

# Advocacy and Lobbying: How to make it work for your program

- David Godfrey, Senior Attorney, American Bar Association Commission on Law and Aging
  - Donald M. Saunders, Vice President of the Civil Legal Services Division at the National Legal Aid and Defender Association
    - Fay Gordon, Senior Associate, Grassroots & Public Policy
  - Brian W. Lindberg, Public Policy Advisor, National Academy of Elder Law Attorneys

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National Consumer Law Center

National Elder Rights Training Project for the National Legal Resource Center.  
Sponsorship for this Webinar is provided by the National Consumer Law Center

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# NLRC

Providing Legal Support to the  
Aging Advocacy Network

- <http://www.nlrc.aoa.gov/>
- Collaboration developed by the Administration on Aging between the National Consumer Law Center, National Senior Citizens Law Center, American Bar Association Commission on Law and Aging, Center for Elder Rights Advocacy, and the Center for Social Gerontology
- See upcoming trainings, conferences, and webinars
- Request a training
- Request consulting
- Request technical assistance
- Access articles and resources

## Presenter – David Godfrey

- Is a senior attorney at the ABA Commission on Law and Aging.
- He is responsible for the ABA's role in the Administration on Aging funded National Legal Resource Center.
- Prior to joining the Commission he was responsible for elder law programming at Access to Justice Foundation in Kentucky.



# Presenter – Donald M. Saunders

- Has dedicated the past 34 years to the delivery of quality legal services to poor people, nationally as well as on the local and regional levels.
- Since February 1995 he has served as Vice President of the Civil Legal Services Division at the National Legal Aid and Defender Association.
- He previously served as Legislative Counsel for NLADA and the Project Advisory Group from May 1990 through January 1995.
- Before coming to Washington, DC, he served as the Executive Director of the North Carolina Legal Services Resource Center, a state support backup center, in Raleigh, NC from January 1983 to May 1990. In that capacity, he actively engaged in legislative advocacy and appellate work covering a broad range of issues in housing, employment, disability and civil rights law.

## Presenter – Brian W. Lindberg

- Has served NAELA as a public policy advisor since 1993. Representing NAELA, Mr. Lindberg has served as the Chair of the Health, Long-Term Care, Community Services, and Membership committees of the Leadership Council of Aging Organizations. He has also served as a Co-Chair of the LCAO's Long-Term Care Task Force. He also participates for NAELA in the Medicaid Coalition and other long-term care related coalitions.
- Mr. Lindberg is also the Executive Director of the Consumer Coalition for Quality Health Care, which is a national, non-profit membership organization comprised of a diverse group of health care and consumer organizations (including NAELA) representing over 30 million Americans. The Consumer Coalition advocates for programs and policies that provide protections, including grievance and appeals rights, to all health care consumers.
- He was appointed by Vice President Gore to the original Planning Committee for the National Quality Forum, currently serves as the Chair of its Consumer Council and as a member of the Board of Directors.

## Presenter – Fay Gordon

- Is the Senior Associate for Grassroots and Public Policy in Brian Lindberg's office.
- Prior to joining his staff, Fay was a law clerk at Frank, Frank and Scherr, LLC, an elder law firm in Lutherville, Maryland.
- Fay holds a JD and certificate in Health Law from the University of Maryland, and a BA from the University of California, Los Angeles.

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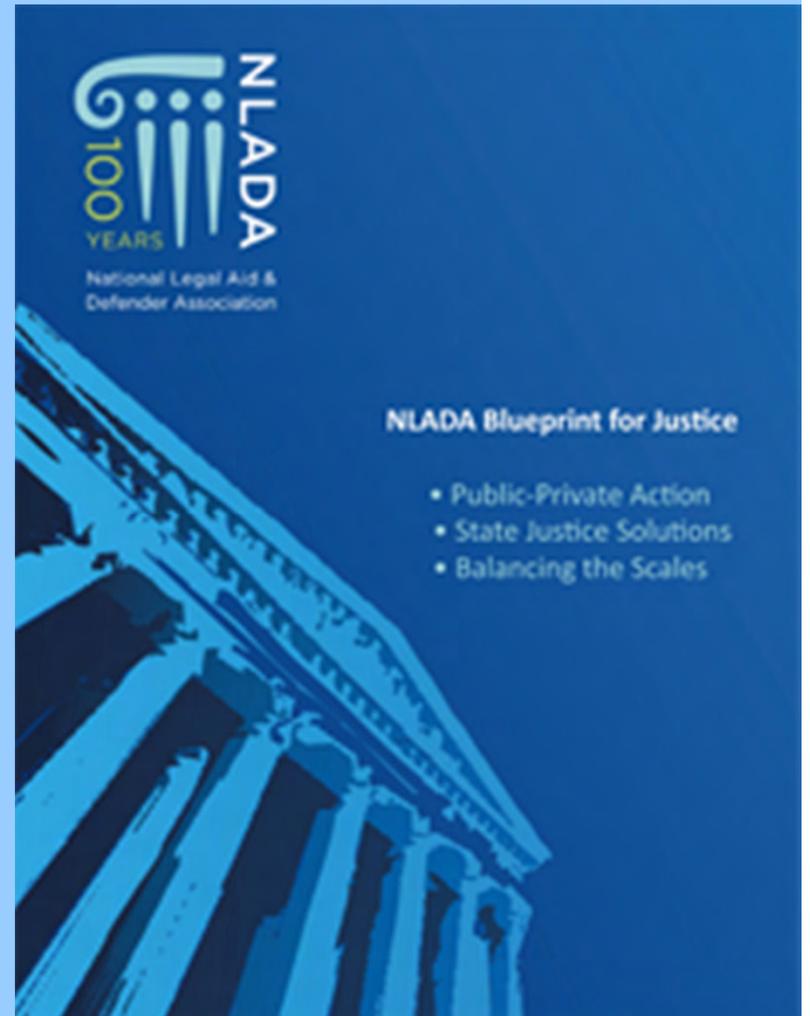
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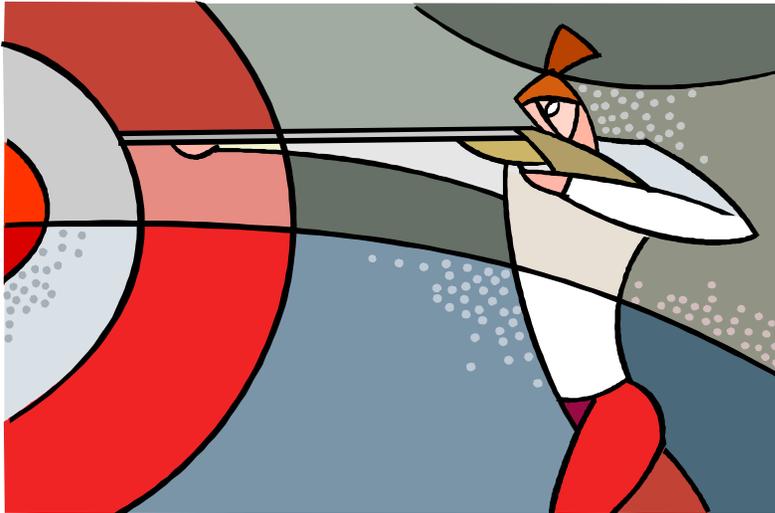
Don Saunders  
Vice President  
Civil Legal Services  
National Legal Aid and  
Defenders Association



# Why legislative and administrative advocacy is important



# Tools and Practices for success



# Using Client Stories and Media Effectively



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# Limitations on Lobbying with Federal Funds



# Special Limitations for LSC Grantees

The image shows a screenshot of the LSC website as viewed in a Windows Internet Explorer browser. The browser's address bar shows the URL <http://www.lsc.gov/>. The website header includes the LSC logo with the tagline "America's Partner For Equal Justice" and a navigation menu with links for "Home", "Careers", "FOIA", and "Sitemap". A secondary navigation bar contains "ABOUT", "LOCAL PROGRAMS", "BOARD OF DIRECTORS", "CONGRESS", "MEDIA", and a prominent red "FIND LEGAL AID" button with a search input field. The main content area features a large image of a woman on the left and a text block on the right that reads "We Help Ensure Safety and Security" with a "Learn more >" link. To the right of this text are four stacked boxes: "Access to Justice", "Serving Veterans and Military Families", "Keeping Families in Their Homes", and "Protecting Victims of Domestic Violence". The footer contains three sections: "LATEST NEWS" with a link to "Staff Reductions Hit Legal Aid Programs", "IN THE SPOTLIGHT" with a link to "2012 TECHNOLOGY INITIATIVE", and another "FIND LEGAL AID" button with a link to "Ayuda en español". The browser's status bar at the bottom shows "Done" and "Internet".

**SHORT PRIMER  
ON  
POLICY ADVOCACY**

**Prepare by  
Alan W. Houseman  
Center for Law and Social Policy  
(202) 906-8001**

**September 2007**

Many staff attorneys and paralegals in LSC-funded legal services programs believe they cannot engage in policy advocacy before various policy making bodies. While some advocacy is prohibited, much policy work is permitted and can still go forward despite the statutory prohibitions of the LSC appropriations legislation and the implementing regulations that LSC has promulgated, 45 CFR 1612.

Some of the questions that commonly arise are covered in this brief Primer. Others are discussed in the ***GUIDE TO PART 1612***. Some questions will involve individual fact situations that will require more detailed analysis of the regulations. Please do not hesitate to contact Linda Perle or me at CLASP if you have questions about what can and can not be done. Linda can be reached at (202) 906-8002 or lperle@clasp.org and I can be reached at (202) 906-8001 or ahouse@clasp.org.

**GENERAL APPROACH**

In examining what we can and cannot do, we must begin by asking two questions.

First, is the activity prohibited?

Second, is there any exception to the prohibition?

Too often, we fail to ask the first question. Of the 1000 calls/e-mails per year that CLASP receives from legal services directors and attorneys seeking advice on whether their activities are legal under the LSC regulations, in over 90% of those cases, we advise the program that the activity they want to do is not prohibited and can be carried out with LSC funds.

# **RULEMAKING**

## **ACTIVITIES NOT INCLUDED WITHIN RULEMAKING**

- You may participate in administrative proceedings adjudicating the rights of individuals, such as public housing eviction proceedings and welfare fair hearings.
- You may communicate with the personnel of local, state and federal agencies such as the Public Housing Authority (PHA), welfare department, labor department, and other agencies for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.
- You may negotiate with agency personnel about the application of an agency rule or policy to the client being represented and may attempt to get the agency to change its interpretation or even its policies as they affect an individual client.
- You may track regulatory developments at the Local, State or Federal levels and inform clients, other recipients, private attorneys, community organizations, human services providers or others about the status, content and meaning of new or proposed plans, executive orders, or administrative regulations.
- You may also participate in discussions about PHA plans, Consolidated Plans and regulatory developments during task force meetings or in other settings.
- You may advise clients, community groups and others about the effect of agency policies or plans as well as other agency rules and policies, analyze and explain proposed changes and their effect, and advise their clients and community groups about their right to themselves participate in agency rulemaking proceedings.
- You may participate in the agency planning process to, for example, develop the Public Housing Plan.

## **WHAT IS PROHIBITED WITH LSC FUNDS**

Under the prohibition using LSC funds, you **CANNOT**:

- comment upon proposed rules or regulations;
- seek to have an administrative agency issue regulations or petition for rulemaking in order to address a client's problem;
- Engage in discussions with those officials making the rules in an attempt to influence the rules during the course of a rulemaking proceeding.

“Rulemaking” includes “notice and comment” rulemaking procedures under the Federal Administrative Procedures Act or similar procedures used by State or local government agencies.

## **COHEN-BUMPERS EXCEPTIONS FOR USING NON-LSC FUNDS TO COMMENT IN RULEMAKING**

Under the Cohen-Bumpers amendment you may provide oral or written comment to an agency and its staff in a public rulemaking proceeding when using non-LSC funds. LSC defined *public rulemaking* to mean any rulemaking proceeding or portion of such proceeding or procedure that is open to the public.

Thus, you may, using non-LSC funds:

- prepare written comments in response to a Notice of Proposed Rulemaking in the *Federal Register* or in response to a similar notice in a state or local publication;
- prepare written or oral comments in response to a publication for the general public or a rulemaking proceeding that is public under state or local law;
- respond orally or in writing to notices of proposed rulemaking from a Federal or State agency, if the recipient routinely receives such notices;
- meet with agency officials and discuss your concerns about proposed regulations during the course of a rulemaking proceeding; and
- meet with agency officials who are considering a rulemaking proceeding to discuss concerns about drafts of regulations that have not yet been published for comment but which have been sent to you for review.

## **LOBBYING**

### **ACTIVITIES NOT COVERED**

- You may track legislative developments at the Local, State or Federal levels and inform clients, other recipients, private attorneys, community groups, human services providers and others about the content and status of new or proposed statutes and explain how such developments would affect eligible clients.
- You may also publish newsletters and other written materials which report the content or status of pending or proposed legislation or regulations, explain the meaning of such legislation with regard to the rights and responsibilities of low-income clients and explain how such legislation would affect legal representation.
- You may discuss legislative developments in task force meetings and other settings.
- You may advise clients, community groups and others about pending or proposed legislation and analyze and explain proposed changes and their effect to clients.

- You may also advise clients and community groups about their right to participate in legislative proceedings or about their right to communicate directly with an elected official. You may advise specific clients whom they are representing about, for example, who their elected representatives are, how legislation is enacted, and the procedures for testifying. You may not prepare testimony for their clients nor train clients to become effective participants in lobbying.

### **WHAT IS PROHIBITED**

1. **Direct Lobbying:** You cannot attempt to influence pending or proposed legislation.

Legislation is defined as “any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy.”

Public policy means “an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules or regulations.”

Therefore, you can not engage in direct lobbying activity on pending or proposed matters involving eligible clients even if you have a retainer from the client to do so.

2. **Grassroots Lobbying.** You cannot engage in any grassroots lobbying.

Grassroots lobbying is defined as any written or oral communication in any form which “contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions” or ballot measures. Thus, an LSC funded program staff member could not send an e-mail to a mailing list telling the list to contact an agency official in support of in or opposition to a proposed regulation.

### **WHAT MAY BE DONE WITH NON-LSC FUNDS**

You may use non-LSC funds to respond to a written request from an elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to:

- (1) Testify orally or in writing;
- (2) Provide information which may include analysis of, or comments upon, existing or proposed legislation, or drafts of, proposed legislation or agency regulations or policies.

Such written requests for responses or participation may involve any pending or proposed legislation or agency regulations or policies.

Such responses to requests may be distributed only to parties that make the request or to other persons or entities to the extent that such distribution is required to fully comply with the request. For example, agencies or legislative bodies may have rules about how and to whom written

testimony is to be distributed, and recipients are permitted to comply with those rules, even if they require a distribution to others.

Recipient staff may not solicit or arrange for such requests, but they can inform officials and their staff about the process for obtaining their testimony or information.

### **PARTICIPATION ON GOVERNMENTAL, BAR ASSOCIATION OR OTHER COMMITTEES AND GROUPS**

You may participate in a variety of organizations, task forces, meetings, advisory boards, committees and the like which may discuss a host of issues relating to the representation of eligible clients. These discussions would include newly enacted legislation as well as pending or proposed legislation or regulations and the impact of such legislation or regulation on low-income persons and families.

For example:

- You may participate in the PHA planning process under housing legislation.
- You may participate in efforts to inform the Consolidated Plan process about housing needs and plans for action.
- You may participate as legal adviser or program representative to, or a member of, an organization, task force, consortium, advisory board or committee which seeks to improve service to clients or share information about community resources or needs.

You may use any funds to participate in meetings or serve on committees of bar associations. You may participate in discussion regarding how pending or proposed legislation or regulations would affect low-income persons and families.

You may participate on government advisory bodies, commissions or committees which are engaged in making recommendations for legislation or regulations, so long as you are invited in writing to participate by an agency or official thereof, elected official, legislative body or committee, or member thereof and the employee uses non-LSC funds to do so. If government advisory bodies are not proposing regulations or legislation, you may participate using LSC funds. If you are asked to participate you may testify before, and provide information to, the body.

There are some limitations on what you can do, but they do not prohibit your participation on these various types of bodies.

### **COORDINATION WITH NON-LSC FUNDED LEGAL SERVICES ENTITIES**

LSC-funded programs may work with the Non-LSC funded entities such as the Legal Services

Advocacy Project in a coordinated and collaborative manner.

- You may communicate about problems of clients with the non-LSC funded entity.
- You may analyze the impact on your clients of existing policies or pending or proposed legislation or regulations and share analyzes with the non-LSC funded entity.
- You may participate in discussion and task forces with the Non-LSC funded entity and discuss legislative and regulatory issues.
- You may advise the Non-LSC funded entity about the most important issues facing your client and how legislative or regulatory change could address such critical issues.
- You may work with the Non-LSC funded entity on proposed rules using non-LSC funds.
- If asked to testify or provide information to a legislative or administrative official, you may coordinate testimony or information with the non-LSC funded entity.

#### **ACTIVITY ON A STAFF PERSON'S OWN TIME**

Recipient staff may undertake direct and grassroots lobbying designed to influence local, State or Federal legislative bodies on welfare reform only if they are operating **on their own time** and if **recipient funds or resources are not used** to support these activities.

However, extreme care must be used to ensure that personal time for any restricted activity is adequately documented so that there can be no question that the activity was taken on the staff's own time (e.g., vacation time, other leave time as permitted by the recipient, off-duty time). Further, no office supplies, equipment, phone or other resources of the recipient can be used in any way to engage in direct or grassroots lobbying or communications. Specifically:

- Recipient staff must make clear that they are acting on their own time and speaking as individuals not as representatives of the recipient.
- Recipient attorneys may not represent clients or client groups in such lobbying activity because they would be engaging in outside practice of law if they did so.<sup>1</sup> Recipient attorneys may only speak for themselves when doing lobbying on their own time.
- Recipient staff may not engage in direct or grassroots lobbying if they are on official travel being paid for with recipient funds.

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<sup>1</sup>The outside practice of law regulation, 45 CFR 1604, sets out what can and cannot be done by attorneys employed full time by a legal services program receiving LSC funds.

Recipient board members may, on their own time, lobby, engage in grassroots lobbying, form and participate in coalitions, prepare information materials or action alerts, and generally undertake whatever is necessary to support or oppose welfare reform legislation. However, board members may not use recipient stationary or recipient resources when engaging in direct or grassroots lobbying activity.

Private attorneys participating in PAI plans may, on their own time, engage in all of the activities necessary to lobby about welfare reform or related issues.

Clients and client councils may engage in direct and grassroots activities, so long as they are not using recipient funds or resources. If they are using recipient funds or resources, the same restrictions apply to clients as apply to recipient staff.

***Listen up Legislators!  
(and regulators, too)***

How to effectively advocate to  
advance your policy positions

Brian Lindberg and Fay Gordon  
National Academy of Elder Law Attorneys

# **Public Policy and Advocacy-**

**It's Your Right *And*  
the Right Thing To Do!**

# Public Policy

- Problem is identified
  - Do people in power want to address the problem?
- Solution is proposed
  - Who are the people (stake holders) affected?
- Debate / discussion about which course of action to pursue
  - Who has the loudest voice / most leverage?

# How to Navigate the U.S. Senate

## Things to Remember:

- “Greatest Deliberative Body”
- Everyone is Equal
- Seniority Rules
- Relationships Matter

# How to Navigate the U.S. House of Representatives

## Things to Remember

- Speaker Power
- Committees
- Tea Party Movement Power
- Relationships Matter

How to engage in a  
successful dialogue  
with your legislator

# Congressional Staff You May Meet with

- District staff
- Chief of Staff or AA
- Legislative Director
- Legislative Assistant or Aide
- Legislative Correspondent
- Fellow or Intern
- Committee staff

# Requesting a meeting

- Ask for a 30 minute meeting, but accept 15 minutes
- Make sure to get staffer's name, title, office address, and room number

# Preparing for the meeting

- Prepare ahead of time – have your points ready
- Limit group to < 5 people
- Decide who will say what and designate one person to “chair” the meeting, make introductions, and draw it to a close
- Find out the legislator’s areas of interest and try to make a connection with your own
- Familiarize yourself with current events in Congress
- Before the meeting, send a confirmation by email re-stating your name, affiliation, and date and time of meeting

# What to bring to your meeting

- Talking points about the issues you want to address
  
- Leave Behinds:
  - Description or list of what you are asking for
  - Business Card
  - Short explanation of your work or organization
  
- Bring a Photo ID

# How to frame the issue

- Think locally – explain the impact your organization has on constituents in the legislator's state or district
- Relate the legislator's own work on a committee or task force, or on a piece of legislation, to your organization

# During the Meeting I

- Introduce yourself, your affiliations, and work
- Briefly explain your reason for the visit
- Limit your discussion to one or two topics
- Outline basic facts but don't talk down or be condescending
- If you don't know the answer to a question, don't make it up. Offer to find out and send information back to the office later.

# During the Meeting II

- Acknowledge that your issue of interest is one of many issues facing Congress.
- Acknowledge what the Member of Congress has done on your issue.
- Humanize the issue: share your personal story and give concrete examples of how the issue affects constituents or the state or district.

# Closing the Meeting

- Decide in advance what you hope to get out of the meeting: sponsorship of a bill, support in committee, a floor speech, a vote, or issue awareness.
- Don't forget to clearly repeat this request at the end.  
Ex: " I am hoping that you will support the Chairman's request for a 50% increase in authorization levels for Title III supportive services in the Older Americans Act."
- If the meeting is with a Member of Congress, ask her or him directly if s/he will support your request. If it is with a staff member, be direct and ask for confirmation of the Member's position in writing.

**Tips and suggestions  
for successful  
administrative  
advocacy**

# Administrative Advocacy

- As important as legislative advocacy
- Think of the components of policy:
  - Federal law
  - State law
  - Administrative and agency interpretations that implement the law
  - Judicial interpretations of the law
- After legislation is passed, state or federal administrative agency must implement the law

# Administrative Advocacy: Implementation

- Implementation of the law takes the form of:
  - Regulations
  - Guidance from agencies
  - Consumer materials: notices, explanations, etc.
- As advocates, you want to be sure your interpretation of the law matches the way the agency enacts the law. This is administrative advocacy.

# Administrative Advocacy

## ■ What you can do:

### – Stay informed:

- Become involved in a coalition with other groups with a similar mission and share intelligence
- Attend webcasts and briefings to stay current on the status of regulations
- Track proposed rules and regulations (for example, read the Federal Register, sign up for the agency's mailing list or follow them on Twitter)

# Administrative Advocacy

- What can you do:

- Comment on proposed regulations:

- An agency is not required to consider the comments submitted by advocates

- However, if you collaborate with other groups, you may strengthen your voice. You can draw an agency's attention and influence the final regulation.

- Write to the agency and voice your concerns

***Any questions?***