COLA CELEBRATES 40 YEARS OF RESEARCH, EDUCATION AND ADVOCACY

The Commission at Work: Past, Present, and Future

- From 1979-2019: Elder Law Then and Now
- A Look Back at Our Commission Chairs
- Through the Years: Advances in Health Care Decisions, Guardianship, & More
BIFOCAL

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BIFOCAL
Journal of the American Bar Association Commission on Law and Aging

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Carole Fleck
Sonia M. Arce
Trisha Bullock

Editor
Carole Fleck
Questions?
Contact the Commission at (202) 662-8690, or at: aging@americanbar.org

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A Celebration of 40 Years of Fighting for Elder Rights

By Louraine Arkfeld

We are pleased to present this special issue of BIFOCAL, celebrating the 40th anniversary of the American Bar Association Commission on Law and Aging. I have been honored to chair the Commission for the past two years and can say unequivocally, based on my many years in the profession and involvement with the ABA, that the Commission on Law and Aging is one of the brightest jewels in the ABA’s multi-faceted crown.

The Commission’s esteemed reputation is due, in large part, to the professional staff led by Director Charlie Sabatino. The five members of the legal staff average 23 years of experience at the Commission and 30 career years in the field of law, aging, and disability. Leading the charge has been Assistant Director Erica Wood, whose tenure extends back to the very first meeting of the Commission in 1979. Erica’s work has touched the professional life of virtually every advocate who has worked in this field over the last four decades.

The deeply felt tectonic change in staffing this anniversary year is Erica’s planned retirement at the end of this year. She leaves a huge legacy behind while she continues to pursue aging advocacy in new ways, along with expanding her role as grandmother.

The Commission also owes much of its success over the years to the many leaders both within and outside the legal profession who have served voluntarily and with great distinction as members.

The 15-member Commission, appointed annually by the incoming ABA president, has included not only lawyers with sweeping legal expertise, but national experts in aging from the fields of medicine, social work, nursing, academia, state and federal public administration, associations, advocacy, and more. We are unique in having this interdisciplinary team and we have been blessed with the tireless volunteer efforts of the best and the brightest from across the country.

This expertise and energy of members and staff will continue to push the envelope of law and aging advocacy as we embark on the next 40 years, but not without new challenges. The “silver tsunami” continues and the scope and complexity of issues we face will only grow. This includes health care access and affordability, long-term care, financial security, independent living, aging in place, technology and privacy, housing and the environment, to name a few of the challenges. But no matter what the issue, we at COLA strongly believe — and fight for — the right of every member of society to age with dignity.

The operations of associations like the ABA are also changing dramatically as robust membership is no longer taken for granted. The many public interest law programs within the ABA, such as this Commission, now shoulder the responsibility of developing business plans that rely far more on grants and generous donations and less on the ABA’s baseline funding.

As a result, readers may already have encountered some of our new initiatives such as the “Friends of the Commission” fundraising effort and the sale of the smartphone app Mind Your Loved Ones, or MYLO for storing and sharing family member’s advance directives and other medical information.

We are confident that these initiatives and your support, along with our core work in policy development, research, training and education, and technical assistance, we will continue to move aging policy and practice toward the highest and the best.

Here’s to the next 40 years!
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 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 services 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 nonlawyer 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, 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.

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.

[This is a reprint of Daniel Skoler’s column on COLA’s 30th anniversary].

What was so unique about the Commission’s launching? That’s hard to say but, 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.

Daniel L. Skoler is the former director of the ABA Public Services Division (1971-1980) and member of the Commission (1980-1986).
Recollection: COLA’s First Director
Nancy Coleman

The Commission took root and grew in its early years largely because of the energy and passion of its first director, Nancy Coleman. A University of Michigan MSW social work graduate and political science MA, Nancy came to the Commission after cutting her teeth in positions such as project director for Michigan’s Citizens for Better Care and investigator for the U.S. Senate Special Committee on Aging.

Her intelligence, skills in project development, and networking ability among lawyers and other advocates serving older persons established the Commission as an important national resource. Her convening of lawyers scattered about the country whose practices focused on aging issues helped give birth to the National Academy of Elder Law Attorneys (NAELA) in 1987 and earn her a presumptive status of the elder law lawyer’s lawyer, sans JD. She remains the only non-lawyer granted membership, including a term on the board, in NAELA’s history.

By the time Nancy moved on from the Commission in 2005, she had built a record of ground-breaking events and resources that helped define the field of elder law and support regulatory and practice improvements in long-term care, Medicare and Medicaid, Social Security, capacity and guardianship issues, and legal services delivery.

She had the ability to tap the best resources within the ABA to establish a firm foundation. I had the pleasure of joining the Commission staff in 1984 after managing a legal aid office practice focused on seniors. It is due to her inspiration, knowledge and passion that I reluctantly stepped into the director role of the Commission and continue to be inspired by its mission.

By the way, Nancy’s inquisitive heart is still probing new issues in her latest role as foreperson of a Los Angeles County Civil Grand Jury. She continues to shed light where it makes a difference.

--Charlie Sabatino

The Commission is Here to Help You

- Our website americanbar.org/aging contains resources you can use in guardianship, elder abuse, health care decision-making, capacity assessment, ethics, & more.
- Our experienced staff can provide training on these and other topics.
- We provide consultation services directly and through the NCLER.
- We are available as collaborators on grant-funded research & education.
- Contact us at aging@americanbar.org.
The Commission is an interdisciplinary body of experts in aging and law, including lawyers, judges, health and social services professionals, academics, and advocates. With its professional staff, the Commission examines a wide range of law-related issues.

**Commission Chairs Past & Present**

- **Hon. Louraine Arkfeld**
  2018 - Present

- **Joseph D. O’Connor**
  2006 – 2009

- **Hon. Patricia Banks**
  2015 - 2018

- **Larry McDevitt**
  2005 - 2006

- **John H. Pickering**

- **David M. English**
  2012 - 2015

- **Kristen Booth Glen**
  2002 – 2005

- **Alexander Forger**
  1993 - 1995

- **Jeffrey J. Snell**
  2009 - 2012

- **F. Wm. McCalpin**
  1996 – 2002

- **Lyman Tondel, Jr.**
  1979-1985
COLA at 40

For 40 years, we've worked tirelessly to improve the lives of thousands of vulnerable older adults. We appreciate the support that enables us to continue to fight to strengthen and preserve elders' rights now and in the future.

### Elder Law Then and Now

<table>
<thead>
<tr>
<th>Then (1979)</th>
<th>Now (2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Elder Law</strong> didn’t exist as a field or even as a descriptive term.</td>
<td><strong>Elder Law</strong> is a widely recognized area of practice.</td>
</tr>
<tr>
<td><strong>Americans over 65</strong> numbered 24.4 million and made up 11 percent of the population.</td>
<td><strong>Americans over 65</strong> number over 54 million and make up over 16 percent of the population.</td>
</tr>
<tr>
<td><strong>The Older Americans Act</strong> authorized funding for “legal services” for older persons only 6 years earlier and created the state role of “Legal Services Developer” only 3 years earlier.</td>
<td><strong>The Older Americans Act</strong> continues to fund “legal assistance” as well as elder justice initiatives, and supports innovative delivery programs to reach the most socially and economically needy.</td>
</tr>
<tr>
<td><strong>The Administration on Aging</strong> funded very few fledgling national support projects such as the Legal Research and Services for the Elderly and the National Senior Citizens Law Center.</td>
<td><strong>The Administration on Aging</strong> funds 23 national resource centers, including the National Center on Law and Elder Rights in which the Commission partners with Justice in Aging.</td>
</tr>
<tr>
<td><strong>Publicly funded legal services</strong> programs for older persons numbered about 120 nationwide.</td>
<td><strong>All 655 Area Agencies on Aging</strong> fund some legal assistance, most commonly a Legal Services program.</td>
</tr>
<tr>
<td><strong>Bar projects</strong> serving the elder existed in about 20 states, most often in the form of no cost or low-cost lawyer referral programs.</td>
<td><strong>Bar projects</strong> exist in nearly every state. The Commission provided seed funding for scores of elder law partnership projects over 30 years.</td>
</tr>
<tr>
<td><strong>No state bar</strong> had an elder law section. About half had a committee on the elderly.</td>
<td><strong>Thirty-two state bars</strong> have active Elder Law Sections; an additional eight have committees with membership totaling nearly 19,000.</td>
</tr>
<tr>
<td><strong>Ten law schools</strong> were known to have law and aging seminars of clinical programs.</td>
<td><strong>More than 100 law schools</strong> nationwide teach elder law courses or clinics. Three have LLM programs in Elder Law: Stetson University College of Law; Touro College - Jacob D. Fuchsberg Law Center; and Western New England University School of Law.</td>
</tr>
<tr>
<td>None had LLM programs in Elder Law.</td>
<td></td>
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<tr>
<td><strong>No Elder Law journal</strong> existed but two professional and one mass market guide on law and aging guide were available:</td>
<td><strong>Two law schools</strong> (U. of Illinois and Marquette University) publish dedicated elder law journals in addition to the journal of the National Academy of Elder Law and the Commission’s own <strong>BIFOCAL</strong>. Several state bar elder law sections publish extensive state practice manuals. All major law publishers have texts and practice guides for elder law.</td>
</tr>
<tr>
<td>• <em>The Law and aging Manual</em> by Legal Research and Services for the Elderly</td>
<td></td>
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<tr>
<td>• <em>Law of the Elderly</em>, a Practicing Law Institute Book edited by Jonathan Weiss</td>
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Then & Now (1979 – 2019) Elder Abuse

1979

- Congress amended the Social Security Act in 1974 to require all states to establish adult protective services units (APS) for adults aged 18 and older.
- The U.S. House of Representatives held hearings and sponsored investigations about elder abuse throughout the middle to late 1970s.
- “Caregiver stress” was thought to be the primary cause of elder abuse. As a result, models that relied upon recognition and reporting of elder abuse by health care providers were developed to identify and help victims. Helping victims often involved removing them from their home and placing them in a nursing home.
- Every state had an APS program by 1981. States may choose to devote some of their Social Service Block Grant funds to APS. Federal APS funding has been authorized but never appropriated.
- The National Center on Elder Abuse (NCEA) was authorized by the Older Americans Act in the late 1980s, and funding has been appropriated since then for its activities which include information dissemination, research, technical assistance, and training.
- The U.S. Senate, House, and Government Accountability Office have conducted myriad hearings and studies on elder abuse issues.
- Congress has enacted two key pieces of elder abuse legislation—the Elder Justice Act (EJA) in 2010 and the Elder Abuse Prevention and Prosecution Act (EAPPA) in 2017—but funding for the activities and programs authorized has never been appropriated. (Some authorized activities, such as the federal Elder Justice Coordinating Council, have been funded by federal agencies in other ways. Amendments to the Violence Against Women Act have authorized dedicated funding for training about abuse of women in later life and persons with disabilities, and those funds have been appropriated.
- Judicial training and development of bench tools and other resources for judges has expanded.
- There is substantially greater training of and involvement of criminal justice system professionals. However, the lack of dedicated federal funding means that involvement may vary widely from community to community and may not continue if key individuals leave their jobs.

2019

- Books, scholarly journal articles, news stories, and other articles and publications about elder abuse have increased exponentially.
- There is growing use of civil remedies including civil protection orders, actions to recover homes and personal property, and removals of abusive guardians or agents under a power of attorney.
- Multidisciplinary responses have developed and are widely regarded as best practices, with increasing support from federal, state, and local government agencies and philanthropies. These responses include multidisciplinary or interdisciplinary teams, task forces, coordinating councils, elder abuse fatality review teams, forensic centers, and more.
- Multiple research agendas have been developed, including the National Academy of Sciences groundbreaking report, Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America (2003).
- Important research has been funded by various federal government agencies (primarily the Department of Justice) and a few foundations. Research focused first on the extent of the problem, then on development of tools for detecting elder abuse, and is beginning to shift toward outcomes for victims. Perspectives about the manifestations of elder abuse and theories about its causes have broadened significantly.
- While tragic, several cases involving allegations of elder abuse against high-profile individuals such as Brooke Astor, Mickey Rooney, Harper Lee, Casey Kasem, and Stan Lee have raised awareness of the problem among the public, a wider array of professionals, and policy makers.
Commission’s Elder Abuse Action Highlights

- Developed *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse* (1995). The ABA adopted the recommendations as Association policy in 1996. This work has informed efforts in the 2000s to change court practices, such as establishment of elder protection courts and elder justice centers.

- Developed *Elder Abuse in the State Courts – Three Curricula for Judges and Court Staff* (1997).

- As a partner in the National Center on Elder Abuse, helped implement the National Policy Summit on Elder Abuse held in December 2001. Led by the Commission, the ABA adopted the Summit’s law-related recommendations as Association policy in 2002. This policy has enabled the ABA to advocate for enactment of the EJA, EAPPA, and other relevant legislation.

- The *Managing Someone Else’s Money* guides we produced for the Consumer Financial Protection Bureau have been distributed to more than 1.5 million people, adapted in whole or part by at least nine states, and translated into Spanish.

- Produced *Legal Issues Related to Elder Abuse: A Pocket Guide for Law Enforcement* and distributed almost 25,000 hard copies to police departments, sheriffs’ agencies, prosecutors, judges and court staff, and community corrections agencies.

- With help from the National Adult Protective Services Association, provided seed funding to demonstration sites to establish the earliest elder abuse fatality review teams and produced *Elder Abuse Fatality Review Teams: A Replication Manual* (2005). A recently concluded project, conducted with program evaluators at the University of Texas Health Science Center at Houston, allowed us to update and expand the replication manual, conduct a team inventory, develop a library of team documents and other resources, and collect and analyze team outcomes.

- For AARP’s Public Policy Institute, we analyzed the abuse-related provisions of the Uniform Power of Attorney Act (UPOAA) and prepared a report comparing existing state provisions with the UPOAA provisions. This report has helped inform state AARP advocates and others, including legislative and bar association study committees, about the benefits of state enactment of the UPOAA.
Health Care Decision-Making

Then & Now (1979 - 2019)

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<tr>
<th>1979</th>
<th>2019</th>
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<tr>
<td>• The Medicare hospice benefit was not yet implemented. A miniscule fraction of deaths in America occurred in hospice.</td>
<td>• Over 50 percent of all deaths of Medicare patients are in hospice (in-patient and home-based).</td>
</tr>
<tr>
<td>• In 1979, Medicaid long-term care expenditures for home and community-based care was almost non-existent. By 1995, it reached only 18 percent of total Medicaid long-term care spending. The rest went to institutional care.</td>
<td>• In FY 2015 Medicaid long-term care expenditures for home and community-based care reached 55 percent of total long-term care spending.</td>
</tr>
<tr>
<td>• Ten states had “living will” statutes. None had comprehensive health decisions legislation. No state had a proxy directive.</td>
<td>• Every state has comprehensive health decisions legislation recognizing advance directives (including living wills and proxy directives).</td>
</tr>
<tr>
<td>• Some six cases nationally addressed the right to refuse life-sustaining treatment in case law, the most well-known being the 1976 Karen Ann Quinlan case of New Jersey. All affirmed the basic right.</td>
<td>• Nearly 500 reported cases nationally have affirmed the right to consent to or refuse treatment under appropriate safeguards. The most well-known case remains the 1990 Nancy Cruzan decision of the U.S. Supreme Court.</td>
</tr>
<tr>
<td>• The term “advance directive for health care” didn’t exist. A tiny fraction of adults had a living will or anything else that would qualify as an advance directive.</td>
<td>• Advance directives for health care are widely known, both proxies and living wills. About one-third of adults have one. Of those over age 60, 72 percent have one.</td>
</tr>
<tr>
<td>• No state had default surrogate decision-making laws authorizing family members to make end-of-life decisions.</td>
<td>• All but six states have a comprehensive default surrogate decision-making law, and more than half of those also recognize a close friend as a possible surrogate.</td>
</tr>
<tr>
<td>• No national model for state health decisions legislation existed.</td>
<td>• 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.</td>
</tr>
</tbody>
</table>
• 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.

• All states authorize either “out-of-hospital” DNR protocols or have adopted some variation of Physicians Orders for Life-Sustaining Treatment (POLST) addressing other high-probability critical care decisions for persons with advanced illness.

• The birth of Advance Care Planning focused almost exclusively on the legislative creation of living wills and later health care powers of attorney.

• Advance Care Planning is understood as an ongoing process of discussion of one’s care, clarification of related values and goals, and embodiment of preferences through written documents and medical orders.

---

Commission Contributions in Health Care Advance Planning

The Commission has moved the issue of health care advance planning forward. These are among our contributions over the last four decades:

• Presented more than 500 professional education programs on health decisions law and practice.

• Worked with Uniform Law Commissioners in shaping the 1993 Uniform Health Care Decisions Act.

• Served in advisory or consultative capacity to nearly 200 federal, state, university-based, and non-profit national groups on health decisions.

• Responsible for a dozen key ABA policies on health care decision-making, end-of-life, and palliative care.


• Produced one of the first national advance directive forms with AARP and the AMA in 1990, receiving national attention by columnist Ann Landers.

• Produced more than 30 research reports, articles, professional practice aids, and public education materials on health decisions and advance planning, including the Tool Kit for Advance Care Planning; Making Medical Decisions for Someone Else; a Multi-state Health Care Power of Attorney Form; and The Lawyer’s Advance Directive Counseling Guide.

• Continued efforts to strengthen the Medicare and Medicaid home and community-based health and support services especially for those with advanced illness.

• Provided consultative support to the National POLST Paradigm since its inception.

• Advocated for federal supports for advance care planning and POLST. Provided legislative tracking and annual updates of state advance directive and surrogate decision-making laws, available to all on our website.

• Participated in multiple governmental and academic research and review processes focused on health, caregiving, and advance care planning.

• Produced practical articles for health care decision-making, caregiving, and advance care planning for both the public and the legal profession, all available free in our bi-monthly BIFOCAL e-journal.
1979-2019

Nursing Home Costs Then and Now

In 1979, the average private pay rate for a nursing home semi-private room was $27 per day.

In 2019, the national median private pay rate for a nursing home semi-private room is $247.


In 1979:

The cost of in-state tuition was under $1,000 at most U.S. colleges and universities for the 1978-79 school year.

Sources: https://libraryguides.missouri.edu/pricesandwages/1970-1979
Advancing Elder Rights: Our Accomplishments in 2019

The Commission is transforming guardianship and supporting decision-making rights

By Erica Wood

Adult guardianship issues are challenging, and transforming practices is an uphill battle. Sometimes older adults lose their rights to a guardianship system that too quickly determines “incapacity” in the name of protection. Some courts lack the resources, data and political will to improve guardianship monitoring and accountability. Family guardians often don’t have the guidance they need. In some cases, guardians take advantage of their position of trust to exploit those under their care.

Since the 1980s, the ABA Commission on Law and Aging has been pushing for guardianship change. We analyze bills, respond to hundreds of requests for technical assistance, speak before state and national groups to prompt action and educate professionals, and urge best practices to change systemic problems. We are a “go-to” source on guardianship and supported decision-making. Our web page is packed with up to date legislative, policy and practice information. In 2019, here’s how we made a difference:

• The National Center for State Courts partnered with the ABA Commission to release an interactive, user-friendly online training called Finding the Right Fit: Decision-Making Supports and Guardianship. The course offers realistic scenarios as well as information on supporting someone to make decisions; legal decision-making options; and serving as a guardian. It features realistic scenarios to help users develop their own strategies.

• The Commission once again produced its nationally recognized annual state guardianship legislative update, an essential tool for policymakers, researchers, and law-related groups. The final 2019 update will be posted at the end of the year. Throughout the year, the Commission partnered with AARP to help state AARP advocates track and analyze bills.

• Working with the National Center on Law and Elder Rights, the Commission led two national webinars on guardianship reaching professionals who can take action to change lives. In June, the Commission, with Jim Berchtold of Legal Aid Center of Southern Nevada, presented “When the Guardian is an Abuser”; and in September, with Catherine Seal of Kirtland & Seal, LLC of Colorado, we presented “Representing a Client in A Defense of Guardianship Case.”

• Under a grant from the DHHS Administration for Community Living, the ABA Commission is enabling state stakeholders to work together strategically on guardianship improvements specific to their state, through WINGS, or Working Interdisciplinary Networks of Guardianship Stakeholders. WINGS can drive changes that any single agency or organization could not. For example, this year Oregon WINGS completed a comprehensive assessment of the availability and use of less restrictive decision-making options throughout the state and has produced a train-the-trainer curriculum to inform professionals. Florida developed a four-part, web-based judicial and legal continuing education curriculum.

• The Commission partnered with the Virginia Tech Center for Gerontology and the New York Vera Guardianship Project to develop and release a comprehensive report with recommendations, Incapacitated, Indigent, and Alone: Meeting Guardianship and Decision Support Needs in New York, funded by the New York Community Trust.
Decision-Making in 2019
By Dari Pogach

The Commission on Law and Aging is at the forefront of a national dialogue between policy makers, advocates, and practitioners about supported decision-making. We draw on our expertise in guardianship reform, health care decision-making, capacity determination, the rights of older adults, elder abuse and undue influence to create useful tools and trainings for practitioners and the public. With our connections in the aging and disability fields, we bring stakeholders together to engage in meaningful conversations about supported decision-making.

Supported decision-making empowers individuals who historically have been denied the right to make their own choices, including people with disabilities and older adults, to make decisions with the support of trusted individuals. Supported decision-making can be an alternative to the most drastic of restrictions on a person’s autonomy: court-appointed guardianship.

New Concept Gains Attention

Supported decision-making, a cutting-edge concept, is one of many ways to provide decision supports to those who need assistance. As this model gains attention in the United States and abroad, its implementation is not uniform. Some decision-makers and their supporters complete a formal written agreement called a supported decision-making agreement. Other individuals use a wide range of decision supports that they do not refer to as supported decision-making, including discussing choices with friends and family or asking a supporter to accompany them to a medical appointment, a financial planning meeting or when consulting a money manager.

The disability rights community, all too familiar with suppression of personal autonomy and the right to make choices, has embraced supported decision-making as a best practice and alternative to guardianship. Recent pilot programs, academic research, and legal advocacy have focused on supported decision-making for individuals with intellectual and/or developmental disabilities.

Advocates for supported decision-making recognize if this model is to become a widespread alternative to court-appointed guardianships, it must also work for older adults with dementia and age-related cognitive decline. As relevant interest groups for older adults join the conversation, they are raising important questions about the potential risks of supported decision-making, such as the potential for a so-called supporter to use his or her role to take advantage of the decision-maker.

Choosing a trusted supporter could be challenging for older adults who have lost their families and friends over the years. However, a supported decision-making model could also address issues of isolation, enhancing existing personal connections and forging new ones.

States Consider Agreement Laws

As supported decision-making gains recognition, state legislatures are considering how to incorporate the model into state law. In recent years, several states have defined supported decision-making in statute. Nine states passed laws recognizing supported decision-making agreement as legally enforceable. The Commission tracks these laws in our annual Guardianship Legislation Summary.

As supported decision-making increasingly becomes a viable option for individuals who may have otherwise been appointed a guardian or surrogate decision-maker, there is a critical need for education and training. In 2019 the Commission developed, in partnership with the National Center for State Courts, Finding the Right Fit: Decision-Making Supports and Guardianship, a user-friendly, interactive resource for friends and family who want to provide support for their loved ones; individuals considering what assistance they may need now or in the future; and guardians who want to learn more about their role. Users can learn about supported decision-making through realistic scenarios and plain language explanations.

Sharing Expertise

In addition to developing an online curriculum to reach people across the country, several organizations invited us to speak about a variety of topics relevant to supported decision-making.
The organizations with which we shared our expertise include the American Society on Aging, American Psychiatric Association’s Council on Psychiatry and Law and Committee on Judicial Action, Council for Court Excellence, Maryland State Bar Association, National Association of Elder Law Attorneys, North Carolina Rethinking Guardianship, National Resource Center on Supported Decision Making, Puerto Rico Bar Association, and the Virginia Public Guardianship Program.

In 2020 and beyond, supported decision-making will continue to gain recognition as a decision-making model and alternative to guardianship in state law and legal practice for a wide range of individuals. The Commission will continue to play a pivotal role in exploring its application, considering challenging questions, and creating helpful materials for practitioners and the public.

For more information on supported decision-making, go to the Commission online at https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/

The Commission has been a part of federally-funded national support programs for professionals in law and aging for 36 of our 40 years. Over the decades we have been funded to provide expertise on a diverse array of substantive issues and on legal service delivery. At times we have been funded as a stand-alone grantee, at other times as a partner in a collaboration or as a subcontractor. The structure and focus of the national support centers have varied, but the commitment to creating resources, providing education and training, and providing advice to professionals in law and aging has remained constant. The Commissions’ role in national support offices has allowed us to share our expertise with a diverse group of advocates in law and aging and spread awareness of the work that we do.

The National Center on Law and Elder Rights (NCLER) was created in the fall of 2016 by the Administration for Community Living funded from the Older Americans Act with an expected term of five years. We are beginning our fourth year as part of the NCLER.

The role of the Commission in the NCLER is to provide expertise on advance planning, decision supports, guardianship reform, and elder abuse. We create and present six national webinars each year. The webinars are offered free of charge to professionals in law and aging and archived online for viewing on demand. For each webinar we create an issue brief of three to six pages. The goal of the issue briefs is to provide concise action oriented written materials for advocates and consumers. See https://ncler.acl.gov/ for details on NCLER.

The Commission presented webinars in 2019 for NCLER on:

- Drafting advance planning documents to reduce the risks of abuse or exploitation
- Representing a client in defending against a guardianship case
- Signs of abuse neglect or exploitation
- When the guardian is the abuser
- Ethical issues in mandatory reporting
- Self-neglect and hoarding

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We created six or more issue alerts that NCLER distributes to its email list. The most popular have been practice tips, and practice checklists. Tips to become a better family guardian, and tips for writing better funding proposals were among the most popular.

NCLER funds also enable the Commission staff to spend time providing expert advice to advocates in law and aging. NCLER refers to these as “case consultations.” We receive requests through the NCLER website, through other NCLER partners, and directly from professionals in law and aging seeking information, guidance or advice on many of the issues. This year, we responded mostly by email or phone to 277 requests.

The NCLER has an email database of over 30,000 professionals in law and aging from across the country. About one-third report being lawyers; the rest are a blend of social workers, health care professionals, academics, government staff, and various advocates.

National Aging and Law Conference

The 2019 National Aging and Law Conference (NALC) was held October 31-November 1 at the Crystal Gateway Marriott in Arlington, Virginia. Attendance was up slightly from the year before; about 250 attended NALC and about 90 attended the pre-conference program. It was the Commission on Law and Aging’s sixth year of organizing and hosting this annual event. What sets NALC apart from other conferences on aging, elder law or estate planning is a focus on training advocates who provide services to primarily low-to-moderate income older adults. The Commission on Law and Aging has played a role in interdisciplinary conferences on aging and law since the 1980s.

First called the Joint Conference on Law and Aging, it was co-hosted by several advocacy organizations including COLA. AARP underwrote, planned, and co-hosted the conference starting in the early 2000s through 2010 when it became known as the National Aging and Law Conference. From 2011 through 2013 the conference was hosted by the National Academy of Elder Law Attorneys under the program title, National Aging and Law Institute. NALI was an effort to produce a conference for both attorneys in private practice and legal aid – public interest advocates. This proved very difficult. When NAELA shifted directions, the Commission on Law and Aging assumed responsibility for organizing and hosting the National Aging and Law Conference in 2014. In 2019 the program started with a Pre-Conference program on advanced issues Supplemental Security income organized by NCLER. The main conference agenda included 30 workshops and four plenary sessions. The planning committee carefully balances the agenda covering health care, abuse, guardianship reform, legal service development and delivery, benefits, and legal ethics.

Planning is underway for the 2020 National Aging and Law Conference. It will be held at the Hilton Crystal City in Arlington, Virginia, with pre-conference programs on October 21 and NALC on October 22-23. The request for workshop proposals will be released in early 2020. The best source of up-to-date information on NALC is the Elderbar distribution list.

Stay Connected

The Commission on Law and Aging has hosted email discussion lists on issues in law and aging for years. The largest of these is Elderbar, with nearly 1,400 members. Elderbar is open to any professional in law and aging. We also have specialized lists such as Collaborate on elder mediation, Law and Aging Networking for ABA members and staff interested in programs, services or policy on aging, and Aging SOLO, a discussion list for professionals helping persons without readily identifiable family or friends. These lists provide a forum for discussion and a place to disseminate information.

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Platform Changes

For decades the lists were hosted using a software platform that allowed list members to send an email to all members of the list, using a single email address, and for replies to the list to go to all members of the list. That platform was largely unchanged since the early 1990s. The platform had an online function, but its operation was not user friendly or intuitive.

This year the ABA has begun transitioning our email lists to connect.americanbar.org, hosted by Higher Logic. The new platform goes far beyond the basic email discussion platform (though it does that well.) The new platform provides a robust and easily searchable online archive of past discussions, an online library of documents posted to the list, or uploaded to the website, an events calendar, and an online directory of list participants.

Emeritus Pro-Bono Practice Rules

In the minutes of the first Commission on Law and Aging meeting 40 years ago, a discussion ensued involving the emeritus pro-bono practice rule that the Washington, D.C., Bar Association had just adopted. These rules lessen some of the licensing burden for attorneys who agree to practice pro-bono cases only. The rules are intended to make it easier for retired or inactive attorneys, or attorneys who are not otherwise engaged in the practice of law to offer pro-bono help. In the last decade, the number of jurisdictions that approved these rules increased from 32 to 44.

Several states have recently amended their rules to make them more helpful, such as expanding the definition of a qualified legal service or pro-bono provider, allowing attorneys licensed in other states to participate, or by including inactive attorneys to the mix.

In the past year we updated our listing of Emeritus Pro Bono Practice rules, provided resources and consultation to several states looking to create new rules or amend new rules, and provided resources to researchers writing on these issues. The Commission is seen at the go-to place in the ABA for understanding these rules, and also for what is happening across the country.

For more information about pro bono work, visit the ABA Center for Pro Bono at https://www.americanbar.org/groups/center-pro-bono/.

We provide technical assistance and planning advice to a wide range of constituents in the field, including bar associations, pro bono programs, legal services offices, bar leaders, law schools, corporate counsel, judges and government attorneys.

Student Interns and Externs

The Commission hosted four students in 2019: Laura B. Ruppalt; Travis Goeden, an undergraduate at Knox College in Galesburg, Illinois; Zack Allen, a second-year law student at Temple University in Philadelphia; and Ann Moody, a second-year law student Georgetown Law School in Washington, D.C. Students conduct in-depth research, attend policy briefings, and learn about law, aging, and public policy under the tutelage of our team.

Many of our students have gone on to be leaders in the field of law and aging. Sarah Richardson Ferendorf is now at the Center for Medicare and Medicaid Services. Dara Valanejad is now a staff attorney at the Center for Medicare Advocacy. He interned with us when he was a law student at American University. Jenica Cassidy interned with the Commission and returned as a Borchard Fellow working on complex guardianship issues. She is now an associate with the law firm Lerch, Early & Brewer in Bethesda, Maryland.
Other speakers and experts in law and aging include (from left) Héctor L. Ortiz, PhD, Consumer Financial Protection Bureau Office for Older Americans; Lisa Weintraub Schifferle, Federal Trade Commission Division of Consumer & Business Education; Odette Williamson, National Consumer Law Center. About 250 people attended the annual event, which was held October 31-November 1 at the Crystal Gateway Marriott in Arlington, Virginia. Planning is under way for the 2020 conference. Stay tuned for details!
The Commission continued its endeavors to improve the justice system’s role in preventing, detecting, and remediating elder abuse, neglect, and exploitation (“elder abuse”). Increasingly, victims and their family members seek redress to this devastating and costly problem from the civil, criminal, family, and probate courts. Staff also continued work on other projects addressing the intersection of elder abuse and guardianship; those projects are discussed in our supported decision-making and guardianship articles.

The Commission completed its project to enhance and evaluate the capacity of elder abuse fatality review teams (EAFRTs) to improve the delivery of services to elder abuse victims. The project was funded by the U.S. Department of Justice, Office of Victims of Crime (DOJ/OVC), building on the foundational investment made by DOJ/OVC in 2001 when it funded the Commission to provide seed funding to some of the earliest EAFRTs and to develop Elder Abuse Fatality Review Teams: A Replication Manual (ABA, 2005).

DOJ/OVC made these investments in the EAFRT concept because these teams examine the deaths of individuals that may be caused by or related to elder or adult abuse with the goal of identifying system gaps and improving victim services. We collaborated with Dr. Jason Burnett, an elder abuse researcher and program evaluator at the University of Texas Health Science Center at Houston, to identify 35 teams in 13 states. Of the 35 teams, 30 are EAFRTs and five are domestic violence FRTs that review some elder deaths. (Other teams may exist or be in development.)

Using three questionnaires, we obtained information from the leaders, coordinators, or members of 24 of the 35 teams about team documents such as confidentiality forms, case review forms, data collection tools, and reports/recommendations; team members and processes; and team outcomes.

We asked team members about the impact of EAFRT participation on themselves, their organizations, and their community (county, region, or state in which the team operates). Seventy-eight percent (n=62) of the responses were from members who had served on their team for more than one year; 44 percent (n=35) had served for four or more years.

Team members indicated the following benefits of EAFRT participation:

1. EAFRT participation enhances members’ knowledge and ability to do their jobs
2. EAFRT members share what they learn at EAFRT meetings with their colleagues
3. EAFRTs often advance systemic changes in their communities and states

We also created an EAFRT web page on the Commission’s website. That page provides information including a list of teams and the jurisdictions they serve; team documents organized by category and by team; 11 charts updating or expanding the charts contained in the 2005 replication manual; fact sheets about team operations and team outcomes; and links to other useful resources. This information will benefit individuals involved with existing teams and those who may be considering establishment of an EAFRT.

We continued supporting federal, state, and community efforts to improve laws and practices related to elder abuse, by providing information and technical assistance to congressional committees, federal agencies, state AARP offices as consultants to AARP’s State Advocacy and Strategy Integration Team, and to numerous state and local providers of legal and other services to older persons.

Efforts to educate lawyers, judges, and allied professionals continued in various ways. We provided or sponsored in-person presentations or webinars about elder abuse to thousands of lawyers, judges, and other professionals primarily through the National Aging and Law Conference and National Center on Law and Elder Rights webinars.
Test Your Knowledge of Elder Law and Policy

1. What was the original name of the ABA Commission on Law and Aging?
   a) Commission on Concerns of the Aging
   b) Commission on Aging Law and Policy
   c) Commission on Legal Problems of the Elderly

2. How many adults age 65 and older will there be in the US in 2020?
   a) 46 million
   b) 56 million
   c) 66 million

3. What percentage of households age 55 and older have neither retirement savings nor a defined benefit retirement plan?
   a) 12%
   b) 17%
   c) 29%

4. How many people in the U.S. are unpaid caregivers of adults ages 65 and older?
   a) 17 million
   b) 40 million
   c) 52 million

5. Who was the first person to enroll in Medicare?
   a) President Harry Truman
   b) Eleanor Roosevelt
   c) Keith Richards

6. In 2019, how many state bar associations have a section or committee devoted to the legal needs of the elderly?
   a) 22
   b) 32
   c) 42

7. How many national resource centers, including the National Center on Law & Elder Rights, does the Administration for Community Living fund?
   a) 12
   b) 17
   c) 23

8. What percent of adults over age 65 are employed full-time or part-time?
   a) 12%
   b) 20%
   c) 24%

9. How many centenarians are there in the United States in 2017?
   a) 46,000
   b) 66,000
   c) 86,000

10. What percentage of Medicare beneficiaries lack dental coverage?
    a) 65%
    b) 75%
    c) 85%

11. How many grandparents were raising grandchildren in 2017?
    a) 1.5 million
    b) 2.5 million
    c) 9.5 million

12. Which movie star did an early ABA Commission video on advance directives feature?
    a) Raul Julia
    b) Helen Hayes
    c) Lloyd Bridges

Answers on the next page.
Medicare Premiums Update for 2020

- Medicare Part B premiums and deductibles for 2020 will increase a full 7 percent.
- The basic monthly premium for Part B will be $144.60, an increase of $9.10 from $135.50 in 2019.
- The annual deductible for Part B beneficiaries will be $198, an increase of $13 from the annual deductible of $185 in 2019.
- The hospital deductibles and coinsurance amounts are increasing by 3 percent.

Source: Centers for Medicare and Medicaid Services

Quiz Answers

1. C
5. A
6. C (Commission on Law and Aging, unpublished survey)
9. C (Administration for Community Living, 2018 Profile of Older Americans)
10. A (Meredith Freed, et al., Policy Options for Improving Dental Coverage for People on Medicare, Kaiser Family Foundation Issue Brief, September 2019)
An Interview with Erica Wood:
A 40-Year Lookback on Guardianship

Erica Wood, assistant director at the ABA Commission on Law and Aging, will be leaving the ABA at the end of December. She has spent much of her time over the last almost four decades on adult guardianship issues. BIFOCAL interviewed her about her recollections and changes she has observed in the field.

BIFOCAL: What did adult guardianship look like 40 years ago when you came to the ABA?

Wood: In 1980, most state guardianship laws were still pretty archaic, using discriminatory terms and lacking in procedural protections. For instance, many statutes still included the term “advanced age” in defining who needs a guardian – meaning a number of birthdays alone would be enough for a person to lose fundamental rights. Guardianship, once considered a backwater area of probate law, was little understood and was certainly not a hot topic! My interest was piqued in hearing one of our early Commission members, Dean John Regan, talk about the dire need for due process safeguards, which began to be addressed to some extent in the 1982 version of the Uniform Guardianship and Protective Proceedings Act.

BIFOCAL: What early events do you recall that stirred reform?

Wood: A major event that garnered attention and launched the beginnings of reform was the shocking Associated Press report entitled Guardianship of the Elderly: An Ailing System.

I remember opening the paper in September 1987 and reading that there were older people across the country who were “declared legally dead by a troubled system.” Following the AP Report, the U.S. House Committee on Aging (which no longer exists) convened a hearing, chaired by Rep. Claude Pepper of Florida, who opened the session by saying: “This hearing illustrates how diligent we must be to protect . . . rights.” He also said, “So these victims of guardianship were just lost people. That is, they were lost in the shuffle? I wonder if they would get me. I am 87.”

The AP report and the House hearing prompted a rush of state guardianship legislation, as well as a steady flow of education and training materials for attorneys, judges, guardians and the public over the next years. The National Guardianship Association was created in 1987.

BIFOCAL: What has helped to drive reform over the past three decades?

Wood: Among other things, there were three broad-based national consensus conferences jumpstarted the guardianship reform movement. The first, in 1988, was held at the prestigious Wingspread conference facility in Racine Wisconsin, whose walls bore a quote by Oliver Wendell Homes: “A mind once stretched by a new experience can never regain its original shape.” Over 30 interdisciplinary stakeholders participated in crafting the landmark “Wingspread” recommendations, some of which eventually found their way into state statutes.

I remember a flurry of flip chart activity – and the very civilized bell that called us to break in the lovely garden. Thirteen years later in 2001, the “Wingspan” conference convened at the Stetson University College of Law in Florida. Its recommendations built on and strengthened the earlier set and in particular urged the development of a uniform act on guardianship cross-state jurisdictional issues, eventually leading to the approval of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in 2007. I most remember the vociferous arguments about the role of counsel for the respondent in a guardianship proceeding. After another decade, the University of Utah S. J. Quinney College of Law hosted the 2011 Third National Guardianship Summit.

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Set against a dramatic red rock background, the Summit crafted standards for guardians that paved the way for the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act and a revised set of NGA Standards of Practice as well as coining the term WINGS for Working Interdisciplinary Networks of Guardianship Stakeholders.

**BIFOCAL**: What stands out from your 30-plus years of tracking state guardianship legislation?

**Wood**: The ABA Commission began tracking state adult guardianship legislation in 1988, before we had access to Westlaw. The updates over the years were printed by Legal Counsel for the Elderly at AARP, and later incorporated into the National Guardianship Association’s annual Legal and Legislative Review. We saw activity in five major areas: procedural protections including the right to and role of counsel; determination of incapacity that emphasized more of a functional approach; limited court orders and requirements for exploring less restrictive options; monitoring and accountability of guardians; and development of public guardianship programs. By and large, the trends in these legislative measures were positive, highlighting rights and accountability, but sometimes there were retreats to overcome.

**BIFOCAL**: What changes need to be made on the ground in guardianship practices?

**Wood**: While passing good guardianship legislation is not easy, making sustainable changes in practice is much harder. Practices vary throughout any state, resources are generally insufficient, the cases are complex, staff turnover in courts and agencies is constant, data is almost nonexistent, family guardians get little help, and the political will for change is uneven.

More than 30 years after the 1987 Associated Press report, subsequent media reports of egregious guardianship practices have surfaced in a growing number of states—reports that highlight some of the same insufficiencies as found by the AP. The Government Accountability Office and the U.S. Senate Special Committee on Aging have spotlighted cases of abuse and exploitation by both professional and family guardians. So there is still much to do through a combination of legislation, law enforcement, rules changes, best practice models, education and training, data improvements, media accounts and more. Some states have convened court-stakeholder WINGS to spark and reinforce these actions.

**BIFOCAL**: As you know, the movement toward supported decision-making is gaining momentum. What has been the impact on guardianship?

**Wood**: The supported decision-making movement has shaken up the guardianship world in a positive way. It is a big conceptual leap from surrogates such as guardians or agents under powers of attorney making a decision for someone else, to supporters enabling people to make their own decisions with help, or as the Beatles said, “with a little help from my friends.”

The idea is not new. But the supported decision-making movement has placed decision-supports and supporters as a central element to examine before a guardianship is ordered, or when a restoration of rights or limited order is considered. A creative variety of supports and informed supporters can reduce use of overbroad or unnecessary guardianship and build self-determination. That’s why in 2016 the ABA Commission and other ABA entities created the PRACTICAL Tool for lawyers, and in 2017 the ABA passed a resolution urging use of supported decision-making as a less restrictive option to guardianship. Much more discussion is needed about supported decision-making, especially its use by people with dementia—and that’s a good thing.

To learn more about guardianship and supported decision making, go to the Commission website at https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/
Naomi Karp, who had worked with the ABA Commission on Law and Aging, recently made a career change. She left the Consumer Financial Protection Bureau (CFPB) after eight years. Prior to the CFPB, Naomi was at the AARP Public Policy Institute. Her departure from the CFPB in October prompted memories by Commission staff.

**Erica Wood:** Naomi and I had an informal job share for over 17 years, as we both worked 60 percent time, with young children. We usually worked jointly and shared many challenges, successes and adventures. Perhaps most memorable was our 2003 project on health care decision-making for “unbefriended” elders. We researched current state laws on how health care decisions are made for adults with no decisional ability, no family, no friends, no connections, and no funds – adults who often slip through societal cracks. We made site visits and held a forum to gain additional information for our report and recommendations.

We also co-authored a report on mediation in nursing homes called *Keep Talking, Keep Listening.* We went to many meetings of the Dispute Resolution Coalition on Aging and Disability over many years, and later secured a grant to develop state or local coalitions on aging, disability and dispute resolution. We researched internal managed care plan grievance procedures and made recommendations. But that’s not all! We were co-investigators on a potpourri of additional projects – health care decision-making of patients with dementia in Medicare managed care plans; an early roundtable on coordination of Social Security representative payees and state courts with guardianship jurisdiction -- and we were part of a challenging project to assess the nursing home “informal dispute resolution” process.

After Naomi moved from the Commission to AARP, we continued to work together on a national study of guardian residential decision-making, a national study of guardianship monitoring, and a 2007 report on best judicial practices in “Guarding the Guardians.” For the report, we made several site visits – and took the opportunity whenever we could to indulge our hobby of visiting state capitol buildings!

Finally, when Naomi moved from AARP to the CFPB in 2011, we worked together again as the CFPB contracted with the ABA COLA for an innovative project that Naomi conceived and managed. Our COLA staff (Charlie Sabatino, Erica Wood, Lori Stiegel, Andrea Amato) worked closely with Naomi to develop national plain language guides for four types of lay fiduciaries, collectively called *Managing Someone Else’s Money,* state-specific adaptations for six states, and a set of templates and tips to facilitate adaptation by other states. The CFPB disseminated more than 1.5 million hard and virtual copies of the national and state documents. They are among the agency’s most popular publications and are helping to improve family fiduciary practices.

**Lori Stiegel:** Except for ongoing discussions about clothes, shoes, and restaurants, Naomi and I collaborated more after she left the ABA. Her AARP and CFPB jobs focused on financial matters, including planning for incapacity and detecting, preventing, and redressing financial exploitation, that overlapped with my work on elder abuse, neglect, and exploitation.

In 2007, thanks to Naomi, AARP’s Public Policy Institute funded the ABA COLA to conduct a national study on power of attorney abuse. Our key tasks were to identify the consumer protection provisions of the new Uniform Power of Attorney Act (UPOAA), compare them to existing provisions in state statutes, and produce a national report. That report, *Power of Attorney Abuse: What States Can Do About It—A Comparison of Current State Laws with the New Uniform Power of Attorney Act* (AARP, 2008), benefited advocates and legislative staff working to support enactment of the UPOAA in their states.

Subsequently, again thanks to Naomi, to help inform aging and elder abuse experts, state policy makers, state program administrators and staff, attorneys general, prosecutors, law enforcement, and legal experts, AARP’s Public Policy Institute funded the ABA COLA to examine professionals’ opinions on the effectiveness of state laws and to elicit new ideas for improving states’ responses to elder financial exploitation.

Although Naomi’s departure from AARP meant there was no AARP staff to shepherd the resulting report and recommendations through AARP’s review and publication process, the work has informed other activities by ABA COLA staff and undoubtedly informed much of Naomi’s work at the CFPB.
**Nancy Coleman (former COLA director):** Naomi approached me at an Age Discrimination in Employment workshop that the Commission was co-sponsoring with the National Senior Citizens Law Center, now Justice in Aging. This was in late 1987. She said she was moving to Washington and was looking for part-time work. The Commission had just been awarded a grant to look at Grandparent Visitation Rights with the ABA’s Center on Children and Law.

Naomi joined the ABA part-time in early 1988. There were numerous projects over the years where Naomi made a significant contribution. She had a major part in our first attempt to look at Ethical Issues in Representing Older Clients. Naomi drafted the overview for the Fordham Law Review’s special issue that contained the papers contracted for the symposium as well as editing the recommendations that were adopted by those in attendance. She was instrumental in the success of the Symposium. The Special Issue was dated March 1994, Volume LXII, Number 5.

**COLA Intern Anne Moody Gains Knowledge Under the Tutelage of Commission Staff**

Intern Anne Moody is a student intern for the Commission on Law and Aging. Anne is from Los Angeles, California and is currently a second-year student at Georgetown University Law Center. Before law school, Anne earned a Master’s degree in psychology and provided counseling to older adults in a large community mental health center. While working at the community mental health center, Anne witnessed many of her clients struggle with legal issues such as healthcare, housing, employment, and government benefits. Her desire to advocate for underrepresented communities on the legal front drove her to attend law school.

During her time at COLA, Anne has contributed to the ABA’s online resources. She has researched state laws regarding mandatory reporting of elder abuse and updated ABA charts with recently-adopted statutory provisions. She created a resource that describes states’ voluntary guardianship statutes and state guardianship statutes that contain language that could be interpreted to allow for a voluntary guardianship. She has researched and synthesized state laws regarding the criteria that make an individual eligible for adult protective services and has condensed states’ 2019 amendments to their health decisions laws into concise, digestible summaries. In her most recent project, Anne researched a recent decision from the New York Supreme Court regarding termination of a consent guardianship and due process concerns.

After graduating law school, Anne plans to go into the private sector and pursue litigation. She intends to continue to be involved in pro bono matters and hopes to circle back to public services work in the future.

**Connect with Us!**

The Commission provides a forum for legal professionals to communicate and share ideas. Check these out:

- **Elderbar**, an open discussion list for professionals in law and aging
- **Collaborate**, a discussion list on aging, disability, and dispute resolution.

Visit the Commission’s homepage for more information on how to sign up. And follow us on:
- Twitter: @ABALawandAging
- Facebook: ABA Commission on Law and Aging
As part of the ABA Fund for Justice and Education, CoLA fights for justice for all older Americans. Through national advocacy, policy development, education, and research, we work tirelessly to:

* Promote independence
* Protect vulnerable seniors from abuse and financial exploitation
* Enhance their quality of life.

As the Commission celebrates 40 years of empowering advocates to effectively represent seniors in life-altering situations, we ask for your support. Help us to continue our mission-critical efforts that make a dramatic difference in the lives of older Americans.

Donate online to become a Friend: ambar.org/donatecola
The ABA Commission on Law and Aging produces a wide array of publications to assist elder law attorneys, advocates, and consumers. Many of these publications are available as free downloads on our Resources pages. Click on the images or visit us online to learn more.

BIFOCAL, A Journal of the ABA Commission on Law and Aging

The ABA Commission’s bi-monthly journal, provides timely, valuable legal resources pertaining to older persons, generated through the joint efforts of public and private bar groups and the aging network. Visit Bifocal web pages to view current and extended archive issues of BIFOCAL.

Health and Financial Decisions: Legal Tools for Preserving Your Personal Autonomy

Why Am I Left in the Waiting Room? Understanding the Four C’s of Elder Law Ethics

Advance Directives: Counseling Guide for Lawyers

Giving Someone a Power of Attorney for Healthcare (multi-state guide and form)
Consumer's Tool Kit for Health Care Advance Planning

Legal Issues Related to Elder Abuse: Guides for Law Enforcement

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

Judicial Determination of Capacity of Older Adults in Guardianship Proceedings

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

Managing Someone Else's Money Guides, available from Consumer Financial Protection Bureau

The PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making
We all wish for good things in aging but what do we have a right to? An important working group within the United Nations has struggled with that question for the last 10 years. The UN General Assembly established an Open-Ended Working Group on Ageing (OEWGA) by resolution in 2010, with a mandate to consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including, as appropriate, the feasibility of further “instruments and measures.” That phrase covers everything from an aspirational memo to a binding U.N. convention. The ultimate goal is to strengthen the protection of human rights of older persons. But is that done by paying better attention to applying existing human rights conventions and principles to older persons, or is a more targeted, specialized convention needed?

From the first annual meeting of the OEWGA in 2011 to the present, the major issue repeatedly debated has been whether there is a need for a specialized binding convention on the rights of older persons.

Virtually every participating non-governmental organization (NGO) and many nations have argued that existing human rights instruments lack both normative standards and operational frameworks effectively applicable to older persons and therefore fail to recognize older persons as clear rights holders in all aspects of human rights laws.

Ageism still lurks in well-intended efforts by nations to take care of the elderly, as opposed to empowering them as rights holders.

The United States, along with many other nations, argue that existing human rights instruments already cover older persons adequately and all we need is better implementation strategies. Which way the pendulum will swing in the debate depends to a large extent on civil society— that is, the NGOs that advocate for and provide services to older persons.

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NGOs have played a major role in the Working Group’s discussion and the OEWGA invites NGOs to participate via a fairly simple credentialing process. The current process parallels that which drove the creation of the Convention on the Rights of Persons with Disabilities where the successful outcome depended heavily on the strength of the voice of NGOs. In the current deliberations, NGOs have been overwhelmingly in favor of a convention, but they still lack the critical mass necessary to make the member states of the U.N. to heed their voice.

Human rights consideration

Now is the time for the countless NGOs that advocate for or serve older persons in the U.S. to consider human rights, even if a human rights perspective has never been part of their thinking. Most probably never considered playing a role in United Nations affairs, let alone even try to understand the working of such a complex organization. However, it is easier than you think. First, several organizations have been doing this work since the start of the Working Group. They have developed materials that explain the issues and can assist in learning the procedural niceties of the U.N. For example: The Global Alliance for the Rights of Older Persons, http://www.rightsofolderpeople.org. Established in 2011, GAROP was born out of the need to strengthen the rights and voice of older people globally. The Alliance is the result of the collaborative efforts of nine organizations:

- International Longevity Centre (ILC) Global Alliance – www.ilc-alliance.org
- International Federation on Ageing (IFA) – www.ifa-fiv.org
- International Association of Homes and Services for the Ageing (IAHSA) – www.iahsa.net
- International Association of Gerontology and Geriatrics (IAGG) – www.iagg.info
- HelpAge International – www.helpage.org
- AGE Platform Europe – www.age-platform.eu
- Age UK – www.ageuk.org.uk
- AARP – www.aarpinternational.org

The next step will be to get your organization accredited to attend the next meeting of the Working Group, scheduled for April 6-9, 2020, at the UN headquarters in New York. The Working Group has posted instructions in the past, but if not posted, use the contact email on the Working Group’s web page to request them. Accreditation is granted only to organizations and not to individuals. You only have to be accredited once to attend all the future meetings.

The application asks for information about the competence of your organization and the relevance of its activities to the work of the OEWGA. If your group works to serve or advocate for elders in need, you probably qualify. The UN Secretariat reviews applications and makes a recommendation. The OEWGA, by motion and vote, makes the final accreditation decision. If you are approved, your organization can register up to five representatives to meetings of the Working Group.

Benefits to participation

Past meetings have focused on particular human rights topics as they apply to older persons, such as equality and non-discrimination; violence, neglect and abuse; autonomy and independence; long-term and palliative care; and social protection and social security. Future topics will likely address matters such as access to justice, health care, and housing, but all these subjects are overlapping and interdependent, so the deliberations are not siloed. Participation does not require you to do anything more than observe or, if you wish to make a comment for your organization, put your name in the cue to deliver comments (called “interventions”) to the topic at hand. Written submissions are also invited on the specific topics that the Working Group plans to address on its agenda. You will find tremendous professional benefit from participating in the process both in terms of learning more about the U.N. processes as well as experiencing the diversity of international aging advocacy.

Keep in mind that UN processes move slowly. Movement toward a majority consensus on recommending a convention, if successful, and the process of drafting one is likely to be a long-term, multi-year process, so you are not too late to get on the train.

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UN Aging continued

You can read the relevant documents and summaries of past meetings on the website of the OEWGA at: https://social.un.org/ageing-working-group. (And yes, at the U.N., they do spell “Ageing” with an “e”).

Other Resources:


- Also be aware of the wealth of material submitted in all of the annual meetings of the Working Group available on its web page at: https://social.un.org/ageing-working-group.

*The author is director of the American Bar Association Commission on Law and Aging, which has participated as an accredited NGO in the meetings of U.N Open-Ended Working Group on Ageing since 2012.

Advance Directives: Counseling Guide for Lawyers is designed to assist lawyers and health care professionals in formulating end-of-life health decision plans that are clearly written and effective.

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