

NCSC

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
www.ncsc.org



Elder Abuse Curriculum for Judicial Officers

Created by NCSC's Center for Elders and the Courts in partnership with the Center of Excellence on Elder Abuse and Neglect at the UC Irvine School of Medicine

INSTRUCTOR'S MANUAL

...serving the nation's courts on issues related to aging, probate, and elder issues.



Center for Elders and the Courts
www.eldersandcourts.org

NCSC Project Staff

Brenda Uekert, PhD
buekert@ncsc.org

Susan Keilitz, J.D.
skeilitz@ncsc.org

Theresa Jones, M.A.
tjones@ncsc.org

UCI Project Staff

Laura Mosqueda, M.D.
mosqueda@uci.edu

Mary Twomey, M.S.W.
mtwomey@uci.edu

Elaine Chen, M.S.
eachen@uci.edu



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This project was supported by Grant No. 2008-056 by the Retirement Research Foundation of Chicago. Points of view are those of the authors and do not necessarily represent the official position or policies of the Retirement Research Foundation of Chicago.

About the Retirement Research Foundation of Chicago

The Retirement Research Foundation of Chicago is devoted exclusively to improving the quality of life for our nation's older population. It is especially committed to improving conditions for those who are vulnerable due to frailty associated with advanced age, those who are economically disadvantaged and at greatest risk of falling through the safety net, and those who experience disparities related to race and ethnicity. Visit the RRF at www.rrf.org.

Project Advisory Group

The project advisory group contributed useful guidance throughout the duration of the project. The Honorable John E. Conery and the Honorable Janice Martin served as judicial educators in the pilot test of the curriculum.

The first pilot test of the curriculum occurred on June 8, 2011 in Destin, Florida. We are grateful to the Louisiana Judicial College and the Louisiana State Bar Association for their participation. The second pilot test of the curriculum occurred on June 23, 2011 in Scottsdale, Arizona. We are appreciative of the Arizona Supreme Court Judicial Conference for its participation.

Members of the project advisory group include:

Mike Bridenback
Court Administrator, 13th Judicial Circuit
Tampa, FL

Honorable John E. Conery
16th Judicial District Court
Franklin, LA

Honorable Julie Conger, Rtd.
Superior Court of California, County of Alameda

Honorable Janice Martin
Jefferson District Court, Kentucky

Rebecca C. Morgan, Esq.
Center for Excellence in Elder Law
Stetson University, FL

Mary Joy Quinn, Director of Probate
Superior Court of California
County of San Francisco

Honorable John Voorhees
Bath, ME

Curriculum Goals and Objectives

Module One: Goal & Objectives

Goal

Judicial officers will understand the physical, emotional, and cognitive effects of aging and their impact on the vulnerability of older persons.

Objectives

At the conclusion of Module One, judges should be knowledgeable about

- Demographics of aging
 - Myths and facts of aging
 - Common aspects of aging
 - Age-associated vulnerabilities
-

Module Two: Goal & Objectives

Goal

Judicial officers will learn how to recognize elder abuse and neglect in a variety of court settings.

Objectives

At the conclusion of Module Two, judges should be knowledgeable about

- General definitions of elder abuse, neglect & exploitation
 - State laws relevant to elder abuse
 - Prevalence & incidence of elder abuse
 - "Red flags" suggestive of abuse
 - Capacity, consent, & undue influence
-

Module Three: Goal & Objectives

Goal

Judicial officers will learn how to craft court responses that effectively address elder abuse, neglect & exploitation in a variety of settings.

Objectives

At the conclusion of Module Three, judges should be knowledgeable about

- State elder abuse reporting requirements
 - The importance of judicial leadership
 - Strategies to build community-based responses
 - Information needed to address elder abuse in a variety of court settings
-

Materials

The following materials are required to successfully complete each module:

Module One	Module Two	Module Three
<p>Provided Materials</p> <ul style="list-style-type: none">• Module One curriculum PowerPoint presentation• Instructor's manual <p>Additional Materials</p> <ul style="list-style-type: none">• State-specific demographics (Slide 6 / Appendix A)	<p>Provided Materials</p> <ul style="list-style-type: none">• Module Two curriculum PowerPoint presentation• Instructor's manual <p>Additional Materials</p> <ul style="list-style-type: none">• Relevant state statutes (Slide 7)• Mickey Rooney Aging Committee Hearing Interview• DVD Responding to Elder Abuse: <i>What Judges and Court Personnel Should Know</i>	<p>Provided Materials</p> <ul style="list-style-type: none">• Module Three curriculum PowerPoint presentation• Instructor's manual• NCSC elder abuse benchcard• Adaptation of benchcard by Florida's 13th Judicial Circuit• Small group exercises (case scenarios and questions)

Instructors are required to obtain additional materials.

Additional Materials- Module One

- Slide 6 requires state specific demographic information. This information is easily found at the U.S. Census Bureau website (<http://www.census.gov/>). Please see Appendix A for an example of a state-specific demographics slide.

Additional Materials- Module Two

- Slide 7 requires the instructor to insert relevant state statutes that pertain to adult protective services law with definitions and any other relevant civil laws, criminal laws, or both (if applicable).
- The Mickey Rooney Aging Committee Hearing Interview (4 minute video clip) is imbedded in the PowerPoint. It can also be downloaded at <http://eldersandcourts.org/curriculum/index.html>
- The DVD Responding to Elder Abuse: What Judges and Court Personnel Should Know must be purchased directly from the Office for Victims of Crime for \$5.00. Please visit <http://ovc.ncjrs.gov/notices/elder-abuse/index.html> to purchase the DVD.

Reprinting or Adapting the Curriculum

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Note to the Instructor

The text accompanying each slide includes instructions pertaining to the slide, talking points that can be delivered to participants, or both. Please be advised that the instructions provided for each module are meant to supply general guidelines as to how each slide can be used. Instructors may modify the delivery of the slides as needed.

Please visit the Center for Elders and the Courts website located at <http://www.eldersandcourts.org> for additional resources related to topics discussed in the curriculum.

Questions? Contact Brenda Uekert, PhD (buekert@ncsc.org) or Susan Keilitz, J.D. (skeilitz@ncsc.org).

Module One Overview



Use

Court seminar or part of a training conference

Delivery Method

Sixty minute PowerPoint presentation (includes interactive exercises)

Goal

Judicial officers will understand the physical, emotional, and cognitive effects of aging and their impact on the vulnerability of older persons.

Objectives

At the conclusion of Module One, judges should be knowledgeable about

- § Demographics of aging
- § Myths and facts of aging
- § Common aspects of aging
- § Age-associated vulnerabilities

Materials

- § Curriculum PowerPoint presentation
- § Instructor's manual
- § State-Specific demographics for Slide 6 (see Appendix A)

Module One

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www.eldersandcourts.org

Elder Abuse & Neglect

Module One: The Physiology of Aging

The National Center for State Courts developed this curriculum in collaboration with the Center of Excellence on Elder Abuse and Neglect at the University of California, Irvine School of Medicine with support from the Retirement Research Foundation of Chicago (grant number 2008-056).

NCSC **CEC**

Slide 1

Note to Instructor: Some slides are animated and require you to CLICK to advance to the next discussion point. Animated slides are noted as such and include CLICK instructions.

Recommended Presentation Time: 60 minutes

Module One Goal

Goal

Judicial officers will understand the physical, emotional, and cognitive effects of aging and their impact on the vulnerability of older persons.

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Slide 2

Module One Objectives

At the conclusion of Module One, judges should be knowledgeable about

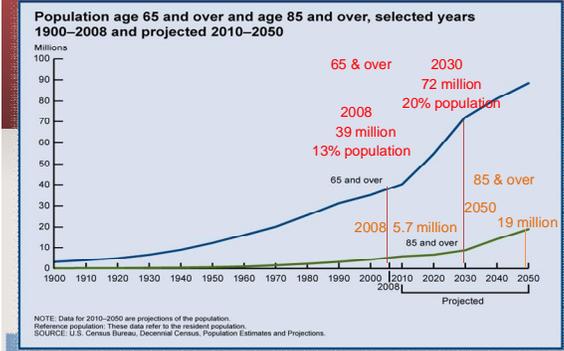
- ü Demographics of aging
- ü Myths and facts of aging
- ü Common aspects of aging
- ü Age-associated vulnerabilities

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Slide 3 (ANIMATED)

CLICK to introduce each objective.

Demographics of Aging



Slide 4 (ANIMATED)

The U.S. population is undergoing a demographic transition. The number of 65 and over population is expected to increase from 39 million to 72 million over the next 20 years alone. The population over the age of 85 is expected to triple during the next 40 years (from less than 6 million to 19 million).

[CLICK]: In 2008, 39 million people age 65 & over comprised approximately 13% of the population.

[CLICK]: Projected figures for 2030 estimate that 72 million people age 65 & over will comprise 20% of the population.

That's almost a doubling of the elderly population.

[CLICK]: We can also look at the older population, those over the age of 85. In 2008, there were 5.7 million people aged 85 & over. This number is projected to more than triple in 2050 when there will be approximately 19 million people aged 85 & over.

State-Specific Demographics

- Add a slide referring to your state's aging population

Slide 5

Visit US Census Bureau for current statistics (<http://www.census.gov/>). Please see Appendix A for additional information.

Demographics of Aging



There will be more older Americans than at any other time in history, living longer lives.



All sectors of society will be increasingly strained to meet the needs of older Americans.

Slide 6

The "baby boomers" (those born between 1946 and 1964) started turning 65, the traditional retirement age, in 2011. This demographic transition must be viewed in the context of another fact—Americans are living longer than ever. The life expectancy for a baby born in 2009 now exceeds 78 years (78 years and 2 months). That's two years longer than the expected life span 20 years ago and nearly 9 years longer than life expectancy in 1900.

This burgeoning population of older Americans, combined with greater longevity, will place a strain on many of our already overburdened social services. The justice system will need to become more responsive to the complexities of issues that involve older persons.

Gender and Aging

Vulnerability

- Living Longer
- Single
- Living Alone
- Poverty

Women's longer life expectancies mean that a disproportionate number of elders are women.

Elderly women are more likely than men to be widowed or divorced and living alone.

Women's incomes are significantly lower than men's for every age group over 50.

NCSG
CEC
Center for Economic and Community Development

Slide 7

There is a relationship between gender, aging, and one's vulnerability in society. The life expectancy for women is 5 years greater than for men—of those 85 and over, two-thirds are women. Older women are more likely than men to be widowed or divorced and living alone. Moreover, women's income is significantly lower than men's incomes. Generally, vulnerability tends to increase for those who are very old, single, live alone, and have fewer financial resources. Those characteristics tend to be more frequent among older women than older men.

- Women's life expectancy exceeds that of men—75.5 for men and 80.5 for women. For the population age 65+ for 2009, 57% were women, 43% were men. But among the very old (those 85 and over) 66% were women, 34% men.
- Older men are more likely to be married and living with a spouse than are older women.
 - Over three-quarters of men age 65–74 were married, compared with just over 57% of women in the same age group.
 - Just 37% of women age 75–84 and 15% of women age 85 and over were married.
 - Widowhood is more common among older women than older men. Women age 65 and over were three times as likely as men of the same age to be widowed (42 percent compared with 14 percent).
- Older women are more likely to live alone – 40% of women over the age of 65 live alone, compared to 19% of men over age 65. (U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2008)
- Being single, living longer, and earning less diminishes the financial resources of older women.
 - Past the age of 50, women's incomes are significantly lower than men's incomes.
 - Within the oldest group, this difference is profound: Median family income for women age 85 and older amounts to only 65 percent of median family income for men over 85.

Interactive Exercise

Age
Gain
Now
Empathy
System

Photo by Nathan Fried Lipiski. Used with permission from MIT AgeLab.

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Slide 8 (INTERACTIVE EXERCISE)

This is an interactive exercise. Ask participants to discuss their own views about what it's like to be really old—over the age of 80. Ask them to call out things they associate with old age. As they call out their responses, write them on a board. After 7 or 8 responses, begin to summarize them into main themes. Then ask how these views might affect how they conduct their work. One could also ask how these perceptions might impact the deliberations of jurors, or assumptions made by prosecutors or defense attorneys.

- Common examples might include normal physical changes (wrinkles, gray hair), common but not normal physical changes (osteoporosis, hearing loss), cognitive changes (memory lapses), and attitudes and behaviors (clothing styles, political attitudes).

Note: The photo is an “aging” suit developed by MIT’s AgeLab that is used by developers, researchers, and marketers to empathize with older adults. It simulates what it may feel like to be a person in her mid-70s. The suit has harnesses and bands that restrict joint and limb movements and has a helmet attached to a harness that constrains the neck and spine, plastic gloves that make it harder to open packages, and foam soles on the shoes to throw off balance. (Photo provided by MIT with permission to use).

Myths and Facts of Aging

Myth: Due to falling memories and confusion, older people make poor witnesses

Fact: Age alone does not affect a person's credibility

ISSUE: Will judges and jurors accept an older person's testimony as truthful and accurate?

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Slide 9 (ANIMATED)

As this slide demonstrates, there are a number of assumptions that people make about older persons. Dispelling myths about aging are important because preconceived notions can influence decisions in the courtroom.

MYTH: Because older people are commonly perceived as forgetful and confused, they are also often perceived as poor witnesses. Consequently, there may be reluctance on the part of jurors and judges to accept that an older person's testimony is truthful and accurate.

FACT: Age alone does not affect one's credibility. An older person can be an excellent witness and retain the ability to recall facts. There may be a difference, however, in how the older person presents those facts and in their level of anxiety if asked to testify—tendencies that can be overcome with good interviewing skills, patience, and witness preparation. In addition, prosecutors are finding that even those with dementia have an ability to remember traumatic events clearly, even though they may be unable to recall other parts of their history or their lives.

CLICK ISSUE: If judges and jurors perceive that memory naturally fades with age, they may be less likely to perceive an older person's testimony as truthful and accurate. This is particularly critical when the witnesses are very old.

Myths and Facts of Aging

Myth: As people age, they will eventually be fully incapacitated

Fact: Incapacity is not part of the normal aging process and fluctuates when it does occur

ISSUES: How does age influence judicial determination of incapacity? How can the court accommodate fluctuating levels of capacity?

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Slide 10 (ANIMATED)

MYTH: The normal aging process necessarily results in incapacity. When incapacity does occur, it tends to impact every aspect of one's life.

FACT: Capacity is a very complex concept. Capacity can fluctuate over time and from one circumstance to another. It is not an all-or-nothing condition. An individual may demonstrate incapacity in one aspect of life (such as managing money) but be totally competent in all others.

CLICK ISSUES:

- Age itself should not be used as a determinant of capacity. This myth is particularly relevant to guardianship and conservatorship cases. Judges should depend on reliable capacity assessments carried out by professionals, and even then, must consider the motives behind a hearing to determine capacity.
- Elderly litigants and witnesses may be better functioning during certain times of the day. The court should consider making calendaring accommodations that will enhance an older person's ability to fully participate in the court case. In addition, judges may need to consider how certain medications may mimic behaviors that are suggestive of incapacity.
- These facts can be integrated into a judicial approach that assumes that all adults, regardless of age, are fully competent and capable individuals who have the power to make their own decisions and to be held accountable for their actions.

Vulnerability

What makes elders more vulnerable?

Physical Impairments

Emotional Issues

Cognitive Impairments

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Slide 11 (INTRODUCTORY SLIDE)

This slide introduces the next section of the module, which focuses on vulnerability caused by physical impairments, emotional issues, and cognitive impairments.

In this next section, we will talk about factors that make elders more vulnerable. You will meet three fictional characters:

Marva, who has some physical impairments

Ed, who is trying to address some emotional problems, and

Clara, who is suffering from cognitive impairments.

The Case of “Marva”



Slide 12

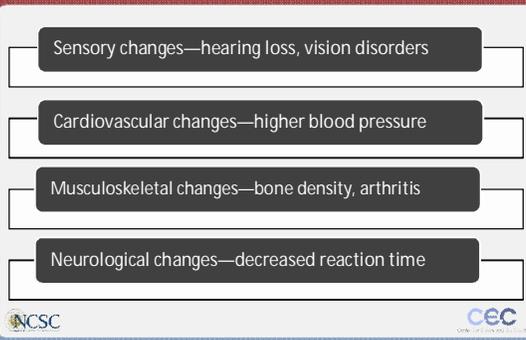
A full summary of this scenario can be found in Appendix B. Provide the background information on Marva, and then refer to her to highlight the information in this section of the presentation.

Marva’s Background

Let’s meet a stranger from the photographs—we’ll call her “Marva.” As we walk you through Marva’s fictional life, consider how vulnerable she becomes as she ages and experiences changes in her physical health.

Marva is in her early 70s and has been in relatively good physical health, although she suffers from arthritis and high blood pressure. Marva recently began taking prescribed medication to treat high blood pressure and she also takes Tylenol to ease the muscle aches from her exercise routine. She works hard to maintain her health and is a regular at the senior zumba classes at the local fitness center. Marva lives alone and has always maintained her independence.

Common Aspects of Aging

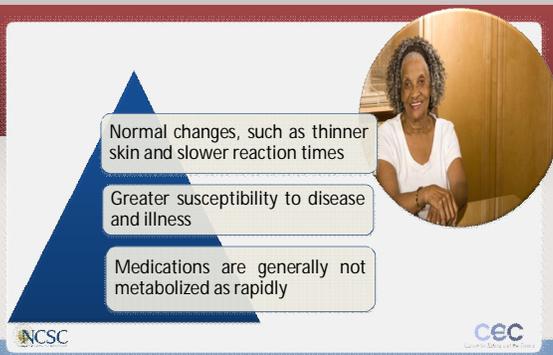


Slide 13

As we age, some real physiological changes are likely to occur. Not all of them happen to everyone, but generally, our eyesight and hearing are likely to worsen, cardiovascular changes may impact our blood pressure, arthritis and osteoporosis are more common, and our reaction time slows.

Marva appears to be in good physical health. She likely suffers from at least one medical condition—if she is typical of an older American woman, Marva may have arthritis and high blood pressure.

Physical Vulnerabilities



Slide 14

Marva’s age means that she can expect to have thinner skin and slower reaction times, is more susceptible to disease and illness, and that the medications she uses are not metabolized as rapidly.

For example, Marva notices that she bruises a lot easier than in her younger years. And it takes her a little longer to get in and out of the car. She also feels her prescription medications and her standard glass of wine have a greater impact on her now that she is in her 70s.

Some of the normal age-related changes not only make people more vulnerable, they also can mask or mimic signs of elder abuse. For example, the presence of bruising is likely to be more common, and slower reaction times will make older persons more vulnerable for the simple reason that they can’t easily protect themselves from physical attacks.

Physical Vulnerabilities

Normal changes, such as thinner skin and slower reaction times

Greater susceptibility to disease and illness

Medications are generally not metabolized as rapidly

Slide 14 (continued)

Marva's age means that she can expect to have thinner skin and slower reaction times, is more susceptible to disease and illness, and that the medications she uses are not metabolized as rapidly.

For example, Marva notices that she bruises a lot easier than in her younger years. And it takes her a little longer to get in and out of the car. She also feels her prescription medications and her standard glass of wine have a greater impact on her now that she is in her 70s.

Slide 15

Recently, Marva has begun to experience short bouts of dizziness and confusion. She and her friends assume that her increased levels of confusion and dizziness are simply a "normal" part of aging.

If Marva is fortunate enough to visit a gerontologist, she might learn that her mental state could be a result of the way her body responds to common medications, even the use of something as simple as "Tylenol." She may also learn that she is combining the wrong types of medicines or over-medicating.

Examples of common side effects of medicines:

- High blood pressure medications can cause the blood pressure to drop quickly when moving from lying to sitting or sitting to standing, resulting in dizziness.
- Anxiety medications can cause drowsiness, confusion, and falls
- Even common over-the-counter medications, such as "Tylenol PM" and "Benadryl" can cause confusion and lead to falls.

Effects of Common Medications

Treatments for allergies, anxiety, psychosis, and high blood pressure

Side effects may include confusion, drowsiness, dizziness, and falls

IADLs and ADLs

Instrumental Activities of Daily Living
Activities needed for independence in the community

- Handling finances
- Use of telephone
- Transportation
- Medication management
- Meal preparation
- Shopping

Activities of Daily Living
Activities needed for independence in the home

- Mobility
- Bathing
- Dressing
- Feeding oneself
- Toileting
- Continence

Slide 16 (ANIMATED)

Marva's health takes a sudden downturn after she takes a nasty fall outside the fitness center and ends up with a broken hip. Her broken hip drastically impacts her independence and ability to maintain her active lifestyle. Due to her age and the fact that she lives alone, the attending physician assesses Marva's ability to live independently in the community and in her home. Her medical history will soon be taken over by the concepts of IADL (Instrumental Activities of Daily Living) and ADL (Activities of Daily Living).

- CLICK IADLs include activities that are needed for independence in the community, such as using a telephone and preparing meals. An individual with basic IADLs can typically manage to maintain a fair amount of independence, but some assistance is likely to be needed.
- CLICK ADLs are those activities that are needed to remain independent in one's home. They include such things as mobility and the ability to feed oneself.

Functional Limitations

39% of elders have some type of functional limitation

14% experience IADL limitations

e.g., shopping, managing money

25% experience IADL and at least one ADL limitation

e.g., bathing, dressing, using the toilet



Reference population: These data refer to Medicare enrollees age 65 and over.
Source: Centers for Medicare and Medicaid Services, Medicare Current Beneficiary Survey.



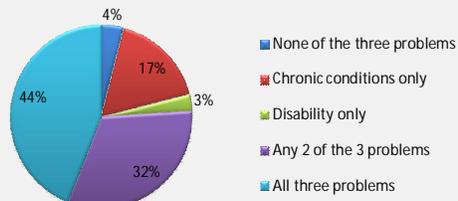
Slide 17

Marva's broken hip will keep her in a wheelchair for a significant period of time. Reluctantly, she asks her niece for assistance while she rehabilitates. Marva will need help with three IADLs (transportation, shopping and meal preparation) and completing everyday tasks such as dressing and bathing (ADLs). This makes her typical of 25% of all persons over the age of 65. As Marva's experience demonstrates, both types of functional limitations can be the result of an unexpected event and be temporary in nature.

Although this data indicates that 39% of Medicare enrollees over the age of 65 have some type of functional limitation, it is just as important to note that 61% do not. Those who do have some type of functional limitation, such as Marva, will be more vulnerable to abuse and neglect because they are unable to defend themselves from physical harm, are more likely to have diminished physical and/or mental abilities, and must depend on others for basic needs.

Health Issues for People Age 85+

Prevalence of Chronic Conditions, Disability, and Functional Limitations



AARP "Beyond 50: A Report to the Nation on Trends in Health Security."
(Washington, D.C.: AARP, May 2002). Data is from 1996.



Slide 18

While Marva may eventually bounce back from her fall, she realizes that her health may not look very promising in another 10 years, when she is in her mid-80s. Statistics show that almost all persons over the age of 85 (96%) have either a chronic condition, a disability, or some type of functional limitation. In fact, 44% of people 85 and plus experience all three problems. Only 4% of Medicare enrollees aged 85 & over reported no issues with functional limitations.

Definitions

- Chronic diseases are long-term illnesses that are rarely cured, such as heart disease, stroke, cancer, and diabetes. Chronic health conditions negatively affect quality of life, contributing to declines in functioning and the inability to remain in the community.
- "Disability": a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.
- Functional Limitations are limitations in one's ability to carry out activities of daily living (ADLs) or instrumental activities of daily living (IADLs).

Interactive Exercise



Marva's Physical Impairments

How might Marva's physical condition make her more vulnerable to abuse, neglect, or financial exploitation?

What issues might bring Marva to the attention of the court?

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Slide 19 (INTERACTIVE EXERCISE) (ANIMATED)

Ask participants: CLICK Now that you have been introduced to Marva, in what ways is she more vulnerable to physical abuse, neglect, or financial exploitation? Can you create some scenarios in which you could see abuse happening?

Anticipated responses:

- She is dependent on her niece, whom she was "reluctant" to call; the niece could be verbally or physically abusive; her physical dependence also makes her more vulnerable to neglect.
- Marva is having some cognitive issues as a result of medication; she may be more easily manipulated
- She may be more susceptible to financial exploitation because she will be dependent on others for help in maintaining her current home while she recuperates, and she will need help accessing cash and taking care of business transactions.

CLICK What issues might bring Marva to the attention of the court?

Emotional Vulnerabilities



Issues:

- Depression & anxiety
- Coping with multiple losses

Fear of losing independence can make older people more vulnerable to threats

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Slide 20

A full summary of this scenario can be found in Appendix B. Provide the background information on Ed, and then refer to him to highlight the information in the next two slides.

Ed's Background

We'll now turn our attention to emotional vulnerabilities by meeting "Ed." Ed worked in the banking industry most of his adult life and has enjoyed a pleasant retirement. His wife recently died, and his adult children live in other parts of the country. He is a proud man and is insistent on maintaining his home without any outside help. Lately, his neighbors have begun to complain about his unkempt yard and he has become more reclusive.

Ed may be suffering from depression and he is coping with a major loss. While the source of his depression is likely a result of the loss of his partner, older persons often experience many losses that leave them emotionally vulnerable. In addition to the loss of a spouse or partner, older people may experience the loss of friends, status, the ability to earn an income, a driver's license, and independence. Ed's biggest fear now is the fear of losing his ability to live independently in his own home. This makes him particularly vulnerable to suggestions that he can no longer maintain his home.

Emotional Vulnerabilities

Why do depression & anxiety often go undiagnosed and untreated in older adults?

Physicians

Don't ask/listen

Normalize depression

Older Adults

Subject is taboo

Depression is a part of aging

Afraid to "become a burden"



Slide 21

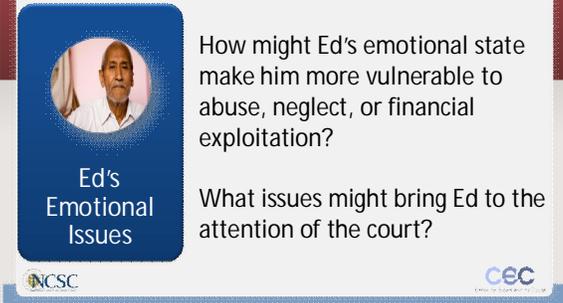
Ed does not want to discuss his emotional state. Depression is an off-limits subject to men of his generation. Besides, with all that he has suffered, depression is simply part of the grieving process. Ultimately, he fears that any sign of weakness, including depression, will be used to force him into a "retirement home." Independence is paramount to him. When he does meet with his family physician, his doctor doesn't specifically ask about depressive symptoms, and when Ed mentions his recent loss, the doctor remarks that depression is a normal reaction for someone of his circumstance and age. The doctor further suggests that Ed make a concerted effort to participate in senior outings and join groups that may be of interest to him. Neither Ed nor the doctor has any further discussions of the subject.

Physicians may expect older adults to be depressed and consider it normal to some extent. However, depression is not normal and is amenable to treatment. Many older adults will not bring up the subject, but are relieved when the doctor does. Some common reasons depression and anxiety often go undiagnosed and untreated include the following:

- Physicians don't ask/listen
- Physicians tend to normalize this for older adults ("if I was in that condition, I'd be depressed too!") and so don't treat it
- Older adults tend to normalize it and don't ask for help.
- Older adults often consider these to be taboo topics and associate "mental health issues" with "crazy", so they may be reluctant to discuss with their doc or family. They may also be embarrassed at acknowledging vulnerability and ultimately, are afraid to "become a burden" to their family.

Ed takes the doctor's advice to participate in activities. A continuing interest in finance and the decline of his retirement portfolio from the recession leads him to notice an advertisement in the local paper aimed at those age 60 and above. He signs up for a seminar called "Come Learn from the IRA Technician," that will provide tips on "how to guarantee your IRA will never run out, regardless of market fluctuations." Even better, the seminar is free and includes a top sirloin steak for lunch. Not only does Ed enjoy the seminar, he becomes enamored with one of the presenters, a divorced middle-aged woman with an eye for numbers.

Interactive Exercise



Ed's Emotional Issues

How might Ed's emotional state make him more vulnerable to abuse, neglect, or financial exploitation?

What issues might bring Ed to the attention of the court?

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Slide 22 (ANIMATED) (INTERACTIVE)

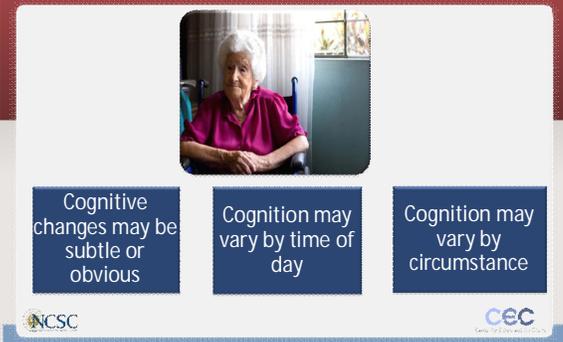
Ask participants: CLICK Now that you have met Ed and learned of his emotional state, in what ways is he more vulnerable to physical abuse, neglect, or financial exploitation? Can you create some scenarios in which abuse or neglect might occur?

Anticipated responses:

- His depression could lead to self-neglect, including the neglect of his home.
- He is despondent and is lonely, which makes him vulnerable to financial exploitation by those who can take advantage of his need for companionship. His strong desire to maintain his house also makes him vulnerable to stranger exploitation, such as driveway paver scams.
- He may be more vulnerable to getting involved in a relationship with someone with less than altruistic intentions.

CLICK What issues might bring Ed to the attention of the court?

Cognitive Vulnerabilities



Cognitive changes may be subtle or obvious

Cognition may vary by time of day

Cognition may vary by circumstance

NCSC

CEC

Slide 23

A full summary of this scenario can be found in Appendix B. Provide the background information on Clara, and then refer to her to highlight the information in this section of the presentation.

Clara's Background

We now introduce you to "Clara," who has some cognitive problems. As we will explore in the next set of slides

"Cognition" encompasses a variety of abilities including memory, language (verbal and written), spatial skills, judgment, and reasoning.

It is not always easy to recognize changes in cognition, partly because cognition can vary by the time of day and by circumstance. This is true in Clara's case, at least at the beginning of her problems. Clara, who is in her late 80s, has limited mobility and occasionally uses a wheelchair. Up to this year, she has maintained her sharp memory and intellect and often talks about her experiences as a former school teacher. She lives with her son's family.

Lately, her memory has been failing and she has experienced some difficulties recalling basic vocabulary. Some days Clara seems her old self, while other days she appears to have more cognitive problems.

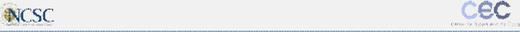
In this part of the presentation, we will take you through Clara's later years, in which she is diagnosed with Alzheimer's disease. You will be able to see how the decline in her cognitive abilities increases her vulnerability to different aspects of abuse and neglect.

Characteristics of Dementia

Dementia must include decline in memory and at least one of the following cognitive abilities

Ability to generate coherent speech or understand spoken or written language	Ability to recognize or identify objects	Ability to execute motor activities	Ability to think abstractly, make sound judgments and plan and carry out complex tasks
--	--	-------------------------------------	--

The decline in cognitive abilities must be severe enough to interfere with daily life



Slide 24 (ANIMATED)

Clara's children worry that she may be slipping toward dementia, though they are uncertain how dementia is documented and exactly what it entails. They speak to her physician about their concerns.

The doctor explains that dementia is a descriptive term for a collection of symptoms that affect the brain. A diagnosis of dementia must include a decline in memory and the loss of at least one of the following cognitive abilities:

- Ability to generate coherent speech or understand spoken or written language
- Ability to recognize or identify objects
- Ability to execute motor activities (such as driving, using a computer mouse, pouring a glass of juice)
- Ability to think abstractly, make sound judgments, and plan and carry out complex tasks.

CLICK Clara is not diagnosed with dementia at this time. The doctor explains that the other critical aspect of dementia is that the loss in cognitive abilities must be severe enough to interfere with daily life. In the initial stages of her disease, Clara's dementia is not diagnosed because her cognitive impairments do not interfere with her daily life.

Alzheimer's Disease

Most common type of dementia that accounts for 60-80 percent of cases

The greatest risk factor is advancing age; 43% of people over 85 have Alzheimer's Disease

Alzheimer's Disease

More women than men have Alzheimer's Disease

The number of people 65+ with Alzheimer's disease is estimated to reach 7.7 million in 2030

Slide 25

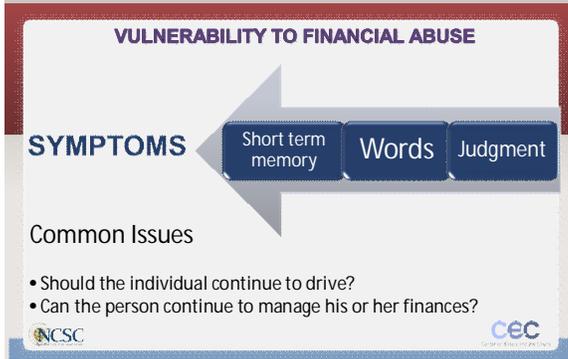
As Clara's cognitive abilities decline further, the doctor eventually makes the diagnosis of Alzheimer's Disease. The doctor explains that Alzheimer's Disease affects different people in different ways, but:

- The disruption of brain cell function usually begins in regions involved in forming new memories. Consequently, the most common symptom is greater difficulty in remembering new information
- As damage spreads, people experience other difficulties: confusion with time or place, decreased or poor judgment, and withdrawal from work or social activities

Clara's doctor provides the family with several pamphlets and a list of local resources. They learn that:

- The most common type of dementia is Alzheimer's disease, accounting for 60 to 80 percent of cases.
- Alzheimer's is not a normal part of aging, but the greatest risk factor is advancing age. Four in ten people (43%) over the age of 85 have been diagnosed with the disease.
- Alzheimer's Disease is more common among women than men.
- The number of people with Alzheimer's is expected to rise, from 5.2 million elders to 7.7 million by the year 2030. It is the 6th leading cause of death in America.

Early Alzheimer's Disease



Slide 26 (ANIMATED)

Clara is experiencing feelings of anxiety and depression as a result of her more frequent memory lapses. Over the course of several months, her children find her increasingly distraught and less engaged in social activities. The doctor confirms with them that their mother may be experiencing some early signs of Alzheimer's Disease.

Clara's appearance remains good, but the doctor notes that she is beginning to have significant impairments in her short-term memory, judgment and reasoning. The doctor mentions that several issues often come up for families at this point, including whether the individual should continue to drive, though Clara gave up driving long ago, and whether the person can continue to manage his or her finances. Clara is terrified that she will be forced to leave the comfort of her son's home to live her final years in a nursing home.

Short-term memory The person remembers 3rd grade teacher's name but can't remember what she had for breakfast

Words If you point at a watch and ask her to name it, she might say, "the thing that tells time."

Judgment She has difficulty understanding complicated information, holding several pieces in her head, and making a decision.

CLICK Common Issues:

Driving Does the older person present a threat to him or herself or other drivers and/or pedestrians when operating a motor vehicle?

Finances This might be a stage when a person is still in charge of her finances but due to impaired judgment, she could be especially susceptible to financial abuse, such as giving her checkbook or ATM PIN code to someone she would not have trusted before these symptoms began.

Moderate Alzheimer's Disease



Slide 27 (ANIMATED)

Clara's health continues to deteriorate. She has been found wandering in the neighborhood and she is beginning to have problems with behavior, dressing, and insight. She sometimes becomes belligerent, exhibits irrational fears (e.g., of water), and becomes violent (e.g., hitting). She has trouble selecting appropriate clothes when getting dressed. Her insight is also impaired. There are many days when she thinks she doesn't have a problem and no amount of explanation seems to help.

CLICK Common Issues:

For Clara, the likelihood of physical abuse increases, as she sometimes acts belligerently and irrationally. Data show that people with dementia who are verbally or physically aggressive are more likely to be physically abused by a caregiver. A key question that the family struggles with is whether Clara can remain at home.

Severe Alzheimer's Disease

VULNERABILITY TO NEGLECT

SYMPTOMS ← Communication Mobility Swallowing

Common Issues

- What are the risks and benefits of medical intervention?
- What measures should be taken to ensure proper nutrition?



Slide 28 (ANIMATED)

As Clara's disease has progressed, the family has reluctantly placed her in an assisted living facility, where she resides in a special wing for Alzheimer's patients. Clara now is suffering from severe symptoms of Alzheimer's disease, including problems with communication, mobility, and swallowing. There are days when she is non-verbal or speaks in "word salad" (incoherent). The doctor notes that her motor cortex is affected, which makes it more difficult for Clara to walk and swallow. She needs increased levels of care.

CLICK Common Issues:

Clara's family is now struggling with end-of-life issues for Clara. They have to consider when and if she should be placed in a hospice. If she should fall and break a hip, what should be the appropriate course of action? If Clara stops eating, should a feeding tube be used? The types of decisions to consider may revolve around end-of-life issues and how to maintain comfort.

In these late stages of Alzheimer's disease, when people are more likely to need assistance with activities such as bathing, hygiene, eating, they are more vulnerable to neglect.

Interactive Exercise



What issues might bring Clara to the attention of the court?



Slide 29 (INTERACTIVE) (ANIMATED)

CLICK We've discussed how Clara's physical, psychological, and cognitive impairments increase her vulnerability to financial exploitation, physical abuse, and neglect. What issues might bring Clara to the attention of the court?

Implications for the Court

- More elders will come before the court
- More cases will involve medical & psychological terminology
- Accommodations for elders will be imperative
- More cases will require assessments by medical professionals



Slide 30 (ANIMATED)

Instructor: Summarize module 1.

- The U.S. is experiencing a demographic transition. As the “baby boomers” head into retirement, there will be more elders than at any other time in history—elders will comprise 20% of the population by 2030.
- People are living longer than ever. The fastest growing age group are those 85 and over. The combination of more elders living longer will impact every facet of society.
- Elders tend to be negatively stereotyped. Yet aging varies significantly from individual to individual. As with most stereotypes, reality seldom aligns to myth.
- Aging is a natural process in which some physiological changes simply make older persons more vulnerable. Slower reaction times and diminished eyesight and hearing are common occurrences.
- Physiological impairments, emotional issues, and cognitive impairments increase one’s vulnerability to financial exploitation, elder abuse, and neglect.

The increase in the number of older persons, greater longevity, and the complexity of physiological and cognitive functioning carries a number of implications for the courts. We can expect the following scenario:

- CLICK More elders will come before the court
- CLICK More cases will involve medical & psychological terminology
- CLICK Accommodations for elders will be imperative
- CLICK More cases will require assessments by medical professionals

Time permitting; discuss some of the implications for the court:

Prompt: Given all that we’ve just discussed, what other implications might there be for the court?

Prompt: How might the change in the number of elders affect the types and volume of cases heard by the court?

- More elders will come before the court
- There may be more probate cases, traffic cases, or cases that require some determination of capacity

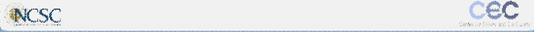
Prompt: How might the physical and cognitive limitations of older adults affect cases heard in the court?

- More cases will involve medical & psychological terminology
- Accommodations for elders will be imperative
- More cases will require assessments by medical professionals

Slide 31
This concludes Module One



"...Elder abuse and financial exploitation will appear in increasing numbers on the civil and criminal dockets. ...Every court needs to take a close look at their preparedness, because the numbers are coming whether they're prepared or not."
—Sally Hurme, AARP



Slide 32

Additional Resources

Visit the National Center for State Courts' Center for Elders and the Courts at

www.eldersandcourts.org



Module One Source List

Slide 4: Demographics of Aging

- U.S. Census Bureau, Decennial Census, Population Estimates and Projections

Slides 6: Demographics of Aging

Slide 7: Gender and Aging

- AARP "Beyond 50: A Report to the Nation on Trends in Health Security." (Washington, D.C.: AARP, May 2002).
- Older Americans 2010 Key Indicators of Well-Being
- U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2008)

Slide 8: Interactive Exercises

- Meet AGNES (Age Gain Now Empathy System)
<http://agelab.mit.edu/agnes-age-gain-now-empathy-system>

Slide 16: IADLs and ADLs

Slide 17: Functional Limitations

- Older Americans 2010: Key Indicators of Well-Being (AgingStats.gov)

Slide 18: Health Issues for People Age 85+

As distinct from the definition used by the National Center for Health Statistics, an individual was considered to have a chronic condition if it has lasted or is expected to last 12 months or longer and either:

- (1) requires ongoing medical care or
- (2) places limitations on age-appropriate task performance, basic self care, independent living skills, or social interactions.

Functional limitations were defined as the need for help or supervision with any ADL or IADLs. Disability was defined by any one of the following characteristics:

- (1) the use of assistive technology,
- (2) difficulty walking, climbing stairs, grasping objects, reaching overhead, lifting, bending or topping, or standing for long periods of time,
- (3) any limitation in work, housework, or school,
- (4) social/recreational limitations,
- (5) cognitive limitations such as confusion or memory loss, or decision-making problems that lead to interference with daily activities or require supervision to ensure one's safety,
- (6) vision problems, and
- (7) deafness or difficulty in hearing.

- Source: AARP "Beyond 50: A Report to the Nation on Trends in Health Security,." (Washington, D.C.: AARP, May 2002).

Slide 21: Emotional Vulnerabilities

Physicians don't ask/listen

- ✚ Fischer, L R, Wei, F, Solberg, L I, et al. (2003). Treatment of elderly and other adult patients for depression in primary care. *Journal of the American Geriatrics Society*, 51(11), 1554-62.

Physicians tend to normalize this for older adults ("if I was in that condition, I'd be depressed too!") and so don't treat it

- ✚ Wagenaar, D B, Mickus, M A, Gaumer, K A, et al. (2002). Late-life depression and mental health services in primary care. *Journal of geriatric psychiatry and neurology*, 15(3), 134-40.

Older adults tend to normalize it and don't ask for help.

- ✚ Garrido, M, Kane, R L, Kaas, M, et al. (2009). Perceived need for mental health care among community-dwelling older adults. *The journals of gerontology. Series B, Psychological sciences and social sciences*, 64(6), 704-12.

Older adults often consider these to be taboo topics and associate "mental health issues" with "crazy", so they may be reluctant to discuss with their doc or family.

- ✚ Conner, K O, Copeland, V C, Grote, N K, et al. (2010). Mental health treatment seeking among older adults with depression: the impact of stigma and race. *The American journal of geriatric psychiatry*, 18(6), 531-43.

- ✚ Financial scams expected to boom as boomers age
www.seniorsite.com

Slides 24: Characteristics of Dementia

Slides 25: Alzheimer's Disease

- ✚ Alzheimer's Association, 2011 Alzheimer's Disease Facts and Figures, *Alzheimer's & Dementia, Volume 7, Issue 2*

Slides 27: Moderate Alzheimer's Disease

People with dementia who are verbally or physically aggressive are more likely to be physically abused by a caregiver

- ✚ Wigglesworth A, Mosqueda L, Mulnard R, Liao S, Gibbs L, Fitzgerald W. Screening for abuse and neglect of people with dementia.

Module Two Overview



Use	Court seminar or part of a training conference
Delivery Method	PowerPoint presentation (includes interactive exercises); four minute video clip; 14 minute DVD Total estimated module delivery time is 60 to 90 minutes
Goal	Judicial officers will learn how to recognize elder abuse and neglect in a variety of court settings.
Objectives	At the conclusion of Module Two, judges should be knowledgeable about: § General definitions of elder abuse, neglect & exploitation § State laws relevant to elder abuse § Prevalence & incidence of elder abuse § "Red flags" suggestive of abuse § Capacity, consent, and undue influence
Materials	§ Curriculum PowerPoint presentation § Instructor's manual § State statutes (Slide 7) § Mickey Rooney Aging Committee Hearing Interview (4 minutes) § Responding to Elder Abuse – What Judges and Court Personnel Should Know (15 minute DVD)

Module Two



Elder Abuse & Neglect

**Module Two:
Identifying Elder Abuse & Neglect**

The National Center for State Courts developed this curriculum in collaboration with the Center of Excellence on Elder Abuse and Neglect at the University of California, Irvine School of Medicine with support from the Retirement Research Foundation of Chicago (grant number 2008-056).



Slide 1

Some slides are animated and require you to CLICK to advance to the next discussion point. Animated slides are noted as such and include CLICK instructions.

Recommended Presentation Time: 90 minutes

Module Two Goal



Judicial officers will learn how to recognize elder abuse and neglect in a variety of court settings.



Slide 2

The goal of this module is to provide information and resources that will help you recognize elder abuse and neglect in a variety of court settings.

Module Two Objectives

At the conclusion of Module Two, judges should be knowledgeable about

- General definitions of elder abuse and neglect
- Federal and state laws relevant to elder abuse
- Prevalence and incidence of elder abuse
- "Red flags" suggestive of abuse
- Capacity, consent, and undue influence



Slide 3 (ANIMATED)

CLICK to introduce each objective.

General Definition

Elder abuse is a term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult.



Slide 4

State laws vary considerably in how they define elder abuse. For the purposes of this module, we refer to the definition used by the National Center on Elder Abuse. While the definition is broad, it provides an overall perspective on the problem.

Types of Elder Abuse



Slide 5

Generally, there are six different types of elder abuse, and several types may occur hand-in-hand. In particular, emotional abuse is likely to be an element of the other types of abuse, especially physical abuse and neglect. Since these are general descriptive categories, it is not always easy to distinguish one form of abuse from another. The following definitions are offered by the National Center on Elder Abuse.

- Physical Abuse - Inflicting, or threatening to inflict, physical pain or injury on a vulnerable elder, or depriving them of a basic need.
- Emotional Abuse - Inflicting mental pain, anguish, or distress on an elder person through verbal or nonverbal acts.
- Sexual Abuse - Non-consensual sexual contact of any kind.
- Exploitation - Illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder.
- Neglect - Refusal or failure by those responsible to provide food, shelter, health care or protection for a vulnerable elder.
- Abandonment - The desertion of a vulnerable elder by anyone who has assumed the responsibility for care or custody of that person.

Elder Justice Act (EJA)

- EJA (S. 795) included in the health care reform bill, H.R. 3590 (signed into law in 2010)
 - Elder Justice Coordinating Council
 - Advisory Board on Elder Abuse, Neglect, and Exploitation
 - Funding for:
 - Adult Protective Services
 - Forensic Centers
 - Long-Term Care Ombudsman Program



For updates, visit the [Elder Justice Coalition](#)



Slide 6

The federal government addresses elder abuse in the Elder Justice Act, which was included in President Obama's health care legislation and signed into law in 2010.

Elder Justice Act (EJA)

- EJA (S. 795) included in the health care reform bill, H.R. 3590 (signed into law in 2010)
 - Elder Justice Coordinating Council
 - Advisory Board on Elder Abuse, Neglect, and Exploitation
 - Funding for:
 - Adult Protective Services
 - Forensic Centers
 - Long-Term Care Ombudsman Program

NCSC

For updates, visit the [Elder Justice Coalition](http://ElderJusticeCoalition.com).

CEC

Slide 6 (continued)

Funding is authorized for:

- Ø Adult Protective Services (APS)—dedicated funding for APS plus grants for state demonstration projects.
- Ø Establishment of Forensic Centers to develop forensic expertise regarding and providing services related to elder abuse, neglect, and exploitation.
- Ø Grants to support the Long-Term Care Ombudsman Program, including training programs and grants to enhance long-term care staffing.

The Act also requires the immediate reporting to law enforcement of crimes in a long-term care facility and establishes civil monetary penalties for failure to report. It provides for penalties for long-term care facilities that retaliate against an employee for filing a complaint against or reporting a long-term care facility that violates reporting requirements. It authorizes a study on establishing a national nurse aide registry, and funds for HHS to improve data collection and dissemination related to best APS practices.

Funds have not been appropriated at the time this curriculum was released. Check status of the Act online at <http://elderjusticecoalition.com>.

Relevant State Statutes

- Each state has an adult protective services law with definitions and may have other relevant civil or criminal laws.
- [Insert relevant state statutes; to be completed by state judicial educator]

NCSC

CEC

Slide 7

Estimates of Prevalence

- Prevalence data on elder abuse is problematic
 - Different definitions, under-reporting, lack of reliable national data collection methods, research study limitations
- Estimates from the 2009 Elder Mistreatment Study:
 - 11 percent reported at least one form of mistreatment (excluding financial abuse) in the previous year (3.6 million)
 - 5 percent reported that they were being currently financially exploited by a family member (1.7 million)
 - Caveats
 - Study used a broad category of “mistreatment,” is based on self reports, and excluded those aged 85 and older and those with dementia, who are particularly vulnerable to abuse and neglect



Slide 8 (ANIMATED)

Prevalence refers to the TOTAL number of people who have experienced abuse, neglect, or exploitation in a specified time period.

CLICK It is difficult to say how many older Americans are abused, neglected or exploited, in large part because definitions vary, data collection is limited, and the problem remains greatly hidden.

CLICK One of the more notable sources of prevalence data is from the 2009 Elder Mistreatment Study. The study relied on self-reported data for those between the ages of 60 and 84. Results showed that:

- 11 percent of older adults reported at least one form of mistreatment (excluding financial abuse) in the previous year (3.6 million elders).
- 5 percent indicated they were currently being financially exploited by a family member (1.7 million elders).

While these may be the best prevalence numbers available, they likely undercount victims because:

- The study used a broad term of “mistreatment,” which is likely to include actions that may not qualify as abuse or neglect.
- The study did not include individuals over the age of 85 and those suffering from dementia, who may be more susceptible to abuse, neglect, and exploitation. If those individuals had been included, the prevalence rates would be much higher.

Elder Abuse Incidence

FOR EVERY REPORT OF ABUSE...



5 GO UNREPORTED



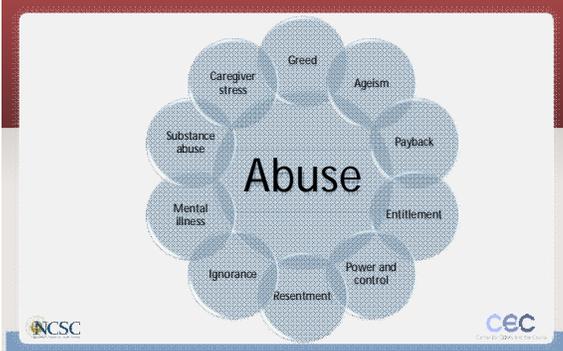
Slide 9 (ANIMATED)

Incidence is the number of NEW cases identified or reported during a given period of time—usually one year.

Victims are seen in clinics and emergency rooms every day, but the injuries often go unrecognized as abuse or neglect. Relatively few cases of elder abuse are reported to the authorities.

CLICK Currently, it is estimated that for every report of abuse, five go unreported.

Elder Abuse Factors



Slide 10 (INTERACTIVE) (ANIMATED)

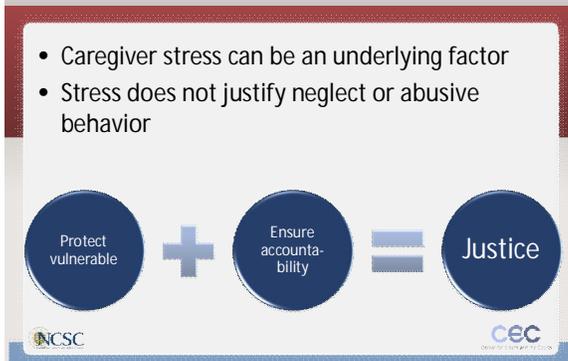
The title of the slide will appear. Do not bring up the graphic until the exchange with participants is completed.

Ask participants: What are some of the factors that might explain why older people are abused or neglected? Write down some of these factors.

CLICK to bring up graphic

Quickly note any additional factors that participants may have overlooked.

Caregiver Stress



Slide 11

The theory of caregiver stress as a cause of elder abuse is sometimes presented. Caregiver stress can be an underlying factor, but it is not an excuse or defense to elder abuse.

There are a number of problems with the idea that caregiver stress is as a cause of elder abuse, including the following:

- It is a theory that is not supported by research.
- It is a theory that ignores the reality that many abusers are actually dependent on the older adult and are not, in fact, caregivers at all.
- It is a theory that sanctions the use of violence against older adults, ignores the reality that most caretakers, though stressed, do not abuse older adults, blames the victim for the abuse, and creates a safe haven for abusers where their behavior is not only excused but met with empathy.

Caregiving may indeed cause stress, but stress is not an excuse for violent behavior. Would a similar theory of the causation of child abuse (i.e., parents abuse their children due to stress) or even pet abuse—garner support or engender empathy?

Ultimately, the judicial system's goal is to protect the vulnerable person, as well as ensuring accountability. Caregiver stress can be recognized in that context, though does not negate an individual's accountability.

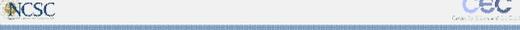
Recognizing Abuse and Neglect

Slide 12

Elder abuse and neglect are hidden problems.



How will you recognize elder abuse?



The Hidden Nature of Abuse

Slide 13

Elder abuse, neglect, and exploitation may be an underlying factor in a variety of court cases involving older persons.



Very few cases are heard by the court as a criminal case with specific charges of “elder abuse” or “elder neglect.” Rather, elder abuse may be a background factor that arises in the context of other types of cases. For example:

A petition for a protection order may be filed to provide relief for an elderly victim who has endured years of abuse from a spouse or a member of the family.

In probate or civil court, a power of attorney (POA) may be contested on the grounds that an agent of the individual placed under the POA is abusing his/her powers.

While the court’s response is limited by state law, jurisdiction, and court practices, once elder abuse or neglect is suspected, innovative strategies that aim to halt the abuse and improve the well-being of the older victim can be explored. The key is to recognize these cases when they come before the court.

“Red Flags”

Physical/Sexual Abuse

Slap marks	Unexplained fractures	Bruises, welts, cuts, sores, or burns	Nonconsensual sexual conduct
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Slide 14 (ANIMATED)

Physical and sexual abuse are the most obvious forms of elder abuse. Examples of “red flags” include slap marks, unexplained fractures, bruises, welts, cuts, sores, burns, and nonconsensual contact. When these cases are presented in court, the issues can be more complex due to the effects of the aging process and issues of capacity and consent.

Click to highlight: Bruises, welts, cuts, sores, or burns.

The next slide discusses some of the latest research (carried out by the UC-Irvine Center of Excellence on Elder Abuse and Neglect) on bruising in elders as a result of abuse.

Physical Abuse: Bruising

Defenses	Research Findings
Older people just bruise easily. There's no way to distinguish if the bruise was accidental or inflicted.	<ul style="list-style-type: none"> • 90% of accidental bruises were on the extremities; whereas bruises caused by abuse tended to be located on the torso, neck, or head. • 90% of older adults with bruises who have been physically abused can tell you how they got their bruises, and this includes many older adults with memory problems and dementia. • Bruises indicative of abuse tend to be large (about 2 inches in diameter or larger).
The color of the bruise indicates it occurred at a time when the defendant was not in contact with the victim.	<ul style="list-style-type: none"> • In older persons, the color of a bruise does not indicate its age.
The bruise was caused by medications taken by the victim.	<ul style="list-style-type: none"> • Older adults taking medications that interfere with coagulation pathways were more likely to have multiple bruises, but the bruises did not last any longer than the bruises of those who didn't take these medications.

Slide 15

The University of California at Irvine Center of Excellence on Elder Abuse and Neglect carried out a study of bruising in elders that occurred as a result of physical abuse.

In a criminal court, you might hear some common arguments that would suggest that bruising cannot be linked to abuse in older persons:

1. Older people just bruise easily. There's no way to distinguish if the bruise was accidental or inflicted.
 - ü Research: Differences can be shown between accidental and intentional bruising. Inflicted bruises tended to be located on the torso, neck, or head of the older person (accidental bruises occurred more frequently on the arms and legs). Bruises caused by abuse tended to be larger than those caused accidentally. Even those with memory problems and dementia who had been abused were able to indicate how they got their bruises.
2. The color of the bruise indicates it occurred at a time when the defendant was not in contact with the victim.
 - ü Research: In older adults, the color of a bruise was insignificant in determining its age.
3. The bruise was caused by medications taken by the victim.
 - ü Research: Certain medications do result in older persons more easily bruising. These individuals tend to have more bruises, but they don't last any longer than those not taking these medications. The location of the bruises should not be impacted by medications.

"Red Flags"

Emotional Abuse

Withdrawal from normal activities

Unexplained changes in alertness or other unusual behavioral changes

Aggressive or controlling relationship

Slide 16 (ANIMATED)

Signs of emotional abuse include withdrawal from normal activities, unexplained changes in alertness or other unusual behavioral changes, and involvement in aggressive or controlling relationships. While emotional abuse does not necessarily include physical abuse, it can be a precursor to physical or sexual violence, especially in relationships that include an element of domestic violence.

CLICK to highlight: Aggressive or controlling relationship.

The next slide discusses emotional abuse, primarily as it occurs in the context of aggressive or controlling partners or family members.

Domestic Violence in Later Life

<p>A person uses power and control to injure or harm an older person with whom they have an ongoing relationship</p>	<p><u>Typical abusers</u> spouses, former spouses, partners, adult children, extended family, caretakers</p>	<p>Abusers use a pattern of coercive tactics, such as isolation, threats, intimidation, and violence to gain and maintain power over their victims</p>
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Slide 17 (ANIMATED)

Aggressive or controlling relationships are typical of domestic violence, which is perpetrated on people of all ages. Elder abuse and domestic violence often intersect in what has been referred to as abuse in later life.

The level of physical violence against older persons may vary, but threats of violence that keep the older person fearful are typical. The goal or outcome of all these behaviors is to maintain power and control.

Emotional Abuse

Mickey Rooney Testifies about Elder Abuse



AP Photo: Alex Brandon

- Often accompanied by physical abuse, neglect, and financial exploitation
- Creates an environment of "shame" and helplessness that plays a role in the hidden nature of abuse
- Can be gradual or sudden




Slide 18

The room should be equipped with speakers that will project the audio from the video clip embedded in this slide. If speakers are not available, you may need to hold a microphone to your laptop speaker.

Emotional abuse is often accompanied by other forms of abuse. It creates an environment of shame and helplessness. Emotional abuse can be an ongoing behavior or can seem to appear out of nowhere.

Case Information

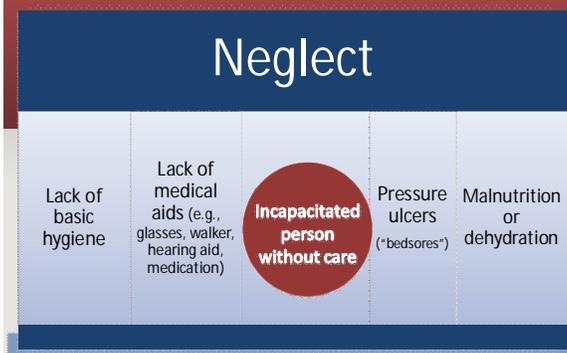
The case of actor Mickey Rooney is an example of emotional abuse and domestic violence in later life. On March 2, 2011, Mr. Rooney testified on elder abuse at the request of the U.S. Senate Special Committee on Aging. In February, Mr. Rooney received a restraining order against his stepson, Christopher Abner. According to court papers, Rooney had to hide in his room to avoid his stepson. Abner deprived Rooney of his medications and food, and he had confiscated Mr. Rooney's passport and other identification cards.

In this video segment from the hearing, Mr. Rooney discusses the intimidation and harassment he had endured for years. His testimony underscores the power and control that can be wielded by family members and the emotional aspects of abuse that keep victims silent for so long.

[Mouse over to Rooney Photo and clip to play video clip]

This is a 4-minute video clip. You may need to physically move the cursor on your laptop and click on the Rooney photo to play this video. Be ready with a back-up of the Rooney video clip (located on the CEC website) in case the video does not play from the slide.

“Red Flags”



Slide 19 (ANIMATED)

Some of the more obvious physical signs of neglect include:

- Leaving an incapacitated person without adequate medical care
- Pressure ulcers (or “bedsores”), and
- Malnutrition or dehydration.

The lack of basic hygiene and lack of medical aids are suggestive of neglect, but may reflect other issues as well. In these cases, self-neglect, financial limitations, or capacity issues may come into play.

Click to highlight. The next example is a criminal case that involved the death of an 88-year old incapacitated woman.

Elder Neglect

The slide is titled "The Case of Christopher Wise" and includes a photograph of a man in a red shirt being escorted by police officers. The text on the slide discusses legal considerations in elder neglect cases:

- Neglect versus honoring victim's wishes
 - Victim's cognitive impairment and history of seeking medical care must be considered
 - Defendant may have ulterior motives (e.g., relying on victim's social security checks)
- Ability to provide adequate care may be an issue

Logos for NCSC and CEC are visible at the bottom of the slide.

Slide 20

See the interview with prosecutor Page Ulrey in Appendix C.

A common defense in elder neglect cases is that the defendant was simply following the victim's wishes—wishes to avoid medical treatment and to die in one's own home. In other cases, the ability to provide adequate care is an issue. The caregiver may consider his or her efforts noble and adequate, but they do not meet minimal standards of care. Neglect cases tend to be very challenging to successfully prosecute.

Case Information

The case of Christopher Wise is one in which he claimed to be simply following his mother's orders. This is a case that occurred in Seattle, Washington and was tried by the King County Prosecuting Attorney's Office. In 2010, Christopher Wise was convicted of second-degree manslaughter in the death of his 88-year-old mother and sentenced to 27 months in prison plus an additional 12 months for the aggravating factor that the victim was a dependent person for whose care the defendant was responsible.

Evidence of neglect revealed in the course of investigating and prosecuting the case included:

- The extreme signs of extended neglect of the mother
 - When King County sheriff's deputies found Ruby Wise's body, she had withered to 70 pounds and was covered in bedsores.
- The mother's dementia
- The mother's long history of obtaining medical care
- Mr. Wise's reliance on her social security and disability checks while going to bars and remaining unemployed.

Throughout the trial, Christopher Wise maintained that he was only following his mother's wishes to die at home.

"Red Flags"

Financial Exploitation

Sudden change in finances and accounts (including unusual withdrawals)	Altered wills and trusts	Checks written as "loans" or "gifts"	Loss of property	Improper use/forgery of power of attorney
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Slide 21 (ANIMATED)

Signs of financial exploitation can take many forms. Some of the common "red flags" that should be investigated include sudden changes in finances and accounts (including unusual withdrawals), altered wills and trusts, checks that are written as "loans" or "gifts," loss of property (including recordings of property deeds that appear to be suspicious), and the improper use or forgery of power of attorney.

CLICK An example of one of these "red flags"—altered wills and trusts—leading to successful criminal convictions follows on the next slide.

Financial Exploitation

The Case of Philanthropist Brooke Astor



- Financial exploitation alleged to be most common form of abuse
- Exploitation occurs within the family (children, grandchildren, and relatives)
- Defenses often based on the defendants' perceptions that they are entitled to funds or acting in victim's best interest

NCSC CEC

Slide 22

See the interview with prosecutor Elizabeth Loewy in Appendix C.

Altered wills and trusts can be a sign of financial exploitation and other forms of abuse. Some experts indicate that financial exploitation is the most common form of elder abuse and often occurs within the family. Some of the common defenses heard in cases of financial exploitation include the following:

- § Consent: "He gave it to me. He insisted I take it."
- § Legal authority: "I have power of attorney and am only doing what is best for my dad."
- § "We are spending down so that he can qualify for Medicaid."
- § Loan: "I planned to pay her back really soon."
- § "It's my inheritance and I'll use it when I need it."

Case Information

The case of legendary New York philanthropist Brooke Astor demonstrates how an altered will led to a criminal case. Facts of the case:

- The case was based on a forged signature on one of the codicils to her will.
- In 2009, a jury returned "guilty" verdicts against the two men entrusted with her financial well-being: son Anthony Marshall and estate attorney Francis X. Morrissey, Jr.
 - Marshall was found guilty on 14 of 16 counts and Morrissey was convicted on counts of fraud, conspiracy, and forgery.

The Astor case will be described in greater detail as we discuss important legal concepts related to elder abuse.

What do these cases have in common?



None of the cases came before the court identified as "elder abuse."

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Slide 23 (ANIMATED)

What do these cases have in common?

CLICK The cases highlighted did not enter the court with specific charges of "elder abuse."

- Mickey Rooney's experiences came to light in the context of a restraining order.
- Christopher Wise was prosecuted on charges of 2d degree murder or in the alternative 1st degree manslaughter, with an aggravator based on the fact that the victim was unusually vulnerable.
- The Brooke Astor case started in Surrogate's Court, as a challenge to a guardianship. The defendants ultimately were found guilty of fraud, conspiracy, and forgery, not specifically elder abuse.

These case examples underscore the fact that judges will see elder abuse and neglect in a variety of settings and illustrate how cases involving elder abuse may come to the attention of the court.

Key Legal Issues

Capacity

Consent

Undue Influence

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Slide 24 (INTRODUCTORY)

This slide introduces the next section of the module. There are three legal concepts that are particularly important in elder abuse and neglect cases: Capacity, Consent, and Undue Influence. The case of Brooke Astor will be used to highlight each of these concepts. First, some background information is needed.

Background to Brooke Astor Case

Brooke Astor died at the age of 105 in 2007, with an estate estimated to be worth \$132 million, in addition to a trust valued at more than \$60 million. One of the transactions that became central to both criminal and civil proceedings was a change in her will in 2004, which diverted millions to her son that had been promised to charities. Mrs. Astor was 103 at the time and suffering from Alzheimer's disease.

Mrs. Astor's condition came to light a year earlier when one of her grandsons sought to have his father removed as her guardian amidst allegations of neglect and financial exploitation. In the course of the proceedings, Mrs. Astor's court-appointed attorney observed that a signature on one of the amendments to the will (codicils) purported to be Mrs. Astor's looked suspicious in comparison to the other documents. After a handwriting analyst confirmed the signature to be a forgery, a criminal investigation was initiated.

Key Legal Issues

Capacity

Consent

Undue Influence

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Slide 24 (continued)

The trial that eventually led to the convictions of Mrs. Astor's son, Anthony Marshall (age 85), and estate attorney Francis Morrissey, Jr. on counts of fraud, conspiracy, and forgery, included 19 weeks of testimony and closing arguments. At the heart of the case were a series of transactions whose legitimacy hinged on evidence of Mrs. Astor's capacity, her consent to specific actions, and undue influence exerted by the defendants.

Capacity

Capacity is the cluster of mental skills that people use in everyday life. It fluctuates over time, situations & tasks.

memory logic behavioral functioning physical functioning

Capacity

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Slide 25 (ANIMATED)

Examples of capacity fluctuations

Time: Capacity can vary by the time of the day. Some people may function better in the morning or early afternoon. People with dementia may experience "sundowning," which is a state of confusion that sets in the end of the day.

Situations: Capacity may be greater when the person is in a familiar setting or with people he or she knows well. A person may be able to comprehend information related to familiar topics, or information that is broken down and delivered in smaller amounts. Grieving the loss of a loved one or friend can lower a person's capacity for a period of time.

Medical conditions: medications can reduce capacity or mimic incapacity.

Task: A person may be able to perform routine tasks (eating, dressing) but have difficulty with tasks that require more steps and attention (preparing meals, managing medications).

CLICK Capacity is comprised of four basic elements: Memory, Logic, Behavioral Functioning, and Physical Functioning

Astor Case Study

In the case of Mrs. Astor, prosecutors presented evidence to demonstrate her diminishing capacity over time. A key piece of evidence was a letter written by her son, Anthony Marshall, to one of her doctors in 2000 in which he described his mother's fragile mental state. He wrote that his mother had difficulty getting dressed, writing and spelling, had problems with simple arithmetic, was incoherent and indecisive, and "mixes up words, saying one, meaning another."

Legal Aspects of Capacity

Standards of capacity vary for different types of transactions. For example:

Testamentary capacity: at the time of executing a will, the person has the capacity to know the natural objects of his/her her bounty, to know the nature and extent of his/her property, and to integrate this knowledge to make a rational plan for disposing of the property.

Contractual capacity: the person can understand the nature and effect of making a contract and the business being transacted (less complicated transaction requires lower level of understanding)

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Slide 26

State statutes and case law have established standards of capacity for different types of legal transactions, including testamentary, contractual, conveyance of real or personal property, execution of durable power of attorney, and health care decision making.

Two common examples are testamentary capacity, which refers to an individual's capacity at the time of executing a will, and contractual capacity, in which the capacity to understand the nature and effect of a contract or business transaction is required.

Astor Case Study

The testamentary capacity of Mrs. Astor was a key element in proving the legitimacy of changes to her will. Defense attorneys argued that, despite a diagnosis of Alzheimer's disease, Mrs. Astor had periods of lucidity and that she had testamentary capacity when she signed the codicils to the will. Prosecutors produced witnesses that stated otherwise.

Legal Aspects of Capacity

Determining capacity in older adults can be very difficult and often requires gathering information from many sources. Examples include:

- ☐ Family members
- ☐ Medical care professionals
 - ☐ Physician
 - ☐ Geriatrician
 - ☐ Neurologist
- ☐ Mental health care professionals
 - ☐ Geriatric Psychiatrist or Psychologist
 - ☐ Forensic Psychiatrist or Psychologist
- ☐ Adult protective services workers



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Slide 27

Determining capacity in older adults can be difficult. Several tools have been developed to assist judges, lawyers and court-based professionals in assessing the capacity of older persons, including *Judicial Determination of Capacity of Older Adults in Guardianship Proceedings* (2006), created by American Bar Association Commission on Law and Aging and the American Psychological Association.

Generally, capacity determinations should include the collection of information from a variety of sources, including family members, medical care experts, mental health professionals, and adult protective services. It is particularly helpful to include experts who have some expertise in geriatrics.

Astor Case Study

The Astor case included over 70 witnesses for the prosecution, including expert witnesses—trust and estate attorney, geriatric psychiatrist, and handwriting analyst. The trial featured testimony from the treating physician, home nurses and aides, housekeepers, personal staff, and two grandsons. Other witnesses included some of Mrs. Astor's well-known friends, such as former Secretary of State Henry Kissinger and Barbara Walters.

Consent

Consent requires an individual to be able to:

- Understand the transaction or activity
- Make judgments about it
- Decide if it is something he or she chooses to do

Consent is a significant factor in determining the legitimacy of a wide range of actions.

- An issue in determining whether a crime has been committed (especially intimate crimes)
- An important issue in legal transactions
- A fundamental issue for APS (capacity to consent)



Slide 28

Consent requires an individual to be able to:

- Understand the transaction,
- Make judgments about it, and
- Decide if it is something he or she chooses to do.

It can be more difficult to apply the familiar legal concept of consent to actions of older persons who may not have the capacity to consent.

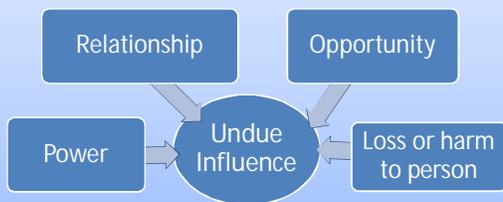
Consent is an important factor in determining whether a crime has been committed—this is particularly challenging in intimate partner crimes, especially crimes that require a true level of consent for sexual relations. The capacity to consent is a fundamental issue in legal transactions and for Adult Protective Services (APS), especially in cases in which they must determine capacity to consent of those who refuse services.

Astor Case Study

Even if the defense had been able to establish Mrs. Astor's capacity, her consent to each of the transactions remained in dispute. Did Mrs. Astor understand the event, was she able to make a rational judgment about it, and did she freely choose to change her will? Testimony from one of Mrs. Astor's nurses stated, in substance, that the defendants had physically dragged Mrs. Astor into a room to execute one of the codicils to her will, a document she had not been shown before that day. Minutes later, Mrs. Astor exited and asked what had just happened. This testimony questions Mrs. Astor's consent to this amendment of her will.

Undue Influence

Undue influence is the misuse of one's role and power to exploit the trust, dependence, and/or fear of another to deceptively gain control over that person's decision making or assets.



Slide 29

Undue influence focuses on the relationship between the vulnerable individual and another person, coupled with that person's opportunity and power to manipulate the vulnerable person's thoughts and actions.

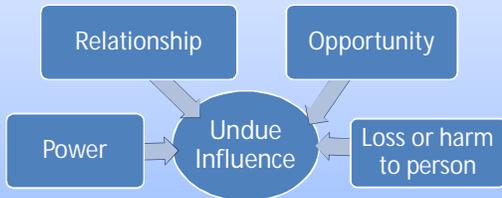
Astor Case Study

The case of Mrs. Astor demonstrated all the elements of undue influence.

- The defendant had legal power through the POA that allowed him to act on his mother's behalf and control her physical environment.
- He had a trusted relationship as an only child.
- He had opportunity to exploit his power and relationship because his mother had advanced Alzheimer's disease.
- His actions resulted in harm to Mrs. Astor by isolating her from friends, depriving her of the living standards her wealth could provide, and diverting her assets away from charities she intended to support.

Undue Influence

Undue influence is the misuse of one's role and power to exploit the trust, dependence, and/or fear of another to deceptively gain control over that person's decision making or assets.



Slide 29 (continued)

Astor Case Study

A prime example of undue influence is the prosecution's contention that Mr. Marshall tricked his mother into thinking it was necessary to sell a well-known painting by telling her she was running out of money (he sold the painting for \$10 million and kept \$2 million as his commission).

Undue Influence

Undue influence typically is not a crime; rather it is a means to commit a crime, such as exploitation and other forms of financial abuse.

Undue influence often is alleged in disputes over the validity of wills, conveyances of property, contracts and powers of attorney.

Undue influence is a factor in decisions about the need to protect a person through guardianship and/or conservatorship.

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Slide 30

Undue influence typically is not a crime, but a means to commit a crime. Undue influence is often referred to in civil and probate codes (especially those pertaining to wills and other conveyances of property/assets and guardianship/conservatorship proceedings) and in Adult Protective Service Statutes.

Astor Case Study

In the Astor criminal case, the term "undue influence" was not used.

- However, testimony regarding facts that could constitute undue influence in a civil proceeding was admitted to support the charge that the defendants conspired to steal from Mrs. Astor's estate.
- On the civil side, undue influence was a factor in the grandson's petition to have his father removed as her guardian.

As the Astor case demonstrates, the legal concepts of capacity, consent, and undue influence are often subtle and can be difficult to prove in specific actions at particular periods of time.

Implications for the Court

- The identification of elder abuse can be difficult.
- Elder abuse may be an underlying factor in a variety of court cases involving older persons.
- Transactions involving older persons may need additional scrutiny.
- More cases will involve complex issues of capacity and consent.



Slide 32 (ANIMATED)

Instructor: Summarize module 2.

- The U.S. is experiencing a demographic transition. As the “baby boomers” head into retirement, there will be more elders than at any other time in history—elders will comprise 20% of the population by 2030.
- People are living longer than ever. The fastest growing age group are those 85 and over. The combination of more elders living longer lives will impact every facet of society.
- Elders tend to be negatively stereotyped. Yet aging varies significantly from individual to individual. As with most stereotypes, reality seldom aligns to myth.
- Aging is a natural process in which some physiological changes simply make older persons more vulnerable. Slower reaction times and diminished eyesight and hearing are common occurrences.
- Physiological impairments, emotional issues, and cognitive impairments increase one’s vulnerability to financial exploitation, elder abuse, and neglect.

What are some of the implications for the court?

- CLICK Identification of elder abuse can be difficult.
- CLICK Elder abuse may be an underlying factor in a variety of court cases involving older persons.
- CLICK Transactions involving older persons may need additional scrutiny.
- CLICK More cases will involve complex issues of capacity and consent.

Ask participants: Given all that we’ve just discussed, are there any additional implications for the court?

Slide 33

Length of DVD presentation is 13:45 Minutes

DVD Instructions

1. The room should be equipped with speakers that will project the audio from the laptop. If speakers are not available, you may need to hold a microphone to your laptop speaker.
2. Insert DVD in your laptop.
3. *CLICK* on Main Menu
4. *CLICK* on Ø Play Video



DVD Presentation

Responding to Elder Abuse
What Judges and Court
Personnel Should Know



Module Two Source List

Slide 4: General Definition

- ✚ Source: National Center on Elder Abuse
http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Questions.aspx

Slide 5: Types of Elder Abuse

- ✚ National Center on Elder Abuse
http://www.ncea.aoa.gov/ncearoot/Main_Site/index.aspx

Slide 6: Elder Justice Act (EJA)

- ✚ Elder Justice Coalition
<http://elderjusticecoalition.com>

Slide 8: Estimates of Prevalence

- ✚ Bonnie & Wallace, Eds, *ELDER MISTREATMENT: Abuse, Neglect, and Exploitation in an Aging America*, National Research Council Panel to Review Risk and Prevalence of Elder Abuse and Neglect, (2003), Preface.
- ✚ M. Lachs & K. Pillemer, Elder abuse, *Lancet*, 364 (2004), 1192-1263.
- ✚ National Elder Abuse Incidence Study, NIJ, Ron Acierno, Melba Hernandez-Tejada, Wendy Muzzy, and Kenneth Steve, 2009

Slide 9: Elder Abuse Incidence

- ✚ National Elder Abuse Incidence Study. 1998. Washington, DC: National Center on Elder Abuse at American Public Human Services Association.

Slide 11: Caregiver Stress

- ✚ Judge Karen Aileen Howze and Jennifer L. White, "Judicial Response to Elder Abuse," *Juvenile & Family Court Journal*, vol. 61, no. 4 (fall 2010), pp. 57-76.

Slide 14: "Red Flags"

- ✚ Examples of "red flags" can be found on the CEC's benchcard for judges (http://eldersandcourts.org/docs/GeneralCard_FINAL2.pdf). The benchcard is discussed in module 3.

Slide 15: Physical Abuse: Bruising

- ✚ Citation: Wigglesworth A, Austin R, Corona M, Schneider D, Liao S, Gibbs L, Mosqueda L. Bruising as a marker of physical elder abuse. *J Am Geriatr Soc*. 2009 Jul;57(7):1191-6.

Slide 16: "Red Flags"

- ✚ Center for Elders and the Courts. Elder Abuse Basics: Types of Elder Abuse
<http://eldersandcourts.org/abuse/index.html#top>

Slide 18: Emotional Abuse

- ✚ Mickey Rooney Interview at the Special Committee on Aging Committee Hearing March 2, 2011 • Start 2:00 PM EST Stop 3:28 PM EST

Slide 19: "Red Flags"

- ✚ Center for Elders and the Courts. Elder Abuse Basics: Types of Elder Abuse
<http://eldersandcourts.org/abuse/index.html#top>

Slide 20: Elder Neglect

- ✚ Case Information from Page Ulrey, Prosecutor, and various newspaper clippings
- ✚ See Appendix C for Q&A with Page Ulrey, Prosecutor

Slide 22: Financial Exploitation

- ✚ Case Information from Elizabeth Loewy, Prosecutor, and various newspaper clippings
- ✚ See Interview with prosecutor Elizabeth Loewy
(<http://eldersandcourts.org/newsletter/index.html>)
- ✚ See Appendix D for case summary

Slide 25: Capacity

- ✚ American Bar Association Commission on Aging and the Law: Capacity Definition & Initiation of Guardianship Proceedings
- ✚ Judicial Determination of Capacity of Older Adults in Guardianship Proceedings (2006) American Bar Association Commission on Law and Aging – American Psychological Association
- ✚ Assessment of Older Adults With Diminished Capacity: A Handbook For Lawyers. (2005) ABA Commission on Law and Aging and the American Psychological Association.
- ✚ Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists (2008) American Bar Association Commission on Law and Aging – American Psychological Association A Copyright

Slide 27: Legal Aspects of Capacity

- ✚ Judicial Determination of Capacity of Older Adults in Guardianship Proceedings (2006) (contains model forms and orders, less restrictive alternatives to guardianship and information charts on numerous capacity related issues)
- ✚ Assessment of Older Adults With Diminished Capacity: A Handbook For Lawyers (2005) (contains a capacity worksheet, a capacity assessment algorithm and a guide to psychological and neurological instruments)

Slide 28: Consent

- ✚ Assessment of Older Adults With Diminished Capacity: A Handbook For Lawyers. (2005) ABA Commission on Law and Aging and the American Psychological Association. Downloadable from the ABA Commission on Law and Aging.
<http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=4280025PDF>

Slides 29 & 30: Undue Influence

- ✚ Explanation of the "Undue Influence: Context, Provisions, and Citations in Adult Protective Services Laws, by State" Chart (Laws current as of 12/31/06) Copyright © American Bar Association Commission on Law and Aging (2007)

- ✚ UNDUE INFLUENCE: CONTEXT, PROVISIONS, AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE (Laws current as of 12/31/06) Copyright © American Bar Association Commission on Law and Aging (2007)
- ✚ Mary Joy Quinn, Eileen Goldman, Lisa Nerenberg, Deana Piazza. UNDUE INFLUENCE: DEFINITIONS AND APPLICATIONS, A PROJECT SUPPORTED BY THE BORCHARD FOUNDATION CENTER ON LAW AND AGING: FINAL REPORT March 2010 (California Administrative Office of the Courts)
- ✚ The “Undue Influence Worksheet” and “IDEAL” Protocol. Available at: http://bennettblummd.com/undue_influence_ideal_model.html

Module Three Overview



Use

Court seminar or part of a training conference

Delivery Method

Sixty minute PowerPoint presentation (includes interactive exercises)

Goal

Judicial officers will learn how to craft court responses that effectively address elder abuse, neglect and exploitation in a variety of settings.

Objectives

At the conclusion of Module Three, judges should be knowledgeable about

- § State elder abuse reporting requirements
- § The importance of judicial leadership
- § Strategies to build community-based responses
- § Information needed to address elder abuse in a variety of court settings

Materials

- § Curriculum PowerPoint presentation
- § Instructor's manual
- § NCSC elder abuse benchcard
- § Adaptation of benchcard by Florida's 13th Judicial Circuit
- § Small group exercises (case scenarios and questions)

Module Three

Slide 1

Some slides are animated and require you to CLICK to advance to the next discussion point. Animated slides are noted as such and include CLICK instructions.

Recommended Presentation Time: 60 minutes

Handouts for Module 3:

NCSC Elder Abuse Benchcard

Adaptation of Benchcard by Florida's 13th Judicial Circuit
Small Group Exercise—Case Scenarios and Questions

Slide 2

Slide 3

CLICK to introduce each objective.

Crafting Appropriate Court Responses

Judicial Leadership

- ABA Code of Judicial Conduct
- State Code of Conduct

Community Resources

- Task Forces
- Multi-Agency Responses

Slide 4

Two ingredients are critical to maximize the court’s response: Judicial Leadership and Community Resources

Judicial leadership is critical to ensuring that the court and the judicial process adequately address elder abuse. The value of judicial leadership in multi-agency coordination efforts has been demonstrated in several arenas, including child abuse and neglect, domestic violence and victims’ rights.

ABA Code of Judicial Conduct (2007) and state codes allow and encourage judges to engage in activities and initiatives to improve the administration of justice and advocate for the improvement of the justice system. For example:

- ü Canon 1, Rule 1.2 Promoting Confidence in the Judiciary: A judge should initiate and participate in community outreach activities [to promote] public understanding of and confidence in the administration of justice. (Comment 6)
- ü Canon 3, Rule 3.1 Extrajudicial Activities in General: ...judges are encouraged to participate in appropriate extrajudicial activities. (Comment 1)
- ü Canon 3, Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities: (A) ...a judge may participate in activities sponsored by [entities] concerned with ...the administration of justice...

Resources specific to the needs of elders can be found in every community. Many communities have elder task forces . It can be beneficial for the court to participate in such task forces so that community resources can be identified and mobilized in elder abuse cases. In addition, some communities feature multi-agency response teams that work to address specific cases, such as those involving financial exploitation.

In the absence of coordinated community responses, the court has an opportunity to demonstrate its leadership by bringing agencies and organizations to the table.

Benchcard for Judges

- What is elder abuse?
- Is elder abuse a crime?
- What important concepts should I know about elder abuse cases?
- How can the court identify elder abuse and neglect?
- What are the court's reporting requirements?
- What tools are available to help the court respond to elder abuse?
- Where can I find more information?

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Slide 5

Hand out copies of both the NCSC Elder Abuse Benchcard.

Explain that the benchcard is a concise guide to elder abuse issues for judges. It is not specific to criminal acts of elder abuse and neglect. It was designed to be a quick reference that will help judges identify elder abuse in cases coming before the court and consider effective responses.

The benchcard addresses many of the issues discussed in modules 1 & 2 and coming up in this module.

Do not go over details of benchcard at this time. Instead, note that it includes the following topics, many of which were already discussed in earlier modules:

Definitions

Important Concepts

Types of abuse and red flags

Reporting requirements

Case management tools

Remediation tools

Homework Exercise

Adapting the benchcard for
your jurisdiction

NCSC

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Slide 6

Hand out copies of Florida's 13th Judicial Circuit Elder Abuse Benchcard.

The benchcard can be modified to suit the needs of your individual court or jurisdiction. We have given you a modified benchcard, created by Florida's 13th Judicial Circuit, as an example.

When you complete this course, we ask that you consider developing a benchcard for your local jurisdiction. The benchcard provides a framework for starting the conversation with current and potential community partners. This conversation can be a catalyst for identifying needs and resources, working together to fill gaps, and improving coordination across the community to achieve better outcomes for elders in the courts.

Tell participants that both benchcards are available at NCSC's Center for Elders and the Courts: www.eldersandcourts.org

Interactive Exercise

Shawn Marshall is arrested for possession of heroin in the apartment complex where he lives with his 72 year old grandmother. Shawn has no prior offenses. He pleads guilty and is found eligible for drug court.

The drug court assessment includes an interview with Mrs. Marshall. She tells the evaluator she has tried to keep Shawn out of trouble over the past few years. He used to borrow money from her, but lately he has been demanding that she write checks to him. He brings strangers into the apartment at all hours and she has become fearful of Shawn and his friends.

Shawn Marshall is scheduled to appear before you for a monthly review hearing. You read the report from the drug court assessment which includes Mrs. Marshall's concerns and fears about Shawn's behavior.

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Slide 7 (INTERACTIVE EXERCISE)

This slide is used in conjunction with the next slide.

The participants will work through the scenario together to identify indicia of elder abuse as an underlying issue in the case and apply issues addressed in the DVD viewed at the conclusion of Module 2.

Read the scenario to the participants. Give the participants a couple of minutes to consider the scenario and jot down some ideas. Lead the participants in a discussion of the possible actions a judge could take.

What is going on?

What are the red flags?

What issues are raised?

What information do I need?

What should I do now?

Slide 8 (INTERACTIVE EXERCISE)

1. Ask participants to identify some of the "red flags."

Possible responses:

- ü Escalating demands for money
- ü Grandmother fearful
- ü Shawn depends on Mrs. Marshall for housing
- ü Mrs. Marshall may be subject to eviction if her rent is federally subsidized
- ü Shawn is using and may be selling drugs

2. Ask participants about the issues that may be raised that the court should/could address.

Possible responses:

- ü Mrs. Marshall probably has ignored/covered up Shawn's behavior thinking she's protecting him
- ü If Shawn is sentenced to probation, it will restrict his employment and housing options

3. Ask participants to identify information they would need to decide course of action.

Possible responses:

- ü What is Mrs. Marshall's medical condition? Does she have any cognitive disabilities or functional limitations?
- ü Substance abuse assessment information on Shawn
- ü Risk assessment for Shawn

4. Ask participants what they should do now.

Possible responses:

- ü Refer Mrs. Marshall to legal services or pro bono attorney (protection order)
- ü Refer case to Adult Protective Services (APS) for investigation
- ü Appoint a guardian *ad litem* (GAL) for Mrs. Marshall
- ü Issue a no-contact order
- ü Allow only supervised contact between Mrs. Marshall and Shawn
- ü Report abuse? To whom

Reporting Requirements

Mandated reporters who suspect elder abuse are required to report the abuse to the local APS or law enforcement agency.



Know your state's mandatory reporting requirements



Develop APS and law enforcement points of contact for the court



Assign court staff to collaborate on the creation of a reporting and investigation protocol between the courts, local justice agencies & APS

Slide 9

The court may need to report possible elder abuse. Judges and court staff should know the state law on reporting elder abuse. Most state laws require reports to the adult protective services agency or law enforcement.

Refer to Benchcard.

Reporting Requirements

Insert your state reporting requirements here

NCSC

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CENTER FOR ELDER CARE

Slide 10

Remediation Tools



Tailored restraining or "no contact" orders



Review hearings



Appointment of guardian *ad litem*

Slide 11

Refer to NCSC Elder Abuse Benchcard. Possible remediation tools might be tailored restraining, protective, or "no contact" orders, review hearings, and the appointment of a guardian *ad litem*.

Tailored restraining or "no contact" orders

A "no contact" order might not be appropriate if the victim is dependent on the other person for basic daily needs. Consider consequences for victim when deliberating over nature of order.

If the victim wishes to maintain a relationship with the offender, then consider supervised contact.

Recognize power imbalances that may affect victim's ability to express true desires.

Order return of property, restitution, garnish wages or attach assets.

Review hearings

Review hearings should be set more frequently in cases that require close monitoring for compliance.

Cases involving reports of complaints about an elder's welfare should be monitored more frequently.

Appointment of guardian *ad litem*

A guardian *ad litem* can monitor the provision of services and the elder's welfare in her placement or treatment.

Remediation Tools



Slide 12

Refer to NCSC Elder Abuse Benchcard. More examples of remediation tools to consider include encouraging the use of advocates, victim impact statements, and creative sentencing.

Advocacy

Judges should encourage the use of advocates, who may help the victim to access resources and create a safety plan

Victim Impact Statements

Provide opportunity for victim to speak about their experiences and to present a victim impact statement

Creative Sentencing

Be creative in sentencing and use of alternative sanctions (e.g., order return of property, restitution, garnish wages or attach assets)

Case Management Tools



Slide 13

Refer to NCSC Elder Abuse Benchcard. There are a number of case management tools that can be used to improve the experience of elders in the courtroom. These include changes that can improve accessibility, and setting up procedures that will expedite and consolidate cases.

Ensure accessibility

- ü Ensure the courtroom is accessible and accommodates physical and/or cognitive impairments.
- ü Hold court proceedings outside of the courthouse when necessary
- ü Provide safe waiting areas for older victims and their families
- ü Equip the courtroom to assist older persons with impairments
 - Hearing amplification, Non-glare lighting, Magnifying glass, Oxygen cylinder

Expedite cases

- ü Expedite cases in which elder abuse is an underlying factor, including avoiding unnecessary continuances and delays.

Consolidate cases

- ü If possible, consolidate ancillary cases involving the same family or victim to create a consistent, efficient, and therapeutic outcome; also to reduce burdens on elder victim when his or her presence is required or desired for multiple matters pending before the court .

Case Management Tools



Slide 14

Refer to NCSC Elder Abuse Benchcard. Additional case management tools include calendaring cases, memorializing testimony and creating an elder court or docket.

Calendaring cases

Understand gradations of diminished capacity and calendar cases to accommodate medical needs and fluctuations in capacity and mental alertness.

- ü Older persons may require more time to dress and make themselves ready for court, so schedule hearings later in the morning.
- ü Avoid late afternoon hearings, when older persons with diminished capacity may experience "sundowning."

Memorialize testimony

While preserving the defendant's right of confrontation, consider procedures that assure the elder victim's testimony is memorialized, such as videotaped examinations and conditional exams.

Create elder court or docket

An elder court or docket can provide more time to focus on elder cases. These courts/dockets are set at a particular time and cases are heard by a specially trained judge. Elder courts often work closely with local community groups that address the needs of the elderly.

Small Group Exercise

Each group considers one of the following case scenarios:



Slide 15

You may find it convenient to print each scenario on a different color of paper. This makes it easier for you to hand out the appropriate form to each member of the group and ensures that each person in the group is working from the same scenario.]

Recommended Time for Group Exercise:

10 minutes to work through scenarios and questions

10 to 15 minutes to report back to the larger group

1. Divide participants into groups of 3 to 5 persons. Because there are 4 scenarios, having 4 groups is most convenient.
2. Assign each group one of the 4 scenarios. Distribute handouts with scenarios and instructions for the group exercise.
3. Ask that each group designate someone who can report back to the larger audience.
4. Give participants 10 minutes to work through scenarios and questions. Click to the next slide while group members are working.
5. Call upon the groups to report in the order on this slide.

Small Group Exercise

What issues does the scenario raise?

What information do you need?

How should you manage the case to maximize access to justice for the victim?

What remedies are likely to prioritize safety and well-being of the victim?

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Slide 16

Display this slide while participants work through group exercise.

Family Violence

- Robert petitions for a family violence restraining order against his 66 year-old brother, John, on behalf of himself, his son and his 83 year-old mother.
- John is unemployed and has alcohol abuse issues.
- All of the parties live together in the mother's home.
- The petition alleges verbal abuse and threats and seeks to exclude John from the residence.
- The mother makes excuses for John's behavior and wants both her sons to reside in the home.

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CEC

Slide 17

Briefly review scenario for the participants before the family violence group reports what it discussed. Possible responses are listed below.

Issues in case

- ü Mother's interests may conflict with protective measures the court can take
- ü Respondent's possible substance abuse and mental health issues are risk factors
- ü Escalation from verbal abuse to physical abuse—safety issues for mother
- ü Need for services for mother and for John

Information needed

- ü APS assessment of relationship between the mother and John
- ü Substance abuse/mental health assessment of John
- ü Geriatric psychological evaluation of mother

Case management options

- ü Continue the hearing to allow time for APS and other agencies to conduct assessments
- ü Set protection order hearing as quickly as possible

Potential remedies

- ü Refer both John and mother to APS for evaluation of need for services
- ü Issue temporary protection order prohibiting abuse, ordering treatment evaluations
- ü Appoint guardian *ad litem* for mother
- ü Issue protective order prohibiting abuse
- ü Order substance abuse & mental health evaluations of John
- ü Order treatment if recommended
- ü Set frequent review hearings to monitor compliance

Neglect

- Mr. Downing, an 85 year old veteran of the armed forces, is sentenced to probation for battery of an employee of a residential adult care facility where his wife resides.
- Mr. Downing takes his wife home because he thinks the cost of her care is too high.
- An ER physician had ordered Mrs. Downing's placement in the facility based on signs of dementia, abuse and neglect.
- APS reports serious self-neglect by Mr. Downing and extremely serious neglect of Mrs. Downing despite having adequate resources.
- Mr. Downing shows signs of dementia and his adult sons wish to be placed in charge of their father's financial affairs.

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CEC

Slide 18

Briefly review scenario for the participants before the neglect group reports what it discussed. Possible responses are listed below.

Issues in case

- ü Vulnerabilities of both the victim and the offender
- ü Hoarding resources while living in poor conditions
- ü Medicare/Medicaid issues-spending down assets to qualify for Medicaid
- ü Maintaining resources for the community spouse

Information needed

- ü Medical, psychiatric, cognitive assessments of Mr. and Mrs. Downing
- ü Assessment of financial resources, including eligibility for VA benefits

Case management options

- ü Expedite proceedings related to Mrs. Downing's needs
- ü Issue emergency orders

Potential remedies

- ü Consider appointing sons as guardians under emergency orders
- ü Consider placing Mrs. Downing back in adult care facility immediately
- ü Order Mr. Downing to pay costs of care not covered by Medicare
- ü Order evaluation of Mr. Downing to determine need for services
- ü File civil protection order; allow visitation only when supervised by a son
- ü Conduct periodic review hearings

Financial Exploitation

- Carolyn Smith is in poor physical and mental health; her son, Keith, has had a durable power of attorney the past two years.
- Keith has acquired two luxury cars and terminated overnight in-home care services for his mother against her wishes.
- Carolyn's grandson, Zack, an interested party under state law, suspects his Uncle Keith is misusing the POA and files a request for an accounting.
- An apparently incomplete accounting shows a large drop in Carolyn's bank accounts but lacks evidence of expenditures for her benefit.
- Zack files a motion to compel a full accounting, which you are scheduled to hear.

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Slide 19

Briefly review scenario for the participants before the financial exploitation group reports what it discussed. Possible responses are listed below.

Issues in case

- ü Carolyn's declining health and isolation make her vulnerable to abuse
- ü Keith may be the only person who pays attention to her
- ü Keith manipulated his mother into creating the POA
- ü Abuse of POA-Keith enriches himself while he neglects his mother
- ü Keith has opportunity to abuse POA because other relatives live out of town

Information needed

- ü Medical, psychiatric, cognitive assessments of Carolyn
- ü Forensic accounting of Keith's use of Carolyn's assets and status of her assets
- ü Carolyn's need for care—level and type
- ü Possible alternate guardians

Case management options

- ü Expedite assessments of Carolyn because her condition could deteriorate
- ü Refer to APS: expedite investigation, safety assessments and service provision
- ü Issue emergency orders (e.g., protection order, guardianship, remove POA)
- ü Refer case to prosecutor

Potential remedies

- ü Order full accounting from Keith
- ü Issue no contact order for Keith if Carolyn is afraid of him
- ü Place liens on Keith's property that was obtained with his mother's assets

Guardianship

- Bart is charged with domestic abuse against his 83 year old grandfather, John, with whom he lives.
- Bart's Aunt Martha claims that Bart physically abuses and financially exploits John.
- The court issues a no-contact order and refers Martha to APS.
- Bart pleads guilty and is placed on probation.
- Martha and her brother, Bart's father, file competing petitions for guardianship of their father.
- APS reports: (1) John wants Bart to stay, (2) Bart's father may condone Bart's actions, (3) John has poor health and limited ability to protect himself or make financial decisions.

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Slide 19

Briefly review scenario for the participants before the guardianship group reports what it discussed. Possible responses are listed below.

Issues in case

- ü John's vulnerability: desire to maintain relationship, poor health, cognitive concerns
- ü John's interests may conflict with protective measures the court can take
- ü John's level of capacity may point to the need of a guardianship appointment
- ü Conflict among adult children

Information needed

- ü Medical, psychiatric, cognitive assessments of John and a home evaluation
- ü Assessment of ADLs and IADLs

Case management options

- ü Role of prosecutor- seek protective order
- ü Role of APS: expedite investigation, safety assessments and service provision
- ü Expedite guardianship proceedings to bring stability to John's life

Potential remedies

- ü In guardianship proceedings consider limited guardianship
- ü Set guardianship review hearing every six months
- ü Issue civil protective order on behalf of John
- ü Allow progressive contact between John and Bart, starting with only supervised contact
- ü Set probation and protection order review hearings every three months
- ü Order mental health evaluation of Bart and order any recommended treatment
- ü Order geriatric psychiatric evaluation for John

Final Thoughts

- Exercise judicial leadership
- Learn about and connect with your local community resources
- Adapt the benchcard to your state laws and local resources



Slide 20 (ANIMATED)

This brings us to the conclusion of this course. We hope that you will take home with you the following thoughts.

CLICK You can apply what you have learned in this course in your courtroom and exercise your leadership in your community to improve awareness and responses in the larger community.

CLICK Every community has a number of resources for the elderly. Get to know your community resources and learn how you might be able to tap into those resources to better meet the needs of older persons.

CLICK Finally, we hope you will consider adapting the benchcard so that all judicial officers in your jurisdiction receive some basic information on how to identify and respond to elder abuse and neglect.



"It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped."
-Hubert H. Humphrey

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www.eldersandcourts.org

Additional Resources

Visit the National Center for State Courts'
Center for Elders and the Courts at

www.eldersandcourts.org



Module Three Source List

Slide 4: Judicial Leadership

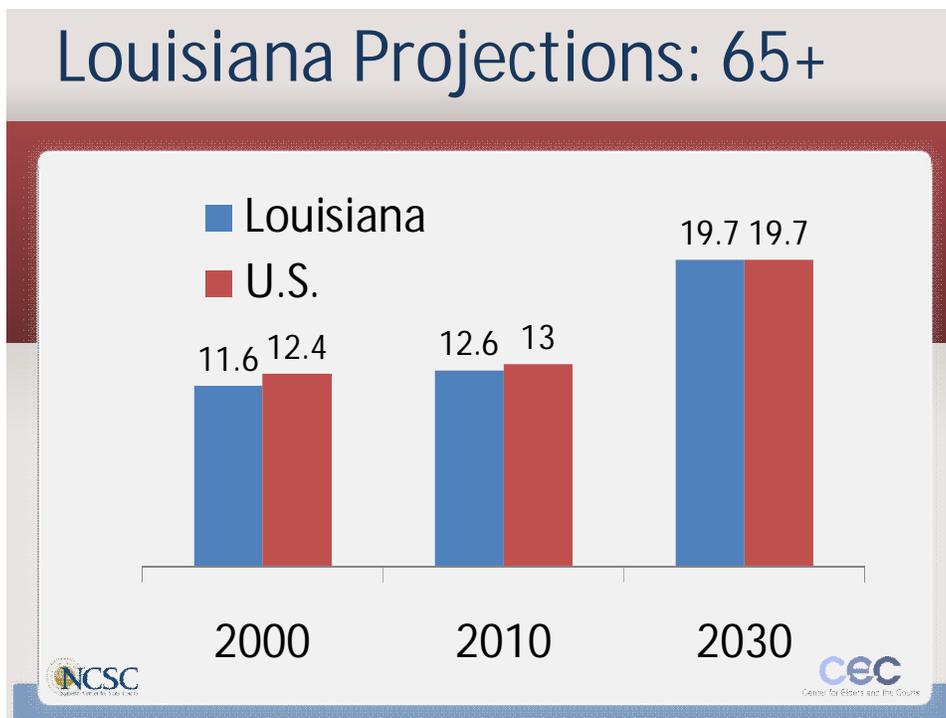
- ✚ ABA Model Code of Judicial Conduct (2007):
http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html
- ✚ Information on State Implementation of the Model Code:
http://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/mcjc.html
- ✚ ABA Model code of Judicial Conduct (2010 Revisions)(Appendix B revises the application of the code to part-time judges):
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2010_mcjc_final_for_website.authcheckdam.pdf

Slides 11 – 14: Remediation Tools and Case Management Tools

- ✚ Source: NCSC Elder Abuse Benchcard
<http://www.eldersandcourts.org/docs/judges-benchcard.pdf>

Appendix A

Slide 6 requires state specific demographics information. This information is easily found at the U.S. Census Bureau website (<http://www.census.gov/>). Below is an example of state specific demographics information for the state of Louisiana that was used for the pilot test of the curriculum on June 8, 2011 in Destin Florida for the Louisiana Judicial College.



The source of this data is the US. Census Bureau. The following page includes the table that has data by state on the percentage of population age 65 and older for 2000, 2010, and 2030.

Instructions:

To look for updates to this data, the following instructions were valid as of 2011.

1. Visit www.census.gov
2. Go to the "People & Households" section. Click on "Projections."
<http://www.census.gov/population/www/projections/index.html>
3. Click on "State"
<http://www.census.gov/population/www/projections/stproj.html>
4. Click on "Interim Projections 2000-2030 based on Census 2000 (released 2005)"
<http://www.census.gov/population/www/projections/projectionsagesex.html>
5. Click on "Table 3: Ranking of states by projected percent of population age 65 and over: 2000, 2010, and 2030" and Open into your Excel program

Table 3: Interim Projections: Ranking of States by Projected Percent of Population Age 65 and Older: 2000, 2010, and 2030

2000 State	2000 Percent	2000 Rank	2010 State	2010 Percent	2010 Rank	2030 State	2030 Percent	2030 Rank
United States	12.4	(x)	United States	13.0	(x)	United States	19.7	(x)
Florida	17.6	1	Florida	17.8	1	Florida	27.1	1
Pennsylvania	15.6	2	West Virginia	16.0	2	Maine	26.5	2
West Virginia	15.3	3	Maine	15.6	3	Wyoming	26.5	3
Iowa	14.9	4	Pennsylvania	15.5	4	New Mexico	26.4	4
North Dakota	14.7	5	North Dakota	15.3	5	Montana	25.8	5
Rhode Island	14.5	6	Montana	15.0	6	North Dakota	25.1	6
Maine	14.4	7	Iowa	14.9	7	West Virginia	24.8	7
South Dakota	14.3	8	South Dakota	14.6	8	Vermont	24.4	8
Arkansas	14.0	9	Connecticut	14.4	9	Delaware	23.5	9
Connecticut	13.8	10	Arkansas	14.3	10	South Dakota	23.1	10
Nebraska	13.6	11	Vermont	14.3	11	Pennsylvania	22.6	11
Massachusetts	13.5	12	Hawaii	14.3	12	Iowa	22.4	12
Missouri	13.5	13	Delaware	14.1	13	Hawaii	22.3	13
Montana	13.4	14	Alabama	14.1	14	Arizona	22.1	14
Ohio	13.3	15	Rhode Island	14.1	15	South Carolina	22.0	15
Hawaii	13.3	16	New Mexico	14.1	16	Connecticut	21.5	16
Kansas	13.3	17	Wyoming	14.0	17	New Hampshire	21.4	17
New Jersey	13.2	18	Arizona	13.9	18	Rhode Island	21.4	18
Oklahoma	13.2	19	Missouri	13.9	19	Wisconsin	21.3	19
Wisconsin	13.1	20	Oklahoma	13.8	20	Alabama	21.3	20
Alabama	13.0	21	Nebraska	13.8	21	Massachusetts	20.9	21
Arizona	13.0	22	Ohio	13.7	22	Nebraska	20.6	22
Delaware	13.0	23	Massachusetts	13.7	23	Mississippi	20.5	23
New York	12.9	24	New Jersey	13.7	24	Ohio	20.4	24
Oregon	12.8	25	New York	13.6	25	Arkansas	20.3	25
Vermont	12.7	26	South Carolina	13.6	26	Missouri	20.2	26
Kentucky	12.5	27	Wisconsin	13.5	27	Kansas	20.2	27
Indiana	12.4	28	Kansas	13.4	28	New York	20.1	28
Tennessee	12.4	29	Tennessee	13.3	29	New Jersey	20.0	29
Michigan	12.3	30	Kentucky	13.1	30	Kentucky	19.8	30
District of Columbia	12.2	31	Oregon	13.0	31	Louisiana	19.7	31
South Carolina	12.1	32	Michigan	12.8	32	Michigan	19.5	32
Minnesota	12.1	33	Mississippi	12.8	33	Oklahoma	19.4	33
Illinois	12.1	34	Indiana	12.7	34	Tennessee	19.2	34
Mississippi	12.1	35	Louisiana	12.6	35	Minnesota	18.9	35
North Carolina	12.0	36	New Hampshire	12.6	36	Virginia	18.8	36
New Hampshire	12.0	37	North Carolina	12.4	37	Nevada	18.6	37
Wyoming	11.7	38	Virginia	12.4	38	Idaho	18.3	38

New Mexico	11.7	39	Illinois	12.4	39	Oregon	18.2	39
Louisiana	11.6	40	Minnesota	12.4	40	Washington	18.1	40
Maryland	11.3	41	Nevada	12.3	41	Indiana	18.1	41
Idaho	11.3	42	Washington	12.2	42	Illinois	18.0	42
Washington	11.2	43	Maryland	12.2	43	California	17.8	43
Virginia	11.2	44	Idaho	12.0	44	North Carolina	17.8	44
Nevada	11.0	45	California	11.5	45	Maryland	17.6	45
California	10.6	46	District of Columbia	11.5	46	Colorado	16.5	46
Texas	9.9	47	Colorado	10.7	47	Georgia	15.9	47
Colorado	9.7	48	Texas	10.5	48	Texas	15.6	48
Georgia	9.6	49	Georgia	10.2	49	Alaska	14.7	49
Utah	8.5	50	Utah	9.0	50	District of Columbia	13.4	50
Alaska	5.7	51	Alaska	8.1	51	Utah	13.2	51
U.S. Census Bureau, Population Division, Interim State Population Projections, 2005.								
Internet Release Date: April 21, 2005								

Appendix B

Module 1: The Case of Marva



This case is used to illustrate physical impairments that result in greater vulnerability. It is used to discuss the following slides:

- Common aspects of aging (Slide 13)
- Physical vulnerabilities (Slide 14)
- Effects of common medications (Slide 15)
- IADLs and ADLs (Slide 16)
- Functional limitations (Slide 17)
- Health issues for people age 85 (Slide 18)

[Introduction/Background] Marva is in her early 70s and has been in relatively good physical health, although she suffers from arthritis and high blood pressure. Marva recently began taking prescribed medication to treat high blood pressure and she also takes Tylenol to ease the muscle aches from her exercise routine. She works hard to maintain her health and is a regular at the senior zumba classes at the local fitness center. Marva lives alone and has always maintained her independence.

[Slides 13-15] Recently Marva has begun to experience short bouts of dizziness and confusion. She and her friends assume that her increased levels of confusion and dizziness are simply a “normal” part of aging. If Marva is fortunate enough to visit a gerontologist, she might learn that her mental state could be a result of the way her body responds to common medications, even the use of something as simple as “Tylenol.” She may also learn that she is combining the wrong types of medicines or over-medicating.

[Slides 16-18] Unfortunately, Marva’s physical health takes a downturn. She takes a nasty fall outside the fitness center and ends up with a broken hip. This injury drastically impacts her independence and ability to maintain her active lifestyle. Due to her age and the fact that she lives alone, the attending physician assesses Marva’s ability to live independently in the community and in her home. Her medical history will soon be taken over by the concepts of IADL (Instrumental Activities of Daily Living) and ADL (Activities of Daily Living).

Marva has a severe enough break that she will need to be in a wheelchair for a significant period of time. She needs help with the activities of daily living. Reluctantly, she contacts her niece who lives in the area to ask for assistance while she rehabilitates. Although she may be unable to live alone in her home for the time-being, she is confident that she will return to her independent lifestyle as soon as her hip is healed. Marva may eventually bounce back from her fall, but she realizes that her health may not look very promising in another 10 years, when she is in her mid-80s.

Module 1: The Case of Ed



The case of Ed is used to illustrate emotional vulnerabilities, which corresponds to Slides 20 and 21 in Module 1.

Ed worked in the banking industry most of his adult life and has enjoyed a pleasant retirement. His wife recently died, and his adult children live in other parts of the country. He is a proud man and is insistent on maintaining his home without any outside help. Lately, his neighbors have begun to complain about his unkempt yard and he

has become more reclusive.

Ed may be suffering from depression and he is coping with a major loss. While the source of his depression is likely a result of the loss of his partner, older persons often experience many losses that leave them emotionally vulnerable. Ed's biggest fear now is the fear of losing his ability to live independently in his own home. This makes him particularly vulnerable to suggestions that he can no longer maintain his home.

Ed's depression is left untreated. He is reluctant to discuss his emotional state with his doctor—depression is an off-limits subject to men of his generation. Besides, with all that he has suffered, he feels that depression is simply part of the grieving process. Ultimately, he is afraid that any sign of weakness, including depression, will be used to force him into a “retirement home.”

When he does meet with his family physician, his doctor doesn't specifically ask about depressive symptoms, and when Ed mentions his recent loss, the doctor remarks that depression is a normal reaction for someone of his circumstance and age. The doctor further suggests that Ed make a concerted effort to participate in senior outings and join groups that may be of interest to him. Neither Ed nor the doctor have any further discussions of the subject.

Ed takes the doctor's advice to participate in activities. A continuing interest in finance and the decline of his retirement portfolio from the recession leads him to notice an advertisement in the local paper aimed at those age 60 and above. He signs up for a seminar called “Come Learn from the IRA Technician,” that will provide tips on “how to guarantee your IRA will never run out, regardless of market fluctuations.” Even better, the seminar is free and includes a top sirloin steak for lunch. Not only does Ed enjoy the seminar, he becomes enamored with one of the presenters, a divorced middle-aged woman with an eye for numbers.

Module 1: The Case of Clara



This case is used to illustrate cognitive vulnerabilities. It is relevant to the following slides:

- Characteristics of Dementia (Slide 24)
- Alzheimer's Disease (Slide 25)
- Early Alzheimer's Disease (Slide 26)
- Moderate Alzheimer's Disease (Slide 27)
- Severe Alzheimer's Disease (Slide 28)

[Introduction/Background] Clara, who is in her late 80s, has limited mobility and occasionally uses a wheelchair. Up to this year, she has maintained her sharp memory and intellect and often talks about her experiences as a former school teacher. She lives with her son's family. Lately, her memory has been failing and she has experienced some difficulties recalling basic vocabulary. Some days Clara seems her old self, while other days she appears to have more cognitive problems.

[Slides 24-25] Clara's children worry that she may be slipping toward dementia, though they are uncertain how dementia is documented and exactly what it entails. They speak to her physician about their concerns.

The doctor explains that dementia is a descriptive term for a collection of symptoms that affect the brain, and that dementia is only diagnosed in cases in which the loss in cognitive abilities is severe enough to interfere with daily life. In the initial stages of her disease, Clara's dementia is not diagnosed because her cognitive impairments do not interfere with her daily life.

As Clara's cognitive abilities decline further, the doctor eventually makes the diagnosis of Alzheimer's Disease. The doctor explains that Alzheimer's Disease affects different people in different ways, but the most common symptom is greater difficulty in remembering new information. This is because disruption of brain cell function usually begins in regions involved in forming new memories. As damage spreads, people experience other difficulties, such as confusion with time or place, decreased or poor judgment, and withdrawal from work or social activities

[Slides 26-28] Over the course of several months, Clara's children find her increasingly distraught and less engaged in social activities. The doctor confirms with them that their mother may be experiencing some early signs of Alzheimer's Disease. Clara's appearance remains good, but the doctor notes that she is beginning to have significant impairments in her short-term memory, language, judgment and reasoning. For example, Clara can remember her third grade teacher, but can't remember what she ate for breakfast. She sometimes can't pull out simple vocabulary words (she may refer to a watch as "the thing that tells time.") Clara has difficulty understanding complicated information and making decisions

The doctor mentions that several issues often come up for families at this point, including whether the individual should continue to drive, though Clara gave up driving long ago, and whether the person can continue to manage his or her finances. Clara is especially susceptible to financial abuse at this stage. She still handles many of her finances, but due to her impaired judgment, she could be convinced to give her checkbook or ATM PIN code to someone she would not have trusted before these symptoms began.

Clara's health continues to deteriorate as she advances to moderate Alzheimer's Disease. She has been found wandering in the neighborhood, and her son and his family are finding it increasingly difficult to take care of all of Clara's needs. They reluctantly begin to look for appropriate assisted living facilities. Clara is beginning to have problems with behavior, dressing, and insight. She sometimes becomes belligerent, exhibits irrational fears, and becomes violent. There are many days when she thinks she doesn't have a problem and no amount of explanation seems to help.

For Clara, the likelihood of physical abuse increases, as she sometimes acts belligerently and irrationally. Data show that people with dementia who are verbally or physically aggressive are more likely to be physically abused by a caregiver. A key question that the family struggles with is whether Clara can remain at home.

As Clara's disease becomes more severe, the family reluctantly places her in an assisted living facility, where she resides in a special wing for Alzheimer's patients. In addition to all the problems with short term memory, language, judgment, behavior, dressing, and insight, Clara now is suffering from severe symptoms of Alzheimer's disease. She is experiencing problems with communication, mobility, and swallowing. There are days when she is non-verbal or incoherent. The doctor notes that Clara's motor cortex is affected, which makes it more difficult for her to walk and swallow. She needs increased levels of care.

Clara's family is now struggling with end-of-life issues for Clara. They have to consider when and if she should be placed in a hospice. If she should fall and break a hip, what should be the appropriate course of action? If Clara stops eating, should a feeding tube be used? The types of decisions to consider may revolve around end-of-life issues and how to maintain comfort. In these late stages of Alzheimer's disease, when people are more likely to need assistance with activities such as bathing, hygiene, eating, they are more vulnerable to neglect.

Appendix C



The Case of Christopher Wise

Case Study for Module 2

Slide 20: Elder Neglect

King County, Washington. Ruby Wise, age 88, was found dead in her home following a call by her son and sole caretaker, Christopher Wise. She was emaciated, bruised, and had pressure ulcers (bedsores) so deep that her shoulder and hip bones were exposed. She was wearing a hospital gown and a soiled adult diaper, and had flies on her face when law enforcement found her in her bed. She had not seen a physician in two years and was on no medications. Neighbors admitted that they had heard her moaning and crying for help in the weeks before her death.

Death was attributed to complications from eight large pressure ulcers. The defendant claimed he had promised to keep his mother at home and had given up his job so he could care for her. They lived on Ruby Wise's social security and disability checks. Wise was ultimately charged with 2nd degree murder or in the alternative 1st degree manslaughter, with an aggravator based on the fact that the victim was unusually vulnerable. The jury convicted him of the lesser included offense of second degree manslaughter and found that the aggravator applied. Christopher Wise was sentenced to 27 months in prison (the high end of the standard range) plus an additional 12 months for the aggravating factor.

The following is a Q & A with prosecutor Page Ulrey regarding the Christopher Wise case.

Can you give a little background on this case? How did this case first come to your office's attention? Christopher Wise called 911 shortly after his mother died. The EMTs who arrived at the scene pronounced Ruby Wise dead, and, consistent with their protocol, notified the King County Sheriff's Office (KCSO). They did not convey to KCSO that they had any concerns about the condition of the body. Patrol deputies arrived at the home and were immediately struck by the strong odor coming out of Ruby Wise's bedroom. After viewing her body, they immediately notified their sergeant, who called the sergeant of the homicide unit. She then phoned our office, and was put in touch with me. From the day Ruby's body was discovered until the end of trial, I worked closely with Detective Thien Do, the homicide detective who was assigned to the case. We were soon joined by Patrick Hinds, another prosecutor who was assigned to co-try the case with me. Patrick and I assisted Detective Do with search warrants and advice on different avenues of investigation to pursue. Detective Do continued to investigate the case even after he submitted it to us for filing, and up until trial. He sat with us throughout the trial and assisted us with trial strategy. It was truly a team effort.

How does a murder case involving elder or dependent adult abuse differ from other murder cases? Perhaps the most striking way these cases differ from other types of homicide cases is in the fact that we are so often faced with the additional burden of having to overcome juror nullification due to ageism. This is where the jury essentially refuses to convict despite the fact that the prosecution has

proved the elements of the crime beyond a reasonable doubt, because the victim is an older or dependent adult. It is often difficult to determine that nullification drove a jury's verdict, as it is usually not expressed by them overtly when they are talking about the case after the trial is over. Rather, it is expressed through statements such as, "He was going to die anyway," "She had dementia so she didn't feel any pain," "She (the defendant caretaker) was doing the best she could," and similar statements expressing sympathy for caregivers, or an aversion to or disregard for the victim. That the motivation behind these statements is ageism is most easily determined when they are applied to a similar scenario with a child victim. For instance, imagine a child homicide trial involving a mother who left her infant alone in bed for days without feeding or bathing him, ultimately causing his death. If the State had proved the elements of the crime, it is almost unimaginable to think that a jury would acquit because it concluded that the defendant "was doing the best she could." Yet such outcomes occur fairly frequently in neglect cases involving victims who are elders or people with disabilities.

Can you discuss some of the challenges prosecutors face when handling cases that involve several types of abuse and/or neglect such as financial and physical abuse and neglect?

Each type of elder abuse may involve complicated legal, evidentiary, or medical issues that require a significant amount of training and expertise in order to effectively recognize, investigate, and prosecute it. In many police agencies, detectives' units are organized by crime type, so that if a case starts off as being a physical abuse case and ultimately also becomes one of financial exploitation, the investigating detective may be ill-equipped to handle the financial aspects of the investigation. The same is true for prosecutors. This can result in some of the abuse or exploitation that was perpetrated not being investigated or prosecuted properly, despite the fact that it may be more serious, carry a higher sentence, or have a more harmful impact on the victim.

In many cases, elder abuse and neglect remains a "hidden" problem. What impact, if any, do you think this case can have on the field of elder abuse?

Because the investigators on this case did such an outstanding job, we have excellent documentation of the victim's body and the crime scene. We also have extensive interviews of the suspect and many other witnesses. In addition, we have extremely competent and thorough medical testimony by the pathologist in this case, who himself went to the crime scene. We were also able to talk to the jury at length about their verdict after the trial concluded. For these reasons, I hope that this case can become a good teaching tool for law enforcement and prosecutors on the investigation and prosecution of adult neglect cases.

What was the most unexpected thing you took away from the case?

How difficult it is to secure a conviction in an adult neglect case, no matter how egregious the facts. In addition to having to overcome ageism and the sympathy that a jury inevitably feels towards a defendant who was a caregiver, we also have to overcome the jury's unfamiliarity with thinking of neglect--the failure to act--as a crime. It is only by our continuing to prosecute these cases and keep them in the public eye that we can begin to improve how the public and juries respond to these cases.

Appendix D



The "Matter of Brooke Astor"
Case Study for Module 2
Slides 25-30
Capacity, Consent, Undue Influence

Introduction

Brooke Astor died at the age of 105 in 2007, with an estate estimated to be worth \$132 million, in addition to a trust valued at more than \$60 million. One of the transactions that became central to both criminal and civil proceedings was a change in her will in 2004, which diverted millions to her son that had been promised to charities. Mrs. Astor was 103 at the time and suffering from Alzheimer's disease.

Mrs. Astor's condition came to light a year earlier when one of her grandsons sought to have his father removed as her guardian amidst allegations of neglect and financial exploitation. In the course of the proceedings, Mrs. Astor's court-appointed attorney observed that a signature on one of the amendments to the will (codicils) purported to be Mrs. Astor's looked suspicious in comparison to the other documents. After a handwriting analyst confirmed the signature to be a forgery, a criminal investigation was initiated.

The trial that eventually led to the convictions of Mrs. Astor's son, Anthony Marshall (age 85), and estate attorney Francis Morrissey, Jr. on counts of fraud, conspiracy, and forgery, included 19 weeks of testimony and closing arguments. At the heart of the case were a series of transactions whose legitimacy hinged on evidence of Mrs. Astor's capacity, her consent to specific actions, and undue influence exerted by the defendants.

Slide 25

Capacity

Capacity is the cluster of mental skills that people use in everyday life. It fluctuates over time, situations & tasks.

memory logic behavioral functioning physical functioning **Capacity**

NCSC CEC

Prosecutors presented evidence to demonstrate Mrs. Astor's diminishing capacity over time. A key piece of evidence was a letter written by her son, Anthony Marshall, to one of her doctors in 2000 in which he described his mother's fragile mental state. He wrote that his mother had difficulty getting dressed, writing and spelling, had problems with simple arithmetic, was incoherent and indecisive, and "mixes up words, saying one, meaning another."

Slide 26

Legal Aspects of Capacity

Standards of capacity vary for different types of transactions.
For example:

Testamentary capacity: at the time of executing a will, the person has the capacity to know the natural objects of his/her her bounty, to know the nature and extent of his/her property, and to integrate this knowledge to make a rational plan for disposing of the property.

Contractual capacity: the person can understand the nature and effect of making a contract and the business being transacted (less complicated transaction requires lower level of understanding)



The testamentary capacity of Mrs. Astor was a key element in proving the legitimacy of changes to her will. Defense attorneys argued that, despite a diagnosis of Alzheimer's disease, Mrs. Astor had periods of lucidity and that she had testamentary capacity when she signed the codicils to the will. Prosecutors produced witnesses that stated otherwise.

Slide 27

Legal Aspects of Capacity

Determining capacity in older adults can be very difficult and often requires gathering information from many sources.

Examples include:

- ◻ Family members
- ◻ Medical care professionals
 - ◻ Physician
 - ◻ Geriatrician
 - ◻ Neurologist
- ◻ Mental health care professionals
 - ◻ Geriatric Psychiatrist or Psychologist
 - ◻ Forensic Psychiatrist or Psychologist
- ◻ Adult protective services workers



The Astor case included over 70 witnesses for the prosecution, including expert witnesses—trust and estate attorney, geriatric psychiatrist, and handwriting analyst. The trial featured testimony from the treating physician, home nurses and aides, housekeepers, personal staff, and two grandsons. Other witnesses included some of Mrs. Astor's well-known friends, such as former Secretary of State Henry Kissinger and Barbara Walters.

Slide 28

Consent

Consent requires an individual to be able to:

- Understand the transaction or activity
- Make judgments about it
- Decide if it is something he or she chooses to do

Consent is a significant factor in determining the legitimacy of a wide range of actions.

An issue in determining whether a crime has been committed (especially intimate crimes)

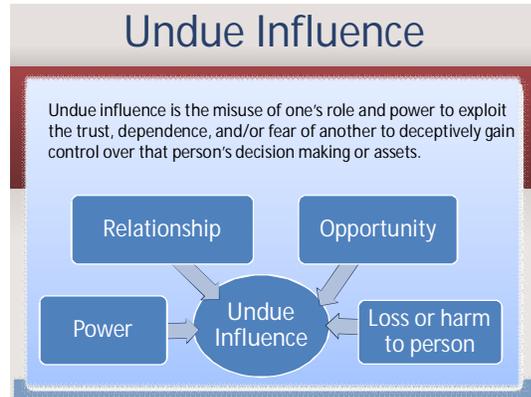
An important issue in legal transactions

A fundamental issue for APS (capacity to consent)



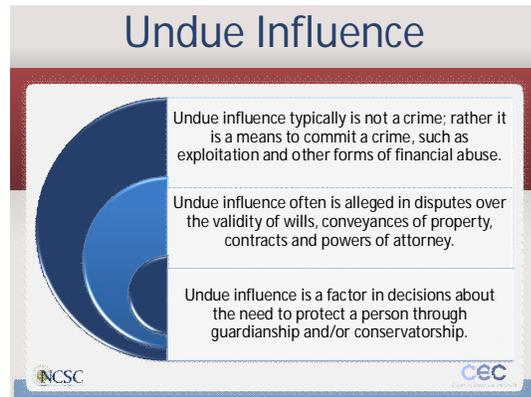
Even if the defense had been able to establish Mrs. Astor's capacity, her consent to each of the transactions remained in dispute. Did Mrs. Astor understand the event, was she able to make a rational judgment about it, and did she freely choose to change her will? Testimony from one of Mrs. Astor's nurses stated, in substance, that the defendants had physically dragged Mrs. Astor into a room to execute one of the codicils to her will, a document she had not been shown before that day. Minutes later, Mrs. Astor exited and asked what had just happened. This testimony questions Mrs. Astor's consent to this amendment of her will.

Slide 29



The case of Mrs. Astor demonstrated all the elements of undue influence. The defendant had legal power through the POA that allowed him to act on his mother's behalf and control her physical environment; he had a trusted relationship as an only child; he had opportunity to exploit his power and relationship because his mother had advanced Alzheimer's disease; and his actions resulted in harm to Mrs. Astor by isolating her from friends, depriving her of the living standards her wealth could provide, and diverting her assets away from charities she intended to support. A prime example of undue influence is the prosecution's contention that Mr. Marshall tricked his mother into thinking it was necessary to sell a well-known painting by telling her she was running out of money (he sold the painting for \$10 million and kept \$2 million as his commission).

Slide 30



In the Astor criminal case, the term "undue influence" was not used. However, testimony regarding facts that could constitute undue influence in a civil proceeding was admitted to support the charge that the defendants conspired to steal from Mrs. Astor's estate. On the civil side, undue influence was a factor in the grandson's petition to have his father removed as her guardian. As the Astor case demonstrates, the legal concepts of capacity, consent, and undue influence are often subtle and can be difficult to prove in specific actions at particular periods of time.

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