

Elder Law Attorneys' Critical Role in Reducing Elder Abuse: A Growing Poverty and Civil Rights Issue

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Marie-Therese Connolly

Woodrow Wilson International Center for Scholars

Alison Hirschel

Michigan Elder Justice Initiative

Types of Elder Abuse

- * Physical abuse
- * Sexual abuse
- * Psychological/emotional/verbal abuse
- * Neglect & abandonment
- * Financial exploitation

Prevalence of Elder Abuse Among People 60+ Living at Home

Random Digit Dialing of 4000 people 60+
living at home:

- * 7.6% of people 60+ in New York State
(Lachs, et al., 2011)
- * 11% of people 60+ nationwide (Acierno, et
al., 2010)

These Prevalence Surveys Don't Include the Most Vulnerable Older Adults:

Random digit dialing surveys don't capture people:

- * in facilities
- * who lack capacity or ability to answer telephone
- * who don't have a phone (4%+ of elders); and
- * who are too frightened to speak because they're scared of someone close by

Prevalence of Abuse Among Most Vulnerable Populations

- * 47% of people with dementia cared for at home by family were abused or neglected
(Wigglesworth, Mosqueda, et al., 2010 and other studies)
- * Abuse and neglect of LTC residents well-documented but prevalence data not collected

Most Elder Abuse Is Not Reported

- * For every **1** case that comes to light, another **23** do not
- * Only **1** in **44** cases of financial exploitation comes to light
- * Only **1** in **57** cases of neglect comes to light

High Cost of Elder Abuse

- 4x increase in nursing home admissions (Lachs, 2002)
- 3x increase in hospital admissions (Dong, 2013)
- 22% increase in hospitalizations for nursing home residents due to facility understaffing (Abt Asst. 2002)
- Financial exploitation increases losses for Medicaid, public programs, business and personal assets (Gunther, 2011, 2012)
- Increased dependence on caregivers takes toll on their health, finances, job performance & security

Risk Factors for Elder Abuse

- Isolation & lack of social support
- Dementia & dependence
- Financial (in)capacity
- Caregiving issues
- Behavioral health issues

Gender, Race, Ethnicity & Poverty

- * About 2/3 of EA victims are **women**
- * About 23-24% of **African Americans 60+** experience financial & verbal abuse
- * About 40% of low-income **Latinos** experience elder abuse
- * **Poverty** increases the risk of elder abuse

The legal response to EA has focused on criminal prosecution and laws:

- * Enacting state criminal laws and penalties
- * Training of law enforcement & prosecutors
- * Special units/prosecutors to bring EA cases
- * Participation of prosecutors and law enforcement in multi-disciplinary teams

Why criminal cases aren't enough:

- * Pursued *after* harm has occurred
- * Punish perpetrators, but rarely help victims
- * Apply to only a fraction of elder abuse cases
- * Many victims don't want prosecution
- * Don't educate people about prevention
- * Don't help people implement protections

The critical role of elder law attorneys

- * Educate clients and families
- * Recognize abuse, neglect, and exploitation
- * Offer a host of legal strategies to improve the life of the victim
- * Serve as a community resource/expert

How can elder law attorneys help?

- * Assist clients apply for services and benefits to create alternatives to abusive caregivers and restore financial security
- * Advise clients about prudent responses to debt to avoid further victimization
- * Counsel clients about executing or revoking POAs to protect assets and empower clients

More ways to help...

- * Actions to recover assets or property
- * Divorces & protection orders
- * Challenges to inappropriate guardianships & POAs
- * Trusts or other mechanisms to protect assets

Making sure elder law attorneys don't unwittingly help abusers

- * Who is the client?
- * Medicaid planning that safeguards assets for children can deprive elder of resources to maintain quality of life and care
- * Guardianship petitions may be unnecessary or unwarranted
- * Powers of attorney can aid perpetrators

How elder law attorneys might unwittingly contribute to abuse...

- * Fail to utilize safeguards to ensure oversight of fiduciaries
- * Fail to recognize signs of abuse or, when appropriate, report abuse
- * Fail to appreciate occurrence of multiple kinds of abuse if one type is identified
- * Fail to balance autonomy and safety

Why aren't we seeing more of these cases?

- * Victims afraid or unable to seek help
- * May miss indicators of abuse
- * May not ask clients the right questions
- * Narrow focus on legal issue presented instead of broader context in which legal issue arose

Why aren't we seeing more of these cases?

- * May not receive referrals if not viewed in community as resource for abuse victims
- * May reject cases due to capacity or ethical issues
- * May form positive relationships with abuser who initiates contact or pays for services

What can elder law attorneys do?

- * Educate clients about preventive strategies
- * Ask the right questions:
 - * *Is anyone hurting you?*
 - * *Is anyone pressuring you for money or using your money or possessions without your permission?*
 - * *Are your care needs being met?*
 - * *Are you afraid of anyone?*

Other ways elder law attorneys can become involved:

- * Make presentations at events for older adults
- * Become a resource for and train APS and AAA staff, hospital social workers & discharge planners, care managers, LTC ombudsmen, victim advocates, and others about civil legal responses to elder abuse
- * Join multi-disciplinary teams and task forces

Little impact litigation has been brought to redress elder abuse; possible targets for such cases include:

- * Systemic guardianship abuses
- * Systemic Adult Protective Services deficits
- * Systemic failures by victim service providers to aide older victims
- * Systemic failures by health and long-term care providers resulting in harm to older people

Be the knight in shining armor!

You can restore dignity, safeguard resources, find remedies, and promote independence & quality of life!



What's happening nationally?

- * Civil legal services curriculum
- * APS data collection
- * Elder Justice Roadmap
- * Elder Justice Act

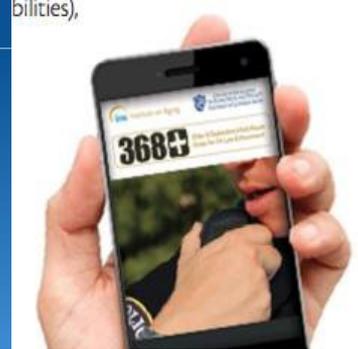
New resources

- * **New!!** Department of Justice's elder justice website:
<http://www.justice.gov/elderjustice/>
- * **New!!** web-based training for legal services lawyers on elder abuse:
<https://www.ovcttac.gov/views/dspLegalAssistance.cfm?tab=1#onlinetraining>
- * **New!!** Elder Justice Roadmap (a strategic planning resource)
http://ncea.acl.gov/Library/Gov_Report/index.aspx
- * **(relatively) New!** Elder Abuse and its Prevention (IOM publication)
<http://www.iom.edu/Reports/2013/Elder-Abuse-and-Its-Prevention.aspx>

Additional resources

- National Center on Elder Abuse; www.ncea.aoa.gov
- Pocket Doc – guide to geriatric conditions and warning signs of elder abuse and neglect (available on Amazon.com)
- Consumer Financial Protection Bureau Older Americans page: <http://www.consumerfinance.gov/older-americans/>
- ABA Comm'n on Law and Aging Elder Abuse resources: http://www.americanbar.org/groups/law_aging/resources/elder_abuse.html
- Apps, including videos, general info & state-specific laws

Apps (CA and MN)
www.safemn.org & 368 CA



S.A.F.E. Elders



AVAILABLE
for iPhones/iPads,
Droid devices
and mobile
web.

Questions?

Thank you!

Marie-Therese Connolly

marie.connolly@wilsoncenter.org

Alison Hirschel

hirschel@meji.org