

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

Paul Greenwood,  
Deputy District Attorney,  
San Diego County, California



# 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

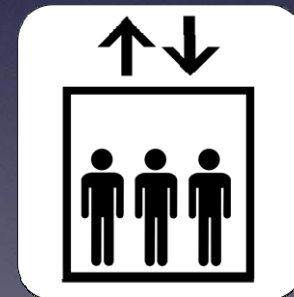
- Victim was classic example of theft by undue influence
- Victim testified
- Short term memory problems
- Areas of extreme vulnerability

# 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



Please feel free to contact me:

- Paul Greenwood
- 619-531-3464
- [paul.greenwood@sdcdca.org](mailto:paul.greenwood@sdcdca.org)

