THE BREAKFAST CLUB

Surely they had proved the adage that no good deed goes unpunished. But, not according to Judge Sterne, who found them guilty under Revised Code 2913.02, of theft by deception, a felony of the fourth degree since the property taken was between $7500 and $150,000. The punishment? 12 months to 18 months. He gave them the max. If the victim is an elderly person, the felony jumps to second-degree carrying 2 to 5 years. Luckily, their victim, Marigold Flowers, a glamorous widow who defied the aging process, denied that she was an elderly person. She refused to give her age, so the prosecutor could only charge fourth degree, which in hindsight was okay given the difficulty of proving their intent to commit a crime. The three agreed to plead to the lesser charge to save the agony and publicity of a trial, and to end the matter before Marigold could be persuaded to disclose her otherwise unobtainable Hawaiian birth certificate.

Since they shared the worthwhile, but misguided project, they agreed to be tried together, although they denied it was a conspiracy. Remarkably, they remained friends and spiritual members of the Breakfast Club, despite the hiatus in Club meetings.

Since they had been convicted at the same time, and received the same sentence, the parole board agreed to hear their plea for early release together. The fourth member of the Club, Topher Byrnes, represented them at the parole hearing. He had been a United States Attorney when they were convicted, but having since retired, he was able to plead their case now and obtain their early release.

The hearing was at the Allen Oakwood Correctional Institution in Lima where they had done their time in the minimum security section. They participated in apprenticeship programs teaching new skills to provide a living after release. Ferd McKnight, former attorney and now de-frocked Deacon, learned library skills by managing the reading room for children visiting their incarcerated parents. The reading room had been started by First Lady Hope Taft in 2000. The concept had spread to many prisons in Ohio.

Harry Goode II, also a former attorney, learned how to train assistance dogs for the blind and disabled. The third club member, Morgan Stanley, a former attorney and financial advisor whose series 7 license had shrunk to zero, decided to learn the more reliable and lucrative field of plumbing. A considerably higher hourly rate than librarians or dog trainers.

The four had met as associates at the oldest, largest, and most venerable law firm in town, Cheetham, Goode and Hoard. Initially they were all on the partner track. Recognizing that few associates ever made partner, a certain amount of competition could not be avoided. In fact, the managing partner encouraged it. But, after they sniffed each other out for a while, and became realistic about who could or would make partner, they became friends. They fell into the habit of meeting for breakfast every Wednesday at the same place at 7:15 to finish by a 8:25 so they could be in the office by 8:30. They ate at the same table in the corner overlooking the square, with a men's room close by.

Ferd had suggested they pattern their meals after the clubs that flourished in the 18th century Virginia public houses and taverns. Groups such as the Burgesses would meet on a regular basis after a session. They were given a “convenient” room apart from the tables where the ordinaries took their meals. A group might adopt a name as a formal Club. The menu and price for a meal was fixed. The Club paid for the meal from the treasury.

Ferd explained the benefits of this plan. No time spent on perusing a menu, ordering, figuring the tip, or where and when to meet. The hotel agreed to Ferd’s request, reserving their usual table with Horace, their favorite waiter. They decided to call it a club and give it a name. Since Ferd had made the deal of a fixed menu of bacon, eggs, potatoes, toast and coffee for $10 for each, including tip, he suggested calling it the Four For Forty (4440) Club. Topher observed that over time, inflation would make the name obsolete. He suggested calling it the Associates Club. Harry, knowing that he at least would make partner, said that name would also become obsolete. Why not name it permanently and call it The Breakfast Club. They agreed.

Additional protocol followed. One person in turn paid the $40, even if less than four attended. Eating and socializing lasted 40 minutes. Then for 15 minutes, one man in turn each week, entertained or informed the others with a piece of fiction, poetry, political essay, business news, travel story, or whatever he selected. To ensure preparation, they agreed that the presentation should be written on one or two pages, never more than 1200 words. They each kept the papers in a notebook, creating a valuable record of their meetings over the years. At the end of each meeting, the man who was to present the following week had the duty of telling a joke, so that they could part in good humor. Sometimes the jokes were off-color but none of them were prudes.

The Club became an important part of each man's life. They grew to appreciate the meetings on hump day as an oasis in a busy life of a young lawyer, husband, and father. They wore bow ties. Because of vacation plans and spousal demands, they decided to meet only from September through May. At one meeting Ferd asked Horace to take their picture with coffee mugs raised to bow tie level. That picture never failed to cheer him up during his year at Allen Oakwood.

RC 2967.03 requires that a parole board examine prisoners concerning their conduct in the institutions, their mental and moral qualities, their knowledge of a trade or profession, and their former means of livelihood, all as might affect their fitness to be at liberty without being a threat to society.

Their parole board paid special attention to their former means of livelihood, albeit with a certain amount of incredulity. How could three pillars of society have gone so wrong? They had all done well in their first years at Cheetham, where they were expected to log 2200 billable hours a year, a target requiring 10 hours a day, six days a week, or creative writing skills. In addition, the firm encouraged them to join the board of some notable charity in town where they would meet and greet wealthy philanthropists, and possibly render some legal service.

Topher discovered that he was good in the courtroom. He even enjoyed the fray of litigation. He did not enjoy the firm politics or logging time in 10 minute increments. With some political connections, after several years, he secured employment as a United States Attorney and left the firm, but not the Club.

Morgan too left the firm to become a stockbroker, or, as he liked to call himself, a financial advisor. He disliked the constant pressure at Cheetham to bring in new business, and to brag around town about the top-quality lawyers in all Cheetham departments, even though he knew otherwise. After his wife inherited well, Morgan decided to leave the firm. He enjoyed managing her portfolio. He developed a surefire system for picking new stocks. All he did was check his wife's credit card statements. Starbucks, TJ Maxx, the Limited, Lululemon, 9 West, Tiffany's, Chipotle. All he had to do was buy early what she liked. It worked! He developed a reputation as a gifted stock picker as compared to his peers who only bought mutual funds recommended by MorningStar. Why waste time doing research? Why try to pick an individual stock?

Ferd McKnight also eventually left the firm, but only after establishing himself as a cutting edge estate planner, in the same group with Harry Goode. Ferd often presented at national estate plan seminars. He nevertheless had a more compassionate approach to the practice than most. He led the firm each year in hours, and number of clients in the Volunteer Lawyers for the Poor program. One grateful client insisted on calling him a McKnight in shining armor. But, Ferd's main reason to be revolved around the Episcopal Church. While practicing law, he trained for, and eventually was ordained as a Deacon. His wife, a top executive in a Fortune 100 company, agreed that Ferd could exit the practice, to devote himself to his duties as a Deacon, and to pursue a lifelong passion as a painter. A local gallery took him on. Some of his paintings were bringing as much as $3000. Using various widths of putty knives, rather than a brush, Ferd slathered bold oil paintings ranging from abstract to vivid ocean scenes, often with discernible sailing vessels. His skill as an estate planner, writing living wills and patient directives, dealing with end of life emotions, made him invaluable to the Diocese. He devoted his church time to visiting retirement facilities and hospitals, to counsel with hospice patients.

Harry Goode II stayed with the firm and prospered. Grandfather Harry Goode had founded the firm with Mr. Cheetham. Harry was on a rather quick partner track, because of his name and the care his father, Harry Goode Jr. provided. They specialized in estate planning, helping high net worth families protect their assets during lifetime and transfer them tax efficiently and privately at death, always avoiding probate. When dad met with the families, he took Harry along. Harry had no need to attract new clients because he and his father already represented most of the multi-millionaires in town. But, Harry did bring in new business – often as a result of a golf game.

When Cheetham and Goode merged with the large Kentucky Hoard firm, they considered dropping the name Cheetham, for obvious reasons. However, a consultant from DC did a blind test. He learned that it would be a mistake to drop Cheetham from the firm name. Despite the unfortunate connotation, he said the name provided instant recognition, far more than could be had by sponsoring performances at the Opera, or helping build a room at the Museum Center. And, at no cost.

As Ferd drove to the first meeting of the reconstituted Club, he thought about what had gone wrong. It began one day when Harry used his 15 minutes to explain startling changes in the estate tax law. First, Congress had increased the exemption to $5,250,000 per taxpayer. Second, and more importantly, Congress added portability to the law. If a spouse dies and the entire exemption is not used to shelter tax, the unused portion can be "ported" to the survivor's estate. Thus, a couple has a combined exemption of $10,500,000 before the survivor's estate will be taxed, at 40% of the excess. Harry was beside himself as he described this hidden asset available to any surviving spouse's estate. The value? Assuming the first to die had nothing, an exemption of $5,250,000 ported to the survivor, at a 40% tax rate translated into a $2,100,000 tax savings. An asset that each and every married person owns, but one that probably will be wasted. Why? Because most couples do not have assets anywhere close to $5 million.

The unused exemption is lost if the executor in the first estate does not file a federal estate tax return and elect portability. The exemption can only be ported on a timely filed 706. Most executors don't know this and wouldn't care if they did. Harry ended his talk bemoaning the number of people out there dying every day with their valuable exemptions evaporating 9 months after death.

In the following days Ferd conceived a plan to use the lost exemptions – a plan somewhat akin to bitcoin – creating value in the cloud. At the next meeting Ferd explained how they could start a private foundation as a not- for-profit corporation. Topher immediately said that as a federal employee, he couldn't participate. Good decision.

The purpose of the foundation would be to capture unused exemptions for the good of the community. He suggested a foundation name, "For Goodness Sake," or FGS. Making his hospice rounds, Ferd knew of many penniless, single people, close to death. They might be glad to know their funeral and other expenses would be paid from a new source.

Ferd suggested that Harry knew most of the widows and widowers in town worth more than $5 million. Their families might glad to have the use of the unused exemption of the soon to die poor person. All they had to do was get married. Upon hearing Ferd's creative and ingenious idea, and claiming the need to prepare for a deposition, Topher excused himself from the meeting. The others did not include him in the foundation plans thereafter.

Ferd explained that FGS could arrange marriages of convenience. The dying person would be willing to marry anyone for say $25,000. The wealthy single person would be grateful that the family could save $2,100,000 later on. Such a person might be glad to pay $100,000 to FGS. "Think of it," said Ferd – "with only five marriages a year, FGS could garner half $1 million. We might want to take some compensation in the beginning for our part in capturing these unused funds charity," he mused.

Morgan cautioned about the complexity and time to obtain a 501©(3) exemption. The last one he did took more than two years. Harry answered by explaining that the IRS has recently simplified and accelerated the exemption process with a new form 1023 EZ, only two pages compared to the old 25 page intrusive 1023. Harry explained that 98% of private foundation applications are now being approved by the IRS within 30 days of submission. Harry said he would form the corporation and submit the 1023EZ.

Later that week, Morgan added to the excitement by telling Ferd and Harry about "death put" bonds which can be purchased at a discount and redeemed at par when an owner dies. Once a joint account was opened with Harry or Ferd and a hospice patient, Morgan could buy discounted bonds to be redeemed after death. He noted death put bonds being issued by financial services companies such as GE Capital and Bank of

America selling at discounts up to 10 points. For only $500,000 in bonds, they could pick up $50,000 and avoid the risk of an increase in interest rates. They could front the money through a margin account until the foundation had enough funds to buy the bonds. A “twofer” – captured exemptions, and discounts. What an opportunity for people who were dying – so to speak.

Harry, incorporated FGS and obtained a tax number. He, Morgan, and Ferd served as trustees and officers.

Ferd already had identified the first poor spouse, Emily Oliver, in the final stages of respiratory failure from COPD. Despite her diminished breathing capacity, her mind worked perfectly. She had been a bookkeeper. She understood the arrangement. She was on Medicaid, with no hope that her funeral expense or headstone would be covered by the $1500 left in her account. She explained it to her children. They agreed with the understanding she would have to sign a prenuptial agreement and submit to a civil marriage to a stranger. She also had to sign papers to establish a joint brokerage account for the death put bonds. $25,000 was paid to her children, not to Emily, so as not to disqualify her from Medicaid.

On his part, Harry identified several widowers with the proper financial profile. He approached Ralph Marriott who, with his children, agreed to the plan. He donated $100,000 to the FGS, a fraction of the eventual $2,100,000 estate tax savings to his children. Both parties signed papers. Ferd married the strangers in the chapel at the hospice. Morgan bought the bonds. Emily’s shortness of breath and coughing spells during the ceremony led Ralph and his family to imagine that the exemption would soon be on its way. Emily died three weeks later. Harry handled the probate of her will and the preparation of the estate tax return, electing portability for the benefit of the estate of her surviving husband, Ralph. Morgan supervised the redemption of the death put bonds at par. He closed the margin account and $50,000 went to FGS. The three Oliver children had mom cremated thus avoided the necessity of a funeral or gravesite so that each netted about $8,000. Ferd made a grant of $5,000 to a local college to be used in $1,000 scholarships to students in the creative writing program. Ferd had often thought that if he ever stopped painting, he might try his hand at writing for a living.

Ferd soon identified a second candidate in hospice, this time a widower. James Stewart was dying of cancer. Half his bladder was gone and the end was in sight. Jimmy could be described as a larger-than-life soldier of fortune. A handsome man with a ready smile, despite his unfortunate circumstance. A risk taker who had made and lost fortunes, currently on Medicaid. A skilled card player who had been denied access to the local blackjack tables after they realized he could count. Jimmy easily understood the purpose and benefits of the marriage plan when Ferd explained it to him.

Harry identified the target bride -- one Marigold Flowers. A still attractive widow of several marriages resulting in a net worth well North of $10 million. Even though she had no plans to have either exemption used for many years (she was only 90), she and her children of her first marriage were delighted to learn that she (or rather the children) could pick up another exemption for only a $100,000 gift to FGS. The second marriage went as planned. The papers were signed, bonds were purchased, the money paid, Jimmy and Marigold met, were married, shook hands, and parted -- never to meet again. Except they did meet again.

After the happy event, Ferd started visiting Jimmy more often, concerned about how long he would live. He did not know that Jimmy had recently fallen under the care of a new oncologist, Sanjean Lee, who came to University Hospital from Sloan-Kettering where he had been involved with an extensive study of bladder cancer patients who were given experimental drugs . More than 90% of patients failed to respond to the experimental treatment. But a 73 year old lady had been cured. A genetic analysis of her tumor revealed a rare mutation-a biomarker-that made her cancer sensitive to the molecular pathway that the experimental drug targeted. The drug, already FDA approved for kidney cancer, had been used off label to cure her bladder cancer.

A gambler at heart, Jimmy readily accepted Dr. Lee's offer to give him the drug. It worked. Quickly. Thus it was to Ferd's extreme amazement and perhaps dismay to find Jimmy being discharged from hospice. Not only was he not dying, but he was making plans to spend the $25,000 funeral fund before Medicaid found out. Morgan managed to sell the death put bonds at only a small loss and retire the margin account. Jimmy had planned to sell the bonds himself as a joint owner.

Jimmy was happy, but Marigold and children were not. Despite the foundations reimbursement of $100,000, the charade of having Marigold marry a con-man with some unfortunate publicity, prompted her family to report the scam to the sheriff. Unfortunately, for the do-gooders, a number of elderly people were being scammed with various fraudulent schemes at this time. The prosecutor seized upon this opportunity to make an example of those who would take advantage of the elderly.

When did Jimmy and Marigold meet again? A year after his cure, Jimmy started going to the Cincinnati Bridge Club to learn duplicate, not knowing that Marigold had been a grand master there for decades. At the first meeting, without nametags, they thought they might know each other, but didn't know how. After all, it had been dark in that hospice chapel and Jimmy had been a shell of his current vigorous self. The common interest in duplicate soon calmed the waters.

Acknowledging that they were partners in marriage, they became partners at the table and Jimmy soon began to acquire master points. At the parole hearing, victims are given a chance to tell the parole board why they think the parole should be denied. Ferd had been dismayed at their hearing when he saw Jimmy and Marigold in the room. Then he noticed that they were smiling at him and holding hands. When it came time for them to speak, they surprised the board by saying that all was forgiven, the marriage was solid, and the prisoners should be set free.

Their parole officer agreed that it would be an important step for their reintroduction into society for all four to reinstate the Breakfast Club. They agreed. Horace was called, the table secured, and a meeting scheduled for the following Wednesday. Understanding the stress on the parolees, Topher offered to present at the first meeting. He read a poignant account of his son's experience as a college athlete. Ferd managed to tell a shaggy dog joke at the end of the meeting. Then he surprised the others by suggesting that they bring their wives to the next meeting. He said that his wife had always wondered what they did at the Club and why it was so important to them. Without really thinking about the consequences, they agreed.

So it was that eight people showed up the following Wednesday. But, the start time was changed to 8:30 because Harry's wife did yoga at seven. And, they could not do a fixed plate because Morgan's wife, a gluten-free vegetarian, wanted to order from the menu. Additional time passed because the ladies room was on a different floor, not convenient to the Club table.

In time, however, the meeting came off without incident. Ferd read a thoughtful piece on how Catholics and Episcopalians differ on certain beliefs - designed to stimulate thoughts - but not for current discussion. The meeting did run over because Topher's wife suggested to Ferd in rebuttal that a certain verse in Isaiah II refuted his premise. Harry, who had joke duty, was grateful time had run out. He had struggled to come up with a suitable mixed company joke.

Remembering the old picture of the four comrades with mugs on high, Harry's wife had suggested that they have Horace take a picture of this groundbreaking meeting. She produced a camera. Horace snapped several shots. Later she selected the best picture and sent one to each of the men… four smiling ladies with four somber partners.

The day after receiving the picture, the comrades met for an unscheduled lunch. Topher started the meeting with the bad news that they had probably violated Section 10(b) of the Exchange Act in the first deal by claiming that Emily Oliver was an owner of the bonds since she put nothing in the joint account. He thought he could get the SEC to settle, but only if they would disgorge to GE Capital the $50,000 they made on the bonds. Didn't they want to wipe the slate clean?

That prompted a full discussion of all that had transpired including the last Club meeting with the ladies. They reached a decision, and that afternoon, Ferd called Horace to cancel the Breakfast Club table for the following Wednesday-**and forevermore**.

Lewis Gatch   The Literary Club   February 9, 2015