

Elder Abuse and the Criminal Justice System: New Awareness, New Responses

By Candace J. Heisler

Criminal investigation and prosecution of elder abuse is a recent phenomenon. Traditionally, abuse, neglect, and financial exploitation of elderly and vulnerable adults by family members, friends, and fiduciaries, if recognized and reported at all, were reported to adult protective services agencies and the long-term-care ombudsman programs, community organizations, and occasionally, to professional licensing boards. Because elder abuse was rarely viewed as criminal conduct, litigation historically has been brought in civil courts as applications for guardianship, civil suits for damages, and will contests (Heisler and Tewksbury, 1991; Heisler, 1991; U.S. Department of Justice, 1998a). Law enforcement did not view the issue as a serious problem and lacked training and experience in handling cases (Plotkin, 1988). The criminal justice system, including law enforcement, prosecution, judges, and probation officers, simply were not viewed as playing a role.

The last decade has seen a significant change due at least in part to new information on the forms and consequences of elder abuse, profiles

*Innovative criminal statutes,
cooperation between law
enforcement and other
community agencies, and
training for law enforcement
personnel.*

of perpetrators, and relationship to domestic and family violence. Increasingly, professionals in a variety of fields have come to believe that in serious cases, only the criminal justice system may be capable of stopping the abuse, protecting the victim, and holding the offender accountable (Attorney General's Task Force on Family Violence, 1984; Heisler 1991; U.S.

Department of Justice, 1998a). Criminal cases are relatively few and tend to be repetitive, serious, and life-threatening incidents. Prosecution remains an exceptional outcome.

In recognition that elder abuse is not only an act against its individual victim with enormous personal consequences, but also an anti-social act against the entire community, some states have enacted statutes that criminalize various acts of elder abuse. While the exact cost of elder abuse is unknown, studies show that between 820,000 and over 2 million incidents of elder abuse occur every year (Tatara, Kuzmeskus, and Duckhorn, 1997). Costs of victimization include actual dollar losses from fraud and theft, medical care, repair of damaged or

destroyed property, housing and maintenance for victims left destitute, investigation (and other) costs incurred by adult protective services, long-term-care ombudsman programs, public and private guardians, law enforcement, court investigators, prosecution and probation agencies, legal defense fees, court costs, and custodial and supervision costs for probation and correctional officials.

Traditional responses assume that victims do not want help from the criminal justice system. While this may be true for many victims, there are others who want law enforcement to investigate their cases and prosecution to charge their abusers (Korbin et al., 1991). Excluding elder-abuse cases from the criminal justice system shuts the courthouse door and denies older people the full protection of the law afforded younger people. Victims suffer serious consequences from criminal abuse; they may be injured, left destitute, or even killed (Plotkin, 1988; Nerenberg, 1999). Studies have shown that abuse victims suffer earlier mortality than elders who are not abuse victims (Lachs and Pillemer, 1998). Perpetrators whose actions are referred to the criminal justice system are rarely caregivers under stress who are unable to balance the competing demands of home, family, job, and ailing relative. Instead, most perpetrators are like people who engage in other kinds of criminal conduct: They are motivated by greed, personal gain, self-justification, a desire to exercise control, and opportunity. And like other kinds of perpetrators, they often target people they believe to be vulnerable. Examples of actual criminal cases illustrate this point.

The financial arena is a common area of abuse. In one case, an elderly woman, the owner of several valuable pieces of real estate, was befriended by a long-time tenant who isolated her, convinced her that her "enemies" intended to harm her, and took over her assets. He invested in high-risk investment schemes, redecorated the mansion he occupied, and bought a French chateau. He employed his own friends to provide personal care to the woman and drill her to pass a mental health assessment indicating that she was competent to make decisions about her financial affairs. He hired a friend of his who was a certified accountant to give her

investment advice, and when he feared loss of control over her assets, he married her.

In another case, a lonely, confused, and socially isolated older man met a new acquaintance at a neighborhood restaurant in San Francisco. In short order, she professed great affection and love for him, and he quickly married her. He bought her a home in another community, which the two never shared, added her as a joint tenant to his bank accounts and other assets, and made a will in her favor. The new wife was the mother of children by her long-term common-law, or putative, husband.

Sometimes offenders target neighborhoods where older people live, working alone or in bands. They use a variety of scams, representing themselves as home repair contractors, utility department employees, or workers from a governmental agency. They gain the older person's trust and quickly collect money for services that are never performed or steal valuables from the elder's home (Sklar, 1999).

Home healthcare workers have also exploited vulnerable older people. For example, in one San Francisco case, a nurse caring for a disabled older woman stole her money and other valuables. The nurse was prosecuted and placed on probation. She then befriended an elderly man, married him, and began looting his assets. She was prosecuted for another series of thefts and burglaries from friends and associates. These new crimes and the acts against her husband became the basis for revoking her probation and sending her to prison.

Examples of physical abuse and neglect are of course the most sensational. In South Carolina, a 91-year-old woman who was cared for by her children in their home was neglected for so long that she developed a decubitus ulcer that exposed her spine. Bobby pins used to hold pads in place had become embedded in her skin. Bodily waste was in the ulcer, and the smell was overwhelming. She died of sepsis.

In southern California, two brothers allowed their father to "rot" to death in bed until he died from neglect, malnutrition, dehydration, and septic shock from bedsores. The 68-year-old victim was paralyzed, bedridden, and unable to control his bodily functions. His sons lived in his rented home and used his pension checks to pay

the bills. One son was responsible for managing the income; the other was responsible for providing personal care. The father was not fed, given water, taken to the bathroom, or cleaned. The family knew that he needed medical care but did not provide it (Wright, 1991).

In San Francisco, an 84-year-old woman with dementia was admitted to a hospital with breathing difficulties and covered with bruises, described by one expert as similar to those sustained by airplane crash victims. The attack was committed by her son.

Criminal justice professionals see domestic violence cases involving elderly spouses. Some occur in long-term marriages, with abuse having lasting over decades, and others occur in new marriages. Some incidents even occur after the battering spouse has died or become incapacitated and the adult son steps into his father's shoes and attacks his mother. In each of these forms, the abuse is usually perpetrated to accomplish power and control over the victim.

DIFFICULTY INVESTIGATING AND PROSECUTING

While such incidents are serious, investigation and prosecution are difficult. For example, many are never discovered because elder abuse is often not reported. When cases are finally discovered, evidence may have been destroyed or changed; witnesses may have disappeared, forgotten important information, or died; and assets may have been plundered. What is more, officers and prosecutors often lack experience and training in developing cases (Heisler, 1991). Other agencies with expertise and evidence may be unfamiliar with the criminal justice system and may lack working relationships with key participants (Nerenberg and Heisler, 1998; Heisler, 1989). Elder abuse may be viewed as a civil rather than a criminal concern, especially when legal instruments such as trusts, powers of attorney, real estate documents, and securities are involved (Sklar, 1999). Disproving consent and establishing competency to testify and prior capacity can be difficult. Victims may be viewed as incompetent to testify or untrustworthy.

In fact, a variety of issues arise when cases rely upon the participation and testimony of victims. Victims are often ambivalent about

prosecution, fearful of retribution or placement in a nursing home, and protective of family and friends who have mistreated them (U.S. Department of Justice, 1998a). Placing responsibility for the decision to prosecute on the victim increases the person's anxiety and fear, and may place the person in greater danger or harm from the abuser. Once the perpetrator learns that the decision about what will happen rests with the victim and not with the state, as in most other crimes, the abuser is likely to threaten, cajole, promise, abduct, or harm—whatever is necessary to get the desired outcome.

PROMISING PRACTICES: LEGISLATION AND TRAINING

Across the country, jurisdictions are developing a variety of promising practices to better investigate and prosecute cases of abuse of older and vulnerable adults. These practices include enactment of specialized laws and increased training.

For example, many states have created specific laws and sentencing enhancements for prosecuting abuse of the elderly and vulnerable that can be used in addition to laws against traditional crimes such as theft, homicide, or assault and battery (Stiegel, 1995). Some statutes, like those enacted in California, apply to crimes against any person aged 65 and older. Others, like Florida's, require special prosecution if the person is age 60 or older and suffers "from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired."

Sentencing provisions vary. For example, in response to growing awareness of elder abuse and, specifically, to the neglect case described above, the South Carolina legislature changed elder neglect from a misdemeanor to a felony for which thirty years in prison is the maximum sentence. In California, sentences for people convicted of specific crimes against the elderly have been increased (Penal Code Section 667.9). If a suspect is convicted of specific financial crimes against the elderly, restitution must be ordered, and if a person inflicts great bodily

injury on a person 70 years of age or older, the sentence is increased by five years.

To improve the training of law enforcement officers, some states now provide special training on elder abuse, aging, and investigation. For example, California now requires that every officer at a supervisory or lower level assigned to field or investigative duties complete a certified elder-abuse training course. Florida and South Carolina have created training guides on elder abuse, neglect, and exploitation. The Police Executive Research Forum (1993) created a manual for law enforcement that contains a training curriculum and a sample departmental policy statement on elder abuse. Finally, the California Commission on Police Officer Standards and Training created a telecourse on elder abuse that is widely disseminated to law enforcement agencies throughout the state and elsewhere.

Prosecutors are increasingly receiving training in handling elder-abuse cases. For example, courses have been offered in California, Arizona, Washington, Minnesota, Wisconsin, Virginia, Delaware, Texas, and Tennessee. In addition, the National College of District Attorneys offers workshops on elder abuse as part of its annual conference on domestic violence.

**PROMISING PRACTICES:
SPECIALIZED HANDLING OF CASES**

Because of the complexity of the cases and special requirements of victims, some agencies now provide specialized handling of elder-abuse cases. A number of law enforcement agencies have created special units to receive complaints and work with older vulnerable adults. Elder-service officers in Chicago and in Hillsborough County, Florida, are just two examples. Other agencies have investigators who specialize in building elder-abuse cases. The Los Angeles Police Department Elder Persons' Estate Unit has two full-time detectives who investigate cases of financial abuse. They have recovered over \$55 million in the course of their investigations. In Delaware, the Elder Abuse and Exploitation Project of the state attorney general's office investigates complex financial elder-abuse cases and conducts national training on case building (Nerenberg, 1996).

Prosecutors are also establishing specialized elder-abuse responses including vertical prosecution, whereby one attorney handles the same case and victim from beginning to end (U.S. Department of Justice, 1998a; Nerenberg and Heisler, 1998). The attorneys receive specialized training to increase their success in prosecuting cases. Examples include the district attorney's offices in San Diego, Los Angeles, Washington State, and Illinois. In addition, every state's Medicaid fraud unit of the state attorney general's office has investigators and prosecutors who handle matters arising in institutional settings.

With increasing awareness of the special needs of older vulnerable adult victims, victim-witness assistance programs across the country are developing specialized responses. Programs provide training and recruitment of older employees and volunteers, set up offices away from the courthouse or in office locations frequented by older people, and use forms, brochures, and posters suited to the needs of the target population (Nerenberg, 1999; U.S. Department of Justice, 1998b). The California Victim Witness Coordinating Council now mandates elder-abuse training for all advocates at entry and advanced levels. In addition, the American Bar Association Commission on the Legal Problems of the Elderly has developed a training curriculum on elder abuse for victims' advocates.

**PROMISING PRACTICES:
CASE BUILDING**

One of the greatest changes in the field is in the area of case building. Traditionally cases have been reported to law enforcement agencies, which investigated the situation, interviewed the witnesses, collected the evidence, and made an arrest. The case was then turned over to the prosecution, which filed the case and presented it in court. Law enforcement and the prosecution worked independently; no other agencies were involved. While this approach may be an effective way to handle street robberies, muggings, vehicle thefts, and burglaries, it is wholly inadequate in cases of elder abuse. Cases are rarely reported to law enforcement. Agencies in a variety of disciplines often have evidence needed to build a case, but these agencies are not traditional partners of the criminal justice

system. Victims may need support through the process, as well as immediate assistance with activities of daily living, preserving assets, or stopping financial transactions already begun.

Increasingly, professionals in criminal justice are working with a variety of groups and agencies to identify suspected criminal conduct, build the case against the suspected perpetrator, and meet the needs of the victim. In a number of jurisdictions, criminal justice agencies participate in multidisciplinary teams to evaluate cases, share information, and divide tasks (Nerenberg, 1995; U.S. Department of Justice, 1998b). The San Francisco Inter-Agency Investigations Task Force is an example. The team is composed of representatives from law enforcement, prosecution, adult protective services, county mental health agencies, the city attorney's office, the public guardian's office, and community public health agencies. The group discusses cases and determines who has relevant information. While some information is confidential or privileged and therefore not subject to disclosure, knowledge that information exists allows for its subsequent discovery pursuant to subpoena or other court order. The task force also evaluates the victim's needs and in appropriate cases determines which agency or agencies will assist the victim (Wolf and Pillemer, 1994).

Other cooperative models include fiduciary abuse specialist teams (FAST), which are now operating in California. The teams are composed of representatives from law enforcement, adult protective services, the long-term-care ombudsman program, the office of the public guardian, the district attorney, the city attorney, private conservators, health and mental health providers, and volunteers who are experts in the areas of banking, real estate, insurance, mortgages, tax, and estate planning. The experts provide information, case consultation, and advice on transactions that are part of financial abuse cases under review. These teams have been invaluable in identifying and building criminal cases (Nerenberg, 1996).

With increased expertise in financial abuses, agencies are developing new strategies to preserve and freeze assets to prevent additional losses (Nerenberg, 1996). For example, in Cal-

ifornia, the public guardian intending to file for conservatorship (guardianship in most other states) can file a certificate of intent. Thereafter, a financial institution can provide information about property solely owned by the proposed conservatee and can surrender any property in danger of loss, waste, misappropriation, or injury under a stipulation of the state probate code. Where the public guardian and law enforcement officials work as team members, this section allows for the protection and securing of assets. California prosecutors use the state's money-laundering statute to obtain court orders for injunctive relief to obtain appointment of a receiver to preserve property and other assets in the possession of the defendant that may be used to satisfy a subsequent order for restitution. Other prosecutors file civil and criminal actions to pursue unlawful business practices and to obtain orders prohibiting the disposition, waste, or encumbering of assets.

Agencies are also seeking court orders to prohibit contact between the victim and suspect. Once charges are filed, prosecutors often request criminal court no-contact orders. Violation of these orders constitutes a separate crime. In some jurisdictions such as California, officers can also obtain emergency protective orders ordering the suspect to vacate the residence and refrain from any contact if there has been violence or the credible threat of violence.

PROMISING PRACTICES: COURT PROCEDURES

Court procedures are also changing. Many states accord early trial-setting dates to cases involving older people—within thirty days after arraignment. In contrast, cases not subject to this preference must be commenced within sixty days after arraignment. Additionally, many states permit the use of special procedures to obtain and retain for later use the testimony of an elderly or vulnerable adult (Frauens, 1999). In such cases, the examination of the victim (or witness) is conducted by the prosecution and the defense in the presence of the judge who rules on all evidentiary matters. The testimony is under oath and transcribed by a court reporter. Testimony is often videotaped. The proceedings can be conducted wherever the victim is

best accommodated—a hospital, private residence, or nursing home. Then, if the victim or witness is unavailable at trial, the record of this examination is offered in place of the live court testimony. Other states have similar provisions for obtaining testimony.

Some states have relaxed the rules of hearsay for the statement of an elderly person. Illinois, California, and Delaware permit the introduction of the hearsay statement of an elderly or vulnerable victim in lieu of their live testimony (U.S. Department of Justice, 1998a).

PROMISING PRACTICES: THE ROLE OF THE VICTIM

Finally, criminal justice agencies are changing their approach to case building by rethinking the role of the victim in case presentation. It is unrealistic to expect older and vulnerable victims to provide testimony in many cases. Reliance on the victim's participation means that many criminal acts go unprosecuted and encourages the defense to delay cases until the victim dies or becomes so disabled or distraught that he or she cannot testify. Instead, drawing on models from prosecution of homicide and domestic violence models, law enforcement is beginning to build cases that do not require the victim's participation at all or which reduce reliance on the victim as the primary witness.

This alternative approach requires the following: that law enforcement officials carefully document all crime scenes, obtain transcripts of victim 911 calls for help, document spontaneous statements, take photographs of all injuries over time, identify and interview all possible witnesses, confirm whether aging-services staff have worked with the victim or family members previously, investigate potential defenses, obtain the victim's mental health assessment when mental competency is in question, cross-report to adult protective services agencies or the long-term-care ombudsman when required or otherwise appropriate, and obtain videotaped interviews from victims at an early stage.

Where multidisciplinary or FAST teams exist, they should contribute to discussions and evaluations regarding financial-abuse and other complex cases. Generally, prosecutors should meet with and assess the status of victims early

in the case and work cooperatively with law enforcement and community partners. Advocates with victim witness assistance programs must work with the victim from the earliest possible moment to provide the person with accurate and consistent information about the criminal justice process and to coordinate the delivery of services with aging services organizations. When victims want or need assistance, adult protective services agencies and other aging services must be included.

Elder abuse has been called the crime of the nineties. As criminal justice professionals have become more familiar with it, many have realized that traditional investigative and prosecution responses are inadequate. New approaches, laws, and rules of court have evolved that make the goals of victim and public safety, making the victim whole, and offender accountability more attainable. ❧

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