

**Trust Betrayed:
Financial Abuse of Older Americans by Guardians and Others in Power**

Testimony of Jaye L. Martin
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Chairman Collins, Ranking Member McCaskill, and Members of the Committee, I am Jaye Martin, Executive Director of Legal Services for the Elderly in Maine. I am honored to be here today and grateful for the Committee's focus on the serious and ongoing problem of elder financial exploitation being committed by guardians and others in power.

LSE is private, nonprofit agency that was formed in 1974 when legal services were first added to the list of potential funded services under the Older Americans Act. LSE provides free legal help to seniors when their basic human needs are at stake. This includes things like safety, food, shelter, public benefits and health care. LSE provides legal assistance to over 7,000 seniors each year. The seniors helped by LSE have nowhere else to turn for help. Maine is unique in having a resource like LSE. There are very few legal aid organizations in the nation devoted exclusively to meeting the needs of disadvantaged seniors. This is in large part because there are no dedicated federal funding sources to support the provision of legal representation for disadvantaged seniors.

LSE has a four decade long history of representing victims of elder abuse in an effort to restore safety and recover assets through civil legal action. LSE also advocates for public policies that improve the response to elder abuse. In the past twelve months, LSE assisted 260 victims of elder abuse. This is up 24% from the prior year and yet we estimate we are serving less than 1% of Maine's total victims. The large increase this past year is in part due to the growing elderly population and in part a direct result of an extensive public awareness campaign being conducted in Maine that is focused on prevention and early detection of financial exploitation. That campaign is funded exclusively by a private foundation, the John T. Gorman Foundation.

LSE represents elderly victims of abuse who can ask for our help and provide us with at least some direction as to their wishes. We refer victims who no longer have capacity to seek help for themselves to one of our partner agencies. This includes Adult Protective Services ("APS"), Maine's Long Term Care Ombudsman Program, the Office of Securities, and the Attorney General's Office.

Elder abuse is a rapidly growing problem. One in 10 people age 60 and older who live at home experience abuse, neglect or exploitation. This means as many as 5 million seniors are abused each year. Add to this alarming picture of pervasive abuse the fact that 10,000 Baby Boomers turn 65 every day and will do so for the next 19 years. That means we are adding 1,000 potential new victims to the population every day and we will continue to do so for the next 19 years.

Social isolation and cognitive impairment are among the known risk factors for elder abuse. This is supported by Maine's APS reporting data showing that 46% of the substantiated reports of abuse of seniors involved seniors with cognitive impairment. We also know from both LSE and Maine APS data that those over 75 years of age are at higher risk of abuse, in particular financial exploitation. Why don't we hear more about the problem of abuse given the magnitude of the problem? It is likely because only 1 in 24 cases of elder abuse are ever reported to authorities.

At LSE, 48% of the elder abuse cases we handled in the past year involved financial exploitation, with 75% of those involving family members as the perpetrators. This is consistent with national research which found that in 90% of reported elder abuse cases with a known perpetrator, the perpetrator is a family member.

I want to share a typical LSE case with you that involved financial exploitation by someone who had been given legal authority to take actions on behalf of a senior. LSE's cases generally involve the abuse of a Power of Attorney ("POA"), but the situations we see directly parallel those involving abuse by guardians and conservators.

An 82 year-old WWII veteran had suffered two strokes and was confined to a wheelchair and homebound. After his wife passed away, he needed help so he bought a mobile home and asked his daughter to move in with him. He also named his daughter agent under a POA and added her to the title of the home and his bank accounts. The daughter systematically isolated her father and took complete control over his money. He finally sought help from LSE after she refused to give him money to buy birthday gifts for his grandchildren. When he sought help he believed he had \$20,000 in savings, but only \$15 remained in his accounts. Bank records revealed that his daughter had taken his money for her personal use, opened and charged thousands on credit cards in his name, and purchased a new car using her POA authority to add him as a co-signer. The money was long gone, but LSE was able to evict the daughter from the home, recover the home, and clear his credit history.

And one need look no further than the November 27, 2016, edition of the Portland Press Herald for another horrific tale of exploitation that led to a 90 year old woman being abandoned in a tiny cabin in Maine after she was robbed of \$1 million in life insurance and real estate proceeds and taken on a three year long cross country trek that led her further and further from her home in Los Angeles. The thieves in this case used a POA as one of the methods for exploiting this woman. Although she was awarded \$2 million

by a Maine court, it appears she will never see any of it, and she is living out her life in a nursing home in Fryeburg, Maine.

At LSE we have seen thousands of cases like this over the years. These victims are our grandparents and our parents and the legions of victims will soon include hundreds of thousands of Baby Boomers. Among the various factors that appear to be driving the actions of the family-member perpetrators are drug-related problems, gambling addiction, debt problems, and greed.

In states like Maine where the rate of home ownership among seniors is high and the only valuable asset many seniors have is their home, the theft of the senior's home is an all too common form of exploitation. Here is one very typical theft of home case that ended up at the Law Court, Maine's highest court:

Frederick and Patricia were exploited by their son, John, after Frederick became terminally ill. One month after his father's diagnosis, John insisted that his mother go with him to a title company and transfer the home to him to protect it from MaineCare (Maine's Medicaid program). She was exhausted from taking care of her husband and trusted her son. She did as she was told. After Frederick suffered a stroke and was hospitalized for an extended period, John placed padlocks on several rooms in the house including the living and dining rooms, justifying it by accusing Patricia of selling Frederick's property. At that point, Patricia sought the help of a private attorney and filed suit to recover the full use of her home. When Frederick died it came to light that John had also obtained a POA from Frederick five days before his stroke and used the POA to transfer all the money from Frederick's accounts to a new joint account. As soon as his father died, John had withdrawn all the funds. Using the Improvident Transfer of Title Act, a statute unique to Maine, a private attorney assisted Patricia in recovering her home and some of the stolen assets.

In Maine, just as the GAO found in its report, we also sometimes see situations where the perpetrator is actually a trusted professional, though these types of cases are far less common:

In a case in Belfast, Maine, an attorney lost his license and was sentenced to 30 months in prison for stealing nearly \$500,000 from two elderly clients who happened to live in the same assisted living facility. Both women had appointed the attorney as their financial agent under a POA due to declines in cognitive ability and other medical complications. Both had lacked family members to assist with that role. Each believed she was appointing a trusted professional. The thefts were identified by a local bank teller who spotted the questionable transactions and alerted the authorities.

In summary, in Maine, and in the nation, most financial exploitation of seniors involves a family member or person in position of trust and it is very common for the perpetrator to have obtained legal authority through a POA, guardianship or conservatorship. That

authority is then abused as the agent proceeds to steal from the senior. The GAO report includes many more stories like the ones I have shared with you today, as did the GAO report published in 2011.

As today's GAO report notes, we are essentially blind to the scope and nature of the problem of abuse by guardians and conservators due to a lack of data. Even less is known about the scope of abuse by agents under POAs. This leaves these guardians and agents free to act with impunity. This is coming at a great cost to our country. In 2015 alone, LSE recovered assets stolen from elderly victims of exploitation in excess of \$710,000 in value. One study estimates the annual national cost of financial exploitation at \$36.5 billion. It is time to collect data on these abuses on a national basis and a good place to start is with the state courts and guardianships and conservatorships. If data were collected, we would then have opportunities to use technology to efficiently and effectively analyze that data and identify red flags for abuse, just as they are finding they are able to do in Minnesota.

Leadership and investment by the federal government are needed to support data collection and monitoring using an approach that leaves each state with some latitude on how to proceed given the great variation in the state court structures. Perhaps the type of funding formula used under the Older Americans Act might provide a roadmap for a federal-state partnership and coordinated response to this challenge facing our seniors' health and financial safety.

Data collection and monitoring will only be the first steps in a coordinated solution. There is no doubt that rampant abuse will come to light if data is collected and guardians are monitored. The GAO report goes on to note the importance of dedicated resources in combating abuse and dedicated federal and state resources will be needed to ensure the states are able to effectively audit, investigate, and prosecute dishonest agents and all elderly victims have the help of an attorney to pursue civil legal actions to recover their stolen assets.

What difference could monitoring of guardians and conservators really make in the lives of our nation's seniors? Here is just one example of a situation where the need for and potential value of monitoring of guardians is quite clear:

An elderly woman in her 80's came to Maine to visit her daughter. She owned a very valuable out of state residential property and extensive assets. She was held by her daughter against her will in unsafe living conditions while the daughter repeatedly attempted to force her to sign a POA. She steadfastly refused. She eventually escaped and flagged down a passing motorist. She was hospitalized briefly after her escape and during that time the daughter obtained guardianship over her mother. APS got involved when the woman first escaped from the daughter's home, but refused to remain involved after she was placed in a nursing home by her daughter because APS then viewed the woman as no longer in danger. When the woman finally sought legal help she was under guardianship and living in a nursing home. She desperately wanted to return to her home. She

did have another child who lived near her home, but that child did not wish to become engaged in a conflict with a sibling. It was concluded that nothing further could be done to assist this woman because there was no legal action that would achieve her desired goal.

There was not one single document filed with the probate court after the guardianship order was issued in this case. It is far too easy to imagine what would have come to light if this guardian's actions had been monitored.

It is time for the federal government to take a leadership role in partnering with the states to bring the pervasive problem of abuse by guardians and others in power out of the shadows and into the light of day.

Thank you for inviting me to speak with you today.