

Testimony of
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September 24, 2003

STATEMENT OF
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of the
COMMISSION ON LAW AND AGING
on behalf of the
AMERICAN BAR ASSOCIATION
submitted to the
SUBCOMMITTEE ON CRIME, CORRECTIONS, AND VICTIMS' RIGHTS

of the
JUDICIARY COMMITTEE
U.S. SENATE
on the subject of
"ELDER ABUSE, NEGLECT, AND EXPLOITATION: ARE WE DOING ENOUGH?"

September 24, 2003

Mr. Chairman and Members of the Subcommittee:

My name is Lori Stiegel. I represent the American Bar Association, where I work as Associate Staff Director of the Commission on Law and Aging. I have developed and directed all of the Commission's activities on elder abuse since 1993 and have worked in the law and aging field at the local, state, and national levels for 21 years.

As representative of the legal profession in the United States with over 400,000 members, the American Bar Association is particularly concerned with equal access to justice for those members of our society who are generally least able to protect their own rights. Among those members are older people who are victimized by abuse, neglect, and exploitation. I appreciate the opportunity to appear before you today on behalf of the Association, to discuss our views on the problem of elder abuse, neglect, and exploitation and to share some ideas for addressing that problem.

My testimony will focus on the following points:

1. Elder abuse is criminal conduct

2. Elder abuse has serious consequences to victims and to society
3. Elder abuse is a growing problem
4. The US Congress and Federal government could do much more to protect older persons from becoming victims of elder abuse and to improve the response to those who have been victimized.

Elder Abuse is Criminal Conduct

"Elder abuse" is a general term for a complex problem that takes many forms and occurs in different settings. As commonly used, and as it will be used in this testimony, the term incorporates the broad concepts of abuse, neglect, and financial exploitation. States' adult protective services laws generally include some or all of the following specific categories: physical abuse, psychological or emotional abuse, sexual abuse, financial exploitation, neglect, and abandonment. Some states also address the problem of self-neglect, but as self-neglect generally does not involve criminal conduct by another it will not be discussed in this testimony. Elder abuse occurs in people's homes and in nursing homes and other institutional settings.

Real stories give meaning to these words.

? In South Carolina, a son was convicted for having allowed his mother to rot to death from bedsores embedded with bobby pins and roiling with maggots.

? In Delaware, a nursing home aide was convicted for hanging a resident's baby doll by a noose from the ceiling of the resident's room. The aide knew that the resident, who had dementia, believed that the doll was her real baby.

? In Iowa, the body of an 87-year old nursing home resident whose death certificate listed the cause of death as "unknown with complications --including Parkinson's disease" was exhumed after a nursing home aide admitted to the Immigration and Naturalization Service that she had killed the resident. Subsequently the aide was charged with first-degree murder after an autopsy revealed that the resident had been "choked to death with food."

? In Alabama, a former nursing home cook was convicted of sexual abuse and attempted rape of a 59-year-old female resident who had suffered a stroke that left her with impaired verbal and motor skills.

? In Wisconsin, a waitress who had befriended a 72-year old male customer was charged with theft by false representation after she bilked him of thousands of dollars while she was in jail by telling him that she needed the money for cancer treatments.

? In Texas, the daughter of a 72-year old man with Alzheimer's disease was charged with fraud after collaborative investigations by adult protective services and law enforcement indicated that the daughter was using an ATM card to take funds from her father's account and had purchased a sports utility vehicle using her father's name.

? In North Carolina, a former state lawmaker and disbarred lawyer was found guilty of two counts of perjury and one of embezzlement for his handling of an older client's estate.

? In California, a 29-year old beat his 86-year old grandmother, who sustained five broken ribs, two broken collarbones and several contusions. When the grandmother died five months later and the coroner ruled that the assault was a primary cause of death, the grandson was charged with murder. A mistrial was declared after opening statements when two jurors informed the judge that they could no longer be fair and impartial. The defense asked for a non-jury trial and the judge convicted the grandson of second-degree murder and sentence him fifteen years to life.

Incidents like these happen in every state, the District of Columbia, and the territories every day.

Although this testimony explains elder abuse with the terminology used by adult protective services laws, elder abuse is not just an issue for adult protective services programs, which receive and investigate reports of suspected elder (and/or adult) abuse and provide or arrange for services to victims. It is also a crime that requires the involvement of state and federal law enforcement agencies, prosecutors, and the courts. Incidents of elder abuse may involve violations of criminal laws related to murder, manslaughter, sexual assault, theft, fraud, larceny, burglary, forgery, etc. In addition to these traditional criminal laws, an increasing number of states have enacted new laws that criminalize elder abuse and neglect or that enhance existing penalty provisions for criminal acts committed against older persons.

As these cases illustrate, elder abuse is committed by a variety of perpetrators. Family members (including spouses/intimate partners, children, grandchildren, nieces and nephews, siblings, and others), paid and volunteer caregivers, fiduciaries and trusted others abuse, neglect, and exploit older people. This existence of a relationship between the victim and the perpetrator is the hallmark of elder abuse; it is the factor that distinguishes elder abuse from criminal victimization of older people by strangers. It is also the factor that -- until fairly recently -- triggered a social services response to an alleged victim, rather than a law enforcement response.

Elder Abuse Has Serious Consequences to Victims and to Society

Elder abuse may have a particularly devastating impact on its victims for several reasons. Again, the existence of a family or trust relationship between the victim and the perpetrator may make elder abuse even more destructive than a crime perpetrated by a stranger. The shame and stigmatization of victimization by a family member or trusted other may be even greater than when a stranger is responsible. Additionally, older people typically have fewer options than younger people for resolving or leaving an abusive situation due to their age, health, financial circumstances, or limited opportunities for alternative housing or care. They may be more vulnerable to and harmed by physical abuse because of their existing physical condition. Older people may have less ability to recover from financial exploitation if they are already retired, have limited resources, or a short remaining life span. Moreover, research has shown that elder abuse increases mortality.

The costs of elder abuse to taxpayers and society have not yet been researched. But when elder abuse victims are physically or sexually abused, there are likely to be costs associated with hospitalization or nursing home placement that are borne by the victims, their family members, or the taxpayers. When elder abuse victims lose their homes or financial resources through exploitation and end up in a nursing home on Medicaid or in government-subsidized housing, the taxpayers pick up those costs. When elder abuse victims need services from adult protection programs, long term care ombudsman programs, state regulatory agencies, law enforcement agencies, prosecutors, public guardians, or the resources of a court system to help protect them from further abuse, the taxpayers bear those costs.

Elder Abuse is a Growing Problem

No statement better illustrates how little is known about the extent of the problem of elder abuse than the beginning of the first paragraph of the preface to the report by the National Research Council's Panel to Review Risk and Prevalence of Elder Abuse and Neglect:

Reports of this kind typically begin by calling attention to the magnitude and social cost of the problem being explored. The fact that equivalent statement cannot be made with any confidence about elder mistreatment is a telling indication of the need for the report, as well as for an intensified program of research. No survey of the U.S. population has ever been undertaken to provide a national estimate for the occurrence of any form of elder mistreatment; the magnitude of the problem - among community-dwelling elders, as well as those residing in long-term care facilities - is basically unknown.

Data from state adult protective services programs has indicated steady and significant growth over the past decade in the number of reports of suspected abuse made to those programs. The National Research Council's Panel to Review Risk and Prevalence of Elder Abuse and Neglect succinctly stated the trend in the second paragraph of the Preface to its report:

The occurrence and severity of elder mistreatment are likely to increase markedly over the coming decades, as the population ages, caregiving responsibilities and relationships change, and increasing numbers of older persons require long-term care.

The US Congress and Federal government could do much more to protect older persons from becoming victims of elder abuse and to improve the response to those who have been victimized.

American Bar Association policy urges federal, state, territorial, and local governments and criminal and civil justice systems to improve their response to elder abuse, neglect and exploitation and to implement the law-related recommendations that were promulgated by the National Policy Summit on Elder Abuse in December 2001. The National Policy Summit on Elder Abuse was a project of the National Center on Elder Abuse, in which the Commission on Law and Aging is a partner. The U.S. Administration on Aging funds the National Center on Elder Abuse. The Office for Victims of Crime of the U.S. Department of Justice also supported the national policy summit.

The following law-related recommendations were adopted by the ABA as policy, a copy of which is attached:

1. Create a nationwide structure for raising public awareness; supporting research, training and technical assistance; funding critical services; and coordinating local, territorial, state, and national resources;
2. Develop and implement specialized training about elder abuse for all components of the justice system;
3. Establish federal leadership to ensure that adult protective services and legal and other services are of sufficient quality to protect and serve victims of elder abuse;
4. Create broad-based, multidisciplinary task forces or coalitions in each state to examine and develop systemic approaches to elder abuse interventions;
5. Develop, fund, and implement a multidisciplinary research agenda to sustain, advance, and assess professional training and practice on elder abuse;
6. Maximize and expand resources for preventing and responding to elder abuse;

7. Develop adequate tools and services to enable capacity assessments and surrogate decision-making for victims of elder abuse;
8. Ensure that legal and other services are available to meet the immediate and crisis needs of victims.

The Need for Federal Law and Leadership

The federal government's support of efforts to prevent and respond to elder abuse has been negligible compared to its commitment to the prevention of and response to child abuse and domestic violence. The elder abuse field is often described as being in the same situation that child abuse was 20-30 years ago and domestic violence was 10-20 years ago, before the federal government began devoting support and resources to those issues. Indeed, while the federal government has declared domestic violence to be both a public health and a public safety problem, it has not yet taken the same approach to elder abuse.

The lack of federal support and leadership has led to a patchwork of state responses, with significant inequities in the response of adult protective services, the justice system, and the health care system from state to state and community to community. Focal points for policy development and oversight, funding and coordination of services, funding of research and best practices, and training and technical assistance are essential.

The Need for Increased Funding and Resources

Efforts to increase federal funding for elder abuse have been discouraging. In the last few years, Social Services Block Grant (SSBG) funds, which are used to fund adult protective services in more than 30 states, have been cut by more than one billion dollars. Approximately \$4.7 million of Older Americans Act money is devoted to elder abuse education, training and awareness, but that money is divided among the 50 states, the District of Columbia, and Puerto Rico. In 2001 Congress did appropriate \$5 million under the Violence Against Women Act for training and education about older women who experience domestic violence and sexual assault. These amounts are very small compared to federal funding for child abuse and domestic violence.

The Need for Enhanced Training and Technical Assistance

The effective prevention of and response to elder abuse require ongoing training of a wide array of diverse professionals who work in a variety of settings. These include adult protective services workers, other social workers and aging services providers, law enforcement personnel, prosecutors, health care and mental health professionals, civil lawyers, judges, and virtually anyone else who may come into contact with vulnerable older people. At minimum, training needs to include the indicators of and risk factors for elder abuse, reporting requirements under state laws, and the role and responsibilities of the various professions and agencies that respond to elder abuse. It is also becoming increasingly important to have training on cultural diversity and the needs of older victims from diverse racial and ethnic groups. Many professions, such as medical examiners and coroners, bank personnel, hospital personnel, nursing facility surveyors, law enforcement personnel, prosecutors, civil lawyers and others need specialized training.

In order to maximize resources and efficiency, the provision of technical assistance is necessary to share information about promising practices, training design, research, legal analysis, statutory drafting, etc. The field needs technical assistance so that it can avoid "re-inventing the wheel."

The Need for Development and Funding of Research

The lack of research means that no one can cite with any certainty the incidence or prevalence of elder abuse. That is usually the first question that policymakers and the media ask about the problem. Practices and programs responding to victims have been developed without evaluations of their effectiveness. Research about the risk factors for and indicators of abuse would benefit the civil and criminal justice systems.

Several research agendas have been developed in the past and the National Research Council published another earlier this year. Nonetheless, very little money from the federal government or private foundations has been used to support research on elder abuse.

The Need for More Effective Laws

In order for the justice system to respond successfully to elder abuse, more effective laws and protocols or procedures that enhance a coordinated response are needed. Existing laws often don't address situations of elder abuse such as neglect by caregivers. Frequently, current laws don't recognize the special nature of these victims, the crimes committed against them, and the perpetrators. Other laws may pose barriers to prosecution of perpetrators of elder abuse.

Not only do effective laws and protocols or procedures need to be developed, they need to be the subject of training in the jurisdictions where they are enacted. Moreover, they need to be evaluated and shared with professionals in other jurisdictions.

The Need for a Coordinated, Multidisciplinary Response

The response of the civil and criminal justice, health care, and mental health systems is generally not coordinated or effective. To illustrate, elder abuse has only recently been recognized as a crime, rather than a "social problem." Law enforcement officers who have not been trained about elder abuse often refuse to write a report, make an arrest, or investigate a case, dismissing it as a "civil problem." Adult protective services workers commonly do not report cases to law enforcement until critical evidence has been destroyed. Health care professionals may not be trained to recognize elder abuse and they may not know to what agencies they should report their suspicions. While some states and communities are working hard to overcome these challenges creatively with few resources, and the federal government and a few foundations have supported training and technical assistance projects, much more is needed to develop a comprehensive system to protect vulnerable older persons from abuse, neglect, and exploitation.

The Need for Improved Tools and Services to Enable Capacity Assessments for Victims of Elder Abuse

A victim's capacity to make decisions will be critical to the protective services, civil justice, and criminal justice systems that should respond to elder abuse. Does the victim have capacity to

reject an offer of protective services? Is the victim competent to testify in court about the abuse? Did the victim have capacity to deed real property to the suspected perpetrator? Does the victim need a guardian or conservator? The development of adequate tools and services to enable capacity assessments for victims of elder abuse is critically needed.

Efforts to improve the response to victims of elder abuse are underway in many states and communities. Your own states are illustrative:

? South Carolina has a strong statewide Adult Protection Coordinating Council that has helped strengthen the state's criminal penalties for elder abuse.

? In Delaware, the Attorney General's office and its Medicaid Fraud Control Unit have prosecuted many cases of financial exploitation and abuse and neglect in long term care facilities.

? Iowa has a new program to work with first-time elder abuse offenders and provide training on how to avoid becoming second-time offenders.

? Alabama's adult protective services program has partnered with the state's Crime Prevention Program to provide training on elder abuse for law enforcement officers and protective services workers.

? Wisconsin's adult protective services program has provided critical state and national leadership in understanding and providing services to victims of domestic violence in later life.

? Texas is among the first states to develop an elder abuse fatality review team.

? California law requires that law enforcement officers receive training about elder abuse.

I could cite to many other promising practices in other states. However, these efforts are sporadic, intermittent, and inconsistent. Few, if any, have been evaluated. Many of these initiatives are sparked by the interest of one person and if that one person moves on, the initiative falls apart. In other words, interest in improving the criminal justice system's response to elder abuse is not institutionalized. For example, in South Carolina, law enforcement instructor Randy Thomas, who has been teaching new and experienced officers about elder abuse at the state Criminal Justice Academy, expects to retire at the end of the year and he believes those educational efforts will be discontinued.

The aforementioned ABA policy supports some provisions of the Elder Justice Act, S. 333, introduced by Judiciary Committee Chairman Senator Hatch and Senator Breaux. The Association endorses its provisions that would enhance public awareness and focus federal resources on elder abuse. We support increased leadership by the federal government on the problem of elder abuse. We encourage the federal, state, territorial and local governments to devote new funding and more resources to elder abuse. We support the development and funding of grant programs to provide training and technical assistance to justice system professionals and the other professionals and service providers who work with victims of elder abuse, as well as the development and funding of research to advance professional training and practice. We support research on and the development of more effective laws and supporting protocols and procedures that would promote prevention, enhance investigation, and serve better to protect older persons. We also support a coordinated response by the justice system and a multidisciplinary approach to the problem of elder abuse, with a broad multidisciplinary coalition in each state to examine systemic approaches to elder abuse. We encourage the development of adequate tools and services to enable

capacity assessments of elder abuse victims, and we support federal funding to ensure that legal and other services are available to meet the immediate and crisis needs of elder abuse victims. The ABA has no policy related to other provisions of S. 333.

We commend the Subcommittee on Crime, Corrections, and Victims' Rights for holding this hearing on this timely and important subject, and appreciate the opportunity to present this testimony.

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RESOLUTION OF THE
AMERICAN BAR ASSOCIATION
ADOPTED AUGUST 2002

RESOLVED, That the American Bar Association supports efforts to improve the response of federal, state, territorial and local governments and of the criminal and civil justice systems to elder abuse, neglect and exploitation (hereinafter "elder abuse").

FURTHER RESOLVED, That in order to address and reduce the incidence of elder abuse, the American Bar Association urges implementation at the federal, state, territorial and local levels of the following actions based upon recommendations adopted by the National Policy Summit on Elder Abuse in December 2001:

- (1) Create a nationwide structure for raising public awareness; supporting research, training and technical assistance; funding critical services; and coordinating local, territorial, state and national resources;
- (2) Develop and implement specialized training about elder abuse for all components of the justice system;
- (3) Establish federal leadership to ensure that adult protective services and legal and other services are of sufficient quality to protect and serve victims of elder abuse;
- (4) Create broad-based, multidisciplinary task forces or coalitions in each state to examine and develop systemic approaches to elder abuse interventions;
- (5) Develop, fund, and implement a multidisciplinary research agenda to sustain, advance, and assess professional training and practice on elder abuse;
- (6) Maximize and expand resources for preventing and responding to elder abuse;

- (7) Develop adequate tools and services to enable capacity assessments and surrogate decision-making for victims of elder abuse;
- (8) Ensure that legal and other services are available to meet the immediate and crisis needs of victims.