ABA Commission to Develop Pocket Guide on Legal Issues Related to Elder Abuse

By Lori Stiegel, Senior Attorney, ABA Commission on Law and Aging

The ABA Commission on Law and Aging was awarded funding to develop a pocket guide on legal issues related to elder abuse for criminal justice system professionals.

The funding for this project is provided by the Bureau of Justice Assistance. It is a portion of the $5.6 million awarded by the U.S. Department of Justice’s Office of Justice Programs (OJP) initiative to strengthen the criminal justice system through the support and development of new practices and innovative strategies for resolving systemic problems.

The project’s goal is to fill the knowledge gap of justice system professionals and policy makers about elder abuse through development, national dissemination, and support of state-specific replication of the pocket guide.

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In Search of Adequate Funding for Legal Assistance For Low-income Seniors

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

This article will show that in 2010, legal assistance to low-income seniors meets less than one-quarter of the need for those living at or below the poverty level. The result is that hundreds of thousands of older Americans have no place to turn for legal assistance needed to secure essential programs and services or to protect their legal rights. At the core of this issue is a lack of adequate funding for legal assistance programming. Under the current version of the Older Americans Act (OAA) each state is required to submit to the Administration on Aging (AoA) a plan that shows an adequate proportion of OAA-title III funding has been committed to the provision of legal assistance to seniors.1 States are required to determine a minimum funding percentage, taking into consideration other legal assistance programming and resources “to meet the legal needs of seniors with the greatest economic and social need.”2 With at least three-quarters of the legal needs of low-income seniors

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Pocket Guide

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This goal will be met through these measurable objectives: (1) develop and nationally disseminate the pocket guide to state and local justice system professionals and policy makers; (2) provide funding and technical assistance to six demonstration projects that will adapt the pocket guide to reflect their state’s laws and resources; (3) develop and nationally disseminate Replicating the ‘Pocket Guide on Legal Issues Related to Elder Abuse’ in Your State to share lessons from the demonstration projects with other states or communities.

The project timeline calls for the pocket guide to be disseminated at no cost (in print and online) in August 2011.

The Commission will issue the request for demonstration project proposals (RFP) at the same time or shortly thereafter so that interested groups can see the pocket guide before deciding whether to submit a proposal. The RFP will specify the funding amount, applicant criteria, and obligations of the ABA and the subgrant recipients.

The pocket guide will be written so as to be clear to non-lawyers. It will address laws and legal principles generally applicable in all states, and also serve as a template for entities that want to develop a state-specific guide.

The guide will describe what elder abuse is and where it occurs, list key risk factors and indicators, and summarize the roles of systems that protect and respond to victims. It will include relevant national and state resources and tips for communicating with older people who have impairments.

The bulk of the pocket guide will be devoted to brief, simple explanations of:

- laws, regulations, programs, policies, legal concepts and tools, and why they are relevant to elder abuse victims (for example, how they may be used to commit or redress elder abuse);
- issues that justice system professionals and other service providers should consider; and
- actions that justice system professionals and other service providers should consider taking.

Topics will, at a minimum, include:

- legal documents (such as powers of attorney, wills, trusts, deeds, and health care advance directives) that may be misused and exploited;
- exploitation that may occur under the guise of Medicaid planning for long-term care;
- legal responsibilities of long-term care facilities (including nursing homes, assisted living, board and care homes) to prevent elder abuse;
- legal responsibilities of fiduciaries (including guardians/conservators and representative payees); and
- the relevance of capacity, consent, and undue influence.

It is intended that the pocket guide will serve as a much-needed resource for criminal justice professionals, as well as others who deal with older people, to better identify and respond to victims of elder abuse.

Get the information you need from the ABA Commission’s Elder Abuse Resource Page at: http://www.abanet.org/aging/elderabuse.shtml
ABA Commission Welcomes Distinguished New Members and Liaison

The ABA Commission on Law and Aging is composed of fifteen members who are appointed on an annual basis by the president of the American Bar Association. As a multi-disciplinary group, the commissioners represent aging experts from a broad spectrum of professions, including law, health care, social work, gerontology, advocacy, and public service. The fundamental diversity of the group ensures a stimulating forum for discussion of the law-related issues facing older Americans. Cooperative efforts between the commissioners and staff have produced numerous publications, as well as research and demonstration projects of considerable value to the public at large. To provide our readers with a view into the strengths and expertise of our commission, each fall issue of BIFOCAL provides abbreviated profiles of the most recent distinguished appointees.

Hon. Grace G. Connolly was elected as the Register of Wills for Baltimore County, Maryland, in 1998. Judge Connolly is the 18th Register and the first woman to serve. Prior to this position, she was elected to the Baltimore County Orphans’ Court, where she served from 1986 thru 1998. In 1990, she became chief judge. Judge Connolly is on the boards of many civic and professional organizations, and currently serves as president of the National College of Probate Judges. In 2005, Judge Connolly was named one of “Maryland’s Top 100 Women.” A graduate of the Institute of Notre Dame, Judge Connolly also holds a degree in nursing from Mercy Medical Center in Baltimore.

Lynn Friss Feinberg is director of the Campaign for Better Care, a multi-year consumer advocacy campaign led by the National Partnership for Women and Families to improve the delivery of health care for vulnerable older adults with multiple chronic conditions. Prior to assuming this position in April 2009, Ms. Feinberg served as deputy director of the National Center on Caregiving at the San Francisco-based Family Caregiver Alliance, where she has been a leader in family-centered care for older adults, with special expertise in developing and replicating family caregiver support programs, and translating research to promote policy change. In 2007, Ms. Feinberg was selected as the John Heinz Senate Fellow in Aging, serving in the office of U.S. Senator Barbara Boxer, and developed legislation on health care workforce issues and aging and the Caring for an Aging America Act of 2008, introduced in the Senate by Senator Boxer. Ms. Feinberg has published and lectured widely on family care issues, and has served on numerous national advisory committees and expert panels to address caregiving, chronic care, and long-term care. Ms. Feinberg is currently on the American Society on Aging’s Generations editorial board, is a fellow of the Gerontological Society of America, and an elected member of the National Academy for Social Insurance. She is a past officer and member of the board of directors of the ASA and, in 2006, received the ASA Leadership Award. Previously, she served as an area agency on aging planner and evaluator, and conducted aging policy research at the University of California, San Francisco. Ms. Feinberg holds a master’s degree in social welfare and gerontology from the University of California at Berkeley.

Eric A. Jones is the founder of the law firm Emmaus Consulting, PLLC, based in Seattle, Washington. Mr. Jones’s practice focuses on immigration and business development for both national and international clientele. Mr. Jones has held numerous positions within the ABA, including member of the Commission on Immigration (2003-2006); Human Rights Committee of the Section of International Law (vice chair, 2009-present); ABA Section of International Law’s committees on immigration and naturalization (vice-chair, 2007-2010) and corporate..
social responsibility; and vice chair of the Young Lawyer’s Division International Law Committee. Mr. Jones also is active in the Washington State Bar Association, where he served as chair of the Young Lawyers Legislative Committee. He is a member of the Washington State Minority and Justice Commission, the American Immigration Lawyers Association, and is a fellow of the American Bar Foundation. Mr. Jones obtained his B.A. in international studies from the School for International Training, and his J.D. from Gonzaga School of Law, in Spokane, Washington.

Richard C. Milstein is a shareholder of the law firm Akerman Senterfitt in Miami, Florida. During his 35-year legal career, Mr. Milstein has handled complex and high-profile guardianship, trust, and probate matters, and has considerable experience in the area of elder abuse. He has not only represented clients of significant means, but has also been called upon to represent the children in disputed relationships and as a representative for vulnerable adults. As a board certified elder law lawyer, Mr. Milstein is able to advise clients on all aspects of life and estate planning for the elderly, alternative families, and same-sex couples. He also is a certified mediator and was a participant in the first pilot project for dispute resolution through the American Bar Association.

Gloria C. Ramsey is a registered nurse and attorney, who is recognized nationally and internationally for her leadership in the areas of end-of-life care, health disparities, and working with vulnerable populations, particularly among African Americans and persons with disabilities. She is currently an associate professor at the Uniformed Services University of the Health Sciences and director of Community Research Engagement for the university’s Center for Health Disparities. Dr. Ramsey has held professional service appointments with the American Nurses Association Code of Ethics Taskforce; American Society for Bioethics and Humanities, Nurse Affinity Group; Hastings Center; U.S. Department of Health and Human Services; RAND Health; Pfizer Pharmaceuticals Fellowship in Health Disparities Academic Advisory Board; and Tuskegee University National Center for Bioethics in Research and Healthcare Black Bioethicist Taskforce. Dr. Ramsey is admitted to the U.S. Supreme Court; is a member of the board of directors of the National Hospice and Palliative Care Organization; and was appointed to the State of Maryland Advisory Council on Quality Care at the End of Life.

Dorothy Siemon currently serves as director of health and long-term care in AARP’s Office of Policy Integration. In this role she coordinates and manages policy development and provides guidance to AARP’s board of directors and National Policy Council. AARP’s national, state, and local policy addresses key issues in the health and long-term care arena. Prior to joining the Office of Policy Integration, Ms. Siemon was a senior litigation attorney for over ten years for the AARP Foundation, writing amicus briefs in federal and state courts, including the U.S. Supreme Court. In addition, she served as counsel in numerous class action cases involving Medicare, Medicaid, and long-term care facilities.

Mary Jane Ciccarello is the Commission’s liaison from the Borchard Foundation Center on Law and Aging. Ms. Ciccarello has been the director of the Self-Help Center of the Utah State Courts since 2007. She was an elder law attorney in private practice in Salt Lake City, Utah, for several years and provided Older Americans Act Title III legal services to older persons in northern Utah. Ms. Ciccarello served previously as the legal services developer for the Utah State Division of Aging and Adult Services, as a staff attorney with the Legal Aid Society of Salt Lake and Utah Legal Services, and as dean of students at the University of Utah S.J. Quinney College of Law, where she currently teaches elder law as an adjunct professor. A fellow with the Borchard Foundation Center on Law and Aging since 2002, Ms. Ciccarello has served as the Center’s assistant director since 2007.
Maria Shriver and the Alzheimer’s Association have published a study that lays out in unqualified terms how women are bearing the brunt of the Alzheimer’s epidemic. The evidence presented in *The Shriver Report: A Woman’s Nation Takes on Alzheimer’s* shows that women are affected significantly and disproportionately by the disease—both as individuals living with Alzheimer’s disease and as caregivers.

According to the report, nearly 10 million American women today suffer from the disease or are caring for someone who is. Experts predict that by 2050, as the baby boomer generation ages, that number will triple.

The 295-page report presents a multi-disciplinary approach featuring seven chapters written by experts and noted figures in the fields of Alzheimer’s research, medicine, social and economic policy, and government. The hard science and statistics are interspersed with personal, and, sometimes, extraordinarily moving, essays by individuals recounting their experiences with the disease. Essays recount the fears of a wife and mother who has been diagnosed with early-onset Alzheimer’s; the exhaustion and collapse of hope of a wife who struggles to continue to care for her husband while working a full-time job so they can keep their home; and the feelings of adult children when their parent with Alzheimer’s no longer knows who they are. The essays are written by people representing all walks of American life, including some more recognizable figures such as Barbara Streisand, former First Lady Laura Bush, and President Ronald Reagan’s daughter Patti Davis, among others.

The report, at heart, is a drumbeat for heightened awareness and a call for preparation by asking for answers to the following:

- How can we get an appropriate level of public research funding for Alzheimer’s disease, given its human and economic costs, both of which are expected to rise exponentially?
- Is there a way to reduce the financial impact on families and society?
- How can society help the millions of women caught between the dual demands of providing for a family and care-giving?
- Is there anyway to prepare for the possibility that Alzheimer’s will strike you or your family?
- Is there a role for government, businesses, non-profits, and the media to call attention to this disease and to implement solutions?

Leslie Fried, ABA Commission on Law and Aging senior attorney and director of the Medicare Advocacy Project of the Alzheimer’s Association and American Bar Association, reviewed portions of this book.

John Adams’ role in the 1770 Boston Massacre trials is regarded as a noteworthy example of the defense of commitment to the rule of law and defense of the rights of the accused, even in cases when advocates represent unpopular clients and become involved in matters that generate public controversy. Patriot, advocate, diplomat, constitutional theorist, and political activist, Adams became our nation’s first lawyer-president in 1797.

The 2011 Law Day theme provides us with an opportunity to assess and celebrate the legacy of John Adams, explore the historical and contemporary role of lawyers in defending the rights of the accused, and renew our understanding of and appreciation for the fundamental principle of the rule of law.

Check upcoming issues of Bifocal for additional Law Day resources, including lesson plans, planning tips and resources, and 2011-themed Law Day products.


A health care proxy is anyone serving as a substitute decision maker—as an agent under a durable power of attorney for health care, as a family member or close friend, or as a guardian appointed by the court.

For many people, this responsibility can be overwhelming and a source of confusion and anxiety.

According to Charles P. Sabatino, director of the ABA Commission on Law and Aging, “[t]here’s no job description and no familiar models for how to be a good proxy decision maker.”

In order to help people understand and fulfill their role as health care proxy, the ABA Commission on Law and Aging developed a pair of guides that describe in simple terms what it’s like to be a health care proxy, what to do while there’s still time to think about it, how to make the hard decisions, and where to get help.

The brochure and longer Web-based guide offer advice on steps to follow in making health care decisions for another, how to work within the health care system, resolving health care decision disputes, and the most common situations faced by persons called on to make health care decisions for someone else.

The Web guide includes additional information addressing specific situations—such as dealing with grief, pain, emergencies, DNR orders, surgery, artificial nutrition and hydration, and medical research.

Making Medical Decisions stresses the importance of talking—how to talk to the patient while there is still time to learn what treatment the person would want, and how to talk with doctors and other medical professionals when the time comes. They also describe the kinds of issues one needs to consider when asked to make medical decisions, such as the other person’s expressed wishes, religious or social beliefs, whether the treatment will be painful, or the success rate of the treatment

Adapting these guides for your state would be an easy and excellent project for bar association sections or committees on aging!


To get started, contact Erica Wood at ericawood@staff.abanet.org, for a text version of the handbook and JPEG files for the photographs—it’s easier than downloading and trying to manipulate a multi-page PDF. You can view both versions of the proxy guide on the ABA Commission Web site at http://new.abanet.org/aging/Pages/Onlinepublicationsconsumers.aspx.
**Free CLE Webinar on Representing Veterans**

**Establishing Service Connection on Disability Claims**

November 10, 2:00 p.m. – 3:30 p.m., EST

Register Now at: http://www.abanet.org/cle/programs/t10bes1.html

Presenter: Michael P. Horan, Deputy General Counsel, Paralyzed Veterans of America, Washington, DC

**Service connection is an essential link in establishing eligibility for many disability-related veterans benefits. This program will explore how to identify potential cases for service connection.**

This webinar is the second in a series of three no-charge MCLE webinars on advanced topics in representing veterans with VA benefits claims. These programs, developed as part of the ABA’s Veterans Advocacy Pro Bono Project, offer a beyond-the-basics examination of key topics in obtaining veterans’ benefits. Each program runs approximately 90 minutes and continuing legal education credit will be applied for in all available jurisdictions. In addition to being eligible for state bar license renewal, these programs will count toward the Veterans Administration initial attorney accreditation requirement (for more information, click here).

The webinars are produced by the ABA Commission on Law and Aging and made possible with funding from the ABA Enterprise Fund. The programs are co-sponsored by the 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 the ABA Senior Lawyers Division.

—David Godfrey, senior attorney, ABA Commission on Law and Aging

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**In the News**

**GAO Report on Guardianship Abuse Underscores Need for Standards, Training, and Monitoring**


While the GAO “could not determine whether allegations of abuse by guardians are widespread,” it identified hundreds of such allegations by guardians in 45 states and the District of Columbia between 1990 and 2010.

The Office examined 20 cases in which criminal or civil penalties resulted, and found significant exploitation of assets from 158 incapacitated persons.

The GAO showed that in many instances guardians are not sufficiently screened or monitored by the court. Additionally, GAO investigators tested guardian certification programs in selected states and found the programs failed to adequately screen potential certified guardians. The GAO cautioned that “case study findings and undercover test results cannot be projected to the overall populations of guardians or controls over guardian certification programs.”

CNN has highlighted the study at: http://www.cnn.com/2010/HEALTH/10/27/elderly.abuse/.

The GAO report underscores the compelling need for guardian standards, training, and monitoring.
seniors being unmet, it is clear that current funding is inadequate.

Reauthorization of the Older Americans Act in 2011 presents an opportunity to strengthen the legal assistance provisions and funding mechanisms in the Act.

Framework for Evaluation

The language of the Act requires states to determine adequate funding by taking into consideration the overall legal assistance service delivery system. To do this, states need to examine the need for legal assistance by low-income seniors and the capacity of the existing legal service delivery system. The data from these two criteria determine what level of funding is necessary to provide an adequately funded system. This article will review research on legal needs and service delivery capacity and project the need for legal assistance; examine current funding for services; and reveal the undersupply of service delivery capacity.

Determining the Legal Needs of Low-income Seniors

The OAA was first passed in 1965 to address the needs of adults age 60 and older and has been reauthorized and amended at regular intervals. While means testing (income and asset limits) is prohibited on services under the OAA, the Act prioritizes providing services to those with the greatest economic and social need. Greatest economic need is defined as seniors living at or below the poverty level.

This article focuses on the needs of seniors at or below the poverty level. It does not address the needs of seniors with the greatest “social need.” Social needs, which focus on those created by non-economic factors, such as disability, language, culture, geography, race, and ethnic status that impact an individual’s ability to perform normal daily tasks and live independently, would exponentially increase the number of seniors needing legal assistance in a given year.

The data below will show that seniors living at or below the poverty level in the United States need legal assistance between 1,250,000 and 10 million times a year.

Understanding the population targeted for legal assistance under the act is an essential first step. About 5.2 million Americans age 60 and above live at or below the poverty level, about 10 percent of the 54 million Americans age 60 and above.

The number of low-income seniors doubles, to about 10.5 million seniors, living at or below 149 percent of the poverty level.

Results of seven recently conducted statewide senior legal needs surveys serve as the basis for projecting the need for legal assistance. The numbers below will show that at a minimum, approximately 1,250,000 low-income seniors nationwide encounter a legal issue each year.

The studies of legal needs of seniors reveal an incidence of legal
needs ranging from 8 percent to 43 percent of low-income seniors per year. This averages to 23.99 percent of survey respondents encountering a legal problem each year.

These studies, conducted largely in connection with Model Approaches to Legal Service Development grants from AoA, vary in method and statistical quality, but the sample is growing large enough, and consistent enough, to provide viable data.

If you apply the 23.99 percent average number of low-income seniors reporting a legal need from the state surveys to the total senior population living at or below the poverty line, the result indicates that approximately 1,250,000 low-income seniors nationwide will have a need for legal assistance each year.

Again, that need more than doubles to 2.5 million seniors with a legal need each year when you include seniors living at or below 149 percent of the poverty level.

The Legal Service Corporation (LSC) reports provide the basis for a high-side estimate of more than 10 million legal needs per year by the same five million low-income seniors. This is based on seven statewide legal needs studies conducted between 2007 and 2009 examining the legal needs of low-income adults. These studies report that the average low-income household in America experienced 2.17 legal issues per year (2.17 percent of low-income households needing legal assistance each year). Data from these studies is reported in Documenting the Justice Gap, published by LSC in 2009. Based on the average of a low-income person encountering a legal issue 2.17 times per year, the number of seniors at or below the poverty level who encounter a legal problem each year is approximately 10,268,239.

The difference between the data from the seven statewide studies of the legal needs of low-income seniors and the LSC-cited studies of the legal needs of the overall low-income population is vast—from 1.25 million to over 10 million.

Several factors may contribute to the disparity. The needs of low-income seniors may be fewer than the needs of the overall low-income population. This may be due to factors such as the overall low-income adult population having more law-related issues with work, family, minor children, and access to stable health care benefits than seniors.

Undoubtedly, the actual number of the legal needs of low-income seniors per year is somewhere between the low number of 1.25 million and the high number of 10 million. Even if we stick with the lowest number of legal needs, the current service delivery system capacity is clearly inadequate to meet the needs.

Capacity of the Legal Service Delivery System

The OAA requires an examination of the overall legal service delivery landscape to determine the adequacy of funding. To do this, I will examine OAA Title III legal assistance, LSC-funded legal assistance, pro bono services, and senior legal hotline services.

Current Service Delivery Capacity

The current legal service delivery system is capable of handling about 240,683 cases for low-income seniors each year, representing less than one quarter of the lowest projected need. This estimate is supported by research published by LSC in 2009 that shows that less than 20 percent of the legal needs of low-income Americans, of all ages, are met by legal aid, the private bar, and pro bono programs. In addition, about half of all qualified low-income clients asking for help from legal aid programs are turned away due to lack of program capacity as a result of inadequate funding. While seniors represent about 17.7 percent of the total U.S. population they only represent about 12.9 percent of the clients served by LSC-funded programs.

OAA Legal Assistance Services

An estimated 86,829 cases were closed in 2008 by OAA-funded legal service delivery programs. The OAA does not require reporting of unduplicated clients for Title III legal assistance, meaning that they do not report the number of clients or cases. However, AoA reports that approximately 920,397 hours of legal assistance were provided in 2008. Legal Service Corporation data allows us to estimate that the average legal aid case closed in 2008 required 10.6 hours of attorney time. At an average of 10.6 hours of attorney time per case, the 920,397 hours of services provided with OAA funding in 2008 represents an estimated 86,829 cases. Improved data collec-
tion is needed to help better track and evaluate legal services provided under the OAA.

Legal Service Corporation-Funded Services

Legal Service Corporation-funded programs reported in 2008 closing about 113,351 cases with clients age 60 and over. Of this about 93,700 cases were closed with funding other than funding from the Older Americans Act. The total number of 113,351 includes services provided with funding from all sources, including services paid for with OAA funding. Because this number includes cases closed with OAA funding that are reported separately in this report, it is necessary to estimate and subtract cases closed with OAA funding to avoid a double count of these cases. The OAA funding represents about 2.2 percent of non-LSC funding received by LSC programs. If cases closed are proportional to funding, 2.2 percent of the 880,521 cases closed by LSC programs, yields about 19,561 LSC cases closed made possible by OAA funding. To get the number of cases closed with other than OAA funding, you subtract the 19,561 estimated cases closed with OAA funding from the 113,351 total cases closed with a client age 60 or older. This leaves the net number of cases closed by LSC programs using funding other than OAA funding at about 93,700 cases.

The 113,351 LSC-reported cases with a client age 60 and over include those closed by pro bono volunteer attorneys (known in LSC terms as Private Attorney Involvement, aka PAI). Statistics provided by LSC show that pro bono representation averages about 12 percent of the services provided by LSC legal aid staff. These cases are included in the estimated 113,351 cases closed by LSC-funded programs with a client age 60 or older.

Senior legal hotlines reported closing 60,154 cases in 2008. Statewide senior legal hotlines operate in more than half of all states and provide legal advice, cases evaluation, and referrals to callers age 60 and over. The majority of hotline cases are closed with legal advice or limited services.

A total estimated legal services delivery system capacity of 240,683 was obtained by adding together OAA-funded services estimated at 86,829 and 93,700 LSC cases closed with other-than OAA funding (including pro bono services), and 60,154 senior legal hotline cases.

Thus, the current service delivery capacity nationwide is less than one-quarter of the lowest projected legal need of 1,240,000 cases per year.

Current Spending

In 2008, a total of $51,303,069 in state, federal, and local money was spent on legal assistance under the OAA. The core of this is $24,803,148 in federal Title III OAA funding. About 80 percent of OAA legal assistance funding is paid to LSC-funded programs, with a miniscule amount of about 1 percent directed to funding senior legal hotlines.

The LSC programs deliver services to older Americans far in excess of the OAA funding that they receive. In 2008, 108 out of 136 LSC-funded programs received OAA funding. Older Americans Act funding passed onto LSC programs accounted for just 2.2 percent of total LSC program funding (from all sources), yet 12.9 percent of all LSC clients were age 60 and over.

In 2008, LSC grantees received $332,078,605 in federal funding for legal assistance. This amount was supplemented by more than $525,000,000 in other private, state, local, and federal funding, including approximately $19,830,063 in OAA funding. The OAA funding, like most of the supplemental funding, was restricted to services targeted at specific populations or legal issues. While we can confidently say that LSC-funded programs received about $20-million in OAA funding, plus state and local supplemental funding associated with this funding (about 80 percent of another $25 million), the total cost of LSC-funded services remains difficult to estimate because of the restricted nature of non-LSC funding received by the programs.

Conclusion

The most favorable interpretation of the data reveals that the overall legal service delivery system at current funding...
levels meet less than one-quarter of the lowest estimated legal needs of America’s lowest income seniors. The actual demand is certainly higher.

Because of the prohibition on means testing in the OAA, it is likely that OAA funding provides services to seniors above 100 percent of the poverty level, resulting in seniors living at or below the poverty level with less access to legal assistance. Expanding the income range of seniors served to 149 percent of the poverty level doubles the eligible population and the legal unmet need.

Reauthorization of the Older Americans Act presents a real opportunity to strengthen the country’s commitment to meeting the legal needs of America’s most vulnerable seniors. It is hoped that this article will bolster the argument for increased appropriations for legal assistance delivery programs for America’s at-risk seniors.

Notes

1. 42 U.S.C. ch. 35 of the Older Americans Act of 1965, as amended § 306 (a) (2) (C).
2. Older Americans Act § 307 (a) (2) (C).
3. Id.
4. Id.
5. Older Americans Act § 102 (a) (40).
6. Older Americans Act § 315 (a) (5)(E).
7. Older Americans Act § 102 (a) (23 & 24) as referred to throughout the Act.
8. Older Americans Act § 102 (a)(23).
10. U.S. Census <http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2008_1YR_G00_S0102&-geo_id=01000US&-ds_name=ACS_2008_1YR_G00&_lang=en&-redoLog=false>.
11. U.S. Census data shows 9.6% of seniors live at or below 100%, or 5,192,737, and 9.8% between 100% and 149% of the poverty level, for a total of about 10,492,922 seniors living at or below 149% of the poverty level < http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2008_1YR_G00_S0102&-geo_id=01000US&-ds_name=ACS_2008_1YR_G00&_lang=en&-redoLog=false>.

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15. See note 11 above.
16. 23.99% of 5,192,737 seniors living at or below the federal poverty level in 2008.
18. Id. at pg 15.
19. Id.
20. Supra n. 2.
21. Supra n. 17.
22. 54,087,228 out of 304,059,728 based on a U.S. Census 2008 report <http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2008_1YR_G00_S0102&-geo_id=01000US&-ds_name=ACS_2008_1YR_G00&_lang=en&-redoLog=false>.
23. 12.9% of 880,521 per LSC Fact Book 2008.
25. Data is actually reported in unit of service. A unit of service should equal one hour, but studies such as the Kentucky Model Approaches to Legal Service Development, Legal Delivery Systems Assessment, David Godfrey, Access to Justice Foundation, December 11, 2008, revealed that some

Continued on next page
programs used 30 minutes, others one hour, and others one client visit as the definition of a unit of service when reporting.

26. Legal Services Corporation, *Fact Book 2008*. LSC attorneys closed 781,501 cases with a staff of 4,144 full-time equivalent attorneys, or an average of 188.58 cases per year per full-time attorney, with a standard 2,000 hour work year, the average is 10.60 hours per closed case.

27. 12.9% of 880,521 per LSC, *Fact Book 2008*.


29. *Id*.

30. Legal Service Corporation programs closed 889,155 cases with funding from all sources, of this 2.2% of the funding was OAA funding. 2.2% of 889,155 closed cases is 19,561 cases closed with OAA funding, but reported by LSC programs.

31. Legal Service Corporation, *Fact Book 2008*, 781,501 cases closed by staff attorneys and 93,174 cases closed by PAI attorneys, 11.92%.

32. 74% of these were closed as information and advice only, Senior Legal Helplines, *Annual Report Calendar Year 2008*, Center for Elder Rights Advocacy <http://www.ceraresource.org/>.


34. 74% closed with legal advice, 17% closed with limited services per Senior Legal Helplines, *Annual Report Calendar Year 2008*, Center for Elder Rights Advocacy <www.ceraresource.org>.

35. Administration on Aging SPR Reports, Table 6b, column X <http://www.aoa.gov/AoARoot/Program_Results/SPR/2008/Index.aspx#national>.

36. Administration on Aging SPR Reports, Table 6a, column X, Fiscal year ending September 30, 2008 <http://www.aoa.gov/AoARoot/Program_Results/SPR/2008/Index.aspx#national>.

37. *Supra* n. 29.

38. About $266,000, little more than 1% of OAA funding and representing only 6% of total Senior Legal Hotline Funding, per Senior Legal Hotlines, *Annual Report 2008*, Center for Elder Rights Advocacy <http://www.ceraresource.org/>.


42. Legal Service Corporation, *Fact Book 2008* (Chart of LSC and Non LSC Funding Summary).

43. Such as Violence Against Women and Community Block Grants.
ABA Commission on Law and Aging Offers Legal Externship Opportunities for Winter/Spring 2011

The American Bar Association Commission on Law and Aging externship program aims to provide law students—especially those who may be interested in pursuing a career focusing on law and aging issues—with experience in a nationally known organization in that field.

The ABA Commission was established in 1979. It examines and responds to law-related issues of aging, including health and long-term care, income maintenance, housing, guardianship and alternatives, court access, elder abuse, due process rights in government programs, and the rights of older persons, generally. The ABA Commission also seeks to enhance legal resources for older persons.

Each intern will be assigned to produce at least one major product (a report, article, analysis, bibliography, etc.) under the supervision of a staff attorney.

In addition, interns will assist staff attorneys in researching or monitoring other legal and policy developments or in working on an identifiable component of a larger research or writing project. The core focus will be chosen from among several current priorities of the ABA Commission, which include nursing home/long-term care access and quality issues; Medicare/Medicaid coverage issues; health care decision-making developments; state guardianship law reform; elder abuse; and international perspectives in elder rights. (For statements by past ABA Commission summer legal interns about their experiences, see http://www.abanet.org/aging/lawstudents/home.shtml.)

Qualifications needed are:

- placement through law school externship program;
- completion of the second year of law school;
- good research and writing skills;
- public interest orientation, especially in the field of law and aging; and
- self-initiative, intelligence, good interpersonal skills, and a willingness to learn and work under supervision.

The externship will last one semester beginning in January 2011. Start and end dates will be negotiated with the applicant. The student will be expected to be at the Commission office for a set number of hours per week, to be arranged. There is no stipend for the externship.

Send resume, contact information of three references, a brief writing sample, and a cover letter explaining your interest to Sonia Arce, Office Manager, ABA Commission on Law and Aging, 740 Fifteenth St., NW, Washington, DC 20005, sarce@staff.abanet.org.

**Deadline: December 3, 2010**

Questions? Contact Sonia Arce, office manager, at 202-662-8695 or e-mail: sarce@staff.abanet.org, or Erica Wood, assistant director, 202-662-8693, e-mail: ericawood@staff.abanet.org.