

Testimony of  
**The Honorable Christopher Chiles**

PROSECUTING ATTORNEY  
CABELL COUNTY, WEST VIRGINIA  
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TESTIMONY

OF

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CABELL COUNTY, WEST VIRGINIA

AND

VICE PRESIDENT  
NATIONAL DISTRICT ATTORNEYS ASSOCIATION

BEFORE A HEARING  
OF THE  
CRIME, CORRECTIONS  
AND  
VICTIMS' RIGHTS SUBCOMMITTEE

ON

ELDER ABUSE, NEGLECT  
AND FINANCIAL EXPLOITATION

SEPTEMBER 24, 2003

My name is Chris Chiles. I am the elected prosecuting attorney in Cabell County, West Virginia and am honored to serve as vice president of the National District Attorneys Association. I want to thank you, on behalf of the National District Attorneys Association, for the opportunity to present our concerns on elder abuse, neglect and financial exploitation

To place my remarks in context - let me briefly tell you about my jurisdiction. Cabell County has a population of almost 100,000 people with some 16% being over the age of 65. Health care services are one of the largest employers in the county with home health care, services for the elderly, and hospice facilities being second only to our hospitals in terms of annual payroll. According to the 2001 economic census almost 10% of our population works in the health care field.

I currently supervise a staff that includes eight full-time and two part-time assistant prosecuting attorneys. Annually, my office prosecutes several hundred felony cases.

Before I begin my remarks I would ask that my complete testimony be included in the record.

I would also request the National District Attorneys Association policy entitled "Policy Positions on the Prosecution of Elder Abuse, Neglect, and Financial Exploitation" be included in the record. I am proud to have served as the co-chair of our Juvenile Justice and Family Law Committee, along with District Attorney Elizabeth Scheibel of Northampton, Massachusetts, during the period in which the policy was developed.

#### HOW BAD CAN IT GET?

On January 17, 2000 at about 7:52 a.m., the Fire Department in Des Moines, Iowa, received a call requesting non emergency response to the home of an elderly woman who had a "sore leg.:

When paramedics arrived they were admitted to the house by a man and they immediately knew something was wrong. An indescribable odor which poured from the home - the odor of decaying flesh, human feces and urine. When they entered the house they saw a small elderly woman, covered with a blanket and newspapers, on the floor in the living room.

The medics went over to the woman to provide medical assistance. The blanket that covered her was soaked with human waste. As they lifted the blanket, the stench was overpowering; the paramedics saw that she was positioned in a kneeling position with her legs crisscrossed. There were plastic bags around where she was seated and her foot was wrapped into the plastic. The paramedics tried to raise the woman but couldn't - she was physically stuck to the floor from the fluids from her own badly injured body.

The paramedics then called for backup and also called the police. A pumper truck arrived within minutes and four firemen worked to twist and move the woman to get her off of the ground using specialized equipment. As she was moved from the ground, the smell of decaying flesh, human urine and feces became unbearable; steam rose from the carpet; and there were maggots on her body and on the plastic below her. As they separated her from the plastic that surrounded her, and that covered her foot, her heel fell off.

As one paramedic supported the woman the other firemen fled the house to put on oxygen masks that are typically used in fires.

The firemen moved the frail woman onto a cot. The paramedics tried to help straighten her rigidly locked legs but it was just too painful for her. They took her in the same kneeling position that they had found her to the ambulance.

The victim was taken to Lutheran Hospital Emergency Room by ambulance. When she arrived at the hospital, ER staff found that large sections of her body had rotted, that the tissue was dead. All that remained were huge open wounds. The nurses cut off her dirty clothing, sponge bathed her and removed maggots from her body. The nurses attempted to cauterize her but it was very difficult because the flesh had rotted away.

Emergency surgery was performed and the doctors tried to remove the massive sections of the decaying flesh, but the damage was too extensive. The infection was too deep. After emergency surgery was performed she never regained consciousness. Mrs. Blossom Deering died just three days later, on January 20, 2000. The infection was just too much for her little decaying body.

As the paramedics had treated Mrs. Deering at the scene they had asked the man who had answered the door what had occurred.

The man had told the paramedics that Ms Deering had leg pains and he had not been able to help her. When asked how long Mrs. Deering had been on the floor he had responded 4-5 days. The man also told the medics that he was a family friend, who had moved into the house, to help her out.

Mrs. Deering, however, had told the medics that she had been on the ground for approximately 2 weeks. She had not wanted the defendant to call for help for fear she would end up in a nursing home but finally she agreed to allow him to seek help for her.

The Des Moines Police arrived, as the paramedics were leaving. They told the police that they wanted the man charged with Neglect of Dependent Adult and Adult Abuse. The police waited outside for the arrival of detectives and crime scene investigators but allowed the man to return to the house.

Inside, the man picked up the human waste soiled blanket, the plastic and newspapers that had surrounded Mrs. Deering threw them into a big garbage bag and tried to conceal them in the basement. He then put baking soda down on the soiled carpet, covering it with clean newspaper, and lit incense to try and hide the odor.

The attempts to conceal the evidence were to no avail. When detectives arrived they could still smell the stench; when they lifted the newspaper and could clearly see the outline of Mrs. Deering's body; and they quickly found the trash bag with the soiled blanket where it had been hidden.

In questioning the man they discovered that the relationship had begun several years previously when he had started doing yard work for Mrs. Deering. He had then moved into the house rent free in exchange for taking care of Mrs. Deering and her home. He maintained that she had exhibited leg and foot problems that had caused her pain.

When asked how Mrs. Deering ended up on the floor he stated that he had returned from work during his lunch hour and found her there. She didn't want help summoned because it might require her to leave her home. He maintained that she was there only 4-7 days (his statements were inconsistent) and that he would bring her food and drinks.

Finally Mrs. Deering purportedly consented to contacting medical care and the call was placed to the Fire Department.

As the investigation proceeded some telling facts were uncovered. Mrs. Deering had income of only \$1,000 per month. Before the man moved into her home Mrs. Deering was current on her bills and taxes; afterwards she was delinquent on her taxes and credit cards. After the man moved into the home, he wrote over \$3,000 in personal checks to himself, from Mrs. Deering's checking account - approximately half of her income for that period of time.

While Mrs. Deering was on the floor dying in her own waste he used her money to go on a shopping spree and gamble, not once but several times.

The man was charged under the Iowa code with Neglect of Dependent Person. Defendant's trial commenced on August 21, 2000 and the defendant pled guilty as charged. Defendant's total prison term is 10 years. He has been denied parole.

#### NATIONAL POLICY ON ELDER ABUSE

In May of 1986 the Board of Directors of this Association adopted a policy on elder abuse stating that:

"Vast numbers of our country's elderly citizens have silently endured physical trauma, financial devastation, and emotional distress because they have been victimized by anonymous criminals - or perhaps worse - by once trusted caretakers, or family members. Just as the criminal justice system has rightly recognized that child abuse can be curbed by the enactment of new laws and the use of special procedures, so too should the system be amenable to changes on behalf of our growing elderly population."

The resolution then went on to list the steps that were believed necessary to deal with the growing problem of elder abuse. Among these were specialized units in police and prosecutors offices to handle these crimes; enactment of new laws enhancing punishment and the establishment of special hotlines to report incidents of crimes against the elderly. The resolution also called for a "high visibility" campaign against elder abuse to deter offenders.

The policy concluded by saying:

"All segments of the community must unite to protect the victims, prosecute the offenders and prevent the recurrence of the outrageous acts against these citizens who deserve our respect and reverence."

Since then NDAA has worked to make this policy a viable concept through meetings with the Department of Justice, with congressional committees with oversight on issues involving the elderly and with other organizations that specialize in the area of elder law.

Ultimately this led to the development of the more lengthy policy that I have offered for the record today. This was compiled by prosecutors representing the various state prosecutor associations and, we believe, represents an accurate portrayal of both the issues and solutions facing us today.

A few of the many prosecutors who helped develop the policy should be recognizable to members of this committee. From South Carolina Solicitors John Justice, Donnie Myers and Randolph Murdaugh contributed their experience; from Delaware it was Attorney General Jane Brady; from Iowa it was Polk County Attorney John Sarcone and Black Hawk County Attorney Tom Ferguson; Utah was represented by District Attorney David Yocum of Salt Lake City and County Attorney Mark DeCaria of Ogden; from Alabama it was David Barber the DA in Birmingham; from Wisconsin it was E. Michael McCann; Idaho was represented by Prosecuting Attorney Greg Bower of Boise; from California we had Jim Fox from San Mateo County, Grover Trask of Riverside and Tom Sneddon of Santa Barbara; Cook County States Attorney Dick Devine and Winnebago County States Attorney Paul Logli were from Illinois; North Carolina was represented by C. Colon Willoughby of Raleigh; and Texas by Jamie Esparza of El Paso and Henry Garza of Bell County.

Collectively their years of experience as prosecutors, along with those of the many others who worked on this policy, are an unheralded national treasure and their insights should be given due recognition in this troublesome area of the law. I commend their work for your study.

While the policy addresses a number of areas of concern I want to highlight several that I believe require special attention.

## THE GROWING PROBLEM OF ELDER ABUSE

Whether we have more incidents of elder abuse or are simply more aware of the problem does not decrease the magnitude of the issues that we, and generations to come, face in addressing abuse of those unable to protect themselves.

Incidents of elder abuse are underreported - sometimes by the victims themselves - and often times ignored, but they are fast becoming a pressing national concern if for no other reason than we are the victims of the future.

The significant elder population that exists today, the large number of individuals in institutional settings, and the current reported levels of elder abuse in domestic and institutional settings help to illustrate the current magnitude of the elder abuse problem in this country. In 2001, only 41.6% of prosecutors surveyed had handled elder abuse cases (Bureau of Justice Statistics Bulletin, National Survey of Prosecutors, "Prosecutors in State Courts, 2001). With our increased life spans we will soon see multigenerational families with several generations above the age of

60. A dramatic increase in the elder population must, unfortunately lead to an increased rate of crime against elders as well. As prosecutors we must be aware of this increase and the impact that it will have on our communities and their resources.

The issue of elder abuse is by no means a small-scale matter given the number of elders in this country and the growth in those numbers projected for the future. The number of persons 65 years and over has increased substantially "from 3.1 million in 1900 to 33.2 million in 1994. Under the Census Bureau's middle series projections, the number of persons 65 years and over [will] more than double by the middle of the next century to 80 million. About 1 in 8 Americans were elderly in 1994, but about 1 in 5 could be elderly by the year 2030." (U.S. Census Bureau, "65+ In the United States")

Because elder abuse is so often unreported, it is difficult to develop accurate statistics on the number of crimes of elder abuse that occur in this country every year. The National Center on Elder Abuse estimated that in 1991, for cases of domestic setting abuse, "2.5 million people were victims of various forms of elder abuse. This figure was adjusted in 1996, based on state reporting data, to suggest that there were between 820,000 and 1,860,000 abused elders in the country" in domestic settings.

The Administration on Aging reports that the National Elder Abuse Incidence Study, done in 1996, found:

? "555,011 persons, aged 60 and over, experienced abuse, neglect, and/or self neglect in a one-year period;

? Almost four times as many new incidents of abuse, neglect, and/or self-neglect were not reported as those that were reported to and substantiated by adult protective services agencies;

? Persons, aged 80 years and older, suffered abuse and neglect two to three times their proportion of the older population; and

? Among known perpetrators of abuse and neglect, the perpetrator was a family member in 90 percent of cases. Two-thirds of the perpetrators were adult children or spouses."

In July 2001, a report prepared by the Special Investigations Division, Committee on Government Reform, U.S. House of Representatives, revealed several major findings regarding abuse in institutional settings:

? "Over thirty percent of nursing homes in the United States-- 5,283 nursing homes - were cited for an abuse violation that had the potential to cause harm between January 1999 and January 2001. These nursing homes were cited for almost 9,000 abuse violations during this two-year period.

? Over 2500 of the abuse violations in the last two years were serious enough to cause harm to residents or to place residents in immediate jeopardy of death or serious injury. In total, nearly 10 % of the nursing homes in the United States--1,601 nursing homes--were cited for abuse violations that caused actual harm to residents or worse.

? The percentage of nursing homes cited for abuse violations has increased every year since 1996. In 2000, over twice as many nursing homes were cited for abuse violations during annual inspections than were cited in 1996."

## THE ELDER VICTIM

As we develop more information in elder abuse it is becoming readily apparent that traditional victim's services, and concepts, must be expanded to meet the needs of the elderly.

As shown in the circumstances leading to the death of Mrs. Deering, fears that may not impact on us in our current stage of life may become increasingly problematic as we get older. In her case, as you may remember, her fear of being removed from her home delayed, at least to some degree, notification of medical authorities.

A man who stormed ashore at Normandy on D-Day or walked out of the "Frozen Chosen" is not likely to report that he was mugged and couldn't defend himself; your mother - who taught you all you needed to know about balancing your checkbook- isn't willingly going to tell you that she was just fleeced by a telephone scam artist.

Just as the crimes committed against the elderly are varied so are the characteristics and needs of elders as victims. Impairments, disabilities and fear may interfere with the ability or willingness to report the crime, to testify in court, to remember essential details of the offense, or to even recognize they have become the victim of a crime. Cognitive impairments may place significant limitations on the elder victim's capacity to remember and describe the crime. Speech disabilities may make speaking difficult and may even render the victim incapable of communicating. Even the enhanced frailty of the elderly may increase the chance of death or impairment that younger victims might survive. These are all issues which prosecutors must be trained to identify and address in order to adequately prepare the witness, and case, for trial. Prosecutors must also lead their communities in educating them about the problems of elder abuse.

In addition to those physical and mental abilities that directly impact on viability of an elder victim as a witness, there are a number of special needs with elder victims that are not seen in most criminal trials. Many elders require specialized medical equipment to function, require medications administered on a regular basis, experience fatigue easily and often have hearing and vision impairments. Prosecutors must be sensitive to these needs and plan their trial strategy to accommodate these requirements.

Lastly, the elder victim may come forward with a number of reluctances and fears. An elder victim of financial exploitation may be very embarrassed over losing money in one of the many perpetrated scams and, therefore, reluctant to participate in the prosecution. The perpetrator of the abuse, neglect, or exploitation may be, and often is, a family member. As a result, the elder victim may be either fearful due to threats by the family member or reluctant to prosecute because of feelings of compassion towards the relative. Lastly, elder victims may feel that they may be viewed as vulnerable and will in some way lose their autonomy if they participate in the prosecution of the matter. Prosecutors should be trained to recognize these fears and reluctances and their causes. They should also be trained how to address these concerns with the elder victim so that the case can be successfully prosecuted.

Elder abuse cases often present problems similar to what we frequently encounter in cases of domestic violence or child abuse. Some victims may be afraid of their abusers, particularly if they think they will be returned to their care. Others may feel that they love their abusers and do not want to do anything that will negatively impact them. Many of these victims will be reluctant to testify and some will simply refuse to testify.

We need to develop special policies and procedures in our offices that address the needs of elder victims. We must ensure that the overall stress and inconvenience to the elder victim during the investigation and prosecution of the case is minimized to reduce trauma as much as we can.

Because of the increased risk of memory loss, illness, and even death, we need to take all possible action to expedite the filing, trying, and sentencing of elder abuse cases. To preserve vital evidence we need to consider videotaped depositions of the elder victim, and work to change state law when this is not permitted..

Addressing the special needs of elder victims should be a cooperative effort. While prosecutors will need to identify the special needs of their elder victims, there will be times when the prosecutor simply will not have the ability to deal with them alone. For instance, prosecutors should consider involving non-offending family members as an additional source of support for the elder victim.

Above all else we must ensure that elder victims are treated with respect and dignity throughout the process.

## TRAINING PROSECUTORS

As a result of the many types of crimes perpetrated against the elderly occur, the complexity of many of these crimes, and the unique needs of elder victims, we recognize that there must be specialized training for prosecutors in dealing with these matters. There are some trial skills that may be transferable but there will be many others that we need to develop and teach others in our ranks. We must also ensure that our police, EMT, and medical personnel are trained in the specialized aspects of elder abuse just as they have been in cases of child abuse and domestic violence.

For instance prosecutors who specialize in child abuse cases have become adept at working with children who do not have fully developed language and cognitive abilities. What can we take from this and use in working with elderly witnesses with Alzheimer's? Likewise lessons learned in domestic violence cases may lend themselves to cases in which an elderly person has been victimized by a partner or a child.

There is so much that we need to learn. The special needs of the elderly as victims and witnesses as identified previously; the unique aspects of crimes committed against the elderly; the medical and forensic evidence applicable in cases involving the elderly; the physiological and psychological aspects of these cases - the list continues to grow as we learn more and more.

The National District Attorneys Association supports the formation of a National Center for the Prosecution of Elder Abuse, Neglect, and Exploitation within the American Prosecutors Research

Institute (APRI), an affiliate of NDAA. APRI currently provides training to literally hundreds of prosecutors each year in trying child abuse cases and we hope to see a mirror image to provide training in cases involving the elderly.

#### THE ELDER JUSTICE ACT

In closing I would commend to your review the "Elder Justice Act," S.333. Coauthored by Senator Breaux and Chairman Hatch, many of the members of this Committee have joined as sponsors. The National District Attorneys Association has gone on record as supporting this bill for what it represents to our parents and grandparents.

On behalf of America's prosecutors I, and the National District Attorneys Association, urge you to take steps to provide federal assistance to our efforts to fight abuse, neglect and exploitation of the elderly. We look forward to continuing to work with you on addressing this growing problem.

#### CHRISTOPHER D. CHILES

Christopher D. Chiles is the Prosecuting Attorney of Cabell County in Huntington, West Virginia. He is a graduate of the University of Tennessee and the West Virginia University College of Law. Mr. Chiles has been a prosecutor since 1981, and the elected prosecutor since 1990. He is a vice president of the National District Attorneys Association and co-chair of the Juvenile Justice and Family Law Committee. He is a frequent lecturer for his state prosecutor association and law enforcement groups. Mr. Chiles is also a frequent lecturer for the National Highway Transportation Safety Administration Trial Advocacy Seminars and has been a faculty member for many courses at the National Advocacy Center.