

NYC Elder Abuse Training Project

# PROSECUTORS CURRICULUM on Elder Abuse

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## SECTION 1: DESCRIPTION OF TRAINING MODES & OVERVIEW OF CURRICULUM

The *Prosecutors Curriculum on Elder Abuse* is a training manual designed to prepare instructors to present seminars and courses to prosecutors. The courses cover several topics relevant to elder abuse prosecution. *{This model curriculum is based on New York State Laws. Review your state laws and interagency protocols before training.}*

The courses in this manual are designed to fit training time slots ranging from 15 minutes to a full 7-8 hour day. For example:

<b>Brief Introduction to Elder Abuse</b>	<b>15-25 minutes</b>
<b>Core Courses for CLE credit</b>	<b>one hour each</b>
<b>Full day conference</b>	<b>six hours content</b>

**Section 2** offers a model to use when a **short period of time** is available for presentation. This might be at a meeting of prosecutors or at a conference where elder abuse is not the main topic. A presenter can use the *Elder Abuse Quick Facts for New York State Prosecutors* as a handout and review the main points in the document in 15-25 minutes. PowerPoint slides can be used to present this **brief introduction**.

**Sections 3-7** comprise the **core courses**. These are five modules designed to provide mandatory continuing legal education credits which are required for attorneys. The 50-minute minimal instruction time for a continuing legal education (CLE) course allows expert presenters to treat key topics in more detail.

*The Evidence-Based Prosecution, Financial Exploitation, Medical Issues, and Interviewing* modules (Sections 3-6) are each designed to deliver one continuing legal education credit in 50-60 minutes.

Section 7 is an ethical case discussion panel designed to deliver 2 CLE ethics credits in 100-120 minutes.

The core courses can be given individually in one or two hour segments. Two or three may be combined in a half day conference, or all five covered in a full day event.

*Interviewing* can be a 1.5 credit CLE as designed for three presenters, while *Medical* and *Financial* could be expanded to 75 minutes for a 1.5 credit CLE.

If a module is used as a stand-alone event, a short introduction to elder abuse is suggested. In addition to the *Quick Facts* versions in Sections 2 and 10, an introduction included in the “Psychological Aspects” part of the *Medical Issues* section and PowerPoint can be adapted to orient any audience to elder abuse.

**Section 8** gives a suggested format for a **full day conference** that covers all five modules and can offer 6 CLE credits. A program schedule from an actual conference is included as an example.

**Section 9** includes an introduction to the US Supreme Court decision *Crawford v. Washington*, which can be added to any core course. The section also summarizes other continuing legal education courses on topics of interest to elder abuse prosecutors.

**Section 10** contains resources for instructors and materials used in the design and testing of the curriculum.

## Acknowledgements

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It represents the partnership of five agencies augmented by the contributions of hundreds of individuals from a variety of agencies locally and from around the nation, collected, arranged and edited by a small team in New York City.

### **Grant partners:**

- NYC Department for the Aging, lead agency, Edwin Méndez-Santiago, Commissioner
- Center Against Domestic Violence, Judith Kahan, Executive Director
- Jewish Association for Services for the Aged, Aileen Gitelson, CEO
- Mayor's Office of the Criminal Justice Coordinator, John Feinblatt, Criminal Justice Coordinator
- Mayor's Office to Combat Domestic Violence, Yolanda B. Jimenez, Commissioner

Existing training materials were shared by numerous persons and organizations in response to solicitations over the Elder Abuse Listserv and at conferences.

Many of the core curricular topics were piloted at a city-wide conference *Elder Abuse and the Criminal Justice System* held June 16, 2004 and attended by over 300 people from the fields of law enforcement and social service.

### **Sponsors:**

- NYC Department for the Aging
- Fordham University
- Center Against Domestic Violence
- Jewish Association for Services for the Aged
- New York Prosecutors Training Institute

### **Presenters:**

- Commissioner Méndez-Santiago, NYC Department for the Aging
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**Advisory board** participants, representing 35 agencies in the community, met several times to review progress and share perspectives on training needs and resources. Members of the board joined sixty other persons on seven small, specialized Task Groups, offering advice on curriculum and training design.

**We thank each contributor.**

## SECTION 2 - BRIEF ORIENTATION TO ELDER ABUSE

**Mode:** 15-25 minute presentation based on handout *Elder Abuse Quick Facts for New York State Prosecutors*; question and answer session based on time allotted.

**Continuing Legal Education Credit:** None

**Use:** Often trainers will be given the opportunity to make a brief presentation at a large conference or meeting where elder abuse prosecution is not the main issue being discussed. When given this opportunity, trainers can use the *Elder Abuse Quick Facts for NYS Prosecutors* as a tool to briefly orient prosecutors to the most important issues regarding these cases. This type of presentation may stimulate interest in providing a more comprehensive treatment of the subject at another time. The orientation will not provide continuing legal education credits as it does not meet the time criteria necessary for these credits.

**Goal:** To provide participants with a brief summary of the major points to consider when working with elder abuse cases.

**Objectives:** By the end of the session, participants will be cognizant of:

- The definition of elder abuse
- New York State statutes and charges for elder abuse cases
- Ways of interviewing elderly persons
- Signs of abuse in the victim and the abuser
- Signs of financial abuse and environmental issues
- Cultural issues in elder abuse
- Courtroom obstacles
- Referral resources

**Materials:** One page handout: *Elder Abuse Quick Facts for NYS Prosecutors*, printed on both sides. Note: An expanded version of *Quick Facts* is found in Section 10. It may require more time to teach than the one-page version.

**Method:** Trainer distributes the handout to attendees. Trainer will review each of the major points in the handout, which will provide an outline for the presentation. Depending on the time allotted, a question and answer period may follow.

## ELDER ABUSE QUICK FACTS FOR NYS PROSECUTORS

**Definition:** Elder abuse is the physical, sexual, emotional or financial abuse or neglect or abandonment of an older person by a family member, friend, fiduciary or caregiver. Often two or more types of abuse are perpetrated simultaneously.

**Causes:** “Entitlement” and “power and control” dynamics appear to drive elder abuse. “Caregiver stress,” once a prime causal theory, has not been supported by data from recent studies. While many caregivers need services which prosecutors can help arrange, stress is no excuse to commit crimes.

**It is important to be able to build a case without the testimony of the victim.** The victim may be reluctant to testify if the perpetrator is a family member or caregiver, or may be unable to testify due to mental or physical impairments.

**Statutes and Charges:** Although some states have specialized laws to protect the elderly, most offenses in New York State must be prosecuted using conventional charges such as menacing, harassment, assault, larceny and forgery. **Look for multiple crimes and “bump-up” situations.** There are four (4) statutes which refer specifically to elderly or disabled victims:

- Endangering the welfare of an incompetent or physically disabled person, P.L. §260.25 (Class A misdemeanor): when a person knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect;
- Endangering the welfare of a vulnerable elderly person in the second degree, P.L. §260.32 (Class E felony): when a caregiver causes physical injury either with intent or with criminal negligence, or subjects the person to sexual contact without consent;
- Endangering the welfare of a vulnerable, elderly person in the first degree, P.L. § 260.34 (Class D felony): when a caregiver causes *serious* injury either with intent or recklessly;
- The Hate Crimes Act of 2000, P.L. §485.05 includes age (over 60) and disability as targeting factors. *The statute does not add new charges.* Conventional charges yield increased penalties for those who perpetrate crimes based on targeting factors such as race, religion, national origin, sexual orientation, age or disability.

**Interviewing older victims** requires special care and patience. Be attentive to whether the victim is tired or not feeling well. An older person may need more time than a younger victim would need to understand and respond to questions. If the person is having **difficulty remembering** when an event occurred, offer memory cues, such as “What television program were you watching?” For **hearing impaired**, eliminate as much background noise as possible and use visual cues and/or written material. Larger type (14 pt) and a magnifying glass may help a **visually impaired** person.

When interviewed patiently, some persons with **dementia** or **Alzheimer’s disease** can provide useful information. Be calm and reassuring as people with dementia are very sensitive to feelings. Pay close attention to their reactions; emotional responses may reveal what they cannot express in words. If the person is very upset, distraction can sometimes be used to calm them and refocus their attention. See *Interviewing Techniques for Victims of Elder Abuse Who May Suffer from Alzheimer’s Disease or Related Dementia*, © 2002 by Sue Beerman and Arlene Markarian. You can also consult the social workers in your office, who are experienced in interviewing older victims.

**Capacity:** Case outcomes can depend on whether a victim had capacity at the time they took an action, such as signing papers giving a defendant control of financial assets. Testifying as an expert witness, a medical doctor, usually a psychiatrist, can give an opinion as to whether the victim had capacity at the time of the action.

**Signs of Abuse/Neglect** include the following:

- **Signs in the Victim:** Inadequately explained wounds; dehydration, malnourishment, over-medication or sedation; unusual confinement; lack of cleanliness; fear of speaking for oneself, shame, embarrassment, anxiety, confusion, withdrawal, or depression
- **Signs in the Abuser:** Tells conflicting stories, is reluctant to let the elderly person be interviewed alone, and speaks for the elder, treats the older person without warmth or compassion
- **Abuser's background:** Problems with addiction (alcohol, drugs, gambling) and/or previous history of abusive behavior indicate a high likelihood of abuse
- **Environmental Signs:** Unsanitary and unclean living conditions (e.g. soiled bedding, fecal/urine smell, fleas, lice); lack of food, heat or electricity; abused or neglected pets

**Signs of Financial Exploitation** include the following:

- **Signs in the Victim:** Deviations in older person's financial habits (large bank withdrawals, etc.); numerous unpaid bills; checks made out to cash; financial papers missing; elder unaware of monthly income; a disparity between income/assets and lifestyle; makes an unprecedented transfer of assets to other(s)
- **Signs in the Abuser:** Always makes bank deposits/withdrawals for the senior; uses ATM cards; makes withdrawals from a dormant account; makes all investment decisions for senior; receives frequent expensive gifts from senior; refuses to spend money on elder's care; asserts powers based on power of attorney

**Language** can be a barrier to use of the court system. Many elderly citizens do not speak English, particularly new immigrants or those who remain in insular communities. If an interpreter is needed, find one who is impartial. Avoid using family members; they may be involved in the abuse. The victim may be reluctant to speak honestly in front of a family member or acquaintance. Also, friends or relatives can give inaccurate translations either due to personal bias or fear

**Immigrant issues:** Some immigrants do not know that they have rights in this country regardless of their immigrant status; some have fears in relation to the legal system based on experiences in their country of origin

**Courtroom obstacles:** Elderly witnesses may have difficulty negotiating stairways in court buildings, or may be unable to get transportation to the court. Victim service agencies or witness advocates can assist with transportation and supportive services. Optimal time-of-day scheduling can enhance case outcomes since elderly witnesses may be affected by fatigue or intervals between meals or medication.

**Referral:** For other supportive services, refer elder abuse cases to the social worker in your office or direct them to caseworkers at an area agency on aging. A social worker can accompany the victim to court and maintain reassuring contact when the victim is testifying.

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## **SECTION 3 - EVIDENCE BASED PROSECUTION OF AN ELDER ABUSE CASE**

**Mode:** 50 minute lecture/question and answers, 10 minutes for introductions, evaluation testing.

**Continuing Legal Education Credits:** One

**Use:** To be used by sponsoring agency such as local bar association or district attorney's office to provide one continuing education credit. Can be used individually or combined with other courses.

**Presenter:** Local expert in bringing elder abuse cases successfully to trial. The trainer should ensure that the points made in the outline are covered, but may add any additional materials as desired. Written outline was prepared by Arlene Markarian, Chief of Domestic Violence Bureau and the Elder Abuse Unit within the bureau, Kings County District Attorney's Office.

**Goal:** To develop an understanding of how to use evidence in prosecutions where victim may not be able to testify.

**Objectives:** By the end of this presentation participants will be able to:

- Investigate an elder abuse case so it can be prosecuted without relying on testimony of the victim

- Use photography effectively

- Evaluate potential evidence throughout the home or crime scene

- Use weapons, drugs, alcoholic beverage containers, damaged property, sheets, and blankets as evidence

- Use financial documents, letters with envelopes, calendars, and diaries to document abuse

- Use witnesses effectively to advance the case

- Understand how "excited utterances" and "business records" can be used as exceptions to the hearsay rule

- Obtain expert medical opinions regarding inflicted injuries, abuse, or neglect

- Document previous police involvement

- Understand how statutes can be "bumped up" in cases of elder abuse

**Materials:** PowerPoint presentation and written handout materials. Handouts: *Evidence Based Prosecution of Domestic Violence and Elder Abuse Cases*. Computer, screen and projector necessary for the PowerPoint presentation

**Method:** Presenter lectures, using PowerPoint provided or may use his/her own PowerPoint ensuring that all material in the outline is covered. Presenter may add additional materials from own cases as appropriate.

**Evaluation:** Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved. Sample pre- and post-tests are provided for evaluation use. They can each be printed on front and back of one sheet.

**Written CLE outline, PowerPoint in handout format, and sample evaluation questionnaires follow.**

## **EVIDENCE-BASED PROSECUTION OF DOMESTIC VIOLENCE & ELDER ABUSE CASES**

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### **WHY??**

The victim is unwilling to participate in the prosecution of a case. You may ask yourself, “Why bother?”—If the victim doesn’t want to help herself, let’s use our resources to investigate other cases.

Put yourself in the victim’s shoes—e.g., would a mugger call you after the mugging and beg your forgiveness or threaten you to drop the charges or try to make you feel guilty for having him/her arrested? NO!!! But this routinely happens in domestic violence and elder abuse cases.

Domestic violence offenders know where their victims live, go to school and hang out. The offenders know the stores their victims frequent, where their family/friends live and where their children attend school. Imagine constantly looking over your shoulder in fear of being attacked. Possible retribution causes great fear in domestic violence victims.

Do you think that an abuser only abuses that one victim? WRONG!! Domestic violence offenders many times abuse everyone with whom they have had an intimate relationship. Would you want this guy getting involved with your sister, daughter or mother?? DON’T THINK IT CAN’T HAPPEN.

As parents, can you imagine a situation where you must call the police on your child? What if you are a fragile senior citizen and your child (or grandchild) is drug addicted or mentally ill? What if that child threatens you for money and becomes physical if you try to refuse? How do you feel as you watch the police handcuff your child and take him/her away? What do you do when that child then calls you from jail, crying and telling you that all sorts of horrible things are happening in jail? Do you think that you would voluntarily testify against your child? Even if he/she seriously injured you? THIS IS ONE OF MANY TYPES OF ELDER ABUSE.

What about seniors who suffer from Alzheimer’s disease or other diseases which prevent them from protecting themselves from neighbors, family or even their own home attendant? Many times the senior is physically unable to tell anyone what is happening to him/her or who is responsible for the abuse.

**NEGLECT** is another form of abuse! Neglect occurs when a caretaker [whether paid or not] does not properly care for the senior. This can include failing to provide appropriate nourishment and/or medical care for the senior, as well as not caring for their personal hygiene [i.e., allowing the senior to remain in feces-soiled clothes or bed].

However, keep in mind that not all neglect cases are criminal. Many times family members try to care for an aging relative, but are not able to do so properly. That is different from the case where the person is not even *trying* to properly care for the senior.

Also, let’s not forget about *senior spousal abuse*—imagine being married or in an intimate relationship and your significant other either verbally or physically abuses you. What if you have been married to this person for three or more **decades**? –and he has abused you throughout the relationship! Do you think that a senior in this position would be able to leave the relationship or testify against their loved one? Think about it.

Senior Citizens can be fragile and may have physical or mental ailments which they did not have as younger adults. It only takes a push or a shove to cause them to fall down and break a major bone, like the hip.

If we don’t prosecute abusers as vigorously as possible, the abuser will not be stopped until it’s too late, i.e., **MURDER**. **DON'T THINK THAT IT CAN'T HAPPEN**. We must intervene before it gets to the point of no return. There are programs and services available for both the victim as well as the abuser. The victims need to know that there is help for them as well as their significant others and children.

**\*\*NOTE:** Please be advised that although the majority of victims may be female, **male victims** in “relationship violence” exist as well. However, male victims are even less likely to come forward because of the embarrassment in admitting that they are being beaten by a woman. Furthermore, “relationship violence” exists in both heterosexual and homosexual relationships.

**\*\*ANOTHER NOTE:** Although there are both female and male defendants and victims in domestic violence and elder abuse cases, defendants will be referred to in the masculine and victims in the feminine for the purposes of this outline.

## **HOW??**

**Many times in domestic violence cases, the trials become a “he said / she said”. This is because all of the available evidence is not collected or obtained which can prove and/or corroborate the allegations. If the victim testifies, you must have evidence to corroborate her so the jury will feel you met your high burden of “beyond a reasonable doubt”. If she does not testify for you, then you need independent evidence to prove each and every element of the crimes charged, as well as the identity of the perpetrator. [Remember, if the victim does not testify for the prosecution, you will need other evidence to prove that it was the defendant who committed the crime.]**

Investigate a domestic violence or elder abuse case as if it was a homicide case—we must try to prove the charges without the victim’s testimony [or, if the victim does testify, to try to corroborate or support his/her testimony as much as possible]. The BEST time to obtain the evidence is in the BEGINNING of the investigation.

## **WE NEED EVIDENCE!!**

### **1. PHOTOGRAPHS:**

- **OF VICTIM**
- To be able to identify her later if she moves and we need to find her.  
To show general physical condition and hygiene [Elder abuse]
- **OF VICTIM’S INJURIES**  
Including scratches, bruises, “grab marks”, lumps or lacerations anywhere on body. In addition, photograph bed sores in elder abuse/neglect cases.

- \* **Remember to take off bandages for photos! [If serious injury, with doctor’s permission and guidance, of course!]**
- \* **Remember to take at least one photo of her injuries which shows her face [so we know she’s the one in the other photos!]**

- **OF DEFENDANT’S INJURIES OR LACK OF INJURIES**  
Especially important if the abuser later claims self-defense.

Include photos of:

- \* Face, torso and hands (top & bottom)
- \* Swollen, red hands if defendant beat victim
- \* What defendant was wearing at time of crime — include footwear if he kicked her or the pet [voucher footwear!]

- **OF ALL BLOODY/BLOOD STAINED ITEMS**

- **OF PROPERTY DAMAGE**

To show struggle or use of intimidation.

Include telephones ripped out of wall to prevent 911 call.

- \* Many times abusers will break, smash or damage the victim’s personal property (usually items which have sentimental value) in order to intimidate and control the victim. This is common in elder abuse cases.

- **OF MESSAGES/NUMBERS ON BEEPERS AND CALLER I.D. BOX**

- **OF ENTIRE HOME/CRIME SCENE**

To show living conditions, including how much of the home was taken over by the abuser and where the victim sleeps. [Elder abuse]

Include photographs of the inside of the refrigerator and cabinets to show the lack of food in the home. [Elder abuse]

Of broken property and overturned furniture to show signs of struggle. [Especially significant where defendant claims “we only had an argument” or “she just fell”.]

**\*\* LAW ENFORCEMENT MUST TREAT THE VICTIM’S HOME AS CRIME SCENE!**

- **OF ANY PROPERTY TAKEN INTO CUSTODY**

All seized property should be photographed where it was found **before** removing it for vouchering. [See “seizing/vouchering property” below.]

## 2. SEIZING/VOUCHERING EVIDENCE:

- **WEAPONS**

Not just guns and knives, but also items used to injure or threaten the victim including scissors, spatulas or other utensils, shoes, boots, etc.

Evidence that defendant owns or has access to weapons including holsters, cartridges, clips, firearm cleaning items, knife sheaths, etc.

**Some weapons cannot be voucher. For example, frozen turkeys (I'm not kidding!). Clearly, the property clerk will be quite upset if you voucher a frozen butterball. In these cases, photograph the item. I can always buy a frozen turkey for trial to be used as "demonstrative evidence". [Don't forget to document the weight so I know what size to get!]**

- **CONTAINERS OF ASSAULTIVE &/OR FLAMMABLE LIQUIDS** e.g. lye, gasoline, etc.

Voucher empty containers as well. Obviously, submit for testing.

RE: Arson cases—don't forget to voucher defendant's clothes and matches/lighter found on him.

If defendant threw chemical substance at victim, check closely for any injuries on him (photographing them), however slight. Voucher his clothes and submit for testing.

- **DRUGS AND/OR DRUG PARAPHERNALIA**

Evidence of drug use is especially relevant to prove the abuser's  *motive* to commit the crimes, including theft, assault and neglect. Items should be photographed where found before seized as evidence. [For example, photograph empty crack vials on the floor before seizing them.]

- **ALCOHOLIC BEVERAGES/EMPTY BOTTLES, CANS OR OTHER CONTAINERS**

If there are beer bottles/cans, vodka bottles, etc. all around the house, photograph them where they are found and then seize them. Again, evidence of excessive alcohol consumption/alcoholism is relevant in theft, assault and neglect cases.

- **DAMAGED PROPERTY**  
Including telephones ripped out of wall, damaged personal property as well as property damaged during a struggle or as a means of intimidation.
- **ITEMS USED TO RESTRAIN, GAG OR TORTURE VICTIM**  
Includes belts, rags, electrical cords, razors, etc.
- **LETTERS W/ ENVELOPES**  
Ask victim for everything she has. Many people save letters and notes. They may contain threats, apologies or evidence of defendant's motive, jealousy and /or stalking behavior. It can also be useful as a handwriting sample to compare with writings at issue in the trial.
- **VICTIM'S AND/OR DEFENDANT'S DIARY/CALENDAR DOCUMENTING ABUSE**  
Affirmatively ask victim if she has documented the abuse  
Get search warrant to look through defendant's calendar/diary
- **ANSWERING MACHINE/VOICE MAIL MESSAGES AND/OR TAPES**  
Containing threats of violence or as evidence of stalking. Also, threats of financial ruin or of being sent to a nursing home in elder abuse cases. Save messages left on voice mail/digital machines and tape record. Can also be used to identify defendant's voice on other recordings at trial.
- **CLOTHING, SHEETS, BLANKETS OR OTHER ITEMS WITH BLOOD STAINS [PLACE IN PAPER BAG]**
- **CLOTHING, SHEETS, BLANKETS OR OTHER ITEMS WITH FECES/URINE STAINS [Elder Abuse/Neglect]**
- **BLOODY/TORN CLOTHING**  
Of both, victim and defendant
- **MARTIAL ARTS PARAPHERNALIA**  
Defendant's knowledge and proficiency in the martial arts, boxing or other type of combat training can be highly relevant in assault cases.

- **FINANCIAL DOCUMENTS**

Including bank statements, ATM receipts, bank withdrawal slips, “overdue” notices, unpaid bills, deeds, powers of attorney, health care proxies and wills. Seniors are many times both physically *and* financially abused by a family member, caretaker, landlord or “new friend”. The financial abuse may be the  *motive* for the physical abuse or neglect. Often the abuser obtains control over the senior’s finances on the pretense that they will take care of the bills but instead, take the money for themselves. [Elder Abuse]

- **EVERYTHING!**

A jury needs to see everything. It brings them back to the time of the crime and corroborates your witnesses—police or civilian—and it makes you look good for getting it!

**\*\* THINK ABOUT SEARCH WARRANTS!! \*\***

**3. EYE WITNESSES, EAR WITNESSES & NOSE WITNESSES:**

- **TO CRIME CHARGED**
- **TO PREVIOUS INCIDENTS OF ABUSE**

Document names, addresses and telephone numbers of neighbors, friends, family or anyone else who may have either *seen, heard, or smelled something*—either now or in the past. In elder abuse cases, neighbors may have **smelled** something which indicates physical abuse or neglect [e.g., the strong odor of urine or feces].

**\*Remember, walls are thin!**

*WHO CALLED 911???*

**4. DOCUMENT “EXCITED UTTERANCES” BY VICTIM:**

- Generally, when victim is *crying/shaking/injured/upset* and tells someone what happened to him/her or tells them about the abuse/neglect soon after it occurred or as soon as possible.
- Document the victim’s *demeanor* as well as the statement. For example, was victim crying, shaking or curled up in a fetal position [elder abuse]?
- Document the victim’s demeanor when the suspected abuser enters the room—does the victim cringe, shake, cover his/her face or close his/her legs? [Elder abuse]
- Check for excited utterances to:
  - \* Friends/neighbors or other people at the scene;
  - \* EMS;
  - \* First police officers to arrive at scene;
  - \* Nurses/doctors;
  - \* To the 911 caller

**5. DEFENDANTS’ STATEMENTS:**

- **DOCUMENT ALL STATEMENTS NO MATTER HOW INSIGNIFICANT AT THE TIME**

For example, if abuser claims that injury was result of an accidental fall, but later, a doctor concludes that the injury is inconsistent with a fall, the abuser’s claim can be used against him/her at trial.

Check for statements made to not only police, but to:

- \* Neighbors
- \* Landlord
- \* Friends/Family
- \* Employer
- \* EMS
- \* Hospital personnel
- \* Jail/Prison officials [check corrections records]
- \* Parole/Probation Officer

*\*\*Did the defendant call 911??*

**YOU MUST TRY TO GET A STATEMENT—READ DEFENDANT HIS MIRANDA RIGHTS AND GIVE IT A SHOT!!** Any statement is better than no statement. Don't worry if the statement is self-serving—the defense, generally, cannot elicit it at trial. If he asks for a lawyer--so what? At least you tried!

**6. EXPERT MEDICAL OPINION**

Try to obtain a “release” from the victim so you can speak with her doctor(s) and obtain medical records.

- **TO EXPLAIN FORCE REQUIRED TO INFLICT INJURY**
- **TO GIVE EXPERT OPINION** as to whether injury is consistent with the way defendant (or recanting witness) claims it was sustained.

**6. CHECK FOR PAST DIRs/UF61s/OOPs:**

- Check other jurisdictions/counties/precincts in which the defendant lived for previous history of abuse
  - \* With this victim
  - \* With other victims

**7. DOCUMENTARY EVIDENCE**

Think about what is relevant to your case. Here are some examples:

- \* Defendant's prison records for present and past cases;
- \* Defendant's prison visitation and phone records;
- \* Defendant's home and cell phone records;
- \* Defendant's parole/probation records
- \* ACS files
- \* Court records—Family Court, Supreme Court (criminal and matrimonial), Criminal Court, etc.

\* Previous 911 calls

- \* Police/court records from other jurisdictions
- \* Prior OOPs from this and other jurisdictions—involving anyone
- \* Has defendant been the Power of Attorney or beneficiary on a will with many senior citizens [evidence of targeting seniors for financial abuse]

**8. SEIZE ALL MEDICATIONS/DOCUMENT MEDICAL INFORMATION:**

- If possible, obtain the names and contact info for all medical personnel who treated the victim both now and in the past including private doctors and hospitals. Specifically, you are looking for repeated injuries in past or for a *lack of medical attention* which may be evidence of neglect in elder abuse cases.
- In elder abuse cases, if possible, obtain information regarding past and present medications taken by victim, as well as the pharmacy from which they were obtained. This includes not only prescribed medications, but homeopathic and over-the-counter remedies as well. Certain combinations of remedies, when not monitored by a physician, can be deadly.
- In elder abuse cases, seize all medications found in the home including prescribed medications, as well as homeopathic and over-the-counter remedies if the senior is being taken to the hospital. If victim or caretaker claims that medications are needed, then a doctor should be consulted to determine if the medications or combination of medications are dangerous. If they are not seized, then photographs of and notes about the medications should be take.

**10. ANIMAL ABUSE:**

- **DID DEFENDANT INJURE OR KILL A FAMILY PET?**
- **DID DEFENDANT EVER THREATEN TO KILL OR INJURE A PET?**

\* Animal abuse is an effective way to **TERRORIZE** a victim. If the defendant did injure or kill a pet, *contact the ASPCA Police or the Humane Society*. Photograph the injuries. Charge the appropriate animal abuse charges. Injuring or killing a pet is proof of the message the abuser is sending to the victim--if I could do this to an animal, imagine what I can do to you!

- **DOES THE PET APPEAR TO BE NEGLECTED?**  
Is the pet underfed, dehydrated or need of medical attention? Often, when an animal is neglected, so is the senior citizen.
- **CHECK OUT AGRICULTURAL & MARKET ACT SEC. 353** for animal abuse charges

**11. DEFENDANT’S BACKGROUND:**

Document anything you discover about the defendant, including:

- **PSYCHIATRIC HISTORY/HOSPITALIZATION?**
- **DRUG/ALCOHOL ABUSE?**
- **SPECIAL MEDICATIONS?** Are there any special medications at the house? If so, what type?

**This checklist is only an example of the evidence which should be sought in a domestic violence or elder abuse investigation. It is important not only to be creative, but to use your common sense. Sometimes in elder abuse cases, the evidence of abuse/neglect may not be immediately obvious. You must ask yourself why a particular situation bothers you. Why do you suspect that a senior is being abused?**

**\*\* FYI! When documenting anything, be as accurate as possible!**

Documenting observations, conversations, statements and other relevant information not only helps refresh your memory later in the investigation or at trial, but avoids cross-examination problems at trial.

## ***RELEVANT STATUTES***

### **1. "BUMP-UPS" (where misdemeanor becomes felony because of prior conviction)**

- Criminal Contempt in the Second Degree [*PL 215.50 (3)*] to Criminal Contempt in the First Degree [*PL 215.51*]
- Harassment in the First Degree [*PL 240.26*] to Aggravated Harassment in the Second Degree [*PL 240.30 (4)*]
- Aggravated Harassment in the Second Degree [*PL 240.30 (3)*] to Aggravated Harassment in the First Degree [*PL 240.31 (2)*]
- Menacing in the Second Degree [*PL 120.14*] to Menacing in the First Degree [*PL 120.13*]
- Menacing in the Third Degree [*PL 120.15*] to Menacing in the Second Degree [*PL 120.14 (3)*]
- Criminal Possession of a Weapon in the Fourth Degree [*PL 265.01 (1), (2), (3) or (5)*] to Criminal Possession of a Weapon in the Third Degree [*PL 265.02 (1)*] [**\*\*Remember—the CPW 4 bump-up can be based on weapons other than guns where defendant has previous conviction for any crime**]
- **Stalking in the Fourth Degree [*PL 120.45*] to Stalking in the Third Degree [*PL 120.50 (4)*]**
- Stalking in Fourth Degree [*PL 120.25*] to Stalking in the Second Degree [*PL 120.55 (3)*]

### **2. VIOLATION OF ORDERS OF PROTECTION**

- Aggravated Criminal Contempt [*PL 215.52*]
- Criminal Contempt in the First Degree [*PL 215.51*]
- Criminal Contempt in the Second Degree [*PL 215.50 (3)*]

### 3. ELDER ABUSE STATUTES

- Endangering the Welfare of a Vulnerable Elderly Person in the First & Second Degrees [PL 260.34 & 260.32]

See also definitions of “vulnerable elderly persons” under PL 260.30

- Endangering the Welfare of an Incompetent or Physically Disabled Person [PL 260.25] [Not only for elder abuse cases.]

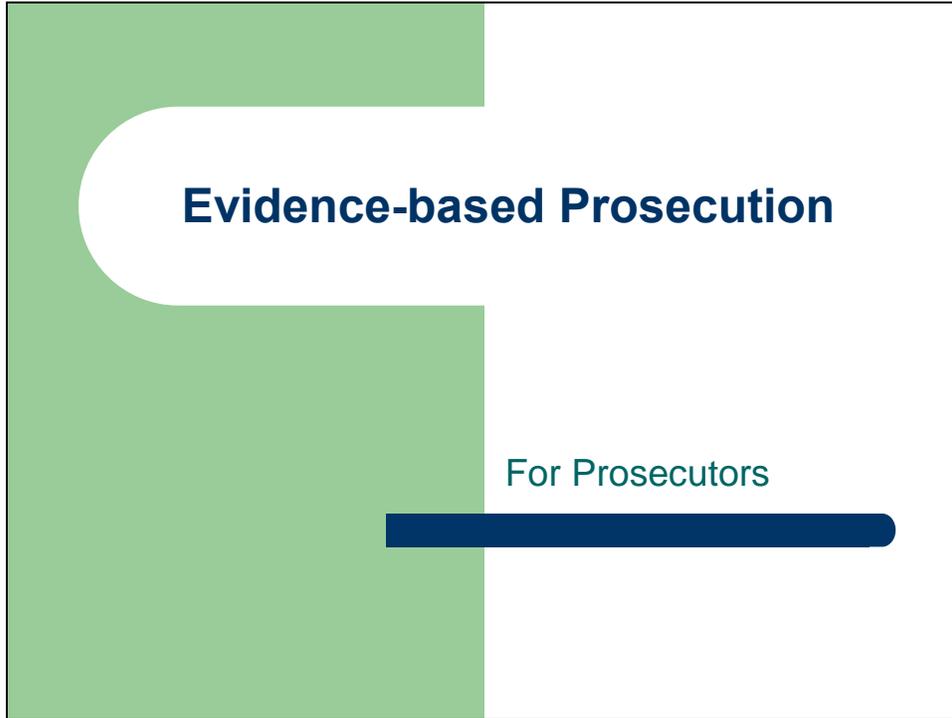
Remember, senior may be incompetent because of *Alzheimer’s disease* or other dementia. However, DON’T PRESUME all seniors have these diseases or are incompetent—because they don’t and aren’t!!

- Consider **Reckless Endangerment** charges [PL 120.25 & 120.20] in neglect cases or where defendant pushes or shoves a senior—depending on their “fragility”, was there a real possibility of the victim breaking her hip or some other major bone?

### 4. CONSIDER THE FOLLOWING CHARGES:

- Intimidation of/Tampering with a Witness [PL Art. 215]
- Coercion [PL Art. 135]
- Grand Larceny by Extortion [PL Art. 155]  
See Penal Law definition of “Larceny”

**GOOD LUCK—AND BE SAFE!**



**{Insert EVIDENCE PowerPoint handout, 6 slides per page}**

## EVALUATION TESTING

Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved by incorporating feedback from evaluation. Participants' knowledge is measured as well as their satisfaction with the session.

**Sample tests:** Sample pre and post tests are provided for evaluation use. They can each be printed on front and back of one sheet. Ideally, the pre-test would be administered to a sample of participants some time before the training event and the post-test would be administered following the training and again after 30 days. However, these samples have been designed so that they can both be administered the same day. It is preferable to administer the pre-test during a welcome session or gathering prior to the training session. The post-tests repeat content questions without repeating demographic questions. However, if you can link the tests with code numbers which do not breach confidentiality, then powerful statistical tests can be performed on the compiled data.

**Adapting tests:** The following pre-test and post-test have content questions for a specific workshop. When evaluating a workshop whose content differs from that outlined here, the pre-test and post-test can be adjusted by adding or deleting true-false questions.

**Thank you for joining us in our workshop today. Before we began our workshop we are asking that you take a moment to fill out this survey as it will help us shape future workshops. Thank you!**  
**Workshop III EVIDENCE-BASED PROSECUTION PRETEST**

1. *Gender?*  Female  Male
  
2. *Age?*  24-29  30-34  35-39  40-44  45-49  50+
  
3. *Borough where you work:*  Manhattan  Brooklyn  Bronx  Queens  Staten Island
  
4. *Are you an:*  ADA  Social Worker  Police Officer  Other: \_\_\_\_\_
  
5. *How many years have you worked at your current job?*  
 Less than one year  1-3  4-6  7-9  10+
  
6. *Do you handle cases involving elder abuse?*  Yes (Go to question 6a)  No (Go to question 7)  
*6a. If yes: Approximately what percentage of your caseload are elder abuse cases?* \_\_\_\_\_  
 Under 25%  25-50%  51-75%  Over 76%
  
7. *Have you ever had any classes or prior elder abuse training?*  
 No (Go to Question 8)  
 Yes (Please complete 7a-7c) ↓

**PLEASE COMPLETE OTHER SIDE**

**8. Please circle the response that best reflects your understanding of the following statements.**

	<b>True</b>	<b>False</b>	<b>Don't Know</b>
<b>a. Recordings of 911 calls cannot be put into evidence.</b>	1	2	8
<b>b. Elder abuse cases should be investigated as if they were homicides.</b>	1	2	8
<b>c. Excited utterances are an exception to the hearsay rule.</b>	1	2	8
<b>d. Most elder abuse victims will be helpful to the prosecution because they want the abuse to stop.</b>	1	2	8
<b>e. It is not possible to prosecute an elder abuse case without the testimony of the victim.</b>	1	2	8
<b>f. Evidence with blood stains should be carefully put into plastic bags.</b>	1	2	8
<b>g. If the alleged abuser has no physical injuries, it is not necessary to take photographs of the alleged abuser.</b>	1	2	8

**Thank you for taking the time to complete this survey!**

**Workshop III**

**Thank you for joining us in our workshop today. Please take a moment to fill out this survey as it will help us to shape future workshops. Thank you!**

**Workshop III EVIDENCE-BASED PROSECUTION POST TEST**

1. *Do you feel that you can incorporate the information you were given today into your work?*  
 No, definitely not    No, not really    Yes, a little    Yes, somewhat    Yes, completely

2. *Was there anything you expected to be addressed in today’s presentation that you feel was either not addressed or not adequately addressed?*    No (go to 3)    Yes (go to 2a)

2a. *If yes: What information you would like to see presented in future presentations.*

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3. *Please circle the response that best reflects your understanding of the following statements.*

	True	False	Don't Know
a. Recordings of 911 calls cannot be put into evidence.	1	2	8
b. Elder abuse cases should be investigated as if they were homicides.	1	2	8
c. Excited utterances are an exception to the hearsay rule.	1	2	8
d. Most elder abuse victims will be helpful to the prosecution because they want the abuse to stop.	1	2	8
e. It is not possible to prosecute an elder abuse case without the testimony of the victim.	1	2	8
f. Evidence with blood stains should be carefully put into plastic bags.	1	2	8
g. If the alleged abuser has no physical injuries, it is not necessary to take photographs of the alleged abuser.	1	2	8

4. *What was ONE aspect of the training that was most valuable to you?*

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**PLEASE COMPLETE OTHER SIDE**

5. *What was ONE aspect of the training that was least valuable to you?*

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6. The next set of questions pertains to how satisfied you were with today's training. For each question, please rate to what extent you agree or disagree with each statement on a scale of 1-5, a 1 indicating you disagree and 5 indicating you agree with the statement.

	Disagree					Agree				
a. <i>The program met my expectations.</i>	1	2	3	4	5	1	2	3	4	5
b. <i>The topic was presented in an easy and understandable format.</i>	1	2	3	4	5	1	2	3	4	5
c. <i>The training had an adequate amount of information.</i>	1	2	3	4	5	1	2	3	4	5
d. <i>The information presented was relevant to my work.</i>	1	2	3	4	5	1	2	3	4	5
e. <i>The goals and objectives were clearly stated.</i>	1	2	3	4	5	1	2	3	4	5

7. *Any other comments:*

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**Thank you for taking the time to complete this survey!**

**Workshop III**

## **SECTION 4: FINANCIAL EXPLOITATION OF THE ELDERLY**

**Mode:** 50 minute lecture/question and answers, 10 minutes for introductions, evaluation testing (or 75 minutes content = 1.5 credits)

**Continuing Legal Education Credits:** One (or 1.5)

**Use:** To be used by sponsoring agency such as local bar association or district attorney's office to provide one continuing education credit. Can be used individually or combined with other courses.

**Presenter:** Local expert in bringing elder abuse cases successfully to trial. The trainer should ensure that the points made in the outline are covered, but may add any additional materials as desired. Written outline was prepared by Elizabeth Loewy, Attorney-in-Charge of Elder Abuse Unit, New York County District Attorney's Office.

**Goal:** To develop a fuller understanding financial exploitation and the prosecution of financial crimes against the elderly.

**Objectives:** By the end of this presentation, participants will be able to:

- Define elder abuse
- Define what crimes are perpetrated in elder abuse cases
- Know which specific laws pertain to elderly persons
- Understand the role of the local district attorney's office
- Understand the role of the police
- Know NYS policies on mandated reporting
- Understand the grand jury process in regard to elder abuse cases
- Know what family offenses may apply
- Understand whether or not the witness has testimonial capacity
- Know the laws pertaining to joint bank accounts, theft from a mentally impaired person, and powers of attorney

- Understand the proper use of Rosario material

**Materials:** PowerPoint presentation and written handout materials. Computer, screen and projector for the PowerPoint presentation.

**Method:** Presenter lectures, using PowerPoint provided or may use his/her own PowerPoint ensuring that all material in the outline is covered. Presenter may add additional materials from own cases as appropriate

**Evaluation:** Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved. Sample pre- and post-tests are provided for evaluation use. They can each be printed on front and back of one sheet.

**Written CLE outline, PowerPoint in handout format, and sample evaluation questionnaires follow.**

## **WORKSHOP: FINANCIAL EXPLOITATION OF THE ELDERLY**

For CLE workshop 6/14/04  
Elizabeth Loewy  
Assistant District Attorney  
Manhattan District Attorney's Office  
Attorney in Charge, Elder Abuse

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### **INTRODUCTION AND OVERVIEW**

The goal of this presentation is to provide workshop participants with a basic understanding of the way elder abuse cases involving financial exploitation are prosecuted within the Criminal Justice System in New York State. The terms *elder abuse* and *financial exploitation* will be explored within the context of the Penal Law, and a brief description of the Criminal Court process, from receipt of the complaint to arrest to sentence, will be covered. We will look at the relationships between the victims and their abusers on these cases. Additionally, special issues relating to the prosecution of matters involving financial exploitation of the impaired victim will be addressed.

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## **Outline:**

### **I. ELDER ABUSE – DEFINED:**

**A.** Police and prosecutors define elder abuse as any crime or violation involving a victim who is sixty years of age or older. Compare with definition used at conference.

- 1.** Elder abuse crimes may fall into one or more of the following categories: domestic violence, financial exploitation, general offenses.
  - a.** Police and prosecutors define domestic violence as any crime or violation committed by a defendant against a member of his or her same family or household.
  - b.** Financial exploitation is defined by prosecutors as the unauthorized use of a victim's funds or resources. Financial exploitation has been characterized as “the illegal or improper use of an adult’s funds, property or assets” or “resources by another individual, including, but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.” (See NCEA National Incidence Abuse Study and NY State Social Services Law)
- 2.** Penal Law offenses charged on elder abuse cases consist of violations, misdemeanors and felonies.
  - a.** A violation is an offense that carries the lowest sanction, and it is not defined as a crime. The maximum term of imprisonment is fifteen days. Examples of violations charged on elder abuse financial cases are disorderly conduct, harassment (striking, shoving, kicking), and trespass.
  - b.** A misdemeanor is classified as the least serious level of crime. Misdemeanors are divided into two classes: "A" and "B." The maximum term of imprisonment for an "A" misdemeanor is one year, and three months for a "B" misdemeanor. Examples of misdemeanors

commonly charged on elder abuse/financial exploitation cases include Assault 3<sup>o</sup>, Attempted Assault, Criminal Contempt (including the violation of a valid order of protection), Endangering the Welfare of an Incompetent or Physically Disabled Person, Forgery (and related charges), Fraudulently Obtaining a Signature, Jostling, Menacing, Petit Larceny, Stalking, Theft of Services, and Unlawful Use of a Credit Card.

- c.** A felony is the most serious crime. Felonies are crimes for which more than one year of imprisonment may be imposed. Felony crimes are classified from "A" to "E" with "A" representing the most serious of crime and "E" the least serious. Examples of felonies which may be charged on elder abuse prosecutions are Assault 1<sup>o</sup> and 2<sup>o</sup>, Burglary, Endangering the Welfare of a Vulnerable Elderly Person, Forgery (and related charges), Grand Larceny, Kidnapping, Rape, Robbery, Scheme to Defraud, Unlawful Imprisonment and Murder. Above lists are not all-inclusive.
  - d.** The Hate Crimes Act of 2000, P.L.§ 485.05, was enacted to address what the Legislature perceived as an increase in crime involving violence, intimidation and destruction of property based upon bias and prejudice. Under the Act, an individual commits a hate crime when he or she intentionally commits a specified offense and targets a person for such an offense because of his belief or perception regarding the victim's race, color, national origin, ancestry, gender, religion, age, disability or sexual orientation, regardless of whether that perception is accurate. "Age" means 60 years of age or older while disability means a physical or mental impairment that substantially limits a major life activity.
- 3.** Some of the enumerated offenses under the Hate Crimes Act include Assault, Grand Larceny, Harassment, Kidnapping, Rape, Robbery, Stalking and Murder.

4. For purposes of sentencing, a conviction for one of the offenses covered by the Act would be as though it was for an offense that is one category higher (an A misdemeanor conviction would be sentenced as an E felony; an E felony would be sentenced as a D felony).

## **II. THE ROLE OF THE DISTRICT ATTORNEY:**

### **A. Elder abuse complaints are brought to the attention of local District Attorney's Offices through various channels.**

1. Police: the police investigate crimes and arrest individuals who are suspected of committing them. The criminal action commences when the police officer has "probable cause" to believe that an individual has committed a specific offense, and he/she is taken into custody.
2. Civilians: most District Attorney's Offices have a unit where individuals who are not members of law enforcement can report crimes which require some degree of investigation. Elder abuse complaints are commonly referred directly to the District Attorney's Office by family members, government agencies, bank personnel, civil attorneys, guardians and judges on guardianship proceedings, medical professionals, social service providers, caregivers and concerned neighbors.

**Note:** New York State does not presently have statutory "mandated reporting" rules for elder abuse which mirror the reporting requirements for cases of suspected child abuse. Adult Protective Services (A.P.S.) workers, however, are mandated to contact the police if they have reason to believe their client is the victim of a crime. See §473 (5) of the Social Services Law.

### **B. Investigation of the complaint.**

1. The District Attorney's Office may initiate a criminal investigation of an elder abuse matter before an arrest has been made.

- a. As part of the pre-arrest investigation, the assistant district attorney (A.D.A.) may interview witnesses, collect and review documents and inspect physical evidence. The A.D.A. has the power to "open" an investigation in the Grand Jury and request that the grand jury issue subpoenas *duces tecum* for the purpose of compelling witnesses to appear and produce documents relevant to the elder abuse case. See C.P.L.§610.20; C.P.L.R. §1311(a).

**2.** There is a Statute of Limitations which governs when the prosecution must commence a criminal action.

- a. The prosecution of most felonies (excluding murder) must commence within 5 years of the commission of the felony act, two years for a misdemeanor, and one year for a violation. See C.P.L.§30.10.

**C. Prosecution of the elder abuse complaint after the arrest.**

**1.** After police effect an arrest, the A.D.A. will review the sufficiency of evidence to support the charges and draft the accusatory instrument (the complaint), upon which the defendant will be arraigned.

- a. The complaint must allege facts providing "reasonable cause" to believe that the defendant committed the offenses. See C.P.L.§ 100.40.

**2.** Once the complaint is drafted, the defendant is brought before the Criminal Court for the arraignment and a hearing on bail. If not disposed of at the arraignment, the case will be adjourned for grand jury action (felonies), motion practice or conference (other offenses) and, eventually, trial. Defendants who are not released on their own recognizance will either post bail or be detained in jail during the pendency of the case. See C.P.L§ § 170.10, 180.10.

**D. The Grand Jury.**

1. Grand juries are authorized to hear and evaluate evidence and to take various actions based upon the evidence and the legal charges given to them by the prosecutor.
  - a. The grand jury may vote an indictment, direct the filing of a prosecutor’s information containing non-felony charges, direct the removal of the case to Family Court, or issue a report. For the first three actions, the grand jury must determine that the evidence is legally sufficient in that it provides reasonable cause to believe the defendant has committed the crime charged. If the grand jury votes a true bill (indictment), the case will proceed to Supreme Court. The grand jury will dismiss the matter if the above criteria are not met. See C.P.L. Art. 190.

**E. Once an action is commenced in Criminal Court, the defendant is entitled to a speedy trial.**

1. The prosecution must be ready for trial within 6 months of the commencement of most felonies (except murder), 90 days for an A misdemeanor, 60 days for a B misdemeanor and 30 days for a violation. Please note that this time period may be extended by the Court for certain specified purposes such as motion practice, or the unavailability of witnesses. See C.P.L. §30.30.
2. Once a defendant has been arraigned on a violation or a misdemeanor, the case does not usually proceed to trial immediately. The judge may adjourn the case for a motion schedule (discovery, demand to produce, applications for pre-trial hearings) or for plea-bargaining conferences. The defendant may choose to enter a guilty plea at any time during this process, or before or during the trial. An order of protection may be issued and extended each time the case is adjourned, mandating that the defendant stay away from the victim’s residence and refrain from

communication with the victim. See C.P.L. Art. 170 and §530.13.

3. After a defendant has been indicted for a felony, he is arraigned on the indictment in Supreme Court. The defendant may plead guilty at the Supreme Court arraignment, or the case will be adjourned for a motion schedule, as in Criminal Court. See C.P.L. Art. 180.

**F. A Criminal Court judge can impose a variety of conditions on the defendant's sentence after conviction.**

1. The Court may issue a long term order of protection as a condition of the defendant's sentence; the order would last five years for a felony, three years for a misdemeanor, and one year for a violation, and can be tolled to begin after a defendant's period of incarceration has been completed. See C.P.L. § 530.12.
2. The Court may opt to make restitution of stolen funds a condition of the defendant's sentence on a financial exploitation conviction. See P.L. §60.27. This is an extremely important option for elderly victims who cannot afford to pay for civil litigation to recover stolen funds.
3. A defendant may be ordered to complete either drug or alcohol rehabilitation as a condition of sentence. Psychological treatment programs dealing with abusive behavior are another sentencing option on domestic violence cases. See C.P.L. Art. 410.

- G.** Certain elder abuse charges that fall within the statutory definition of "family offense" qualify the victim to be able to proceed in Criminal Court, Family Court, or both venues concurrently. See C.P.L. § 530.11.

### **III. ANATOMY OF AN ELDER ABUSE/FINANCIAL EXPLOITATION PROSECUTION**

#### **A. Who are the victims?**

1. Elder abuse victims come from all socio-demographic groups. A recent study in New York City identified the majority of victims as Caucasian females living with another adult; in most cases it was their abuser. See Journal of Elder Abuse and Neglect, Vol. 11(4) 1999, p. 81.

2. The victim's mental status is crucial in determining whether and how to proceed on a criminal case.

- a. The victim may be mentally ill, have a substance abuse dependency (drugs or alcohol), and/or dementia.

#### **B. Who are the abusers?**

1. New York County D.A.'s Office statistics indicate that exploiters of the elderly include their family members, home attendants, health care workers, fiduciaries (including accountants, brokers, attorneys, agents, guardians) and strangers (street crime, con and scam artists).

- a. The abuser may also have mental health issues, but these are less likely to determine how the prosecution proceeds, unless it is determined that the impairment affected the defendant's intent when he/she committed the crime.

#### **C. Proving a criminal case when the elderly victim is reluctant to cooperate.**

1. Domestic violence cases involving adult couples are notoriously difficult to prosecute; domestic violence crimes involving parents and grandparents who are being physically/financially exploited by their children often come with the most reluctant witnesses of all.

**2.** Prosecutors will attempt, whenever possible, to “build a case” without relying on the reluctant victim to testify.

- a.** The prosecution may attempt to prove its case at trial without requesting or subpoenaing the elderly victim to testify. There are certain offenses, like Criminal Contempt (violation of an order of protection), which the prosecution may be able to prove beyond a reasonable doubt through the introduction of evidence other than the victim's statement (i.e. the order of protection and a police officer's testimony that he witnessed the defendant at the victim's residence in violation of the order).
- b.** The following evidence may also be crucial in preparing for a "victimless" trial:
  - a defendant's admissions to civilian witnesses or to the police at the time of crime/arrest
  - medical evidence pertaining to the nature of the victim's injuries
  - photographs or drawings of the crime scene and/or the victim's injuries
  - witnesses' observations of the victim and/or defendant's abusive conduct
  - financial records which establish the unauthorized transfer of the victim's funds (including canceled checks, balance books, deposit and withdrawal slips, deeds, trusts, power of attorney documents, applications, contracts, receipts, bills, and ATM film, when it exists)
  - forensic evidence, such as laboratory examinations, handwriting analysis and voice analysis
  - physical evidence obtained from the crime scene or from the defendant
- c.** If the prosecution cannot prove the elements of the crime charged "beyond a reasonable doubt" without calling the reluctant victim to testify, a subpoena to compel the witness' attendance can be issued by the District Attorney. See C.P.L. §610.20.

**d. Conditional Examination of the Elderly Witness.** See C.P.L. §660.20

**D. Proving a criminal case when the victim is mentally impaired.**

**1.** The Criminal Procedure Law mandates that a witness have testimonial capacity (competence) in order to testify at trial. See C.P.L. § 60.20.

**a.** If the witness is mentally impaired, the court will assess whether or not he/she understands the nature of the oath.

**b.** If the judge determines that the mentally impaired witness does not sufficiently understand the oath, the witness may be permitted to give unsworn testimony if the court is satisfied that the witness possesses sufficient intelligence to justify the reception thereof. Caveat: A defendant may not be convicted of a crime based solely upon unsworn testimony.

**2.** An elderly witness may have testimonial capacity, but little or no memory of the matter in question due to Alzheimer's disease, or some other age-related illness.

**3.** There are a small number of charges in the Penal Law which apply specifically to mentally impaired victims:

**a.** Endangering the Welfare of an Incompetent or Physically Disabled Person is a misdemeanor that criminalizes activity by an individual who "knowingly acts in a manner which is likely to be injurious to the physical, mental or moral welfare of one who is unable to care for himself or herself because of a physical disability, mental disease or defect." See P.L § 260.25.

- b.** This offense, though under-utilized in many jurisdictions, can be quite helpful to prosecutors who are attempting to "find a charge that will stick" on elder abuse cases in which the victim is impaired. It may be an appropriate charge to consider against a reckless or neglectful caregiver, or when the likelihood of proving an assault case is questionable.
  - c.** Endangering the Welfare of a Vulnerable, Elderly Person, a relatively new addition to the Penal Law, makes it a felony for a paid caregiver to commit certain misdemeanor crimes, such as assault, against a person over sixty who is suffering from a disease or infirmity associated with advanced age. Certain felonies are also upgraded to a more serious classification.

See P.L. §§ 260.32, 260.34.
- 4.** Article 155 of the Penal Law, the larceny statute, does not address the issue of theft from a mentally impaired person.
- a.** Prosecutors in New York State rely on cases that are instructive on the issue of whether an owner's mental state is important when determining if a theft has occurred.

    - People v. Camiola, 225 A.D.2d 380 (1st Dep't 1996), lv denied 5/14/96, is a case in which an accountant for an elderly, senile woman maintained a pattern of thefts from her over a two year period. The victim passed away by the time of the trial. The defense contended that the victim had consented to the transfers of funds in question, and that they were gifts she had knowingly given to the defendant. The Court held that the jury, in evaluating the definition of larceny, was properly instructed that it could consider the victim's capacity to form consent in order to determine whether

there had been a trespassory taking of her property, a form of larceny actionable pursuant to section 155 of the Penal Law. Id. at 380; People v. Shurn, 69 A.D. 2d 64 (2d Dep't 1979).

- b.** Larceny actions involving joint bank accounts are often unprovable.
  - Under New York State Banking Law section 675, as well as the definition of “Owner” in section 155 of the Penal Law (larceny statute), a theft charge is often not viable against an account holder who is a joint tenant of funds in a joint bank account.
- c.** If a defendant opens a joint account with funds obtained from a mentally incapacitated person, a larceny charge may be supported by the evidence pursuant to People v. Patricia Gbohrou and Calloway Johnson, 186 Misc.2d 324 (Supreme Court. Bronx County 2000)
  - In Gbohrou, the Court determined that the defendant, a home health aide, had created a joint account with her impaired clients' funds at a time when she knew that they had significant mental impairment. Citing Camiola, supra, and People v. Antilla, 77 N.Y. 2d 853 (1991), the judge held that this transfer of funds was a “wrongful taking” within the meaning of the larceny statute.
- d.** There is currently a bill before the State Legislature that seeks to amend Article 155 of the Penal Law to include larceny from a mentally disabled or mentally incapacitated person. (S. 3279; A. 2851)

**E. Financial exploitation and the power of attorney.**

- 1.** Durable powers of attorney (p.o.a.) are a significant vehicle for criminal financial exploitation of elderly victims.
  - a.** There is relatively easy access to power of attorney forms sold at local stationery stores, and many banks now routinely distribute their institutional p.o.a. documents to individuals who plan to become agents for account holders. Virtually anyone has access to these forms.

- b.** There are no legal filing requirements and no provisions for an accounting by the attorney in fact.
- 2.** The larceny statute does not specifically address the issue of theft through the use of a power of attorney. The General Obligations Law is also silent on the issue of the fiduciary obligations of the agent.
  - a.** Prosecutors rely on case law in an effort to prove that larceny has been committed through the use or misuse of a power of attorney.
- 3.** New York law dictates that an attorney in fact must act as a fiduciary for the principal. See Elco Shoes Inc.v. Sisk, 260 N.Y. 100 (1932); Matter of Moglia, 144 A.D.2d 347 (2d Dep't 1988). A power of attorney is given with the intent that the agent will use that power "for the benefit of the principal" Id. at 348. Therefore, prosecutors can argue that the siphoning of a principal's funds for the agent's personal use is clearly a "wrongful taking" within the definition of larceny pursuant to section 155.05 of the Penal Law.
- 4.** Section 678 of the Banking Law authorizes banks in the state of New York to offer clients a "convenience account." This type of account would be opened strictly for the convenience of the depositor, and as opposed to a joint account, title to the deposited funds would remain with the depositor. Moreover, upon the death of the depositor, the surviving party on the convenience account would not be entitled to the balance. A criminal prosecution for larceny may be viable with a convenience account, as well as with a power of attorney, if the exploiter were to withdraw funds in a manner which does not benefit the elderly depositor.

**F. Additional issues facing the elderly victim: Identity theft, predatory lending and telemarketing fraud.**

#### **IV. ETHICAL CONSIDERATIONS IN THE ELDER ABUSE PROSECUTION:**

- A.** Prosecutors should attempt to prove their case without calling the elderly witness to testify if he/ she is reluctant to appear.
- B.** Although a district attorney has the authority to subpoena a witness to compel his or her attendance at the grand jury or Criminal Court (See P.L. §610.20), this power should be used with great discretion. If the witness fails to appear, he or she could be charged with Criminal Contempt under the Penal Law and, if prosecuted, could face a fine or a sentence of incarceration.
- C.** Throughout the investigation and prosecution of every elder abuse case, the prosecution must be mindful of its obligations under People v. Rosario, 9 N.Y.2d 286 (1961).
  - 1.** The prosecutor must turn over Rosario material to the defense before each and every prosecution witness takes the stand to testify. Rosario material includes any statements of a witness who will testify at trial, as long as it relates to the subject matter of the testimony of that witness. This material includes all reports, documents, notes, diaries or any other recordings (including voice mail messages) made by a police officer or civilian witness regarding the elder abuse case which is being tried.
    - a.** The defense will be able to use statements turned over as Rosario material to cross examine prosecution witnesses. This is a fact that should be made clear to witnesses, if possible, well in advance of trial
- D.** The prosecutor must be aware of the continuing obligation to provide defense counsel with any and all information that is exculpatory to his or her client pursuant to Brady v. Maryland, 373 U.S. 83 (1963).

# FINANCIAL EXPLOITATION

For Prosecutors

**{Insert FINANCIAL PowerPoint handout, 6 slides  
per page}**

## **EVALUATION TESTING**

Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved by incorporating feedback from evaluation. Participants' knowledge is measured as well as their satisfaction with the session.

**Sample tests:** Sample pre and post tests are provided for evaluation use. They can each be printed on front and back of one sheet. Ideally, the pre-test would be administered to a sample of participants some time before the training event and the post-test would be administered following the training and again after 30 days. However, these samples have been designed so that they can both be administered the same day. It is preferable to administer the pre-test during a welcome session or gathering prior to the training session. The post-tests repeat content questions without repeating demographic questions. However, if you can link the tests with code numbers which do not breach confidentiality, then powerful statistical tests can be performed on the compiled data.

**Adapting tests.** The following pre-test and post-test have content questions for a specific workshop. When evaluating a workshop whose content differs from that outlined here, the pre-test and post-test can be adjusted by adding or deleting true-false questions.

**Thank you for joining us in our workshop today. Before we began our workshop we are asking that you take a moment to fill out this survey as it will help us shape future workshops. Thank you!**

**Workshop IV FINANCIAL EXPLOITATION PRE TEST**

1. **Gender?**  Female  Male
2. **Age?**  24-29  30-34  35-39  40-44  45-49  50+
3. **Borough where you work :**  Manhattan  Brooklyn  Bronx  Queens  Staten Island
4. **Are you an:**  ADA  Social Worker  Police Officer  Other: \_\_\_\_\_
5. **How many years have you worked at your current job?**  
 Less than one year  1-3  4-6  7-9  10+
6. **Do you handle cases involving elder abuse?**  Yes (Go to question 6a)  No (Go to question 7)  
*If yes: Approximately what percentage of your caseload are elder abuse cases?*  
 Under 25%  25-50%  51-75%  Over 76%
7. **Have you ever had any classes or prior elder abuse training?**  
 No (Go to Question 8)  
 Yes (Please complete 7a-7c) ↓

- 7a. How many classes/trainings have you had on the topic of elder abuse?** \_\_\_\_\_
- 7b. Not counting today's training, how long ago was the most recent training?(years/months)**  
Years: \_\_\_\_\_ Months: \_\_\_\_\_
- 7c. Where did you receive your prior training(s)?** \_\_\_\_\_

**PLEASE COMPLETE OTHER SIDE**

**8. Please circle the response that best reflects your understanding of the following statements.**

	True	False	Don't Know
<b>a. There are specific Elder Abuse Statutes to consider in elder abuse cases.</b>	1	2	8
<b>b. An elderly person who does not have testimonial capacity, may be permitted to give unsworn testimony in court.</b>	1	2	8
<b>c. The larceny statute addresses the issue of theft from a mentally impaired person.</b>	1	2	8
<b>d. If the holder of a joint account is mentally incapacitated, it is not possible to prove wrongful taking.</b>	1	2	8
<b>e. The police are mandated to report all suspected elder abuse cases to the State Registry.</b>	1	2	8
<b>f. The Hate Crimes Act of 2000 includes age, in addition to race, color, national origin, ancestry, gender, religion, disability and sexual orientation, as a targeting factor in acts covered by this statute.</b>	1	2	8

**Thank you for taking the time to complete this survey!**

**Workshop IV**

**Thank you for joining us in our workshop today. Please take a moment to fill out this survey as it will help us to shape future workshops. Thank you!**

**Workshop IV FINANCIAL EXPLOITATION POST TEST**

*1. Do you feel that you can incorporate the information you were given today into your work?*

No, definitely not    No, not really    Yes, a little    Yes, somewhat    Yes, completely

*2. Was there anything you expected to be addressed in today’s presentation that you feel was either not addressed or not adequately addressed?*

No (go to 3)                       Yes (go to 2a)

*2a. If yes: What information you would like to see presented in future presentations.*

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*3. Please circle the response that best reflects your understanding of the following statements.*

	True	False	Don’t Know
<b>a. There are specific Elder Abuse Statutes to consider in elder abuse cases.</b>	1	2	8
<b>b. An elderly person who does not have testimonial capacity, may be permitted to give unsworn testimony in court.</b>	1	2	8
<b>c. The larceny statute addresses the issue of theft from a mentally impaired person.</b>	1	2	8
<b>d. If the holder of a joint account is mentally incapacitated, it is not possible to prove wrongful taking.</b>	1	2	8
<b>e. The police are mandated to report all suspected elder abuse cases to the State Registry.</b>	1	2	8
<b>f. The Hate Crimes Act of 2000 includes age, in addition to race, color, national origin, ancestry, gender, religion, disability and sexual orientation, as a targeting factor in acts covered by this statute.</b>	1	2	8

**PLEASE COMPLETE OTHER SIDE**

4. *What was ONE aspect of the training that was most valuable to you?*

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5. *What was ONE aspect of the training that was least valuable to you?*

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6. The next set of questions pertains to how satisfied you were with today's training. For each question, please rate to what extent you agree or disagree with each statement on a scale of 1-5, a 1 indicating you disagree and 5 indicating you agree with the statement.

	Disagree					Agree				
a. <i>The program met my expectations.</i>	1	2	3	4	5	1	2	3	4	5
b. <i>The topic was presented in an easy and understandable format.</i>	1	2	3	4	5	1	2	3	4	5
c. <i>The training had an adequate amount of information.</i>	1	2	3	4	5	1	2	3	4	5
d. <i>The information presented was relevant to my work.</i>	1	2	3	4	5	1	2	3	4	5
e. <i>The goals and objectives were clearly stated.</i>	1	2	3	4	5	1	2	3	4	5

7. *Any other comments:*

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**Thank you for taking the time to complete this survey!**

**Workshop III**

## SECTION 5 - MEDICAL ISSUES IN ELDER ABUSE CASES

**Mode:** 50 minute lecture/question and answers, 10 minutes introductions, evaluation testing (or 75 minutes content + 1.5 credits)

**Continuing Legal Education Credits:** One (or 1.5)

**Use:** To be used by sponsoring agency such as local bar association or district attorney's office to provide one continuing education credit. Can be used individually or combined with other courses.

**Presenter:** Local doctor or medical professional who can discuss signs of abuse, dementia, and other diseases in the elderly which may affect testimony in elder abuse cases. This section was based on a presentation made by Judith Race, CSW, Coordinator of Direct Services, Elderly Crime Victims Resource Center, NYC Department for the Aging, and Martin Drooker, MD, Associate Professor and Director, Behavioral Medicine and Consultation Psychiatry, Mount Sinai School of Medicine.

**Goal:** To develop an understanding of the medical issues and psychiatric issues that may impact on elder abuse prosecutions.

**Objectives:** By the end of this presentation participants will be able to:

- Identify the markers of physical abuse including fractures, bruising, burns, and other injuries
- Understand factors in neglect of elders including bed sores, malnutrition, dehydration and misuse of medication
- Know the types, signs and symptoms of sexual abuse
- Identify the sub types of dementia and which types are reversible
- Understand how psychiatrists can evaluate decisional capacity
- Know how to use expert psychiatric testimony

**Materials:** PowerPoint outline and handout materials. PowerPoint presentations *Markers of Physical and Sexual Abuse* prepared by Judith Race, CSW, and Adolfo Firpo, MD, MPA, and *Psychological Considerations in Elder Abuse* by Martin Drooker, MD. Written background material. Computer, screen, and projector for the PowerPoint presentations

**Method:** Presenter lectures, using PowerPoint provided or may use his/her own PowerPoint ensuring that all material in the outline is covered. Presenter may add additional materials from own cases as appropriate

**Evaluation:** Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved. Sample pre- and post-tests are provided for evaluation use. They can each be printed on front and back of one sheet.

**Written background materials, PowerPoint's (2) in handout format, and sample evaluation questionnaires follow.**

## **INDICATORS OF PHYSICAL AND SEXUAL ABUSE OF THE ELDERLY**

### **INTRODUCTION TO ELDER ABUSE**

Elder abuse is an intentional behavior that results in the physical, sexual, emotional or financial harm or injury or neglect or abandonment of an older person by a family member, friend, fiduciary or caregiver. Often two or more types of abuse are perpetrated simultaneously.

Neglect is the failure to fulfill a responsibility to attend to and properly satisfy a basic need of an older person. Neglect can be an active, conscious, intentional attempt to inflict physical or emotional distress on the victim, or it can be a passive or unintentional infliction.

An example of active neglect would be a caregiver who does not provide the things a person needs to survive on a daily basis (e.g., food, water, access to health care) in order to hasten an older adult's death and benefit from that person's money.

An example of passive neglect would be a caregiver who does not know how or is unable to provide the proper care for an older person (e.g., a developmentally disabled older child who is a caregiver).

Self-neglect is not included in most definitions of elder abuse, since the term "self" infers that there is no abuser--that it is the behavior of the older adult that threatens his or her own health or safety. One example of self-neglect would be an older adult who has lost a partner and is suffering from depression but refuses to seek help. A clutterer who lives amid hazardous conditions would be another example

It is often difficult to distinguish between a disease process and an injury in an older adult. Many cases of elder abuse fall into a gray area where abuse and neglect are less clear because of physiologic and psychological changes that occur in old age. Also, deaths may not be evaluated in detail because it is assumed that death was the result of old age. As a result, autopsies are rarely performed on older adults.

Note: the PowerPoint presentation that follows this overview focuses on the medical markers of physical and sexual abuse. Included in the section on physical abuse is an overview on the signs of neglect. Depending on the intended focus of the training, the trainer may use all or part of the presentation. The descriptions in the presentation are intended as a general guide and framework for discussion, but not as specific legal definitions.

### **Emotional (or Psychological) Abuse**

Emotional (or psychological) abuse is the infliction of anguish, pain, or distress through verbal or nonverbal acts. Emotional abuse includes verbal assaults, insults, threats, intimidation, humiliation, and harassment. Examples of emotional abuse include: treating an older person like an infant; isolating an older person from his or her family, friends, or regular activities; and giving an older person the “silent treatment.” Emotional abuse is often the beginning of a downward spiral—it frequently escalates into other types of abuse such as physical and financial.

### **Physical Abuse**

Physical abuse is the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include, but is not limited to, acts of violence such as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, and burning. Inappropriate use of physical restraints, force-feeding, and physical punishment of any kind are also examples of physical abuse.

The results of physical abuse include: fractures, bruising, burns, and medication induced symptoms (e.g., dizziness, excess sleepiness).

### **Identifying abuse**

Investigators follow suggestive signs to a tentative conclusion. At some point they must determine whether they are seeing abuse or if there is a logical or reasonable explanation for the person’s injuries (i.e., did a person fall or was the person pushed).

Investigators try to obtain information from the victim and, if possible, medical records. They look for unexplained injuries: are the injuries consistent with the person’s account (e.g., a person who presents with cigarette burns on their arms but tells you he or she was accidentally burned while cooking)? Was there delay in seeking medical treatment (i.e., is the victim hiding the injury or is the abuser preventing the victim from getting help)?

## **MARKERS INDICATING POSSIBLE PHYSICAL ABUSE**

Accidents tend to cause trauma to the extremities such as fingers and toes (distal trauma) while abuse trauma tends to be proximal (e.g., to trunk and head). The mid-regions are usually covered by clothing (except for the face), making “cover-up” easy. Dating injuries is not an exact science. Because of the many variables frequently involved in any particular case it is difficult to lock in a point in time.

(1) **Wounds and suspected injuries**

Almost all accidental wounds tend to occur to arms and hands. Any other location indicates possible abuse. Note any injury not properly cared for, delay in seeking treatment, unset broken bones, welts, cuts, abrasions, lacerations, punctures, insufficiently stitched lacerations, or any unexplained injury. Also note inconsistencies between the injury and explanations of the injury or pain when touched (even if you don't see an injury). It is important to rule out pre-existing medical condition such as osteoporosis as the cause of fractures or unset broken bones (see section "Medical Causes of Fractures").

**Glossary of injury:<sup>1</sup>**

**Wound** = a bodily injury caused by physical means, with disruption of the normal structures.

**Abrasion** = a wound caused by rubbing or scraping the skin or mucous membrane.

**Contusion (bruise)** = traumatic injury of tissue without breakage of skin, due to blunt force trauma. Blood accumulates in the surrounding tissue producing swelling, discoloration, and sometimes tenderness or pain.

**Incision** = a cut. Wound made by a sharp instrument or object.

**Laceration** = wound produced by tearing or splitting of body tissue often from blunt impact, usually over a bony surface. Not a cut or incision.

(2) **Bruising (contusion)**

Bruising is the most common expression of injury from trauma and occurs more frequently in older adults. When people bang into something, it usually results in a bruise on one side of the body. Thus, bilateral bruises are indicators of abuse and may come from the abuser grabbing the victim's arms and shaking and/or pushing the victim.

It is important to look for patterns of bruising such as clusters of bruises, bruises in different stages of healing, tramline bruising (parallel marks caused by hitting with a stick), and bruising on the insides of arms and thighs.

Bruising in an abuse victim most often occurs on face and neck, chest wall, abdomen, and buttocks, but sometimes on knuckles, fingers, and palms and soles of feet. The tough fibrous tissue on the palms and soles of feet is less susceptible to bruising from minor accidental trauma or injury. However, you may see defensive bruises on a person's palms indicating that the person held his or her hands up to thwart off a beating or a stabbing attack.

The elderly bruise more easily and heal more slowly. Bruises range in color from red or purple (recent) to yellow green (older). They generally take two to four weeks to heal, but may take months. Bruises may be under the skin,

making the victim sensitive to the touch before the bruises actually manifest, which may take 24 hours or more. There is strong disagreement as to the reliability of timing a traumatic event in terms of the changes in the color of bruises. The general suggestion is that black or blue suggests that a bruise is less than 12 days old while the presence of yellow indicates that it is more than 24 hours old.<sup>2</sup>

Females tend to have more adipose tissue (fat) and bruise more easily than males.

Bruising can be increased as a result of:

- a medication regimen (e.g., when a person is on Coumadin, aspirin, or other blood thinning medications)
- a medical condition (e.g., vitamin deficiency, leukemia)
- nutritional supplements (e.g., garlic, ginkgo, bilberry, ginger)

**(3) Morphological Signs**

Morphological signs are marks that look like the shape of an object (e.g., an iron, curling iron, belt marks, fingers, cigarette burns). “Rope burns” are caused by victims struggling to free themselves from restraints. Bite marks are still another established indicator of abuse

**(4) Burns**

Burns are rare among healthy adults or among frail elderly residing in skilled nursing facilities. Approximately 70% of all burns in older adults are the result of abuse or neglect.

**(5) Ruptured and/or Bleeding Eardrums**

Ruptured eardrums and bleeding from the ears can result from an abuser boxing a victim’s ears.

**(6) Changes in Hairstyle**

Changes in hairstyles can be compensation for hair having been ripped out of the victim’s head or to hide bruises on the scalp (the victim may change a hairstyle to hide these injuries). Hair pulling can also result in cervical injuries or death due to a snapped neck.

**(8) Syndromes (constellations of symptoms occurring together) that suggest some type of abusive behavior by a care provider:**

• **Medicinal Misuse**

Malnutrition, dehydration, and the various other consequences of medicinal misuse can occur when a person is neglected by a caregiver on whom he or she is dependent. Medications can also be used as a tool for intentional abuse; abusers give their victims too much or too little of an indicated drug, withhold a necessary medication, or administer unnecessary or inappropriate medication.

- **Violent Shaking**

Violently shaking an older adult can result in whiplash, detached retinas, and brain hemorrhages--similar to Shaken Baby Syndrome. As people age, the size of the skull remains the same but the brain may begin to atrophy. Thus there is more room in the skull for the brain to move around in, so shaken older persons are even more prone to contusions and other brain injuries than are shaken babies. (Brain hemorrhaging can also result from attempted strangulation.)

## **MARKERS of NEGLECT OR PHYSICAL ABUSE**

### **Fractures**

Rule out possible medical causes before exploring abusive behavior as the cause of a fracture. Fractures are a common injury in older adults and are often attributed to age-related factors such as osteoporosis. The bones of older adults are thinner and less dense, making them more susceptible to fractures as the result of bone disease or injury. Osteoporosis and other bone diseases also make the bones more brittle.

Additional causes of fractures include poor nutrition, Vitamin D deficiency, alcoholism, age-related sex hormone deficiencies, and cancers that invade bones (e.g., osteosarcoma).

Fractures of the hip are most often seen in adults who are 75 and older. In people under the age of 75, the wrist is a common site of fracture since people often try to break a fall with their hands. Other sites of fractures in older adults include the trunk and spine, and the head, particularly the face, teeth, and cheekbones. *Any facial fracture should raise suspicions of abuse.*

Of those older adults who are susceptible to falling, most experience one to three serious falls a year. The causes and results of any given fall in an older adult should be evaluated to determine if they are, in fact, forensic markers for abuse and/or neglect.

### **Decubitis Ulcers (bedsores, pressure sores, pressure ulcers)**

*Decubitis* ulcers are the result of circulatory failure due to pressure resulting in dead tissue (necrosis). The presence of *decubiti* may indicate that a bed-ridden patient is not being properly cared for and/or moved or turned by the caregiver. Multiple sites of *decubiti* and foul-smelling dead tissue are indicators of neglect.

*Decubiti* are never normal. The risk factors for this type of skin lesion in the frail elderly include medical illness, cognitive impairment, incontinence, and poor nutrition. In abuse victims, more frequent illnesses (with prolonged periods of confinement to bed, immobility and cognitive impairment) result in greater

susceptibility because of their increased dependency on a care provider to exercise proper skin care. Once *decubiti* occur, they require evaluation by a physician or nurse expert in wound care followed by appropriate management. If *decubiti* are not treated, further complications are likely to ensue, such as infection which could lead to death.

### **Malnutrition**

Malnutrition occurs when there is a decreased intake of necessary nutrients due to a poor diet and/or malabsorption (poor passage of materials through the walls of the intestine into the bloodstream). Malnutrition can result from:

- Decline of smell and taste in the older adult resulting in a loss of appetite-- natural aging factors
- Inappropriate medications, including psychotropic drugs
- Medical conditions such as cancer, dementia, stroke, Parkinson's disease, a disorder of the esophagus, or COPD—Chronic Obstructive Pulmonary Disease (e.g., chronic bronchitis, asthma, and emphysema). In COPD, a patient uses so much energy when trying to breathe that more calories are burned, often resulting in significant weight loss. Self-neglecting persons who may have lost their will to live can also become malnourished.
- Neglect or poor caregiving, misarrangement or loss of teeth by neglect, or loss of appetite

Causes of appetite loss in the frail elderly include depression, change in environment, change in medical condition and under- or over-medication. In abuse victims, appetite loss is often the result of inappropriate or excessive medications that can affect swallowing and/or memory. Appetite loss may be exacerbated by a caregiver's ignoring of cultural food preferences (e.g., expecting an older person to eat unfamiliar foods). Force feeding and other inappropriate feeding can lead to food revulsion, refusal to eat, depression, choking, aspiration, pneumonia, or death.

### **Dehydration**

Dehydration is excessive water loss from the body. The elderly are more prone to dehydration than other segments of the population, as there are decreased body water reserves and thirst drives in the older adult. The thirst drive in the older adult may remain depressed even after 12 to 24 hours of water deprivation. Dehydration is often the result of a medical illness. However, neglect may be present if inadequate fluids are offered or provided and if the dehydration goes unrecognized for a long period of time by medical or nursing personnel. Symptoms of dehydration include dizziness, dry mouth and nose, and decreased urine production. Dehydration is the most frequent cause of reversible dementia.

Possible causes of dehydration include gastrointestinal illness (e.g., stomach flu), food poisoning, alcohol overload, dieting, ignoring thirst, diabetes, neglect or withholding of fluids, and too much caffeine.

### **Misuse of Medication**

Older adults may misuse prescription drugs due to a lack of capacity, or because they reject efforts by medical professionals to help them. Medications can also be used as a tool for abuse. Abusers sometimes over-medicate to keep a person quiet and manageable. Under-medicating or withholding medication may occur when a caregiver is diverting drugs for his or her personal use. Over- or under-medication can result in medical or cognitive impairment.

To detect abuse, explore the use of medications, their side effects, interactions with other medications, and the use of multiple medications.

### **SEXUAL ABUSE**

Sexual abuse is defined as non-consensual sexual contact of any kind with an elderly person. Sexual contact with any person incapable of giving consent is also considered sexual abuse. It includes but is not limited to unwanted touching; all types of sexual assault or battery, such as rape, sodomy, or coerced nudity; and sexually explicit photography.

Sexual assault does occur among the elderly, but there is no complete data on this type of abuse. Sexual abuse is often difficult to detect because older adults may be reluctant to disclose it and find it difficult to discuss.

Older adults become vulnerable to sexual abuse through cognitive impairment and/or their physical inability to protect themselves. Abusers sometimes use sexual abuse as a punishment.

*Case Example:* A 93-year-old woman, diagnosed with dementia, who was repeatedly raped by young people in the community who entered her first-floor bedroom each night. The woman was cognitively impaired and was incapable of giving consent.

### **Identifying Sexual Abuse**

The forensic markers of sexual abuse include torn, stained, bloody underclothing; bruised breasts; changes in the bowel or bladder; pain, itching, bruising, and burning in the genital area; unexplained venereal disease or vaginal infections; and difficulty in walking, standing, and sitting. Bruising of the palate may indicate forced oral copulation. Rope burns are signs of the victim having been restrained. Behavioral markers of sexual abuse include withdrawal, fear, depression, anger, insomnia, increased interest in sexual matters and more aggressive behavior.

*Case example:* A 67-year-old widow whose 19-year-old neighbor came to her door one night to ask if he could use her telephone. As soon as she let him in the door, he threw her down, raped and sodomized her. When he tried to drag her upstairs to her bedroom, the room she had shared with her husband, she was able to resist him. At one point she ran out of the house, naked, into the street screaming for help. The 19-year-old ran away, and the victim called the police and had the presence of mind not to shower and wash away the evidence. She was taken to a local hospital where a rape kit was completed, and within 10 hours she was in the prosecutor's office, having sustained serious bruising to the palate and uvula (small mass of tissue suspended from the palate).

Sexual abuse is more prevalent in the cognitively impaired and those needing help with Activities of Daily Living (ADLs) and/or Instrumental Activities of Daily Living (IADLs). ADLs are the core daily personal care activities which are necessary for people to be able to live independently. ADLs are not always defined in the same way but generally include bathing, dressing, eating, mobility, transferring (e.g., moving from bed to chair to toilet), and toileting. IADLs generally include meal preparation, medication management, financial management, use of the telephone, use of transportation facilities, and the ability to work.

### **Court determinations**

The court may be called upon in sexual abuse cases to determine if the victim was able to give consent. Is it possible that the suspect reasonably believed that the victim understood and could give legal consent?

The court may be asked to consider evaluations by psychiatrists, who may employ a wide variety of screens [e.g., Folstein Mini-mental, Geriatric Depression Screen, Post-Traumatic Stress Disorder (PTSD) Symptom Scale].

### **Forensic photography**

Photographs can be important evidence when carefully evaluated. They can also be misleading. 35mm prints are affected by fluorescent light, which makes them look greener. Digital photos can be enhanced; attorneys in court should be required to declare if the photos they wish to admit are enhanced and, if so, with what software. Close-up shots depicting forensic markers should be accompanied by mid-range and full-body shots for identification of the person depicted. The person being photographed is not always the victim; prosecutors may present photos of the accused showing lack of injuries in order to counter claims that the accused was injured by the victim.

# Indicators of Physical and Sexual Abuse

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## PSYCHOLOGICAL CONSIDERATIONS IN ELDER ABUSE

Adapted from presentation June 16, 2004 by

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### DEFINITION

Elder abuse is defined as the infliction of physical, sexual, emotional or psychological harm on an older adult. It may involve financial exploitation or active and passive neglect of an older adult by a paid caregiver or by someone who has taken on the responsibility to provide care.

- **Physical Abuse:** non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.
- **Sexual Abuse:** non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.
- **Emotional Abuse:** the willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.
- **Financial Exploitation:** the improper use of an adult's funds, property or resources by another individual, including but not limited to: fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets, improper use of guardianships or powers of attorney.
- **Active Neglect:** the willful failure by the caregiver to fulfill the caretaking function and responsibilities assumed by the caregiver, including but not limited to: failure to provide food, clothing or shelter; failure to provide access to medical care, failure to provide assistance with the activities of daily living.
- **Passive Neglect:** the non-willful failure of a caregiver to fulfill caretaking functions and responsibilities because of inadequate caregiving knowledge, infirmity or disputing the value of prescribed services.

### SCOPE OF THE PROBLEM

Two million older Americans who are 65 years or older are victimized each year by physical or psychological abuse. Over 50% of these are victims of financial exploitation. Most of these cases occur in the home. The elderly are becoming a

larger percentage of the total United States population. In 1990, 12% of the population was over 65. By 2050, elders will comprise approximately 20% of the population.

### **FINANCIAL EXPLOITATION**

Financial or material exploitation is the illegal or improper use of an adult's funds, property or resources by another individual, including but not limited to: fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets, improper use of guardianships or powers of attorney. The psychological mechanisms employed to accomplish these transactions include intimidation, deception, and coercion.

### **VULNERABILITY**

Victims are both men and women, competent or judgmentally impaired, age 60 or over from all socio-economic backgrounds. Most elder abuse takes place at home. The great majority of older people live on their own or with their spouses, children, siblings, or other relatives—not in institutional settings. When elder abuse happens, family, other household members, and paid caregivers usually are the abusers.

There is no single pattern of elder abuse in the home. Sometimes the abuse is a continuation of long-standing patterns of physical or emotional abuse within the family. Perhaps, more commonly, the abuse is related to changes in living situations and relationships brought about by the older person's growing frailty and dependence on others for companionship and for having their basic needs met.

### **WHO ARE THE ELDER ABUSERS?**

Abusers of older adults are both women and men. Family members are more often the abusers than any other group. Adult children are the most common abusers of family members; other abusers can be friends, neighbors, hired caregivers, and persons with fiduciary or legal obligations. Generally a trusting relationship has been established.

### **ELDER ABUSERS: PSYCHOLOGICAL PROFILE**

The psychopathology of the abuser may include isolation, substance abuse, financial troubles, depression or personality disorders, and poor self-esteem. They are usually dependent upon the victim and reside in the home of the victim. There is a dichotomy in the role of the abuser, as he/she is often the person responsible for providing assistance to the older adult. As caretakers, they are often unprepared for the role they have taken on, and have become overwhelmed or "burned-out".

**VICTIMS OF ELDER ABUSE: PSYCHOLOGICAL PROFILE**

It isn't just infirm or mentally impaired elderly people who are vulnerable to abuse. Elders who are frail, disabled, or depressed are at greater risk of abuse, but even those who do not have these obvious risk factors can find themselves in abusive situations and relationships.

Studies have shown that power and control dynamics similar to those experienced by younger battered woman may also be prevalent in later life.

**OBSTACLES TO INVESTIGATION AND PROSECUTION OF ABUSE**

Domestic violence cases involving adult couples are notoriously difficult to prosecute; domestic violence crimes involving parents and grandparents who are being physically and or financially exploited by their children often come with the most reluctant witnesses of all.

In elder abuse there is often a "conspiracy of silence" between the victim and the abuser. The victim may have memory deficits, and may be unable to report accurately which will affect their credibility. They may also have a fear of abandonment or reprisal by the abuser. They maybe physically frail, have a limited life expectancy, and can lack the vigor needed for a court appearance. Often there is a lack of other supports such as caretaking.

**PSYCHIATRIC DISORDERS IN THE ABUSED ELDERLY**

The elderly may have memory disorders resulting in impairment in reporting and testifying. These impairments are usually due to dementia. Intrinsic to, or distinct from dementia, may be depression, where the victim feels hopeless and passive; paranoia, which results in a reluctance to cooperate with investigation and prosecution; and identification with the abuser.

- A- **Depression:** Individuals with this disorder feel sad, hopeless, worried, and discouraged. Other symptoms are appetite disturbances and change in weight, sleep disorders such as insomnia or hypersomnia (excessive sleepiness), fatigue or low energy, feelings of worthlessness, hopelessness, or excessive or inappropriate guilt, difficulty thinking or concentrating and, in cases of Major Depression<sup>3</sup>, recurrent thoughts of death or suicide.
- B- **Paranoid Personality Disorder:** Individuals with this disorder are reluctant to confide in or become close to others because they fear that the information they share will be used against them. The essential feature of Paranoid Personality Disorder<sup>4</sup> is a pattern of pervasive distrust and suspiciousness of others such that their motives are interpreted as spiteful.

Individuals with this disorder assume that other people will exploit, harm, or deceive them, even if no evidence exists to support this expectation.

## **DEMENTIA**

Dementia is the overarching term given to a gradual deterioration in cognitive functioning, seen through impaired memory and perception, and decreased decision-making abilities. Dementia is a disorder primarily associated with aging; however, dementia is NOT a part of normal aging. It is important to note that while some dementia-like symptoms may be reversed, such as that caused by delirium or depression, others associated with Alzheimer's disease or cerebral vascular disease, are irreversible. For this reason, it is important to obtain a thorough medical exam to rule out other possible causes of the observed changes in cognition and behavior.

### **Dementia Subtypes**

There are several subtypes of dementia including Alzheimer's disease, vascular dementias, and that caused by Parkinson's disease, frontotemporal dementia, and head injuries.

**A- Alzheimer's disease:** Alzheimer's disease, a form of dementia, is a term used to describe a group of brain disorders that causes memory loss and a decline in mental function, over time. Common symptoms include a gradual loss of memory, problems with reasoning or judgment, disorientation, difficulty in learning, loss of language skills, and decline in the ability to perform routine tasks.

People with dementia also experience changes in their personalities and behavioral problems, such as agitation, anxiety, delusions (believing in a reality that does not exist), and hallucinations (seeing things that do not exist).

Alzheimer's disease is the most common form of dementia, affecting about 4.5 million men and women in the United States.

The incidence of Alzheimer's disease increases with age. It affects up to 50 percent of people older than 85, and the risk increases with age. Although the first symptoms of Alzheimer's disease are often confused with the changes that take place in normal aging, it's important to remember that Alzheimer's disease is not a normal part of aging.

**B- Vascular dementia:** Vascular dementia is the broad term for dementia associated with problems of the circulation of blood to the brain. It also called "multi-infarct dementia." It is the result of obstructions to blood flow in the brain; the most common emboli are blood clots. These produce what would be commonly referred to as

"strokes." The emboli cause a destruction of brain tissue in areas where the blood supply to brain cells is interrupted. Vascular dementia is due to the accumulation of multiple strokes in the brain.

**C- Parkinson's disease:** Degeneration of nerves in the brain, leading to tremors, weakness of muscles, and slowness of movement. Dementia has been reported in 20 to 60% of individuals with Parkinson's disease and is more likely to occur in older persons or those individuals with more severe or advanced Parkinson's disease. The dementia associated with Parkinson's disease is characterized by cognitive and motoric slowing, executive dysfunction, and impairment in memory retrieval. Declining cognitive performance in individuals with Parkinson's disease is frequently exacerbated by depression.

**D- Frontotemporal dementia (FTD):** Frontotemporal dementia (FTD) is the third most common type of dementia and is a relatively new category. It encompasses a group of disorders that cause deterioration and shrinkage in the front and side areas of the brain.

The frontal and temporal lobes are the center of many important brain functions, including language skills; the ability to focus attention; the capacity to organize and understand one's behavior; and the ability to make plans and decisions, solve problems, and control impulses. Early indications of FTD often involve alterations in personality, mood, and conduct. Affected individuals may experience a decline in social skills and manners or engage in unusual verbal, physical, or sexual behavior. Initial symptoms may also involve uncharacteristic apathy, indifference, and an unwillingness to talk. Weight gain due to dramatic overeating is another common symptom. People may repeat motions compulsively or collect and hoard objects. Affected individuals may neglect hygiene and resist encouragement to attend to themselves. Another key feature is that people with FTD lack awareness or concern that their behavior has changed.

**E- Dementia due to Head Injuries:** Head injury occurs when an outside force hits the head hard enough to cause the brain to move violently within the skull. This force can cause shaking, twisting, bruising, and sudden change in the movement of the brain (concussion). In any case, the violent jarring of the brain damages brain tissue and tears nerves, blood vessels, and membranes.

Damaged brain tissue does not work normally. The brain has many different functions in the body, and any of them can be disrupted by this damage. Not all brain damage is permanent. Like all body organs, the brain can heal to a certain extent. Even this healing may not bring the brain's function back to what it was before the injury.

Even a relatively mild head injury can cause prolonged or permanent declines in cognition. (Cognition includes the processes of thinking, remembering, understanding, reasoning, and communicating.) Head injury can also cause changes in emotions or behaviors.

After sustaining a head injury, a person may have symptoms such as changes in personality, emotional problems, and difficulty making decisions or solving problems.

### **Evaluation of Dementia**

The evaluation of dementia involves considering psychosocial factors. The psychiatrist or medical doctor conducts a biopsychosocial, starting with medical records and gathering other relevant information in order to consider the ([biological](#), [psychological](#) and [social](#))<sup>5</sup> factors of the patient's life.

The course of the dementia is determined from physicians' records and family recollections, although many families are not helpful because they deny signs of dementia. Seven stages are identifiable in the course of Alzheimer's disease.

To determine the cause of the dementia, a history is taken, and laboratory assessments such as brain imaging tests can be used.

Dementia is also measured by degree which includes mild, moderate, and severe dementias. Tools to assess dementia range from the Folstein Mini-mental status examination<sup>6</sup>, which takes two minutes, and neuropsychological testing of four hours duration.

### **Managing Dementia**

The management of dementia includes supervision of medical treatment and medications, finances, and activities of daily living. Pharmacology (the use of drugs and medications to treat the illness) can aid in memory enhancement, and control behavioral sequelae of paranoia and depression.

### **Decisional Capacity**

Decisional capacity is complex and multi-dimensional, eluding precise definition. At best, it is defined as ability to "perform a task," entailing an ability to understand information, deliberate about it, and make a decision. When assessing capacity the client must be evaluated as to their ability to: understand factors, including reciting them and recalling them; understand and process information; make reality-based decisions regarding one's lifestyle and deportment that are in character with one's beliefs and values over time; communicate those decisions; carry out the activities of daily living; or direct others to carry out personal wishes in order to meet essential needs for food, clothing, shelter and medical care. Judgment must also be applied to these facts and it must be determined if the client can rationally manipulate data and reach a decision.

Decision-making capacity should not be confused with the legal concept of capacity. The term “Incapacitated” is a legal determination made by a court of law. While the court may consider information about a client’s decision-making capacity in making a determination of capacity, the terms are not synonymous. For example, someone who is judged legally incapacitated to handle their financial affairs may retain sufficient decision-making capacity to make meaningful decisions about other aspects of their lives.

**Dementia Impairs Decisional Capacity**

Dementia is the overarching term given to a gradual deterioration in cognitive functioning, seen through impaired memory and perception, and decreased decision-making abilities. It intrudes on the understanding and judgment of facts in both medical and financial decision making. It also compromises the appraisal of individuals who propose to "assist" the patient. It also limits the consideration of options for avoiding exposure to abuse.

**Psychiatric Assessment of the Victim**

In order to make an assessment of the victim, the doctor must identify memory disorders which limit the victim's recall of relevant facts. The doctor must also identify depression and dependency issues which limit the willingness of the victim to cooperate. Further, he must identify paranoid and or aggressive behavior of the victim which may obscure the culpability of the alleged abuser.

**Psychiatric Keys to Successful Investigation and Prosecution**

First you must consider the perpetrators and the victim's psychiatric risk factors for abuse. Then you must provide the victim with a clear plan for safety and support. This plan can include family, social services, and/or placement. It is also necessary to obtain corroboration of the facts of the case to overcome the victim's memory deficits. Expert advice on the impairment in the victim's decisional capacity at the time of the abuse, the evidence available to the abuser of the victim's mental and physical limitations, and the coercive aspects of the relationship between the abuser and the victim, can all help in the prosecution of elder abuse cases.

**Psychological Considerations in Elder Abuse**

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## EVALUATION TESTING

Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved by incorporating feedback from evaluation. Participants' knowledge is measured as well as their satisfaction with the session.

**Sample tests:** Sample pre and post tests are provided for evaluation use. They can each be printed on front and back of one sheet. Ideally, the pre-test would be administered to a sample of participants some time before the training event and the post-test would be administered following the training and again after 30 days. However, these samples have been designed so that they can both be administered the same day. It is preferable to administer the pre-test during a welcome session or gathering prior to the training session. The post-tests repeat content questions without repeating demographic questions. However, if you can link the tests with code numbers which do not breach confidentiality, then powerful statistical tests can be performed on the compiled data.

**Adapting tests:** The following pre-test and post-test have content questions for a specific workshop. When evaluating a workshop whose content differs from that outlined here, the pre-test and post-test can be adjusted by adding or deleting true-false questions.

Thank you for joining us in our workshop today. Before we began our workshop we are asking that you take a moment to fill out this survey as it will help us shape future workshops. Thank you!

Workshop II MEDICAL ASPECTS PRE TEST

- 1. Gender?  Female  Male
- 2. Age?  24-29  30-34  35-39  40-44  45-49  50+
- 3. Borough where you work:  Manhattan  Brooklyn  Bronx  Queens  Staten Island
- 4. Are you an:  ADA  Social Worker  Police Officer  Other:  
\_\_\_\_\_
- 5. How many years have you worked at your current job?  
 Less than one year  1-3  4-6  7-9  10+
- 6. Do you handle cases involving elder abuse?  Yes (Go to question 6a)  No (Go to question 7)
- 6a. If yes: Approximately what percentage of your caseload are elder abuse cases?  
 Under 25%  25-50%  51-75%  Over 76%
- 7. Have you ever had any classes or prior elder abuse training?  
 No (Go to Question 8)  
 Yes (Please complete 7a-7c) ↓

7a. How many classes/trainings have you had on the topic of elder abuse? \_\_\_\_\_

7b. Not counting today's training, how long ago was the most recent training?(years/months)  
Years: \_\_\_\_\_ Months: \_\_\_\_\_

7c. Where did you receive your prior training(s)? \_\_\_\_\_

PLEASE COMPLETE OTHER SIDE

**8. Please circle the response that best reflects your understanding of the following statements.**

	True	False	Don't Know
<b>a. Elder abuse victims are 60 years of age and older.</b>	1	2	8
<b>b. Signs of elder abuse include over-medicating or under-medicating an elderly person.</b>	1	2	8
<b>c. Burns are common among frail elderly.</b>	1	2	8
<b>d. Bilateral bruising is often a sign of abuse.</b>	1	2	8
<b>e. Often abusers are financially dependent on the elder person.</b>	1	2	8
<b>f. Most abusers assist the elder person in some aspect of their everyday life.</b>	1	2	8
<b>g. Decisional capacity includes both the elder's ability to understand the facts and the elder's ability to rationally apply judgment to the facts.</b>	1	2	8

**Thank you for taking the time to complete this survey!**

**Workshop II**

**Thank you for joining us in our workshop today. Please take a moment to fill out this survey as it will help us to shape future workshops. Thank you!**

**Workshop II      MEDICAL ASPECTS      POST TEST**

**1. Do you feel that you can incorporate the information you were given today into your work?**  
 \_\_\_ No, definitely not    \_\_\_ No, not really    \_\_\_ Yes, a little    \_\_\_ Yes, somewhat    \_\_\_ Yes, completely

**2. Was there anything you expected to be addressed in today’s presentation that you feel was either not addressed or not adequately addressed?**    \_\_\_ No (go to 3)    \_\_\_ Yes (go to 2a)

**2a. If yes: What information you would like to see presented in future presentations.**

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**3. Please circle the response that best reflects your understanding of the following statements.**

	True	False	Don't Know
<b>a. Elder abuse victims are 60 years of age and older.</b>	1	2	8
<b>b. Signs of elder abuse include over-medicating or under-medicating an elderly person.</b>	1	2	8
<b>c. Burns are common among frail elderly.</b>	1	2	8
<b>d. Bilateral bruising is often a sign of abuse.</b>	1	2	8
<b>e. Often abusers are financially dependent on the elder person.</b>	1	2	8
<b>f. Most abusers assist the elder person in some aspect of their everyday life.</b>	1	2	8
<b>g. Decisional capacity includes both the elder’s ability to understand the facts and the elder’s ability to rationally apply judgment to the facts.</b>	1	2	8

**PLEASE COMPLETE OTHER SIDE**

**4. What was ONE aspect of the training that was most valuable to you?**

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**5. What was ONE aspect of the training that was least valuable to you?**

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**6. The next set of questions pertains to how satisfied you were with today’s training. For each question, please rate to what extent you agree or disagree with each statement on a scale of 1-5, a 1 indicating you disagree and 5 indicating you agree with the statement.**

	Disagree					Agree
<i>a. The program met my expectations.</i>	1	2	3	4	5	
<i>b. The topic was presented in an easy and understandable format.</i>	1	2	3	4	5	
<i>c. The training had an adequate amount of information.</i>	1	2	3	4	5	
<i>d. The information presented was relevant to my work.</i>	1	2	3	4	5	
<i>e. The goals and objectives were clearly stated.</i>	1	2	3	4	5	

**7. Any other comments:**

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**Thank you for taking the time to complete this survey!  
Workshop II**

## References:

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- <sup>1</sup> D.J. Sheridan, lecture notes for presentation 9/29/04 in Portland, ME., (National Association of Protective Services for Adults, 2004).
- <sup>2</sup> E. Ruppe, K. Brunight, and L. Mosqueda, "Bruising in the Geriatric population," lecture notes for presentation 11/17/03 at 131<sup>st</sup> Annual Meeting of American Public Health Association, (2003).
- <sup>3</sup> APA, *Diagnostic and Statistical Manual of Mental Disorders 4<sup>th</sup> Edition (DSM4)*, (Washington, DC: American Psychiatric Association, 2000).
- <sup>4</sup> APA, *DSM4* (2000).
- <sup>5</sup> Biopsychosocial model: From Wikipedia, the free encyclopedia.  
[www.wikipedia.org/wiki/Biopsychosocial\\_model](http://www.wikipedia.org/wiki/Biopsychosocial_model)
- <sup>6</sup> M.F. Folstein and P.R. McHugh, "Mini-Mental State," *Journal of Psychiatric Research* 12 (3) (© 1975, Pergamon Press, Ltd.): 189-198.

## SECTION 6 - INTERVIEWING ELDERLY PERSONS

- **Interviewing Techniques**
- **Alzheimer's disease and Dementia**
- **Cultural Considerations**

**Mode:** 50 minute lecture/question and answers, 10 minutes for introductions, evaluation testing (or 75 minutes content for +1.5 credits)

**Continuing Education Credits:** One or 1.5

**Use:** To be used by sponsoring agency such as local bar association or district attorney's office to provide one continuing education credit. Can be used individually or combined with other courses.

**Presenters:** Local experts in Alzheimer's disease, dynamics of aging and elder abuse interviewing, and cultural issues. The trainers should ensure that the points made in the outline are covered, but may add any additional materials as desired.

**Goal:** To prepare prosecutors for the task of interviewing a diverse spectrum of older citizens.

**Evaluation:** Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved. Sample pre- and post-tests are provided for evaluation use. They can each be printed on front and back of one sheet.

## ◦ **Interviewing Techniques**

**PRESENTER:** Local assistant district attorney who is an expert in bringing elder abuse cases to trial. Outline based on the Presentation of Arlene Markarian, Chief of Domestic Violence and Elder Abuse Unit, Kings County District Attorney's Office.

**Goal:** To prepare prosecutors for the task of interviewing elderly witnesses.

**Objectives:** By the end of this presentation participants will learn:

- Specific techniques to use when interviewing elderly witnesses
- The role of assistive devices in interviewing elderly witnesses
- What type of suspicious injuries may occur in elder abuse
- The role of photography in documenting injuries, property damage, and weapons
- How telephone numbers, caller ID, and answering machines can be used as evidence
- How written material including letters, address books and notes can be used as evidence
- How to interview elderly persons to see if they made any excited utterances to anyone
- How to get statements from an abuser.

**Materials:** PowerPoint presentations and written handout materials. Handout: *Interviewing Techniques For Victims of Elder Abuse Who May Suffer from Alzheimer's disease or Related Dementia*, by Arlene Markarian. Computer, screen and projector for the PowerPoint presentation

**Method:** Presenter lectures, using PowerPoint provided or may use his/her own PowerPoint ensuring that all material in the outline is covered. Presenter may add additional materials from own cases as appropriate

**Evaluation:** Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved. Sample pre- and post-tests are provided for evaluation use. They can each be printed on front and back of one sheet.

**Written CLE outline, PowerPoint in handout format, and sample evaluation questionnaires follow.**

## **INTERVIEWING TECHNIQUES FOR VICTIMS OF ELDER ABUSE WHO MAY SUFFER FROM ALZHEIMER'S DISEASE OR RELATED DEMENTIA**

**Copyright, 2002, 2003, 2004**

**By Sue Beerman, Barrister Advisory Services, Inc., author of *Eldercare 911*, Prometheus Books, 2002 & Arlene M. Markarian, Bureau Chief, Domestic Violence Bureau/Elder Abuse Unit, Kings County District Attorney's Office (718) 250-3309**

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*Some of these suggestions may already be a part of your interviewing technique. Remember, interviewing a senior citizen [whether or not the senior has dementia] takes patience, sensitivity, a watchful eye and a keen ear.*

### **I. THE INTERVIEW**

**A. *IMPORTANT*:** Before you begin the interview process, ask all family, hired caregivers, or anyone else present to **leave the room**. You may call upon them later to observe the victim's response to certain individuals.

**B.** [For police/peace officers.] Keep your weapon out of sight. Wear a jacket.

A confused person may not understand that you are there to help him/her. Some individuals suffer from delusional thinking and may incorporate your weapon into their reality. Example: The victim may have watched a police television show a few hours before and you then walk into his room. Reality and fantasy may become confused and the victim may become too agitated for you to talk with him.

***FYI #1:** Keep in mind that many immigrants have come from countries where they feared the police and/or the military. They do not see the police as source of safety. Immigrants may also fear the social consequences of bringing "shame" to family, as well as deportation if the police become involved in the situation.*

**C.** Begin your conversation with orienting information and address the victim by his/her name. Be respectful—address the senior as Mr., Mrs. or Ms. unless the senior invites you to use his/her first name. **Be specific and indicate immediately that you are a friend. Speak in a low conversational tone to create a pleasant mood and begin developing a sense of trust.**

**Example:** "Hello, Mrs. Smith, I am Janet Jones and I am here to help you."

- D.** Face the person and look him/her in the eye. Ask permission to sit down near the individual in order to be at eye level. Never conduct an interview towering over a frail [demented or not] man or woman. Remember, many abusers stand over their elderly victims and use their body to intimidate them.

Try to give him/her enough space [about one foot] so the senior does not feel crowded or threatened. Maintain eye contact to help keep the individual focused.

**FYI #2:** However, please keep in mind that in some cultures it is considered disrespectful to make eye contact with an authority figure such as a police officer.

**E. Be aware of environmental distractions.**

**Example:** Radio, television, an open window facing a busy street. Don't try to shout over these distractions; **simply eliminate them.** Shouting may be perceived as an assault on the victim and trigger an attack of anxiety or agitation. Remember, abusers shout at their victims in an effort to intimidate and instill fear in them. Being surrounded by multiple stimuli will make it almost impossible for a cognitively impaired person to concentrate on you and what you are asking them.

**F. Assistive Devices**

Does the senior need his/her hearing aid, glasses or dentures? If so, ask the senior or companion/caretaker where they are. Remember, if the senior can't see you as clearly as possible, hear what you are saying, or properly speak, and then your interview may not be as fruitful. Again, do not raise your voice. It is not effective and it may cause the individual to feel uncomfortable and/or fearful.

**FYI #3:** *Abusers will often take away seniors' dentures, hearing aids, canes, etc. [and even withhold medication] in order to isolate, coerce and intimidate them. This also forces the victims to rely on their abusers.*

**G. Smile and Relax**

Smiling is often difficult to do when you are involved in serious business. However, Alzheimer's and dementia patients are VERY SENSITIVE to feelings. Often a smile may be just the leveler to maintain calm and avoid distress. But if you are smiling, gritting your teeth, arms folded across your chest the message will be "displeasure." This stance will frighten the individual. Your physical posture (body language) and what you say should complement one another.

- H.** Speak slowly, in short and simple sentences. Be patient and always wait for a response.

**Example:** Mrs. Smith, did you hurt your arm? Give her time to respond before you ask your next question. Do not assume she understands everything you are saying. See what she does, not necessarily what she says, in response to your questions.

## **I. Listen**

You are trained to listen to people, but it is often difficult when the individual is not communicating clearly. Ask for clarification when you need it. If the individual has trouble with “word finding”, use some examples. For instance: If you see bruises that look like grab marks on the senior’s arm, you might say “Mrs. Smith, did someone do this to you?” Look at her eyes, reaction and body language. Do not interrupt. Allow the person to finish her thought before you ask another question. ***Be patient!***

## **J. Acknowledge feelings**

Even if the language is unclear and the cues are confusing, try to recognize the individual’s feelings, by their tone of voice. Let him know that you are aware of how he feels by simple responses: Example: “Mr. Smith, are you angry?” Don’t dismiss his feelings. It gives the individual a sense that you care and that you are trying to understand.

## **K. Touch**

A simple touch can convey approval, caring and security. If you are helping someone to a chair, ask his permission to assist him. Lightly hold onto his elbow.

**FYI #4:** Again, we must always try to be aware of cultural differences. While a gentle touch on the shoulder may be comforting to some elderly victims, in some cultures this is considered an intrusion and would be inappropriate by a stranger.

## **L. Look – Observe - Smell**

Watch the individual’s body language. If there are allegations of abuse by a hired or family caregiver, ask them to join you at some point. Observe the victim’s response, comfort level. Observe obvious bruises and signs of neglect, e.g., “grab marks” [finger marks or fingertip-sized bruises which result from the abuser grabbing the senior—usually on the arms], body odor and/or dirty clothing or body.

## **M. Distraction**

If the victim becomes distracted by something else going on in the room or he becomes agitated, try to distract him by drawing his attention to something or someone else. For example: “Do you have a picture of your grandchildren?” Once he seems involved in the new conversation, bring him back to what you were talking about and continue the interview.

## **II. TYPES OF ELDER ABUSE**

*There are many forms of elder abuse. NEGLECT is a form of abuse.*

**A. *Physical Abuse:*** Includes slapping, punching, cutting, burning, forcibly restraining and/or sexual abuse. Sexual abuse includes not only forcible or non-consensual touching, but touching where the victim is *unable* to give consent, e.g., victims suffering from advanced Alzheimer's disease.

**B. *Psychological/Emotional Abuse:*** Includes intimidation tactics, threats to kill or hurt the senior, a family member or a beloved pet. Threats to damage personal property like sentimental items or to burn down the house. Threats to send senior to a nursing home.

Also includes controlling and isolating the senior. [E.g., taking away "assistive devices" or indications as discussed above.]

**C. *Neglect:*** The refusal, failure or inability to carry out a caretaking responsibility such as withholding food, medicine, aids [glasses, hearing aids, dentures, walker, etc.]; not providing proper hygienic care; not frequently moving a bed-ridden senior; and not providing needed medical care.

***FYI #5:*** *Self-Neglect is the refusal, failure or inability of a senior to properly care for him or herself. While this is not a form of "elder abuse" because it is not being committed by a third party, intervention is necessary to prevent serious harm.*

**D. *Financial Abuse:*** Using threats to force the senior to give money, power of attorney, or any other access to assets. The unethical use of the senior's money or assets by anyone including a "friend", family member or caretaker.

### **III. HELPFUL TIPS**

- A.** Be suspicious when you see: bed sores, bruises [old and new/various stages], lacerations [old and new/various stages/scarring], dehydration, malnutrition and/or over-medication [to keep the senior sedated so they won't be "a bother"]. **\*\*Affirmatively look for "grab marks"**. If the senior is wearing a sweater, ask her if she would mind removing it.
- B.** Beware of caretakers giving the senior homeopathic remedies. Find out if the senior is taking these remedies voluntarily and whether the senior is being harmed by them.
- C.** When caretaker or companion re-enters the room, watch the senior's reaction. Does the senior curl up; cover his/her face or genital area? This may be a sign that the companion is an abuser. Also, watch the companion/caretaker. How does that person interact with the senior?
- D.** Does the caretaker refuse to let you speak to the senior alone? Does the caretaker answer for the senior? This can be controlling behavior, as well as suspicious.

***FYI #6:*** *Having bed sores, bruises or poor hygiene isn't necessarily a condition of old age. [Not all seniors "bruise easily".] It can be a sign of elder abuse. Don't dismiss it. Look into it further. **The senior's life could depend on it.***

***FYI #7:*** *If you are not sure whether it's elder abuse, speak with the ER doctor or hospital social worker. Speak with a geriatrics specialist, if one is available at the hospital. You can also call your local District Attorney's Office, Adult Protective Services or Office for the Aging. If it is even possible elder abuse, you must investigate further!*

***FYI #8:*** ***Not all cases of neglect are criminal.** Many times, family members are trying to care for the senior, but are just not able to properly do so. Other times, family members may be in denial. For example, a husband may not want to face the fact that his wife has Alzheimer's disease. He may feel that she is able to care for herself, as she always has. However, she is suffering from malnutrition and dehydration. Clearly these families need help. Your local Office for the Aging will be able to assist them. Many times, the senior may be entitled to services which are free or covered by Medicaid. Speak with the hospital social worker regarding your investigation so the proper referrals can be made. Try to follow-up so the case does not "fall through the cracks".*

#### **IV. WHAT DO WE NEED TO PROSECUTE?**

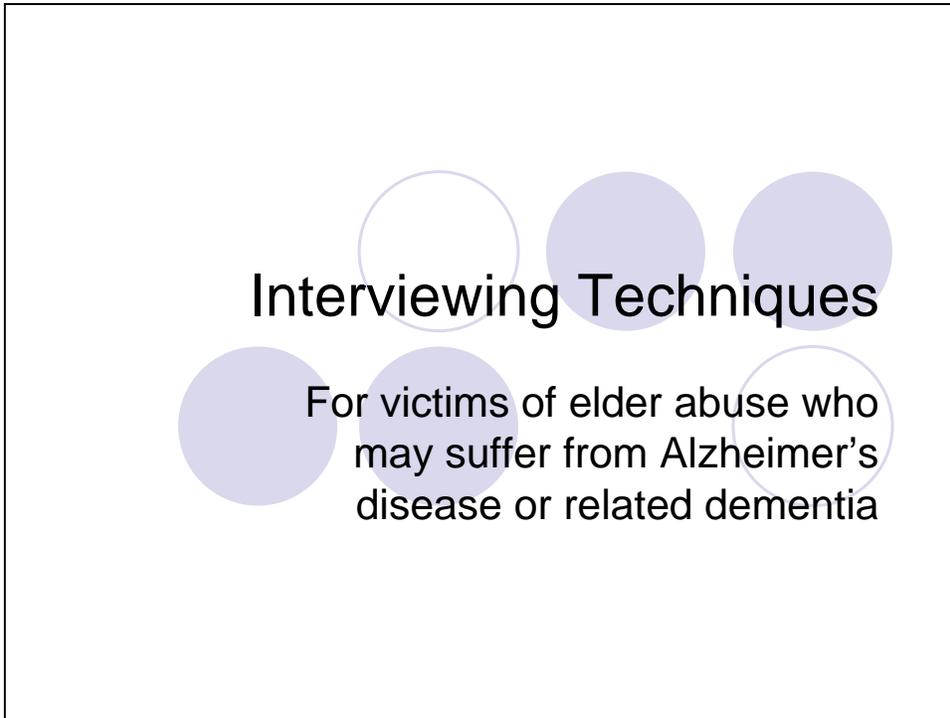
- *Document your observations of the senior including the injuries and reaction to the caretaker.*
- *Document your observations of the caretaker [Does the caretaker refuse to leave the senior's side, refuse to let you speak with the senior alone, answer for the senior, etc? Document it.*
- *Document what the senior tells you—indicate the emotional state of the senior [e.g. crying, shaking and stated that her son beats her.] This is very important because these statements can be used at a trial of the abuser.*
- *Document whatever the caretaker says to you [e.g. if the caretaker claims the senior fell down—especially if the injury is not consistent with the story.]. Photograph the injuries and general physical condition of the senior.*

**\*\* DON'T FORGET TO INCLUDE DATES, TIMES, PLACES AND PEOPLE PRESENT WHEN DOCUMENTING THIS INFORMATION. MAKE SURE THE DATE AND VICTIM'S NAME ARE ON PHOTOGRAPHS, AS WELL THE PHOTOGRAPHER'S NAME.**

#### **V. IMPORTANT TELEPHONE NUMBERS!**

- *Adult Protective Services [APS] Central Intake: (212) 630-1853*
- *The NYC Department for the Aging [DFTA] Elderly Crime Victims Resource Center: (212) 442-3103*
- *Kings County District Attorney's Office Elder Abuse Unit: (718) 250-4893/3309*

**\*\* Outside of Kings County and the New York City area, please call your local Adult Protective Services office, Office for the Aging or local District Attorney's Office for assistance.**



**{Insert INTERVIEWING PowerPoint, 6 slides per page}**

## ○ **ALZHEIMER'S DISEASE AND DEMENTIA**

**Presenter:** A local expert in Alzheimer's disease or a geriatric psychiatrist or psychologist who has experience in working with elderly patients who can provide information about how this disease can affect mental capacity and how it can impact on criminal cases where witnesses suffer from the disease. This section was based on a presentation made by Robin Fenley, CSW, Director, Alzheimer's & Long Term Care Unit, NYC Department for the Aging.

**Goal:** To develop a way for prosecutors to have a working knowledge of dementia and Alzheimer's disease to aid them in the preparation of cases involving elderly witnesses who may be suffering from incapacities.

**Objectives:** By the end of this presentation participants will be able to:

- Identify the psychiatric disorders that occur in abused elderly
- Understand dementia and its subtypes
- Know how to evaluate the degree of dementia the person suffers
- Know how dementia is managed
- Understand how decisional capacity is measured
- Know the keys to investigating and prosecuting elder abuse cases where dementia is a factor
- Be familiar with the risk factors of Alzheimer's disease
- Know the 10 warning signs of Alzheimer's disease
- Know how to best communicate with an Alzheimer's patient

**Materials:** PowerPoint presentation and handout materials. PowerPoint handout: *Alzheimer's and Dementias*, Robin Fenley.

Note: Following text section *Overview of Dementia* can be used as instructor's background supporting a PowerPoint presentation, or as a handout.

**Method:** Lecture format. Presenter uses PowerPoint format provided or may use his/her own PowerPoint ensuring that all material in the outline is covered. Presenter may add additional materials from own cases as appropriate

**Evaluation:** Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved. Sample pre- and post-tests are provided for evaluation use. They can each be printed on front and back of one sheet.

## **OVERVIEW OF DEMENTIAS**

### **by Robin Fenley, CSW**

#### **DEMENTIA OVERVIEW**

Dementia is the overarching term given to a gradual deterioration in cognitive functioning, seen through impaired memory and perception, and decreased decision-making abilities. In Alzheimer's disease, the most prevalent form of dementia, this decline culminates in a total dependency on others for all aspects of personal care. In the mid to later stages, psychosis is evident in as many as 50% to 80% of diagnosed individuals.<sup>1</sup> This psychosis is generally manifested as characteristic behavioral disturbances of paranoia and delusions (typically, thinking that a stranger is in the house or that someone has stolen personal items) and hallucinations (the individual will often be seen 'picking' at the air). Agitation and wandering are also frequently seen with Alzheimer's disease.

For the police officer, it will be important to carefully assess the allegations of intruders or theft by the alleged incompetent person. While some degree of cognitive impairment may be evident, these allegations must not be disregarded as delusions without a more in-depth interview being conducted. Many abusive situations have been permitted to continue under the assumption that the reports are attributed to dementia psychosis.

Dementia is NOT a part of normal aging. The greatest risk factor for Alzheimer's disease, however, is age. Approximately 5%-8% of those over 65 are diagnosed with some form of dementia,<sup>2</sup> with percentages rising dramatically for those aged 85 and older, as other researchers report a prevalence rate as high as 47% (Evans, et al., 1989).<sup>3</sup> The age parameters of this disease continue to expand as public education about early diagnosis and improved diagnostic technology are uncovering a growing number of individuals in their 40's and 50's with early onset Alzheimer's disease.

It is important to note that while some dementia-like symptoms may be reversed, such as that caused by delirium or depression, others associated with Alzheimer's disease or cerebral vascular disease, are irreversible. For this reason, it is important to obtain a thorough medical exam to rule out other possible causes of the observed changes in cognition and behavior. The disease progress is very gradual, with alterations almost unnoticed for about three years before the severity of symptoms lead to a doctor visit. While definitive diagnosis occurs only through autopsy, it is possible to establish a probable diagnosis of Alzheimer's disease, based on a constellation of symptoms and family history.

The progress of the disease differs for each person, but its course is similar. For the individual with early stage Alzheimer's disease, routine tasks and recent events become increasingly difficult to accomplish and recall. Something called 'masking' may occur, whereby the person will respond to a question that they are unable to answer by saying 'I don't have time for this', or 'don't you know?'. This person is experiencing difficulty with word retrieval. This individual is often aware of these cognitive changes, but is fearful of acknowledging them, and so redirects the question back to the questioner.

When confronted by an individual who appears physically fine, but does not seem to understand the nature of the activity around them, the police officer and/or prosecutor will not need to diagnose, but rather, can conduct a quick check of this person's mental status. Following are example questions that can help determine if the person is oriented to person, place, and time:

- \*What is your name?
- \*Where do you live?
- \*What is the month?
- \*Who is the President?

## **Communication**

Communicating with those who are confused or disoriented, as a result of a dementia, can be challenging. It should not be assumed, however, that they are always unable to provide useful or accurate information. Periods of lucid thought are to be expected, particularly in the early stages of Alzheimer's disease.

Prior to interviewing an individual with dementia, it may be helpful to obtain assistance from a family member or a service provider who is familiar with the person and their history. These collateral contacts may be able to recommend times during the day when the person with dementia is more alert and oriented, as well as ways to approach the individual for optimum cooperation. Receptivity to interrogation or the ability to provide information may vary throughout the day for the individual with dementia.

For instance, a phenomenon known as 'sundowning' can greatly interfere with the police officer's and/or prosecutor's ability to obtain useful information. Occurring in the later part of the day, it is thought to be the cumulative effect of stimulation throughout the day, and is not able to be processed by the person with dementia. Sundowning is characterized by a marked increase in agitated behaviors in the person with dementia, such as pacing, loud vocalizing, and possibly combativeness. It can be very difficult for the Alzheimer's individual to participate in an interview during this time. It is advised to postpone the interview until another time. Note that not all persons with dementia experience sundowning.

**Interviewing strategies**

Following are some strategies that may make the police and/or prosecuting interview more productive. Consider that a sensitive approach to interviewing the person with dementia may yield valuable results.

- Keep the interview area quiet and free of distractions, as possible.
- Begin the interview with orienting information, such as the purpose of the interview and what you would like to accomplish.
- Offer a few words of reassurance.
- Relax and be yourself. Your degree of calmness is quickly sensed, just as any anxiety will be sensed.
- Acknowledge the person's feelings. It communicates your concern and that you are trying to understand their point of view.
- Speak slowly and in a soothing tone, without infantilizing the individual.
- Give the person with dementia ample time to respond.
- Repeat questions as needed, using simple and concrete words. Remember that what has been asked may take longer to be understood.
- Give simple directions, one step at a time.
- Distraction or redirection may help to calm and refocus an individual who is upset.
- Closely observe the individual's reactions. Emotional responses may reveal what the person cannot express in words. For example, if the individual becomes agitated, frightened, or mute when asked about a certain person or situation, there may be a reason. In alleged abusive situations, it is important to document this reaction.



## Alzheimer's disease & Dementias

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by Robin Fenley, CSW

Director

Alzheimer's and Long-term Care Unit

NYC Department for the Aging

**{Insert ALZHEIMER'S PowerPoint handout, 6 slides per page}**

# CULTURAL CONSIDERATIONS

## THE ROLE OF CULTURE, RACE, & ETHNICITY

**Presenter:** A social worker or other professional who is knowledgeable about cultural issues involved in elder abuse. This section was based, in part, on a presentation given by Evelyn Laureano, PhD, Director, Neighborhood Self-Help by Older Persons Project, Bronx, NY.

**Goal:** To develop an understanding and appreciation of the cultural factors which may affect the reporting, investigation, and prosecution of elder abuse cases involving persons from different ethnic backgrounds.

**Objectives:** By the end of this presentation participants will be able to:

- Identify elements of their own culture and ethnicity
- Understand the influence of culture and ethnicity on perceptions of elder abuse
- Understand how cultural issues may affect the reporting of elder abuse and the response to representatives of the legal system and courts
- Learn culturally sensitive methods of investigation and assessment of elder abuse cases

**Materials:** PowerPoint presentation and written handout materials. Handout: *Cultural Issues in Elder Abuse Prosecution* can be used as instructor's background supporting a PowerPoint presentation, or as a handout. Optional: flip chart for recommended exercises.

**Method:** Presenter lectures, using PowerPoint provided or presenter's own PowerPoint, ensuring that all material in the outline is covered. Presenter may add additional materials from own cases as appropriate.

**Evaluation:** Testing is recommended to measure presenter's effectiveness and students' knowledge base. Training can be continually improved. Sample pre- and post-tests are provided for evaluation use. They can each be printed on front and back of one sheet.

**Written outline, PowerPoint in handout format, and sample evaluation questionnaires follow.**

## CULTURAL ISSUES IN ELDER ABUSE PROSECUTION<sup>4</sup>

### WHAT IS CULTURE?

Culture embodies a number of concepts, including the ideas, customs, skills, and arts of a given group of people who generally share a common language and ethnic origins. Culture is passed from generation to generation through families and groups. Cultural values represent strengths in families and a source of strengths for individuals.

Culture shapes all individuals, fostering beliefs that influence behavior.

Culture may be based on gender, religion, sexual orientation, level of assimilation and acculturation, disability status, language, tradition, or country of origin, in addition to race and ethnicity.<sup>5</sup>

Culture is classified into various categories, four of which—values, norms, folkways, and mores—relate to law enforcement and prosecution. The categories include:

- **Language**, including speech and body posture (“body language”)
- **Patterns of thought**
- **Values**, which are the shared principles, goals, or standards held or accepted by a culture including their notions of right and wrong and the relative desirability of various goals that culture wishes to achieve
- **Norms**, which prescribe appropriate behavior, that is, what members of that culture can and cannot do in pursuing goals
- **Beliefs**, which tell a group the nature of reality in which it makes choices and acts. This includes religious beliefs.
- **Stereotypes**, which are composites of beliefs about other people which a culture uses to define those people when little personal information about them is known
- **Attitudes**, which are positive or negative predispositions that influence the manner of acting, feeling, or thinking toward a person, object or idea
- **Folkways**, which are a way of thinking or acting adopted by the members of a group as part of their shared culture. Breaches are enforced informally.
- **Mores**, or standard modes, are folkways that are considered conducive to the welfare of a culture and, considered to be so vital as to be enforceable by penalties and codified by law (i.e., murder, incest).

### WHAT IS AN ETHNIC GROUP?

An **ethnic group** “consists of people who share certain commonalities which give them a sense of people hood, including a common history and identity, a common language, the same national background, a common culture, a common religion, or some combination of these factors”.<sup>6</sup> Ethnicity is a major form of group identification, and a major determinant of our family patterns and belief systems.<sup>7</sup> It is not the only form of group identification.

Groups can form around sexual identity, religious practice or political persuasion, to name a few. Such a group could be ethnically diverse.

The United States is growing more ethnically diverse, and ethnic minority populations are growing in communities nationwide. Four principal ethnic minority groups (Latino, African American, Native American, and Asian/Pacific Islander) now form majorities in dozens of US cities. Together, they were projected to comprise about 30% of the total US population in 2004 and to reach 47% by the year 2050.<sup>8</sup> The diversity within these groups is also increasing. Some of these groups now have dozens of sub-groups. Individuals maintain diversity within a group.

The four ethnic groups mentioned above are not the only groups with cultural norms which may differ from mainstream culture. Many groups that bring distinct cultures from Europe, the Middle East and Eurasia would not fit into any of the four principal ethnic groups above.

No ethnic group is immune from elder abuse. Thus, it is likely that the victim and/or perpetrator in an elder abuse case may be from a culture different than your own. To effectively intervene in these situations, it is useful to have an understanding of the cultural factors that might influence the victim or the victim's family.

### **WHY IS AN UNDERSTANDING OF CULTURAL ISSUES IMPORTANT IN PROSECUTING ELDER ABUSE CASES?**

Cultural values, beliefs, and traditions significantly affect family life. They dictate family members' roles and responsibilities toward one another, how family members relate to one another, how decisions are made within families, how resources are distributed, and how problems are defined. Culture further influences how families cope with stress and determines if and when families will seek help from outsiders.<sup>9</sup>

An increased knowledge and understanding of cultural factors that influence victims and their families can significantly influence the prosecutors' effectiveness in elder abuse cases. Although it is not possible to achieve an understanding of all the diverse cultures, learning what questions to ask is an important first step.

A number of cultural factors may inhibit ethnic minority members from reporting elder abuse crimes or cooperating effectively with investigators and prosecutors if the crimes have been reported and are to be prosecuted. These factors fall into various categories.

### **CONCEPTS AND DEFINITIONS**

Elder abuse remains ill-defined among members of many cultural groups. Some tend to equate elder abuse with physical violence and not include neglect and financial exploitation. Others groups don't register physical abuse and neglect but typically report instances of emotional abuse. In studies comparing conceptions of elder abuse among four groups, Native Americans were found to have the broadest definition of abuse, followed by African Americans and Caucasian Americans, with Korean Americans holding the narrowest definitions.<sup>10</sup>

Respect for one's elders is a characteristic that we would like to assume exists in most cultures. However, the phenomenon of elder abuse crosses all socio-economic groups.

Behaviors that mainstream U.S. culture and law regard as “elder abuse” may be considered normal in other cultures. For example, what we regard as psychological or emotional abuse, as in family members who are seen routinely yelling or shouting at other family members, may be regarded as normal in that family’s culture. In families that customarily share assets, individuals may have difficulty understanding that financial exploitation could exist. Even among abusers, striking one’s mother might be unthinkable, yet they are able to rationalize using her money for things other than her care.

The following are perceptions and feelings prosecutors may encounter in complainant/witnesses. The recommended exercises at the end of the workshop will also help identify strengths in your own cultural makeup and apply them to these situations.

### **SUFFERING**

Cultural norms of perseverance, silent suffering, and quiet endurance are valued in many ethnic minority groups. These qualities are also associated with victimization. Consequently, ethnic minority elders may not see themselves as victims of abuse; they may deny or minimize problems, or refuse to cooperate with authorities.

### **SHAME**

Some ethnic minorities place great value on family interdependence and multi-generational households. They may fear the social consequences of bringing shame to the family and ask questions like “What would others think of me and my family if they knew about this?”

Some cultures believe that maintaining the community’s or the family’s honor is more important than the interests of the individual and that the authorities should not be involved in what they consider “family matters.” Shame should stay in the family, they feel. In fact law and customs in some countries forbid intervention in family affairs without the permission of families. It is also important to note that physical abuse, which few regard as acceptable behavior, is not always reported, often because victims are ashamed to report a family member or out of fear of retaliation.

### **DISTRUST**

Some persons distrust authority or the courts because they may have grown up in a part of the world where a police state or a corrupt legal system existed.

### **FEARS EXPERIENCED BY SOME IMMIGRANTS**

Elders who are immigrants may also have fears based on experiences that American born elderly are unlikely to share. These fears can not only inhibit reporting but also undermine investigation:

- Immigrants may not know they have rights in this country regardless of their immigrant status. They may not know that the abuse they are suffering is against the law in this country regardless of their immigrant status.
- They may fear deportation if the authorities get involved.
- Some immigrants come from countries where they had good reason to fear the legal system and therefore, unlike most people who grew up in the United States, they see the courts as punitive rather than as a source of justice and security. It

may be helpful to reassure immigrants that the legal system is here to protect them.

### **CUMULATIVE EFFECT**

Immigrant elders are likely to be dependent on the abuser and fear the consequences of cooperating with an elder abuse investigation. The cumulative load of other cultural barriers on top of this fear of the abuser makes it even less likely that they will report abuse or cooperate fully with an investigation or prosecution.

### **ROLES OF ADULT CHILDREN IN FAMILIES**

Conflicts may result from differences in filial roles between culture of origin and U.S. mainstream culture. Cultures differ in defining who will be responsible for care, finance and emotional support within a family system. Some expect adult daughters to care for elders, while others encourage women's careers, shifting more caregiving responsibility to males. Some cultures encourage elders to retain control of all assets until they die. Others pass family control to a son and daughter-in-law at a certain point in return for care. Or the older generation may loan money freely so the next generation can start new businesses or careers, sometimes turning over all their assets to the "opportunity generation." This will not be considered exploitation unless the younger person fails to reciprocate with care or fails to maintain expected reverence.

### **COMMUNICATION WITH DIFFERENT CULTURAL GROUPS**

Sensitive, culturally competent communications are key in investigation and prosecution. Culturally competent practices are "congruent with the behavior and expectations that members of each distinctive cultural group recognize as appropriate".<sup>11</sup>

#### **Approach**

Approach victims or witnesses in a respectful manner. Inventory cultural strengths and meet the victim/witness on common ground. Two cultures can complement one another with dignity and respect.

- Address the victim/witness as Mr./Mrs./Ms. last name, unless you are asked to use their first name.
- In some cultures, women customarily initiate handshakes with men.
- Be conscious of your own body language. If the victim/witness is sitting, ask permission to sit. If you sit, sit upright at a distance that will help the person feel at ease.
- Some persons will not make eye contact with you. In many cultures, eye contact with authority figures is discouraged, and averted eyes are considered to be a sign of respect rather than an indicator of non-cooperation. In other cultures the reverse is true. Take cues from the individual regarding his or her preferences.
- Begin with carefully-phrased, indirect or open-ended questions. In some cultures, direct questions may be considered offensive,<sup>12</sup> and some victims have had the experience of been "grilled."

- Do not use jargon or speech patterns from the client's culture in an attempt to fit in. Maintain their dignity and yours.
- A country of origin may not indicate a preferred language; therefore, it is best to ask what language the complainant/witness prefers.

## **LANGUAGE**

Language can be a barrier. Many elders who live in insular ethnic communities do not speak English. If you need a translator, use an impartial person. Never use a family member, friend, or neighbor to communicate with the victim or with the suspected offender. This may give an inaccurate translation due to their personal bias. A potential translator from the family may actually be involved in the abuse. After all, elder abuse is usually perpetrated by family members. Also, the victim may be reluctant to speak honestly in front of an acquaintance (out of shame or embarrassment) or a family member (out of fear). Good interpreters will almost always be native speakers of the target language.

Translation services via telephone are available in all courthouses and to some detectives in the field. If using these services, caution all translators before they get the complainant/witness on the telephone, to ask only the questions you pose without inflection, and to tell you after each answer, what the complainant/witness said.

## **OTHER CULTURAL FACTORS**

Other cultural factors may influence the outcome of interviews with elderly persons from ethnic minorities:

- While a gentle touch on the shoulder may be comforting to some elderly victims, in some cultures this is considered an intrusion.
- Some victims may be reluctant to reveal injuries that are covered with clothing due to cultural customs of modesty or religious beliefs. Be careful not to interpret an unwillingness to show injuries as an indication that there are no injuries.
- Carefully present any prosecutorial options to the complainant/witness in an impartial manner. Some victims may not choose their favored option when they perceive that you favor one over the other and they want to give the "right" answer because they are desirous of gaining your respect.

## **ETHICAL CONSIDERATIONS**

Recanting or reluctant witnesses pose ethical dilemmas for prosecutors. When should you compel a person to testify? Given the cultural set of the victim, exactly what did an earlier statement mean? Will you need to arrange extensive witness supports in order to take the case to trial? The many cultural factors introduced above can make these decisions more challenging.

**SUMMARY**

Demographics suggest that any prosecutor is likely to encounter members of different cultural groups as victims, witnesses or defendants, especially in large cities. Culture may play a significant role in shaping a person's behavior. When interviewing persons from a different culture, it is helpful to inventory and remain aware of your own cultural attributes and use your strengths with dignity to support those of the victim.

**Cultural factors should not be seen as an automatic predictor of how a given victim or family will respond.** Each case is unique and should be approached with alertness and assessed keeping relevant aspects of culture in mind.

## RECOMMENDED EXERCISES

### Exercise I. What is culture?

**Caution:** Begin with a warm-up and end with a follow-up. Exercises are likely to bring up emotions in participants.

1. **Warm-up:** Participants pair off. One person tells a funny or embarrassing incident from his or her family. The other recalls the attitude of his or her family or date's family to their first date. Each has one minute.

**Rationale:** Icebreaker. Begins process of sharing and trusting

2. **Activity:** In a large group (usually all workshop participants), trainers solicit responses from participants on what is culture. Responses are listed on flip chart.

**Rationale:** By seeing other participants' definition of culture, they heighten their awareness of the parameters people use to identify themselves, including race, social class, sexual orientation, religion, educational level, art, or music.

## Exercise II. Cultural Dyads

1. **Activity:** Participants are paired with someone they don't know who is from a different background and answer questions about their race, ethnicity, cultural and class backgrounds.
  - a. Participants are instructed that while one person speaks, the other will listen without interrupting.
  - b. Participants share information about their racial, ethnic and cultural backgrounds

### **Suggested questions:**

Describe your race, ethnic and class backgrounds.

What are some strengths you have gained from having these backgrounds?

What have been some difficulties?

How have the misconceptions or stereotypes about your culture affected you personally?

**Rationale:** Participants examine their attitudes about their own culture. They also get to hear another perspective from their partner of a different background.

1. **Follow-up:** Trainer facilitates large-group discussion based on the activity of sharing in pairs. Participants are asked to check with their partners before sharing information about them to the larger group.

### **Suggested questions:**

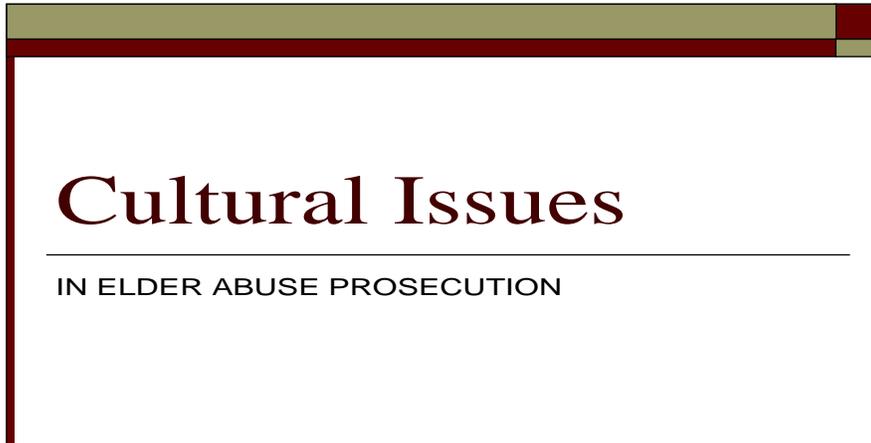
How was it to talk about these issues?

How did it feel to be listened to without interruption?

Was there anything new that you learned about yourself?

Was there anything new that you learned about your partner?

**Rationale:** Participants hear other's experiences with the cultural dyads.



**{Insert CULTURAL PowerPoint handout, 6 slides per page}**

## EVALUATION TESTING

Testing is recommended to measure presenters' effectiveness and students' knowledge base. Training can be continually improved by incorporating feedback from evaluation. Participants' knowledge is measured as well as their satisfaction with the session.

**Sample tests:** Sample pre and post tests are provided for evaluation use. They can each be printed on front and back of one sheet. Ideally, the pre-test would be administered to a sample of participants some time before the training event and the post-test would be administered following the training and again after 30 days. However, these samples have been designed so that they can both be administered the same day. It is preferable to administer the pre-test during a welcome session or gathering prior to the training session. The post-tests repeat content questions without repeating demographic questions. However, if you can link the tests with code numbers which do not breach confidentiality, then powerful statistical tests can be performed on the compiled data.

**Adapting tests:** The following pre-test and post-test have content questions for a specific workshop. When evaluating a workshop whose content differs from that outlined here, the pre-test and post-test can be adjusted by adding or deleting true-false questions.

The following pre test and post test were developed for a workshop which included Dementia, Wandering, and Cultural Issues, but not Interviewing. Three mini-courses have been outlined above in Section 6. Training planners may choose to offer two or one only in a session. The pretest and posttest can be adjusted by adding or deleting true-false questions, including those on the following list:

1. Elderly immigrants may not cooperate with an elder abuse investigation because they fear deportation if elder abuse is reported. TRUE
2. If an elderly immigrant does not look you in the eye, this is a sign that he does not want to be interviewed. FALSE
3. Immigrants may not realize that the abuse they are suffering is against the law in the U.S. regardless of their immigrant status. TRUE
4. When you interview an elder abuse victim, it is helpful to have a family member present for support. FALSE
5. Since many elderly people are hard of hearing, speak loudly when you interview them. FALSE
6. If you smile when you interview an abuse victim, it may help them to feel less distressed. TRUE

7. It is helpful to acknowledge the feelings of the elderly person you are interviewing even if they don't express them in words. TRUE
8. You can distract an agitated victim by drawing his attention to an unrelated subject. TRUE

**Thank you for joining us in our workshop today. Before we began our workshop we are asking that you take a moment to fill out this survey as it will help us shape future workshops.**

**Thank you! Workshop I ALZHEIMER'S & CULTURE PREtest**

1. **Gender?**  Female  Male
2. **Age?**  24-29  30-34  35-39  40-44  45-49  50+
3. **Borough where you work**  Manhattan  Brooklyn  Bronx  Queens  
 Staten Island
4. **Are you an:**  ADA  Social Worker  Police Officer  Other:  
\_\_\_\_\_
5. **How many years have you worked at your current job?**  
 Less than one year  1-3  4-6  7-9  10+
6. **Do you handle cases involving elder abuse?** If no, go to question 7  
  
*If yes: Approximately what percentage of your caseload are elder abuse cases?*  
 Under 25%  25-50%  51-75%  Over 76%
7. **Have you ever had any classes or prior elder abuse training?**  
 No (Go to Question 8)  
 Yes (Please complete 7a-7c) ↓

**7a. How many classes/trainings have you had on the topic of elder abuse?** \_\_\_\_\_

**7b. Not counting today's training, how long ago was the most recent training? (years/months)**

Years: \_\_\_\_\_ Months: \_\_\_\_\_

**7c. Where did you receive your prior training(s)?** \_\_\_\_\_

**PLEASE COMPLETE OTHER SIDE**

9. Please circle the response that best reflects your understanding of the following statements.

	True	False	Don't Know
a. Elder abuse victims are 60 years of age and older.	1	2	8
b. Medication can stop the progression of Alzheimer's Disease.	1	2	8
c. One problem in elder abuse investigations is that elders with Alzheimer's/dementia are not able to give good information in an interview.	1	2	8
d. Some age related dementias can be reversible.	1	2	8
e. People with Alzheimer's/dementia do not get lost in familiar places.	1	2	8
f. If an elder does not speak English, have a family member or friend translate for them	1	2	8

10. If you find a "wanderer" what nationwide identification program would you call?

Write here: \_\_\_\_\_

11. What local agency takes referral for ALL ELDER ABUSE situations?

Write here: \_\_\_\_\_

**Thank you for taking the time to complete this survey!**  
**Workshop I**

**Thank you for joining us in our workshop today. Please take a moment to fill out this survey as it will help us to shape future workshops. Thank you!**

**Workshop I**

**ALZHEIMER'S & CULTURE**

**POST-test**

**1. Do you feel that you can incorporate the information you were given today into your work?**

\_\_\_No, definitely not \_\_\_No, not really \_\_\_Yes, a little \_\_\_Yes, somewhat \_\_\_Yes, completely

**2. Was there anything you expected to be addressed in today's presentation that you feel was either not**

**addressed or not adequately addressed? \_\_\_No (go to 3) \_\_\_Yes (go to 2a)**

**2a. If yes: What information you would like to see presented in future presentations.**

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**3. Please circle the response that best reflects your understanding of the following statements.**

	True	False	Don't Know
<b>a. Elder abuse victims are 60 years of age and older.</b>	1	2	8
<b>b. Depression can be a reversible dementia.</b>	1	2	8
<b>c. Medication can stop the progression of Alzheimer's Disease.</b>	1	2	8
<b>d. Some age related dementias can be reversible.</b>	1	2	8
<b>e. People with Alzheimer's/dementia do not get lost in familiar places.</b>	1	2	8
<b>f. If an elder does not speak English, find a neighbor who can translate.</b>	1	2	8

**4. If you find a "wanderer" what nationwide identification program would you call?**

Write here: \_\_\_\_\_

**5. What local agency takes referral for ALL ELDER ABUSE situations?**

Write here: \_\_\_\_\_

**6. What was ONE aspect of the training that was most valuable to you?**

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**PLEASE COMPLETE OTHER SIDE**

7. What was ONE aspect of the training that was least valuable to you?

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8. The next set of questions pertains to how satisfied you were with today's training. For each question, please rate to what extent you agree or disagree with each statement on a scale of 1-5, a 1 indicating you disagree and 5 indicating you agree with the statement.

	Disagree					Agree				
a. <i>The program met my expectations.</i>	1	2	3	4	5	1	2	3	4	5
b. <i>The topic was presented in an easy and understandable format.</i>	1	2	3	4	5	1	2	3	4	5
c. <i>The training had an adequate amount of information.</i>	1	2	3	4	5	1	2	3	4	5
d. <i>The information presented was relevant to my work.</i>	1	2	3	4	5	1	2	3	4	5
e. <i>The goals and objectives were clearly stated.</i>	1	2	3	4	5	1	2	3	4	5

9. Any other comments:

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**Thank you for taking the time to complete this survey!**  
**Workshop I**

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## Notes on Alzheimer's/dementia section:

- <sup>1</sup> C.G. Lyketsos et al., "Prevalence of neuropsychiatric symptoms in dementia and mild cognitive impairment," *Journal of the American Medical Association* 288 (2002): 1475-1483.
- <sup>2</sup> S.S. Richards and H.C. Hendrie, "Diagnosis, management, and treatment of Alzheimer's disease," *Archives of Internal Medicine* 159 (1999): 789-802.
- <sup>3</sup> D.A. Evans et al., "Prevalence of Alzheimer's disease in a community population of older persons: Higher than previously reported," *Journal of American Medical Association* 18 (1989): 2551-2556.

## Notes on Cultural Section:

- <sup>4</sup> NYC Mayor's Office to Combat Domestic Violence, *Medical Providers' Guide to Managing the Care of Domestic Violence Patients within a Cultural Context*, (New York, 2002); NYC Mayor's Office to Combat Domestic Violence, *Domestic Violence in Diverse Communities: Critical Information for Police Officers*, (New York, 2002); *Understanding and Combating Elder Abuse in Minority Communities*, proceedings of 1997 conference in San Diego, Prevratil et al., eds., (Long Beach, CA: Archstone Foundation, 1998).
- <sup>5</sup> NYC Mayor's Office to Combat Domestic Violence, *Medical Providers' Guide to Managing the Care of Domestic Violence Patients within a Cultural Context*, (New York, 2002), 14.
- <sup>6</sup> Gordon, as cited in M. Queralt, *The Social Environment and Human Behavior: A Diversity Perspective* (Needham Heights, MA: Allyn & Bacon, 1996), 169.
- <sup>7</sup> McGoldrick, Monica, Ed., Ethnicity and family therapy: An overview, in *Ethnicity and Family Therapy* (New York: The Guilford Press, 1982), 3.
- <sup>8</sup> USBC, "Population projections," (Washington, D.C.: U.S. Bureau of the Census, 2000).
- <sup>9</sup> R. C. Atchley, "General social responses to aging," in *Social Forces and Aging*, (Belmont, CA: Wadsworth Publishing Company, 1994).
- <sup>10</sup> Moon and Williams, Hudson and Carlson; as cited in Rosalie Wolf, "Research track," in *Understanding and Combating Elder Abuse in Minority Communities* (Long Beach, CA: Archstone Foundation, 1998), 252-259.
- <sup>11</sup> Green, as cited in M. Queralt, *The Social Environment and Human Behavior: A Diversity Perspective* (Needham Heights, MA: Allyn & Bacon, 1996), 2.
- <sup>12</sup> NCEA, (2004). National Center on Elder Abuse *Newsletter*, 6(7), June, [www.elderabusecenter.org](http://www.elderabusecenter.org).

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**Additional sources:**

NYC Mayor's Office to Combat Domestic Violence, *Medical Providers' Guide to Managing the Care of Domestic Violence Patients Within a Cultural Context*, (New York: 2003).

NYC Mayor's Office to Combat Domestic Violence, *Domestic Violence in Diverse Communities: Critical Information for Police Officers*, (New York, 2002).

Prevratil et al., *Understanding and Combating Elder Abuse in Minority Communities*, proceedings of 1997 conference in San Diego, (Long Beach, CA: Archstone Foundation, 1998).

## **SECTION 7 - ETHICAL CHOICES AND DILEMMAS:**

### **A CASE PRESENTATION**

**Mode:** 100-minute case presentation and panel discussion with questions and answers; 10 minutes for introductions.

**Continuing Legal Education Credits:** Two

**Use:** To be used by sponsoring agency such as local bar association or district attorney's office to provide two continuing education credits in ethics. Can be used individually or combined with other courses.

**Presenters:** Local expert in ethics, social worker, judge, geriatric psychiatrist or psychiatrist who is familiar with elderly patients, police officer, and assistant district attorney who has experience with elder abuse cases. It is helpful to choose a skilled moderator and diverse panelists with strong skills and commitment to combat elder abuse.

**Goal:** To provide workshop participants with a basic understanding of the ethical decisions that must be made by professionals working in the field of elder abuse.

**Objectives:** By the end of this presentation participants will:

- Understand approaches of other professionals to ethical choice
- Understand how ethical decisions interface with procedures re:
  - Mandatory arrest
  - Orders of Protection
  - Capacity examinations
  - Recanting witnesses

**Materials:** Case study *Betty Gordon* and suggested questions for panel moderator. Microphones for panelists and for audience to participate

**Method:** Panel discussion with moderator and time for questions and answers. Case is divided into four scenes. Audience and panelists read and react to one scene at a time. During each subsequent scene, more information about the case is revealed.

**Benefits of the case study/panel discussion format:**

- The case personalizes and makes more real aspects of elder abuse which could otherwise seem theoretical.
- The panel models the different roles of professionals involved in an elder abuse case.
- The panel demonstrates that interaction with others can help when grappling with difficult ethical decisions.

- In addition to showing how five people deal with ethical dilemmas, the panel discussion is likely to clarify certain protocols and terms, such as “must arrest,” “excited utterances,” and capacity determination. The case and suggested moderator’s questions lead the discussion to these and other points.
- Audience is energized, wide-awake, and ready to learn more from the workshops which follow the panel.

**Ethical dilemmas:** There are no “right answers” to the moderator’s discussion questions. The case is designed so that several professionals can apply their ethical considerations. Ethics can be defined as the science of morality. Ethical behavior is regarded as that which is good. An **ethical dilemma** is a situation that involves an apparent conflict between moral imperatives, in which to obey one would mean disobeying another.<sup>1</sup> Example:

Dr. Smith told Ana, the nurse, “You must get the patient to take this medicine. Don’t take no for an answer!” The nurse, however, felt there was a problem. If the patient did not want to take the medicine he should have the right to refuse it. But in that case the patient would probably experience serious medical complications.

Each panelist may feel the pulls of conflicting institutional approaches. Their discussions can guide the observant individual in approaching and resolving a dilemma for which he or she is ultimately responsible. Working together is one valid approach to ethics.

Two versions of the case follow.

The first version includes possible questions which the moderator can use.

The second version shows the scenes only, one to a page, and can be used to print them to be handed to the panelist’s one at a time. Printing each scene on a different colored paper is helpful.

Ideally, only the moderator would know what happens in subsequent scenes. It may be impractical to rapidly distribute fresh scenes to the audience. The moderator can instead urge them not to look ahead.

The moderator can choose to read each scene aloud at the appropriate time, or he can pass a fresh scene to the panelists, then audience and panel can read silently.

**Note: To achieve maximum effect, do not give the moderator’s questions to the audience or to the panelists.**

## **BETTY GORDON CASE SCENARIO**

### **SCENE 1**

Betty Gordon is an 81 year old widow who raised her two grandchildren, Marlene and Tim.

Although she has some short-term memory loss, Mrs. Gordon seems to be mentally alert in other ways. Severe arthritis makes her dependent on help with shopping, cooking and cleaning. Tim lives in California, but Marlene lives with her and helps to meet all of these needs. Mrs. Gordon's sole source of income is \$1200 per month in social security benefits. She owns her house and has about \$50,000 in the bank.

Marlene has a drinking problem and works only sporadically. She fights with her grandmother over money. She screams at Mrs. Gordon and slaps her on many occasions. A neighbor hears the fights. She knows Mrs. Gordon is vulnerable and talks with her about getting help. Mrs. Gordon refuses.

One day when the neighbor hears the fighting, she calls the police. When the police arrive, there are no visible injuries, but they give Mrs. Gordon literature about abuse and advise her that if she is ever mistreated, she can go to court to seek an order of protection. The police leave.

The hitting continues, and the neighbor convinces her to call 311. She is connected to a caseworker at the Department for the Aging. After exploring details and issues, the caseworker refers her to a social worker at a community agency near her house. Mrs. Gordon meets with the social worker and, after several sessions, decides to get an order of protection. The social worker helps her to prepare a petition.

When she goes before the judge at family court, Mrs. Gordon speaks in a hesitating manner. It is not clear whether she is forgetting things or just nervous. The judge tells her that if the order is violated Marlene could be arrested; she then asks to withdraw the petition.

### **Scene 1 Discussion**

Detective:                      Knowing that family violence often escalates, what else might the **police** have done on this domestic incident run?

**Social Worker:** Should the **social worker** address all risks associated with going for an order of protection and help the victim come up with a safety plan?

**Judge:** Should the **judge** allow Mrs. G. to withdraw the petition? Based on her hesitating speech, should a capacity evaluation be ordered?

## ***BETTY GORDON***

### **SCENE 2**

The petition Mrs. Gordon filed in family court was withdrawn without prejudice. In further sessions with the social worker, she continues to recount troubles with Marlene. Together they work on a safety plan.

Marlene gets married and her husband moves into the household. He says he has a lot of experience in financial matters and wants Mrs. Gordon to sign a power of attorney making him the agent. He also says she should make him representative payee for her social security, and sign a new will naming him and Marlene as primary beneficiaries. In this will, Mrs. Gordon’s grandson Tim will be excluded.

Mrs. Gordon is calling Tim in California to get his opinion when James and Marlene walk in on her. Tim later states that he heard his grandmother yelling “let go James. Marlene, stop hitting me...” before the phone went dead. After they end the phone conversation with Tim, they use physical force to make her sign the financial papers.

The neighbor visits Mrs. Gordon, sees the bruises and is very upset. Mrs. Gordon states that both James and Marlene hit her. The neighbor calls the police. The officers see the bruises, but Mrs. Gordon asks that they not arrest James and Marlene.

### **SCENE 2 DISCUSSION**

Detective:                   Should the **police** use their discretionary powers to arrest Marlene and/or James?

Is this a “must arrest” situation?

Would Mrs. Gordon’s dependence on Marlene for help in instrumental activities of daily living (IADLs) affect their decision?

Social Worker:           Should the **social worker** counsel Mrs. Gordon toward other support options which could free her from dependence on Marlene?

Could this “strategic safety plan” also free the police to arrest and the prosecutors to pursue conviction?

**Doctor:** Suppose Marlene asks Mrs. Gordon's **doctor** to sign a Representative Payee form based on a change in her condition, should he sign? What else might he do?

**A.D.A.:** Upon receiving a report from a citizen (e.g. a bank officer) of suspected misuse of a power of attorney, what steps can **prosecutors** take to minimize losses to the purported victim?

## ***BETTY GORDON***

### **SCENE 3**

The police make no arrest.

Mrs. Gordon and the neighbor return to the agency where the social worker arranges for her to call her grandson, Tim, in California. Tim tells his grandmother that he is worried about her safety and convinces her to seek an order of protection against both Marlene and James. He also says he will fly to New York in two weeks when he can take some vacation time to see the situation for himself. In the meantime, he urges her to go to the hospital for treatment. As Mrs. Gordon and the neighbor head for the hospital, the agency social worker calls ahead to arrange for a hospital social worker to expect an abuse victim.

At the hospital, Mrs. Gordon is seen by an ER physician. To him, the injuries appear to have been inflicted. He examines further and finds indications of other injuries in various stages of healing. He requests a psychiatric consultation. The psychiatrist finds some short-term memory loss, and finds her anxious, but does not find loss of decision-making capacity.

Mrs. Gordon goes before the same judge, this time with visible injuries, and gets a temporary order of protection. The judge asks Mrs. Gordon if she wants Marlene and James excluded from her home and she says she does not because she is afraid Marlene will wind up on the streets. The judge signs an order directing Marlene and James to refrain from harassing, threatening, striking and intimidating Mrs. Gordon and to refrain from inducing her to sign any legal documents or banking instruments.

### **SCENE 3 DISCUSSION**

Doctor:                      Should the **doctor** try to keep her in the hospital on a social admission?

Social Worker:            Would the **hospital social worker** formulate a different discharge plan if examination had shown diminished capacity in Mrs. Gordon?

Judge:                        This is the second time the **judge** sees Mrs. Gordon. Suppose the judge has not been informed of the hospital psychiatrist's finding, should he now order a capacity evaluation?

Since Mrs. Gordon does have capacity, should she be allowed to make her own decision--and remain in a potentially dangerous situation? Or should the **judge** exclude James and/or Marlene from the house even though Mrs. Gordon did not request it?

If Mrs. Gordon were found to have diminished capacity, should the **judge** appoint a *guardian ad litem*?

Detective: Twice officers have come to the house and still no arrest. Do you think they should have arrested?

Social Worker: Suppose that the week after Mrs. Gordon goes home with the order of protection, the **agency social worker** loses contact with Mrs. Gordon; her calls are not answered nor are her messages returned. Should she alert the police or anyone else?

## ***BETTY GORDON***

### **SCENE 4**

When James and Marlene learn about the temporary order of protection, they get drunk and both attack Mrs. Gordon. She ends up on the floor and cannot get up. Again the neighbor hears the attack and calls the police. The police arrest both James and Marlene for violating the order of protection.

Mrs. Gordon is transported to the hospital. She sees the same ER physician. He treats her injuries and asks the psychiatrist to do another consult based on the severity of the injuries. The psychiatrist finds her more anxious, but she still has decision-making capacity. The medical doctor is very concerned about Mrs. Gordon and tells the police he would testify in court.

The prosecutors plan to try both James and Marlene in criminal court on charges of Criminal Contempt (for violating the order of protection), and Assault. Tim is now here from California. He is eager to testify to the “excited utterances” he heard on the phone.

Mrs. Gordon tells the prosecutors she will not testify against Marlene. She tells them Marlene never hit her; it was all James. She also says that she is afraid of what will happen if she testifies against James.

Investigators discover that James has used the power of attorney to deplete Mrs. Gordon's bank account. The District Attorney decides to prosecute James for Coercion and Grand Larceny in addition to Assault and Criminal Contempt. Through his lawyer, James seeks to delay the trial, reckoning that time is on his side.

### **SCENE 4 DISCUSSION**

A.D.A.:           Should Marlene be **prosecuted** against Mrs. Gordon's wishes?

Should **prosecutors** maintain the charges against Marlene-- even if they might drop them later--in order to get her to testify against James?

Should the **prosecutors** have Tim testify, knowing that he stood to inherit under the old will?

Should the **prosecutors** subpoena the neighbor to testify?

Should the **prosecutors** subpoena any or all of the **social workers**, and what are their conflicts regarding confidentiality?

Judge: Should the **judge** permit Tim to testify as to “excited utterances”? If he captured them on an answering machine tape, is that admissible?

Should Mrs. G be compelled to testify against James, whom she reasonably fears?

A.D.A.: Suppose Mrs. Gordon later admits that Marlene also hit her, and they decide to prosecute Marlene. Do the **prosecutors** have to tell the defense about her earlier story?

Suppose the assistant took notes at the early interview when Mrs. Gordon said that Marlene never hit her. Must these notes be shown to the defense attorney?

Judge: Should the **judge** allow delaying motions?

Doctor: Realizing how much time trial appearances would take away from his work with other patients, should the **doctor** withdraw his offer to testify?

What about HIPAA? What should the **doctor** do if Mrs. Gordon does not want her medical information and records released?

A.D.A.: If the doctor does withdraw, should he be subpoenaed?

Social Worker: Should the **DA’s social worker** use her skills to persuade Mrs. Gordon to testify?

Can the three **social workers** who saw Mrs. Gordon adhere to the social work code of ethics while fulfilling the demands of their respective employers (agency, hospital, DA)? Can they work together?

### **{Take questions from the floor.}**

Scenes 1 through 4 follow in handout form.

# Scene 1

Betty Gordon is an 81 year old widow who raised her two grandchildren, Marlene and Tim.

Although she has some short-term memory loss, Mrs. Gordon seems to be mentally alert in other ways. Severe arthritis makes her dependent on help with shopping, cooking and cleaning. Tim lives in California, but Marlene lives with her and helps to meet these basic needs. Mrs. Gordon's sole source of income is \$1200 per month in social security benefits. She owns her house and has about \$50,000 in the bank.

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One day when the neighbor hears the fighting, she calls the police. When the police arrive, there are no visible injuries, but they give Mrs. Gordon literature about abuse and advise her that if she is ever mistreated, she can go to court to seek an order of protection. The police leave.

The hitting continues over time, and the neighbor convinces her to call 311. She is connected to a caseworker at the Department for the Aging. After exploring details and issues, the caseworker refers her to a social worker at a community agency near her house. Mrs. Gordon meets with the social worker and, after several sessions, decides to get an order of protection. The social worker helps her to prepare a petition.

When she goes before the judge at family court, Mrs. Gordon speaks in a hesitating manner. It is not clear whether she is forgetting things or just nervous. The judge tells her that if the order is violated Marlene could be arrested; she then asks to withdraw the petition.

## Scene 2

The petition Mrs. Gordon filed in family court was withdrawn “without prejudice.” In further sessions with the social worker, she continues to recount troubles with Marlene. Together they work on a safety plan.

Marlene gets married and her husband moves into the household. He says he has a lot of experience in financial matters and wants Mrs. Gordon to sign a power of attorney making him the agent. He also says she should make him the representative payee for her social security, and sign a new will naming Marlene and himself as primary beneficiaries. In this will, Mrs. Gordon’s grandson Tim will be excluded.

Mrs. Gordon is calling Tim in California to get his opinion when James and Marlene walk in on her. Tim later states that he heard his grandmother yelling “let go James. Marlene, stop hitting me...” before the phone went dead. After they end the phone conversation with Tim, they use physical force to make her sign the financial papers.

The neighbor visits Mrs. Gordon, sees the bruises and is very upset. Mrs. Gordon states that both James and Marlene hit her. The neighbor calls the police. The officers see the bruises, but Mrs. Gordon asks that they not arrest James and Marlene.

## Scene 3

The police make no arrest.

Mrs. Gordon and the neighbor return to the agency where the social worker arranges for her to call her grandson, Tim, in California. Tim tells his grandmother that he is worried about her safety and convinces her to seek an order of protection against both Marlene and James. He also says he will fly to New York in two weeks when he can take some vacation time to see the situation for himself. In the meantime, he urges her to go to the hospital for treatment. As Mrs. Gordon and the neighbor head for the hospital, the agency social worker calls ahead to arrange for a hospital social worker to expect an abuse victim.

At the hospital, Mrs. Gordon is seen by an ER physician. To him, the injuries appear to have been inflicted. He examines further and finds indications of other injuries in various stages of healing. He requests a psychiatric consultation. The psychiatrist finds some short-term memory loss, and finds her anxious, but does not find loss of decision-making capacity.

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## Scene 4

When James and Marlene learn about the temporary order of protection, they get drunk and both attack Mrs. Gordon. She ends up on the floor and cannot get up. Again the neighbor hears the attack and calls the police.

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Mrs. Gordon is transported to the hospital. She sees the same ER physician. He treats her injuries and asks the psychiatrist to do another consult based on the severity of the injuries. The psychiatrist finds her more anxious, but she still has decision-making capacity. The medical doctor is very concerned about Mrs. Gordon and tells the police he would testify in court.

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Investigators discover that James has used the power of attorney to deplete Mrs. Gordon's bank account. The District Attorney decides to prosecute James for Coercion and Grand Larceny in addition to Assault and Criminal Contempt. Through his lawyer, James seeks to delay the trial, reckoning that time is on his side.

## Notes

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<sup>1</sup> Wikipedia, the free encyclopedia. [www.wikipedia.org](http://www.wikipedia.org)

## **SECTION 8 - FULL DAY TRAINING PROGRAM INCLUDING THE ENTIRE CORE CURRICULUM**

**Mode:** Full day training program.

**Continuing Legal Education Credits:** 6 credits

**Use:** Large-scale, full-day conference of at least 7 hours. Event could be sponsored by a local bar association, district attorney's office, or any other entity who could provide the continuing legal education credits necessary for the program. Such a program would probably involve 100-500 participants and a large venue such as a university or other place that could accommodate that many people.

**Presenter:** Various local experts. See each course for requirements.

**Goal:** To deliver all of the five core courses. See each course for specific goal.

**Objectives:** See course objectives for each course.

**Method:** Sponsoring agency would include all of the five parts of the core curriculum in a full day program. Local experts would deliver each module. It is recommended that breakfast and lunch be provided to keep participants within the training venue.

**Materials:** Training curriculum for each of the core courses to be provided on PowerPoint with handouts and supplemental materials. See individual courses for materials needed.

### **Model Full Day Program:**

8:00-9:00 Breakfast/Registration

9:00-9:15 Greetings from local criminal justice officials and social work organizations sponsoring the conference

9:15-11:05 *Ethical Choices and Dilemmas: A Case Presentation*, Interdisciplinary Panel composed of an ethicist, social worker, assistant district attorney, judge, police officer, and geriatric psychiatrist.

11:05-11:30 Break

11:30-12:30 *Medical Issues in Prosecuting Elder Abuse Cases*

12:30-1:30 Lunch

1:30-2:30 *Financial Exploitation*

2:30-3:30 *Evidence-based Prosecution*

3:30-3:45 Break

3:45-4:45 *Interviewing Elderly Persons: Techniques; Alzheimer's & Dementia; Cultural Considerations*

4:45-5:00 Wrap-up, resources, evaluations

### **Core Curriculum Courses:**

Based on research and work with expert task groups and advisory committees, the following five core courses were recommended to provide the minimal knowledge needed by prosecutors to work effectively with elder abuse cases:

1. Evidence Based Prosecution
2. Financial Exploitation of the Elderly
3. Medical Issues in Prosecuting Elder Abuse cases
4. Interviewing Elderly Persons: Techniques; Alzheimer's disease & Dementia; Cultural Considerations
5. Ethical Issues in Elder Abuse Cases

All of the courses, with the exception of the ethical issues course, are designed to be given in one hour modules, with at least 50 minutes of actual instruction to meet the continuing legal education requirements in New York. (They can be expanded to 75 minutes of content and provide 1.5 credits). The ethics course runs for at least 1 hour and forty minutes and will provide 2 credits. The courses must be sponsored by accredited CLE providers. They can be given individually in one hour sessions, or combined into two or three hours for half-day programs. Further, all five of the sessions could be delivered in a full day training. The following is an example of a model full day program.

**{Insert flyer of an actual all-day training conference}**

## SECTION 9 – SPECIAL TOPICS

### ◦ INTRODUCTION TO CRAWFORD

**Mode:** 10-30 minute lecture/question and answers.

**Use:** Can stand alone or augment another CLE course, such as Evidence, Financial, Interviewing.

**Continuing education credits:** Portion of one or 1.5 credit course.

**Presenter:** Local attorney who is familiar with the background of the US Supreme Court *Crawford v. Washington* decision and the case law stemming from it. Introduction and PowerPoint are based on a June 30, 2004 presentation by Sean Morgan, American prosecutors Research Institute, Alexandria, VA.

**Goal:** To prepare prosecutors to gather evidence in such way that it will withstand “Crawford” challenges and be admitted in court.

**Objectives:** By the end of this presentation participants will learn:

- The potential impediments to admissibility of evidence in elder abuse cases
- When Crawford does and does not apply
- What qualifies under the “business record exception”
- How records generated by caseworkers at Adult Protective Services and other agencies can be introduced as evidence
- How Crawford affects joint interviews with law enforcement and social service workers

**Materials:** PowerPoint presentations and written handout materials.  
**Handouts:** *Introduction to Crawford; the US Supreme Court decision itself; relevant articles (see Section 10).* Computer, screen and projector for the PowerPoint presentation

**Method:** Presenter lectures, using PowerPoint format provided or may use his/her own PowerPoint ensuring that all material in the outline is covered. Presenter may add additional materials from own cases as appropriate.

**Written introduction and PowerPoint in handout format follow.**

## ***INTRODUCTION TO CRAWFORD***

The U.S. Supreme Court, on March 8 2004, handed down a decision in the case *Crawford v. Washington*. It was not an elder abuse case, but it impacts on the entire process of investigating and processing an elder abuse criminal case.

Not only are prosecutors affected, but also professionals from other disciplines who investigate and gather potential testimonial material. This includes police officers, detectives, adult protective services workers and social workers.

Basically, the Crawford decision makes it more difficult to use taped interviews of the victim or certain other testimonial material gathered when the defendant or his representative did not have the opportunity to cross-examine the declarant.

The decision was based on the Sixth Amendment to the U.S. Constitution, which guarantees that “in all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him.”

Generally, hearsay, an out-of-court statement offered for the truth of the matter asserted, is not permitted as evidence in court. However, many exceptions to the hearsay rule have been honored, including five in cases where the declarant is unavailable for cross-examination, and twenty-one that apply regardless of his availability.

Prosecutors could sometimes introduce recorded statements into evidence, and some states had statutes facilitating this practice. Those state laws may now be unconstitutional.

One extreme scenario has an elderly victim identifying the perpetrator in a videotaped statement shortly after the crime. The suspect flees, but is apprehended a few years later. Now the victim has died, but his taped statement cannot be used because the defendant could not cross-examine.

Case law pursuant to Crawford is growing. Prosecutors, social workers, nurses, and other first responders should be trained in the rules of evidence regarding the hearsay exceptions, particularly regarding the “business records exception,” so that their records and testimony can still be admissible in court.

# Crawford v. Washington

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## Implications for Prosecutors

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**{Insert CRAWFORD PowerPoint, 6 slides per page}**

## ◦ **Other CLE Courses for Prosecutors**

**Mode:** Modular.

One hour courses approved by accredited providers of legal education.

Must include 50 minutes of instruction.

Instruction is to be given by local expert.

Common points on elder abuse for prosecutors using *Elder Abuse Quick Facts for NYS Prosecutors* can be worked into the program by local

expert presenter, or offered as an introduction by an elder abuse trainer.

Can be given during lunch hours, after work, or at conferences attended by prosecutors.

Topics must be relevant to elder abuse.

### **Example: Predatory Lending**

**Mode:** 50 Minute lecture/question and answers, 10 minutes for introductions.

**Presenter:** Local attorney experienced in defending foreclosure cases.

#### **Relation to Elder Abuse:**

Many seniors, who own homes outright or have substantial equity in their homes, are induced to take out mortgages or home equity loans by unscrupulous lenders who convince them to purchase home improvements or other things. Seniors, who are often on fixed incomes cannot afford the payments on these mortgages and may lose their homes to foreclosure.

#### **Supplemental Material:**

Summary of New York State's Anti-Predatory Lending Law, prepared by the Foreclosure Prevention Project at South Brooklyn Legal Services and the Neighborhood Economic Development Advocacy Project (Last revised 6/17/03)

## **SECTION 10 - LIST OF SUPPLEMENTAL MATERIALS**

- *Elder Abuse Quick Facts for NYS Prosecutors*, expanded version
- Working with Access Orders, STIPSO, and HIPAA
- Web Resources
- Sample research survey for ADA's on CLE topics and venues
- Summary of Research Survey completed by ADA's in New York City
- *People v. Camiola* (case law pertaining to exploitation)
- *People v. Gbohoun* (case law pertaining to exploitation)
- *Crawford v. Washington* (US Supreme Court decision March 8, 2004)

## **ELDER ABUSE QUICK FACTS FOR NYS PROSECUTORS**

**Elder abuse** is the physical, sexual, emotional or financial abuse or neglect or abandonment of an older person by a family member, friend, fiduciary or caregiver. Often two or more types of abuse are perpetrated simultaneously.

### **Causes of elder abuse**

“Entitlement” and “power and control” dynamics appear to drive elder abuse as they do other domestic violence. “Caregiver stress,” once a prevalent causal theory, has not been supported by data from recent studies. While many caregivers need supportive services which prosecutors can help arrange, stress is no excuse for committing crimes.

**It is important to be able to build a case without the testimony of the victim.** The victim may be reluctant to testify if the perpetrator is a family member or caregiver, or may be unable to testify due to mental or physical impairments.

**Statutes and Charges:** Although some other states have specialized laws to protect the elderly, most offenses in New York State must be prosecuted using conventional charges such as menacing, harassment, assault, larceny and forgery.

### **Look for multiple crimes and “bump-up” situations.**

There are four statutes which refer specifically to elderly or disabled victims:

- Endangering the welfare of an incompetent or physically disabled person, P.L.§260.25, (Class A misdemeanor): when a person knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself or herself because of physical disability, mental disease or defect
- Endangering the welfare of a vulnerable elderly person in the second degree, P.L.§260.32, (Class E felony): when a caregiver causes physical injury either with intent or with criminal negligence, or subjects the person to sexual contact without consent
- Endangering the welfare of a vulnerable, elderly person in the first degree, P.L.§260.34, (Class D felony): when a caregiver causes *serious* injury either with intent or recklessly
- The Hate Crimes Act of 2000, P.L.§485.05, includes age (over 60) and disability as targeting factors. *The statute does not add new charges.* Conventional charges yield increased penalties for those

who perpetrate crimes based on targeting factors such as race, religion, national origin, sexual orientation, age or disability.

**Interviewing older victims** requires special care and patience. Be attentive to whether the victim is tired or not feeling well. An older person may need more time than a younger victim would need to understand and respond to questions. If the person is having difficulty remembering when an event occurred, offer memory cues, such as “What television program were you watching?” For hearing impaired persons, eliminate as much background noise as possible and use visual cues. Written communication can be used. Offer larger type (e.g., 14 pt.) and a magnifying glass.

When interviewed patiently, some persons with **Dementia** or **Alzheimer’s disease** can provide useful information. Be calm and reassuring as people with dementia are very sensitive to feelings. Pay close attention to their reactions; emotional responses may reveal what they cannot express in words. If the person is very upset, distraction can sometimes be used to refocus their attention and calm them down.

For further suggestions, see *Interviewing Techniques for Victims of Elder Abuse Who May Suffer From Alzheimer’s Disease or Related Dementia*, © 2003 by Sue Beerman and Arlene Markarian. Social workers in a district attorney’s office are often experienced at communicating with older victims.

**Capacity/Expert opinion:** Case outcomes can depend on whether victims had capacity at the time they took actions, such as signing papers giving a defendant control of financial assets. Testifying as an expert witness, a medical doctor, usually a psychiatrist, can give an opinion as to whether the victim had capacity at the time of the action.

**Signs of Abuse/Neglect** include the following:

- **Signs in the Victim:**
  - Has inadequately explained wounds
  - Is reluctant to let the elderly person be interviewed alone
  - Speaks for the elderly person
  - Treats the older person without warmth or compassion
  - Has problems with addiction (alcohol, drugs, gambling) and/or previous history of abusive behavior

- **Environmental Signs of Abuse/Neglect:**
  - Unsanitary and unclean living conditions (e.g. soiled bedding, fecal/urine smell, fleas, lice)
  - Lack of food, heat or electricity
  - Abused or neglected pets

**Signs of Financial Exploitation** include the following:

- **Signs in the Victim:**
  - Deviations in financial habits (large bank withdrawals, etc.)
  - Numerous unpaid bills
  - Checks made out to cash
  - Financial papers missing
  - Elder unaware of monthly income
  - A disparity between assets and lifestyle
  - Unprecedented transfer of assets to other(s)
- **Signs in the Abuser:**
  - Always makes bank deposits/withdrawals for the senior
  - Uses elder's ATM cards
  - Makes withdrawals from a dormant account
  - Makes all investment decisions for senior
  - Receives frequent expensive gifts from senior
  - Refuses to spend money on elder's care
  - Asserts powers based on power of attorney

**Language** can be a barrier to use of the court system. Many elderly citizens do not speak English, particularly new immigrants or those who remain in insular communities. If an interpreter is needed, find one who is impartial. Avoid using family members; they may be involved in the abuse. The victim may be reluctant to speak honestly in front of a family member or acquaintance. Also, friends or relatives can give inaccurate translations either due to personal bias or fear.

**Immigrant issues**

Some immigrants do not know that they have rights in this country regardless of their immigrant status; some have fears in relation to the legal system based on experiences in their country of origin. Empathy can help to reduce the fears of elderly immigrants.

**Courtroom obstacles:** Elderly witnesses may have difficulty negotiating stairways in court buildings, or may be unable to get transportation to the court. Victim service agencies or witness advocates can assist with transportation and supportive services. Optimal time-of-day scheduling can enhance case outcomes since elderly witnesses may be affected by fatigue or intervals between meals or medication.

**Referral:** For other supportive services, refer elder abuse cases to the social worker in your office or direct them to caseworkers at an area agency on aging. A social worker can accompany the victim to court and maintain reassuring contact when the victim is testifying.

## **WORKING WITH ACCESS ORDERS, STIPSO, AND HIPAA**

**Orders to Gain Access** are court orders which can only be obtained by Adult Protective Services in New York State. They are similar to search warrants and can be used to gain entry to a home or apartment where there is a reasonable suspicion to believe that there is a vulnerable person in need of protective services present. APS can bring a social worker, doctor, nurse, or psychiatrist to make an assessment of the person's living conditions and health. The person cannot be removed under this order, but psychiatric hospitalization can be made if the doctor orders it. Forced entry may be used if requested in the order.

**STIPSO (Short Term Involuntary Protective Service Order)** can be used to place a vulnerable person who is in imminent danger of death or serious physical harm in the hospital if it has been determined he or she is in need of a hospital based assessment and lacks the mental capacity to make that decision. It is very rarely used in New York State.

Although **HIPAA** was designed to protect patient privacy, it was not the intent of this law to prevent agencies helping the person and law enforcement from obtaining pertinent medical information.

## Web Resources

**Links active as of Apr 21, 2005**

### **Alzheimer's Association**

This national association is dedicated to researching the prevention, cures and treatments of Alzheimer's disease. Many of its findings and other on-line resources for caregivers, advocates and researchers are included on their site.

<http://www.alz.org/>

### **United States Administration on Aging (AOA)**

Representative of its weight within the aging network, this site contains the largest collection of on-line aging resources

<http://www.aoa.gov>

### **Adult Protective Services**

Site contains information about APS and lists APS borough offices and central intake numbers in NYC.

[http://www.nyc.gov/html/hra/html/serv\\_adultprotective.html](http://www.nyc.gov/html/hra/html/serv_adultprotective.html)

### **American Bar Association: *Facts about the Law and the Elderly***

This site offers a brief overview of state laws related to elder abuse, mandatory reporting requirements, guardianship, the rights of grandparents, and medical and end of life planning.

<http://www.abanet.org/media/factbooks/elderlaw.pdf>

### **American Society on Aging**

American Society on Aging (ASA) is the largest organization of professionals in the field of aging. Publications such as *Generations* and *Aging Today*, and several newsletters, are offered online, as well as resources for people working with the elderly or their families.

<http://www.asaging.org>

### **Association for Protection of the Elderly**

Association for Protection of the Elderly (APE) is a national non-profit corporation that seeks to insure civil and criminal liability for all offenses committed against elders and vulnerable adults, especially for those who reside in institutional settings. This site contains advocacy links and information particularly related to improving the quality of care in nursing homes.

<http://www.aepepe.org>

**Clearinghouse on Abuse and Neglect of the Elderly (CANE)**

CANE, funded by the Administration on Aging, is a database of elder abuse materials and resources operated by the University of Delaware's National Center on Elder Abuse (NCEA). CANE staff will conduct customized information searches and provide resources and referrals to elder abuse support groups.

<http://www.elderabusecenter.org/clearing/index.html>

**Department of Justice (DOJ)**

DOJ, part of the Federal Government, works to protect older Americans in a variety of ways, including the Nursing Home Initiative and elder justice efforts to prosecute institutions whose wrongdoing results in harm or death for residents. DOJ prosecutes health care and consumer fraud and enforces civil rights addressing discrimination against older people. Publications and statistics on victimization of older people are available.

<http://www.usdoj.gov/>

**Department of Justice: Tips for Responding to Elderly Crime Victims**

<http://www.ojp.usdoj.gov/ovc/publications/infores/firstrep/2001/eldvic.html>

**Elder Abuse: Types, Causes, and Prevention**

This site contains definitions of various types, overview of possible causes of abuse, prevention strategies, and resources for additional information.

<http://www.geocities.com/~elderly-place/abuse.html>

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

The Center performs elder abuse clearinghouse functions, develops and disseminates information, provides training and technical assistance, and conducts research and demonstration projects. Their site provides elder abuse statistics, outcomes of incidence studies and publications.

<http://www.elderabusecenter.org>

**❖ National Center on Elder Abuse: List Serve**

The elder abuse list server provides professionals working in the field of elder abuse with a free forum for raising questions, discussing issues, and sharing information and best practices.

<http://www.elderabusecenter.org/listserve/index.html>

**❖ National Center on Elder Abuse Fact sheet: Basic definitions and facts**

<http://www.elderabusecenter.org/basic/index.html>

**National Clearinghouse on Abuse in Later Life (NCALL)**

The clearinghouse develops programs and training focused on the intersection of domestic violence, sexual assault, and elder abuse/neglect. Site contains resources, links, and a store to purchase publications and training materials or rent videos.

[www.ncall.us](http://www.ncall.us)

**National Committee for the Prevention of Elder Abuse**

The Committee is one of six partners that make up the National Center on Elder Abuse, which is funded by Congress to serve as the nation's clearinghouse on information and materials on abuse and neglect.

<http://www.preventelderabuse.org/>

**National Sexual Violence Resource Center (NSVRC)**

The National Sexual Violence Resource Center serves as a central clearinghouse for resources and information on sexual assault. They provide information, help and support and work to influence public awareness, policy, practice and new research.

<http://www.nsvrc.org>

**New York City Department for the Aging**

The NYC Department for the Aging (DFTA) site lists and explains myriad programs in support of aging citizens and offers aging trends and statistics.

[www.nyc.gov/aging](http://www.nyc.gov/aging)

**New York City Mayor's Office to Combat Domestic Violence**

The site offers resources, domestic violence fact sheets, publications, domestic crime statistics including elder abuse statistics, and features. Recently, police were pictured demonstrating Language Line translations equipment under a pilot project.

[www.nyc.gov/domestic-violence](http://www.nyc.gov/domestic-violence)

**New York State Assembly**

The assembly site lists all bills pending before the assembly, including those intended to mandate reporting of elder abuse.

[www.assembly.state.ny.us](http://www.assembly.state.ny.us)

**New York State Senate**

The senate site lists bills pending before the senate and laws, including four statutes which refer specifically to elderly or disabled victims.

[www.senate.state.ny.us](http://www.senate.state.ny.us)

**New York State Crime Victims Board**

The New York State Crime Victims Board was created under Article 22 of the Executive Law to compensate innocent victims of crime for out of pocket expenses.

<http://www.cvb.state.ny.us/>

**New York Law Review Commission**

The commission is based at Albany law School. Reports on current initiatives to revise laws are found on the site. Recently the Mental Hygiene Law §81, dealing with guardianships, topped the list.

[www.lawrevision.state.ny.us](http://www.lawrevision.state.ny.us)

**New York State Office for the Aging**

Information about programs and services funded by SOFA are listed on this site, including a county listing of Area Agencies on Aging.

<http://www.aging.state.ny.us/nysofa>

**❖ SOFA: The Future of Aging in New York State**

Implications for the future of elder abuse and neglect in New York State

<http://aging.state.ny.us/explore/project2015/artabuse.htm>

**United States Senate: Special Committee on Aging: Elder Justice Center**

The committee studies matters pertaining to problems and opportunities of older people. The site provides information on elder abuse, Social Security, Medicare, Long-term care, and others.

[www.aging.senate.gov/public/](http://www.aging.senate.gov/public/)

**Victim Assistance Online: Domestic, Elder and Family Violence Articles**

Full text online articles from the Department of Justice, National Institute of Justice, and many others related to domestic abuse, elder abuse, and family violence.

[www.vaonline.org](http://www.vaonline.org)