

# How Is Elder Abuse Perceived in the Courtroom?

By Jonathan M. Golding and Nesa E. Wasarhaley

In a scenario very similar to other forms of abuse (e.g., child abuse), elder abuse has changed from a subject rarely discussed to a national dilemma that gains media headlines. The exposure of elder abuse also has led researchers to take greater interest in this topic. Researchers have investigated elder abuse with regard to defining the problem, identifying victims, identifying abusers, and describing why elder abuse occurs (see Bonnie & Wallace, 2003). One area of research, however, has received very little attention: the perception of elder abuse in court. This lack of research does not reflect the number of elder abuse cases, which continues to grow, but may reflect the paucity of cases that ever reach trial (Hafemeister, 2003; NCEA, 2006). The latter may be due to police officers and prosecutors historically being reluctant to become involved in family abuse cases, preferring that social service agencies handle these cases rather than prosecuting the abuse (Chermak, 1993).

One justification for researching elder abuse in a legal context is that increasing knowledge about how jurors perceive various types of elder abuse cases may prompt an increase in these cases reaching the courtroom. For example, if research showed that prosecuting elder abuse cases led to convictions, victims may be persuaded to move forward with reporting these crimes, and prosecutors may be more willing to pursue these cases in court (Daniels,

Baumhover, Formby, & Clark-Daniels, 1999; Tueth, 2000). Also, it is important to investigate courtroom perceptions of elder abuse because of the psychological and practical impact of elder abuse on victims (Nerenberg, 2000; MMI, 2009; Tueth, 2000). For example, elder financial abuse can lead to depression and may increase unnecessary institutionalization (Kemp & Mosqueda, 2005).

When an elder abuse case reaches the courtroom, a juror's task may be particularly difficult. Given the inherent privacy and secrecy surrounding elder abuse, these cases often lack physical evidence and corroborating witnesses. Jurors must base their decisions largely on the testimony of alleged victims (Myers, 1998; *Pennsylvania v. Ritchie*, 1987; Whitcomb, Shapiro, & Stellwagen, 1985). Thus, although jury research in the field of psychology and law usually finds that hard evidence ("legal" evidence) is the most influential factor in jurors' decision making, such evidence is often lacking in elder abuse cases. Therefore, "extralegal" factors, such as individual juror biases or an elderly victim's characteristics can influence decisions.

The Research on Courtroom Perceptions of Elder Abuse lab at the University of Kentucky has been conducting research that investigates how elder abuse is perceived in the courtroom for more than 10 years. We employ a mock trial methodology, creating the details of plausible cases based on facts from actual cases. We present the cases in written form to mock jurors (i.e., research participants who play the role of jurors for the study), who are usually jury-eligible undergraduate students receiving course credit for participation, but are sometimes paid community members. The mock jurors are asked to render a verdict and provide other judgments (e.g., credibility of witnesses). At this point, the research from the lab has only investigated mock

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jurors' individual judgments and not included jury deliberations.

Mock trials do not duplicate the experiences of jurors in actual trials. Researchers should take the artificiality of these methods into account when seeking to generalize from laboratory studies to actual legal situations (Diamond, 1997). Although mock juror research lacks some aspects of realism, the experimental control offered in the lab is quite important in ensuring the scientific integrity of research. Experimental control allows researchers to vary specific factors while keeping all other factors constant. Without this control, it would be impossible to draw definitive conclusions about the effects of a particular factor on juror decision-making. Such control would be impossible if researchers were restricted to studying actual cases decided by actual juries, which are unique in numerous idiosyncratic ways. The mock trial methodology also allows researchers to collect data from a relatively large number of participants.

The research we conduct focuses on elders as abuse victims, and not simply on elders as witnesses to crime. Our research includes the most studies in this domain and investigates many types of elder abuse in both a criminal and civil court context. The first of our studies investigated elder physical abuse in criminal court. Kinstle, Hodell, and Golding (2008) explored how victim characteristics influenced verdict decisions in a mock juror study with a community sample. The trial summary described the alleged victim's health status as either healthy, confused (i.e., cognitively impaired), or frail (i.e., physically impaired). Participants also completed a measure of general attitudes towards the elderly. Results indicated that verdict was not influenced by the alleged victim's health status, but mock jurors were less confident in their verdicts when the trial summary described the alleged victim as "confused." Overall, the majority of mock jurors rendered guilty verdicts, but attitudes towards the elderly did not significantly affect conviction rates. Participant age did not significantly impact conviction rates either, although older participants had more positive attitudes towards the elderly than the middle aged group (Kinstle, et al., 2008). Additionally, a gender effect was

observed, such that women rendered more guilty verdicts and rated the alleged victim as more believable than men.

We conducted another elder physical abuse study with undergraduate mock jurors to examine a domestic elder physical abuse case from the perspective of gender differences (Golding, Yozwiak, Kinstle, & Marsil, 2005). In one experiment, the alleged victim was described as a 66-, 76-, or 86-year-old woman and in the second experiment, the alleged victim and the defendant gender was either male or female. Alleged victim age or gender and defendant gender did not affect the results. Like the earlier elder physical abuse research, women were more pro-victim (e.g., more guilty verdicts) than men.

Finally, we investigated elder physical abuse in the context of hearsay testimony. In Dunlap, Golding, Hodell, and Marsil (2007; see commentary by Dunlap, Hodell, & Golding, 2008 on the use of hearsay testimony in elder abuse cases) a community sample answered questions about a trial summary that manipulated what type of witness (45-year-old hearsay witness, a 75-year-old hearsay witness, or the 75-year-old victim) presented an allegation of elder physical abuse. Overall, participants who read the testimony of a 45-year-old hearsay witness had higher conviction rates than participants who read the testimony of the 75-year-old hearsay witness or the elder victim. Additionally, participants who had previously been victims of abuse or who had positive attitudes toward the elderly rendered more pro-prosecution verdicts. Finally, as the age of the participant increased so did conviction rates.

Hodell, Golding, Yozwiak, Bradshaw, Kinstle, and Marsil (2009) examined elder sexual abuse. This study investigated perceptions of elder sexual abuse in an elder's home (experiment 1) and both the elder's home or a nursing home (experiment 2). Unlike other types of elder abuse, the results of both experiments showed that elders were believed to a small degree, leading to relatively few guilty verdicts. Consistent with other elder abuse studies, women were more pro-prosecution in judgments than men. Finally, mock jurors

believed the elder sexual abuse occurred more in a residence versus a nursing home.

Another study in our lab involved criminal elder neglect in a domestic context. In Golding, Allen, Yozwiak, Marsil, and Kinstle (2005) undergraduate participants read a trial summary in which a man allegedly neglected his elderly mother by not checking in on her for several days. The alleged victim had a physical disability or a cognitive impairment. The manipulation of the alleged victim's health did not impact the believability of the alleged victim. However, mock jurors were more likely to render guilty verdicts when the alleged victim was described as physically disabled rather than cognitively impaired. It appeared that the cognitive deficit gave mock jurors a reason to doubt the alleged victim's account of the event, despite believing her.

Recently, we have moved our investigations of elder abuse from criminal court to civil court in examining elder neglect. This research has also given greater consideration of causal mechanisms in mock jurors' decision making by investigating the possibility of mediating variables. Wasarhaley and Golding (in press) used a statistical mediation model to investigate elder neglect in an institutional setting. Undergraduates read a trial summary in which an elderly nursing home resident sued the home for failure to provide the necessary level of care. The plaintiff's case presented testimony from the alleged victim or the alleged victim's floor-mate, or no witness to the neglect testified. Mock jurors were equally likely to rule for the plaintiff when the alleged victim testified and when the floor-mate testified, and both of these groups were more likely to rule for the plaintiff than those in the no witness condition. This relationship was statistically mediated by mock jurors' perceived overall credibility of the plaintiff's case. When the alleged victim or floor-mate testified, participants perceived the plaintiff's entire case as more credible, which made them more likely to rule for the plaintiff. Thus, testimony from the victim or another witness to the neglect increased perceived credibility of the plaintiff's case, which in turn influenced mock jurors to favor the victim in their ruling decision.

Golding, Hodell, Dunlap, Wasarhaley, and Keller (in press) also used a statistical mediation model to investigate elder financial abuse or exploitation. Undergraduates and community members read an elder financial abuse trial summary in which an 85-year-old elder victim accused her son of stealing her money. The trial summary described the elderly victim as either healthy or having a cognitive deficit. The results indicated that victim characteristics (i.e., health status) and participant characteristics (i.e., gender and community members' age) both impacted perceptions of exploitation. The impact of the health status of the alleged victim and participant gender on verdict were statistically mediated by the believability of both the defendant and the alleged victim. In other words, when the alleged victim had a cognitive deficit mock jurors were more likely to believe the defendant, which led to fewer guilty verdicts. Men were less likely to render guilty verdicts because they believed the defendant and women were more likely to render guilty verdicts because they believed the alleged victim.

The research studies our lab conducted show clearly that perceptions of elder abuse differ as a function of a number of factors. First, the type of elder abuse impacts mock jurors' perceptions. For example, elder physical abuse led to a relatively high number of convictions, while elder sexual abuse led to a relatively low number of convictions. Second, the health status of the alleged victim impacted perceptions in different types of cases (elder physical abuse, elder neglect), such that elders described as having a cognitive deficit were not believed as much as elders with a physical disability or described as "healthy." Third, participant gender differences may impact elder abuse perceptions. The previously discussed elder physical abuse and elder financial abuse research showed that women mock jurors tend to be more pro-victim than men. However, the more recent research involving elder neglect cases have not found participant gender effects. Finally, the studies on institutional elder neglect and elder financial abuse showed that ratings of credibility statistically mediate the impact of certain factors (e.g., an elder victim's testimony) on trial verdicts. We feel that our research is a good start

to understanding juror perception of elder abuse cases, but we hope that other researchers also investigate elder abuse in the courtroom. This research should continue to investigate various types of elder abuse and the specific laws that protect elders. Moreover, we feel that examining the role of mock jurors' attitudes towards the elderly and investigating the deliberation process in elder abuse cases are critical components of researching perceptions of elders in court. It is only through continued research efforts on the part of multiple investigators that elder abuse will be afforded an appropriate place in the literature.

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