

Overcoming Barriers to successful
prosecution of Financial Elder Abuse

Greater Augusta Coalition Against
Adult Abuse

“Financial Exploitation: It’s not just a
civil matter”

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Presented by

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WARNING!

- The views expressed by the presenter are not necessarily those of the San Diego District Attorney's Office

My Elder Abuse journey
began

January 1996

I had an office, a phone, a
computer but....

No cases!

Just silence!

Prosecution: Reactive or
proactive?

For the first 7 months I did not prosecute any elder abuse case; instead I went around our county talking with law enforcement....

What did I learn?

How are we to measure a community?

- By the way we care for our very young, the elderly and the defenseless

All victims deserve our utmost response

- Sadly, some victims are overlooked, ignored, disbelieved, or simply are abandoned

Elder Abuse is.....

- A Crime
- Going unpunished
- Predictable
- Affecting both urban & rural areas
- Where child abuse & DV were 30 years ago
- Escalating

The aging of America

- Between 1950 & 2000, the total population increased by 87%
- Age 65+ - by 188%
- 85+ - by 635%
- By 2030 - 65+ will triple to over 70 million

Every day in the USA, the
number of people turning
65 years old is.....

10,000

Demographics of living longer

- By 2010 there were 114,000 Americans 100 years old +
- By 2020, there will be 241,000

ELDER ABUSE IS EXPLODING

- Fastest growing age group
- No known cure for dementia etc.
- Victims often do not report
- Third fastest growth job is home care
- Minimal background checks
- High temptation, low risk factors

UNDERSTANDING THE DYNAMICS

- Fears of many seniors
- Leads to underreporting
- Feelings of shame
- Concern that exposure will lead to loss of independence
- Sometimes accompanied by threats from perpetrator

Who are my victims?

Elders

65+

Dependent adults

aged 18 - 64 with physical or mental limitations that restrict his ability to carry out normal activities or to protect his rights

I discovered that law enforcement -
through no fault of their own - were
falling into common misconceptions...

Destroying some myths....

- Some of these myths affect all forms of elder abuse
- Some affect only financial elder abuse

Myth #1

- Elderly people make terrible witnesses

Most common answer...
forgetfulness

AVOID STEREOTYPING OF SENIORS

- Forgetful
- Senile
- Longwinded
- Grumpy
- Disabled
- Fragile



Myth # 2

- If elderly victim refuses to provide information, there is nothing that can be done

- We can still build a case by talking to other key witnesses
- Start on the outside and work your way to the middle
- Let the DA figure out a way to break through victim's wall of silence

LESSONS LEARNED FROM DOMESTIC VIOLENCE

- Self-determination is not the answer

“Victim declines
prosecution”

Why self-determination is a problem

- If not punished, the perp WILL abuse again
- We CAN convict even without the assistance of the victim
- Abuse is a crime against NOT JUST the abused

One profile of an elder financial abuser:

- Son in his late 30's to late 50's
- Living at home with Mom
- Divorced/ returns or single and unmotivated or just out of jail
- Lazy and unemployed
- Drugs, alcohol or gambling
- Feeds habit off Mom
- Sometimes history of mental illness

And my latest homicide...

Myth # 3

- If elderly victim gives the money voluntarily, it is not a crime

This article appeared
in a prominent
California newspaper
just a few weeks ago

“Simply getting ‘scammed’ by a smooth-talking person is no crime,” District Attorney’s Office spokesman [REDACTED] said in an email. “If money is freely/voluntarily given/donated/gifted, there is no theft. Unless an older person lacks the mental capacity to give consent or undue influence is used to obtain it, elders are free to make gifts or donations to anyone they choose.”

The “it’s a civil matter”
mindset is pervasive

But things are not always
how they first appear

- There are times when the apparent voluntariness has been diluted by fraud, undue influence or by exploiting the mental limitations of the victim

Myth # 4

- A Power of Attorney does not provide a license to steal and plunder

A family member who is
the suspect - accelerated
inheritance is not a good
defense!

Myth #5

- If victim is deceased before we discover the theft, we cannot prosecute

- Wrong!
- Treat such a case as if it were a murder
- There are some situations in which we do not need the victim for a prosecution

Myth # 6

- Any case where the elderly victim is involved in a home repair & there is a dispute over money – this is ALWAYS a civil matter.

- Is the “contractor” licensed?
- Are there other victims out there?
- Did he get the money up front?
- What services did he promise?
- What did he deliver?

Myth # 7

- Suspects of elder abuse crimes
NEVER call 911

Why 911 tapes can be so valuable to a prosecutor?

- Dispatchers need training

And paramedics.....

- They need training!
- They hear & see things that NO-ONE else sees & hears
- Paramedics are often walking into a crime scene
- They make GREAT witnesses

Myth # 8

- Elderly people die from natural causes

- The importance of an elder death review team

Lessons to learn from....

- Dr. Harold Shipman
- Charles Cullen

Coroner /Medical examiner

- Train ME Investigators who take calls from police after a death
- Establish a protocol for reviewing suspicious deaths of elders
- Can instigate an elder death review team

Lessons to be learned
from the
Polchow case which led to
our EDRT being formed

Myth # 9 - the anyway excuse

- There are more important cases out there and anyway we don't have the additional resources
- The victim was going to die anyway
- She was going to inherit anyway

Myth # 10

- “We don’t have jurisdiction... the crime did not occur here...”

An e-mail I received a few
months ago...

I am a retired catholic priest and former Army Chaplain. I was recently involved in a "fraud" by a gentleman who claimed to be an attorney for the Publishers Clearance House. I was sent a notice that I was the grand prize winner of \$1,600,000.00 and that i must follow the directions given me in order to receive the prize. After many telephonic calls and assurances I was directed to first send a check of \$41,000.00 which would cover all the federal and state taxes incurred. I envisioned the financial help I would be giving to a high school and church because of paying just a rather small sum for the full prize amount. How naive I was. After weeks of communication and my final attempt to finalize the deal, I realized that the check I was mailed was a fake and the phone number I tried calling was "no longer in operation". I lost half my life savings and probably will never recover the amount; but I would do anything to prevent this happening to anyone else. I would be happy to meet with you if at all possible.

The importance of the 3 Cs
in building a multi
disciplinary team approach

Collaboration

Cooperation

Communication

Building blocks to form collaborative approach

- APS/Ombudsman program
- Law enforcement
- Prosecutors
- Coroner
- Public Health
- Seniors
- Public Guardian/Probate Court
- Elder law attorneys

APS/ Ombudsman

Creating/promoting referral line:

- Every County must have a reporting line
- Billboards
- Posters
- Radio and TV PSA's
- # of calls WILL increase



Prosecutors

- These cases are worthy
- These cases are provable
- We should get more creative in our charging
- We should not be obsessed with a win-loss record
- We need to talk to APS

Building the awareness level

- Through public speaking at Rotary, Kiwanis, Lions etc...
- Front counter personnel at police/sheriff's station
- 911 dispatcher
- Banks & credit unions & Western Union
- Pharmacies

Awareness level cont'd

- Train the clergy
- Most are unaware of the problem
- Encourage an overhaul in visitation ministry

Financial elder exploitation

Watch for an explosion of
elder financial abuse cases

The grandma
scam.....

Watch out for Green Dot &
iTunes cards.....

Investment Frauds...

Opportunists looking for
the perfect victim

Bogus charities &
questionable tactics by
legitimate charities

The sweetheart scam

Two major types of this
scam

The face to face con artist

That scammer is out there
looking for the perfect
victim

Who are they?

Professionals..

Meet through “legitimate”
business transactions

Professional cons..

They seek out their victims
in various places..

- Parking lots
- Places of faith
- Door to door
- Casinos
- Grocery stores

The hook...

The charm offensive..

The con knows exactly
how to find & target the
victim's vulnerability

The victim...

Often recovering from a loss..

Appreciates the attention..

Has \$\$\$\$

And the second type of
sweetheart scammer....

The online scammer...

Theft by guardians

Building the elder financial exploitation case

HOW TO PROVE STEALING?

- Taking property
- belonging to another
- without consent &
- with intent to permanently deprive

We need to be able to
argue lack of consent much
more forcefully

Lack of consent

- To consent to a transaction a person must:
- Act freely & voluntarily & not under the influence of threats, force or duress
- Have knowledge of the true nature of the act or transaction involved
- Possess the mental capacity to make an intelligent choice whether or not to do something proposed by another person

- Consent requires a free will and positive cooperation in act or attitude

Three prosecutable scenarios

- Classic case of theft from a competent victim
- Theft from an incompetent victim
- Theft from a marginally competent victim [by undue influence]

SCENARIO # 1

- Victim testifies
- Did not give permission
- Did not owe monies to suspect
- Victim is credible

SCENARIO # 2

- Victim cannot testify
- Medical testimony that victim suffers from dementia/ Alzheimer's/ Parkinson's or some other illness that deprives victim of necessary understanding
- Incapacity was present at time of transaction

SCENARIO # 3

- Is it theft, a loan, or a gift?
- Victim is marginally competent
- Suspect exploited victim's vulnerability
- Victim was unduly influenced or was defrauded

Undue Influence

- Victim 'was pushed in a direction that he did not want to go.'
- The influence by suspect was sufficient to remove the voluntariness of the transaction
- No longer free will
- Victim has been evaluated by a geriatric psychiatrist/psychologist

How to prove undue influence?

- Length of relationship
- Place of first meeting
- Prior spending habits
- Prior “charitability”
- What is left?
- Multiple escalating transactions
- Statements & conduct by suspect

Evidence collection

- Bank, credit card statements
- Bank surveillance tapes
- Prior medical records
- Look for the inappropriate purchases
- Ask questions, questions, questions!!!

People v. Harris

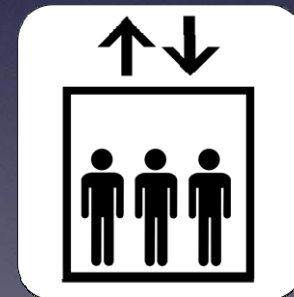
- Victim was classic example of theft by undue influence
- Victim testified
- Short term memory problems
- Areas of extreme vulnerability

Assess the impact of the crime

- Financial
- Emotional
- Residual

A Message to Seniors:

- We respect and honor you!
- We commit to seeking justice for you
- We prosecute with:
 - Passion
 - Purpose
 - Perseverance



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