

## President's Message

JAMES S. RICHARDSON SR.

### Aging and Its Impact on Court Systems

**T**HE U.S. POPULATION'S rapid tilt toward the aged is well known. According to a number of studies, the nation's population that would be classified as "older" (that is, 65 and above) will more than double in the next 20 years. Many of the issues related to this

aging population—including health and long-term care, drug benefits and costs, and the reduction in the mortality rate and its concomitant impact on the Social Security system—have been studied at length.

However, as Max Rothman and Burton Dunlap have observed, little is known about the potential impact of this aging population on the judiciary and court systems.<sup>1</sup> Most research on elder law has focused on such topics as estate planning and end-of-life issues. Little attention has been paid to such topics as access to the courts and the provision of legal services to an aging population.

The first issue facing many courts is the physical access to the facilities themselves. Many courthouses, particularly those that have been designated as "historical," are difficult to retrofit with appropriate ramps, elevators, and restrooms; it is also difficult to make the necessary modifications to courtrooms to accommodate aging citizens. Although the Americans with Disabilities Act mandates such changes, financial constraints often delay or limit the optimum changes that need to be made for seniors; for instance, a simple matter of having the proper acoustics in a traditional courtroom to ensure that an elder litigant is able to participate meaningfully may require substantial expenditure of scarce resources.

A number of jurisdictions where the judiciary has become proactive in this area, including Reno, Nev., New Castle County, Del., and the state of Florida, have solved this type of problem by dedicating specific courtrooms for renovation to ensure that senior citizens will receive appropriate assistance. Among the modifications to the courtrooms in these jurisdictions have been the installation of additional speakers or headphones for those with limited hearing; monitors to ensure the visibility of exhibits; and handrails to provide full access for litigants, witnesses, and jurors.

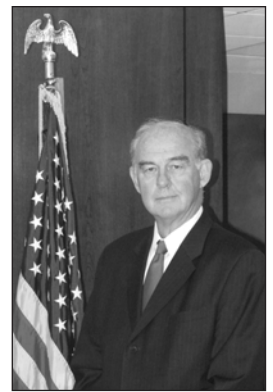
A second area of concern is the abuse of elder citizens by guardians and caregivers. An article in the National Association of State Judicial Educators' publication, *NASJENews Quarterly*, reported the following statistics:

- It is estimated that only one in 14 incidents of domestic elder abuse are reported.
- One to two million people aged 65 or older have been abused by a trusted caregiver.
- Approximately five million people are victims of financial abuse *each* year.
- The oldest individuals (aged 80 and over) are abused at two to three times their proportion of the elderly population.
- A survey of adult protective services conducted in 2000 reported that investigations increased by 61 percent between 1996 and 2000.<sup>2</sup>

Much of this abuse was what might be loosely characterized as financial exploitation either by a close relative or a designated caregiver. According to Sally Hurme, a consumer protection attorney at the Washington, D.C., headquarters of AARP, "Elder abuse and financial exploitation will appear in increasing numbers on the civil and criminal dockets. ... The readiness of courts across the country is uneven. Every court needs to take a close look at their preparedness, because the numbers are coming whether they are prepared or not."

Other issues that are arising with increasing frequency include capacity determinations; age discrimination; health care fraud, abuse, and crime; and end-of-life determinations, together with the religious and ethical implications related to this issue. Several state court systems have responded to this challenge by creating specialty courts to handle these and related issues. It should come as no surprise that these courts are found in states such as Arizona, Florida, and California, which have become home to large numbers of retirees, a development that has accelerated the raw numbers of elder citizens needing access to the courts.

What does all this mean to those of us who are primarily federal practitioners? Many of us are already



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engaged in some form of elder law, whether or not we characterize those cases as such. Cases related to Social Security benefits, veterans' benefits, health care, and health care fraud all involve the area of elder law to some degree. As the population ages, a greater portion of the litigants in federal courts will be seniors, if for no other reason than seniors will occupy a larger sector of the universe of consumers of legal services.

It is unlikely that the federal court system will be able to create specialty courts and still adhere to its jurisdictional limitation.<sup>3</sup> However, modifying traditional federal courtrooms to accommodate the aging population is clearly a measure that we can advocate. As we adapt our courts to new technology, we should also urge that the modifications that need to be made for senior citizens be included among the physical changes.

In addition, there are many subjective and relatively cost-neutral steps that can be taken. Good Guardianship,<sup>4</sup> a pamphlet published by AARP, offers 10 suggestions for partnerships between courts and local senior organizations to improve the delivery of judicial services to aging adults. The pamphlet also offers a list of other resources available to assist the legal community in providing help to senior citizens as they navigate the court system.

As federal lawyers, we need to focus on this increasingly vital topic. As the population shifts from

the "baby boom" to a "senior boom," many of us and many of our clients will need to confront the issues raised by age. If we ignore these problems, we will shirk our responsibility for good government and the proper administration of justice. **TFL**



### Endnotes

<sup>1</sup>Max Rothman and Burton Dunlap, *Judicial Responses to an Aging America*, 42 COURT REVIEW: THE JOURNAL OF THE AMERICAN JUDGES ASSOCIATION 8 (2005).

<sup>2</sup>Denise O. Dancy and Brenda K. Uekert, *The Aging of America, The Rise of Elder Abuse and Its Impact on Judicial Education*, NASJENews QUARTERLY, Summer 2007, [nasje.org/news/newsletter0703/resources02.htm](http://nasje.org/news/newsletter0703/resources02.htm).

<sup>3</sup>A clear exception is the U.S. Court of Appeals for Veterans' Claims.

<sup>4</sup>See [www.ncea.aoa.gov/NCEAroot/Main\\_Site/pdf/publication/guardianshipombudsman.pdf](http://www.ncea.aoa.gov/NCEAroot/Main_Site/pdf/publication/guardianshipombudsman.pdf).

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as accusations that they did not act reasonably and diligently. Courts will be called upon to answer the question: What diligence was reasonable? How does a family explain that a refugee was too traumatized to speak about a horror that he or she had survived and too busy trying to feed a family to finance costly and fruitless searches for missing assets?

In *Marei von Saher v. Norton Simon Museum of Art at Pasadena*, 2007 WL 4302726 (C.D. Cal. 2007), the court found California's Civil Code 354.3, which extended the statute of limitations for Holocaust-era claims until 2010, unconstitutional. The case is currently on appeal to the Ninth Circuit.

Our federal courts now face the choice of whether our common law rule that "no one can take title from a thief" will remain the fundamental law of the land. It is to be hoped that district courts will interpret equitable doctrines such as laches in light of the mass extermination of an entire people, will heed our strong federal policy of ensuring that property looted by the Nazis is returned to its rightful owners, and will strike down any statutes of limitations that violate our nation's duty under international law to provide a meaningful remedy. Our American example should be followed by other countries, where

tens of thousands of looted works of art have been concealed to this day. If the United States does not respect the rights of property owners and cut through the legalisms protecting holders of stolen goods, no one else will. **TFL**

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