

Written Testimony to the United States Senate Special Committee on Aging

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I. Introduction

Chair Collins, Ranking Member McCaskill, and other members of the Committee,

I am Page Ulrey, Senior Deputy Prosecuting Attorney for the King County Prosecutor's Office in Seattle, Washington. I have been my office's dedicated elder abuse prosecutor, handling cases of elder financial exploitation, neglect, physical assault, sexual assault, and homicide, for thirteen years.

In case after case of elder financial exploitation that I have handled, I have witnessed the huge human and economic toll the problem takes. Its victims suffer tremendously from the betrayal and the loss of their life savings, often dying premature deaths as a result of it. Families are torn apart by it, with the damage often lasting for generations. And federal and state governments often end up bearing the cost of the exploitation, due to the depletion of the elder's assets, the increase in their care needs, and the increased demand on Medicare, Medicaid and other health, housing and social programs.

This testimony addresses: 1) why elder financial exploitation cases are so challenging for the criminal justice system; and 2) offers recommendations for action that can be taken by Congress and federal agencies to begin to address the problem more effectively.

II. Why Elder Financial Exploitation Poses Such a Problem for the Criminal Justice System

Having historically deemed most cases of elder abuse as “civil” or “family” matters, the criminal justice system is only now beginning to come to terms with the fact that crimes are being inflicted on the elderly at alarming rates, and that only a small fraction of those crimes are ever properly investigated and prosecuted. As a result, we are woefully ill equipped to handle these cases, both in terms of knowledge and resources. Compounding the problem is the fact that elder financial exploitation often involves co-occurring crime types, including neglect, physical and sexual assault; rarely are there prosecutors, law enforcement, victim service providers or other responders who have expertise in all types. In my experience, financial exploitation is one of the crime types with which the justice system struggles the most.

Elder financial exploitation cases are far more complex than typical theft cases, as they often involve powers of attorney, guardianships, fiduciary duties, trusts, wills, mortgages, and issues of capacity and undue influence. Knowledge of these concepts is essential to properly investigating and prosecuting cases with financial dimensions, yet few in the criminal justice system are familiar with them all. Rarely, if ever, are these subjects taught in police academies or in training for 911 dispatchers. While they may be taught in law school, they are seldom included in the curriculum of criminal law or prosecutor training courses.

Because victims of elder financial exploitation are so often isolated, their victimization often goes on for months and sometimes years before it is discovered. When it is discovered, the lack of training on these concepts at every level of the criminal justice system means that the likelihood of a door being closed in the face of the person reporting the wrongdoing is high. From the 911 dispatcher to the patrol officer to the detective to the prosecutor--if just one of

these essential players fails to recognize a report as criminal, the case will likely end there, with the exploitation continuing until Adult Protective Services (APS) or the family intervenes civilly, or no one at all intervenes. In any event, the elder's resources are usually gone. Even if there are assets left when the case reaches someone in the justice system who recognizes it as potentially criminal, rarely does that person have the knowledge or legal tools to seize the funds so that they can be returned to the victim.

In the rare case when a report of elder financial exploitation does make it through the door and onto the desk of a detective or prosecutor, other hurdles exist. In the majority of cases that my elder abuse unit sees, the victim has some degree of cognitive impairment. The defense raised most often is that the victim "consented" to giving the perpetrator his/her assets. In order to refute this claim of consent, we must obtain an evaluation of the victim by a geriatrician or neuropsychologist or psychiatrist with expertise in dementia. Most police agencies and prosecutors' offices have no connections to such experts and lack the funding to pay for such an evaluation. Adult Protective Services may have access to experts who can assist in such an evaluation; however, APS often lacks the tools, resources and training to screen for cognitive impairment itself when there are concerns that it might be present. As a result, APS often unwittingly screens out cases involving victims who lack the cognitive capacity to handle complex financial transactions, thereby allowing the exploitation to continue.

Additionally, in most of these cases, the complete financial records of the victim and suspect are essential parts of the evidence. Once these records are obtained, they must be entered into spreadsheets and analyzed. Most detectives do not have access to a forensic accountant and so are left to attempt to conduct this analysis on their own—an often daunting and unappealing task for a criminal investigator, particularly if he or she hasn't been trained in how to investigate

financial crimes. In my office, the King County Prosecuting Attorney's office, we saw a significant change in our ability to pursue elder abuse cases with a financial component after we hired a forensic accountant to help us with the financial aspects of the investigation. Our forensic accountant knows what records we need, how to analyze them, and is able to convey what those records show in a way juries can understand.

Further complicating financial exploitation cases is the fact that they so often occur in the same case with neglect, physical abuse, and even sexual abuse. When we see a neglect or abuse case, often the investigation turns up financial exploitation. The reverse is also true: where there is financial exploitation, we often see abuse or neglect. And usually, the different types of mistreatment are linked.

In a typical neglect scenario, for example, the elder is cared for in their own home by an adult family member and dies of sepsis (blood infection) due to multiple, large, untreated or improperly treated pressure ulcers (bedsores). If the case is to be handled properly, both its medical and financial aspects must be investigated. The financial aspects of the case should be looked into to determine whether the neglect was financially motivated and thus potentially criminal, or caused by self-neglect or the caregiver's lack of knowledge, in which case it is not. What we often find in these cases is significant financial exploitation, with the caregiver motivated to not provide necessary treatment in hopes of a larger inheritance, to hasten the elder's death, or to avoid paying for proper care so they can continue spending the elder's assets. The medical aspects of the case must be investigated in order to determine whether the pressure sores were caused by neglect versus underlying disease process. However, as in financial cases, most police agencies and prosecutor's offices do not have relationships with the appropriate medical experts who can assist them. In our jurisdiction, we are lucky to have a chief medical

examiner, Dr. Richard Harruff, who is a leading expert in neglect cases and knows to refer the matter and what kinds of questions to ask. Most medical examiners and coroners, however, lack knowledge and expertise on the subject of adult neglect and when it might be criminal, let alone its nexus to financial motivations. Even if they are trained, many are loathe to conduct autopsies and make findings on cases of neglect, fearing that their already overburdened agencies will be unable to handle the onslaught of new cases that will ensue as a result.

Besides being underreported by the public, elder financial exploitation is also underreported by all sorts of professionals who may have reason to suspect something is amiss, including health professionals, social service professionals, long-term care professionals and others, many of whom are required by law to report their suspicions. In my state, as in others, the law requires that mandatory reporters report financial exploitation cases only to Adult Protective Services, not to law enforcement. However, in addition to lacking the proper tools and resources to screen for capacity impairment, APS also often lacks the tools, resources and expertise to properly investigate these cases. As a result, many of the cases of financial exploitation that are reported to APS are never referred on to law enforcement.

Adding to these difficulties are the often pressing needs of the victim, who may be suffering from dementia, health issues, physical disabilities, financial and legal issues, isolation, fear of loss of independence, need for housing, and lack of caregiver and social support and advocacy. While APS may be able to assist by locating services for the victim, APS does not provide those services, and is not an advocate for the victim. Because there is no advocacy available for victims of elder financial crimes in most communities, it is not at all unusual for the detective or prosecutor to be drawn into playing that role, if anyone takes it on. Additionally, due to the current lack of coordination between the criminal justice system and civil legal

services on these cases, many victims are never referred to civil attorneys to assist them in recouping losses and repairing their credit and the other damage that has been done as a result of the exploitation.

In addition, the relatively robust victim assistance network that exists for other victims of crime often does not extend to older crime victims who usually have distinct needs and desires not met by existing services.

When the victim of elder financial exploitation is unlucky enough to be scammed by someone from another country, the chances of criminal justice involvement are even lower, due to lack of resources and coordination between local law enforcement and the federal agencies that are beginning to investigate and respond to these cases.

Yet another aspect of the problem is that the parties responsible for elder financial exploitation may be long-term care facilities or other providers of health care or other services that take an older person's money but don't provide the care or services promised or that the elder needs. When a victim is in a long-term care or other facility, law enforcement experiences yet another set of problems: unfamiliarity with the facility's organizational structure; difficulty obtaining records; state investigation and licensing agencies that are often reluctant to report or cooperate; and systemic failures that make finding and charging individual suspects challenging if not impossible.

III. What Can Be Done: Three First Steps¹

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

¹ Thanks to M.T. Connolly, Paul Greenwood, Elizabeth Loewy, and Tristan Svare for their input on these recommendations.

1. Develop infrastructure to support criminal justice handling of elder abuse cases at the local, state and federal level.

With the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974 and the Violence Against Women Act (VAWA) in 1994, the federal government made tremendous strides in building the infrastructure to respond to child abuse, domestic violence and sexual assault, not only at the federal and state level, but also at the local level. There is a profound need for similar attention by the federal government to the issue of elder abuse.

One common ingredient that I have seen in communities whose criminal justice systems are beginning to respond properly to elder abuse is specialized prosecutors, detectives, and victim advocates, as we see in child abuse, domestic violence and sexual assault cases. When these professionals have been trained on the complex concepts involved in these cases, and when they are not simultaneously faced with competing cases, elder abuse reports are investigated, charges are filed, and victims' needs are addressed. Further, these professionals are much more likely to be active and committed participants in their community's various elder abuse Multi-Disciplinary Teams (MDTs). In addition, medical and social service providers, APS, financial services professionals, and the public have an identified person to call when they come across an elder abuse case that is serious enough that it may warrant suspicion and perhaps a criminal response. Once the community begins to believe that the justice system will actually take action on these cases, then reporting, documentation, coordination and investigations across disciplines will improve.

Creation of elder abuse specialist positions in the justice system is necessary not only at the local level, but at the state and federal level as well, so that the many cases that occur across state and national borders and in long-term care and other facilities receiving federal funding are also responded to properly.

But creation of these positions alone isn't sufficient. In order for professionals placed in them to succeed, they need technical assistance, information, resources, enhanced knowledge, and ongoing training. Some of these resources exist at the federal level, in various states and in some organizations, but few local police, prosecutors or victim services providers are aware of them. We need to fund a systematic federal effort to reach out to these professionals at the state and local level, connect them to the resources that already exist, and continue to develop resources for them.

We also need a National Resource Center for the Investigation and Prosecution of Elder Abuse with experienced prosecutors and detectives on staff to provide advice, case consultation and technical assistance, and to incorporate the elder abuse website that DOJ is currently developing. Further, we need to fund the creation of multi-disciplinary forensic centers within states so that victims will benefit from a more coordinated response from APS, law enforcement (federal, state and local), medical professionals, forensic professionals, financial services institutions, aging network entities, the long-term care ombudsman, and others.

2. Develop and conduct training.

As I have described above, there is a pressing need for training of the law enforcement officers and detectives, prosecutors, judges, Adult Protective Services workers, financial services professionals and others who see and routinely respond to

these cases. I am a member of the national training team for the Enhanced Training and Services to End Abuse in Later Life Program, a small grant project of the Office on Violence Against Women. This project is doing just that: funding communities to conduct systematic training of these professionals on how to recognize and properly respond to all forms of elder abuse. In the years that I have been working on this project, I have watched as transformations have taken place in many of the communities that have been awarded the grant, including my own. However, OVW only has the funding to train a handful of communities each year, so it is very slow going.

In addition to training those whose job it is to respond to these cases, we need to train the professionals across all disciplines in positions to reduce the problem; and we need both discipline-specific and multi-disciplinary trainings to do so. This was also a priority identified in the Elder Justice Roadmap Project. The National Center on Elder Abuse has a webpage with links to existing curricula, training videos, events and other resources. In addition, efforts are underway to inventory existing training and education resources and identify what is still needed. One such gap was recently filled by the Department of Justice-funded Online Elder Abuse Training for Legal Services Providers – a much-needed resource for civil attorneys to hone their skills to prevent and assist victims of financial exploitation and other forms of elder abuse. We need to continue to develop, coordinate, implement and update these trainings so that we are routinely conducting them for professionals such as accountants, bank employees, financial advisors, investment professionals, and others in the financial services industry, as well as paramedics and emergency medical personnel, ombudsmen, physicians, nurses,

forensic experts, social workers, notaries public, and private civil attorneys, to name a few.

3. Increase knowledge.

In order to begin to respond properly to these cases, there are many areas in which research and data collection are desperately needed. We need to fund, pilot test, and collect data on the impact of specialized elder abuse detectives, prosecutors and victim advocates in a few jurisdictions. Additionally, we should expand a small exploratory project funded by DOJ's Bureau of Justice Statistics in the King County Prosecutor's Office to track and evaluate what types of elder abuse cases law enforcement and prosecutors are seeing, which ones they pursue and why, where cases originate, what types of referrals, reporting, and investigations make for successful prosecutions, the impact of prosecution on victims, and how the prosecution response is affected by issues such as capacity, lack of a living victim, victims who cannot or choose not to cooperate, lack of prosecutors and/or detectives who specialize in elder abuse cases, the impact of the presence or absence of APS involvement, MDT involvement, use of experts, and the availability of victim advocacy. Developing this information about the impact of the justice system's involvement and other factors will help us to target scarce resources where they can be put to the best use.

We also urgently need research about forensic markers – specifically on how to tell when neglect caused and led to the worsening of pressure ulcers, on fractures, dehydration and malnutrition, and on other physical signs and symptoms with a nexus to elder abuse. We need to know more about the connection between the refusal of care/intervention and dementia, as it is very often a hindrance to APS and law enforcement intervention, and to successful prosecution.

We also need to know more about the prevalence of elder abuse so that law enforcement and prosecution offices can better understand the nature and extent of the problem. In addition, we need more research on and better tools for the detection and assessment of cognitive (in)capacity, especially as it relates to the vulnerability to elder financial exploitation and abuse, and the ability to “consent” to being exploited, neglected or abused. Finally, we need to assess and pilot test tools for financial services professionals that enable them to better identify, report, and address situations involving elder financial exploitation.

IV. Other Recommendations

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

- Enhanced victim services (in justice system offices and the community) to assist victims, provide advocacy, and connect them with services and civil legal assistance;
- Improved reporting and referral systems so that suspected or confirmed elder abuse cases are directed to the right entity to protect victims, stop wrongdoing, prevent future victimization, recompense losses, and if appropriate, prosecute wrongdoers. Entities including law enforcement, prosecution, APS, state agencies that license long-term care facilities, social services, financial services, and health care providers should become more aware of criteria for prioritization of response, standardized referral methods, and how to determine which cases should be referred to which agency;
- Strengthening of the civil legal role in preventing elder abuse and responding to cases of elder abuse, including assisting victims with protection orders, powers of attorney and guardianships, recovering stolen assets, and restoring credit after financial exploitation

- has occurred, regardless of whether the case is appropriate for criminal action;
- Development and funding of forfeiture units or positions within prosecutors' offices so that the stolen assets and funds of older victims can be frozen and recovered without the expense and hardship of a civil law suit;
 - Legislation/guidelines to assist state and local prosecutors in obtaining copies of federal tax returns, to improve their ability to build a financial exploitation case, especially in cases where the perpetrator invokes the "gift" defense;
 - Funding/support for the creation of investigative/law enforcement positions at the federal level that are focused on cons and scams of older victims so that federal, state and local prosecutors are better equipped to address this billion dollar industry;
 - Legislation/training to improve reporting of elder abuse by financial institutions when they have reason to believe their client is the victim of a financial crime. This can be particularly complicated when the apparent perpetrator has power of attorney or is a guardian;
 - Legislation and standards to monitor proxy decision-makers (such as powers of attorney, guardians and representative payees) who have huge power over older persons' assets and few checks to assure compliance with their legal fiduciary duties;
 - Legislation/training to improve recognition and reporting by health care providers of all forms of elder abuse;
 - Improved training and funding for medical examiners and coroners to improve their recognition and assumption of jurisdiction of potential elder neglect deaths;
 - Funding for data collection for medical examiners and coroners for the review of elder deaths and participation in Elder Fatality Review Teams;

- Legislation/regulations to improve reporting by state agencies who license and investigate abuse and neglect in long-term care facilities to law enforcement;
- Data collection on the impact of mandatory reporting on elder abuse victim safety;
- Improving civil attorneys' ability to report suspected elder abuse without fear of liability, and giving them the tools they need to prevent their older clients from becoming victimized in the first place.

V. CONCLUSION

As I hope is obvious from this document, our need for an improved response to elder financial exploitation (and the abuse and neglect that so often accompany it) is immense and urgent. Implementing solutions at modest cost is within reach and a great investment with the potential to save untold suffering and billions of dollars. We don't have to reinvent the wheel to do this. Already throughout the country, government and non-governmental agencies and individuals are working hard on many aspects of this complex issue and have developed promising models for us to analyze, choose from, and, where appropriate, replicate. And the DOJ and HHS-funded Elder Justice Roadmap provides a strategic planning resource developed by the field, for the field, to inform those efforts.