

Seeking Justice for Older Americans



By Karen C. Buck

The Legal Intelligencer, March 25, 2013

"I've known rivers: I've known rivers ancient as the world and older than the flow of human blood in human veins. My soul has grown deep like the rivers."

— Langston Hughes

In July 1965 in Washington, D.C., President Lyndon B. Johnson envisioned a nation that "no longer will ... refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this progressive country." As a result of his eloquence and advocacy, the federal Older Americans Act was passed, perhaps the most important piece of aging legislation in our lifetimes.

In 1978 in Philadelphia, when a small organization was founded to serve the legal problems of seniors, "elder justice" was not a term one heard often in the legal or legislative lexicon. Seeking justice for older Americans, as our country faces what has been deemed an "aging tsunami," is today a dynamic area of law. Over the past 35 years, much has been accomplished in the world of law and aging. But the challenges continue. Most deal not with death, but with all of the complexities of modern life.

Currently, Pennsylvania is the fourth "oldest" state in the nation, with nearly 2.7 million individuals aged 60 and older — 20 percent of the state population. By the year 2030, it is estimated that 3.6 million Pennsylvanians will be aged 60 and older. Currently, 27.4 percent of grandparents over the age of 60 are primarily responsible for their grandchildren under the age of 18. Older Americans have been instrumental in the defining events of modern American history and law. They launched and led the transformative battles of our country, not only those fought abroad, but the struggles for civil rights, racial and gender equality, and voting rights.

Yet today, hundreds of thousands of seniors face their elder years in poverty or are targeted for exploitation, abuse, fraud, disenfranchisement and homelessness as they enter the "third age" and last chapters of their lives.

Thirty-five years have passed since our organization was founded in 1978 as the Senior Citizen Judicare Project by leaders of the Philadelphia Bar Association, including executive director Ken Shear and founding board chair Richard Weiner, to protect the legal rights of Philadelphia elders in need. Today, as the SeniorLAW Center, we represent, educate and advocate for over 8,000 seniors facing diverse legal problems and systems affecting their safety, homes, health, families and civil rights.

What has happened in those three-and-a-half decades reflects the aging population we serve — one of powerful impact and continuing challenge.

ELDER JUSTICE, ELDER ABUSE

Thirty-five years ago, there was no Elder Justice Act recognizing that elder abuse, neglect and exploitation is a national crisis demanding a national response. Signed by President Obama after a seven-year legislative journey despite wide bipartisan support, the act is a step forward in coordinating a national response to the fight against elder abuse, neglect and exploitation — a national crisis. According to research funded by the National Institute of Justice, almost 11 percent of people ages 60 and older, or 5.7 million individuals, suffered from some form of abuse in 2009 alone. Elder abuse includes physical, emotional and sexual abuse, self-neglect, and shocking and sometimes highly sophisticated forms of financial exploitation.

Financial exploitation costs older Americans \$2.5 billion nationally, as estimated by the MetLife Mature Market Institute and the National Committee for the Prevention of Elder Abuse. Abuse of power of attorney or guardianship, fraudulent deed conveyances, home repair contractor fraud, credit card and bank account fraud and unauthorized use, pressured sales of unsuitable products, lottery scams, and illegal and exploitative telemarketing and collection practices are just examples of the many forms of elder financial exploitation.

Elder abuse is deadly: Victims of elder abuse, neglect and financial exploitation have three times the risk of dying

prematurely. Elder abuse is the only form of family violence for which the federal government has historically provided virtually no funding.

SENIORS AND THE HOUSING CRISIS

Philadelphia is a city of homeowners, and this holds especially true for seniors. A clear majority of older Philadelphians — approximately 79 percent — own their homes. Seniors over the age of 65 in Philadelphia account for 30 percent of the total homeowners in the city. Older homeowners face an array of complex legal issues threatening their shelter: home repair contractor fraud, including violation of new requirements under the Home Improvement Consumer Protection Act; tangled title, when generations of estates have not been probated or administered; and fraudulent deed transfers, in which the title of a senior's home has been "stolen" by being transferred without his or her knowledge or consent. With Philadelphia Court of Common Pleas Judge Annette Rizzo's leadership, senior protocols have been developed to address the needs of older homeowners and special legal considerations that affect them, including those recently widowed and facing health or cognitive challenges. The difference is homeownership versus homelessness, and the ability to age in a place with dignity and independence versus institutionalization.

In 2012, the SeniorLAW Center proudly worked with legal services, pro bono partners and Municipal Court leadership to launch Philadelphia's first court-based legal program for unrepresented low-income tenants, more than 95 percent of whom navigate the landlord/tenant system without an attorney. The Philadelphia Landlord/Tenant Legal Help Center has served over 1,000 low-income families of all ages in its first year of operation.

LEGAL TOOLS AND PROTECTIONS

Lawyers and advocates for older adults helped develop critical tools over these past 35 years to allow us to make powerful decisions about our lives, from the Pennsylvania durable power of attorney statute enabling an aging individual to avoid guardianship by appointing an agent who can act on his behalf, to the Living Will Statute that permits a terminally-ill person to control his or her medical treatment at the end of his or her life. Thirty-five years ago, there was no Older Adults Protective Services Act requiring investigation of confidential reports of abuse, neglect, exploitation or abandonment of vulnerable and incapacitated elders, no minimum standards for nursing homes and basic rights for nursing home residents, no spousal impoverishment provisions under the Medical Assistance Act, and no modern Guardianship Statute to guarantee procedural due process protections to prevent the unjust and often unnecessary deprivation of an older person's rights and liberties.

Challenges remain in each of these areas. The lack of oversight of guardians, inconsistent access to counsel, failure to recognize, investigate and effectively prosecute sexual assault, family violence, economic crimes and other forms of exploitation against elder victims, inadequate funding for senior protective and legal services, advocacy and in-home care just begin the list.

We in Philadelphia are home to one of the largest populations of senior citizens in the country — and one of the poorest. Philadelphia has the largest percentage of senior citizens of the 20 largest cities in the United States. One in five of our seniors lives in poverty. Most are women. Last year, the SeniorLAW Center assisted over 8,000 clients throughout Pennsylvania ranging in age from 60 to 110, and as diverse as our nation, of all colors, races, languages and orientations.

Our elders today are indeed diverse. Fifty-five percent of Philadelphia's current older adult population are a minority, foreign-born, or both. Elderly immigrants face not only the challenges and changes of aging that are universal to us all, but also the obstacles of a new language, culture, government and health system.

As the SeniorLAW Center celebrates 35 years of pursuing elder justice, we are proud to recognize those who came before us. On April 17, the SeniorLAW Center is set to hold its 35th anniversary gala and launch its inaugural Hall of Fame, inducting 10 extraordinary individuals who have served as our founders and leaders. We also proudly recognize our outstanding pro bono partner of 2013, Pepper Hamilton.

Aging is a universal truth: unless we die, we will age. Join us as lawyers and advocates as we strive to ensure that elder justice becomes not just a new legal term of art, but a legal reality.

***Karen C. Buck** is the executive director of SeniorLAW Center (formerly Senior Citizen Judicare Project), an independent nonprofit organization celebrating its 35th year of protecting the rights of older Pennsylvanians through legal representation, education and advocacy.*