

Forgotten Victims of Elder Financial Crime and Abuse

A Report and Recommendations



The National Center on Elder Abuse (NCEA)

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This report summarizes four roundtable discussions conducted in conjunction with the *Forgotten Victims of Crime Conference*, which took place on October 29th 1998 in San Francisco, California. The event was co-sponsored by the Northern California Branch of the United States Attorney's Office (Department of Justice), the National Center on Elder Abuse, the Goldman Institute on Aging, the San Francisco District Attorney's Office, and San Francisco SAFE. The views expressed at the conference do not necessarily reflect the policies or views of NCEA or its partner organizations.

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NCEA exists to provide elder abuse information to professionals and the public; offer technical assistance and training to elder abuse agencies and related professionals; conduct short-term elder abuse research, and assist with elder abuse program and policy development. NCEA's website contains many resources and publications to help achieve these goals. You can find the website at www.elderabusecenter.org. NCEA may also be reached by phone (202/898-2586); fax (202/898-2583); mail (1201 15th Street, N.W., Suite 350, Washington, D.C. 20005-2800); and by e-mail <NCEA@nasua.org>.

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Forgotten Victims of Elder Financial Crime and Abuse

Some rob you with a gun, some with a fountain pen.

Woody Guthrie

I. Introduction

Losing the fruits of a lifetime's labor through financial exploitation can be devastating. It may compromise victims' independence and security, destroy legacies, and lead to depression, hopelessness, or even suicide. Although financial crimes are committed against members of all age groups, the impact is particularly great on the elderly, who are often unable to replace lost assets through work, saving, or investing.

While the victims' rights movement has, over the last three decades, brought attention to the emotional, financial, and physical needs of victims of violent crime, this consideration has not extended to victims of financial crime. Until recently, federally funded victim assistance programs did not provide for services to financial crime victims.¹ Federal programs to compensate victims for crime-related expenses are still restricted to serving victims of violent crimes. Few social service programs are equipped to address financial crime victims' emotional needs, help them recover their losses, educate them about crime prevention, or arrange for services that they need as a result of the crime (e.g. alternative housing or support services).

This inattention to financial crime victims has been attributed to numerous factors. Perhaps foremost among them is the pervasive attitude that financial crime is less devastating than violent crime is to victims. Other factors include a lack of consensus regarding what constitutes criminal conduct as opposed to mismanagement or unethical, but not unlawful, conduct. Law enforcement personnel often view financial crimes involving civil instruments (e.g. the misuse of a power of attorney to access a victim's assets) as strictly civil matters even when the conduct also constitutes criminal behavior. Consequently, they may advise victims to seek out civil attorneys who can sue for recoveries as an alternative to criminal action. Similarly, civil attorneys often fail to recognize the criminal nature of cases they handle.

Financial crimes span the spectrum from telemarketing scams, the misuse of powers of attor-

¹ The victims of Crime Act (VOCA) of 1984 provided for services and compensation to victims. Until recently, VOCA grants for victim assistance services could not be used for services for victims of financial crime. Although

neys, confidence crimes, and illegal transfers of property. Perpetrators include family members, predatory individuals, and unscrupulous businesses. Although anyone and everyone is vulnerable, the elderly are at particularly high risk. The fact that older Americans hold a disproportionately high percentage of the country's wealth makes them a particularly attractive target. Many seniors live alone, which shields abusers from scrutiny and insulates victims from those who can help. Cognitively impaired individuals who lack surrogate decision-makers are particularly susceptible to certain crimes like the surreptitious transfer of property or assets. As a result of physical impairment and disability, many seniors rely on others for assistance. Their caregivers often have access to financial information, documents, and valuables. The intimacy, proximity, and dependency that the care-giving relationship engenders place unscrupulous caregivers in disturbingly opportune positions to exercise coercion, subtle influence, or outright control.

Many elderly victims fail to report crimes or abuse to the police or even to their own families out of shame or embarrassment. Some want to stop the exploitation and recover their assets, but are less interested in seeing perpetrators punished. Many have close ties or relationships to their abusers, which they want to preserve. They may want to protect abusive family members, particularly when the abuser is a troubled son or daughter. Others fail to report because they don't want to draw attention to the fact that they are having problems managing on their own and fear that disclosure will result in nursing home placement or guardianship. Because victims are often induced to cooperate in their own exploitation, they may believe that they are fully or partially to blame for their victimization. Many people do, in fact, blame victims or hold them responsible, assuming that they brought their problems upon themselves through greed, imprudence, or naiveté. The reality is more complex.

When victims do come forward to report financial crimes, the results are often disappointing. Physically or cognitively impaired seniors often find the criminal justice system incomprehensible and inaccessible. Physical disability prevents some from coming to police stations, prosecutors' offices, or court. When cases are prosecuted in jurisdictions other than those in which they live, victims may be required to travel, which poses major hardships for ill or impaired individuals. Particularly frail victims are likely to decline, become incapacitated, or die during the course of protracted proceedings and it is not uncommon for cases to continue for years, particularly when the defendant must be extradited. Victims with diminished mental capacity who are unable to recall details of the crime or to explain the true impact the crime had on their lives may be poor witnesses. As a result of these problems, many cases go unprosecuted.

As the decade draws to a close, it is clear that financial crime and abuse will persist well into recent changes to VOCA regulations provide for services for financial crime victims, victims of financial crime are still not eligible to receive VOCA funded compensation.

the new millennium. The emergence of increasingly complex and technologically sophisticated new varieties of exploitation is portended by the recent surge in crimes involving the Internet, electronic transfers of money, and the intercepting and compromising of victims' financial identities. Preventing financial crime will also challenge our current understanding of such complex matters as cognitive functioning, mental capacity, and undue influence as we attempt to interpret victims' ability to understand complex financial transactions and withstand increasingly sophisticated forms of persuasion.

II. “The Forgotten Victims of Crime” Conference and Roundtable Discussions

Because financial crime exceeds the boundaries of any single jurisdiction, it is clear that effective prevention will require cooperation between all levels of law enforcement, including local, state, and federal jurisdictions. The civil system, which provides additional vehicles for stopping abuse and recovering assets, must also be involved. Finally, victim advocates must be enlisted to ensure that victims’ rights are protected, barriers are removed, and victims have adequate incentives to participate in the process. The resources of each of these systems must be coordinated to optimize their effectiveness.

To achieve a clearer understanding of the roles of these systems in stopping and preventing financial crime, the remedies and resources they offer, and the challenges that those working within them face, a series of roundtable discussions was conducted in San Francisco on October 29, 1998. The discussions were sponsored by the National Center on Elder Abuse (NCEA) and convened in conjunction with the *Forgotten Victims of Financial Crimes* conference. The conference was co-sponsored by the Northern California Office of the U.S. Attorney’s Office, the San Francisco Consortium for Elder Abuse Prevention at the Goldman Institute on Aging, the San Francisco District Attorney’s Office, and San Francisco SAFE. Each session focused on one of four systems: the criminal justice system, the civil justice system, the victim witness assistance network, and federal investigative and regulatory agencies. Participants included local, state and national experts.

Each roundtable discussion followed a similar format. Participants were asked to introduce themselves and the organizations they represented and briefly describe the challenges they face in handling financial crime and abuse cases. Following introductions and opening comments, the groups engaged in lively discussions about common areas of concern and promising approaches to addressing problems. The groups were also asked to offer recommendations for new services and public policy reform.

Summaries of the four, one and a half-hour sessions are presented in the following section. The content, therefore, reflects the views and opinions of the participants. To broaden the scope and usefulness of this report, some additional background information is included within each section. Additional experts were also consulted during the preparation of the report to clarify certain points and provide additional insight. Because there was some overlap and repetition among the four discussion groups, this report aggregates best practice models and recommendations by subject area rather than by attributing them to particular groups.

III. The Role of the Criminal Justice System in Stopping Elder Financial Crime and Abuse

Although financial crimes fall under local, state, and federal jurisdiction, the planners of the roundtable discussion felt it would be more productive to convene separate discussions with local and federal law enforcement personnel (there were no representatives from state law enforcement agencies present). Consequently, this section focuses on issues specific to local law enforcement. Issues pertinent to federal law enforcement personnel are addressed in a separate section (Section V) of this report. Participants in the local law enforcement roundtable included police investigators, prosecutors, and social service agencies. A representative from a federal law enforcement agency also participated.

A. Introduction

Financial crimes include theft, fraud, larceny, forgery, usury, and others. Some states have developed specialized statutes to make financial crimes against the elderly easier to prosecute by extending statutes of limitations, creating special provisions for family members or persons in positions of trust, etc. These specialized statutes also may include provisions for enhanced penalties for perpetrators who intentionally single out the elderly.

B. Challenges

Lack of Appropriate Training for Law Enforcement Officials

Investigating and proving financial crimes frequently require familiarity with such diverse topics as contract law, real estate, guardianship, and mental capacity. Investigators and prosecutors may need to decipher civil contracts and financial documents, prove what victims did and did not understand (often at earlier points in time), and determine what defendants knew or reasonably should have known about victims' levels of understanding. Because these topics are not covered in traditional law enforcement training curricula or programs, few police officers within local precincts, even command staff, have this expertise. Similarly, prosecutors are unlikely to have received training in these areas. Those officers and prosecutors who do possess this type of expertise are likely to be so inundated with cases that they are forced to prioritize those that involve a large number of victims and large losses.

Without training, law enforcement personnel who come into contact with financial crimes are forced to pick up needed skills "on the run." Because law enforcement agencies typically rotate staff through their various units, by the time fraud investigation personnel have acquired the expertise that is needed, they are transferred back to other divisions, or retire.

"Unless you're handling the "French Connection" or some esoteric crime, the most time investigators have in our unit is three years."

The Repetitive Nature of Financial Crimes

A troubling characteristic of financial crime is its repetitive nature. Victims are likely to be repeatedly targeted and re-victimized, while perpetrators are likely to re-offend many times. This recycling of cases, which creates a significant drain on already limited resources, has been attributed to characteristics of both victims and perpetrators.

Older victims are frequently victimized repeatedly for several reasons. Because impaired individuals may never realize that they are being victimized, protective mechanisms or supervision will not be put into place unless or until third parties discover the abuse. Victims of investment or telemarketing fraud are frequently re-victimized as they desperately attempt to recover their losses. The likelihood that victims will fall for scams repeatedly is so high that the sale of "sucker" or "mooch" lists (lists of individuals who have been defrauded in the past) is a big business in and of itself. It has been reported that individual "leads" may sell for as much as \$200.

The repetitive nature of financial crime can also be attributed to the lack of systems in place for tracking suspects or convicted offenders. As a result, offenders can (and do) relocate to avoid arrest and those who are caught and prosecuted often simply relocate and start operating again after they have completed their sentences. It has been frequently observed that many ex-convicts become paid caregivers for vulnerable individuals. This practice goes unchecked because most states still do not require criminal background checks and do not prohibit persons who have been convicted of certain crimes from working with the elderly. In California, attempts to develop an abuser registry and require background checks for potential attendants were vigorously opposed by advocates for the disabled, who believe that the practice would restrict their freedom to hire whomever they want.

Another factor contributing to the recycling of cases is the relatively light sentences that are typically imposed on perpetrators, which fail to deter them from re-offending.

"You have ex-cons getting out of the joint and becoming care providers. They're hired for minimum wage and aren't required to give disclosure of their background. Before you know it, they own the person's house."

Failure of Law Enforcement to Recognize Financial Crimes

Many law enforcement personnel fail to recognize crimes when they see them. When abuse involves the misuse of legal documents, (e.g. the forging of wills or powers of attorney, or inducing mentally incapacitated persons to transfer titles of their homes), it is often viewed as a "civil matter." Even when law enforcement personnel do get involved, they often fail to see the "broader picture" or the direction in which cases are likely to proceed. For example, lacking knowledge about common patterns, investigators may be well into cases before it occurs to them to find out if victims are being overmedicated or under-medicated (homicide cases involving victims who are poisoned or starved for financial gain are becoming increasingly common). Unless these patterns are recognized, victims may be dead and cremated before the investigator makes the connection.

"It's the chicken or the egg problem. We don't see the cases, so they must not exist. Well, you don't see the cases because you're not investigating them."

"They (law enforcement) are telling victims 'go hire a civil attorney. This is not a crime.'"

Financial Crimes are seen as Less Serious than Violent Crime

Within most police agencies and prosecutors' offices, "property crimes" are seen as less serious than violent crimes. Without "buy-in" from chiefs, sheriffs, city managers, mayors, Boards of Supervisors, and City Councils, agencies are unlikely to provide sufficient resources.

"If two gang bangers go out and kill someone with a .22, now that's a big case."

Financial Crimes are Difficult to Prove

Financial crimes are often very difficult to prove for myriad reasons. Pertinent documents are frequently in the hands of offenders or they have been destroyed. When perpetrators and/or victims are members of immigrant groups and do not speak English, it can further complicate investigations. Proving cases may also involve proving that perpetrators had special relationships with their victims (e.g. relationships of trust); establishing the existence or nature of these relationships can be extremely difficult. In addition, many victims do not make good witnesses owing to the same attributes or conditions (e.g. dementias) that render them susceptible to this type of abuse in the first place.

Financial Crimes are Labor Intensive

Investigating and prosecuting financial crimes can be extremely labor intensive and time-consuming, particularly cases involving multiple victims, multiple charges, and multiple jurisdictions. Cases involving highly technical issues of disclosure and fraudulent misrepresentation require extensive fact-finding and background work that may take months to complete. Because law enforcement agencies are “statistic-driven,” it is not surprising that, when faced with having to choose between financial crimes and those which can be resolved more quickly, law enforcement personnel are likely to assign a low priority to financial crimes.

“I have been as many as 500 cases behind, and that’s ridiculous. And many of those cases are bookings that have to get rebooked and reviewed within 48 hours.”

“Upper management doesn’t understand why we’re backlogged. They don’t know what it takes to put these cases together.”

Failure of Victims to Report to Law Enforcement

Many victims fail to perceive financial abuse as criminal in nature. In the case of telemarketing fraud, for example, a study by the American Association of Retired Persons (AARP) showed that, while victims felt that what had been done to them was wrong, the majority did not understand it to also be criminal. Some victims fail to report because they distrust the system or fear retaliation. Some report once, but if they do not hear back from investigative agencies, fail to report again. Others fear being sued by offenders. Still others fail to report because they lack adequate incentives for doing so. Many victims simply want to recover what they have lost and do not believe that reporting to the police will accomplish this.

Statutes of Limitations are Not Long Enough

The statutes of limitation typically applied to financial crimes are not long enough in many cases. Financial crimes are likely to be discovered long after they have been committed, and securing needed evidence can be extremely time consuming. For example, banks are usually reluctant to release records to law enforcement for fear of breaching confidentiality or exposing themselves to lawsuits. The turn-around time for getting search warrants and serving financial institutions can be significant, particularly since banks’ records are likely to be stored in other states.

“They (financial institutions) get stacks of search warrants and stacks of subpoenas, and it doesn’t seem to make all that much difference to them.”

Victims' Assets are in Jeopardy During Investigations

While investigations are in progress, suspects often continue to exercise legal control over victims' assets and influence and control over victims themselves. This raises the likelihood that assets will be depleted or dissipated by the time the case is prosecuted. Many states have inadequate laws to freeze victims' assets or keep suspects away from their victims while investigations are in progress.

Lack of Clarity With Respect to Jurisdiction

There is a lack of clear definition where jurisdiction lies in financial crimes, which may cross county, state, and federal boundaries. Depending on the nature of the crime, cases may be handled by police, Medicaid fraud and control units, the Federal Bureau of Investigation, the Federal Trade Commission, the Secret Service, etc. In some cases, the appropriate jurisdiction is unclear. (This issue is discussed in greater detail in Section V of this report.) Further complicating matters is the fact that financial crimes often occur in concert with other types of crime including assault, neglect, false imprisonment, or homicide, which are handled by different units within police agencies or prosecutors' offices.

Cases May Exceed the Boundaries of a Single Jurisdiction

In many cases, victims reside in different jurisdictions from perpetrators and evidence exists in still other jurisdictions. For example, bank records that are needed to prove a case may be stored in a different state from that in which the crime occurred, requiring law enforcement officers to work through another jurisdiction to obtain a search warrant.

Insufficient Resources

Most police and prosecutors' offices lack adequate resources for handling complex financial crimes. Some police and prosecutors divide their time between elder abuse, domestic violence, general fraud and theft, and child abuse cases. In addition to insufficient in-house staff, prosecutors' offices lack funds to hire expert witnesses whose testimony is critical to prove many cases. These include experts in geropsychiatry to evaluate mental capacity and undue influence. Some units lack resources to even pay for simple services like researching bank files or duplicating bank records. When a law enforcement agency can not pay these costs, they may simply give up an investigation.

Lack of "Front End" Protections to Prevent Abuse

Many financial crimes or abuse could have been prevented or circumvented if adequate "front end" protections had been in place. For example, many perpetrators commit crimes using documents such as powers of attorney, trusts, etc. Despite the fact that these instruments can

be used to take over someone's life savings, transfer the title of their homes, or cash out their stocks or CDs, there is very little tracking or accountability for fiduciaries. The fact that costly and complex criminal investigations could have been avoided is a source of frustration for some law enforcement personnel.

"You're talking about a person's life savings, and they're (perpetrators) not required to get thumb prints, mental evaluations, nothing."

IV. The Role of the Civil System in Stopping Elder Financial Crime and Abuse

Participants in the civil system roundtable included private attorneys, private professional guardians, probate court personnel, an expert in undue influence, and social service providers.

A. Introduction

Civil courts can play a fundamental role in stopping or preventing elder financial crimes and abuse. Guardianship (called conservatorship or committeehip in some states), which is the court appointment of an individual to supervise and make decisions for an impaired individual, can be an effective vehicle for preventing exploitation. Civil attorneys can also initiate lawsuits to recover stolen or misappropriated money or assets, challenge bogus marriages, contest guardianships, and petition courts for accountings of expenditures by attorneys in fact. More importantly, civil attorneys can help prevent abuse by crafting protective legal mechanisms like trusts and durable powers of attorney to offer maximum protection. Civil actions can also be an effective means for recovering victims' losses.

B. Challenges

Lack of Understanding about Mental Capacity

The concept of mental capacity is pivotal to understanding and responding to elder financial crime and abuse because the question of whether abuse even occurred often depends on determinations of what vulnerable persons did and did not understand. For example, the signing of legal documents such as wills or powers of attorney requires that signers understand the nature of the contract and the repercussions of signing. Although these documents are improper or illegal if the older person lacks the mental capacity to understand what they are signing, there is a general lack of clarity and consensus regarding the nature or standards of capacity that are needed for some transactions.

Mental capacity is the collection of mental skills required to perform everyday tasks, including memory, reason, the ability to calculate, the ability to modulate emotions, etc. Different tasks require different mental skills. Paying bills, for example, requires that the bill payer remember when the bills need to be paid and be able to perform simple calculations. Although there is general agreement about how capacity should be defined for certain purposes (e.g. testamentary capacity, or the degree of capacity necessary to make a will), there is little agreement about the level of capacity needed for other common contractual agreements, such as giving gifts or getting married.

Lack of Understanding of Undue Influence

Undue influence, which is the concerted, deliberate effort to assume control over another person's decision making, is another concept that is fundamental to understanding and responding to financial crimes against vulnerable persons. Just as transactions made by persons who lack mental capacity are not legal, transactions by persons who are victims of undue influence are also illegal.

Several legal standards exist for defining undue influence, and, not surprisingly, there is disagreement over which standard should be used in specific instances. The broad definition, which has its roots back to the time of Sir Francis Bacon, defines undue influence as one person taking unfair advantage of another. A much narrower interpretation, and one which has been used by appellate courts in California, characterizes undue influence as "substituting the will" of the victim for that of the perpetrator, a standard that is extremely vague and difficult to prove.

Although persons with diminished mental capacity are vulnerable to undue influence, mentally competent persons can also be unduly influenced. Commonly used mental status exams, even those administered by capable neuropsychologists, fail to assess susceptibility to undue influence. Part of the difficulty in identifying and defining undue influence stems from the fact that it is a process as opposed to a discrete action, event, or condition. It involves what is often a series of interactions by a powerful influencer who uses his or her power and authority to play upon the vulnerable person's fears, loneliness, and disability. In order to prove that undue influence has been exercised, courts and advocates need to understand these processes. Courts are increasingly relying upon expert witnesses to trace these patterns and help attorneys and judges understand what has happened.

Probate Guardianship: The Challenges of Balancing Protection, Costs, and Civil Liberties

Background

Guardianship (also called "conservatorship" and "committeeship" in some states) is a mechanism by which courts appoint persons to handle the financial and/or personal affairs of individuals who are unable to protect themselves as the result of disability. Guardianships are typically granted to stop abuse when severely impaired victims are unable to grasp the severity of their situations and refuse needed services. It can be an effective remedy when family members are quarreling over the custody or assets of impaired elders or when adult children want to claim inheritances prematurely or influence their elder family members to make new

wills. Guardianship may also be appropriate when less restrictive legal devices, such as durable powers of attorney or trusts, have been misused.

Although guardianship can be a powerful vehicle for stopping or preventing financial abuse, it can become a license to steal if granted to untrustworthy individuals. In the mid 1970s, the Associated Press published a national expose² on guardianships which revealed rampant abuse, including situations in which court appointed guardians stole money from those they were charged to protect. The study also revealed widespread disregard for the civil liberties of seniors citing, for example, instances in which guardianships were granted solely on the basis of a single physician's judgment that a person was mentally incapacitated (regardless of whether the physician had expertise in making this type of assessment). These revelations led to Congressional hearings² and major reforms in some states. Despite the progress that has been made in some states, the system is still vastly inadequate nationwide. Most courts throughout the country lack the resources to provide adequate investigation and ongoing monitoring of guardianships. In addition, most states do not have public guardians.

Ensuring Adequate Protection is Costly

Reforming guardianship has come at a high price, which is often borne by those the system is charged to serve. For example, in California, the costs of investigating proposed conservatorships are charged to the incapacitated person's estate whenever possible. Because the process is already costly and complex, the recently added requirement that proposed guardians try less restrictive alternatives prior to filing has led to some criticism. Critics believe that these added responsibilities might potentially discourage trustworthy family members from becoming guardians or that they create an additional burden for public guardians who already lack sufficient resources.

Courts are also increasingly appointing separate counsel for the alleged incapacitated person (see following section), and there is discussion as to whether courts should routinely do so in all cases. Much of this debate stems from the fact that fees for court appointed lawyers come from the incapacitated person's estate, which may create hardships for persons with limited estates. Some jurisdictions are able to pay court appointed attorneys from public funds although it is usually at a lower hourly rate than attorneys typically charge.

Lack of Clear Direction or Standards for Court Appointed Attorneys in Guardianship Cases

Until recently, family lawyers sometimes represented both the alleged incapacitated

² U.S. House Select Committee on Aging (1987). Abuses in guardianship of the elderly and infirmed: a national disgrace. Publication No. 100-639. Washington DC: U.S. Government Printing Office.

person and the proposed guardian in guardianship proceedings, posing an apparent conflict of interest. While courts are increasingly appointing independent counsel for alleged incapacitated persons, as mentioned above, there remains a lack of clarity regarding the precise role of court appointed attorneys in guardianship cases. Although in most civil proceedings, the role of attorneys is to represent their clients' wishes (as well as advising them in legal matters), this may not be possible when a client has a mental impairment. There is on-going disagreement as to whether the role of court appointed attorneys is to defend their clients' wishes to the extent possible, advocate for what they believe clients would have wanted if they did not have a mental impairment (substituted judgment), or advocate for what they believe is in the "best interest" of their clients.

Shortage of Affordable Guardians

Although the overwhelming majority of guardians are family members, many vulnerable seniors do not have trusted family members or friends available to serve in this capacity. Public guardianship programs were created to serve these individuals, but many communities do not have public guardians. In communities in which they exist, the demand often far exceeds the supply.

The shortage of guardians has fostered the emergence of the relatively new field of private professional guardians and fiduciaries. Several private non-profit agencies across the country have also started guardianship programs. Ironically, these developments have had a negative impact on public guardians' ability to serve low income and indigent clients. Although public guardians are publicly funded, they have historically lacked adequate resources to accept all clients in need. Like private guardians, public guardians are authorized to charge fees to the estates of clients who can afford to pay and have depended upon these fees to supplement public funds. With increased numbers of private professional guardians, public guardians find themselves in competition with private professionals and agencies for clients who have assets, thereby reducing public guardians' resources for serving the poor.

Lack of Accountability for Private Professional Guardians

Ensuring accountability by private, professional guardians and fiduciaries is also problematic. At present, this rapidly growing new profession is unregulated; the sole requirement for becoming a private professional guardian in most states is to be over the age of 18. (In California, private professional conservators must register with the court in the jurisdiction in which they practice. They are fingerprinted and a criminal background check is done.) This is in spite of the fact that fiduciaries control a huge amount of wealth (a survey conducted by the Southern Region of the California Asso-

ciation of Private Professional Fiduciaries revealed that its members alone handled over \$5 billion dollars in assets).

This lack of regulation and oversight is troubling to responsible members of the profession as well as to outsiders. In California, private professionals have initiated efforts to regulate their field but these efforts have tended to be viewed with suspicion and have met with defeat. One motivation behind these efforts to regulate their own industry is to reduce some of the risks that have prevented private professional fiduciaries from getting malpractice insurance. It was only after a long struggle that private fiduciaries in California were finally able to purchase malpractice coverage, but the price is still prohibitively high.

"You tell me why a hairdresser has to be licensed and we (private fiduciaries) don't."

Negative Stigma Attached to Guardianship

Pervasive stigma attached to guardianship makes it the alternative of last resort for most families. To some seniors, the threat of being placed under guardianship is as terrifying as the threat of nursing home placement.

Shortage of Attorneys to Handle Elder Abuse Cases

Civil attorneys can play a significant role in elder abuse cases by helping victims recover misappropriated assets, challenging bogus marriages, filing for accountings by attorneys in fact, contesting guardianships, etc. There is, however, at present, a critical shortage of attorneys to handle these cases in most communities.

Private attorneys have few incentives to take abuse cases, which are risky from a financial perspective. Many cases are extremely time consuming and if the victim dies before the case is resolved, lawyers may not get paid. California's Elder and Dependent Adult Protection Act (EADACPA) was created to address these problems by providing for treble damages, post mortem recoveries, and enhanced penalties. Some, however, believe that the law has failed to achieve the desired effect. Attorneys' fees are often difficult if not impossible to collect and courts have failed to offer much support in requiring perpetrators to pay. Perpetrators are often "judgement proof," that is, they have no assets from which victims can be reimbursed and attorney fees paid. It has also been observed that civil judges who handle abuse cases, unlike judges who routinely handle personal injury litigation, are reluctant to award attorneys' fees, especially in cases in which the damage is small and the fees are high by comparison. When defense attorneys offer to settle, the first thing that often gets struck from the settlement is attorneys' fees.

Although publicly funded legal assistance programs are increasingly receiving referrals for abuse cases, these programs have experienced severe retrenchments in recent years and lack the resources to meet the existing demand, particularly since abuse cases tend to be extremely complex and labor intensive. Some communities have started programs, many of which are sponsored by Bar Associations, to enlist private attorneys to provide pro bono service.

Shortage of Attorneys With Requisite Skills to Handle Complex Abuse Cases

Financial abuse cases involving fiduciary litigation (e.g. contesting guardianships or wills) require skills that are often difficult to find in one person. Although personal injury and medical malpractice attorneys are skilled in litigation, they are rarely versed in estate planning. Conversely, estate planners are not typically skilled in litigation.

"You have the litigators who aren't good with numbers and then you have the numbers people who don't want to litigate. Few attorneys are attracted to both specialties."

Standards of Proof are Difficult to Meet

The standard of proof typically applied to abuse cases in the civil system is "clear and convincing" evidence (that abuse occurred). Some civil attorneys believe that this standard is too high, preferring instead the "preponderance of evidence" standard in some forms of abuse.

Lack of Adequate Oversight of Powers of Attorney

A general power of attorney is a legal document through which one individual (called the "principal") appoints another individual (called the "agent" or "attorney in fact") to act in place of, or on behalf of, the principal. An older person who can not get to the bank because of physical disability, for example, may grant a power of attorney to a trusted person to perform the task for them. A durable power of attorney (DPA) is a type of power of attorney that "endures" after the onset of incapacity. A DPA must contain certain words indicating that it is intended to be durable (e.g. "this power of attorney shall not be affected by the subsequent incapacity of the principal"). Without this provision, the power of attorney is nondurable and terminates once the principal becomes incapacitated. Executing a DPA allows a competent elder to choose a trustworthy person to handle his or her affairs and continue to do so even in the event that the principal becomes incapacitated. The power may become effective at the time it is signed or, in the case of a "springing power of attorney," at a specified future time, or on the occurrence of a specified future event or contingency (e.g. the subsequent incapacity of the principal). DPAs provide a simple, inexpensive tool for financial management and planning for the future.

Like other devices that were created to provide protection, powers of attorney can also become “licenses to steal” if the authority is given to, or taken by, untrustworthy individuals. Common abuses include getting persons with cognitive impairments to sign powers of attorney (this is illegal, regardless of the type of power), using the power after it has terminated (e.g. the principal becomes incapacitated and the power is not a durable one), or using the power for purposes other than those for which it was intended.

At present, there is little oversight to protect against abuses by attorneys in fact. Few states require any type of registration and most do not require lawyers’ involvement in drafting the documents or witnesses to ensure that the agent has mental capacity and is not being coerced into signing. (Although notary publics are typically required to witness the signing of powers of attorneys, it is not the role of notaries to assess mental capacity (see the following section). Without guidance, many elders do not realize the extent of the authority they are assigning to the chosen agent. Because few states have formal procedures for revoking the powers, attorneys in fact can, and often do, continue to use them even after they have been revoked. Because there is no requirement that the principal be notified when a power of attorney is used, competent principals are unable to monitor the actions of attorneys in fact.

When abuses occur, they are difficult to prove or rectify. Courts frequently encounter situations in which it appears that a principal lacked capacity at the time he or she signed a document. These situations, however, raise ethical dilemmas for court personnel; although the appropriate course of action would seem to be to revoke the power, the principal must possess mental capacity to do so. A temporary guardianship could be established to suspend the power, but initiation of a guardianship is relatively expensive and burdensome if the sole intent is to accomplish a single action.

Some states have explored ways to bring more accountability into the system (see section on Best Practices). These efforts have met with mixed success. For example, although California passed legislation allowing for court monitoring of powers of attorney, some court personnel are dissatisfied with the new law, which places them in the position of monitoring attorneys in fact with insufficient information or resources. Because the law does not provide for courts to receive inventories and appraisals when the powers are enacted, accountings at a later point in time have little meaning.

Lack of Clarity Regarding the Role of Notaries

The fact that notaries must witness the signing of certain documents, like powers of attorney, creates a false sense of security by creating the illusion that there is oversight and accountability. The role of notaries, however, is simply to ensure the signer is, in fact, the person s(he)

claims to be. Notaries are not trained in assessing mental impairment or required to report problems.

"I had a client who wanted to revoke a power of attorney and the notary said 'I can't do this until you notify the attorney in fact,' who we suspected of abuse. This would have given him time to wipe everything out and remove this woman from the home that she was in."

V. The Role of Federal Agencies in Stopping Elder Financial Crime and Abuse

Participants in the law enforcement roundtable included representatives from the Federal Trade Commission (FTC), Federal Bureau of Investigation, the United States Attorney's Office, the Secret Service, and other interested service providers.

A. Introduction

Many financial crimes that are commonly perpetrated against the elderly fall under federal jurisdiction. Crimes are federal if they involve the use of the mail, interstate transfers, the use of the telephone, or the misappropriation of federal benefits. Common examples include telemarketing fraud, the theft of Social Security or Supplemental Security Income checks, pension fraud, and crimes involving the use of credit cards or the Internet.

The responsibility for investigating and prosecuting federal crimes is shared by numerous federal investigative and regulatory agencies. Examples include the Federal Trade Commission (FTC), the U.S. Immigration Service, the Secret Service, the Federal Bureau of Investigation (FBI), the Department of Justice through the U.S. Attorneys Offices and its other divisions, the Social Security Administration, and many others. Although it is beyond the scope of this report to define the roles of all of the agencies involved, several of the agencies that are frequently involved in elder abuse cases are described below.

The FTC is a civil (as opposed to a criminal) law enforcement agency that handles telemarketing fraud, investment scams, and business opportunity scams. Its primary approach is to seek injunctions, through district courts, to stop offenders from engaging in illegal activities, freeze perpetrators' assets, take over their offices, and litigate cases to a conclusion. The FBI also gets involved in telemarketing and pension fraud.

The Secret Service handles cases of check forgery, cases in which money is electronically transferred into someone else's account (often a family member's), cell phone fraud, and credit card fraud, which includes transactions involving stolen, altered, or counterfeit credit cards. Federal forgeries include the forging of treasury and other government checks. The Secret Service also handles cases in which government checks are stolen, forged or altered, certain cases involving fraudulent misrepresentation, and "identity fraud," (perpetrators assume the identity of others to obtain credit, assets, or property).

The United States Attorney's Office has more than 90 federal judicial districts around the

country, which prosecute cases that any federal investigative agency brings forward, regardless of jurisdiction. The Office handles investment swindles in which multiple victims are involved, and has both criminal and civil divisions. In addition to prosecuting financial crime, the Office also assists victims by enforcing restitution orders on their behalf.

In addition to these agencies, dozens of others become involved in specific types of financial crime and abuse. Federal agencies often work collaboratively with police departments, states' attorneys, or district attorneys' offices. They also may become involved in cases that cross state lines.

B. Challenges

The Magnitude of the Problem

The sheer number of individuals who are affected by federal crimes makes enforcement a formidable task. Cases of telemarketing or credit card fraud, for example, may involve hundreds or thousands of victims. In addition, offenders seek out the same victims repeatedly or sell their names to others. As described in the law enforcement section of this report, the tendency for victims of financial crime to be re-victimized is so common in the fraudulent telemarketing business that "sucker" or "mooch" lists (lists of individuals who have been victimized in the past) are valuable commodities in and of themselves.

Another factor contributing to the magnitude of the problem is the high rate of offender recidivism. Federal agencies lack the resources or methods needed to track offenders so that even those who have been prosecuted or restrained often resume business in other communities.

"We know these guys are going to go back to it because that's what they're good at. It's how they make their money. Even if they never get on the phone again, if they have a list of a thousand people who have bought before, that list itself is worth several thousand dollars."

Lack of Clarity About the Roles and Jurisdictions of Federal Agencies

With the numerous agencies handling financial crime cases, victims are unlikely to know if they should report to their local district attorneys, their states' attorney general, the FBI, or others. Service providers and advocates are also unlikely to know which agencies handle specific types of crime.

Even personnel from federal agencies may be unclear about jurisdiction in particular cases.

For example, a crime involving a credit card could constitute both mail fraud and credit card fraud and could, therefore, fall under the jurisdiction of the Postal Service or the Secret Service. Violations may also overlap with state jurisdiction. A case may begin as a small, local crime but then go to the FBI.

“The Secret Service has jurisdiction over credit card fraud but it’s not always a hundred percent clear what is meant by credit card fraud. I called the Secret Service about a case that looked like credit card fraud to me, but it wasn’t.”

Lack of Information About the Extent of the Problem

The lack of reliable and compelling statistics to demonstrate the incidence of financial crimes, patterns of victimization, and losses impede efforts to secure adequate resources for prosecuting federal financial crimes and ensuring the rights of victims. Financial crime has never been included in the United States Department of Justice’s National Crime Victimization Survey, the major survey of its kind.

Problems in documenting the actual incidence of financial crime go beyond the limitations of reporting mechanisms. Victims are often reluctant to report financial crime out of shame or fear. Others are incapable of reporting as the result of disability. As described earlier, many victims do not know to whom they should make reports. Some do not know the extent of their losses. Many older people fail to report because they do not perceive certain types of fraud as crime.

Other impediments to determining the true extent of the problem include the fact that some public agencies have not wanted to include financial abuse in mandatory reporting statutes for fear of discovering cases that they lack the resources to serve. Consumer advocacy organizations, on the other hand, have the opposite incentive — to inflate incidence figures in order to justify demands for additional resources.

Limited Impact of Prevention Efforts

Traditional approaches to preventing financial crime have focused on raising public awareness and alerting potential victims to common scams and fraudulent practices. These efforts have met with limited success. Outreach is virtually ineffective with many of the most vulnerable individuals, especially those with mental impairments, those who are isolated, and individuals who are desperately in need of cash. Persons who are subjected to intense pressure or undue influence are also often impervious to warnings. Even knowing that the schemes are likely to be fraudulent, many victims continue to participate in hopes of recouping their losses.

White Collar Crime is Seen as Less Serious Than Other Types of Crime By Law Enforcement and the Public

Historically, law enforcement has tended to view personal financial crime as less serious than violent crime. The public also shares this perception. Although many advocates believe that current sentencing guidelines for financial crimes are not stringent enough, public opinion polls have shown that most responders were satisfied with the existing guidelines. Competing demands on law enforcement personnel's time and resources, as well as the difficulties inherent in these cases, further contribute to the low priority that these cases are typically assigned.

Failure to Collect Restitution

Although the public and politicians see restitution as extremely important, the amount of restitution actually recovered in financial crime cases is relatively low. A major obstacle to recovery is the time lag involved in investigating and prosecuting cases. By the time cases are prosecuted, offenders have often hidden or dissipated misappropriated assets. (Restitution is discussed in greater detail in Section VI of this report.)

"The political emphasis for years has been on restitution. Back in the '80's, we were going to Congress and saying 'last year we got 120 million dollars in judgments and our budget was \$50 million dollars' so it looked like we were a really cost effective agency. Then somebody would ask, 'how much did you collect?' If we capture a nickel or dime on a dollar, it's a really good day."

"Restitution in fraud cases is pointless, a useless exercise. It's the wrong focus. You can do all the work you want to do, but if somebody has spent 95 percent of the money on running a scam, there's only 5 percent of it left, and you can't make that any bigger."

Inconsistent Enforcement of Federal Crimes

Federal regulatory agencies have regional branches throughout the country. Because these regional offices set their own priorities, the same federal crime may be handled differently in one part of the country than in another. There is also significant variation across the country in how local district attorneys prioritize and handle cases. Because of these inconsistencies in enforcement, there are certain geographic areas that become "safe havens" for perpetrators.

New Trends Emerge More Quickly than Federal Response Systems Can be Designed

New crimes are being identified on a monthly basis. Developing response systems may involve enacting new laws or changing policy, resulting in a lag between when a new crime

is discovered and when systems are set in place to address it. Examples include identity theft and Internet fraud, which recently became federal crimes years after the first cases were identified.

Cases Cross Jurisdictions

Some financial crimes fall under both state and federal law. Because there is often disagreement or a lack of clarity regarding the appropriate jurisdiction in a particular case or type of crime, many cases “fall between the cracks.” An example is the sale of “Medicaid qualifying trusts,” a multi-million dollar business in which victims are told that anything contained within the trusts is not counted as assets by Medicaid in determining eligibility. These false claims could be prosecuted by district attorneys, Medicaid fraud control units, or federal agencies (because perpetrators typically mail “instruction kits” to salespersons showing them how to sell the products).

VI. The Victim Service Network's Role in Stopping Elder Financial Crime and Abuse

Members of the victim services roundtable included victim advocates from the local, state, and national levels, an expert in restitution reform, and other interested service providers.

A. Introduction

Because the criminal justice system has traditionally viewed criminal acts as offenses against society, the role of individual victims within the criminal justice process, until recently, was extremely limited. It was "the people" or "the government" to whom offenders were made to answer for their actions while victims merely served as witnesses to the crimes committed against them. Little attention was paid toward understanding or responding to the impact that the crime had on victims or toward their psychological or service needs. Those who suffered financial losses were not compensated or assisted in recovering them. Although the U.S. Constitution protects the rights of accused criminals (e.g. ensuring their right to a speedy trial), it does not extend comparable (and enforceable) rights to victims.

In the last three decades, the role of victims within the criminal justice system has expanded significantly. Criminal justice personnel and advocates have fought to acknowledge victims' right to participate in the criminal justice process. The Victims of Crimes Act (VOCA) of 1984 provided for new services and compensation to victims. Most states have enacted victims' rights amendments and statutes which give victims the right to be informed when offenders are released from custody, to tell courts how they were affected by the crime, and to have a voice in sentencing decisions. A national victims' rights amendment has been introduced in Congress which would set national standards for ensuring victims' rights.

Although these trends have significantly raised the status of victims, they have focused on victims of violent crimes, largely ignoring the needs of victims of financial crimes. Until very recently, VOCA victim assistance grants could not be used to fund services for victims of financial crime. Recent changes in VOCA regulations provide for assistance to financial crime victims but many advocates and victims are unaware of these changes. Victims of financial crimes are still not eligible to receive VOCA funded compensation.

B. Challenges

Failure of Courts to Order Restitution or Name Victims

Perhaps the right which is most valued by financial crime victims is restitution, which is the

monetary compensation that courts can require offenders to pay victims. All states offer some form of restitution and the federal government requires perpetrators of federal crimes to pay restitution in most cases. Many judges, however, fail to order restitution and prosecutors seldom ask for it. Other judges order restitution but fail to list victims' names on judgments, which makes it virtually impossible for victims to enforce the orders, use them to declare losses on their taxes, or seek recovery funds.

It has been observed that failure to order restitution may be attributed to the fact that judges and prosecutors believe that victims can seek civil remedies for recovering their assets or that offenders are unlikely to have assets with which to repay victims. Hiring civil attorneys to help them recover their losses, however, is beyond the financial reach of many victims.

"I know of a case that involved 150 victims of a limited real estate partnership scam. The sentencing order said that the defendant was ordered to state prison for nine years and ordered to pay restitution of \$9,780, 240. 32 to the penny. But the victims weren't identified. How can victims enforce civil judgment if their names are not in there?"

"We don't expect our rape victims to go out and sue civilly to get redress. Why do we expect it of our fraud victims?"

The Restitution System Does Not Ensure Fairness

Even at its best, the current system of restitution only serves some victims. Many offenders are never apprehended and an estimated 90 percent of all criminal defendants are indigent. Victims who suffer losses at the hands of these perpetrators have no recourse for recovering their losses. The current system also fails to consider the full value of victims' financial losses, which may continue to accrue long after sentencing has taken place. When perpetrators are charged with multiple counts, many counts are discharged in the course of plea negotiations and victims whose cases are dropped are often not considered eligible for restitution. In cases involving multiple victims, there is often no system in place or consideration given to determining who gets restitution or the order of priority. Owing to the difficulties involved in collecting restitution, those most likely to collect are victims who have the financial resources to hire attorneys. As a result, those in greatest need seldom receive restitution.

Victims may not receive restitution because they do not know they are entitled to it. Those who are not kept apprised of the continuing status of their cases are unlikely to be told that they are entitled to restitution. Some victims are not told to keep the criminal justice system notified of address changes; as a result, the U.S. Clerk of Court, or other agencies that distribute restitu-

tion, are not able to find them.

Lack of A Designated Agency to Oversee the Enforcement of Restitution

There is currently disagreement over what agency is, or should be, responsible for the collection and enforcement of restitution. Some advocates feel that the responsibility should rest with probation departments, while law enforcement tends to view the collection of restitution as the victim's responsibility. With limited staffing, most probation personnel believe that their primary responsibility is to supervise offenders and ensure the safety of the community.

Lack of Mechanisms to Ensure that Restitution is Paid

Fragmentation within the recovery system makes it impossible to track the disbursement of restitution or ensure that the system is working properly. Restitution payments are collected by clerks' offices, financial litigation offices, or the U.S. Attorney's Office. Victim/Witness Assistance programs, which have ongoing contact with victims, may not have access to information about who is getting paid.

In the federal system, a restitution order is enforceable for twenty years, which may exceed victims' life spans. Many victims and their families, however, are unaware that payments can be applied to victims' estates.

Victims Are Often Unable to Collect Restitution

Many victims are unable to do what is necessary to collect restitution as a result of physical or cognitive impairment. Others are severely depressed or distressed. Many feel that recovering restitution should not be their responsibility. Others mistakenly believe that once restitution is ordered, it will be immediately available or collected for them.

Even victims who want to collect restitution and have the mental and physical ability to do so, face formidable obstacles. Once restitution is ordered, information about the process, and even about their own cases, is not readily available. Copies of judgments are often not provided to them and securing information about their offenders is often difficult. Some do not know who their offenders are, where they live, or their status within the criminal justice system. The remedies available to victims differ depending on whether the perpetrator was prosecuted in the federal or local system and on the agencies involved. Even victim advocates, whose job it is to assist victims, are often ill informed about these processes.

Lack of Effective Mechanisms for Preserving Assets

Because financial crime investigations often take months or years, perpetrators' assets are often dissipated or hidden during the process, leaving little or nothing left for victims to collect. Time lags in collecting restitution also reduce the amount that is available.

When Crimes Involve Multiple Victims, Ensuring Their Rights Becomes Virtually Impossible

Financial crimes often involve dozens, hundreds, or even thousands of victims. The existing system for ensuring victims' rights can not begin to ensure the rights of all victims in these cases. Even notifying victims about the status of their cases is often impossible. With inadequate technology, some victim advocates still manually stuff thousands of letters to send out notices of hearings. Although most offices have toll free numbers, responding to individual requests or questions in a timely fashion is virtually impossible, particularly in light of variations in time zones and the complexity of the information that needs to be conveyed.

Pervasive Belief that Financial Crime is Less Serious than Other Crimes

The belief that financial crime is not as serious as other forms of abuse has already been mentioned several times in this report. This pervasive belief is even shared by some victim advocates, as evidenced by the fact that victims of federal financial crime have not always been afforded the same rights as other victims. For example, in some districts, victims of financial crimes are not permitted to speak about the impact of the crime at sentencing hearings. The proposed federal victims rights constitutional amendment does not include provisions for protecting the rights of financial crime victims.

Lack of Resources and Services to Deal with the Impact

Victims of financial crime need a variety of services to help them recover from emotional, financial, and physical trauma. Mental health services are often needed to address the emotional impact of these crimes, which may include depression, thoughts of suicide, and hopelessness. Other needed services include legal assistance to recover assets, help in finding new housing as a result of crime-related home foreclosure or eviction, assistance in finding attendants to replace abusive individuals, financial assistance for necessities that the victim can not afford as a result of the crime, and assistance in securing benefits. Victims also need assistance in tracking down available sources of help, such as "recovery funds" (e.g. California's Department of Real Estate's fund for victims who have been defrauded by licensed realtors acting within the scope of their licenses). All of these services are in short supply and fierce competition for state and federal victim assistance dollars makes it unlikely that new resources or services will be forthcoming unless alternative sources or cost efficient approaches are identified.

*"If you lose your home to a natural disaster, there are emergency services.
But if you lose your home to crime, you're on your own."*

Lack of Information on Which to Design Services for Victims of Financial Crimes

As noted earlier, little is known about the extent or nature of financial crime. Although there have been a few studies of telemarketing fraud, very little is known about other types of financial crime, including fraud by family members. Even less is known about the impact of financial crime on its victims, victims' services needs, and promising approaches to meeting those needs. Commonly accepted perceptions or stereotypes assume the worst. For example, although there is a pervasive belief that efforts to collect restitution are futile, little has actually been done to explore promising approaches to improving restitution recovery. Even less is known about victims' mental health or social service needs and effective approaches to addressing them. Without this information about best practices and promising approaches to service delivery, it is unlikely that new resources will be forthcoming.

Victims are Often Unable to Access Services or Assert their Rights

Physical, cognitive, and attitudinal impediments limit financial crime victims' access to services and avenues for exercising their rights. Most victims' services are only available to victims who agree to participate in the criminal justice system and, as described earlier, many victims are unable or unwilling to do so as the result of fear, shame, disability, and cognitive impairment. Some believe that their efforts will prove futile. Others are unaware that they have been victimized or refuse to see themselves as victims. Although service providers who work with the elderly and are likely to encounter financial crimes and abuse could play an important role in providing liaison to the criminal justice system and victim assistance programs, many are unfamiliar with these systems. Even many adult protective service (APS) workers, who are often the first people to discover financial crimes, are unfamiliar with these networks (APS is a federal program that was created to protect individuals who are endangered because of unsafe or hazardous living conditions, neglect or exploitation. APS has been designated to accept reports of abuse and neglect under most states' older and dependent adult abuse reporting laws). In addition, with large caseloads, APS workers may not have sufficient time to establish the level of trust and confidence that is frequently needed to encourage victims to accept help.

Lack of Organizations to Advocate for Elder Victims of Financial Crimes

Although national and state organizations have emerged to advocate on behalf of victims of violent crime such as domestic violence and sexual assault, there are no comparable organizations advocating for victims of financial crimes. As a result, the interests of elderly victims of financial crimes are not effectively being voiced or defended.

Cultural Barriers to Accessing Victims Services

Many financial scams target elderly members of specific cultural groups, creating additional barriers to victims' services. Language barriers, negative experiences with the criminal justice system, and immigrants' fears about being deported discourage many from seeking out or accepting help. Others are simply uninformed about the system and do not know about available services or how they can be accessed. Additionally, research has shown wide variations in how members of different cultural communities perceive financial crime and abuse, creating additional challenges to victim advocates.

Lack of Coordination and Cooperation Among Agencies Serving Victims

Although victim witness assistance programs are receiving increasing numbers of referrals from other entities within the criminal justice system, most of these referrals involve victims of violent crimes. Police and prosecutors still frequently fail to recognize that victims of financial crimes may also benefit from these programs.

Promoting collaboration and coordination between victim assistance programs and other community agencies has also been difficult. Victim advocates and social service providers who work with the elderly have not traditionally worked closely together and do not understand each other's approaches, resources, policies, or procedures. "Territoriality" may discourage some agencies from cross-referring cases.

Elderly Victims are Difficult to Reach

As described earlier, victims of financial crime and abuse are unlikely to self-report and service providers who are likely to encounter these situations are also unlikely to contact law enforcement or victim service programs. As a result, if victims are to receive services, victims' rights programs need to find ways to reach them. Effective outreach to victims and vulnerable seniors is a formidable challenge owing to the enormous size of the vulnerable population and the complexity of the information that needs to be conveyed. In addition, many of the most vulnerable seniors are particularly hard to reach as a result of cognitive impairment, physical disability, isolation, and language barriers.

Traditional Approaches to Outreach Blame Victims

It has been frequently suggested that financial crime can be prevented by alerting vulnerable seniors to potential risks. Approaches that emphasize primary prevention have drawn criticism from some advocates who view them as perpetuating the notion that victims of financial crimes are at least in part to blame for their victimization. They cite examples of outreach materials that ostensibly promote prevention while, in fact, subtly suggest that victimization results from greed or gullibility, and that this type of crime can be avoided through prudence.

These materials de-emphasize perpetrators' culpability, fail to communicate the fact that perpetrators are highly skilled and predatory manipulators, and further fail to acknowledge that the problem can be attributed in part to the shortcomings of the current systems of enforcement. Although it is clear that circumventing abuse before it occurs is preferable to intervening after a crime has been committed, there is no research to show that preventative techniques, such as outreach brochures that caution victims against falling for scams, are effective with crimes like telemarketing scams or investment fraud. Further research into effective intervention and prevention techniques is clearly indicated.

"Victims I've talked to have seen those things. They don't identify what happened to them with what they saw on that brochure."

VII. Recommendations

The recommendations contained in this section were made by members of the four roundtable discussion groups and others who contributed to the development of this report. Because it was beyond the scope of the project to achieve agreement or consensus on the most effective means for improving the response to financial crime, the recommendations reflect the opinions of contributors. Their inclusion does not imply the endorsement of all contributors or of the National Center on Elder Abuse. They are intended to stimulate further discussion and deliberation by policy makers, program planners, and other interested parties.

The recommendations are divided into sections: Statutory Reform, Procedural Innovations, Training, Outreach, and Coordination.

A. Statutory Reform

1. Promote the development of criminal statutes that facilitate the prosecution of financial crimes against the elderly, recover and preserve assets to as great an extent as possible, and serve as a deterrent to future crimes by creating adequate penalties for perpetrators. Criminal statutes should provide for, or accomplish, the following:
 - a. Enhance damages and penalties for crimes committed against the elderly and make prison time mandatory for persons who systematically target this population.
 - b. Clearly distinguish criminal conduct from financial mismanagement, negligence, or improper (but not illegal) conduct.
 - c. Make it easier for law enforcement to access financial records from financial institutions.
 - d. Include specific provisions for prosecuting financial crimes committed by caregivers and persons in positions of trust.
 - e. Provide for securing and preserving assets while investigations are in progress.
2. Financial crimes should be reviewed and assessed to determine whether certain crimes that are currently handled by local and state jurisdictions could be handled more efficiently if they were federal crimes (e.g. crimes in which perpetrators, bank records, and evidence are likely to be found in different jurisdictions).

3. Promote the development of civil statutes that provide for, or accomplish the following:
 - a. Create incentives for civil attorneys to handle financial abuse cases (e.g. provide for adequate legal fees, ensure that fees can be recovered, and ensure that cases continue even after a victim dies).
 - b. Cover all types of financial abuse regardless of perpetrators' relationships to victims.
 - c. Use the "preponderance of evidence" burden of proof.
 - d. Define mental capacity in functional terms (e.g. clearly define the level and type of mental capacity that is needed for common transactions and choices including the signing of powers of attorney, getting married, etc.).
 - e. Use broad definitions of undue influence.
 - f. Expand the range of protective interventions available to courts to give them greater flexibility in shaping interventions that conform to the specific needs of vulnerable individuals and streamline processes. Possible options include the following:
 - "Limited guardianships" that specify precisely those rights that will be retained and those which will be granted to others based upon the evidence of incapacity.
 - Grant authority to public guardians to authorize banks to place holds on financial transactions in situations involving customers who are believed to be victims of abuse. (California law now provides for this authority only in situations in which the public guardian intends to file for conservatorship.)
 - Temporary guardianships when authority is only needed for specific actions or over a limited period of time (California law currently only provides for temporary conservatorships when petitions for permanent conservatorship have been filed).
 - g. Find alternatives to the terms "guardianship" and "conservatorship" that are less stigmatizing.
 - h. Promote the development of guardianship monitoring systems that report directly to the Probate Court.

- i. Promote requirements and standards for court monitoring of guardianships.
 - j. Develop clear guidelines for court appointed attorneys in guardianship cases that define standards of practice.
 - k. Encourage courts that handle guardianship cases to require more frequent status reports in cases in which abuse is alleged.
 - l. Encourage courts to order independent investigations and mental and physical status exams in guardianship cases.
4. Promote measures to ensure that victims of financial crimes enjoy the same rights, privileges, and treatment as victims of violent crimes.
- a. Extend all measures provided for under the proposed Federal Victims' Rights Constitutional Amendment, which is currently under discussion, to include victims of financial crimes.
 - b. Improve the enforcement of state and federal victims' rights bills.
5. Promote preventative measures to reduce the risk of financial abuse and reduce losses.
- a. Require in-home care providers to be licensed.
 - b. Provide statutory authority to financial institutions to report abuse and place holds on older customers' funds when abuse is suspected. Strict criteria for determining when such action is appropriate, time limits, and due process protections must be included.
 - c. Promote measures to ensure greater accountability for powers of attorney (examples for doing so are included in the Best Practices section of this report).
 - d. Certify professional guardians and establish standards and procedures for certification.
 - e. Mandate federal employees, particularly law enforcement, to report financial crimes and abuse.

B. Procedural innovations

1. Promote the development of specialized units within prosecutors' offices to work with elderly victims of financial crimes, particularly those who are physically or mentally impaired. Prosecutors and advocates should be trained in working with the elderly and familiarized with their special needs.
2. Promote the development of special procedures for handling elder fraud cases that provide for or accomplish the following:
 - a. Allow prosecutors to try alleged abusers even when the elderly victim does not want to press charges.
 - b. Provide for expedited investigations and prosecution.
 - c. Provide for expedited return of property.
 - d. Provide for the videotaping of testimony by frail victims who are unable to come to court in order to reduce unnecessary hardships and avoid the possibility that they will become incapacitated or die prior to court dates.
 - e. Make hearsay evidence admissible.
 - f. Develop court support procedures including transportation and court accompaniment.
 - g. Expedite trials and discourage defense attorneys from seeking non-essential continuances.
 - h. Allow victims to use assistive devices such as walkers, wheelchairs, and notes in court.
3. Develop specialized units within police departments for financial crimes against the elderly. Units should be staffed by "in-house resident experts" whose assignments are staggered over time to ensure that units have expertise at all times and that experienced personnel are available to provide on-going training. Owing to the complex nature of financial crimes and the lengthy training periods required, personnel should be assigned to units for a minimum of five years with the possibility of extending assignments to seven or eight years.

4. Promote the development of programs and materials aimed at ensuring victims' rights, including:
 - a. "Court watch" programs which use volunteers to observe how courts handle cases involving financial crimes, determine whether victims' rights are respected, and ensure that restitution is ordered, etc. Findings should be publicized and reported to judicial disciplinary agencies.
 - b. Referral cards that provide information on victims' rights and services which are in large print, easy to understand, and easy for officers to carry.

5. Promote the development of services, funds, and policies to address the emotional, financial, housing, and social service needs of elderly victims of financial crimes, including:
 - a. New forms of mental health treatment that address the trauma of losing one's assets and the betrayal of trust this type of crime engenders (e.g. support groups, counseling, etc.).
 - b. Pro bono or affordable legal assistance to recover losses or damages, annul bogus marriages, contest or initiate guardianships, separate assets, enforce restitution orders, call for accountings of powers of attorney, etc.
 - c. Pro bono or affordable private investigators to track down perpetrators and assets.
 - d. Shelters for persons who become homeless as a result of abuse.
 - e. Social services, including assistance with finding alternative housing, moving possessions, setting up new bank accounts, arranging for direct deposit services, finding trustworthy attendants, etc.
 - f. Credit counseling.
 - g. Emergency funds to remedy problems associated with financial crimes and abuse (e.g. victims who are evicted from their dwellings as a result of abuse may need assistance with security deposits or moving).

- h. Authorize HUD to prioritize victims of financial crime, including home equity fraud, for subsidized housing.
 - i. Encourage states to set aside VOCA (Victims of Crime Act) funds and other victim grants to serve elder victims of financial crime and abuse.
 - j. Permit VOCA compensation funds to be used to compensate victims of financial crimes.
 - k. Volunteer programs to provide advocacy services or legal representation to victims. Potential volunteers include private attorneys and other professionals who are interested in community service.
 - l. Provide increased resources to victim assistance programs to ensure adequate staffing.
 - m. Elder victims should be allowed to access victim service and compensation programs even if they are not willing to report the criminal conduct. If program requirements mandate cooperation, that requirement should be interpreted to deny coverage only when the victim's conduct made prosecution impossible.
6. Promote the development of effective, easy to administer tools for assessing mental deficits, using functional criteria, to provide guidance to courts.
7. Promote the development of instruments or protocols for assessing undue influence that take into account on-going patterns of persuasion.
8. Develop methods for preventing financial crimes and abuse before it occurs and reducing vulnerability:
- a. Ensure greater accountability by solicitors and sales representatives by requiring them to indicate on contractual agreements, using a simple system of checking boxes, whether a customer has displayed signs of diminished mental capacity.
 - b. Develop statewide registries of fiduciaries, including trustees and professional guardians, and assign oversight.
 - c. Develop registries of attorneys in fact.

- d. Provide more resources for public guardians.
 - e. Promote the development of money management programs that range from assistance with bill paying to guardianship so that assistance can be tailored to meet the specific needs of vulnerable individuals.
9. Develop procedures that increase the likelihood that victims, particularly those in greatest need, will receive restitution.
- a. Improve recovery by developing “front end” systems to track offenders’ assets while investigations are in progress (e.g. asset investigators - see the Best Practice section of this report).
 - b. Develop guidelines for handling restitution that take into consideration victims’ financial situation and age.
 - c. Develop protocols for the handling of restitution that define the roles and responsibilities of all agencies involved, including probation and victim/witness assistance programs, and that ensure accountability.
 - d. Develop a funding pool to provide relief to all victims of state and federal financial crimes whose offenders are not apprehended or are indigent. Possible sources of support include funds collected on behalf of victims who can not be located or by modifying victim compensation regulations.
 - e. Require perpetrators to continue repaying their victims even after they have finished their sentences.
 - f. Consider sentences of parole or supervised release that continue past the required mandated time to last until all restitution is paid. This will give probation or parole officers access to perpetrators’ accounts and financial affairs.
 - g. Promote state and federal statutes that allows a victim who has had restitution ordered to him/her to be able to access the perpetrator’s estate if the perpetrator dies.
 - h. Promote the development of comprehensive “restitution centers” or financial crime victim assistance centers in every community to assist victims learn about their rights,

make victim impact statements, and access civil and criminal justice processes for recovering their funds.

- i. Develop training materials and programs to instruct victims in how to use restitution orders to get judgments on their own and provide advocates to assist and guide them through the process.
 - j. Develop statutes and procedures to ensure that victims and their families receive information about the issuance of restitution to victims' estates in the event that the victim dies (it is not known by many victims that restitution paid after they die will go to their estate).
 - k. Require offenders who lack the funds to make restitution to engage in community service in lieu of monetary restitution. This should be done with victims' consent and input. Formulas should be developed to ensure that services performed are commensurate with losses (e.g. a perpetrator will be credited with \$5 toward restitution for every hour of service performed until the full amount is paid).
 - l. Develop methods for extending restitution orders to compensate victims for continuing losses.
 - m. Include a percentage formula for adding to the actual losses for delays in paying immediately.
10. Promote discussion of how restorative justice principles can be applied to cases involving elder financial crimes.

C. Training

- 1. Develop training for judges, prosecutors, law enforcement officers, probation officers, and victim advocates in the dynamics of elder financial crime and abuse and its relationship to other forms of abuse. Because of the complexity and changing nature of crimes, as well as the fact that new varieties of financial crime are constantly emerging, these individuals need training on an ongoing basis and on-the-job support to keep them updated and abreast of current trends and promising new approaches. Special areas of need include the following:

- a. Restitution laws and the importance of restitution to victims. (Prosecutors should be encouraged to educate judges about restitution through motions and court documents.)
 - b. Mental capacity evaluations that include gradations of mental and functional capacity and factors that affect capacity (e.g. nutrition and time of day).
 - c. Undue Influence.
 - d. Community resources and services for victims.
 - e. Judges should receive special instruction in crafting effective orders to monitor guardianships.
2. Promote the development of methods and approaches to law enforcement training that achieve optimal results:
- a. Training should be available on an ongoing basis. This includes on-the-job support.
 - b. Training should begin three to six months prior to officers joining special financial crime units to prepare them for their assignments.
 - c. Training should not be limited to detectives but also patrol officers
 - d. Training on elder financial abuse should be promoted by top leadership within law enforcement agencies (e.g. directives from state AGs offices).
3. Promote the development of training for non-law enforcement personnel including lawyers, bank personnel and community agencies. Training should be tailored to meet the needs of specific groups, ongoing, interactive, and multidisciplinary. Topics to be covered should include:
- a. How to identify elder abuse, what to do for elderly victims, community resources, capacity and undue influence, statutes pertaining to reporting obligations, and barriers to reporting.
 - b. How VOCA dollars can be used to develop programs to assist victims of financial crimes.

- c. Community services that can be accessed to assist victims.
 - d. Powers of Attorney (to include the different types of powers, when they are in effect and how they can be revoked, how to request accountings, what notaries can and can not do, etc.).
 - e. Ways to work cooperatively with victim assistance units.
4. Promote the training of expert witnesses to testify in civil and criminal matters. Experts are needed to explain the indicators and dynamics of financial abuse, its relationship to other types of abuse, mental capacity and undue influence, etc.

D. Outreach

Outreach is needed to heighten public awareness about the impact and seriousness of financial crime and abuse, encourage victims to seek help, provide information about available services, and educate policy makers about needed services and policy reform. Despite the fact that people of all ages can be victimized, special outreach should focus on the vulnerability of the elderly. Financial crime against the elderly is politically compelling because the general population is aging, the public is more likely to be sympathetic to those who are most vulnerable, and because most people expect to reach old age and, therefore, can anticipate their own needs for assistance.

1. Promote community awareness campaigns that achieve the following objectives:
 - a. Change pervasive public perceptions that financial crime is less serious than other forms of crime and that it is preventable. Outreach should emphasize the devastating impact that financial crime may have and affirm that culpability rests with perpetrators, as opposed to victims. Possible approaches include defining fraud as "financial violence."
 - b. Educate seniors about available medical and financial assistance.
 - c. Provide information to adult offspring about how to assist elderly parents when they discover financial crimes.
 - d. Encourage the public, particularly victims, to report to law enforcement and allay their fears about coming forward for help.

- e. Raise awareness about specific types of financial crime, how perpetrators operate, and how members of the community are likely to be approached.
 - f. Ensure that victims of economic crimes and abuse know about victim assistance and compensation programs and community crime prevention programs.
 - g. Handle complaints, gather data, and respond to requests for information on emerging new scams and telemarketing pitches.
 - h. Focus on preventing financial crime before it occurs. Although this approach is cost effective and eliminates trauma, care should be taken not to suggest that victims could have prevented the crime had they been less naive or greedy.
2. Optimize the impact of outreach through the following approaches:
- a. The print and electronic media should be used.
 - b. Campaigns should be national in scope.
 - c. Outreach should be culturally appropriate and language appropriate to reflect the fact that certain types of crimes are being perpetrated in specific communities.
 - d. The Internet should be used to provide support to victims, accept financial crime reports, provide information about regulatory agencies, and provide updates on the status of cases.
 - e. Hotlines can be used to direct callers to services, collect data, and respond to requests for information. Although a few hotlines already exist, they need to be expanded and provided with additional resources to better serve consumers and law enforcement.
3. Promote outreach campaigns aimed at creating or improving services and policy.
- a. Elected officials, policy makers, and program planners need information about the extent and nature of the problem; how cases are currently handled; compliance (by judges) with restitution statutes; the amount of restitution that is being collected; effective approaches to preventing this type of crime; prosecuting offenders; and recovering assets.

- b. Law enforcement administrators, including upper and middle management, need information about the impact of financial crime. These individuals should be encouraged to prioritize financial crime and develop systems that support cooperation and coordination within and outside of their units.
4. Public awareness campaigns should be targeted and focused. Targeting should focus on the following groups:
- a. Persons who have been victimized before. They have been shown to be at particularly high risk for re-victimization.
 - b. Persons who have suffered recent losses are particularly vulnerable to undue influence and are more likely to be targeted by unscrupulous persons who locate them through publicized death notices.
 - c. Persons who have received default notices or are in foreclosure.
 - d. Persons who respond to solicitations.
 - e. Religious and community leaders and service providers who deal with seniors. These individuals can provide a channel of communication through which law enforcement agencies can disseminate information and receive feedback.
 - f. Because early detection can reduce the damage and lead to more successful outcomes, it is particularly important to reach those entities which are likely to encounter abuse and financial crimes at their early stages. "Gatekeepers," who include bank employees, postal workers, merchants, pharmacists, animal control officers, employees of utilities and garbage companies, etc. may provide a promising link to the vulnerable. Adult children are also likely to discover financial crimes and abuse.

E. Coordination

Better coordination is needed between all the entities that play a role in preventing financial crime. This includes law enforcement, the civil justice system, the victim witness assistance network, adult protective service programs, and health and social service agencies. In addition, better coordination is needed within systems and between jurisdictions. In addition to ensuring a more timely and appropriate response to financial crime, many of the ap-

proaches to coordination described below will further provide a means for collecting critical information about financial crimes, perpetrators, and victims. This information can be used in developing new services and policy.

1. Promote the development of local, statewide or national task forces to accomplish the following:
 - a. Improve coordination among law enforcement agencies in investigating and prosecuting crimes.
 - b. Enable agencies to share information about abused older persons.
 - c. Clarify the respective roles, responsibilities, and goals of the different prosecution agencies. Define the relations between local district attorneys' offices, Offices of Medicaid fraud, and federal law enforcement agencies.
 - d. Promote better coordination between law enforcement, victim service, and social service agencies so that victims' needs are met while investigations are in progress. For example, victims may need supervision or personal care in the event that the perpetrator was also the victims' caregiver. Other commonly needed services include money management, transportation, emergency housing, etc.
 - e. Increase the number and range of available options for stopping financial crime and abuse and compensating victims. For example, in discussing a particular case, a task force can decide what burden of proof can realistically be met, which may influence decisions about which agency will take the lead.
2. Create a national clearinghouse of convicted financial crime offenders to provide information on criminal histories, standing warrants, etc. (A hotline currently exists for telemarketers.) Information from previous convictions or complaints can be used by law enforcement to identify additional witnesses, establish patterns or design, or bring additional charges. Because offenders often move frequently to avoid being apprehended, clearinghouses need to be national or international in scope. They also need to include photographs and fingerprints, since offenders often use numerous aliases. In addition to collecting information on individuals, clearinghouses are needed which describe the operations of specific families or types of abusers. All data could be collected in one centralized location or information could be collected using a decentralized system in which multiple agencies collect information that can then be shared.

3. Establish an "Economic Crime Czar" to serve as a "point person" within the executive branch of government to oversee coordinated efforts, both prosecution and civil actions, against perpetrators. Drawing from the experiences of the "Drug Czar," who was appointed in the early eighties, this "top-down" approach would accomplish the following:
 - a. Create an infrastructure for coordinating efforts and addressing jurisdictional problems and issues.
 - b. Achieve greater uniformity in how cases are prioritized and responded to across the country.
 - c. Demonstrate to the public that this is an issue of major importance to the government and that offenders will be prosecuted to the full extent of the law.
 - d. Allow for prioritizing resources. For example, senior level federal law enforcement administrators can devote needed resources to problem or "high intensity" crime areas that exceed what a local community could provide on its own.
 - e. Bring media attention to the problem, which can serve as a vehicle for educating the public. The czar will serve as a spokesperson, convene press conferences, and issue progress reports.
 - f. Generate new resources. Increased attention to the problem will catalyze the development of new funding sources.
4. Promote the development of law enforcement associations to provide informal forums for addressing financial crimes by sharing information and knowledge, and tracking offenders.
5. Promote the development of FASTs (Fiduciary Abuse Specialist Teams - see Best Practices section of this report) to resolve cases and serve as forums for ongoing interdisciplinary training and resource sharing.
6. Develop a centralized 800 telephone number to accept and triage reports of financial crimes. This would provide a "one-stop-shopping" point of access for consumers. All calls would come into a single intake unit where trained professionals determine which agency has jurisdiction (e.g. the U.S. Customs Office, the U.S. Attorney's Office,

or district attorneys). This approach would conserve resources because the cost of educating personnel who respond to calls would be nominal in comparison to educating the public and professionals about what agency is most appropriate to receive calls for specific types of crime. This approach would further facilitate the development of a centralized database on financial crimes against the elderly.

7. Promote the development of research on elder financial abuse to determine the number of vulnerable elders, current and projected incidence rates, etc. and make this information available to program planners and policy makers.
8. Develop statewide systems to monitor restitution. This would provide a mechanism by which the judiciary can be held accountable for ordering restitution and offenders can be held accountable for paying restitution.
9. Provide federal and state Internet sites for "unrecovered" restitution owed to victims.
10. Develop a centralized system to track victims and inform them of their rights throughout the entire process.
11. Promote the development of a national association of fraud victims to advocate for the rights of victims of financial crimes.
12. Promote the development of comprehensive white collar crime centers to provide individual counseling, support groups, materials, referral information, and advocacy services to victims.

VIII. Best Practices and Resources

A. Programs

The Elder Person's Estate Unit of the Los Angeles Police Department investigates cases of elder financial exploitation, including the misappropriation of property belonging to older people through powers of attorney, quitclaim deeds, wills, or living wills. The unit's emphasis is on identifying and preserving assets as well as ensuring victims' safety. The Unit works closely with other community agencies.

Fiduciary Abuse Specialist Teams (FAST) bring together district attorneys, stock brokers, public guardians, retired probate judges, bank trust officers, law enforcement, and elder abuse specialists to review cases of financial exploitation and develop response plans.

In Los Angeles, a victim of identity theft organized and has convened a **support group for victims of identity theft** for approximately six years, with no budget and word-of-mouth referrals.

Ventura County's (California) Senior Crime Prevention Program, operated by the District Attorney's Victim/Witness Assistance Center, works closely with the County's Elder Abuse Council. Victim advocates are assigned to assist elderly victims of crime, including victims of financial exploitation, who are referred by the county's Adult Protective Services program. The advocates assist elderly victims through all phases of the criminal justice process and are involved in extensive community outreach efforts to seniors. They have produced handbooks on crime prevention and audio tapes for the visually impaired. A Spanish-speaking advocate makes regular reports on a Spanish radio show to update the community about recent scams and warn community residents who may be susceptible. Seniors who are enrolled in "Meals on Wheels" programs get tips on crime prevention via paper placemats, which are delivered with their food. Ventura County's pharmacies have also all agreed to insert "Rx cards," or prescriptions for preventing abuse, in prescription orders for the elderly.

The Elder Fraud Prevention Team (EFPT) is a pilot project developed under the U. S. Department of Justice's Fraud Prevention Initiative, which was established in 1998. Teams of representatives from agencies such as the American Association of Retired Persons (AARP) and law enforcement agencies will be conducting community presentations on various types of fraud against the elderly. The program will be piloted in Miami/Ft. Lauderdale, Newark, Phoenix, San Diego, and Seattle.

The Volunteer Legal Services Program (VLSP) of the San Francisco Bar Association has trained attorneys to work with seniors who are at risk for home equity loan fraud. The attorneys review loan documents and alert seniors to the risks involved. In some cases, where seniors have already signed loan documents, VLSP volunteer attorneys review the documents for Truth in Lending violations and other illegal practices. VLSP operates a Hotline for victims of home equity loan fraud.

Probate Court Investigation Units were created in California to serve as the “eyes and ears” of Probate Courts. Court personnel investigate proposed conservatorships to determine whether conservatorship is needed, explain the conservatorship to the proposed conservatee, answer questions, see if the proposed conservatee has objections, and recommend whether a lawyer should be appointed to represent him or her. They also provide routine follow-up investigation to determine if a conservator/guardian is acting in the conservatees’ best interest, respond to complaints, and make suggestions to judges about crafting orders to offer protection to vulnerable wards. The state also developed a handbook which conservators are required to purchase (using estate funds) prior to appointment and a video is shown before appointment hearings.

The American Association of Retired Persons (AARP) has a volunteer guardianship monitoring program. Local AARP programs recruit and train volunteers to assist probate court researchers, examiners, and visitors.

Operation Senior Sentinel, a collaboration between AARP and the FBI, uses trained volunteers to contact persons who have been targeted by illegal telemarketers to warn them of the dangers of illegal telemarketing schemes, inform them that their name was found on telemarketers’ lists, educate them about illegal telemarketing activities, take reports on suspicious calls they’ve received for FBI follow up, and provide support and resources as needed. The program has been replicated across the country and some have received VOCA funding.

Operation Unload (Reverse Boiler Rooms), a collaboration between AARP, the FBI, the National Association of Attorneys General (NAAG), the U.S. Postal Inspection Service and others, was initiated in 1996 to advise consumers that they might be targeted by illegal telemarketers. Using the criminals’ own tactics against them, they simulated a boiler room (an office from which telemarketing calls are made) in which Attorneys General from 30 states joined AARP volunteers in calling more than 2,000 people nationwide, advising them that their names had been found on “mooch” lists seized from fraudulent telemarketers. Several communities across the country have replicated the event, while others operate reverse boiler rooms on an on-going basis.

AARP's "Fraud Court Watch," in Atlanta, Georgia uses AARP volunteers to observe court hearings involving criminal fraud cases. Patterned after a program developed by Mothers Against Drunk Driving, the program's purpose is to ensure that the interests of financial crime victims are represented within the criminal justice system.

The Elder Financial Exploitation Prevention Program of Salem, Oregon trains bank personnel in how to identify and report financial crimes or exploitation against elderly customers. They are also replicating "reverse boiler rooms," a technique used in Operation Senior Sentinel, to warn high risk seniors that they have been targeted.

WE ARE FAMILY, a program of the San Francisco Consortium for Elder Abuse Prevention at the Goldman Institute on Aging, develops culturally specific approaches to educating African American seniors about abuse. Current projects include educating the community about mortgage fraud and fraud by burial insurance companies.

San Francisco's Probate Court has developed a volunteer mediation program. Lawyers and court personnel have been trained to mediate in problematic conservatorship cases.

Videotaped depositions are increasingly being used in legal conferences and prosecutors' offices so that victims, particularly those who are frail, do not have to travel long to get to court.

The **Wisconsin Department of Justice's Elder Financial Crimes Advocacy Program**, funded through VOCA, provides education and advocacy services to elderly victims of financial crimes. Housed within the state's Department of Justice, the elder advocate provides training to seniors, social workers, members of the aging service network, law enforcement, and district attorneys about consumer fraud and financial abuse by family members and caregivers. The latter category includes abuses of durable powers of attorney and joint bank accounts. The advocate also provides technical assistance to members of the same groups. The program's goal is to increase the number of criminal prosecutions of family members and caregivers who financially abuse the elderly. The advocate has mediated conflicts regarding jurisdiction, provided instruction to police officers who do not know how to investigate financial abuse cases and makes referrals to its White Collar Crime Bureau, which can provide additional advice.

The Elder Abuse and Exploitation Project of the Delaware Criminal Justice Council uses VOCA funds for a Special Investigator, who has previously worked in law

enforcement, to provide liaison between law enforcement, adult protective services, and the attorney general's office. He also investigates complex cases of financial exploitation, ranging from abuse using powers of attorney to investment fraud.

The “Elder Court,” of Hillsborough County, Florida was created to handle all civil and criminal cases involving the elderly. The docket will include guardianship, mental health, elder abuse, domestic violence and other crimes as well as civil litigation involving the elderly. Investigators, prosecutors, and the judge in the Elder Court will become experts in elder issues.

The Perpetrator Asset Identification Advocacy Project of the U.S.

Attorney's Office in San Francisco is a pilot project aimed at recovering assets stolen by white collar crime defendants. The project was designed to increase the likelihood that victims of financial crimes, including investment fraud and telemarketing schemes, will be able to collect restitution by tracking stolen assets while crimes are being investigated. Working along with the prosecution team as it establishes the “elements of proof” in a case, the asset investigative advocate (AIA) concentrates on identifying, securing, and recovering stolen assets and locating the defendant's assets. Using specialized public and governmental databases and public records, the AIA can search for assets including personal and real property, leases, contracts, and inheritances. Prosecutors can then pursue available methods of “seizing or freezing” assets so that they can be returned to victims as restitution.

The National Hispanic Council on Aging has developed a public education program to combat telemarketing fraud in the Latino community. Information is disseminated in small groups of seniors and peer counseling is also available.

B. Statutes

Maine's Improvident Transfers of Title law permits individuals who have transferred property as the result of undue influence, to get court orders forcing the return of the property. The statute applies to dependent persons 60 years of age or older who have transferred real estate or 10% or more of their money or personal property for less than fair market value. The transfers must have been accomplished without the assistance of independent counsel and perpetrators must have a confidential or fiduciary relationship to the elderly person. The latter extends to family members, accountants, brokers, financial advisors, health care providers, social workers, counselors, attorneys, priests, ministers, rabbis, spiritual advisors, caregivers, friends, neighbors, or roommates. The burden is on the person to whom the property has been transferred to rebut the presumption of undue influence, making it more likely that the transaction

will be overturned by the court.

Several states have passed laws aimed at reducing the risks involved with powers of attorney. Examples include:

- In **New Hampshire**, certain designated persons can compel accountings by agents.
- In **North Carolina**, DPAs must be filed with the register of deeds in order for the document to be considered valid.
- **Wisconsin** law permits the recording of durable powers of attorney with the register of deeds.
- **California** statute provides that an agent selected because s(he) possesses a specific skill has a higher standard of responsibility.

California's Due Process in Competency Determination Act offers a methodology for assessing mental capacity using data sets and mental function lists. For each type of capacity (e.g. capacity to contract, to hire a lawyer, to marry), there is a unique data set. The act was created to provide guidance to courts in determining what mental functions are needed to make specific decisions.

California's Elder and Dependent Adult Civil Protection Act encourages private attorneys to handle elder abuse cases by providing for treble damages, post mortem recoveries, etc.

In **Arizona**, persons in positions of trust and confidence who take control of an elder's assets through intimidation or deception with the intent of permanently depriving them of the assets are guilty of theft. Persons who violate their duties are also subject to damages in civil actions brought by or on behalf of the person that equal up to three times the amount of the monetary damages. They also forfeit their claims on the older person's estate.

In **California**, persons convicted of elder financial abuse forfeit their claims on the older person's estate.

C. Studies/ Reports/ Recommendations

AARP's Don't Fall for a Telephone Line Campaign, included a large scale survey of telemarketing fraud victims. Conducted in 1995, the study revealed the following:

- Over half of the victims of telemarketing fraud are over the age of 50 although this age group accounts for only 36% of the total population.
- Although only 7% of the total population is over the age of 75, this group accounted for 14% of the telemarketing victims.
- Despite the pervasive stereotype that victims of this types of crime are socially isolated, ill-informed, and confused, the study showed that many victims were relatively affluent, well-educated and informed, and active in their communities.
- Although older consumers knew telemarketing fraud was wrong, they found it hard to believe that it was a crime.

The Hard Sell/ Combating Home Equity Lending Fraud in California (by Norma Paz Garcia of Consumers Union, July 1998) describes best practices, model legislation, and recommendations for stopping home equity lending fraud through legislation, civil litigation, law enforcement training, and task forces. Copies may be requested from the West Coast Regional Office; Consumers Union of U.S., Inc.; 1535 Mission Street; San Francisco, CA 94103; (415) 431-6747.

The Massachusetts Bank Reporting Project, spearheaded by the Massachusetts Executive Office of Elder Affairs, was designed to enlist the help of bank employees in identifying financial crime and abuse. Project personnel developed a report and replication manual, which can be ordered through the Executive Office of Elder Affairs; One Ashburton Place; Boston, MA 02108; (617) 727-7750.

The Report of the Canada — United States Working Group on Telemarketing Fraud was commissioned by the U.S. and Canadian governments to address problems arising from the fact that telemarketing fraud is often committed across national borders. The report addresses complications posed by differences in legislation between the two countries and procedural delays created by extradition proceedings. Available online at: <http://canada.justice.gc.ca/publications/rappports%5Fanalyses/telefrad/summary%5Fen.html>

Among the recommendations contained in the report are the following:

- The governments and agencies of both countries should clearly identify telemarketing fraud as a serious crime.
- Both countries should explore the use of remote testimony in criminal proceedings, by video-teleconferencing or similar means, to reduce costs.
- The legal and technical potential and limits of electronic surveillance as a tool against telemarketing fraud should be explored further.
- Both governments examine the regulation of telephone services and options for denying telephone services to telemarketing offenders.
- The scope of the existing mutual legal assistance arrangements be considered to determine whether they might be expanded to deal more effectively with telemarketing fraud cases.
- Both governments clarify the circumstance under which mutual legal assistance requests are needed, by providing information and advice to the agencies involved.
- Extradition arrangements be examined, and if possible modified, to facilitate and accelerate extradition in telemarketing fraud cases.
- Federal deportation laws which might apply to foreign nationals engaging in telemarketing fraud should be reviewed, and enforcement agencies should be given information about when deportation may be an option.
- Research should be conducted into offenders, victims and other aspects of telemarketing fraud to create effective educational materials and strategies to prevent it.
- Governments and their agencies should cooperate as closely as possible in developing, maintaining, and disseminating educational materials, and in coordinating education and prevention efforts.
- Strategies to control telemarketing fraud should be coordinated between Canada and the United States at the agency, regional, and national levels.

- An ongoing binational working group should serve as an overall coordinator and deal with national and binational telemarketing fraud issues as they arise.
- Regional task-forces should be encouraged to cooperate across the international border to the maximum extent possible.
- To further coordination, governments and agencies should examine privacy and other laws relevant to cross-border shared access information systems with a view to expanding access to such systems to the maximum extent possible.

Exploitation of Durable Powers of Attorney, a study conducted by the Government Law Center (GLC) at Albany Law School, found that abuse of DPAs was widespread and offered legislative strategies for addressing the problem: (Copies of the report can be obtained by contacting the Government Law Center; Albany Law School; Albany, NY 12208; Phone: (518) 445-2303.)

Among the strategies cited in the report are the following:

- Require uninterested witnesses and/or notarization when DPAs are executed.
- Require simple warning language on any commercially-available DPA forms.
- Require that the elder executing the commercially-available form specifically agree to each grant of power instead of crossing out only the powers he/she doesn't want to grant.
- Require that each DPA be filed in a public office.
- Clearly specify in the law how DPAs can be revoked.
- Permit interested parties to petition a court to terminate a DPA when abuse is suspected
- Require notification of the elder whenever a transaction over a specified amount is completed or contemplated.
- Create a public registry of those convicted of DPA abuse.
- Provide enhanced sentences for those convicted of criminally abusing DPAs.

- Require that the elder designate a third party with power to revoke it if the person should become incapacitated.
- Require the designation of more than one agent in each DPA.
- Require the agent to provide an annual accounting to a court of law, family member, co-agent or APS unit.
- Require mandatory reporting of suspected cases of DPA abuse.
- Require that the agent post a surety bond.
- Hold agents to fiduciary standards such as trustees and executors are held to, and provide for compensation for their efforts (if the elder does not specifically deny compensation).

Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse

by Lori A. Stiegel, J.D. Associate Staff Director; ABA Commission on Legal Problems of the Elderly 1995. American Bar Association, Washington, D.C. The report is based on the findings of focus groups and a Delphi Study which surveyed 170 judges, court administrators, lawyers, prosecutors, attorneys general, protective service providers, law enforcement officers, health care providers, researchers, and others. Although the report does not focus exclusively on financial crime, it offers the following recommendations that pertain to this type of crime:

- Courts should recognize that the capacity of older persons may fluctuate with time of day, medications, etc. and should be flexible in scheduling hearings to accommodate those individual variations.
- Courts should use expert witnesses, evaluators, guardians ad litem, court investigators, court visitors, or interdisciplinary teams who are trained and knowledgeable about the problems of older persons to assess the older person's capacity.
- Courts should understand gradations of diminished capacity in order to more effectively manage and adjudicate cases involving elder abuse.
- Courts should consider that incapacity could increase the likelihood of abuse and, if necessary, order a qualified evaluator to conduct an unbiased assessment of the older person's capacity.

- Courts should understand and use limited guardianship and other alternatives to guardianship appropriately.
- Further analysis and study should be undertaken of the ramifications of courts more readily allowing an older abused person's testimony to be videotaped before capacity is lost or the individual dies.
- Further analysis and study should be undertaken of the ramifications of courts more readily allowing admission of evidence from collateral sources if the older abused person's capacity is at issue, as has been done by the Department of Justice regarding child witnesses and child abuse cases.
- Courts must develop ways of ensuring that judges become aware of cases involving older abused persons that might be underway simultaneously in different divisions or that might previously have been heard and have some influence on a current case.
- Newly appointed guardians should receive training about their role and responsibilities as guardians, and about preventing, recognizing and reporting elder abuse.

D. Training Manuals/Videos

Financial Exploitation of the Elderly, a 14 minute video produced in 1992 by the University of Maryland at Baltimore's School of Geriatrics and Gerontology in conjunction with the Schools of Law and Social Work. Geared for a non-professional audience, it describes abuse by sales persons, service providers, and family members. It presents warning signs for family members and friends and offers tips for avoiding the three types of abuse. Available through

Terra Nova Films

Phone (773) 881-8491

Fax (773) 881-3368

Email Tnf@terranova.org

Victims of Fraud: Beyond Financial Loss (NCJ#170593), is a 20 minute video produced by the Police Executive Research Forum for federal victim witness coordinators. A companion guide, *Providing Services for White-Collar Crime Victims: A Resource for Victim/Witness Coordinators (NCJ # 170594)* is also available.

Both materials can be ordered from:

Victims of Crime Resource Center

Phone: (800) 627-6872

Preventing Elder Financial Exploitation: How Banks Can Help, a technical assistance kit that includes two manuals and videos. One set of materials instruct bank employees in recognizing and reporting suspected elder financial exploitation. The other instructs banks in how to conduct seminars for seniors in how to avoid becoming victims of financial exploitation. The materials, which were produced by the Oregon Department of Human Resources Senior and Disabled Citizen's Division, can be adapted for other communities. Available for \$50.00 from:

**Oregon Department of Human Resources Senior and
Disabled Citizen's Division**

Phone: (503) 378-2539

Replicating the Massachusetts Bank Reporting Project: A Guide for Other States. The guide, which was produced by the Executive Office of Elder Affairs in Massachusetts, provides instruction in how to enlist the help of banks in identifying financial abuse. Available through:

Executive Office of Elder Affairs

One Ashburton Place
Boston, MA 02108
Phone (617) 727-7750

Financial Abuse of the Elderly, produced for the National Center for Elder Abuse, provides an overview of financial abuse, intervention strategies, and promising service models. Available for \$15 through:

Elder Abuse Prevention Program

Goldman Institute on Aging
Phone: (415) 750-4180 ext. 222

Problems With Money Management (1995). Clinical Protocol Series for Care Managers. Philadelphia Corporation on Aging. Problems with Money Management is part of a series of Clinical Protocols for Care Managers. Each module comes with a companion 8 minute video. Problems with Money Management describes the range of money management options from assistance with bill paying to long-range financial planning. The in-depth training

booklet describes interventions to assist with money management tasks, mechanisms for providing for surrogate decision making, decision trees, discussion questions, and case examples.

Available for \$45 from:

Philadelphia Corporation for Aging. Action Duplication

555 North Lane, Suite 5075
Conshohocken, PA 19428
Phone: (215) 765-9000

Training Manual for the Prevention of Financial Abuse of the Elderly (1993). The manual, which was produced by the Suffolk County Executive's Task Force on Family Violence, was designed for training personnel in the banking industry in financial exploitation and other forms of elder abuse. Copies can be obtained by contacting Carole Pickney:

**Suffolk County Executive Task Force on Family Violence;
Suffolk County Office for the aging**

395 Oser Avenue; Hauppauge, NY 11788
Phone (516) 853-3691

How to Protect Your Customer & The Bank, A Handbook for Bankers, produced jointly by the County and City of Los Angeles Area Agencies on Aging and WISE Senior Services.

Available from:

WISE

1527 Fourth Street
Santa Monica, CA 90401
Phone: (310) 394-9871

Fraud Fighters Program Kit, created by the American Association of Retired Persons (AARP), is a self teaching training module for seniors. It includes a 16 minute video which contains an interview with an incarcerated telemarketer, an audiotape of recordings of fraudulent telemarketers at work, handouts, and suggestions for how to present a telemarketing fraud workshop.

Available from:

AARP

Phone: (202) 434-2277

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