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The Department of Health and Human Services  
Elder Justice Coordinating Council  
2012-2014 Report to Congress

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1   DISCLAIMER: These White Papers reflect the opinions and thoughts of the authors as submitted to the Elder Justice Coordinating Council. They do not represent the interests or positions of the Elder Justice Coordinating Council nor any of the federal agencies that are members of the Council. The Council has reviewed these White Papers and has taken their contents under advisement, but does not endorse nor adopt these papers wholly or in part as representing the policies or positions of the federal government.

## EXECUTIVE SUMMARY

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Title XX of the Social Security Act, Subtitle B, the Elder Justice Act of 2009, establishes the Elder Justice Coordinating Council (Council) within the Office of the Secretary of the Department of Health and Human Services (DHHS). The purpose of the Council is to make recommendations to the Secretary of DHHS on the coordination of elder justice activities within DHHS, the Department of Justice (DoJ), and other federal, state, and local entities. The Council was initially convened by DHHS Secretary Sebelius on October 11, 2012, and is comprised of 12 federal agencies.

The Council is required to submit a report to Congress every two (2) years describing the accomplishments and activities of the Council and making recommendations for Congressional action as the Council deems appropriate. As the statutorily-named Chair of the Council, the Secretary of DHHS has prepared this report to satisfy the requirement. This report contains the following:

- Summary of activities undertaken by the Council since convening on October 11, 2012, including the development of the recommendations for federal action;
- Highlights of the elder justice activities and accomplishments of the Council's member agencies from 2012-2014; and
- Written statements and white papers from experts, stakeholders, and the public on those areas they perceive as needing federal involvement to address gaps and barriers.

From 2012 to 2014, the Council met five times and produced eight recommendations for federal action to address elder abuse, neglect, and financial exploitation. The Council believes the recommendations represent a focused, but well-balanced, approach for establishing greater federal leadership in the area of elder justice and for improving the federal response to elder abuse, neglect, and exploitation. These recommendations for federal action fall into two categories and address a broad range of elder justice issues important to stakeholders and constituents:

### **Improve the Response to Elder Abuse, Neglect, and Exploitation**

*Recommendation 1:* Support the Investigation and Prosecution of Elder Abuse Cases

*Recommendation 2:* Enhance Services to Elder Abuse Victims

*Recommendation 3:* Develop a National Adult Protective Services System

*Recommendation 4:* Develop a Federal Elder Justice Research Agenda

### **Improve Awareness and Prevention of Elder Abuse, Neglect and Exploitation**

*Recommendation 5:* Develop a Broad-Based Public Awareness Campaign

*Recommendation 6:* Promote Cross-disciplinary Training on Elder Abuse

*Recommendation 7:* Combat Elder Financial Exploitation, including Abuse by Fiduciaries

*Recommendation 8:* Improve Screening for Dementia and Cognitive Capacity, Financial Capacity, and Financial Exploitation

# INTRODUCTION

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## REPORT OF THE SECRETARY DETAILING THE ACTIVITIES OF THE ELDER JUSTICE COORDINATING COUNCIL FOR 2012-2014

As Required by  
Title XX of the Social Security Act, Subtitle B, the Elder Justice Act of 2009

### OVERVIEW OF THE PROBLEM

Elder abuse is a substantial public health and human rights problem. Available prevalence data suggest that at least 10 percent (or 5 million) of older Americans experience abuse each year, and many of them experience it in multiple forms.<sup>1</sup> In addition, data from Adult Protective Services (APS) agencies show an increasing trend in reports of elder abuse,<sup>2</sup> despite estimates that as few as 1 in 14 cases of elder abuse,<sup>3</sup> and 1 in 44 cases of financial exploitation,<sup>4</sup> come to the attention of authorities.<sup>5</sup>

The term “elder abuse” is used generally as an umbrella term to include physical abuse, neglect, financial exploitation, sexual abuse, and emotional/psychological abuse. Some states and federal statutes also include the concepts of abandonment of an elder by a person who has assumed a duty to care, isolation, and self-neglect.<sup>6</sup> Legal definitions of these terms vary from state to state, and there is no consistently used definition by researchers or at the federal level. The Elder Justice Act defines the following terms<sup>7</sup>:

- Abuse: “the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm”;
- Exploitation: “the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets”;
- Neglect: “(A) the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder; or “(B) self-neglect”;
- Self-neglect: “an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including— (A) obtaining essential food, clothing, shelter, and medical care; (B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or (C) managing one’s own financial affairs.”

Elder abuse results in a wide range of negative health impacts, including the increased likelihood of injury and chronic health conditions, both of which significantly impact health care

expenditures. On average, older people have more chronic diseases and access the health care system at higher rates than other age groups. Older adults who are victims of violence have additional health care problems and higher premature mortality rates than non-victims. Older victims of even modest forms of abuse have dramatically (300 percent) higher morbidity and mortality rates than non-abused older people.<sup>8</sup> Research has also demonstrated that older adults who are victims of violence have more health care problems than other older adults, including increased bone or joint problems, digestive problems, depression or anxiety, chronic pain, high blood pressure, and heart problems.<sup>9</sup>

Victims of elder abuse also have significantly higher levels of psychological distress and lower perceived self-efficacy than older adults who have not been victimized.<sup>10</sup> For older victims of sexual violence the negative health impacts of abuse are even more pronounced. One study found that 12.7 percent of older women in the study group reported a history of sexual assault, all of whom experienced significantly increased risks of breast cancer and arthritis. Also, those who experienced repeated violence were up to four times more likely to develop these chronic conditions than women who were never abused.<sup>11</sup>

Older victims of violence not only access the health care system more often than non-victims, they also incur higher health care expenditures. In a 2012 report, the Agency for Healthcare Research and Quality estimated from the most recent available data that \$1.9 trillion, or 16 percent of the U.S. gross domestic product, was spent on health care. It was estimated that \$6,280 was spent per person, but that individuals with chronic health problems generate the greatest financial burden on the health care system and account for a disproportionate amount of overall spending. The elderly (age 65 and over) consumed 36 percent of total U.S. Personal health care expenses in 2002, and the average health care expense was \$11,089 per year. Of all conditions, trauma ranked as the second most expensive condition in terms of total health care spending.<sup>12</sup>

Considering these factors together (higher utilization rates of healthcare services by older adults, higher rates of chronic conditions for victims of abuse, and higher treatment costs for both trauma and chronic conditions) we are faced with both an economic and a public health imperative to prevent elder abuse, neglect, and exploitation. As the elderly population in the US continues to rise, comprising 20 percent of the total US population by 2029, we are likely to see more people impacted by abuse, neglect, and exploitation.<sup>13</sup>

There is a significant lack of evidence and data about effective methods and practices to prevent elder abuse, despite growing knowledge about the scope of the problem and the growing body of evidence on the negative impacts of abuse. Not only is there a dearth of tested prevention models, but interventions that incorporate multiple service components, as well as multidisciplinary teams, are also generally lacking across states and communities. This has been widely noted in a range of studies, including by the National Research Council, the Institute of Medicine, the U.S. Government Accountability Office, and the Centers for Disease Control and Prevention.<sup>14</sup>

### **THE ELDER JUSTICE ACT**

Title XX of the Social Security Act, Subtitle B, the Elder Justice Act of 2009 (EJA), was signed into law on March 23, 2010 to address weaknesses in federal and state responses to elder abuse, as well as gaps in the literature, outlined above. The EJA contains a number of provisions, including to:

- Improve and enhance adult protective services programs,

- Enhance the long-term care ombudsman program, and
- Receive reports of crimes in long-term care facilities.

In addition, the EJA establishes the Elder Justice Coordinating Council. The purpose of the Council is to make recommendations to the Secretary for the coordination of activities of the DHHS, the Department of Justice (DoJ), and other relevant federal, state, local, and private agencies and entities, relating to elder abuse, neglect, and exploitation and other crimes against elders.

The Secretary of DHHS is identified as the Chair of the Council, and the Attorney General, or a designee, is identified as a permanent member. Other members of the Council are to be federal department or agency heads identified by the Chair as having responsibilities, or administering programs, relating to elder abuse, neglect, or exploitation. Each member of the Council must be an officer or employee of the federal Government. Current agency membership includes:

- Department of Health and Human Services, Chair
- Department of the Treasury
- Consumer Financial Protection Bureau
- Department of Veterans Affairs
- Corporation for National and Community Service
- Federal Trade Commission
- Department of Housing and Urban Development
- Securities and Exchange Commission
- Department of Justice
- Social Security Administration
- Department of Labor
- U.S. Postal Inspection Service

From October 2012 – September 2014, \$8 million from the Patient Protection and Affordable Care Act supported elder justice activities, including the Council. Competitive grants to states and tribes were awarded to test promising elder abuse prevention intervention strategies, and to conduct an evaluation of the effort. In addition, funds were awarded to design and pilot a national adult protective services reporting system, to provide a national snapshot of the problem of elder abuse as reported to adult protective services agencies. Both of these activities will inform the work of the Council. Funds also supported staff and resource support for the Council.

The Council is required to meet at least twice per year. In addition to the inaugural meeting on October 11, 2012, the Council has held open meetings on May 13, 2013 and September 24, 2013. The Council also met in closed, Executive session on November 5, 2013 and April 25, 2014. Agendas for those meetings are included in [APPENDICES](#).

The Council is required to submit, every two years, a report to Congress describing its activities and accomplishments, and may make recommendations for legislation, model laws, or other action as determined to be appropriate. This report fulfills the statutory requirement for the period October 2012 - September 2014.

## COUNCIL ACTIVITIES & RESULTS

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### OCTOBER 11, 2012 INAUGURAL MEETING

The Council was convened by DHHS Secretary Sebelius on October 11, 2012. At that time, Secretary Sebelius designated Kathy Greenlee, Assistant Secretary for Aging and Administrator for Community Living, as the DHHS delegate and Chair on the Council. Assistant Secretary Greenlee has since continued to serve as the Council Chair. During the inaugural meeting, a select group of experts on elder abuse, neglect, and exploitation was invited to speak on four primary topic areas: Financial Exploitation, Public Policy and Awareness, Enhancing Response, and Advancing Research (*See APPENDICES*). These experts were also asked to submit white papers that detailed the importance of the federal government in addressing specific elder abuse issues and that provided recommendations for federal action in those areas. *Figure 1* summarizes the specific issues the 16 expert panelists addressed in their remarks to the Council and the White Papers. The written remarks and white papers are included in *B*.

Those expert recommendations served as the basis for additional investigation by federal staff on the Interagency Elder Justice Working Group (EJWG) into the current state of knowledge within the field of elder justice on the particular issues raised by the experts. The EJWG compiled information on best and promising practices for primary, secondary, and tertiary prevention; empirical evidence from peer-reviewed research; approaches used in related disciplines; and information about where gaps exist in the collective knowledge about elder abuse, neglect and exploitation. The EJWG further refined the expert suggestions into nine proposals with accompanying steps for federal action. The proposals were subsequently presented at two Council meetings that took place in May and September 2013.

### MAY 2013 MEETING

On May 13, 2013, Assistant Secretary for Aging Kathy Greenlee was joined by Acting Associate Attorney General Tony West in convening the 2013 Spring Council meeting. The agenda for this meeting included EJWG member presentations of proposals for federal action to address elder abuse, neglect, and exploitation (*See APPENDICES*). Nine (9) proposals were presented to the Council. Information on the proposals was organized to provide the Council with a summary of:

- A. Purpose or desired outcome of the proposal;
- B. Current status in the area, including brief background on work federal agencies may already be involved in; and
- C. Next steps for analyzing the proposals for implementation.

Following the presentation at the May 2013 Council meeting, the draft proposals were made publicly available through the website of the Administration for Community Living, along with a mechanism by which the public could provide comments and suggestions about the proposals.

### SEPTEMBER 2013 MEETING

Assistant Secretary for Aging Kathy Greenlee was joined by Associate Attorney General Tony West on September 24, 2013, in convening the 2013 Fall Council meeting. The agenda for this

meeting included presentations by the EJWG; background on, and summary of, the activities since the May 2013 meeting; and discussion on implementation of the nine Elder Justice Proposals (See [APPENDICES](#)). In developing implementation strategies for each of the nine (9) proposals, the EJWG incorporated comments and directions expressed by the Council, as well as considered input from the advocates and stakeholders.

The meeting, which was open to the public and webcast, included two panels of federal government experts and a listening session for stakeholders and advocates to provide feedback on the nine proposals. To the extent possible, public comments submitted to the website or directly to the Council at the September 2013 meeting were incorporated into the final recommendations.

#### **NOVEMBER 2013 MEETING**

On November 5, 2013, the Council met in a closed, Executive Session to discuss and further refine the proposals. The Council agreed to and adopted a final set of eight recommendations for federal action to combat elder abuse, neglect, and exploitation. These recommendations were provided to and approved by the DHHS Secretary in May 2014, in accordance with the EJA. *Figure 3* summarizes the eight recommendations, which address a broad range of elder justice issues important to stakeholders and constituents.

The Council believes the recommendations represent a focused, yet well-balanced, approach for establishing greater federal leadership in the area of elder justice and for improving the federal response to elder abuse, neglect, and exploitation. These recommendations fully address the statutory charge of the Council, to review how best to enhance coordination at the federal level.

#### **APRIL 2014 MEETING**

The Council's Spring 2014 meeting was a closed, Executive Session that occurred on April 25, 2014. During this meeting, Council members shared highlights on key elder justice activities of each member agency and discussed ways in which member agencies could advance work on the eight recommendations.

Moving forward, the Assistant Secretary for Aging/Administrator for Community Living, as the DHHS designated Chair, will continue to work with the Council members on implementing the adopted recommendations. In addition, the Council and its member agencies will continue to work to embed and institutionalize the Council's recommendations for increased federal action.



**FIGURE 1. ELDER ABUSE, NEGLECT, AND EXPLOITATION EXPERTS  
PROVIDING TESTIMONY AND WHITE PAPERS TO THE COUNCIL  
AT THE OCTOBER 11, 2012 MEETING**

**PANEL ONE - FINANCIAL EXPLOITATION**

Paul Smocer, President, BITS, The Financial Services Roundtable

- Challenges faced by the *financial services industry* in addressing financial exploitation of customers

Paul Greenwood, Deputy District Attorney, Head of Elder Abuse Prosecutions, San Diego County, California

- *Cross-jurisdictional* financial exploitation

Erica Wood, Senior Attorney, American Bar Association Commission on Law and Aging

- *Representative payee* abuse/misuse

**PANEL TWO - PUBLIC POLICY & AWARENESS**

Kay Brown, Director of Education, Workforce, & Income Security, U.S. Government Accountability Office

- *GAO efforts and findings* on federal elder justice activities and system gaps

Hillary Tsumba, Director, Reingold, Inc.

- Need for increased *public awareness efforts*, including discussion on marketing, framing the issue, and addressing challenges

Robert Blancato, National Coordinator, Elder Justice Coalition

- *Leveraging national partners*: how can the federal government encourage and catalyze national attention to the issue and foster better public/private partnerships in increasing attention and efforts?

Marie-Therese Connolly, Senior Scholar, Woodrow Wilson International Center for Scholars

- What can federal agencies do to more fully *integrate elder justice activities* and considerations into all appropriate programs, including into federal work on domestic violence?

**PANEL THREE - ENHANCING RESPONSE**

William Benson, National Policy Advisor, National Adult Protective Services Association

- Need for standardized *adult protective services* definitions, standards, training, and data collection

Lori Stiegel, Senior Attorney, American Bar Association Commission on Law and Aging

- Improved legal/justice system response by the *judicial system* and *civil legal services*

Patricia Banks, Presiding Judge of Elder Law and Miscellaneous Remedies Division, Cook County, Illinois

- Improved legal/justice system response by the *courts*

Page Ulrey, Senior Deputy Prosecuting Attorney, King County, Washington

- Improved legal/justice system response by *prosecutors* and *law enforcement*

Laura Mosqueda, MD, Director of Geriatrics, University of California, Irvine School of Medicine

- How the federal government can encourage and facilitate the development of more *multidisciplinary team responses*?

#### **PANEL FOUR - ADVANCING RESEARCH**

Robert Wallace, MD, MSc, Director, Center on Aging, Department of Epidemiology, University of Iowa

- *Priority research topics* on elder abuse

Mark Lachs, MD, Director, Center for Aging Research and Clinical Care, Weill Cornell Medical College

- *IRB/ethics issues* related to elder abuse research, including research involving individuals with cognitive impairment

Ying-Ying Yuan, Ph.D., Walter R. McDonald Associates, Inc.

- Measuring prevalence of elder abuse versus the need for ongoing *surveillance*, with lessons learned from child welfare.

Xinqi Dong, MD, MPH, Director, Rush Institute for Healthy Aging, Rush University Medical Center

- Need to incorporate more *community, culture, and diversity considerations* into efforts to understand, prevent, and address elder abuse

**FIGURE 2. INDIVIDUALS PROVIDING WRITTEN COMMENTS TO THE COUNCIL**

1. Fran Coleman, private citizen
2. Rev. Dr. Anne Marie Hunter, Director, Safe Havens Interfaith Partnership Against Domestic Violence
3. Donald Goodnow, President, Conference of State Court Administrators
4. Myra Kirkland, JD, Investigators' Office, Dallas County Probate Courts
5. Kathleen Quinn, Director, National Adult Protective Services Association
6. Robert Salmon, Certified Fraud Examiner
7. Joe Snyder, Chair, National Adult Protective Services Association's Public Policy Committee
8. Chief Justice Myron Steele, President, Conference of Chief Justices, Conference of Chief Justices
9. Karl Urban, Director, Performance and Policy Development, Adult Protective Services, Texas Department of Family and Protective Services

**FIGURE 3.** Recommendations for Increased Federal Involvement in Addressing Elder Abuse, Neglect, and Exploitation

### **IMPROVING RESPONSE**

**Recommendation 1: Support the Investigation and Prosecution of Elder Abuse Cases**

Support the investigation and prosecution of elder abuse, neglect, and financial exploitation cases by providing training and resources to federal, state, and local investigators and prosecutors.

**Recommendation 2: Enhance Services to Elder Abuse Victims**

Support and protect elder abuse victims by improving identification of elder abuse and enhancing response and outreach to victims.

**Recommendation 3: Develop a National Adult Protective Services (APS) System**

Develop a national APS system based upon standardized data collection and a core set of service provision standards and best practices.

**Recommendation 4: Develop a Federal Elder Justice Research Agenda**

Establish a coordinated research agenda across federal agencies to identify best practices for prevention of and intervention in elder abuse and elder financial exploitation.

### **IMPROVING AWARENESS AND PREVENTION**

**Recommendation 5: Develop a Broad-Based Public Awareness Campaign**

Develop a comprehensive, strategic, and broad-based national public awareness campaign, with clear and consistent messaging to raise awareness and understanding of elder abuse, neglect, and exploitation.

**Recommendation 6: Cross-disciplinary Training on Elder Abuse**

Develop training to educate stakeholders across multiple sectors and disciplines on preventing, detecting, intervening in, and responding to elder abuse, neglect, and exploitation.

**Recommendation 7: Combat Elder Financial Exploitation, including Abuse by Fiduciaries**

Prevent, detect, and respond to elder financial exploitation through federal enforcement activities, policy initiatives, coordination, oversight, and education, and by collaborating with industry to enhance fraud detection and provide resources for victims.

**Recommendation 8: Improve Screening for Dementia, Cognitive Capacity, Financial Capacity, and Financial Exploitation**

Improve the ability of APS and first responders to screen for diminished capacity, diminished financial capacity, and vulnerability to or victimization of financial exploitation.

## **PARTICIPANT AGENCY ACCOMPLISHMENTS**

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Agencies represented on the Council also have staff attend the Elder Justice Interagency Working Group (EJWG). The EJWG is an informal group that brings together federal staff responsible for carrying out elder justice activities including elder abuse prevention, research, grant and program funding, and prosecution. This group meets to support the Council, as well as to discuss emerging issues, promising practices, and mechanisms for coordinating efforts throughout the federal government. Listed below are programs, initiatives, and/or activities relevant to elder justice within each of the participating agencies compiled in May of 2013 and updated in September 2014.

### **UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **ADMINISTRATION FOR COMMUNITY LIVING**

The Administration on Aging (AoA), within the Administration for Community Living (ACL), manages a portfolio of programs for the protection of vulnerable adults. This portfolio consists of several distinct but complementary programs designed to prevent, detect, and respond to elder abuse, neglect, and exploitation. In 2010, under the leadership and direction of the Assistant Secretary for Aging, AoA/ACL engaged in a strategic planning process to develop specific targets for the agency's elder justice portfolio and activities. Six (6) Strategic Objectives were identified covering the areas of health, prevention, research and data collection, financial exploitation, promoting national recognition of elder abuse, and integrating elder abuse awareness and prevention into AoA/ACL core programs. Below are highlights of specific accomplishments for each of those priority objectives under AoA/ACL core programs.

#### **PREVENTION OF ELDER ABUSE**

Much of ACL's work is to leverage opportunities to develop and promote policies and programs that focus on preventing elder abuse, neglect, and exploitation.

##### *Older Americans Act Formula Grants*

The Prevention of Elder Abuse and Neglect program provides formula grants to states for training and education and promoting public awareness of elder abuse. The program also supports state and local elder abuse prevention coalitions and multi-disciplinary teams. These activities are important elements of AoA/ACL's enhanced focus on elder justice. The program coordinates activities with state and local adult protective services programs (over half of which are directly administered by State Units on Aging) and other professionals who work to address issues of elder abuse and elder justice. AoA/ACL supports these grants by providing technical assistance to states on specific issues and challenges that arise in the operation of the grants, as well as by providing guidance in the development and review of their state plans on aging.

- In order to strengthen State-level focus on elder justice activities, the AoA/ACL has requested States to describe their leadership in this area in their FY2014 State plans. AoA/ACL provided written instruction, technical assistance, and training to States on planning for elder justice activities in their State planning process in the fall 2012. In addition, AoA/ACL elder rights staff reviewed previous plans submitted by states, and

provided feedback via the Regional Office staff, suggesting areas for improvement in the forthcoming plans.

- To raise awareness of state-level support for federal elder abuse prevention initiatives, AoA/ ACL Regional staff presented to various statewide audiences in Illinois (Statewide Annual Elder Rights Conference), Iowa (Statewide Elder Abuse Summit), Wisconsin (Midwest Service Coordinators Symposium) and Minnesota (SUA Strategic Planning Meeting).

#### *National Center on Elder Abuse (NCEA)*

AoA/ACL also funds the [National Center on Elder Abuse \(NCEA\)](#). The NCEA provides relevant information, materials, and support to enhance state and local efforts to prevent and address elder mistreatment. The NCEA makes available news and resources; collaborates on research; provides consultation, education, and training; identifies and provides information about promising practices and interventions; answers inquiries and requests for information; operates a listserv forum for professionals; and advises on program and policy development. NCEA also facilitates the exchange of strategies for uncovering and prosecuting fraud and scams targeted at seniors.

- In FY 2013, The NCEA partnered with the Eldercare Locator to produce a consumer guide, [Protect Your Pocketbook: Tips to Avoid Financial Exploitation](#), to help facilitate discussions with older adults around strategies to prevent financial exploitation. The guide was distributed nationally, and has received considerable media attention, including numerous stories highlighting prevention of elder financial exploitation.

#### *National Adult Protective Services Resource Center*

In response to the growing need for APS programs to improve investigation and response, train APS staff, and develop and disseminate best practices for interventions into reported incidents of elder abuse, neglect, and exploitation, in FY 2011 AoA/ACL established the first ever federal grant program to provide a [National APS Resource Center \(NAPSRC\)](#). The goal of the NAPSRC is to provide current and relevant information and support to enhance the quality, consistency, and effectiveness of APS programs across the country. The NAPSRC works to enable state APS programs to enhance their critical role in responding to elders and adults with disabilities who are facing abuse, neglect, and exploitation.

- In partnership with the Urban Institute, the NAPSRC is working to establish a baseline of survey data on the structure, organization, funding, and function of state and local APS programs will inform future national developments in APS and information sharing and partnerships within and among state programs.

#### *National Adult Mistreatment Reporting System (NAMRS)*

Recognizing the lack of consistent national data on adult mistreatment, ACL, in partnership with the DHHS Office of the Assistant Secretary for Planning and Evaluation, launched a two-year effort to design and pilot a national reporting system based on data from state APS agency information systems. The design of the system will be based upon input from state agencies, as well as other stakeholders in the field of adult mistreatment. A state working group will be convened to assist in the planning of this system. Future participation in the reporting system will be voluntary and on an annual basis. Data on the mistreatment of older adults and adults

with disabilities as addressed by APS agencies will be included. Though not all mistreatment is reported to APS, incidents that are reports to APS are important sources of information, which can inform the public and advance public awareness of this most critical problem. This project was funded in September 2013 by ACL at \$1.2 million, which ACL received from the FY 13 Prevention and Public Health Fund (PPHF), and continues through September 2015.

- In September 2013, in partnership with the Office of the Assistant Secretary for Planning and Evaluation, ACL launched the development of a national APS data collection system, a ground-breaking effort that will provide the mechanism for the first-ever collection of APS data on an on-going basis, and respond to recommendations from the GAO. The information will be invaluable in understanding the experiences of abuse for individuals that are in contact with APS, and will serve to inform the development of better and more targeted prevention and intervention efforts.

#### *Elder Abuse Prevention Intervention Grants*

In FY 2012, ACL received \$5.5 million from the PPHF to test and evaluate comprehensive approaches to preventing elder abuse. This prevention project will focus on evaluating replicable best practices in support of the development of secondary and tertiary prevention and intervention strategies. Using the results of these prevention projects, AoA/ACL will develop a compendium of best practices and lessons learned that APS programs across the nation can use to improve their programs. The project period is September 2012 – September 2015.

#### *IOM Forum on Global Violence Prevention*

AoA/ACL has supported the [IOM Forum on Global Violence Prevention](#) since FY 2010 by providing \$10,000 per year in funding for Forum Activities. Each year, the Forum conducts two (2) workshops. AoA/ACL has repeatedly advocated for a workshop focused on the international problem of elder abuse, neglect, and exploitation.

- The Institute of Medicine’s Forum on Global Violence Prevention on April 18-19, 2013 focused on elder abuse. This has the potential to greatly improve the legitimacy for, and momentum toward, more research in the field of elder abuse, neglect, and exploitation.

#### *Late Life Domestic Violence*

For many years, AoA/ACL has been a member of the DHHS Violence Against Women (VAW) Steering Committee. The VAW Steering Committee has the responsibility for coordinating the DHHS response to issues related to violence against women and their children, and also coordinates DHHS violence-related activities with those of other federal agencies. AoA/ACL’s participation ensures that the interests of older women victims are represented in the Committee’s work. In addition to participating on the DHHS VAW Steering Committee, AoA/ACL has partnered with a number of federal and non-governmental organizations to promote the inclusion of older women in responses to domestic violence.

- As a result of AoA/ACL’s work on global elder abuse, AoA/ACL was included in reviews of UN documents related to violence against women. AoA/ACL successfully advocated for the inclusion of older women in the reports: “[Challenges and Achievements in the Implementation of the Millennium Development Goals for Women and Girls](#)” (UN Commission on the Status of Women), as well as for special mention of the need to

address older women's issues in a dialogue at the UN Human Rights Council with the Special Rapporteur on Violence Against Women.

- AoA/ACL participated in the [DHHS Symposium on Intimate Partner Violence](#) (December 2013), ensuring that older adults and adults with disabilities were included in the discussions of how to develop effective guidelines for health practitioners to screen for IPV and provide patients with appropriate counseling.
- In partnership with CDC, AoA/ACL has worked to fund the development and execution of a pilot elder abuse module to add to the National Intimate Partner and Sexual Violence Survey (NISVS) in order to annually assess the prevalence of elder abuse, neglect, and exploitation.

### *Legal Assistance and Elder Abuse*

Legal assistance and elder rights programs under Title III-B of the Older Americans Act (OAA) are instrumental in addressing the harmful consequences of elder abuse including financial damage caused by exploitation and fraud. With the rapidly increasing aging population creating unique demands on existing service delivery systems, the need to have aging services, legal services, and elder abuse prevention and response networks working cohesively together to protect the rights of older persons will become even more critical. Legal services provided under Title III-B, Section 321, of OAA are part of the essential core of AoA/ACL's legal assistance and elder rights programs. There are approximately 1,000 OAA-funded legal services providers nationwide, which provide over one million hours of legal assistance per year. Legal services under Title III-B can protect older persons against the direct challenges to independence presented by elder abuse. These cases involve complex legal issues which may include: cases of financial exploitation, fiduciary abuses, and consumer fraud; cases of physical abuse; and cases of neglect/self-neglect.

### *National Legal Assistance and Elder Rights Projects*

[National Legal Assistance and Elder Rights Projects \(NLAERP\)](#) grants comprise a comprehensive national legal assistance support system for aging and legal service providers and advocates, including those involved in addressing elder abuse. Currently, five (5) organizations in partnerships comprise the National Legal Resource Center which provide case consultation, training, technical assistance, and other informational resources to both aging and legal networks. Elder abuse is a priority legal subject matter area addressed by the NLRC.

- Notable legal training events conducted by the National Legal Resource Center (NLRC) in 2012-2014 that have addressed legal issues associated with elder abuse prevention include: legal issues impacting persons with Alzheimer's disease, guardianship accountability, undue influence in elder abuse, abuse in later life, and elder financial exploitation.
- In 2012-2013, as part of the National Alzheimer's Plan, the National Legal Resource Center implemented a four-part webinar series for aging and legal providers on working with clients with diminished capacity (Alzheimer's/dementia), [including clients experiencing abuse and financial exploitation](#).



### *Model Approaches to Statewide Legal Assistance Systems*

Since 2006, AoA/ACL has conducted the Model Approaches to Statewide Legal Assistance Systems (Model Approaches) grant program, designed to promote the development of integrated legal services delivery systems that coordinate the efforts of the Legal Assistance Developer, Title III-B legal providers, senior legal helplines, private bar pro bono activities, law school clinics, and self-help sites to ensure maximum impact from limited resources.

- A new series of Model Approaches demonstration grants, entitled Model Approaches – Phase II, were offered to states in 2013. A major objective of Model Approaches - Phase II is to promote the creation of well integrated and cost effective legal service delivery systems that are more responsive to complex legal issues emerging from cases of elder abuse, neglect, and financial exploitation. The grants are promoting new partnerships between legal providers, Ombudsman, Adult Protective Services, and other essential elder rights entities. Partnerships also include AAA/ADRCs, Alzheimer’s programs, and State Courts involved in overseeing guardianship conservatorship, and financial institutions.

### *Long-Term Care Ombudsman Program*

States’ Long-Term Care Ombudsman Programs serve residents of long-term care facilities (nursing homes, board and care, assisted living and similar settings) and work to resolve resident problems related to poor care, violation of rights, and quality of life. Ombudsmen also advocate at the local, state and national levels to promote policies and consumer protections to improve residents’ care and quality of life.

AoA provides federal leadership and administers OAA formula grants for states to operate their Office of State Long-Term Care Ombudsman Program. Each state, plus the District of Columbia, Puerto Rico and Guam, has an Office of the State Long-Term Care Ombudsman, headed by a full-time State Long-Term Care Ombudsman who directs the program statewide. In most states, the Office of the State Long-Term Care Ombudsman is housed within the State Unit on Aging or another state agency. In others, the Office is housed in a private non-profit agency.

Training and technical assistance are provided to state and local ombudsmen by the AoA- funded National Long-Term Care Ombudsman Resource Center, operated by the National Consumer Voice for Quality Long-Term Care. The resource center website is <http://www.ltombudsman.org>. The site includes state and local ombudsman contacts and other resources.

- ACL/AoA’s National Ombudsman Resource Center (NORC) has developed [training materials related to misuse of anti-psychotics](#). The NORC also held a [training webinar](#) on this topic.
- The [National Ombudsman Resource Center \(NORC\)](#) partnered with the National Center on Elder Abuse to provide training at the 2014 State Ombudsman Training Conference regarding the elder abuse. NORC developed and published the [“Technical Assistance Guide: Responding to Allegations of Abuse: Role and Responsibilities of Long-Term Care Ombudsmen.”](#)

Residents' Rights Month is an annual event designated by the Consumer Voice and is celebrated in October to honor residents living in all long-term care facilities, including nursing homes, sub-acute units, and assisted living, board and care, and retirement communities. The 2013 Residents’ Rights Month theme was “Speak Out Against Elder Abuse.” A packet of information

and resources was made available for free to interested parties from the National Ombudsman Resource Center and information about elder abuse prevention was highlighted leading up to and throughout the month. Residents were invited to contribute to “The Resident’s Voice” about elder abuse and prevention.

Long-term care ombudsmen provide person-centered support for residents who are victims of alleged abuse, neglect, and financial exploitation. In most states, the Ombudsman programs are not the primary finder of fact in order to substantiate allegations of abuse. However, they coordinate with adult protective services, regulatory agencies, law enforcement agencies, long-term care facilities, and others to prevent abuse, to resolve resident complaints, and to strengthen responses when abuse is substantiated.

- In order to prevent consumer fraud related to long-term care facility selection, AoA/ACL and its National Ombudsman Resource Center organized a discussion between State LTC Ombudsmen and the Federal Trade Commission (FTC) regarding misleading consumer activities by long-term care placement and referral agencies (2011). FTC’s work on this issue resulted in two enforcement actions with placement agencies in September 2012.
- AoA/ACL collects information on Long-Term Care Ombudsman program complaint resolution work through the National Ombudsman Reporting System (NORS). In FY 2013, Ombudsman programs worked to resolve more than 17,000 complaints related to abuse, gross neglect, or financial exploitation of long-term care facility residents.
- AoA/ACL published a Notice of Proposed Rulemaking for States’ Long-Term Care Ombudsman Programs in 2013, which proposed a number of provisions related to resolution of abuse-related complaints. For example, the proposed rule would clarify the Ombudsman program role in resolving abuse-related complaints as well as requirements related to abuse reporting and disclosure of resident identifying information. Additionally, the proposed rule would emphasize the role of State Units on Aging in providing elder justice coordination and leadership. AoA/ACL is currently working to finalize the rule.
- In order to assist the Aging Network to better understand the appropriate and distinct roles and responsibilities between adult protective services and Long-Term Care Ombudsman Programs, AoA/ACL and its Resource Centers developed training on APS and LTCO coordination and distinct characteristics in coordination with [NASUAD in September 2012](#).

#### *Senior Medicare Patrol (SMP) Program*

Since 1997, ACL has led a national program to provide Medicare beneficiaries information on protecting themselves against fraud, errors, and abuse within the Medicare system. The program mission is to empower and assist Medicare beneficiaries, their families, and caregivers to prevent, detect, and report healthcare fraud, errors, and abuse through outreach, counseling, and education. ACL funds 54 Senior Medicare Patrol (SMP) statewide projects (each state, Guam, Puerto Rico, U.S. Virgin Islands and D.C.) with funds authorized in the Older American Act and the Health Care Fraud and Abuse Control (HCFAC) Wedge. SMP projects recruit and train volunteers to educate Medicare beneficiaries on how they can detect and prevent fraud, errors, and abuse in Medicare.

The program is supported by The [National Consumer Protection Technical Resource Center](#) (the Center). The Center, established in 2003, provides technical assistance, support, and training to

the SMP projects, ensuring a fully consolidated national approach to reaching Medicare and Medicaid beneficiaries. The goal of the Center is to provide professional expertise and technical support, serve as an accessible and responsive central source of information, and maximize the effectiveness of the SMP projects in healthcare integrity outreach and education. The Center, a grantee, has been instrumental in supporting ACL efforts to forge national visibility for the SMP program.

- During FY 2012, ACL and DHHS/OIG continued a collaborative effort to help ensure SMP referrals of beneficiary complaints of potential fraud are received by law enforcement in a timely fashion. This has included development of processes for SMP referral of beneficiary complaints to the DHHS/OIG hotline, including mechanisms for capturing outcomes related to these referrals. In addition, a workgroup between ACL and DHHS/OIG meets regularly to review potential fraud cases for submission to the OIG hotline.
- In order to enhance the work of State-level Medicaid Fraud Control Units (MFCU) in responding to patient abuse, OIG revised its standards (released June 2012). OIG adopted Office of the Long-Term Care Ombudsman (LTCO) comments designed to support state-level coordination with LTCO and APS programs.
- To promote elder abuse awareness training among nursing home staff, AoA/ACL participated with CMS in creating and distributing the “[Hand in Hand](#)” [training curriculum](#). The ACA mandated that DHHS develop elder abuse prevention and dementia training for nursing facility staff. The training curriculum was distributed in the fall of 2012.
- In an effort to prevent abuse and neglect, Congress has provided for improved screening of formal caregivers in in-home and facility settings (through the Elder Justice Act). AoA/ACL has collaborated with CMS on the development and implementation of a national background check program through grants to states.

#### **PROTECTING THE RIGHTS OF ELDERS FROM TRIBAL COMMUNITIES: OFFICE FOR AMERICAN INDIAN, ALASKAN NATIVE AND NATIVE HAWAIIAN PROGRAMS (OAIANNHP)**

##### *National Indigenous Elder Justice Initiative*

In 2011, AoA/ACL awarded funds to establish the [NCEA National Indigenous Elder Justice Initiative \(NIEJI\)](#). The NCEA NIEJI will begin to address the lack of culturally appropriate information and community education materials on elder abuse, neglect, and exploitation in Indian Country. Some of the undertakings of the initiative will include establishing a resource center on elder abuse to assist tribes in addressing elder abuse, neglect, and exploitation; identifying and making available existing literature, resources, and tribal codes that address elder abuse; and developing and disseminating culturally appropriate and responsive resources for use by Tribes, care providers, law enforcement and other stakeholders.

- With other federal partners and key stakeholders, AoA/ACL contributed to the “Elder Justice Roadmap,” a DoJ project to develop a research agenda of specific research gaps and needs in elder abuse, including elder abuse in Indian Country.

### *National Title VI Training and Technical Assistance Conference and Tribal Consultation*

The Older Americans Act Sec. 201 (c)(3)(H) directs the Director of the Office for American Indian, Alaskan Native, and Native Hawaiian Aging to "develop and provide technical assistance and training programs to grantees under Title VI." The [National Title VI Training and Technical Assistance Conference](#) and Tribal Consultation serve this purpose. Additionally, Older Americans Act Sec. 203A requires the Assistant Secretary for aging to "consult and coordinate with... recipients of grants under title VI in the development of Federal goals, regulations, program instructions, and policies under this Act." Each national conference includes a "Tribal Consultation session" with an ACL leader that fulfills this function.

The Conference in 2013 included sessions on Elder Abuse as well as discussion regarding program directors' concerns around the area of elder abuse in their communities. More attention was given to this area at the 2014 National Title VI Training and Technical Assistance Conference and Tribal Consultation in Washington, DC from August 18 – 21, 2014. Tribal Elder Abuse Prevention Intervention Projects include:

- At the end of FY2012 ACL awarded three Tribal Elder Abuse Prevention Intervention projects through the PPHF funds received. Each of the Tribal Organizations will develop screening tools as well as providing training and education to elders, caregivers, and those working with these populations. The Poarch Band of Creek Indians have also developed a multidisciplinary team to help move forward their project and provide guidance on how best to address issues of elder abuse within their community.

### **FINANCIAL EXPLOITATION: IMPROVING THE RECOGNITION, REPORTING, AND RESPONSE TO ELDER FINANCIAL ABUSE**

- AoA/ACL has collaborated with Wells Fargo Advisors to develop training materials targeted to the aging network and at APS professionals. Announced at the World Elder Abuse Awareness Day event in 2012, this work inspired similar efforts and interest from other financial institutions during the period covered by this report.
- AoA/ACL met with the CFPB to discuss coordinated efforts to address financial exploitation. This partnership continues to enhance the federal response to financial exploitation through the Elder Justice Coordinating Council.
- Through conversations with SSA and SSA-OIG on improving coordination and collaboration between aging networks, APS, and Ombudsman on financial fraud investigations involving Representative Payees, SSA-OIG agreed to explore opportunities to facilitate information exchange and training for aging and protective service networks.
- AoA/ACL Office of Elder Rights staff presented information on federal efforts to combat financial abuse at the American Bankers Association conference and the National Aging and Law conference.
- AoA/ACL partnered with the CFPB in its development of a [guide for the prevention of elder financial exploitation affecting older adults in congregate settings](#).

### *Pension Counseling and Retirement Planning*

Thousands of individuals reach retirement age each year, only to be told that they cannot receive the benefits that they expected. Since 1993, the AoA/ACL Pension Counseling projects have helped older adults access information about their retirement benefits and negotiate with former employers and pension plan administrators for due compensation. Monetary recoveries have helped people achieve and maintain financial security, which has increased their independence and decision making. AoA/ACL currently funds 6 regional counseling projects covering 29 states, and a [National Pension Assistance Resource Center](#), which strengthens the pension counseling skills and capacities of the AoA/ACL Pension Counseling projects, state units on aging (SUA), and area agencies on aging (AAA).

### *National Education and Resource Center on Women and Retirement Planning*

The [National Education and Resource Center on Women and Retirement Planning](#) was established through a cooperative agreement with the Women's Institute for a Secure Retirement (WISER). The mission of the Center is to provide women with access to a one-stop gateway that integrates financial information and resources for retirement, health, and long-term care planning with Older Americans Act Programs. Often, programs such as OAA Nutrition and Supportive Services Programs become critical to the retirement security of older women. And, as more and more women are returning home from military services, reaching out to women veterans. Through the Center, WISER is making user-friendly financial education and retirement planning tools available to traditionally hard-to-reach women. This includes average and low income women, women of color, women with limited English speaking proficiency, women living in rural areas, and other under-served women.

## **PROMOTING NATIONAL RECOGNITION OF ELDER ABUSE PREVENTION**

AoA/ACL has participated in, and organized the planning of, national and international awareness events to increase the recognition of elder abuse, neglect, and exploitation and the importance of addressing it across the full spectrum of national public, private, and nonprofit entities, including health systems.

### *World Elder Abuse Awareness Day*

World Elder Abuse Awareness Day (WEAAD) was launched on June 15, 2006 by the International Network for the Prevention of Elder Abuse and the World Health Organization, and officially recognized by the United Nations in 2011. The purpose of WEAAD is to provide an opportunity for communities around the world to promote a better understanding of abuse and neglect of older persons by raising awareness of the cultural, social, economic, and demographic processes affecting elder abuse and neglect. In addition, WEAAD is in support of the United Nations Madrid International Plan of Action on Ageing, acknowledging the significance of elder abuse as a public health and human rights issue. WEAAD serves as a call-to-action for individuals, organizations, and communities to raise awareness about elder abuse, neglect, and exploitation.

- World Elder Abuse Awareness Day 2012 included an event at the White House with high ranking officials, including the DHHS Secretary, the Deputy Attorney General, and the Director of CFPB, in attendance. The event featured multiple announcements from public and private participants. The featured announcements were \$6 million for state and tribal elder abuse prevention intervention grants and the establishment of the Elder Justice Coordinating Council from the EJA

- For World Elder Abuse Awareness Day 2013, AoA/ACL partnered with the U.S. Department of State to coordinate a World Elder Abuse Awareness Day observance at the United Nations in New York. ACL joined with representatives from Canada, the European Union, and Malawi in highlighting the magnitude of the problem and calling for global attention to address elder abuse.
- For World Elder Abuse Awareness Day 2014, AoA/ACL created a [World Day “microsite”](#) with resources, tools, and information for planning and observing World Elder Abuse Awareness Day, as well as providing an opportunity for organizations around the country to pledge to [“Collaborate!”](#) on increasing public awareness and a [WEAAD Event Calendar](#) listing events and observances for elder abuse prevention and awareness around the country.

#### *Promoting the Health Response to Elder Abuse*

AoA/ACL worked with SAMHSA, CDC, and NIH/NIA to incorporate elder abuse screening into the CMS proposed rule on annual wellness visits. Together, the agencies made major progress toward a goal – physician screening for elder abuse – important to the advancement of the field.

- As a result of this outreach, CMS convened an Elder Mistreatment Symposium in March 2013 specifically aimed at revising the existing elder abuse PQRS measures to include a recommendation for elder abuse screening, including preferred screening tools that could be used, as well as protocol for handling suspicions of elder abuse.
- AoA/ACL designed an [awareness and training campaign](#) to teach oral health service providers and office staff how they can play a vital role in identifying elder abuse through screening.

#### *Other Awareness Efforts*

- AoA/ACL convened a meeting with leaders and national trade groups from the various service sectors with a role in addressing elder abuse to stress importance of addressing the issue and to discuss best practices for collaboration.
- Elder abuse screening will be included in the training for the new Options Counseling grant program. Options Counseling is a person-centered, person-directed decision support process whereby individuals are supported in their deliberations to make informed, long-term support choices in the context of their own preferences, strength, and values. Screening for elder abuse in Options Counseling was encouraged in the ADRC/Options Counseling program announcement, and approximately half of grant awardees included plans for elder abuse screening in their proposals.

### **ASSISTANT SECRETARY FOR PLANNING AND EVALUATION**

The DHHS Office of the Assistant Secretary for Planning and Evaluation (ASPE) is the principal advisor to the Secretary of the U.S. Department of Health and Human Services on policy development, and is responsible for major activities in policy coordination, legislation development, policy research, evaluation, and economic analysis. Within ASPE, the [Office of Disability, Aging, and Long-Term Care Policy](#) (DALTCP) conducts policy research and analysis

to support the independence, productivity, health, and long-term care needs of children, working age adults, and older persons with disabilities.

Related ASPE Elder Abuse Prevention Activities:

- ASPE is currently involved in the National Adult Mistreatment Reporting System data collection project with ACL.
- ASPE is currently involved in the evaluation of the 2012 ACL Elder Abuse Prevention Grants.
- In 2010, ASPE submitted a report to Congress on the Feasibility of Establishing a Uniform National Database on Elder Abuse. This report was written with input from ACL/AoA, DoJ, CDC, and NIH/NIA. The report outlines the data sources, limitations, and considerations for establishing a uniform database of administrative data on elder abuse.

## **CENTERS FOR DISEASE CONTROL AND PREVENTION**

### **DIVISION OF VIOLENCE PREVENTION (DVP)**

#### *Elder Abuse Surveillance: Uniform Definitions and Recommended Data Elements*

CDC's Division of Violence Prevention is finalizing development of a surveillance document to promote national level surveillance of elder abuse to provide data for use in setting priorities and making other decisions regarding prevention efforts.

#### *Fatal Elder Maltreatment Surveillance Pilot Project*

CDC is working on a pilot project that links National Violent Death Reporting System (NVDRS) data with state Adult Protective Services (APS) data to capture details of violent deaths due to elder abuse. It also links "natural" death vital statistics data for the elderly to assist in understanding circumstances for violent death. This may inform prevention by increasing knowledge about the precursors of violent death and injury as a result of elder abuse.

#### *Inclusion of questions on physical, sexual, and psychological violence by any perpetrator among adults aged 70 and older in the National Intimate Partner and Sexual Violence Survey (NISVS)*

A small number of elder abuse related questions (on physical, sexual, and psychological violence) were administered, as a limited pilot test, in the first year of the National Intimate Partner and Sexual Violence (NISVS) survey data collection. Since most violence against older adults is perpetrated by non-intimate partners, questions for non-intimate perpetrators (e.g., caregivers, friends, those who help with ADLs/IADLs, or relatives other than a spouse) were asked only for persons age 70 and older.

#### *Adult Protective Services (APS) Data Analysis*

Using data from Illinois, regarded as one of the more comprehensive APS systems in the U.S., CDC is analyzing longitudinal data and linking multiple reports. These data will be utilized to provide yet another avenue for understanding risk and protective factors for violent death among older adults.

*A Protocol to Inform Development of an Ongoing, Population-based Survey of Elder Abuse in the United States.*

To establish and monitor changes and trends in the prevalence and incidence of elder abuse and evaluate the effectiveness of intervention strategies, data must be collected on an ongoing basis. To do this efficiently and effectively, it is crucial that proven elder abuse data collection methods be identified, examined for strengths and weaknesses, and configured to create data collection strategies that can support continuous data collection. As a first step towards this larger goal, CDC is supporting work to develop a surveillance protocol to inform development of a robust ongoing, population-based survey of EA in the United States. CDC is specifically working with SciMetrika to complete essential foundational tasks to promote survey-based collection of data on elder abuse experiences. The delivered protocol and its supporting products will:

- Assist stakeholders in navigating the survey surveillance implementation process
- Provide comprehensive, evidence-based guidance to inform decision-making
- Establish the requirements for carrying out such an endeavor, as well as the factors that may influence successful implementation and sustainability.

## **CENTERS FOR MEDICARE & MEDICAID SERVICES**

### **DIVISION OF NURSING HOMES**

*Federal Regulations for Abuse, Neglect, Mistreatment, and Misappropriation of Resident Property*

- CMS plays a major role in protecting nursing home residents from abuse, neglect, and misappropriation of funds. Each year CMS's survey and certification operations conduct about 15,000 full, onsite recertification surveys of nursing homes and approximately 45,000 complaint investigations. In FY2013 CMS issued citations for 454 deficiencies related to these 3 areas, and imposed civil monetary penalties and other enforcement actions.

*Reporting of Crimes in Facilities*

- Section 1150B of the Social Security Act, as established by section 6703 (b)(3) of the Patient Protection and Affordable Care Act of 2010, requires specific individuals in applicable long term care facilities to report any reasonable suspicion of crimes against a resident of that facility. In order to promote timely application, CMS distributed guidance via Survey and Certification Memos to State Survey Agency Directors (S&C: 11-30-NH). The Survey and Certification memos entitled, "Reporting Reasonable Suspicion of Crimes in Long Term Care Facilities" addressed: (1) the obligations of applicable long term care facilities, states, and covered individuals; (2) defined terms included in the Affordable Care Act and other sources; and (3) provided answers to frequently asked questions. In addition, CMS currently responds to Section 1150B-related inquiries and provides guidance and instruction recommendations to internal sources, long term care facilities, states, covered individuals, provider organizations and law enforcement agencies.

*Nurse Aide Training*

- CMS also implemented a national initiative to reduce the use of unnecessary medications, particularly unwarranted use of anti-psychotic medications in nursing homes. The Social Security Act, and CMS nursing home regulations, contain protections for residents against the use of chemical restraints and against unnecessary use of medications. As of the second



quarter of CY2014, the use of anti-psychotic medications in nursing homes in the U.S. declined by 18.8 percent compared to the baseline period before the national initiative (last quarter of CY2011). In September 2014 CMS announced a goal to achieve a 30 percent reduction from the baseline by the last quarter of CY2016.

## **HEALTH RESOURCES AND SERVICES ADMINISTRATION**

### **BUREAU OF HEALTH WORKFORCE (BHW)**

BHW supports the Geriatric Education Centers (GECs), Comprehensive Geriatric Education Programs (CGEPs), Geriatric Academic Career Awards (GACAs), and Geriatric Training for Physicians, Dentists, and Mental and Behavioral Health Professions (GTPD). All of these programs educate health care providers, direct care workers, and/or family and community members in caring for older adults.

Nineteen GECs in California, Oregon, Washington, Iowa, Minnesota, Michigan, New Mexico, Texas, Oklahoma, Kentucky, Tennessee, Alabama, Georgia, North Carolina, New Jersey, Pennsylvania, Washington, D.C., West Virginia, and Maine along with AHECs in 26 states, the District of Columbia and Puerto Rico comprise the Coalition to Prevent Elder Investor Fraud and Financial Exploitation (EIFFE). Between 2009 and 2011, these partners have planned and held 40 continuing education programs that have reached well over 2000 health care professionals who see older patients in their practices. The EIFFE held an additional 28 programs in 2012, and doubled the number of health care professionals who screen their older patients for medical/social conditions that place them at greater risk of being defrauded. A web-based version of the program was launched in 2013. Attendees are given a Clinician's Pocket Guide and a Patient Education Brochure.

An additional eighteen GECs provided 49 continuing education offerings on elder justice to 5721 health care professionals in 2012 (latest available data). Nine CGEP grantees offered fifteen programs on elder justice to 1,722 direct care workers and healthcare professionals in 2012 (latest available data). Six recipients of the GTPD award taught eight courses on elder justice to 652 physicians and dentists. Finally, four GACA fellows developed curricula on elder abuse. Four curricula were designed for medical professionals and students, and reached 205 participants in 2012 (latest available data). One of the curricula was developed for paramedics and emergency medical technicians, and was offered to 60 learners in 2012 (latest available data).

All grantees of the geriatrics programs continue to develop and disseminate curricula and single offerings on elder justice to a wide variety of learners.

### **OFFICE OF WOMEN'S HEALTH**

HRSA's Office of Women's Health and Bureau of Health Workforce worked in collaboration with the Administration for Community Living/Administration on Aging to develop an infographic around World Elder Abuse Awareness Day (June 15, 2014), noting the disparate impact on older women. The Infographic aligned with the Department and White House recognition of this observance.

## NATIONAL INSTITUTES OF HEALTH

### **NATIONAL INSTITUTE ON AGING (NIA)**

NIA continues to fund unsolicited research applications and several ongoing research studies devoted to elder mistreatment, providing approximately \$1,000,000 of funding each year. Examples of such research projects include:

- A scientific investigation about the social and neural bases of vulnerability to financial fraud (AG034416: Shelley Taylor);
- Aggression inflicted on and by residents in long term care facilities (AG014299: Mark Lachs);
- An epidemiological study of sources and consequences of psychological distress, such as mistreatment, for elders in a community-dwelling Chinese population (AG042318: XinQi Dong);
- A newly initiated research study on the neurological basis of financial decision-making errors which render people with Alzheimer's disease and frontotemporal dementia vulnerable to financial exploitation (AG043553: Winston Chiong).

NIA is also providing funding support for two research training programs aimed at cultivating the next generation of elder abuse researchers:

- Dr. Mark Lach's (AG022399) patient oriented research training program for Medical students, Residents and Fellows, and Junior Faculty at Weill Cornell Medical College and Columbia University and for junior investigators in his national mentorship program;
- And, Dr. Linda Meurer's (AG029793) 12 week summer research training program for first and second year medical students at the Medical College of Wisconsin.

With support from the Administration for Community Living, NIA is adding assessments of verbal, physical, and financial elder mistreatment to the National Social Life, Health and Aging Project (NSHAP), a longitudinal study of social relationships and health in older persons led by Dr. Linda Waite (AG043538).

There have been multiple scientific publications in the peer reviewed literature resulting from the 2006 and 2007 solicitations as well as from other NIA funding of elder mistreatment research. For example, in research exploring psychological factors which may contribute to susceptibility to fraud, Castle, et al. (PNAS. 2012; 109: 20848–20852) found that older adults perceive untrustworthy faces to be significantly more trustworthy and approachable than younger adults and that this difference might result from age-related changes in the neural processing of facial cues of trustworthiness. Underscoring that the elderly are vulnerable to abuse in a variety of settings, findings documented in another publication show that resident-to-resident aggression in Nursing Homes and long term care facilities is manifested in the invasion of privacy and personal integrity, roommate issues, intentional verbal aggression, unprovoked actions, and inappropriate sexual behavior (Pilemar et al. Gerontologist. Feb 2012; 52(1): 24–33). Understanding the potential for such aggression to result in serious detrimental outcomes for residents, researchers developed an intervention for nursing staff in long term care facilities, which was shown to be effective in enhancing knowledge, recognition and reporting of resident-to-resident elder mistreatment (Teresi et al., Int J Nurs Stud. 2013 May;50(5):644-56).

Two other recent publications present evidence to suggest that elder abuse has potentially important economic implications, as it is associated with both increased rates of hospitalization (Dong and Simon, JAMA Intern Med. 2013;173(10):911-917) and admission to Skilled Nursing Facilities (Dong and Evans: Gerontology. 2013;59:464-472). In 2011, the Gerontological

Society of America (GSA) chose Dr. Xinqi Dong as the 2011 recipient of the Maxwell A. Pollack Award for Productive Aging. Dong's publication, "Elder Abuse: Research, Practice, and Health Policy; The 2012 GSA Maxwell Pollack Award Lecture" was recently published in *The Gerontologist* (2014 Apr;54(2):153-62). NIA anticipates that publications reporting results from grants funded by the Institute will continue to appear in the scientific peer reviewed literature and make significant contributions to the nation's understanding of elder mistreatment.

## **HHS OFFICE OF WOMEN'S' HEALTH**

In December 2013, the HHS OWH, in collaboration with the HHS Coordinating Committee on Women's Health, co-sponsored the Department's Symposium on Intimate Partner Violence. The Symposium focused on the recommendations of the U.S. Preventative Task Force for screening of domestic violence, and included sessions targeted at the special issues of older adults and adults with disabilities. For 2014, there are currently no Elder Justice focus activities being planned.

## **UNITED STATES DEPARTMENT OF JUSTICE**

### **ACCESS TO JUSTICE INITIATIVE**

The Access to Justice Initiative (ATJ) addresses the access-to-justice crisis in the criminal and civil justice system, irrespective of wealth and status. The Initiative's staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers. ATJ collaborated with the Elder Justice Initiative and the Office of Victims of Crime to support the development of an online training for legal aid offices to detect and address elder abuse, neglect, and exploitation.

### **CIVIL DIVISION**

#### **ELDER JUSTICE AND NURSING HOME INITIATIVE**

The Elder Justice Initiative coordinates and supports the Department of Justice's law enforcement and policy activities on elder justice issues. The Initiative plays an integral role in the Department's investigative and enforcement efforts against nursing homes and other long-term care entities that deliver grossly substandard care to Medicare and Medicaid beneficiaries by providing attorney and investigator training, helping to identify and fund subject matter experts and investigative consultants, and facilitating regular calls with United States Attorneys' Offices and other law enforcement partners to discuss emerging legal trends and developments. The Initiative also works closely with all the Justice Department components to develop and advance elder abuse and financial exploitation policy both within the Department and as part of federal Interagency Working Groups.

In September, the Elder Justice Initiative launched the Elder Justice Website located at [www.justice.gov/elderjustice](http://www.justice.gov/elderjustice). The Elder Justice Website serves as a resource for elder abuse prosecutors, researchers, practitioners, and for victims of elder abuse and their families. This

website also serves as a forum for law enforcement and elder justice policy communities to share information and enhance public awareness on the subject matter.

#### **FRAUD SECTION, COMMERCIAL LITIGATION BRANCH**

In addition to housing the Elder Justice and Nursing Home Initiative, the Fraud Section investigates False Claims Act allegations, including claims that nursing homes and other long term care providers billed the government for “worthless services” provided to Medicare and Medicaid beneficiaries.

#### **CONSUMER PROTECTION BRANCH, COMMERCIAL LITIGATION BRANCH**

The Consumer Protection Branch focuses on fraud on the elderly as part of a broader emphasis on fraud on vulnerable populations and has successful prosecutions and pending investigations concerning a number of frauds targeting the elderly, including reverse mortgage fraud scams and lottery scams. This is in addition to enhancing public education through collaboration with other organizations such as the AARP.

### **CIVIL RIGHTS DIVISION**

#### **SPECIAL LITIGATION SECTION**

The Special Litigation Section enforces the Civil Rights of Institutionalized Persons Act (CRIPA) by protecting residents of publically-owned or –operated residential facilities such as LTC facilities. This Division enforces CRIPA and monitors implementation of remedial measures to eliminate conditions that might lead to abuse, neglect, undue restraint, and inadequate care.

The Civil Rights Division also enforces the integration mandate of the Americans with Disabilities Act (ADA), which requires that people with disabilities, including many vulnerable elders, not be needlessly segregated in institutions. The Supreme Court's decision in *Olmstead v. L.C.* ensures that people with disabilities can receive services in the most integrated setting appropriate to their needs. The Division works with state and local government officials; disability rights groups and attorneys around the country; and other federal agencies, including the Department of Health and Human Services, to end the unnecessary segregation of people with disabilities in institutional residential settings, and in work and day programs used by many vulnerable elders.

### **CRIMINAL DIVISION**

#### **FRAUD SECTION**

The Fraud Section prosecutes mass-marketing fraud cases and identity-theft cases that target senior citizens. These include internationally operating fraud schemes that target seniors in the United States with fraudulent promises of lottery or sweepstakes prizes. The Section also chairs national and multinational working groups that foster coordination and information-sharing between law enforcement agencies on fraud and identity theft, including foreign-based fraud schemes that target seniors.

## **UNITED STATES ATTORNEY’S OFFICES**

The U.S. Attorneys are the chief federal law enforcement officers in their districts, responsible for federal criminal prosecutions and civil cases involving the United States Government. There are 94 United States Attorney’s offices nationwide. The United States Attorney’s Offices aggressively prosecute fraud schemes targeting the elderly – from Ponzi schemes, to what are known as “grandparent schemes,” “lottery schemes,” “affinity fraud,” “phantom debt,” and other “strike it rich” scams.

## **FEDERAL BUREAU OF INVESTIGATION**

The Financial Crimes Section investigates various financial frauds, to including securities fraud and mass marketing fraud perpetrated on the elderly are often victims. The FBI works closely with our international, federal, state, and local partners to investigate these crimes. The FBI also works with these partners to provide training and to educate potential victims of fraud scams targeting the elderly. The FBI has Legal Attaches stationed in U.S. embassies worldwide to facilitate investigations with an international nexus. The FBI has partnered with the National White Collar Crime Center (NW3C) to establish the Internet Crime Complaint Center (IC3) to receive Internet related criminal complaints. These complaints are reviewed and referred to federal, state, local, or international law enforcement, and/or regulatory agencies for appropriate investigation.

## **OFFICE OF INSPECTOR GENERAL**

The Office of Counsel to the Inspector General and the Office of Investigations work closely with DOJ’s Fraud Section, Commercial Litigation Branch, to investigate False Claims Act allegations, including claims that nursing homes and other long term care providers billed the government for “worthless services” provided to Medicare and Medicaid beneficiaries. The Office of Counsel also negotiates and monitors Corporate Integrity Agreements (CIAs) with providers found to have provided “worthless services.” The CIAs focus on the providers’ implementation and improvement of robust quality systems designed to prevent, detect, and remediate quality of care issues.

## **OFFICE OF JUSTICE PROGRAMS**

### **BUREAU OF JUSTICE ASSISTANCE (BJA)**

BJA’s mission is to provide leadership and services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities. BJA supports programs and initiatives in areas of law enforcement, justice information sharing, and protecting vulnerable populations. BJA has routinely supported projects to help protect the elderly. Some are listed below.

#### *Elder Abuse Toolkit for the Courts*

A grant to the National Center for State Courts created a “toolkit” to increase awareness and improve court responses to elder abuse, neglect, and exploitation.

*Pocket Guide on Legal Issues Related to Elder Abuse*

BJA produced a “Pocket Guide” template for state and local justice system professionals for ultimate use throughout the U.S.

*Improving Public Safety – Responding to Today’s Emerging Trends*

BJA created and disseminated public education materials and provides training for law enforcement agencies on “Responding to Caretaker Abuse of Seniors and Preventing Crime Against Seniors.”

**BUREAU OF JUSTICE STATISTICS (BJS)**

The mission of the Bureau of Justice Statistics is to collect, analyze, publish, and disseminate information on crime, criminal offenders, victims of crime (including the elderly), and the operation of justice systems at all levels of government. Below are several elder-justice related projects in which BJS is engaged.

*National Crime Victimization Survey (NCVS)*

The National Crime Victimization Survey (NCVS) is the nation's primary source of information on criminal victimization. Each year, data on the frequency, characteristics, and consequences of criminal victimization in the United States are obtained from a nationally representative sample of nearly 160,000 persons residing in about 90,000 households. The survey enables BJS to produce estimates of violence and property crime committed against all persons 12 or older as a whole as well as for specific demographic subgroups, such as the elderly. In addition, the NCVS generates estimates of victimization for persons with disabilities, which includes many elderly victims. Data from the U.S. Census Bureau's American Community Survey (ACS) and the 2000 U.S. Standard Population are used to estimate age-adjusted victimization rates from the NCVS.

*Identity Theft Supplement (ITS) to the National Crime Victimization Survey (NCVS)*

BJS conducts an Identity Theft supplement to the National Crime Victimization Survey (NCVS) that describes the prevalence and nature of identity theft, defined as the unauthorized use or attempted use of existing accounts, or the unauthorized use or attempted use of personal information to open a new account or for other fraudulent purposes. This study describes how the personal information was obtained, financial losses due to identity theft, victim reporting to credit bureaus and police, and the impact of identity theft on victims' lives and provides a more complete picture of crime committed against persons 16 or older, including the elderly.

*Assessment of Administrative Data on Elder Abuse, Mistreatment and Neglect (EAMN)*

The EAMN project is designed to assess the feasibility of using administrative data collected by Adult Protective Services (APS) agencies for examining cases of abuse, mistreatment, and neglect of the elderly and adults with disabilities reported to APS. During the first phase of the project, state APS representatives provided information about the structure of APS agencies in their respective states and on the types of data on EAMN cases uniformly collected and maintained at the state agency level. The second phase of the project will collect more detailed information about data recorded by state administrative data systems on a set of key indicators on EAMN cases, including the proportion of APS cases referred to the criminal justice system for further processing. Lessons learned from the project will be used to assess the suitability of

using administrative data from Adult Protective Services as the basis for a statistical system to generate national estimates of abuse, mistreatment, and neglect of the elderly and adults with disabilities.

#### *Criminal Victimization of Persons with Disabilities Residing in Group Quarters (CVGQ)*

The CVGQ project was undertaken to design and pilot test a nationally-representative survey specifically designed to measure victimization of persons with disabilities residing in group quarters, such as skilled nursing facilities, group homes for adults, other board and care facilities, and domestic violence shelters. The project will identify the challenges associated with surveying non-institutional group quarters populations on a routine basis as part of BJS' ongoing National Crime Victimization Survey.

#### *King County, Washington Elder Abuse Prosecution Data Collection Project*

This data collection is a pilot effort to assess the feasibility of collecting data on elder abuse cases from the administrative records of courts and prosecutors. Data are currently being collected on a census of cases involving victims age 60 or older filed by the King County Prosecuting Attorney's Office between 2008 and 2012. The data collected includes details on the nature of the victimization and other incident-based characteristics specific to the type of case being examined, information about the victim and the defendant, and data on court proceedings from initial hearing through sentencing, when applicable. Along with court data, information is being collected on the reasons why the prosecutor declined to pursue a case for prosecution, when applicable.

#### *National Survey of Victim Services Organizations*

The NSVSO is a multi-phased effort to establish a national statistical system with information on victim service organizations (VSO), including data on the characteristics of VSOs, the types of victims they serve, and the types of services they provide. Phase I is a brief census, to be administered to more than 20,000 VSOs nationwide. The purpose of the census is to collect basic information about the organization's staffing, funding, types of services provided and types of victims served, including elderly victims of physical or sexual abuse and financial exploitation. Phase II will be the administration of a detailed survey to a nationally representative sample of VSOs, in order to collect more detailed information on the characteristics of victims served and how providers are organized to provide those services. Data from both phases of the NSVSO will be used in conjunction with data from BJS's National Crime Victimization Survey and the FBI's Uniform Crime Reporting System and National Incident-Based Reporting System to identify gaps in the provision of services to crime victims.

### **NATIONAL INSTITUTE OF JUSTICE (NIJ)**

The National Institute of Justice (NIJ) is the research, development, and evaluation agency of the U.S. Department of Justice. NIJ's mission is to strengthen science and advance justice. The agency provides objective, independent, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the state and local levels.

NIJ supports an active portfolio of research grants on elder abuse, neglect, and exploitation that is at the cutting edge of applied information on elder mistreatment. Examples of completed work include a study of "bruising" as a forensic marker of elder physical abuse; a study that used phone interviews to obtain a national one-year point estimate of the prevalence of various types

of abuse, neglect, and financial exploitation; the development of a validated risk assessment tool for Adult Protective Services (APS); and research on the conceptualization and operationalization of financial exploitation and psychological abuse. Findings from NIJ's completed research projects can be found on the [elder abuse topic webpage](#).

NIJ has solicited the field for research on elder abuse, neglect, and exploitation for nine of the past 10 years. Between 2005 and 2013, NIJ funded 26 research projects totaling approximately \$10.2 million. Some notable ongoing studies include an evaluation of the Forensic Center model; an implementation evaluation of a computerized system for elder abuse screening, treatment and referral decisions in Adult Protective Service (APS) agencies in Illinois; and a study examining the differences in forensic markers of physical abuse between abused and non-abused elders.

Over the past several years, NIJ has hosted a series of webinars providing forums for discussion on findings related to forensic markers of elder abuse, the incidence and prevalence of elder mistreatment, and innovative partnerships between practitioners and researchers. In addition, in 2013, NIJ published "[Understanding Elder Abuse: New Directions for Developing Theories of Elder Abuse Occurring in Domestic Settings](#)," a 40-page *Research in Brief*. The publication was followed by a recent meeting of researchers to encourage the use of theory in elder abuse research.

## **OFFICE OF VICTIMS OF CRIME (OVC)**

Established in 1988 through an amendment to the Victims of Crime Act (VOCA) of 1984, OVC is charged by Congress with administering the Crime Victims Fund (the Fund). The Fund supports a broad array of programs and services that focus on helping victims in the immediate aftermath of crime and continuing to support them as they rebuild their lives. The Fund is also used for training, technical assistance, and other capacity-building programs designed to enhance the ability of victim service providers and allied practitioners to support victims of crime in communities across the Nation. OVC's formula and discretionary funding has supported projects and efforts such as the following:

### *Curricula and Training Videos*

Over the years, OVC has supported/produced curricula and training videos used by a variety of professionals who are involved in cases of elder abuse, neglect, and financial exploitation or may interact in some capacity with victims of elder abuse (including nurses, physicians and medical students, law enforcement, judges, and corrections personnel).

In 2014, OVC released online training modules on elder abuse for legal aid attorneys. Four modules address the following topics: What Every Legal Services Lawyer Needs to Know About Elder Abuse; Practical and Ethical Strategies; Domestic Violence and Sexual Assault; and Financial Exploitation. Additionally, the Academy for Professional Excellence at San Diego State University of Social Work has completed and soon will release several training modules on elder abuse topics for adult protective services workers, developed with OVC funding. Among those first released will be modules entitled Risk Assessment of Victims of Elder Abuse, Voluntary Case Planning for Adult Protective Services/Elder Abuse, Elder Sexual Abuse, and Physical and Developmental Disabilities.



### *Financial Fraud and Abuse Fellowship*

In FY 2012, OVC began supporting a 3-year visiting fellowship focusing on financial fraud and abuse, with a major focus on elder financial exploitation. Under the fellowship, Shelly Jackson, Ph.D., currently supports OVC's efforts to develop and enhance resources for victim services professionals and allied practitioners on addressing financial fraud, elder financial exploitation, and polyvictimization in later life.

### *National Crime Victims' Rights Week (NCVRW) Resource Guide*

Each year, OVC produces the NCVRW Resource Guide to help communities and victim assistance providers promote awareness of crime victim issues. The online Resource Guide includes educational content and campaign materials such as customizable public awareness posters. In 2013 one of the posters addressed elder financial exploitation and in 2014 one of the posters raised awareness about elder abuse generally.

### *Assistance to Victims of Crime*

OVC supports formula grants to states to support direct assistance to victims of crime at the local level including victims of elder abuse.

### *Training and Technical Assistance for Victim Service Providers*

In addition, through its Training and Technical Assistance Center, OVC supports capacity building for professionals who serve victims of crime, including victims of elder abuse.

## **OFFICE OF VIOLENCE AGAINST WOMEN (OVW)**

Created in 1995, the mission of the Office on Violence Against Women (OVW) is to provide federal leadership in developing the nation's capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking. The Enhanced Training and Services to End Abuse in Later Life Program was established by Congress to address the unique barriers to receiving assistance faced by individuals 50 years of age or older who are victims of violence against women. Through this program, OVW has supported the development of national curricula for law enforcement, prosecutors, and courts to enhance their ability to recognize, address, investigate, and prosecute cases of elder abuse, neglect, and exploitation. Since 2006, OVW has provided grant funding to over 60 communities to:

- Provide training to criminal justice professionals, governmental agencies and victim assistants to enhance their ability to address elder abuse, neglect and financial exploitation in their communities;
- Provide cross training to professionals working with older victims.
- Develop or enhance a coordinated community response to abuse in later life; and
- Provide enhanced services for victims who are 50 years of age or older.

## **OFFICE OF COMMUNITY ORIENTED POLICING SERVICES (COPS)**

The Office of Community Oriented Policing Services (COPS) advances the practice of community policing in America's state, local and tribal law enforcement agencies through the COPS Office Grant Programs and Funding. In addition, the COPS Office provides essential information in the form of best practices for law enforcement, Problem-Oriented Policing (POP)

Guides addressing crime-related problems, and publications composed by subject matter experts within the federal government, academics, and law enforcement leaders. In 2004 COPS published a guide entitled *Financial Crimes Against the Elderly Problem-Oriented Guide for Police*.

## **CONSUMER FINANCIAL PROTECTION BUREAU**

The Consumer Financial Protection Bureau (“CFPB” or “Bureau”) was established under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). To create a single point of accountability in the federal government for consumer financial protection, the Dodd-Frank Act consolidated many of the consumer financial protection authorities previously shared by seven federal agencies into the CFPB and provided the Bureau with additional authorities to:

- Conduct rulemaking, supervision and enforcement with respect to the federal consumer financial laws;
- Handle consumer complaints and inquiries;
- Promote financial education;
- Research consumer behavior; and,
- Monitor financial markets for risks to consumers.

## **OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS**

This Office is the only federal office solely dedicated to the financial well-being of older Americans. It works to:

- Ensure that seniors have the information they need to make sound financial decisions, and
- Help seniors, their family members, caregivers, and the professionals who assist them to identify and avoid unfair, deceptive, abusive, and discriminatory practices that target older Americans.

Accomplishments of the Office include:

### *Managing Someone Else’s Money*

The Office for Older Americans produced four Managing Someone Else’s Money guides to assist people who are managing money or property for a family member or friend who is unable to pay bills or make financial decisions. The Managing Someone Else’s Money guides are aimed at lay people who are responsible for managing someone’s money. This includes agents under powers of attorney, court-appointed guardians and conservators, trustees, and government benefit fiduciaries (Social Security representative payees and Veterans Administration fiduciaries). The guides explain the duties and responsibilities of people acting in each of these fiduciary roles; how to watch out for scams and financial exploitation and what to do if a loved one is a victim; and where to go for help. The guides are [available for download from the Bureau’s website](#). At no charge, single copies or small quantities can be ordered through [Publications.USA.gov](#), and bulk quantities can be ordered through [CFPB Bulk Publications](#). A future phase of this initiative will include the release of state-specific guides for six states (Arizona, Florida, Georgia, Illinois, Oregon, and Virginia), a replication manual for other states, and Spanish versions of the guides.

The guides have been featured in major national media outlets and were included in a family caregiver's kit promoted by Dear Abby in June, 2014. In response to the Dear Abby promotion, 75,399 sets of guides reached consumers. Other federal agencies including the Social Security Administration, Department of Veterans Affairs, Department of Health and Human Services, Federal Trade Commission, and the U.S. Postal Inspection Service have posted the guides or links to the guides on their websites, written blog posts, or included information in e-newsletters. AARP's Caregiving Resource Center has also discussed the guides. Since the guides were released in October 2013, the Bureau has distributed over 450,000 hard copy guides.

#### *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults*

In 2012, financial institution officials raised concerns about whether the privacy provisions of the Gramm-Leach-Bliley Act (GLBA) precluded financial institutions from reporting suspected elder financial abuse. The Office for Older Americans, working in coordination with the CFPB's Office for Supervision Policy, developed interagency guidance for financial institutions to clarify the applicability of privacy provisions of GLBA to their reporting of suspected financial exploitation of older adults. Eight federal regulatory agencies with authority to enforce the privacy provisions of GLBA released the guidance on September 24, 2013. The goal of the guidance is to provide financial institutions more certainty about the legality of reporting suspected abuse. This clarity will facilitate financial institutions' timely reporting of suspected abuse so that law enforcement and Adult Protective Services officials can take appropriate protective action.

The Bureau has launched a nationwide outreach campaign to raise awareness about the guidance and about the importance of reporting suspected elder financial exploitation to appropriate local, state, and federal agencies. The outreach events have included calls with industry, Congressional staff, state agencies and regulators, community groups, and aging advocates; speeches to national organizations; webinars; and presentations to federal interagency groups such as working groups of the Financial Literacy and Education Commission and the Elder Justice Coordinating Council.

The interagency guidance is helping raise awareness of the problem of elder financial exploitation and has influenced activity by financial institutions. For example, following the release of the guidance, the "SeniorSafe" training program for financial institutions in Maine was launched through a collaborative effort between financial institutions and organizations including the Maine Department of Professional and Financial Regulation and the state's Office of Aging and Disability Services— Adult Protective Services.

#### *Older American Protection Networks*

The Office for Older Americans is assisting older American protection networks of state and local governments, elder justice advocates, law enforcement agencies, financial service providers, and other key stakeholders that are working to improve community response to elder financial exploitation. The primary goals of the networks are to increase prevention of, and improve collaboration and response to, elder financial exploitation. The Office for Older Americans staff has been monitoring and participating in network activities such as community education events, and public awareness campaigns and cross-training programs for stakeholders, first responders, advocates, and industry professionals.

To support this effort, Older Americans has launched a project with the Federal Research Division of the Library of Congress to study the activities undertaken by these networks, their

outcomes, and best practices. The study will also inform the creation of a replication guide that communities can use to create a network or to enhance their existing one.

### *Money Smart for Older Adults.*

In June 2013, the CFPB and the FDIC released Money Smart for Older Adults (MSOA), an instructor-led curriculum for the FDIC's Money Smart program to provide older consumers and their caregivers with information on preventing and responding to elder financial exploitation. Older Americans and the FDIC have also developed train-the-trainer materials and offer in-person training sessions for national non-profit organizations and others that express interest in becoming Money Smart Alliance partners. Alliance partners can make presentations to community groups on recognizing and preventing elder financial exploitation. The materials include a PowerPoint, Instructor Guide, and Participant Resource Guide. The Participant Resource Guide presents information about different types of fraud, scams, and exploitation that target older persons and provides tips and warning signs on how to prevent losses and report cases. The Participant Resource Guide is [available for download](#). At no charge, single copies or small quantities can be ordered through [Publications.USA.gov](#), and bulk quantities can be ordered through [CFPB Bulk Publications](#). [Instructor materials](#) are available from the FDIC. In fiscal year 2014, the CFPB distributed over 140,000 copies of the Participant Resource Guide nationwide, including 75,399 distributed through the Dear Abby promotion.

To date, Older Americans has conducted over 20 train-the-trainer sessions. Intermediary organizations that have received the CFPB-FDIC training have launched local, regional, and state training initiatives in North Carolina, New York, Illinois, Ohio, Indiana, and California. To increase the reach of this program, the Bureau and FDIC are working on updating the MSOA content and translating the Participant Resource Guide into Spanish.

### *Research Roundtable*

On April 1, 2013, the CFPB's Office for Older Americans convened a one-day invitational roundtable for academic researchers and representatives of federal partner agencies to focus on elder financial exploitation research. The goals of the Research Roundtable were to:

- Assess the state of research on this topic to date;
- Obtain input from experts on what additional research is needed to advance protections for older Americans against financial exploitation in its myriad forms;
- Generate ideas on appropriate and promising research methodologies; and
- Help the CFPB shape its own research agenda on this topic.

### *Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risks*

On April 18, 2013, the CFPB's Office for Older Americans filed a report and recommendations to federal and state policymakers regarding financial advisers holding senior designations as required under the Dodd-Frank Wall Street Reform and Consumer Protection Act. In recent years, federal and state regulators, financial industry representatives and consumer groups have been reporting that some financial advisers with "senior designations" are targeting older consumers and selling them inappropriate and sometimes fraudulent financial products and services. Financial advisers often use "senior designations" to imply to consumers that they have advanced training or expertise in the financial needs of older consumers. The report found that the names and acronyms of senior designations confuse consumers, there is a wide variety of required training, qualifying exams, and oversight associated with different designations, and that older consumers can be attractive targets for some financial advisers using senior

designations who are marketing various financial products. The recommendations in this report seek to reduce consumer confusion and protect consumers by improving the: (1) dissemination of information and consumer education around senior designations; (2) standards for the acquisition of senior designations; (3) standards for senior designee conduct; and (4) enforcement related to the misuse of senior designations.

The Office for Older Americans released a consumer guide in November 2013 to help older consumers understand the wide variety of designations used by financial advisers to signify expertise in senior financial issues and verify senior designation and certification titles. The guide is available on the [Bureau website](#), and through other federal agencies, non-profit organizations, and consumer organizations nationwide.

#### *Protecting Residents from Financial Exploitation: A Manual for Assisted Living and Nursing Facilities*

In June, 2014, the Office for Older Americans published a guide to help operators of nursing facilities and assisted-living residences protect the people in their care from financial exploitation through prevention and early intervention. The manual is designed for administrators, business office staff, social service personnel, and staff members involved in the admissions process for the facility. The publication provides facility personnel with information they need to identify warning signs of exploitation and a model protocol for intervening to prevent significant losses to victims. The manual is available for download on the [Bureau website](#).

#### *Outreach Efforts*

The Office for Older Americans is engaged in extensive outreach with older consumers and other stakeholders to learn what efforts have been underway to strengthen the financial literacy of older consumers. The Office is also providing information and guidance to organizations that help older consumers protect themselves against unfair, deceptive, and abusive practices and work to strengthen their financial capability with current and future financial choices. In furtherance of these goals, the Office for Older Americans has held or participated in over 220 events, which have been attended by more than 9,500 people during the period from June 2013 through May 2014. The Office's engagement with consumers and stakeholders ranges from in-person presentations across the country to webinars to virtual encounters via email blasts and other social media. Participants have included, among others, older consumers, caregivers, public officials, and representatives from financial institutions, the consumer services industry, consumer organizations, and other stakeholders.

## **FEDERAL TRADE COMMISSION**

The Federal Trade Commission (FTC), through various divisions of its Bureau of Consumer Protection, has focused on strategies to combat unfair, deceptive, abusive, and fraudulent practices that impact older Americans. These strategies include maintaining a strong enforcement presence, developing education materials to promote awareness of frauds that commonly affect older Americans and collaborating with community-based organizations to enhance outreach about the FTC's programs and consumer rights.

For example, the FTC has recently prosecuted scams involving discount prescription services; bogus health insurance plans and Medicare-related fraud; medical alert devices; sweepstakes, prize promotions and lotteries; sham investment opportunities involving timeshare resale and

precious metals; government imposters; business opportunity or work from home programs and bogus fraud protection schemes. The FTC also focuses on identity theft issues involving older Americans, and encourages all Americans to put their numbers on the Do Not Call Registry to help reduce the number of unwanted sales calls they get.

The FTC coordinates its law enforcement initiatives with a broad range of local, state and federal enforcement agencies, participates in information-sharing, case referrals and case generation, and coordinates joint enforcement strategies. For example, in cooperation with Canadian law enforcement authorities, the Commission this year obtained a preliminary injunction against a Montreal-based telemarketer who used a ring of accomplices in the United States to bill elderly consumers for products or services, such as fraud protection and medical prescription benefits, that the defendants never provided. The FTC's involvement in a different joint U.S. – Canada anti-fraud operation resulted in at least ten indictments of people involved in grandparent and other telemarketing scams. Also, as a member of a U.S. – Jamaica taskforce, the Commission supported multiple prosecutions for fake lottery scams that targeted older adults.

Every FTC enforcement action is accompanied by relevant and targeted consumer education in English and Spanish that is shared with websites, the media, libraries, legal services groups, and other community-based organizations for the broadest possible reach. Recent blog posts and consumer education materials address funeral consumers' rights, fake charity callers, scam pitches for medical alert devices and calls from government imposters.

In July 2014, the FTC launched a new fraud education campaign aimed at active older people. **Pass It On** is based on the theory that older adults are part of the solution, not simply the victims of scammers. Older adults are a huge group with life experience and social networks. **Pass It On** acknowledges their experience, expertise, and trusted place in the community. It reinforces what they already know about some common scams, and gives them the tools to start conversations about these scams with a friend, neighbor, or relative. The topics included in the first phase of **Pass It On** are imposter scams, identity theft, fundraising fraud, health care scams, paying too much, and 'you've won' scams.

The materials are short, direct, friendly, and respectful. By design, they do not use frightening, condescending, or complicated language. There's clearly a demand for this approach: orders for 250,000 copies of the materials came in from 49 states in the first four weeks they were available. The FTC is reaching out to older adults where they live and gather — libraries, social and civic clubs, senior centers, adult living communities, and veterans' facilities — and through people who spend time with them. We hope to reach older adults where they shop, too. **Pass It On** campaign materials are free and in the public domain. They are at [ftc.gov/PassItOn](http://ftc.gov/PassItOn); copies are available from [ftc.gov/bulkorder](http://ftc.gov/bulkorder).

The FTC works in conjunction with the AARP Foundation to offer peer counseling to people over age 60 who tell the FTC they've been victims of certain frauds including lottery, prize promotion and grandparent scams. Last year, Foundation peer counselors provided one-on-one advice and guidance to more than a thousand people who accepted a referral from the FTC. Consumers who gave information to the Foundation report they'd lost more than \$15 million.

The FTC also trains advocates and organizations about recognizing, preventing, and reporting financial exploitation of older consumers regardless of the form it takes. In February 2014, the FTC's privacy division staff presented at an AARP webinar on senior identity theft that had an audience of over 1,000 people. The FTC also shares information and consumer education materials with legal services organizations located throughout the country. For example, the

Commission is developing a series of webinars for elder law attorneys, geriatric social workers, legal services attorneys, and university legal clinics on fraud and older people.

## **SOCIAL SECURITY ADMINISTRATION**

### **REPRESENTATIVE PAYEE AND INTERDISCIPLINARY TRAINING PILOT**

The Social Security Administration (SSA) is working on a collaborative interdisciplinary pilot designed to recruit train and support representative payees equipping them with the tools to serve their beneficiaries and better safeguard them against potential abuse and financial exploitation. The project will feature an interdisciplinary training program designed to heighten awareness of the signs of elder abuse and exploitation and effective strategies in working with the banking community to help protect the beneficiaries' assets. Project partners include: Anne Arundel County Maryland Department of Social Services, Administration on Aging, Consumer Financial Protection Bureau, National Adult Protection Services Association, Corporation for National and Community Service, City of Chicago Department of Human Services-Senior Services, and Wells Fargo Hands on Banking and Wells Fargo Foundation.

### **WINGS COLLABORATION**

SSA has joined the Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) effort to help ensure cross communication and strong working relationships with local aging and human services organizations. WINGS groups are court-community partnerships that bring together broad-based and multidisciplinary groups and individuals, including participation from SSA along with judges and court staff, aging and disability networks, mental health agencies, advocacy groups, medical professionals, family members and other individuals affected by guardianship.

### **APS COLLABORATION**

To further strengthen communication, SSA has also begun working more closely with Adult Protective Services (APS) to enhance collaboration between APS and SSA and eliminate gaps in processes that help protect elders from financial fraud and exploitation.

### **2014 WORLD ELDER ABUSE AWARENESS DAY OBSERVANCE**

To further amplify and raise awareness of elder abuse and financial exploitation among seniors and vulnerable adults, SSA hosted a World Elder Abuse Awareness Day observance on June 13, 2014. The purpose of this activity was to broaden SSA staff understanding of this critical issue. The activity included member agencies of the EJCC and also resource exhibits for showcasing federally sponsored elder abuse prevention efforts and initiatives. The event was broadcasted to SSA's more than 1,200 field and regional offices.

## **UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

The role of a service coordinator has the greatest potential for protecting elderly residents from abuse, whether through awareness or through linkages to programs and activities within the community that are intended to prevent elder abuse and exploitation. The Section 202 Supportive Housing for the Elderly, Service Coordinators in Multifamily Housing, and the Resident Opportunity and Self-Sufficiency (ROSS) are the Department's primary programs that support the availability of service coordinators within public and assisted multifamily housing developments. To learn more about these programs visit the [HUD website](#).

### **SERVICE COORDINATORS**

Service coordinators are funded through grants, rental subsidies, and other available resources. The service coordinator's goal is to help residents obtain the necessary supportive services that will foster independent living and support their ability to age in place successfully. This staff person is required to have a strong understanding of matters that affect the well-being of elderly residents; recognize signs of elderly abuse or mistreatment; educate residents and staff within our developments on topics such as elder abuse and exploitation; establish partnerships with entities in the community whose mission is to prevent elder abuse, neglect, and exploitation; and assess residents' needs and if determined necessary, link residents to the appropriate local services and supports that will protect them from abuse. Since services provided by the service coordinator may also be accessed by elderly persons living in the vicinity of the HUD supported development, the impact of the service coordinator is far reaching.

## **UNITED STATES DEPARTMENT OF THE TREASURY**

### **GO DIRECT CAMPAIGN**

The [Go Direct](#) public education campaign is a national campaign aimed at educating federal benefit check recipients on the requirement to switch to direct deposit by March 1, 2013. The Go Direct campaign has been in existence since 2005 and has continued to promote the safety and security associated with direct deposit. Since many older Americans are recipients of payments such as Social Security and are often targeted for financial crimes, the campaign specifically reaches out to this segment of the population with messaging and events focused on crime prevention. This includes Crime Prevention Month as well as National Night Out. Go Direct has over 1,800 partner organizations helping spread the word to the check receiving population including elder Americans. Influential partner organizations include the [National Center on Elder Abuse \(NCEA\)](#). NCEA is a prime example of how the Go Direct campaign spreads the word through the mission of our partner organizations and broadens the reach of our campaign.

### **DIRECT EXPRESS PREPAID CARD PROGRAM**

Treasury's [Direct Express](#) prepaid card program provides federal benefit recipients, including Social Security recipients, the option to receive payments electronically. Sometimes cardholders are subject to phishing attempts designed to collect personal information or compromise Direct Express card accounts. To combat this, Treasury, along with the Direct Express card issuing



bank --- Comerica Bank --- message to cardholders through multiple channels. Late in 2013, we sent informational brochures to all cardholders (4 million) with tips to avoid phishing and reminders that Direct Express will never call asking for personal information. In addition, we take advantage of social media via Twitter to tweet card safety tips. We also have extensive education modules in the Direct Express PayPerks cardholder education program.

### **OFFICE OF THE COMPTROLLER OF THE CURRENCY**

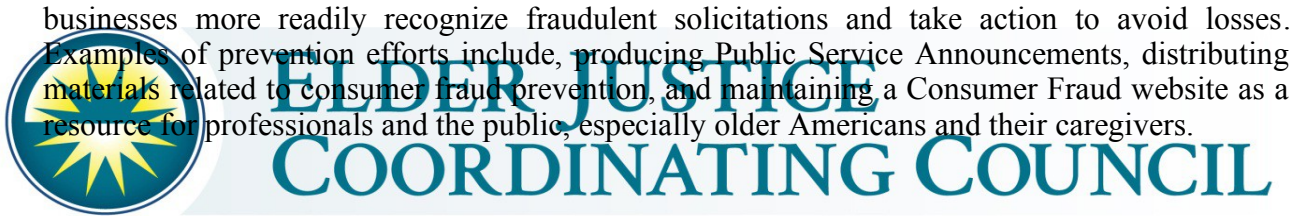
The Office of the Comptroller of the Currency's (OCC) primary mission is to charter, regulate, and supervise all national banks and federal savings associations. The OCC's goal in supervising banks and federal savings associations is to ensure that they operate in a safe and sound manner and in compliance with laws requiring fair treatment of their customers and fair access to credit and financial products.

On September 24, 2013, the OCC along with seven other agencies released the "[Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults](#)." The guidance provides clarification regarding the application of the privacy provisions of the Gramm-Leach-Bliley Act (GLBA). Under this interagency guidance, banks can share nonpublic personal information about consumers with appropriate local, state, or federal agencies for the purpose of reporting suspected financial abuse without the consumer's authorization and without violating the consumer privacy provisions of GLBA. The agencies issued this guidance in recognition of the fact that financial institutions can play a key role in preventing and detecting elder financial exploitation. By issuing this guidance, the regulatory agencies hope that financial institutions' prompt reporting of suspected financial exploitation to adult protective services, law enforcement, and/or long-term care ombudsmen will trigger appropriate intervention, prevention of financial losses, and other remedies.

In addition, OCC organized a "Knowledge Sharing" call for its examiners. The purpose of the call was to discuss financial elder abuse and provide information that may be useful to OCC employees as they carry out the agency's mission, or respond to inquiries from financial institutions. The OCC developed a special internal Web page that provides background information on financial elder abuse, a review of legislation and regulations pertaining to financial elder abuse, and resources. OCC also added a new section, entitled "Elder Financial Exploitation," to its public Financial Literacy Web Resource Directory. The section provides information to financial institutions and consumers about elder financial exploitation and available resources to assist to responding to suspected exploitation.

### **UNITED STATES POSTAL INSPECTION SERVICE**

The U.S. Postal Inspection Service (USPIS), founded in 1731 by Benjamin Franklin to regulate the Post Offices and bring accountability to postmasters, is one of the country's oldest law enforcement agencies. Its mission today is to protect postal employees, infrastructure, and customers; to prevent postal crimes; to enforce laws that defend the nation's mail system from illegal or dangerous use; and to ensure the public's trust in the mail. USPIS investigates a variety of consumer frauds, including investment and lottery fraud that disproportionately victimize the elderly. The USPIS works closely with the Department of Justice in coordinated efforts to combat mass-marketing fraud schemes that target Americans by actively participating in various working groups and criminal investigations. The USPIS works to prevent elder Americans from being victimized through public awareness campaigns that help individuals and



## **UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

The mission of the U.S. Securities and Exchange Commission (SEC) is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As part of this mission, the agency participates in initiatives to protect older Americans from abusive sales practices and investment fraud. This work includes educating senior investors so they can better protect themselves, and regulating the sales practices of financial professionals registered with the SEC, with a particular focus on sales practices associated with products and services frequently marketed to seniors. SEC staff also conducts its examination and inspection program with an eye toward issues affecting seniors. In addition, the SEC identifies violations against seniors as a target for its enforcement actions, and brings enforcement actions against individuals or firms for defrauding senior investors, and committing other violations of the federal securities laws.

### *Educating Senior Investors*

During FY 2013-2014, SEC staff participated in dozens of outreach activities focused on educating older Americans and other investors about investment products and potential investment scams, including the Outsmarting Investing Fraud program through which SEC staff conducts educational programs with the FINRA Investor Education Foundation, state securities regulators, and AARP on how to identify common persuasion techniques used by con artists. SEC staff also updated the SEC's investor education web materials with resources relating to the prevention and reporting of elder abuse, distributed hard-copy brochures on investing to older Americans and others through various distribution channels, including public libraries, issued over fifty investor alerts and bulletins, many of which focused on topics relevant to senior investors, and continued to provide assistance to senior investors who contact the SEC's Office of Investor Education and Advocacy with investment-related complaints or questions. In addition, the Director of the SEC's Office of Investor Education and Advocacy, Lori J. Schock, began representing the SEC on the North American Securities Administrators Association's Committee on Senior Issues and Diminished Capacity.

### *Reporting Elder Financial Abuse*

SEC staff supported the efforts of the Financial Crimes Enforcement Network (FinCEN) to highlight for broker-dealers and other financial institutions their obligations under the Bank Secrecy Act for detecting and reporting suspected elder financial abuse; among other things, these efforts culminated in FinCEN's adoption in 2013 of a new version of the Suspicious Activity Report that requires financial institutions to specifically categorize instances of suspected elder financial abuse. In addition, SEC staff participated in several training events focused on educating law enforcement about common fraud persuasion tactics and handling investment fraud complaints.

### *Detecting Cognitive Impairment in Brokerage Customers*

SEC staff discussed the issue of possible cognitive impairment affecting their customers with broker-dealers, other regulators and senior advocates (including medical professionals) to help brokers better manage and address their customers' needs. Previously, SEC staff participated in FINRA's development of a training module to help broker-dealers identify and escalate issues of possible cognitive impairment affecting their customers. The training module is currently available on FINRA's website.

### *Conducting Examinations*

SEC staff is finalizing a coordinated public summary report discussing findings and observations from risk-targeted examinations focused on potentially improper sales to senior investors. Among other things, these examinations were aimed at determining the products sold to seniors, the suitability of these products, the training to and supervision of registered representatives in relation to seniors, the senior designations employees were allowed to use, advertising and marketing to seniors, onboarding of senior accounts, and whether the disclosures given to seniors were adequate. SEC staff initiated the examinations, which were coordinated with FINRA, in late 2012 and completed the examinations in 2013.

### *Educating Compliance Professionals*

SEC staff participated in conferences focused on senior investors and diminished capacity, including a SIFMA panel and FINRA roundtable. On June 4, 2014, SEC staff and FINRA hosted a Compliance Outreach Seminar Program in Chicago for approximately two hundred Chief Compliance Officers and other compliance professionals. The program included a panel discussion on senior investor issues.

### *Bringing Enforcement Actions*

Deterrence through strong enforcement action has been an important part of the SEC's efforts to protect senior investors from fraud. The SEC vigorously prosecutes violations of the federal securities laws. For example, in 2014 the SEC obtained an emergency asset freeze and the appointment of a receiver against a retirement plan administrator and its founder, American Pension Services, Inc. and Curtis DeYoung, who are charged with squandering more than \$22 million of investor funds on high risk investments and hiding losses by issuing inflated account statements. In another recent example, the SEC brought an action against Donna Jessee Tucker, a broker who was charged with defrauding elderly customers by stealing their funds for her personal use and falsifying their account statements to cover up her fraud. In settlement, Tucker agreed to disgorge her ill-gotten gains, and to be barred from the securities industry.

### *Highlighting Elder Abuse — Office of the Investor Advocate*

The SEC's Office of the Investor Advocate (OIAD) published its first annual Report on Objectives on June 30, 2014 (Report). The Report indicated that OIAD would study elder abuse-related issues in greater depth in FY 2015. The Report stated that OIAD would evaluate current initiatives underway at the Commission, self-regulatory organizations, and other state and federal agencies to protect seniors from financial abuse. The Report also stated that OIAD would supplement those efforts by promoting policies to benefit investors with diminished capacity. The Report explained that OIAD would look for ways to equip financial service professionals with better tools to protect vulnerable clients, as well as ways to prevent abuse by financial professionals who take advantage of clients.



# ELDER JUSTICE COORDINATING COUNCIL



# ELDER JUSTICE APPENDICES COORDINATING COUNCIL

## A – EJCC MEETING AGENDAS

The Council is required to meet at least twice per year. In addition to the inaugural meeting on October 11, 2012, the Council has held open meetings on May 13, 2013 and September 24, 2013. In addition, the Council met in closed, Executive session on November 5, 2013 and April 25, 2014. Copies of the agendas for these meetings follow.



# ELDER JUSTICE COORDINATING COUNCIL

THURSDAY, OCTOBER 11, 2012  
WASHINGTON, D.C.

## AGENDA

### *Welcome & Convening*

**Kathleen Sebelius**

Secretary, U.S. Department of Health & Human Services

**Eric H. Holder, Jr.**

Attorney General, U.S. Department of Justice

**Michael J. Astrue**

Commissioner, Social Security Administration

**Richard Blumenthal**

United States Senator for Connecticut

### **Council Member Designees**

### *Speakers Panel: Financial Exploitation*

**Paul Smocer**

President, BITS, The Financial Services Roundtable

**Paul Greenwood**

Deputy District Attorney, Head of Elder Abuse Prosecutions, San Diego County, California

**Erica Wood**

Senior Attorney, American Bar Association Commission on Law and Aging

**Lunch • 12:30 – 1:30 (On Your Own)**

**Afternoon Session • 1:30 p.m. – 5 p.m.**

***Speakers Panel: Public Policy and Awareness***

**Kay Brown**

Director of Education, Workforce, and Income Security, U.S. Government Accountability Office

**Hillery Tumba**

Director, Reingold, Inc.

**Robert Blancato**

National Coordinator, Elder Justice Coalition

**Marie-Therese Connolly**

Senior Scholar, Woodrow Wilson International Center for Scholars

***Speakers Panel: Enhancing Response***

**Laura Mosqueda, MD**

Director of Geriatrics, University of California, Irvine School of Medicine

**William Benson**

National Policy Advisor, National Adult Protective Services Association

**Lori Stiegel**

Senior Attorney, American Bar Association Commission on Law and Aging

**Page Ulrey**

Senior Deputy Prosecuting Attorney, King County, Washington

**Patricia Banks**

Presiding Judge of Elder Law and Miscellaneous Remedies Division, Cook County, Illinois

***Speakers Panel: Advancing Research***

**Robert Wallace, MD, MSc**

Director, Center on Aging, Department of Epidemiology, University of Iowa

**Mark Lachs, MD**

Director, Center for Aging Research and Clinical Care, Weill Cornell Medical College

**Ying-Ying Yuan, Ph.D.**

Walter R. McDonald Associates, Inc.

**Xinqi Dong, MD, MPH**

Director, Rush Institute for Healthy Aging, Rush University Medical Center

**MONDAY, MAY 13, 2013  
WASHINGTON, D.C.**

**MEETING AGENDA**

1:00 – 1:30 Opening remarks by EJCC Members

1:30 – 2:20 Presentations by Elder Justice Working Group

- Activities since the last EJCC meeting
- Recommendations on “Improving the response to elder abuse, neglect and exploitation”

2:20 – 2:30 Break

2:30 – 3:15 Presentations by Elder Justice Working Group

- Recommendations on “Improving awareness of and intervention in elder abuse, neglect and exploitation”

3:15 – 3:30 Closing Summary

- Next Steps for the EJCC and EJWG

:



**TUESDAY, SEPTEMBER 24, 2013**  
**WASHINGTON, D.C.**

**MEETING AGENDA**

10:00-10:30 Opening Remarks by EJCC Members

10:30-12:30 Presentations by Elder Justice Working Group

- Background and summary of activities since the last EJCC meeting
- Discussion on implementation of 9 Elder Justice Proposals

12:30 – 2:00 Lunch

2:00 – 3:00 Listening Session

3:00 Closing Remarks

**TUESDAY, NOVEMBER 5, 2013  
WASHINGTON, D.C.**

**EXECUTIVE SESSION  
MEETING AGENDA**

- Discussion and adoption of the nine (9) Proposals for Federal Action
- Discussion: Implementing the EJCC Proposals for Federal Action
- Discussion: EJCC Report to Congress Components
- Next Steps

# EXECUTIVE SESSION

FRIDAY, APRIL 25, 2014

2:00 PM – 4:00 PM

EISENHOWER EXECUTIVE OFFICE BUILDING (EEOB) ROOM 208

## MEETING AGENDA

- White House Welcome  
*Carole Johnson, Domestic Policy Council*
- Overview of the Work of the Council  
*Kathy Greenlee, DHHS, Administrator for Community Living and Assistant Secretary for Aging*
- Highlights on Key Elder Justice Activities of Council Departments and Agencies  
*(3 minutes each)*
- Review of DHHS FY15 Elder Justice Funding Proposal and Opportunities for all Departments  
*Kathy Greenlee, DHHS, Administrator for Community Living and Assistant Secretary for Aging*
- Discussion: Implementation of the Council's Recommendations
- Adjourn  
*Kathy Greenlee, DHHS, Administrator for Community Living and Assistant Secretary for Aging*

**B – WRITTEN REMARKS AND WHITE PAPERS OF PANEL OF EXPERTS  
CONSULTED BY THE EJCC<sup>2</sup>**

The inaugural Elder Justice Coordinating Council meeting took place October 11, 2012 in Washington, DC, under the direction of the Administration on Aging. The meeting agenda was developed with input from experts on the Elder Justice Interagency Working Group, a [National Institute on Aging and National Academy of Sciences State of the Science meeting summary](#), and the Department of Justice’s [Concept Mapping Project](#).

The meeting was comprised of four panels of nationally recognized, non-federal government experts who presented testimony to Council members and their representatives on issues of paramount importance in addressing elder abuse, neglect, and exploitation. These panels were organized around the following major topics related to elder mistreatment:

- Financial Exploitation: [Video](#) | [Transcript](#)
- Public Policy and Awareness: [Video](#) | [Transcript](#)
- Enhancing Response: [Video](#) | [Transcript](#)
- Advancing Research: [Video](#) | [Transcript](#)

Video and transcripts of the presentations are hyperlinked above. Following are the written materials submitted by each of the panelists.

**PANEL ONE - PUBLIC POLICY AND AWARENESS**

**HILLERY TSUMBA**

WRITTEN TESTIMONY.....	B-4
WHITE PAPER.....	B-9

**ROBERT BLANCATO**

WRITTEN TESTIMONY.....	B-15
WHITE PAPER.....	B-18

**MARIE-THERESE CONNOLLY**

WRITTEN TESTIMONY.....	B-22
WHITE PAPER.....	B-26

White Paper

2 DISCLAIMER: These White Papers reflect the opinions and thoughts of the authors as submitted to the Elder Justice Coordinating Council. They do not represent the interests or positions of the Elder Justice Coordinating Council nor any of the federal agencies that are members of the Council. The Council has reviewed these White Papers and has taken their contents under advisement, but does not endorse nor adopt these papers wholly or in part as representing the policies or positions of the federal government.

**Hillery Tumba**

Director, Reingold, Inc.

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

Honorable council members, good afternoon and thank you for the opportunity to speak to you today. My name is Hillery Tumba and I am a director at Reingold—a strategic communications firm that specializes in social marketing—or communications for a cause.

In my few minutes before you I won't go into the extent of the problem of elder abuse, as you will be hearing about that from different panels. Instead I will focus on lack of public awareness and understanding of the issue, and what can be done.

Research tells us the public does not know the extent of the problem of elder abuse. Frankly, the issue is so disturbing that the public doesn't want to know about this problem. But without knowledge and understanding people cannot recognize abuse, nor can they act to protect their family members, neighbors, or even themselves from potential abuse.

There is a strong need for a coordinated national campaign to educate the public about this problem. A strategic and multifaceted campaign—including media relations, public service announcements, and online tools and information—with clear and consistent messaging, will help raise awareness and improve understanding of this complex issue.

From October 2009 through August 2010, I managed a yearlong market research effort to determine the feasibility of a social marketing campaign addressing elder abuse. I have also produced a variety of materials for the Senior Medicare Patrol that focused on health care fraud and financial exploitation of seniors.

Our study included a variety of research activities designed to:

- Gauge existing perceptions and misconceptions about elder abuse
- Analyze and evaluate communications strategies used by campaigns on elder abuse prevention
- Review results of social marketing campaigns dealing with other forms of interpersonal violence (such as domestic violence and child abuse)
- Measure the level of interest among organizations in supporting a coordinated national campaign to address elder abuse

The research effort included the following activities:

- Two focus groups with adult protective services professionals
- Twelve telephone interviews with adult protective services professionals and elder abuse prevention experts

- An environmental scan considering 27 elder maltreatment awareness and prevention campaigns
- A literature review of 10 academic journal articles discussing best practices and lessons learned from interventions into domestic violence, teen dating violence, and child abuse in the 1980s, 1990s, and early 2000s
- Conversations with 21 people from 19 organizations to gauge their level of interest in partnering in a campaign against elder abuse
- An audit of 65 traditional media outlets analyzing the main messages, voices, and themes prevalent in their coverage of elder abuse
- A review of social media activity on the topic of elder abuse, including analyses of discussion groups, blogs, and online videos
- Four distinct and targeted focus groups to gauge understanding of issues and test audience reactions to proposed messages and materials for this campaign

The findings were clear. There is a pressing need for a straightforward and consistent public education campaign to raise awareness and understanding of elder abuse, as well as to educate seniors and caregivers about identifying and avoiding high-risk situations.

Here is what a coordinated effort to educate the public about elder abuse will accomplish.

**1. It will provide people with accurate information about what elder abuse is, where it happens, and how to recognize it.**

At the moment, the few things most people do know about elder abuse are inaccurate or misleading. For example, most people think that elder abuse happens only in institutional settings. In reality, abuse happens most often in the person's own home and is most often perpetrated by a family member. This misconception persists because abuse that happens in an institutional setting is more likely to be observed and reported than abuse perpetrated by a family caregiver—often, family members are the whistleblowers on institutional abuse. Furthermore, personal injury lawyers and elder-law attorneys are among the most visible and vocal parties discussing elder abuse, especially on social media. Although these individuals do serve the people affected by abuse, they are also motivated by their own business pursuits, and benefit more by focusing their attention and messaging on institutional abuse, which reinforces the misconception that most elder abuse occurs in institutional settings.

**2. It will tell people now to lay the groundwork for their future with a campaign that shows people that elder justice is important and relevant to them—if not directly, then through parents and grandparents, friends and neighbors.**

People who entertain the notion that elder abuse can happen within the family consider it to be a private matter and not their business. But it is everyone's business. Advancing the public's understanding of where abuse happens and who is at risk will help all members of our society to connect the dots and see that elder abuse is relevant to everyone's life and is an issue that we all need to be concerned about.

**3. It will reduce the stigma of victimization, and let people who are abused know that the abuse is not their fault.**

Individuals who are abused may be reluctant to report it because they feel ashamed, embarrassed, and in many cases they may want to protect the perpetrator—if he or she is a loved one. Findings from our focus groups and expert interviews revealed that seniors are resistant to messaging about elder abuse because they do not want to think of themselves as being vulnerable to victimization. Despite this resistance, many respondents felt that elder abuse is a real issue facing seniors and that seniors should be a part of the solution. Whether or not an older adult has been affected by or is at risk of elder abuse, seniors need to hear about it.

#### **4. It will fight ageism with messages that strengthen a system of values where older adults are respected and appreciated.**

Sadly, prejudice and discrimination against the elderly and infirm prevent people from identifying with and caring about people who are at risk for abuse. All of our research revealed that ageism is a driving force behind people's inability or unwillingness to consider elder abuse as a social problem. There is no shortage of advertising and communications targeting older adults that feature surreal scenes of bathtubs on the beach. There's nothing wrong with the ideal of active aging, and it is great for older adults to be young at heart. But this type of messaging is indicative of our society's denial of some of the realities of aging that do make some older adults vulnerable.

There are challenges that a coordinated national communications campaign would face. But these challenges are not insurmountable. Structural and systematic issues make it difficult to shape a "call to action" in which a campaign would ask members of the public to do something about elder abuse. These structural problems include inconsistent legal definitions of what constitutes elder abuse, varying roles for adult protective services workers and direct-service providers in different jurisdictions, and the lack of a national help line. They do not, however, preclude the possibility of an awareness-focused campaign.

There are lessons to be learned from communications campaigns addressing other forms of interpersonal violence, such as domestic violence and child abuse.

There are legitimate questions about the wishes and desires of elders who are being abused. For people with all of their faculties, their own choice whether to report the abuse or press charges is paramount, and because the abuse is often perpetrated by a loved one, they may not want to do so. This pattern of behavior is similar to other forms of interpersonal violence, particularly domestic violence, where myriad wraparound services and supports can be made available. However, if the person who is being abused does not want to press charges, there is little the system can do. Scholarship on domestic violence is more extensive than on elder abuse and we know that with ongoing support and encouragement many people do liberate themselves from abusive relationships, but the process of self-emancipation takes time. In the case of elders, who are at the end of their lives, and who may be at risk of losing their ability to exercise their individual will—due to physical or cognitive declines—the same amount of time is not available.

#### **5. We need to change the conversation about abuse to reduce the stigma of victimization and empower people affected by elder abuse to stand up for themselves if they are able.**

However, communications intended to empower people affected by abuse must be carefully crafted to avoid language that may exacerbate a feeling of victimhood. Lessons learned from other campaigns addressing interpersonal violence remind us that the abuse is about power and control, and warn that overly forceful interventions could re-victimize the individual.<sup>15</sup>

For individuals who are no longer in possession of all of their faculties, and are therefore unable to exert their own will, the behavior patterns correlate more closely to child abuse. Due to decades of effective social marketing and communication about child abuse, our society has now reached a stage where every adult who suspects abuse knows that it is his or her responsibility to ask questions and intervene. Of course there are still barriers, and, sadly, people do not act in every instance, but that inaction is no longer the result of bystanders' being unaware of their responsibility to act to protect children. **We need to make it clear to all members of our society that they are equally responsible to act to protect older adults, if those individuals cannot, for whatever reason, protect themselves.**

#### **THE FOUR APPROACHES TO EFFECTING SOCIAL CHANGE**

Best practices in social marketing emphasize the importance of a multifaceted approach to achieve social change. Those aspects include informational, legal, technological, and economic considerations. We are at a transformational point in many of these areas:

**Informational.** There is currently not a coordinated effort to inform the public about elder abuse and engage people in its prevention. That void should be seen as an opportunity for the federal government to launch a coordinated national public education effort on elder abuse.

**Legal.** For the first time there is a significant legislative foundation to support and unite elder abuse prevention efforts. Although legislative barriers still exist, the Elder Justice Act is a milestone that sets the stage for a public education campaign.

**Technological.** The absence of a national call center or help line that people can use to report incidents or get information about intervention options makes it difficult to craft a clear and concise call to action. The lack of human and financial resources in the adult protective services networks makes it difficult to respond to increased reports of elder abuse that would be the likely result of a public education campaign. These are important considerations when crafting a campaign strategy but should not preclude the possibility of a campaign. If a sufficient response system is not in place, a campaign that focuses on prevention and minimizing risk is a very viable alternative and one that could naturally evolve into a campaign with a more tangible and immediate call to action: “Call this number” when the time is right.

**Economic.** Of all forms of elder abuse, the public best understands financial exploitation. Furthermore, the public is very focused on economic issues at the moment, and is primed to hear messages about the cost of elder abuse in terms of financial losses to elders, institutional costs due to stolen identities and false claims on programs such as Medicare and Social Security, and health care costs of elders who are abused and neglected. There are already successful communications and legal efforts addressing health care fraud. Communication about financial exploitation is the low-hanging fruit. However, in our research we found that public education—at least at the outset—should not focus entirely on one form of elder abuse, as that could actually be detrimental to the overall goal of raising awareness and improving understanding of all types of elder abuse.



## **CRAFTING THE MESSAGE**

Elder abuse is a complex issue and people close to the issue can get to the point where they can't see the forest for the trees. Public education needs to follow the social marketing model of:

1. Raising awareness. People need to know the problem exists.
2. Improving understanding. Once they know there is a problem, people need to understand what it is and where it happens. Definitions of the different types of elder abuse and explanations of risk factors are examples of the kinds of information that would be shared at this stage.
3. Inviting people to act. Once people understand the problem, they can determine whether they want to act. It is important to note that some research into domestic violence interventions revealed that there was no correlation between the intent to intervene in a domestic violence situation and actual intervention.<sup>16</sup> Nevertheless, unless we provide a coherent call to action we aren't even providing an opportunity to intervene for those who will take that step between a good intention and actual intervention.

## **CONCLUSION**

The time is right to roll out a multifaceted communications effort to raise awareness of elder abuse. There are real challenges that the campaign would face, but a strategic and thoughtfully designed public education campaign that includes media relations, public service announcements, and online tools and information is feasible, and necessary. A coordinated, national public education campaign is just one piece of the puzzle, but it is a critical piece, and without it the issue will remain distorted and misunderstood. Thank you for this opportunity and I thank you for your consideration of my remarks.

**Hillery Tumba**

DIRECTOR, REINGOLD, INC.

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

TOWARD AN ELDER ABUSE PREVENTION CAMPAIGN

**ABSTRACT**

As the aging of the baby boomer generation triggers dramatic growth in our nation's population of older adults, the proportion of our population affected by or at risk of elder abuse is increasing. Although inconsistencies among state-level data collection methods make it difficult to know the exact extent of the problem, what is clear is that members of the public are ill-informed about elder abuse—and ill-equipped to prevent high-risk situations or recognize and report instances of abuse.

To determine the feasibility of a public education campaign addressing elder abuse, Reingold conducted a market research study that included focus groups and interviews with adult protective services professionals and members of the public; analyses of elder maltreatment awareness and prevention campaigns; assessments of media coverage of elder abuse; and a review of academic journal articles on best practices and lessons learned in interpersonal violence interventions. We also talked with potential communication partners.

The findings were clear: There is a pressing need for a clear and consistent public education campaign to raise awareness and understanding of elder abuse, as well as to educate people about identifying and avoiding situations in which older Americans are at risk of abuse.

**IDENTIFYING THE PROBLEM**

Elder abuse is a hidden problem in our society. The veil of silence shrouding this troubling issue makes it impossible to know the full extent of the problem, but recent estimates suggest that one in every 10 older Americans will be abused. As 72 million baby boomers grow older, these estimates place more than 7.2 million people at risk of elder abuse, and yet the general public has little knowledge or understanding of this problem and how to prevent and stop it.

Lack of awareness about elder abuse rose to the forefront in all of our research activities. Several focus group participants, interview respondents, and potential communication partners indicated that the problem is not fully understood in their communities. Our media audit also revealed a general lack of understanding of elder abuse among journalists who play a role in educating the public about social concerns.

## WHERE TO BEGIN?

Elder abuse is a complex relationship problem that includes physical and emotional abuse, neglect by a caregiver, self-neglect, and financial exploitation. Interventions for elder abuse are controversial and raise questions about the cognitive abilities of the people affected by abuse and their right to make decisions for themselves; social taboos against incriminating close family members who may be perpetrating the abuse; and questions about how to define and implement evidence-based interventions in the face of data collection practices that vary from jurisdiction to jurisdiction.

There are also structural problems that make it difficult to increase intervention in elder abuse, including an under-resourced and over-extended adult protective services system; inconsistent laws governing reporting of elder abuse; and the lack of a national elder abuse prevention helpline to provide a single source of information and referrals.

With so many challenges, it is difficult to know where to begin. A social marketing campaign designed to improve public awareness and understanding of elder abuse can aid in addressing all of these factors.

## TOWARD AN ELDER ABUSE PREVENTION CAMPAIGN

### *Protecting people with compromised cognitive abilities.*

The evidence is clear that people who are experiencing age-related cognitive decline do not respond well to messages about protecting themselves and their investments from abuse. They may resist interference in their affairs due to a sense of pride and effort to conceal their diminishing capabilities—or they may simply not understand or appreciate that they are at risk. That is why it is critical to start educating the baby boomers about the risks of elder abuse before they lose cognitive abilities, and to provide them with detailed information on actions they can take now to guard against potential abuse or exploitation. Actions such as creating a long-term care plan and establishing dual power of attorney so that no single person has control over one's finances are important steps to take.

### *Overcoming the stigma of victimization and taboos against incriminating loved ones.*

Being a victim or perpetrator of abuse carries a powerful stigma in our society. The stigma of victimization and the fact that perpetrators of elder abuse often are relatives or “trusted” friends make it difficult for victims to acknowledge what is happening to them and report abuse or otherwise protect themselves. Furthermore, the relationship between the abuser and the abused is often so complicated that outsiders who perceive elder abuse may be disinclined to intervene because they think it is “a private matter” or “none of my business.”

While bystanders may be appalled by elder abuse, they may feel as though they need permission to intervene or need assurance that their intervention will not make the situation worse. Victim blaming is also a common reaction—among both the general public and victims themselves—that creates a serious challenge when it comes to preventing and responding to elder abuse.

A social marketing campaign can help reduce the stigma of victimization with messages that let people who are abused, and their family members and bystanders as well, know that the abuse is

not their fault. These messages should use language of survivorship that help empower at-risk individuals to remove themselves from dangerous situations and enable abused individuals to break free of the cycle of abuse. An educational campaign can also aid in overcoming the belief that elder abuse is a private family matter, using messages that demonstrate the impact of elder abuse on society as a whole and focus on the responsibility of all community members to look out for vulnerable older adults.

“I am in the Aging Network. I should know what to do with this, where to go, but I don’t.”  
—Interview Respondent,  
National Council on Aging  
employee.

*Facilitating the development and implementation of evidence-based interventions.*

Programmatic hurdles, including differing legal definitions of elder abuse across jurisdictions and a lack of a standardized national data collection system, are critical challenges facing the field of elder abuse prevention. The ambiguity about what constitutes elder abuse is not only a critical communications challenge; it will also cause ongoing problems when it comes to data collection and program evaluation.

Data collection, evidence-based interventions, and well-resourced adult protective services systems are critical elements in elder abuse prevention, but they are not prerequisites for launching a social marketing campaign. In fact, public support for funding allocations to support data collection and improved interventions may be a positive by-product of greater public awareness of elder abuse. It is important to recognize the value of evidence-based interventions and continued research, but it is equally important to engage the public in the fight against elder abuse and allow public education to fuel advocacy for funding and political support for an improved infrastructure to collect and analyze data.

*Addressing pressure on the adult protective services (APS) system.*

A well timed and carefully implemented social marketing campaign can support the APS system in a number of ways. On first blush it may seem that a social marketing campaign would place undue strain on an adult protective services system that is generally overworked and lacks the infrastructure to respond to increased reports of suspected elder abuse. In reality a campaign can help re-position APS in the public eye and help garner public support for APS.

First, as with the matter of data collection, increased public awareness and outcry about elder abuse can help in securing more funding to bolster the APS system. Second, many members of the public do not know there is an equivalent of Child Protective Services for adults. Members of the public who are aware of APS may have outdated views and think of them as “the men in white coats” who will lock their friend or neighbor away in a facility. A social marketing campaign can improve the public’s knowledge, understanding, and trust of APS.

It is also important to note that behavior change takes time. Although a well-executed social marketing campaign will ultimately result in increased reports of elder abuse, which will then need to be investigated, increased reporting may not happen immediately. And, while reporting suspected

“Most people are surprised to find out that there is an equivalent of Child Protective Services for adults.” —  
Interview Respondent, APS  
Professional

abuse is an easy call to action for a campaign, it is not the only action people need to take to prevent elder abuse. An awareness-focused campaign that encourages people to prepare their long term-care plans, file dual powers of attorney, and stay involved in the community to prevent isolation may naturally evolve into a campaign that exhorts people to report suspected abuse when the APS system is better prepared to respond to those reports.

Finally, we know elder abuse happens much more often than it is reported. The fact that many instances of elder abuse are unreported, and therefore go uninvestigated, does not mean it didn't happen. Waiting to blow the whistle on those cases until APS is better resourced and able to respond will not undo the harm, nor will it make the cases easier to investigate. The stakes are too high to leave this issue in the dark.

### **ELDER ABUSE CAMPAIGN GOALS**

There is a pressing need for a strategic and multifaceted campaign that includes media relations, public service announcements, online tools and information, and partner outreach, among other things. Such a coordinated national effort to educate the public about elder abuse will:

Provide people with accurate information about what elder abuse is, where it happens, and how to recognize it.

- Show people that elder justice is relevant to them—if not directly, then through their parents and grandparents, friends and neighbors.
- Reduce the stigma of victimization, and let people who are abused know that the abuse is not their fault.
- Fight ageism with messages that strengthen a system of values in which older adults are respected and appreciated.

A social marketing campaign to raise awareness of elder abuse does not have to be a cost prohibitive proposition. By working with enthusiastic partners and strategically employing online and traditional media, it is possible to elevate elder abuse prevention considerably. Online and broadcast media can raise public awareness of how to recognize and respond to elder abuse. Search engine optimization (SEO) techniques can increase the visibility of online information about the issue, and search engine marketing can deliver tailored messages to target audiences such as caregivers, older adults, and senior services providers. Strategic earned media and media relations efforts can secure broadcast time for public service announcements on elder abuse prevention. These media can also enable tracking of the reach and effectiveness of the campaign messages.

### **FOUR APPROACHES TO EFFECTING SOCIAL CHANGE**

Although a public communication and outreach campaign on the subject of elder abuse is critical, it is important to note that communication is only one aspect of effecting social change and, if done in isolation, will have little impact.

Best practices in social marketing emphasize the importance of a multifaceted approach to achieving social change, using legal, technological, economic, and informational avenues. While a social marketing campaign can address the informational aspect, the other three aspects create an environment for change. In fact, in these areas we are at a transformational point.

### *Legal.*

For the first time there is a significant legal foundation to support and unite elder abuse prevention efforts. Although legal barriers still exist, enactment of the Elder Justice Act was a milestone that sets the stage for increased public discourse about elder abuse and its prevention. Increased funding, information--sharing, training, and multiagency coordination under the law will help create an infrastructure for communication and outreach.

### *Technological.*

New technologies such as instant messaging services, social networking sites, and even voice-controlled mobile devices provide an opportunity to re-engage older adults, and keep them engaged as they become less mobile in their later years. Isolation is a known risk factor for elder abuse, but for the first time, housebound older adults can interact with the outside world online. A 2010 study found that the number of seniors who regularly use social media is growing. Between April 2009 and May 2010, the number of Internet users ages 50 and older engaged on social media increased from 22 to 42 percent.<sup>17</sup> It is reasonable to believe that baby boomers will continue to be avid users of social media as they age. Elder abuse prevention efforts should take advantage of these new technologies to keep older adults active and engaged in community life, even when it is difficult for them to move around.

### *Economic.*

Of all forms of elder abuse, financial exploitation is the best understood by the public. In addition, today the public is very focused on economic issues and primed to hear messages about the cost of elder abuse in terms of financial losses to elders, institutional costs due to stolen identities and false claims on programs such as Medicare and Social Security, and health care costs of elders who are abused and neglected. There are already successful communications and legal efforts addressing health care fraud, underscoring its impact on both elders and society as a whole. Today's economic climate has primed the public to listen and respond strongly to information about the costs of all forms of abuse of older Americans, not just financial exploitation, and to support efforts to prevent this abuse.

## **CONCLUSION**

Elder abuse is a complex issue that needs to be tackled in many different ways. A strategic social marketing campaign designed to increase public awareness and understanding of the problem is a critical piece of a coordinated national effort addressing elder abuse. Without it, the issue will remain distorted and misunderstood.

The trumpeted backdrop of a growing aging population and the foundation being forged under the Elder Justice Act provide an opportune time to launch a campaign that rides a small wave of public awareness. But time is of the essence. The time is right to educate the public about elder abuse prevention and intervention so that baby boomers can prepare for their later years while they are still active, mentally competent, and fully independent.

**Robert Blancato**

NATIONAL COORDINATOR, ELDER JUSTICE COALITION

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

Secretary Kathleen Sebelius and Members of the Elder Justice Coordinating Council:

Good morning. My name is Bob Blancato and since 2003 I have served as the National Coordinator of the Elder Justice Coalition. We are a non-partisan 3000 member coalition dedicated to advancing elder justice policy at the federal level whether through passage and implementation of legislation or through administrative action. In our years of work, we view as our signature accomplishment our 7 years of effort and advocacy to gain passage of the Elder Justice Act.

This first meeting of the Elder Justice Coordinating Council is most welcome. We worked closely with the Senate and the House in developing the language to establish this Council. The Elder Justice Act is all about developing a comprehensive and coordinated federal response to the growing problems of elder abuse, neglect, and exploitation in America. This response can and should begin by achieving better coordination among the different federal agencies that have some role and responsibility to promote elder justice and prevent elder abuse. That was the intended purpose behind this Council and we look forward to your ongoing work.

In my time I was asked to focus on four areas. The first is to address areas that have immediate and practical action implications for the federal government. I maintain that advocacy is one of these. We need sustained advocacy from within and outside the federal government to achieve funding for the Elder Justice Act either through appropriations or as was done earlier this year through allocations from the Affordable Care Act and through reauthorization of the Older Americans Act and the Violence Against Women Act.

Since these are issues that await action in the lame duck session of Congress or more likely in 2013 there are certain actions this Administration can take in the interim. We need to ensure the continued implementation of the Elder Justice Act. In particular, we call on the Administration to name the members of the Elder Justice Advisory Board and to convene its first meeting. Through administrative direction from the Administration on Aging we ask that all aging network staff who come in regular contact with older people receive elder abuse related training. In addition we should examine all federal resources which are dedicated to training in areas of abuse prevention and think in terms of reallocating any unused or underused funds toward more elder abuse prevention training.

In addition we applaud the work of the Office of Older Americans of the CFPB. They have done important work in raising public awareness about elder financial abuse. One example was a forum conducted jointly with our Coalition, the Benjamin Rose Institute on Aging and Skip Humphrey, the Director of the Office of Older Adults in Cleveland. It was a forum involving a variety of stakeholders including those directly working in financial institutions discussing what

they are doing to help address elder financial abuse. The hope is this office will commit to a national training initiative on combatting elder financial abuse and have this training provided at the state and local level with appropriate standards. Also in the spirit of immediate and practical actions which the federal government can take, we urge that the APS Resource Center and the National Center on Elder Abuse be continued.

The second area is to address issues related to leveraging national partners to address elder mistreatment. We believe to an extent there have been relationships established between this Administration and national partners, most notably the partnership for the historic observance in the White House of World Elder Abuse Awareness day earlier this year which involved both private and non-profit partners. In addition, the composition of the National Center on Elder Abuse provides another good example as a “unique, multi-disciplinary consortium of equal partners with expertise in elder abuse, neglect, and exploitation.” Some of their partners are national organizations.

The naming of the Advisory Board and its 27 members from different sectors will inevitably lead to new and expanded partnerships including a focal point for discussion an exchange of information and ideas. Further the combined work of this Council and the Advisory Board can lead to an enhanced national elder justice strategy which should ultimately be the basis of a public private partnership of commitment. It would also make sense for the Administration to break the topic of elder abuse down and determine which sectors are or should be involved in prevention and work to identify and cultivate national partners in the solution. This can include the medical, law enforcement, the financial sector, faith based communities and so on. In addition an inventory should be done to determine and compile all activities of national entities currently involved in elder mistreatment prevention work and have that help leverage new partnerships.

The third area is to address how the federal government encourage and catalyze national attention to the issue and again foster better public private partnerships to achieve the same goal. Certainly the convening and subsequent work of this Council should go a long way to achieving this goal.

In blunt terms, federal government leadership had been sorely lacking in the area of elder abuse prevention. It was the reason why an Elder Justice Act was first proposed and later became law. This Administration has turned this lack of leadership around. But more lies ahead. It is about both resources and resourcefulness. Among all the federal agencies represented here today—aren’t there sufficient resources if coordinated to take the lead in embarking on a robust public education and awareness campaign on elder mistreatment? Materials from the National Center on Elder Abuse and the CFPB are good examples that can be built onto. One very straightforward idea that could be implemented in quick fashion would be to include a set of standardized tips on how to prevent elder mistreatment, especially financial abuse on every federal agency website including those of Members of Congress. We would add parenthetically that our Elder Justice Coalition is willing and able to be a distribution channel for educational materials and public awareness activities.

Further, working with the media, the entertainment and advertising industries, aren’t there more resourceful ways to get a message to the American public about how we can all help stop elder abuse? This Council should include collaborations with those inside and outside of government



who have worked with success in the child abuse and domestic violence prevention world, especially around messaging and raising public awareness and in some cases outrage.

Finally, we need to address how to identify gaps in the short term that can have immediate and practical action implications.

One of these certainly has to be data collection. In the greatest and most technologically advanced nation in the world, why is there such an inability to collect accurate incidence data on elder abuse? An investment needs to be made in improving data collection. It is another example of a public private partnership waiting to happen. Furthermore, in the archives of ASPE, there was a report produced several years ago called for in the original Elder Justice Act which addressed issues related to how to do better data collection. That playbook should be dusted off and brought back to life.

Another gap that most certainly needs to be addressed is the unevenness of the country's numerous and diverse authorities who investigate elder abuse. This is especially true with Adult Protective Services. A report just issued jointly by NASUAD and the NAPSARC makes this point. In their executive summary they note that "there is no federal oversight or funding for the Adult Protective Services program." The report goes on to note "without a national program, states create laws and regulations independently" and as a result APS programs in the state vary greatly.

One immediate step that can be implemented and is called for in the Elder Justice Act would be to designate a home for APS and in turn vest it with greater responsibility and resources to coordinate the response to elder abuse. In addition stronger alignment between APS and the law enforcement community at the national, state, and local level must be advanced and can be through the work of this Council and a newly empowered Office of APS within DHHS.

In conclusion, while we laud the convening of this Council, we want to caution it not to become too much of a Washington-only entity. The federal government has an absolutely key responsibility to take the lead in developing an elder justice strategy based on coordination. Yet much of the work on the ground that is done in the fight against elder abuse is done at the state and local level. There are hundreds of coalitions, alliances, and committees across our nation working to prevent elder abuse. Most recently these coalitions were established under the leadership of the National Committee for the Prevention of Elder Abuse in locations that never had one but that had a growing elder abuse problem. We should be learning more about and from these local initiatives as part of the Council's work and its eventual recommendations.

As this council continues its important work I expect you will conclude that it is not about reinventing the wheel but rather redirecting it. Elder abuse prevention is a shared responsibility. Having the federal government take more responsibility is a step that is long overdue. We wish you success in your work and we hope you will continue to utilize us as a resource.

**Robert Blancato**

NATIONAL COORDINATOR, ELDER JUSTICE COALITION

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**THE ELDER JUSTICE ACT: COORDINATING FEDERAL AGENCIES'  
RESPONSE TO ELDER MISTREATMENT**

**INTRODUCTION**

This paper is submitted on behalf of the Elder Justice Coalition.<sup>18</sup> We are a non-partisan 3000-member coalition dedicated to advancing elder justice policy at the federal level whether through passage and implementation of legislation or through administrative action. In our years of work, we view as our signature accomplishment our seven years of effort and advocacy to gain passage of the Elder Justice Act.<sup>19</sup>

We applaud the first meeting of the Elder Justice Coordinating Council on October 11 and we were pleased to participate. We worked closely with the Senate and the House in developing the language to establish this Council. The Elder Justice Act is all about developing a comprehensive and coordinated federal response to the growing problems of elder abuse, neglect, and exploitation in America. This response can and should begin by achieving better coordination among the different federal agencies that have some role and responsibility to promote elder justice and prevent elder abuse. That was the intended purpose behind the creation of this Council and we look forward to your ongoing work.

**IMMEDIATE AND PRACTICAL ACTION NEEDED: ADVOCACY**

This paper focuses on four areas. The first addresses areas that have immediate and practical action implications for the federal government. We maintain that advocacy is one of these. We need sustained advocacy from within and outside the federal government to achieve funding for the Elder Justice Act either through appropriations or as was done earlier this year through allocations from the Affordable Care Act.<sup>20</sup> We need important other elder abuse prevention programs in the Older Americans Act<sup>21</sup> and the Violence Against Women Act<sup>22</sup> to be continued through the reauthorization of these laws.

Since these are issues that await action in the lame duck session of Congress or more likely in 2013, there are certain actions this Administration can take in the interim. We need to ensure the continued and completed implementation of the Elder Justice Act. In particular, we call on the Administration to name the members of the Elder Justice Advisory Board<sup>23</sup> and to convene its first meeting. Through administrative direction from the Administration on Aging we ask that all aging network staff who come in regular contact with older people receive elder abuse related training. In addition, we should examine all federal resources which are dedicated to training in

areas of abuse prevention and think in terms of reallocating any unused or underused funds toward more elder abuse prevention training.

In addition, we applaud the work of the Office of Financial Protection for Older Americans of the Consumer Financial Protection Bureau (CFPB). They have done important work in raising public awareness about elder financial abuse over the past year. One example was a forum conducted jointly with our Coalition, the Benjamin Rose Institute on Aging and Skip Humphrey, the Director of the Office of Older Adults in Cleveland. It was a forum involving a variety of stakeholders including those directly working in financial institutions discussing what they are doing to help address elder financial abuse. The hope is this office will commit to a national training initiative on combating elder financial abuse and have this training provided at the state and local level with appropriate standards. Also in the spirit of immediate and practical actions which the federal government can take, we urge that the Adult Protective Services (APS) Resource Center and the National Center on Elder Abuse be continued.

### **LEVERAGING NATIONAL PARTNERS**

The second area this paper focuses on is issues related to leveraging national partners to address elder mistreatment. We believe to an extent there have been important relationships established between this Administration and national partners, most notably the partnership for the historic observance in the White House of World Elder Abuse Awareness Day<sup>24</sup> earlier this year which involved both private and non-profit partners. In addition, the composition of the National Center on Elder Abuse provides another good example as a unique, multi-disciplinary consortium of equal national organizational partners with expertise in elder abuse, neglect, and exploitation.

The naming of the aforementioned Advisory Board and its 27 members from different sectors will inevitably lead to new and expanded partnerships including a focal point for discussion an exchange of information and ideas. Further, the combined work of this Council and the Advisory Board can lead to an enhanced national elder justice strategy which should ultimately be the basis of a public-private partnership of commitment. It would also make sense for the Administration to break the topic of elder abuse down and determine which sectors are or should be involved in prevention and work to identify and cultivate national partners in the solution. This can include the medical sector, law enforcement, the financial sector, faith-based communities, information system companies, organized labor and so on. In addition, an inventory should be done to determine and compile all activities of national entities currently involved in elder mistreatment prevention work and have that help leverage new partnerships.

### **ENCOURAGING NATIONAL ATTENTION**

The third area this paper addresses is how the federal government can encourage and catalyze national attention to the issue and again foster better public private partnerships to achieve the same goal. Certainly the convening and subsequent work of this Council should go a long way to achieving this goal.

Federal government leadership had been sorely lacking in the area of elder abuse prevention. This was the reason why an Elder Justice Act was first proposed and later became law. This Administration has turned this lack of leadership around. But more lies ahead. It is about both

resources and resourcefulness. Among all the federal agencies represented on the Council, there are sufficient resources if coordinated to take the lead in embarking on a robust public education and awareness campaign on elder mistreatment. Materials from the National Center on Elder Abuse and the CFPB are good examples that can be built onto. One very straightforward idea that could be implemented in quick fashion would be to include a set of standardized tips on how to prevent elder mistreatment, especially financial abuse on every federal agency website including those of Members of Congress. We would add parenthetically that our Elder Justice Coalition is willing and able to be a distribution channel for educational materials and public awareness activities.

Further, working with the media, the entertainment and advertising industries, there are more resourceful ways to get a message to the American public about how we can all help stop elder abuse. This Council should include collaborations with those inside and outside of government who have worked with success in the child abuse and domestic violence prevention world, especially around messaging and raising public awareness and in some cases outrage.

### **IDENTIFYING SHORT-TERM GAPS**

Finally, we need to address how to identify gaps in the short term that can have immediate and practical action implications.

One of these certainly has to be data collection. In the greatest and most technologically advanced nation in the world, why is there such an inability to collect accurate incidence data on elder abuse? An investment needs to be made in improving data collection. It is another example of a public-private partnership waiting to happen. Furthermore, in the archives of the DHHS Office of the Assistant Secretary for Planning and Evaluation, there was a report produced several years ago called for in the original Elder Justice Act which addressed issues related to better data collection.<sup>25</sup> The report recommends both “a national dataset comprised of administrative data on elder abuse that is reported to local authorities and then centralized and analyzed on an ongoing basis” as well as “a national prevalence study (or a series of ongoing studies) to assess the total amount of elder abuse in the United States, including an estimate of the level of unreported abuse.”<sup>26</sup> Those recommendations should be followed.

Another gap that most certainly needs to be addressed is the unevenness of the country’s numerous and diverse authorities who investigate elder abuse. This is especially true with Adult Protective Services. A report just issued jointly by the National Association of States United for Aging and Disabilities (NASUAD) and the National Adult Protective Services Resource Center (NAPSRC) makes this point. In their executive summary they note that “there is no federal oversight or funding for the Adult Protective Services program.”<sup>27</sup> The report goes on to note “without a national program, states create laws and regulations independently”<sup>28</sup> and as a result APS programs in the states vary greatly.

One immediate step that can be implemented and is called for in the Elder Justice Act would be to designate a home for APS and in turn vest it with greater responsibility and resources to coordinate the response to elder abuse. In addition, stronger alignment between APS and the law enforcement community at the national, state, and local level must be advanced and can be through the work of this Council and a newly empowered Office of APS within DHHS.

## CONCLUSION

In conclusion, while we laud the convening of this Council, we want to caution it not to become too much of a Washington-only entity. The federal government has an absolutely key responsibility to take the lead in developing an elder justice strategy based on coordination. Yet much of the work on the ground that is done in the fight against elder abuse is done at the state and local level. There are hundreds of coalitions, alliances and committees across our nation working to prevent elder abuse according to a report from the National Center on Elder Abuse.<sup>29</sup> Most recently these coalitions were established under the leadership of the National Committee for the Prevention of Elder Abuse in locations that never had one but that had a growing elder abuse problem. We should be learning more about and from these local initiatives as part of the Council's work and its eventual recommendations. Elder abuse prevention is a shared responsibility. Having the federal government take more responsibility is a step that is long overdue.

**Marie-Therese Connolly**

SENIOR SCHOLAR, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS  
DIRECTOR, LIFE LONG JUSTICE

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL  
OCTOBER 11, 2012

DO ONE THING: COORDINATING AND INTEGRATING  
FEDERAL ELDER JUSTICE EFFORTS

Madame Secretary, Mister Attorney General, agency heads, and staff, thank you for inviting me to testify here today. I have been asked to suggest ways to integrate elder justice measures into ongoing federal activities and programs, and have provided specific recommendations in my accompanying white paper.

In this testimony, I will discuss the multifaceted nature of elder abuse, how it cuts across and is relevant to the mission of numerous federal agencies, and suggest a few opportunities provided by the creation of this Council:

*LEONARD SWENSON*

I'll begin with Leonard Swenson, a 67 year old, 5'1" man with developmental disabilities and mild dementia who was shattered when his wife of 34 years died in a car wreck.

Not long thereafter, Lisa O'Neill picked Swenson up in a bar. He moved into her basement thinking he'd gotten a second chance at love. She treated him like a servant and ATM. She put her name on his accounts, promising to care for him, then drained all his assets. He lost his house, truck, cell phone, and independence. She berated and humiliated him, hit and threw him down the stairs, and neglected to get him the medical care he needed.

Leonard Swenson escaped his basement at 5:30 one morning after waiting until O'Neill, who often drank and watched TV until 3 am, was asleep. Carrying his few belongings in a plastic garbage bag, he turned off the porch light, snuck out of the house, and began to walk.

Because King County has dedicated detectives and prosecutors, Page Ulrey prosecuted O'Neill. But prosecution doesn't return to Swenson, or any victim, what was lost.

Things could have been different for Leonard Swenson. In the life of the case, he came in contact with numerous systems:

- Financial institutions asked no questions as O'Neill took control of and wiped out all his assets, and racked up debt in his name.
- APS determined he didn't fit its definition of "vulnerable," so closed its case.

- No party to the real estate transactions that resulted in him losing his house reported their suspicions that he was being abused and exploited by O’Neill.
- Hospital staff didn’t ask the right questions or follow up when he missed appointments.
- The police officer who responded to a 911 call from Swenson’s daughter, and went to the bank where O’Neill was cashing out his savings, didn’t ask the right questions or know how to respond.
- The civil attorney Swensen’s daughter consulted said there was little to be done, except possibly petition for guardianship, but that the court was unlikely to find Swenson incapacitated enough to warrant that course.
- The victim services he briefly received, ended when the program was defunded, leaving him to deal with his financial ruin and trauma on his own. Although the court ordered O’Neill to repay him the \$90,000 she stole, he’ll likely never receive more than a few hundred dollars of it.

Each system, working alone, failed Swenson. Had they worked together, things might have turned out differently. What’s true at the local level is also true at the state and federal levels and shows why we so urgently need the coordination this Council can facilitate.

As 77 million baby boomers age, we are learning that elder abuse occurs at epidemic rates—victimizing one in 10 people over sixty in the general population, and a staggering 47% of people with dementia; and that it exacts a terrible human, social and economic toll.

### **THE MANY FACES OF ELDER ABUSE**

This Coordinating Council is critical because elder abuse is entwined with so many different issues and is relevant to the diverse missions of the many agencies that are members of this Council:

- *Elder abuse is a public health issue* of epidemic proportions requiring a multifaceted coordinated approach like comparable epidemics.
- *Elder abuse is a justice issue*, but only a tiny fraction of cases are pursued at any level, courts are ill-equipped to handle cases they do see, and we lack the forensic expertise we need to address it.
- *Elder abuse is a financial issue* that requires education, training, oversight, and vigilance by every participant in the financial services industry.
- *Elder abuse is a social and protective services issue*, yet standards, training, and resources of those systems are woefully lacking and the safety net is badly frayed.
- *Elder abuse is a victim assistance issue*, but we know little about how to help older victims and do little to address their needs.

- *Elder abuse is an economic issue*, depleting the assets of Medicare, Medicaid, public programs, businesses, individuals, and families, of untold billions a year.
- *Elder abuse is a housing issue*. Victims, like Swenson, lose their homes by exploitation; others need emergency housing because they're no longer safe at home.
- *Elder abuse is a consumer protection issue*, requiring us to redefine how to protect consumers with unrecognized diminishing capacity to make financial decisions. As often unmonitored long-term care options proliferate, we need to assure that consumers get the care they need and were promised
- *Elder abuse is a long-term care and health systems issue*, yet it's rarely mentioned in national conversations about health policy, quality, and information technology that might offer paths for progress.
- *Elder abuse is a mental health and substance abuse issue*, with one or both factors appearing in most elder abuse cases among perpetrators, victims, or both, and are key understanding how to intervene in and prevent the problem.
- *Elder abuse is a labor issue*, as we try to address growing workforce shortages. We need to assure that caregivers have decent and fair work conditions and that they can provide humane care for those who need it.
- *Elder abuse is an issue for aging Veterans and their families* and VA programs might provide critical data about intervention and prevention.
- *Elder abuse is a family, domestic and sexual violence issue*. We have much to learn from our colleagues in those fields, and they have yet to fully incorporate the needs and issues of older victims.
- *Elder abuse is a research and data collection issue*, cutting across numerous agencies and components, and calling out for a strategic and coordinated approach to generating information we need about what works and what the people we're trying to serve want.
- *Elder abuse is an issue where deploying volunteers could have a significant impact*.
- *Elder abuse is an ethical issue*, raising complex questions daily about how to balance our desires for autonomy, safety, and privacy from individual, familial, and policy perspectives.
- *And elder abuse is an invisible issue*. For every one case we do see, another 23 never come to light. Yet those cases too tear at the social fabric and cause untold suffering.



## THE OPPORTUNITY

Ten years ago, while we were working on the Elder Justice Act, Lauren Fuller and I tried to imagine what type of Coordinating Council would most effectively advance elder justice, given the multifaceted nature of the problem. It's amazing and tremendously exciting to have the privilege to see this body coming to life.

Why is this federal Coordinating Council so important when so much of elder abuse is a state and local issue? Because elder abuse crosses state lines and requires federal leadership and coordination to build a solid foundation to inform and support efforts on the front lines, for example research, data collection, assessing cost, building the knowledge base, deploying information about what does and doesn't work, assuring access to quality training, addressing universal impediments, and promoting more effective coordination, as has been discussed by others too here today.

\* \* \*

Assistant Secretary Kathy Greenlee, who is such a great champion for this issue, likes to challenge audiences to "do one thing" in the next year to promote elder justice.

Taking a page from her playbook, I'd like to issue the same challenge back to each one of our federal agency partners: Do One Thing. In my white paper, I have suggested one thing that each federal entity could integrate into ongoing activities and priorities, to advance elder justice.

But don't do that one thing alone. The most significant contribution this Council can make is to assure collaboration to bring a more strategic, integrated, informed, and unified approach to how we address elder abuse.

It is in the end, this Council will be effective through regular meetings, the shared setting of goals, and the shared accountability for making sure those goals are met.

In that regard, I'd like to highlight one specific recommendation from my white paper. It's not mine alone. After the 2008 election, a large number of us collectively submitted a proposal to the transition team recommending naming Special Advisors on Elder Justice in the Offices of the DHHS Secretary and of the Attorney General to assure ongoing, high-level inter- and intra-agency coordination.

Such coordination at the staff level, in leadership offices, and through the vehicle of this Council, can inform and assist those struggling every day on the front lines to address this growing problem, and have a tremendous impact on the lives of millions of older Americans.

We've coordinated spectacularly to lengthen life. Elder abuse is a preventable problem. Now it's time to turn our efforts to improving wellbeing in the time we've gained.

Thank you for the privilege of testifying before the inaugural meeting of this Council. Please let me know what I can do to help.

**Marie-Therese Connolly**

SENIOR SCHOLAR, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS  
DIRECTOR, LIFE LONG JUSTICE

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL  
OCTOBER 11, 2012

**AN ORCHARD OF LOW HANGING FRUIT: WEAVING ELDER JUSTICE  
MEASURES INTO EXISTING FEDERAL ACTIVITIES**

Thank you for the opportunity to submit testimony and a white paper to this exciting and historic inaugural meeting of the Elder Justice Coordinating Council and for all the effort that has gone into its planning. I was asked to identify elder justice efforts that could be integrated into ongoing federal activities.

As noted by the General Accountability Office (GAO) in its March 22, 2011 report and in other documents, federal programs and agencies often give short shrift to the growing problems attending abused, neglected and exploited older people, even though modest attention and coordination could make a huge difference, reducing suffering and saving billions of dollars.

Assistant Secretary Kathy Greenlee, who has been such a great champion for this issue, often challenges audiences to “*do one thing*” to promote elder justice. Taking a page from her playbook, I’m encouraging each member of this Council to do the same, to *Do One Thing*, as outlined in this paper. The recommendations in this paper are illustrative.

*Organization of this white paper:* In this document, I have suggested one or two options per entity. The Department of Health and Human Services (DHHS) and the Department of Justice (DOJ) are listed first and second (with their component entities listed alphabetically), because they have the broadest roles in federal elder justice efforts. Other federal agencies and entities are listed alphabetically after DHHS and DOJ. This paper offers illustrative examples but does not of course represent the entire universe of federal entities or potential projects.

A few examples of interagency coordination are briefly addressed at the end of this document.

**I. DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)**

**ADMINISTRATION ON AGING (AOA/ACL)**

- *Problem:* Research shows that most older people are abused, neglected or exploited by their caregivers and aging network programs are often the only contact isolated elders have with the outside world. Although there has been progress, there is still much work to be done to integrate elder abuse awareness, training, prevention, detection, and

amelioration measures into AoA's caregiving, aging network programs, ombudsman, and other Older Americans Act programs consistent with a person-centered approach.

- *Proposal:* AoA should assure that elder abuse awareness, prevention, detection and response measures are fully integrated into the existing caregiving, aging network, and Older Americans Act programs it funds and administers in an integrated, person-centered manner.

#### **ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF). FAMILY VIOLENCE PREVENTION AND SERVICES OFFICE**

- *Problem:* Some of elder abuse is domestic violence in old age, or fall out from other types of family violence. Programs and shelters designed to address such violence among younger people often fail to serve older victims.
- *Proposal:* The Family Violence Prevention and Services office should provide training and technical assistance to coalitions and direct service providers to urge and equip them to better meet the needs of older victims.

#### **ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF), CHILDREN'S BUREAU**

- *Problem:* The Children's Bureau has a long history of leadership in collecting data about child abuse and funding a resource center to address it. Expertise relating to both data collection and resource center could help to inform similar efforts relating to elder abuse.
- *Proposal:* Children's Bureau data collection and resource center experts should share relevant expertise to enhance elder justice data collection efforts and resource centers.

#### **ASSISTANT SECRETARY FOR PLANNING AND EVALUATION (ASPE)**

- *Problem:* The elder abuse field is decades behind child abuse in data collection. Child protection experts (including those at ASPE) have worked collaboratively with outside experts and states for decades to identify common data points and collect data accordingly.
- *Proposal:* To convene a working group that can begin to identify core data elements and states willing to pilot initial data collection. State grantees awarded DHHS elder abuse prevention grants provide an initial potential group of state entities to engage in the effort. ASPE, as the agency working with the national evaluator for those prevention grants and given its expertise in data collection and evaluation, is in a unique position to lay a foundation for elder abuse data collection, in consultation with AoA, BJS and other components. Other experts to engage in the conversation include: (1) data collection and information technology experts with relevant expertise; (2) representatives from states in addition to Alaska, California, New York, and Texas (the four receiving prevention grants); and (3) experts in a range of state systems and programs issues relevant to elder

abuse and EA data. The working group could identify common data points, structure a pilot project, and make recommendations for how to proceed.

### **CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)**

- *Problem:* Elder abuse is a significant public health issue that has received a fraction of the recognition and CDC resources allocated to child abuse, intimate partner violence, quality of care, and healthy aging initiatives.
- *Proposal:* CDC should integrate elder abuse, neglect and exploitation issues into its surveillance, violence and injury prevention, aging, and health quality programs, for example by (1) supporting cross-unit and cross-Center collaborations addressing or with the potential to address elder abuse, and (2) creating and supporting the extension of existing surveillance programs to capture elder abuse-related data, for example surveys relating to aging, disability, mental health, substance abuse, long term care, and injury.

### **CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS)**

- *Problem 1:* Medicaid & Medicare reimbursement policy inhibits elder abuse prevention.
- *Proposal:* Convene a group of experts to identify suggested modifications to Medicare and Medicaid reimbursement policy to promote prevention, such as house calls for high risk elders or for time geriatric health professionals spend with patients and families on prevention.
- *Problem 2:* Due to personal preference and trends in policy (such as waiver programs), older Americans increasingly will receive publicly-funded care in at home. But we have not figured out how to prevent, detect and address elder abuse at home in ways that respect beneficiaries' autonomy and privacy, while assuring their safety, and assuring that public dollars are not squandered on worthless or nonexistent care.
- *Proposal:* CMS should develop demonstration projects designed to promote quality and prevent, detect, and ameliorate abuse, neglect, and exploitation at home, particularly by caregivers paid with public dollars.

### **HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)**

- *Problem:* Vulnerable populations, such as those served by the types of health centers funded by HRSA's Health Centers Program, are at heightened risk for elder abuse, but rarely receive the help they need to prevent or address the problem.
- *Proposal:* HRSA should begin to integrate elder abuse detection, intervention, and prevention into select health centers in its Health Centers Program, and collect data regarding the process.

## NATIONAL INSTITUTES OF HEALTH (NIH)

### *National Institute on Aging (NIA)*

- *Problem:* As reported by the GAO, NIA spent 1/1000<sup>th</sup> of its budget on elder abuse research in 2009, a number consistent with its scant expenditures on the issue in other years. We urgently need rigorous elder abuse research especially regarding prevention, intervention, and to better understand how the target population defines success.
- *Proposal:* NIA should specify in a statement of interest that EA is a priority funding area. In addition, NIA should issue a funding opportunity announcement that specifies elder mistreatment as its topic. This announcement could (and ideally would) be joined by other institutes listed in this white paper. In addition, it should annually fund at least one elder abuse research Request For Proposals and assure the review panel includes people who understand the issue's complexities.

### *National Institute on Mental Health (NIMH)*

- *Problem:* Preliminary research indicates that mental health problems lead to increased rates of elder abuse and that elder abuse leads to increased rates of mental health problems (both among victims and those pressed into service because of the toll of that victimization). (One study concludes that verbal abuse has even worse consequences for the mental health than physical abuse for women aged 50 – 79.) Despite its epidemic rates, elder abuse rarely is included in discussions, research, or programs relating to mental health.
- *Proposal:* NIMH should fund research that examines the relationship between mental health and elder abuse, and how addressing mental health issues among both potential perpetrators and victims more effectively can prevent or reduce elder abuse.

### *NIMH and/or the National Institute on Drug Abuse (NIDA) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA)*

- *Problem:* Anecdotal reports indicate that those who abuse, neglect, or exploit older people most often are adult children, grandchildren and others with developmental disabilities, behavioral health and/or substance abuse issues, and that substance abuse and mental health issues often also are present among victims of elder abuse. Initial research indicates that interventions with (potential) perpetrators often are more successful in preventing elder abuse than interventions with (potential) victims.
- *Proposal:* NIMH, NIDA, and/or NIAAA should begin to recognize and fund research to illuminate what types of interventions targeting behavioral and mental health, and substance abuse issues are most effective in addressing and preventing elder abuse.

### *National Institute on Nursing Research (NINR)*

- *Problem:* Nurses are on the front lines of elder abuse response, as care providers in hospitals, long term care facilities, hospice, palliative care, and home care settings, as health researchers, administrators, and care managers, and as trainers (such as the

International Association of Forensic Nurses who developed a training program on elder abuse).

- *Proposal:* Nurses were in the vanguard of conducting forensic evaluations and supporting victims of sexual assault with the Sexual Assault Nurse Examiner programs. NINR should examine potential corollary roles for nurses relating to elder abuse. In addition, NINR could pilot test various types of training to determine what tools nurses need to most effectively prevent, detect, and respond to elder abuse, and participate in multidisciplinary teams that address the problem.

#### *National Institute on Minority Health and Health Disparities (NIMHD)*

- *Problem:* Research indicates that African Americans disproportionately live in worse nursing homes than whites, are victims of financial exploitation about twice as often as whites, and that Latinos are victimized by all sorts of elder abuse at roughly four times the rate of whites. In addition, cultural norms and immigration status has been shown to have a relationship to elder abuse in the Asian American community.
- *Proposal:* NIMHD should integrate elder abuse considerations into ongoing research on health disparities and aging to identify the role of elder abuse, its nature and prevalence in various populations, what constitute protective factors, and how to provide those on the front lines with better guidance about how to identify, prevent and address elder abuse in minority communities.

#### **OFFICE OF CIVIL RIGHTS (DHHS-OCR)**

- *Problem 1:* Same as for NIMHD.
- *Proposal:* OCR in collaboration with DOJ's Civil Rights Division, should investigate (possibly including by testing) potentially discriminatory practices, and consider the disparate health consequences of elder abuse in promulgating regulations and policy to address it.
- *Problem 2:* Fears or threats of HIPAA violations often are an impediment to the prevention, detection, and response to elder abuse. Though HIPAA concerns may be well-intended, many experts believe that they actually may exacerbate elder abuse. (See testimony and white paper of Mark Lachs, MD submitted to the EJCC.)
- *Proposal:* OCR should work with DOJ to promulgate guidance and raise awareness about how individuals, entities, and multidisciplinary teams should navigate HIPAA issues in the prevention, detection, treatment and amelioration of elder abuse so that HIPAA compliance enhances not undermines elder justice.

## **OFFICE OF THE INSPECTOR GENERAL (DHHS OIG)**

- *Problem:* Most elder justice related laws are not adequately funded or implemented. Sometimes this is because of inadequate congressional appropriations. Often, however, more could be done by the administration with existing resources, as pointed in GAO's March 22, 2011 report.
- *Proposal:* OIG should begin to assess implementation of federal elder justice laws by DHHS components, including implementation of the Elder Justice Act, the Older Americans Act, the Family Violence Prevention and Services Act, and other laws as they pertain to elder abuse. In addition, OIG should promote measures designed to prevent and redress Medicare and Medicaid fraud and abuse and neglect of the individual beneficiaries of those programs, whether in cases pursued by DOJ, DHHS or OIG, in industry guidance OIG promulgates, or in its oversight of Medicaid Fraud Control Units.

## **SUBSTANCE ABUSE AND MENTAL HEALTH ADMINISTRATION**

- *Problem:* Although practitioners report a strong correlation between mental illness and substance abuse on one hand, and elder abuse on the other, SAMHSA's programs rarely address elder abuse.
- *Proposal:* SAMHSA should incorporate elder abuse considerations in its existing screening programs for substance abuse and depression (SBIRT). For example, it should consider, in addition to screening for depression and substance abuse, also screening older people for dementia, and both older people and their caregivers for the risk of abuse, neglect or exploitation that has occurred or is ongoing.

## **II. DEPARTMENT OF JUSTICE (DOJ)**

### **OFFICE OF JUSTICE PROGRAMS**

#### *National Institute of Justice*

- *Problem:* There is a dearth of research to assist in the detection of elder abuse, illuminate forensic aspects of the problem, to assist law enforcement and prosecutors in bringing elder abuse cases, or to guide those who create multidisciplinary centers to address elder abuse in what practices are most successful.
- *Proposal:* NIJ should continue to fund research to identify forensic markers, develop forensic knowledge, provide practical tools to those on the front lines in the detection and redress of elder abuse, facilitate the coordination of the many systems involved in elder abuse, evaluate multidisciplinary (forensic) centers about process and outcomes (beyond just prosecution), and encourage the dissemination knowledge that has been generated (such as the bruising studies). In addition, NIJ should work with DHHS research entities to develop some consensus about what tools those on the front lines should use and how

they should use them to screen for elder abuse, an issue about which there is considerable confusion and diversity of practice.

#### *Office for Victims of Crime (OVC)*

- *Problem:* There are few victim services designed or available to meet the needs of older victims, who often have complex medical, mental health, legal, financial, and/or housing needs. In addition, little is known about how best to meet their needs or about the efficacy of those programs that do exist. And assistance to older victims accounts for a small fraction of victim assistance funds.
- *Proposal:* OVC should encourage states to use some of the formula grant funds on elder justice measures and do so itself with the discretionary funds that it controls, to begin developing a better knowledge base about what programs and types of advocacy best serve older victims of various types of abuse, neglect and exploitation.

#### *Bureau of Justice Statistics (BJS)*

- *Problem:* BJS has devoted scarce resources to collect, analyze, publish, or disseminate information about elder abuse, who commits it, who's victimized by it, or to otherwise illuminate who is victimized by and perpetrating elder abuse, and how the justice system responds to the problem. (Recent BJS reports about prison rape have done much to illuminate and target the response to another difficult issue.)
- *Proposal:* To date, BJS has begun one small pilot program to gather data from one local prosecutor's office about its elder abuse cases. BJS should expand that project to include additional prosecutor offices. It also should develop a validated data collection instrument to collect justice system data about elder abuse, and consult with DHHS, and experts in other fields about how best to go about doing so across different systems and levels of government.

#### **OFFICE ON VIOLENCE AGAINST WOMEN (OVW)**

- *Problem:* Some percentage of elder abuse is domestic violence, sexual assault, and stalking in old age, but OVW programs often fail to recognize or address the needs of older victims.
- *Proposal:* OVW should continue to support the VAWA's abuse in later life program as a stand-alone program, and integrate the needs and concerns of older victims into all VAWA programs except those relating specifically to teen dating violence

#### **LITIGATING COMPONENTS (CIVIL, CRIMINAL, & CIVIL RIGHTS DIVISIONS, AND US ATTORNEY'S OFFICES)**

- *Problem:* Relatively few cases that can be pursued under federal law involving abuse, neglect, or financial exploitation of older people are prosecuted by DOJ.



- *Proposal:* DOJ should assign additional priority to civil and criminal prosecutions of those who defraud Medicare and Medicaid by seeking reimbursement for worthless and non-existent services, thereby not providing beneficiaries care they urgently need and on which they depend. In addition, DOJ should step up efforts to pursue financial exploitation of older people, in particular fraud and exploitation schemes targeting older people that cross state or international boundaries.

## **CIVIL RIGHTS DIVISION**

- *Problem:* Research indicates that African Americans disproportionately live in worse nursing homes than whites, are victims of financial exploitation about twice as often as whites, and that Latinos are victimized by all sorts of elder abuse at roughly four times the rate of whites. In addition, cultural norms and immigration status has been shown to have a relationship to elder abuse in the Asian American community.
- *Proposal:* The Civil Rights Division should investigate, if necessary use testers, to determine to what extent racial and ethnic disparities, violate any laws, and if so, redress those violations. In addition, it should investigate alleged violations of the constitutional rights of institutional persons and pursue such cases.

## **CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

- *Problem:* We don't know the economic cost of elder financial exploitation.
- *Proposal:* CFPB economists should work with its Office of Older Americans, in consultation with outside experts, to design a methodologically rigorous study to measure the cost of elder financial exploitation on older people, their families, on Medicare, Medicaid, and other health care programs, on employers and businesses, on public housing programs and other social programs, and on the wages and health care of caregivers.

## **CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (CNCS)**

- *Problem:* Elder abuse is a problem that can be addressed in part with the efforts of well-trained, well-deployed volunteers to address gaps, for example insufficient numbers of financial experts to provide counseling and assistance in cases of financial exploitation.
- *Proposal:* The CNCS should explore with experts in the field how best to train volunteers to effectively provide education regarding financial literacy and capacity, and assist in pursuing cases of financial exploitation, potentially as a Special Initiative or through its Senior Corps, Social Innovation Fund, and/or Volunteer Generation Fund. There are many ways such programs could contribute to reducing elder abuse, neglect, and exploitation, and assist those on the front lines to address it more effectively.

## **FEDERAL TRADE COMMISSION (FTC)**

- *Problem 1:* Research reveals that millions of older people lack the capacity to make fully informed financial choices and to protect themselves from deceptive and unfair practices.
- *Proposal:* FTC should develop and implement consumer protection programs designed for people with diminishing capacity including those whose diminished capacity to make financial decisions goes undetected and unaddressed.
- *Problem 2:* Long term and congregate care providers that don't receive Medicare and Medicaid, or that are subject to uneven oversight or regulation, often evade review and action when they abuse, neglect or exploit those for whom they provide care.
- *Proposal:* The FTC should develop a consumer protection-based enforcement initiative to protect consumers of long term care from providers not bound by Medicare and Medicaid rules and oversight, and other protections.

## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

- Elder abuse victims often require emergency shelter, transitional housing, or public housing because they have lost their homes by exploitation or are in danger of abuse or neglect where they live.
- The Department of Housing and Urban Development (HUD) should assure that people victimized or at risk for elder abuse have priority access to affordable housing and shelter.

## **DEPARTMENT OF LABOR**

- As a growing number of older people require care, and increasing numbers wish to receive that care at home, we will need a well-trained workforce to provide decent care. Yet we will experience growing workforce shortages and insufficient training and compensation of caregivers.
- The Department of Labor should promote fair labor standards for in-home caregivers and develop and make available training to prevent and address elder abuse.

## **UNITED STATES POSTAL SERVICE**

- *Problem:* Millions of older people are financially exploited in ways that use the United States mail.
- *Proposal:* The Postal Service should designate a point person in countries where financial exploitation schemes originate, who can assist in the coordination of cross-border efforts to address and prevent financial exploitation. In addition, the Postal Service should identify all relevant repositories of data from any source that might be useful in pursuing financial exploitation cases.

## **SOCIAL SECURITY ADMINISTRATION (SSA)**

- *Problem:* We have not measured Rep Payee fraud or developed measures to prevent it.
- *Proposal:* SSA should work with its Office of Inspector General to measure the extent and cost of Rep Payee fraud and begin to develop programs to prevent it.

## **DEPARTMENT OF THE TREASURY**

- *Problem:* Elder abuse is a serious and widespread if usually unrecognized financial problem to which there is no real coordinated response despite its significant economic impact.
- *Proposal:* The Department of the Treasury should modify the FinCEN form so that it includes a box to check for elder abuse, and elder abuse should be included among the issues considered by the 21-agency brain trust it heads.

## **VETERAN'S ADMINISTRATION (VA)**

- *Problem:* Given high elder abuse prevalence numbers in the general population, it's likely that aging veterans, particularly those with cognitive and physical disabilities, also are subject to high rates of elder abuse.
- *Proposal I:* The Veterans' Administration should become more involved in elder abuse research, policy, and practice, and integrate research and demonstration projects relating to elder abuse into programs relating to Veteran's health.
- *Proposal II:* In the child abuse field, home visits by health care workers have proven to be an effective prevention measure. The VA has done research showing the house calls are a cost effective way to deliver geriatric care. One potential project would be for the VA's Geriatric Research, Education and Clinical Centers (GRECCs) to pilot a demonstration project in its house call program to study whether house calls have any

preventive (or other) impact on elder abuse, neglect or exploitation. A related question to examine is whether the reason house call programs are cost effective because house calls help to reduce elder abuse that often results in costly nursing home or hospital admissions.

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**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**HOW THE FEDERAL GOVERNMENT CAN ENCOURAGE AND  
FACILITATE THE DEVELOPMENT OF INTERDISCIPLINARY TEAM  
RESPONSES TO ELDER ABUSE**

**INTRODUCTION**

A couple of months ago an Adult Protective Services social worker was notified that an elderly woman was living in a motel room with her adult daughter. The anonymous reporter was concerned that the elderly woman “didn’t look good.” When the APS worker went for a visit, the daughter would not allow her entry, but the APS worker could see an old woman who appeared to be disheveled, sitting quietly in a dark room. She brought this concerning situation to our OC EAFC for advice on how to proceed. The police detective made a phone call during the meeting and discovered that the daughter had been arrested several times for dealing and using illicit drugs. Plans were made for the social worker, geriatrician, public guardian, and patrol officer to make a group visit the following day. This time when the daughter denied us entry, the officer obtained a key from the clerk and we entered in order to perform a “welfare check.” The room was cluttered with plastic bags and paper; clothes were strewn throughout. The elderly woman was confused, thin, filthy, and smelled of feces; she was sitting in a chair in a corner of the room. A cognitive exam showed her unable to comprehend her situation; a physical exam revealed she was in atrial fibrillation (abnormal heart rhythm), had dirty, elongated toenails, and was unable to get out of the chair without assistance. As a result of our visit, an emergency guardianship was issued; the lady was brought to a nursing home; the daughter was no longer able to access her mother’s social security income.

Elder abuse takes many forms: physical, sexual, and psychological abuse, financial exploitation, and neglect by paid and unpaid caregivers. It cuts across all races, gender, ethnic and religious groups and occurs in every part of this country. It is inflicted in homes and facilities, and causes untold suffering. Separately, agencies face insurmountable obstacles in addressing the abuse of elders. Collaborations between differently trained professionals help to better identify, intervene, and prevent elder abuse. In fact, the need for multiple areas of expertise is so great that informal community collaborations form where formal networks are nonexistent and these informal collaborations evolve into interdisciplinary teams.

Some of the benefits of interdisciplinary teams include:

- a. Swifter and more effective intervention
- b. Improved access to needed services
- c. More cases are filed and prosecuted

- d. Communal wisdom and knowledge that comes from different perspectives and different expertise

### **SYSTEMIC BARRIERS THAT IMPEDE THE EFFECTIVENESS OF AN IDT**

Even when all the components of an effective team are present, there are still significant barriers to prevention and intervention in elder abuse.

**Barrier 1:** Ambiguity in laws protecting the confidentiality of victims (such as HIPPA) hinders interdisciplinary team responses.

**Barrier 2:** We currently lack a Goldilocks response for the most complex cases: we can either do too much or too little and rarely are able to do what is “just right.” There is a tension between an individual’s right to autonomously decide how to live and the community’s wish to intervene when those choices lead to abuse.

**Barrier 3:** Large geographical areas and limited expertise make finding the needed team members challenging. Existing technologies have the potential to connect team members when one community does not have all the needed expertise.

**Barrier 4:** Lack of geriatric training across disciplines hinders the ability of teams to address medical, legal, social, and ethical issues surrounding the abuse of older adults.

### **RECOMMENDATIONS**

1. Clarify existing HIPPA language to ensure disciplines are allowed to talk to each other.
2. Create guidelines to promote sharing info among/across agencies.
3. Build the infrastructure for use of technology that can cross state lines.
4. Endorse the use of evidence-based best practice models of Interdisciplinary teams.
5. Integrate EA responses into existing programs (respite care, meals on wheels).
6. Support research agendas, specifically in the area of standardized measurement, data collection instrumentation, evaluation, and translational research.

### **SUMMARY**

It is truly important to have national leadership on this issue. Just as we have found that moving from a silo mentality to a village mentality at the local level has been vitally important, the same is likely to apply at the federal level. Communication among the agencies will promote understanding, efficiency, and coordinated action. This may require the hiring of one person who serves as the identified mover, shaker, prodder, and leader. However this coordination is accomplished, its importance and urgency are clear. Too many of our nation’s elders are becoming impoverished, are suffering, and are dying as a result of abuse. Without swift, thoughtful action the problem will only grow.

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**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

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Elder abuse takes many forms: physical, sexual, and psychological abuse, financial exploitation, and neglect by paid and unpaid caregivers. It cuts across all races, gender, ethnic and religious groups and occurs in every part of this country. It is inflicted in homes and facilities, and causes untold suffering. Called the “gorilla in the room” of elder abuse work, dementia also looms large as we experience demographic growth of the two groups known to be most vulnerable to abuse: adults over 85; and adults with dementia. The medical, legal, social, and ethical complexities of elder abuse cases exceed the boundaries of any single discipline or agency. Effectively resolving cases of elder abuse takes a team effort at every level.

**BACKGROUND**

Separately, agencies face insurmountable obstacles in addressing the abuse of elders. Adult Protective Services and Ombudsman agencies are mandated to respond to allegations of abuse by assessing living conditions, injuries, and decision-making capacity but are mostly unable to conduct medical and/or cognitive assessments (Falk et al., 2010). Physicians and psychologists can provide needed assessments of cognition but lack the mandate and legal knowledge to navigate the criminal justice system. Law enforcement officers are able to gain access to victims and investigate allegations of abuse but require DAs to file cases. DAs can prosecute cases but require the case preparation of law enforcement and expertise of the medical community. Collaborations between differently trained professionals help to better identify, intervene, and prevent elder abuse. In fact, the need for multiple areas of expertise to address and deal with individual cases of elder abuse is so great that informal community collaborations often form where formal networks are nonexistent (Dyer, Heisler, Hill, & Kim, 2005) and these informal collaborations evolve into interdisciplinary teams.

**TYPES OF INTERDISCIPLINARY TEAMS IN ADDRESSING ELDER ABUSE**

Response to elder abuse and neglect requires collaboration between adult protective service workers, law enforcement officers, social workers, long-term care ombudsmen, clinical psychiatrists, nurses, geriatricians, public guardianship deputies, criminal justice investigators,

and prosecutors. The team approach to elder abuse grew out of a need to address social, legal, medical, ethical issues central to most elder abuse cases. Types of interdisciplinary teams include *Multidisciplinary Teams (MDTs)*, *Financial Abuse Specialist Teams (FASTs)*, *Elder Death Review Teams (EDRTS)*, *Elder Abuse Forensic Centers*.

*Multidisciplinary Teams (MDTs)*: Emerging in the 1980s, MDTs formed to review cases and address elder abuse at the local level. MDTs connect professionals and enable them to learn about other agencies in order to better link elder clients to appropriate services.

*Financial Abuse Specialist Teams (FASTs)*: FASTs convene to investigate and intervene in cases of financial abuse and can improve elders' access to needed legal services (Reeves & Wysong, 2010).

*Elder Death Review Teams (EDRTs)*: EDRTS bring together law, medicine, social services, and coroner/medical examiners to analyze suspicious elder deaths. Some EDRTS analyze individual cases to help with decisions regarding prosecution, while others look at systemic issues to identify breakdowns in care, detection, and treatment.

*Elder Abuse Forensic Centers*: Established by the Program in Geriatrics at the University of California, Irvine in 2003, Elder Abuse Forensic Centers grew out of efforts to further integrate services. The centers focus on action-oriented collaboration in which each team member is willing to provide service for a given case. The model has been replicated across California and at a number of sites around the country and are shown to increase filing, prosecution, and conviction of elder abuse cases (Navarro et al 2012).

## **KEY FACTORS THAT MAKE AN EFFECTIVE IDT**

As we approach our 1000<sup>th</sup> elder abuse case at the Orange County Elder Abuse Forensic Center, our observation on the factors that make for a high functioning interdisciplinary team echo those of teams across the nation: consistent representation across the spectrum of agencies/disciplines; agreed upon (often negotiated) goals; the ability to provide timely response; and rigorous case follow-up.

*Factor 1*: Consistent representation from social services, law enforcement, the legal system, medicine, mental health, and the public guardian is essential. Without this collaborative integration, the response is often inadequate, ineffective, and at times, harmful.

*Factor 2*: Elder abuse case requires the willingness to engage/challenge one another. Through this dynamic, often confrontational process, an effective interdisciplinary team arrives at integrated goals that are complementary rather than conflictive.

*Factor 3*: Timely response is critical. Operating separately (the typical response), requires countless phone calls between agencies and significant waiting while conditions worsen, bank accounts drain, victims continue to suffer, and sometimes die.

*Factor 4*: Elder Abuse interdisciplinary teams will not be effective without rigorous case follow-up. Because sequential steps by various agencies are required, timely follow-up ensures that cases move forward and proceed in a manner consistent with the goals negotiated and articulated



by the team. This follow-up assures accountability that agencies carried out their part of the solution.

### **SYSTEMIC BARRIERS THAT IMPEDE THE EFFECTIVENESS OF AN IDT**

When all the components of an effective IDT and the necessary factors that support good team integration are present, there are still significant barriers to effective prevention and intervention in elder abuse. Systemic barriers are those that are built into policies and regulations specific to the multiple agencies involved in the process.

*Barrier 1:* Ambiguity in laws protecting the confidentiality of victims of elder abuse hinders interdisciplinary team responses making it more difficult to protect them. IDT's function well when all the stakeholders share a common goal and have access to all relevant information in order to act in the victim's best interest. Adult Protective Service Agencies vary in their understanding of what information can be shared with law enforcement agencies. Health professionals may be unsure how HIPAA regulations and confidentiality protections are applied to elder abuse reporting and may have inaccurate knowledge (Schmeidel, Daly, Rosenbaum, Schmuck, & Jorgerst. 2012).

*Barrier 2:* We currently have “nuclear war” vs “nothing” responses to the most complex cases. A specific area where this occurs is what happens when gaps in services are identified between the broad domains of mental health and dementia. There is little coordination between the agencies, laws, policies and resources that are available to elders who suffer from dementia (Anetzberger et al., 2000), as opposed to mental health disorders. This lack of coordination causes our most vulnerable clients who may have both types of disorders to “fall between the gaps.” We need mechanisms to respond to the needs of these very complex clients with interventions that are more nuanced and targeted.

*Barrier 3:* The tension between an individual's right to autonomously decide how to live and the community's wish to intervene when those choices lead to mistreatment, abuse, or neglect is central to elder abuse cases. Clarification of these policies as they apply to elder abuse is important so that the duty to protect is not unnecessarily or inadvertently limited. Issues of privacy and confidentiality are specific examples of where this balance is relevant.

*Barrier 4:* Large geographical areas and limited expertise in all area make team collaboration and cross-state work challenging. Existing technology, such as videoconferencing capabilities, have the potential to connect expert teams of MDTs to communities in need of expertise, however, sufficient infrastructure needs to exist in order for these technologies to work.

*Barrier 5:* Lack of geriatric training across disciplines hinders the ability of teams to address medical, legal, social, and ethical issues surrounding the abuse of older adults. Without understanding, ageist attitudes color perceptions of what is considered “normal” in old age and prevent recognition of elder abuse.

### **RECOMMENDATIONS**

Growing interest in collaborative team approaches at local, state, and federal levels has created a ripe environment in which MDTs can form and thrive. Additionally, many communities have

the necessary components to build the infrastructure for an MDT. It is in the context of these untapped opportunities that the following recommendations are proposed:

1. Clarify existing HIPPA language to ensure different agencies are allowed to talk to each other.
2. Create guidelines to promote sharing info among/across agencies.
3. Build the infrastructure for use of existing and innovative technology.
4. Endorse the use of evidence-based best practice models of Interdisciplinary teams.
5. Integrate EA responses into existing programs (respite care, meals on wheels).
6. Support research agendas, specifically in the area of standardized measurement, data collection instrumentation, evaluation, and translational research.

## SUMMARY

It is truly important to have national leadership on this issue. Just as we have found that moving from a silo mentality to a village mentality at the local level has been vitally important, the same is likely to apply at the federal level. Communication among the agencies will promote understanding, efficiency, and coordinated action. This may require the hiring of one person who serves as the identified mover, shaker, prodder, and leader. However this coordination is accomplished, its importance and urgency are clear. Too many of our nation's elders are becoming impoverished, are suffering, and are dying as a result of abuse. Without swift, thoughtful action the problem will only grow.

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**William F. Benson**

NATIONAL ADULT PROTECTIVE SERVICES ASSOCIATION (NAPSA)

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

Thank you for the opportunity to speak to you today. My name is Bill Benson. I am here on behalf of the National Adult Protective Services Association (NAPSA), for whom I serve as National Policy Advisor. NAPSA represents the nation's state and local Adult Protective Services (APS) programs. As an original member of the Elder Justice Coalition, we join Bob Blancato and the other members of the EJC in being honored to be here for the first meeting of the Elder Justice Coordinating Council. Your convening today represents a significant step toward implementing the landmark Elder Justice Act and a federal commitment to address the scourge of elder abuse, neglect and exploitation, which even those of us long in the field did not realize until recently how very common, deadly and extremely expensive it is.

APS represents the only national state-based statutorily-authorized system to investigate elder abuse, neglect, and exploitation, and to respond to and protect its victims as far as possible. APS, which, in most states, also responds to abused younger adults with significant disabilities, operates under state laws in every community. It exists to protect vulnerable adults who cannot protect themselves because of cognitive or other serious impairments. While research is desperately needed and other systems must also respond to what is truly an epidemic of elder abuse, APS is the keystone when discussing an adequate response system, especially for victims who live in their own homes and communities (where almost all older persons reside). We must adequately and compassionately respond to those who are being victimized and suffering right now, while simultaneously working toward creating a more comprehensive and evidence-based response system for the future. APS is the primary system we have for doing that.

The research shows us there are more elder abuse victims than other types of abuse victims, such as victims of child abuse and domestic violence.<sup>30</sup> Yet, older victims are the only ones who receive no designated federal support for services. Parenthetically, it should be noted that federal support and attention to other types of abuse have resulted in reduced incidences of both child abuse and domestic violence homicides.<sup>31</sup>

APS relies heavily on state and local funds, which have been under intense pressure over the last few years. APS receives no designated federal funding, although 60% of states do use some Social Services Block Grant funds to support APS. The EJA authorizes the first-ever dedicated funding for APS, but thus far not a dollar has been appropriated.

While state and local APS investigators, case workers, and others do the best they can to deal with an onslaught of difficult, complex and growing caseloads, they do so with virtually no national infrastructure behind them. There is no federal agency with responsibility for APS. There is no national data system, nor practice standards, nor minimal training standards. As we all know, older persons, especially the very old, are the fastest growing population group, and we

know that more elder abuse can be expected just on the basis of that fact. It is troubling to note that despite these demographics, over the past five years, 87% of state APS programs report that the number of their reports and caseloads have gone up, while at the same time 48% report that their staff levels were reduced during the same time period. This information and much additional data on APS were gathered through a comprehensive survey of state APS Programs by the National APS Resource Center, and its partner NASUAD, the results of which are summarized in a just-released Resource Center report: *Adult Protective Services in 2012: Increasingly Vulnerable*<sup>32</sup>.

Not only are vulnerable and older adults invisible, but to a large extent so is the primary system charged with protecting them. APS is difficult even to describe. It differs from state to state and sometimes from county to county. With no federal leadership or resources, states have evolved their own systems, with their own definitions and standards. For example, APS programs are administratively fragmented, about a third residing in state units on aging; about half in state departments of social services, and the rest in various other arrangements. Over 80% of states serve all persons with significant disabilities who are age 18 and older; while several serve only persons 60 or 65 and older, and some states can serve older persons without disabilities. All APS programs investigate abuse in home settings, where nine out of ten older persons live, but almost half also conduct abuse investigations in facilities. In about one-third of states, APS professionals work in other programs in addition to APS (aging services, e.g.)<sup>33</sup>. All these variations make it difficult to gather data, to describe APS in a succinct way, to explain to victims, the general public and allied professionals how and where to report suspected abuse, and to develop standards of practice and training.

In our limited time today we would like to make ten suggestions as to what the federal response could be to strengthen and support APS to better address the needs of the victims of elder abuse (as well as other adult victims with disabilities). The White Paper we are preparing for the EJCC will elaborate upon each of these points.

1. There is a great need for support for research about the effectiveness of APS interventions, promising practices and optimal outcomes for victims. A not-yet-published paper from the joint research committee of NAPSA and the National Committee to Prevent Elder Abuse found only 44 “hypothesis-driven” studies involving APS over a 15 year period, and “very few” of those looked at the risks and benefits of APS interventions<sup>34</sup>. A recent and thorough survey, literature review and paper on evidence-based practices from NAPSRC’s partner, the National Council on Crime and Delinquency, “identified a handful of evidence-based practices” being utilized by APS across the country<sup>35</sup>.
2. There is also a great need for the development and testing of field-friendly assessment and screening tools that can be used by APS. We know, for example, that common tools such as the Mini Mental Status Exam, in use by APS in 22 states, are not adequate to screen for financial and other types of capacity, especially given the recent research on mild cognitive impairment. The field needs new and easy-to-use tools that are not costly to states or local APS programs in terms of either time or money.
3. It is imperative that a national data system be developed, tested and implemented that will be capable of annually telling us how many cases are reported to APS; what types of abuse those cases allege; how many are substantiated after investigation; the age, gender, living

arrangement, cognitive and other impairments, etc. of the victims; the age; gender, cognitive and other impairments, and the relationship to the victim, of the abusers; what interventions are put into place; why the cases are closed and other basic data. Such an effort will require identifying the essential common data elements and learning from those states that do have their own strong centralized automated data systems, including Texas and Illinois. One challenge will be the fact that the majority of APS data systems are integrated into other systems such as child protective services.

4. NAPSA worked closely with California's Project MASTER at San Diego State University to develop the NAPSA-identified 23 core competency modules for use in training their state's APS personnel. The modules, which are based on the latest research and have all been piloted and evaluated, are now developed. The topics range from initial investigation, sexual and physical abuse, neglect, self-neglect and financial exploitation to case planning and case closure. Resources are now needed to adapt the California modules into a nationally accessible, web-based training and certification program which can be utilized by every state and by every APS professional. This step would go a long way to standardizing not only APS training but also APS practices across the US.
5. Ensure that victim services funds (e.g., VOCA, VAWA, FVPSA) are allocated to older victims in proportion to their numbers and needs, and be sure that older and vulnerable adult victims, and victim response systems, are represented in all planning and programmatic decision-making. Older victims of abuse are underrepresented by these other victim services' programs both in terms of the dollars allocated and in the services provided.
6. We also believe that federal employees and contractors in federally funded systems and programs that interact with older adults, especially those who employ large numbers of mandated reporters, should be educated about elder and vulnerable adult abuse and about APS – what its authority is and when it should be called upon. The Veteran's Administration is one example of such a system. Moreover, APS clients – that is, victims of abuse – should be considered a priority class for federally-funded services (e.g., aging and disability services, housing). This could be accomplished through administrative guidance provided by the Executive Branch or through federal law.
7. There is a particular need to strengthen the Aging Services and Disabilities Services Networks' partnerships with APS at the state and local levels, especially with respect to providing emergency and temporary services for victims, screening for abuse and reporting suspected abuse. We believe every effort should be made to encourage or even require funded entities to work with the appropriate state or local APS program. We believe the aging services networks needs to be better educated about recognizing, reporting, and responding to elder abuse (and non-elder adult abuse). With 47 states having mandatory reporting laws, the aging services network, along with many others, need to be trained about their obligations and what more they can do when encountering victims of abuse.
8. APS partners routinely with law enforcement and the criminal justice system. But much more must be done to strengthen the hand of police, prosecutors, and judges to adequately respond to elder abuse and to work with their corresponding APS systems. We believe is important to expand training for law enforcement, prosecutors and judges beyond VAWA-defined crimes to all forms of elder and vulnerable adult abuse, and to make the training

widely and easily available throughout the country. While not all elder abuse is criminal in nature, the abuse that is needs to be thoroughly investigated and prosecuted.

9. As I noted earlier, Assistant Secretary Greenlee is to be applauded for her decision to fund the first-ever National APS Resource Center. It provides an essential vehicle for information exchange and mutual education among state and local APS programs, through producing urgently needed information, such as the report on APS I mentioned earlier, through frequent webinars and disseminated materials on research and training topics needed by the field, through a monthly newsletter and by responding to frequent requests for information and technical assistance by both programs and individuals. It is an important step toward building a modest national infrastructure to support and strengthen APS. This center needs to be an on-going part of the federal response to elder abuse.
10. And, finally, we remain thrilled by the enactment of the Elder Justice Act as part of the Affordable Care Act. But the great promise of the new law, especially the authorized support for states and communities as they attempt to keep their APS systems reasonably responsive to the growing demand for their services, is unfulfilled in the absence of appropriations.

Thank you again for this opportunity to offer NAPSA's thoughts and recommendations today. We will elaborate upon these points in our White Paper. We are committed to working closely with the EJCC and each of its member agencies and offices in considering the federal response to the nightmare of elder abuse.

**William F. Benson**

NATIONAL ADULT PROTECTIVE SERVICES ASSOCIATION (NAPSA)

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**FEDERAL RESPONSES NEEDED TO MEET THE SIGNIFICANT  
CHALLENGES FACING STATE AND LOCAL ADULT PROTECTIVE  
SERVICES**

Adult Protective Services (APS) are the only national state-based statutorily-authorized system in place to investigate elder abuse, neglect, and exploitation, and to respond to and protect its victims. APS (which, in most states, also responds to abused younger adults with significant disabilities) operates under state laws in every community. APS exists to protect vulnerable adults who cannot protect themselves because of cognitive or other serious impairments.

While research is desperately needed, and other systems must also be called upon to respond to what is truly an epidemic of elder abuse, APS is the keystone to any discussion about an adequate response system, especially for victims who live in their own homes and communities (where almost all older persons reside). We must adequately and compassionately respond to those who are being victimized and suffering right now, while simultaneously working toward creating a more comprehensive and evidence-based response system for the future. APS is the primary system we have for achieving these goals.

Research shows us there are more elder abuse victims than other types of abuse victims, including victims of child abuse and domestic violence.<sup>36</sup> Yet, older victims are the only abuse victims who receive no designated federal support for services, although federal investment clearly makes a significant difference: federal support and attention have resulted in reduced incidences of both child abuse and domestic violence homicides.<sup>37</sup>

APS relies heavily on state and local funds, which have been under intense pressure over the last few years. APS receives no designated federal funding (although more than half (60%) of states opt to use some Social Services Block Grant funds to support APS). The Elder Justice Act (EJA), enacted in 2010 as part of the Affordable Care Act, authorizes the first-ever dedicated funding for states for APS. While the EJA holds out considerable promise for states and their APS systems, not one dollar has yet been appropriated.

While state and local APS investigators, case workers, and others do the best they can to deal with an onslaught of difficult, complex, and growing caseloads, they do so with virtually no national infrastructure behind them. There is no federal agency with responsibility for APS; no national data system, practice standards, or minimal training standards, among many other infrastructure and support needs. As we know, older persons, especially the very old, are the fastest growing population group. On the basis of that fact alone, more elder abuse can be expected. That makes it especially troubling to note that despite these demographics, over the

past five years 87% of state APS programs report that the number of their reports and caseloads have gone up, while at the same time 48% have had their staff levels reduced.

This information and much additional data on APS were gathered through a comprehensive survey of state APS Programs by the National APS Resource Center (NAPSRC), and its partner the National Association of States United for Aging and Disabilities (NASUAD), the results of which are summarized in a just-released Resource Center report: *Adult Protective Services in 2012: Increasingly Vulnerable*.<sup>38</sup>

While vulnerable and older adults are often invisible, to a large extent so is the primary system charged with protecting them. APS is difficult even to describe, as it differs from state to state and sometimes even from county to county. With no federal leadership or resources, states have evolved their own systems, with their own definitions and standards. Some examples:

- APS programs are administratively fragmented: about a third reside in state units on aging; about half in state departments of social services or similar agencies, and the rest in various other arrangements.
- Over 80% of state APS programs serve all persons with significant disabilities aged 18 and older; while several serve only persons 60 or 65 and older, and some states serve older persons with or without disabilities.
- All APS programs investigate abuse in home settings, where over nine out of ten older persons live, but almost half also conduct abuse investigations in facilities.
- In about one-third of states, APS professionals work in other programs in addition to APS (e.g., aging services).<sup>39</sup> All these variations make it difficult to gather data, to describe APS in a succinct way, to explain to victims, the general public, and allied professionals how and where to report suspected abuse, and to develop standards of practice and training.

For the purposes of this paper and brevity we are making ten key recommendations as to what the federal response could be to strengthen and support APS to better address the needs of elder abuse victims (as well as younger adult victims with disabilities). The recommendations are not made in order or priority; rather, they are all of great importance to APS and more importantly, to the victims of abuse, neglect, and exploitation served by APS professionals across the United States.

1. There is a great need for support for research about the effectiveness of APS interventions, promising practices and optimal outcomes for victims. A not-yet-published paper from the joint research committee of NAPSA and the National Committee to Prevent Elder Abuse (NCPEA) found only 44 “hypothesis-driven” studies involving APS over a 15-year period, and “very few” of those looked at the risks and benefits of APS interventions.<sup>40</sup> A recent and thorough survey, literature review and paper on evidence-based practices from NAPSRC’s partner, the National Council on Crime and Delinquency (NCCD), “identified a handful of evidence-based practices” being utilized by APS across the country.<sup>41</sup>



2. There is a great need for the development and testing of field-friendly assessment and screening tools that can be used by APS. We know, for example, that common tools such as the Mini Mental Status Exam (MMSE), still in use by APS in 22 states, are not adequate to screen for financial and other types of capacity, especially given the recent research on mild cognitive impairment and aging brains.<sup>42</sup> The field needs new and easy-to-use tools that are not costly to states' or local APS programs in terms of either time or money.
3. It is imperative that a national data system be developed, tested and implemented that will be capable of annually telling us how many cases are reported to APS; what types of abuse those cases allege; how many are substantiated after investigation; the age, gender, living arrangement, cognitive and other impairments, etc. of the victims; the age, gender, cognitive and other impairments, and the relationship to the victim, of the abusers; what interventions are put into place; why the cases are closed; and other basic data. Such an effort will require identifying the essential common data elements and learning from those states that do have their own strong centralized automated data systems, including Texas and Illinois. One challenge will be the fact that the majority of APS data systems are integrated into other systems such as child protective services, so it may be difficult to extract APS-only information. A national APS data system would be the most efficient way to begin to ascertain the scope and nature of reported elder abuse.
4. Adequate training is urgently needed for APS personnel including investigators, case workers and supervisors at all levels. NAPSA worked closely with California's Project MASTER at San Diego State University to develop the NAPSA-identified 23 core competency modules (list provided as an appendix to this paper) for use in training their state's APS personnel. The modules are based on the latest research, have all been piloted and evaluated, and are now developed.<sup>43</sup> The topics range from initial investigation, sexual and physical abuse, neglect, self-neglect and financial exploitation to case planning and case closure. Resources are now needed to adapt the California modules into a nationally accessible, web-based training and certification program which can be utilized by every state and by every APS professional. This step would go a long way to standardizing not only APS training but also APS practices across the US.
5. It is not only necessary but just to ensure that a) federal victim services funds, such as those provided through the Victims of Crime Act (VOCA), the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA) are allocated to older victims in proportion to their numbers and needs, and b) older and vulnerable adult victims, and their victim response systems, are represented in the planning and programmatic decision-making for these programs. Older victims of abuse are underrepresented by these other victim services' programs both in terms of the dollars allocated and in the services provided.<sup>44</sup> Elder abuse victims have been in the shadows for far too long. federal policy and resources should not perpetuate the inequities.
6. Federal employees and contractors in federally-funded systems and programs that interact with older adults, especially those who employ large numbers of mandated reporters, need to be educated about elder and vulnerable adult abuse and about APS – what its authority is and when it should be called upon. The Veteran's Administration is one example of such a system.

Moreover, APS clients – that is, victims of abuse – should be considered a priority class for federally-funded services (e.g., aging and disability services, housing). This could be accomplished through administrative guidance provided by the Executive Branch or through federal law.

7. There is a particular need to strengthen the Aging Services and Disabilities Services Networks' partnerships with APS at the state and local levels, especially with respect to providing emergency and temporary services for victims, screening for abuse and reporting suspected abuse. We believe every effort should be made to encourage or even require funded entities to work with the appropriate state or local APS programs. The aging services network needs to be better educated about recognizing, reporting, and responding to elder abuse (and non-elder adult abuse). With 47 states having mandatory reporting laws, aging services network personnel, along with many others, must be trained about their obligations and what more they can do when encountering victims of abuse.

At NAPSA's annual conference in mid-October, 2012, Mary Lynn Kasunic, Executive Director and CEO of the Phoenix-based Area Agency on Aging Region One, and her Arizona counterparts from APS and law enforcement, spoke eloquently and forcefully about the importance of collaboration among the three fields. In particular, Ms. Kasunic noted her commitment to placing APS clients at the top of lists for needed services such as case management, shelter, home care; that is, they are not placed on current waiting lists for services.

As we can expect wait-lists for aging services to grow, APS clients everywhere should be considered a high priority for services, if not next in line. This is a matter on which the federal government can provide forceful leadership. Moreover, the Older Americans Act (OAA) should be amended to ensure that APS clients are *de facto* considered a top priority for OAA and other aging services. Similarly, this could be a part of other key federal programs such as those provided by the Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of Housing and Urban Development (HUD).

8. While APS programs routinely work with law enforcement and the criminal justice system, much more must be done to strengthen the capacities of police, prosecutors and judges to adequately respond to elder abuse and to work with their corresponding APS systems. We believe it is important to expand training for law enforcement, prosecutors, and judges well beyond the primarily VAWA-defined crimes to all forms of elder and vulnerable adult abuse, including self-neglect, and to make the training widely and easily available throughout the country. While it is important to recognize that not all elder abuse is criminal in nature, the abuse that is or may be needs to be thoroughly investigated and prosecuted.

APS plays an especially critical role in investigating and addressing elder financial exploitation, which is both increasingly common and increasingly complex, and which can serve as the motivation for co-occurring physical abuse and neglect. APS needs the assistance of the criminal justice system to hold criminal exploiters accountable and to seek redress for their victims. The criminal justice system should no longer be able to get away with ignoring criminal elder financial abuse by stating "it's a civil matter." While there are excellent examples of committed and effective criminal justice practitioners addressing elder abuse, these efforts need to be the routine and not the exception. Moreover, as established by

a study in Utah, effectively intervening to prevent ongoing financial exploitation saves taxpayer dollars as well.<sup>45</sup>

9. The recently established National APS Resource Center (NAPSRC) must be continued and made a permanent part of federal law. Assistant Secretary for Aging, Kathy Greenlee, and the Administration on Aging deserve a great deal of recognition for the decision to fund the first-ever National APS Resource Center, as recommended by the GAO in their landmark report: *ELDER JUSTICE: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*.<sup>46</sup> There are numerous federally-supported technical assistance/resource centers for addressing abuse of other populations, but until 2011 there had never been a center devoted to APS. While the National Center on Elder Abuse provides information about elder abuse in general, it does not focus on the skills and knowledge specifically needed by APS practitioners or other specific APS-related matters.

NAPSRC provides an essential vehicle for information exchange and mutual education among state and local APS programs, through producing urgently needed information, such as the report on APS cited earlier, frequent webinars and materials on research and training topics needed by the field, and a regular newsletter, as well as by responding to numerous requests for information and technical assistance by both programs and individuals. In the coming months, the NAPSRC will continue its focus on evidence-based practices, by examining how other similar fields are utilizing evidence-based practices to determine if any of their expertise and experience can be applied to APS.

The NAPSRC is an important step toward building a modest national infrastructure to support and strengthen APS. This center needs to be an on-going part of the federal response to elder abuse. The comprehensive OAA reauthorization legislation (S. 3562) introduced by Senator Sanders with 16 cosponsors in September 2011 includes provisions offered in separate legislative proposals by Senators Blumenthal and Franken to make the NAPSRC a permanent part of the OAA, as has been done with other AoA-funded centers, such as the National Ombudsman Resource Center and the National Center on Elder Abuse.

10. The enactment into law of the EJA as part of the Affordable Care Act was greeted with immense relief and excitement by the nation's APS community. Among its many important provisions (including establishing the EJCC), the Act authorizes the first-ever funding specifically devoted to supporting states in delivering APS to victims of abuse. NAPSA estimates that if the full \$100 million authorized were appropriated it could provide as many as 1,700 new APS investigators and case workers to directly respond to and help older victims. Moreover, the EJA authorizes funding for DHHS to research and test new and better approaches to APS, to improve data collection and to test many other means of strengthening states' APS. The Act would also establish a federal "home" for APS. Currently, no federal agency is tasked with supporting or even addressing APS. Assistant Secretary for Aging Greenlee, to her credit, has indicated her desire for AoA/ACL to have that responsibility.

The EJA would address each of these key needs of APS. But the great promise of the new law, especially the authorized support for states and communities as they attempt to keep their APS systems reasonably responsive to the growing demand for their services, is

unfulfilled in the absence of appropriations. Again, not a dollar has been appropriated under the EJA (or any federal law) specifically for APS.

On a related note, it is essential that the Social Services Block Grant (SSBG), which helps support APS in the majority of states, be maintained at least at its current funding level. Eliminating or reducing SSBG would deal a catastrophic blow to many already-struggling APS programs and more importantly, to their clients.

Beyond our ten recommendations there are other needs in the APS field which could and should be addressed through federal attention, such as amending or clarifying the Health Insurance Portability and Accountability Act (HIPAA) to make it clear that records can be released to APS; allowing for interstate compacts<sup>47</sup> among state APS programs to ensure that APS clients who are transported across state lines can be readily found and helped by another state's APS program, and that the state programs can share relevant client information; and requiring financial institutions to provide client records to assist in APS financial abuse investigations. Furthermore, helping to build and support a strong network of elder death review teams across the country could greatly advance knowledge about elder abuse for a very small investment of resources.

Finally, NAPSA would be remiss in not highlighting the great need for more federal attention to elder abuse in Indian country. In 2011, when Assistant Secretary for Aging Greenlee provided the first-ever funding for the NAPSRC she also provided first-time funding for a national center to focus on abuse of American Indian and Alaska Native (AI/AN) elders. That is an important first step for which she and AoA deserve much recognition but much more must be done. Congress has yet to appropriate a single dollar to the Indian part of Title VII, the Elder Rights Title, of the OAA, which was enacted into law in 1992 – **20 years ago**. APS is a state and county-based system. Federally recognized Indian tribes are sovereign nations. There are good examples of collaboration between tribal authorities and state APS but much more must be done to improve the delivery of appropriate APS services within Indian country. Older Indians deserve strong protective services systems constituted according to their own cultural values and norms.

Each of the recommendations made herein are of great importance to APS and those served by APS. The long-term significant lack of federal leadership and resources has meant that the states' APS programs are not coordinated, that there is no standardization among programs, that little APS-specific research has been done, and that innovations have not been tested, validated, and replicated. A continued absence of federal responses will result in crises for a system already strained, given the current and future rising numbers of older persons. APS, as the only statutorily-authorized and universal victim services system for elder and vulnerable adult abuse, must be equipped with needed tools and resources to adequately respond to the serious and widespread problem of elder abuse. To deny vulnerable older Americans and other dependent adults a strong system of protection against abuse, neglect, and exploitation is in itself a form of neglect, if not worse.

#### **TABLE 1. CALIFORNIA APS CORE COMPETENCIES TRAINING MODULES<sup>48</sup>**

Course Title	Target Date Availability	Type of Training
<b>Understanding APS</b>		
• <a href="#">APS Overview</a>	Available	e-learning
• <a href="#">APS Values and Ethics</a>	Available	Instructor led
• <a href="#">Agency Standards: California Regulations for APS</a>	Available	e-learning
• Collaboration and Resources	Awaiting OVC Approval	Instructor led
<b>Basic Skills</b>		
• <a href="#">Initial Investigation: Taking the First Steps</a>	Available	Instructor led
• <a href="#">Professional Communication Skills</a>	Available	Instructor led
• <a href="#">APS Case Documentation and Report Writing</a>	Available	Instructor led
• Case Closure	Awaiting OVC Approval	Instructor led
<b>Issues in Aging, Health and Behavioral Health</b>		
• <a href="#">The Aging Process</a>	Available	e-learning
• Physical/ Developmental Disabilities	Available (Pilot Version)	e-learning
• Mental Health Issues	Available (Pilot Version)	e-learning
• Substance Abuse	Available (Pilot Version)	e-learning
<b>Understanding Issues of Abuse</b>		
• <a href="#">Dynamics of Abusive Relationships</a>	Available	Instructor led
• <a href="#">Self-Neglect</a>	Available	Instructor led
• <a href="#">Caregiver or Perpetrator Neglect</a>	Available	Instructor led
• Physical Abuse	Fall 2012	Instructor led
• Sexual Abuse	Awaiting OVC Approval	Instructor led
• <a href="#">Financial Exploitation</a>	Available	Instructor led
<b>Financial Exploitation - topic specific e-learning mini-modules</b>		
• <a href="#">Identity Theft and Credit Card Fraud</a>	Available	e-learning
• <a href="#">Power of Attorney Abuses</a>	Available	e-learning
• <a href="#">Deed Theft and Foreclosure Rescue Scams</a>	Available	e-learning
• <a href="#">Undue Influence</a>	Available	e-learning
• <a href="#">Living Trust and Annuities Scams</a>	Available	e-learning
• <a href="#">Reverse Mortgage Abuse</a>	Available	e-learning
<b>Investigating Abuse: Multi-Disciplinary Perspectives</b>		
• <a href="#">Investigation: Client Capacity</a>	Available	Instructor led
• Investigation: Risk Assessment	Awaiting OVC Approval	Instructor led
• Legal Issues and Law Enforcement	Awaiting OVC Approval	Instructor led

Course Title	Target Date Availability	Type of Training
<b>Case Planning</b>		
<ul style="list-style-type: none"> <li>• Voluntary Case Planning and Intervention Process</li> </ul>	Awaiting OVC Approval	Instructor led
<ul style="list-style-type: none"> <li>• <a href="#">Involuntary Case Planning and Intervention Process</a></li> </ul>	Available	Instructor led

## **Lori Stiegel**

SENIOR ATTORNEY, AMERICAN BAR ASSOCIATION COMMISSION ON LAW AND AGING

### **WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

### **CIVIL LEGAL SERVICES**

\*The testimony will present options rather than recommendations, and Lori Stiegel will speak from her own professional experience and not as a spokesperson for the ABA.

#### **OVERVIEW**

Civil lawyers can play a critical role in preventing, detecting, and redressing elder abuse for the benefit of victims and their family members. For example, civil lawyers can:

- Counsel older persons about including provisions in a power of attorney that may help prevent financial exploitation by the designated agent;
- Assess whether an older person might be experiencing abuse in some form; and
- Bring lawsuits in civil court to break an abuser's control over the victim, to seek compensation for harm caused by a caregiver, or to recover misappropriated assets.

#### **WHAT VICTIMS NEED**

Victims face many gaps in their efforts to obtain civil legal help. These include:

- Lack of understanding what civil lawyers can do to prevent elder abuse or to redress it, and how to find help;
- Inability to obtain free legal services – whether through OAA Title III or LSC – or to pay for a private practitioner; and
- Difficulties finding lawyers who are knowledgeable about elder abuse.

Actions the federal government might take to fill these gaps include:

- Providing leadership on the role and importance of civil legal services in meeting the needs of victims, preventing victimization of other older persons, and reducing health care and Medicaid expenditures;
- Placing a high priority on the delivery of civil legal services in federal agency programming, grant funding, and training (e.g., ensuring that activities funded by the Office for Victims of Crime “wraparound legal services” initiative include victims of elder abuse, developing Administration on Aging regulations or guidance to State Units

on Aging and Area Agencies on Aging to raise the priority of civil legal services for elder abuse victims); and

- Supporting (or at least not opposing) bills pending in Congress that would authorize and appropriate funds for civil legal services.

## **WHAT CIVIL LAWYERS NEED**

Civil lawyers—whether they work in a legal aid/legal services program, a private law practice, or a state attorney general's office—need:

- Training on how to prevent, detect, and redress elder abuse, ideally beginning in law school and then through continuing legal education programs; and
- Technical assistance and other resources to help them provide high-quality, cost-effective civil legal services, including case analyses, brief banks, case consultations, listservs, and other opportunities for discussion, and information on expert witnesses.

The federal government could address these needs by:

- Providing leadership on the need for civil lawyers to have training, technical assistance, and other resources on elder abuse;
- Placing a high priority on providing these resources through federal agency programming, grant funding, and training; and
- Supporting (or at least not opposing) bills pending in Congress that would authorize and appropriate funds for these resources.

## **WHAT APS AND OTHER AGING SERVICES PROFESSIONALS NEED REGARDING CIVIL LAWYERS**

As civil lawyers should be an integral part of any effort to prevent, detect, and redress elder abuse, it is necessary for:

- APS and other aging services professionals to understand the role of civil lawyers in preventing, detecting, and redressing elder abuse so that they can make timely and appropriate referrals; and
- APS and other aging services professionals to understand the importance of having civil lawyers participate in multidisciplinary teams, coordinating councils, task forces, educational opportunities, and legislative and policy development activities, and accordingly to ask civil attorneys to participate in those activities.

The federal government could address these needs by:

- Providing leadership on the role that civil lawyers can play in addressing the problem of elder abuse and on the benefit of having civil lawyers at the table for the activities listed above; and
- Using federal agency programming, grant funding, and training to support the inclusion of civil lawyers in such activities; and



- Supporting (or at least not opposing) bills pending in Congress that would authorize and appropriate funds that would support these activities and the inclusion of civil lawyers in them.

#### **WHAT FEDERAL AND STATE LEGISLATORS AND POLICYMAKERS NEED REGARDING CIVIL LAWYERS**

To inform legislation and policy development, both federal and state legislators and policymakers need:

- Education about the role that civil lawyers play in preventing, detecting, and redressing elder abuse, and the ways in which those efforts can impact budgetary matters such as Medicaid and criminal justice services; and
- Data demonstrating how civil legal actions have benefited victims and also impacted federal and state budgetary matters.

Steps the federal government might take to fill these gaps include:

- Providing leadership and education on the ways in which civil lawyers can impact these budgetary matters by preventing, detecting, and redressing elder abuse;
- Using federal agency programming, grant funding, and training to support the development and use of comparable and accurate data collection tools that civil lawyers can use to gather and analyze data on how they impact these budgetary matters; and
- Seeking adequate funding for civil legal services programs.

**Lori Stiegel**

SENIOR ATTORNEY, AMERICAN BAR ASSOCIATION COMMISSION ON LAW AND AGING

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**CIVIL LEGAL SERVICES**

**OVERVIEW**

The purpose of this white paper is to share ideas on ways the federal government could enhance and support the role of civil lawyers in addressing elder abuse.

<sup>49</sup> Legal aid programs that receive Legal Services Corporation or Older Americans Act funding are central to this paper because (a) so many victims can't afford to pay for a lawyer and (b) that federal funding provides a means for exerting some influence over program activities. Nonetheless, many civil lawyers in private practice, as well as civil lawyers who work for federal, state, or local government agencies or for the private sector, also play a critical role in preventing, detecting, or redressing elder abuse, and their needs will be covered by this paper too.

Civil lawyers can be involved in elder abuse efforts to end elder abuse in myriad ways. For example, civil lawyers can:

- Counsel older persons about including provisions in a power of attorney that may help limit the designated agent's opportunity to commit financial exploitation by misusing the authority granted;
- Screen and assess whether an older person might be experiencing abuse in some form;
- Bring lawsuits in civil court to break an abuser's control over the victim, to seek compensation for physical harm caused by a caregiver, to remove an agent or guardian who is exploiting the victim, or to recover misappropriated assets;
- Advise and represent adult protective services programs, long-term care ombudsman programs, law enforcement, or other agencies in fulfilling their responsibilities to elder abuse victims;
- Bring civil lawsuits on behalf of government agencies to stop abusive practices;
- Help the private sector to interpret laws and regulations and to develop policies and protocols to facilitate prevention, detection, and reporting of abuse;
- Participate in multidisciplinary teams and other collaborations; and

- Develop improved laws, regulations, and policies.

This paper presents four major gaps and then provides ideas for short-, medium-, and long-term federal actions that could help to fill each of those gaps.

**GAP #1 – MANY VICTIMS FACE SIGNIFICANT CHALLENGES IN THEIR EFFORTS TO OBTAIN CIVIL JUSTICE AND NEED:**

- Information about what civil lawyers can do to prevent elder abuse or to redress it;
- Information about how to find legal help, which necessitates educating the public and also staff of adult protective services and other hotlines, information and referral services, area agencies on aging, and others about recognizing that elder abuse raises civil legal issues and that victims and family members should be referred to a legal aid program or bar association as well as to protective services, the ombudsman program, or law enforcement;
- Accessible, affordable civil legal services – whether through legal aid programs including those supported by Older Americans Act or Legal Services Corporation funding, pro bono programs, or civil lawyers in private practice; and
- Civil lawyers who are knowledgeable about elder abuse and related issues including decision-making capacity and undue influence.

National studies of unmet legal needs of low-income persons and state-specific studies of unmet legal needs of older persons have demonstrated clearly that Legal Services Corporation- and Older Americans Act-funded civil legal assistance programs are unable to provide representation to a substantial majority of persons who need help.<sup>50</sup> And these studies were conducted before the devastating “great recession” increased the numbers of persons in need as federal and state spending on civil legal assistance was slashed, so undoubtedly the need is far greater now.

**GAP #2 – WHETHER THEY WORK IN A LEGAL AID PROGRAM OR OTHER NONPROFIT AGENCY, A PRIVATE LAW *practice or other business, or a government agency, civil lawyers addressing elder abuse need:***

- Training on how to prevent, detect, and redress elder abuse, ideally beginning in law school and then through continuing legal education programs; and
- Technical assistance and other resources to help them provide high-quality, cost-effective civil legal services, including case analyses, brief banks, case consultations, opportunities for communication and networking such as listservs and conferences, information on expert witnesses; and legislative analyses; and
- Research and translational research about the effectiveness of interventions, including adult protective services, ombudsman programs, and shelters; about capacity to make financial decisions and susceptibility to undue influence; and about markers and consequences of neglect. The results of this research must be made accessible to lawyers and judges, as well

as investigatory agencies including adult protective services, law enforcement, and—in neglect cases—medical examiners or coroners. The members of those disciplines need to understand the research and its relevance to their work so that they can assess the merits of cases, what evidence is necessary, and what expert witnesses may be required.

Moye and Marson have reviewed nascent research related to decline in financial capacity among persons with Alzheimer’s Disease and called for research on: (1) “undue influence and exploitation of older adults with diminished capacity”; (2) the nature of capacity impairment in older persons with other diseases and impairments, including developmental disabilities; (3) clinician decision-making, including how clinicians from different disciplines “may vary in their capacity assessment approach and outcomes”; and (4) “identifying cognitive and other behavioral markers of diminished capacity.” They urged “continued model building and instrument development in this area” and recommended that future research “address issues of normative longitudinal change in financial capacity over the life course, the natural history of financial capacity loss in patients with dementia, and cognitive predictors of financial capacity.”<sup>51</sup>

A review of the “neglect” research listed in the Clearinghouse on Abuse and Neglect of the Elderly indicates that there is a good bit of literature about the concept and definitions of neglect, the need for and challenges of assessing it in clinical practice, and the difficulties of researching it. There appears, however, to be no literature about research on its markers and results. In 2003, the National Research Council’s book *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* stated there were “no published studies of physical markers of elder mistreatment that help distinguish preventable, unavoidable signs from those that are intentional, inflicted, or avoidable” and called for research “to help illuminate the characteristics of common injuries, such as their etiology, natural course, distribution, and severity so that the process of identifying cases of elder mistreatment can become more accurate and reliable.”<sup>52</sup> There does not seem to have been any of the recommended research on neglect since 2003. The need has not diminished; if anything, the need is increasing as more civil and criminal court cases regarding elder neglect are litigated.

**GAP #3 – OTHER PROFESSIONALS, INCLUDING BUT NOT LIMITED TO APS AND LAW ENFORCEMENT, NEED TO:**

- Learn about the role of civil lawyers in preventing, detecting, and redressing elder abuse so that they can recognize when a referral to a civil lawyers is appropriate and make that referral in a timely manner; and
- Understand the benefit to victims and to themselves of having civil lawyers participate in multidisciplinary initiatives, educational opportunities, and legislative and policy development activities, and then accordingly ask civil attorneys to participate in those activities.

Over the past decade, substantial progress has been made in educating components of the criminal justice system about elder abuse and in involving prosecutors in educational programs, multidisciplinary teams, and other initiatives, and those efforts have aided victims and other professionals. Nonetheless, as stated during the Elder Justice Coordinating Council meeting and

at other times, “we can’t prosecute our way out of this.” Efforts to support prosecution need to be complemented by efforts to support involvement of the civil justice system. Civil lawyers have far greater opportunities to prevent, detect, and remedy elder abuse, and may have critical expertise to share.

#### **GAP #4 – FEDERAL AND STATE LEGISLATORS AND POLICYMAKERS NEED:**

- Input from civil lawyers about the impact of laws, regulations, and other policies on efforts to prevent, detect, and redress elder abuse;
- Education about the role that civil lawyers play in preventing, detecting, and redressing elder abuse, and how those efforts can impact budgetary matters such as Medicaid and criminal justice services; and
- Data demonstrating how civil legal actions have benefited victims and also impacted federal and state budgetary matters.

There are opportunities to collect valuable data from legal aid programs supported by the Legal Services Corporation (LSC) and the Administration on Aging (AoA). In a 2006 white paper prepared for the National Center on Elder Abuse, Wood opined that LSC grantees and AoA-funded senior legal hotlines could become sources of data on incidence and prevalence.<sup>53</sup> It is unclear whether her recommendations were ever pursued or implemented. Additionally, LSC grantees and AoA-funded legal assistance grantees could be sources of more than incidence and prevalence data if they were required or encouraged to capture and report data that demonstrate the financial costs of elder abuse to victims, their families, businesses, or governments. Examples of such data might be the value of financial accounts or homes that are recovered from an exploiter. My old program, Bay Area Legal Services in Tampa, Florida, used to collect and report this data voluntarily. Recent studies of the costs of financial exploitation conducted by Utah’s and Wyoming’s adult protective services programs also demonstrate that this can be done.<sup>54</sup>

#### **ACTIONS THE EJCC MEMBER AGENCIES COULD TAKE TO FILL THESE GAPS**

*Short Term: Use your bully pulpit to galvanize public and professional awareness of the need for:*

- Affordable, accessible, high quality civil legal services to meet the needs of victims, prevent victimization of other older persons, and reduce Medicaid and other health care expenditures;
- Civil lawyers to have training, technical assistance, and other resources to meet victims’ needs;
- Involving civil lawyers in multidisciplinary initiatives to address elder abuse, as well as federal and state efforts to develop better laws, regulations, and policies.

*Medium Term: Lead efforts to effect change within your agencies even in the absence of significant resources by placing a high priority on:*

- Supporting delivery of civil legal services to elder abuse victims in existing federal agency programming, grant funding, and training. Ways of doing this include funding the “Missing Link” project and ensuring that activities funded by the Office for Victims of Crime “wraparound legal services” initiative include victims of elder abuse, as well as by developing Administration on Aging regulations or guidance to State Units on Aging and Area Agencies on Aging about selecting providers of civil legal assistance who have expertise in preventing, detecting, and redressing elder abuse.
- Reviewing existing laws, regulations, policies, and programs to determine whether they impose barriers to professionals serving elder abuse victims, and taking steps to fix problems identified. An example is the opinion letter about whether banks could lawfully report suspected elder abuse issued by the Federal Reserve, FDIC, FTC, SEC, and other agencies in 2002.<sup>55</sup>
- Examining existing data collection efforts to assess whether there are opportunities to obtain prevalence or incidence data or data about the financial costs of elder abuse, particularly from civil legal assistance programs funded through the Legal Services Corporation and the Administration on Aging.

*Long Term: Broaden and institutionalize these efforts within your agencies by:*

- Seeking adequate funding for civil legal services programs;
- Seeking authorization and adequate funding for the myriad resources and activities that would support the civil legal system’s response to elder abuse victims;
- Developing laws, regulations, or other forms of guidance to address barriers to services identified; and
- Using federal agency programming, grant funding, and training to support the development and use of comparable and accurate data collection tools for civil lawyers to contribute to the knowledge base on incidence and prevalence as well as the financial costs of elder abuse.

**Lori Stiegel**

SENIOR ATTORNEY, AMERICAN BAR ASSOCIATION COMMISSION ON LAW AND AGING

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**JUDICIAL SYSTEM**

Over the course of the 19 years in which I have worked exclusively on elder abuse issues at the ABA Commission on Law and Aging, my efforts have been bookended by research on how state courts handle cases involving elder abuse. Sadly, there has been so little attention paid to the role of courts in elder abuse cases that the findings of the research conducted in the early 1990s are as pertinent today as the findings of the research we concluded earlier this year. Informed by those research projects, which were funded respectively by the State Justice Institute and by the U.S. Department of Justice's National Institute of Justice, this statement will present ideas for practical federal government steps to improve the ability of the state courts—both civil and criminal—to address the problem of elder abuse.

My comments will focus on how the federal government can help the courts to:

1. Provide leadership within the community;
2. Provide education to the public and the bar;
3. Handle cases involving elder abuse; and
4. Collect data.

**GAP: COURTS HAVE PROVIDED LEADERSHIP AND EDUCATION OF THE PUBLIC AND OF THE BAR WITHIN THEIR COMMUNITIES ON SIMILAR PROBLEMS SUCH AS CHILD ABUSE AND DOMESTIC VIOLENCE.**

Within the confines of state judicial ethics codes, courts can offer leadership on and raise awareness of elder abuse by:

- Encouraging and supporting the development and continuing operation of a state or local task force or coordinating council on elder abuse issues, or the continued existence of such bodies;
- Encouraging evolving or existing task forces or coordinating councils on family violence or domestic violence to incorporate elder abuse advocates into their membership and elder abuse issues into their agenda;
- Including professionals knowledgeable about elder abuse, such as civil lawyers or APS, on court advisory councils, or develop other mechanisms for establishing linkages with practitioners who address elder abuse;
- Encouraging and supporting the development and continued operation of elder abuse multidisciplinary teams;
- Encouraging and supporting the development of protocols or memoranda of understanding between various entities involved in elder abuse cases; and

- Speaking at public awareness events and at bar association meetings or continuing legal education programs about the role of the courts in elder abuse cases.

*Ideas for Federal Government Action:*

Federal leadership on this issue could encourage the leadership of the state courts to make elder abuse a higher priority issue. The chief judges and court administrators of the state courts are increasingly cognizant of the impending impact on the courts of the burgeoning population of older persons, but they need guidance and other resources to act on that awareness and to help them focus on elder abuse. Federal support for training, technical assistance, and materials on the opportunities for and abilities of state courts to provide leadership and education on elder abuse could have a significant impact.

**GAP: JUDGES AND COURT STAFF NEED TRAINING ON THE DYNAMICS OF ELDER ABUSE AND FAMILY VIOLENCE...**

...types of cases involving elder abuse; capacity issues; state laws concerning elder abuse; APS and other aging services, including the long-term care ombudsman program; case management issues and procedural innovations; and crafting and implementing effective orders in elder abuse cases. They need to learn about the recent—and hopefully ongoing—developments in scientific research about decision-making capacity to inform their judgments in many civil and criminal cases. The courts would benefit from much-needed research on interventions, including direct services such as APS or guardianship for elder abuse victims.

*Ideas for Federal Government Action:*

After funding our initial research on the courts, the State Justice Institute funded the ABA Commission on Law and Aging to develop curricula on elder abuse for judges and state courts. Lack of resources to implement the training and lack of interest in the issue by the courts hindered the use of those curricula. More recently, the National Center for State Courts has, with a combination of federal and foundation funding, developed a new curriculum and is making it available online. But federal leadership on elder abuse is still needed to enhance the state courts' recognition of the importance of the issue. Ongoing technical assistance and the development and dissemination of practical materials for judges and court staff are necessary, requiring federal support. Continuing support of the scientific research on decision-making capacity is critical, as is the translation of that research to aid practitioners in understanding what it means and how it is relevant to elder abuse victims.

**GAP: FURTHER ASSESSMENT OF THE COURT-FOCUSED ELDER ABUSE INITIATIVES...**

...we studied for our recent National Institute of Justice project and new initiatives developed subsequently, such as the Cook County, Illinois elder court that Judge Banks will discuss, would also be useful. The five initiatives studied were doing very little to self-assess their impact and outcomes. Only two of the initiatives had developed a client satisfaction survey, and they had received very few responses. None of the initiatives were making any formal attempt to obtain feedback from their professional stakeholders. Court case files in all five study sites contained very little information about the victims and perpetrators beyond the most basic demographic-



type data. There was very little information about the circumstances and outcomes of the case that would be needed for an evaluation. Indeed, in four of the five study sites it was usually impossible to tell from the court's data cover sheet that a case involved elder abuse, and that is the data collected and reported to and by the state court administrative offices. This finding reflects the fact that most court cases involving elder abuse are handled under laws that are not specifically about elder abuse (e.g., murder, theft, sexual assault, guardianship, orders of protection) and thus are not "counted" as elder abuse cases. These data limitations have significant policy and practice implications.

*Ideas For Federal Government Action:*

This lack of an "evaluation gestalt" indicates that the courts need to change their mindset about the need for data collection that will enable program evaluation and basic counting of the number of cases related to elder abuse. Federal provision of technical assistance, training, and other support could help the courts in general, as well as the existing and new court-focused elder abuse initiatives, to understand the need for and develop plans to collect critical data and support program evaluation.

## **Lori Stiegel**

SENIOR ATTORNEY, AMERICAN BAR ASSOCIATION COMMISSION ON LAW AND AGING

### **WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

### **JUDICIAL SYSTEM**<sup>56</sup>

#### **OVERVIEW**

Growth of the older population, increasing detection and/or incidence of elder abuse, state legislative action, and growing emphasis on legal remedies for elder abuse are combining to expand the role of the judicial system in addressing the problem.<sup>57</sup>

In 1993, the State Justice Institute funded the American Bar Association (ABA), Commission on Law and Aging to conduct a groundbreaking study and develop recommended guidelines to enhance the ability of the state courts to handle elder abuse cases. Nearly 300 professionals (judges, court administrators, private and publicly-funded lawyers, prosecutors and attorneys general, Medicaid Fraud Control Unit staff, state legal services developers, and adult protective services and other non-legal professionals) identified barriers that inhibited entry of cases involving elder abuse into the state courts. Among the problems identified were:

- The lack of knowledge about and sensitivity to elder abuse by judges was seen as inhibiting prosecutors, civil lawyers, and abused persons from bringing court cases;
- The failure of court staff to explain the judicial process to older abused persons, particularly to those who have a mental or cognitive disability or who may be intimidated or confused, was considered to be a barrier to victims' pursuit of legal remedies;
- The courts' failure to recognize that older persons who are homebound or bedbound may be incapable of traveling to the courthouse even though they are capable of testifying;
- Court delays—typical or otherwise—were thought to be particularly onerous to older abused persons who are nearing the end of their life span, and who may be losing their capacity to remember the abuse and testify about it; and
- Lack of knowledge about elder abuse among prosecutors, law enforcement officers, and civil lawyers.<sup>58</sup>

To address these and other barriers the ABA Commission promulgated 29 recommended guidelines for state courts, which were adopted as policy by the ABA House of Delegates in August 1996.<sup>59</sup> In March 2006 the Center on Aging at Florida International University produced recommendations for adapting the U.S. Department of Justice Bureau of Justice Assistance's

*Trial Court Performance Standards with Commentary* to an aging society in three contexts, including criminal cases involving elder abuse and domestic violence.<sup>60</sup> These guidelines and standards contributed to the development of five “court-focused elder abuse initiatives”<sup>61</sup> that the ABA Commission recently assessed with funding from the Department of Justice’s National Institute of Justice.<sup>62</sup> This history informs the ideas presented in this white paper, which focus on practical federal government steps over the short-, medium, and long-term to improve the ability of the state courts<sup>63</sup>—both civil and criminal—to:

- (1) Provide leadership within the community;
- (2) Provide education to the public and the bar;
- (3) Handle cases involving elder abuse; and
- (4) Collect pertinent data and evaluate court practices.

**GAP #1 – COURTS HAVE PROVIDED LEADERSHIP AND EDUCATION OF THE PUBLIC AND OF THE BAR WITHIN THEIR COMMUNITIES ON SIMILAR PROBLEMS SUCH AS CHILD ABUSE AND DOMESTIC VIOLENCE, BUT RARELY HAVE DONE THOSE THINGS ON THE ISSUE OF ELDER ABUSE.**

Within the confines of state judicial ethics codes, courts can, for example:

- Encourage and support development or continuation of multidisciplinary initiatives on elder abuse or the inclusion of elder abuse in initiatives addressing other topics;
- Include professionals knowledgeable about elder abuse, such as civil lawyers or adult protective services personnel, on court advisory councils or other means of informing courts about the needs and issues of its jurisdiction;
- Encourage and support development and continued operation of elder abuse multidisciplinary teams; and
- Speak at public awareness events and at bar association meetings or continuing legal education programs about the role of the courts in elder abuse cases.

*Ideas For Federal Government Action On Gap #1*

Federal leadership on this issue through speeches, publications, media events, and other means could encourage the leadership of the state courts to make elder abuse a higher priority issue. The chief judges and court administrators of the state courts are increasingly cognizant of the impending impact on the courts of the burgeoning population of older persons, but they need guidance and other resources to help them act on that awareness and focus on elder abuse. Federal support for training, technical assistance, and materials on the opportunities for and abilities of state courts to provide leadership and education on elder abuse could have a significant impact.

**GAP #2 – JUDGES AND COURT STAFF NEED TRAINING AND PRACTICAL TOOLS SUCH AS BENCH CARDS ON MYRIAD ISSUES RELATED TO ELDER ABUSE,**

including but not limited to manifestations, dynamics, state laws, services (e.g., adult protective services, long-term care ombudsman, aging, and disability), decision-making capacity, undue influence, case management issues and procedural innovations, and crafting and implementing effective orders in these cases. They need to learn about the recent—and hopefully ongoing—developments in scientific research about decision-making capacity, physical abuse, and neglect

to inform their judgments in many civil and criminal cases, and about any research on the effectiveness of interventions that may occur in the future.

#### *Ideas For Federal Government Action On Gap #2*

The State Justice Institute funded the ABA Commission on Law and Aging to develop curricula on elder abuse for judges and state courts. Lack of resources to implement the training and lack of interest in the issue by the courts hindered use of those curricula. More recently, the National Center for State Courts has, with a combination of federal and foundation funding, developed a new curriculum and is making the training available online. But federal leadership is still needed to enhance the state courts' recognition of the importance of the issue. Ongoing technical assistance and the development and dissemination of additional practical materials for judges and court staff are necessary, requiring federal support. The Department of Justice could place a high priority on using existing federal agency programming, grant funding, and training to encourage the state courts to focus on elder abuse. The Violence Against Women Act supports some training for family court judges on elder abuse, but many other types of judges hear cases involving elder abuse and could benefit from training, technical assistance, and practical tools and materials. Continuing support of scientific research on decision-making capacity, on physical abuse, and on neglect is critical, as is the translation of that research to aid judges, as well as lawyers and other professionals, in understanding what the research means and how it is relevant to elder abuse victims.

#### **GAP #3 – COURTS NEED TO LEARN ABOUT AND CONSIDER IMPLEMENTING DIFFERENT WAYS OF HANDLING ELDER ABUSE CASES TO MEET THE NEED OF OLDER LITIGANTS WHO OFTEN HAVE SUBSTANTIAL DIFFICULTY ACCESSING AND NAVIGATING THE COURT SYSTEM.**

Examples that we recently assessed for our National Institute of Justice-funded project include elder protection courts, elder justice centers, and processes for handling protection order cases by telephone for people who are homebound. As these ideas are expanded and adjusted, or as new ideas are created, courts also need to learn about those developments. Nevertheless, while specialized courts and other focused initiatives have significant benefits, there are many things that courts can do to enhance access to justice for victims of elder abuse without creating court-focused elder abuse initiatives. The ABA's recommended guidelines for state courts handling cases involving elder abuse and the Florida International University standards provide other ideas, and there also is much to learn from the judicial system's approach to child abuse and domestic violence.

#### *Ideas For Federal Government Action On Gap #3*

Training and technical assistance resources supported by the federal government need to address systemic issues that may limit access to justice by or for elder abuse victims, as well as substantive legal issues and scientific knowledge about decision-making capacity, physical abuse, and neglect. Judges and court administrators who are considering whether to establish court-focused elder abuse initiatives don't have access to or time to read lengthy journal articles about research and therefore could benefit from simple, practical tools about research findings.

**GAP #4 – DATA COLLECTION BY AND EVALUATION OF THE COURT-FOCUSED ELDER ABUSE INITIATIVES THE ABA COMMISSION JUST ASSESSED AND NEW INITIATIVES DEVELOPED SUBSEQUENTLY, SUCH AS THE COOK COUNTY, ILLINOIS ELDER AND MISCELLANEOUS REMEDIES DIVISION THAT JUDGE BANKS DISCUSSED, IS NEEDED.**

That suggestion raises complex issues about whether courts are interested in undergoing evaluation and whether they are capable of producing data that can be evaluated. The federal government has supported evaluations of other types of specialized courts, including drug courts and domestic violence courts, thus demonstrating that such evaluation is possible when courts are provided with guidance to deal with the challenges of collecting relevant data and researchers are provided with the necessary financial support to undertake the necessary evaluations. Elder abuse cases pose some additional challenges, however.

The five initiatives studied were doing very little to self-assess their impact and outcomes. Only two of the initiatives had developed a client satisfaction survey, and they had received very few responses. None of the initiatives were making any formal attempt to obtain feedback from their professional stakeholders. Court case files in all five study sites contained very little information about the victims and perpetrators beyond the most basic demographic-type data. There was very little information about the circumstances and outcomes of the case that would be needed for an evaluation. Indeed, in four of the five study sites it was usually impossible to tell from the court's data cover sheet that a case involved elder abuse, and that is the data reported to and by the state court administrative offices. This finding reflects the reality that judges see elder abuse in a variety of contexts: criminal cases such as assault, battery, forgery, fraud, murder, rape, theft; civil fraud or conversion matters to regain misappropriated property; personal injury actions; guardianship or conservatorship; mental health commitment; special protective proceedings initiated through adult protective services; cases involving health care decisions for an incapacitated patient; petitions for civil orders of protection from victims of elder abuse; and criminal or civil cases regarding institutional care in nursing homes or other long-term care facilities. In other words, these cases are not "counted" as elder abuse cases. Clearly these limitations pose significant policy and practice implications.

*Ideas For Federal Government Action On Gap #4*

This lack of an "evaluation gestalt" indicates that the courts need to change their current mindset about collecting data that supports program evaluation and basic counting of the number of cases related to elder abuse. Federal provision of technical assistance, training, and other support could help the courts in general, as well as the existing and new court-focused elder abuse initiatives, to understand why and how to create plans to collect critical data and support program evaluation. Federal support could also increase the likelihood that data collection and evaluation will be conducted in ways that are meaningful and have potential for national, multi-state, or multi-jurisdiction comparability.

This gap also illustrates a problem that cuts across most of the testimony provided at the Elder Justice Coordinating Council meeting but that was never articulated. What are the consequences of the current spotlight on evidence-based practices on efforts to address elder abuse when interventions and initiatives have not yet undergone rigorous evaluation? None of us want to see our tax dollars wasted, but federal agencies need to be very careful in their messaging and in funding, whether directly or through state or local agencies, to ensure that they don't

unintentionally choke off new ideas or impede the development of issues that are currently under-resourced and under-researched.

**Page Ulrey, J.D.**

SENIOR DEPUTY PROSECUTING ATTORNEY, KING COUNTY, WASHINGTON

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**CONFUSION ON THE FRONT LINES:  
THE RESPONSE OF LAW ENFORCEMENT AND PROSECUTORS TO  
ELDER ABUSE**

I have prosecuted felony level elder abuse cases for the King County Prosecutor's Office in Seattle, WA, for approximately ten years. My office is unusually well resourced compared to other prosecutor's offices around the country when it comes to elder abuse. We have two full-time attorneys dedicated strictly to the prosecution of these cases, as well as a forensic accountant to analyze the extensive financial documents that are so often a part of them. One of the police agencies with whom we work has several specialized elder abuse detectives. We are a recipient of the Office on Violence Against Women's Abuse in Later Life grant, which allowed us to conduct extensive training on elder abuse of local law enforcement and direct service providers, as well as prosecutors and judges in our county. And, we are the recipient of a grant from the Bureau of Justice Statistics to collect data on the prosecution of these cases in our office.

On a table in our office sits a stack of documents that is close to two feet high. In it are copies of all of the recent reports sent by Adult Protective Services over the past several weeks to the 39 police agencies in King County. Each document contains the summary of a phone call or message that APS received on its hotline, reporting the abuse, neglect, or exploitation of a vulnerable adult. In that stack are reports ranging from complaints about the food at the facility where an elder resides, to reports of suspicious deaths. A fairly typical report contains an allegation of severe pressure sores on a bedbound 85 year-old woman being cared for by the unlicensed caregiver she hired off of Craigslist, or the theft of the life savings of an older man by his granddaughter and power of attorney, or the sexual assault of a severely demented man in a nursing home.

My office receives copies of all of these APS reports, per our request. Our hope was that we would be able to monitor them and follow up to make sure that both APS and law enforcement were responding to them and coordinating their investigations when appropriate. But as we have conducted trainings and increased our visibility over the past few years our caseloads have risen dramatically. And now, despite our good intentions, it is a good week when we are able to triage some of the more critical reports to make sure that APS and law enforcement have responded.

Each of the 39 police agencies to which these reports are faxed handles them differently. The one agency in our county that has specialized elder abuse detectives responds by reviewing each report, calling APS to get additional information, and assigning anything that appears to be criminal to its elder abuse detectives. Many of the other agencies merely read that initial report

and if it contains insufficient detail or does not on its face appear to describe a crime, discard it without contacting APS or conducting any investigation. Still other police agencies have no system for reviewing the reports, and respond inconsistently, if at all.

For the 38 police agencies that do not have specialized detectives, how they respond when they do go out on a report varies tremendously, depending on whether the officer was trained on elder abuse investigations, and on whether he or she has time for the lengthy investigation these cases often require. The vast majority of cases our elder abuse unit receives from law enforcement were investigated by the one agency that has specialized elder abuse detectives. These detectives are also the most actively involved in our elder abuse multidisciplinary team and elder fatality review team, and have the strongest connections with local experts who can assist them in developing the evidence they need to build a case.

Adult Protective Services (APS) is a primary clearinghouse for elder abuse, neglect, and exploitation cases that are reported. Whether a case is ever forwarded to law enforcement for investigation depends on the knowledge and resources of the particular APS agency or caseworker. In many states, including mine, APS does not have a hotline that is staffed 24 hours/day, resulting in law enforcement often receiving these reports hours or days after they are made, if at all. What percentage of these cases actually makes their way to our office in the form of a police report is anyone's guess. No one has ever even tried to get a count.

I work in a local prosecutor's office, with local law enforcement, local medical examiners, and state APS, ombudsman, and departments of health and welfare. But this is an issue that is bigger than state and local entities. Those of us on the front lines urgently need information and support only federal involvement and coordination can provide. Three recommendations for federal agencies that are part of this Council, that would make a tremendous difference to those of us on the front lines of law enforcement and prosecution, include, to:

- **Specialized law enforcement and prosecutors:** Fund pilot programs to create positions for trained, specialized elder abuse detectives and prosecutors to handle these cases in a few jurisdictions. Collect and compare data from jurisdictions that do and don't have these specialized positions, to determine whether they have an impact on the number of elder abuse cases that are investigated and ultimately prosecuted.
- **Resource center and website:** Create and fund a National Resource Center for the Investigation and Prosecution of Elder Abuse, and expand the website that DOJ is developing to assist law enforcement and prosecutors on these cases. This would help us learn from cases pursued in other jurisdictions, and create a forum for information sharing as we take on more of these cases. Specifically, such a Center should offer databases of local experts, guidelines for participation in multidisciplinary teams, protocols on the investigation of neglect and financial exploitation cases, and on how to address issues of capacity.
- **Research and data collection:** Enhanced research and data collection to assure that we have the data and knowledge we need to support our cases. This would expand what our office is currently undertaking with BJS, and would give us much-needed information on what types of elder abuse cases law enforcement and prosecutors are seeing, which ones they pursue and why, where cases originate, what types of referrals, reporting, and



investigations make for successful prosecutions, the impact of prosecution on victims, and how the prosecution response is affected by issues such as capacity, lack of a living victim, a victim who cannot or chooses not to cooperate, and the impact of APS involvement, MDT involvement, use of experts, and the availability of victim advocacy.

I live in a wealthy jurisdiction with an elected prosecutor who is keenly aware of elder abuse and wants to do everything he can to address it. Yet the pile of reports that sits in our office continues to grow. Even in my county with all of our resources, we are failing countless older victims of criminal neglect, abuse, and exploitation every day. And in most other jurisdictions the situation is far worse. Most do not have any specialized elder abuse prosecutors or detectives. Most have never received any training on elder abuse. Most do not have access to experts who can assist them with these cases, and most do not have elder abuse multidisciplinary teams to whom they can turn for help.

In our jurisdiction as in all others, elder abuse is a problem with many faces. It's a legal and criminal problem, a health care problem, a social services, long-term care, housing, research, training, and a financial problem. The only way we can begin to address it effectively is by collaboration among systems, and the creation and coordination of federal programs and initiatives.

We are in desperate need of your help. Thank you.

**Page Ulrey, J.D.**

SENIOR DEPUTY PROSECUTING ATTORNEY, KING COUNTY, WASHINGTON

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**CONFUSION ON THE FRONT LINES: THE RESPONSE OF LAW  
ENFORCEMENT AND PROSECUTORS TO CASES OF ELDER ABUSE**

**I. Introduction**

Having historically deemed most cases of elder abuse as “civil” or “family” matters, the criminal justice system is only now beginning to come to terms with the fact that crimes are being inflicted on the elderly at alarming rates, and that only a small fraction of those crimes are ever properly investigated and prosecuted. As a result, we are woefully ill-equipped to handle these cases, both in terms of knowledge and resources. Compounding the problem is the fact that, unlike the fields of domestic violence, sexual assault, and child abuse, elder abuse involves a wide array of crime types, including financial exploitation, neglect, physical, and sexual assault. In my experience, the types of crimes that we struggle most with are those involving financial exploitation and neglect. In addition, we experience significant issues in properly responding to elder abuse cases where the victim suffers from some degree of cognitive impairment, or lives in a long-term care facility.

In this white paper, I will 1) explain why cases of elder abuse are so challenging for the criminal justice system and 2) make recommendations to the Elder Justice Coordinating Council for action that can be taken by federal agencies to begin to address the problem.<sup>64</sup>

**II. Why Elder Abuse Poses Such a Problem for the Criminal Justice System**

**A. Financial Exploitation cases**

Unlike typical, younger-victim theft cases, elder financial exploitation cases are complex, often involving concepts such as powers of attorney, guardianships, fiduciary duty, trusts, wills, capacity, and undue influence. Knowledge of these concepts is essential to properly investigating and prosecuting them, yet they are rarely mentioned in police academies or in training for 911 dispatchers. While they may be taught in law school, they are usually not done so in criminal law courses, and are not part of the curriculum of most prosecutor training courses. Because victims of elder financial exploitation are so often isolated, their victimization often goes on for months and sometimes years before it is discovered. When it is discovered, the lack of training on these concepts at every level of the criminal justice system means that the likelihood of a door being closed in the face of the reporter is high. From the 911 dispatcher to the patrol officer to the detective to the prosecutor--if just one of these essential players fails to recognize a report as criminal, the case will likely end there, with the exploitation continuing until APS or the family intervenes civilly, or the elder’s resources are gone.

Even when a report of elder financial exploitation does make it through the door and on the desk of a detective or prosecutor, other hurdles exist. In most of these cases, an essential part of the evidence is the complete financial records of the victim and suspect. Once these records are obtained, they must be entered into spreadsheets and analyzed. Most detectives do not have access to a forensic accountant and so are left to attempt to conduct this analysis on their own—an often daunting and unappealing task for a criminal investigator, particularly if he or she hasn't been trained on financial crimes. Adding to these difficulties are the often pressing needs of the victim, who may be suffering from dementia, health issues, physical disabilities, financial and legal issues, isolation and fear of loss of independence, need for housing, and lack of caregiver and social support and advocacy. While APS may be able to assist by locating services for the victim, APS does not provide those services, and is not an advocate for the victim. Because there is no advocacy available for victims of elder financial crimes in most communities, it is not at all unusual for the detective or prosecutor to be drawn into playing that role. Additionally, due to the current lack of coordination between the criminal justice system and civil legal services on these cases, many victims are never referred to civil attorneys to assist them in repairing their credit and the other damage that has been done as a result of the exploitation. When the victim of elder financial exploitation is unlucky enough to be scammed by someone from another country, the chances of criminal justice involvement are even lower, due to lack of resources and coordination between local law enforcement and the federal agencies that are beginning to investigate and respond to these cases.

#### B. Neglect Cases

Elder neglect cases pose some similar problems. These cases are also chronically underreported due to the victim's isolation, as well as the common [mis]perception by social service and medical professionals that they aren't of interest to the criminal justice system. When they are reported, the investigations are almost always complex, requiring knowledge of certain medical concepts, obtaining medical records, conducting interviews of nurses and physicians, and, because establishing a financial motive is often essential in these cases, obtaining the victim's and perpetrator's financial records. Again, expert assistance is needed to analyze these records and often to help the detective and prosecutor determine whether a crime has occurred and how it should be charged. As in financial cases, most police agencies and prosecutor's offices do not have relationships with the appropriate medical experts who can assist them on these cases. In addition, in cases of elder deaths due to possible neglect, many medical examiners and coroners are untrained on the subject of neglect and when it might be criminal. Even if they are trained, many are loathe to conduct autopsies and make findings on cases of neglect, fearing that their already overburdened agencies will be unable to handle the onslaught of new cases that will ensue as a result.

#### C. Other Issues

In all forms of elder abuse—neglect, financial exploitation, sexual and physical abuse—victims who suffer from dementia pose issues with which the criminal justice system is unfamiliar. In the majority of cases that my elder abuse unit sees, the victim has some degree of cognitive impairment. In cases of financial exploitation, sexual assault, and neglect, the defense raised most often is that the victim consented to the act at issue: to give the perpetrator his/her assets; to the sexual act; or to the lack of medical care provided. In order to refute this claim of consent

in a victim with cognitive impairment, we must obtain an evaluation of him or her by a geriatric psychologist or psychiatrist. Many police agencies have no connections to such an expert, and/or lack the funding to pay for such an evaluation. Adult Protective Services may be able to assist with such an evaluation; however, in many cases APS relies instead on the Folstein Mini-Mental State Exam (MMSE), a tool that on its own is not adequate to assess incapacity for purposes of a criminal case.

When a victim resides in a long-term care facility, law enforcement experiences yet another set of problems: unfamiliarity with the facility's organizational structure; difficulty obtaining records; state investigation and licensing agencies that are often reluctant to report or cooperate; and systemic failures that make finding and charging individual suspects challenging if not impossible.

## **I. What Can Be Done: Three First Steps**

The common ingredient that I have seen in communities whose criminal justice systems are beginning to respond properly to elder abuse is specialized prosecutors, detectives, and advocates. When these professionals have been trained on the many complex concepts involved in these cases, and when they are not faced with competing cases involving younger victims, elder abuse reports get investigated, charges get filed, and victim's needs are addressed. Further, these professionals are much more likely to be active and committed participants in their community's elder abuse Multi-Disciplinary Team. In addition, medical and social service providers, APS, and the public have an identified person to call when they come across an elder abuse case that is serious enough that it may warrant a criminal response. Once the community begins to believe that the justice system will take action on these cases, reporting, documentation, and investigations across disciplines improve.

But creation of these positions alone isn't sufficient. In order for professionals placed in these specialized positions to succeed, they need technical assistance, information, and resources. In addition, we need to vastly increase our understanding of what cases are being referred to prosecutors and why, what cases are being filed and why, and their outcomes.

My recommendation as to three important first steps that should be taken is as follows:

1. Fund, pilot test, and collect data on the impact of specialized elder abuse detectives, prosecutors and victim advocates in a few jurisdictions;
2. Create and fund a National Resource Center for the Investigation and Prosecution of Elder Abuse with experienced prosecutors and detectives on staff to provide advice, case consultation and technical assistance; incorporate the website that DOJ is developing to include a database of:
  - a. Local and national geriatric medical experts to consult and testify on neglect cases;
  - b. Local and national geriatric psychiatrists and psychologists to review medical records, conduct capacity evaluations of victims, and testify;

- c. Forensic accountants to analyze and financial records and testify in financial exploitation cases and cases where financial exploitation is co-occurring;
  - d. Trial transcripts of exemplary elder abuse trials;
  - e. Sample legal briefs and motions;
  - f. Sample voir dire questions addressing specific issues including consent, dementia, undue influence, and jury nullification;
  - g. Model direct examinations of state's expert witnesses; model cross-examinations of defense experts;
  - h. Protocols for the investigation of cases of neglect and financial exploitation, of those involving victims with possible dementia, and of those occurring in long-term care facilities;
  - i. On-line training courses and seminars for prosecutors.
1. Enhanced data collection expanding the current project of the King County Prosecutor's Office and the Bureau of Justice Statistics to other sites, to track and evaluate what types of elder abuse cases law enforcement and prosecutors are seeing, which ones they pursue and why, where cases originate, what types of referrals, reporting, and investigations make for successful prosecutions, the impact of prosecution on victims, and how the prosecution response is affected by issues such as capacity, lack of a living victim or victims who cannot or choose not to cooperate, lack of prosecutors and/or detectives who specialize in elder abuse cases, the impact of the presence or absence of APS involvement, MDT involvement, use of experts, and the availability of victim advocacy.

## **I. Other Recommendations**

The needs of the criminal justice system extend well beyond the first steps I have articulated above. Below is a list of other recommendations that would, over the long term, make a tremendous difference in how we respond to these cases:

- Funding for the creation of multi-disciplinary forensic centers within states so that victims have access to a coordinated response from APS, law enforcement (both federal, state and city), medical professionals, financial institutions, and local aging agencies;
- Guidelines for participation of prosecutors and law enforcement in MDTs, including Elder Fatality Review Teams, specifically addressing concerns about confidentiality of victim information and non-disclosure protocols that bind those in law enforcement and prosecution;
- Expansion of OVW's Abuse in Later Life Grant Program to train more law enforcement, prosecutors, judges, and direct service providers, and so that it can include training for 911 dispatchers, medical first responders, and medical providers to improve their recognition, reporting, and documentation of elder abuse cases;

- Enhanced victim services to assist victims, provide advocacy, and connect them with services and civil legal assistance;
- Research—specifically on causation and development of pressure ulcers and other forensic markers of elder abuse, the connection between dementia and refusal of care/intervention (often hindering law enforcement intervention and successful prosecution), and prevalence so that law enforcement and prosecution offices can better understand the nature and extent of the problem;
- Improved reporting and referral systems so that suspected or confirmed elder abuse cases are directed to the right entity to protect victims, stop wrongdoing, prevent future victimization, recompense losses, and if appropriate, prosecute wrongdoers. Entities including law enforcement, prosecution, APS, state agencies that license long-term care facilities, social services, financial services, and health care providers, should become more aware about criteria for prioritization of response, standardized referral methods, and criteria to determine which cases should be referred to which agency;
- Strengthening of the civil legal response to cases of elder abuse, including assisting victims with protection orders, powers of attorney and guardianships, recovering stolen assets, and restoring credit after financial exploitation has occurred, regardless of whether the case is appropriate for criminal action;
- Development and funding of forfeiture units or positions within prosecutors' offices so that the stolen assets and funds of older victims can be recovered without the expense and hardship of a civil law suit;
- Legislation/guidelines to assist state prosecutors in obtaining copies of federal tax returns, which will improve our ability to build a financial exploitation case, especially in cases where the perpetrator invokes the "gift" defense;
- Funding/support for the creation of investigative/law enforcement positions at the federal level, focused on cons and scams of elder victims so that federal and local prosecutors are better equipped to address this billion dollar industry;
- Legislation/training to improve reporting of elder abuse by financial institutions when they have reason to believe their client is the victim of a financial crime;
- Legislation/training to improve reporting by health care providers of all forms of elder abuse;
- Improved training and funding for medical examiners and coroners to improve their recognition and assumption of jurisdiction of potential elder neglect deaths;
- Funding for data collection for medical examiners for the review of elder deaths and participation in Elder Fatality Review Teams;

- Legislation/regulations to improve reporting by state agencies who license and investigate abuse and neglect in long-term care facilities to law enforcement;
- Data collection on the impact of mandatory reporting on elder abuse victim safety.

**Judge Patricia Banks**

PRESIDING JUDGE OF THE ELDER LAW AND MISCELLANEOUS REMEDIES DIVISION OF THE CIRCUIT  
COURT OF COOK COUNTY

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL  
OCTOBER 11, 2012

My name is Judge Patricia Banks, Presiding Judge of the Elder Law and Miscellaneous Remedies Division of the Circuit Court of Cook County. Timothy C. Evans is the Chief Judge of the Circuit Court of Cook County, which is one of the largest unified courts in the world. Today, we welcome the opportunity to share with the Elder Justice Coordinating Council (EJCC) the road taken by the Circuit Court of Cook County in developing the Elder Law and Miscellaneous Remedies Division (ELMR) and a resource center, the Cook County Elder Justice Center, to support ELMR's work.

In December 2010, Chief Judge Evans made the bold decision to create a new court division for elderly litigants. This decision resulted from an awareness of the escalation in the financial exploitation of the elderly, increase in the aging population and of elderly litigants utilizing every division of our courts, frustration on the part of elderly litigants and some members of the judiciary over the inability to adequately address issues of abuse, neglect and financial exploitation in a holistic and focused manner. Moreover, elder law practitioners, law enforcement, victim advocates, and local area agencies on aging actively lobbied the courts to make specific provisions for elderly litigants.

Allowing cases of elder abuse, neglect and financial exploitation to be heard and resolved randomly throughout our divisions did not allow for collection of data, tracking of cases, and best dispositions due to a lack of judicial training and links to social services. Elderly access to our courts was limited because of a deficiency in information, physical access, audio and visual aids, and training of judicial and court personnel. The end result included unreported incidences of elder abuse, neglect and financial exploitation, recidivism, some instances of unwarranted guardianships, involuntary mental health commitment, and loss of property.

Chief Judge Evans has committed resources to the development of ELMR, which include a full time veteran Judge with support staff to implement ELMR as well an elder justice center to provide support services to elderly litigants. The implementation of ELMR began with the formation of a small Workgroup. Members of the Workgroup were selected on the basis of their knowledge, resources, connections to the senior community, and commitment to the goal of creating an elder protection court. This included the City and County Area Agency on Aging, Offices of the Public Defender, State's Attorney, Public Guardian, Sheriff's Department, Probation Department, Chicago Police Department, Attorney General, elder law practitioners, and Law Schools with elder law programs. Designated subcommittees prepared reports relating to the structure of the court, types of cases appropriate for handling by ELMR, method of transfer, threshold age of litigants eligible to file cases in the Division, elderly access to the court, court programs, models already in existence and the feasibility of implementing those



court programs in Cook County, and research of Illinois and other states' laws on elder issues and existing cases of elder abuse, neglect and financial exploitation. Other subcommittees were given the task of drafting ELMR's venue statement and developing marketing, education and training programs. After the Workgroup was formed, a forty-five member Task Force was convened to provide assistance to ELMR insofar as community outreach, legal support, education, and training and on various other levels. The Task Force included members of the faith-based community, law enforcement, seniors, educators, accountants, bankers, legal aid organizations, elder law practitioners, medical professionals, and social workers.

In my capacity as Presiding Judge, I interviewed in excess of a hundred stakeholders. I also worked with presiding judges of divisions likely to be impacted by ELMR; with them, I reviewed activities of the Workgroup, responded to specific concerns and coordinated procedures. Critical to this process were meetings with the Offices of the State's Attorney, Public Defender, Sheriff's Adult Probation and the Clerk of the Circuit Court, who were all major players in ELMR's development. The Clerk of the Circuit Court provided much needed data on case filings. In addition, site visits were made to California's elder protection courts and Florida's Elder Justice Center.

Early in the planning process, steps were taken to educate the judiciary. A training module was developed, judicial faculty was identified and judges throughout the state were introduced to elder law and the notion of a court set up to hear civil, criminal and domestic violence matters involving elderly litigants. Judges assigned to hear elder abuse, neglect, and financial exploitation cases have received additional training to further hone their skills. Judicial training was followed by a major training initiative within the legal community. ELMR co-sponsored an elder law seminar with the Illinois Department on Aging, 28 area bar associations and eight Chicago area law schools.

Training and education of judges and lawyers have resulted in heightened interest in elder abuse issues by groups such as realtors, faith-based organizations, bankers, hospitals and other medical professionals. The development of a training module for seniors throughout Cook County has met with great success and has shown much promise. ELMR additionally developed a training template entitled, "*Senior Power: Keeping Control of Your Future*," designed to reach seniors within their churches, synagogues, sororities and other professional organizations.

Challenges inherent in developing ELMR have included the following:

- a. Collecting data on cases currently in the system as a baseline to begin research for future research and administrative use
- b. Creating a model court for a system as large as the Circuit Court of Cook County
- c. Raising awareness and sensitizing judges and court personnel to aging issues and unique needs of elderly litigants
- d. Creating a new system where different kinds of financial abuse are heard in the elder law division, regardless of whether the legal context is probate, property, powers of attorneys, consumer fraud, reverse mortgages, or other areas
- e. Lack of funding and technological means to accomplish a complete model
- f. Creating a system to collect age data
- g. Development and implementation of training and education programs utilizing primarily volunteers

- h. Motivating partners and interdisciplinary teams during the course of formulating the court model

After participating in the development of an elder law court model for the Circuit Court of Cook County, I am now a stronger proponent the elder law court concept. These courts are essential to the present and future well-being of the elderly when interacting with our legal system. Resource centers in close proximity to the court should also be available to provide links to social service and legal needs of the elderly litigants. The main barrier to these courts is, of course, adequate funding for judges, support staff, facilities and equipment. Funding is needed to hire forensic accountants, to train judges, court personnel and persons who are fiduciaries or would be fiduciaries for the elderly, assessments for determining cognitive impairment or other needs of the elderly, provide transportation to facilitate court appearances, for audio/visual equipment in the courtrooms, courtroom modifications to better accommodate the elderly, for more financial exploitation prevention programs, and to develop a template to assist with collection of research and administrative data.

## **Judge Patricia Banks**

PRESIDING JUDGE OF THE ELDER LAW AND MISCELLANEOUS REMEDIES DIVISION OF THE CIRCUIT  
COURT OF COOK COUNTY

### **WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL  
OCTOBER 11, 2012

## **BRIDGING THE ACCESS GAP FOR OLDER LITIGANTS: AN ELDER COURT MODEL**

### **OBJECTIVES**

To describe the process by which the Circuit Court of Cook County developed a model to facilitate legal redress for elder abuse, neglect and financial exploitation of Cook County's elderly population through the formation of multidisciplinary partnerships, education and training, dedicated court dockets and a Cook County Elder Justice Center; to describe challenges inherent in such an undertaking; and, to make recommendations on how the federal government can facilitate the sustainability and replication of this model.

### **INTRODUCTION**

The number of persons 65 and older will double between 2010 and 2030, a phenomenon attributable to the aging of baby boomers.<sup>65</sup> Those aged 65 and over are expected to reach 19.3% of the population by 2030.<sup>66</sup> Illinois represents one of eleven states that account for 56% of the elder population.<sup>67</sup> Illinois witnessed the largest growth in population amongst the very elderly (those 85 and older), a fact that speaks to the increase in life expectancy of the elderly. Chicago, Cook County, Illinois, a large metropolitan area, is heavily populated by the elderly.<sup>68</sup> This meteoric increase in the aging population has generated new and greater demands on our legal system. Foremost among the many legal needs of the elderly are those relating to elder abuse, neglect, and financial exploitation.<sup>69</sup> The Circuit Court of Cook County, one of the largest unified court systems in the world, is directly impacted by this population growth. More than 400 judges working within the court's 16 divisions and districts serve the 5.1 million residents of Cook County. The types of cases heard in each division and district depend on the nature of the controversy.

Timothy C. Evans, Chief Judge of the Circuit Court of Cook County, made the bold decision on December 10, 2010 to name a new division of the Circuit Court. He resolved that this new division would adopt a holistic approach to the legal issues of Cook County's elderly population – most notably, those issues involving elder abuse, neglect, and financial exploitation.

The inclusion of elder abuse, neglect, and financial exploitation in the general caseload of all divisions and districts hinders the ability to capture critical data, to coordinate legal and social services, to develop partnerships having the objectives of detecting, impeding, and preventing

elder abuse, neglect and financial exploitation, and to broaden the elderly's access to justice. Going forth, the court will be able to more easily track and consolidate cases involving the elderly, develop a body of precedent-setting elder law, capture data that will substantiate need for additional resources as well as demonstrate to legislators, court funding bodies and policymakers the magnitude of the problem. The Court and its partners, will be in a better position to craft programs to educate the elderly, the bar, and the general public as to available rights and remedies for elder abuse, neglect, and financial exploitation. Moreover, unconfirmed hypotheses can be tested: e.g., trained elder law judges with expanded resources will bring about fairer, consistent and more lasting solutions; a specially designated forum for elder abuse and other elder issues will increase the likelihood that more cases will be deemed meritorious enough to be prepared by law enforcement, filed and prosecuted, irrespective of monetary value and nature of abuse. A coordinated judicial response to elder issues in our massive court system allows for a holistic approach to the identification and resolution of underlying issues often present in cases involving the elderly.

Chief Judge Evans committed substantial resources to the development of the Elder Law and Miscellaneous Remedies Division (ELMR). This included a full-time veteran judge and support staff to develop the ELMR Division and a Cook County Elder Justice Center to provide support services to elderly litigants. The implementation of the ELMR Division began with the formation of a small Workgroup who enthusiastically embraced the concept of an ELMR Division. From the onset, this supportive and multi-talented Workgroup committed time and energy to help develop the Division and to inform the judicial system, professional community and general public about the ELMR Division concept. Moreover, the collective expertise and resources of the Workgroup members as well as their individual networks provided assurance that the final structure and operation would make sense to all affected parties. Members of the Workgroup included the city and county Area Agency on Aging; the Offices of the Public Defender, the State's Attorney, the Public Guardian, and Attorney General; city and county law enforcement; elder law practitioners; and local law schools with elder law programs.

Subcommittees of this Workgroup were charged with the completion of specified tasks, including research of national and state laws and authoritative writings pertaining to the elderly; limitations, if any, on the jurisdiction of the new Division based on the Illinois constitution and laws; research of models already in existence throughout the country and the feasibility of implementation in Cook County; review of our Circuit Court's structure; surveying the types of cases appropriate for handling by the ELMR Division; logistics of transfer within the Circuit Court; and preliminary drafting of a venue statement. Other subcommittees were given the task of researching the threshold age of litigants eligible to have their matters heard in the ELMR Division; identifying barriers to elderly access to the court; and developing marketing, education, training, and elder mediation programs.

Concurrent with the Workgroup's research and survey, the Presiding Judge of the ELMR Division interviewed in excess of one hundred local stakeholders. The Presiding Judge reached outside of Illinois to consult with prosecutors, law professors, jurists, the National Center for State Courts, and the American Bar Association's Commission on Law and Aging. In addition, the Presiding Judge conducted site visits to Florida's Elder Justice Center and California's Elder Protection Courts.<sup>70</sup> The ELMR Division's presiding judge had multiple meetings with the presiding judges of divisions of the Circuit Court of Cook County who were most likely to be impacted by the ELMR Division. With whom the ELMR Division presiding judge explored,

explained, and presented proposed modifications in the Circuit Court’s approach to cases involving the elderly. The Clerk of the Circuit Court, a key player and stakeholder, was kept informed and regularly consulted concerning the programming and technical issues such as capturing pertinent data, e.g. age, identifying multiple cases, and tracking of transfers. The Offices of the Public Defender and the State’s Attorney, as well as private defense attorneys, were consulted on the merits of designated trial judges to exclusively preside over elder abuse, neglect, and financial exploitation cases. Insights gained from these consultations were shared with the Workgroup and further shaped and informed the process of creating the ELMR Division model.

## **THE MODEL**

Civil and criminal dockets of the ELMR Division have been created to hear cases involving the elderly. The assigned judges have undergone training to deal with issues of elder abuse, neglect, and financial exploitation. In the Criminal Division of the Circuit Court of Cook County, three dedicated judges, dually-assigned to the ELMR and Criminal divisions, receive assignments of all elder abuse, neglect and financial exploitation cases in which the victim is an elderly person, defined as aged 60 and over.<sup>71</sup> Victim advocates will assist and provide victims with links and referrals to social and legal services. Understandings have been reached between ELMR and other divisions; dually assigned judges with special expertise will preside over cases such as involuntary commitments, tax deeds adoption cases and domestic violence matters involving litigants, age 60 and over. With respect to other civil cases, judges assigned exclusively to the ELMR Division will hear cases arising under the Elder Abuse and Neglect Act, the Illinois Power of Attorney Act, and cases based on the financial exploitation of an elderly person in which the elderly person is not a ward.<sup>72</sup> ELMR Division judges will preside over cases involving persons age 60 and over who face cognitive impairments and vulnerabilities. The source of many of these cases will be discretionary transfers from judges throughout the Circuit Court and elderly persons who petition to have their cases heard in the ELMR Division based on their age and vulnerabilities. Included in this category are housing code violations, evictions, traffic offenses, contract disputes, and debt collections. The Clerk of the Circuit Court and the Cook County Sheriff are training their personnel to accommodate the elderly and adhere to ELMR Division’s developed protocol.

The Cook County Elder Justice Center (CCEJC) will deliver support to litigants aged 60 and over. The CCEJC is designed to provide numerous services to seniors, family members and caretakers, including but not limited to training and education; legal and social counseling; assessments; mediation; victim advocacy; hotline; informational brochures; availability of senior peer counselors; access to enhanced communication devices for the visually and hearing impaired; courthouse orientations and tours; direct links to social services; and referrals to existing agencies that provide services to seniors. When fully operational, it will be staffed by a multidisciplinary team, including a court coordinator, victim advocate(s), case manager(s), law enforcement representatives, senior peer counselors, and volunteers, including law school and social work externs and community members.

A Task Force was convened to provide support and assistance to the ELMR Division and to guarantee the sustainability of the CCEJC and the ELMR Division. Its purpose is one of outreach, legal support, education, and training. The Task Force included members of the faith-based community, judges, law enforcement, seniors, educators, accountants, realtors, bankers,

legal aid organizations, mediators, attorneys including elder law practitioners, medical professionals, social workers, and investment brokers.

Early in the planning process, steps were taken to educate the judiciary. A training module was developed, judicial faculty was identified, and judges throughout the state were introduced to elder law and the concept of a court designated to hear civil, criminal, and domestic violence matters involving elderly litigants. Judicial training was followed by a major training initiative within the legal community. The ELMR Division co-sponsored an elder law seminar with the Illinois Department on Aging, 28 area bar associations and eight Chicago area law schools.<sup>73</sup>

The ELMR Division developed a training template entitled, “Senior Power: Keeping Control of Your Future.” It is designed to educate and raise senior awareness about elder abuse, neglect and financial exploitation and how to prevent victimization. This training module for senior community groups of varying sizes has met with great success.

## **CHALLENGES**

The mission of the Circuit Court is to better serve an elderly population faced with many challenges. Fulfilling the mission requires varying degrees of creativity.

- The first challenge is that of a budget. Budget concerns are always a consideration when a new project requires considerable investment of people, materials, space, and resources from already stretched resources. New funding sources must be found to ensure that services remain viable, and to ensure that the Elder Justice Center becomes fully operational within a reasonable period of time. Existing court partners, i.e., Clerk of Circuit Court, Office of Public Defender, Office of State’s Attorney, Office of Sheriff may allocate a portion of their existing budget to service the elder client who falls within the scope of the ELMR Division cases that the partners handle.
- In using the holistic approach to elder services, we have to think, plan and craft solutions outside existing parameters. The second challenge, directed to our judges, is to think outside the box and look beyond the form in which the case presents itself to arrive at recommended solutions that address the major issues facing the elder.
- A third challenge in tackling the myriad forms of financial abuse was the necessity of involving all third parties who may witness the abuse, but not report the abuse or who may not take steps to protect the elder.
- The fourth challenge is that of collecting and storing data that would impact on follow up strategies and future planning, on the administrative and legislative level.
- The fifth challenge is the development and implementation of continuing training and education of the public on aging issues.
- The sixth challenge is making the Court accessible, friendly, accommodating of physical impairments, and doing the necessary infrastructure planning to implement the plan

## **RECOMMENDATIONS:**

The federal government can facilitate the sustainability and replication of models, such as that of Cook County, as follows:

1. Intervene and assist courts to devise a process for the collection of research and administrative data. This would include development of performance and evaluation standards. There is a critical need to assess the effectiveness of interventions and treatment.
2. Funding to provide comprehensive training of judges, court personnel, forensic accountants, and geriatric experts. There should also be funding for training material(s), trainers, training programs geared specifically toward lay and professional fiduciaries and elder mediation programs.
3. Funding to staff and maintain elder justice and forensic centers would enhance the prevention of elderly exploitation.
4. Funding for audio/visual equipment in the courtrooms and other courtroom modifications to better accommodate the elderly.
5. Funding for transportation to facilitate court appearances and/or hearings in nursing facilities, homes or via teleconference.
6. Promote legislation providing for the expansion of mandatory reporting requirements, as well as stronger penalties for non-reporting of elder abuse, neglect, and financial exploitation.

## **CONCLUSION**

Elder courts and centers are essential to the present and future well-being of the elderly when interacting with our legal system. A combination of dedicated and knowledgeable elder law judges and a supportive elder justice center offer the promise of swift and more lasting resolutions to elder abuse, neglect, and financial exploitation. The growth of the elderly population, with increasing wealth and issues of diminished mental capacity, along with the economic downturn, have brought about new causes of action and greater use of our legal system.<sup>74</sup> These expanded demands require solutions beyond the traditional.

## **Paul Smocer**

THE FINANCIAL SERVICES ROUNDTABLE

### **WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

The Financial Services Roundtable<sup>75</sup> (the “Roundtable”) and BITS appreciate the opportunity to share our thoughts with the members of the Elder Justice Coordinating Council regarding the financial exploitation of older Americans and actions we can collectively take to reduce that exploitation.

The financial services industry is a key part of the circle protecting older Americans from financial fraud and exploitation. When employees observe signs of potential exploitation, they can work with families, caregivers, social service agencies and law enforcement to prevent, detect, and help investigate and prosecute the individuals who engage in fraud.

The Roundtable and its members are committed to encouraging their employees comply with high standards of conduct when providing financial advice to all customers, including older Americans and their families. Helping ensure a secure retirement for millions of Americans is central to the business and the mission of the financial services industry.

### **THE PROBLEM**

By 2030, the number of Americans aged 65 and older is projected to double to 71 million, roughly 20 percent of the U.S. Population.<sup>76</sup> In some states, fully a quarter of the population is likely to be aged 65 and older.<sup>77</sup> Unfortunately, the increase in the aging population creates a potentially large pool of potential victims for financial exploitation.

It is sad, but true, that the most frequent perpetrators of financial abuse are family members, who by some estimates commit nearly 75% of crimes,<sup>78</sup> and professional criminals. It is also important to note that financial institutions are often the first line of defense against this financial exploitation.

Since many older customers prefer to conduct transactions in person, financial services employees can be the first to detect changes in an older customer’s behavior. Signs of exploitation of an elderly customer may include: unusual transactions or changes to accounts, unpaid bills, changes in spending patterns, new individuals accompanying the customer to a bank facility, and missing property. When these and other signs are detected, and an investigation suggests that exploitation is taking place, financial institutions can help the customer take action to protect his or her assets. Financial institutions also work with agencies such as Adult Protective Services, local law enforcement and prosecutors, many times as part of local or regional task forces focused on elder abuse prevention and prosecution. Institutions also report suspected abuse via the Suspicious Activity Reports (SARs) filed with the Financial Crimes Enforcement Network (FinCEN), an agency of the United States Department of the Treasury.



For decades, financial institutions have been at the forefront of fraud detection utilizing sophisticated technology, modeling, training and education. As a result of these proactive measures, they are often the first to detect patterns associated with fraud, earning goodwill in their communities. Using a variety of safeguards, financial institutions make every attempt to ensure the reliability and security of financial transactions as well as protect financial privacy. In fact, financial institutions often exceed the standards set by financial regulators in order to better protect their customers, shareholders and employees.

Education – of employees, customers and other stakeholders – is critical for preventing financial abuse. Many financial institutions have extensive programs to educate employees and customers on detecting abuse and steps to secure accounts from the lure of fraudsters. Financial institutions also work closely with Adult Protective Services, law enforcement and prosecutors to educate those entities on patterns of fraudulent activity and help identify individual cases of potential fraud. Financial institutions also work closely with community organizations to host panel discussions and community events to educate seniors and their caregivers about the risk of elder financial abuse. These efforts provide older American and their advocates education and resources to not only recognize financial elder abuse, but to also take steps to proactively protect oneself and ones assets through document shredding and identity theft prevention for example, and report the crime as it occurs.

Employees and customers who are better educated about fraudulent behavior and preventing fraud are more likely to take fraud prevention measures. An example of the Roundtable's education efforts is a white paper produced by the Roundtable's BITS entitled, "*Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation*" to help financial institutions and their customers identify and combat elder abuse.<sup>79</sup> The Roundtable also partnered with the Administration for Community Living/Department of Health and Human Services and the Consumer Financial Protection Bureau to support the June 14, 2012 White House Office of Public Engagement symposium in recognition of the 7th annual World Elder Abuse Awareness Day by providing financial industry speakers for the panel addressing the prevention of elder financial abuse. The Roundtable has also formed a working group to focus on this issue. The Group's members consist of a collaborative cross-section of financial institutions, federal agency representatives, representatives from various adult protective services organizations, and academics focused on the area of elder abuse.

The Elder Working Group currently has identified two projects on which it will concentrate. These are:

- Develop a structure/syllabus for training financial institution consumer-facing staff and all new hires on elder fraud trends and internal procedures for reacting to suspected elder financial abuse, including engaging Adult Protective Services and law enforcement.
- Work with financial institutions with strong education programs to develop a publicly available awareness and education program to be made available to all financial institutions.

## CHALLENGES AND IMPEDIMENTS

As we have engaged in our efforts regarding prevention of elder financial abuse and based on the experiences and feedback of financial institutions, we have identified a number of areas where potential impediments exist to improving prevention. For many of those, the assistance of the agencies forming the EJCC either directly or in concert with other non-EJCC agencies would be helpful to clarify concerns or remove impediments. These include:

- Clarify the permissibility of age-based fraud monitoring. As noted previously, financial institutions utilize sophisticated fraud detection technology and modeling in their attempts to prevent and identify potential fraudulent activity in an attempt to protect customers. An added layer of sophistication could be to segregate their elder customers' activities for special screening. Many financial institutions are concerned, however, that segregating their customer population for this purpose could be interpreted to place them in violation of existing age discrimination laws and, therefore, put the institution at risk for potential fines or regulatory actions.

It would be extremely beneficial if the involved EJCC agencies, particularly the Department of Justice, could clarify permissibility of age-based fraud monitoring. If such segregation is currently permissible, to assuage the concerns we have heard, a written opinion of the permissibility would be extremely helpful. If, in fact, it is considered a violation of current anti-discrimination laws to segregate this population for fraud monitoring purposes, we encourage the EJCC to undertake an effort to pursue legislative action to allow for an exception.

- Authority to authorize a protective hold on a suspicious transaction. One significant challenge financial institution employees encounter is situations where an elderly customer wants to perform a transaction (e.g., a withdrawal, a request to transfer funds) in a situation where the employee strongly suspects or even knows that fraud is involved. This clearly creates a conundrum pitting the financial institution's contractual obligation to carry out its customers and instructions and the financial institutions' desire to prevent the elderly customer from being defrauded.

There are a few methods that are suggested for dealing with this issue:

- Working with CFPB and Treasury create an option allowing institutions to put a minimal hold on the transaction pending the sending of an alert of APS and APS discussing the situation with the customer. It will likely be necessary for CFPB and Treasury to work with the states to implement this suggestion.
- Working collaboratively with input from the U.S. Department of Justice, U.S. Postal Inspection Service, Federal Trade Commission and other agencies along with input from financial institutions, create and maintain a list of known fraudulent actors that can be used to "convince" elders of their involvement in a fraudulent situation.
- Leverage the work already underway and led by the Consumer Financial Protection Bureau to create a list of local and regional APS services into a shareable database that financial institutions could use to understand who to contact that might be helpful

in discussing these types of situations with involved elders. Along with creating a database for contacts, it will be necessary to further clarify the type of information institutions are legally able to share with APS regarding their older customer.

- Another substantial challenge occurs when an individual with a duly executed Power of Attorney to act on behalf of an elder is suspected of trying to perpetrate fraudulent activity or activity not in the best interest of the elder. Duly executed Powers of Attorney give the holder the legal right to act on behalf of the customer. This essentially creates the same conundrum for the financial institution as noted in the previous point.

There are a series of actions we would ask the EJCC members to consider regarding this issue. They include:

- Powers of Attorney laws and regulations vary by state and, particularly in the case of Durable Powers of Attorney, can involve granting rights to the agent even after the principal becomes incapacitated. While the agent is obligated to exercise due care and protect the principal, state law is not uniform with respect to the specific responsibilities of an agent with regard to financial transactions, particularly when the principal is an elder. The development of uniform state laws and a Uniform Power of Attorney would be very helpful. Study of the feasibility and benefits of having a uniform Power of Attorney, particularly one for situations in which the principle is an elder should be undertaken.
  - Select agencies – most likely U.S. Department of Health and Human Services, Social Security Administration, CFPB, U.S. Department of Justice, the Federal Trade Commission and the U.S. Department of Veterans Affairs – should consider working collaboratively to develop educational materials that explain clearly to those agents with Powers of Attorney their financial responsibilities and provide specific examples of what are considered abusive behaviors.
  - The U.S. Department of Justice could undertake a study of existing criminal statutes that apply to financial abuse of elders. This should include both federal and state level statutes with the goal to develop a model criminal code applicable to this area that strongly dis-incentivizes criminal actors and those acting as agents from taking advantage of the elderly.
- Financial institutions are sometimes concerned with the liability they or their employees might incur in situations where they suspect and report elder abuse – particularly if it is a situation in which it is ultimately determined that a fraud was not involved. Today, certain states require the reporting of even suspicions of fraud, but that reporting is not uniform on a national level and statutory hold harmless provisions to protect the reporter seem far from consistent.

The Council should work toward legislative action that would result in a national reporting statute that provides uniform electronic reporting requirements to a single report point which would disseminate the information (or otherwise make it available) to state and local

agencies, as well as uniform hold harmless protections for reporting parties. Additionally, the importance of federal and state agencies such as the CFPB, SEC, FINRA, and NSAA, etc., to coordinate their efforts in addressing elder financial abuse can ensure the avoidance of conflicting rules and regulations, which themselves would potentially harm individual clients. This should also include a definition of those individuals who are protected by the requirements, as in some states fraud of vulnerable adults follow the same requirements as fraud of the elderly.

- Confusion of requirements regarding to whom to report the abuse and under what circumstances.

FinCEN, a part of the U.S. Treasury, issued an advisory on February 22, 2011 that addresses the reporting of actual or suspected elder financial abuse on Suspicious Activity Reports (SARS).<sup>80</sup> This provided financial institutions with guidance on reporting specific to SARs' requirements; however, the reporting of elder financial abuse often goes beyond that type of reporting. Reporting would likely include reporting of situations to Adult Protective Services or similar agencies as well potentially, depending on the circumstances, to local law enforcement. Today, however, the structure of adult protective services type agencies is diffused across the country. Some locations have more centralized state-wide or regional agencies while others structure such agencies very locally. Determining the correct agency for reporting is often difficult. Law enforcement capabilities to deal with such reports often vary as well. In addition, today with law enforcement often done at the local level, it is often difficult to synthesize information across jurisdictions to identify when elders in different locations may be being subjected to scams and fraudulent activity that relates to the same set of criminal actors.

To assist with overcoming these issues, we suggest the following actions:

- The CFPB is currently working with various constituencies to develop a database of regional and local APS agencies across the United States. Making that database accessible to financial institutions would facilitate those institutions ability to know and contact the correct agency.
- Recognizing that local law enforcement lacked skills in investigating cybercrime, in 2007, the Department of Homeland Security, the United States Secret Service, the Alabama District Attorneys Association, the State of Alabama, and the city of Hoover, Alabama partnered to create the National Computer Forensics Institute (NCFI). This partnership provides state and local law enforcement officers the training necessary to conduct basis electronic crimes investigations. Creating a similar model to train state and local law enforcement personnel the training necessary to conduct investigations of elder abuse could have significant merits. Short of such a large effort, creating and providing to local law enforcement bodies an educational opportunity through such options as written best practices, webinars and seminars on the subject would be beneficial.

Note that these same concepts can be generally applied as well to local prosecutorial authorities, who sometimes also lack the knowledge and experience requisite to the successful prosecution of those who prey financially on the elderly. Similar training programs and best practices can also serve this community well.

- The CFPB is currently working to establish state and regional coalitions of APS, law enforcement, prosecutors and financial institutions that can work together on the issue of elder abuse. We encourage continued expansion of this effort and offer our services to assist in connecting our Roundtable members into these coalitions.
- While SARS reporting is working well today, a significant improvement can be made by specifically adding “Elder Financial Abuse” as a category in Section 35 of the SARS Reporting Form. This would allow for easier collation of such activity and facilitate cross-matching of potential criminal actors within this area.
- Enhanced financial literacy to further empower consumers, including older Americans, to make sound financial decisions.

Financial literacy is one of the highest priorities for the Roundtable and its members at the grass roots and at the national policy level. In 2011, Roundtable member companies conducted more than 45,600 financial literacy projects around the country to further empower thousands of consumers to make sound financial decisions.

As we noted earlier, as a part of the efforts of its Elder Working Group, the Roundtable has committed to work on two projects (i.e., develop a structure/syllabus for training financial institution consumer-facing staff and to develop a publicly available awareness and education program to be made available to all financial institutions).

We would certainly welcome the engagement of any of the departments or agencies represented on the EJCC in this effort – either in development or ultimately in distribution of the publicly facing awareness and education materials developed. We believe a national-level awareness campaign targeting elder Americans and their family members would provide long-lasting benefits in helping to reduce elder financial abuse.

- One last area of potential improvement involves the licensing of financial professionals who serve the elder community. In its August 20, 2012 letter to the CFPB regarding CFPB’s “Request for Information Regarding Senior Financial Exploitation [Docket CFPB-2012-0018],” the Roundtable mentioned another key area to reduce financial abuse of elders. It noted that an effort to make elders more aware of the licensing of financial professionals coupled with an effort by federal and state agencies and professional organizations’ role in developing best practices for the training and licensing of financial professionals would have benefits. The Roundtable’s comments on this last area are excerpted into Appendix A of this document.

## **CONCLUSION**

We appreciate the opportunity to share our thoughts and ideas regarding how we might improve the protections that help prevent financial abuse against elder Americans. The concepts and suggestions that we outlined above are a starting point for this discussion. We recognize various

methods to approach these issues and look forward to continuing to work together with the Departments and Agencies involved in the EJCC on this important issue.

## INCLUSION

Excerpt from August 20, 2012 letter to the CFPB regarding CFPB's "Request for Information Regarding Senior Financial Exploitation [Docket CFPB-2012-0018]"

*Consumers Should Seek Financial Advice Only From Licensed Financial Professionals, and the CFPB Should Work with Federal and State Agencies and Professional Organizations to Develop Best Practices For the Training of These Professionals*

The financial services industry has played a vital role in expanding retirement security for millions of Americans for the last 100 years. The industry currently manages more than \$17 trillion in retirement assets, which represents 36% of all U.S. household assets.<sup>81</sup> The U.S. retirement market is projected to grow to nearly \$22 trillion by 2016,<sup>82</sup> a 30% increase in retirement savings over four years.

It is important that consumers of all ages seek professional assistance to prepare for and make major financial decisions involving investments, wealth planning, and retirement. When making these decisions, consumers should seek out individuals who are licensed under federal and/or state law.

The Roundtable believes that consumers should only hire properly licensed investment professionals. Federal law regulating securities brokers, securities dealers, and investment advisers provides strong and effective protection for all consumers, including older Americans. The Securities and Exchange Commission, together with securities self-regulatory organizations like the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board, implement the registration and regulatory régime under federal securities law. These protections are complemented at the state level by laws designed to protect consumers from investment fraud. A similar registration and regulatory structure exists for futures professionals and firms, which are subject to oversight by the Commodity Futures Trading Commission, National Futures Association and other futures self-regulatory organizations. Additionally, state insurance commissioners regulate insurance agents in their respective jurisdictions.<sup>83</sup>

We understand that a number of states and professional organizations have laws and programs that govern certifications and titles used by retirement professionals. While training that focuses on the specialized needs of older Americans may be valuable and useful, we urge the CFPB to partner with the financial services industry, federal regulators, financial industry self-regulatory organizations, state agencies and professional organizations in developing best practices for the training and certification of professionals who specialize in advising older Americans.

**Paul Smocer**

THE FINANCIAL SERVICES ROUNDTABLE

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**PROTECTING THE ELDERLY FROM  
FINANCIAL FRAUD AND EXPLOITATION**

**INTRODUCTION**

This paper, *Protecting the Elderly and from Financial Fraud and Exploitation*, is designed to address special needs for which financial institutions are uniquely suited to assist. The paper provides information to support the implementation or improvement of a financial institution's internal program for education and awareness about abuse of, and exploitation against, the elderly.

According to the National Center on Elder Abuse (NCEA), Bureau of Justice Statistics<sup>84</sup>, 9.5% of the elderly population was abused in 2010. In a telephone survey<sup>85</sup> of more than 5,500 older adults, 5.2% of respondents reported current financial exploitation by a family member and 6.5% reported lifetime financial exploitation by a non-family individual. The National Adult Protective Services Association (NAPSA) conducted an informal study of U.S. news articles regarding elder abuse reported between October 1, 2008 and March 31, 2009. Of the 1,971 incidents publicly reported, 458 of the incidents included financial exploitation<sup>86</sup>. A 2009 [report](#) estimates the annual financial loss by victims of elder financial abuse to be at least \$2.6 billion. It also describes the typical victim of elder abuse as a woman over 75 who lives alone.<sup>87</sup>

By 2030, the number of Americans aged 65 and older will more than double to 71 million, roughly 20 percent of the U.S. Population. In some states, fully a quarter of the population will be aged 65 and older<sup>88</sup>. This dramatic increase in the aging population can also lead to a large pool of potential victims for financial exploitation.

According to NCEA, financial exploitation can include “the illegal or improper use of an elder’s funds, property, or assets.” Examples include, but are not limited to, “cashing an elder adult person’s checks without authorization or permission; forging an older person’s signature; misusing or stealing an older person’s money or possessions; coercing or deceiving an older person into signing any document (e.g., contracts or will); and the improper use of conservatorship, guardianship, or power of attorney.”<sup>89</sup>

Financial exploitation can be devastating to the victim. Research has shown that elders who suffer from abuse, neglect or exploitation are three times more likely to die than those who have not suffered from abuse, neglect or exploitation.<sup>90</sup> Compounding the devastation is that the exploitation is often traced to family members, trusted friends, or caregivers. Financial abuse

often occurs with the implied acknowledgment and/or consent of the elder person, even when that person is mentally capable, and therefore can be more difficult to detect or prove. In addition, many victims may be unable or unwilling to implicate a friend or family member as the perpetrator. The University of Chicago survey found that adults over the age of 60 are less likely to report verbal or financial mistreatment than those aged 50–60. According to the NCEA, Bureau of Justice Statistics, 15.7% of elder abuse cases reported in 2010 were cases of financial exploitation.

Why are older persons at risk? Greed is the major motivator of the perpetrator of the financial crime. Persons over 50 control the majority of the personal wealth in this country and the problem will only increase as the “baby boomer” generation ages. Fear is also a primary factor. Older adults are afraid of being left alone or being placed into a nursing home. The physical and mental impairments of aging make the elderly dependent on others for care, which allows the abuser to isolate and control the victim both physically and emotionally.

Employees within the financial services industry may often be the first to detect changes in the behaviors of customers with whom they have regular contact. This front-line relationship places institutions in a unique position to assist in protecting customers, upholding their inherent trust relationship with clients. Misconceptions and misunderstandings of privacy laws<sup>91</sup> may cause institutions to avoid reporting suspected financial exploitation even though many states mandate such reporting.

Financial institutions are encouraged to broaden dialogue with and report suspected fraud to Adult Protective Services (APS), as required by law<sup>92</sup>. In turn, APS will conduct investigations, prepare assessments, and arrange for services needed to help victims correct or eliminate financial exploitation.

## **ROLE OF THE FINANCIAL SERVICES INDUSTRY**

The financial services industry is uniquely positioned to assist in detecting and preventing financial fraud and exploitation of the elderly. Following are some of the reasons this role is critically important.

- A primary role of financial institutions is the protection of assets and prevention of financial losses. Experts from BITS member financial institutions develop and share best practices and other voluntary guidelines to safeguard consumer information.
- For decades, financial institutions have been at the forefront of fraud detection utilizing sophisticated technology, modeling, training and education, and are often the first to detect patterns of fraud. These proactive measures help to promote goodwill within the financial institutions’ communities.
- Using a variety of safeguards, financial institutions ensure the reliability and security of financial transactions as well as protect financial privacy. While federal regulators require some of these safeguards, financial institutions often exceed the minimum standards of such regulation for the benefit of their customers, shareholders, and employees.
- Financial institutions educate employees and customers on steps to secure accounts against the lure of fraudsters. Often, fraud is committed by trusted third parties, family, or friends, and may be committed with the implied consent of the customer.



## TYPES OF ABUSE AND SCAMS

NCEA recognizes six types of abuse<sup>93</sup>. In addition to signs of financial abuse, financial institution personnel may recognize, identify, and report other forms of abuse. Identification of non-financial abuse may indicate that financial abuse is also occurring. The types of abuse below may be independent of each other:

- **Abandonment** – Desertion of an adult by an individual who has assumed responsibility for providing care.
- **Emotional or psychological abuse** – Trauma after exposure to threatening acts or coercive tactics.
- **Financial abuse or exploitation** – Unauthorized or improper use of the resources of an elder for monetary or personal benefit, profit, or gain.
- **Neglect** – Failure to fulfill any part of a person’s obligations or duties to an elder’s physical, emotional, or social needs.
- **Physical abuse** – Injuring, assaulting or threatening with a weapon, or inappropriately restraining.
- **Sexual abuse** – Sexual contact against an elder’s will.

Financial exploitation can be classified into two broad categories. These categories of exploitation may affect more than older consumers; however they are highlighted for purposes of understanding the direct risk they pose to the elderly.

- **Theft of income** – Most common form of financial exploitation and fraud. Theft is typically between \$1,000 and \$5,000 per transaction.
- **Theft of assets** – Often more extensive and typically involves abuse associated with Powers of Attorney, real estate transactions, identity theft or tax manipulation.

Some forms of exploitation may be considered “scams,” in which a person (or persons) unknown to the adult attempts to trick the victim for financial gain. The elderly person, who may be more trusting, gullible, or less financially sophisticated, are often the preferred targets of scams.

## **POPULAR SCAMS**

The frauds outlined below are not unique to seniors, but the opportunity and impact can be greater than on the average consumer.

### *Advance Fee Fraud or “419” Fraud.*

Named after the relevant section of the Nigerian Criminal Code, this fraud is a popular crime with West African organized criminal networks. There are a myriad of schemes and scams – mail, email, fax, and telephone promises are designed to entice victims to send money for various reasons. Victims are told they will receive a percentage for their assistance. There are many variations of phishing and 419 schemes, but they all have the same goal: to steal the

victims' money or personal and account information. See [Attachment A](#) for more information about the various schemes.

#### *Debt Relief Scam*

Senior Americans are using their credit cards more to compensate for decreasing retirement portfolios and increasing medical costs,<sup>94</sup> and financially distressed elders may be susceptible to debt relief scams by unscrupulous companies that promise to repair a bad credit report or renegotiate a debt. Seniors may fall victim to companies that seek upfront fees for services that are often provided at little or no cost by the government. They may instruct the senior to redirect the payments to them, not the creditor, and either keep the payment entirely or charge exorbitant fees (sometimes 50%) as service charges. These companies often require payment in cash or money order, claiming that this decreases their overhead costs and keeps fees to a minimum, when it's actually done so the payments cannot be tracked like credit or debit card payments

#### *Exploitation by a Financial Institution Employee*

While institutions go to great lengths to avoid hiring known fraudsters<sup>95</sup> and employ monitoring and access controls to prevent them from unnecessarily accessing customers' records, some employees may abuse their relationships or use their knowledge of internal processes to steal from their elderly customers.

#### *Fictitious Relative*

The perpetrator calls the victim pretending to be a relative in distress and in need of cash, and asks that money be wired or transferred either into a financial institution account.

#### *Financial Institution Examiner Impersonation Fraud*

The victim believes that he or she is assisting authorities to gain evidence leading to the apprehension of a financial institution employee or examiner that is committing a crime. The victim is asked to provide cash to bait the crooked employee. The cash is then seized as evidence by the "authorities" to be returned to the victim after the case.

#### *Foreclosure Rescue Scam*

The perpetrator claims to be able to stop instantly foreclosure proceedings on the victim's real property. The scam often involves the victim deeding the property to the perpetrator who says that the victim will be allowed to rent the property until some predetermined future date when the victim's credit will have been repaired and the property will be deeded back to the victim without cost. Alternatively, the perpetrator may offer the victim a loan to bridge his or her delinquent payments, perhaps even with cash back. Once the paperwork is reviewed, the victim finds that his or her property was deeded to the perpetrator. A new loan may have been taken out with an inflated property value with cash back to the perpetrator, who is now the property owner. The property very quickly falls back into foreclosure and the victim, now tenant, is evicted.

### *Identity Theft*

Using one or more pieces of the victim's personal identifying information (including, but not limited to, name, address, driver's license, date of birth, Social Security number, account information, account login credentials, or family identifiers), a perpetrator establishes or takes over a credit, deposit or other financial account in the victim's name.

Fraudsters gather victim's information through various means; however, senior citizens are often susceptible to social engineering techniques that fraudsters use, such as “**phishing**” to entice victims to supply personal information such as account numbers, login IDs, passwords, and other verifiable information that can then be exploited for fraudulent purposes. Phishing is most often perpetrated through mass emails and spoofed websites, but it can also occur through old-fashioned methods such as the phone, fax, and mail.

### *Misappropriation of Income or Assets*

A perpetrator obtains access to an older consumer's Social Security checks, pension payments, checking or savings account, credit or ATM cards, and withholds portions of checks cashed for himself or herself.

### *Pigeon Drop*

A victim is approached by a stranger (or strangers) claiming to have found a large sum of money who offers to share it with the victim. However, the fraudster requests “good faith” money and offers to accompany the victim to the bank to withdraw the funds. In return, the victim is given an envelope or bag that contains blank pieces of paper rather than money.

### *Power of Attorney Fraud*

The perpetrator requests a Limited or Special Power of Attorney, specifying that legal rights be given to manage funds assigned for investment to the perpetrator, a trustee, an attorney, an asset manager, or other title that sounds official and trustworthy. Once the rights are given, the perpetrator uses the funds for personal gain.

### *Reverse Mortgage Scam*

Fraudsters may target senior citizens who have accumulated a sizeable amount of equity in their home. While there is nothing illegal with reverse mortgage products, the process can be complex and homeowners must carefully review all of the terms and conditions (preferably with family members and an attorney) before signing anything.

Unscrupulous estate planners may charge fees for information that is available at no charge from the [U.S. Department of Housing and Urban Development \(HUD\)](#)<sup>96</sup> or “mortgage consultants” may insist that unnecessary renovations must be done to the home in order to qualify for the loan and specify which contractor should be used to make these repairs.

### *Sweetheart Scam*

The perpetrator enters the victim's life as a romantic interest in order to gain influence and eventual financial control. This type of fraud often goes unreported due to the embarrassment

and emotional impact on the victim. At times, the victim knows they are being duped but they simply do not want to be alone.

### *Telemarketing or Charity Scam*

The victim is persuaded to buy a valueless or nonexistent product, donate to a bogus charity, or invest in a fictitious enterprise. Seniors are particularly vulnerable to this type of fraud because they are often at home during the workday to answer the phone. Social isolation is also a factor where fraudsters prey on lonely seniors anxious for someone with whom to talk. They devise schemes that require multiple phone calls and development of a trusting relationship.

### *Unsolicited Work*

Victims are coerced, intimidated, or otherwise conned into paying unreasonable amounts for poor quality work for services such as roofing, paving, auto body repair, etc. Often the work is fully paid for, but never started or of such poor quality that the victim must pay legitimate contractors to repair the work. Sometimes the work is only partially completed and the fraudster will insist that more money must be paid for the job to be completed. Often the perpetrator will accompany the victim to the bank to withdraw cash to pay for the substandard or incomplete work.

## **RELATIVES AND CAREGIVERS**

Unlike strangers, relatives, caregivers, and others with fiduciary responsibilities, hold a position of trust and have an ongoing relationship with the older consumer. Financial exploitation occurs when the offender steals, withholds, or otherwise misuses the victim's money or assets for personal profit. Perpetrators take advantage of the victim and rationalize their actions in various ways. For example, perpetrators may feel that they are entitled to receiving their inheritance early and do not view their actions as wrong, while others simply take advantage of the victim.

- **Borrowing money** (sometimes repeatedly) with no intent to repay.
- **Cashing or keeping some portion** of the person's pension, Social Security or other income checks without permission.
- **Opening or adding their name to banking accounts** without the elder's permission. Often, a fraudster may use the victim's personal information to open an account online, as opposed to opening an account at a branch location. The fraudster often opts to receive online statements to avoid having statements sent to the victim's address and elude detection.
- **Theft of the victim's money or other cash-equivalent assets** (e.g., stocks, bonds, savings bonds, travelers checks), both directly and through establishing joint accounts or signatory authority on existing accounts. Perpetrators may convince the elder to add them to the account as an authorized user without the elder understanding that the perpetrator can withdraw funds without their knowledge.

- **Transferring title on, or re-encumbering, real property** of the older consumer. Financial exploitation utilizing real property is particularly appealing to family members or caregivers who may feel they are “owed” something for their efforts, however meager those efforts may be in reality. For many elderly, their most significant economic asset may be the equity they have built in their real property over decades of ownership.
- Using the victim’s checks or ATM, debit or credit cards without permission.

The tactics used by these offenders may include intimidation, deceit, coercion, emotional manipulation, psychological or physical abuse, and/or empty promises. The offender may try to isolate the victim from friends, family, and other concerned parties who would act in the victim’s best interest. By doing so, the perpetrator prevents others from asking about the person’s well-being or relationship with the offender and prevents the person from consulting with others on important financial decisions.

## **DEVELOPMENT OF AN INTERNAL AWARENESS AND TRAINING PROGRAM**

Financial institutions understand the importance of establishing an internal awareness and training program on this issue. Most institutions train all of their staff on this issue when they are hired, and then perform regular trainings for those individuals who work directly with consumers. This section outlines the responsibility of each part of an institution in combating this abuse.

### **PROGRAM DESIGN AND EMPLOYEE TRAINING**

Corporate support is important when developing and maintaining a successful awareness and training program. Institutions should involve and seek input not only from their internal departments, but also from external groups such as protective services and law enforcement, as they often have a keen understanding regarding the cases and issues affecting a specific region.

#### *Role of Customer Contact Staff*

Customer contact staff are in a unique position to identify potential abuse of elder populations through greater awareness and recognition of “red flags” in customer behavior. The industry is in the process of establishing an overview of curriculum for training customer facing personnel to identify potential signs of fraud. This work will include identifying key “red flags” that staff may identify during routine account servicing that could indicate actual or potential fraud.

#### *Role of Loss Prevention/Security*

Loss prevention/security staff are strongly encouraged to proactively contact and establish relationships with local law enforcement and APS offices to increase collaboration and information sharing with these groups before an incident occurs.

In addition, the regional field offices of the Federal Bureau of Investigation (FBI) and U.S. Secret Service (USSS) sponsor task forces that serve as an excellent means to network and share

information regarding crimes affecting the region. Local [FBI](#)<sup>97</sup> or [USSS](#)<sup>98</sup> field offices will be able to direct an institution to a local task force.

### *Role of Legal Departments*

Financial institutions may be reluctant to report suspicious activity to APS due to concerns with federal and state privacy laws. According to the American Bar Association (ABA) Commission on Aging, The Right to Financial Privacy Act of 1978 applies only to federal agencies requesting consumer information from financial institutions. Further, the Gramm-Leach-Bliley Act applies to federal, state, and local agencies, but it contains several exemptions that permit disclosure, including “to protect against or prevent actual or potential fraud, unauthorized transaction, claims, or other liability.” In addition, 49 states and the District of Columbia include immunity provisions in their APS laws that protect individuals who make reports in good faith. These immunity provisions may be interpreted as overriding the restrictions in applicable state privacy laws.

In 2003, the ABA published the document, [Can Bank Tellers Tell? Reporting Financial Abuse of the Elderly](#),<sup>99</sup> which outlines state laws associated with elder abuse. Another paper, [Legal Issues Related to Bank Reporting of Suspected Elder Financial Abuse](#)<sup>100</sup> provides an overview of the legal issues that institutions may consider when reporting suspected cases of financial exploitation of the elderly.

As stated above, financial institutions should consult with legal departments on the specific reporting guidelines for the states in which they do business. In some cases, a written request from APS is sufficient to release customer statements and transaction copies, while other states require a subpoena or written consent from the customer.

### *Role of Law Enforcement and Communities*

*National Organization of Triads* (NATI) is a partnership of law enforcement, senior citizens, and community groups to promote senior safety and reduce the unwarranted fear of crime that the elder community often experiences. A [handbook](#)<sup>101</sup> is available to assist law enforcement and senior citizens in implementing a comprehensive crime prevention program for older adults.

## **CONSUMER AWARENESS AND EDUCATION**

Consumer education is critical to preventing fraud. Most individuals will take action if they believe it will decrease their chances of being victimized by fraud, as long as the action does not significantly inconvenience them. By educating customers, financial institutions can decrease fraud losses.

Included in the [Appendix](#) are resources institutions may refer customers for tips on preventing fraud. Institutions can share this information with customers through various channels, such as postings at the branches, flyers sent with monthly statements, emails, through a Web site, and/or by request to a call center.

## **CHALLENGES AND IMPEDIMENTS**

While financial institutions recognize the importance and their responsibility in protecting older customers from fraud and abuse, there are areas that require an increased focus to more effectively respond to these threats.

### **CLARIFY THE PERMISSIBILITY OF AGE-BASED FRAUD MONITORING**

Financial institutions utilize sophisticated fraud detection technology and modeling in their attempts to prevent and identify potential fraudulent activity to protect customers. An added layer of scrutiny for older customers' activities, could identify more efficiently identify abnormalities in transactions. However, providing additional security to these specific accounts could place a financial institution in violation of existing age discrimination laws and, therefore, put the institution at risk for potential fines or regulatory actions.

The Department of Justice should review this issue and clarify permissibility of age-based fraud monitoring. A written opinion of the permissibility would be extremely helpful. If, in fact, it is considered a violation of current anti-discrimination laws to segregate this population for fraud monitoring purposes.

### **AUTHORITY TO AUTHORIZE A PROTECTIVE HOLD ON A SUSPICIOUS TRANSACTION**

If an employee strongly suspects or knows the older consumer has fallen for a scam, but the elderly customer wants to perform a transaction (e.g., a withdrawal, a request to transfer funds), the institution is contractually obligated to carry out the customer's instructions. In these cases, institutions may try to convince the consumer that the transaction is in response to a fraudulent request, but they may be unsuccessful.

The Consumer Financial Protection Bureau and Treasury should create an option allowing institutions to put a minimal hold on the transaction pending the sending of an alert of APS and APS discussing the situation with the customer.

The U.S. Department of Justice, U.S. Postal Inspection Service, Federal Trade Commission, and other agencies along with input from financial institutions should create and maintain a list of known fraudulent actors that can be used to "convince" elders of their involvement in a fraudulent situation. By providing documentation to an older consumer from a trusted source in the government, individuals may be more easily understand that they are the victim of the fraud.

A shareable database of local and regional APS services, as well as, contacts at the Area Agency on Aging would more easily identify for institutions who to contact in discussing these types of situations with involved elders. Along with creating a database for contacts, it will be necessary to clarify further the type of information institutions are legally able to share with APS regarding their older customer.

## **POWER OF ATTORNEY PRIVILEGES USED FOR INAPPROPRIATE TRANSACTIONS**

Similar the situation described of a victim wanting to go through with a transaction after they have been told that it could be fraud, individuals with a Power of Attorney have the ability to perform transactions on the older consumers behalf. If a financial institution suspects that they are trying to perpetrate fraudulent activity or activity not in the best interest of the elder. Duly executed Powers of Attorney give the holder the legal right to act on behalf of the customer.

Powers of Attorney laws and regulations vary by state and, particularly in the case of Durable Powers of Attorney, can involve granting rights to the agent even after the principal becomes incapacitated. While the agent is obligated to exercise due care and protect the principal, state law is not uniform with respect to the specific responsibilities of an agent with regard to financial transactions, particularly when the principal is an elder. The development of uniform state laws and a Uniform Power of Attorney would be very helpful. Study of the feasibility and benefits of having a uniform Power of Attorney, particularly one for situations in which the principle is an elder should be undertaken.

Select agencies – most likely U.S. Department of Health and Human Services, Social Security Administration, CFPB, U.S. Department of Justice, the Federal Trade Commission and the U.S. Department of Veterans Affairs – should consider working collaboratively to develop educational materials that explain clearly to those agents with Powers of Attorney their financial responsibilities and provide specific examples of what are considered abusive behaviors.

The U.S. Department of Justice could undertake a study of existing criminal statutes that apply to financial abuse of elders. This should include both federal and state level statutes with the goal to develop a model criminal code applicable to this area that strongly dis-incentives criminal actors and those acting as agents from taking advantage of the elderly.

## **REPORTING OF SUSPICIOUS ACTIVITIES**

Financial institutions are sometimes concerned with the liability they or their employees might incur in situations where they suspect and report elder abuse – particularly if it is a situation in which it is ultimately determined that a fraud was not involved. Today, certain states require the reporting of even suspicions of fraud, but that reporting is not uniform on a national level and statutory hold harmless provisions to protect the reporter seem far from consistent.

The Council should work toward legislative action that would result in a national reporting statute that provides uniform electronic reporting requirements to a single report point which would disseminate the information (or otherwise make it available) to state and local agencies, as well as uniform hold harmless protections for reporting parties. Additionally, the importance of federal and state agencies such as the CFPB, SEC, FINRA, and NSAA, etc., to coordinate their efforts in addressing elder financial abuse can ensure the avoidance of conflicting rules and regulations, which themselves would potentially harm individual clients. This should also include a definition of those individuals who are protected by the requirements, as in some states fraud of vulnerable adults follow the same requirements as fraud of the elderly.

FinCEN, a part of the U.S. Treasury, issued an advisory on February 22, 2011 that addresses the reporting of actual or suspected elder financial abuse on Suspicious Activity Reports (SARS).



This provided financial institutions with guidance on reporting specific to SARs' requirements; however, the reporting of elder financial abuse often goes beyond that type of reporting. Reporting would likely include reporting of situations to Adult Protective Services or similar agencies as well potentially, depending on the circumstances, to local law enforcement. Today, however, the structure of adult protective services type agencies is diffused across the country. Some locations have more centralized statewide or regional agencies while others structure such agencies very locally. Determining the correct agency for reporting is often difficult. Law enforcement capabilities to deal with such reports often vary as well. In addition, today with law enforcement often done at the local level, it is often difficult to synthesize information across jurisdictions to identify when elders in different locations may be being subjected to scams and fraudulent activity that relates to the same set of criminal actors.

Recognizing that local law enforcement lacked skills in investigating cybercrime, in 2007, the Department of Homeland Security, the United States Secret Service, the Alabama District Attorneys Association, the State of Alabama, and the city of Hoover, Alabama partnered to create the National Computer Forensics Institute (NCFI). This partnership provides state and local law enforcement officers the training necessary to conduct basic electronic crimes investigations. Creating a similar model to train state and local law enforcement personnel the training necessary to conduct investigations of elder abuse could have significant merits. Short of such a large effort, creating and providing to local law enforcement bodies an educational opportunity through such options as written best practices, webinars and seminars on the subject would be beneficial.

Note that these same concepts can be generally applied as well to local prosecutorial authorities, who sometimes also lack the knowledge and experience requisite to the successful prosecution of those who prey financially on the elderly. Similar training programs and best practices can also serve this community well.

While SARS reporting is working well today, a significant improvement can be made by specifically adding "Elder Financial Abuse" as a category in Section 35 of the SARs Reporting Form. This would allow for easier collation of such activity and facilitate cross matching of potential criminal actors within this area.

## **FINANCIAL LITERACY**

Enhanced financial literacy further empowers consumers, including older Americans, to make sound financial decisions. Financial literacy is one of the highest priorities for the Roundtable and its members at the grass roots and at the national policy level. In 2011, Roundtable member companies conducted more than 45,600 financial literacy projects around the country to empower further thousands of consumers to make sound financial decisions.

The Roundtable is currently in the process of developing a structure for training financial institution consumer-facing employees. In addition, the Roundtable is developing a publicly available awareness and education program to be made available to all financial institutions for adoption or modification.

A national-level awareness campaign targeting elder Americans and their family members would provide long-lasting benefits in helping to reduce elder financial abuse.

## **LICENSING OF FINANCIAL PROFESSIONALS FOCUSED ON ELDERLY ISSUES**

In the Roundtable's August 20, 2012 letter to the CFPB regarding CFPB's "Request for Information Regarding Senior Financial Exploitation [Docket CFPB-2012-0018]," the Roundtable mentioned another key area to reduce financial abuse of elders. It noted that an effort to make elders more aware of the licensing of financial professionals coupled with an effort by federal and state agencies and professional organizations' role in developing best practices for the training and licensing of financial professionals would have benefits.

## **ATTACHMENT A: VARIATIONS OF COMMON PHISHING AND 419 SCAMS**

### **INHERITANCE SCAMS**

Victims receive mail from an "estate locator" or "research specialist" purporting an unclaimed inheritance, refund, or escheatment. The victim is lured into sending a fee to receive information about how to obtain the purported asset.

### **INTERNET SALES OR ONLINE AUCTION FRAUD**

The perpetrator agrees to buy an item available for sale on the Internet or in an online auction. The seller is told that he or she will be sent an official check (e.g., cashier's check) via overnight mail. When the check arrives, it is several hundred or thousand dollars more than the agreed-upon selling price. The seller is instructed to deposit the check and refund the overpayment. The official check is subsequently returned as a counterfeit but the refund has already been sent. The seller is left with a loss, potentially of both the merchandise and the refund.

### **RECOVERY ROOM SCAMS**

Fraudsters build lists of consumers who have previously fallen victim to a scam and sell them to telemarketers. These "sucker lists" contain detailed information about the victim including the name, address, phone number and information about money lost in the scam. The telemarketers contact the victims, often posing as government agents, and offer—for a fee—to assist the victim in recovering the lost money. The consumer is often victimized twice, as a government or consumer advocacy agency would not charge a victim for this assistance.

### **WORK-FROM-HOME SCAMS**

Potential employees are recruited through newspaper, email and online employment services for jobs that promise the ability to earn money while working from the comfort of home. However, many customers unwittingly become mules for fraudsters who use their accounts to launder money or even steal from them. For example, a customer may apply for a position as a "mystery shopper," "rebate processor," "trading partner," or a "currency trader." Upon being hired, the new "employee" provides their bank account information to their employer or establishes a new account using information provided by the employer. The employee is instructed to wire money

that is deposited into the accounts to drop boxes via Western Union. Rather than processing rebates or trading currency, the customer is actually participating in a money-laundering scheme where the fraudsters use the employee's (mule's) legitimate account to transfer stolen money to other accounts out of the country.

#### **INTERNATIONAL LOTTERY AND SWEEPSTAKES FRAUD**

Scam operators, often based in Canada, use telephone and direct mail to notify victims that they have won a lottery. To show good faith, the perpetrator may send the victim a check. The victim is instructed to deposit the check and immediately send (via wire) the money back to the lottery committee. The perpetrator will create a "sense of urgency," compelling the victim to send the money before the check, which is counterfeit, is returned. The victim is typically instructed to pay taxes, attorney's fees, and exchange rate differences in order to receive the rest of the prize. These lottery solicitations violate U.S. law, which prohibits the cross-border sale or purchase of lottery tickets by phone or mail. In a similar scam, victims are advised that they are the winner of a sweepstakes. However, they do not receive their initial "winnings" but are encouraged to write small dollar checks in order to get them to the next round to win a larger sweepstakes prize.

#### **FAKE PRIZES**

A perpetrator claims the victim has won a nonexistent prize and either asks the person to send a check to pay the taxes or obtains the credit card or checking account number to pay for shipping and handling charges.

#### **CHARITABLE DONATION SCAM**

Scam artists claiming to represent charitable organizations use e-mails and telephone calls to steal donations and in some cases donors' identities.

#### **GOVERNMENT GRANT SCAMS**

Victims are called with the claim that the government has chosen their family to receive a grant. In order to receive the money, victims must provide their checking account number and/or other personal information. The perpetrator may electronically debit the victim's account for a processing fee, but the grant money is never received.

#### **SPOOFING**

An unauthorized website mimics a legitimate website for the purpose of deceiving consumers. Consumers are lured to the site and asked to log in, thereby providing the perpetrator with authentication information that the perpetrator can use at the victim's legitimate financial institution's website to perform unauthorized transactions.

## **PHARMING**

A malicious Web redirect sends users to a criminal's spoofed site even though the user entered a valid URL in the browser's address bar. This redirection usually involves worms and Trojans or other technologies that attack the browser address bar and exploit vulnerabilities in the operating systems and Domain Name Servers (DNS) of the compromised computers.

## **HOME STEALING**

Using public records to obtain information about property records and property transfer forms purchased at any office supply store, fraudsters may use false identification, forge the true property owner's signature, and transfer the deed without the true owner's knowledge. Many states do not require deed recorders or those who oversee property closings to authenticate the identities of buyers or sellers who submit the information filed with the city or county recorder's office. These "stolen homes" are often used as collateral for new loans or sold to cash-paying buyers at a fraction of the property's value. The buyers themselves are often victims of this scam as they are unaware that the property was hijacked from the true owner.

## **INVESTMENT PROPERTY**

Property is sold to the elderly consumer as a guaranteed investment with high yield returns. The victim is convinced to buy investment property through, or in conjunction with, a property management firm that will handle all the loan documents, make all the loan payments, place the tenants, collect the rents, and maintain the property. The victim is told that he or she has to do nothing other than be the buyer and borrower. The property then falls into foreclosure. The victim finds that the property was inflated in value, payments at the closing were made to the property management company or affiliated parties, no loan payments have ever been made, and any collected rents have been stolen as well.

## **ATTACHMENT B: RESOURCES FOR FINANCIAL INSTITUTIONS**

### **AGENCIES AND ASSOCIATIONS**

#### **Department of Health and Human Services**

Administration on Aging (AoA)

Washington, DC 20201

Ph: (202) 619-0724

Fax: (202) 357-3555

Email: [aoainfo@aoa.DHHS.gov](mailto:aoainfo@aoa.DHHS.gov)

Website: <http://www.aoa.gov>

#### **National Adult Protective Services Association (NAPSA)**

920 S. Spring Street, Suite 1200

Springfield, IL 62704  
Ph: (217) 523-4431  
Fax: (217) 522-6650  
Website: <http://apsnetwork.org>

**National Center on Elder Abuse (NCEA)**

<http://www.ncea.aoa.gov>

Resources by State:

[http://www.ncea.aoa.gov/NCEAroot/Main\\_Site/Find\\_Help/State\\_Resources.aspx](http://www.ncea.aoa.gov/NCEAroot/Main_Site/Find_Help/State_Resources.aspx)

**National Center for Victims of Crime**

2000 M Street NW, Suite 480

Washington, DC 20036

Ph: (202) 467-8700

Fax: (202) 467-8701

Email: [gethelp@NCVC.org](mailto:gethelp@NCVC.org)

Website: <http://www.ncvc.org>

**National Organization of Triads, Inc. (NATI)**

1450 Duke Street

Alexandria, VA 22314

Ph: (703) 836-7827

Fax: (703) 519-8567

Email: [nati@sheriffs.org](mailto:nati@sheriffs.org)

Website: <http://www.nationaltriad.org>

**Identity Theft Assistance Center (ITAC)**

ITAC, the Identity Theft Assistance Center, is a nonprofit founded by The Financial Services Roundtable as a free service for consumers. Since 2004, ITAC has helped more 60,000 consumers recover from identity theft by giving them a single point of contact to identify and resolve suspicious account activity. ITAC shares victim data with law enforcement agencies to help investigate and prosecute identity crime and forms partnerships on identity theft education and research initiatives. Through its partner Intersections Inc., ITAC offers the ITAC Sentinel® identity management service ([www.itacsentinel.com](http://www.itacsentinel.com)). For more information visit <http://www.identitytheftassistance.org>.

## TRAINING MATERIALS AND TOOLKITS

*Attorney General of Texas – Senior Texans Page*

Texas has launched a statewide outreach campaign to raise awareness for protecting senior Texans. More information can be found at the Texas Attorney General website: <http://www.oag.state.tx.us/elder/index.shtml>

*Clearinghouse on Abuse and Neglect of the Elderly (CANE)*

CANE identifies a comprehensive list of resources on the many facets of elder mistreatment. Visit [www.cane.udel.edu](http://www.cane.udel.edu) for more information.

### *The Elder Consumer Protection Program*

The program, housed at Stetson University College of Law's Center for Excellence in Elder Law, serves as a progressive and evolving educational, informational, and instructional resource, to both professionals and the public, on general and legal topics regarding current and developing issues, matters, and concerns in the area of elder consumer protection. The Program, which is supported in part by state and federal funding, offers assorted materials and various services that provide and promote general knowledge, public awareness and assistance, and professional development and training. Materials and services include, but are not limited to, speeches and presentations, brochures and handouts, web page platforms and interfaces, non-legal consumer inquiry assistance, reference databases, and resource guides. Details and additional information can be found at <http://www.law.stetson.edu/elderconsumers>.

### *Elder Financial Protection Network (EFPN)*

The Network works to prevent financial abuse of elders and dependent adults through community education programs, public awareness campaigns, and coordination of financial institution employee training. Financial institution statement stuffers, brochures, and posters can be ordered via the website at <http://bewiseonline.org>.

### *Elder Abuse Training Program*

Developed in conjunction with the Oregon Department of Human Services, this 2-hour educational curriculum teaches professional and family caregivers about the complexities of domestic elder abuse and neglect. More information on this program, including cost, can be found at: <http://www.medifecta.com/>.

### *Federal Bureau of Investigation (FBI)*

The FBI offers a free fraud alert poster, available at [http://www.fbi.gov/majcases/fraud/fraud\\_alert.pdf](http://www.fbi.gov/majcases/fraud/fraud_alert.pdf), for placement in branches to help alert customers to common check fraud scams. The FBI's site also provides information about common fraud schemes and those targeting senior citizens. For more information, see <http://www.fbi.gov/majcases/fraud/fraudschemes.htm> or <http://www.fbi.gov/majcases/fraud/seniorsfam.htm>.

### *Fiduciary Abuse Specialist Team (FAST)*

The Los Angeles FAST team was developed to provide expert consultation to local APS, Ombudsman, Public Guardian, and other caseworkers in financial abuse cases. The team includes representatives from the police department, the district attorney's office, the city attorney's office private conservatorship agencies, health and mental health providers, a retired probate judge, a trust attorney, an insurance agent, a realtor, an escrow officer, a stockbroker, and estate planners. The FAST coordinator and consultants have also provided training to bankers and police officers across the state of California. They have developed a manual and have helped other communities start up FAST teams. For more information, visit <http://www.preventelderabuse.org/communities/fast.html>.

*Financial Institution Elder Abuse Training Kit*

Developed in 1995 and updated in 2007 in conjunction with the Oregon Department of Human Services, this kit also includes videos, manuals and other materials. For more information contact:

Oregon Bankers Association  
777 13th Street SE, Suite 130  
Salem, OR 97301

-or-

PO Box 13429  
Salem, OR 97309  
Ph: (503) 581-3522  
Fax: (503) 581-8714

<http://www.oregonbankers.com/community/efapp>

*The Massachusetts Bank Reporting Project: An Edge Against Elder Financial Exploitation*

The Massachusetts' Executive Office of Elder Affairs, in collaboration with the Executive Office of Consumer Affairs, and the Massachusetts Bank Association, developed the bank reporting project to provide training to bank personnel in how to identify and report financial exploitation, as well as foster improved communication and collaboration between the financial industry and elder protective services. The project has been successfully replicated in numerous communities. Sample materials, including model protocols, procedures for investigating and responding to abuse, and training manuals are available. For more information contact:

Jonathan Fielding  
One Ashburton Place, 5th Floor  
Boston, MA 02108  
Ph: (617) 222-7484  
Fax: (617) 727-9368  
Email: [jonathan.fielding@state.ma.us](mailto:jonathan.fielding@state.ma.us)

*Missouri Department of Health and Human Services – Missourians Stopping Adult Financial Exploitation (MOSAFE) Project*

The MOSAFE website includes training materials for financial institution employees to help spot the warning signs of financial exploitation, and take steps to stop it. The materials include a video, brochure, PowerPoint presentation, resource manual, and eight articles, which can be viewed and/or downloaded from this site. <http://www.dhss.mo.gov/MOSAFE/index.html>

*National Center on Elder Abuse (NCEA) Training Library*

In response to the needs of various agencies for training materials on elder abuse, neglect, and exploitation, the NCEA developed this national resource library. Technical assistance is provided to library users both on what is available through the library and on how to select the right materials to meet the user's particular needs. Most of the library's materials are now available for downloading. To learn more and access the library, visit:

[http://www.ncea.aoa.gov/NCEARoot/Main\\_Site/Library/Training\\_Library/About\\_Training\\_Library.aspx](http://www.ncea.aoa.gov/NCEARoot/Main_Site/Library/Training_Library/About_Training_Library.aspx)

## CONSUMER RESOURCES

### *AARP Foundation*

In conjunction with the Colorado Attorney General the AARP Foundation has created the Colorado ElderWatch Project (<http://www.aarpelderwatch.org/>) to fight the financial exploitation of older Americans through collection of data.

### *Attorney General of Texas – Senior Texans Page*

Texas has launched a statewide outreach campaign to raise awareness for protecting senior Texans. More information can be found at the Texas Attorney General website, <http://www.oag.state.tx.us/elder/index.shtml>

### *Federal Bureau of Investigation (FBI)*

This FBI site includes information about common fraud schemes and those targeting senior citizens. For more information, see <http://www.fbi.gov/majcases/fraud/fraudschemes.htm> or <http://www.fbi.gov/majcases/fraud/seniorsfam.htm>.

### *Federal Deposit Insurance Corporation (FDIC)*

The Federal Deposit Insurance Corporation publishes the FDIC Consumer News quarterly to help people protect and stretch their money. The fall 2005 edition of "Fiscal Fitness for Older Americans: Stretching Your Savings and Shaping Up Your Financial Strategies" included a section on frauds targeting the elderly. For more information, see <http://www.fdic.gov/consumers/consumer/news/cnfall05/index.html>.

### *Federal Trade Commission (FTC)*

The Federal Trade Commission's Bureau of Consumer Protection provides free information to help consumers detect and avoid fraud and deception. For more information, visit <http://www.ftc.gov/bcp/index.shtml>. The FTC also operates a call center for identity theft victims where counselors tell consumers how to protect themselves from identity theft and what to do if their identity has been stolen (1-877-IDTHEFT [1-877-438-4338]; TDD: 1-866-653-4261; or <http://www.ftc.gov/idtheft>).

### *Identity Theft Assistance Center (ITAC)*

ITAC is a nonprofit supported by financial services companies as a free service for their customers. ITAC shares information with law enforcement to help them investigate and prosecute fraud and identity theft. For a list of ITAC member companies and consumer information on identity theft detection and prevention, visit <http://www.identitytheftassistance.org>.

### *MetLife Mature Market Institute® (MMI)*

The MMI site offers pamphlets, guides, and tip sheets designed to assist decision-makers about retirement planning, caregiving and healthcare. Such publications include *Helpful Hints: Preventing Elder Financial Abuse*<sup>102</sup> and *Preventing Elder Abuse*.<sup>103</sup> For more information about other guides, reports, and resources offered by the MMI, visit [www.maturemarketinstitute.com](http://www.maturemarketinstitute.com).



*North American Securities Administrators Association, Inc. (NASAA)*

The North American Securities Administrators Association (NASAA) is an international organization devoted to investor protection. The [NASAA Fraud Center](#) contains resources and information to protect against investor fraud.

## **ATTACHMENT C: TIPS FOR SENIOR CONSUMERS**

### **ESTABLISH A BUDGET.**

Identify all current obligations (e.g., mortgage payment, supplemental health insurance, prescription drugs). Determine the amount to spend each month and develop an appropriate budget.

### **DETERMINE THE APPROPRIATE PRODUCTS FOR YOU.**

Institutions offer a wide variety of products to respond to consumer needs. Investigate the products and determine which will benefit your lifestyle. Ask questions if you do not understand a product's features and make sure you understand any fees and, especially for investments, risks associated with the product before agreeing to purchase it. Your bank or financial institution or the local Area Agency on Aging can offer you educational information on financial products. Financial institutions offer resources to explain these.

### **PLAN FOR YOUR ESTATE.**

To assist your family when decisions must be made, it is helpful to have the following legal documents: a durable power of attorney in the case of incapacity, living will for health care decisions, and a will for property distribution decisions. You should seek the assistance of a lawyer to complete these documents. If you cannot afford a lawyer, many communities offer free or low cost legal services for seniors.

### **BE READY FOR THE UNEXPECTED.**

No one can predict when tragedy will strike, but all should plan accordingly. Establish an emergency fund with enough for three months' expenses.

### **CHOOSE A TRUSTED INDIVIDUAL WHEN PROVIDING POWER OF ATTORNEY.**

Your attorney can discuss the benefits of appointing a power of attorney so someone can make decisions on your behalf when you are no longer able. Carefully review the authority the power of attorney document grants your designee, especially regarding the ability to perform financial transactions and make gifts.

### **STAY ACTIVE AND ENGAGE WITH OTHERS REGULARLY.**

Fraudsters prey on individuals who have infrequent contact with others. Stay active in your community. Most communities have senior centers that offer social activities.

### **RESPOND CAUTIOUSLY TO IN-PERSON, MAIL, OR INTERNET SOLICITATIONS.**

No one should ask you to send them money unless you purchased or bought a product or service. Likewise, legitimate organizations offering contests or lotteries would never ask you to send them money to “claim your prize.” Be cautious of any deal that sounds too good to be true. Discuss with a trusted friend or family member any request you get to send someone you do not know money. For instance, you cannot win a lottery, if you have not entered.

### **KNOW THAT WIRING MONEY IS LIKE SENDING CASH.**

Con artists often insist that people wire money, especially overseas, because it is nearly impossible to get your money back or trace the money. Do not wire money or write checks to strangers, to sellers who insist on wire transfers for payment, or to someone who claims to be a relative in an emergency.

### **CONTACT YOUR BANK OR FINANCIAL INSTITUTION IF A REQUEST LOOKS SUSPICIOUS.**

Fraudsters may contact you claiming to be your bank or financial institution. Before providing any information, especially private information like your social security number, bank account numbers or passwords for your computer, contact your bank or institution through your regular channels (e.g., in-person visit, phone call) to confirm the request is from your bank or institution.

### **PROTECT YOUR PASSWORDS AND ACCOUNT NUMBERS.**

Do not share your passwords and / or account numbers with others. If you think someone has obtained your password, immediately notify the institution.

### **DO NOT LET EMBARRASSMENT OR FEAR KEEP YOU FROM DISCUSSING SUSPICIOUS ACTIVITIES.**

We all make mistakes and often do not realize we have until after we have. If you think you have made a mistake with your finances, the situation could become worse if not escalated. Discuss any suspicious activity with someone you trust (e.g., family member, bank manager, attorney, local Area Agency on Aging, police).

### **MONITOR YOUR FINANCIAL AFFAIRS.**

Actively track your financial accounts so you will be able to recognize quickly when a fraudulent transaction appears. Read your bank and credit card statements. Look for things that you did not authorize or do yourself. If you find activity you did not do, call your bank or credit card company immediately.

**CHECK YOUR CREDIT REPORT REGULARLY.**

Checking your report can help you guard against identity theft. Visit [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) if you spot accounts that are not yours. Visit [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com) or call 1-877-322-8228, the only authorized website for free credit reports. You will need to provide your name, address, Social Security number, and date of birth to verify your identity.

**DO NOT DEPOSIT CHECKS YOU RECEIVE FROM STRANGERS.**

Fraudsters may ask you to deposit a check and then require you to send a portion back. They do this to gather information about you that they then use to impersonate you. Ask your institution for help to prove the legitimacy of a check before you send any money to a stranger.

**KEEP DETAILS OF ALL DEALS IN WRITING.**

When making a financial decision always ask questions to ensure that you feel comfortable and confident where your money is going. Keeping a record of this information may help remedy a situation if the deal was in fact a fraud scam.

**LOOK OUT FOR COMMON SCAMS.**

Criminals have similar tactics that they often use. These include posing as a repairperson that you did not call for, claiming to be a relative in emergency and stating that you have won a sweepstakes or lottery that you did not enter.

**ASK FOR ASSISTANCE.**

Many financial institutions have programs specifically designed to help. Beware of advisors claiming special qualifications and certifications to advise seniors. Contact your state securities regulator to check on specific licenses. In addition, credit-counseling resources are available through the following:

National Foundation for Credit Counseling  
1.800.388.2227  
[www.nfcc.org](http://www.nfcc.org)

[The Federal Trade Commission](http://www.ftc.gov)  
Consumer Credit  
Counseling Service  
1.800.388.2227  
[www.cccsatl.org](http://www.cccsatl.org)

You can also contact your local Area Agency on Aging or call 1-800-677-1116.

## **ATTACHMENT D: TIPS FOR FAMILY MEMBERS AND FIDUCIARY**

### **DISCUSS FINANCIAL WISHES.**

Before capacity is diminished, discuss financial plans with your family members in a non-confrontational setting. Reassure him or her that you want to learn about their plans and concerns, not impose your own ideas upon them.

### **LEARN ABOUT ESTATE DOCUMENTS.**

These documents may include a will, durable power of attorney, and health care proxy. It will be important that you know where these are stored in the event of an unfortunate circumstance. If the family member involved does not have these documents, encourage them to get them through a qualified attorney. If the family member cannot afford an attorney, many communities offer free or low cost legal services for seniors.

### **ACT ON BEHALF OF THE INDIVIDUAL.**

When given the Power of Attorney, it is your fundamental responsibility to act in the best interest of the individual. You must use the elder's funds for the care of the elder. No funds should be used for your own desires.

### **WATCH FOR SIGNS OF MENTAL CHANGES OR ABUSE.**

- Diminished mental capacity
- Confusion over simple concepts; disorientation
- Failure to remember basic facts or recent conversations
- Difficulty performing simple tasks
- Drastic shifts in investment styles or investment objectives.
- Unexplained withdrawals, wire transfers or other changes in financial situation
- Erratic behavior or dramatic mood swings
- Over-reliance on a third-party
- Inability to make decisions
- Diminished hearing
- Diminished vision
- Memory Loss

### **THIRD PARTY FINANCIAL ABUSE**

- Account withdrawals that are unexplained or not typical
- Inability to contact the older adult
- Signs of intimidation or reluctance to speak, especially in the presence of a caregiver

- Sudden or highly increased isolation from friends and family
- Checks written to strangers or to parties to whom the elder has never written a check.
- Someone forging signatures
- Improper use of conservatorships, guardianships or powers of attorney

#### **ABOUT BITS**

BITS addresses issues at the intersection of financial services, technology and public policy, where industry cooperation serves the public good, such as critical infrastructure protection, fraud prevention, and the safety of financial services. BITS is the technology policy division of The Financial Services Roundtable, which represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs. For more information, go to <http://www.bits.org/>.

#### **ABOUT THE FINANCIAL SERVICES ROUNDTABLE**

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$85.5 trillion in managed assets, \$965 billion in revenue, and 2.3 million jobs.

#### **DISCLAIMER:**

This White Paper reflects the opinions and thoughts of the author as submitted to the Elder Justice Coordinating Council. It does not represent the interests or positions of the Elder Justice Coordinating Council nor any of the federal agencies that are members of the Council. The Council has reviewed this White Paper and has taken its contents under advisement, but does not endorse nor adopt it wholly or in part as representing the policies or positions of the federal government.

**Paul Greenwood**

DEPUTY DISTRICT ATTORNEY, HEAD OF ELDER ABUSE PROSECUTIONS,  
SAN DIEGO COUNTY, CALIFORNIA

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL  
OCTOBER 11, 2012

My name is Paul Greenwood and I have been a deputy district attorney for the past 19 years in the County of San Diego.

I am responsible for prosecuting all crimes committed against elderly victims over the age of 65 and have held this position for the past 17 years.

Approximately, 75% of all the felony cases that I prosecute involve some form of financial exploitation; these typically involve theft by caregivers, family members, opportunistic criminals, and professionals.

However, I have been consistently frustrated that we have rarely been able to prosecute any out-of-state suspects who scam our elderly victims. Having spoken with many other prosecutors around the country, I believe that this is a huge problem involving the loss of millions of dollars into the hands of crooks who enjoy anonymity and protection from prosecution.

I am not alone in expressing this frustration; there are many others in law enforcement throughout the country who are equally dismayed at our apparent inability to track and ultimately apprehend these scammers. Additionally, we are troubled as to where these vast sums of monies are going; and it is not beyond the boundaries of credibility to infer that at least some of the life savings of our senior citizens are ending up in the hands of potential terrorists.

The classic scams to which I am referring include the popular “grandma” scam. The suspect will call an elderly resident purporting to be the grandson. He will try to elicit a promise from the victim not to divulge any information; he will then explain that he is in custody in an out-of-state jail and requires an immediate cash payment for bail money that should be sent by wire transfer to a third party. The amount requested is typically in the region of \$5000.

We are also seeing an increase in Internet sales scams using recognized websites such as eBay; often elderly victims are contacted after they post an item for sale on Craigslist or through a specialized agency that advertises timeshare properties for sale. And of course there is the perennial sweepstakes scam - where the victim is duped into believing that they have won a big monetary prize that will be shipped to them once the taxes are paid.

The frequency with which elders are being victimized can never be fully measured as there is often a reluctance by the victim to report theft to law enforcement because of the sense of embarrassment or shame.

The suspect normally requests that the victim withdraw cash from the victim's bank or credit union and then go to another outlet such as Moneygram or Western Union in order to transfer the funds. However, in recent weeks, we have noticed a new trend in that some suspects are now requiring victims to purchase for cash a prepaid money card such as being offered by Green Dot Corporation. These cards are readily obtainable from Walmart, CVS, and Walgreens. There is a scratch off 14 digit series on the back of the card which is provided to the crook over the telephone. This enables the crook to simply transfer the cash funds directly into another account.

I am not alone in believing that there are several deficiencies in our current system that require immediate attention. For example, there is little or no support for local law enforcement from federal authorities in commencing investigations regarding a "grandma" or "sweepstakes" scam. I am often contacted by Adult Protective Services with a request to speak with a new victim; I encourage that victim to make a police report - but then there is no follow up. The police agency typically recommends that the victim contact the FBI or the Secret Service - but no-one is willing to take the lead.

We suspect that federal agencies such as the US Attorney's Office has a monetary minimum loss threshold - and so if a 90 year old widow complains of being scammed out of \$5,000, there is no investigation.

Additionally, there are no local federally led elder abuse task forces. When I commenced prosecuting elder crimes in 1996 I joined a "boiler room task force" that met at the US Attorney's Office. Since 2001 there have been no such initiatives and when inquiries have been made, the official response has always been that priorities have now shifted to homeland security issues.

Moreover, we rarely hear about any successful federal prosecutions involving cross border or cross jurisdictional suspects who have been convicted of elder financial exploitation. We would welcome such information for encouragement and for training purposes.

In order to reduce some of these system gaps that hinder successful investigation and prosecution, we are inviting the federal government to consider implementing the following:

1. The creation of multi-disciplinary task forces in major urban areas involving federal, state, and local law enforcement and adult protective agencies, as well as representatives from financial institutions and wire transfer merchants. Such task forces should be established primarily to provide a rapid response to any report of suspected elder financial exploitation involving an out of state or cross border suspect where monies have been wired. The local prosecutor's office should be willing to seek extradition when a suspect is identified and there is a likelihood of a state prison commitment.
2. The implementation of mandated reporting laws nationwide for suspected financial elder exploitation - such as already exists in California for all employees of financial institutions. Since the introduction of this law in 2007 there has been a concerted effort by some banks and credit unions to train their staff to have more interaction with an elderly customer or member who requests withdrawal of a large amount of cash. Such proactivity occasionally leads to early intervention, thus protecting the senior's assets. But this law should be expanded to include all employees of wire transfer entities.

Unfortunately, a bill [AB 1525] that my office co-sponsored this year that would have created that expansion met with stiff resistance from the wire transfer industry.

3. A requirement for more stringent anti-fraud measures such as non-destruction of video surveillance tapes at ATM machines, and at wire transfer outlets for a minimum of nine months. Preservation of potential identifying evidence is crucial. Additionally, far stricter regulations surrounding the collection of wired funds are necessary. There should be compulsory photo ID and fingerprinting for all recipients of such wire transfers.
4. The establishing of a national committee of law enforcement experts who would create a database accessible by approved members. Such a database would contain useful contact information of key law enforcement representatives throughout the United States, Canada, Jamaica, the UK, and other countries where these scams are known to originate. Moreover, the database would contain names of known suspects, aliases, and any addresses or telephone numbers used in the scam.
5. The creation of a system that would process quickly any search warrants to identify the location of known telephone numbers used by the scammer.

The challenges involved in identifying, apprehending, and prosecuting predators who prey upon the senior citizens of this country are numerous; and the problem is escalating at an alarming rate. An article in today's Los Angeles Times illustrates the epidemic that we all face. Antonia Becerra, an 81 year old Glendale resident, was close to retiring after more than 40 years as a waitress. But she now has to keep working after scammers took her life savings this year.

The crooks are targeting our elders without fear of detection. It is time for us to go on the offensive.



**Paul Greenwood**

DEPUTY DISTRICT ATTORNEY, HEAD OF ELDER ABUSE PROSECUTIONS,  
SAN DIEGO COUNTY, CALIFORNIA

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL  
OCTOBER 11, 2012

Imagine a scenario in which you come home and discover that while you were away, your residence has been looted. It is obvious that the suspect has gained access without your knowledge and has stolen assets valued at approximately \$5,000.

After the initial shock, you call 911 to report the crime. You are then told that there is nothing that can be done. It is explained to you that an investigation is not possible because of either lack of resources, or because the amount stolen does not meet the criteria for investigation. Additionally, because there is evidence that the suspect has now left the jurisdiction, you are informed that your local agency does not have the ability to go after the out of state criminal.

Such a lack of response from a local law enforcement agency would typically create a protest from the homeowner and from the community at large.

Yet, every day in this country there are cash assets being taken from elder citizens, and very little is being done to investigate, apprehend, and prosecute the offenders.

The crime of elder financial abuse takes many forms. It is one of the fastest growing crimes and the indications are that it is going to escalate. The reasons for that are evident.

Demographics show us that we are indeed an aging society. Thanks to medical advances we are living longer. By the year 2030 it is predicted that there will be over 70 million people in this country over the age of 65. And by the year 2020 it is calculated that there will be over 240,000 people aged 100 or above.

Additionally, victims of elder financial abuse are often reluctant to report such crimes to the authorities. Embarrassment leads to silence; and there is sometimes a perception by the victim that an adult child might want to take control of the older parent's finances in an effort to preserve any remaining assets. A victim may choose to stay silent rather than run the risk of losing independence and control.

And some elderly victims - because of mental capacity challenges - are unaware that they have been tricked or duped by a perpetrator.

Furthermore, as resources and budgets become more stretched, local law enforcement may have to give priority to investigating violent crimes and therefore place reports of financial elder abuse on the back burner.

Financial institutions share the responsibility for the fact that so many of these crimes remain unreported. Frequently, the elderly victim is told by the scammer to withdraw funds from their bank or credit union and then make a wire transfer or purchase a credit card onto which cash can be loaded. In states where the institutions are not mandated by law to report suspected financial elder abuse either to Adult Protective Services or to law enforcement, a bank or credit union teller may be reluctant to intervene. Training of such employees in recognizing red flags of elder financial abuse may not occur.

However, in states where either mandatory or permissive reporting laws exist, there is at least some expectation that an alert bank teller may spot an unusual transaction and attempt to prevent the elder from becoming the next victim.

Advances in technology has allowed suspects to remain anonymous. Cell phones can be purchased off the shelf at supermarkets leaving very little trace as to the identity of the user. The internet allows crooks to create bogus accounts and intercept monies from victims without the need to physically walk into a store or bank.

Prepaid credit cards are now offered for sale at local pharmacies and popular outlets. Elderly victims are frequently hoodwinked into loading such a card with cash; they are then instructed to scratch off the metallic strip on the back of the card revealing the numeric code from which the crook can obtain the cash value of the card.

Elders are targeted because typically they are known to be a more trusting generation; a kind, reassuring voice on the other end of the telephone can persuade an elderly victim to do something that a younger person might otherwise challenge.

Moreover, many elders are concerned about their financial security. They have seen their savings reduced by a volatile stock market and are looking for ways in which they can guarantee a more secure future for themselves and their children. When an individual calls and promises a large “prize,” the temptation to respond is huge.

The failure of local law enforcement to take a report or investigate such crimes may be attributed to one or more of the following reasons:

There is no known, identifiable suspect

1. The suspect appears to be out of state and therefore beyond the jurisdiction of that particular agency
2. The victim entered the transaction voluntarily and is entitled to make a “foolish” decision
3. The agency does not think that the prosecutor’s office will be willing to prosecute

Prosecutors too often labor under misconceptions that prevent successful prosecution of suspects who commit elder fraud. One of the most common myths is that elders make poor witnesses in the court room. Sadly, many prosecutors fall into the trap of believing that an elderly victim will be ineffective as a witness because of poor memory.

Moreover, some prosecutors are unwilling to consider filing charges because the amount of the loss to the victim falls below the threshold that the prosecutors’ office has established.

Unfortunately, we currently have no reliable data from which we can measure the extent of the problem of elder financial abuse. There is no national clearing house that collects such cases; and we will never know the true extent of the number of cases that go unreported.

Meanwhile, the perpetrators become more brazen and creative in their efforts to extract the life savings of our elders.

Two “scams” have emerged as prevalent in the last few years. One is known as the grandma scam. The crook typically calls the unsuspecting grandmother and pretends to be her grandson. One variation of this crime involves the crook telling the elder that he is in jail in another state or country; he may explain his travels by stating that he is attending a friend’s wedding. The reason for his incarceration is because he has crashed the rental car after a pre-wedding celebration and has been arrested for a DUI. He convinces the grandmother that he needs urgent bail money in order to get back home. He tells the victim not to mention this to anyone in the family or elsewhere as he does not want this information to be leaked to his employer. The victim is then ordered to go immediately to the bank or credit union to withdraw up to \$5,000 in cash and then wire the money to a third party in the region where the jail is located.

A second common scam involves the promise of a substantial prize. The victim is convinced that he or she simply needs to send money to cover the taxes on the winnings. Payment is demanded either in the form of a wire transfer or through the purchase of loaded credit cards. Sometimes, the victim is sent through the mail a check that ostensibly will cover the amount of the taxes. The check looks authentic; and it may take the bank or credit union several days to confirm that it is bogus. Meanwhile, the victim has already withdrawn funds to pay for the taxes.

The following e-mail [published with permission] illustrates the frustration felt by many families across the country:

“My husband, Mark was recently diagnosed with frontal temporal lobe degeneration (FTD), an early-onset form of dementia. FTD affects the part of the brain that governs the executive functioning skills such as reasoning, decision making, problem-solving, and planning. People with FTD often appear to be mentally sound until the disease has progressed to its later stages.

“Because FTD is often undiagnosed for years, our family was unaware that my husband had the disease. We only became aware of the problem when I learned that my husband had made financial decisions that have had disastrous effects on him and our family:

“Mark became involved in an Internet scam -- something so out of character, that it was our first inkling that something was seriously wrong.

“Mark always had been extremely frugal and conscientious with money. Suddenly, he failed to make payments on monthly bills. Where he had always paid the full amount on the monthly credit card bills, he failed to do so for months, amassing large interest and penalty payments. In addition, Mark began running up huge bills on the credit cards. In less than a year, he amassed almost \$60,000 in debt.

“Mark depleted almost all our liquid assets: our children's trust fund and his IRA.

“He used the liquid assets to wire almost \$400,000 overseas to an entity he believes is a China-based trucking company but which is actually an internet scam which has promised him a large percentage of a \$10 million payoff at some future date. Because of the FTD, no one no family member, no doctor, no lawyer, no friend can convince my husband that this is a scam. To this day, my husband believes this is a viable business investment.

“Mark continues to attempt to redirect his monthly pension and social security payments, as well as my work income to this internet scam. Mark also has applied for numerous loans against the house and tried to get new credit cards. Fortunately, so far, I have been able to use the revocable Power of Attorney to block these actions: this power is revocable at will by Mark so my ability to keep our home safe from the scam is tenuous. Presently I am attempting to obtain guardianship.

“I am writing this letter because I need assistance in recapturing some of our funds from these internet scam artists, and in forcing them to stop contacting my husband and pressuring him for more money. And, while one can put curbs on our home computer, he gains access to a computer and these scammers at the library.

“I have contacted the FBI via the on-line complaint form. But, to date, the FBI has not responded. State and local police offices state they have no jurisdiction. I have requested assistance from the .....Attorney General's office, national and local agencies charged with assisting the elderly and persons with disabilities; the banks and lending offices involved; and our financial advisor. These entities either offered no assistance or did not respond.

“I know there must be a federal agency or office with the federal system that can assist us with the internet scam problem. But, I am unable to find that office.”

It is clear that there are system gaps that hinder successful investigation and prosecution of those who prey upon our elderly population. But the writer invites the federal authorities to consider implementing the following:

1. The creation of multi-disciplinary task forces in major urban areas involving federal, state, and local law enforcement and adult protective agencies, as well as representatives from financial institutions and wire transfer merchants. Such task forces should be established primarily to provide a rapid response to any report of suspected elder financial exploitation involving an out of state or cross border suspect where monies have been wired. The local prosecutor's office should be willing to seek extradition when a suspect is identified and there is a likelihood of a state prison commitment.
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and credit unions to train their staff to have more interaction with an elderly customer or member who requests withdrawal of a large amount of cash. Such proactivity occasionally leads to early intervention, thus protecting the senior's assets. But this law should be expanded to include all employees of wire transfer entities.

3. A requirement for more stringent anti-fraud measures such as non-destruction of video surveillance tapes at ATM machines, and at wire transfer outlets for a minimum of nine months. Preservation of potential identifying evidence is crucial. Additionally, far stricter regulations surrounding the collection of wired funds are necessary. There should be compulsory photo ID and fingerprinting for all recipients of such wire transfers.
4. The establishing of a national committee of law enforcement experts who would create a database accessible by approved members. Such a database would contain useful contact information of key law enforcement representatives throughout the United States, Canada, Jamaica, the UK, and other countries where these scams are known to originate. Moreover, the database would contain names of known suspects, aliases, and any addresses or telephone numbers used in the scam.
5. The creation of a system that would process quickly any search warrants to identify the location of known telephone numbers used by the scammer.

State and county officials can also improve system responses by:

1. Encouraging their police chiefs to designate one or more detective[s] to actively investigate reports of suspected elder financial abuse. San Diego Police Department made such a courageous decision back in 1999 and now has an Elder Abuse Unit staffed with five detectives and a sergeant.
2. Encouraging their elected or appointed prosecutors to designate one or more prosecutor[s] to tackle these crimes and develop an expertise in presenting testimony through elderly victims.
3. Establishing statewide Financial Abuse Specialist Teams [FAST] consisting of key representatives from the community with a stake in protecting elders from fraud.
4. Creating Public Service Announcement campaigns to educate the public about current scams and frauds and to provide a 24/7 telephone number where reports can be made to Adult Protective Services.

Successful collaboration that leads to the apprehension of suspects needs to be shared as an encouragement. Recently, the following press release appeared on the FBI Los Angeles Division website:

“LOS ANGELES—A Canadian man who is among six defendants charged with defrauding elderly Americans in a scheme in which victims were convinced their grandchildren were in danger in a foreign country was arrested Thursday in Los Angeles and is due in court today for an initial appearance, announced André Birotte Jr., the United States Attorney in Los Angeles; and Timothy Delaney, Special Agent in Charge of the FBI's Los Angeles Field Office.

“Pascal Goyer, 29, whose last known residence was Montreal, was arrested at Los Angeles International Airport when his flight landed from Mexico late yesterday afternoon. Following an investigation by the Royal Canadian Mounted Police in 2011, Goyer and others were identified as participants in an advance fee scheme, known as the “grandparent scam,” which they allegedly operated from a boiler room in Montreal. On September 25, 2012, a federal grand jury returned an indictment in United States District Court in Los Angeles charging Goyer and five co-defendants with multiple counts of wire fraud, attempted wire fraud, and aiding and abetting.

“According to the indictment, Goyer and his co-defendants telephonically contacted elderly victims in Southern California and invented scenarios involving legal or financial crises they claimed had befallen the grandchildren or other relatives of the victims. During the telephone calls, one of the defendants would impersonate the purported relative of the victim and claim to be located in a foreign country and in need of money in order to resolve the purported crisis. While perpetrating the fraud, defendants allegedly fabricated perilous situations that included car accidents or arrest scenarios, where bail money or repair expenses were immediately required. The indictment further alleges that the defendants also impersonated third parties during the telephone scheme whom they introduced as an attorney or official acting in the best interest of the individual they claimed was the distressed relative.

“The defendants would then instruct victims where and to whom the funds should be sent via a wire transfer service. The indictment alleges the defendants obtained enough information from the victim to fraudulently authenticate the wire transaction by either assuming a false identity or by advising the victim to send funds to the person identified as the third party introduced to the victim.

“In none of the cases alleged in the indictment were the defendants related to the victims or associated with any relatives of the victims. The indictment alleges that none of the funds collected from the victims were used to assist relatives of the victims and that all of the funds collected were used for the collective benefit of the defendants.

“Investigators have determined that the victims were identified through mass-produced lead lists that targeted a specific victim demographic.

“The 23-count indictment alleges that the defendants successfully convinced victims from across Southern California to use wire transfer services to send money each time they agreed to help what they thought was a relative overseas and in dire need of financial assistance. According to the indictment, victims wired amounts between \$2,000 to \$3,000, in most cases.

“In some cases, victims were contacted after sending money and convinced that additional funding would be necessary to completely resolve the purported problem, according to the indictment.

“Information developed during the investigation indicated that Goyer recently traveled to Mexico. On Thursday, Goyer was located and deported by Mexican authorities. Goyer was taken into custody upon his arrival at Los Angeles International Airport.

“Goyer will appear before a federal magistrate in United States District Court in Los Angeles today for an initial appearance on the charges. Arrest warrants have been issued for the additional defendants charged in the indictment. The statutory maximum penalty for each of the 23 counts in the indictment is 20 years in federal prison.

“The charges and arrest of Goyer are the result an ongoing joint investigation by multiple agencies in Canada and the United States that participate in Project Colt, one of the many binational task forces dedicated to combating cross border and mass marketing fraud. The Royal Canadian Mounted Police, the United States Secret Service, the Federal Trade Commission, and the FBI provided significant resources to the investigation, as did the United States Attorney’s Office in Los Angeles, which is prosecuting this case.

“During the past year, officials in the Central District of California publicly warned potential victims how to identify and protect themselves from fraud similar to the scheme alleged in the indictment.

“An indictment is merely an allegation, and the defendants are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.”

This is an example of collaboration at its best. It needs to be replicated all over the country. Until that happens we will continue to hear stories of victims such as 81 year old Antonia Becerra. After working for more than 40 years as a waitress at a well-known French restaurant in Los Angeles she was ready to retire. But after falling victim to a lottery scam that depleted her life savings, Ms. Becerra has been forced to continue working.

The crooks are targeting our elders without fear of detection. It is time for us to go on the offensive.

## **Erica Wood**

ASSISTANT DIRECTOR OF THE AMERICAN BAR ASSOCIATION COMMISSION ON LAW AND AGING

### **WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

Picture these actual scenarios:

- A Social Security representative payee deposited beneficiary funds into a joint personal bank account, from which her spouse withdrew a large amount.
- An organization serving as representative payee and collecting fees housed beneficiaries in unsafe and unsanitary housing.
- A representative payee failed to notify the Social Security Administration and continued to collect SSA benefits although the beneficiary had moved and was no longer in contact.

I am Erica Wood, Assistant Director of the American Bar Association Commission on Law and Aging, and am honored to speak before the Elder Justice Coordinating Council about issues of abuse and misuse of funds by Social Security and other representative payees – which have ranged from a 1988 scandal in which bodies were discovered in the Sacramento back yard of a boarding home operator payee with a criminal record, to exploitation of benefits, to inadequate reporting. I should note up front that today I am not a spokesperson for the ABA on this panel. Rather, I am speaking from my own professional experience, as the ABA has no policy on representative payment programs.

Are these compelling scenarios common? Hardly, but problems of financial exploitation, misuse of funds and mismanagement do occur in Social Security’s mammoth program of representative payees appointed by the agency to handle benefits for close to 5.6 million beneficiaries unable to do so on their own – including close to four million children and almost 1.6 million adults, of which some approximately 700,000 are age 65+ (Social Security Administration, Office of Retirement and Disability Policy, Annual Statistical Supplement, 2012). These payees – who may be family members, other individuals, or organizations – have counterparts in other federal agencies, particularly VA “fiduciaries” (in 2008, managing benefits for more than 103,000 beneficiaries) and OPM representative payees. Representative payees differ from guardians, who are appointed by state courts.

Federal third party payees, like agents under powers of attorney, trustees and court-appointed guardians or conservators, fill a role that society calls “fiduciaries” – those entrusted to manage property for someone else, often a vulnerable individual easily at risk for abuse. Fiduciaries are to act according to the highest standards of loyalty, good faith, trustworthiness, and honesty. Yet while many perform well, inevitably some take advantage of their position of trust and confidence, misusing funds that are to be for the sole use of the beneficiary, while others simply lack an understanding of their responsibilities. Representative payees are authorized only to manage the agency benefits, not the person’s other funds, which might be managed by a guardian. The representative payee and the guardian might or might not be the same person or organization.



Federal studies and investigations have highlighted problems in the government's representative payment systems. The 2007 National Research Council report, *Improving the Social Security Representative Payee Program: Serving Beneficiaries and Minimizing Misuse*, shined a light on systemic gaps and made recommendations for SSA actions in improving payee performance, as well as preventing and detecting misuse. The 2010 Government Accountability Report, *VA's Fiduciary Program: Improved Compliance and Policies Could Better Safeguard Veterans' Benefits*, outlined potential VA actions to improve oversight of the program and minimize risks to beneficiaries.

While both federal programs are taking steps -- within the constraints of existing resources -- to better train staff, select and educate payees, review payee reports, monitor payees, maintain data and achieve more national uniformity, I suggest some additional strategies. The SSA and VA are best equipped to detail where their efforts stand and what deficiencies and challenges remain. Additionally, the GAO currently is conducting an investigation concerning options to help the SSA in managing the rep payee program. Instead, my statement looks more holistically, beyond internal agency management approaches, to existing gaps and possible federal government strategies to prevent and detect rep payee misuse and abuse, with an emphasis on the SSA program. (The possible strategies described are options only and are not meant as recommendations.)

*Gap: Representative payment programs are not coordinated with other systems serving the same population, putting vulnerable adults at risk of financial exploitation.*

There are several different permutations – for example, one person could serve as both guardian and representative payee for one or more individuals; or an individual could have two or three different people or entities serving as fiduciary. In 2004, a GAO report, *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, found a lack of coordination among state courts handling guardianship, the VA fiduciary program and the SSA rep payee program. The GAO concluded that “this lack of coordination may leave incapacitated people without the protection of responsible guardianship and representative payees.” A 2011 GAO report, *Incapacitated Adults: Oversight of Federal Fiduciaries and Court-Appointed Guardians Needs Improvement*, found that gaps in information sharing continued to exist, and recommended disclosure of information by federal agencies to state courts: “It is in the best interest of incapacitated beneficiaries for federal agencies to disclose certain information about these beneficiaries and their fiduciaries to state courts.” Consider these situations:

- B was appointed by SSA as rep payee for A. B also petitioned the court to be A's guardian. The court appointed B, not knowing that B had misused A's Social Security benefit funds.
- Adult protective services received a report of alleged abuse by guardian B, who was also the SSA rep payee, but APS could get no information on B's rep payee performance or record.
- B was appointed by the court as A's guardian, but C was appointed by SSA as A's rep payee and by the VA as A's fiduciary. Neither B nor the court had adequate information about A's situation to act in his best interest – and each would have had a more complete picture had they shared information.

- B was appointed by the court as A’s guardian and by SSA as A’s rep payee, yet there was no coordination between the court and SSA about B’s separate reports.

**Possible Strategy:** SSA maintains that the federal Privacy Act limits the sharing of information about beneficiaries and rep payees with courts, adult protective services, and the aging network. However, spurred by the 2011 GAO report, recent discussions by SSA, the Social Security Office of Inspector General, and the Administration on Community Living are exploring ways to overcome barriers to sharing information. This is an encouraging development.

**Possible Strategy:** Regardless of information sharing about specific cases, coordination among SSA field offices, VA regional offices, state courts, adult protective services, the protection and advocacy agency, and State and Area Agencies on Aging could be a win-win strategy. With coordinated efforts, it may be easier to develop training, recruit volunteers, and educate the public.

Looking jointly at how the overlapping systems work as silos, what the patterns are and where the logjams occur could result in imaginative solutions. Starting with pilots in selected locales could be a practical way to begin and could test whether to promote more broad-based replication. (This is very much in accord with recent recommendations by the National Guardianship Network’s 2011 Summit to create state or local Working Interdisciplinary Networks of Guardianship Stakeholders.)

*Gap: There is no third party review of individual SSA rep payees and less than full review of organizational payees.*

Outside review by a qualified entity knowledgeable about needs of elders and adults with disabilities could help SSA to better target misuse and abuse.

**Possible Strategy:** The National Disability Rights Network is the national membership and technical assistance/training provider for the federally funded and mandated state Protection & Advocacy system. In 2009, SSA contracted with NDRN to involve the P&A agencies in reviews of selected SSA organizational rep payees. The reviews addressed not only mismanagement of SSA benefits, but also issues of beneficiary employment, housing, safety, and mistreatment.

NDRN developed a web-based curriculum for P&A staff, and conducted training. P&As began reviews in late 2009. As of mid-2011, the P&As had reviewed 425 payee organizations (currently more), identifying 210 problems for SSA at 140 organizations (NDRN, *Report on the Social Security Administration Representative Payee Review Project*, April 2011). The P&A network appears squarely positioned to conduct payee reviews because it can look not only at management of benefits but at the health, housing and welfare of the individuals served; and can suggest resources to help. One option could be to extend the NDRN review project, at least on a pilot basis, to additional organizational payees -- and perhaps selected individual payees, which would require different review procedures and training. Getting P&A “eyes and ears” on a broader range of payees could enhance internal SSA oversight. An additional option might be similar review specifically through the aging network – perhaps with a role for Older Americans Act legal assistance programs or other aging advocates.

*Gap: The SSA may not have a sufficient pool of responsible payees for the growing number of beneficiaries unable to manage their own funds*

-- Especially for high risk “unfriended” beneficiaries who may be homeless, have substance abuse or mental health problems, as well as multiple chronic health conditions. The demands of such beneficiaries are enormous; and crisis situations may force use of payees not well qualified to meet the needs.

**Possible Strategy:** The 2007 National Research Council report discussed the use of volunteers to fill this gap, as well as possible expansion of fees beyond the specified organizational payees to small organizations and individuals who might be equipped to serve.

As with volunteer guardianship programs, volunteers may be best matched with the more routine cases, leaving the especially challenging situations for professionals. The trick is to use volunteers wisely, identifying the most appropriate cases, and ensuring high-quality recruitment, training, supervision and technical assistance. Ideally, this might free up organizational time or even the time of qualified, paid individuals to cover high-demand cases. Such a strategy might best develop through a joint effort of the court, community agencies and SSA that could recruit and train for both volunteer guardians and volunteer rep payees; and could designate cases needing professional attention as well as entities to serve. Discussions between SSA and the Administration on Community Living are underway about identifying suitable rep payees through the aging network. The Corporation for National and Community Service might even play a role in advising on volunteer programs, or in volunteer recruitment.

*Gap: Federal employees and federally-funded stakeholders who commonly encounter beneficiaries may fail to recognize and identify payee misuse*

-- and more broadly, fiduciary abuse and exploitation.

**Possible Strategy:** Individuals working for a wide range of federal programs or who are federally-funded regularly come into contact with beneficiaries and payees, yet may not identify the paradigm of “abuse” or “misuse.” For example, HUD housing services coordinators may find rep payees using funds in a way that appears primarily to benefit the payee. Long-term care ombudsmen, long-term care surveyors, CMS-funded state insurance counselors, staff of CDC programs – and a much longer list perhaps including Postal or Labor Department employees, AmeriCorps staff and volunteers – could “bump into” rep payee problems yet may not realize it nor know where to report it. One option could be a simple flyer or curriculum unit, widely disseminated through government channels, that explains the SSA rep payee program, the “red flags” of misuse, and what to do about it.

*Gap: SSA and VA rep payees (as well as lay fiduciaries who are agents under powers of attorney or guardians) frequently do not understand their basic responsibilities and do not always know what is expected of them.*

According to the National Research Council, “payees must understand their duties and responsibilities, including details such as how to keep records, how to deposit benefits into separate accounts, and how to save money.”

**Possible Strategy:** While SSA and the VA have taken steps in providing such guidance (including web-based resources), it appears that payees still need more help. Some vehicles for

guidance might include: staff charged with educating federal fiduciaries, plain language brochures, samples of completed forms, additional fact sheets, and videos –available in languages other than English. Again, collaboration with courts and community agencies may be useful. Courts, for instance, could routinely provide materials to newly appointed guardians concerning rep payee duties and procedures. There may be multiple governmental and community channels that could be tapped to get information directly to payees in a form they can use.

It is notable that the Consumer Financial Protection Bureau is developing a “lay fiduciary guide” (through a contract with the ABA Commission on Law and Aging) to help family and other non-professional fiduciaries better understand their roles and responsibilities as guardians, conservators, trustees, agents under powers of attorney and rep payees. This hard copy and online guide is only one way to heighten payee awareness.

To ensure that representative payees effectively carry out their fiduciary duties, we need a combination of (1) continued internal SSA and VA (as well as OPM and any other federal governmental third party payee programs) steps to strengthen payee performance and bolster oversight, with (2) collaborative governmental efforts that extend agency capacity.

**Erica Wood**

ASSISTANT DIRECTOR OF THE AMERICAN BAR ASSOCIATION COMMISSION ON LAW AND AGING

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**STATEMENT ON FEDERAL APPROACHES TOWARD ELDER FINANCIAL  
EXPLOITATION BY FIDUCIARIES –REPRESENTATIVE PAYEES AND  
GUARDIANS**

Federal third party representative payees, court-appointed guardians and conservators, agents under powers of attorney, and trustees fill a role that society calls “fiduciaries” – those entrusted to manage property for someone else, often a vulnerable individual easily at risk for abuse. Fiduciaries are to act according to the highest standards of loyalty, good faith, trustworthiness and honesty.<sup>104</sup> Fiduciaries play dual roles on financial exploitation. First, they stand as a bulwark against it, protecting beneficiary funds. That’s why they were appointed -- to manage and protect the funds of another. But sadly, they sometimes become the perpetrators, despite their fiduciary role. While many perform well, inevitably some take advantage of their position of trust and confidence, misusing or exploiting funds that are to be for the sole use of the beneficiary --and others simply lack an understanding of their responsibilities.

This paper will outline approaches the federal government could take toward: (1) educating and training fiduciaries; (2) preventing or reducing financial exploitation by Social Security representative payees and VA fiduciaries; and (3) promoting effective practices and accountability by court-appointed guardians with control over the funds of an individual (often and hereinafter called “conservators”). The paper builds on my statement at the October 11 Elder Justice Coordinating Council. It is drawn from my own professional experience, and does not represent the policy of the American Bar Association, where I serve as Assistant Director for the Commission on Law and Aging. The paper focuses more on big-picture collaborative federal strategies rather than internal SSA and VA improvements, which are underway and need additional recognition and support. The paper does not address the many actions states can take to reform the adult guardianship system.

**1. Education and Training of Fiduciaries**

Representative payees and conservators -- particularly family and other non-professional payees and conservators -- frequently do not fully understand their basic responsibilities and do not always know what is expected of them. According to the National Research Council, “payees must understand their duties and responsibilities, including details such as how to keep records, how to deposit benefits into separate accounts, and how to save money.”<sup>105</sup> Conservators must understand similar responsibilities, including prudent asset management, and the requirements for an inventory and for annual or regular accountings to court.

It is notable that the Consumer Financial Protection Bureau (CFPB) is developing a “lay fiduciary guide” (through a contract with the ABA Commission on Law and Aging) to help

family and other non-professional fiduciaries better understand their roles and responsibilities as conservators, representative payees, agents under powers of attorney and trustees. The guide will set out key fiduciary duties for each role. This upcoming CFPB guide is only one way to heighten payee and guardianship awareness.

The SSA and the VA have taken steps in providing such guidance. SSA has a web-based *Guide for Representative Payees*,<sup>106</sup> as well as a webinar;<sup>107</sup> and the VA has listed responsibilities of a fiduciary on its web site.<sup>108</sup> However, it appears that payees still need more help. Possible vehicles for guidance might include: staff or volunteers charged with educating federal fiduciaries, broadly distributed plain language brochures, samples of completed forms, additional fact sheets, videos, and web applications –available in languages other than English. SSA and VA collaboration with courts and community agencies would be useful. For instance, since many guardians also serve as representative payee, courts could routinely provide materials concerning payee duties and procedures to newly appointed guardians. There may be multiple similar governmental and community channels that could be tapped to get information directly to payees in a form they can use.

While educating guardians is the work of state courts (and many states developed have handbooks and videos),<sup>109</sup> federal resources through the State Justice Institute, the Administration on Community Living, the Department of Justice and other agencies can offer needed support, as well as greater visibility.

## **2. Strategies Concerning Representative Payees**

Violations and misuse<sup>110</sup> of funds by Social Security and other representative payees have ranged from high visibility cases such as a 1988 Sacramento scandal involving a boarding home operator payee with a criminal record<sup>111</sup> to less visible payee exploitation of benefits, control of funds beyond the benefits, charging of excessive fees, and failure to keep records and submit reports. For instance, scenarios include instances in which:

- A Social Security representative payee deposited beneficiary funds into a joint personal bank account, from which her spouse withdrew a large amount.
- An organization serving as representative payee and collecting fees housed beneficiaries in unsafe and unsanitary housing.
- Representative payees failed to notify the Social Security Administration and continued to collect SSA benefits although the beneficiaries had moved and were no longer in contact.

While these compelling scenarios are not common, problems of financial exploitation, misuse of funds and mismanagement do occur<sup>112</sup> in Social Security’s mammoth program of representative payees appointed by the agency to handle benefits for close to 5.6 million beneficiaries unable to do so on their own – including close to four million children and almost 1.6 million adults, of which some approximately 700,000 are age 65+.<sup>113</sup> These payees – who may be family members, other individuals, or organizations – have counterparts in other federal agencies, particularly VA “fiduciaries” (in 2008, managing benefits for more than 103,000 beneficiaries),<sup>114</sup> OPM representative payees, and third party payees in other agencies as well.

Representative payees differ from guardians, who are appointed by state courts. Representative payees are authorized only to manage the agency benefits, not the person's other funds, which might be managed by a guardian or might continue to be managed by the individual. The representative payee and the guardian might or might not be the same person or organization.

Federal studies and investigations have highlighted problems in the government's representative payment systems. The 2007 National Research Council report on *Improving the Social Security Representative Payee Program*,<sup>115</sup> shined a light on systemic gaps and made recommendations for SSA actions in improving payee performance, as well as preventing and detecting misuse. Additionally, the GAO currently is conducting an investigation concerning options to help the SSA in managing the representative payee program. The 2010 Government Accountability Report on *VA's Fiduciary Program*<sup>116</sup> outlined potential VA actions to improve oversight of the program and minimize risks to beneficiaries.

While both federal programs are taking steps<sup>117</sup> -- within the constraints of existing resources -- to better train staff, select and educate payees, review payee reports, monitor payees, maintain data and achieve more national uniformity, there are some additional potential strategies, many of which involve coordinated actions by federal agencies. The SSA and VA are best equipped to detail where their internal efforts stand and what deficiencies and challenges remain. Instead, this statement looks more holistically, beyond internal agency management approaches, to existing gaps and possible federal government strategies to prevent and detect representative payee misuse and abuse, with an emphasis on the SSA program.

**Gap:** *Representative payment programs are not coordinated with other systems serving the same population, putting vulnerable adults at risk of financial exploitation.*

There are several different permutations – for example, one person could serve as both guardian and representative payee for one or more individuals; or an individual could have two or three different people or entities making financial decisions on his or her behalf in different roles. In 2004, a GAO report, *Guardianships: Collaboration Needed*,<sup>118</sup> found a lack of coordination among state courts handling guardianship, the VA fiduciary program, and the SSA representative payee program. The GAO concluded that “this lack of coordination may leave incapacitated people without the protection of responsible guardianship and representative payees.” A 2011 GAO report on *Oversight of Federal Fiduciaries*<sup>119</sup> found that gaps in information sharing continued to exist, and recommended disclosure of information by federal agencies to state courts: “It is the best interest of incapacitated beneficiaries for federal agencies to disclose certain information about these beneficiaries and their fiduciaries to state courts.” Consider these situations:

- B was appointed by SSA as rep payee for A. B also petitioned the court to be A's guardian. The court appointed B, not knowing that B had misused A's Social Security benefit funds.
- Adult protective services received a report of alleged abuse by guardian B, who was also the SSA rep payee, but APS could get no information on B's rep payee performance or record.

- B was appointed by the court as A's guardian, but C was appointed by SSA as A's rep payee and by the VA as A's fiduciary. Neither B nor the court had adequate information about A's situation to act in his best interest – and each would have had a more complete picture had they shared information.
- B was appointed by the court as A's guardian and by SSA as A's rep payee, yet there was no coordination between the court and SSA about B's separate reports.

**Possible Strategy:** SSA has maintained that the federal Privacy Act limits the sharing of information about beneficiaries and representative payees with courts, adult protective services, and the aging network.<sup>120</sup> However, spurred by the 2011 GAO report, recent discussions by SSA, the Social Security Office of Inspector General, and the Administration on Community Living are exploring ways to overcome barriers to sharing information. This is an encouraging development.

**Possible Strategy:** Regardless of information sharing about specific cases, coordination among SSA field offices, VA regional offices, state courts, and community agencies could be a win-win approach. With coordinated efforts, it may be easier to develop training, recruit volunteers, and educate the public.

A process of jointly examining how the overlapping systems currently work as silos, what the patterns are, and where the logjams occur could result in imaginative solutions. Initial pilot meetings of SSA, VA, courts and community agencies in selected locales could be a practical way to begin. (This is very much in accord with recent recommendations by the National Guardianship Network's 2011 Third National Guardianship Summit<sup>121</sup> to create state or local Working Interdisciplinary Networks of Guardianship Stakeholders, which would promote communication among courts and relevant agencies.)

*Gap: There is no independent third-party review of individual SSA representative payees and less than full review of organizational payees.*

Outside review by a qualified entity knowledgeable about needs of elders and adults with disabilities could help SSA to better target misuse and abuse.

**Possible Strategy:** The National Disability Rights Network is the national membership and technical assistance/training provider for the federally funded and mandated state Protection & Advocacy (P&A) system. In 2009, following a shocking case of longstanding exploitation by Texas payees who employed individuals with intellectual disabilities in a poultry plant, SSA contracted with NDRN to involve the P&A agencies in reviews of selected SSA organizational representative payees.<sup>122</sup> NDRN developed a web-based curriculum for P&A staff, and conducted training. P&As began reviews in late 2009. The reviews addressed not only mismanagement of SSA benefits, but also issues of beneficiary employment, housing, safety, and mistreatment.

As of mid-2011, the P&As had reviewed 425 payee organizations (currently more), identifying 210 problems for SSA at 140 organizations.<sup>123</sup> The P&A network appears squarely positioned to conduct payee reviews because it can look not only at management of benefits but at the health, housing and welfare of the individuals served; and can suggest resources to help. One option



could be to extend the NDRN review project, at least on a pilot basis, to additional organizational payees – as well as selected individual payees, which would require different review procedures and training. Getting P&A “eyes and ears” on a broader range of payees could enhance internal SSA oversight. An additional option might be similar review specifically through the aging network – perhaps with a role for Older Americans Act legal assistance programs or other knowledgeable aging advocates.

**Possible Strategy:** Another approach to independent third-party review of payees might be to develop a program of volunteer payee monitors for selected cases. This concept is patterned after the successful model of court-based volunteer guardianship monitoring programs originated by AARP and updated by the American Bar Association.<sup>124</sup> SSA offices could select, screen, coordinate, train and supervise a cadre of dedicated volunteers to visit and interview beneficiaries and payees, and report back. SSA could use the volunteer reports to identify red flags where there may be payee problems, and better target follow-up checks.

*Gap: The SSA may not have a sufficient pool of responsible payees for the growing number of beneficiaries unable to manage their own funds*

-- Especially for high risk “unfriended” beneficiaries who may be homeless, have substance abuse or mental health problems, as well as multiple chronic health conditions. The demands of such beneficiaries are enormous; and crisis situations may force use of payees not well qualified to meet the needs.

**Possible Strategy:** The 2007 National Research Council report discussed the use of volunteers to fill this gap<sup>125</sup> (as well as possible expansion of fees beyond the specified organizational payees to small organizations and individuals who might be equipped to serve).

As with programs of volunteer guardians, volunteers may be best matched with the more routine cases in which there is a need for a representative payee, leaving the especially challenging situations for professionals. The trick is to use volunteers wisely, identifying the most appropriate cases, and ensuring high-quality recruitment, training, supervision and technical assistance. Ideally, this might free up organizational time or even the time of qualified, paid individuals to cover high-demand cases. Such a strategy might best develop through a joint effort of the court, community agencies and SSA that could recruit and train for both volunteer guardians and volunteer representative payees (as well as volunteer monitors, as outlined above); and could designate cases needing professional attention as well as entities to serve. The Corporation for National and Community Service might even play a role in advising on volunteer programs, or in volunteer recruitment.

*Gap: Federal front-line employees and federally-funded stakeholders who commonly encounter beneficiaries may fail to recognize and identify payee misuse -- and more broadly, fiduciary abuse and exploitation.*

**Possible Strategy:** Individuals working for a wide range of federal programs or who are federally-funded regularly come into contact with beneficiaries and payees, yet may not identify the paradigm of “abuse” or “misuse.” For example, HUD housing services coordinators may find representative payees using funds in a way that appears primarily to benefit the payee. Long-term care ombudsmen, long-term care surveyors, CMS-funded state insurance counselors, and a much broader list of workers might “bump into” payee problems yet may not realize it nor

know where to report it. One option could be a simple flyer or curriculum unit, widely disseminated through government channels, that explains the payee programs, the “red flags” of misuse, and what to do about it.

Ultimately, to ensure that representative payees effectively carry out their fiduciary duties, we need a combination of (1) continued internal SSA and VA (as well as OPM and any other federal governmental third party payee programs) steps to strengthen payee performance and bolster oversight, with (2) collaborative governmental efforts that extend agency capacity.

### **III. Strategies Concerning Conservators**

While conservatorship/guardianship is governed by state law, practice suffers because of the Balkanization of law, data, and procedures across state lines, and because of increasingly strained court budgets. There is a clear rationale and role for the federal government in addressing conservator practices, with at least three foundations or “hooks” for such federal involvement in state affairs: (1) conservators manage significant federal pensions and other federal funds; (2) conservatorship/guardianship involves fundamental rights protected by the U.S. Constitution; and (3) conservatorship/guardianship increasingly crosses state and international lines, thus creating issues that extend beyond the reach of individual state jurisdictions.

With these rationales in mind, example of potential federal roles in improving conservatorship and preventing financial exploitation include:

- Guardianship Court Improvement Projects. Since 1993, federal funding has supported the Child Welfare Court Improvement Project (CIP), in which DHHS grants are awarded to the highest state courts to support implementation of reforms in child welfare court practices. No such parallel program exists for implementation of court reforms affecting adults. One proposal, adopted in part by the pending S.1744 (“Guardian Accountability and Senior Protection Act”), is the establishment of “Guardianship Court Improvement Projects” in which state courts could work with state units on aging, disability agencies, and others to identify and address deficiencies in the state conservatorship/guardianship system.
- ACL or Other Funding of Specific Pilot Projects. The Administration on Community Living could play a role by funding pilot projects focused on specific areas of need – such as the e-filing and background check pilots proposed in S.1744 – as well as training, data collection, court technology for monitoring, help for family and other lay conservators, and more. In 2011, the GAO recommended that “the Secretary of DHHS direct the Administration on Aging to consider supporting the development, implementation, and dissemination of a limited number of pilot projects to evaluate the feasibility, cost, and effectiveness of one or more generally accepted promising practices for improving court monitoring of guardians.”<sup>126</sup>
- Volunteer Visitors. On the child welfare front, Congress has for many years appropriated Department of Justice (Office of Juvenile Justice and Delinquency Protection) funds for technical assistance to states and courts in the development of CASA (Court-Appointed Special Advocates) programs to protect at-risk children. A somewhat parallel idea for adults is the development of volunteer guardianship monitoring and assistance (or

“visitor”) programs (as mentioned above). While the State Justice Institute Board has named guardianship/conservatorship one of its five priorities, especially highlighting “visitors,” a 50% cash match is required, making grants out of reach for many courts and community agencies. Additional federal funding could boost this concept and leverage usage in courts nationally.

- Data Issues. The dire lack of data on adult conservatorship/guardianship impedes judicial oversight and the prevention of abuse. A 2007 Senate report on *Guardianship for the Elderly* urged attention to data issues, including surveying a representative sample of counties to generate nationwide estimates, promoting data collection by states, and “research to identify and publicize successful [local data] systems already in place. . . .”<sup>127</sup> Federal attention to conservatorship/guardianship data issues through the Bureau of Justice Statistics would galvanize the collection of needed statistics.

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**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**RECOMMENDATIONS ON FEDERALLY SPONSORED RESEARCH  
DIRECTIONS FOR THE PREVENTION AND CONTROL OF ELDER  
MISTREATMENT**

I'm delighted to have a few minutes with you to offer my views on federal directions in elder mistreatment research.

I want to start by enunciating a few principles. First, existing research and policy interventions should be carefully acknowledged and cataloged, to avoid duplication or pursuing less fruitful methods or themes and maximize productivity. This includes not only elder issues, but also what we've learned from all dimensions of domestic and institutional mistreatment and violence. Next, I believe that federally-sponsored research needs to be directed to important, defined research themes where unsolved issues are well-identified, as well as leaving some resources for innovative investigator-initiative approaches.

There are important activities that federal agencies can do besides providing funds. Perhaps most important is sharing or facilitating the sharing of federal data relevant to mistreatment research, including information related to justice, social and environmental factors, housing, urban design and structure, and informative clinical information that may be in its possession. Federal agencies should also facilitate public sector research banking and financing industries, in order to improve progress with respect to detection and prevention of financial mistreatment. Finally, perhaps hardest of all, agencies should spend of their funds on to, where possible, evaluate their own elder mistreatment-related policies, to determine efficacy and effectiveness, to promote and accommodate new and promising policy initiatives, at least of a pilot basis.

For the rest of my time, I want to suggest some important research directions that I believe are central to preventing and managing mistreatment. One fundamental need is for more qualitative social and psychological studies of the dynamics of older people in families and households that may lead to mistreatment. This is a very difficult and complex area, because it involves the intimacies and struggles of private lives and how they are revealed to outside social institutions such as the church, networks of friends and relatives, the police, the health care system and various helping agencies and organizations. However, this dynamic is central to achieving accurate surveillance of mistreatment, which in turn is essential to credible program evaluation and control.

In order to evaluate programs, federal agencies must not only share data but these data must also contain a common and useful taxonomy and nomenclature in order to communicate the issues not only within the government but also among the all organizations and professionals who touch

elder mistreatment in any of its dimensions. Focused nomenclature research is needed; the resources of the National Library of Medicine may be able to help. An important example of an ill-defined term in the mistreatment lexicon is so-called “neglect,” and particularly “self-neglect.” Are some elders really neglecting themselves, or are we dealing with much more common problems such as illness, disability, cognitive impairment and, above all else, poverty and lack of access to social resources?

I’m not very conversant with legal issues in elder mistreatment, but a few things are clear: Each state has its own special set of laws regarding elder mistreatment, and it is critical to evaluate which of them work, and how much, and why they effective or ineffective, in order to better guide federal policy and legislative initiatives. Also, a discipline that transcends the law and health is forensic medicine. This almost orphan discipline needs to be strengthened with targeted research in order to help identify mistreatment and distinguish it from naturally-occurring misfortunes. For example, we need to distinguish between a fracture or soft tissue injury that occurred because of a spontaneous fall from those occurring because of willful abuse—not an easy task. Research to identify accurate and inexpensive biomarkers of mistreatment is critical for health and social professionals.

As in all other aspects of our lives, federal agencies should promote research that leverages technology to detect mistreatment, hopefully leading to better and earlier interventions. With the advent of smart homes and highly monitored institutions, we need more research on early warning systems that detect abuse or imminent criminal behavior as well as the disablement of disease. This is not far-fetched; some research already exists on indirect technological assessment of the quality of social interactions. The obvious point is that research that informs early detection will in the long term be more effective than what we will learn from autopsies. New technologies may also be informative on how to do better urban and regional design, which might lessen the mistreatment burden.

The last research initiative I would like to suggest has to do with prevention of mistreatment. Fundamentally, very little known about the primary prevention of mistreatment. When is the last time you heard or saw a public service announcement on deterring elder mistreatment? I believe that it is critical to make controlling mistreatment a federal public health research goal, and experiment with promising interventions that may work in the context of public health and social agency practice. The federal government can also test useful preventives in populations that are in its charge, such as older persons in the Veterans Health System, community health centers or the Indian Health Service, where mistreatment problems have been described.

My white paper, as well as those of my colleagues, will document these issues in more detail, and I’m happy to answer questions. I appreciate your attention, and fully understand that there is substantial competition for resources for many other health and social imperatives. With regard to elder mistreatment control, only dedicated, effective leadership will make any of this happen.

Thank you.

**Robert B. Wallace, MD, MSc**

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**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**RESEARCH DIRECTIONS IN ELDER MISTREATMENT RESEARCH**

It was a distinct pleasure to testify on suggested research directions before on the Elder Justice Coordinating Council in Washington, DC on October 11, 2012. This “white paper” is an elaborated version of my comments, and offers suggestions on how where the field of elder mistreatment should go and some ideas on how to get the most from available research funds. The paper is in two parts: the first deals with directions in research policy; the second suggests a number of targeted, specific research directions.

**FEDERAL RESEARCH POLICY ON ELDER MISTREATMENT (EM)**

It is important to start with some suggested directions in federally-sponsored research policy, because the US federal government sponsors most of the health and related social research in the US and at the present time research funds are scarce. Therefore funds distribution should be done with extreme care. The following are some suggestions to research policies that may maximize research output and results:

**1. Catalog existing research on EM.**

Careful cataloging of existing research and related policy interventions should be carefully gathered and cataloged, to avoid duplication or pursuing less fruitful methods or themes and maximize productivity. It might be of value to conduct systematic reviews and even meta-analyses where enough sound studies are available. This should include not only direct elder mistreatment, but also related knowledge from all dimensions of domestic and institutional mistreatment and violence. It should be noted that not all important work have been performed in the US; important studies performed elsewhere can have an important impact on our knowledge of causes and potential interventions.

**2. Specifically target research themes.**

In my view, a substantial portion of federally funded research should be targeted to the most important research themes, where knowledge is lacking and issues are unsolved. While there are such themes suggested below, the list should be developed by a panel of investigators along with federal officials involved with EM policy. Of course, there should always be some funds available for new ideas and previously unidentified problems, but in the case of EM, many of these problems have been identified.

### **3. Promote new investigators in EM.**

Consider targeted funding to increase the size and scope of the investigative workforce in important research areas related to EM. An important example might be training and coordinated research in forensic medicine and practice. Working with appropriate professional organizations, plans could be made to provide modules of training and possibly pilot research funding. This needn't be limited to health professionals, as other scientists working in sociology, psychology, justice or criminology might be important recipients of such research and training funding. It is not a great stretch to consider starting fellowships in EM research, perhaps in part with funding from voluntary organizations.

### **4. Facilitate EM research by means in addition to providing extramural research funding.**

There are a number of important activities that federal agencies can do to promote effective EM research besides providing funds. Perhaps most important is facilitating the sharing of federal data relevant to mistreatment and EM research, including information collected on justice matters, social and environmental matters, housing policies relevant to EM, urban design and structure, and informative clinical information that may be in its possession. It is appreciated that sharing such information may have legal and logistical impediments, it is critical to for various types of policy research. Federal agencies should also facilitate research in the private sector, particularly the banking and financing industries, in order to improve progress with respect to detection and prevention of financial mistreatment. Finally, and also challenging, federal agencies should conduct internal evaluations of their own EM policies, to determine their own efficacy and effectiveness and to promote and accommodate new and promising policy initiatives. Too often, the value of many well-meaning and potentially important policies is never determined.

## **SELECTED RESEARCH THEMES ON ELDER MISTREATMENT**

The following are some potential research themes that the author believes are central to improving the prevention and control of EM in the community and institutions. Some research has been performed in each of these areas, and other research directions are possible, but in the author's view the suggestions below are likely to be among the most fruitful in the short and medium terms:

### **1. Develop and pilot improved qualitative methods for understanding how EM in the community reveals itself to social agencies and institutions.**

Among the most important elements of research directions that should be funded now is to conduct new studies, beginning on a small scale, on how to get closer to "truth" on rates of EM occurrence rates in American society. This not for the sake of accuracy alone, but because it is likely that the rates we cite are not very accurate, and the economic basis for research and EM control may be mischaracterized. This potential inaccuracy is suspected because of the complexity of EM, which in the community takes place mostly in intimate personal and family settings, where accurate observation is extremely limited and many family secrets are never revealed. Truer rates may only be revealed by triangulation of multiple sources of data collection and a combination of quantitative and qualitative studies. Without this fundamental work, there will be no credible benchmarks for federal EM control and program evaluation, and

will deter further advances in clinical screening for EM, which has been an important prior goal of EM research. Methods might include clinical interviewing of victims, family and household members, other persons in relevant social networks, including health, social and justice professionals, and perpetrators.

**2. Promote research to develop a consistent federal taxonomy and nomenclature of EM for use in research and administrative matters.**

In keeping with Recommendation #1, above, the federal government should promote research on creating a standardized and consistent clinical and administrative EM taxonomy and nomenclature for diagnosed and suspect cases of EM. This would be applied in all research and related administrative communications and measurement assessments across all departments and agencies dealing with EM. All important EM domains, such as physical and psychological abuse, institutional abuse, financial abuse, and elder neglect should be considered. This will require some research on linguistics, disease taxonomy and nomenclature and natural language processing. This could be supported by National Library of Medicine, which supports medical linguistic activities such as the Unified Medical Language System. Related to this are informatics issues on how to detect EM in federal programs and activities. Without this harmonization of nomenclature in federal data bases, further work will be difficult.

**3. Conduct conceptual and community-based research on the nature and outcomes of “neglect” among EM victims.**

Particularly important is the need to revisit and reconceptualize the entire notion of the EM labels of “neglect” and “self-neglect.” It is probably the most common of EM situations in the US where older persons disabled by mental and physical illness to the point of limited ability for self care; usually, others in the social environment are unwilling or unable to assist that person. But this is a complex “diagnostic” social problem and in most instances the label is not productive from a policy perspective. The central issue is defining need, whatever its origins. Important factors that need to be evaluated include poverty, limited literacy and self-efficacy, lifelong intellectual disability, the presence of equally impaired family members, and unresponsiveness by the social and health care systems. Each of these situations requires very different remedies, but perhaps underlying this complex and diverse syndrome is a person with basic human needs. This syndrome needs accurate characterization (diagnosis) and evidence-based management. The use of current EM labels may becloud appropriate management of what might be the largest EM problem of all: impoverished, sick, disabled persons unable to engage in self-preservation. The most important thing that can be done now is to determine the role of poverty (and its encumbrances) and the lack of social and medical support as the fundamental causes of this syndrome of “neglect.” Only then can appropriate actions and remedies can be taken.

**4. Conduct research on modern technological ways to detect possible EM in both community and institutional settings.**

There is a need to promote research on ways in which putative EM can be “automatically” suspected or detected in home and institutional circumstances, applying a variety of modern, technologically-driven detection and surveillance devices. In the era of the “smart home” and highly monitored institutional settings, this should be increasingly possible. Positive signals can



then be detected and at least related to the clinical picture of potential victims. There is already a precedent for assessing the quality of social interactions electronically with electronic sensors.

**5. Fund research on the potential for community-based interventions to prevent EM, including those conducted by formal health departments.**

There is very little research on community-based interventions that have the potential to prevent EM before it starts. As an exercise, research funders should try to identify and count the number of public service announcements over a given time period concerning the problem of EM. There has been research on the secondary prevention of EM, suggesting that interventions within individual homes where EM has occurred can deter subsequent EM episodes, affecting both perpetrators and victims. These might include, for example, respite care, and educational programs. Further research in this area is likely to be fruitful, but there is almost no research on *broadly-based community interventions* on decreasing EM rates. A critical issue is the role of formally constituted public health departments at the state and local levels. How EM might be mitigated at the community level is all but unanswered. Would community education programs be of value? Could school-based education encumber children as agents against physical or psychological mistreatment? Could potential perpetrators with histories of alcoholism or illicit drug abuse be identified in advance of crimes with useful interventions? Pilot interventions that are well-grounded in both behavioral theory and community intervention methodology should be tested in a variety of geographic and cultural settings.

**6. Experiment with new prevention and intervention programs in populations served by federally-administered health programs, such as the Veterans Affairs Health System, the Indian Health Service and federally-sponsored health community health centers.**

As noted in #5 immediately above, prevention is all by untested. Some venues for health services delivery, where the federal government has jurisdiction, see many older patients where elder mistreatment incidence and prevalence are among the most common documented in the United States, and these may be among the most important for testing the role of prevention. Some important venues are the Veterans Affairs Health System, federally-sponsored community health centers and the Indian Health Service. Within these programs, there is a need for greater emphasis on research programs that: a) lead to more complete and accurate recognition of EM; b) document the special clinical consequences of EM in patient-victims; and c) develop more efficient and effective methods for addressing and mitigating the problems through a combination of health and social interventions. Because of available data and committed health professionals and administrators, these venues could provide leadership in understanding community approaches to EM.

**7. Federal agencies should strengthen forensic research aimed at detecting EM in state and local jurisdictions.**

Forensic techniques to detect physical abuse among potential EM victims are severely underdeveloped, and rigorous research is needed to identify such abuse in the clinic, the pathology suite, and other important community settings. Biomarkers and radiographic, toxicological, and other techniques are needed to define the differences between naturally-occurring illnesses and injuries and the trauma associated with EM. Whether in the clinic or in the autopsy suite, there are very few validated modern tools to discern the role of EM in causes

of stress-related conditions, promotion of co-morbid illnesses, and death. The forensic services of the US are desperately in need of new and concerted research in this area. This will assist both the health and justice EM communities.

**8. Federal agencies should partner with the financial and banking industries to do research on developing signals indicating possible financial abuse.**

This is a critical need to better understand the occurrence and circumstances of financial mistreatment, since the episodes rarely lead to scrutiny by any social or protective agencies. This may also include so-called “POA abuse” (power of attorney abuse). There are many possible dimensions to this, but creative remedies are not well-developed, even though some banking and trust systems have experimented with signal detection of misuse of funds belonging to older persons. The federal government should partner with the financial industry and the private legal communities to explore systematic research that might include: a) developing new controls on the disposition of financial assets of impaired elders, such that signals occur if untoward flows of funds occur; b) monitoring the flow of funds by those who have medical or durable power of attorney to look for signs inappropriate monetary acquisition or expenditures; and c) developing model research programs to test the efficacy and enforceability of criminal penalties in deterring financial mistreatment.

**9. Conduct evaluation research on the efficacy, including outcomes, of the basic practices of Adult Protective Services (APS).**

APS is a critical part of the fabric of screening, investigating and intervening in EM cases. As with other such EM control programs, however, many of the practices vary from one jurisdiction to the next, and whether resources are optimally employed is uncertain. Immediate, federally supported evaluation research needs to be conducted on the most efficient practices, with outcomes that reflect both specific APS clients and for community as a whole. Multiple evaluative endpoints can be pursued, but in the end lowering the rates of EM in defined populations will be the ultimate benchmark of success.

**10. Federal data bases should be made available to do more critical work on identifying EM perpetrators.**

These might include bringing to bear such data as prior histories of arrest and conviction, work-related social malfunction, divorce and family violence histories in past records, behavioral disorders in federal medical record data bases, disciplinary problems in the military, excessive numbers of automobile citations, and related clues that may identify EM perpetrators. The federal government can provide or assist the states in acquiring such information on known perpetrators. This approach may turn out to be ineffective, but it needs to be explored. An analogy to how convicted pedophiles are handled may be useful here if the risk situation is discovered. As has been discovered in many types of criminal behavior, a substantial amount of crime may be perpetrated by a smaller number of repeat offenders. In his testimony at the EJCC, Dr. Lachs also made a plea for having federal data available for research.

**11. Explore urban and regional planning models and architectural housing design alternatives to determine if various designs promote or deter EM.**

The federal government has oversight of a substantial amount of housing in the US, and it is important to determine whether various designs of cities, neighborhoods and housing have an impact, negative or positive, on the rates of EM, which itself must in part be determined by the degree and quality of social interaction of older persons.

**12. Explore the efficacy of various state policies, regulations, laws, and programs in deterring and controlling EM.**

There is a comparative lack of empirical research evaluating the role of state public policies in advancing the public effort to identify, investigate, and prosecute EM. This oversight is problematic because, on one hand, there is clear and direct link between state policies and the protection of older adults and, on the other hand, the modification of state policies may be the most effective and efficient way to reduce the occurrence of EM. Important agencies such the DHHS and DOJ support research proposals that are guided by an over-arching theoretic model hypothesizing that outcomes pertaining to the identification, investigation, and prosecution of EM are shaped variably by state policies and enforcement structures. Consistent with this, priority should be assigned to research proposals that aim to: (a) account for targeted EM policy outcomes (e.g., increasing the number of prosecuted cases), (b) evaluate legislation, regulation, and case law which comprise the foundation of state EAN policies; (c) examine pertinent state agency enforcement structures, and (d) statistically test models in which the outcomes are linked to state policies and enforcement structures nested within contexts where interest groups and other extrinsic variables.

**CONCLUSION**

A multifaceted approach to research is needed in order to control or deter elder mistreatment in the community. Such approaches must include research funding, but it also requires a series of steps by relevant federal agencies to facilitate effective research programs, conduct detailed evaluations of existing important policies and programs and partner with the private sector to identify and execute more effective solutions. The steps suggested above may not be the only ones available, but they should be considered as a way of going forward in this neglected area.

**Mark Lachs**

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CORNELL UNIVERSITY

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL  
OCTOBER 11, 2012

My name is Doctor Mark Lachs; I am a professor of medicine at the Weill medical college of Cornell; I am also a founder and Director of the New York City Elder Abuse Center. As both a

clinician and NIH funded NIH researcher for nearly 25 years, I have devoted my career to protecting the rights, dignity, and safety of older adults, particularly elder abuse.

I came of “medical age” in the 1980’s in some of the most respected health care centers in the United States. As a medical student, resident, and new physician, I marveled at lack of safeguards to protect patient privacy. Information was offered to any caller to a medical ward who expressed interest in a patient. Physicians communicated with each other and patients and their families in the most haphazard of ways. These transgressions were unintentional, and reflected for the most part health care providers trying to do the right thing without any guidance in this area. That legislation like HIPPA would come to pass was no surprise to me; the surprise was that it took so long. And I welcomed the effort.

Similarly, as a public health student at Yale in the late 1980’s, I became well aware of the ways in which vulnerable populations have been exploited in research over the course of human history. These are some of the saddest chapters in American science, chapters that should never be repeated. The strong protection of human subjects that arose as a result of these transgressions are the most important ethical edicts of American science.

I provide that personal history and predicate to underscore my message to you today: For elder abuse victims and elder abuse research, the pendulum has swung too far in the other direction. Specifically, HIPPA and IRB provisions that are intended – actually, well intended – to protect victims and encourage the safe conduct of research are not only failing to afford protection – in many cases they are placing victims in harm’s way and undermining critical research that needs to be conducted. I will provide a few couple of examples of each, first in the realm of clinical care.

Elder abuse victims typically traverse many health and social welfare systems as their plight unfolds: Health and hospital systems, adult protective services, community social workers in NGOs, housing authorities, and law enforcement are just a few of the organizations encountered. Each may have its own policies and procedures around information sharing and/or be subject to external laws (like HIPPA) that govern such information sharing. The irony here is that successful resolution of elder abuse cases relies critically on coordination and communication between many of these many interacting (or, sadly, non-interacting) agencies and organizations; rarely if ever is elder abuse treated successfully in a “silo.” This is the impetus for the growing movement around elder abuse forensic centers and multidisciplinary teams modeled after child abuse, in which a jurisdiction’s most vexing cases are discussed as a group with all disciplines and organizations at the table.

At the New York City Elder Abuse Center and other centers around the country, several such cases are discussed at each meeting; cases may be brought to the team via health care providers or community agencies. When a patient is presented by a physician seeking the concrete assistance of a community agency for his or her incapacitated victim abused by an immediate family member, HIPPA theoretically requires consent of that family member to release information that could assist in the investigation and mitigation of abuse. When community social workers discover their clients have been hospitalized with abuse related sequelae, HIPPA may be invoked by medical providers to preclude that social worker from sharing vital information. I have personal knowledge of situations in which social workers from community senior centers have longstanding and highly meaningful relationships with elder abuse clients

who become hospitalized from abuse or neglect, in some cases actually accompanying victims to the emergency room. In a cruel irony, these dedicated individuals are often precluded from interacting meaningfully with hospital staff, even when they are in possession of important knowledge, such as the safety of the home environment where the patient will be ultimately discharged. No such communication restrictions are placed on the abusing family member.

Because HIPPA assumes beneficence of family members, an elder abuse perpetrator who has been designated a health care proxy for an incapacitated victim, wields extraordinary power over critical decision in the life of victim. These range from the exclusion of other loved ones in information sharing and visitation to a hospitalized victim, to the deployment of refusal of invasive life sustaining treatments in the setting of critical illness (sometimes in violation of previously articulated patient wishes). When financial exploitation is involved, abusers may select less than optimal health care resources or environments for their victims with the belief that resources not expended will ultimately come to them in the form of subsequent inheritance. One familiar scenario to elder abuse clinicians is the victim removed from a dangerous community environment and placed in a nursing home who then thrives; shortly thereafter they are returned to the community by family who were dependent upon the victim's social security income, wherein the cycle of victimization and decline resume.

In the area of research, laws, policies, and procedures have been enacted that to protect "vulnerable populations." Elder abuse victims are frequently deemed to be especially vulnerable because of the nature of the phenomenon itself, or the high prevalence of cognitive impairment (and attendant incapacity) in these subjects. The remedies advocated for the protection of vulnerable human subjects include (but are not limited too): greater attention to the informed consent process including the use of proxy consenters, greater attention to the cost benefit ratios of the research itself (with some arguing for a lower ratio when vulnerable subjects are involved), special oversight committees or bodies when vulnerable subjects are invoked, and the participation of members of vulnerable populations in IRB committees that review and approve such research. Here too, these well-intentioned efforts to protect vulnerable older adults in the research process may do little to afford incremental protection or have them excluded from critical elder abuse studies altogether. The most egregious and compelling example of such harm: the situation in which the abuser for an incapacitated elder victim is the family member or health care proxy, and therefore the party who would be consented for participation the research.

Other IRB barriers to elder research are similar to those encountered in the clinical care of elder abuse victims, namely the inability to share or track clients' information over time in the many medical and social welfare systems they traverse. HIPPA provisions of the IRB process typically preclude the sharing of protected health information across systems, or invoke complex safeguards that are so difficult to enact that the research becomes unfeasible.

Another problem with the review of elder abuse studies is the "medicalization" of Institutional Review Boards, whose membership may have less familiarity with domestic violence research generally and even less so with elder abuse specifically. Well versed in the ethics and approval of clinical trials of drugs and devices, these standards, when applied to elder abuse victims, are often impractical and irrelevant.

To restore balance to this state of affairs, The Elder Justice Coordinating Council should:

1. Convene an expert panel of ethicists, clinicians, and other community clinicians to explore the HIPPA and IRB issues surrounding elder abuse, and make specific recommendations about how to address these issues. It is critical that such a panel provide guidance around elder abuse specifically and that elder abuse not be subsumed under a general rubric of “domestic violence” given the issues outlined that are unique to elder abuse.
2. Encourage hospital and physician education about current HIPPA provisions regarding Domestic Violence disclosure, as the law is often interpreted and invoked erroneously to the detriment of victims.
3. Encourage research in several areas including (a) How protective service workers assess decision making capacity and how the accuracy of such assessments could be improved. This is critical in that decision making capacity is the basis for many of the HIPPA and IRB I have raised (b) New methods and techniques for accessing victims and protecting them to the greatest extent possible while permitting their participation in elder abuse research.
4. Encourage IRBs be composed of members with research and clinical experience in domestic violence generally and elder abuse specifically.
5. Provide guidance to the growing number of elder abuse teams multidisciplinary teams on how they may (a) Serve victims in an interdisciplinary fashion while maintaining HIPPA compliance. Waivers or “special dispensation” may need to be afforded to such teams so that they may conduct their critical work and serve victims. (b) Participate in elder abuse intervention research (and refer clients to such research) given the many HIPPA and IRB challenges cited.
6. Advocate for a national voice and national leadership in the field at the federal level, so that these and other priorities be effectively implemented. The absence of a unified front in this regard is, ironically, an ageist state of affairs.

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**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL  
OCTOBER 11, 2012

**NO GOOD DEED UNPUNISHED:  
HOW WELL INTENTIONED HIPPA AND HUMAN SUBJECT PROTECTION  
CAN HARM ELDER ABUSE VICTIMS AND UNDERMINE QUALITY  
RESEARCH IN THE FIELD**

**INTRODUCTION**

Both service providers and researchers who work in the field of elder abuse should share a single edict as their highest priority: do no harm. Victims of elder abuse do not need their suffering compounded by poorly trained clinicians who confront an abuser in the presence of the victim, or poorly designed research studies in which subjects are interviewed within earshot of their aggressors. Transgressions like these would in all likelihood escalating abuse rather than remediate it. The good news is that within the relatively small but growing elder abuse research and clinical communities, there is unanimity on this point. Composed primarily of gerontologists who are fierce advocates for the rights and dignity of older people, our ranks our dedicated to the abolishment of age discrimination or “ageism.” And there is no more heinous form of ageism than elder abuse.

However, an unusual and curious paradox exists in the field of elder abuse for both scientists and clinicians. Many laws, policies, and procedures intended to protect elder abuse victims are not only failing to afford any meaningful protection; in the case of clinical service I believe they can actually cause real harm. In the case of research, many critically needed studies to advance our knowledge in the field cannot be executed because IRB policies and procedures intended to protect human subjects, however well intentioned, make the conduct of such research unfeasible, often without providing any incremental meaningful safeguards to participating subjects.

In this brief white paper I will (1) explore the basis for this paradox, (2) provide specific examples of how HIPPA and IRB policies and procedures may unintentionally impede victim safety and the advancement elder abuse science, and (3) make specific recommendations to the elder justice coordinating council for a more balanced approach in this area to elder abuse science or service. While I will cite some of the limited literature in this area to support my assertions, I offer these observations and suggestions primarily from the vantage of an NIH funded investigator who has worked in the field for 25 years, and as an internist-geriatrician who has participated in the evaluation of hundreds of elder abuse cases, most recently and Director and Founder of the New York City Elder Abuse Center.

## WHY ELDER ABUSE IS DIFFERENT

The idea that some aspects of HIPPA and human subject protections may be overreaching and/or potentially harmful is not a new idea to researchers and clinicians in the field of domestic violence. However, elder abuse is a form of domestic violence with relatively unique characteristics that influences this calculus. Foremost among them is *the high prevalence of cognitive impairment and incapacity* in elder abuse victims in a society where the capacity of adults is assumed unless proven otherwise. When incapacity does exist and the putative abuser is a family member, he or she may be the proxy making decisions for the victim about any number of issues, ranging from the use of health care resources to consent to participate in research studies.

A related issue is *the high prevalence of medical illness in elder abuse victims in comparison to other forms of domestic violence, which* influences this area in two ways. First, more medical illness results in more interactions with the health care system generally, increasing the likelihood that HIPPA related issues will be invoked. Second, as chronic illness unfurls, many treatment discussions (including palliative and end of life care) may become necessary for the older adult. In an ideal world, these discussions involve not only the patient, but also family members and other important members of his or her social network. A familiar scenario to physicians caring for hospitalized older victims is a suspected abuser who is also the health care proxy (by designation or default) who makes decisions for an incapacitated older victim, while simultaneously excluding others who might have a different (and valuable) perspective.

Finally, the *high prevalence of financial exploitation*, a subcategory of elder abuse that is relatively unique to this form of domestic violence, can also impact on HIPPA and health care decisions as will be discussed subsequently.<sup>128</sup>

## HOW HIPPA CAN HARM ELDER ABUSE VICTIMS

Among the many provisions of the Health Insurance Portability and Privacy Act are laudable rules that limit how health care providers can share patient information both with other providers as well as family and non-family laypersons expressing interest in the care of a patient. While the details of HIPPA are beyond the purview of this discussion, the most central feature of the legislation regarding privacy directs “covered entities” to share protected health information only at the explicit direction of the patient, and with whom. When those wishes cannot be communicated or emergent medical conditions preclude timely consent, immediate family members are generally afforded special access and consideration by default. While HIPPA has certain provisions that recognize the unique problems potentially posed by domestic violence and the health care workers attempting to care for those victims, practitioners and experts in the field have expressed concerns about how those provisions are interpreted in real world settings.<sup>129</sup>

However well intentioned, these provisions of HIPPA often do a disservice to elder abuse victims, typically in two broad categories: (1) Preclusion of information sharing among service providers endeavoring to protect the safety and well-being of victims, and (2) Unbridled access and decision making power by the elder abuse perpetrator when he or she is an immediate family member (or designated health care proxy) and the victim has cognitive impairment and incapacity. Each of these are discussed separately.



Elder abuse victims typically traverse many health and social welfare systems as their plight unfolds: Health and hospital systems, adult protective services, community social workers in NGOs, housing authorities, and law enforcement are just a few of the organizations encountered. Each may have its own policies and procedures around information sharing and/or be subject to external laws (like HIPPA) that govern such information sharing. The irony here is that successful resolution of elder abuse cases relies critically on coordination and communication between many of these many interacting (or, sadly, non-interacting) agencies and organizations; rarely if ever is elder abuse treated successfully in a “silo.” This is the impetus for the growing movement around elder abuse forensic centers and multidisciplinary teams modeled after child abuse, in which a jurisdiction’s most vexing cases are discussed as a group with all disciplines and organizations at the table.

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Because HIPPA assumes beneficence of family members, an elder abuse perpetrator who has been designated a health care proxy for an incapacitated victim, wields extraordinary power over critical decision in the life of victim. These range from the exclusion of other loved ones in information sharing and visitation to a hospitalized victim, to the deployment of refusal of invasive life sustaining treatments in the setting of critical illness (sometimes in violation of previously articulated patient wishes). When financial exploitation is involved, abusers may select less than optimal health care resources or environments for their victims with the belief that resources not expended will ultimately come to them in the form of subsequent inheritance. One familiar scenario to elder abuse clinicians is the victim removed from a dangerous community environment and placed in a nursing home who then thrives; shortly thereafter they are returned to the community by family who were dependent upon the victim’s social security income, wherein the cycle of victimization and decline resume.

#### **IRB AND HUMAN SUBJECT PROTECTIONS: SOMETIMES AN UNREASONABLE BARRIER TO ELDER ABUSE RESEARCH**

Ethical lapses in research involving human subjects, particularly research that recruit vulnerable or disenfranchised populations, are historical blemishes that must never be repeated. Accordingly, laws, policies, and procedures have been enacted that carefully govern the conduct of such research, with special attention to protections for vulnerable populations such as children

and those with incapacity due to mental or other illness. Elder abuse victims are frequently deemed to be especially vulnerable because of the nature of the phenomenon itself, or the high prevalence of cognitive impairment (and attendant incapacity) in these subjects. Additionally, participants in elder abuse research have traditionally been regarded as difficult to identify, access, and follow. Some of this stems from cognitive and physical frailty, but some results from victims being sequestered by abusers. These realities, whatever their etiologies, are among the many factors that make elder abuse research exceedingly difficult to conduct under the best of circumstances.

The remedies advocated for the protection of vulnerable human subjects include (but are not limited to): greater attention to the informed consent process including the use of proxy consenters, greater attention to the cost benefit ratios of the research itself (with some arguing for a lower ratio when vulnerable subjects are involved), special oversight committees or bodies when vulnerable subjects are invoked, and the participation of members of vulnerable populations in IRB committees that review and approve such research.

Here too, these well-intentioned efforts to protect vulnerable older adults in the research process may do little to afford incremental protection or have them excluded from critical elder abuse studies altogether. The most egregious and compelling example of such harm: the situation in which the abuser for an incapacitated elder victim is the family member or health care proxy, and therefore the party who would be consented for participation the research.

Other IRB barriers to elder research are similar to those encountered in the clinical care of elder abuse victims, namely the inability to share or track clients' information over time in the many medical and social welfare systems they traverse. HIPPA provisions of the IRB process typically preclude the sharing of protected health information across systems, or invoke complex safeguards that are so difficult to enact that the research becomes unfeasible.

Yet another problem with the review of elder abuse studies is the “medicalization” of Institutional Review Boards, whose membership may have less familiarity with domestic violence research generally and even less so with elder abuse specifically. Well versed in the ethics and approval of clinical trials of drugs and devices, these standards, when applied to elder abuse victims, are often impractical and irrelevant.

## **RECOMMENDATIONS**

Several strategies might improve the service elder abuse victims receive in the context of HIPPA and permit crucial elder abuse research to move forward while protecting subjects who participate in research.

1. The Elder Justice Coordinating Council should convene an expert panel of ethicists, clinicians, and other community clinicians to explore the HIPPA and IRB issues surrounding elder abuse, and make specific recommendations about how to address these issues. It is critical that such a panel provide guidance around elder abuse specifically and that elder abuse not be subsumed under a general rubric of “domestic violence” given the issues outlined that are unique to elder abuse.

2. The Elder Justice Coordinating Council should encourage hospital and physician education about current HIPPA provisions regarding Domestic Violence disclosure, as the law is often interpreted and invoked erroneously to the detriment of victims.
3. The Elder Justice Coordinating Council should encourage research in several area including:
  - a. How protective service workers assess decision making capacity and how the accuracy of such assessments could be improved. This is critical in that decision making capacity is the basis for many of the HIPPA and IRB issues raised in this white paper.
  - b. New methods and techniques for accessing victims and protecting them to the greatest extent possible while permitting their participation in elder abuse research.
4. The Elder Justice Coordinating Council should encourage IRBs be composed of members with research and clinical experience in domestic violence generally and elder abuse specifically.
5. The Elder Justice Coordinating Council should provide guidance to the growing number of elder abuse teams multidisciplinary teams on how they may:
  - a. Serve victims in an interdisciplinary fashion while maintaining HIPPA compliance. Waivers or “special dispensation” may need to be afforded to such teams to that they may conduct their critical work and serve victims.
  - b. Participate in elder abuse intervention research (and refer clients to such research) given the many HIPPA and IRB challenges cited in this document.
6. The Elder Justice Coordinating Council should advocate for a national voice and national leadership in the field at the federal level, so that these and other priorities be effectively implemented. The absence of a unified front in this regard is, ironically, an ageist state of affairs.

**Ying-Ying Yuan, Ph.D.**

WALTER R. McDONALD ASSOCIATES, INC.

**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

I would like to thank Stephanie Whittier Eliason and her colleagues for inviting me to talk about the experience of a sister field, child abuse, and neglect, in developing a national data collection and reporting system. I use the terms collection and reporting intentionally to imply that the federal government would be collecting data and analyzing and reporting on these data to build knowledge about the extent and characteristics of elder abuse.

The experience of the field of child abuse has some similarities and many differences from elder abuse. While not belaboring the differences today, I would like to share some lessons learned that may apply to national elder abuse data. I share these experiences humbly, as unlike my other colleagues today, I am not an expert in elder abuse, nor have I had the opportunity to research the history of the issue of collecting elder abuse data. I have been able to read a few reports, but have not undertaken a thorough assessment or swat analysis (strengths, weaknesses, advantages, and threats) of all options and solutions available to the field of elder abuse.

First, I would like to give a brief background about the National Child Abuse and Neglect Data System (NCANDS). In 1988, amendments to the Child Abuse Prevention and Treatment Act required DHHS to establish a national data collection and analysis program, which would make available child abuse and neglect data. Significantly the legislation required the Department to create a system but did not require states to participate. In rapid order a series of short term contracts were released and awarded to start the process of defining what the system could look like and what would be the strategy for developing a system. After these short term contracts, longer 3-year contracts were competitively bid. Walter R. McDonald & Associates, Inc. has provided technical support to the Children's Bureau on NCANDS since its inception. The federal contacts on this initiative are Melissa Brodowski and Kurt Heisler of the Children's Bureau.

Initially several key decisions were made by the Children's Bureau. These decisions have held the effort in good stead these many years.

- a. A federal-state partnership would be built and maintained to sustain the effort. To that end, states participated in the design of the system, in the piloting of all parts of the system, and in the design of the initial reports. The federal government invested in technical assistance annual meetings of all states and onsite technical assistance to build capacity of states to participate. A state advisory group was also formed.
- b. Given that participation would be voluntary, the data collection would need to be cleared and approved by the Office of Management and Budget but would not require rulemaking or regulation.

- c. Data would be collected annually on a calendar year basis, as that was most familiar with the states. This was later changed to the federal fiscal year to maximize comparability to other data collection efforts of the Children's Bureau. The design created a two-tiered system of aggregated data on key variables and client level data for those states that had the capacity to provide case level data. By the reporting year of 2000, case-level data had become the dominant method of submitting data and the primary source of reporting and estimating national statistics.
- d. Data would be reported by states in a common record format, and states would map to the common record layout from their own systems. States would be responsible for their own data extracts.

Today NCANDS is a large system, receiving data from all 50 states, the District of Columbia and Puerto Rico with 51 jurisdictions providing case-level data. More than 3.5 million records a year are collected from the states in a common format. While not all states complete all data elements for each record, the record layout includes data on the characteristics and risk factors of the child, the characteristics of perpetrator, the types of maltreatment that were alleged and that were supported, and services provided to the child and the family. Case-level data are maintained in a data warehouse environment allowing for the rapid deployment of many key analyses. Additional analyses are conducted using SQL (Structured Query Language) and IBM SPSS (originally Statistical Package for the Social Sciences). The 2011 annual report will be the 22<sup>nd</sup> annual report issued by the Department of Health and Human Services. It is scheduled for release in December 2012.

What lessons might be the most germane to creating a national data base on elder abuse? I would like to talk briefly about two categories of learning: what we learned during the design process and what we have learned about return on investment.

#### **LESSONS FROM THE DESIGN AND IMPLEMENTATION PROCESS**

- a. **Start from Existing Strengths but Strive for Aspirational Goals:** The basic starting points in implementing a national data system are to determine which agency or agencies has the most information in an automated format, even if not all the desired information, and what is the direct relationship between these agencies and the federal government.

The original design of NCANDS decided to focus on child protective services agencies, rather than other agencies including service agencies such as law enforcement, hospitals, schools, day care centers, etc. The reasoning behind this decision was that the federal Government had an ongoing relationship with state child welfare agencies and that furthermore child welfare agencies are charged through federal and state legislation to investigate reports alleging child abuse and neglect. Both state-administered and state-supervised county administered agencies agreed to participate.

Prior to the NCANDS initiative various non-profit groups had had their own programs to develop national data, but these, whether funded by the federal government or not, were short term and eventually unsustainable. Indeed part of the emphasis behind the development of NCANDS was some lack of satisfaction with the previous efforts conducted by advocacy groups.

Working with state child welfare agencies as partners has the result that some types of maltreatment, primarily institutional maltreatment, are under reported. (In the most recent report, 16 states did not report on abuse by facility and group home staff.) In many states institutional abuse is handled by other agencies. Furthermore NCANDS only includes those cases that have been reported to child welfare. With only the exception of data on child fatalities, data that are not reported directly to child welfare are not collected. However it is also critical to note that both substantiated and unsubstantiated reports are collected, as well as those receiving other responses from child protective services.

In addition, although very few states could report on services, and many still have problems, the NCANDS record contains aspirational data elements related to risk factors and services.

- b. **Build Peer Leadership among the Reporting Entities:** The Office on Child Abuse and Neglect, and later the Children's Bureau, has provided technical assistance to the states each year in order to encourage and improve participation in NCANDS. However, the initiative has also depended upon peer leadership among the states themselves. From the very beginning the states were active in the design of the system. There continues to be a state advisory group, which essentially is a forum for discussing complex issues in depth before presenting the issues to the wider group for discussion and making suggestions to the federal Government. For example, each cycle of OMB approval involves intensive discussion with the states about their capacity to report on new data elements.
- c. **Involve Information Technologists as well as Policy and Practice Experts:** From the beginning NCANDS largely depended upon extant automated information systems. At the original design sessions, data processing department staffs were active participants in the design of the common record layout. This resulted in the core design concept of NCANDS, which is a record for each child for each report. Twenty years ago, many systems were primarily report-oriented rather than child-oriented. Therefore a record layout which includes both reports and children associated with a report, allowed more states to participate, while still focusing attention on then need to develop and maintain unique child identifiers.

The IT specialists were useful because they knew the details of their systems' capacities and could accurately discuss what was possible and what was not. The importance of recognizing the need to strengthen the infrastructure of data collection at the state and local levels was also emphasized when federal enhanced funding was provided for the development of SACWIS systems (Statewide Automated Child Welfare Information Systems). This first occurred in 1994 and was extended for a period. States could receive approval for funding at an enhanced matching rate by meeting certain criteria, one of which was the ability to participate in NCANDS.

Even today, nearly half of the state representatives to the national meetings are business analysts, information technologists, and reporting specialists. Many are responsible for state information systems, which encompass far more than child protective services. The remaining attendees are primarily program managers and administrators, as well as quality assurance specialists.

## LESSON ON THE RETURN ON INVESTMENT

- a. **Recognize and Emphasize the Utility of the Data:** Voluntary participation in large initiatives, such as NCANDS, need to have incentives. One incentive has been that the data are used and reported by the federal Government. Since the very beginning an annual report has been published. This report has grown in its sophistication and breadth but certain key components have remained constant. One is that the core data tables report data at the state level. Data are only aggregated across states for very specific multivariable analyses. Second, a large section of the report enables states to describe the context of their reporting, including policy, practices, definitions, and new initiatives. This is a rich source of information that is helpful in understanding the data. Third, the NCANDS data have been used by the Children's Bureau in other initiatives such as their Child and Family Services Reviews. The data are used in various ways throughout these reviews including the development of a safety profile of the state, using key indicators. An annual report to Congress on child welfare outcomes also relies upon NCANDS data.

The data are used by several other governmental initiatives and researchers. A version of the data set is archived annually at the National Data Archive on Child Abuse and Neglect at Cornell University. This is the public usage version of the data. On average more than 600,000 persons access the annual reports each month on the Children's Bureau website.

- b. **Do Not Put all the Eggs in One Basket:** While investing in a national data system, other means of gathering information on elder abuse could and should be conducted in parallel. Research needs to be supported on the characteristics and risk factors associated with elder abuse; prevention programs need to be developed, evaluated, and replicated; and experiments of integrating existing data sets to gain a cross-agency perspective could also be conducted. These efforts would serve to complement and enhance the understanding of national data, which could not be successful in addressing all topics of interest.
- c. **Return on the Investment Quickly:** Most students of successful systems change urge early return on investments. In other words, people need to see the value of the effort, even if it is not yet totally complete. NCANDS started in 1988 with the initial design effort. By 1991, OMB approval had been received on a reporting strategy that had been achieved through consensus building among all key stakeholders, including the reporting agencies and other key players in the field of child abuse. By 1992, data were published in an annual report on 1990 data. Thus in a span of 4 years, from the start of the initiative, national data were published. This momentum retained the interest and commitment of all participants, and today, annual data are reported within 9 months of collection, responding to the ever increasing demand for up to date data.

Thank you for allowing me to present to you some experiences, which we, in the field of child abuse, hope will be of use to you.

**Ying-Ying Yuan, Ph.D.**

WALTER R. McDONALD ASSOCIATES, INC.

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

NATIONAL DATA COLLECTION AND REPORTING ON ELDER ABUSE:  
LESSONS FROM THE NATIONAL CHILD ABUSE AND NEGLECT DATA  
SYSTEM

The intention of this paper is to summarize some of the key lessons that have been learned from the 20 plus year history of collecting national data on child abuse and neglect and to discuss how some of these lessons might be relevant to collecting national information on elder abuse.<sup>130</sup> This paper is meant to be used as background information for the Elder Justice Coordinating Council (EJCC). It does not presume to be a complete history of child abuse or elder abuse data collection. The objective of this paper is to provide some additional information to the EJCC for its deliberations on future directions.

Throughout this paper, I use the term elder abuse or elder mistreatment to include physical abuse, sexual abuse, psychological abuse, exploitation, neglect, and self-neglect. I include as elders persons 60 years and older. I include in this concept all living arrangements of elders and all types of perpetrators, although the range of these attributes will influence national data collection and are discussed briefly in the paper.

I use the term national data collection system to refer to the goal of collecting data from all states and reporting annual on these data. I consider that this activity would be conducted under the auspices of the federal Government and would be reported as state by state data, not solely aggregated data or national estimates. Such an effort could be supplemented by other activities that would provide additional information to the field.

When reviewing the field of child abuse compared to the field of elder abuse, one finds many similarities between both fields. These similarities include the following.

- The subjects of the data collection are vulnerable citizens who are considered to be of interest based upon their age and events that have occurred or alleged to have occurred.
- Both fields depend upon mandated reporters as well as other reporters for identification of persons at risk of mistreatment.
- In general the field as a whole is interested in both victims and perpetrators. There is also interest in services provided to these vulnerable persons as well as the outcomes of services.



- The objectives for collecting data are multiple including having an accurate count of victims of mistreatment, understanding the response to these conditions, and designing improved prevention strategies.
- In each state there is a one or more agencies responsible for conducting activities on behalf of these vulnerable persons (child protective services and adult protective services).
- Law enforcement also has a major role in terms of investigation and prosecuting child abuse and elder abuse.
- There is legislative authority for the Department of Health and Human Services (DHHS) to collect data on both child abuse and elder abuse. The legislative authority gives DHHS the ability to craft a response based on its interpretation of the legislation.
- Difficulties in data collection include issues related to the definitions of mistreatment, the living arrangements of the vulnerable persons, the agencies which respond to reports, and cooperation among agencies that have responsibility at the local and state levels.
- Both the fields of child abuse and elder abuse have undertaken and continue to undertake several different types of research and data collection activities to increase the knowledge pool about the characteristics and consequences of abuse.

Both fields are complex. Both have challenges in addressing the basic questions of the extent to which our citizens are being mistreated, the nature of our response to their needs, and the outcomes that result from interventions. However, the field of child abuse and neglect has a national system for collecting data and the field of elder abuse has periodic studies, but no national system.

This paper will provide information about the background of the national child abuse data collection effort and lessons learned. Some of the lessons are based on intentional decisions and others are based upon more serendipitous decisions. The implications for the field of elder abuse are also discussed. A list of reports consulted while writing this paper is provided at the end of this document.

## **BACKGROUND**

In 1988, amendments to the Child Abuse Prevention and Treatment Act required DHHS to establish a national data collection and analysis program, which would make available child abuse and neglect data. Significantly the legislation required the Department to create a system but did not require states to participate. In rapid order a series of short term contracts were released by the National Center on Child Abuse and Neglect within the Administration on Children, Youth and Families (ACYF). These contracts were awarded to start the process of

defining what the system could look like and what would be the strategy for developing a system. The proposed system was named the National Child Abuse and Neglect Data System (NCANDS) during these early contracts. After these short term contracts, longer 3-year contracts were competitively bid. Walter R. McDonald & Associates, Inc. has provided technical support to the government on NCANDS since its inception. (ACYF was reorganized in the mid 1990's. The responsibility for NCANDS was given to the Data Team within the Children's Bureau at that time. Currently the responsibility for NCANDS is shared between the Office on Child Abuse and Neglect in the Children's Bureau and the Office of Data Analysis, Research and Evaluation, both within ACYF.) The current federal Contract Officer Representatives for NCANDS are Melissa Brodowski and Kurt Heisler.

Initially several key decisions were made by the National Center on Child Abuse and Neglect. These decisions have held the effort in good stead for many years.

- a) A federal-state partnership would be built and maintained to sustain the effort. To that end, states participated in the design of the system, in the piloting of all parts of the system, and in the design of the initial reports. The federal Government invested in annual technical assistance meetings and onsite technical assistance to build capacity of states to participate. A state advisory group was formed.
- b) Given that participation would be voluntary, the data collection would need to be cleared and approved by the Office of Management and Budget (OMB), but would not require rulemaking or regulation.
- c) Data would be collected annually on a calendar year basis, as that was most familiar with the states. This was later changed to the federal fiscal year to maximize comparability to other data collection efforts of the Children's Bureau.
- d) Data would be reported by states in a common record format, and states would crosswalk data elements from their own information systems to the common record format. These crosswalks would be reviewed by the technical assistance team to reduce inappropriate cross walks and maximize data comparability, wherever possible. States would be responsible for their own data extracts and submitting the data. Data would be resubmitted if the validation of the data resulted in a recommended corrections to the data file.
- e) Data were collected on all reports for which investigations were completed during the reporting period. Thus both data on reports that resulted in unsubstantiated findings, as well as those that resulted in substantiated findings, were collected. States were given 3 months after the close of the data reporting period to submit their data. These decisions resulted in more complete data on each record.

- f) Data would be validated and approved before compiling the annual report. Over the years the validation routines have become more comprehensive as more has been learned about the procedures and policies of child protective services agencies.
- g) The system was designed as a two-tiered phased-in system. At first states would only be asked to provide aggregated data. Then states that had the capacity to do so were encouraged to provide child-level data. For several years both types of data were collected. By the reporting year of 2000, child-level data had become the dominant method of submitting data and the primary source of reporting and estimating national statistics. By 2012, 51 jurisdictions were providing child-level data.
- h) The child-level data record was designed to establish an entity of report and child (a report-child pair) to enable data to be analyzed by reports made to the agency or by child.

Some further explanation of the last point above may be useful. When NCANDS was first started, many state systems were collecting data on reports, not persons. This is analogous to current reporting by APS data systems. Even though child identifiers were in their infancy, it was decided that in order to participate in the child-level reporting, states would need to use child identifiers in addition to a report identifier. A report could include more than one child and a child could occur in more than one report. This retained the work-related unit of analysis, namely reports that were investigated, and encouraged the development of the person unit of analysis. It has taken several years for the child identifiers to become consistent and to have a high level of reliability of being unique within a state. This goal has been achieved by almost all states, and continues to be a focus of attention.

Today NCANDS is a large system, receiving data from all 50 states, the District of Columbia and Puerto Rico, with 51 jurisdictions providing child-level data. More than 3.5 million child-level records a year are collected from the states in a common format. While not all states complete all data elements for each record, the record layout includes data on the characteristics and risk factors of the child, the characteristics of perpetrator, the types of maltreatment that were alleged and that were supported, and services provided to the child and the family. Each year, states continue to work on improving the comprehensiveness and accuracy of the data that they submit. Child-level data are maintained in a data warehouse environment allowing for the rapid deployment of many key analyses. Additional analyses are conducted using SQL (Structured Query Language) and IBM SPSS (originally Statistical Package for the Social Sciences). The 2011 annual report will be the 22<sup>nd</sup> annual report issued by DHHS. It is scheduled for release in December 2012.

## **LESSONS FROM THE DESIGN AND IMPLEMENTATION PROCESS**

Several lessons were learned during the design and early implementation stages of NCANDS.

- **Utilize Legislative Authority:** Under the CAPTA amendments of 1998, the authority for pursuing a national data collection system was given to DHHS. The legislation was interpreted as giving the department the authority to establish a voluntary data collection system. Subsequent amendments to CAPTA established additional data reporting

requirements, to the extent practicable, and several of these were incorporated into NCANDS in subsequent years.

There were two additional pieces of legislation that were highly influential on the evolution of NCANDS. One was legislation that provided enhanced funding for statewide automated child welfare systems (SACWIS) passed in 1993. The second was the requirement under the Promoting Safe and Stable Families Act of 2001 which modified the Social Security Act (Section 1123A) to establish Child and Family Services Reviews (CFSR) to monitor state child welfare performance. The development of indicators and standards under the CFSR gave additional impetus to states to increase their capacity to collect and report data to NCANDS, which became one of several key information sources for the CFSR.

- **Start from Existing Strengths but Strive for Aspirational Goals:** The basic starting points in implementing a national data system are to determine which agency or agencies has the most relevant and accessible information in an automated format to support an ongoing effort to collect data. In today's environment, automated information systems, as known as producing administrative databases, are critical for any ongoing national system, which will not be solely occasional.

The original design of NCANDS decided to focus on child protective services agencies, rather than other agencies such as law enforcement, hospitals, schools, day care centers, etc. The reasoning behind this decision was that the federal Government had an ongoing relationship with state child welfare agencies and that furthermore child welfare agencies are charged through federal and state legislation to investigate reports alleging child abuse and neglect. Both state-administered and state-supervised county-administered agencies agreed to participate.

Prior to the NCANDS initiative, various non-profit groups had had their own programs to develop national data, but these, whether supported by the federal Government or not, were short term and eventually unsustainable. Indeed part of the emphasis behind the development of NCANDS was some lack of satisfaction with the previous efforts conducted by advocacy groups.

Working with state child welfare agencies as partners has had the result that some types of maltreatment are under reported. In many states institutional abuse is handled by other agencies. In the most recent report, 16 states did not report on abuse by facility and group home staff to NCANDS. Furthermore NCANDS only includes those cases that have been reported to child welfare, and thus the data do not contain information not known to the child welfare agency. NCANDS does however make special efforts to collect some data that are not maintained by the child welfare agency. These notable exceptions include information on child fatalities, information on funding streams, and a few other topics.

In addition, although very few states could report on services, and many still have problems, the NCANDS record contains aspirational data elements related to risk factors and services.

- **Build Peer Leadership among the Reporting Entities:** The federal Government has provided technical assistance to the states each year in order to encourage and improve participation in NCANDS. However, the initiative has also depended upon peer leadership

among the states themselves. From the very beginning, the states were active in the design of the system. There continues to be a state advisory group, which essentially is a forum for discussing complex issues in depth before presenting the issues to the wider group for discussion and making suggestions to the federal Government. Each cycle of OMB approval involves intensive discussion with the states about their capacity to report on new data elements.

- **Involve Information Technologists as well as Policy and Practice Experts:** From the beginning NCANDS largely depended upon automated information systems. At the original design sessions, data processing department staffs were active participants in the design of the common record layout. This resulted in the core design concept of NCANDS, which is a record for each child in each report. Twenty years ago, many systems were primarily report-oriented rather than child-oriented. Therefore a record layout which included both reports and children associated with a report, allowed more states to participate, while still focusing attention on then need to develop and retain unique child identifiers.

The IT specialists were useful because they knew the details of their systems' capacities and could accurately discuss what was possible and what was not. The importance of recognizing the need to strengthen the infrastructure of data collection at the state and local levels was also emphasized when federal enhanced funding was provided for the development of SACWIS systems in states.

Even today, nearly half of the state representatives to the national meetings are business analysts, information technologists, and reporting specialists. Many are responsible for state information systems, which encompass far more than child protective services. The remaining attendees are primarily program managers and administrators, as well as quality assurance specialists.

## LESSONS ON THE RETURN ON INVESTMENT

In order to be successful, an investment needs to have returns that are useful to supporters and advocates. Some general lessons have been learned from the NCANDS experience.

- **Recognize and Emphasize the Utility of the Data:** Voluntary participation in large initiatives, such as NCANDS, need to have incentives. One incentive has been that the data are used and reported by the federal Government. An annual report has been published each year. This report has grown in its sophistication and breadth but certain key components have remained constant. One is that the core tables report data at the state level. National estimates are developed where useful. Data are aggregated across states for very specific multivariable analyses. Second, a large section of the report enables states to describe and comment on the context of their reporting, including policy, practices, definitions, and new initiatives. This is a rich source of information that is helpful in understanding the data. Third, the NCANDS data have been used by the government in major initiatives such as the CFSRs and an annual Report to Congress on Child Welfare Outcomes.

The data are used by several other governmental initiatives, researchers, and the general public. The data are included in several national reports on the status of children. A version

of the data set is archived annually at the National Data Archive on Child Abuse and Neglect at Cornell University. This is the public usage version of the data prepared for researchers. In addition, on average more than 600,000 persons a month access NCANDS reports on the Children's Bureau website.

- **Data Improve Due to Reporting:** The NCANDS and other data collection initiatives have shown that data improve as data become more available and accessible for analysis and review. As agencies find that other agencies, researchers, and policymakers are using their data, continuous quality improvement becomes an ongoing feature of service delivery, with regards to data, as well as service delivery.
- **Do Not Put all the Eggs in One Basket:** In addition to NCANDS, the government supports a periodic national incidence study of child abuse and neglect that utilizes sentinels in a sample of counties. In addition, two major research efforts, LONGSCAN and the National Study of Child and Adolescent Wellbeing, have provided rich detailed information on samples of children, most of which have had some contact with child welfare services. Furthermore the Children's Bureau has incorporated key measures of child maltreatment as reporting elements in several grant programs. The Children's Bureau has further supported collaborative efforts among courts, service providers, and child welfare agencies in service provision, outcome monitoring, and data reporting.
- **Return on the Investment Quickly:** Most students of successful systems change urge early return on investments. In other words, people need to see the value of the effort, even if it is not yet totally complete. NCANDS started in 1988 with the initial design effort. By 1991, OMB approval had been received on a reporting strategy that had been achieved through consensus building among all key stakeholders, including the reporting agencies and other key players in the field of child abuse. Data collection was launched that same year. By 1992, data were published in an annual report on 1990 data. Thus in a span of less than 5 years, from the start of the initiative, national data were published. This momentum retained the interest and commitment of all participants, and today, annual data are reported within 9 months of collection, responding to the ever increasing demand for current data.

## **APPLICATION OF LESSONS LEARNED TO ELDER ABUSE**

This section discusses briefly the possible implications of these lessons for the national collection of elder abuse data.

### *Legislative Authority and Home of the Initiative*

It appears that both the Older Americans Act amendments of 2006 and the Elder Justice Act give DHHS authority to collect national data on elder abuse. Furthermore it would appear that the most appropriate home for a national data collection system, if it were based upon Adult Protective Services data, would be the Administration on Aging within the Administration on Community Living. Depending upon the operationalization of the organizational chart of ACL, another branch of ACL might be a logical candidate, such as the Center for Disability and Aging Policy or the Center for Management and Budget. As stipulated in the legislation, cooperation with the Department of Justice would be beneficial.

Whichever unit was selected, it is likely that additional specialists in data collection, reporting and analysis would need to be hired or assigned in order to undertake and maintain such a complex endeavor. Providing technical support, and perhaps financial incentives to reporting agencies, could be important components of a strategy. Input from partner agencies would be critical during the design phase and very useful once the system was implemented. If the national data system were based upon other data, such as law enforcement data, the logical home would be a different agency, such as the DOJ.

#### *Type of Vehicle for National Collection*

Recent data collection efforts regarding elder abuse have been conducted under grant funding to the partners of the National Center on Elder Abuse and to independent researchers. The many and varying partners of the National Center on Elder Abuse have played lead roles in many of these efforts. In addition the Bureau of Justice Statistics has currently a project under a voluntary cooperative agreement with the Urban Institute to assess administrative data on elder abuse, mistreatment, and neglect. This study will largely focus on the capacity of APS agencies. The GAO has also surveyed APS agencies as part of their recent report.

When deciding how to move forward in establishing a national data system, different types of funding vehicles, such as grants, contracts, and cooperative agreements, will need to be reviewed to determine the pros and cons for different approaches within AOA or another agency. One thing appears clear. Regardless of the vehicle that is used, the federal Government would need to undertake to support the program. It is highly unlikely at this time, that a national data collection effort could be sustained without federal funding.

To the degree possible, a strategic plan should be developed that would allow for minimally two phases of the effort to be achieved. The first phase would include the design and piloting of a system. The second phase would include obtaining OMB approval, initiating the data collection, and issuing the first report. Subsequently, the government could determine if the ongoing maintenance of the system would be conducted under grant, contract, or by the government itself.

#### *Primary Source of Data*

Given the many efforts that have already been conducted to collect data from APS agencies, and the currently ongoing effort to assess the capacity of these agencies, it would seem that APS would be a key source of national data and indeed perhaps the obvious starting point. Several reports have already discussed the limitations of such data, and more work would have to be done to establish priorities in collecting data that are the most reliable at the present, with the additional goal of collecting data that have the best chance of becoming available.

Given that there will always be differences in policies, priorities, and definitions among APS agencies, a critical part of the design of the system would be to create definitions for the national system against which the states would crosswalk their own data elements, mapping to the national specifications. This process would require technical assistance and some degree of oversight. Moreover the mapping to national specifications should be updated periodically by each state as it develops its own capacities. These mapping documents could be made available to those who would be interested in interpreting the data further.

Based on the experience of NCANDS and other national projects, a common record layout is highly recommended. A common record layout would encourage states to take responsibility for their data submissions and the interpretation of their data.

An alternate approach would be to obtain the data in various formats and structures from the 52 states and analyze these different submissions. This approach was used for a period of time prior to the development of NCANDS. The problem with such an approach is that it results in overhead costs needed to keep up to date on all 52 systems. Such an approach also removes the primary responsibility for keeping data submissions up to date from the submitting agency. Moreover agencies may perceive that their participation is minimal and not undertake to improve state and local capacity. As new capacities for such data mining become available, this may be more viable in the future, but such techniques for cross-jurisdictional data are still in their infancy and the costs unknown.

#### *Annual Data Collection from all States*

To date the reports of national estimates of elder abuse have been periodic. Indeed one report made the recommendation that data be collected every 4 years. NCANDS and the other two major data collection efforts of ACYF are annual programs. The advantages of annual data collection efforts include that data are more up to date for use by multiple stakeholders and that capacity building becomes an ongoing priority rather than receiving only periodic attention.

#### *Core Data Elements and Aspirational Goals*

The last APS survey was conducted in FY 2003. A list of suggested key elements that would be part of a national data collection system is provided below for further discussion. These elements all refer to persons aged 60 and older, although a national system might collect data on the larger population coming to the attention of state and local APS agencies.<sup>131</sup> The issues pertaining to collecting data on elders who are abused while in nursing homes, other residential care, hospitals, or prisons, need further discussion. An initial list of data elements includes the following.

- Reports with completed investigations in the reporting year
- Report sources for these reports
- Reports substantiated or founded in the reporting year
- Number of persons associated with the substantiated reports (duplicated count)
- Age distribution of these persons
- Race distribution of these persons
- Sex distribution of these persons
- Functional capacity of these persons
- Living arrangement of these persons
- Founded maltreatments of these persons
- Number of these persons who received ongoing services by APS
- Number of persons who needed to be placed under guardianship due to mistreatment
- Number of persons who needed to change their living arrangement due to mistreatment



- Relationship of perpetrator(s) to these persons (duplicated count)
- Number of perpetrators referred to law enforcement (duplicated count)
- Number of uniquely counted persons associated with the substantiated reports
- Number of uniquely counted persons who had received prior services from APS
- Number of uniquely counted perpetrators associated with these persons

A number of the above elements may be aspirational at this point and might need to be included in a person-level data collection system, if such a system were to be implemented. States would also be asked to include their policies and definitions as related to the above data elements. If a person-level system were implemented, it is highly likely that additional data elements would be considered.

#### *Peer Leadership and Partnership Support*

The success of a national system will depend upon the agreement of state agencies to participate and the recognition that certain states would be leaders in the efforts, due to their relatively advanced information systems or experience with collecting comprehensive and reliable data. Without the participation of these states as leaders and partners the effort is likely to be less successful or more slowly successful. The government could also consider if financial support were to be provided to leading states in order to assist other states and/or to those states that have specific plans to improve their participation in a system. Technical assistance in general will also need to be provided.

Partnership support might also be defined as the collaborative support of other governmental agencies in supporting states to develop their data system in conjunction with their improvements to other data systems, such as health and justice systems. As DHHS encourages the development of comprehensive cross-sector systems, such enterprise systems might also benefit the national collection of data on elder abuse. Various funding vehicles could be considered and assessed as to their utility in encouraging such collaboration and exchange of data.

#### *Information Technologists*

As a plan is developed to design and implement a system, the role of information technologists in the federal Government, as well as in the states, will need to be considered. The standards of data exchange established by DHHS and other government agencies may apply. Local capacity and resources to participate may be under the control of the state or local data processing units. Thus, the stakeholders in such an effort should include not only policy specialists, programmatic specialists, and advocates, but also information technologists and planners. The state offices of information technology might be a group with which to discuss plans for a national system.

#### *Return on Investment*

A clear concept of return on investment will be needed. Not all lessons learned from NCANDS may be appropriate or other returns may be more appropriate. Some to consider are listed below.

- **Emphasize Utility:** A strategic plan could include a discussion of the utility and purpose of the data. It is likely that the various stakeholders would need to be considered so that such an effort could meet as many needs as possible.
- **Improve Data Quality:** The argument might be made that it is through making data more available to a wide audience that the complexities of the data, the environments in which data are collected and reported, and the need for continual attention to improving both the breadth and depth of data becomes a reality and is integrated into ongoing agency performance. This would suggest that the development and implementation of a national strategy is of utmost urgency.
- **Institute Multiple Approaches:** One national data collection program could not collect all useful and necessary data. While investing in a national data system, other means of gathering information on elder abuse could and should be conducted in parallel. Research needs to be supported on the characteristics and risk factors associated with elder abuse; prevention programs need to be developed, evaluated, and replicated; and experiments of integrating existing data sets to gain a cross-agency perspective could also be conducted. The roles of intensive local prevalence studies and a national incidence study could also be considered. These efforts would serve to complement and enhance the understanding of national data, which could not be successful in addressing all topics of interest.
- **Make Quick Returns:** Each type of initiative needs to be able to gain and maintain momentum. Momentum is lost when there is not a clear focus or a clear purpose of an initiative.

## SUMMARY

In outlining the steps that would be important in developing a national system, the complete critical path is not yet clear. One of the most important steps will be for AOA to determine how it wishes to utilize its legislative authority. It will also be important to determine how the federal requirements that certain classes of professionals are mandated reporters of elder abuse could support such a system.

While considering future options, additional strategies such as listed below should be considered in terms of their relationship to the analysis of data from a national system.

- a) Continue to fund rigorous studies of prevalence of elder mistreatment conducted through surveys of individual. Establish a plan to repeat a number of these studies, including those funded by the Department of Justice, within another 3-5 years.
- b) Continue to work with the National Center on Aging and its partners to support periodic surveys of the APS workforce and policies of APS agencies.
- c) Consider repeating the national incidence study conducted in 1998.

- d) Develop parallel efforts to collect information from hospitals, nursing homes, other facilities, and law enforcement to supplement data collected by APS. Consider adding data elements to other ongoing data collection efforts supported by the federal Government.
- e) Coordinate grant, cooperative agreements, and contracts within AOA to maximize various initiatives to compile additional statistics on elder abuse. Invest in data integration projects to develop analyses and products based on the multiple sources.
- f) Provide grants to states to develop interagency data sets which they can use to analyze data on elder abuse. Disseminate widely the results from these analyses to encourage other states to also conduct such efforts.

In short, elder abuse is a comprehensive issue that could widely benefit from national statistics on a core set of data from all jurisdictions in the nation on an annual basis. The route to achieve this goal chosen by those responsible for meeting the needs of our vulnerable elders will be shaped by the history, interests, leadership, commitment of many individuals and agencies, and resources of the field. However it is hoped that lessons from other fields, such as child abuse and neglect, may be helpful in making timely progress towards achieving national data on this most important issue.

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**WRITTEN TESTIMONY**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

Dear Elder Justice Coordinating Council members and honored guests, my name is Xinqi Dong, and I am humbled to provide testimony on elder justice through the lenses of culture and community in our increasingly diverse populations. At Rush University Medical Center in Chicago, I direct the Chinese Health, Aging and Policy Program and am the Associate Director of the Institute for Healthy Aging. Today, I testify as a geriatrician who provides direct care for frail and vulnerable populations, many of whom struggle with their physical health and psychosocial wellbeing in our complex health care system. Moreover, I sit before you as an epidemiologist who has been conducting research on elder abuse in our diverse populations and the critical roles of community in the prevention of elder abuse. Furthermore, as an immigrant and a grandson of a man who dedicated his life advocating for social justice, I witnessed first-hand my grandfather's suffering from being a victim of repeated violence and sent to prison at the age of 75 during the Cultural Revolution.

Currently, the aging population represents approximately 40 million of the total US population, and by 2030, there will be about 72.1 million older people, more than twice the number in 2000. In 2010, approximately 20% of people ages 65 and over are minorities, with 8.4% are African American, 6.9% are Hispanic, 3.5% are Asian, and 1% are Native American. From 2010 census, minority populations are growing rapidly. In the last decade, the rate of growth has been 5.7% in the white population, 43.0% in the Hispanic population, 43.3% in the Asian population, 18.3% in the Native American population, and 12.3% in the African American population.

Recent studies have expanded our knowledge about elder abuse in diverse populations. Evidence suggests that prevalence of financial exploitation is almost 3 times higher and psychological abuse is 2 times higher in African American older adults than white older adults. A recent study in a low-income Latino community indicates that 40% of older adults have experienced abuse in the last year, yet only 2% were reported to authorities. In the Chinese population, despite the high cultural expectations of filial piety from older adults, 18% of U.S. Chinese older adults have self-reported elder abuse. Despite these alarming data, a severe lack of research has directly hampered our ability to devise targeted prevention and intervention strategies. Research is needed to explore the issues of cultural norms and expectations in relation to the perception, determinants, and impact of elder abuse in diverse communities.

However, significant challenges exist in the preparation and conduct of aging research in diverse populations, especially on culturally sensitive issues, which may be associated with stigma and shame. For example, in Chinese, the word dementia literally translates into two characters: Crazy and Catatonic; the word depression is synonymous with schizophrenia; and elder abuse elicits unbearable family shame and frank violation of the most sacred cultural norms. In order to devise intervention and prevention strategies, linguistic and cultural complexities and nuances are critical to provide deeper understanding of elder abuse in diverse communities. The

Community Based Participatory Research (CBPR) approach could be a potentially optimal model to explore the issues of elder abuse in diverse communities. CBPR necessitates equal partnership between academic institutions with community organizations and key stakeholders to examine the relevant issues. This partnership requires reciprocal transfer of expertise and needs to build infrastructure towards sustainability. Recent elder abuse research in Native American, Latino and Chinese communities has demonstrated success in enhancing infrastructure and networks for community engaged research and community-academic partnerships.

The PINE (Population Study of Chinese Elderly) 華人松年研究 is one example of fruitful collaboration between academic and community, leveraging the principles of CBPR to advance the scientific knowledge of elder abuse, filial piety, and psychological distress in Chinese populations. We instituted a community advisory board of key stakeholders to guide our ongoing collaborations and initiated a grass-roots educational initiative on health and psychosocial distress facing the Chinese population. The PINE study is a population-based epidemiological study of 2,500 Chinese older adults in the greater Chicago area. With strong community support and our bicultural/bilingual research team, 89% of Chinese older adults have agreed to participate in our in-depth survey interviews. In addition, through the integration of grass-roots civic engagement with culturally appropriate activities (i.e., calligraphy, Tai-chi, Chinese poetry, water painting and etc.), Chinese older adults have been more willing to discuss and disclose family conflict and elder abuse in research studies.

As an APSA Congressional Policy Fellow/Health and Aging Policy Fellow over the last 2 years, I have had the privilege to work with policy makers on elder justice issues nationally and internationally. Moreover, as a member of the Institute of Medicine Global Violence Prevention Forum, we continue to push for the prevention of elder abuse and violence towards our most vulnerable populations. In Chinese communities, violence towards older adults does not only include elder abuse, but also self-directed violence: suicide. Globally, suicide in the Chinese population accounts for 20% of suicide in the world and Chinese older adults have a rate that is 5 times higher than that of younger adults. In the US, Chinese older adults, particularly Chinese older women have higher suicide rates than other racial/ethnic groups. Among many etiologies, family conflict is a predominant factor in these suicidal ideations and attempts. Our current work in the PINE study will help to more precisely understand the relationships among elder abuse, cultural factors, and psychological distress in Chinese families.

In conclusion, I hope the Elder Justice Council could consider to: 1) invest in community-based participatory research to understand the complex linguistic and cultural issues surrounding elder abuse across diverse communities; 2) integrate cultural and community issues on elder abuse into professional education and training on aging issues, especially on psychosocial wellbeing; and 3) recommend the inclusion of community members and key stakeholders in the multidisciplinary teams dealing with elder abuse issues at the city, state and national levels.

Elder Justice Coordinating Council members and honored guests, I thank you for the opportunity to speak before you today, and my special thanks to Assistant Secretary Kathy Greenlee whose personal dedication has inspired us all to continue advocating for the prevention of elder abuse in our diverse communities. Submitted with utmost gratitude.

**Xinqi Dong, MD, MPH**

DIRECTOR, RUSH INSTITUTE FOR HEALTHY AGING, RUSH UNIVERSITY MEDICAL CENTER

**WHITE PAPER**

ELDER JUSTICE COORDINATING COUNCIL

OCTOBER 11, 2012

**BUILDING THE FOUNDATION TO PREVENT ELDER ABUSE:  
CULTURAL DIVERSITY AND THE ROLE OF COMMUNITY**

Elder abuse is a substantial global public health issue. The World Health Organization has declared that elder abuse is a violation of one of a human being's most basic fundamental rights: the right to be safe and free of violence<sup>132</sup>. In the United States, an estimated 10 percent of elders experience abuse each year, and many of them experience it in multiple forms.<sup>133,134</sup> In addition, elder abuse is associated with increased risk of premature morbidity and mortality.<sup>135,136,137,138</sup> Despite the accessibility of Adult Protective Services (APS) and nursing home regulations in all fifty states, an overwhelming number of abused older adults pass through our health care system undetected and untreated.

A major complexity in advancing the field of elder abuse is exemplified by the issues of cultural diversity surrounding elder abuse. In 2003, the National Research Council put forth a strong recommendation to urge the field to explore the cultural issues related to elder abuse.<sup>139</sup> In 2010, National Academy of Science and National Institute on Aging organized a state-of-science meeting on research issues in elder abuse and financial fraud and identified the cultural diversity as a major gap for the field of elder abuse.<sup>140</sup> Despite these reports and the continued effort of multiple disciplines across academic, community, state and federal organizations, there remain vast gaps in our understanding of cultural issues on elder abuse.

Aging population (ages 65 and over) represents approximately 40 million (12.9%) of the US population and by 2030, there will be about 72.1 million older people, more than twice the number in 2000. In 2010, approximately 20% of people ages 65 and over are minorities, with 8.4% are African American, 6.9% were of Hispanic origin, 3.5% were Asian or Pacific Islander, and 1% were American Indian or Native Alaskan.<sup>141</sup> From 2010 US census, minority populations are growing rapidly. In the last decade, the rate of growth has been 5.7% in the white population, 43.0% in the Hispanic population, 43.3% in the Asian population, 18.3% in the Native American population, and 12.3% in the African American population.

Recent studies have expanded our knowledge about elder abuse in diverse populations. Evidence suggests that prevalence of financial exploitation is almost 3 times higher and psychological abuse is 2 times higher in African American older adults than white older adults.<sup>142</sup> A recent study in a low-income Latino community indicates that 40% of older adults have experienced abuse in the last year, yet only 2% were reported to authorities.<sup>143</sup> In the Chinese population, despite the high cultural expectations of filial piety from older adults, 35% Chinese older adults have self-reported elder abuse.<sup>144,145</sup> Despite these alarming data, a severe lack of research has directly hampered our ability to devise targeted prevention and intervention

strategies. Research is needed to explore the issues of cultural norms and expectations in relation to the perception, determinants, and impact of elder abuse in diverse communities.

Future quantitative and qualitative studies are needed to better define the concept and cultural variations in the construct, definition and understanding of elder abuse. Cultural explorations are needed to better explore the barriers to reporting elder abuse and help-seeking behaviors with respect to the specific socio-cultural contexts. Moreover, systematic studies are needed to understand the prevalence, incidence, risk/protective factors, and consequences associated with incident cases of elder abuse and its subtypes in diverse populations. Furthermore, research is needed to explore the issues of cultural norms and cultural expectations in relation to the perception, determinants, and impact of elder abuse in different racial/ethnic communities.

However, significant challenges exist in the preparation and conduct of aging research in diverse populations, especially on culturally sensitive issues, which may be associated with stigma and shame. For example, in Chinese, the word dementia literally translates into two characters: Crazy and Catatonic; the word depression is synonymous with schizophrenia; and elder abuse elicits unbearable family shame and frank violation of the most sacred cultural norms. In order to devise intervention and prevention strategies, linguistic and cultural complexities and nuances are critical to provide deeper understanding of elder abuse in diverse communities. The Community Based Participatory Research (CBPR) approach could be a potential model to explore the issues of elder abuse in minority communities. CBPR necessitates equal partnership between academic institutions with community organizations and key stakeholders to examine the relevant issues. This partnership requires reciprocal transfer of expertise and needs to build infrastructure towards sustainability. Recent elder abuse research in the Native American and Chinese communities have demonstrated success and have enhanced infrastructure and networks for community engaged research and community-academic partnerships.<sup>146,147</sup> CBPR methodology could be a novel model for conducting systematic and culturally appropriate elder abuse research in minority populations.

The PINE (Population Study of Chinese Elderly) 華人松年研究 is one example of fruitful collaboration between academic and community, leveraging the principles of CBPR to advance the scientific knowledge of elder abuse, filial piety, and psychological distress in Chinese populations. We instituted a community advisory board of key stakeholders to guide our ongoing collaborations and initiated a grass-roots educational initiative on health and psychosocial distress facing the Chinese population. The PINE study is a population-based epidemiological study of 2,700 Chinese older adults in the greater Chicago area. With strong community support and our bicultural/bilingual research team, 89% of Chinese older adults have agreed to participate in our in-depth survey interviews. In addition, through the integration of grass-roots civic engagement with culturally appropriate activities (i.e., calligraphy, Tai-chi, Chinese poetry, water painting and etc.), Chinese older adults have been more willing to discuss and disclose family conflict and elder abuse in research studies.

At a broader level, city and state leadership could collaborate broadly with diverse communities to bring lights to the issues of elder abuse. In 2004, under the direction of Chicago Mayor, Chicago Wellbeing Task Force was formed to establish: an on-going multidisciplinary task force, training for diverse disciplines to identify vulnerable older adults, services at the community, city, and state level to assist these vulnerable older adults. Over the last 10 years, the task force has trained more than countless persons on aging issues and vulnerability factors.



Through the work of the taskforce, Legislative Task Force was formed to update the IL Elder Abuse Act, which was unanimously passed and implemented at the state level.

As an APSA Congressional Policy Fellow/Health and Aging Policy Fellow over the last 2 years, I have had the privilege to work with policy makers on elder justice issues nationally and internationally. Moreover, as a member of the Institute of Medicine Global Violence Prevention Forum, we continue to push for the prevention of elder abuse and violence towards our most vulnerable populations. In Chinese communities, violence towards older adults does not only include elder abuse, but also self-directed violence: suicide. Globally, suicide in the Chinese population accounts for 20% of suicide in the world and Chinese older adults have a rate that is 5 times higher than that of younger adults. In the US, Chinese older adults, particularly Chinese older women have higher suicide rates than other racial/ethnic groups. Among many etiologies, family conflict is a predominant factor in these suicidal ideations and attempts. Our current work in the PINE study will help to more precisely understand the relationships among elder abuse, cultural factors, and psychological distress in Chinese families.

Culturally appropriate education and training are critically needed for health care professionals, law enforcement personnel, social services agencies, adult protective services, community organizations, and others who have contact with older adults.<sup>148</sup> Federal programs that provide funding to academic institutions should mandate elder abuse and cultural diversity training and/or violence-across-lifespan training for internal medicine, geriatric medicine, family medicine, and other relevant medical and surgical subspecialties. Culturally appropriate training and resources for the Adult Protective Services (APS) and other front-line workers will be critical to alleviate factors exacerbating abusive situations and to prevent elder abuse recidivism. Moreover, this education and training must emphasize medical, social, and cultural complexities of the vulnerable seniors with respect to cognitive impairment, dementia, and decision-making capacity issues. Furthermore, this education and training needs to be vertically integrated across relevant disciplines in order to maximize learning and knowledge retention. Comprehensive and culturally appropriate advocacy and policy efforts are needed to push for the culture diversity issues of elder abuse in these legislations at the local community, city, state, and federal levels.<sup>149</sup>

Elder abuse is a pervasive public health issue, yet there are major gaps in research, education and training and policy. Nationally representative longitudinal research is needed to better define the incident, risk/protective factors, and consequences of elder abuse in diverse racial and ethnic populations. Collective federal, state, and community efforts are needed to support the culturally appropriate training and education on the issues of elder abuse and to enable practice and policy changes for our increasing diverse vulnerable aging populations. In conclusion, I hope the Elder Justice Council could consider to: 1) invest in community-based participatory research to understand the complex linguistic and cultural issues surrounding elder abuse across diverse communities; 2) integrate cultural and community issues on elder abuse into professional education and training on aging issues, especially on psychosocial wellbeing; and 3) recommend the inclusion of community members and key stakeholders in the multidisciplinary teams dealing with elder abuse issues at the city, state and national levels.

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