LEGAL PROBLEMS AFFECTING OLDER AMERICANS

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BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
NINETY-FIRST CONGRESS
SECOND SESSION

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STATEMENT BY SENATOR HARRISON A. WILLIAMS, CHAIRMAN

Senator Williams. Good afternoon, ladies and gentlemen.

Briefly, as I understand it, this is an American Bar Association annual meeting first with the Senate special committee hearing being made a part of the proceedings.

I would like to say a word about this Special Senate Committee on Aging. It is a special committee, as a matter of fact, it is the only special committee in the Senate. It grew out of a subcommittee of the Labor Committee dealing with the situations of older people. It was found in 1961 that really the problems were broader than just the legislative work of one substantive committee, so it was created as a special committee. We listen, study, learn and report and our findings are, of course, made available to the legislative committees. I think we have furnished many fine ideas to many committees. Senator Randolph is chairman of the Public Works Committee, and I think out of our deliberations we have a lot to say to the legislative committees, such as the Public Works Committee and many others.

I certainly want to extend our thanks to the American Bar Association for making it possible for the Senate Committee on Aging to conduct this hearing.

Mr. Kalcheim, the chairman of your Section Committee on Legal Problems of the Aging, deserves special praise. He has given this committee a splendid podium for raising issues that should be of concern to every American, no matter what his age.

The major issue, of course, is that Americans should be served by government and not thrown into confusion by government. For the elderly, service by government is especially important. When retirement begins many adjustments must be made. Not the least of these
is understanding the many rules relating to such programs as social
security, Medicare, Medicaid, railroad retirement, and many others.
Good, honest efforts are made by many government representatives
to help people understand what is due them under these programs.
There is no doubt about that. These officials we all commend.

**Baffling Problems**

Much as we would like to think that all is well between older
Americans and government, we have to face these facts. These facts
arrive at the office of the Committee on Aging in the form of letters
from men and women who find themselves baffled or angry about prob-
lems that arise and programs that are meant to serve them. These
facts, many of them, are presented in the working paper that has
been published by our committee and I believe has been made avail-
able generally here.

We read there about couples who are turned out of their homes
because relocation laws are not implemented.

We read about a blind man who is struggling alone on inadequate
Social Security benefits because he didn't know until a legal advocate
told him that he was entitled to $4,600 in back benefits.

We read about elderly people who are kept in mental institutions
simply because there is no other place for them.

We read entirely too much about involuntary, inappropriate com-
mitment to those institutions in the first place.

What can be done to fight these and other problems. We are here
today to begin a search for answers.

One answer can be found among the elderly themselves. Once they
have the facts, they will act. I would like to give you one example.

A 75-year-old part-time employee of our committee had a good idea
one day. He saw that older persons, especially widows, were having
great difficulty in filling out income tax forms. He got in touch with
the Internal Revenue Service and suggested special training pro-
grams. Once given instructions, elderly persons could help other el-
derly individuals. The idea caught on. The Internal Revenue Service
is organizing training programs of this kind throughout the country.

The committee went a few steps beyond that this year. We called
the Internal Revenue Service into a hearing and asked them to explain
how on earth they could make the income tax forms so complicated,
especially the retirement credit instruction sheet. We received a prom-
ise that the form would be simplified next year, and I am happy to say
they said it would be simplified for all age groups.

What we need, obviously, is responsiveness in other Government
programs as well, and we will get it if we insist on it.

I would like to close by thanking the National Council of Senior Cit-
izens for its contribution to today's proceedings. The council is a spon-
or of a legal services and research program which is funded by the
Office of Economic Opportunity. Mr. David Marlin of the LRSE staff
arranged for the working paper that I referred to earlier. They have
provided us with the springboard we need for today's discussion and
tomorrow's solutions. We will hear more from LRSE representatives
shortly.
Without objection, it is ordered that the working paper "Legal Problems Affecting Older Americans", be printed as an appendix to this hearing.

(See appendix 1, p. 41.)

In a moment we will call the American Bar Association representatives and they will be introduced in a moment by Mr. Kalcheim.

Before I turn to you, I would like to turn to my good friend, my colleague, Senator Jennings Randolph.

STATEMENT BY SENATOR JENNINGS RANDOLPH

Senator Randolph. Good afternoon, ladies and gentlemen.

It is a privilege for me to join Senator Harrison Williams, the knowledgeable chairman of our Special Committee on Aging, meeting here in St. Louis with those of you who are intensely interested in the problems of the aged.

I would like to bear down on one point mentioned by Senator Williams. That is the matter of relocation of people who are displaced by the loss of property, either housing or places of business, because of public works developments. As chairman of the Public Works Committee of the Senate, I do want to give particular stress to a point of Chairman Williams on the matter of relocation.

In the 1968 Federal Aid Highway Act we recognized the need to write into highway legislation safeguards for people who are to be relocated. Senator Williams knows, and other Members of the Senate and House know, that we cannot, today, develop a road without first assuring that the people who are displaced have the approximate housing or better housing than they had at the time of the new road location. This is something entirely new, never being written into highway legislation in the past.

THE TOTAL CONCEPT

We are concerned, not with just laying another mile of cement or asphalt, but with the highway in its total concept on the American people.

In the urban development programs of the United States, we work mostly in our highway efforts with the housing agencies within the Department of Housing and Urban Development. There is a very earnest desire, I think, to recognize that we have to counsel with people before the fact, not after the fact. As Chairman Williams knows, there was a time when a road was laid and then the people complained. Now the people are a part of the process of determining the route which must only receive final approval at the Federal level. The real decisions are made by a political subdivision within a State or city, and so people are a part of the process today of our public works programs.

I wanted, Mr. Chairman, to stress these matters because of your mention of the very serious situation which often affects large segments of our people and, naturally, those are not the younger people of our society. These are the people who have lived at one location for a long while. They are very much a part of that community or section of a city and they have the well springs of a long life there that they look
back to, so, particularly, the elderly are concerned with dislocation. This is a very real problem and we are attempting, not within one committee and its jurisdiction, but within several committees, highlighting, I think, the work of the Special Committee on Aging, in addressing ourselves to the matters of considerable concern to a growing group of people in the United States.

I think, Mr. Chairman, for me to say more would be improper at this point, even though it is difficult for a Senator to call it quits.

I am very grateful; thank you very much.

Senator Williams. Thank you very much, Senator.

We will now turn to Mr. Norman Kalcheim, chairman of the Section Committee on Legal Problems of the Aging.

STATEMENT OF NORMAN J. KALCHEIM, PHILADELPHIA, PA., CHAIRMAN, SECTION COMMITTEE ON LEGAL PROBLEMS OF THE AGING, ABA

Mr. Kalcheim. Thank you, Senator Williams.

With your permission and permission of Senator Randolph, we will proceed with the part of the ABA program, the committee on problems of the aging, of which I am chairman.

Before I forget I want to thank the committee for the opportunity of joining with them in presenting the legal problems of the aging, and I am grateful that we can participate with them in this part of the program.

"Whence cometh my help," the title of these proceedings, comes from an old Hebrew prayer, which goes on, "mine help cometh from the Lord." Well, there is also a saying, "the Lord helps those who help themselves." Today our subject covers those who may not be able to help themselves, the 20 million aged persons who need some form of help, legal, social, and economic. And the Lord in good time may help them, but the lords to whom we can presently turn are the lords of legislation—our local, State and Federal legislatures, supplemented, assisted, and guided by the lawyers of this Nation.

Let me say at the outset that the recommendations made here by the panelists are their personal observations, and not to be considered as policy or recommendation of the American Bar Association, or our family law section, except where specifically so stated. In the broad context of policy, however, I must emphasize the role of the American Bar Association and the family law section in fostering, supporting and active advocacy of humanitarian legislation inspired by a professional awareness of the needs of all underprivileged, handicapped, and deprived persons in our Nation. Today, as in the past, the lawyer has been deeply involved in fashioning the quality of the society in which we live.

An increasing percentage of our growing population consists of old people, as medical advances enable more people to live to old age. Fifty years ago, the average American's life expectancy was 48 years. Today, it is about 70, and in the year 2000 it will be 82. In this year of 1970, it has been estimated that our population over 65 has reached 20 million, over 10 percent of our population. Two-thirds of those over 65 own their own homes, which, in itself, can constitute an appreciable management problem when competence begins to fail.
THE PERMANENT MINORITY

All of us eventually will become a member of this permanent minority. We cannot be integrated in this melting-pot Nation. We do not have the many advantages given seniority in civil service, by union contracts or in the Congress. Unless we have unusually large resources, the latter days are full of economic, medical, social, and legal problems, albeit the existence of a social security program, pension plans and old age assistance, Medicare and Medicaid.

The question is whether Government will fulfill its role in income, health, and housing. We expect it will as a social institution carry out democracy's promise. It must include the aging in its social policy and provide protective services for all with diminished resources and high health risks. A glance at the committees of the family law section will show its concern with not merely the legal problems of the child, of the mismated, but with the concomitant social problems. So with the problems—legal and social of the aging. In the last 20 years, the efforts of the legal profession in combination with the social scientist has produced new attitudes as to children, juveniles, their rights and social prerogatives, and now we are striving to give this same attention to the expanding aged population, so as to provide the whole family the protective needs of a viable democracy.

RELEVANCE: A TOPIC FOR ALL AGES

Everything is geared to the young today. There is need for balance. We all can't be Pablo Cassels, a Picasso, or Stokowski, but we all have some contribution to life—even after 65. Youth today talks constantly of doing things which are "relevant." Relevance is a topic of all ages. The basic question for all is what kind of a human being am I going to be? What is to be our social credo for the rest of the 20th century? What values do human beings want to live by? Perhaps the aged group in this country is being set adrift on an ice float as with the aged Eskimo who is no longer contributing to the family structure. Is it not time to look back to some of the older civilizations—the Chinese, the Indian, where the aged were revered and respected—and yes, even catered to? The time is ripe to round out our democratic civilization, to eliminate the manifold discriminations, practices in job continuance, licensing, insurance—all based on arbitrarily designed rules based on the image of the productivity of the aged. In our own profession, and in the other professions—medicine, architecture, the arts, the sciences, no lines are drawn because of age.

But it is not enough to develop the rhetoric of our concern, we must also develop the implements which will adequately reflect this concern. I will have, at the end of our part of the program, a series of committee recommendations—some approved by the family law section, some being presented for approval, but all representing our committee's concern over the problems of the so-called golden years.

Grow old along with me!
The best is yet to be,
The last of life, for which the first was made;
Our times are in his hand
Who saith, "A whole I planned,
Youth shows but half; trust God; see all, nor be afraid!"
So, still within this life
Though lifted o'er its strife,
Let me discern, compare, pronounce at last,
"This rage was right 't the main
That acquiescence vain:
The future I may face now I have proved the Past."

—from "Rabbi Ben Ezra," by Robert Browning.

Thank you, Mr. Chairman, and at this point I would like to have this report copied into the record, the second annual report of the committee on legal problems of the aging of family law section, American Bar Association, which was prepared for the annual meeting of the section in St. Louis, Mo.

Senator Williams. Very well, it will go into the record at this point.

SECOND ANNUAL REPORT OF THE COMMITTEE ON LEGAL PROBLEMS OF THE AGING OF FAMILY LAW SECTION OF AMERICAN BAR ASSOCIATION—JUNE, 1970

1. COMMITTEE CHARGE

The Committee on Legal Problems of the Aging was created by the Council of the Family Law Section, January, 1969. This new Committee was charged to: "develop projects and objectives in the form of recommendations for proposed legislation, statements of policy, etc., all of which should receive circulation and action amongst our profession."

2. COMMITTEE MEMBERS

The members of the committee under the chairmanship of Norman J. Kalchelm of Philadelphia consist of the following:
- Prof. George J. Alexander, Associate Dean, College of Law, Syracuse University, Syracuse, N.Y. 13210.
- Alfred Berman, Esq., 80 Pine St., New York, N.Y.
- Prof. Henry H. Foster, Jr., N.Y. University Law School, New York, N.Y. 10003.
- Doris Jonas Freed, Esq., 3 East 69th St., New York, N.Y. 10021.
- Maxine T. McConnell, Esq., 301 N. Market St., Dallas, Tex. 75202.
- Esther Polen, Esq., 1401 Walnut St., Philadelphia, Pa. 19102.
- Karl Zukerman, Esq., Vice Chairman, N.Y.C. Department Social Services, 66 Leonard St., New York, N.Y. 10013.

Chairman:
Norman J. Kalchelm, Esq., 1730 Land Title Building, Philadelphia, Pa. 19110.

3. MEETINGS

The Committee held five meetings: September 26, 1969; November 7, 1969; January 23, 1970; March 19, 1970, and May 11, 1970. The first and last meetings were held in Philadelphia, and the other three were held in New York City. Minutes of all five meetings have been submitted to the Section Chairman and officers.

In addition, the Chairman attended as an observer:
(a) An annual meeting of the National Association of Retired Persons, in Washington, D.C., at the direction of the Chairman of the Family Law Section, on October 26, 27, 28, 1969.
(b) The mid-winter meeting of the Family Law Section in Atlanta on February 21, 1970, at which time a mid-year report was submitted covering the activities of the committee for the first half of this period.

4. RESUME OF MEETING ACTIVITIES

At the September 26, 1969, meeting, three subjects were discussed:
(a) The issue of mandatory retirement age 65 under pension agreements were discussed, and it was agreed to raise a fundamental question and
discuss possible legislation to eliminate mandatory requirements. A study is to be made of this situation by Karl Zukerman to determine the extent to which persons over 65 are deprived of the right to work after age 65. (b) Detailed discussion of a proposed panel of speakers on the subject of legal problems of the aging for the 1970 Annual Meeting of the Family Law Section, ABA, in St. Louis. (c) The committee recommended the compilation of a review of current laws and cases on legal problems of the aging by a subcommittee being composed of Doris Jonas Freed and Professors Foster and Alexander. (d) Committee recommended that the law schools be requested to make part of their curriculum emphasis on legal problems of the aging.

MEETING OF NOVEMBER 7, 1969

(a) A discussion of Article V of the Uniform Probate Code approved by ABA, and its effect on the recommendations made by this committee last year (see recommendation 3) that persons who are subject to commitment to a mental facility or to a determination of incompetence shall be provided with counsel. (b) A discussion of recommendation No. 1 in the 1969 report of this committee, to wit, that there is discrimination by auto insurance companies, State Insurance Commissioners, and licensing agencies, with respect to insurance and licenses of persons over 65. It was recommended that conclusions on such discrimination and the position of the Family Law Section against such discrimination be circulated to all State Insurance Commissions instead of going through the House of Delegates. This would avoid the necessity of the House of Delegates taking a position on this recommendation, and would merely reflect the thinking of the Family Law Section on this subject and constitute information rather than recommendation.

MEETING OF JANUARY 28, 1970

The Committee finalized the panel for the Family Law Section at the St. Louis Convention, and prepared the subjects to be discussed by the panelists; to wit, by Professor Alexander, "Economic Problems of the Aging," with emphasis on the need, or lack of need, for guardians, conservators, or court appointed supervisors of the property of the aged; Owen T. Armstrong, "Basic day-to-day Legal Problems of the Aged." It was agreed that the title of the program would be, "Whence Cometh My Help?" The Chairman of this Committee is to prepare a preamble statement covering the purposes of the Committee and to introduce the panelists. The meeting is to be in conjunction with, and part of a Senate Subcommittee Hearing under the Chairmanship of Senator Harrison Williams, of New Jersey, on August 11th, at 2:30 p.m., at Stouffer's River Front Inn in St. Louis, Missouri. It was agreed that the committee, in addition to the panelists, were to make recommendations to the Senate Subcommittee on the Aging, which recommendations were not to be considered approved by either the Family Law Section or the ABA, but principally to point up areas of concern with respect to legal problems of the aging, such areas being as follows:

(a) Tax exemptions; rent controls; employment discriminations; mandatory age 65 requirements under retirement and pension plans; mental health problems of the elderly, including decent institutional facilities and supervision thereof; consumer protection; proper hearing procedures on Social Security claims with mandatory requirements for appeal; support for legislation permitting class consumer suits; uniform State Laws on guardianship and commitment proceedings, and on legislation pertaining to mental health.

The committee prepared a list of short range projects and long range projects, which will be referred to in the conclusions hereinafter set forth.

MEETING OF MARCH 10, 1970

Formal approval of the Section Chairman was given to the format for the St. Louis meeting. The Committee members who were attending the St. Louis meeting were urged to prepare recommendations to be presented to the Senate Subcommittee, and then only in their individual capacity, and that committee members also be prepared with questions to ask the panel speakers. Finally, there was a discussion of the specific areas on which recommendations would be made for the Annual Report.
Most of this meeting was concerned with Article V of the Uniform Probate Code, and then only with respect to that part of Article V which defines incompetency. After lengthy discussion, Article V was approved especially since it provided for a continuing Power of Attorney as a tool for the aged, but some reservation was made with respect to lack of freedom of choice on the part of the alleged incompetent when in certain cases the question of competency may be a "battle of the experts." However, the final conclusion was as follows:

The committee endorsed Article V subject to the following caveat: "As to Part III of Article V, we endorse the due process involved, but reserve to later decision, following the study of the incompetency proceedings, our approval for all the conditions included in Article V, especially since it provides for proceedings to be initiated by any person interested in his welfare to become the guardian." While this was accepted, it was pointed out that a large number of incompetency proceedings should not be encumbered by inhibitions against individuals who are interested in the person when there are only small assets involved, as the courts usually pick a bank or trust company as guardian when large assets are involved so as to preserve the estate of the incompetent and prevent designing persons from acquiring the estate.

5. SHORT-RANGE PROGRAMS FOR THE COMMITTEE

The following short-range programs were agreed upon for future activity by the Committee:

(a) Examine the extent of Legal Aid for the elderly in both the urban and rural areas.
(b) Examine the legislation in existence to supervise the small estates of the elderly with a minimum of costs.
(c) Continue examination of the various aspects of disability of the elderly with respect to incompetency statutes, so as to provide guides for legislation. Included would be the personal and property rights of the elderly as they may be affected by incompetency proceedings, and an examination of the proposed New York Conservatorship Law and the California Public Guardians Act.

6. LONG-RANGE PROGRAMS

(a) Continuing review of current laws, procedures and cases concerning problems of the aging.
(b) Upon establishing a liaison with National Commissioners on Uniform State Laws, the committee to examine all drafts proposed Uniform Acts to assure protection of the interests of the aging and provisions for due process.
(c) From time to time, make recommendations in changes of procedure of substantive law relating to legal problems of the aging.
(d) Examine and make recommendations in all areas where tax exemptions for the elderly are proposed.
(c) Promote the grants, Federal and State, of funds for Law School research in legal problems of the aging.

7. RECOMMENDATIONS

(1) That the Family Law Section and/or the Committee on the Aging continue to publicize the discrimination against the elderly, and that active steps be taken for the Amendment of 81 Stat. 607 (29 U.S. Code Ann. 631) so as to eliminate any reference to age 65 in the Federal Act on Discrimination in Employment.
(2) Repeat the recommendations in the previous Annual Report calling attention to a study of the University of Denver College of Law, which indicated arbitrary practices and attitudes regarding licensing and insuring older persons. The Committee recommends that, instead of proceeding through the House of Delegates, the Family Law Section and the Committee on the Aging call this condition to the attention of all Insurance Commissioners and Licenses Commissioners, as well as to the Senate Committee on Aging.
(3) The Committee recommends to the Family Law Section that it support the Tydings-Eckhardt Bill (Senate Bill 1980) which would allow class actions where consumer claims are involved, and that it was against the Bill S-3201,
proposed by the Administration, which would permit such class action, but only after the Department of Justice had brought successful action against a business for one of eleven deceptive or fraudulent practices outlined in the Bill. Such actions are now largely barred by requirements for a minimum claim of $10,000 and diversity of citizenship. A recent Supreme Court decision also bars the totaling of individual claims to reach the $10,000 minimum.

(4) A recommendation that there be legislation which would prevent pension agreements from requiring mandatory retirement at age 65, since this conflicts with a person’s right to work after age 65, and forces early retirement without option on the part of the retiree. In any event, some built-in determination as to whether the retiree is capable of continuing should be provided for if the person over 65 desires to continue to work, rather than the general requirement for mandatory retirement in most pension plans.

(5) The committee recommends a thorough examination of administrative and appeal provisions under both the Social Security Act and Old Age Pensions, and particularly payments under the Medicare provisions of Social Security, so as to avoid arbitrary discrimination determination without opportunity for a hearing or an appeal.

(6) Recommend that Family Law Section have a liaison representative with the National Commissioners on Uniform State Laws, so that all proposed uniform laws, especially dealing with guardianship, committal, mental health, may take into consideration the legal problems of the aged on these and other areas in which the National Commissioners are preparing uniform legislation.

(7) That the Family Law Section recommend to all of the Law Schools that in all courses in Family Law there be a specific area of training for the student in the legal problems of the aging, so as to assure competency in handling the property and personal rights of the elderly; and to obtain the concern of the Law Schools in legislation related to protective legal services for the aging.

SPECIAL RECOMMENDATION

The Commissioner on the Aging, in Washington, has requested the Chairman to obtain the help of our committee in preparing a series of monographs to be put together in a single document covering the various elements of the legal problems of the aging for use by the technical committees of the White House Conference on the Aging in 1971. Approval of the Family Law Section for this project is requested.

Mr. KALCHEIM. Mr. Chairman, I would like to introduce the first of our panelists, Professor, and soon to be dean of the Santa Clara Law School in California, and now the vice dean of the law school of Syracuse University.

I consider him an engaging young law professor, and they seem to be going west where the action seems to be, or at least starting on the college campuses.

He already has a two-page list of published writings. More recently he has been concentrating on incompetency proceedings, the abuses arising where there is to be property management of the aging, the right to be left alone where property is involved.

Always the question remains, how do we balance the need of the person and property of the aged against the rationality, the future interests of his family, protection from designing persons, preservation of the aged persons’ resources to assure his proper maintenance and health.

His recommendation may be charting a new path or testing if such proceedings are fashioned in the primary interest of the individual aged person. He may raise more questions than we can answer. His paper will add to the continuing service which lawyers and the public must have in the protection of not only the property of the aged but in their well-being and basic rights.
STATEMENT OF GEORGE J. ALEXANDER, PROFESSOR OF LAW, UNIVERSITY OF SYRACUSE LAW SCHOOL (NEWLY APPOINTED DEAN OF THE SANTA CLARA, CALIF., LAW SCHOOL)

Mr. ALEXANDER. I wish my own mother and father were here to hear that introduction. My father would have been so proud and my mother would not have believed it.

Senator Williams and Senator Randolph, it is a deep honor to be here. Although I had anticipated addressing myself to the question whether limiting a law professor to present any topic does not constitute cruel and unusual punishment, I hope to summarize my prepared statement as well as a copy of an article already filed with the committee. I intend to file a copy of another article before the closing of this hearing.

I am going to address myself, if I may, to a very limited aspect of the large range of deprivations to which the aged and the minority of our society are subject. Senator Williams has cataloged the full spectrum, but I want to talk about only one problem of this group, the least militant minority in the country that needs the greatest amount of support, the problem of being deprived of the right to manage property through incompetency proceedings.

INCOMPETENCY PROCEEDING

Last year after a survey of the legislation and case reports dealing with incompetency I developed a thesis which can be stated, as follows: Incompetency procedures—do not seem to make sense; in theory, property management is taken over by a surrogate in the ward's interest. When he is aged and rarely restored to competency what interest he might have in not being allowed the use of his wealth is extremely unclear.

Much clearer in the reported cases are instances of gross overreaching on the part of the guardian, both to benefit himself as the legatee and sometimes to benefit himself during the lifetime of his charge. It seems more appropriate to view the question of how the law should intervene, not as a question of maximizing the benefits of the aging, but of minimizing to the extent possible the deprivation of the civil liberties by removing their right to control their property.

From this perspective, I think the question one might better ask, in whose interest is the surrogate manager, in fact, appointed? It is doubtless true that courts could find people who could better manage the property of the aged than they themselves, but this is merely another application that in society there are always people who can manage property better than others. That is not true of the aged. A person may obtain for himself a manager of his property. Where a manager is involuntarily chosen for him, I think we have reason to be skeptical of the benefit that is to be derived by a potential ward. One can reject the answer also given to other cases. Once a surrogate of the reserve of property is obtained the aged are rarely restored to competency once found incompetent. Although his wealth may increase, unless he retains a power to spend his money to maximize his own enjoyment, the ward's affluence would hardly be likely to be received by him as a benefit.
Many of the aged suffer merely from memory loss and lack of familiarity with legal process, without having lost their judgment concerning their personal goals. A provision which allows their entire ability to manage property to be deprived seems a gross over-reaction to the problem.

**ADVERSE INTEREST**

Now, obviously the wards of the aged are not the only people concerned with their wealth. Those who are potential beneficiaries of the ward's affluence take a natural interest in their waste. What is important in their interest, however, is that it is an interest adverse to the interest of the aged. The proceedings which presently focus on benefits to the ward inadequately and inarticulately deal with that interest. In consequence, beneficiaries themselves are in a cynical position premised on the benefit to the object of the proceedings rather than candidly to themselves. Unfortunately when the underlying self-interest of the petitioner is probed he appears in a very bad light in court. Where this issue is not probed, potential beneficiaries were determined from the perspective of benefiting the beneficiaries interest rather than the wards'.

Would a better probe be to ascertain the legitimate interest of the others, and to project themselves in law, rather than circuitously holding incompetency proceedings, which is not the answer.

The same apparently bizarre spending habits would seem much more objectionable when they defer funds from a destitute wife, merely the extravagance of a person who has decided merely to become self-indulgent, who might otherwise benefit on his demise.

I should point out that the law has already established a number of such procedures, although I can't go into detail about them now. Once society has identified those who may legitimately benefit, it would seem a salutory change in the focus to allow them to bring a direct action in preference to an incompetency proceeding addressed against the ward. At what moment is mental acuity lacking if he, in fact, squanders funds, which society believes should first meet his obligations, to those near to him. This squandering of money to our creditors, our spouses, would seem far more reprehensible, fully capable of more circumspect behavior. I wrote a paper a year ago, having views of presenting reported cases and statutes near real life, and I ended it by suggesting that field study of actual practice might lend initial insight. I had no idea how much would be learned.

**Syracuse and Cornell Studies**

This summer a research came from Syracuse University and Cornell which are studies of incompetency procedures in central New York. The report is not completed, but I can mention a few of the findings that that report will support. Undoubtedly, the single most important finding is that pure incompetency infrequently exists in the study group, and we have no reason to believe that it exists in any greater degree anywhere in the United States.

The incompetency proceeding was developed as a means of determining inability to function in a specific capacity. It is separate from sanity or dangerous mental illness in that everybody recognizes that
a person may have difficulty in managing his property without needing psychiatric care, and that a person may well be in need of care though still managing his property. Even a person involuntarily committed to a mental institution remains competent to manage his property, and in no step does the finding of incompetency alone automatically lead to self-commitment. Yet in the almost 600 cases studied this summer, very few people in the entire population studied who were declared incompetent did not manage to spend at least a portion of their time in a psychiatric ward. The conclusion is obvious. Not only is a person found to be incompetent bound to be deprived of his right to manage his property, but he is very likely to lose his liberty in the process.

LITTLE PROTECTION IN INCOMPETENCY PROCEEDINGS

A second finding in the workings is that procedures for a declaration of incompetence are structured in the manner that it affords little protection to a person. In all of the cases studied there was not one single case in which an appeal was brought in a finding of incompetence. This fact becomes less startling when one realizes that the proceeding, though adversary in theory, is not really so in fact. Medical testimony is not questioned. In fact, the attorney for the ward, who seldom is paid out of the ward’s estate, is usually paid a very small fee. The attorney for the petitioner who seeks to have the person declared incompetent and whose salary is also paid out of the estate of the ward is paid a far more handsome fee.

I have some horrible examples of that which I must skip over. The average petitioner’s attorney fees came to $1,341 for bringing the largely uncontested proceedings to declare the person incompetent. One man got $12,000 for his services. The average guardian’s fee, on the other hand, as contrasted to that, was $268. He is the man who is supposed to be looking out for the ward. Since concern for the ward’s finances is a stated reason for the proceeding, incompetency proceedings are extremely curious. One case illustrates this about as well as anything. A woman who was declared incompetent had her guardian, as the first act after the declaration of incompetency, return to the husband a disputed $12,000 which he claimed had been improperly taken from him. The record does not disclose that the guardian put the husband to his proof as to her owing him $12,000 or even as to the amount that was owed. Nonetheless, a lawyer charged $1,096 for this service alone, plus $1,660 for hiring another lawyer. While I am not quite sure what was said to be mentally wrong with the woman, had she been sane, I would have been very happy to say that you would have to be out of your mind for paying $2,168 for the services involved in giving her husband $12,000.

“CURIOUS METHOD OF SUING FOR DEBT”

Most suits were brought by State hospitals. The largest number of petitions in the study group were State hospitals. Not only does this curious method of suing for debt do great violence, but the hospital, like all other petitioners, with the exception of the veteran’s petitions, charged the ward for services against them. I should say in respect to them that they did at the bargain rate of only $25 which, compared to other petitioners, was very cheap. The deprivation of
rights of people declared incompetent are horrendous, and I can only suggest to those of you who care to pursue this to read the article. I can't go into detail now.

The other program that I can only briefly sketch is the standard for incompetence. When I wrote the original article I theorized that the standard for incompetence, like the standard for mental illness, was probably too vague to be dependent. Absolutely nothing in this study has changed my mind. I should say candidly that most of the reported cases neither proved nor disproved the theories. The petitions, the testimony is stated in conclusions, and there is neither question nor rebuttal, so all I can do is point to a couple of cases.

Consider the man who was committed in large part because he accused his wife of infidelity. That is why he was said to be mentally ill. He obtained the divorce when his wife bore a child while he was still committed.

Another man was committed because he accused his niece of stealing his diamond ring. The diamond ring did not appear in the State accounting.

Another man was committed after having been declared incompetent because he accused his son of stealing from him. He was declared incompetent, and guess who became his guardian? His son.

Suffice it to say, the study has persuaded me more than ever that the aged must be protected from proceedings like those presently used.

In the articles I have written and filed with the committee, I have made a few moderate proposals. I hope for the Senate to finance additional work, and I implore the State legislatures to examine the mentality of present practices.

Thank you very much.

Senator Williams. Thank you.

Mr. Kalcheim. I told you he was going to test some of the procedures that we lawyers operate under, and that he may be charting new paths or new points for examination. The legal profession, I must add, is always examining its position. We listen to the professors and argue with them and sometimes change our position at the suggestion of the professors. I think you have had some worthwhile observations on this, on the difficulties of this very complex problem of determining when a person should be declared incompetent.

Mr. Alexander has a paper which would, I feel, be of great value to the committee, if it could be made a part of this record.

Senator Williams. It will be incorporated in the record.

(The document referred to follows:)

COMMENTS OF GEORGE J. ALEXANDER

Gentlemen: Although I spoke earlier of a field which I have studied, I would like now to speak, as a citizen, of a field in which I have little knowledge and begrudge the knowledge I have had to acquire. If my own experience is at all typical, the procedures used in determining medicare benefits for the elderly are in serious need of revision.

When my father died, I became the executor of his estate. It is a very modest estate and his widow is, I would guess, the type of person that medicare benefits were primarily designed to benefit. She depends, for her support on the funds in the estate. The medical payments during my father's terminal illness were a substantial drain on its funds. Her attempt at reimbursement for nursing services, which I later undertook, show how frustrating such efforts can be.

The following narrative comes from a decision of a Hearing Examiner of the Social Security Administration.

52-601 0—71——2
"The claimant's father, Walter Alexander, the deceased wage earner herein, was hospitalized in the Parkway Hospital, Forest Hills, New York, on January 3, 1969. He remained an inpatient at the hospital until his death on February 2, 1969.

Thereafter, the expenses of the deceased wage earner's hospitalization, with the exception of the cost of nursing services received by him, were paid to the hospital, under the provisions of Title XVIII of the Social Security Act, as amended. An application was thereafter filed by the wage earner's widow, for reimbursement for the payment for nursing services received by the wage earner during his hospitalization. The application was filed with Group Health Insurance, Inc., of New York City, which denied the application on February 27, 1969. On March 14, 1969, the wage earner's widow requested reconsideration, and, on March 31, 1969, Group Health Insurance again denied the application, on the ground that the nursing services received by the wage earner were rendered by private-duty nurses, and that the expenses therefore were specifically excluded from coverage under the provisions of the Act. The cost of the nursing services is shown to have been $670.

Thereafter, the claimant became executor of the estate of the deceased wage earner and assumed the claim. He reapplied for reimbursement for the cost of the nursing services received by the deceased wage earner to the Group Health Insurance, Inc., on April 10, 1969. He received no acknowledgment or answer until May 7, 1969, when Group Health Insurance, having twice previously denied the claim, informed him that it was not the appropriate intermediary for the claim and directed the claimant to United Medical Services, Inc. On May 20, 1969, the claimant submitted the claim to the United Medical Services, Inc. The claim was denied on June 6, 1969. On June 12, 1969, the claimant requested reconsideration and, on August 8, 1969, the claim was again denied by United Medical Services. On August 8, 1969, the claimant submitted a letter to the Social Security Administration, in which he indicated that he desired a hearing. He filed a formal request for hearing on September 12, 1969. The claimant's request for hearing was interpreted as a request for reconsideration and referred to the Reimbursement Branch of the Bureau of Hospital Insurance of the Social Security Administration. On January 22, 1970, the latter agency issued a Reconsideration Determination, denying the claim. On February 9, 1970, the claimant submitted a letter to the Administration, which reads as follows: "Although I have already done so once, I again formally request a hearing before a Hearing Examiner.

The record indicates that, after the claimant filed his original request for hearing, the matter was referred to a third intermediary, Associated Hospital Service of New York. On November 14, 1969, that intermediary addressed a letter to the claimant, which reads in part as follows:

Your recent inquiry concerning reconsideration of payment for hospital benefits is being developed. We are making every effort to expedite the completion of your claim. Due to circumstances involved, however, it will take us some time to obtain the necessary information from various sources in order to make a complete review of your case.

On November 18, 1969 Associated Hospital Service submitted a letter to the claimant which reads, in part, as follows:

We contacted Mrs. Smith of the Insurance Department of the Parkway Hospital, she informed us that since the group of private duty nurses were not employed by the hospital nor their salary reimbursed by the Hospital, the nurses are considered as private duty nurses. Therefore it is determined that the charges for the service of the private duty nurses during the period in question are not payable by the Health Insurance Program.

In accordance with the request of the claimant, a hearing was duly held before the undersigned Hearing Examiner on April 15, 1970, at Syracuse, New York. The claimant appeared personally and testified in support of the claim. (The Hearing Examiner then determined the disputed issue in favor of the estate and then added.)

At the hearing, the claimant stated that the denial of his claim, as well as the manner in which it was handled, indicated a serious abuse in the administration of the Hospital Insurance Program. He pointed out that he had been referred to three different intermediaries and that the claim had been pending for more than a year. He pointed out further that he had been referred back and forth
from office to office and that at one point he had received a telephone call informing him that he should withdraw his claim because it was “misguided”. He stated that, if he had been representing a client, he would long since have abandoned the claim, because the value of the professional time which he had to spend on the claim far exceeded the amount involved. In the opinion of the Hearing Examiner, there is much merit in the claimant’s assertions. In addition, the record indicates that the adverse determination in this case rested solely upon the assertion of the hospital, without reference to any of the actual facts involved. The third intermediary denied the application, following a telephone call with a representative of the hospital and based solely upon such telephone call. As pointed out by the claimant, the practice of the hospital in this case would appear to constitute an abuse of the hospital insurance program.

Because the claimant is an attorney and the executor of his father’s estate, he persisted in the prosecution of this claim. Other claimants, who arc without funds or the benefit of legal advice, arc no doubt being denied benefits to which they arc entitled under the law, (emphasis added) by reason of the apparently unlawful policy of the Parkway Hospital. As indicated above, the hospital hires these nurses and has hired them on a regular and continuing basis. They provide services not for particular patients but for all patients in the particular ward, which the hospital chooses not to call an intensive care unit. The fact that the hospital required the patients to pay the nurses is of no significance. The hospital might just as well have required patients to pay the daily wages of the janitors, cooks, and other employees. Accordingly, the Hearing Examiner respectfully recommends that the Bureau of Hearings and Appeals bring this case to the attention of the Bureau of Hospital Insurance, so that a precedent may be set for the future determination of claims for nursing services rendered under similar circumstances in the Parkway Hospital and in other hospitals participating in the Hospital Insurance Program.”

Thus, on May 14, 1970, almost one and a half years after the claim was filed, it was allowed by the fourth official to consider it. On July 15, 1970, the Appeals Council notified me that it had decided “on its own motion” to review the decision in Washington, D.C. I have no idea as to what the issue on review is to be, when the appeal will be heard or what the rules governing the appeal are. Also, I do not understand how a private claimant is supposed to be able to afford such a continued process of litigation with the federal government. My letter of July 18 to the Appeals Council, asking these questions, had neither been answered or acknowledged by August 4 when I prepared this comment.

I respectfully urge this committee to review the administrative procedures used in determining medicare claims to determine whether improvements would not lead to more equitable solutions. I am confident that unless changes are made denials of claims, justified or not, will be final. If “apparently unlawful” practices cannot be challenged more effectively, they cannot be checked.

Mr. Kalcheim. Our next panelist is also a young man, a member of a well-known St. Louis law firm, and engaged in meeting the day-to-day legal problems of the aged. He is on the firing line. He meets and attempts to solve the daily problems that we practicing lawyers face with our aging clients. From him you will hear other aspects of incompetency proceedings, other tools to smooth the way for maintenance and care of the aged and their property, and children’s responsibility in the care of parents.

Are the tools fashioned by lawyers and legislatures sufficient for present day needs? Are there better ways of handling the type of problems Mr. Armstrong will discuss? Is our advice and use of present procedures maintaining the dignity of the individual who has aged? Do they minimize litigation and disputes?

I am sure Mr. Armstrong will add to your knowledge, not only of the variety of problems relating to the aged, but of the concern he has, and we have, for preserving the tranquility of the family and family life.
STATEMENT OF OWEN T. ARMSTRONG, PARTNER, LOWENHAUPT, CHASNOFF, FREEMAN & HOLLAND, ST. LOUIS, MO.

Mr. Armstrong. Thank you, Norman.

I think Professor Alexander has put me on the spot as a representative of lawyers who deal with the day-to-day legal problems of the aging. It seems I have the burden of showing how we earn these thousands of dollars in fees that Professor Alexander was talking about. Of course, such fees are not within my experience, but I have no doubt that the statistics are authentic. They must be based on practice in New York or California, or somewhere besides St. Louis.

Actually to place the topic in perspective, in the context of the ABA treatment, it occurs to me that in the light of recent developments, sociological and legal, the emergence of the pill, artificial insemination, more liberal abortion laws, and most recently, the women's lib, it may be that Mr. Kalcheim's committee on legal problems of the aged, may become known as the last surviving committee of the family law section.

I suppose the largest problem of the aging is the fact that there are so many of us. We are all aging and we are all concerned with the various problems that have been outlined in the talks up to this point.

The case history I will recite represents not so much my own experience but an experience of the law firm with which I have been associated for the past 20 years.

The statistics Mr. Kalcheim mentioned, the fact that there are 20 million people over 65, or about 10 percent of the population, is proof enough that representation of the older or elderly person is an increasingly significant part of any lawyer's practice.

In the day-to-day experiences we encounter situations like these: A 67-year-old man suffers a severe coronary, but is back at work in 4 months. On the other hand, a 65-year-old man looks and feels like 50, yet must retire under a company rule; a couple in their 70's are planning a 6-month trip abroad; or a 90-year-old lady is slowly becoming senile. All of them have legal problems. The legal profession ought not to overlook the growing field these problems represent and the necessity for developing new knowledge and solutions to deal with them.

MORE DELICATE LEGAL PROBLEMS

In addressing ourselves to the problems of the older or elderly clients, we must distinguish between the two classifications, an older person, say 65, and an elderly client who may be 85 or even 90. Both the Internal Revenue Code and the usual corporate policy treat 65 as the dividing line between middle and old age. At this stage the typical legal problems are economic and financial, and the lawyer deals with the older person himself. He may be concerned with social security or pension benefits, income tax matters or estate planning. The situation of the elderly person often involves a more delicate problem. The decisions to be made are quite personal in nature and commonly involve consultation with relatives. This presents a serious challenge to the lawyer's sense of professional responsibility. He may not, under standards of legal ethics, dilute loyalty to his client by the desires of the third persons, however closely related. Thus, sup-
pose the members of the family seek the lawyer's assistance in having a relative adjudicated incompetent. The elderly person's interests may be diametrically opposed to those of his family. It is the lawyer's duty to identify which individual is his client and suggest that the adverse party seek other counsel so that he wouldn't be representing the conflicting interest.

Equally important in advising with respect to the elderly is to draw the proper line between mental incapacity and mere advanced age. The problem arises in a number of ways. Does the individual have the capacity to execute a power of attorney, a deed, will or trust? Does he meet the statutory test of incompetence in a particular jurisdiction for purposes of appointment of a guardian? This is for a court to decide, but the lawyer's recommendation on the matter of seeking an appointment is often decisive.

Non composita inentis is generally defined as a condition approximating total and positive incompetence. It denotes a person entirely destitute of memory and understanding. Dotage or senility, on the other hand, is that feebleness of mental faculties which proceeds from old age. It does not necessarily mean that the person suffering therefrom is non composita mentis. Clearly, old age is not non composita mentis, nor does old age alone justify appointment of a guardian, but it is well settled that weakness of mind resulting from old age may assume such form and be of such character as to justify appointment of a guardian to handle the affairs of the person so afflicted.

Those are all generalities. I could mention very briefly a number of cases, but it occurs to me that it may be more useful and interesting to outline at somewhat greater length a single case history which more or less typifies the whole problem area.

**Hypothetical Case**

Consider the case of a widow whom we shall call Mrs. Jones. Her husband died in 1950 when Mrs. Jones was 70 years old. She inherited a rather substantial estate—this was not the problem. On advice of her lawyer Mrs. Jones created a revocable living trust, naming a corporate trustee. She transferred the bulk of her assets to the trust, including all of her investment securities, but not including her residence or household furnishings. The trust instrument contained the usual provisions: The trustee was directed to pay Mrs. Jones the income during her lifetime, plus such payments out of principal as he might direct; there was an incapacity or disability clause, permitting the trustee in such event to make payments to others for grantor's benefit; the remainder went to relatives and a favorite charity; and, of course, Mrs. Jones reserved the right to revoke or amend the trust.

Mrs. Jones had no children or other descendants. Her closest relative was a young sister, married to a man we shall call Smith. Mrs. Jones executed a will in conjunction with the trust, leaving her household goods to sister Smith, again omitting to mention the residence, and giving the residue of her estate to the trustee of the revocable trust.

Thus far the case history may sound like a rather elementary estate plan, but problems soon began to emerge in the case of Mrs. Jones. She continued to live in her family residence with a close friend who was both companion and housekeeper. In 1965, at age 85, Mrs. Jones,
acting on her lawyer's advice, executed a power of attorney in favor of brother-in-law Smith, primarily so that he could receive and manage the income payments from the trust. A short time later, desiring to provide for her companion, Mrs. Jones, still alert, executed a codicil bequeathing all her U.S. saving bonds.

At this point, which was in 1968, Mrs. Jones had reached the advanced age of 88. She fell and sustained a severe head bruise. In the next few months both the companion and sister Smith noticed that Mrs. Jones suffered increasingly frequent lapses of memory and displayed other signs of mental weakness, but she remained clear on other occasions.

Early in 1969, Mrs. Jones fell again and broke her hip. At this point, after careful deliberation, sister Smith and Mr. Smith, her husband, decided to move Mrs. Jones to a nursing home.

This development, in conjunction with Mrs. Jones now dubious mental competence and legal capacity, precipitated a number of distinct problems for the family and their lawyer. One problem was how to handle the contractual arrangements and payments for Mrs. Jones care at the nursing home.

The second problem was how to make adequate financial payment to the companion who had been living with and attending Mrs. Jones for the past 20 years.

The third problem was how to dispose of the residence which had never been disposed of in the trust or in the will.

Mrs. Jones' lawyer conferred with the Smiths and with the corporate trustee of the revocable trust. No consideration was given to seeking court appointment of a guardian, for the reason, among others, that most of Mrs. Jones' assets were already in the trust in the custody of the trustee.

As to the nursing home arrangements, the trust contained the disability clause which permitted the trustee to take care of the nursing home payments.

As to providing for the companion, Mr. Smith, the brother-in-law, in his capacity as attorney-in-fact, had been receiving the trust income for Mrs. Jones. He used the excess of this income, over that which was needed for her care, to invest in additional Government bonds which, of course, then passed to the housekeeper under the codicil that Mrs. Jones had executed earlier.

Finally, as to the problem of how to deal with the residence when Mrs. Jones moved to the nursing home, the lawyer considered two alternatives. One was a sale by Smith acting under his power of attorney. The lawyer, however, was concerned that the power of attorney might be questioned at a later date when Smith would wish to complete the sale, because of the rule of law that such a power of attorney is deemed to be revoked when the principal, the person who gives the power, becomes incapacitated.

The second alternative was to rely on the revocable trust once more, to accept additional property from the grantor and to sell the trust assets.

At this time, although Mrs. Jones mental capacity was generally uncertain, she did enjoy periods of clarity. The attorney, therefore, ultimately recommended to Mrs. Jones that she execute a deed conveying the residence to the corporate trustee. In this way her subse-
quent incapacity would not prevent a sale. The property was later sold by the trustee and the proceeds of sale were added to the trust corpus.

Based upon the lessons learned from the case history of Mrs. Jones, along with many other cases within the experience of our law firm, I don't hesitate to endorse the recommendations contained in the first annual report of the committee on legal problems of the aging of the ABA family law section. Day-to-day problems indicate the need for new legislation, and it is a very acute need indeed.

I am particularly concerned because of these experiences with the need for a new power of attorney law. Also I agree it is important to adopt a uniform State guardianship law that has the same definition of incompetency in all jurisdictions.

**LEGAL COUNSEL FOR INCOMPETENCY PROCEEDINGS**

Perhaps most important is the recommendation that in all proceedings in the determination of incompetence, the alleged incompetent person should be provided with legal counsel.

I would add the suggestion that provision for a permanent staff of "public defenders" might well prove more satisfactory than ad hoc appointment of counsel by the court to protect the interest of the alleged incompetent, because very often the attorney in such a case is not in a position to give the careful study that the matter deserves.

Mr. Kalcheim. Thank you, Mr. Armstrong.

I have, and I will do it as quickly as possible, a series of recommendations.

In connection with the reference to the power of attorney and the necessity for counsel in all cases involving petitions for the appointment of guardians, I call attention to the fact that the Uniform Probate Act adopted by the American Bar Association, and hopefully it will be adopted by all of the States, does contain in article V a provision for the continuation of the power of attorney beyond the point where the person is declared incompetent and does not disqualify or terminate or void that power of attorney. Secondly, it also provides in very strong language the necessity for counsel being appointed for the ward or the alleged incompetent.

**Recommendations**

Let me briefly go over the recommendations which I have submitted to the committee in writing, and I believe you will be interested in them. I will read them quickly.

We are against the continuing discrimination in employment which is allowed against persons over 65 under the U.S. statutes covering discrimination in employment because of age, and because the act makes the limitation of ages 40 to 65, we believe the top age of 65 should be eliminated.

The second thing is the elimination of mandatory retirement at age 65 under pension agreements. We believe this is important because written into most pension agreements is the mandatory retirement at 60 or 65. This deprives the person involved of continuing employment. It deprives the State of the skills of this person and is unnecessary as a means of determining whether a person should continue to work.
Discrimination in licensing and insurance, we adopt the recommendation in the report of the law school of the University of Denver, which calls attention to the fact that there is blatant discrimination in obtaining insurance and driver's license over 65. The statistics they have prepared in support of their position indicate that the over 65 person is a much better insurance risk for insurance, that the incidence of accidents is the lowest in all classes and, therefore, we think publicity should be given to this fact and that licensing commissioners in the various States and the insurance companies should be urged and requested to set up fairer arrangements with respect to all insurance and eliminate the discrimination.

Thirdly, we want to support certain bills that are now in Congress to permit class action in consumer suits, because we think that the large and growing population of older people is an important segment of the consumer public, and that the action proposed by Senate bill 1980 would allow direct class action by consumer, rather than waiting under another bill for the Attorney General to complete his proceedings where he charges consumer fraud, et cetera. Many of these proceedings take 3 or 4 years, and under that act he cannot proceed until the Attorney General has obtained the judgment.

We are proposing additional tax relief for the elderly to eliminate the over 65 $600 exemption and the 10-percent standard deduction, and replace it with the special $2,300 for single persons and $4,000 for married people to be applied to lower and middle-income elderly, regardless of the sources of their income. This will be reduced to those of the higher income bracket beginning at $5,600 for single people and $11,200 for married people. This is based on the assumption that those of higher income, the gradual reduction accomplished by reducing the approved special exemption by $100 over $5,600, or $11,200 level, but not below one-third of any social security or any other pension agreement. It also provides that social security retirement benefits will no longer be excluded from income and will thus be included in the calculation of the income set above. Assuming the inclusion of social security income, 90 percent of the present social security recipients would continue to remain untaxed and there would be a reduction in taxes for an additional 5 percent who have other unearned income.

We also recommend that there also be an in depth examination of the Appeal Provisions Act of pension provisions so as to protect the individuals involved so that full consideration is given to the position to be determined in the appeal.

Thank you, Mr. Chairman.

Senator Williams. Thank you very much, Mr. Alexander and Mr. Armstrong.

I propose that we go to our other panel and we will have a general discussion afterward.

We will turn to our members of the legal research and services for the elderly program.

We have Mr. Morris Goldings, Mr. Borsody, and Mr. Stanton Price.

Have you chosen a chairman?

Mr. Goldings. I think the correct order is outlined on our list of witnesses.

Senator Williams. All right, we will hear from you, Mr. Goldings. If you will, please describe your activity and, of course, who you are and where you are from.
STATEMENT OF MORRIS M. GOLDINGS, COUNSEL, COUNCIL OF
ELDERS, ROXBURY, MASS.

Mr. Goldings, Senator Williams, Senator Randolph, and members,
my name is Morris M. Goldings of Boston, Mass.

I have the honor of testifying here today as a representative of the
legal research and services for the elderly projects sponsored by the
National Council of Senior Citizens for the U.S. Office of Economic
Opportunity. I am also here to describe, with specific examples, some
of the varied work being done by the 12 projects throughout the coun-
try. Later in my statement I will describe the project with which I am
most familiar, that involving my firm in Boston. At the outset, how-
ever, I will comment more generally on features of the elderly legal
project which may be of particular interest to your committee.

This project had its origin in a grant by the Office of Economic Op-
pportunity to the National Council of Senior Citizens. The stated pur-
pose of the grant was simple enough, to provide legal research and
services for the elderly. Carrying out its responsibility, however, the
National Council recognized and indeed took advantage of the variety
of problems and circumstances which involve the elderly across the
country. Thus 12 subprojects were authorized; and simply to state
their location gives a good indication of the geographical distribution,
the urban-rural mix, and the various other factors which make gener-
alizations such as I am about to give as treacherous in this field as in
so many others: New York City; San Francisco; Boston; Albuquer-
que; Santa Monica; the Bronx; Morehead, Ky.; Miami Beach; Ann
Arbor; Bluefield, W. Va.; and Atlanta. If this listing sounds like a
Walt Whitman piece, it is not a coincidence, as I am sure this com-
mittee which has held so many notable local and regional hearings
will recognize.

The original thinking was, obviously, that although many of the
problems, both legal and economic, which the elderly population is
facing in the United States today require solutions in Washington
and in the State capitals, nevertheless, the solutions are no better than
the clarity with which the problems are recognized. The National
Council, just as this committee, correctly found that it had to leave
Washington and leave the State capitals, quite literally, from time
to time to recognize these problems and to test solutions.

LAW REFORM PROJECTS

A major theme of the project has been the identification, develop-
ment, and administration of what must be described as "law reform"
projects as distinguished from what have been the traditional "legal
aid" functions. As I, at least, understand it, a law reform project is
one which addresses itself to a problem either of litigation, admin-
istrative procedures, or legislation which has broad applicability. It
involves a legal issue which has what lawyers ominously call prece-
dential value beyond the individual case or controversy to which it is
specifically addressed. I think it is well to distinguish this type of proj-
et from the equally necessary and unfortunately overburdened legal
aid and legal assistance work which is going on throughout the country
under other sponsorship. In making this distinction, let me be clear
that there is the usual gray area with which lawyers are congenitally
burdened. You are all familiar with many notable cases which have reached our highest courts from modest, unpretentious beginnings in private law offices, legal aid offices, and Government agencies. The function of law reform, in one aspect at any rate, is to continue and to enhance this remarkable ability of our legal system to pick out a Gideon—and yes, even an Escobedo and a Miranda—for a certain kind of fame if not fortune. And it is at least one aspect of the work of this project to do so in the context of civil forums for the benefit of our elderly constituencies, whether these forums be a Social Security office, a State legislative committee, a public utilities hearing room, or courts at any level.

With this general description of the scope of the National Council’s legal project for the elderly, I would like to turn to some of the specific work which the projects have done and here I am speaking from my personal involvement in Boston and from my association with the other projects as a member of the National Advisory Board for the project.

**Three Roles**

I would divide the work of the projects into three broad categories. First, our elderly clients brought to us cases of bad administration of existing Federal, State, and local programs. These cases had to be handled as any law cases are. We must assemble a set of facts; present them to a forum, be it an original administrative agency, an appellate agency, or ultimately a court; and resolve the matter by settlement or by a decision. For want of a better word, I would call this the litigative feature of the legal research and services program.

Second, under existing law in many States and under Federal law, we have found opportunities for improving elderly economic and social conditions by representing the elderly in traditionally available but hitherto unused forums. The goal is to make the elderly into a vocal interest group as impressive to the rest of the community and to agencies of government as other interest groups which are more obviously identifiable, such as business, labor and, may I add, the youth and women. This use of legal research and services is similar to that employed by consumer groups, but is specially addressed to elderly issues. Utility rates and special utility services are examples of this part of administrative law.

Third, where existing statutes were inadequate, notably on the State level in many jurisdictions, the legal research and services program has been available for drafting, filing and, indeed, lobbying of legislation in State houses, city councils, and other local legislative bodies to provide new programs, improvement of old programs, increases in benefit levels, and the elimination of antiquated and inefficient procedures having their origin in statutes and ordinances or at least most likely to be eliminated by new enactments.

With respect to the area of court litigation, the legal services project has benefited greatly by the availability as a resource of the Center for Legal Problems of the Elderly at Columbia University Center on Social Welfare Policy and Law. There an enterprising staff of attorneys has acquired and maintained an expertise in the area of poverty law at which I, as a private practitioner, continually marvel. The exquisite distinctions which can be woven by interested lawyers from subsections
of the regulations relating to medicare and medicaid would leave the antitrust lawyer and most sophisticated tax lawyers at the starting gate. A representative of that project, Mr. Borsody, will speak for it, so I will move to other areas in which the Boston project has been involved.

**Telephone Rate Reduction**

With respect to the use of existing administrative procedures, I will describe briefly a petition which we filed before the Massachusetts Department of Public Utilities on behalf of the elderly in the Boston's model city groups, but actually representing the elderly in the entire area served by what we call the Mother Bell, the New England Telephone & Telegraph Co., in a recent case. In that case, the New England Telephone & Telegraph Co. sought large increases in phone rates, including the basic rate for residences in the Boston area. The Council of Elders under the legal research program was the only nongovernmental agency to file as an intervener for consumer interests. It not only opposed the rate increase, but made what was frankly described as a novel and, indeed, in some areas described as a radical proposal, a basic rate reduction of 50 percent for persons 62 years of age or older who are telephone subscribers and who do not share their subscription with more than one other person below the age of 62.

Let me mention that last year Massachusetts enacted a statute providing for a half rate reduction for the elderly, regardless of means, on public transportation in the metropolitan area. The transportation company is a public company, to be sure, and the New England Bell is a private facility, but we had that degree of precedent before us.

The telephone company opposed the introduction of evidence on this issue, evidence which took the form of both economic data and personal testimony by elderly individuals. The commission ruled that the evidence was admissible, a ruling without precedent in our jurisdiction and, indeed, contrary to precedent in other jurisdictions. I wish we could report that the commission ordered the 50 percent rate for the elderly, but it did not. The commission's decision on the elder's petition was, however, notable because it specifically cited supposed inability under existing legislation to make such an order and added a suggestion that if new authorizing legislation is to be forthcoming, it include a means test. Interestingly, the telephone company never questioned the constitutionality of this proposal, and the avenue is rather obviously open for the enactment of enabling legislation. Indeed, the legislation had already been filed on behalf of our Council of Elders some months before in anticipation of this type of ruling and is presently pending in the Massachusetts general court. In the same public utilities decision, we can report the department of public utilities severely cut the proposed general increase for residential phones and as a result, the elderly, together with all other consumers, will benefit from that decision. I have given this one specific example, but others could be added in the area of representation before public agencies in the establishment of regulations for rental housing, the licensing of nursing homes, and the improvement of Medicare and Medicaid procedures. In legal terms, this feature of the legal research and services project constitutes the elderly as a "party in interest" with the standing to petition, to present evidence, to cross-examine the
evidence of others, to win a case, and, yes, to lose one, but in one word, to be heard, both in the technical sense and more broadly.

I have already alluded to the third major part of the project, that of drafting legislation, that is, the right of free legislative petition. Any person can introduce a bill, or many bills, by a certain date in December for consideration by the Massachusetts Legislature in its next session beginning in January. It is traditional for these bills to be filed by a member of the branch, but it is not actually necessary for that to be done. Many a Massachusetts legislator on the eve of filing has had a constituent or nonconstituent come up with "oddball legislation" and file it and he uses the marking words "By Request" and it gets in the hopper.

FULL "PASS ALONG" AND REDUCED FARES

We filed on behalf of our elderly project in the past year 12 significant pieces of legislation which have had full public hearings, often attended by large numbers of our constituents, and received full consideration, including an enactment into law in several cases. We drafted and saw adopted State legislation passing along the entire social security increase voted last year by the Congress, and not only the $4 required as a minimum by the Federal law, to persons who are recipients of both social security and old-age assistance, so that the cruel result of a social security increase being eaten up by a decrease in old-age assistance would not occur in Massachusetts. We were active in the enactment of the legislation requiring reduced fare for the elderly in public transportation in the Boston metropolitan area, legislation which is being used as a model in other jurisdictions and on which we were able to do through a rather massive lobbying job. In this connection, let me mention, and I am sure it needs only brief reference, that the elderly are a remarkably able and available force to demonstrate on a person-to-person basis their interest in every proper manner by appearing at hearings, visiting State capitol, and acting and reacting at elections. In short, they are excellent lobbyists and have become respected as such in Massachusetts.

The legal projects have found no simple solutions to the problems of aging. It is, however, fair to say that they have demonstrated that the law, and particularly those attuned to notions of law reform as I described at the outset, are available in various aspects to assist and lead in problem solving with the help of Government and its economic resources. And this is, after all, the highest calling of both law and government.

LAY ADVOCATES

I think it is appropriate to comment, particularly as we are meeting here in conjunction with the American Bar Association convention, on the role of organized bar in relationship to these projects. I think I can speak personally in that regard because I am a member of the association and a partner in a private law firm. In this connection, I was particularly interested and involved in the use of nonlawyers, persons whom we refer to as the lay advocates, with respect to various aspects of our projects. They do not appear in courts, but they do appear to assist our clients in administrative proceedings with the ap-
proval of the agencies involved. They work under the supervision of an attorney in their general responsibilities; they have been trained in matters of confidentiality as aids to the attorney; and their use has been carefully screened by our office to be sure that the traditional notions of the unauthorized practice of law were not being violated. The simple facts are that they are not doing the work of lawyers because there are not enough lawyers trained or available to represent the large numbers of persons in the advocacy situations in which the elderly require assistance. Indeed, they do better than many lawyers would, not only because they are elderly and naturally owe and receive the respect which is due them as such, but because they have that additional advantage of knowing at first hand the type of problem on which they are advocating. The life of the law is indeed more experience than logic, and our program has been proving it daily. This is not the place to engage in an extended discussion on the use of so-called paraprofessionals and its implications for the future and for other areas of poverty law and law in general. Let it suffice to say that in our project in Boston, we recognized our responsibilities in the employment of lay advocates and they have been markedly successful in the administrative and legislative fields in which they have been active.

In conclusion I would like to add that I, as an attorney, and my law firm took on the elderly project in one sense as another client on a fee-paying basis, indeed with a retainer in the traditional sense of that word. We represent the project and the individuals whom the project is assisting with the same degree of professional attention and responsibility which we give to any corporate or individual client. It may seem peculiar to some that the elderly, as a group, should use the services of a private law firm. One may recall, sitting as we are in Missouri, that Harry Truman's view of the Presidency was that he was the only person, he and his Vice President, elected by the entire country and so he represented each individual who did not have a special interest to speak to him in Washington. This is a fine and noble view of the Presidency, but as the chairman of the Section Committee noted, we can all use help, and in this complicated age where the economics of the thirties and, indeed, the economics of the fifties no longer lead to obvious solutions, the problems of elderly Americans demand and justify the best talents which every discipline, including the law, can give.

The matters to which I have referred are primarily the problems of the elderly poor but the erosion of wealth which has occurred in the last year and a half in this present economy obviously expands that category. May I suggest that one must undertake his own definition of that term and work on the basis of such a definition. Studies which this committee has made in the past with respect to European experience indicate that one of the most significant issues is not necessarily the amount of money that a person has, but the diminution from his previous levels of wealth and earning power. I think that to a group of lawyers this has real meaning, so that rather than simply the problems of the elderly poor these issues are truly relevant to the vast majority of elderly Americans.

Those participating in the Legal Research have participated with a sense of commitment. We hope that the elderly, and I know that the law will be better off for that participation.
Thank you very much.
Senator Williams. Thank you very much.
We will now hear from Mr. Borsody.

STATEMENT OF ROBERT BORSODY, SENIOR ATTORNEY, LEGAL SERVICES FOR THE ELDERLY POOR, CENTER ON SOCIAL WELFARE POLICY AND LAW, COLUMBIA UNIVERSITY, NEW YORK, N.Y.

Mr. Borsody. My name is Robert P. Borsody. I am a staff attorney at the Legal Services for the Elderly Poor Project of the Center on Social Welfare Policy and Law at Columbia University.

The Center is an OEO-funded back-up and research center for legal services programs providing expertise in welfare law. The project deals with legal problems relevant to the elderly poor.

Since I have been granted permission to include in the record my extended remarks which are a summary of a working paper that has been prepared by our project for the latest publication of the committee, I think I can be fairly brief, and just discuss some of the high spots and give you a few examples. These will be things which we think will need further research, study, and action by ourselves, among others. In many cases we can't propose any solutions right now.

HEARING PROCEDURES AND JUDICIAL REVIEW OF HEARINGS

A prior hearing; that is, a fair hearing before benefits may be terminated or reduced, is essential for the protection of persons receiving benefits under any program. Recently the Supreme Court recognized the severe injury and hardship suffered by people whose categorical assistance grants are wrongfully terminated and it imposed the requirement of a hearing before such terminations could be allowed. This case was Goldberg v. Kelley, which the attorneys at the welfare center worked on. Since old age and disability beneficiaries may suffer the same severe injury and hardship upon termination, we think that prior hearing should be mandatory in title II programs. The Columbia Center in conjunction with the Kentucky Mountain Legal Rights Association now has a suit pending to correct this abuse.

Another thing that should be interesting to the assembled group here is the authority lacking in the categorical assistance programs, for payment by public agencies of all of the attorneys' fees incurred by claimants in conjunction with hearings, and subsequent judicial review. This results in substantial numbers of people who are unable to retain counsel at hearings and usually don't request hearings because they don't have attorneys to represent them.

Benefit levels in OASDI. This is something that is in the news a good deal, because it is something that affects millions of OASDI recipients. We think that all future OASDI increases should be passed along in full to recipients of categorical assistance. At present as OASDI goes up the categorical assistance payments go down; as a result they don't get any more money. These OASDI increases are given as an offset to increases in cost of living for people who need it most.
We have another case pending with you, Morris.
Mr. Goldings. It is the Gainville v. Finch case.
Mr. Borisdy. That is aimed at the retirement test in OASDI.
Mr. Goldings. On September 17 we will have the judge determine whether we leave the court immediately or after an opinion. It is up before a three-judge hearing on September 17.
Mr. Borisdy. The 1-year limitation on the amount of retroactive benefits is a particularly harmful thing that we have been trying to get at. It harms those who deserve the least to suffer; people who are usually disabled in some way and suffering from incompetency. The OASDI administration should be able to do something about this, because they have records and computer systems and there is no reason for this 1-year statute of limitation. We have a case planned where we will be asking the court to upset this.

Relative Responsibility

A lot of States have, as a condition for receipt of categorical assistance, a duty imposed by the State laws on relatives of recipients to be liable for any benefits that are extended to the recipients. These are the so-called relative responsibility laws. They have the effect of deterring potential elderly applicants from applying for aid because they feel that the authorities will go after their children and the children will be economically harmed. Therefore, they never apply. The Federal law should be amended to require the States to eliminate such provisions under grant-in-aid programs.

Most States have unrealistic income and asset levels for categorical assistance applicants. Elderly persons who have worked throughout their lives and with social security retirement benefits inadequate to support them are ineligible for categorical assistance unless they agree to place a lien for the value of assistance received on their home, to assign life insurance policies, and to assign the value of burial insurance or prepaid funeral contracts. A system which poses such harsh choices for our elderly, failing to recognize the noneconomic value and attachment elderly persons have for certain of their resources, must be altered to make it more sensitive to the human factors that make a burial contract valued at $300 very different from $300 in a bank account.

Nursing Home Problems

Nursing homes as extended care facilities under Medicare presently have a 100-day limitation placed on the days of care which will be reimbursed by the Federal Government in all of the State plans. We feel that the time limitation on reimbursement will have the effect of providing care for those who need it least at the expense of those who truly need extended care. The reason for this is that nursing homes prefer to take short-term cases, as opposed to severely ill who will require treatment in excess of 100 days. Given effective utilization review of patient needs, which is required in Medicaid, there should be no arbitrary limitation on the number of days of the skilled nursing service.

We think Medicaid coverage should be extended to all persons receiving disability benefits. Their medical expenses exceed twice that of nondisabled persons in the same age category.
Another point, States may now provide Medicaid coverage to the so-called medically needy. This is a group whose income is sufficient for daily living, but not sufficient to cover their medical needs. This coverage should be mandatory for people of 65 or over.

Provision should also be made in Medicaid for persons whose expenses for medical care reduce their income to within the limitation for coverage for welfare recipients. There are 24 States that now provide coverage only for people actually receiving welfare benefits, the so-called categorically needy. After this hearing I am going on to Denver to work on a case which will try to rectify this, based on one of those obscure little sections, 1902(a) (17)(D) of title 19. We maintain that this section requires those 24 States to give medical assistance, through Medicaid, to those who may not be eligible for welfare because of overincome but who have medical expenses that reduce their income below the welfare level. That way everyone with real, provable medical needs will get medical assistance the way congress intended.

Let's see, what else? Involuntary commitment? I think that has been covered pretty well.

I have just attempted to highlight, often without offering solutions, problems now facing the elderly in Government programs and to suggest areas which deserve further study. The solution for these problems may be costly, but our elderly citizens are entitled to security and well being in their final years.

Let us now turn to Stan and see what we can find out about HOWSE.

(Prepared statement of Mr. Borsody follows:)

PREPARED STATEMENT OF ROBERT P. BORSODY

My name is Robert P. Borsody. I am Senior Staff Attorney of the Legal Services for the Elderly Poor Project of the Columbia Center on Social Welfare Policy and Law at Columbia University.

The Center is an OEO-funded back-up and research center for legal services programs providing expertise in welfare law. The Project deals with all legal problems relevant to the elderly.

I will discuss government benefit programs affecting the elderly, including OASDI, categorical assistance, Medicare and Medicaid. Emphasis will be placed on problems which require legislative remedy and on areas which require further study and research.

I. HEARING PROCEDURES

A. Prior hearing

I will first discuss the procedural problems relating to hearings and the judicial review of decisions made at hearings. Prior hearing—that is, a fair hearing before benefits may be terminated or reduced in amount—are essential for the protection of persons receiving benefits under any of these programs. The Supreme Court recently recognized the severe injury and hardship suffered by persons whose categorical assistance grants are wrongfully terminated and imposed the requirement of a hearing prior to such terminations. Since old age and disability beneficiaries may suffer the same severe injury and hardship upon termination, prior hearings should be mandatory in Title II programs. The Columbia Center in conjunction with the Kentucky Mountain Legal Rights Association presently has a suit pending to correct this abuse.

B. Medicare

A patient should be able to obtain both administrative and judicial review, in Medicare hearings, regardless of the amount in controversy in the same manner as Social Security determinations.

At the present time beneficiaries under Part A of Medicare receive administrative review only if the amount in controversy is $100 or more. Judicial
review may be had under Part A only if the amount in controversy is $1,000 or more. Part B does not provide any administrative hearings or judicial review for questions of payments due. There is only a "fair hearing" procedure undertaken by the carrier.

Since the fair hearing procedure under Part B is by the carrier which made the determination in the first place, there should be detailed Congressional study of the meaningfulness of such "fair" hearings. It must be recognized that carriers have a built-in conflict of interest. On the one hand their performance is rated by the Social Security Administration and they are under pressure to make correct and consistent determinations. Fair hearing reversals are an indication of the incorrectness of their initial determinations and thus cast doubt on their efficiency under the program. Since the carrier is a private body there is no compulsory process and no testimony under oath at such hearings.

C. Disability

In disability hearings there must be an opportunity for a claimant to request an independent medical examination, paid for by HEW. This is an indispensable aspect of an adequate hearing, for the cost of obtaining medical evidence is often beyond the means of disabled persons.

Furthermore, in all OASDI and categorical assistance hearings decisions based purely on hearsay evidence should not be permitted. Without some protection against the admission of hearsay, the claimant is faced with a situation in which a decision against him may be rendered without ever having a chance to confront or cross-examine any of the persons responsible for the evidence on which the decision is based.

The inadequacy of the present structure of hearings is illustrated by the high reversal rate at every level of review. Hearing examiners, in the fiscal year 1969, reversed 40% of disability denials made by the Social Security Administration. 29% of the retirement denials by the SSA were subsequently reversed at the hearing level. The Appeals Council, in turn, reversed 9% and 14% of the disability and retirement hearing determinations respectively. That the program has long had difficulty in providing an adequate hearing procedure is indicated by the fact that from the period of July, 1955 through March, 1970, 49% of the decisions made in disability hearings which were later appealed to the District Courts were reversed or allowed by the Appeals Council on remand.

D. Attorneys' fees

Authority is lacking in both categorical assistance programs and OASDI for payment by public agencies of the attorneys' fees incurred by claimants in conjunction with hearings and subsequent judicial review. This results in substantial numbers of claimants who are unable to retain counsel at hearings and do not even request hearings because they lack counsel.

II. Benefit Levels

A. OASDI increases

All future OASDI benefits increases should require that the full amount of the increase be made available to recipients of categorical assistance. Since OASDI increases are given to offset the increased cost of living permitting reduction of categorical assistance vitiates the purpose of the increase for those who need it the most.

B. Wage base and retirement test

The present method of financing OASDI is regressive. The program should at least partially be financed by general federal revenues. Additionally, the taxable wage base should be increased.

The retirement test should be eliminated as it presently exists. If it is felt necessary to maintain such a test then all income should be considered for purposes of this test. There is no basis for differentiating between earned and unearned income for purposes of providing a decent standard of living to retired elderly persons.

C. Retroactive benefits

The one-year limitation on the amount of retroactive benefits harms those who deserve the least to suffer—poor and less-informed workers. Careful examination of methods of record keeping by the Social Security Administration in
OASDI should enable the keeping of records which would allow payment of full retroactive benefits.

D. Family maximum benefits

The present family maximum in OASDI should be eliminated. Social Security is a program designed not only to prevent loss of income, but also to provide a decent standard of living for family members. Thus, wives, widows, and children are eligible for benefits. However, the family maximum makes this little but a sham. The maximum is approximately one and one-half times the primary insurance amount, i.e., sufficient to cover two persons. This is a totally unwarranted discrimination against larger families.

E. Relatives’ responsibility

Many states, as a condition for receipt of categorical assistance, impose a duty to support prospective recipients upon relatives. This has the effect of deterring potential elderly applicants from applying for aid because of fear and embarrassment that they will be forced to turn to their adult children for support and that their children will be economically harmed. Further, the state manages to reduce its costs by reducing the amount of its grants. Federal law should be amended to completely eliminate such provisions under grant-in-aid programs.

F. Income eligibility for categorical assistance

All states have unrealistic income and asset levels for categorical assistance applicants. Elderly persons, who have worked throughout their lives, and with Social Security retirement benefits inadequate to support them, are ineligible for categorical assistance unless they agree to place a lien for the value of assistance received on their home, to assign life insurance policies, and to assign the value of burial insurance or prepaid funeral contracts. A system which poses such harsh choices for our elderly, failing to recognize the non-economic value and attachment elderly persons have for certain of their resources, must be altered to make it more sensitive to the human factors that make a burial contract valued at $300 very different from $300 in a bank account.

III. MEDICARE AND MEDICAID

A. Nursing homes under medicare

Nursing homes as extended care facilities under Medicare, presently have a 100 day limitation placed on the days of care which will be reimbursed.

We feel, and study may show, that the time limitations on reimbursement have the effect of providing care for those who often need it the least at the expense of those who truly need extended care. Nursing homes prefer to take short term patients who will be released within the 100 day period as opposed to the severely ill who will require treatment in excess of 100 days. Given effective utilization review of patient needs there should be no arbitrary limitation on the number of days of skilled nursing service.

Hearings would also determine whether informal sanctions are now imposed on those persons who complain about the quality of care and treatment in nursing homes. We suspect that sanctions in the form of poor treatment, transfers from semi-private to ward accommodations, and discharge to public institutions are commonly imposed on those who complain. Hearings should also examine the inadequacy of treatment and services provided by nursing homes. Daily recreational activities other than television viewing are rarely provided.

Perhaps the most pressing problem in the Medicare program is the retroactive denial of payment for services to those persons who have been certified as eligible for extended care services. In this situation the patient acts innocently in relying upon his doctor’s certification that he is eligible for extended care services. Then at some later date, often extended because of lax administrative practices, he is notified that reimbursement will not be provided. The patient is then personally responsible for bills incurred and in most cases is forced to withdraw from the extended care facility because he has no means to pay subsequently incurred charges.

B. Desirable changes in coverage of medicare

Medicare coverage should be extended to pay for self-administered drugs, presently the largest uncovered health expenditure of the aged. Intermediate care facilities are now provided under Medicaid but not under Medicare. The result
is that doctors who in good faith feel that their patients require intermediate care facilities, but not necessarily skilled nursing services, are often forced to order skilled nursing services because they know that Medicare will pay for the latter and not the former. There are obvious potential savings to Medicare by proving intermediate care coverage. Homemaker services should also be provided. The same problem, of doctors having to order skilled nursing care, rather than homemaker services, because of their patients' financial need, is present.

C. Medicaid coverage

Medicaid coverage should be extended to all persons receiving disability benefits. Their medical expenses exceed twice that of non-disabled persons in the same age category. States may now provide Medicaid coverage to the medically needy, a group of persons whose income is sufficient for daily living, but not to cover their medical needs. This category should be made mandatory for persons aged 65 and over, whose needs for medical protection are not contested.

Provision should also be made in Medicaid whereby persons, whose expenses for medical care reduce their income to within the limitations for coverage by Medicaid, are thereafter eligible for Medicaid benefits.

It is a common practice in many states to require institutionalized Medicaid recipients to pay over all of their income to the Welfare Department. The Department then gives a pittance (e.g., $15 per month) to the recipient to meet his "clothing and personal needs." This should clearly be eliminated since many patients are short-term patients. Without more funds available they are subject to lose their apartments and default on other kinds of continuing payments, e.g., insurance.

IV. INVOLUNTARY COMMITMENT FOR THE AGED

State mental hospitals are used to warehouse vast numbers of aged senile persons until they die. Commitment laws should be examined and/or changed to prevent the inclusion of senility as a basis for commitment. It is clear that many elderly are physically infirm so as to require institutional help. However, this may best be satisfied in "halfway" houses, rest homes, or by homemaker services. At a minimum a full panoply of procedural safeguards must be used to prevent arbitrary and unnecessary commitment.

Conclusion

I have attempted to highlight, often without offering solutions, problems now facing the elderly in government programs and suggested areas which deserve further study. The solution for these problems may be costly, but our elderly citizens are entitled to security and well being in their final years.

Senator WILLIAMS. We will now hear from Mr. Stanton Price of the Housing Opportunities for the West Side Elderly, Santa Monica, Calif.

STATEMENT OF STANTON J. PRICE, DIRECTING ATTORNEY, HOUSING OPPORTUNITIES FOR THE WEST SIDE ELDERLY, SANTA MONICA, CALIF.

Mr. Price. Senators Williams and Randolph, good afternoon and good evening.

I am Stanton Price. I am the directing attorney for HOWSE, Housing Opportunities for the West Side Elderly. We are part of the University of Southern California, a subagency of the U.S.C. law school. We are located in Santa Monica, and we were originally funded to deal with the problems of Santa Monica. We expanded our operations because housing problems tend to be regional rather than parochial, so we represent client groups in both the West Side and East Side of Los Angeles, although we still work heavily in the Venice and Ocean Park area of West Los Angeles.

The East and West Side areas in which we work are very similar, although they have striking racial and ethnic differences. East Los
Angles is primarily Chicano and West Los Angeles is primarily Anglo, very heavily Jewish. Those areas are very, very poor. Both areas are made up of little white frame bungalows built after World War I, occupied by people who have stayed there through the years. Both areas are being challenged by a variety of forces which can be lumped under the heading of development.

**Property Tax: Regressive in the Extreme**

In dealing with these areas certain specific types of problems affecting the elderly in the housing field have become clear. Perhaps the most serious problems for people who are homeowners is the property tax. I have examined that problem at some length in the working paper and I would like to point out here that the average low income elderly couple in Los Angeles County pays two times as great a percentage of its income toward property tax as the average upper income couple. This means, of course, that the property tax is very seriously regressive and the burden is placed upon the elderly person. A poor couple living in a bungalow will pay $500 to $800 a year in property taxes. On the other hand, a much more affluent couple living in, let's say, a $75,000 house in Beverly Hills may be paying only a thousand dollars a year property taxes. You can see that the burden is much greater on the poor person than on the affluent person when it comes to property taxes, even though the burden is great on everyone.

Our project has finally come to the conclusion that the corporate tax as the primary revenue source for municipalities and local government is a very bad thing, and as long as the property tax remains the primary revenue source for local government, they will continue to exact a very heavy burden on the elderly.

We are recommending that the Senate special subcommittee join other interested Senators in pushing for Federal revenue sharing so that the burden of finance of local government will be shifted to the income tax which, despite its problem, is basically a much fairer way of raising revenue. However, we are very much opposed to President Nixon's proposal. This proposal, first of all, disburses a very small amount of money to local government. Secondly, it is geared to the local government's own revenue earning capacities. Consequently, under the Nixon proposal, Beverly Hills which has relatively few social problems, will be receiving half a million dollars, whereas, a town like Compton, which has three times the population of Beverly Hills, and which is very much an elderly town with a tremendous number of social problems, will be receiving $150,000. We think a much more equitable revenue sharing proposal can be worked out.

**Code Enforcement**

The next major problem that faces the elderly is that of code enforcement. Often this is not so much a matter of the house that the elderly person lives in being unsafe, but rather that the house does not conform to recent changes in zoning and setback requirements so that the house constitutes a nonconforming use. Many houses were built right up to the property line though at the time they were built the law required a 10-foot setback. Often this has gone unchallenged for 40 or 50 years. Now Los Angeles is in the middle of a massive
program of code enforcement and people are given notices that they have to eliminate this nonconforming use. This is clearly impossible for the elderly. They cannot afford to pay for a loan, they cannot get a loan because the banks will not loan money to elderly people who are living on a fixed income, and banks will not loan money to homeowners in certain parts of the city of Los Angeles, particularly East and the poorer parts of West Los Angeles. These people are faced with a serious problem. It is possible for the city to work out an arrangement, although this is totally discretionary, for a life tenancy, under the circumstances.

Life tenancy would enable the elderly couple to live in the house and the city would enforce the code upon termination of the tenancy, either by death of the owner or sale of that particular house.

We would like to see these life tenancy provisions be made mandatory upon cities through the workable program, which sets out the Federal requirements that the cities have to live up to in order to receive Federal money for urban renewal. This brings up another problem, and that is urban renewal.

**Urban Renewal**

Old areas are the favorite site for urban renewal, and old areas, of course, generally contain old people. One of the Los Angeles councilmen said at a council meeting that Los Angeles' chief problem is old people in old houses, and he is going to figure out a way to eliminate both. He is now facing a recall petition. He expressed what a great number of city officials do feel, that old people living in old houses is not a good thing for a city. Consequently, we have in Los Angeles a vast number of federally funded renewal programs. The programs themselves are not really bad. In fact, if used properly they would benefit the elderly. The problem is that somewhere between the statement of congressional intent and the drafting of statutes, and the actual working out at the local level, something very important is lost.

There are any number of congressional guidelines embodied in the statutes, which in most cases will adequately protect the rights of old people. However, HUD does not enforce its own regulations, by and large, and in most cities local government does a poor job of enforcement. Consequently, all of the good relocation requirements, requirements that housing be replaced on a 1-to-1 basis, are not followed. What is needed here are ways in which elderly people can go to court and vindicate the rights which Congress has given them. What is needed is a formal procedure whereby elderly people can file complaints with HUD when the city is tearing down their property and not complying with relocation requirements.

Next there is a problem of funding the 235 and 236 program. Right now the funding is not adequate. Currently there is a 2-year waiting list in FHA for 235 or 236 housing, and old people can't wait that long. Several clients have already died. Congress has set beautiful goals, but Congress has not bothered to fund the programs to reach these goals.

There are other problems, too, but I think I have summed up the major problems that have come to me in a year's practice of representing the elderly.
Thank you.
Senator WILLIAMS. Thank you very much, Mr. Price, and all the panelists.

(Subsequent to the hearing the following letter was received from the witness:)

WESTERN CENTER ON LAW AND POVERTY,
HOUSING AND THE ELDERLY PROJECT,
Santa Monica, Calif., September 18, 1970.

DEAR SENATOR WILLIAMS: I wish to thank you for the opportunity you have afforded me to expand on my remarks at the St. Louis hearings. * * *

One of the best statements of the precarious legal position of citizens adversely affected by decisions of the Department of Housing and Urban Development or local planning and housing agencies is that contained in a recent article published in the Hastings Law Journal: "Judicial Enforcement of the Housing and Urban Development Acts." The authors of this article are Stephen F. Ronfeldt, Esq. and Denis J. Clifford, Esq. With the permission of the Committee I would like to incorporate this article into my testimony.*

In passing, let me note that I do not agree with statements to be found on page 319 of the article regarding elderly housing. The authors seem to underestimate the proportion of the elderly among the poor in general as well as the amount of poverty among the elderly. And, too, the implication that enough public housing for the elderly already exists is simply untrue. The need of the elderly for decent housing remains extremely great.

It should be noted, however, that the authors' remarks do point up the need for a separately funded 202 program for the senior citizen population of this country. The present policy of putting the elderly in competition with other groups for 236 housing forces advocates of multi-family housing into the position of the authors.

In any event, the article remains a fairly comprehensive statement of the difficulties of challenging decisions made by HUD and local agencies operating under HUD loans and grants when these decisions are not in accord with federal law and regulation.

Not all of the problems raised in the article presently exist in every jurisdiction. Certain decisions handed down since the publication of the article have broadened considerably the rules pertaining to standing. Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970); Barlow v. Collins, 397 U.S. 159 (1970); North City Area Wide Council v. Romney, Civ. No. 18,466 (3rd Cir. July 14, 1970); Coalition for United Community Action v. Romney, Civ. No. 69-C-1628 (N.D. Ill. April 6, 1970). The problem of obtaining Jurisdiction also seems to have lessened. See e.g. Tenants and Owners in Opposition to Redevelopment (TOOR) v. HUD, Civ. No. C-69-324 (N.D. Cal. April 29, 1970), and the cases cited above.

Of course, it must be borne in mind that North City Area Wide, Coalition and TOOR are not binding on other courts. In the great bulk of the circuits the questions posed in "Judicial Enforcement" remain open and vexing.

Before proceeding further it should be emphasized that agency failure to follow federal regulations poses a serious threat to the elderly. The TOOR case, cited above, will illustrate this.

TOOR concerns the Yerba Buena Redevelopment Project of the City of San Francisco. The project site covers several square blocks south of Market Street and had about three thousand residents. Almost all of the residents were elderly.

Section 1456 (c) (1) of Title 42, USC, declares that the loan and grant contract under which the defendants in the case were proceeding requires: "a feasible method for the temporary relocation of individuals and families displaced from the urban renewal area. . . ." Section 1455 (c) (2) provides that as a condition to further federal assistance the "Secretary [of HUD] shall require, within a reasonable time prior to actual displacement, satisfactory assurance" that adequate relocation housing is available.

Adequate relocation housing was not available. The vacancy rate in San Francisco for the time, of housing suitable for the elderly residents of the site, was close to zero. There was a waiting list for public housing in the City equal to the total number of said housing units. Virtually the only housing the City's
relocation agency offered the Yerba Buena residents was in the Tenderloin area. In many cases this housing had not been inspected by agency personnel, in all cases was more expensive than Yerba Buena housing, and in any event was thoroughly unsuitable because of the high crime rate prevailing in the Tenderloin.

The assurances the City provided the Secretary in accordance with Sec. 1455 (c) (2) were completely inadequate. The City, in attempting to show the availability of housing, made use of the "turnover" concept, which use was improper under federal regulations, counted public housing units, despite the extensive waiting list, made use of other units which the City had already committed to displacees from other urban projects and used obsolete vacancy rate figures. The City even acknowledged that it had not inspected the units in which it was intending to relocate Yerba Buena displacees. Despite the gaps in the City's assurances, until the plaintiff's obtained their federal court injunction, HUD had allowed the City's assurances and the project to go unchallenged.

It is interesting to note that following the issuance of the injunction the City agreed to submit the matter to binding arbitration. The arbitrator ordered the City to build 2000 new units.

While a problem as complex as the judicial enforcement of housing and development statutes and regulations cannot be easily resolved, it is submitted that some relatively simple amendments to the Administrative Procedure Act (codified at scattered sections throughout 5 U.S.C.) would provide some answers. Sec. 553 should be amended expressly to apply to loans, grants, benefits, contracts or workable program certification issued by HUD. Where the submission of data by interested persons raises factual questions, the Secretary shall be required to hold hearings in accordance with Secs. 556 and 557.

Further, decisions regarding the above matters should be expressly made reviewable by statute so as to come under the purview of Sections 704 and 706 of 5 U.S.C.

It is hoped that subjecting HUD and the local housing and development agencies to the full, searching scrutiny of an administrative procedure and of judicial review would go a considerable way toward insuring that the programs decreed by Congress for the benefit of low income people be carried out as Congress intended.

Respectfully submitted.

STANTON J. PRICE, Director.

Senator WILLIAMS. We had scheduled at this time a roundtable discussion among the panelist members and staff of the committee. I will say that has become impossible because we are under a very strict directive to be out of here so that this room can be made available for the next activity. We must be out of here at 4:30.

We would like to reserve the right, Senator Randolph and I, to submit questions in writing for your replies, gentlemen, if we might do that, and we will have for our permanent record this hearing, which has been magnificent. We have heard from this wealth of experience and wisdom of the various concerned committees, and I thought in our remaining time those of you who have participated here silently might now want to be part of the proceedings and address any questions or observations to members of the committee or to the panelists.

Mr. GOL DBNS. One question has come up here, if I can answer it briefly.

It is from Maury Blomek of Reader's Digest on the public conservators bill, referring to pages 47 and 48 in the working paper. That is a bill to establish in Massachusetts the office of a public conservator for small estates, analogous to public administration, after death, of small estates with various restrictions and limitations that I won't go into because of the time restriction.

The legislature has the bill filed and it is our belief that it will not pass, although our legislature is still in session. It will probably go to the judicial council which is a body established to review matters
dealing with the courts, including the probate court, as we call them in Massachusetts, and hopefully will be coming up for a vote next year.

Illinois has a public conservator system. The statute is quite different, but the notion is the same.

Mr. Kalcheim. California has a public guardian, so called.

Senator Williams. Are there any other questions for our panel?

Mr. Kaskowitz. I have a general question. It doesn’t have anything to do with the specific legal problems, but I wonder—this is directed to both of the young men over here, as well as to Mr. Alexander—to what degree law schools do produce a breed of attorneys similar to the gentlemen here on the right? To what degree is the curriculum designed to produce this type of lawyer? How is it, I would like to ask one person here to answer, that you entered into this kind of activity?

Senator Williams. This is an improvement of the breed, though, generally.

Mr. Kaskowitz. It is very nice.

Mr. Goldings. I am an “old fogey.” I was admitted to the bar 10 years ago this year. This places me in the “old fogey” category. I don’t know the admission dates of my two colleagues. I don’t think law school is supposed to prepare students for any particular area in law. Without being facetious, the answer to your question is, how does one get into it? Similar to how one gets into any area in the law, it is through experience and reference.

I got involved with the elderly through the youth, interestingly. We did a redraft of the public welfare laws of Massachusetts for a private charitable organization, and it passed. Inevitably I got into the categorical areas not only of AFDC and problems of that nature, but the elderly. Public service law is here to stay; it is “working within the system,” in the terms we hear about so often. I think, from interviewing new people applying for positions as associates in our firm, the law schools and so-called eastern establishment law schools are willy-nilly preparing people through specific courses. But I think it is more a reflection of the time and lawyers have traditionally responded to these problems. The names are different, but the players remain the same.

All I can say, it is for those of you who share the questioner’s concern or inquiry, you ought to come back to the Halls of Ivy and really blow your mind.

Mr. Kalcheim. May I add, the Committee on Legal Problems of Aging has made a recommendation this year that all the law schools in their courses on family law emphasize specific areas of training for the students in legal problems of the aging, the property and personal rights of the elderly, and to obtain the concern of the law schools in legislation relating to legal services for the aging.

Senator Williams. Mr. Reeves.

STATEMENT OF GEORGE REEVES, PRESIDENT, OLDER ADULTS SPECIAL ISSUES SOCIETY

Mr. Reeves. I am George Reeves, president of the Older Adults Special Issues Society. We use the acronym OASIS, and we represent the 20 million who are the object of your concern and solicitude.
Due to the lateness of the hour, I can only allude to the fact that you have really covered the total spectrum, very nearly the total spectrum of the problems of the aged, but one that I am particularly interested in is one that has been covered to some extent, the matter of incompetency in incompetency proceedings. In addition to being a representative of 20 million, I am also a qualified professional social worker, and until I reached my 80th birthday, I worked full time. Since then I have been working only half time, but it does give me particular perspective on the problems of the aged because I worked for the Cardinal Ritter Institute which serves the aged who are ill. I am very much in contact with all the problems that we have to meet in this connection.

I had occasion to institute proceedings for a finding of incompetency in cases where the aged person had outlived all of his relatives and interested people, and yet was in need of protective service. This matter of protective service is something which in our own State laws is very much neglected. There is a laconism there that is simply not covered. If a person has plenty of money in an estate, there is no lack of persons to push the matter and to secure whatever assistance he may need, but particularly in the case of an indigent who may need protective service, there is no such provision.

The agency I work for would be in a position in many cases to offer a type of protective service administered by professional social workers. We social workers are pretty much part of that silent minority that nobody hears about, but I assure you that professional competency is assured by the right kind of training in the accolade National Association Academy of Certified Social Workers, and we are fully cognizant of our responsibility and would take real care of the aged persons who might be entrusted to us to look after.

This is the resource that you lawyers apparently know nothing about or, at least, it hasn't been mentioned here. But I assure you that there is a very considerable body of competent social workers who are not on the make or they wouldn't be social workers. They are fully competent through their professional training and experience to handle the problems involved in this sort of thing.

I wish it were not so late, because there are other things I would like to say about many of the questions that have been raised, but I am quite sure that the problems are being handled by competent hands. And we do want to assure you of our appreciation for your interest in our problems.

**STATEMENT OF MRS. ARENDY CLARK, KINLOCK, MO.**

Mrs. Clark. Would you mind if a lady joined you for a minute?

Senator Williams. Tell us who you are.

Mrs. Clark. I am Arendy Clark from Kinlock, Mo. I work with the senior citizens, and I am quite interested in them. If I were not, I would not be here.

I think this is one of the finest programs that has been developed for senior citizens. The aged people need someone to take care of them. So many of them have children that have turned their backs on them, and you go to their homes and they are standing there with outstretched arms for some love and affection, and I am so happy to say
that each of you lawyers have spoke so beautifully. I wish the time would allow us to have a longer session so many people could hear what can be done for the aged. You are very beautiful lawyers.

Thank you.

Senator Williams. I think that is the note that we can close on.

Mr. Reeves. The program is our senior age program being administered by OASIS. It is a grant conceived from our labor. So you know more about it, we have 62 senior aides who are employed under this grant which is being administered by the organization of OASIS, and this is one of our very splendid, excellent workers. [Applause.]

A Voice. Wonder why we didn't come up with a uniform probate law recommendation.

Mr. Kalcheim. We did come up with it, our committee did. We originally wanted a model power of attorney act, and then we found that the new uniform probate code contained all of the provisions that we were interested in, and it continued the power of attorney beyond the point of incompetency and provides all of the protection that the alleged incompetent would need, in the sense that a lawyer must be provided for, the same as for juveniles today.

Senator Randolph. Mr. Chairman, I am not an advocate nor do I serve as an advertisement in bringing to your attention what I think is one of the most outstanding motion pictures that will be presented in the coming months and years. I have just seen a preview of a movie called “I Never Sang for My Father.” The principal actor is Melvin Douglas, and the cast is a very splendid one. The story concerns the problem of children as they work with their parents who have become older, and the adjustments that are necessary.

Not often would I say a good word for any motion picture, but I do say it for this one. Check it out in the weeks and months ahead and see it. It will be most worthwhile.

A Voice. Since there is no uniform incompetency law, is there any State that has progressive legislation that could be modeled for the purpose of legislative action along that line?

Mr. Kalcheim. New York State is in the process of revising what they call a conservatorship law. There has been a lot of discussion pro and con, and I think out of it will come a model conservatorship law. They call it conservatorship in New York, conservatorship not only of property but of the personal rights of the individual. There is no State at this time that we presently consider as a perfect type of thing, but this is one of the areas in which the lawyers are working for the benefit of the older population of our community.

Mr. Alexander. On this point, the California legislation is, in my view, considerably more progressive on this point than the New York proposal or New York law.

A Voice. The District of Columbia has a good conservatorship passed, of course, by Congress.

Senator Williams. I believe we will have to conclude at this point. Our thanks to all of our panelists and to all of you for being here. Bill, will you make an announcement where we can be reached if anyone would like to reach our committee.

Mr. Oriol. There may be some in the audience that have additional statements. If you care to have the statement entered as part of the hearing record, mail it to the U.S. Senate Special Committee on

Senator Williams. Thank you.

Senator Randolph. I want only 30 seconds to say that I think the criticism of Congress in not funding legislation is a very valid criticism, not only in this field but in so many fields in which we legislate. We often think it is easy to pass a bill. We don't realize that we have to back it up with dollars, and I doubt whether we would pass bills so quickly, if we realized the cost of many of them. But once Congress has placed its stamp of approval on legislation, it should be gracious enough to back it with the dollars necessary to make it work.

Senator Williams. Thank you.

(Whereupon, at 4:30 p.m., the committee adjourned.)
APPENDIXES

Appendix 1

LEGAL PROBLEMS AFFECTING OLDER AMERICANS

A WORKING PAPER

(Prepared for the Special Committee on Aging, United States Senate, August 1970)

(Prepared by Legal Research and Services for the Elderly, National Council of Senior Citizens, Inc.)
LETTER OF TRANSMITTAL

JULY 16, 1970.

Hon. Harrison A. Williams, J.r.,
Chairman, Special Committee on Aging,
U.S. Senate, Washington, D.C.

Dear Senator Williams: In response to your request we take
pleasure in submitting this report on some of the legal problems affect-
ing the elderly.

For nearly 2 years the National Council of Senior Citizens has
sponsored a research-demonstration program funded by a grant from
the Office of Economic Opportunity. We have worked on 12 projects
in ten cities throughout the country. Eleven of the projects have con-
ducted research and provided services in specific problem areas. One
project has provided research and technical assistance.

The objective has been identification of legal issues affecting the
elderly poor and the development of solutions. A long-range goal has
been to demonstrate how OEO-funded legal programs and the private
bar can better serve the 20 million Americans over 65 and the millions
more who are approaching that age. In particular, we seek to serve
those who are not only aged but have the disadvantage of being
poor.

LRSE projects have been active in the areas of health care, housing,
advocacy training, probate reform, protective services, economic
development, and Federal benefit programs.

This report has been prepared by our LRSE staff with special papers
from some of the lawyers working on demonstration projects. Their
views do not necessarily reflect the views of the National Council of
Senior Citizens.

We are indebted to the Office of Economic Opportunity for furnish-
ing us this opportunity to examine the issues, to involve some of the
finest legal talent in the country, and to develop plans for legal
reform. We are grateful for the interest of the U.S. Senate Special
Committee on Aging and hope that this report—though limited to
just a few of the areas in which we have been working—will contrib-
ute to increased concern regarding the legal problems of the elderly.

Sincerely,

William R. Hutton,
Executive Director,
National Council of Senior Citizens.
PREFACE

"... the only sure bulwark of continuing liberty is a government strong enough to protect the interests of the people, and as people strong enough and well enough informed to maintain its sovereign control over its government."

—Franklin Delano Roosevelt.

Law is one instrument by which government serves humanity. If, however, law is misconstrued or mismanaged, it becomes tyrant instead of servant.

Few would argue with the sentiments expressed above. And yet, every member of the Congress of the United States receives complaints daily from citizens who say that fundamental rights, or benefits due them under law, are denied to them.

"Due process" may be subverted. "Equal protection" may be out of reach.

An applicant for public housing, for example, may find himself passed over in favor of others who have not waited as long. An immigrant, trying to become a citizen, may believe he is capriciously denied that status. An older person, forced to retire because of ill health, may feel that investigators invade his privacy unnecessarily to determine old age assistance eligibility. Neighborhood residents in a renewal site may argue that the letter and the spirit of relocation statutes are overridden by Federal or local officials. A veteran, seriously ill, may write in utter desperation, not knowing that help can be had at a nearby Veterans' Administration office.

We in Congress do our best when complaints are valid. We devote much time and effort to "case work."

But even as we do, we may be painfully aware that we are helping only the most articulate and persistent persons in need of help.

We know that for each letter we receive, hundreds or thousands of other persons may face similar problems.

But they do not write. They accept injustice or do not even know that injustice exists. Statutes defy interpretation. Officials sometimes seem to have answers ready even before questions are asked. "You can't fight city hall" is a common saying, even yet. How on earth, then, can the average citizen fight a Federal establishment which—despite the honest and often valiant work of public servants throughout government—often gives the appearance of bureaucratic unresponsiveness.

To that question, there can be only one response. Citizens must maintain control of those meant to serve them, and government itself should strengthen such control:

—By providing facts to the public.
—By impartial and sensitive implementation of the law.
—By submitting to review or appeal when responsibly challenged.
Older Americans, in particular, stand in need of fair, sympathetic treatment in their dealings with government.

Retirement, after all, can be the most difficult adjustment made in a lifetime.

Not only must the retiree live on an income averaging less than half for those still in the work force, he must define new roles for himself in life. And, even though he may rarely have dealt with government agencies before—except to pay taxes—he now finds himself personally involved in intricate and sometimes baffling encounters with Federal programs. He may spend hours in a Social Security office trying to understand "technicalities" which could deny him precious dollars every month. Paperwork under Medicare and Medicaid may be incomprehensible or onerous. If he is one of the two million Americans dependent upon Old Age Assistance, the welfare office may seem to be a forbidding citadel rather than a headquarters for service and understanding.

Stubborn misconceptions about the elderly and their needs also have their effect. The Columbia Center for Legal Problems of the Elderly has criticized the "mistaken and aggressive steps that the government and public agencies take which deprive the elderly of freedom of choice and action."

Under that category, the Center gives these examples:
People are often put into hospitals, hospitals which often resemble jails. People have committees appointed for them to run their money affairs... There is often a bias in favor of institutions rather than individual attention in the home. Actual treatment inside institutions often is merely preservation of life rather than a proper way to make people enjoy an active and fulfilling period of time.

Implicit in this critique is recognition of the widespread—and perhaps subconscious—attitude that the retiree "has lived his life-time," and that priority should be placed elsewhere. Morally indefensible as this notion is, it is also unrealistic. More Americans are spending more years in retirement. They are not satisfied with old cliches and a welfare image. Their retirement years should not be wasted or blighted. Those years are a national asset of great value to all people in this land.

Aging, even before retirement, can bring citizens into contact with government. They may futilely protest alleged violations of the Age Discrimination in Employment Act. They may question pension plan rulings. They may wish to challenge policies which force early retirement upon them. They may be so-called "older workers"—men and women past age 45—who seek retraining when jobs are wiped out. They may seek disability payments long before their sixty-fifth birthdays.

Oftentimes, the citizen may exhaust whatever appeals there may be to regulatory justice. He may then take the case to court. And there, he may encounter other complexities.

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1 See Appendix C, p. 57, for additional details on the Center.
Perhaps most elderly persons in the United States today escape such difficulties. If perplexity arises, they can receive valuable assistance in many a Social Security office and in other agencies. We can hope that more problems are resolved than are not.

But there is far too much evidence that large numbers of older Americans suffer needless anxiety, deprivation and injustice simply because they do not know what help is available to them, or because of wrong-headed decisions made arbitrarily by representatives of government.

That evidence has been provided in part at hearings before this Committee and other units of the Congress. Another source of information was established 2 years ago when the Office of Economic Opportunity established a Legal Research and Services for the Elderly program under the sponsorship of the National Council of Senior Citizens.

Project directors for LRSE are the major contributors to this document. Carefully, they have informed the Committee that they do not yet have all the documentation or experience needed for final conclusions on many of the issues discussed on the following pages. Their recommendations do not necessarily reflect the views of this committee.

But from their experience thus far, there is much to be learned. They and their associates must sometimes play the role of gadfly, but more often they are fact-finders who explore the confrontation of people and government in problem areas.

The Senate Committee on Aging is grateful to the National Council, the OEO, the LRSE directors, and to the authors of individual papers. They have made it possible for the Committee to publish a document which should receive careful attention at several levels:

—Congress should consider new laws, or the revision of old laws to help overcome difficulties described in this study.
—Federal, State, and local administrators of any program with the elderly should heed the factual evidence and suggestions which follow.
—Members of the legal profession will find much useful information which will be of use for them as advocates for aging and aged Americans.
—And finally, individual citizens of all ages should ask themselves: Have they unwittingly contributed to the problem simply by not caring about what happens to "the old folks?"

This introductory statement would be incomplete without mention of the fact that the American Bar Association has established a Section Committee on Legal Problems of the Aging. Under the chairmanship of Norman J. Kalcheim of Philadelphia, the ABA Committee is cooperating with the Senate Committee on Aging in arrangements for a hearing to be conducted during the ABA national convention in St. Louis, Missouri, on August 11, 1970.

There, LRSE and ABA representatives will discuss issues raised in this study, as well as others.

This study, and the hearing—it is hoped—will result in greater understanding and responsiveness among lawmakers, government administrators and those who, in the private practice of law—bear formidable responsibilities in daily struggles for principle and justice.
Without such responsiveness, there would be little left for us but to bemoan the growth of bureaucracy and the inevitability of injustice. Our nation—after almost 200 years of existence, with the prospect of abundance and genuine fulfillment in the lives of its citizens within view, despite present tragedies and disruptions—is far too mature to accept defeatism as a way of life. But if we let one person’s rights be trampled, we as a people have suffered a defeat. No nation can afford such defeats. No people should be asked to bear them.

Harrison A. Williams, Jr.,
Chairman, U.S. Senate Special Committee on Aging.