

## *Alzheimer's Disease/Social Security Disability Benefits*

### **Advocacy Victory for People with Younger-Onset Alzheimer's Disease Results in Expedited Benefits**

By Leslie Fried, Senior Attorney, ABA Commission on Law and Aging

On February 11, the Social Security Administration announced the addition of younger-onset Alzheimer's disease and 37 other disabling medical conditions to its list of Compassionate Allowances conditions.

Compassionate allowances are a way for SSA to quickly identify and provide benefits to individuals "whose medical conditions are so serious that they obviously meet disability standards." (Social Security Admin., *Compassionate Allowances*, <<http://tinyurl.com/6affuy>> (Feb 12, 2010)).

Social Security disability benefits are critically important to those diagnosed with early-onset (under age 65) Alzheimer's disease. Applicants are often initially denied benefits, but usually win on appeal. Because of the degenerative nature of the disease, by the time an individual has gone to the doctor and been diagnosed with Alzheimer's disease, he or she is already experiencing some functional loss that impacts his or her ability to maintain substantial gainful employment.

Since 2003, I have been a part of a dedicated group of advocates working to improve the Social Security disability process for individuals with early-onset Alzheimer's disease and related dementias.

Following Social Security Commissioner Astrue's announcement of the Compassionate Allowance Initiative in September 2007, I, and several of my colleagues at the Alzheimer's Association, decided that we should advocate for the inclusion of early-onset Alzheimer's disease and related dementias. We submitted comments, wrote letters, and had meetings with SSA staff, to support our position.

*"Our success was the result of four principal components necessary to influence change: research (the facts), advocacy, outreach, and individuals inside the agency who were willing to listen."*

When SSA decided to hold a public hearing on early-onset Alzheimer's disease and related dementias, they asked for our assistance to identify experts who could testify on the diagnosis and its impact on work and function.

These experts provided an overview of Alzheimer's disease and

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## Advocacy Victory

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related dementias, showed images of the brain, and discussed the disease progression.

Of great significance was the testimony on the impact of the disease on an individual's executive function during the earliest stages.

We also identified individuals, and their family members, with early-onset Alzheimer's disease, who testified at the hearing on the impact of the diagnosis on their work and their experiences applying for SSDI benefits. These indi-

viduals provided some of the most powerful and poignant testimony of the day. Each discussed the personal impact of the disease, as well as its effect on their family lives. They told of the varying degrees of difficulty and humiliation of the SSDI application process. They described how their families struggled while they awaited a favorable determination. As one spouse noted, "the passage of time is not a friend to people with terminal illness."

More than 600 individuals wrote comments to SSA to share their stories about early-onset Alzheimer's disease and applying for SSDI or SSI. It was the compilation of these efforts (and

much more) that resulted in the SSA decision to include these conditions in its Compassionate Allowance list.

Our success was the result of four principal components necessary to influence change: research (the facts), advocacy, outreach, and individuals inside the agency who were willing to listen.

To see the list of the 38 new Compassionate Allowance Conditions, go to <http://tiny.cc/VKt09>.

To read more about Social Security's Compassionate Allowances, go to <http://www.socialsecurity.gov/compassionateallowances/>.

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*Save the Date*



## EQUAL JUSTICE CONFERENCE

May 13-15, 2010

Pointe Hilton Tapatio Cliffs Resort  
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Every year the **American Bar Association** and the **National Legal Aid and Defender Association** bring together all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to poor and low-income individuals in need of legal assistance.

Through plenary sessions, workshops, networking opportunities, and special programming, the conference provides a wide range of learning and sharing experiences for all attendees.

*Pro bono* and legal services program staff, judges, corporate counsel, court administrators, private lawyers, paralegals, and many others attend this event. The main conference celebrates the ongoing collaboration between *pro bono* and legal services and explores additional partnerships that must be created, the resources that must be tapped, and the new issues facing clients.

**For more information, visit online:**  
<http://www.abanet.org/legalservices/ejc/>

## Access Express/Resputos Rápidos Brings Knowledge of Legal Issues To Remote Elders and Lawyers Who Serve Them

By Janay Haas and Robert Mead

New Mexico may be the land of enchantment, but it also is a land of enormous challenges to legal services providers seeking to serve elders in rural, often remote, locations. Many of those elders lack awareness about basic legal rights relating to their health, safety, and financial well-being.

For those seeking law-related information, the state has only two public law libraries, both in urban areas, and no state-specific practice manuals for those who must represent themselves.

Public libraries in the state have limited access to legal information and budgets that are often inadequate to fund even a basic law self-help collection. There's little consensus on appropriate reference services for patrons with legal questions and very little training available for basic legal research and reference skills. In addition, many elders are monolingual Spanish speakers—their heritage creating another barrier to their ability to understand their rights.

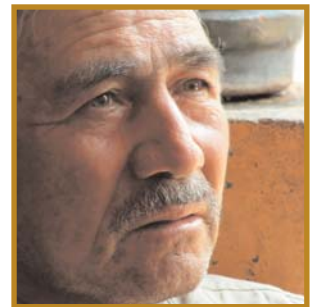
Like elders in rural areas, isolated solo practitioners have limited access to resources that would allow them to recognize or advise elderly clients about critical needs. These practitioners, for the most part, have not forged collaborative relationships with regional legal services offices.

To build these relationships and to make it possible for elders—and lawyers and librarians—to recognize problems that have legal solutions, New Mexico Legal Aid (an LSC-funded statewide program) and the New Mexico Supreme Court Law Library created “Access Express/Resputos Rápidos,” a three-part project funded by the Borchard Foundation Center on Law and Aging’s and ABA Commission’s Partnerships in Law and Aging Program.

The Partnerships mini-grant subsidized activities designed to build relationships and knowledge about each other within three target groups: isolated elders, lawyers, and librarians.

To reach isolated elders, New Mexico Legal Aid conducted in-person community legal education at senior centers in rural communities on debt issues, Medicare and Medicare

appeals, and identity theft. These trainings were augmented by a series of approximately 50 “issue spotter” public service announcements, in English and Spanish, that were aired on rural stations for an extended time in rotation. Topics included housing discrimination against those with disabilities, Social Security overpayment problems, identity theft, Medicare denials, alternatives to guardianship, and elder abuse. Many of the PSAs refer listeners to additional resources on New Mexico Legal Aid’s Web site [www.lawhelpnewmexico.org](http://www.lawhelpnewmexico.org). The grant enabled New Mexico Legal Aid also to create a number of new entries, in Spanish and English, on the Web site targeting issues common to seniors.



For lawyers, the grant subsidized a three-course series of free CLEs for rural attorneys, covering housing discrimination against persons with disabilities (including dementia), Medicare and Medicare appeals, and elder abuse. New Mexico Legal Aid staff attended most of these sessions, introducing their local offices to private bar attendees and inviting them to consider *pro bono* involvement. By providing this training, the grant strengthened the capacity of the rural bar to competently represent elders in critical elder law areas.

For librarians, the grant provided critical training in addressing the legal reference needs of patrons in the public library setting. Increased focus on meeting the information needs of elders in their home communities, through support services offered by the New Mexico Supreme Court Law Library and New Mexico Legal Aid, makes it more likely that seniors will be able to find answers to their basic legal questions and connect with competent attorneys to handle their litigation and planning needs.

As a result of this project, New Mexico Legal Aid will continue to develop PSAs on elder rights and poverty issues, generally, and the N.M. Supreme Court Law Library will continue to offer elder rights resource training for public librarians.

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*Janay Haas is the private bar involvement coordinator for the LSC-funded New Mexico Legal Aid and Robert Mead is the director of the New Mexico Supreme Court Law Library.*

# A Primer on Veterans Administration Law, Practice, and Procedure (DVD-ROM)



Produced by the Paralyzed Veterans of America and Howrey LLP

Distributed by the American Bar Association Commission on Law and Aging

ABA Product Code: CECA09PVAD

Recording Date: January 29, 2009

Format: DVD-ROM

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Recorded before a live audience, this video program covers the basics of Veterans Administration law, practice, and procedure with extensive accompanying written materials.

This program is designed to fulfill the U.S. Department of Veterans Affairs' (VA) Attorney Accreditation.

## U.S. Department of Veterans Affairs' Attorney Accreditation Requirement Information

Lawyers must be "accredited" by the VA before assisting with the "preparation, presentation, and prosecution" of claims. The accreditation process applies to all attorneys, including legal aid attorneys and *pro bono* volunteers assisting veterans.

The accreditation is a fairly simple process that starts with the filing of an application with the VA's office of general counsel (*see* VA form 21a online at <http://www4.va.gov/ogc/accreditation.asp>). Within 12 months of receiving initial accreditation, the VA requires that attorneys complete a program that is approved for a minimum of 3 hours of CLE credit by any state bar association (38 CFR 14.629 (b) (iii)).

The VA will accept completion of a CLE approved in any state, even if the training is not approved in the state that the attorney is licensed in.

To facilitate this requirement, self-study CLE credit has been requested in CO, FL, MO, NM, NY, VI, and WV. Other MCLE accrediting agencies may not accept this program toward meeting CLE requirements for license renewal and accreditation may expire after specific time periods in some states.

More information on VA attorney accreditation can be found in the December 2009 issue of *Bifocal, Journal of the ABA Commission on Law and Aging* (*see* David Godfrey, *To Help Veterans with Claims, Lawyers Must Be Accredited by U.S. Department of Veterans Affairs: Learn How*, 31(2) *Bifocal* 26, online at <http://tinyurl.com/ydadf2k>).

This program was produced by the Paralyzed Veterans of American and Howrey LLP and is distributed by the American Bar Association Commission on Law and Aging.

The ABA Veterans Advocacy Pro Bono Project is a joint effort of the American Bar Association Commission on Law in Aging in collaboration with ABA Section of Administrative Law and Regulatory Practice; ABA Standing Committee on Bar Activities and Services; ABA Commission on Homelessness and Poverty; ABA Standing Committee on Pro and Public Service; and ABA Senior Lawyers Division.

The project was made possible, in part, by generous funding from the American Bar Association Enterprise Fund.

**Questions?** Contact David Godfrey, senior attorney, ABA Commission on Law and Aging, at [Godfreyd@staff.abanet.org](mailto:Godfreyd@staff.abanet.org).



Order your free copy of **Primer on Veterans Administration Law, Practice and Procedure** (DVD-ROM) from the Web site of the ABA Commission at:  
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<<http://tinyurl.com/ybz866k>>.

## Voting Accommodations

### More Help Is Needed for Persons with Cognitive and Other Brain Impairments, Especially Those in Long-term Care Facilities, Who Want to Vote

By Ellen Klem, Staff Attorney, ABA Commission on Law and Aging

Voting is a fundamental right and persons with cognitive or other brain impairments,<sup>1</sup> especially those who live in long-term care facilities (LTCFs),<sup>2</sup> are entitled to participate as fully as possible in the electoral process. Unfortunately, election officials nationwide are faced with so many obstacles in making voting fair, accessible, and accurate that voting by this vulnerable population is often overlooked.

Questions have been raised about the extent to which states and localities are helping the increasing numbers of persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs, to exercise their right to vote. To answer these questions, the **ABA Commission on Law and Aging** began a project to identify and publicize state and local policies and practice strategies that promote proper access to the polls by this cohort and protect against the fraudulent manipulation of their vote.

The ABA Commission asked members of the National Association of State Election Directors (NASED) for help identifying state and local activities or resources that support or promote voting by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs. The ABA Commission sent NASED members a brief six-question survey on September 25, 2008, and followed up on the results via e-mail and telephone on February 26, 2009, and March 16, 2009. The ABA Commission also examined activities and resources in states that did not respond to the survey. The results of that research are summarized as follows.

#### Scope and Methodology

Our objective was to identify activities and resources that support or promote voting by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs, at (1) the state level and (2) the local level. We administered a Web-based survey of NASED members, including the chief official in each of the fifty states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands, whose primary responsibility is election administration at the state level.<sup>3</sup> The survey included six questions about state and local actions to support or promote voting by persons with cognitive and other brain



impairments and, in particular, those individuals living in LTCFs. The survey was conducted using a self-administered questionnaire posted on the Internet. Survey data was collected between September 25, 2008, and April 10, 2009. We received completed surveys from 37 states, the District of Columbia, and the U.S. Virgin Islands (a 71 percent response rate). In some instances, individual NASED members were contacted to gain a deeper understanding of their survey responses and relevant documentation from selected states was obtained and reviewed.

#### Findings

##### State Support Increasing

Several states support or promote voting by persons with cognitive and other brain impairments and, in particular, those individuals living in LTCFs, by conducting voter outreach and education, partnering with advocacy groups, and conducting poll-worker education and training. States also reported that they support or promote voting by visiting LTCFs to help with voter registration, delivering absentee ballots, conducting “mobile polling,” and conducting outreach and education to staff and residents.

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## Voting Accommodation

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### Nineteen States Conduct Outreach and Education Activities

Voter outreach and education was the most commonly reported type of state activity. Specifically, 18 states reported some activity of this nature.<sup>4</sup>

Some states publish brochures, booklets, or flyers. For example, the Minnesota Secretary of State developed a flyer titled *Know Your Voting Rights* to educate citizens that voters who have brain injuries, are experiencing severe memory loss, are developmentally disabled, and have some other cognitive impairment, may be entitled to vote.<sup>5</sup>

Election officials in Nevada reported that they provide public radio messages during election season to publicize polling locations. The broadcast messages also serve to remind voters that voting machines are compliant with the Americans with Disabilities Act and encourage individuals who cannot make it to the polls to vote by absentee ballot.

Other states reported that they demonstrate accessibility features of voting systems and auxiliary aids to citizens prior to elections.

Ten of the 18 states reported partnering with advocacy groups to support or promote voting by persons with cognitive and other brain impairments.<sup>6</sup> For example, the North Dakota Secretary of State's office works cooperatively with the North Dakota Association of Counties and the North Dakota Protection and Advocacy Project to promote voting by persons with a full range of disabilities. Together the three entities have produced two videos to inform and help persons with disabilities to vote. One video instructs poll workers on how to provide assistance to voters with disabilities and the other helps voters understand their rights, regardless of their disability.<sup>7</sup>

Seven states reported conducting poll-worker education and training.<sup>8</sup> Some states include information relevant to voters with cognitive and other brain impairments in the poll workers' training manual.<sup>9</sup> Other states produce and distribute videos to teach poll workers how to assist voters with disabilities. For example, a Pennsylvania video titled *Training to Assist Voters with Disabilities* was distributed to

all sixty-seven counties in the state and uploaded to the department of state's Web site.<sup>10</sup>

### Eleven States Visit Long-term Care and Other Facilities or Deliver Ballots

Seven states reported visiting LTCFs to facilitate voter registration, deliver absentee ballots, and conduct voting.<sup>11</sup> For example, the District of Columbia Board of Elections and Ethics (BOEE) arranges visits to LTCFs and veterans health facilities to facilitate voter registration and deliver absentee ballots to the residents. At the request of residents, BOEE also provides assistance in completing absentee ballot request forms and voting via absentee ballots.

Vermont's pioneering "mobile polling" initiative utilizes election officials to bring ballots to convenient and accessible locations, such as LTCFs, and skilled, non-partisan election workers to provide assistance when needed, and where permitted, to registered voters.<sup>12</sup>

Four states reported conducting outreach and educational activities for the benefit of staff and residents of LTCFs.<sup>13</sup> Some states offer to conduct presentations for or provide written materials to staff and residents. For example, Hawaii sends letters and makes phone calls to all LTCFs, retirement homes, and senior citizens centers offering to conduct presentations and send written materials on voting.

### Limited Local Support

In our survey, only six local jurisdictions reported taking actions to support or promote voting by persons with cognitive and other brain impairments. The most common action was voter outreach and education. Localities also reported conducting mobile polling and transporting accessible voting units to locations with immobile voters.

### Two Local Jurisdictions Conduct Outreach and Education Activities

Voter outreach and education was the most commonly reported type of local activity. Specifically, two localities reported they have a Web page or pamphlet for voters with cognitive and other brain impairments. In Clark County, Nevada, the election department maintains a Voters with

**See the chart *Summary of Promising Practices, Resources, and Contact Information* for a list of state and local jurisdiction activities and resources that support or promote voting by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs, on the Web page of the ABA Commission at: <http://tinyurl.com/yk454dn>.**

Disabilities Web page.<sup>14</sup> The Web page lists all the local services, as well as state laws, that a voter with a disability can take advantage of to vote independently.

Washington County Elections in Washington County, Oregon, distributes a pamphlet on the Voter Assistance Program, which supports the rights of voters with disabilities by providing alternative methods of voting that ensures privacy, independence, and the right to vote a secret ballot. One such method—the Voter Assistance Teams (VAT)—is described below.<sup>15</sup>

#### Four Local Jurisdictions Visit Long-term Care and Other Facilities or Deliver Ballots

Visits to LTCFs with accessible voting units or absentee ballots was the most commonly reported type of local activity to support voting by this vulnerable population. Specifically, two localities reported visiting with accessible voting units and one locality reported visiting with absentee ballots when requested.<sup>16</sup>

Kitsap County, in Washington, purchased a van to transport its accessible voting unit to LTCFs and other locations to reach voters who may have difficulty getting to a voting center. Another locality in Washington, Cowlitz County, contacts every LTCF to arrange for the transportation of an accessible voting unit to the facility.

Two localities reported using voter assistance teams (VATs) to assist persons in LTCFs with the voting process. Multnomah and Washington counties, in Oregon, provide teams made up of two registered voters that do not have the same political affiliation. The teams assist voters who have requested help with either a person-to-person approach or by using the Alternate Format Ballot (AFB) and the Accessible Computer Station (ACS).<sup>17</sup> The goal is to ensure voting is secure, convenient, fast, independent, private, and accessible to all voters.

### Conclusion

Despite research that shows activities like mobile polling can enhance proper access to the polls by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs, and protect against fraudulent manipulation of their vote, most jurisdictions do nothing to ensure the voting rights of these vulnerable individuals are protected.<sup>18</sup>

The field needs guidance in making a critical step forward to ensure that this population group has the opportunity to vote.

The need for such guidance will become more critical as the population continues to age and the number of Americans with cognitive and other brain impairments increases. The



failure to provide such guidance compromises the electoral process and disenfranchises an entire voting population.

The promising practices described here and in the accompanying chart titled *Summary of Promising Practices, Resources, and Contact Information* (see link on page 56) provide states and local jurisdictions with the opportunity and resources to learn from each other's success and challenges. They demonstrate that states and local jurisdictions can conduct activities and provide resources that support or promote voting by persons with cognitive and other brain impairments and, in particular, persons residing in LTCFs.

### Notes

1. For brevity in this article, the term “cognitive and other brain impairments” includes not only impairments resulting from Alzheimer’s disease and other causes of dementia, but also impaired cognition caused by any other disease, disorder, or condition, including traumatic brain injury, stroke, and mental retardation.
2. Unless otherwise indicated when necessary, this article will use the term “long-term care facilities” to include nursing homes and assisted living facilities.
3. This article refers to these jurisdictions generally as “state” or “states.”
4. California, District of Columbia, Hawaii, Idaho, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nevada, New Hampshire, North Dakota, Oregon, South Carolina, Texas, Vermont, and Washington.
5. Office of Minnesota Secretary of State, Elections Center, *Know Your Voting Rights, 2008*, available online at <http://tinyurl.com/m3ku8y>.
6. California, District of Columbia, Hawaii, Idaho, Maine, Maryland, Minnesota, Nevada, North Dakota, and Washington.
7. Secretary of State North Dakota, *A New Experience for the Experienced Voter, Large Captioned* (30Mb), n.d., available online at <http://tinyurl.com/mg2uc2>. Secretary of State North Dakota, *A New Experience for the Experienced Voter, Large Non-Captioned* (30Mb), n.d., available online at <http://tinyurl.com/lpaow4>. Secretary of State North Dakota, *The Right to Vote: Accessible*

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- Options for All, Large Captioned* (37Mb), n.d., available online at <http://tinyurl.com/lhy373>. Secretary of State North Dakota, *The Right to Vote: Accessible Options for All, Large Non-Captioned* (37Mb), n.d., available online at <http://tinyurl.com/l23nkf>.
8. District of Columbia, Maryland, New Hampshire, Oregon, Pennsylvania, South Carolina, and Vermont.
  9. For example, the Maryland State Board of Elections includes information in statewide poll workers' manuals and training curricula about voters with disabilities, including a specific section on voters with cognitive disabilities. Maryland State Board of Elections, *Licensed Nursing Homes and Assisted Living Facilities: Absentee Ballot & Voter Registration Procedures*, November 2007, available online at <http://tinyurl.com/l64kjd>.
  10. Pennsylvania Department of State, Division of Help America Vote Act (HAVA), *Training to Assist Voters with Disabilities*, October 3, 2008, available online at <http://tinyurl.com/p6akrg>.
  11. District of Columbia, Iowa, Maine, Maryland, Missouri, Nevada, and Vermont.
  12. Mobile polling differs from absentee voting in several ways critical to persons with cognitive impairments. Voters must apply for an absentee ballot, wait for it to arrive, fill it out independently or with someone's assistance, and then return it. For mobile polling, election officials bring ballots to convenient and accessible locations, such as LTCFs, and skilled, non-partisan election workers provide assistance when needed and, where permitted, register voters. In some nations, such as Australia, mobile polling is the norm. For more information on mobile polling in Vermont, see *Bringing the vote to residents of long term care facilities: A study of the benefits and challenges of mobile polling*, Jason Karlawish, et al., (Forthcoming 2010).
  13. Hawaii, Idaho, Louisiana, and Minnesota.
  14. Election Department - Clark County, Nevada, *Voters with Disabilities*, April 20, 2009, available online at <http://tinyurl.com/r549tu>.
  15. Washington County Elections, *Voter Assistance Program Pamphlet*, n.d., available online at <http://tinyurl.com/mt8hrc>.
  16. For example, White Pine County, Nevada, reported they make trips to nursing or assisted living homes to deliver absentee ballots when requested.
  17. The Alternate Format Ballot (AFB) is a voting tool for voters unable to use a printed ballot. The AFB lets voters with print disabilities (e.g., vision impairment, learning disability, etc.) to vote privately and independently at home using their own computer, Web browser, assistive technology, and printer. Voters who do not have a computer and printer can still vote with an AFB by using the Accessible Computer Station (ACS) located at the Elections Office. Washington County Elections, *Alternate Format Ballot (AFB) Request*, n.d., available online at <http://tinyurl.com/y857on2>.
  18. Jason Karlawish, et al., *Addressing the Ethical, Legal, and Social Issues Raised by Voting by Persons with Dementia*, Journal of the American Medical Association, 292, 1345-50 (2004); Jason Karlawish, et al., *Identifying the Barriers and Challenges to Voting by Residents of Long-term Care Facilities: A Study of the 2003 Philadelphia Mayor's Race*. Journal of Aging and Social Policy, 20, 65-75 (2007); Paul Freedman, et al., *How Does Voting Occur in Long-term Care: A Survey of Virginia LTC Facilities*. Center for Survey Research, University of Virginia (2008); *Recommendations of the Symposium*, 38 McGeorge L. Rev. 861, 2007; Jason Karlawish, et al., *Bringing the Vote to Residents of Long-term Care Facilities: A Study of the Benefits and Challenges of Mobile Polling*, (Forthcoming 2010).

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### Inside the Commission

In September the ABA Commission on Law and Aging welcomed an international law student intern from Israel.

**Carmit Shay** is an Israeli elder law attorney. She currently is an LL.M. student at American University Washington College of Law in Washington.

Ms. Shay came to the United States as part of the New Israel Fund 2009-2010 U.S-Israel Civil Liberties



**Carmit Shay**

Law Fellows program. Prior to coming to the United States, Carmit served as legal counsel for Law in the Service of the Elderly (LSE), the first Israeli organization that promotes elderly rights through legal working.

In her work, Ms. Shay raises public awareness of ageism. While her work at LSE targets all forms of discrimination against the

elderly, the main concerns for seniors and, thus, the central focus of her work, is discrimination against the elderly in the work force.

In addition to her legal work, Ms. Shay lectures to professionals and the public on the rights of the elderly in Israel.

Following her studies in the United States, Ms. Shay plans to continue her work in this area to improve senior citizens' rights in Israel. As she is one of very few lawyers in Israel who practice elder law, she wishes to make elder law a well-regarded and central area in Israeli jurisprudence.

## Get Connected, Stay Connected On Elderbar

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- State unit on aging staff
- OAA-funded elder rights advocate
- LSC, IOLTA-funded, or other non-profit or public sector legal services organization
- Law school elder law or clinical staff
- State or local bar association elder law section or committee leader
- Service provider in the aging network
- National law and aging advocate

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

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

To get connected to **Elderbar** send your name, e-mail address, and professional affiliation to David Godfrey at [Godfrey@staff.abanet.org](mailto:Godfrey@staff.abanet.org).



## Elder Abuse

### The Brooke Astor Case:

#### “An Appalling Set of Circumstances”

Part Two of an Interview with Alex Forger  
Conducted by Lori A. Stiegel, Senior Attorney,  
ABA Commission on Law and Aging

To read part one of this interview, see the December 2009 issue of *Bifocal*, *Journal of the ABA Commission on Law and Aging* at <http://new.abanet.org/aging>. Most of the introduction that appeared in part one is repeated, below, to provide context.

On October 8, 2009, a New York City jury convicted Anthony Marshall, the 85-year-old son of the late philanthropist Brooke Astor, on 14 of 16 counts for financially exploiting his mother. Lawyer Francis Morrissey was convicted of five of six counts, including conspiracy, scheme to defraud, and forgery.



Alex Forger

Renowned 86-year-old New York lawyer **Alex Forger**, who practiced trusts and estates law for 42 years and who served as **chairman of the Commission on Law and Aging from 1993-1995**, testified as an expert witness for three days of the

five-month trial. Assistant district attorney Elizabeth Loewy, head of the elder abuse unit in the Manhattan district attorney's office and one of the three prosecutors in the case, described Mr. Forger as “a lion of the bar” and “incredibly generous with his time.”

Mr. Forger continued his generosity by sharing his thoughts about the case, his role in it, and the lessons that lawyers who represent older persons should learn from it with **ABA Commission Senior Attorney Lori A. Stiegel**. Ms. Stiegel has directed all of the Commission's elder abuse activities.

**Lori Stiegel:** What is the current status of the case?

**Alex Forger:** Anthony Marshall was convicted on 14 of 16 counts, including scheming to defraud and first degree grand larceny. The first degree grand larceny count carries a mandatory prison sentence of at least one year. Francis Morrissey

was convicted on five counts, including conspiracy and forgery. [For a list of all charges and verdicts against Marshall and Morrissey, see *The Verdicts in the Brooke Astor Case*, N.Y. Times (Oct 8, 2009) at <http://tiny.cc/H1bNc>].

In December each was given a one-to-three-year prison sentence. In early January a justice of the New York Appellate Division allowed both defendants to remain free on bail while the case is appealed. The defendants have stated that their issues on appeal are:

- The judge's failure to interview one juror following a report that she felt coerced or threatened by one or more of the other jurors.
- The judge's instruction, deemed prejudiced, relating to Marshall's use of the power of attorney.
- The judge's ruling allowing me to testify as an “expert witness.” During trial, the defendants contended that no such witness was required or appropriate, as my testimony would usurp the function of the judge. My role as prescribed by the judge was to testify as to the pattern of Mrs. Astor's estate planning (working through the maze of some 38 testamentary instruments and lifetime transfers) and as to customary practice standards—not touching on legal ethics.

It is my opinion that the appeal will likely extend over a lengthy period of time, being heard first in the Appellate Division and thereafter in the Court of Appeals.

**Stiegel:** In order to understand the issues in this case, perhaps it would be helpful if you provided a summary of the assets and estate plan of Mrs. Astor at or about the time of the execution of the second and third codicils in 2004.

**Forger:** Mrs. Astor's estate was valued at \$180 million (hereafter abbreviated as M). It included a marital trust of \$60M created by the will of her late husband, Vincent Astor. His will provided that the income from the marital trust was payable to Mrs. Astor and on her death the principal was to be distributed as she determined by exercise of a power of appointment. Throughout the years since Vincent Astor's death in 1959, Mrs. Astor's estate plan had appointed the principal to charity. The remainder of her estate (\$120M) was to be distributed as follows:

- Real estate of \$40M, bequeathed to Marshall (who would be obliged to pay about \$20M in estate taxes on that property).
- Tangible property of about \$5M, of which \$4M was bequeathed to Marshall and the balance to others, including his wife Charlene Marshall, who was to receive one or two pieces of jewelry and two coats.

- Approximately \$75M of liquid assets providing a cash legacy of \$5M to Marshall, close to \$3M in other bequests, and a residue of roughly \$67M. Of that \$67M residue, about \$37M would be paid in taxes (in addition to the \$20M mentioned above), leaving \$30M in a charitable remainder unitrust that provided that Marshall would receive 7 percent per year until his death and then the principal would be given to charities that Marshall would select. All bequests to Marshall were made on condition that he survive Mrs. Astor.

Her will named Marshall and her lawyer, Terry Christensen, as executors and trustees. Marshall could not name a successor to himself.

**Stiegel:** What was the effect of the second and third codicils on Mrs. Astor’s estate plan and on the principal participants in the case?

**Forger:** Mrs. Astor’s estate plan, which had been in effect for years, was materially changed—charity lost out and the principle participants benefited.

The second codicil, which was executed on January 12, 2004, made the following changes to the will it revised:

- It eliminated the charitable remainder unitrust and gave the \$30M residuary outright to Marshall. It had been years since Marshall had been given any part of his mother’s estate outright except for real estate, a cash legacy (\$2.5M earlier, but increased to \$5M in her latest testamentary instruments), and some tangible property.
- Marshall was named sole executor with the right to appoint successor and co-executors. He had never been named sole executor and never had the authority to appoint successor or co-executors in any of Mrs. Astor’s estate plans.
- Charity’s remainder interest was eliminated. Moreover, if Marshall failed to survive his mother, the residuary was given to his estate; this meant that he could give the residuary to whomever he designated in his will. Mrs. Astor’s prior estate plan provided that if he died before his mother virtually her entire estate of close to \$120M, in addition to the \$60M marital trust, would be given to charity.

The third codicil, dated March 3, 2004, had the effect of increasing Marshall’s inheritance while decreasing the amount charity would receive because:

- It created some \$5M of additional administrative expense by relieving Marshall of the costs to be incurred in selling the real estate (which he intended to do). This was to be accomplished by eliminating the specific legacy to him and, instead, causing the executors to sell the property. As the proceeds of the sale would be part of the residuary there was no reduction in the overall amount Marshall would inherit (approximately \$54M), but he would avoid having to pay personally the expenses associated with the sale (maintenance until title was transferred; “flip tax”; New York City and state transfer taxes; brokerage commission; etc.). Under Mrs. Astor’s 2002 will and several earlier wills, administration expenses were to be paid out of the marital trust, so this change reduced the amounts to be received by charity, but not by Marshall.
- Additionally, the sales proceeds would become subject to executors’ commission, which would not have occurred before when it was Marshall’s individual responsibility. This meant that approximately \$1.6M would be payable to Marshall, Charlene Marshall, and Morrissey—the latter two having been named by Marshall as co-executors under the authority granted him in the second codicil. This \$1.6M also was an administrative expense to be paid by the marital trust, further reducing the amount to charity.

**Stiegel:** Please go into more details about the principal participants in the case and how they were involved in or benefited from the second and third codicils.

**Forger:** **Anthony Marshall**

Then age 79 or 80, Anthony Marshall was Mrs. Astor’s son from her first marriage. For many years mother and son did not have a close relationship though they may have grown closer in her last years. He was a Marine at Iwo Jima and an ambassador to a number of small countries during the Nixon Administration to which Mrs. Astor was a major contributor. For over 25 years up to the time of execution of the questioned codicils he was employed by his mother to oversee her investments. He also was interested in theater, had several successful productions, and won a Tony Award. He married Charlene in 1992. Mrs. Astor had always provided very

*Continued on page 62*

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## Brooke Astor Case

*Continued from page 61*

substantial financial benefit for Marshall in her estate planning for over 40 years, primarily assuring him of a flow of income for his life. Over the 30 years up to and including her last will in 2002, Marshall was to receive residuary trust income for his life. In the last ten years this was manifested as a payment of 5 percent—subsequently increased to 7 percent—from a unitrust, payable to charity on his death. This trust income was in addition to the pre-residuary legacies he would receive.

Before the residuary trust was eliminated by the second codicil, he would have received an annual payout estimated to be slightly more than \$2M on the \$30+M trust that was to be paid over at his death to such charities as he selected. If he predeceased his mother, his estate would receive nothing and her estate, valued at some \$120M (excluding her marital trust under Vincent Astor's will—valued at about \$60M—which was always to go to charity) would be given to charity. Mrs. Astor in 2003, a year before the codicils in question, had given Marshall her estate in Maine, as well as a cash gift of \$5M so as to have enough, in her opinion, to enable him to take care of Mrs. Marshall.

The second and third codicils increased substantially the benefits he would receive from the Astor estate (approximately \$54M outright) whether or not he survived his mother. He now had the certainty of ample funds to “take care of Charlene.”

### Francis Morrissey

Francis Morrissey had befriended Mrs. Astor quite a few years before the codicils and was known to Marshall for many years. Morrissey escorted Mrs. Astor to some social events, accompanied her to the theater and dinners. He was referred to as a trust and estate lawyer, though according to Warren Whitaker, the lawyer who prepared the second and third codicils, Morrissey did not do much trust work but mostly conferred with clients and gave “strategic advice.” So far as was known Morrissey spent time with Mrs. Astor, particularly during the period in 2004 when her long-time lawyer was removed and the changes to her estate planning occurred. He contacted Warren Whitaker in December of 2003 saying that Mrs. Astor was dissatisfied with her current counsel (Terry Christensen, discussed below) and wished to engage someone else to revise her will. Morrissey apparently had called on Whitaker to do some drafting for Morrissey earlier in the year for another client of his. It is not known whether Whitaker was aware of Morrissey's professional

history, as it could not be mentioned during the trial. However, the *New York Times* published an article in 2006 reciting a number of will contests in which Morrissey had been involved, presumably as the decedent's lawyer, legatee, and/or fiduciary, and aided in most instances by an outside lawyer, whom he retained to do the drafting. Each case apparently had been settled and confidentiality agreements often entered into. Also, Morrissey had been suspended in the mid-1990s from practice in New York for two years for unprofessional conduct. After the second codicil Morrissey entered into an agreement with Warren Whitaker to split equally the estimated \$3.6M legal fee in representing Mrs. Astor's estate upon her death. In addition, he would become an executor and share in an estimated total commission of \$4.8M.

[Note: The Associated Press and several newspapers reported on February 18 that Morrissey had been automatically disbarred due to the convictions in the *Astor* case.]

### Terry Christensen

Terry Christensen was a partner at the law firm of Sullivan and Cromwell, which had represented Mrs. Astor for over 40 years. Christensen took on that client responsibility in the early 1990s and, over time, that professional relationship developed into a personal friendship. He drafted a number of testamentary instruments for Mrs. Astor, as well as powers of attorney and deeds of gifts. The last such instrument was a codicil drafted and executed in December 2003. Under this codicil 49 percent of the marital trust was to be placed in a new trust, to be named the “Anthony Marshall Fund.” Marshall was to be sole trustee with the right to designate the charities to receive the fund on or before his death, at which time the fund would be terminated. He was to receive no compensation and could not name any other trustees. Christensen also represented Marshall and testified that he was persistently pressured by Marshall to cause Mrs. Astor to do more for him—stating his reason for doing so was to assure that his wife Charlene, who was considerably younger, would have sufficient resources if he predeceased her, which in view of the wide disparity in their ages was likely. Earlier in 2003, Christensen was involved in gifting Mrs. Astor's Maine estate and \$5M to Marshall, who transferred the estate to Charlene soon after it was given to him.

Shortly after the execution of the second codicil Christensen was removed as an executor and he and his firm were replaced as counsel for Mrs. Astor and her estate.

### Warren Whitaker

Warren Whitaker was a recognized expert in trust and estate practice who, when he was asked by Morrissey to draw up the

second codicil, was a partner in the firm of Day Berry & Howard. It was not immediately clear from the evidence whom Whitaker was to represent. Morrissey was then representing Mrs. Astor, as well as Marshall, as was Christensen until he was later informed that he had been replaced. No retainer agreement was executed. Whitaker responded to Morrissey, with whom he later entered into an agreement to become co-counsel to Mrs. Astor's estate. In the interim, his firm would become counsel to Marshall and to Mrs. Astor. He had neither met nor had any communication with Mrs. Astor until he supervised the execution of her second codicil.

### Charlene Marshall

Charlene Marshall was not a party to the proceedings, but was very much a factor in the case. There apparently was little warmth in Mrs. Astor's relationship with her, stemming in part perhaps from the fact that Mrs. Marshall, who was the wife of Mrs. Astor's minister in Maine, divorced him and thereafter married Marshall. In her will Mrs. Astor gave Mrs. Marshall a piece or two of jewelry and two coats. Marshall's persistence in seeking property from his mother was apparently for the purpose of providing additional resources for his wife, who participated in the meetings with Whitaker and Morrissey as the second codicil was drafted. Her name was not mentioned in the codicil either as a legatee in the event Marshall did not survive his mother, or as a fiduciary.

### Brooke Astor

At the time of the events in question Brooke Astor was a year or two beyond her 100th birthday. She had been diagnosed with Alzheimer's disease some four or five years earlier. There was much testimony given by doctors, nurses, employees, and friends concerning her mental status. It was generally agreed that she had diminished capacity in 2003 and 2004 when documents were signed and gifts made. There was also testimony of her declining physical health, sight, and hearing. It was stated that she often failed to recognize those she knew and, on occasion, questioned nurses as to what had just transpired following the signing of documents.

The prime activity in her life was to be engaged in charitable giving, particularly favoring New York City where Vincent Astor had amassed his fortune. For over 40 years it was her plan to make significant bequests to these charities to be in addition to the funds in her marital trust.

### Charity

Though not a party to the proceedings, its interest in the estate of Mrs. Astor was ever present, as was the testimony—

and her public personae—reciting the major contributions she had made through her grants, in particular to libraries, museums, and education in New York City. The changes embraced within the second and third codicils significantly decreased—or in one circumstance eliminated—the charitable interest in her estate except for her marital trust. The charities' interest, as well as all other matters relating to the disposition of Mrs. Astor's estate, will be determined in the pending probate proceeding in Westchester County, N.Y.

[Part 3 of this interview will be continued in a forthcoming issue of *Bifocal*, *Journal of the ABA Commission on Law and Aging*.]

## Every Senior Needs to Be Counted

By David Godfrey, Senior Attorney,  
ABA Commission on Law and Aging

It is critically important that every senior in your area is counted as part of the 2010 U.S. Census. Population data from the census is used to allocate more than \$400 billion in funding, including funding for senior centers, transportation infrastructure, hospitals, and emergency services. In addition, many states use census data to apportion state funding to local communities.

**Getting an accurate count that includes every senior in your area will dramatically impact the funding that is available for at least ten years to come for aging services and other elder programs in your area.**

The 2010 U.S. Census count date is April 1, with announcement letters, questionnaires, and reminder notices being mailed in mid March.

The questionnaires are the shortest in many years, with just 10 questions. The census does not ask for Social Security numbers, citizenship, or immigration status. It is estimated that most households can complete the form in ten minutes or less.

If you work with seniors, encourage them to be counted and remind them of how important it is to complete the census forms. Assure seniors that being counted makes a real difference in the services available in their community and that their census answers are confidential. You can find more information on your organization becoming a partner in the U.S. Census online at [www.2010.Census.gov](http://www.2010.Census.gov).



## Borchard Foundation Center on Law and Aging Invites Applications For 2010-2011 Fellowship

The Borchard Fellowship in Law and Aging affords one year for two law school graduates interested in, and perhaps already in the early stages of pursuing, an academic and/or professional career in law and aging, the opportunity to pursue their research and professional interests.

During the fellowship period, the center's executive director and assistant director stand ready to assist each fellow with the further development of his or her knowledge, skills, and contacts. A legal services or other non-profit organization involved in law and aging must supervise a fellow's activities and projects. In addition to the fellow's planned activities and project (unless the fellow's project includes the provision of legal services), the fellow must also provide some *pro bono* direct legal services to older persons under appropriate supervision. A fellow is expected to provide the center with monthly activities reports.

The fellowship is \$40,000 and is intended as a full-time position only. The fellow's sponsoring agency is responsible for providing employee benefits, workspace, administrative support, computer, telephone, e-mail access, and employer's FICA payment. Fellows may live and work where they choose in the United States; fellows must be either U.S. citizens or legal residents of the U.S.

The fellowship period runs from July 1 to June 30 each year, or for the calendar year beginning the month after the fellow's completion of a state bar examination.

Examples of activities and projects by recent Borchard Fellows include:

- writing and publication of law review articles on law and aging issues;
- writing and publication of state-specific, consumer-oriented handbooks on legal issues affecting older persons;
- teaching elder law and related courses at law schools where fellows reside;
- development of a non-profit senior law resource center providing direct legal services and public education;
- development of an interdisciplinary elder law clinical program at a major public university law school;
- development of a mediation component for a legal services program elder law hotline;

- development of an interdisciplinary project for graduate students in law, medicine, and health advocacy to foster understanding and collaboration between professions;
- development of training materials and statewide trainings for lawyers, judges and other court personnel, and social service providers on new comprehensive state guardianship laws;
- organizing and/or attending national conferences on law and aging issues;
- providing supervised *pro bono* legal representation of older clients;
- analysis of Medicare policies;
- development of legal services programs for older clients in consumer law and small claims matters, in end-of-life matters, and for older clients whose first language is other than English.

### Application Process

**A**pplications are due on **April 15, 2010**. Applicants must submit a completed online application, including an information form, an explanation of the applicant's planned activities and projects, a current *curriculum vitae*, a law school transcript, a letter of support from the proposed supervisor, and two other letters of support. All application information and the required online application are available at <http://www.borchardcenter.org/fellowship-program>.



## Plan a Health Care Decisions Day Event For Your Section's Law Day This Year

Need help getting started? Check out the free consumer resources on health care decision making available from the ABA Commission and visit the ABA's Law Day Planning Web site at [www.lawday.org](http://www.lawday.org)

### Join the National Health Care Decisions Day Initiative April 16!

All adults can benefit from thinking about what their health care choices would be if they were unable to speak for themselves. These decisions can be written in an advance directive so that others know what they are. Advance directives come in two main forms:

A “**health care power of attorney**” (or “**proxy**” or “**agent**” or “**surrogate**”) documents the person you select to be your voice for your health care decisions if you cannot speak for yourself.

A “**living will**” documents what kinds of medical treatments you would or would not want at the end of life.

Join with lawyers, doctors, and nurses across the country on April 16 to help people understand the benefits of advance directives and learn how to express their wishes regarding health care through conversations and the completion of advance directives.

Organizations and individuals interested in participating in National Health Care Decisions Day should visit the NHDD Web site at: [www.nationalhealthcaredecisionsday.org](http://www.nationalhealthcaredecisionsday.org).

The NHDD initiative also is working with providers and facilities to ensure that individual wishes are respected, whatever they may be.

The **ABA Commission on Law and Aging** offers the following free resources to help make, discuss, and document future health care wishes and decisions:

#### **Making Medical Decisions for Someone Else: A How-to Guide**

<http://www.abanet.org/aging/pdfs/genlproxyguide2009.pdf>

#### **Tool Kit for Health Care Advance Planning**

[www.abanet.org/aging/pdfs/consumer\\_tool\\_kit\\_bk.pdf](http://www.abanet.org/aging/pdfs/consumer_tool_kit_bk.pdf)

#### **Myths and Facts About Advance Medical Directives**

[www.abanet.org/aging/pdfs/myths\\_and\\_fact\\_about\\_HC\\_AD.pdf](http://www.abanet.org/aging/pdfs/myths_and_fact_about_HC_AD.pdf)

Additional resources on advance planning and end-of-life legal issues can be found at ABA Law Info: Your Gateway to Information on Legal Topics that Affect Your Life ([www.abalawinfo.org/fam1.html](http://www.abalawinfo.org/fam1.html)).

### *Law Day 2010*

## Law in the 21st Century: Enduring Traditions, Emerging Challenges

### Law Day - May 1, 2010

Economic markets are becoming global, transactions require cultural adaptation and understanding, populations are more mobile, and communication technologies, such as the Internet, bridge distances and time zones to form new communities around the world.

In such a world, all of us must renew our commitment to the enduring principles of law, become knowledgeable about other legal systems, recognize the need to adapt our practices,

and acquire new cultural understandings.

In a global era, matters such as human rights, criminal justice, intellectual property, business transactions, dispute resolution, human migration, and environmental regulation become not just international issues—between nations—but shared concerns.

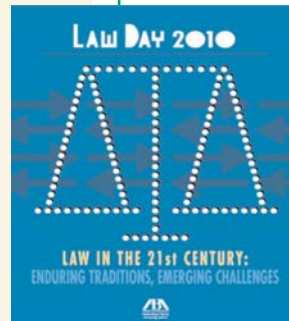
Law Day 2010 provides us with an opportunity to understand and appreciate the emerging challenges and enduring traditions of law in the 21st century.

### Are You Ready for Law Day?

The **2010 Law Day Planning Guide** will be available in February. Be sure you receive your copies and sign up for your planning guide on [www.lawday.org](http://www.lawday.org).

You can download artwork and logos from the site for use on your promotional materials.

If you are a law day event planner, you can also sign up for the law day listserve.



# Health Decisions

## Legal Guide for the Seriously Ill Helps People Understand Financial and Legal Options At the End of Life

The onset of a serious illness or injury can affect much more than a person's health. Knowing what steps to take to get one's financial and legal affairs in order is often vitally important not only to the affected individual, but to his or her loved ones, as well.

The *Legal Guide for the Seriously Ill*—a project by the American Bar Association Commission on Law and Aging commissioned by the National Hospice and Palliative Care Organization—was designed for both the seriously ill individual and those caring for someone who is seriously ill. The guide explains “seven key steps” in a brief, clear way while offering additional tips and resources for readers looking for more detailed information and guidance.

The recently released guide addresses societal issues that have gained prominent media attention in recent years, such as paying for health care, managing health and personal decisions, and patient rights. In addition, the *Legal Guide for the*

*Seriously Ill* sheds light on new legislative and regulatory changes, such as the recently enacted American Recovery and Reinvestment Act of 2009, which provides a 35 percent subsidy of the COBRA premium for up to nine months.

Carolyn Lamm, president of the ABA, said:

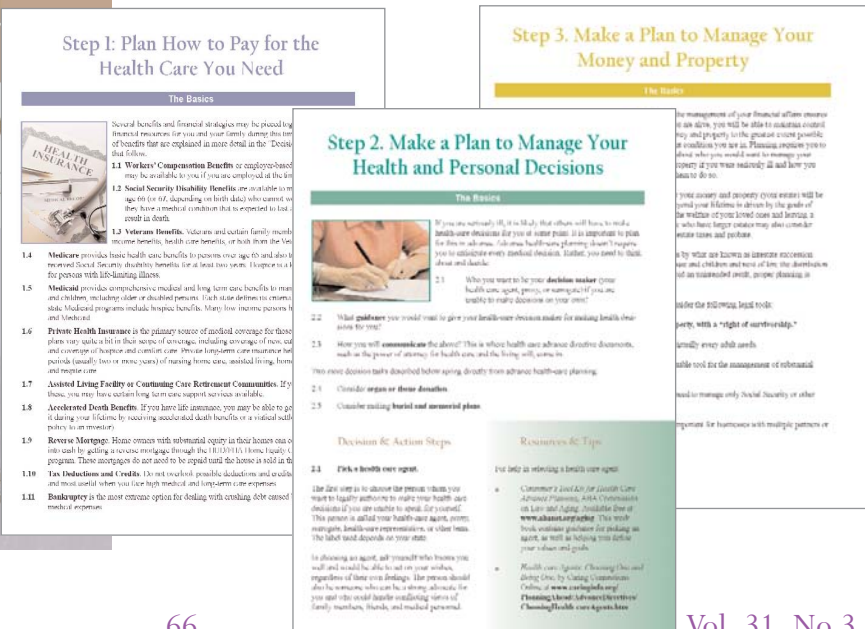
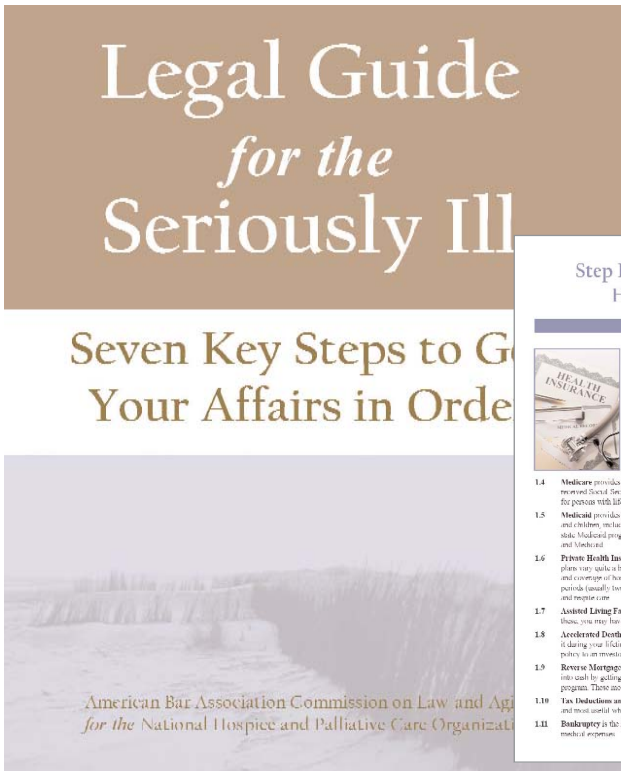
The *Legal Guide for the Seriously Ill* is a great resource for anyone facing a serious illness. The book provides critical tools that help readers understand their options, make informed decisions, and minimize some of the anxiety they may be feeling about their financial and legal affairs at this stage of life.

J. Donald Schumacher, president and CEO of NHPCO added,

Hospice and palliative care organizations are frequently asked for information regarding end-of-life planning and decision-making. This guide will be a tremendous resource to them, as well as to faith communities, caregiver organizations, aging service providers, hospitals, and others who work to support people living with a serious illness.

The views expressed in the book have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the ABA. The book is available online at <http://tinyurl.com/ybkovg6>.

Editor's Note: Review copies are available by sending an e-mail to Ellen M. Klem at [kleme@staff.abanet.org](mailto:kleme@staff.abanet.org). If you publish a review of this book, please send tearsheets or a copy for our files to Ellen M. Klem, ABA Commission on Law and Aging, 740 15th Street, N.W., Washington, DC 20005.





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

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

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

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

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

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

[www.abanet.org/aging](http://www.abanet.org/aging)



## In the News

On February 10 Secretary of Health and Human Services Kathleen Sebelius announced an award totaling \$900,000 to Services and Advocacy for GLBT Elders (SAGE) to establish the nation's first national resource center to assist communities across the country in their efforts to provide services and supports for older lesbian, gay, bisexual, and transgender (LGBT) individuals.

The resource center will provide information, assistance, and resources for both aging organizations and LGBT organizations and will help support LGBT people as they plan for their future long-term care needs

Services and Advocacy for GLBT Elders is the nation's oldest and largest organization serving LGBT older adults.

In creating the national resource center, SAGE will forge a partnership with ten other organizations with various expertise and experience in the field of aging.

Among the services SAGE plans to offer is a comprehensive, Web-based clearinghouse that will include diverse resources, social networking tools, an "Ask the Experts" service, and Web-based trainings.

**David Godfrey, senior attorney with the ABA Commission on Law and Aging**, has agreed to serve on the center's advisory council.

In 2008, SAGE was awarded a Partnerships in Law and Aging Mini-grant, funded by the Borchard Foundation Center on Law and Aging and the ABA Commission on Law and Aging. The project aimed to:

benefit lesbian, gay, bisexual, and transgender seniors in New York City and nationwide through initiatives that enhance awareness of the legal issues that impact them uniquely or disproportionately and increase access by LGBT seniors to legal services by expanding SAGE's *pro bono* legal clinic, which is now significantly understaffed, underpublicized, and under-resourced.

A major product of this project was publication of a legal guide for LGBT elders titled *Planning with Purpose* that can be downloaded at: <http://tinyurl.com/yfjoago>

SAGE has been a pioneer in service delivery for the LGBT older adult community since its inception thirty years ago. Its innovations include many first-in-the-nation programs for LGBT older adults, including the first "friendly visiting" program for homebound and frail older people, the first drop-in center, the first support group for LGBT older people with HIV, the first conferences devoted to LGBT aging concerns, and the first municipally-funded caregiver respite program. Countless organizations across the country have turned to SAGE for technical assistance in developing programs for LGBT older adults in their communities.

For more information about the National Resource Center, please contact: [Greg.Case@aoa.hhs.gov](mailto:Greg.Case@aoa.hhs.gov)

For more information about SAGE, please visit: <http://www.sageusa.org/index.cfm>



## Book Review

### You and Your Aging Parents: The American Bar Association Guide to Legal, Financial, and Health Care Issues

By Marguerite Angelari, J.D., and Marcia Spira, Ph.d (Random House Reference, NY: 2009)  
300 pp, \$16.95

Review by David Godfrey, Senior Attorney,  
ABA Commission on Law and Aging

This book is a consumer and family guide to common legal and social issues faced by family caregivers. The text is organized in an easy to follow question-and-answer format.

Among the topics covered are developing care plans, planning for incapacity, guardianship and other interventions, understanding income and assets, paying for health care, in-home assistance and home health care, housing, transportation, elder abuse, mental health, and caring for the caregiver.

The book does an excellent job of covering the social issues faced by family caregivers. It provides a useful discussion of

housing options, the basics of elder abuse, and mental health concerns. It also has a useful chapter on taking care

of the caregiver (although, there is an explanation of involuntary civil commitment at the end of this chapter that seems oddly out of place).

Readers of this book will find that it generate ideas for exploration and discussion among family members about caring for aging loved ones.

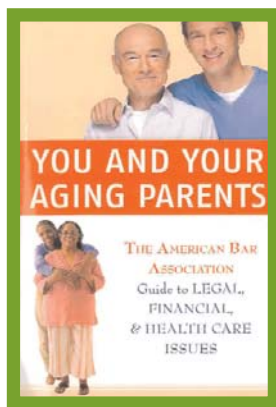
Writing a book of this type presents two significant challenges. First, many of the legal issues are governed by state-specific laws. As a result, the book covers the most common practice and cannot be expected to provide exacting answers to many legal questions.

The second challenge the authors faced was writing on very complex topics in a manner accessible by the average person. While this book succeeds for the most part, there are points that would benefit from more detail, without overwhelming a family caregiver with too much minutia.

For example, when discussing how long a person must be disabled to qualify for Social Security Disability benefits the text quotes a Social Security Web page that notes that to be eligible a person has to have been unable to work due to a qualified disability that “has lasted or can be expected to last for a continuous period of not less than 12 months.” It does not mention, however, that individuals can apply at the onset of the disability, and start drawing benefits in the sixth month of the disability, as long as it is expected that the disability will last for 12 months or more or result in death.

Our review of the text found only two or three minor substantive errors, so overall, the advice is sound. Readers are rightfully reminded that the book is not a substitute for legal advice.

The book can be ordered from the ABA Web store at <http://www.tiny.cc/> and at bookstores selling Random House Reference titles.



## Older Americans Month 2010: Age Strong! Live Long!

May is Older Americans Month—a tradition dating back to 1963 to honor the legacies and ongoing contributions of older Americans and support them as they enter the next stage in life. This year’s Older Americans Month theme—Age Strong! Live Long!—recognizes the diversity and vitality of today’s older Americans.

The annual commemoration of Older Americans Month is an opportunity to recognize the contributions of older citizens and join them in providing services and support that empower the elderly. Lawyers, advocates, educators, service providers, and others can volunteer with programs that improve health literacy, increase access to quality health services, offer food and nutrition services, provide financial and housing counseling, sponsor social activities and community engagement, and more.

Contact your local Area Agency on Aging by visiting <http://www.eldercare.gov> or calling 1-800-677-1116 to find out what you can do to strengthen services for older Americans.



AgeStrong!LiveLong!

## In the News

### Article Appraises Current State Of Elder Law Education

The *Journal of Legal Education* (Vol. 59, No. 3 (2010)) features an article reporting the findings of an empirical study of elder law teaching and scholarship. The article, funded by the Borchard Foundation Center on Law and Aging, is authored by Nina Kohn, associate professor, Syracuse University, and Edward (Ned) D. Spurgeon, executive director of the Borchard Foundation Center on Law and Aging and professor and dean emeritus at the universities of Utah and Georgia.

The abstract reads as follows:

As the American population ages, the emerging field of elder law stands poised to play an increasingly important role in both legal practice and legal education. Relatively little, however, is known about how elder law is taught in America's law schools, or about the nature and impact of elder law scholarship.

This article fills the void by providing findings from a broad-ranging empirical study of the current state of elder law teaching and scholarship. These findings suggest that elder law is on the threshold of becoming a mainstream part of the American legal academy. They also suggest that, at this critical stage, significant barriers to the field's development remain. By describing the current state of the field and the challenges it faces, this article paves the way for future efforts to guide and support the field's growth. The article can be downloaded from: <http://tinyurl.com/yk3de5l>

If you have any questions or comments about the article, please contact Nina Kohn at: [nakohn@law.syr.edu](mailto:nakohn@law.syr.edu).

**The ABA Commission on Law and Aging features on its Web site a chart of elder law courses and clinics in law schools** (as of 11-09). The chart includes information that is publically available on law school Web sites and includes course or clinic title, credits, instructor's name, and description. View chart online on the Web site of the ABA Commission at: <http://tinyurl.com/yk42aau>



### Mortgage Assistance Relief Scams: What Advocates Should Know and Updates on Regulation

Wednesday, March 10, 2:00 p.m. - 3:30 p.m. EST

Space is limited. There is no charge for this Webinar. Reserve your Webinar seat now at:

<https://www1.gotomeeting.com/register/271354129>

High rates of foreclosures continue to affect many neighborhoods as the earlier plague of predatory lending has been compounded by high unemployment rates. While the government and mortgage services struggle to address this problem, scammers have taken the opportunity to prey upon homeowners' desperation by offering forms of "help," or foreclosure "rescue," that often leave homeowners worse off than they were before.

This Webinar will describe the most common foreclosure rescue scams: deceptive sale-leasebacks, loan modification services, loan audits, short sale scams. The discussion will cover why these scams have been successful, how to avoid them, and legal strategies for addressing sale-leasebacks. It will also discuss the Federal Trade Commission's recent proposal for cracking-down on these scams, including the FTC's proposed regulations and findings.

#### System Requirements

PC-based attendees

Required: Windows® 2000, XP Home, XP Pro, 2003 Server, Vista

Macintosh®-based attendees

Required: Mac OS® X 10.4 (Tiger®) or newer

Sponsored by the National Consumer Law Center and a grant from the Administration on Aging, as a part of a series series of National Elder Rights Training Project Webinars for the National Legal Resource Center.

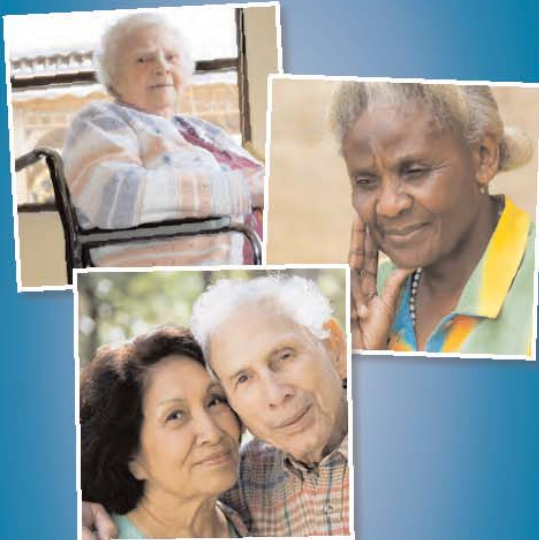
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- ~ **Creative thinking**
- ~ **Collaborative work approach**
- ~ **Cutting-edge interdisciplinary research**
- ~ **Ability to look forward to identify emerging issues**
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