

Statement of Paul R. Greenwood, Deputy District Attorney, Head of Elder Abuse Prosecution Unit, San Diego DA's Office

Good afternoon, Mr. Chairman and distinguished members of the Special Committee on Aging. My name is Paul Greenwood and I have the privilege of heading up the San Diego District Attorney's Office Elder Abuse Prosecution Unit, a position which I have held for the past sixteen years. I am also a co-chair of the California District Attorneys Association Elder Abuse Committee.

California defines an elder as anyone over the age of 65.

I am therefore responsible for prosecuting felony crimes that are committed against victims in that age bracket. These crimes cover physical and mental elder abuse, neglect, and financial exploitation.

At least 65% of my prosecutions involve some form of financial exploitation. The conduct of the criminals is becoming more brazen and diverse. The perpetrators are constantly developing new ways to gain access to our seniors' life savings and have focused upon a generation that typically has been more trusting and less able or willing to self report the victimization.

Let me share some cases to illustrate the problem.

Victoria Gilbert was a convicted felon who moved to San Diego from Nevada. She took a job as a caregiver and started work for an elderly widower who was physically and mentally. Within a few days she had convinced the victim to allow her to move in with her boyfriend, Gary Kircus, whom she portrayed as a deputy US Marshall. Soon both Gilbert and Kircus were stealing the victim's medications, and then depleting his checking account and assuming control of his credit card accounts. Fortunately, an alert bank teller became so concerned at the apparent isolation of her customer and the change in banking activity that she contacted the victim's adult children. After making an unannounced visit, the adult daughter discovered her elderly father close to death. Law enforcement was called in and both Gilbert and Kircus were arrested, prosecuted and ultimately convicted after a jury trial.

William Pitre was an unlicensed contractor but described himself in flyers left in church parking lots as a licensed Christian contractor. A 79 year old widow contacted him in response to the flyer left on her car windshield; she wanted her fence repaired and her driveway resealed. The work was shoddy and incomplete; yet Pitre demanded excessive payment. The victim was so fearful that she was unable to write out the checks that Pitre demanded. He wrote out the checks and had the victim sign them. He then left his workmen in the kitchen standing over the victim while Pitre went to the bank to demand cash. The bank became suspicious and called the victim; however she told the bank to give Pitre the cash because she was afraid of what the workmen might do. The victim was too embarrassed to call the authorities; but the bank made a call to Adult Protective

Services who in turn contacted law enforcement after visiting the victim. As a result Pitre was arrested and prosecuted and received a state prison commitment.

Donald Wade was a cab driver hired to drive Peggy twice a month to visit with her 93 year old friend Ruth who was in the advanced stages of Alzheimer's and who resided in a skilled nursing facility. On one occasion Peggy cancelled the scheduled visit because of illness; however, Wade seized the opportunity to drive over to the facility and collect Ruth. He drove her to Ruth's bank and along the way obtained Ruth's signature to a CD surrender form that authorized the bank to cash in her CD for \$97,000, albeit with a penalty for early withdrawal. Wade convinced the bank to issue a cashier's check payable to Wade's friend whom he described as Ruth's "attorney." At no time did the teller take Ruth to one side and ask her if she understood what was happening. As a result, Wade and his friend were able to steal \$96,000 [the bank deducted \$1,000 by way of a penalty] from Ruth's account. The crime was only discovered after Wade shot his friend over a dispute as to how the theft proceeds were being divided. Wade was convicted and sentenced to state prison.

These cases underscore the importance of combating financial elder abuse through a multi-disciplinary approach. Throughout California we have seen examples of effective collaboration such as:

1. The emergence of Financial Abuse Specialist Teams [FAST] consisting of representatives from law enforcement, Adult Protective Services, financial institutions, elder law attorneys, prosecutors, and other qualified professionals.
2. The creation of forensic elder centers that offer wrap around services for elder victims; Orange County has led the way thanks to the pioneering efforts of Dr. Laura Mosqueda from the UCI Medical Center.
3. The expansion of mandated reporting to employees of financial institutions who are now required to immediately report suspected elder exploitation to either law enforcement or Adult Protective Services.
4. The implementation of Operation Guardian by the California Attorney General's Office which since the year 2000 has been conducting surprise, on-site inspections of nursing homes. This operation has often led to the uncovering of financial exploitation of residents within a facility in addition to other incidents of neglect.

In San Diego we have tried to replicate this multi-disciplinary concept in the following manner:

1. Periodic lunchtime meetings are held throughout our County to discuss the latest trends and scams - in which we invite community partners to exchange information and receive updates.
2. Trainings for first responders, the clergy and financial institutions in recognizing red flags of elder abuse.
3. Promoting a public awareness campaign entitled "Silence is not golden" – so that the public is encouraged to call a 1-800 number when observing elder abuse

4. Offering comprehensive services to elderly crime victims through our San Diego Family Justice Center and Center for Community Solutions and funded by the not for profit Archstone Foundation.
5. Launching a series of countywide events entitled “Protect yourself and your wallet” that provide education for seniors in the form of tips to avoid becoming a victim of physical and financial abuse. These seminars are organized by our local Adult Protective Services and the District Attorney’s Office and are sponsored by two local Tribal governments. I am attaching to these remarks a copy of my financial exploitation “Top ten tips for seniors”.

I am convinced that collaboration by prosecutors with multiple agencies – where the local prosecutor’s office takes the initiative – is the key to making an impact on the escalating financial crimes being committed against seniors. There are encouraging signs that prosecutors in several states are capturing the same vision but much more needs to be done. The National Center for State Courts has recently published an excellent resource guide for prosecutors entitled “Prosecuting Elder Abuse cases: Basic Tools and Strategies” funded by the Bureau of Justice Assistance. As more prosecutors take advantage of these training materials, we will see an improvement in how financial elder abuse cases are handled through criminal prosecution.

We also need to eliminate aging discrimination and bias in our attitude towards prosecution of these cases. There has been a tendency in the past for prosecutors to fall into the trap of concluding that:

1. Elders make poor witnesses in court
2. Financial exploitation cases are difficult to prove because of mental capacity issues
3. Cases involving home repair fraud allegations or misuse of Powers of Attorney are best dealt with as civil matters

Prosecutors must find ways to rebut the standard defense that the elder either “loaned” or “gifted” the money to the suspect. Understanding the legal term of consent is at the core of such a case. California crafted a very enlightening jury instruction as follows:

“To consent to a transaction a person must:

- Act freely and voluntarily and not under the influence of threats, force or duress;
 - Have knowledge of the true nature of the act or transaction involved;
 - Possess the mental capacity to make an intelligent choice whether or not to do something proposed by another person.
- And consent requires a free will and positive cooperation in act or attitude.”

Additionally, prosecutors have to learn how to overcome many elderly victims’ reluctance to talk about the exploitation because of embarrassment or fear that such exposure might lead to the victim losing their financial independence.

Moreover, prosecutors should be less concerned about the actual monetary loss and focus more on the underlying conduct by the perpetrator. It is frustrating when a case is rejected by a prosecutor’s office because the loss involved does not meet the threshold for

prosecution. In my experience, theft of \$500 can be as devastating to an elderly widow as a theft of \$100,000.

We also should examine ways in which to become more creative and assertive in the actual charges that are filed. For example, consider this hypothetical: An unlicensed contractor fraudulently persuades an elderly homeowner that major corrective work is required on the homeowner's roof. The crook enters the victim's kitchen and stands over the victim while he or she writes out a check. The work is unnecessary, inferior and causes damage to a previously good roof. In that situation we should be looking to not only charge the suspect with elder financial exploitation but also with residential burglary; and if the victim felt intimidated we should consider adding a robbery charge.

Having prosecuted felony financial elder abuse cases for over sixteen years, I see the following areas as crucial in our nation's ability to react to the escalating problem of financial elder abuse:

1. Immediate funding of the Elder Justice Act which was passed over two years ago but which has laid essentially dormant. Much has been achieved at the grass roots level in recent years – but we need some leadership and responsibility from the Federal branch of government in tackling financial elder abuse.
2. We need to look at state laws dealing with elder exploitation. For example, we should be very concerned at the fact that convicted felons can easily get employment working as caregivers. Surely, more can be done to protect the unsuspecting public from hiring felons to look after an aging relative. Additionally, we should evaluate whether state laws relating to financial elder abuse are correctly earmarked as felonies rather than as misdemeanors.
3. We should consider creating or expanding lists of mandated reporters of suspected financial elder abuse. Other logical mandated reporters would be health care workers, first responders, caregivers, medical personnel, the clergy, notary publics and wire transfer merchants.
4. We need to make the court room more elder accessible and learn from such judges as Her Honor Judge Patricia Banks, Presiding Judge of the Elder Law Division in Cook County, Illinois who has gained national attention for the way she operates her Elder courts.
5. All major urban communities should consider having a dedicated investigative law enforcement unit that handles elder abuse investigations. San Diego Police Department has had such a unit since 2000; it consists of five detectives and one sergeant.
6. States should invest in more awareness campaigns so that the public knows exactly how and where to report financial elder exploitation quickly and efficiently.
7. The creation of multi-disciplinary task forces in major urban areas involving federal, state and local law enforcement and adult protective agencies, as well as representatives from financial institutions and wire transfer merchants. Such task forces should be established primarily to provide a rapid response to any report of suspected elder financial exploitation involving an out of state or cross border suspect where monies have been wired. The local prosecutor's office should be

willing to seek extradition when a suspect is identified and there is a likelihood of a state prison commitment.

8. The establishing of a national database that tracks different types of elder financial exploitation cases and which offers useful contact information allowing procedures such as obtaining bank records to be expedited.

I last addressed this committee in 2007. Since that time we have made progress both locally and across the country in developing strategies to combat the rising tide of elder exploitation. But I am also aware that the crooks and con artists are becoming more creative and daring in their efforts to deplete the life savings of our senior citizens. It is therefore time for us to go on the offensive in identifying, investigating and prosecuting these suspects. We must expand our multi – disciplinary programs, eliminate misconceptions regarding hurdles to successful prosecution of elder financial abuse, and seek the kind of justice that our seniors deserve.

Paul Greenwood
Deputy District Attorney
Head of Elder Abuse Prosecutions
San Diego District Attorneys Office

TEN TIPS TO HELP YOU REDUCE THE RISK OF BECOMING THE NEXT VICTIM OF FINANCIAL ELDER ABUSE

1) CHOOSE A CAREGIVER WITH CAUTION

Do not assume that by hiring a caregiver through a bonded agency you are guaranteed to get someone who has been checked. There is no current law requiring mandatory background checks for in-home caregivers in California.

2) KEEP AN INVENTORY OF ALL JEWELRY

Jewelry is the number one item that is stolen from homes occupied by elders. Not only should your jewelry be kept in a locked drawer, you should have photographs of rare, valuable or sentimental items in a separate location. In the event of theft, such photographic evidence will be useful in tracking down the missing jewelry at a pawn shop.

3) EVERY HOME SHOULD HAVE A SHREDDER

Every piece of mail containing your name, address and any other identifying information should be shredded before being discarded. The most effective type of shredder is the criss-cross cut shredder. Even envelopes with your name and address should be shredded. Never throw away old checkbooks from closed accounts or bank credit card application forms. There is no danger in over shredding!

4) PROTECT YOUR INCOMING AND OUTGOING MAIL

Never allow incoming mail to sit in an unsecured mailbox where the public have access. Mailbox theft is rampant. Similarly, never leave outgoing mail in an unsecured mailbox with the red flag raised as this simply provides an easy alert to the thief who is cruising the streets. Consider either purchasing a locked mailbox or renting a post office from your local post office.

5) OBTAIN A CREDIT SEARCH ON YOURSELF AT LEAST TWO OR THREE TIMES A YEAR

Identity theft is rampant. The only way to have peace of mind is to obtain a credit search on yourself periodically from one of the three major credit bureaus – Experian, Equifax and Trans Union. This will enable you to discover whether someone has applied for or obtained a credit card in your name.

6) EVERY TELEPHONE SHOULD HAVE CALLER I.D. FITTED

All modern telephones are equipped with Caller I.D. capability and the minimal cost of this extra service is well worth it. By seeing if the incoming

call is classified as “private” or “unknown” this will allow you to be immediately on your guard. Crooks love the telephone. It is now their weapon of choice.

7) YOU WILL NEVER WIN THE CANADIAN LOTTERY

If a smooth talking 25 year old male tells you on the telephone that you are the proud winner of the Canadian lottery, he is a liar. Similarly, if you get an email from Nigeria or letter from Madrid indicating that you could receive a substantial amount of money, such communications are always fraudulent. Do not dabble!!

8) CONSIDER ALLOWING YOUR BANK TO SEND A DUPLICATE COPY OF YOUR MONTHLY STATEMENT TO A TRUSTED FAMILY MEMBER OR PROFESSIONAL ADVISOR

Sadly, most financial elder abuse cases are only reported or discovered six to nine months after the initial losses have occurred. Elders whose sight is failing are at greater risk because they may rely upon the very person who is stealing from them to insure that the financial transactions are in order. An independent pair of eyes that is able to look over bank statements every 30 days will be able to catch suspicious activities in the early stages.

9) DON'T ASSUME THAT THE FRIENDLY HANDYMAN IS IN FACT LICENSED

Before committing to any work on your home, always obtain at least three estimates in writing and check on the name of the contractor with both the Better Business bureau and with the State License Contractor's Board. Just because someone gives you an impressive business card with a contractor's license number on it, this does not mean that the person is qualified. The license number may have in fact been stolen. Additionally, never pay more than 10% of the contract price up front.

10) ALWAYS HAVE A SECOND LINE OF DEFENSE AT YOUR FRONT DOOR

You should either have a locked screen door or a security chain guard at your front door. Crooks will attempt to gain entry to your home by using excuses such as a fake emergency, or false uniforms and badges. By having a second line of defense, you will be able to communicate with the stranger on the doorstep without exposing yourself to the possibility of a forced entry. Never allow any stranger into your home even if the emergency seems real. Instead, tell the stranger that you will call 911.