Elder Abuse: Policy and Procedure

Defining Elder Abuse

Analyses of research, policy, and practice in elder abuse typically begin with caveats about the variations and inconsistencies in how elder abuse is defined, which have obstructed efforts to estimate the prevalence of abuse, understand and measure risk, and craft policy and services. A brief summary of the controversies surrounding definitions is therefore warranted.

A panel of researchers and practitioners convened in 2002 by the National Academy of Sciences (NAS) to review and evaluate the research on elder abuse adopted the following definition of elder mistreatment:

> (a) Intentional actions that cause harm or create a serious risk of harm (whether or not harm is intended) to a vulnerable elder by a caregiver or other person who stands in a trust relationship to the elder, or (b) failure by a caregiver to satisfy the elder's basic needs or to protect the elder from harm [1].

In defining abuse this way, the panel focused its analysis on affirmative actions by caregivers or people in special relationships toward their victims, thereby eliminating benign or "self" neglect, and abuse by strangers or persons with mental impairments that render them incapable of intent. The inclusion of the word *vulnerable* means that victims have cognitive or physical deficits that render them incapable of protecting themselves, which eliminates abuse against able-bodied elders.

In contrast, the Elder Justice Act (EJA) of the Patient Protection and Affordable Care Act, described later, uses a sketchier definition.

> The knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

In adopting this definition, policy makers avoided the questions of whether to include vulnerability as a prerequisite for protection or to focus on abuse within relationships.

These controversies are not merely academic, but rather are mirrored in policy and practice, with significant implications. They dictate the number of elders entitled to protection, what services they need, and the associated costs. For example, when broader, more inclusive definitions are used in mandatory reporting laws (e.g., when mandated reporters must report misconduct by *anyone*, not just persons in positions of trust), it obviously results in more reports to investigate. Although narrow definitions may have the opposite effect (reducing reports), they pose addition challenges. For example, in states that only require investigations when alleged older victims are deemed "vulnerable", responders must evaluate factors such as cognitive deficits, which can be extremely difficult to measure. Defining "trust and confidence" within this context is also challenging.

Further complicating efforts to define elder abuse is the fact that new forms of abuse continue to emerge. The following list describes those forms of abuse that are typically covered within states' laws as well as current trends and challenges. An expanded description of financial abuse is provided to reflect a broadening perspective on this form of abuse.

Financial Abuse

Attention to financial elder abuse has historically focused on situations in which persons in positions of trust and confidence (family members, acquaintances, caregivers, or fiduciaries) steal from, exploit, or defraud older adults. Common scenarios include getting cognitively impaired elders to sign deeds, wills, trusts, or powers of attorney; using deception, coercion, or undue influence for financial gain; using property or possessions without permission; promising lifelong care in exchange for money or property and not following through on promises, forgery, confidence crimes (cons), and "sweetheart scams". Perpetrators may also gain access to elders' assets through guardianship, marriage, or adoption. Neglect or abandonment by caregivers when the motive is financial gain (e.g., withholding care to hasten elders' death by those who stand to inherit) has also been defined by some as financial abuse [2, 3].

In recent years, greater attention has been paid to abusive practices by predators who actively seek out victims. The scope of conduct receiving attention has also grown to include tactics such as mass marketing fraud, affinity fraud, predatory lending,

identity theft [4, 5], and investment fraud. Although these crimes are committed against persons of all ages, elders are believed to be targeted [6–9].

Mass marketing fraud refers to schemes using mass communication (telephones, the Internet, mass mailings, and television and radio advertisements) to reach multiple potential victims. The specific tactics that are used vary. In telemarketing fraud, for example, criminals use the phone to commit crimes involving sweepstakes, lotteries, loans, club memberships, credit card or credit repair offers, investments, money transfers; work-at-home and secret shopper opportunities; bogus charities; relatives-in-distress scams; and advance-fee schemes (victims are told that they have won sweepstakes or contests, or are entitled to other payments of money, but have to pay "advances" on awards to cover insurance, taxes, and other fees). Phishing is an activity in which potential victims are sent e-mails that appear to be from reliable sources (such as banks, credit card companies, government agencies, or businesses) asking them to divulge personal financial information such as Social Security numbers, bank account information, and passwords, which is then use to commit other crimes.

Victims of mass marketing fraud are likely to experience multiple victimizations. These "chronic victims" may be convinced to make multiple payments until their assets are depleted, sometimes losing hundreds of thousands of dollars [10]. Their names and contact information may be added to "mooch" lists that are exchanged and sold for "reload" or "recovery" schemes (offers to assist them recover losses). Many mass marketing schemes are run by criminal enterprises and organized crime groups operating from other countries [11]. Scammers typically use sales and persuasion tactics to gain victims' trust but may also resort to violence or threats of violence against uncooperative victims or their families. For example, victims have been enticed to travel to foreign countries to obtain winnings or inheritances, or have even been kidnapped and held for ransom [12].

In "affinity frauds", con artists are or claim to be members of the same ethnic, religious, career, professional, or civic group as their victims. Recent immigrants, minority communities, the deaf community, and religious groups have been particularly hard hit by affinity-based investment crimes [13].

Mortgage fraud includes misstatements, misrepresentation, or omissions by underwriters and lenders when they fund, purchase, or insure loans. It includes short sales, loan originations, builder bailouts, equity skimming, home equity lines of credit, illegal property flipping, reverse mortgage fraud, and schemes associated with loan modifications that are disadvantageous to borrowers [14]. In fraudulent foreclosure "rescues", professionals use half-truths and lies to sell services that promise relief but fail to deliver, resulting in the foreclosure the victim sought to prevent.

Identity theft, which has become the fastest growing crime in the United States and Canada, involves unlawfully obtaining personal information through the theft of payment cards and documents from purses or wallets, trash, mailboxes, or automatic tellers; phishing; stealing or hacking into company or government databases; and credit card skimming [15]. It is sometimes referred to as an *enabling* crime because the stolen personal information is typically used to commit credit card fraud or to defraud phone or utility companies, banks, employers, or the government [16]. Although identity theft is often portrayed as a high-tech crime committed through sophisticated means, recent research suggests that most crimes are committed by family members and acquaintances [17]. According to the Bureau of Justice Statistics [18], 39% of victims who knew the individuals who had used their personal information for fraudulent purposes identified them as family or friends. Lipka [19] found that 2–3 million older adults had their identities used by younger family members, mostly adult offspring, for fraudulent reasons between 2006 and 2010.

Investment, or securities, fraud is the use of deception or unfair practices to induce investors to purchase stocks and commodities.

Physical Abuse

This refers to intentionally or recklessly causing bodily injury, pain, or impairment through striking, pushing, burning, strangling, and using physical or chemical restraints. Several specific forms of physical elder abuse have been the focus of recent attention, including intimate partner violence, homicide/murders, and suicide/homicides.

Intimate partner violence involving elderly partners may have begun earlier in life or begin or escalate in old age [20, 21]. The violence may also begin when older adults enter into new relationships. In some cases, the violence appears to be linked to

age-related factors such as retirement and heightened dependency.

Elder homicides and murders are likely to be concealed or staged to look like deaths by natural causes, suicides, or accidents [22, 23]. The cause of death may be suffocation, strangulation, starvation, neglect, over- or undermedication, drowning, causing someone to fall, poisoning, or arson. Elder homicide/suicides typically involve elderly men killing their spouses or intimate partners, often using firearms, and subsequently committing suicide [24]. These killings are likely to be prompted by the physical decline, hospitalization, or institutionalization of either partner. In one study, illness was cited in just over half of the cases; of these, perpetrators were ill in 30% of the cases [25]. Cases originally believed to be "double suicides" or "mercy killings" may reveal, under closer scrutiny, that one partner was not willing [24].

Sexual Abuse

This is nonconsensual sexual contact with an older person, including rape, molestation, lewd or lascivious conduct, coercion, or sexual contact with someone who lacks the capacity to consent [26–28]. Victims are mostly females with impairments (including cognitive deficits) that make them dependent on others [29]. Abusers include spouses and intimate partners, other relatives, paid caregivers, and acquaintances, and, in the case of assaults in long-term care facilities, staff, visitors, or other residents [30]. In nearly one-third of cases, offenders victimize multiple victims or one victim on multiple occasions. Older female victims are more likely than their younger counterparts to live alone, be assaulted in their own homes, and report higher rates of disability, including psychiatric and cognitive problems [31, 32].

Verbal or Psychological Abuse

This includes the use of words or acts to cause fear, humiliation, emotional stress, or anguish. Victims may be threatened with violence, deprivation, or institutionalization; or berated, infantalized, humiliated, ridiculed, cursed, ignored, or isolated. Conrad *et al.* [33] identify "clusters" of psychological abuse, which include isolation, insensitivity and disrespect, shaming and blaming, and threats and intimidation.

Neglect

This is the failure of persons who have responsibility for older adults with mental or physical disabilities to provide the level of care that reasonable people in similar positions would provide. It includes failure to provide medical, health, or mental-health care; assist in personal hygiene; prevent malnutrition or dehydration; or protect against health and safety hazards. Perpetrators include family caregivers, paid attendants, long-term care facilities, and others who have a "duty" to provide care. The question of who has a duty to provide care is controversial and being addressed by courts [34]. Some researchers and practitioners distinguish between unintentional or intentional neglect, with the former resulting from factors such as caregivers' lack of resources, physical strength or stamina, emotional stability, maturity, or skills. In contrast, intentional neglect is when perpetrators withhold needed care out of malice or for financial gain. A highly regarded national incidence study includes the category of "potential neglect", which was defined as a need for assistance that was not being actively addressed regardless of whether anyone had been designated to meet that need [35]. Those at highest risk for potential neglect are nonwhite older adults with low income who are in poor health and lack social support.

Abuse in Long-Term Care Facilities

This includes violence, neglect, psychological abuse, or financial abuse by employees, visitors, or other residents [36–38]. It further includes management practices that endanger residents, including facilities' failure to provide adequate staff, screen or supervise employees, or protect residents from abusers. In the latter, culpability may rest with supervisors, management, or corporate entities.

Others

These forms of elder abuse include violation of basic human (e.g., the right to privacy, confidentiality, to associate with whomever one chooses, and to refuse psychotropic medications or involuntary confinement), abduction, and abandonment. Abduction includes taking elders from their residences and preventing them from returning through force or coercion. Abandonment is when caregivers desert or

forsake elders under circumstances in which reasonable people would continue to provide care. Elders may be left unattended in public settings or hospital emergency rooms, or caregivers may leave elders alone without adequate provisions, quit, or move away without arranging for substitutes. Abandonment by facilities includes discharging patients into unsafe situations.

An Evolving Response

The Federal Role

Elder abuse first came to light in the late 1970s when Congress held two hearings [39, 40]. In 1981, the House Select Committee on Aging issued "Elder Abuse: An Examination of a Hidden Problem", which was followed by "Elder Abuse: A National Disgrace" by the Subcommittee on Health and Long-Term Care of the House Select Committee on Aging. In 1981, the Prevention, Identification, and Treatment of Elder Abuse Act was introduced.

The subsequent development of national policy reflects ever-changing conceptualizations of the problem [41, 42]. Early researchers and theorists viewed elder abuse as an aging issue, focusing on caregiving. This view portrays impaired victims, usually elderly parents, being cared for by adult caregivers who are unwilling or unable to meet the elders' needs as the result of stresses related to the role or external stresses such as jobs, family, and finances [43].

Elder abuse policy also built on the earlier development of adult protective services (APS). In the 1950s, Congress had passed legislation as part of the Social Security Act providing funds for "protective service units" to offer social services and legal assistance to adults with mental and physical impairments who were unable to manage on their own and were being exploited or neglected. Congress further provided funds for demonstration projects, including one at the Benjamin Rose Institute in Cleveland that was headed by Margaret Blenkner, whose team found that recipients of protective services had higher mortality and nursing home placement rates than those who received traditional services [44]. Despite these findings, as well as criticism that the programs were excessively costly and seemed to infringe on clients' rights, Congress amended the Social Security Act in 1974 to mandate APS in all states. Although interest in APS waned in the 1970s, it was reignited by the emergence of elder abuse, and the protective services model emerged as the centerpiece of elder abuse response systems. Today, funding for APS comes from the Social Services Block Grant. States augment the federal funds and some support special projects such as outreach campaigns, training, and model projects.

In the 1980s, Surgeon General Louis Sullivan held a workshop on family violence, declaring it to be a public health and criminal justice issue. He included elder abuse under the umbrella of family violence [43]. The event enlisted the medical and criminal justice communities and was generally seen as a positive development, although some voiced concern about the "criminalization" of elder abuse [43].

A major milestone was reached in 1992, when the American Association of Retired Persons hosted the symposium "The Older Battered Woman", which brought together advocates, researchers, and professionals from the fields of elder abuse and domestic violence prevention to share perspectives and explore the service needs of elderly battered women [45]. The interest generated prompted the Administration on Aging (AoA), Department of Health and Human Services, to fund model projects to explore the relationship between elder abuse and domestic violence and victims' service needs.

Domestic violence theory and practice was greeted with enthusiasm by many in the field of elder abuse who welcomed the focus on empowerment as a counterbalance to the earlier emphasis on vulnerability. It further offered new insights on patterns of victimization and help seeking as well as strategies for protecting victims and encouraging them to seek help. As information and findings emerged from the AoA model projects, communities began to adopt support groups, shelters, restraining orders, and offenders' treatment [46–48]. When the Violence against Women Act (VAWA) was reauthorized in 2001, it defined older women as an underserved population and permitted funds to be used for elder abuse prevention. VAWA further provided grants to assist states, tribal governments, and local governments improve their law enforcement, prosecution, and victim service responses; and training for judges, law enforcement personnel, prosecutors, and the private bar. It also funded the National Clearinghouse on Abuse in Later Life.

Older American Act (OAA) funds, through AoA, have supported research on elder abuse, including

partial funding for a national incidence study on elder abuse [49] and demonstration projects, professional training, state and local social coordination, hotlines, technical assistance, public education, and the National Center on Elder Abuse [43, 50]. OAA funds also support Long-Term Ombudsman programs, which recruit and train volunteers to visit long-term care facilities and accept complaints of poor care. Ombudsmen further report serious problems to state regulatory and licensing agencies, inform residents and their families of available resources and remedies, and assist in relocating residents when facilities are forced to close down. A 1992 OAA amendment created the Vulnerable Elder Rights Protection Program, which introduced the concept that protection was a right. The program promoted advocacy through Ombudsmen programs, legal assistance, and abuse prevention programs. Amendments in 2006 called on states to establish elder justice systems.

The Victims of Crime Act (VOCA) provides for two programs that offer direct relief to victims through the Office for Victims of Crime (OVC). Victims compensation remunerates victims for crime-related expenses, including shelter, counseling, funeral expenses, repairs, and loss of support, and victim assistance provides funds to agencies for community-based services. The programs are funded by federal criminals using fees, fines, and recoveries.

Originally, VOCA programs only served victims of physical violence who cooperated with law enforcement. In the 1990s, VOCA revised its guidelines, extending eligibility to financial crime victims and those whose cases were handled by APS, and encouraging states to develop services to underserved groups, including older adults and financial crime victims. Services for financial crime victims that VOCA funds can now be used for include mental-health services, respite care, credit counseling, public information, outreach, advocacy, and professional training. However, states have discretion in the use of VOCA funds and only a few have changed their priorities in response to the revised regulations [10].

OVC has also funded coalitions for senior advocates, law enforcement officials, and social service providers; culturally specific campaigns to combat financial abuse; materials for banks; and financial abuse specialist teams (FASTs) and elder death review teams. It has also convened several important national forums and focus groups to explore financial crimes.

Federal agencies have made sporadic attempts to promote the development of public policy. In December 2001, NCEA convened the first national summit on elder abuse with support from the AoA and Department of Justice (DOJ). Delegates adopted 21 recommendations, which included declaring elder abuse a public health problem; creating a nationwide structure for abuse prevention activities; calling on the General Accounting Office to study service needs; creating a national APS resource center and a research institute to oversee research, data collection, and program evaluation, and an Executive Order directing federal agencies; and inviting Governors to review policies related to elder abuse.

Another major landmark came in 2002 when Louisiana Senator John Breaux, Chairman of the Senate Special Committee on Aging and Sen. Orrin Hatch, chairman of the Senate Judiciary Committee, introduced the EJA. The following year, the House introduced an identical companion measure, H.R. 2490. The Elder Justice Coalition, a group of national, regional, state, and local advocacy groups and concerned citizens, was formed to promote public understanding and support for the act.

In 2010, after 8 years of advocacy, the EJA was enacted as part of the Patient Protection and Affordable Care Act [51]. The EJA calls for the creation of an Elder Justice Coordinating Council to facilitate coordination at the national level and provide guidance to states, and increased funding to APS and Ombudsman programs. No appropriation for implementing the provisions has been appropriated to date.

On June 14, 2012, the White House, in collaboration with the newly created Administration for Community Living (which includes the Administration on Aging, the Office on Disability, and the Administration on Developmental Disabilities) and the Consumer Financial Protection Bureau (CFPB), created under the Dodd–Frank Wall Street Reform and Consumer Protection Act, hosted the first White House Symposium on Elder Abuse. During the event, officials from federal departments reported on new and current initiatives, including the launch of the Elder Justice Coordinating Council called for in the EJA and grants to test innovative elder abuse prevention programs.

Several federal initiatives have addressed court involvement in elder abuse. In May 2005, the

National Center for State Courts launched the Elder Abuse and the Courts Working Group, which includes representatives from the judiciary, criminal justice agencies, APS, advocacy and legal organizations, and government officials, to build court capacity to address elder abuse. Strategies adopted by the group include a training program for the judiciary and court staff, identifying effective court responses, and a strategic plan. The initiative received the support of the Conference of Chief Justices and the Conference of State Court Administrators.

Elder abuse has also been addressed in national efforts to safeguard guardianship, with an emphasis on guardianship as a remedy for abuse and preventing abuse by guardians, courts, and others. The National Guardianship Network, comprising 10 national advocacy organizations, has sponsored three landmark conferences, beginning in 1987 with "Wingspread", which addressed statutory and practice changes, and followed in 2001 with "Wingspan", which produced 68 recommendations in law, practice, education, and research [52]. Delegates to the Third National Summit on Guardianship, held in 2011, focused on postappointment issues, adopting recommendations for guardian standards, and best practices that courts, legislatures, and others can take to improve access to guardians and oversight.

Other efforts to reform guardianship include the Uniform Guardianship and Protective Proceedings Act (UGPPA) of the Uniform Probate Code and the National Probate Court Standards, which were developed by the National College of Probate Judges.

States' Role in Elder Abuse

Despite these waves of interest and activity at the national level, the federal government provided little guidance or support to states to develop policy and services. By 1985, 44 states had enacted laws to protect the elderly that were largely patterned after those developed decades earlier for children [53]. Child-protective services were based on the assumption that children were incapable of seeking help and enlisted the help of those most likely to observe abuse – teachers, pediatricians, child-care workers, social service providers, and others – to report to child-protective services programs, which dispatched investigators to assess risk. Similarly, APS programs assumed that older abused adults would be incapable of seeking help and, therefore, enlist health and social service providers to report to APS agencies, which investigate using risk assessment tools similar to those used by child-protective services workers. Abuse reporting laws typically contain definitions of abuse and specify who must report, who *may* report, to whom reports are made, time requirements, what must be reported, penalties for failure to report and impeding investigations, provisions for confidentiality, and immunity from civil suits or prosecution for those who make reports in good faith. Some state laws contain provisions for cross reporting among agencies authorized to conduct investigations (see below). Some state and local APS units operate 24-hour hotlines to make reporting easier and quicker, and some have developed databases of offenders.

Other agencies play primary or supportive roles in responding to abuse reports. The involvement and responsibilities of the agencies listed below are determined by state and federal statutes and depend on factors such as the type of abuse, its severity, whether the abuse constitutes criminal conduct, whether the abuse occurred in residential or institutional settings, and whether institutions receive Medicare or Medicaid funding.

- *Local law enforcement*: Local police and sheriffs investigate criminal cases, apprehend suspects, and preserve and present evidence. They may also assist in securing and enforcing protective orders and check on the well-being of vulnerable persons believed to be in danger.

- *Bureaus of Medicaid fraud and elder abuse*: Typically located within offices of attorneys general, the bureaus investigate and prosecute fraud in the administration of Medicaid and the misappropriation of patient funds in facilities. They also review complaints of patient abuse and neglect when the facilities or their employees are responsible.

- *Long-term care Ombudsman program*: In addition to their federal responsibilities described earlier, a few states mandate Ombudsmen to investigate abuse and neglect reported in long-term care facilities under state reporting laws.

- *State licensing agencies*: Abuse and other problems occurring in long-term care facilities may

also be reported to state agencies responsible for licensing and monitoring them.

- *Probate court investigators*: Some communities have probate court investigators who investigate proposed guardianships and monitor complaints of abuse by guardians.

Although reports to APS have steadily increased [54], many have acknowledged that the APS approach alone is inadequate. Criticism of mandatory reporting has ranged from the fact that enforcement depletes funds intended for services to claims of ageism on the grounds that they assume elders are incapable of determining whether reporting is in their own best interest. Some claim that mandatory laws are inappropriate in the absence of programs that have been found to be helpful [55].

Practical concerns have also been raised about APS workers' authority. Unlike their colleagues in Child Protective Services (CPS), APS workers can only intervene with the consent of clients unless one of the two conditions apply: (i) when clients lack the capacity to consent to services and the potential negative consequences of failure to act are high, involuntary interventions may be needed, and (ii) abuse constitutes criminal conduct, and it must be reported to the police.

These exceptions, however, are not clearly defined or easily operationalized. There are, for example, no universally accepted standards for determining when someone has sufficient decision-making "capacity" to consent to APS services. Furthermore, workers who believe that crimes have been committed and contact law enforcement report variability in how criminal justice personnel respond. The extent to which APS and law enforcement are able to collaborate or coordinate their efforts also varies significantly across the country and even within states.

In cases that do not fall within these two categories, APS can only intervene with victims' consent. Workers' role is to inform their clients about available services and encourage them to accept help. Many victims, however, refuse out of fear, shame, or loyalty toward their abusers. As practitioners came to understand the formidable social, physical, cultural, and financial barriers that victims face in seeking help, they turned to the fields of domestic violence, substance abuse, victim advocacy, psychology, and others for guidance.

State programs vary widely in how abuse is defined; eligibility for services; and how reported cases are assessed, prioritized, and responded to. Because no federal agency routinely collects information about abuse reports, there is no reliable data on which to develop a national profile of reported cases that could be used to estimate the demand for services and the associated staffing needs and costs.

States have enacted other laws to address abuse. They have strengthened and extended the use of criminal and civil remedies and penalties; modified requirements for compensation, strengthened consumer protections, and enhanced restitution. Examples include the following:

- The creation of specific elder abuse crimes that acknowledge older adults' vulnerability and make it easier to hold family members and others in positions of trust accountable.
- Special classifications for elderly victims in robbery, assault, battery, murder, telemarketing, consumer fraud, and other crimes.
- Penalty enhancements, such as longer prison sentences, when victims are elderly or when offenders targeted elders. Some states treat advanced age as an aggravating factor in sentencing.
- Prioritizing or expediting the handling of civil and criminal cases involving elders.
- Special trial provisions such as videoconferencing for older victims who are unable to come to court because of mobility problems.
- Extending compensation. Although compensation programs do not typically compensate victims for the loss of personal property, many states do so when the property lost is considered essential to elders, such as eye-glasses or medical equipment. Recognizing the economic hardship that even a small loss might inflict on elderly victims with fixed incomes, some programs have waived minimum loss and deductibility provisions in elder abuse cases (minimum loss standards preclude claims for less than specified amounts, and deductibility provisions require victims to absorb a portion of the losses in the same way deductibles are paid with private insurance policies).
- Special provisions for elderly victims in restitution laws, such as making restitution for medical and psychological treatment mandatory for elderly victims of assault, battery, assault with a

deadly weapon; breaking and entering; or other serious crimes.

- Incentives for private attorneys to accept elder abuse cases, including increased damages when perpetrators target older victims, when they are criminally charged and fail to return victims' property, are in positions of trust and confidence, or have acted with recklessness, oppression, fraud, or malice. Some states allow for causes of action to survive after victims die. The rationale for these provisions is that attorneys' fees are typically based on damages, which are based on life expectancy and earning power, and therefore, significantly lower for older clients. In addition, pain and suffering claims do not survive the death of the plaintiff in most tort cases, raising concerns that plaintiffs will die before cases are settled.
- Provisions preventing abusers from inheriting from their victims.

Special Provisions for Institutional Abuse

Many states have created distinct measures to address abuse in institutional settings. Authorities are granted special powers to investigate reports of abuse in nursing homes and care facilities, and to revoke or deny operating permits to institutions that violate laws or allow employees to commit offenses against elders in their care. "Whistle-blower" provisions to protect employees who report abuse from retaliation by their employers are becoming more common. States are also beginning to establish registries of caregivers and medical personnel convicted of elder abuse to allow potential employers to conduct more complete criminal history background checks of applicants for positions involving care of the elderly. A number of states have passed residents' bills of rights, which prohibit mental and physical abuse of patients and encourage the filing of grievances or complaints by or on behalf of the resident.

State Initiatives to Improve Their Response

States are taking steps to improve their policy responses to elder abuse through summits, consensus conferences, and state task forces and councils [56–58]. Among the measures they have addressed are the need for coordination among the various state and federal agencies involved in elder abuse, standardized definitions of abuse, establishing how cognitive impairment affects legal investigations, improving professional reporting, funding for APS and other services, research into risk factors and promising interventions, and training.

Services for Victims

Service developers have taken an improvisational approach to abuse prevention, drawing from the many disciplines described earlier, including child-protective services, public health, domestic violence, and others. Common services needed by victims are listed below. Their availability varies significantly across the country [59].

- *Shelters*: Elderly victims may need shelter for many reasons. Some require safe haven to avoid further victimization. Others need shelter when they have been evicted from homes or apartments, abandoned by caregivers, when abusive caregivers have been fired or arrested, when essential utilities have been discontinued, or when their homes are unsafe or unhealthy as a result of neglect. A variety of options exist, including rooms in battered women's shelters that have been adapted for women with disabilities, temporary stays in residential care homes or apartments, and free-standing shelters specifically designed for elderly victims.

- *Services for caregivers*: The risk of abuse by caregivers can potentially be reduced by enhancing caregivers' skills, providing them with information about disease progression and how to manage difficult behaviors, and reducing stress through respite care, support groups, counseling, and financial relief.

- *Emergency funds*: Funds may be needed for food, emergency caregivers, mortgage payments, transportation, utilities, locks to secure victims' homes, court filing fees, and repairs and relocation costs.

- *Legal assistance and advocacy*: Victims may need help to secure orders of protection; annul bogus

marriages and adoptions; sue for civil recoveries; recover restitution; create or revoke misused powers of attorney; and intervene with creditors, landlords, or public benefits programs.

- *Victim witness assistance programs*: These programs help victims whose cases are in the criminal justice system. They provide information about the court process and status of cases; court accompaniment; and assistance in securing compensation, restitution, and community services.

- *Mental-health assessments and services*: Assessments may be needed to determine whether elders are capable of meeting their basic needs, making decisions about services, entering into contracts, offering testimony, and protecting themselves against abuse. Assessments of alleged abusers' mental status are sometimes needed to determine whether they pose a danger to others and need treatment. Assessments range from simple "shorthand screening tools" to comprehensive batteries of tests. Groups or individual counseling may address immediate or long-term traumatic stress, provide emotional support, assist victims explore options, and address codependence, depression, and diminished self-esteem.

- *Support services*: Services that are believed to decrease vulnerability and enhance independence include daily money management, meals, attendant care, adult day centers, friendly visitors, and telephone reassurance programs.

- *Guardianship (see* **Guardianships of Adults***)*: This legal proceeding, in which courts appoint individuals or agencies to manage the personal and/or financial affairs of people who lack sufficient mental capacity to manage on their own and who are vulnerable to abuse, neglect, or other harm, may be used to prevent abuse or mitigate or undo the impact of abuse. There are two types: "guardianship of person" refers to the handling of an individual's personal needs such as medical care, food, clothing and shelter; "guardianship of estate (or property)" refers to the management of financial resources and assets. Guardianship is often the only alternative available for appointing surrogates for people who have lost decision-making capacity or when less restrictive legal devices such as trusts or powers of attorney have been misused. Guardians may be family members, professionals in private practice, private nonprofit agencies, or public entities ("public guardians").

- *Fraud prevention programs*: A variety of programs have been created to explore and respond to fraud, many of which are partnerships between commercial enterprises and public and private, nonprofit agencies. They range from programs designed to alert older adults to scams to peer counseling programs aimed at addressing victims' emotional and social needs. Examples include a national hotline that is a collaboration among the National Adult Protective Services Association (NAPSA), the Financial Planning Association (FPA), Baylor College of Medicine, the Investor Protection Trust (IPT), and Kiplinger's Personal Finance [60].

Challenges and Innovations

Despite progress in some areas, the service response to elder abuse remains inadequate, a situation that is getting worse with recent retrenchments resulting from the recession. Poor coordination in the administration and delivery of services has exacerbated the problem. Another barrier is the lack of service models with demonstrated success on which new programs can be patterned. These challenges are briefly described below along; also described are the examples of ways that communities are responding.

An Inadequate Supply of Services

Services to prevent, evaluate, assess, treat, or mitigate the effects of elder abuse are scarce, fragmented, of varying quality, and poorly understood by the public, professionals, and those they were created to serve. Although shortages in APS, Ombudsman, law enforcement, daily money management, and other key services have long been recognized, newly recognized needs have also emerged. These include the need for surrogate decision-makers, services and advocacy for victims of financial abuse, programs

for offenders, and culturally specific services [10, 57]. Surrogate decision makers may be needed when abused or vulnerable elders lack capacity to act on their own behalf. In many cases, the only way to obtain authority over someone who has already lost capacity (and who has not executed an advance directive such as a durable power of attorney before the onset of incapacity) is guardianship, which is costly, stigmatizing, and restrictive. Although advocates have called for less restrictive alternatives, few in fact are available. Examples of situations in which less restrictive alternatives may be appropriate are when decision-making authority is needed for single actions, such as revoking trusts or powers of attorney or authorizing placements into skilled nursing facilities. An initiative to explore alternatives carried out in San Francisco suggested that promising areas for exploration include limited guardianships (limited in authority or duration), the expanded use of advance directives, time-limited protective placements, and ethics committees [61].

Programs are needed that reflect cultural variations in how abuse is perceived, the roles and expectations of family members, attitudes toward abuse and services, confidentiality, immigration status, and caregiving responsibilities and expectations.

Few programs or services exist for abusers and would-be abusers. Notable exceptions include a self-assessment guide to help caregivers identify their own risk of becoming abusive (Office of Geriatric Medicine/Gerontology at Northeaster Ohio Universities), a treatment group for offenders that raises members' awareness about the impact of their actions on victims and changes culturally derived attitudes (Lifespan of Rochester, New York), and educational programs for long-term care workers [62]. Other approaches that have been advanced include instruction for caregivers in handling difficult behaviors and respite programs.

Relatively little attention has been paid to the needs of financial abuse victims, many of whom suffer repeat victimization. These include legal assistance to recover assets or restitution, advocacy with creditors and public benefits administrators, and mental-health counseling to address victims' emotional and mental-health needs [10].

The important role that support services such as transportation, nutrition programs, in-home support services, and case management play in reducing vulnerability is coming into sharp relief as these services become scarcer.

Lack of Coordination

Lack of coordination among law enforcement, social service agencies, courts, health-care providers, and others further reduces the likelihood that victims will receive help. Existing services are funded through multiple state and federal programs, which makes it difficult for agencies to create comprehensive and seamless service systems. For example, VAWA funds are intended for programs that serve elderly victims of domestic violence and sexual assault, excluding male victims and victims of other forms of abuse. VOCA funds have historically served only victims of violent crimes. Providing a comprehensive range of services, therefore, requires drawing from multiple funding streams, each with its own administrative requirements and policies, eligibility criteria, funding cycles, and bureaucracies. Few agencies have achieved comprehensive arrays of services, opting instead to develop referral networks and agreements with other community agencies, an approach that runs the risk of victims "falling between the cracks". Further, divergent perspectives and ideologies have impeded cooperation and coordination among some service providers. For example, because domestic violence theory and practice is grounded in feminist ideology and attributes domestic violence to societal attitudes about women, domestic violence advocates have been unwilling (or prohibited owing to restrictions imposed by funders) to serve male victims or victims whose situations do not fit the traditional analysis. Tensions have also arisen between the elder abuse and disability rights communities with respect to the extent to which vulnerable older adults maintain control over their own care. Many disability rights advocates believe that beneficiaries of publicly funded personal care programs should have maximum authority to hire whomever they want, whereas many in the field of elder abuse believe that frail beneficiaries' vulnerability to coercion, threats, and undue influence places them at an unfair advantage when it comes to exercising their roles as health-care consumers, and call for greater control over the screening and monitoring of workers.

A primary vehicle for coordinating services is multidisciplinary teams (MDTs), which have become

a hallmark of elder abuse prevention [63, 64]. Teams provide a forum for professionals from diverse disciplines and agencies to coordinate their efforts; discuss difficult cases; learn what services, approaches, and resources are available from other agencies and disciplines; share information and expertise; identify and respond to systemic problems; and ensure offender accountability. Typically, team members include health and social service providers, law enforcement personnel, Ombudsmen, mental healthcare providers, physicians, advocates for persons with disabilities, lawyers, domestic violence advocates, case managers, and many others.

Several specialized teams have emerged [63, 64]. FASTs provide consultation and support to professionals who investigate and respond to financial abuse cases [65]. Members include people with expertise in real estate, insurance, banking practices, investments, trusts, estate and financial planning, and others, who can explain financial products and industry standards, regulations, and practices. Some include representatives from federal law enforcement and regulatory agencies with jurisdiction in financial crimes, including the Federal Trade Commission, the Federal Bureau of Investigation, and the Postal Service.

Elder fatality review teams, which were patterned after child and domestic violence fatality review teams, evaluate injuries and causes of death, attempt to distinguish accidental from nonaccidental deaths, shed light on events leading up to deaths, identify systemic problems, and aid in prosecutions. They include coroners/medical examiners, law enforcement, prosecutors, state agencies that oversee long-term care facilities, and others [66].

Forensics teams focus on building legal interventions including criminal prosecution and guardianship. Members include experts in geriatric medicine, civil and criminal law, neuropsychology, and advocates for persons with developmental disabilities and residents of long-term care facilities. Team members provide medical and cognitive assessments, consultation during and between meetings, and testimony in legal proceedings. They also make recommendations for training and research [67, 68].

Lack of Evidence-Based Practice

The number of abuse prevention services that have been evaluated is extremely low, with one effort to identify rigorous and systematic evaluations of elder abuse finding just eight studies that met the reviewers' criteria for inclusion [69]. Of those reviewed, their findings were disappointing. Most found that the interventions under investigation had had no significant impact on case resolution and at-risk caregiver outcomes. They reported mixed results regarding the programs' impact on professional knowledge and behavior related to elder abuse. The need for improved program evaluation was among the priorities defined by expert practitioners and researchers during a groundbreaking Research-to-Practice Consensus Workshop [70].

A few efforts have been made to gather anecdotal and qualitative data on services. The Archstone Foundation's Elder Abuse and Neglect Initiative, a multiyear program that piloted promising approaches to education and training for mandated reporters, MDT development, systems analysis, forensic centers, and financial protection, also included a cross-cutting evaluation of the programs [71, 72].

Barriers to the Criminal Justice System

Although progress has been made in prosecuting elder abuse cases in some areas, the criminal justice system's response to abuse varies greatly across the country and a wide range of barriers persist. These range from victims' reluctance to participate in the process, barriers to accessing courts, and lack of training by law enforcement.

Victims may be unwilling or unable to participate in criminal proceedings as a result of disability, shame, fear, or not wanting to see perpetrators (particularly family members) punished. They may have cognitive or communication impairments. Some have codependent or enmeshed relationships with their offenders. Coming to court can also be particularly traumatic to frail older people. In addition, elderly victims are unlikely to receive restitution for financial losses, assistance by victim advocates, compensation for crime-related expenses, or services to help them recover from crimes, reducing their incentive to participate.

Acknowledging that many elderly victims want justice but would prefer to avoid adversarial legal confrontations, a few communities have explored restorative justice approaches [73]. Restorative justice, which is based on the premise that victims,

their communities, and their offenders all have a stake in repairing the harm caused by crime and preventing recurrences, focuses on victims' need for safety, information, validation, restitution, and help to recover and heal. It assumes that certain conflicts, particularly those involving families, can best be resolved by repairing relationships and controlling risk, rather than by simply punishing offenders. Specific interventions include victim–offender mediation (also called victim–offender reconciliation or dialog), a process in which victims meet offenders in a safe, structured setting and engage in discussions with the help of trained mediators. Conferences (also called talking, accountability, or responsibility "circles") provide an opportunity for people who are directly and indirectly affected by conflicts, including victims' and perpetrators' families, friends, supporters, health and social service providers, spiritual advisors, and key community members, to express support for victims and offenders, agree on offenders' responsibilities, consider alternatives, and negotiate outcomes. Community reparative boards are typically composed of trained citizens who conduct public, face-to-face meetings with offenders who are ordered by courts to participate. Members of the board discuss the offenses and their negative consequences and propose sanctions.

Restorative justice programs may be carried out with court involvement, under court supervision, or as an alternative to court intervention. When courts are involved, interventions may be carried out at different points in the process (e.g., as a pretrial diversion after arrest but before charging, before sentencing, as conditions of probation, as alternatives to sentencing after offenders plead guilty, or even while offenders are in prison).

Even when cases are reported to law enforcement, the outcomes are often disappointing. Elder abuse is a low priority within many law enforcement agencies, and this is particularly true of certain forms of abuse including financial exploitation and abuse in long-term care facilities. Few law enforcement officials and prosecutors have training or experience working with victims. Persistent beliefs that certain types of abuse, including the misuse of powers of attorney, are strictly civil matters prevent some cases from being filed or investigated. In financial abuse cases, key evidence is likely to be in the hands of perpetrators or financial institutions.

A few innovative courts have addressed these barriers. Elder courts, which exist in a few communities, feature separate calendars (typically in the late morning) and case managers to explain the court system to victims, describe what will happen to perpetrators, arrange for needed services such as transportation or court accompaniment, assist in making special arrangements such as videotaping testimony, request victim compensation, assist victims file for orders of protection, maintain directories of community services, make referrals, and follow-up to ensure that clients' needs are met. When elders requesting orders of protection are unable to appear in court, the proceedings may be conducted in chambers, with a judge issuing orders by telephone.

Other programs to improve access include family justice centers, which house police, prosecutors, forensic experts, and victim advocates from public and private nonprofit agencies in the same building, and court-operated self-help clinics, which provide access to courts by people who cannot afford lawyers. Efforts to improve restitution recovery rates include measures such as employing collections investigators in the court system to see that victims receive court-ordered restitution.

Procedural innovations to improve law enforcement's response that have been instituted include specialized elder abuse units within police departments and prosecutors' offices, legal centers that facilitate coordination between the civil and criminal justice systems, coordinating councils and MDTs that promote exchange between law enforcement and other networks, and the use of vertical prosecution (a single attorney handles a case from the beginning to the end of a prosecution). Training initiatives have enhanced law enforcement officers' and prosecutors' expertise in working with elderly victims and people with disabilities.

The need for forensics research and expertise in elder abuse has been widely acknowledged [74]. In 2000, the US Department of Justice convened a roundtable of researchers, practitioners, and policy makers to address the need for forensic research and expertise to review the current state of the art and challenges involved in identifying and substantiating abuse and neglect. The group called for research to establish abuse evidence-based "markers", including research on bruising, falls, pressure ulcers, weight loss, nutritional deficits, and other factors. Delegates further called for clearing houses of forensics experts

available to testify or consult in cases, and databases of documented findings that can be used in the prosecution of abuse and neglect. A subsequent meeting was held in 2004.

These events led to several new studies and demonstration projects. The University of California at Irvine College of Medicine conducted a study to develop baseline data on bruising, which can be used to distinguish abusive from accidental bruises [75, 76], and participated in another that explores variations in the occurrence of pressure ulcers in skilled nursing facilities [77]. After Arkansas passed the first state law requiring nursing homes to report all deaths to local coroners in 1999, a team of researchers investigated the medical examiner's investigative process and gather impressions about markers that might indicate mistreatment and identify barriers to accurate assessments of abuse [78].

Programs introducing forensics knowledge into practice include elder abuse death review teams and forensics centers, which were described earlier. In response to state legislation, the Medical Training Center at the University of California at Davis developed a medical forensic form that provides instructions, guidance, and examination protocols to assist medical professionals in examining victims of elder and dependent adult abuse and neglect. Several APS programs have hired forensics nurses or consultants to assist workers investigate cases, and forensics findings in elder abuse have been included in training programs for medical and nursing students, APS workers, and others.

Capacity and Undue Influence

Investigating, substantiating, proving, and responding effectively to abuse often requires assessing mental capacity and undue influence, which can be highly complex (*see* **Capacity to Consent to Medical Treatment**, **Capacity for Independent Living**, and **Guardianships of Adults**). Mental capacity is the cluster of mental abilities needed to perform daily tasks, and different tasks require different skills. Decision-making capacity is the ability to make and communicate decisions, understand their consequences, and act in one's own self-interest. It is also task specific; determining whether someone has decision-making capacity requires looking at the decision in question. Professionals are generally in agreement about how to evaluate decision-making capacity for certain decisions (e.g., "testamentary capacity" or the capacity to execute wills); there is less agreement, however, about decisions that are commonly questioned in elder abuse cases such as the capacity to get married, give gifts, consent to sexual relations, and select and supervise home-care workers.

Although simple assessment tools are readily available that provide gross assessments of cognition, many forms of abuse are believed to be related to subtle deficits in "executive function", those higher level cognitive skills that affect judgment, the ability to plan, *etc.*, which require more precise and costly methods to evaluate. New discoveries are further creating new challenges. For example, the Alzheimer's Association and National Institute of Neurological Disorders and Stroke [79] recently acknowledged an emerging consensus that people who eventually develop Alzheimer's experience a period of minimal impairment, called *mild cognitive impairments* (MCIs), preceding full onset of the disease [80]. Others suspect that MCIs may heighten vulnerability to financial abuse [81, 82].

Undue influence may also interfere with decision making. It is the concerted, deliberate effort to assume control over another person's decision making through psychological control and manipulation that involves the use of power and control to exploit trust, dependency, and fear of others, a process that typically occurs over time [83, 84]. Influencers play on emotional vulnerability and dependence by endearing themselves to victims to gain their compliance and trust and to foster dependency. Victims of coercion typically feel pressured to do what they are told, whereas victims of undue influence may not even be aware that they are being manipulated. They may even defend or collude with perpetrators.

Although undue influence has been addressed in the psychological and legal literature, there has been little analysis or research related to elder abuse available to provide guidance to courts, policy makers, and practitioners. In attempting to fill this gap, the San Francisco Superior Court conducted a literature review of the legal and psychological literature on undue influence, an analyses of cases, and focus groups with lawyers, APS workers, and public guardians [85]. The project identified four core elements of undue influence: (i) victim vulnerability resulting from permanent, situational, or induced

impairments; emotional distress, personality characteristics, *etc.* (diminished capacity, stress, grief, depression, and acquiescent personality); (ii) power differential between victims and abusers (guardian and ward, caregiver and care receiver, professional and client, and spiritual advisor and advisee); (iii) actions, tactics, or circumstances suggestive of undue influence, including specific actions taken by the alleged perpetrators (isolating the elder, discussing transactions in unusual settings or at unusual times, insistence on haste, poisoning relationship; and (iv) outcomes that are perceived as unfair, unnatural, or unethical by objective third parties (sale of property significantly below market value, gifts that are not commensurate with the relationship, and lawyers as beneficiaries of clients' estates).

Summary and Conclusion

The development of practice and public policy in elder abuse has progressed slowly, owing in large part to the widely divergent and ever-changing definitions and conceptualizations that have characterized the field. Variations in how abuse and victims are defined in research, policy, and practice reflect fundamental differences in how elder abuse has been viewed: as an aging and caregiving issue, a protective services matter, a form of domestic violence, a public health concern, just to name a few. While this diversity of approaches has enriched practice by providing a plentiful source of interventions, insights, and models to draw from, it has also led to inconsistent and disjointed responses, competition among proponents of different approaches, and in some instances, incoherent policy.

Recent developments have created additional challenges. An apparent epidemic in new and complex forms of financial abuse comes at a time when protective services, Ombudsman programs, courts, law enforcement, and other vital safety net services are experiencing sharp retrenchments. Similar reductions in long-term services and supports (LTSS) have brought into focus the critical role these services play in reducing vulnerability, supporting independence, and enabling personal choice.

Elder abuse prevention has clearly entered a new phase, with "elder justice" emerging as the dominant framework. As defined by the authors of the EJA, elder justice is the right to live free from abuse, neglect, and financial exploitation. The EJA further seeks to establish for the first time a national structure for elder abuse prevention, which may create an imperative for some level of standardization and uniformity. Furthermore, new "ecological" models have been proposed that acknowledge both interpersonal and social influences in elder abuse, supporting the need for more expansive approaches to policy and practice. However, while an expanded paradigm may provide a more comfortable "fit" conceptually, applying it to service delivery and practice presents new challenges. For starters, it requires defining what services and interventions are needed to ensure justice and who will provide them.

Clearly, the recent focus on improving access to the legal system for those with impairments through statutory and procedural innovations; training to legal professionals and advocates, and forensics research and expertise are steps in the right direction. Elder courts and forensics centers are indeed important components. However, to a great extent, the legal system addresses situations in which individual's rights have already been violated. Clearly, the preferred approach is proactive measures to prevent abuse from occurring in the first place.

Some promising steps have already been taken. The federal government has acknowledged that consumer protections are an essential component of elder justice by establishing the Office of Financial Protection for Older Americans within the Consumer Financial Protection Bureau. The office has adopted a broad definition of consumer protection that includes working with the financial industry to adopt safeguards against financial exploitation; studying ways that older consumers, investors, and homeowners are being targeted by predators; and developing materials to educate fiduciaries about their responsibilities. The enthusiastic commitment to cooperation and coordination by the CFPB, Administration for Community Living (Department of Health and Human Services) (ACL), DOJ, Social Security Administration (SSA), financial industry, and others on display at the 2012 White House World Elder Abuse Awareness Day symposium is promising, but promises need to be acted on and states need to follow suit.

Further, to really have an impact, "justice promotion" practices need to be fully integrated into (LTSS) services, including fundamental programs such as in-home support services, congregate and home delivered meals, transportation, adult day care, geriatric

mental health, and home health care. As the LTSS system adopts integrated models and moves beneficiaries into managed care, the specters of exploitation and neglect loom large. These developments, however, also potentially offer new and unprecedented opportunities to integrate elder justice protections at the front-line level. Simple interventions could, for example, include adding risk indicators to universal assessment and intake instruments. Asking simple questions could potentially determine whether older beneficiaries have been targeted by predators or have mild, undiagnosed cognitive impairments that place them at risk of losing homes or savings. Elder justice advocates could further play an important role in ensuring that LTSS program implementation and enrollment is informed by state-of-the-art research and knowledge about cognitive capacity and decision making, thereby ensuring that older consumers' autonomy and right to exercise choice are protected while further identifying high risk situations. Taking advantage of these opportunities will require state and federal leadership and support.

Elder justice cannot be ensured solely by courts, legal professionals, and advocates. Rather, it requires proactively promoting elder justice in everyday practice. Ensuring individual freedom, autonomy, and fairness; thwarting predation; and ensuring a timely and aggressive response to abuse will further require mechanisms for identifying and responding to systemic needs and problems on an ongoing basis. Perhaps the MDT approach that has led to more integrated and holistic approaches to serving individuals can be applied to policy and program development. The idea of a state elder justice MDT is in fact currently being explored in California, with potential implications for other states and federal policy development. The expanded approach to elder abuse prevention that the elder justice paradigm offers will be a boon to the field if policy makers and stakeholders at the federal, state, and local levels have the foresight and will to adopt it.

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LISA NERENBERG