

Prepared Testimony

To: Pennsylvania House Committee on Aging and Older Adult Services
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Chairman Hennessey and Chairman Samuelson, and to each of the members of this important committee,

I express my thanks for this opportunity to discuss access to justice for older Pennsylvanians. As many on this committee may be aware, as a law professor for more than 20 years, I've appeared before the Pennsylvania legislature fairly often to discuss various legal issues affecting older adults.

Pennsylvania's law schools play important roles in a sometimes fragile network of critical legal services for older adults. For example, Temple Law has its Elderly Law Project in Philadelphia, under the direction of Clinical Professor Debra Kroll; Widener Law's Elder Law Clinic is based in Harrisburg; Professor Martha Mannix is the long-time head of the Elder Law Clinic at Pitt Law.

The major focus of my current teaching, research and scholarship grows in large part out of my experiences in supervising an Elder Protection Clinic, staffed by law students at Penn State's Dickinson Law, where we offered free legal services. I was in that position for more than ten years. Penn State's Dickinson Law now serves older adults through its Community Law Clinic in Carlisle, under the direction of Clinical Professor Megan Riesmeyer. Approximately one-third of the Community Law Clinic's clients are older adults. In addition, dozens of our law students work each year as interns and law clerks in positions that directly impact and benefit older Pennsylvanians. During the last two years, for example, our students served as legal interns in Pennsylvania's Departments of Aging and Health, and in the Attorney General's Bureau of Consumer Protection. One of our students will be interning this summer at the SeniorLAW Center in Philadelphia and many more will work for various legal aid units around the Commonwealth, often with the support of IOLTA fellowships. Law students with strong experiences in public service for older adults often carry forward their learning, into their post-graduation careers and volunteer work.

I regularly receive telephone calls or emails from older adults in Pennsylvania, or their family members, seeking guidance. (I know people are desperate if they are calling a law professor!) The need grows with each year as Pennsylvania is the home to an ever higher percentage of older adults. Often the calls come from people who are simply without funds to pay for private lawyers. One woman explained it well. She said, "I planned to work until I was 70 and I made it. I planned my savings to last until I was 80 and I made it. Unfortunately now I'm 85 and my savings weren't enough, Social Security isn't enough, and I don't know what to do about housing. I think I need help with my creditors but I can't pay an attorney to help me."

In my experience, both during my work with Penn State's Clinics and from a recent review of statistics from our Community Law Clinic, the issues we see most often fall into three categories:

- A. Access to appropriate, safe housing;
- B. Access to adequate health care (especially when people are unaware of dual eligibility for services under Medicare and Medicaid); or
- C. Issues associated with financial insecurity, including crushing debt.

Sometimes the calls start as a concern about denial of Medical Assistance or Waiver programs, whether for home, community or residential placement, and I would characterize those calls as potentially involving all three categories. These are sophisticated and often complicated legal issues that can overwhelm even the strongest family.

Karen Buck from SeniorLAW Center asked me to address whether Pennsylvania’s law schools could be bigger components of the senior service network. The answer is a qualified “yes.” For law schools to be stronger players in providing legal aid to older adults would require dedicated lines of funding. Law schools are running on very lean budgets right now, and have been since at least the financial crisis of 2008-10. Clinical professors tell me law school clinics *could* do more for seniors – but to do more requires additional supervising attorneys. Right now our Clinic is experiencing a particularly high demand for someone skilled in housing issues. Debra Kroll at Temple reports that in her region she is seeing an astounding number of senior evictions, while mortgage issues are overwhelming.

As an example, let me tell you about the experience of a recent client at Dickinson Law’s Community Law Clinic. The individual was over 60 and had a host of health issues, including complications from diabetes. He faced eviction from his housing because he wasn’t current on paying his rent. The students, working under the guidance of a staff attorney, learned that the reason he wasn’t paying the rent was because of ongoing problems with the landlord’s failure to maintain the property. Our client was, in essence, in a trap, unfairly expected to pay for increasingly unsafe housing, but likely to lose his security deposit if he left and tried to find new housing. The Community Law Clinic team was successful in defending him on the eviction claim, and securing a positive result on his counter suit about the responsibilities of the landlord. Despite the positive outcome, this history actually makes me just a bit sad, as it reminds me of all of the calls for help from people who can’t access services, usually because the waiting list at any available legal aid office or clinic is very full.

Increasingly, I think we are hearing from people who have no family members who can help. There is a shortage, in my experience, of qualified, reliable individuals who can help older adults with activities of daily living, including bill paying and management of their financial resources or running the gauntlet of complicated rules that govern benefit programs. Legal aid offices and clinical programs can serve as key access points, to help those who may be un-friended find safer personal and financial caregivers. Lawyers – not just law professors – can and do spend much of their time educating individuals, not only about their legal rights, but about their duties, including fiduciary obligations that arise in caregiving relationships.

As some of you may be aware from recent news media stories, both nationally and more recently in Pennsylvania, there is growing concern about court appointment of private or professional guardians for older adults who do not seem to have reliable family members standing by them. Most guardians in my experience are indeed trustworthy; but, of course, the good ones don’t generate headlines. Nonetheless, I believe that strong legal aid programs are critical here, as the lawyers in these programs can serve as counsel for alleged incapacitated persons (or AIPs) during a guardianship proceeding and can provide a first important safeguard against unnecessary or inappropriate appointments, by representing the older adult directly.

United States Supreme Court Justice Sonia Sotomayor has spoken often about professional and moral duties for lawyers. She calls upon lawyers to “represent the underrepresented in our society,” and to “ensure that justice exists for all, both legal and economic justice.”¹ Pennsylvania’s legal aid programs and the outreach mission of each of Pennsylvania’s law schools, including Dickinson Law, can bring Justice Sotomayor’s words to life.

The Penn State community includes a wide range of faculty members and researchers who contribute to an open, public dialogue on important issues across the state, nation and world. Opinions expressed within this testimony represent solely my views and do not represent the views of The Pennsylvania State University or Dickinson Law.

¹ Sonia Sotomayor, as quoted by Joe Beck, for THE HISPANIC IN HIGHER EDUCATION, November 2002.