needs to be a part of your life.

As background, I have practiced law for over twenty-eight years with an emphasis on probate and estate planning. When I consult with a client for estate planning, I discuss the benefits of a Will and other legal documents. I also inquire whether any arrangements have been made with regards to funeral and final interment, as well as disposition of personal property. I further question if any family members are aware of the location of important papers. Often, the client jokingly replies, “It doesn’t matter. When I am no longer here, then it’s their problem.” The “their” usually refers to surviving children. However, after I describe the importance of this type of planning and explain the options available, the client decides to start putting things in order.

Unfortunately, too often I receive calls from family members whose parents did not put something in order. Many people prepare estate planning documents, but neglect to tell their children how to locate all of the bank accounts, deeds, insurance policies, and other important papers. A mourning spouse or child is now faced with mounting bills and expenses related to the decedent's last illness and no idea how to pay them.

Accepting that someone is no longer here is devastating. To then confront the decisions and arrangements that must be addressed can be emotionally exhausting. Though we protect our home from an approaching storm, or make arrangements to have the mail taken in when we are away, planning for our passing is something we continually put off. As a result, an unprepared family may face serious financial and psychological consequences.

In my many years of practice, I have repeatedly seen how the loss of a loved one has wreaked havoc on a family. Sudden death is most devastating, as there is often no planning in place. However, even when a patient is terminally ill, the family often avoids any conversation of making final plans. In preparing this book, I questioned many clients who suffered the loss of a loved one as to why the subject was avoided. Though a small percentage responded that they always held out hope that there would be a cure, the majority answered that they could not bear to think of the inevitable.

Death and dying are becoming increasingly relevant for baby boomers. With approximately 2.4 million Americans dying each year—and the number growing—it is only logical that thoughtful, serious, and personal conversations take place with friends and loved ones so that you are well prepared for the end of life. The time to take charge is before you encounter a life-threatening illness or crisis. This will greatly reduce the stress endured by your survivors. By preparing in advance, you can alleviate some of the uncertainty and anxiety survivors experience when they do not know what you would have wanted.

Dying is no laughing matter. However, in discussing the subject matter, it does not have to be presented in a depressing form. Accordingly, by blending experience learned from my clients, anecdotes where appropriate, and a sprinkling of humor, *My Wishes* explores all the issues facing one's passing. Most important, the reader who follows this handbook will gain a sense of security knowing that his or her affairs will be in order.

Finally, *My Wishes* is a planning guide, offering practical information for you and your loved ones. It is not meant to depress, but instead, to inspire. It provides for an orderly transition for the survivors, and helps avoid both the financial and psychological burdens that often become the responsibilities of the survivors. Equally as important, it provides peace of mind for you and your loved ones. You owe it to yourself and those you care for to be prepared.

Many of us have, unfortunately, experienced the loss of a loved one. Sometimes we learn after the passing of a loved one what his or her last wishes were. If you have a story or an experience that you would like to share for a future edition of this book, please go to www.mywishesbook.com and click the link “my stories.” All stories and experiences will be considered for future publication.

—*Ben Berkley*

INTRODUCTION

My Wishes is a planning guide. The purpose of the book is to provide practical information for you and your loved ones. A person does not have to be facing imminent death for the book to be relevant. Instead, this material should be viewed as a resource guide to put an orderly plan in place. Further, the book is intended as a reference. As a reference guide, it does not have to be read cover to cover.

The book discusses end of life issues, including:

- preparing for sudden death;
- advance health care planning and powers of attorney;
- how to behave towards others when you are ill;
- preparing a message to your children on how to behave with each other after you are no longer here;
- hospice care;
- Wills, Trusts, estate planning, and asset protection;
- financial planning;
- arranging for your pets after you are gone;
- pre-need arrangements and funeral planning;
- writing your own eulogy and Legacy Will;
- disposing of personal property;
- embracing your spirituality;
- managing debt;

- Social Security disability and other federal insurance programs;
- unfinished business, including future purchases and claims you may have against others; and,
- issues faced by partners of a same-sex relationship.

The book is divided into two parts.

PART 1—PERSONAL ISSUES

Chapter 1 discusses what happens when one passes suddenly without any planning. It illustrates how the survivors are often unprepared for the inevitable and why it is prudent to have a plan in place. It includes a financial planning checklist if you become terminally ill. It also discusses enjoying life to the fullest. Chapter 2 discusses what steps you need to take to continue living while you plan for the inevitable.

In Chapter 3, you will learn about the importance of making decisions about advance health care planning, end of life treatment options, and organ donation. Chapter 4 discusses hospice care and the requirements needed to qualify for benefits.

Chapter 5 provides a guide to planning your funeral service. It is becoming more common for people to make pre-need arrangements for their funeral and final interment, and Chapter 6 discusses these arrangements. It also discusses final interment options. You may want to write your own eulogy and tape a video message for your loved ones. Options for doing so appear in Chapter 7.

Chapter 8 discusses the issues that must be addressed if you have to relocate from your home due to illness or other reasons. It provides information on senior living housing options that are available. Chapter 9 discusses issues faced by people who live alone.

Chapter 10 is a discussion about your behavior towards others and a parent's message to children on how to behave with each other after a parent passes away. A traditional Will disposes of property, but the Legacy Will discussed in Chapter 11 is your written expression to your family and friends of who you are, how you wish to be remembered, and what lessons you want to leave.

PART 2—MANAGING YOUR AFFAIRS

A discussion of distributing and disposing of your personal property and what a Will does not cover is provided in Chapter 12. This chapter also discusses how to arrange care for your pets after your passing.

Chapter 13 discusses the differences between Wills and Trusts and whether you need one. Chapter 14 addresses the importance of Living Wills. Chapter 15 describes Health Care and Financial Powers of Attorney, as well as special situations like appointing guardians of your children and protecting your same-sex relationship.

Chapter 16 discusses canceling credit card accounts, paying bills, and providing computer access to your passwords so that your survivors can obtain your information. Often, a medical crisis makes it very difficult to manage your everyday bills when you have medical bills to pay, and Chapter 17 provides advice on how to manage such a situation.

Chapter 18 includes a discussion of private insurance options, including disability, long-term care, and funeral insurance. It also discusses reverse mortgages. Information about federal insurance benefit programs, including Social Security disability and veteran's benefits, can be found in Chapter 19.

Chapter 20 discusses the role of an attorney in drafting estate planning documents and providing consultation on end-of-life issues.

You can learn how to avoid scam artists who prey on people's vulnerabilities during periods of stress in Chapter 21.

Chapter 22 discusses notification and instructions to others upon your passing. Chapter 23 discusses unfinished business, such as purchases and other contracts that you may have entered into that may not be completed before your passing, as well as claims you may have against others and how the claims may be continued on behalf of your estate.

Following the Conclusion is a glossary of the most commonly used terms. Finally, the appendix contains useful forms for planning for the inevitable.

Please note that laws vary from state to state. As such, it is advisable to consult with an attorney or visit a law library to be sure that the form is correct for your needs. If you would like to read the laws themselves, you may want to check out Gavel2Gavel, an Internet resource providing every state's codes and statutes. The direct link is www.request.net/g2g/codes/state/index.htm. Simply click on your state's name, and you will be directed to the codes and statutes for your state.

Blank forms are provided throughout the book. Jot down notes to yourself on these pages as you read the book. The forms also appear in the appendix. Use your notes from earlier to fill out and keep these forms from the appendix.

PART 1
PERSONAL
ISSUES

CHAPTER 1: PREPARING FOR THE INEVITABLE

As children, we believe we are invincible. We can ski the steepest mountain and challenge the highest wave. When we are young, sleep, diet, and exercise often take a back seat to having fun. However, upon the passing of a loved one, we are forced to face our own mortality. There is never a right age for being able to accept that someone has passed away or that we, too, will be gone someday. However, it is important to face these facts and plan for that unfortunate and often sudden event, so that when tragedy strikes, your survivors do not find themselves scrambling to find the pieces of the puzzle that were held by you.

Ben's Story

My father died suddenly at age 59. We had spoken by phone the day before. The conversation was typical—we chatted about our New York Yankees, the weather, and the stock market. He was feeling fine and there was no reason to believe that twenty-four hours later, he would be gone. Like many families of my parents' generation, the husband wrote the checks and paid the bills. My mom was overwhelmed with emotion and terribly unprepared for life after my dad's passing.

The events of September 11, 2001 are a sobering reminder that we never know when the end will come. Of the more than 2,000 people who perished that day, the great majority had no arrangements in place for the unthinkable. They kissed their wives, husbands, and children good-bye that morning, never thinking that day was their last day on Earth. For weeks, the news was filled with stories of surviving families facing financial disaster as a result of the terrible disruption. Insurance companies could not issue death benefits because insurance policies could not be located. Families who needed to sell their homes often had to seek court permission, because people whose names were on the titles were no longer here to sign deeds to transfer titles.

Jane's Story

Several years ago, a frantic woman called my office. Jane's husband had died. She knew he had insurance, but she could not locate the insurance policy, even though she had turned the house upside down. At the time of his passing, the couple was overextended in debt. Creditors were calling and their bank was threatening to foreclose on their home, since they were three months behind in payments. With my assistance, the insurance company finally issued a check for the insurance benefits after Jane signed a declaration that the insurance policy was lost or destroyed. Unfortunately, by the time the company performed payment, Jane's home was scheduled to be sold at a foreclosure sale.

By planning for the inevitable, you are taking the first steps in protecting the future lives of your loved ones when you are no longer here. It is prudent to be prepared in order to avoid the disruption that is often faced by your survivors upon your passing.

Planning for the Inevitable—Presidential Style

Days after President Reagan had passed away, a *Los Angeles Times* article provided information about the advanced planning for his passing. In fact, within days after he was sworn in as the nation's fortieth president in 1981, Reagan and his wife Nancy began discussing funeral arrangements for if he were to die in office.

According to the article, Mr. Reagan chose the music that he wanted to be played at his funeral service. He and Nancy also selected the verses

and psalms to be recited. The details even included the names of the pallbearers he wished to have the honor of carrying his casket and the number of times “Hail to the Chief” would be performed.

Every year thereafter, the plans were reviewed and revised. After he left office in 1988, Reagan appointed a committee that was part of his presidential library to oversee the funeral arrangements, though he continued to be consulted regarding all details. In the mid-1990s, after his medical condition prevented him from partaking in any discussions, his family continued to provide input.

When Reagan died in June of 2004, his family was well prepared for the inevitable. Of course, only presidents and other dignitaries are afforded funerals where their bodies lie in state in the Capitol Rotunda and require such precise planning. However, it should not be minimized that proper planning reduces the emotional strain on your loved ones when you are no longer here, no matter who you are.

Sudden Adult Death

Some of the most difficult calls I have taken over the years have been from grieving family members who found my business card in the personal phone book of their recently deceased loved one with the words “call in the event of my death” written on it.

One of the most common, and emotionally difficult, forms of passing is sudden adult death. When a loved one dies suddenly and for no apparent reason, it is often more devastating than if the loved one had been ill, because the survivors have had no time to emotionally prepare. Survivors are sometimes wracked with guilt, especially if their last conversation with their loved one was not pleasant. Still, after the grieving and the soul-searching, the survivors must begin the task of learning how to survive without their loved one. This includes funeral and financial arrangements, which will be much easier to complete if you have done some planning for the inevitable.

The recent South Asian tsunami disaster is an unfortunate illustration of sudden death, and of how tragedy can strike at any time without warning. The monster waves destroyed everything in their path. When I watched in horror the home videos taken by tourists, I vividly remembered walking with my family on the beautiful beaches of Phuket, Thailand. My thoughts immediately went to the families of those who had died. They are the survivors who had no warning or time to prepare

for the loss of a loved one. They must now address both the emotional and legal issues associated with their loss. This task becomes even more difficult if no plan was in place for the inevitable.

Terminal Illness

The five most dreaded words a doctor can say to a patient are “I have some bad news.” Any conversation that follows is usually a blur ending with the suggestion to get affairs in order.

Receiving such devastating news is impossible to comprehend. However, it is information that is meant to stimulate action and not inaction. The message is not to wait too long to organize your affairs—do this before you reach a point where you can no longer do things for yourself.

Many people, after receiving such news, are anxious to complete their estate planning needs. They understand that their time remaining is precious and that there is an urgency to attend to these affairs. Clients often tell me that until their estate planning needs are complete, they cannot plan for the time remaining.

Unfortunately, some people wait too long and are no longer competent to make decisions by the time they decide to sign the important papers. As a result, a lawyer cannot prepare documents, because the lawyer must know that the client understands the document. Also, most documents must be witnessed by at least two impartial individuals who attest or sign in writing that the person was of sound mind, and was not acting under duress or undue influence. If the maker of a Will, for example, is not competent due to being under the influence of medication, the Will can later be challenged.

Jill's Story

I received a call from Jill, who asked if I would visit her ill father. She said Bob was having difficulty speaking but could communicate in an audible whisper. Upon my arrival, I observed that Bob was on an intravenous line for pain and was almost comatose. Needless to say, I could not consult with him. Unfortunately, Bob passed away without a Will. His estate, which included a four-plex residential property and other savings, had to be probated. The estate paid over \$20,000 in probate and attorney's fees. Bob could have prevented his estate's eventual legal consequences and fees had he consulted with an attorney for proper estate planning when he was diagnosed with lung cancer a year earlier.

Live Life Today

Finally, planning for the inevitable includes living for today. You need to put your financial and end-of-life affairs in order, but it is important that you also consider how you want to spend your time and money on this Earth. Consider taking that dream vacation or that exciting new job. It is said that the only two guarantees in life are death and taxes, so you might as well live life for today. Time passes us by very quickly, and living in a world where time is so compressed and schedules are constantly being juggled to fit in as much as possible sometimes causes us to lose sight of why we are here.

I am often asked by clients to give what I would consider nonlegal advice. The tough questions are from those who are facing a terminal illness. There is still that part of them that wants to explore the Amazon or challenge the highest mountain. Should he and his wife go on the Mediterranean cruise that was to be their 50th wedding anniversary present to each other? Should she take all the grandchildren to Disney World now instead of waiting until school is out? I wish that someone had told my father not to put off visiting Israel until his retirement. When he died suddenly at age 59, he had never fulfilled his dream.

There are no answers to these questions, and I can only offer support and hope. But from client experiences, I can attest that every client who said “I am going to live life today” never regretted that he or she did!

Ralph's Story

Recently, Ralph and his girlfriend Alice retained my services. During the consultation, Ralph informed me that he had inoperable stomach cancer. His doctor told him that the tumors had spread and that he had a few weeks to live. He was only 35 years old. Neither Ralph nor Alice had been married before, but they were madly in love and wanted to know if I thought they should marry. They wanted to share whatever time Ralph had left together as husband and wife. After counseling them on the legal ramifications of marriage, I told them if they invited me to their wedding, I would come. It was a great party and we danced our feet off.

Living life today is not limited to doing and going. As my clients have shown me, living life today includes giving today. Whether it is writing a check to a charity, dropping a few coins in the Salvation Army

kettle, or making an offering in church on Sunday, you may realize joy by giving during your lifetime from the estate that you have worked so hard to amass.

Federal tax law generally allows an individual to give up to \$12,000 per year to anyone without paying gift taxes. That means you can transfer some of your wealth to your children or others during your lifetime to reduce your taxable estate. For example, you could give \$12,000 a year to each of your children and grandchildren, and your spouse could do likewise (for a total of \$24,000 per year to each child). As a result, by reducing the overall value of your estate, your estate will owe less to the IRS for estate taxes upon your passing. In deciding whether to make a monetary gift to a relative, you should first consult with your tax consultant.

Mary's Story

Mary asked me to review her Will. She did not have a large estate from a dollar value, but she had a vast collection of porcelain dolls. Her granddaughters always played with them when they visited. Her Will listed each grandchild and the figurine dolls they were to receive. Mary wanted to delete the mention of the dolls. Instead, she wanted to give the dolls to her grandchildren now, during her lifetime. She said she wanted to experience the joy of seeing her grandchildren enjoy the gifts.

A Financial Planning Checklist for Terminal Illness

The emotional issues involved with the news that you or a loved one is terminally ill are devastating, but it is critical to address the financial issues as well. The following is a checklist of some of the financial issues that need to be addressed by you and your family if you have been diagnosed with a terminal illness. These topics are more fully discussed in Part 2 of this book.

- **Start planning immediately.** Though you may be in denial, time is of the essence. Also, proper planning may relieve apprehension.
- **Determine what costs should be expected with the illness.** Talk to your doctors, and get information about medical expenses and other costs associated with assisted living.
- **Prepare a budget.** Include in your budget additional medical costs and any special wishes that you may have, such as a dream vacation.

- **Decide whether to keep working.** Work may provide critical financial, medical, and psychological benefits. However, consider changing to a less demanding job.
- **Review health insurance.** Is your illness a preexisting condition that is not covered under your present policy? What are the lifetime maximum benefits? How much must you pay out of pocket? Will it cover experimental treatments? Will your coverage expire? You must review your health insurance policy so you can answer these questions, and adjust your plan based on those answers.
- **Review disability insurance.** Is there disability insurance through work or is a personal policy available? What percentage of your income will it replace? What is the waiting period before benefits begin? Are the benefits taxable? Are there any state sources available? Knowing these answers will help you complete your planning.
- **Establish care.** Where are you likely to go for care? Your home? A nursing home? The hospital? A hospice care facility? Can family members help at home? Each option has associated costs to consider.
- **Review life insurance.** You may be able to borrow against the cash value of whole life insurance. This is not applicable for term life insurance. The policy may also pay what is called *accelerated benefits*, or the policy may be sold to a third party in what is called a *viatical settlement*. These living benefits pay in cash a percentage (usually 30% to 90%) of the death benefits.
- **Review your investments.** It may be in your and your family's best interest to move assets like stocks and bonds into more liquid investments, such as money market accounts, as there is a lesser degree of risk involved.
- **Assess other assets.** Is money available from 401(k)s, IRAs, or equity in property? Consider reverse mortgages.
- **Review government sources.** People with few assets and little income usually qualify for Medicare to pay nursing home care. Medicare can also pay for hospice care. Social Security disability income may be available if you have worked five of the last ten years prior to your illness and had Social Security withholdings taken from your paycheck.
- **Consider tax issues.** Many of these checklist items, such as withdrawals from IRAs or sales of investment items, may pose tax-planning issues that need to be discussed with your tax consultant.

- **Draft or update estate planning documents.** Every adult should have a Will. Consider drafting other documents, such as powers of attorney and a Living Will, as well. A Durable Power of Attorney lets you appoint someone to make financial decisions for you. A Living Will describes what life-saving medical treatment you may or may not want. A Health Care Power of Attorney appoints someone you trust to make medical decisions if you are unable to do so yourself.
- **Review beneficiaries.** Be sure the names of beneficiaries are up to date in your Will, insurance policies, and retirement plans.
- **Hire professional help.** An estate-planning attorney and other financial professionals can be of immense help in making sure that the best plan is created and carried out.

CHAPTER 2: LIVING WITH DYING

Part of planning for the inevitable includes learning how to live the remainder of your life knowing that you are dying. If you are diagnosed with a terminal illness, there are some special planning needs you should follow.

Your acknowledgment that you are dying is the first step to living with dying. This becomes even more of a challenge when your diagnosis comes without warning and is completely unexpected. If you are feeling great with no physical symptoms, the news is psychologically devastating.

Mike's Story

Mike had a routine physical for a new job. A chest x-ray revealed a suspicious nodule, and a follow-up CT scan found a tumor that was later determined to be of a very aggressive type of cancer. A month earlier he had competed in his fifth marathon run and was the picture of perfect health. He thought he had plenty of time to get things in order despite his doctor's advice, so he did not immediately draft any estate planning documents. He died a month later without making any last wishes arrangements.

Accepting Fate—Not Death

By accepting your fate, you are not letting go of hope. Acknowledging the reality of your fate, instead of denying it, makes the planning process easier. Planning for the inevitable is intended to make life easier and less stressful for your survivors after you have passed.

No two people process the news of a terminal illness the same way. Your initial reaction may be that of anger, denial, or hope. Your emotions must be addressed accordingly. However, when you are facing the most difficult challenge of your life, you must separate emotions from logic. This book's intent is to be a resource guide for logic so that you can put the necessary groundwork for your loved ones to follow into place.

Getting in tune with your emotional state of mind will help you live with your illness. You must be in control and never let others tell you how you feel. Remember that there is no right or wrong way for you to think or feel. What is important for you to remember is to stay focused on your agenda—putting your life in order so that your survivors may avoid suffering stress and financial harm.

Finding the Support You Need

It is during this most difficult time in your life that your family and friends must respect your needs and wishes. There will be times when you do not want to talk about your illness. There will also be periods when you may want to talk only to some people and exclude others. Regardless, if you make your thoughts and feelings known, you are more likely to receive the kind of care and companionship that will be most helpful to you. Remember, if you do not want to talk about your illness, do not feel that you have to. You must be in control.

Part of planning for the inevitable includes informing your family and friends of your terminal illness. How your survivors process the news differs with each individual and the relationship that you have with that person. Many will be shocked. Many will cry. Some will refuse to believe it while others will spring into action—offering to run errands, organize your home, cook meals, and do just about anything. There are also those who will not know how to respond or express themselves to you. They may fear for their own mortality and will avoid you altogether. Keep in mind that their apparent abandonment does not mean they do not care.

It is important that you listen to your body. As your illness progresses, you may become fatigued. Likewise, your strength and ability to make decisions and think clearly may become impaired. Respect what your mind and body are telling you, but do not put off organizing your affairs.

Planning for the inevitable also includes saying good-bye to those you care about. There is no time during your illness that is the right time to say good-bye, but you will know when it is right. Depending upon your abilities, you might want to set aside time to talk one-on-one or have a gathering for friends and family. Other ways of communicating include writing letters and creating videotapes. (see Chapter 7.)

Mark's Story

Several years ago, I received a call from an old high school friend. Though we had seen each other at the school reunions, we never stayed in touch. I was happy to hear from Mark and assumed he looked me up because he was planning a trip to California. Unfortunately, the reason for his call was not so pleasant. Mark had been diagnosed with leukemia. He took an early retirement from his job and wanted to contact his old high school buddies to say good-bye. Upon hearing the news, I immediately responded with all the trite remarks like “I am so sorry” and “How can this be?” However, Mark did not want to dwell on the prognosis. He wanted to reminisce about the old days. As his friend, I respected his wishes.

Part of the planning process includes reaching out for support. This is not the time to cling foolishly to an independence that is no longer possible. Even if you have always lived your life doing everything on your own, your illness may progress to a point where you will need help. As difficult as it may be for you, you must reach out. Of course, family and friends will be there for you, but you may want to consider hospice care. (see Chapter 4.) Hospice workers are trained to help both you and your survivors. For more information on hospice care, go to the Hospice Foundation of America website at www.hospicefoundation.org, and the website for the National Hospice and Palliative Care Organization at www.nhpco.org.

In the song “That’s What Friends Are For,” the lyrics suggest that a friend will always be there for you. However, there may be times when

you do not want to be visited by your friends. If you are ill, it is important for those around you to respect your wishes. It is perfectly permissible to let your family or whomever you appoint to know the names of those you wish to see and those you do not. Remember, a really true friend will not have his or her feelings ruffled.

Embracing Your Spirituality

If faith has been a part of your life, the strength you have received from your beliefs should provide comfort now. Reading spiritual books, attending religious services, and surrounding yourself with people who share your beliefs will provide support.

If you want to seek spiritual guidance, find someone who will not be critical and will allow you to explore your feelings. Talk to your spiritual leader. If you are not affiliated with any particular church or synagogue, hospice care organizations can make referrals to you. You can also search your local Yellow Pages under the category “Grief Counselors.”

Joe's Story

I once consulted with a gentleman who was dying of AIDS and wanted to make a Will. When Joe revealed to his family that he was gay, his wife divorced him and would not allow him to have a relationship with his kids. He desperately needed to talk to someone, as he felt so alone in this world. A friend of mine who does grief counseling befriended Joe and provided the professional support that he so needed.