

Legal Services Delivery

Preserving Homeownership Among Low-income, Elderly Landlords

By Mary M. Connolly

Over the years, a number of homeowners, most of them elderly, have approached the Volunteer Lawyers Project (VLP) of the Boston Bar Association with problems that could have been avoided had they been better informed of their legal rights and the services available to them. In the greater Boston area, there is a sizable population of low-income homeowners who own two or three family dwellings, renting the second and third units to subsidize their own housing costs. Many such landlords are woefully ill-informed about their responsibilities and about the rights of their tenants. In response to this problem, VLP designed the Homeownership Preservation Project. The project's aim was to recruit *pro bono* lawyers to conduct community legal education programs on issues relevant to homeownership and landlord/tenant law. In addition, the project sought to recruit lawyers to handle cases, particularly foreclosures, for low-income homeowners.

Mark Your Calendar!

Third Annual Aging and Law Conference

October 23-26, 2002, Arlington, Virginia

Funding for the project was provided by grants from the Partnerships in Law and Aging Program, with funding from the Albert and Elaine Borchard Foundation Center on Law and Aging and the Marie Walsh Sharpe Endowment, and the Boston-based Bushrod H. Campbell and Adah F. Hall Charity Fund.

Mary M. Connolly is the executive director of the Volunteer Lawyers Project of the Boston Bar Association.

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Inside the Commission

Commission Initiates Project on Health Care Decision-Making for the “Unbefriended” Elderly

By Naomi Karp

The ABA Commission on Legal Problems of the Elderly has initiated a project to research and develop recommendations on health care decision-making on behalf of socially isolated, “unbefriended” elderly who lack the capacity to make their own decisions. Working under a 14-month grant awarded by the Fan Fox and Leslie R. Samuels Foundation, the Commission will take a close look at this population,

Naomi Karp is associate staff director of the ABA Commission on Legal Problems of the Elderly.

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Homeownership Preservation

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Developing a Community Legal Education Program

Although many Boston area real estate lawyers had provided *pro bono* services to affordable housing developers and homeless shelters, many had not done *pro bono* work for low-income homeowners. VLP believed that a community legal education program targeting low-income homeowners would be beneficial to the community and was well suited for a *pro bono* effort.

The first step involved a recruitment campaign directed at real estate departments in firms and local bar association real estate sections. Lawyers were asked to make a commitment to attend a training program and to conduct at least two community legal education programs at sites throughout VLP's service area. The community legal education sessions

would follow an established VLP-developed protocol, which would help guide the volunteers through the sessions.

The project's initial recruitment effort resulted in fifteen volunteers. Nearly half of the volunteers came from small firms, slightly fewer came from large firms, with the balance made up of solo practitioners.

The first training program for the volunteer lawyers covered a range of topics. Although the training addressed substantive areas such as landlord responsibilities, the program concentrated on acquainting the lawyers with the characteristics of the specific client community and providing tips for presentations to lay people.

Each of the community legal education presentations was to be augmented with informational materials. Originally, VLP planned to produce much of this print material itself. Upon investigation, however, VLP was pleased to learn that pamphlets and other materials on homeownership responsibilities and rights were readily available through various sources throughout the city, such as local and state governmental agencies. VLP collected these materials and, in some cases, translated them into Spanish.

The presentations were scheduled, during the months of May and June 2000, for six sites—three in Boston neighborhoods and three in the cities of Quincy, Chelsea, and Malden. Two sessions were scheduled for each of the sites: one session to cover landlord/tenant issues and the other to address a range of matters of interest to homeowners, including financing issues, real estate tax abatements, homesteads, and working with contractors. Sites included a public library, a community college, a community action center, and a senior citizens center. Although a fair amount of advance outreach was done, VLP was disappointed in the modest client turnout at the early sessions. The volunteer lawyers, however, were not to be discouraged and indicated that they would be willing to conduct future sessions.

A second series of programs was offered in October and early November 2000 at four additional sites. For the second series, the two-part presentations that were developed for the first series were combined into one.

The presentations' question and answer sessions allowed the volunteer lawyers to identify problems that required more in-depth consultation. In certain cases, people were directed to VLP or the Legal Advocacy Center (VLP's subgrantee, which provides telephone legal advice and referral) for further assistance. A total of thirteen programs were offered, and more than 100 people attended.

In late fall of 2000, VLP connected with the Massachusetts Alliance of Affordable Housing Advocates (MAHA). In this arrangement, MAHA handled the logistics of the programs (such as sites and contacts with local

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BIFOCAL

Bar Associations in Focus on Aging and the Law
Newsletter of the American BAR Association
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Bar Profile

Elder Law Section Emerges As Force For Policy Initiatives and Legislative Change

Elder Law Section of the Washington State Bar Association

By Barbara A. West

In 2002, the Washington State Bar Association's (WSBA) Elder Law Section celebrated its 10th anniversary with a membership in excess of 500 lawyers statewide and a full plate of ideas for expanding the reach and breadth of its member and community services.

Attracting lawyers practicing in the areas of estate planning, Medicaid planning, disability law, guardianship and probate, the Elder Law Section entered its second decade with a vision of becoming a force for policy initiatives and legislative change in the state.

The section expanded its community outreach efforts in 2001 by providing financial support to legal services that assist elderly persons throughout Washington. A new grants program provided \$5,000 in funding to five different community-based groups in diverse areas of the state that serve seniors with low-cost or no-cost legal services. The section also continued its tradition of serving as a major contributor to the Legal Aid for Washington (LAW) Fund, the chief private fundraising vehicle for legal service programs to low-income citizens in Washington. In 2001, the section contributed \$10,000 to support LAW Fund's service and advocacy programs.

In 2000, Elder Law Section members joined a task force with members of the WSBA's Real Property, Probate and Trust Section to shepherd significant modifications to the state's durable power of attorney statute through the legislature. The statutory revisions provide a procedure of an affidavit and a petition to be filed with the court that can be used by an agent seeking to have a power of attorney accepted by a recalcitrant bank or brokerage company. The changes provide a mechanism for parties seeking an accounting by an agent. The revised statute also offers a principal the option of defining the specific individuals who may (and may not) demand an accounting of an agent.

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The changes were, in part, motivated by the state's progressive guardianship statute. That law directs the courts to seek the "least restrictive alternative" to guardianship. In cases where that least restrictive alternative is a power of attorney, but the power of attorney is being unreasonably dishonored, an agent may have no choice but to seek a court-supervised guardianship in order to manage a principal's affairs. The new statutory procedures provide an out-of-court option for an agent to employ as a first line of defense and a subsequent last resort to the court for an order seeking validation of the power of attorney when all else fails.

The section has expanded its community outreach by providing financial support to legal services that assist elderly persons.

In 2001, lawyers from the Elder Law Section again joined members of the Real Property, Probate and Trust Section, along with educators, legislators, long-term care experts, and mental health experts and advocates in drafting a Mental Health Care Advance Directive. This bill is making its way through the legislature at this writing. The idea behind this directive is for a mentally ill person (the principal) to be able to create an advance directive during a period of lucidity that will provide for treatment to be authorized by a mental health agent in the event of a subsequent mental health crisis. Currently, the task force is grappling with the question of imposing treatment that may have been provided for under the advance directive. The task force is seeking to recognize the liberty to refuse treatment, setting limits in the law to achieve a balance between the duty to honor the advance directive during a period of illness when the princi-

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Elder Law Section of WSBA

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pal may be resistant to treatment, and the right of a principal to a valid revocation of the directive.

At the section's annual meeting on September 21, 2001, attendance had more than doubled from the previous year. The program featured, as its keynote speaker, Wendy Lustbader, a geriatric social worker and nationally known speaker and expert on aging issues. Ms. Lustbader is also the author of the recently published *What's Worth Knowing*, a compendium of the wisdom of seniors with whom she has worked over the years. By contrast to the infirmity, loss of independence, and vulnerability that so often charge the work of the section's lawyers, Ms. Lustbader affirmed for the audience that it works with an exceptional population. Coming so soon after the tragedy of the terrorist attacks in Washington and New York, the meeting was a profound and opportune moment for the section membership to reaffirm its sense of community, as well as its commitment to this uniquely personal practice area, and Ms. Lustbader's remarks carried special meaning to all of the attendees.

In 2002, the section will continue its efforts to assist in shaping the policy debates within Washington on issues that affect the aged and disabled clients it serves. The section has plans to sponsor two symposia in coordination with the Washington chapter of the National Academy of Elder Law Attorneys (NAELA). The first symposium will deal with issues of long-term care financing and will feature speakers from the public and private sector, stakeholders such as AARP, and the State Insurance Commissioner's office and legislative staff. A second symposium will deal with the crisis of abuse of vulnerable adults and review the existing legislation. Featured will be speakers from the public and private sector, as well as the health care and mental health professions.

As elder law continues to be defined as a practice field, the Elder Law Section of the Washington State Bar Association will continue its efforts to demonstrate leadership in this endeavor and to provide broad-based, quality legal services to all of Washington's senior citizens.

Homeownership Preservation

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groups), and VLP provided *pro bono* lawyers to make the presentations. From late October 2000 through February 2001, this partnership resulted in seven additional presentations to an additional 227 people. Providing lawyers for the MAHA partnership has since been integrated into VLP's *pro bono* opportunities for lawyers program.

Foreclosure Representation Program

Although VLP added to its capacity to handle some matters related to this project, particularly representing low-income landlords in eviction proceedings, it was not successful in recruiting lawyers to handle foreclosures. In January 2000, VLP sponsored a training program on Predatory Lending Practices, co-sponsored by the National Consumer Law Center and Massachusetts Community Legal Education. Although the training program was well attended by approximately thirty lawyers, only five foreclosure matters were handled during the grant period, which was a zero gain from previous years. Over the years, VLP has tried to build its capacity for handling foreclosure matters, with only limited success. This most recent effort proved no more successful. In analyzing the most recent effort, the problem appeared to be twofold: 1) the cases tended to be extremely time-consuming, and 2) many lawyers had actual or "generic" conflicts of interest, making the cases extremely hard to place.

As a result of the Homeownership Preservation Project, an important new service to the low-income, elderly community has been institutionalized through the ongoing partnership between VLP and MAHA. This partnership has expanded and strengthened alliances between VLP and a broad range of community groups, city officials, and city services offices. The project also confirmed that there is an interest among a previously untapped population of the bar to undertake this type of *pro bono* work. Finally, and most importantly, hundreds of low-income, elderly homeowners were educated on their responsibilities and rights as landlords.

ELVIS Citing

2002 Partnerships in Law and Aging Program Grants Awarded

by Stephanie Edelstein

The Partnerships in Law and Aging Program was established to foster the development of collaborative and innovative projects directed at improving legal access and awareness for older persons. Projects aimed at helping elders in the greatest social or economic need are especially encouraged.

The program is administered by the ABA Commission on Legal Problems of the Elderly, with funding from the Albert and Elaine Borchard Foundation Center on Law and Aging and the Marie Walsh Sharpe Endowment. Each year the program awards ten mini-grants of up to \$7,500 to bar groups, legal services providers, aging networks, and other non-profit organizations to support a variety of programs that enhance older persons' legal knowledge and access. Periodically, project reports will be published in *BIFOCAL* as a way to share information, and generate ideas and contacts among the legal services and elder advocacy networks.

Following are brief descriptions of the ten projects that were selected for the 2002-2003 program year.

- u **End-of-Life Partnership of Western Pennsylvania, Inc.'s "Take Charge of Your Life" Campaign** (Pennsylvania). Project will educate seniors about end-of-life care options, importance of discussing preferences with loved ones, and practical aspects of putting one's wishes in documented, legalized format.
- u **Neighborhood Legal Services, Inc.'s "Demystifying Medical Guardianships for Massachusetts Elders"** (Massachusetts). Project will develop a guide for use by lay advocates, family members, and nursing home administrators on the process to secure Medicaid reimbursed medical guardianships for Massachusetts elders.
- u **Wyoming Legal Services' "Senior Advance Planning and Guardianship Project"** (Wyoming). Project will coordinate and improve delivery of legal assistance to low-income seniors in guardianship matters.
- u **DSC - Community Mediation Center's "Reaching Higher Ground: A Community Collaboration"** (Virginia). Project will build capacity in the older adult community to resolve conflicts and develop an intervention strategy to alert seniors to benefits of mediation.
- u **Legal Aid of Arkansas/Arkansas Volunteer Lawyers for the Elderly's "Promoting Legal Awareness for Older Arkansans"** (Arkansas). Project will develop training and information tool for use by local media, churches, and other interested parties to enhance consumer recognition of legal problems and resources.
- u **Legal Aid Society of San Mateo County's "Caregiver Legal Assistance Network"** (California). Project will recruit private lawyers to provide legal services to grandparents and other relatives over age 60 who are raising minor children.
- u **Western Massachusetts Legal Services, Inc.'s "Spotlight on Advocacy for Elders Project (SAFE)"** (Massachusetts). Project will produce two town meeting-style forums on elder legal issues filmed live at the Western Massachusetts Public TV station, to be broadcasted and replayed.
- u **Three T's Inc.'s "Elder Protection Ace Review and Amendments"** (Ariz.). Project will collaborate with elders at five senior centers on the Navajo Nation to review and suggest changes to current elder protection laws.
- u **Marion-Polk Legal Aid Services, Inc.'s "Expanding ELVIS" (Emeritus Lawyer Volunteers in Service)** (Oregon). Project will recruit volunteer emeritus lawyers to provide community education and direct services to clients at a clinic in Keizer, Oregon.
- u **Senior Legal Hotlines/Legal Services of Northern California's "Developing Multicultural/Multilingual Capacity to Provide Legal Assistance to Northern California Seniors."** Project will recruit corps of bilingual translators to assist the Senior Legal Hotline in conducting outreach to seniors who do not speak or understand English, as well as educate translators on elder law issues.

For more information about the Partnerships in Law and Aging program and descriptions of previous program grantees, see the Commission's Web site at <http://www.abanet.org/elderly>.

Information about the 2003/2004 program year, including the RFP and application, will be available on the Commission's Web site in mid-August 2002.

Stephanie Edelstein is associate staff director of the ABA Commission on Legal Problems of the Elderly.

EM-Power Squared for Mediation

Theory Collides with Practice in Developing An Elder Mediation Project

By Virginia Marcantel

The Elder Mediation, or EM-Power, Project was an ambitious effort to bring the option of alternative dispute resolution to the seniors of rural Central Pennsylvania's Union and Snyder counties. With a grant from the Partnerships in Law and Aging Program, with funding from the Albert and Elaine Borchard Center on Law and Aging and the Marie Walsh Sharpe Endowment, project partners Susquehanna Legal Services (now North Penn Legal Services) and the Union-Snyder Area Agency on Aging sought to implement an alternative dispute resolution project that replicated an established, metropolitan Philadelphia-based senior mediation service. Throughout its design and implementation phases, the project depended heavily upon the guidance and support of its two primary collaborators: the Montgomery County Mediation Center's Committee on Mediation Services for Seniors of Norristown, Pennsylvania, and the Lewisburg Area Mediation Project (LAMP) of Lewisburg, Pennsylvania.

During its initial year, the EM-Power Project experienced a mixture of successes, delays, and frustrations, as well as glimpses of a bright future. To examine and interpret each of these will, it is hoped, prove beneficial to other groups that may be considering the development of a similar volunteer mediation program.

The Model

Montgomery County Mediation Center's Mediation Services for Seniors (which also received its start-up funding from the Partnerships in Law and Aging Program) had been two years in development when its Committee on Mediation Services for Seniors agreed to mentor the EM-Power Project. Key components of the Montgomery County Mediation Center's program that the EM-Power Project sought to replicate included:

- u Educating seniors and service providers about mediation and its availability;

- u Training mediators in legal, ethical, and geriatric issues, as well as referral sources;
- u Reaching out to other organizations that serve the elderly in order to share information regarding services, resources, referrals, and the development of creative ways of serving the elder population;
- u Training and utilizing senior volunteer mediators at all phases of the program design and implementation; and
- u Evaluating and adapting general mediation practices to meet the special needs of seniors.

Located in the Philadelphia metropolitan region, the Montgomery County Mediation Center benefits from a large and diverse population, a wide variety of resources and services, and a relatively compact service area. In comparison, Union and Snyder counties are both vastly rural, with a small, scattered population, and considerably fewer locally-available resources and services. Nevertheless, the EM-Power Project partners were confident that the model could be successfully replicated, with few modifications, in their predominantly rural service area

Objectives

With the Montgomery County Mediation Center as a guide, the EM-Power Project partners developed the following ten objectives:

1. Design and structure a delivery system for mediation services and education in a rural setting that replicates the Montgomery County Mediation Center's Mediation Services for Seniors;
2. Recruit and train senior volunteers to provide mediation services for seniors living in Central Pennsylvania's Union and Snyder counties;
3. Provide advanced training for mediators in legal, ethical, and geriatric issues, as well as referral resources appropriate for senior clients and their concerns;
4. Involve senior volunteers at all phases of the program design, implementation, and governance;

Virginia Marcantel is the EM-Power project coordinator.

5. Develop innovative instructional strategies for the education of seniors, service providers, lawyers, and other relevant segments of the population, as well as for the general public, about mediation and its availability as a conflict resolution option;
6. Form a coalition among organizations serving the aging and underserved in order to share information regarding services, resources, and referrals for the development of new and creative ways of serving the legal needs of the elder population;
7. Develop mechanisms for screening, intake, and delivery of mediation services, and implement them as senior mediation cases are processed;
8. Create an environment in which Montgomery County Mediation Center's Committee on Mediation Services for Seniors program can meet its goals related to the EM-Power Project;
9. Establish a mutually beneficial working relationship with LAMP to co-mediate appropriate cases;
10. Produce a final report that documents the project's strengths and weaknesses, plans for its continuation and expansion, and anticipates its becoming a model for other communities.

Next, staff of the EM-Power Project devised a two-phase time line. Phase I, which would begin in March 2000 and run through May 2000, was to encompass the recruitment of volunteer mediators, the preponderance of the mediation training, development of the initial community-wide educational outreach presentation, and the initial design of the administrative policies and processes. During phase II, which would begin in June 2000 and run through February 2001, the implementation of the project was to occur.

Staff included a project coordinator (a member of the Union-Snyder Area Agency on Aging) and a local lawyer, who served *pro bono*. Volunteer mediators would be recruited from the senior population of Union and Snyder counties to perform the major functions of the project and fulfill significant roles in the project's administration. An Advisory Committee was established, which consisted of the directors, or their designees, of the two project partners (Susquehanna Legal Services and the Union-Snyder Area Agency on Aging), and the two project collaborators (the Donald L. Heiter Community Center and the Montgomery County Mediation Center). Administration of the project's finances was the responsibility of Susquehanna Legal Services.

Development and Implementation

The staff, although quite experienced in project management and legal issues, had limited knowledge of the practice

of mediation. As a result, the staff of the EM-Power Project depended heavily upon the staff and volunteer mediators of Montgomery County Mediation Center's Mediation Services for Seniors Project, their mentors, for direction and guidance.

In addition, although both mediation projects were similarly structured, there proved to be significant differences between their two situations that would drastically affect the operations of the EM-Power Project. These differences surfaced only as the project began to be implemented.

The first difference was that the mentor program, Montgomery County Mediation Center, was a well-established, full-service, full-time mediation center, out of which the more specialized Mediation Services for Seniors had developed. In other words, a foundation in general mediation practice provided a solid base that could readily support a more specialized off-shoot. In comparison, for EM-Power, that established mediation foundation did not exist. The EM-Power Project attempted to build, not only the general mediation foundation and supporting network, but also the senior component—all in the span of one year.

Another issue that emerged soon after the project was initiated revolved around the problems inherent with an all-volunteer "work force." The management of schedules, and the distribution of roles and responsibilities of the volunteers proved to be more challenging than was anticipated. Project staff would have been well-served to have observed more closely the operation of project collaborator LAMP, which is also a virtually all-volunteer project. Because of the management challenges raised from working with volunteer groups, adhering to the project's time line became quite challenging.

Recruitment and Retention of Volunteer Mediators

The crucial element of phase I of EM-Power was to recruit seniors as volunteer mediators. Project staff distributed the initial recruitment information, primarily through the efforts of two district judges, local lawyers, several senior organizations, and local churches. Interested seniors were invited to attend an informational meeting in mid-March of 2000. The meeting would provide seniors with more information about the project, the effectiveness of mediation with the senior population, and the degree of commitment they would be asked to make as volunteer mediators. Ten seniors expressed a serious interest in becoming mediators, seven of whom attended the informational meeting.

Even at this early stage of the project, EM-Power staff realized that a deviation from the Montgomery County Mediation Center's model would be required. For example, several of the senior volunteers were interested in participat-

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ing in the project, but not necessarily as mediators—some preferred to do only telephone intake or education/outreach rather than to conduct actual mediations. Project staff determined that such a division of responsibilities would be appropriate to EM-Power because it could accommodate the involvement of a greater number of the seniors who were interested in participating. Another difference between EM-Power and its model could be found in the sources of its volunteers. The Montgomery County Mediation Center had a stable, centralized source from which to recruit volunteers (the Philadelphia chapter of the RSVP organization). However, in the Union-Snyder region, there is no single organization with an established, focused commitment to volunteerism that could serve EM-Power as a primary source of personnel.

Another challenge to the regular and systematic involvement of senior volunteers in the EM-Power Project also became apparent at this first meeting. The type of senior citizen who has the background and skills to become a mediator is, generally, one who is retired, has many other interests and commitments, travels extensively, and may not necessarily place his or her commitment to the EM-Power Project as a priority. Although such seniors are intelligent, have a wide range of interests, value their independence, and have enthusiasm for life—all clearly to the advantage of any project—the implications of this senior volunteer profile have, to a degree, impacted adversely on the delivery of training, the scheduling of meetings, and the administration of the project.

Training and Internships

Two four-hour basic mediation training sessions were provided to potential volunteer mediators and project staff in late March 2000 by the director of LAMP and several of their trained mediators. In May, four hours of active role play in simulated mediation scenarios offered the volunteer mediators a chance to practice the skills they had learned. In addition to basic mediation principles and techniques, the LAMP trainers shared their intake and screening strategies with the EM-Power staff and volunteers.

As the different functions involved in delivering mediation services were realized by the group, it became even more apparent that some of the volunteers were interested in carrying out only selected responsibilities, e.g., to be an intake person, but not a mediator, or vice versa. A total of six volunteers attended all or part of the basic training, and, even though all of them demonstrated genuine interest in mediation as an excellent alternative dispute resolution option,

some began to express doubts that they would be able to make the long-term commitment that the project required.

In mid-April, a three-day planning, training, and community education and outreach event was held in Lewisburg under leadership of the Montgomery County Mediation Center's Senior Mediation Services staff. The training for EM-Power staff and volunteers, as well as for LAMP staff and volunteers, offered presentations, demonstrations, and discussions, with an accompanying training and resource manual covering geriatric issues that should be considered when one or more of the disputants in a mediation is age sixty or older.

Undoubtedly, the greatest contribution that EM-Power can offer to any group considering the development of a similar mediation program is the revelation of the problems.

In addition, seven local lawyers also attended and participated in a two-and-a-half-hour workshop conducted by the Montgomery County Mediation Center's trainers. This workshop explored ways in which mediators and lawyers can work together to resolve disputes involving elderly clients or clients dealing with elderly people. The informal workshop provoked a stimulating exchange among the trainers and lawyers (who also earned 2.5 Substantive Pennsylvania Continuing Legal Education credit hours).

The trainings provided by LAMP and the Montgomery County Mediation Center were informative and stimulating. However, each group revealed a very different philosophy and approach to its practice of mediation. The Montgomery County Mediation Center practiced transformative mediation and favored a more scholarly method. In comparison, LAMP took a more practical, expeditious approach to mediation. This difference became somewhat problematic to those being trained. The trainees often found themselves struggling with which of the two approaches to follow and how the two methods might be blended. Because neither the project coordinator nor the project's consulting lawyer were trained as mediators at the outset of the project, they had not anticipated the wide differences in philosophy or approach. The preferred situation would have been to have compatible training providers. However, the two different approaches conveyed to the trainees a wider perspective of the practice of mediation and provided a variety of strategies and techniques for consideration.

Following the completion of the basic and the more specialized senior training in mediation, the EM-Power staff had arranged for LAMP to provide internship opportunities for the newly-trained mediators. When the appropriate time came, however, LAMP was receiving only limited referrals and requests for mediation. Consequently, the EM-Power mediators, who had completed their “classroom lessons,” were impeded from completing their total training requirements for lack of internship opportunities. Again, because of the relatively isolated geographic location of Union and Snyder counties, and a lack of remaining project funds, it was not feasible for EM-Power’s mediators to travel to other locations to intern.

In hindsight, the EM-Power staff realized that a more insightful plan for spending the project’s training dollars would have been to offer several smaller, more varied, and less expensive training events that were spread across the duration of the funded project. That way, the volunteers’ schedules would have been better accommodated, and there could have been funds available in the second phase of the project to pay for some alternate means of providing additional training options, specifically for the needed internship opportunities.

Project Administration

The administrative and operational functions of the EM-Power Project were planned according to the Montgomery County Mediation Center’s model, which calls for the senior volunteers to be involved in all aspects of the project’s planning and implementation. However, at its first operational meeting, the EM-Power volunteers indicated that they were not interested in developing policy, procedures, or written instruments. In addition, the volunteers also emphasized that they were not ready to take a leadership role in community outreach and education. The limits that the volunteers placed on their participation presented a real dilemma for project staff. Because of other professional commitments, the EM-Power staff were not in a position to absorb all of the responsibilities that had been proposed for the volunteers.

As a result of the reluctance of the volunteers to participate at the anticipated level, coupled with the inability of the project staff to assume the additional responsibilities, the project was significantly delayed in creating its own policies, procedures, administrative documents, and a fully-developed outreach and education plan.

Another weakness in the administration and operation of EM-Power was the failure to fully utilize its Advisory Committee. Difficulties in scheduling the proposed quarterly meetings—due to geographic distance and member schedules—became problematic. The project would most certain-

ly have benefited from the regular counsel of the advisory committee.

Community Outreach and Education

The project’s community outreach and education component has, generally, been very successful. At the outset, the project coordinator and the consulting lawyer developed a design for community outreach and education that could serve reciprocally as a referral network from various elements within the community back to the project.

A highly successful community outreach event took place when the Montgomery County Mediation Center conducted its three-day training, planning, and outreach meeting in March 2000. Approximately one hundred local citizens were invited to attend the meeting, which included a simulated mediation presented by the center’s trainers. The audience included two district judges, lawyers, social workers, health care providers, residents of senior housing projects, senior center managers, and staff from the Union-Snyder Area Agency on Aging. The program disseminated a wealth of information about mediation as a dispute resolution option, evoked a variety of questions from the audience, and served as an extremely effective orientation to the community regarding the advantages of mediation for the older population.

During the subsequent months, several additional outreach and education presentations were made by the EM-Power staff and a lawyer from Susquehanna Legal Services. These presentations were to specifically targeted groups within the community, including six senior centers in the two counties, a long-term care committee (advocates for seniors who reside in nursing homes and assisted living facilities), an Area Agency on Aging from neighboring Northumberland County, and several civic organizations.

The presentations were all well-received, but they elicited inquiries about fees and the immediate availability of mediation services for seniors that could not be satisfactorily answered at the time. As strong an impact as the outreach presentations had on the community, it might have been wiser to postpone them until more details of the project’s implementation had been determined. For example, not all of the audience’s questions (e.g., about the project’s fee structure) could be answered during the presentations.

The community outreach effort was widely expanded by the positive, in-depth local press coverage it received, which raised the awareness of the broader community about mediation and the geriatric issues related to it. However, even though there were time and personnel available to provide the outreach, it may not have been prudent to stimulate so much

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interest and actual requests for mediation services that the project was not yet ready to provide.

Conducting Mediations

The original design and time line for the EM-Power Project called for mediation services to be available to the community by summer of 2000. However, given the stumbling blocks and delays that the project encountered, EM-Power had not progressed to the point where it was able to deliver mediation services on its own.

A New Partnership

At the end of March 2001, the EM-Power Project was significantly behind schedule. However, its administrative and managing partners and personnel were still dedicated and actively striving to maintain the focus of the project and to realize its original objectives in full. Operating without specific funding, the project sought creative and economical strategies in order to continue operation. To that end, EM-Power signed a formal partnership agreement with LAMP to jointly provide a full spectrum of mediation services to the citizens of its general service area. The partnership would also allow EM-Power to incorporate the unique attributes of senior mediation into LAMP's existing operations.

Under the guidance of designated staff from the Donald L. Heiter Community Center and the Union-Snyder Area Agency on Aging, this partnership (referred to as LAMP/EM-Power) is being administered and operated by volunteer mediators who have received both basic and senior mediation training, thus ensuring that the older adult population will continue to have senior-sensitive mediation services available. Reciprocally, the original EM-Power volunteers are receiving training in other specialized issues, such as

child custody cases, so that the partnership has a wide degree of flexibility to co-mediate virtually any case that presents itself. The group meets twice monthly and frequently features continuing education and training programs for its members, as well as strategy sessions for community outreach, project development, and expanding the network and potential of the LAMP/EM-Power Project.

Recommendations for Replication

Undoubtedly, one of the greatest contributions that the EM-Power Project can offer to any group considering the development of a similar mediation program is the revelation of the problems it faced, the lessons it has learned from them, and the alternate plans it developed to maintain its presence in its immediate community and expand its reach into a larger one. These experiences, set against EM-Power's original plans, should serve as a reasonable guide for any group seeking to develop a similar program in their own community.

The most important issues to consider in replicating the EM-Power model would center around:

1. Geographic location and availability of services and resources;
2. Support and acceptance from the community, especially the legal establishment and the aging network;
3. Profile of the volunteers it might recruit;
4. Identifying, early in the planning and development stages, all other mediation projects and methods of practice within the region and establishing a working relationship with them; and
5. Building flexibility into its management plan and time line.

Working within the above-described parameters, replication of the EM-Power Project could prove productive and rewarding for any community seeking to provide its citizens with viable alternative dispute resolution options.

**Attention Bar
Chairs**

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Questions?

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Book Review

Lifelines: Living Longer, Growing Frail, Taking Heart

by Muriel R. Gillick, M.D., (New York: W.W. Norton & Company, 2001)

Review by Naomi Karp

With the growth of the “old old” segment of our population, more and more of us will suffer from “the elusive condition known as frailty.” A frail older person has impairments in multiple domains that lead to profound functional limitations in coping with daily life. Although there is some evidence that the percentage of individuals facing a protracted period of disability in old age is falling, the growing population of very old people means that the absolute numbers of frail people will continue to increase. Many of these people will survive for a good number of years in a state of frailty.

Dr. Muriel R. Gillick, a geriatrician and physician-in-chief at the Hebrew Rehabilitation Center for Aged in Boston, has written a book aimed at helping all of us gain an in-depth understanding of the experience of the frail elderly. In *Lifelines: Living Longer, Growing Frail, Taking Heart*, she seeks to help the frail elderly and their families cope with their condition. Her vivid exploration of the medical, ethical, social, and spiritual issues surrounding frailty will broaden the viewpoints and expand the knowledge bases of professionals in aging as well as lay persons.

Gillick explores the world of frail elders through the stories of four people drawn from her clinical experience. These individuals differed in the health problems they encountered, the progression of their impairments, the living situations they chose, and their treatment decisions. Jack Simon was a dynamic man suddenly made frail due to a stroke. Ben Frank slid gradually into frailty as one organ system after another failed. Catherine Endicott progressively became more frail through a series of heart attacks. Unlike the others, Leyla Keribar became frail when she developed dementia on top of Parkinson’s disease. Through their varied stories, Gillick enables the reader to consider a host of complexities.

These case studies serve Gillick well as she devotes a chapter to each of four difficult issues confronting the frail elderly. The first she calls “Fixing the Fixable Part,” a discussion of maximizing the individual’s functional abilities by addressing one particular physical problem—for example, removing a cataract, obtaining a hearing aid, or replac-

ing a hip joint. Next, Gillick discusses the individual’s environment, both physical and social. She explains that “the moves make the man”—a move to assisted living, for Catherine Endicott, meant a safer physical environment and social contacts that enriched her life. In the next chapter, “When Acute Illness Strikes,” Gillick discusses the difficulty of choosing how much medical care and what kind for people who already have become frail. She shows that geriatricians tend to see medical procedures in a different light from other internists, in part due to their fuller understanding of frailty. Gillick starts the last of these four chapters by saying, “When I see patients who are old and frail, I cannot help but wonder what keeps them going, what sustains them spiritually as their bodies disappoint or betray them.” Each of the patients in the case studies illustrates personal methods of finding meaning and deriving satisfaction, as daunting as that may be.

“When I see patients who are old and frail, I cannot help but wonder what keeps them going, what sustains them spiritually as their bodies disappoint or betray them.”

Gillick closes with a discussion of two challenges we face now and in the future. As individuals, we need to try to avoid becoming frail. As a society, we must design better environments for frail elders and create systems of medical care that promote autonomy and comfort.

While many of the facts and viewpoints presented may not be new to professionals in the aging field, this author’s lucid and sensitive presentation of the multiple facets of frailty makes the book worthwhile reading for frail older persons, members of their support networks, and the professionals who serve them. Gillick blends engaging personal stories, useful facts, the geriatric physician’s unique perspective, and a look at social policy into a comprehensive presentation—and a very good read.

Naomi Karp is associate staff director of the ABA Commission on Legal Problems of the Elderly.

Unbefriended Elderly

Continued from page 1

many residing in nursing homes, with no guardians, designated health care proxies, family members or close friends who can be their decision-makers when they have lost the capacity to make necessary health care decisions.

This project is a welcome follow-up to the Commission staff's considerable work on health care decision-making, guardianship and alternatives, and health and long-term care. We will be partnering with the Samuel Sadin Institute on Law of the Brookdale Center on Aging of Hunter College in New York City.

The Commission/Brookdale Law Institute project will take a three-pronged approach to the problem: (1) background research—i.e., surveys of target groups, legal research, telephone interviews, site visits—on the current state of the law and practice; (2) a symposium of experts who will focus on legal, clinical, and ethical aspects of the issue and seek to develop realistic policy and practice recommendations and guidelines (followed by a strategy session aimed at enhancing health care decision-making for this population in New York); and (3) the dissemination of findings and recommendations through publication of a report and a targeted communications strategy to spread its messages.

The project will be national in scope but have a heightened focus on New York, where the Fan Fox and Leslie R. Samuels Foundation directs most of its energies.

Our initial task is to study existing laws, policies, and practices. We have extensive knowledge of guardianship, advance directives, and health care consent laws, and are looking for other existing mechanisms. We would appreciate the help of *BIFOCAL* readers in answering the following brief inquiries:

- u In your setting or locale, is there a process (other than guardianship) for health care decision-making on behalf of persons with diminished capacity who lack formal or informal surrogates (e.g., appointed proxies or family members/close friends under health care consent laws)?
- u What is the source of this process?
 - u State law or regulation?
 - u Local or institutional policy/practice?
 - u Other?

Please identify the authority or entity responsible for this process and a contact name, phone number, and email address. **Send your responses to Naomi Karp at nkarp@staff.abanet.org.** Let us know who you are and your connection to this topic. Thank you very much for your help.

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