

Special 30th Anniversary Issue (1979 - 2009)

Letter from the Chair

We are pleased to present this special issue of *Bifocal*, celebrating the 30th anniversary of the ABA Commission on Law and Aging.

I have been honored to chair the Commission for the past three years and can say, based on my many years in the profession and involvement with the ABA and its many worthwhile divisions, sections, committees, commissions, and other entities, that the Commission on Law and Aging is one of the brightest jewels in its many-faceted crown.

The Commission's esteemed reputation is due, in large part, to the professional staff, led by Staff Director Charlie Sabatino and Assistant Director Erica Wood, both of whom have been with the Commission almost since its inception. Having worked with all of the Commission's professional staff I can say without hesitation of contradiction that they are some of the most highly-regarded professionals in their respective areas of concentration in elder law.



Joe O'Connor

The Commission also owes much of its success over the years to the many leaders both within and outside of our profession who have served with great distinction as members (*see page 110 in this issue*).

Our association has been blessed with the untiring volunteer efforts of some of the best and brightest lawyers from across the country, supported by some of the hardest working and smartest staff that can be imagined. The Commission on Law and Aging members and staff exemplify these attributes.

—Joe O'Connor, Chair,
ABA Commission on Law and Aging
(2006-2009)

Inside the Commission

Reflections on the Origins of the Commission on Law and Aging

By Daniel L. Skoler

In 1977, when then-ABA President William B. Spann determined to add the concerns of senior citizens to the association's roster of public service priorities, the Washington office was a fertile garden for new initiatives of this kind. The ABA's Public Services Division had recently moved its location from Chicago to Washington and there was a real enthusiasm for exciting and diverse programs of this kind. Moreover, success with operating formats, such as specially focused bar committees and interdisciplinary "commissions," coupled with opportunities for public and charitable funding to expand such endeavors, had opened a world of new possibilities.

Through these units, the ABA was increasingly able to study a variety of issues, marry formidable volunteer leadership to talented staff specialists, and then formulate responses ranging from policy positions to study reports, clearinghouse functions, demonstration projects, working conferences, and collaborative advocacy.

President Spann proceeded by designating a special task force to examine the status of the legal problems and needs



Daniel L. Skoler

Continued on page 86

Daniel L. Skoler is the former director of the ABA Public Services Division (1971-1980) and member of the Commission (1980-1986).

Notable Quote

For far too many older Americans, the economic challenges of today are becoming the legal problems of tomorrow.

—Kathleen Sebelius,
Secretary of Health and Human Services,
in a press release dated May 1, 2009.

BIFOCAL

BAR ASSOCIATIONS IN FOCUS ON AGING AND THE LAW
JOURNAL OF THE AMERICAN BAR ASSOCIATION
COMMISSION ON LAW AND AGING

Commissioners

Joseph D. O'Connor, Chair
Betsy J. Abramson
John J. Copelan Jr.
Arthur R. Derse
Israel Doron
Robert B. Friedland
Sarah Lenz Lock
Jennifer Moye
Rudolph N. Patterson
Karen J. Sarjeant
Barbara A. Soniat
Jeffrey J. Snell
Linda S. Whitton
Kate Wilber
Hon. Rhonda Reid Winston

Board of Governors Liaison

Larry McDevitt

Commission Staff

Charles P. Sabatino, Director
Erica F. Wood, Assistant
Director
Lori A. Stiegel
Leslie B. Fried
David Godfrey
Ellen VanCleave Klem
Jamie Philpotts
Sonia Arce
Trisha Bullock

Editor

Jamie Philpotts

BIFOCAL, ISSN 0888-1537, is published bi-monthly (six times a year) by the ABA Commission on Law and Aging, 740 15th St., N.W., Washington, DC 20005. The views or opinions expressed herein do not necessarily represent the policies of the American Bar Association unless specifically adopted as such. Questions? Contact the Commission at (202) 662-8690, or see our Web page at: www.abanet.org/aging. © 2009 American Bar Association.

Reprint and Reproduction Requests

All ABA content is copyrighted and may be reprinted and/or reproduced by permission only. In some cases, a fee may be charged. To protect the integrity of our authors' work we require that articles be reprinted unedited in their entirety. To request permission to reprint or reproduce any ABA content, go to the online reprint/reproduction request form at:

http://www.abanet.org/abastore/index.cfm?fm=static&url=http://www.abanet.org/abastore/front_end/static/permissions.html

Inside

- 85 Letter from the President of the American Bar Association H. Thomas Wells Jr.
- 91 ABA Commission Members on the Cutting Edge: Nancy Coleman and Erica Wood Remember
- 103 Federal Trade Commission Offers Free Resources to Deter Consumer Fraud
- 105 Elder Law 2009 - 2039?
- 110 List of Distinguished Commissioners
- 111 Test Your Knowledge of Elder Law and Policy
- 112 ABA Commission Offers CLE Podcast Series for Elder Law Attorneys
- 112 Updated Resources on Elder Abuse and Guardianship (113)

Then and Now (1979-2009) Charts

- 86 Medicare Part B
- 88 Elder Law
- 90 Health Care Decision-making
- 98 Private Pay Rates for Nursing Home Stays
- 102 Guardianship
- 107 Supplemental Security Income



How Are We Doing?

Won't you please take a moment to participate in a short survey about the work of the ABA Commission on Law and Aging and our National Legal Resource Center partners in legal service delivery programming. The survey will only take a few minutes, but your input will be used to shape future programming. Note that the survey will close August 7, 2009. To access the survey, go to:

https://abanet.qualtrics.com/SE/?SID=SV_5tMLLqIshbc1CHa&SVID=Prod

—David Godfrey, Senior Attorney,
ABA Commission on Law and Aging,
Godfreyd@staff.abanet.org

Letter from the President of the American Bar Association H. Thomas Wells Jr.

Thirty years ago, the ABA had the foresight to create a task force to anticipate the coming legal, policy, and practice challenges of an aging society. The fruit of that task force was the creation of a multi-disciplinary

commission in 1979, known today as the ABA Commission on Law and Aging. This year, under the leadership of chair Joe O'Connor, the Commission is celebrating 30 years of cutting-edge research, education, and technical assistance on a vast array of federal and state law and aging issues. It is a stellar example of the ABA's vision, energy, and leadership in carrying out some of its core goals by improving the knowledge and skills of members of the legal profession, increasing public understanding of the legal process, and working for just laws and a fair and accessible legal process for elders. Our Commission includes ABA members, as well as professionals from other aging-related disciplines.



H. Thomas Wells Jr.

The Commission reached its full stride under nine years of chairmanship by ABA legend John Pickering, beginning in 1985. John continued to stay involved in the Commission's work thereafter as liaison and special advisor until his death in 2005. The work of the Commission's professional staff of six attorneys today includes extensive partnerships with other disciplines, researchers, and advocates. Examples include collaborations with the Alzheimer's Association to improve Medicare policy, with the American Psychological Association to produce guides to capacity assessment, with other ABA entities to advance emeritus attorney *pro bono* projects, with university-based research centers to conduct elder abuse research, and with AARP to improve guardianship law and practice. The Commission staff attorneys are recognized across the country and internationally as leaders on the legal issues facing seniors at all levels of society.

The Commission has also been successful in leveraging the ABA's core support with substantial outside funding; sixty percent of the Commission's budget derives from grants and contributions. Like other ABA entities, the Commission is now faced with a greater strain on outside support than ever before. Yet, as the graying of society continues, the need for the Commission's forward-thinking work will only increase. Members can best help celebrate the Commission's anniversary through a designated contribution to the Fund for Justice and Education. With much optimism, I look forward to seeing another 30 years of Commission leadership in the field of aging, as it carries out its mission—to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of elders.

To learn more about the work of the Commission on Law and Aging, go to <http://www.abanet.org/aging>. To contribute financially, visit the ABA Fund for Justice and Education at <http://www.abanet.org/fje> and specify the Commission on Law and Aging for your donation.

Let the ABA Commission On Law and Aging Help You in Your Work

The ABA Commission on Law and Aging provides valuable professional and consumer resources, technical assistance and legal education, and research on a wide-range of critical issues affecting older persons, including:

- Legal Services Access and Delivery
- Elder Abuse
- Guardianship and Conservatorship
- Dispute Resolution and Mediation
- Professional Ethical Issues
- Housing Options and Needs
- Health and Long-term Care Quality, Planning, and Decision-making
- Social Security, Medicare, Medicaid, and Other Public Benefit Programs

The ABA Commission on Law and Aging provides a forum for legal professionals to communicate and share ideas on two active listserves—**Elderbar** and **Collaborate**—and distributes a bimonthly e-journal *Bifocal*.

Find up-to-date and practical information on the Commission's publications Web page, which offers an extensive catalog of professional and consumer resources on a wide range of issues of concern to elder law practitioners, advocates, and older persons.

See how the ABA Commission can help you. Visit us online at:

www.abanet.org/aging



Reflections on the Origins of the Commission on Law and Aging

Continued from page 83

confronting our elderly population, to determine whether, indeed, the ABA could play a constructive role, and to suggest what structure and broad priorities for an association program seemed most promising. With the nation's elderly citizens steadily moving toward 15 percent of the total population and increasingly severe strains on their economic and social status being imposed by inflation, bureaucracy,

resource scarcity, and benefit program squeezes, this appeared to be a pressing area for public service attention.

The task force reported out in mid-1978, affirming the value of an ABA initiative and suggesting that this might be best implemented through an interdisciplinary commission. It identified four priority areas that seemed worthy of attention—provision of legal ser-

vices to the elderly, discrimination against the elderly, simplification and coordination of administrative procedure and regulation, and rights of persons subject to institutionalization or subsidized care. The task force also reviewed prior work relating to older persons within other units of the ABA, urging that this be continued, that duplication be avoided, and cooperation fostered. Where feasible, the Commission was to mobilize and stimulate the talents and contributions of other ABA entities undertaking work in the field rather than replace them.

The task force report was favorably received and at the ABA's 1978 annual meeting, the establishment of a new interdisciplinary Commission on Legal Problems of the Elderly was authorized by the ABA governing bodies.

Appointments to the Commission were made in late 1978 and its first meeting was held in February 1979. This initiative brought together an outstanding group of practicing attorneys, legal educators, specialists in aging, and non-lawyer experts on problems of the elderly, including key federal officials, national organization leaders, and two former secretaries of the U.S. Department of Health, Education and Welfare.

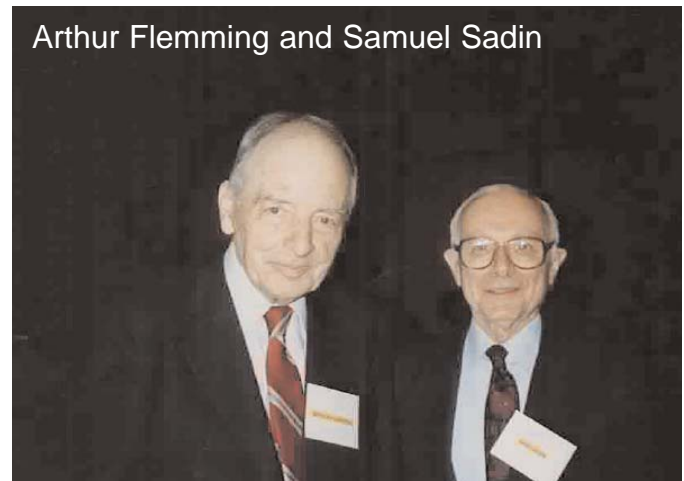
The new Commission established a committee structure based on its four major priority areas. By midyear 1979, it was intensively engaged in problem analysis and program development efforts. A grant award from the American Bar Endowment made possible the retention of a small full-time staff to support the Commission's effort in its first year of activity, which grew steadily over the next few years to reach a plateau of roughly 8 to 10 well-chosen members as its funded project portfolio grew.

From these beginnings emerged a truly significant and extraordinary effort that, contrary to expectations of its founders, went on to produce thirty years of steady leadership, service, hard work, and contributions to the cause and interests of our older citizens—and continues, from all indications, to be moving forward at full strength today.

How could this have happened and what was so unique about the Commission's launching? That's hard to say but,



Arthur Flemming and Samuel Sadin



Then and Now (1979 - 2009): Medicare Part B

- In 1979 the Medicare Part B monthly premium indexed to \$8.70 for all beneficiaries.
- In 2009, the Medicare Part B monthly premium starts at \$96.40 and goes up to as much as \$308.30 for very high income beneficiaries.

Source: 1979 rate, Jennifer O'Sullivan, *Medicare: Part B Premiums*, CRS Rpt. for Congress, Sept. 14, 2004 <www.law.umaryland.edu/marshall/crsreports/crsdocuments/RL32582.pdf>; 2009 rate, Medicare Part B Monthly Premiums in 2009 <https://questions.medicare.gov/cgi-bin/medicare.cfg/php/enduser/std_adp.php?p_faqid=2099dicare>.



“No ABA-related activity was more enjoyable or rewarding for me. And, as the population ages, your research, publications, and advocacy become ever more critical and valuable for those of us fortunate to be among the elderly who, in our own lives or as advisors to others, need to cope with the aging process. Having recently served eight years as a court-appointed guardian in separate states with conflicting rules and requirements, I surely applaud your efforts in support of uniform laws.

in retrospect, it seems, first, that the time was terribly right; and second, whether by design or good fortune, the Commission’s founding fathers did virtually all the right things.

First, the use of a talented and well-chosen task force to carefully study the design and wisdom of a focused public service effort addressing legal problems of the elderly was not only “good form,” but yielded a sound product design.

Second, the choice of an interdisciplinary Commission, rather than an all-lawyer committee, and the filling of that Commission’s roster with a stunning and diverse selection of appointees—both “top of the mountain” figures (such as Arthur Flemming, Wilbur Cohen, and Robert Butler) and up-and-coming ABA legal stars (such as George Alexander, Esther Lardent, Paul Nathanson, Fernando Torres-Gil, and Erica Wood)—assured creative depth.

Third, the hiring and launching of the right staff director resulted in the era of Nancy Coleman, whose performance and destiny, as it turned out, encompassed “heads up” leadership for a full 25 years.



Nancy Coleman

Fourth, the selection of wise and meaningful program priorities for initial concentration and the initial selection of veteran chairs assured stability. The first two chairs, Lyman Tondel, followed by John Pickering, provided more than 15 years of stable and dynamic stewardship for the Commission, followed, happily, by a succession of equally dedicated “normal term” chairpersons.

From this base, the Commission would go on to compile an impressive record of service in continuing education, policy development, rights advocacy, state and local bar partnerships, “hard issue” analysis and confrontation, legal services field support for programs funded by the federal Administration on Aging, national aging and law conferences, and expansion of the original 1979 program priorities to encompass such vital aging areas as guardianship, elder abuse, housing needs, planning for incapacity, federal benefit program participation, and health care decision-making—all adding up to a hard-to-measure but clearly enormous impact beyond its modest size and numbers.

The writer is well aware that these reflections on Commission beginnings by a former ABA staffer, who was there at the time and had the responsibility (as Public Service Activities Division Chief) of helping with the start-up of the Commission may have taken on the look of a eulogy. This is hardly an intended result. Yet, a close reflection on and study of its 30-year record cannot help but justify a respectful salute and warm pat on the back for the kind of excellence and accomplishment that honors the ABA and assures a well-earned place among the ABA’s corpus of public service achievements touching so many facets of law and society.

New Resource

Making Medical Decisions for Someone Else

The ABA Commission on Law and Aging is pleased to release a new consumer resource titled *Making Medical Decisions for Someone Else: A How-to Guide*. Please share this publication with your clients, your staff, and your loved ones.

This guide offers advice on steps to follow in making health care decisions for another, how to work within the health care system, resolving health care decision disputes, and the most common situations faced by persons called on to make health care decisions for someone else.

The guide is free and can be printed from the Web site of the ABA Commission at: www.abanet.org/aging/pdfs/genl-proxyguide2009.pdf.

Making Medical Decisions for Someone Else: A How-To Guide



The American Bar Association
Commission on Law and Aging



Then & Now (1979 - 2009):

Elder Law



Then—1979

- Elder law didn't exist as a field or even as a word.
- Americans over age 65 numbered 24.4 million and made up 11% of the population.
- The Older Americans Act authorized funding for "legal services" for older persons starting in 1973.
- The Administration on Aging funded a few fledgling national support projects, such as Legal Research & Services for the Elderly and the National Senior Citizens Law Center.
- About 120 publically-funded legal services for the elderly projects existed nationwide.
- Bar projects serving the elderly existed in about 20 states, most often no-cost or low-cost lawyer referral programs.
- No association or certification of elder law lawyers existed.
- No state bar had an elder law section. About half had a committee on the elderly.
- Ten law schools were known to have law and aging seminars or clinical programs.
- No elder law journal existed. Only two lawyer-practice guides were available.

Now—2009

- Elder law is now a widely recognized area of practice.
- Americans over 65 number 38.9 million and make up 12.8% of the population
- The OAA continues to fund "legal assistance" in all states, plus hotlines in 26 (plus DC and PR), and model approaches programs in 13 (plus 11 new ones in 2009).
- The Administration on Aging funds a collaborative National Legal Resource Center, comprised of the Commission on Law and Aging and four other national groups.
- All 655 Area Agencies on Aging fund some legal assistance.
- Bar projects exist in every state.
- The National Academy of Elder Law Attorneys and an ABA-approved certification program thrive today.
- Thirty-two state bars have active elder law sections and an additional seven have committees.
- More than 100 law schools nationwide teach elder law courses or clinics.
- Two law schools (U. of Illinois and Marquette) publish dedicated elder law journals, as does NAELA. Several state bar elder law sections and all major law publishers publish practice manuals.

Commission Contributions

- With the Borchard Foundation, the Commission has awarded nearly 100 "mini-grants" totaling \$730,000 to local non-profit law-related organizations to enhance the rights of seniors.
- Brought together lawyers serving older clients who eventually established the National Academy of Elder Law Attorneys in 1988.
- Commission has been funded by the U.S. Administration on Aging for 26 years to serve as a National Legal Support Center for the aging network.
- Successfully brought 42 major policy resolutions on law and aging to the House of Delegates over 30 years.
- Published the first *ABA Legal Guide for Older Americans* with the ABA Division for Public Education.
- Provide online comparative charts, annually updated, of state legislation in health care decision-making, guardianship, and elder abuse.
- Track and support bar committees on elder law and provide the *Bifocal* e-journal and CLE support.
- Track and promote bar emeritus attorney programs and *pro bono*.
- Sponsored major national conferences and reports on access of the elderly to the courts.

Inside the Commission

What Is the Medicare Advocacy Project?

The Medicare Advocacy Project is a collaborative effort between the Alzheimer's Association and the American Bar Association's Commission on the Law and Aging. It was established in 1998 by the Alzheimer's Association to address Medicare coverage issues for people with Alzheimer's disease and to respond to Alzheimer-related Medicare inquiries from Alzheimer's Association chapters throughout the country.

The Medicare Advocacy Project:

- Responds to inquiries from Alzheimer's Association chapters regarding Medicare problems;
- Advocates for increased Medicare coverage of services for individuals with Alzheimer's disease;
- Identifies problems, patterns and trends, and assists with the development of appropriate federal policy positions related to Medicare and health care delivery; and
- Prepares materials about Medicare coverage.

Medicare Problem Areas include:

- Coding and billing errors;
- Drug benefit problems;
- Physical, occupational, and speech therapy denials;
- Psychiatric, psychological, and mental health services denials; and

- Access to and denials of hospice and home health care.

Medicare Advocacy Materials

The Medicare Advocacy Project has developed numerous fact sheets and other materials on the Medicare fee-for-service program, including:

- Frequently Asked Questions about Medicare for People with Alzheimer's Disease;
- Original Medicare: An Outline of Benefits;
- Medicare's Hospice Benefit: Frequently Asked Questions about Medicare's Hospice Benefit for Alzheimer's Beneficiaries;
- Medicare Savings Programs;
- Basic Facts about the Medicare Drug Benefit; and
- Special Considerations When Choosing a Medicare Drug Plan for People with Alzheimer's Disease.

These materials can be obtained on the Alzheimer's Association Web page or ordered from the Alzheimer's Association's Public Policy Office in Washington D.C.

All Medicare Advocacy Project materials are online at: <http://www.alz.org/Resources/FactSheets.asp>.

To Contact the Medicare Advocacy Project:

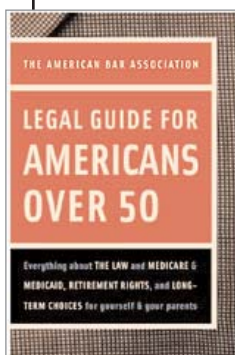
Leslie B. Fried, Project Director
(202) 662-8684
friedl@staff.abanet.org
Leslie.Fried@alz.org

Bestseller

ABA Legal Guide for Americans Over 50

By the staff of the ABA Commission on Law and Aging

This book is an essential reference for baby boomers and their parents. It covers everything from choosing the best pension plan to finding affordable housing and getting appropriate eldercare. It features the most recent changes in healthcare and Social Security laws, and explains the ins and outs of legal issues concerning income tax breaks, estate planning, and everything to do with the legal protection and well-being of all Americans over 50 years of age.



The *ABA Legal Guide for Americans Over 50* explains how to:

- Write wills, establish trusts, and plan estates;
- Get the most out of Medicare and Medicaid;
- Divide property, share debt in case of divorce;
- Request grandparent visitation rights;
- Apply for health care benefits and housing;
- Collect Social Security benefits;
- Protect savings and prepare for retirement; and
- Deal with the legal issues of caring for aging parents.

\$16.95 (\$14.40 for ABA Members). PC # 2350226/ ISBN: 978 0375 721397. 320 pp.

This book is available for purchase online at <http://www.ababooks.org>, or by calling the ABA Service Center at (800) 285-2221.



Then & Now (1979 - 2009):

Health Care Decision-Making



Then—1979

- Ten states had “living will” statutes.
- No state had a proxy directive. Some six cases nationally addressed the right to refuse life-sustaining treatment, the most well-known being the 1976 *Karen Ann Quinlan* case of N.J. All affirmed the basic right.
- The term “advance directive for health care” didn’t exist. A miniscule fraction of adults had a living will or anything else that would qualify as an advance directive.
- No state had default surrogate decision-making laws authorizing close family members to make end-of-life decisions.
- No national model for state health decisions legislation exists.
- No state had a do-not-resuscitate (DNR) order that could be honored by EMS personnel or others outside of a hospital or other institution.
- No hospice benefit existed in federal law and was rare under private insurance.

Now—2009

- Every state has legislation recognizing living wills and proxy directives (health care powers of attorney).
- More than 300 reported cases nationally have affirmed the right to consent to or refuse treatment under appropriate safeguards. The most well-known case is the 1990 *Nancy Cruzan* decision of the U.S. Supreme Court.
- Advance directives for health care are widely known, both proxies and living wills. About one-third of adults and over half of those over age 55 have one.
- Forty-four states have default surrogate decision-making laws.
- The Uniform Law Commissioners promulgated three generations of a model act—a Uniform Rights of the Terminally Ill Act (1985), a revised Act (1989), both replaced by the Uniform Health Care Decisions Act in 1993.
- All but two states have “out-of-hospital” DNR protocols and nine have expanded the concept into Physicians Orders for Life-Sustaining Treatment (POLST), addressing other high-probability decisions.
- In 2007, 38.8% of all deaths in the U.S. were under the care of hospice.

Commission Contributions

- Spoke at more than 60 major professional meetings on health decisions and advance planning.
- Worked with Uniform Law Commissioners in shaping the Uniform Health Care Decisions Act.
- Served in advisory or consultative capacity for more than 30 federal, state, university-based, and non-profit national groups on health decisions.
- Responsible for five key ABA policies on end-of-life and palliative care.
- Led ABA support for the 1990 federal Patient Self-Determination Act.
- Produced 1987 award-winning video featuring the “First Lady of American Theater” Helen Hayes.
- Produced the ABA/AARP/AMA joint publication on advance directives in 1990, endorsed by columnist Ann Landers.
- Produced more than 30 research reports, articles, professional practice aids, and public education materials on health decisions and advance planning.
- Continued efforts to strengthen the Medicare hospice benefit.

ABA Commission Members on the Cutting Edge: Nancy Coleman and Erica Wood Remember

Upon the celebration of the 30th anniversary of the ABA Commission on Law and Aging, we look back as long-time Commission staff and marvel at the number of Commission member volunteers that have been shining stars and true change-makers in enhancing the rights and quality of life of older people.

The Commission is a 15-member interdisciplinary body of experts in aging and law, including lawyers, judges, health and social services professionals, academics, and advocates, appointed by the ABA president. The word “interdisciplinary” is key. The Commission has seen itself as being “on the cutting edge of law and social policy.” There are many instances in which truly creative Commission members have partnered with staff to take some law and policy leaps on behalf of the growing older population, especially the most vulnerable.



The two of us have served a collective total of 54 years as Commission staff—Nancy for 25 years as director, ending in 2005; and Erica for 29 years as staff attorney and currently assistant director. We have had the privilege of working with a parade of stellar Commission members over the tumble of years and projects—movers and shakers, idea-generators, and even some giants in the field. Often the trick has been to have keen policy experts along with staunch ABA leaders, who can skillfully pilot policy through the association’s House of Delegates. In other instances, well-connected Commission members could leverage funds, spark partnerships, make a persuasive case before Congress, or model effective programs in their own states.

It is difficult to capture on paper the vibrancy of the discussions at Commission meetings over three decades—the chain reactions of ideas that frequently sent staff scurrying down new directions. And it is not possible to name everyone

Nancy Coleman is the former director, and Erica Wood is the current assistant director, of the ABA Commission on Law and Aging.

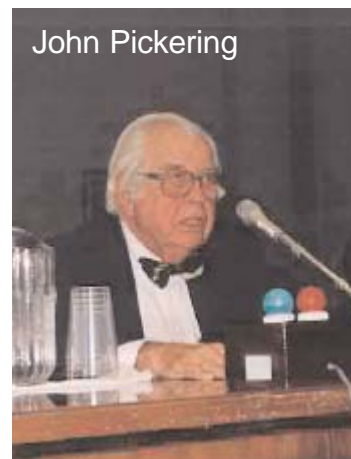
who served and contributed perspectives. Here are a few snapshots we most remember.

Exceptional Leaders

Certainly each of the seven Commission chairs put his or her own stamp on the group’s history. It was cigar-smoking **Lyman Tondel**—who had known his way around the ABA for years—that kindled the idea for the Commission in the first place. He was behind the creation of an original task force that recommended development of the Commission, and served as its first chair from 1979 to 1986—wrestling with its original four priorities of age discrimination, long-term care, legal services, and “simplification of administrative procedures and regulations.”

Early on, the Commission had a victory in age discrimination in employment. The ABA has long played a role in reviewing the qualifications of prospective federal judges. Archibald Cox had been nominated for the bench and the association found him not qualified because he was over age 60. The new Commission discussed this, and pressed internally within the ABA to remove the age restriction. The Commission’s stance became a major force as Congressional hearings were held, and eventually the policy was changed.

The most long-standing leader—the one who most personified the Commission in the larger association and wielded tremendous influence in the ABA House of Delegates—was **John Pickering**, a founding partner in the



Washington law firm of Wilmer, Cutler, and Pickering (now known as WilmerHale). From 1985 through 1999, as chair, and then as special advisor and liaison, the revered Mr. Pickering was able to take the Commission’s proposed recommendations—from universal health care coverage and end-of-life care to ombudsman standards, guardianship,

Continued on page 92

ABA Commission Members: On the Cutting Edge

Continued from page 91

advance directives, Social Security, and more—best shape them for the House of Delegates, speak forcefully on their behalf, and quell any opposition with his brilliant and formidable statements. He was nationally recognized for his devotion to *pro bono* services and advocacy for vulnerable individuals, but he was also a kind and funny man who was a friend to Commission members and staff alike. Interestingly, his wife **Helen Wright** and his daughter **Leslie Francis**, strong and well-known advocates both, served on the Commission as well!

While not a chair, **Arthur Flemming** was one of the Commission's most treasured and certainly most famous members. Dr. Flemming, over the years, served as Secretary of the Department of Health, Education and Welfare, Commissioner on Aging, Civil Rights Commissioner, and president of three universities. Throughout his adult life, he served every U.S. president in some capacity from FDR through Bill Clinton. All through the 1980s and beyond, his booming voice weighed in

at Commission meetings on key issues—especially of Social Security, Medicare, and health care reform—bringing to the table his memories going back to the Roosevelt administration. With boundless energy, he chaired a national task force on SSI in his eighties, and colleagues complained that they could not keep up with him as he traveled across the country. His strong advocacy on any issue of social justice was an asset to the Commission, and the staff felt privileged to know such a historical figure. One of Dr. Flemming's mottos was "Never accept a negative without fully exploring the positive"—which came in as handy advice in many Commission crises! Nancy had the special pleasure of having breakfasts with Dr. Flemming for over 15 years and being privy to his perspectives on issues of the day.

Sam Sadin, another early and strong Commission member, was the founder of the Institute on Law and Aging of the Brookdale Center on Aging at Hunter College. Sam had been an accountant in the first part of his life, but wanted to become involved in the elder rights issues that he increasingly saw around him. Sam mentored attorneys who later were among the founders of the National Academy of Elder Law

Attorneys. He served with Arthur Flemming on the SSI Modernization Task Force and, later, on the Social Security Representative Payee Federal Advisory Committee that Nancy chaired. His aim was for the Institute on Law and Aging to be a state version of the Commission, and it was a remarkable model.

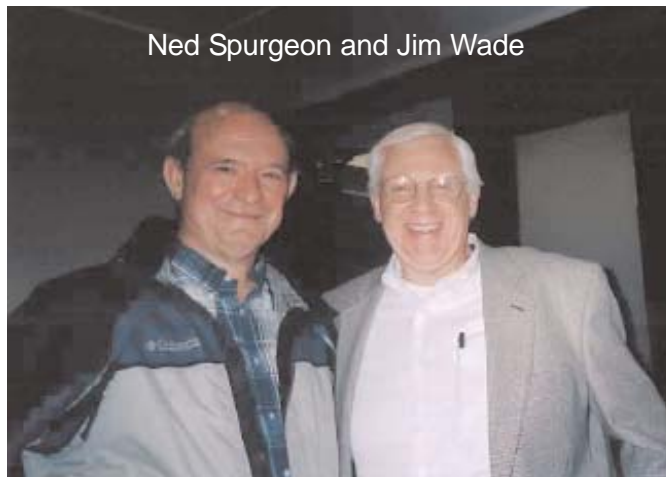
Fernando Torres-Gil was another early Commissioner. He had served as a White House Fellow, staff director to the House Select Committee on Aging, and later as the first assistant secretary for aging. Fernando brought the Commission contacts with the national aging organizations that later lead to Nancy's serving on the executive committee and board of the American Society on Aging. These contacts and work furthered one of the goals of the original Commission to bring law-related issues to the broader national aging community.

Ned Spurgeon left big footprints on the Commission's history and continues to be supportive. Ned spearheaded collaboration between the Commission and the Borchard Foundation Center on Law and Aging, which he directs. When the Commission's mini-grant program to encourage the legal awareness of older Americans through the Marie Walsh Sharpe Endowment was faltering, Ned proposed a new Partnerships in Law and Aging Program to be jointly funded by the Commission and the Borchard Foundation. For over a decade, the program gave out funds for imaginative model projects for public education, legal services outreach, elder mediation, long-term care advocacy, continuing legal education, guardianship, advance planning, and more. In some cases the initial funding triggered ongoing efforts that still benefit older people.

The Borchard Foundation Center co-sponsored several groundbreaking symposia, including the 1993 Fordham Symposium on Ethical Issues in Representing Older Clients, the 2000 Conference on Legal and Ethical Issues in the Progression of Dementia, the 2001 Wingspan conference on



Ned Spurgeon and Jim Wade



Larry McDevitt, Chair of the ABA Commission on Law and Aging (2006 - 2007)

“Serving as chair of the Commission on Law and Aging is the most valuable work I have done with the ABA. The members of the Commission are true experts in their respective fields. The staff of the Commission, whose advice is routinely sought on Capitol Hill, is renowned for its expertise. I believe the work of the Commission validates the proposition that the lawyers of America deserve the public trust.”



guardianship, and the 2007 Conference on Facilitating Voting as People Age: Implications of Cognitive Impairment. Thanks to the Commission's ongoing relationship with Ned, the Borchard Foundation sponsors a summer law intern for the Commission each year.

Dan Skoler had been the director of the ABA Public Services Division and worked with Lyman Tondel to develop the Commission's originating task force and then to create the Commission. Dan left the ABA less than a year after the Commission became a permanent entity. However he remained a close advisor, serving as a Commissioner, a consultant, and general supporter to the staff and Commissioners.

Through Dan's work as the Associate Commissioner for Social Security, he was able to bridge several aspects of the Commission's work: the protective aspect of the Social Security Representative Payee Program, the Social Security due process issues, and the court-related needs of the state and federal systems. Throughout the past 30 years Dan provided articles for the Commission's *Bifocal* newsletter and consulted on issues surrounding Privacy Act aspects in the Social Security program and the state courts. Finally, he challenged Commission director Charlie Sabatino by inviting him to co-teach a law and aging seminar at Georgetown Law School, where he continues as an adjunct professor today.

Our most recent chair, **Joe O'Connor**, partner in an Indiana law firm and active member of the ABA House of Delegates, conducted meetings with poise, civility and humor—including his infamous “ice breakers.” He piloted the group through issues as diverse as voting for individuals with cognitive impairments, use of emeritus attorneys, and invalidation of mandatory, binding pre-dispute arbitration clauses in long-term care facility contracts.

The Commission has been fortunate to have Commission members with close working relationships with many ABA sections and committees. This has proven instrumental in obtaining co-sponsorship for seminars, projects, and most importantly, recommendations before the ABA House of Delegates. John Pickering played this role extremely well, whether it was his position with the Senior Lawyers

or the Administrative Law sections. **Bill McCalpin** used his relationships with the Senior Lawyers Division to bring support to the Commission's activities—as did **Jim Carr**, a member of the House of Delegates with extensive ties to Tort and Insurance Practice and many other association entities. The Commission has a robust number of liaisons who attend its meetings, including from the Government and Public Sector Division, the Health Law Section, the Section on Real Property, Trust and Estate Law, the Senior Lawyers Division, Young Lawyers Division, and at times over the years the Section on Individual Rights, the various committees of the Legal Services Division, and the Bioethics Commission.

Legal Resources

A key driver and source of support throughout the Commission's history has been its grants from the U.S. Administration on Aging to enhance legal resources for older people. First awarded in 1981, the grants to the Commission and to partners, such as the National Senior Citizens Law Center, the Center for Social Gerontology, and the AARP Legal Counsel for the Elderly, were an early centerpiece in what became the Administration's elder rights strategy. The Commission, of course, sought to bolster action by the private bar, but went beyond that to strengthen delivery of legal services in other ways as well.

A cadre of skilled Commission members helped to make this happen. **Esther Lardent**, known early on as “the queen of *pro bono*” instilled in staff the importance of quality assurance measures in *pro bono* projects. Commission chair **Bill McCalpin** twice served on the board of the national Legal Services Corporation across four decades—and, thus, brought deep LSC perspectives and connections to the table; as later did **Karen Sarjeant** as vice president of LSC. **Alex Forger**, who served as chair of the Commission, left to become president of the the LSC under the Clinton administration. **Allan Bogutz** was one of the few private lawyers in the early 1980s whose practice focused primarily on older

Continued on page 94

ABA Commission Members: On the Cutting Edge

Continued from page 93

clients. At an ABA annual meeting program in the mid-1980s, the Commission brought Allan together with four other such practitioners to highlight this then-unique service—a forerunner of “elder law” and the eventual development of the National Academy of Elder Law Attorneys.

Jack Martin, an attorney with the Ford Motor Company, was tasked by the Ford general counsel to develop a corporate *pro bono* program. His wife was interested in gerontology and was working with one of our other Commissioners, **Harold Johnson**, the dean of the University of Michigan School of Social Work. Jack asked for the Commission’s help in setting up a corporate *pro bono* program serving older clients in Detroit—which encouraged the Commission’s extensive work to generate corporate counsel *pro bono* programs nationally. Jack later joined the Commission. Harold served two different Commission terms and brought his broad knowledge of the field of aging to the Commission’s work. Harold had also served as Nancy’s first mentor in aging—convincing her to attend the University of Michigan and subsequently placing her with Citizens for Better Care in Michigan, where she worked on issues of nursing home reform.

Paul Nathanson, a member of the Commission’s first “class” in 1979, and later **Burt Fretz**, as executive directors of the National Senior Citizens Law Center, spurred an ongoing relationship between the Commission and the Center. **Natalie Thomas**, one of the country’s most active and experienced “legal services developers” named through the Older Americans Act, ensured that Commission activities were reflected in and connected with her network of colleagues in each state. **Dick Allen**, a quiet and steady source of wisdom, contributed knowledge from his prior life at the *ABA Journal*, and served admirably as our Senior Lawyers Division liaison, as well as a Commission member.



Natalie Thomas

Aging Advocacy

The Older Americans Act provided an opportunity to work with aging advocates across the country. **Doug Nelson**, the youngest state aging director, came to the Commission as the

deputy director of the umbrella health and social services agency in Wisconsin and now serves as the president of the Annie E. Casey Foundation. He challenged the Commission to think broadly about the array of aging services to include health, welfare, housing, and income security. **Trish Riley**, who served as the state director on aging in Maine and is now director of the governor’s office of health policy and finance, focused Commission attention on advocacy that included the state health assistance programs. **Shauna O’Neil**, long-standing director of the Salt Lake City Area Agency on Aging, pushed the Commission to become more involved in providing model programs for the delivery of legal services under the Older Americans Act and through the early mini-grant program.

Other advocates and gerontologists enriched the Commission’s activities as well. **Jon Pynoos** of the USC Andrus Gerontology Center brought to the Commission’s aging advocacy his expertise in housing, accessibility, and home modification. **Kate Wilber**, also of the Andrus Gerontology Center, contributed extensive knowledge of elder abuse, health, and long-term care. **Jim Firman**, currently president and CEO of the National Council on the Aging, brought ties to aging organizations and pressed the Commission on public benefits, long-term care insurance, and other insurance issues.

Wisconsin attorney **Betsy Abramson** is certainly an aging advocate *par excellence*, who brought to the table an invaluable mix of long experience in elder abuse, guardianship, long-term care, and the development of elder law. Often Betsy took Commission priorities and played them out in Wisconsin—and brought practical grassroots issues from Wisconsin to temper the Commission’s national perspective.



Betsy Abramson

Health and Long-Term Care

The Commission traditionally has included a physician in its roster, ensuring that the views of the medical community—and especially the view from the bedside, the emergency room, and the ethics committee—were brought into the mix. **Robert Butler**, famed author of the classic 1975 book called *Why Survive? Being Old in America*, and later a founding director of the NIH National Institute on Aging, was the first; followed by **Dr. Joanne Lynn**, **Dr. Tom Finucane** of Johns Hopkins, **Dr. Joan Teno** of Brown Medical School, **Dr. Art Derse** of the Medical College of Wisconsin, and others.

From the beginning, the Commission took a deep interest in Medicare. Commission member **Judy Stein**, director of the Center for Medicare Advocacy, strengthened the Commission's Medicare role, ensured coordination with the Center, and challenged us to look more closely at low-income beneficiaries.

Commission member **Stephen McConnell**, then vice president of public policy of the Alzheimer's Association, recognized that the Alzheimer's Association needed ongoing legal expertise in Medicare to assist its chapters throughout the country and to voice its positions before Congress and the formerly-Health Care Financing Administration (now

Centers for Medicare and Medicaid Services). Steve felt that the Commission could partner with the Alzheimer's Association to bring this Medicare Advocacy Project to fruition. With Steve leading the way, the Association secured ongoing foundation monies for a Commission staff attorney to aide Alzheimer's chapters and their constituents and assist in Medicare advocacy. Once Leslie Fried was brought on staff in this dual Commission and Alzheimer's Association role, she scored a huge victory in September 2001. As a result of her extensive advocacy efforts, CMS issued a pro-

Continued on page 97

*Hon. Kristin Booth Glen, Commissioner (1994 - 1997),
Chair (2002 - 2005), and Liaison (2008 - present),
of the ABA Commission on Law and Aging*

“ It is no exaggeration to say that my service on the Commission on Law and Aging, first as a member and later as chair, has been among the most rewarding professional experiences of my life. It is also an incredible honor, as well as quite humbling, to have followed such greats as Arthur Flemming, John Pickering, and Alex Forger, and to have worked with directors Nancy Coleman and Charlie Sabatino.

The work of the Commission on Law and Aging, from its inception, has been at the forefront of using law to preserve and protect the autonomy and dignity of older persons, especially those most vulnerable because of gender, race, poverty, and disability.

From its pioneering work on adult guardianship and capacity, which I have referenced countless times as a law professor, judge, and a judicial educator, to elder abuse, Medicare and Medicaid, end-of-life decision-making and care, and protection of what the Universal Declaration of Human Rights guarantees as “a secure retirement” through its defense of Social Security, the ABA Commission on Law and Aging has provided critical research, analysis, and advocacy for policy makers, legislators, litigators, and older persons and their advocates. From wholesale law reform to changes in practice “on the ground” in myriad settings (nursing homes, hospitals, hearing rooms, prosecutors’ offices, and more) the Commission’s work has been critical and essential.

The camaraderie of Commission on Law and Aging members, liaisons, and the splendid and incomparable staff is hard to describe adequately, but it has informed friendships, lasting relationships, and continuing networks that

benefit not only the participants, but the older persons to whom they have devoted their professional lives. It should also be noted, beside the hard work and great product, the Commission on Law and Aging has always been really good fun!

A wise person once said that the elderly were the only disadvantaged group to which everyone aspires to belong. In large part these words are truer, and the prospects for secure, dignified, and productive aging enhanced because of the untiring work of this extraordinary institution and its equally extraordinary staff. The ABA is to be congratulated for its vision in creating, and its support in sustaining this true “jewel in its crown.” I am so proud to have been a part of the Commission on Law and Aging’s great history and look forward to many more years of its invaluable contributions to the world of aging.



Nancy Coleman and the Hon. Kristin Booth Glen

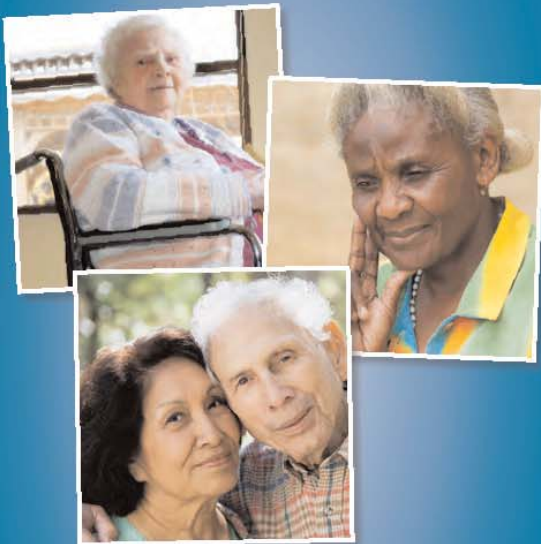
Join Us in Celebrating the 30TH ANNIVERSARY

..... of the

ABA Commission ON LAW AND AGING



Help the ABA Commission continue its mission to strengthen and secure the legal rights, dignity, autonomy, quality of life and quality of care of elders.



AMERICAN BAR ASSOCIATION

Commission on
Law and Aging

In 1979, the American Bar Association established the Commission on Law and Aging to examine and respond to law-related issues of aging. Since then, the ABA Commission on Law and Aging has emerged as a leader in the vanguard of the law and aging field through:

- ~ Creative thinking
- ~ Collaborative work approach
- ~ Cutting-edge interdisciplinary research
- ~ Ability to look forward to identify emerging issues
- ~ Timely technical assistance and education

Your gift to the ABA Commission on Law and Aging will support the programs and research that help protect the rights of elders, ensure their access to the legal system and educate lawyers, policy makers, professionals and the public about the legal issues affecting older people. Help by giving today!



WAYS YOU CAN HELP

— WRITE A CHECK —

Make check to *Fund for Justice & Education*.^{*} Mail to:
ABA Commission on Law & Aging, 740 15th St., N.W.
Washington, DC 20005

— DONATE ONLINE —

ABA Commission's website at:
www.abanet.org/aging

— CALL THE COMMISSION —

Discuss a specific gift of support at:
(202) 662-8690

^{*} Designate Commission on Law & Aging as donee. Contribution is tax-deductible.

ABA Commission Members: On the Cutting Edge

Continued from page 95

gram memorandum that prohibits the automatic denial of claims for medical services based solely on the diagnosis of dementia. This landmark memorandum provided that Medicare could not use the dementia diagnostic codes alone as a basis for determining whether Medicare-covered services are reasonable and necessary. The program memorandum, as well as the Medicare Advocacy Project, received tremendous publicity due to an article on the front page of the *New York Times* and reproduced in local papers across the country.



Donna McDowell, director of the Wisconsin Bureau of Aging and Disability Resources, was the one who first brought up the issue of Medicaid estate recovery. The Commission discussion on the new 1993 federal mandate kindled concern, and as a result the Commission sponsored a roundtable that resulted in an early report on the topic called *Medicaid Estate Recovery: Picking the Bones of the Poor*. Following this, the AARP Public Policy Institute contracted with the Commission to conduct a nationwide survey in 1995 that offered the first snapshot of state efforts. And after an interval of 10 years, the Commission again conducted a state survey and produced an in-depth report for AARP, followed by an additional report on state practices that could best give beneficiaries and survivors timely and clear information on recovery.

Guardianship and Capacity

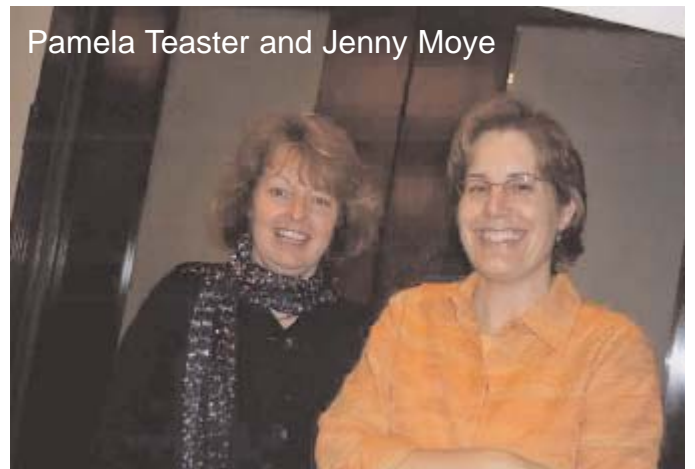
Among the original class of Commission members beginning in 1979 were **George Alexander**, dean of the Santa Clara School of Law, and John Regan, then a professor of law at the University of Maryland. Both had substantial backgrounds in adult guardianship, even though it was still before the bulk of guardianship reform occurred. The two of them had different perspectives, and at several early meetings a repeated dialogue took place:

Dean Alexander: John, adult guardianship is too drastic an action. It removes fundamental rights, and the benefits are not worth the severe deprivation. I think it should be abolished.

Professor Regan: George, granted that guardianship removes fundamental rights and should be a last resort, but our society is always going to need it, and the challenge should be to ensure due process protections.

Out of that early spirited exchange grew the Commission's enduring dedication to improving the guardianship system—seeking the best balance between rights and needs, protection, and autonomy—beginning with a judges' conference in 1986 with the National Judicial College, and continuing through the landmark 1988 Wingspread Conference, ABA participation in the 2001 Wingspan conference, and much more. Indeed, when the Commission took a stand in 1997 in favor of legal representation for respondents in every case in the revision to the Uniform Adult Guardianship and Protective Proceedings Act, the driving force can be traced to the early heedings of Prof. Regan 15 years before.

Continued on page 98



ABA Commission Members: On the Cutting Edge

Continued from page 97

But all the impetus did not come from the lawyers. Rising gerontologist **Pamela Teaster** joined the Commission in 2002 and fired the group's interest in examining public guardianship programs, which had not been studied in over 20 years. As a result, the Commission joined with the University of Kentucky in an extensive two-phased research project on public guardianship funded by the Retirement Research Foundation. The report shed light nationally on the stark underfunding and understaffing of public guardianship agencies and set out recommendations for action.

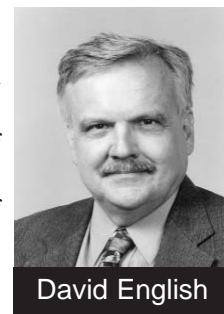


Meanwhile Commission member **Mary Joy Quinn** of the San Francisco Probate Court set about producing the first comprehensive text on guardianship for social services practitioners, drawing on Commission staff, as well as others, for assistance in writing and editing. An abiding and fruitful collaboration with

Mary Joy over the years has bolstered the Commission's close relationship with the National College of Probate Judges and has sparked a continuing stream of best practice ideas in guardianship, elder abuse, and undue influence.

The Commission had a history in the guardianship arena within the ABA. The Section on Real Property, Trust and Estate Law often brought to the table differing perspectives, particularly on issues such as the right to and role of the attorney for an alleged incapacitated person. **Jim Wade** of Denver, a renowned probate attorney and judge, served both as Commission member and liaison with the section. While

he may have had some differences with the Commission's approach he remained a loyal supporter and section representative for many years. **David English**, a law professor now at the University of Missouri, served as reporter for two Uniform Law Commission acts on guardianship, and was key in the Commission's involvement in both. **Linda Whitton** of Valparaiso University School of Law, was a reporter for the Uniform Power of Attorney Act. Both are active members of the ABA Section on Real Property, Trust and Estate Law and the American College of Trust and Estate Counsel. David and Linda were instrumental in bringing about a recent Commission project on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act that has contributed to timely passage of the Act by a dozen states; as well as a groundbreaking project for the AARP Public Policy Institute on power of attorney abuse.

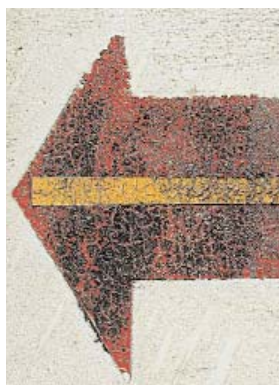


David English



Linda Whitton

A question at the heart of guardianship, but going far beyond, is that of capacity. What does it mean that someone has diminished or fluctuating capacity—and capacity to do what? What should be the elements of incapacity in a guardianship proceeding? How can a lawyer determine if a client has capacity to execute a legal document? What is the role of a psychologist in assessing capacity for independent living or financial management? In the early 2000s the Commission had an ongoing liaison with the American Psychological Association, and these questions bubbled to the surface. The Commission and the APA's Office on Aging held a momentous day-long meeting in June 2003 in which lawyers were seated alternately with psychologists, and discovered that while the language was quite different, the con-



Then and Now (1979 - 2009): Private Pay Rates for Nursing Home Stays

- In 1979, the average private pay rate for a nursing home semi-private room was \$27 per day.
- In 2009, the average private pay rate for a nursing home semi-private rooms is projected to be approximately \$193 per day.

*1979 data based on K. Stewart, D. Grabowski, and D. Lakdawalla, *Annual Expenditures for Nursing Home Care: Private and Public Payer Price Growth, 1977 to 2004*, 47(3) Medical Care 295-301 (2009). 2009 data based on extrapolating the 2008 MetLife Market Survey figures, www.metlife.com/assets/cao/mmi/publications/studies/mmi-studies-2008-nhal-costs.pdf.



“The Commission on Law and Aging is one of the brightest jewels in the ABA’s many-faceted crown. The professional staff are some of the most highly regarded resource professionals and practitioners in their respective areas of concentration in elder law.

cepts of capacity and decision-making were actually similar. The meeting fomented a phenomenally successful and collegial six-year effort around capacity assessment. The ABA-APA Working Group on Capacity Assessment produced three widely disseminated practical handbooks—one for lawyers in 2005, for judges in 2006, and for psychologists in 2008. A driving force skillfully leading the way through this thorny new territory was Commission member and psychologist **Jenny Moye**, director of the Geriatric Mental Health Clinic at the VA in Boston.

Health Care Decision-Making

In the late 1980s and throughout most of the 1990s, Commission meetings were graced by the presence of lawyer and noted bioethicist **Nancy Dubler** of Montifiore Medical Center in New York. The author of the nationally-recognized *Ethics on Call: Taking Charge of Life-and-Death Choices in Today’s Health Care System*, Nancy ran the center’s bioethics consultation service, where she was involved daily in wrenching and poignant cases of family conflict, medical uncertainty, and competing values in which a “principled resolution” was difficult.

Nancy brought the sense of these cases to the Commission just around the time that staff were exploring new applications of mediation for older people and people with disabilities—*et voilà*, the Commission pursued the emergent concept of “bioethics mediation.” With health care mediator Dr. Leonard Marcus, Nancy Dubler and the Commission collaborated on a groundbreaking project to examine the potential of mediation in the acute care setting in New York hospitals. This later led the Commission, with funding from the AARP Andrus Foundation and the Commonwealth Fund, to explore the use of mediation in the long-term care setting—and led Nancy Dubler to co-author a pioneering book on bioethics mediation. Not only was Nancy a gripping speaker and perceptive thinker, but also a wry Jewish mother and grandmother who traded kid stories and parent stories with staff over the years.

Nancy Dubler also sparked long-lasting Commission activities targeting the role of health care proxies and surrogates—*i.e.*, those persons faced with having to make medical decisions for someone else. These efforts started with

Nancy’s “Doctor-Proxy Relationship Project” reported in a symposium issue of the *Journal of Law, Medicine and Ethics* (27(1) (Spring 1999)). This effort kindled an analysis and monitoring of state surrogate decision-making laws, articles on the legal and functional status of proxies, and eventually the collaboration with the Maryland attorney general to prepare an online guide for proxies (available at <http://www.oag.state.md.us/healthpol/proxyGuide.htm>). The Maryland guide has spawned other state-specific versions of the guide, as well as the generic guide released in 2009 on the Commission’s Web site. The proxy work also informed the advisory role of the Commission in the drafting of the Uniform Health Care Decisions Act of 1993.

Dr. Joanne Lynn, a nationally known cutting-edge leader and thinker in addressing serious and eventually fatal medical conditions, served on the Commission from 1985 to 1992 and left an enduring mark in two ways. First, she compellingly illuminated the deficiencies of the long-term care delivery system in Medicare and Medicaid, bringing fundamentally new and revolutionary ideas to the health reform debate. Second, Joanne refocused the target of our health care advance planning policy toward a non-legalistic and developmental approach. Until that time, the emphasis in advance planning was on execution of a legally valid living will or power of attorney for health care. Dr. Lynn’s research called into question the efficacy of this document-focused legal approach and refocused our efforts on systemic reforms and enlightened professional education to support value- and goal-oriented advance planning discussions among patient, physician, and family at multiple points in the process of health care.

Dr. Lynn helped animate much of the Commission’s work in connection with the adoption of the Patient Self-Determination Act in 1990 and went on to organize Americans for Better Care of the Dying, which became a frequent collaborator of the Commission throughout its history.

Starting in the mid-1990s, **Myra Christopher**’s appointment to the Commission led to a long-term working relationship between the Commission and Myra’s nationally known Center for Practical Bioethics in Kansas City, Missouri. Commission staff worked with the Center in its implementa-

Continued on page 100

ABA Commission Members: On the Cutting Edge

Continued from page 99

tion of the Robert Wood Johnson Foundation's National Program for State-based Initiatives to Improve End-of-Life Care and then in the foundation's Last Acts Initiative over a ten-year span. Myra has also played the catalyst role in the end-of-life care initiative of the National Association of Attorneys General under the leadership of then-president Drew Edmondson, attorney general of Oklahoma. For her leadership, she was awarded the 2003 National Association of Attorneys General President's Award.

Social Security

The Commission was fortunate to have leaders in the field of Social Security. Commission member **Ed Howard**, who was one of the original members of the Commission's originating task force, had served as the general counsel to the House Select Committee on Aging, and also as the staff director for the Social Security panel in 1983 chaired by Alan Greenspan and Congressman Claude Pepper. Ed encouraged the Commission to expand from its initial four areas of concern to look at Social Security due process issues, especially surrounding spousal penalties in the Supplemental Security Income Program. **Eileen Sweeney**, an expert in Social Security, later joined the Commission and added greater expertise in Social Security Disability issues. Eileen served on Arthur Flemming's SSI Modernization Task Force and also was a founding co-chair of the Consortium on Disabilities. The involvement of the Commission expanded through recommendations to the ABA House of Delegates on SSI modernization to demonstration projects that sought to increase the number of older lower-income Social Security beneficiaries who might be eligible for SSI benefits.

Nancy Shor, who helped to form the National Organization of Social Security Claims Representatives, served two different terms on the Commission. She helped

the Commission identify Congressional issues that would help the ABA remain in the forefront of due process considerations for Social Security beneficiaries. **Dan Skoler** served as the chief Administrative Law Judge for SSA and then head of the Appeals Council, which helped to bridge issues in Social Security with guardianship and privacy rights. Dan was instrumental in linking the Commission with SSA's first Federal Advisory Committee—for which Nancy served as the chair—to look at representative payee issues. Dan later served as a consultant to a Commission project funded by the State Justice Institute on coordination of representative payees and state court administration.

Martha E. Ford, from The Arc, served to bring the disabilities and aging communities together. Martha had been a member of the ABA Commission on Mental and Physical Disability Law prior to joining our Commission. She became a pivotal member in helping to define issues, participate in joint conferences, and ensure that the Commission was cognizant of the implications of potential policy conflicts that might harm persons with disabilities.

Rudolph Patterson had served as president of NOSS-CR, had been president of the Georgia State Bar, was broadly involved in the delivery of legal services, and was a

Lillian Gaskin, Martha E. Ford, Nancy Shorr, and John Pickering



Georgia J. Anetzberger, PhD, ACSW, Partnerships in Law and Aging Grantee

“Sometimes even a small grant can “make a difference” when it comes from a nationally respected source like the American Bar Association’s Commission on Law and Aging. Recently such a grant helped propel the Ohio Supreme Court’s Subcommittee on Adult Guardianship to develop recommendations for improving guardianship locally through better data collection, standards, and monitoring. We now are working to implement these recommendations, which further may serve as models for other states. At the same time, efforts are underway to plan an Ohio Summit on Aging. Thank you for improving the lives of older Ohioans.”

member of the public benefits committee of the ABA Administrative Law Section. Rudy joined the Commission within the last decade. On behalf of the Commission, he met with members of Congress and the Commissioner of Social Security.

International Front

The **Hon. Kristen Booth Glen** was dean of the City University of New York School of Law, as well as a member of the judiciary, serving on the New York City Civil Court and the New York State Supreme Court. Kris served the Commission in multiple roles over a decade—as member, chair, and liaison. It was Judge Glen who began to pull the Commission into the international arena. She brought an expert from CUNY to address the Commission on the use of international law to enforce human rights issues in the United States. She later became a liaison from Global Action on Aging, and forcefully urged the Commission to advocate for an international Convention on the Rights of Older Persons.

In the late 1990s, Nancy was one of the delegates appointed for the United States to The Hague Conference on Private International Law’s drafting committee on international recognition of the authority of guardians and agents under powers of attorney. The resulting Convention on International Protection of Adults was adopted in 2000 and can be considered by nations for ratification.

Recently the Commission has been fortunate to have the membership of **Ann Soden**, a Montreal lawyer who has been very active in the growing field of elder law in Canada. She was the founding chair of the National Elder Law Section of the Canadian Bar Association and chair of the Quebec Elder Law Section of the CBA, as well as heading the National Institute of Law, Policy and Aging, based in Montreal. Ann pushed for stronger connections for the Commission with law and aging leaders not only in Canada but other nations, as well. The Commission has participated in several conferences in Canada, some including attendees from other parts of the world. A current active Commission member is **Issi Doron**, a professor of law and senior lecturer at the Department of Gerontology at Haifa University, Israel, and the founder of the Law in the Service of the Elderly Association in Israel.



Ann Soden



Issi Doron

Certainly this three-decade tour of illustrious Commission members does not include them all. Dozens of others supported staff, were not afraid to voice different views, sparked key contacts—and participated faithfully in Friday and Saturday Commission meetings and lively dinners over many years. We thank them all!



Staff of the ABA Commission on Law and Aging (from top, left to right): David Godfrey, Ellen Klem, intern Allison Hughes; (next row) Lori Stiegel, Jamie Philpotts, Leslie Fried, Erica Wood; (next row) Charlie Sabatino, Trisha Bullock; (front row) intern Laura Remick and Sonia Arce.



Then & Now (1979 - 2009): Guardianship



Then—1979

- Most state adult guardianship laws included few procedural protections, and used antiquated, often prejudicial, terms such as “advanced age” and “senility.”
- Guardianship was plenary, and capacity was conceptualized as all or nothing.
- There were no adult guardianship practice standards or certifications.
- There was no uniform act on guardianship, although article V of the Uniform Probate Code focused on guardianship.
- Congressional attention to guardianship consisted of a 1977 working paper on Protective Services for the Elderly, by the U.S. Senate Special Committee on Aging.
- Less than 34 states had provisions for public guardianship.
- There was no such thing as guardianship mediation.

Now—2009

- Most state laws have strengthened rights to meaningful notice and appointment of counsel. Capacity determinations are based on functional, as well as medical and cognitive, statutory elements, and only two states still use “advanced age.”
- All state laws include provisions for limited guardianship, although practice is uneven and use may be infrequent.
- The National Guardianship Association has nationally recognized standards of practice and a code of ethics, and conducts a national certification program. Seven states have state certification for guardians. The National Probate Court Standards set out guidelines for courts.
- Article V became the Uniform Guardianship and Protective Proceedings Act, with revisions in 1982 and 1997, adopted in whole or part by a number of states. The Uniform Law Commission in 2007 approved a UAGPPJ adopted by 12 states and under consideration by others.
- The House Committee on Aging held historic hearings in 1987 and 1992. The Senate Committee held hearings in 2003 and 2006, and generated a report in 2007. The GAO examined guardianship issues in a 2004 report.
- A total of 44 states have specific statutory provisions on public guardianship, and most others have some mechanism in practice to provide guardianship services.
- The Center for Social Gerontology has provided extensive training and guidance for mediation in conflicted guardianship cases.

Commission Contributions

- With the National Judicial College, sponsored a 1986 National Conference of the Judiciary on Guardianship Proceedings for the Elderly, which resulted in recommendations.
- With the Commission on the Mentally Disabled, sponsored the nationally recognized 1988 Wingspread conference; and participated in planning and conducting the 2001 Wingspan conference, both of which resulted in recommendations bearing on state law and practice.
- Tracked state adult guardianship legislation and produced annual update since 1988; regularly provided technical assistance to range of stakeholders.
- With Sally Hurme, produced and annually updated extensive state statutory guardianship charts.
- Spearheaded adoption of extensive American Bar Association policy on adult guardianship.
- Collaborated with University of Kentucky in conducting two-phased national study on public guardianship.
- Collaborated with AARP Public Policy Institute in conducting two-phased national study on guardianship monitoring.
- Collaborated with American Psychological Association and National College of Probate Judges in producing handbook for judges on capacity assessment in guardianship.
- Conducted 2009 multi-faceted campaign for uniform guardianship jurisdiction.

Consumer Resources

Federal Trade Commission Offers Free Resources to Help Deter Consumer Fraud

Resources Address Healthcare, Telemarketing, Identity Theft, and Online Safety

At the Federal Trade Commission, the nation's consumer protection agency, education is considered the first line of defense against fraud and deception in the marketplace. As such, the agency produces practical and plain-language information, both in English and Spanish, to help people avoid rip-offs and exercise their rights.

The FTC offers free articles, brochures, bookmarks, and outreach kits for consumers that elder law professionals and aging advocates can use to help their clients. The resources cover a broad range of topics, including sweepstakes scams, online safety and security, telemarketing fraud, travel scams, mortgage foreclosure rescue scams, miracle health claims, and bogus cancer cures. A complete list of materials can be viewed online at <http://ftc.gov/consumer>.

In addition to extensive print information, the FTC gathers much of its consumer information into one-stop Web sites. Key online topics address:

- **Healthcare products and services. Who Cares?** (<http://ftc.gov/whocares>) helps you find reliable sources of information on a variety of health topics, including Medicare fraud, medical ID theft, generic drugs, and assisted living.

- **Telemarketing fraud: Who's Calling?** (<http://ftc.gov/phonefraud>) provides information about common telemarketing scams and how to avoid them, including credit and loan offers, identity theft, sweepstakes and lotteries, and work-at-home and business opportunities. It also explains and links to the *National Do Not Call Registry*, where people can register their phone number to limit the telemarketing calls they receive (<https://www.donotcall.gov/>).
- **Identity theft: Deter, Detect, Defend—Avoid ID Theft** (<http://ftc.gov/idtheft>) offers detailed information about avoiding identity theft and what to do if personal information is stolen or abused.
- **Online safety: OnGuard Online** (<http://surf-safety.net/onguard.html>) provides practical tips to help guard against Internet fraud, secure your computer, and protect personal information. The articles, games, and videos on the site cover 19 topics, including spam scams and online shopping.

All FTC materials are in the public domain. Reprint them, use them as the basis for a presentation, or even co-brand them with your organization's name and logo.

In addition, all consumer information from the FTC tells readers to report scams and fraud to the FTC at www.ftc-complaintassistant.gov or by calling 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters all complaints it receives into Consumer Sentinel, a secure online database that is used by thousands of civil and criminal law enforcement authorities to pursue legal action.

Subscribe for Free to *Bifocal*, Journal of the ABA Commission on Law and Aging

Every other month, you will receive timely and valuable legal information pertaining to older persons, generated through the joint efforts of public and private bar groups and the national aging network.

The ABA Commission distributes *Bifocal* online six times a year to elder bar section and committee officers and members, legal services providers, elder law and other private practitioners, judges, court staff, elder advocates, policymakers, law schools, elder law clinics, law libraries, area agencies on aging staff, long-term care ombudsman, senior health insurance benefits program staff, service providers and other professionals in the law and aging networks.

Each issue of *Bifocal* features news on the delivery of legal services to seniors through publicly-funded programs, the private bar, *pro bono* activities, community legal education programs, activities of state and local bar groups, innovative projects, resource reviews, and substantive law articles.

To read the most recent issue, or to search back issues, go to <http://www.abanet.org/aging/publications/bifocal.shtml>

To contact the editor with news about your bar section's or committee's activities, or to submit an article for consideration, e-mail Jamie Philpotts at philpotj@staff.abanet.org. To subscribe, e-mail your name and professional affiliation to Bullockt@staff.abanet.org. Include the word "SUBSCRIBE" in the subject heading.

Get Connected, Stay Connected On Elderbar

Join **Elderbar**, the listserv that brings together public and private sector legal advocates and the aging network. **Elderbar** is for you if you are an:

- Elder law attorney
- Title IIIB legal services provider
- Legal services developer
- Senior hotline attorney or staff
- Long-term care ombudsman
- Senior Health Insurance Benefits Program staff
- Area agency on aging staff
- State unit on aging staff
- OAA-funded elder rights advocate
- LSC, IOLTA-funded, or other non-profit or public sector legal services organization
- Law school elder law or clinical staff
- State or local bar association elder law section or committee leader
- Service provider in the aging network
- National law and aging advocate

Elderbar gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private legal sectors. Share ideas and information about programs, bar section and committee activities, and learn how others are responding to the increasing demand and finite funding for legal services for seniors.

Elderbar is a project of the ABA Commission's National Legal Assistance Support Center as part of its role in the National Legal Resource Center, funded by the Administration on Aging. It is a closed list; messages can only be posted and read by members.

To get connected to **Elderbar** send your name, e-mail address, and professional affiliation to David Godfrey at Godfreyd@staff.abanet.org.

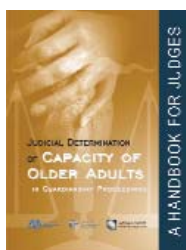
The ultimate resources on capacity assessment of older adults—for lawyers, judges, and psychologists. Developed by the experts at the American Bar Association Commission on Law and Aging and the American Psychological Association.

Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers



While most older adults will not have impaired capacity, some will. Obvious dementias impair decision-making capacity—but what about older adults with an early stage of dementia or with mild central nervous system damage? This book offers elder law attorneys, trusts and estates lawyers, family lawyers, and general practitioners a conceptual framework and a practical system for addressing problems of client capacity, in some cases with help from a clinician. \$25.

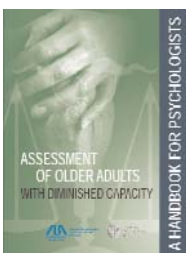
Judicial Determination of Capacity of Older Adults in Guardianship Proceedings



A user-friendly handbook written especially for judges, it provides a quick guide to the “six pillars of capacity assessment,” essential to a full and accurate assessment of capacity; a practical explanation of the “five key steps in judicial determination of capacity”; and links to expanded information, work sheets, model forms, and fact sheets available online at no charge. \$25. Available from the ABA

Commission on Law and Aging. *An online, expanded version of the book is offered on the Web site of the ABA Commission on Law and Aging at <http://www.abanet.org/aging/publications>.

Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists



This handbook is designed for psychologists evaluating civil capacities of older adults. The specific goal of this handbook is to review psychological assessment of six civil capacities of particular importance to older adults, namely, medical consent capacity, sexual consent capacity, financial capacity, testamentary capacity, capacity to drive, and capacity to live independently. Relevant literature, suggestions for assessment tools, and case examples are provided throughout. \$25.

**Purchase online from the Web site of the ABA
Commission on Law and Aging at
<http://www.abanet.org/aging/publications>**

Elder Law 2009 - 2039?

By Charles P. Sabatino

Ten years ago I wrote an article titled *The Future of Elder Law*,¹ in which I suggested three characteristics of elder law that distinguish it from traditional practices of law, as follows:

Elder Law places special emphasis on issues surrounding long life instead of death.

The core issues of a long life were suggested by a 1995 Images of Aging survey by AARP, that found that health, isolation, and financial problems ranked as the top worries of Americans

over age 65. These concerns are all rooted in our underlying cultural values of autonomy, dignity, and quality of life. These are values that still drive nearly every aspect of an elder law practice.

Elder Law integrates legal planning into the larger picture of planning needs.

Clients' "non-legal" personal goals regarding health,

housing, personal autonomy, and quality of life ultimately have a legal planning or crisis intervention face. Cutting the purely "legal" part out from the larger picture forces compartmentalization and is non-responsive to the client's perspective. Thus, elder law has always embraced a "big-picture," holistic approach.

Elder Law strives for an interdisciplinary planning perspective.

Social workers, geriatricians, other health practitioners, geriatric case managers, financial planners, and others all serve as allies in the legal planning work of elder law attorneys. Often, elder law practices function as an entry point for clients into aging and

disability networks and community resources.

Experienced elder law attorneys know how to connect to or provide the supportive services their clients might need.

These three attributes still accurately describe elder law today, but they do not provide a clear conceptual basis for elder law. One conventional approach has been to define elder law by the nature of the clients it serves and by the legal topics it targets. The National Elder Law Foundation, whose ABA-approved elder law certification program has been in operation since 1994, defines elder law as the "practice of counseling and representing an older person or their representative" in five core areas of law, plus eight additional extended areas.² But, this approach faces a three-fold predicament.

- First, elder law practitioners actually exhibit tremendous variability in what substantive areas they focus on within the panoply of elder law topics;
- Second, the nature of the practice keeps evolving and branching into new areas, such as special needs trusts; and
- Third, elder law attorneys as a group probably serve as many or more younger clients, who are either the adult children of elder clients or persons with disabilities who benefit from the planning and special needs expertise of elder law attorneys.

How, then, is elder law to be substantively defined? My own view is that a focus on the underlying goals of elder law representation provides the most valuable starting point. These values, as noted above—autonomy, dignity, and quality of life—apply to adults of all ages, but not surprisingly become particularly important and particularly stressed in the face of chronic disease, frailty, and disability.

Certain legal matters arise directly from these goals—matters of decision-making capacity, delegating decision-making authority, and intervening in the case of incapacity. Thus, key legal topics include durable powers of attorney, inter-vivos trusts, advance directives for health care, and guardianship. Beyond these immediate issues of personal decision-making, elder law issues tend to congeal around three quite broad, but concrete, foci connected to these underlying goals: housing (or more broadly, one's living environment); financial well-being; and health and long-term care.

This framework is summarized in the elder law paradigm figure (*see next page*). The center of the paradigm is a circle, representing the goals of autonomy, dignity, and quality of life. These goals are directed by the values of the



Charles P. Sabatino is the director of the ABA Commission on Law and Aging.

Continued on page 107

An Elder Law Paradigm:

Housing (Living Environment):



Access to Options.

- Home Care
- Retirement Housing
- C-B Care & Services
- Assisted Living/CCRCs
- Nursing Home Care
- Home Equity Conversion

Collaborative fields:

Architects/designers
Employment services
Real estate financing
Transportation

Financial Well-being:

ADEA/Employment issues

Pension & Other Retirement Benefits

Public Benefits:

- Social Security/Pensions
- Medicare & Medicare Rx benefit
- Medicaid Planning
- Veterans Benefits, etc.

Special Needs Planning

Home Equity Conversion

Estate Planning.

- Wills & Trusts
- Property Transfers
- Medicaid Planning
- Special Needs Trusts

Collaborative Fields:

Financial planners/Brokers
Insurance agents
Banks & Trust Companies

Health & LTC:

Private Benefits:

- Employer based insurance
- Long-Term Care Insurance

Public Benefits:

- Medicare
- Medigap
- Medicaid
- Veterans

Collaborative Fields:

Health Care
Social Work
Gerontology
Insurance
Government administration

Elder Law 2009 - 2039?

Continued from page 105

client and not by the attorney or others. Directly below the circle are the issues most related to personal decision-making and autonomy. The points of the triangle represent the three major foci or concrete challenges to these goals mentioned above: housing, financial well-being, and health and long-term care. Several specific content areas are listed that relate directly to each of these points of the triangle. Some subjects unavoidably span across more than one area. Medicaid issues, for example, arise most obviously as a long-term care matter, but also as a financial well-being issue, and possibly



a housing issue in the context of nursing home care or other residential care. Finally, each of the content areas typically requires collaboration, or at least communication, by elder law attorneys with other disciplines, examples of which are listed under the content areas. Even this paradigm does not capture all the diversity of elder law practices—where, for example, are grandparent's

rights issues? Nevertheless, the paradigm captures the purpose and connectedness of those components in most elder law practices.

An advantage of this paradigm is that it avoids defining elder law merely by the clients it serves. It is not surprising that these goals and issues have a higher priority and urgency for older or disabled individuals and their families. But, it is increasingly common for elder law attorneys to serve the younger generations of elder clients who seek to do their own planning or who have special needs. In addition, the paradigm allows for a great deal of flexibility in the evolution of elder law. While the core goals and general challenges remain the same over time, the particular benefits, or finan-

cial planning options, or housing options, or health care options and issues are likely to change significantly over time.

Regardless of the slant one takes in fashioning their elder law practice, it is clear that the field has become an established practice area. The numbers themselves speak loudly. A June 2009 survey conducted by our Commission confirmed the existence of 39 state bar associations with elder law sections or committees (32 with sections and 7 with committees), having a total membership of 19,491 lawyers. About 4,000 lawyers belong to the National Academy of Elder Law Attorneys and nearly 9,000 ABA members report elder law as an area of concentration. Although some portion of these latter two groups are likely to be duplicative of bar section membership, nevertheless, these data suggest a substantial cadre of at least 25,000 lawyers nationally who concentrate in elder law—and that number does not reflect all the general practitioners and estate and trust lawyers who do not call themselves elder law attorneys, but who do much of what is described as elder law.

Looking ahead another 30 years is an exciting prospect, but a prognostic stretch a little like soothsaying, though probably less accurate. Nevertheless, there is evidence of trends that may help us see at least a few years into the future.

Most evident is diversification. We have already seen elder law practices diversify in both expected and unexpected ways. The expected diversity arises from the cross-disciplinary vision of practitioners, many of whom have included social work, nursing, and financial management in their practices in order to provide comprehensive services to aging clients. This same vision causes some practitioners to push the envelope of multi-disciplinary practice models intended to provide clients with one-stop planning for high-priority legal, financial, and health needs. This kind of diversification will continue.

A less predictable trend is represented by the budding of new practice niches, especially in special needs trusts and planning for younger persons with disabilities. In recognition of this, NAELA revised its own mission and tag line which

Continued on page 108



Then and Now (1979 - 2009): Supplemental Security Income

- In 1979, the Supplemental Security Income benefits level for an individual was \$208.20
- In 2009, the Supplemental Security Income benefits level for an individual is \$674

Source: SSI Federal Payment Amounts <<http://www.ssa.gov/OACT/COLA/SSIamts.html>>



Leslie Francis, Commissioner (1996 - 2002)

“ I vividly recall how excited my father [John Pickering] was about the *Cruzan* decision, and about all the efforts afterwards to publicize advance directives. He was so pleased with the Commission’s video on the subject featuring Helen Hayes and all the efforts to get out the word, including the mention of the ABA Commission on Law and Aging’s *Health and Financial Decisions* booklet four separate times by columnist Ann Landers.

The Commission played a personal, as well as professional, role in my father’s life. As a personal matter his health care advance directive, so strongly promoted by the Commission, meant a great deal to him and his decision makers. Ironically, he lay dying from his stroke just as Terri Schiavo also was dying. The difference could not have been greater, and much of what helped us was knowing that we knew his wishes, unequivocally.

Elder Law 2009 - 2039?

Continued from page 107

now reads “Leading the way in special needs and elder law.” But, also emerging are new specialty organizations such as the Academy of Special Needs Planners and the Special Needs Alliance that may fracture the elder law field to some degree. Whether the field can sustain the diversity of practice and at the same time keep its identity is a major present and future challenge.



One can envision two very different possible futures for elder law. One vision foretells that elder law, driven by society’s relentless aging demographics, will continue to mature into an established multi-faceted practice field, taught in every law school,

anchored securely in the bar, and populated mostly by small or solo firms, as is the case today. Organizations such as NAELA will continue to thrive, and even the ABA will give birth to a formal elder law section.

The other vision sees those same demographic forces as driving virtually all lawyers in myriad types of practices to become competent in elder law knowledge and skills. But, if everyone becomes elder-tuned in their practices, then elder law begins to lose its separate identity. In other words, if lawyers in general practice, or estate planning, health law, administrative law, family law, housing law, labor and employment law, and disability law all develop the special knowledge and skills needed to serve older clients, then elder law slips into the landscape of all practices and becomes

largely invisible. Specialty bar groups in elder law may still survive and perhaps flourish, but their growth would be limited to those who consciously package their knowledge, goals, and skills into a holistic practice model labeled elder law or some new designation that evolves down the road. Terms such as “life care planning” or “life services planning” have already vied for name recognition in place of elder law. That kind of repackaging will be driven by market forces, as well as legislative change in programs such as Medicare and Medicaid that fundamentally affect the health and quality of care of elders.

Another challenge for those lawyers who will shape the elder law practices of the future is the pendulum’s swing in social policy away from purely age-based eligibility for benefits. The boomer generation is too massive to be able to sustain benefits based solely or primarily on age. Thus, needs-based criteria will increasingly drive eligibility for public benefits, and the necessity to maximize one’s own resources to prepare for the future will increase. We have seen precursors of this already in the rise of the full retirement age for Social Security and income-based adjustment of Medicare Part B premiums.

A final evolving facet of elder law that may seem more of an academic interest at first glance is its international dimension. Elder law germinated in the United States and its genes reflect the policies, programs, and culture of the U.S. But its basic objectives are universal, and the greying of the planet’s inhabitants is universal. Elder law is an emerging reality in developed countries such as Australia, Israel, Japan, and especially Canada. The Canadian Bar Association already has an Elder Law Section, whose founding chair, Ann Soden, is a past member of our Commission on Law and Aging and its first international member. The Canadian Center for Elder Law, established in 2003 through the British Columbia Law Institute in Vancouver, serves a function in Canada substantially the same as the ABA Commission in the

U.S. The Canadian Center is recognized for its expertise in elder law issues both in Canada and internationally.

Apart from legal professional groups, other non-governmental organizations focused on international aging are proliferating. They include:

- AARP International
- The International Federation on Ageing
- Global Action on Aging
- The International Longevity Center
- HelpAge International
- The International Guardianship Network

Increasingly, these groups have promoted the need for greater attention to enforceable human rights standards for aging members of all societies. International human rights standards for several vulnerable populations, such as children and persons with disabilities, have gained increasing recognition in contemporary society. However, older persons as a group have not been a high priority beneficiary of this attention. Many treaties and declarations do refer to rights that are of importance to older persons, but there is no comprehensive international instrument that adequately addresses the specific protections required for an aging society. Accordingly, we observe a growing advocacy effort among both non-governmental and governmental organizations to foster a United Nations convention drafting and approval process focusing on the rights of older persons. These groups have encouraged the Commission on Law and Aging to become involved in

helping mobilize the legal profession in the United States to support and implement this goal, and this may very well be a next generation of challenge for the ABA Commission.

In the meantime, nation-specific variations of elder law will likely take root and grow in developed countries around the world. Along with this, opportunities for international cross-fertilization of ideas and strategies will increase, especially in areas that most obviously transcend international boundaries, such as decisional incapacity and surrogate decision-making. But, international collaboration takes both desire and financial resources, the latter being in increasingly short supply at this point in history. Regardless of the pace of progress internationally, elder law in the U.S. will continue to be an exciting and evolving calling for lawyers most moved by the goals of autonomy, dignity, and quality of life for aging members of society . . . of any age.

Notes

1. Charles P. Sabatino, *The Future of Elder Law: One Perspective*, 10 *Elder L. Rpt.* 1-4 (March 1999).
2. Core Topics: 1. Health and Personal Care Planning; 2. Pre-mortem Legal Planning; 3. Fiduciary Representation; 4. Legal Capacity Counseling; 5. Public Benefits Advice.
Extended Topics: 6. Advice on Insurance Matters; 7. Residents Rights Advocacy; 8. Housing Counseling; 9. Employment and Retirement Advice; 10. Income, Estate, and Gift Tax Advice; 11. Counseling about Tort Claims Against Nursing Homes; 12. Counseling with Regard to Age and/or Disability Discrimination; 13. Litigation and Administrative Advocacy in connection with any of the above matters.

Ricker Hamilton, Program Administrator for Protective Services, Portland, Maine

“The Maine Elder Death Analysis Review Team (MEDART) was made possible by funds through the ABA Commission on Law and Aging and the Office for Victims of Crime at the U.S. Department of Justice. Over the past five years MEDART has examined deaths and cases of serious bodily injury associated with suspected abuse or neglect of the elderly and vulnerable adults. The MEDART has produced a dynamic systems change associated with our reviews. Adult Protective Services, law enforcement, emergency medical services, healthcare crimes unit, licensing and regulatory services, victim services, adult mental health services, prosecutors, long-term care ombudsman, the medical examiner, and the office of the attorney general are now more effectively communicating and cooperating because of MEDART. Findings and recommendations are made to the Maine attorney general on an annual basis, which has resulted in an improved response to victims and prevention of similar outcomes. The older citizens of Maine have benefited greatly from the grant funds that helped us form MEDART. Thank you.

Thank You to All the Distinguished Commissioners Who Have Served Over the Past 30 Years!

Betsy Abramson
Hon. Ronald B. Adrine
George J. Alexander
Jacqueline Allee
Richard B. Allen *
Stuart M. Andrews, Jr.
La Ronda D. Barnes
Hilton S. Bell
Allan Bogutz
Hon. Kristen Booth Glen
Robert N. Brown
Robert N. Butler
Betty J. Capps
James Carr
Myra K. Christopher
Wilbur J. Cohen *
Stuart Cohen
John J. Copelan
James R. Crouch
Nelson Cruikshank *
Hon. J. Joseph Curran, Jr.
Pamela M. Dashiell
Gilbert Davis *
Delores A. Davis
Dr. Arthur R. Derse
Hon. Nikki DeShazo
Sara-Ann Determan
Kevin J. Donnellan
Israel Doron
J. Chrys Dougherty
Nancy N. Dubler
David English
Dr. Thomas E. Finucane
James Firman
Athur S. Flemming*
Martha E. Ford
Alexander D. Forger
Thomas H. Foye
Leslie P. Francis
Burton Fretz *
Robert Friedland

Scott M. Geron
Dr. Michelle Grant Ervin
Martha Griffiths *
Roy Hammer
Stephen Hanlon
Rodney N. Houghton *
Edward F. Howard
N.E.H. Hull
Harold R. Johnson
Abigail Kampmann
Hon. John H. Kirkendall
Jorge J. Lambrinos
Robert M. Landis *
Esther Lardent
Peter Libassi *
Sarah Lenz Lock
Dr. Joanne Lynn
John W. Martin, Jr.
D. Michael McBride
F. William McCalpin
Stephen McConnell
Larry McDevitt
Donna McDowell
Demetria McJulien
Truman Q. McNulty *
James E. Merritt
Dr. Mathy Mezey
Leigh B. Middleditch, Jr.
Rebecca C. Morgan
Jennifer Moye
Robert S. Mucklestone
Frankie Muse Freeman
Paul F. Nathanson
Douglas W. Nelson
Thomas Nelson
Joe O'Connor
Shauna O'Neil
Hon. Benjamin Overton
Rudolph N. Patterson
Martha Pelaez
John H. Pickering *

John Pynoos
Mary Joy Quinn
John J. Regan *
Patricia Riley
Thomasina V. Rogers
Samuel Sadin *
Karen Sarjeant
Mark Schickman
Jack Schwartz
Irving R. Segal *
James Shann
Anna Williams Shavers
Hon. Patrick Sheedy
Nancy Shor
Daniel Skoler
Jeffrey J. Snell
Ann Soden
Barbara Soniat
Clara H. Springs
Edward Spurgeon
E. Percil Stanford
Judith Stein
Eileen Sweeney *
Thomas Tang *
Pamela B. Teaster
Dr. Joan Teno
Natalie Thomas
Hon. Sandra Thompson
Lyman M. Tondel, Jr. *
Fernando M. Torres-Gil
James Wade
Sue Ward
Edwin Dean White, III
Linda S. Whitton
Kathleen Wilber
Hon. Rhonda Reed Winston
Erica Wood
Helen P. Wright *
Raymond H. Young

** Deceased*

Take the Quiz!

Test Your Knowledge of Elder Law and Policy

1. **Which debuted first?**
 - a) www.Medicare.gov
 - b) 1-800-Medicare
2. **What was the original name of the ABA Commission on Law and Aging?**
 - a) Commission on Concerns of the Aging
 - b) Commission on Legal Problems of the Elderly
 - c) Commission on Aging Law and Policy
3. **How much is the average Social Security benefit for a retired worker in 2009?**
 - a) \$1,158
 - b) \$1,112
 - c) \$998
4. **What percentage of the U.S. population is classified as “older” (age 65+)?**
 - a) 11.5%
 - b) 12.8%
 - c) 13.1%
5. **Who was the first person to enroll in Medicare?**
 - a) President Harry Truman
 - b) President Dwight D. Eisenhower
 - c) Keith Richards
6. **Who was the first director of the ABA Commission on Law and Aging?**
 - a) Dan Skoler
 - b) Nancy Coleman
 - c) John Pickering
7. **In 1980, how many state bar associations had a section or committee devoted to the legal needs of the elderly?**
 - a) 17
 - b) 23
 - c) 41
8. **In 2009, how many state bar associations have a section or committee devoted to the legal needs of the elderly?**
 - a) 21
 - b) 27
 - c) 39
9. **For how many years has the ABA Commission on Law and Aging received funding by the U.S. Administration on Aging to provide national legal support?**
 - a) 20
 - b) 24
 - c) 26
10. **What percentage of older Americans (age 65+) have some type of a disability (e.g., sensory, physical, or mental disability)?**
 - a) 37%
 - b) 41%
 - c) 51%



Key: 1. a) In 1998 www.Medicare.gov was launched; 1-800 Medicare began in 1999. Source: Key Milestones in CMS Programs Key Milestones.pdf; 2. b) Commission on Legal Problems of the Elderly; 3. a). \$1,158. Source: Monthly Statistical Snapshot, May 2009 <http://www.ssa.gov/policy/docs/quikfacts/stat_snapshots/2009_May>; 4. b) 12.8%. Source: Census Bureau Estimates Nearly Half of Children Under Age 5 Are Minorities <http://www.census.gov/Press-Release/www/releases/archives/population/013733.html>; 5. a) President Harry Truman; 6. b) Nancy Coleman; 7. b) 23. Source: ABA Commission on Legal Problems of the Elderly, State Bars Establish Committees on Legal Concerns of the Elderly, 1(6) Bifocal (1980): 8. c) 39. Source: ABA Commission on Law and Aging; 9. c) 26; 10. b) 41%. Source: U.S. Census Bureau, http://www.census.gov/PressRelease/www/releases/archives/facts_for_features_special_editions/013739.html.

National Aging and Law Conference

The ABA Commission on Law and Aging Is Proud to Offer a CLE Podcast Series Especially Designed for Elder Law Attorneys and Advocates

Download podcasts from <http://www.abanet.org/aging/cle/home.shtml>

If you didn't have the opportunity to attend the 2008 National Aging and Law Conference held December 4-6, in Arlington, Virginia, you now have the chance to listen to podcasts of some of the expert workshops presented.

Each podcast is delivered in a single zip file, consisting of 1) the MP3 audio file, 2) written course materials in PDF, and 3) self-study CLE certificates for the program.

Listed below are the titles of available podcasts.

Help Is On the Way—Interstate Guardianship Jurisdiction

Presenters: Sally Hurme, Terry Hammond, Erica Wood, and Eric Fish

Run Time: 01:16:25

Representing Victims of Abusive Debt Collection

Presenters: Lynn Drysdale, Michelle Weinberg, and Deborah Zuckerman

Run Time: 01:23:13

Coverage for Assisted Living Facility Care in Medicaid HCBS Waivers

Presenters: Eric Carlson and Gene Coffey

Run Time: 01:26:25

Florida's Model Approach to Statewide Legal Services: A Partnership That Works for Florida's Seniors

Presenters: Valerie Soroka, Maureen Kelly, Mary Haberland, Sarah Halsell, and Carol Moody

Run Time: 01:30:02

Issues for Low-Income Medicare Beneficiaries Who Also Receive Medicaid

Presenters: Patricia Nemore and Hilary Dalin

Run Time: 01:13:24

Power of Attorney Abuse: Strategies for Legislative Reform

Presenters: Lori Stiegel, Naomi Karp, Laura Watts, and Linda Whitton

Run Time: 01:17:50

Are Your Clients Missing Out?

VA Benefits: An Untapped Funding Source for Veterans and Survivors

Presenters: Mary Ellen McCarthy

Run Time: 01:30:25

To play an audio download in MP3 format you will need a media player such as iTunes, Windows Media Player, Real Player, or Quicktime. For instructions on loading MP3 files to a portable media device, please refer to your device's instruction manual.

For technical help with the downloads, you may contact the ABA Center for CLE at: CenterforCLEWeb@staff.abanet.org.

These podcasts are made possible through the generous support provided by the Administration on Aging, U.S. Department of Health and Human Services. The opinions expressed therein are those of the authors and presenters and do not necessarily reflect the views of the American Bar Association or the Administration on Aging, U.S. Department of Health and Human Services.

Elder Abuse Resources Online

The ABA Commission on Law and Aging is continually expanding its catalog of online resources for professionals working in fields related to elder abuse, including the latest information on:

- the Elder Justice Act;
- elder abuse fatality review teams;
- durable power of attorney abuse;
- neglect; and
- state-by-state analysis of laws related to elder abuse (including APS laws, institutional abuse laws, and long-term care ombudsman laws).

Visit the ABA Commission's elder abuse Web page at: <http://www.abanet.org/aging/elderabuse.shtml>.

Guardianship Resources

The ABA Commission on Law and Aging has updated three charts titled *Multi-State Guardianship Jurisdiction Stories Supporting Need for the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*.

Each chart provides the same information but is sorted in different ways—by issue, first state involved, and second state involved—for ease of use.

If you only want to see the cases and stories for your state, look at the charts sorted by first state involved and second state involved. The charts are available on the **ABA Commission's Guardianship Jurisdiction Web page: www.abanet.org/aging/guardianshipjurisdiction/home**.

Other useful resources on that page include:

1. A free, archived **Webcast on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act** (originally presented on February 5, 2009). Topics include an introduction to guardianship and the need for a uniform law; three key problems of interstate guardianship and how the Act addresses them; how the Act could help reduce elder abuse; and advocating for state enactment.
2. *Nine Ways to Reduce Elder Abuse Through Enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, an article that addresses granny-snatching, among other issues;

3. **A Multi-State Adult Guardianship publications List**; and

4. **Links to the UAGPPJA** and other resources.

Commission staff are available to provide training and technical assistance regarding the Act and its relation to elder abuse.

—Lori A. Stiegel, Senior Attorney,
ABA Commission on Law and Aging

New to the ABA Commission's Guardianship Law and Practice Web page are five updated charts on state adult guardianship legislation, including:

- Limited Guardianship of the Person (as of 12-08)
- Initiation of Guardianship Proceedings (as of 12-08)
- Representation and Investigation of Guardianship Proceedings (as of 12-08)
- Notice in Guardianship Proceedings (as of 12-08)
- Monitoring Following Guardianship Proceedings (as of 12-08)
- Conduct and Findings of Guardianship Proceedings (as of 12-08)

The charts are a joint effort of Sally Hurme and the ABA Commission on Law and Aging. **View the charts online at: www.abanet.org/aging/legislativeupdates/home.shtml**.

Membership in the American Bar Association Comes with Professional and Personal Rewards

The American Bar Association represents the best interest of lawyers on a national level—in the courts, in legislatures, in the media, and even in the classroom. Our goal is to serve each and every lawyer, each and every day, by protecting attorney-client privilege, lobbying for protection of legal services funding, educating potential clients on the benefits of legal advocacy, working for more work/life balance, and more.

Join the ABA today and become part of the most prestigious legal organization in the country!

- Stay on top of the latest developments in the law and the legal community;
- Gain access to leadership and networking opportunities;
- Select from more than 30 specialty sections, divisions, and forums, and over 600 ABA listserves; and
- Take advantage of valuable discounts on the products and resources you need.

It's Easy to Join! Visit www.abanet.org/join or call (800) 285-2221.

**The ABA promotes
pride in the profession
professional excellence,
and efficient
management practice.**

