Building a Trial-Ready Case - Who you might need..

Gulf Coast Elder Abuse Conference
June 25th, 2018
Career prosecutors
It all started with a call to go to the boss’s office...
January 1996......
I had an office, a phone, a computer but....
No cases!
Just silence!
Break the Silence

Report Elder Abuse  1-800-252-8966 (Voice and TTY)
So for the first 7 months I went around our county talking with law enforcement....
What did I learn?
How are we to measure a community?

• By the way we care for our very young, the elderly and the defenseless
All victims deserve our utmost response

- Sadly, some victims are overlooked, ignored, disbelieved, or simply are abandoned
Why should we care?

• “Our debt to the heroic men and valiant women in the service of our country can never be repaid. They have earned our undying gratitude. America will NEVER forget their sacrifices.”

• President Harry S. Truman

• Inscription at WWII Memorial
Elder Abuse is.........

- A Crime
- Going unpunished
- Predictable
- Affecting both urban & rural areas
- Where child abuse & DV were 30 years ago
- Escalating
The aging of America

- Between 1950 & 2000, the total population increased by 87%
- Age 65+ - by 188%
- 85+ - by 635%
- By 2030 - 65+ will triple to over 70 million
By 2010 there were 114,000 Americans 100 years old +

By 2020, there will be 241,000
And yet, despite this obvious escalation of the “aging” population...
Despite great progress, funding for #ElderJustice is 1% of funding for child and family welfare. #EJCC
ELDER ABUSE IS EXPLODING

- Fastest growing age group
- No known cure for dementia etc.
- Victims often do not report
- Third fastest growth job is home care
- Minimal background checks
- High temptation, low risk factors
How did Page get into this specialized area.....
2001

- Happily prosecuting felony domestic violence cases
- Asked by Norm Maleng whether I would be interested in becoming office’s first elder abuse prosecutor
- Answer: Yes
My Assignment
(Informed by Paul)

• Train first responders on how to recognize, respond to EA cases
• Create community group to address King County’s systemic response to EA
• Prosecute cases of elder abuse
• Up to me to determine which cases to take on
The First Year

• Like Paul:
• Had a desk, phone, computer, even a half-time paralegal
• No cases
Carving Out an Identity

- Elder sexual assault cases already handled by Special Assault Unit
- Financial crimes already handled by Fraud and Trial Teams Units
- Domestic Violence cases already handled by DV Unit
- Neglect
Who are our victims?
In California...?
In Washington State...?
UNDERSTANDING THE DYNAMICS

- Fears of many older victims
- Leads to underreporting
- Feelings of shame
- Concern that exposure will lead to loss of independence
- Sometimes accompanied by threats from perpetrator
I [and Page] discovered that law enforcement - through no fault of their own - were falling into common misconceptions...
• Some of these myths affect all forms of elder abuse

• Some affect only financial elder abuse
We have learned that to bring elder abuse out of the shadows, we need to recognize what is standing in our way…
Myth #1

- Elderly people make terrible witnesses
Most common answer...
forgetfulness
AVOID STEREOTYPING OF SENIORS

- Forgetful
- Senile
- Longwinded
- Grumpy
- Disabled
- Fragile
Myth # 2

• If elderly victim refuses to provide information, there is nothing that can be done
• We can still build a case by talking to other key witnesses

• Start on the outside and work your way to the middle

• Let the DA figure out a way to break through victim’s wall of silence
LESSONS LEARNED FROM DOMESTIC VIOLENCE

- Self-determination is not the answer
“Victim declines prosecution”
Why self-determination is a problem

• If not punished, the perp WILL abuse again

• We CAN convict even without the assistance of the victim

• Abuse is a crime against NOT JUST the abused
Myth # 3

- If elderly victim gives the money voluntarily, it is not a crime
- It is just a civil matter
• There are times when the apparent voluntariness has been diluted by fraud, undue influence or by exploiting the mental limitations of the victim
This article appeared in a prominent California newspaper just a few months ago.
Woman used 10-year-old son as part of scheme to take thousands from two Stanislaus County women

She befriended them and appealed to their compassion with a story of a dying or dead child. She exploited their generosity when she cried to them about her hardships. She used her 10 year-old son for sympathy. But the woman who was investigated for scamming two elderly women out of thousands of dollars likely will not face charges.
But one of the victims, a 90-year-old Modesto woman who asked to be identified only by her middle name, Eileen, for fear of being victimized again, said the $14,000 in checks she wrote to Medeiros were intended as a loan.
And what was the DA’s office response...
“Simply getting ‘scammed’ by a smooth-talking person is no crime,” District Attorney’s Office spokesman said in an email. “If money is freely/voluntarily given/donated/gifted, there is no theft. Unless an older person lacks the mental capacity to give consent or undue influence is used to obtain it, elders are free to make gifts or donations to anyone they choose.”
The “it’s a civil matter” mindset is pervasive
But things are not always how they first appear
A case I just completed...
THE WORST
GARAGE DOOR COMPANY
IN THE NATION

By Tom Wodsworth, CEDC
Editor, Door + Access Systems
In a first for the garage door industry, a technician has been convicted of multiple felonies, all pertaining to nothing more than his garage door repair work. The case may have repercussions for garage door repair companies that charge high rates for garage door repair work.

On July 7, Tim Patterson, 44, former leading technician for GDS, pleaded guilty in Superior Court of San Diego County to four felony counts of “elder financial abuse.” In California, such a felony involves the theft of more than $950 from someone over 65. By pleading guilty, Patterson avoided a jury trial and likely influenced a lesser sentence from the court.

Patterson wanted to avoid a jury trial and likely influenced a lesser sentence from the court.

His sentence also required Patterson to pay $2,800 in restitution. As part of his sentencing, Patterson was placed on three years' probation, his address and employment information so that he can be monitored by the probation department. After Patterson pleaded guilty, D+AS contacted GDS for their response.

"We have received complaints from former customers of Mr. Patterson’s, and in nearly all instances the business reached a satisfactory resolution. We encourage anyone who believes they were treated unfairly by Mr. Patterson to contact us so we can work towards resolving any complaints.”

**Key factors**

After Patterson’s preliminary hearing in March, Greenwood presented testimony from nine victims. To secure the guilty pleas, Greenwood accepted a guilty plea from Patterson to four of the nine felony counts. Patterson wanted to avoid a jury trial and likely influenced a lesser sentence from the court.

The sentence was submitted as an exhibit in the case. The nine elderly victims included $2,596.16 (80-year-old male), $2,195 (73-year-old female), $2,200 (78-year-old male), $4,608.82 (to a 76-year-old female), $4,274.74 (91-year-old widow), $2,949.15 (79-year-old male), $1,457.11 (78-year-old male), and $1,460.11 (74-year-old male).

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Myth # 4

- If the financial institution reimburses the elderly victim and then declines to seek prosecution, we have no victim
• Once a victim, always a victim!
• Restitution can NEVER remove the stigma
Myth #5

- If victim is deceased before we discover the theft, we cannot prosecute
Wrong!

Treat such a case as if it were a murder

There are some situations in which we do not need the victim for a prosecution
Myth # 6

• Any case where the elderly victim is involved in a home repair & there is a dispute over money – this is ALWAYS a civil matter.
• Is the “contractor” licensed?
• Are there other victims out there?
• Did he get the money up front?
• What services did he promise?
• What did he deliver?
Myth # 7

- Suspects of elder abuse crimes NEVER call 911
Wrong!

Dispatchers need training

As do paramedics
In building a case for trial...
911 dispatchers need to know what questions to ask & how to talk to an elderly victim
First Responders

- They need training!
- They hear & see things that NO-ONE else sees & hears
- Paramedics are often walking into a crime scene
- They make GREAT witnesses
Observations of the first responders that led to an arrest & filing
Myth # 8

• Elderly people die from natural causes
• The importance of an elder death review team
Myth # 9 - the anyway excuse

• There are more important cases out there and anyway we don’t have the additional resources
• The victim was going to die anyway
• She was going to inherit anyway
Myth # 10

• “We don’t have jurisdiction... the crime did not occur here...”
So in order to build a case that will convince a jury you will need to get law enforcement to agree on those misconceptions and to ...
Law enforcement

- Recognize red flags of elder abuse
- Respond to referral of an elder abuse case
- Take initial report and make sure case is assigned to a detective for follow up
Common reactions among law enforcement

- It cannot be a crime - she gave him the money
- It can’t be filed - he does not want us to prosecute
- The prosecutor won’t file the case - the victim will make a terrible witness
- It is a civil matter - it involves a Power of Attorney
We also learned that fighting elder abuse requires more than just prosecutors & law enforcement.
Building blocks to form collaborative approach

- APS/Ombudsman program
- Coroner
- Public Health
- Seniors
- Public Guardian/Probate Court
- Elder law attorneys
• Every County must have a reporting line
• Billboards
• Posters
• Radio and TV PSA’s
• # of calls WILL increase
An Early Case for Page...
Lashawn

• 32 years old, suffers from Cerebral Palsy and is wheelchair-bound. Lives with her two uncles.

• Brought into ER by uncle, who tell the nurse, “We got in over our heads. We didn’t notice she was having trouble until it was too late.”

• Suffering from multiple Stage III and IV pressure ulcers, contractures, malnutrition, and dehydration.
Lashawn

- Until two months earlier, was going to adult day care 5 days/week
- Then became a 2-person transfer, and could no longer attend
- Uncles received over $3000/month from the State to provide her care
- They have no other income
I file charges:

• Criminal Mistreatment
• Theft
After charges are filed, I learn:

- ER staff took no photos of injuries, did little documentation
- Failed to report neglect to State as required by law
- Out of fear of liability, minimized injuries
Problems

• As a result of failure to report, I lost:
  • Photos and detailed documentation of victim’s condition and wounds at time she left the residence
  • Photos and documentation of:
    • Condition of victim’s room, home
    • Medications, nutritional supplies and wound care supplies
  • Assistive devices in home
  • Evidence of how caregivers were spending State benefits
Other Problems

• Differing medical opinions as to cause of symptoms
• Sympathy towards caregivers
• Failure by state agency to properly monitor victim
• Failure by visiting nurse to examine victim
Result of Problems

• Felony charges reduced to misdemeanors
• No jail
• No message sent to negligent caregivers of vulnerable adults
Underlying Problems

• Ignorance on part of mandatory reporters as to when, what, and how they should report

• Lack of awareness of neglect as a crime
Underlying Problems,

• Differing opinions in medical field as to what constitutes neglect
• Lack of training of law enforcement on what evidence is necessary to prove neglect
Underlying Problems,

• Lack of coordination and mistrust between agencies and law enforcement
• Complexity of determining who is responsible for victim’s care
• Overburdened state, law enforcement agencies
Lashawn

• 32 years old
• Suffered from Cerebral Palsy and was wheelchair-bound
• Lived with her two uncles, who had been her caregivers for past 4 years
• Was going to adult day care 5 days / week and doing well
Fall of 2001

- Health began to decline
- Began to require 2 persons to transfer her in and out of wheelchair
- As a result, could no longer attend adult day care
- Left home alone with uncles 24 hours / day
January 2002

- Seattle Police Department received a report of neglect from Adult Protective Services (APS)
- APS reported they were called 2 weeks earlier by nursing home reporting the neglect of a young woman discharged to their care from a local hospital
Police Investigation Reveals

- Lashawn brought to hospital on 1/4/02 by uncle:
  - “We got in over our heads. We didn’t notice she was having trouble until it was too late.”

- Diagnosed with:
  - Multiple, necrotic Stage III and IV pressure ulcers
    - Some on front of body
  - Osteomyelitis (bone infection)
  - Contractures
  - Malnutrition
  - Dehydration
Police Investigation Reveals

• In pain
• Weighed 85 pounds
• Despite mandatory reporting laws, hospital staff failed to report neglect due to sympathy for the caregivers
The Investigation Reveals

• Uncles received over $3000/month from the State to provide her care
• Had no other income
The Investigation Reveals

- Approximately one month before hospital admission, Lashawn examined by nurse for the State
- Accepted uncles’ claims that she was asleep and fine, never examined her
- Wrote in report that she had no concerns
- 6 months earlier, Lashawn weighed 125 pounds; had lost 40 pounds
We File Charges Against Caregivers

- Felony Neglect (Criminal Mistreatment 2)
- Felony Theft (billing for services not provided)
Problems with the Prosecution

• Thoughts?
Problems with the Prosecution

• Hospital staff reluctant to cooperate with prosecution due to their failure to report Lashawn’s neglect
• Out of fear of criminal and civil liability, hospital staff minimize the seriousness of Lashawn’s neglect
• Little documentation of wounds, so difficult to refute
Problems

- As a result of delay in reporting to police, we lost:
  - Photos of Lashawn before she was cleaned up at hospital
  - Evidence from Lashawn’s room and home:
    - Condition of bedding
    - Absence of proper wound care supplies, medications
    - Absence of adequate food
  - Witnesses, suspects had time to prepare stories
Problems

• Defense could claim that others were also to blame:
  • Nurse who failed to actually examine Lashawn when she visited her
  • State agency that failed to properly monitor her

• Defense could also claim that wounds worsened during hospital stay
Result of Problems

- Defendants pled guilty to reduced, misdemeanor charges
- No jail imposed
- No message sent to the public
Stepping Out of My Silo

• Began to train police officers on how to identify and investigate neglect cases
• Roll Calls
• Academy
• OVW Abuse in Later Life Grant
Stepping Out of My Silo

• Formed Multidisciplinary Teams to Address General and Specific Issues
• Elder Abuse Council
• Criminal Mistreatment Review Panel
• Mandatory Reporting Subcommittee
• Care Facility/Law Enforcement Task Force
• Fatality Review Team
Criminal Mistreatment Review Panel

- Detectives, DSHS, long term care nurses, geriatrics physician, hospital social worker, prosecutors, professors of nursing, medical ethicist, ombudsman
- Individual neglect cases presented
- Recommendations re: prosecution made
Goals of CMR Panel

• Educate all participants on perspectives on neglect of other disciplines

• Educate detectives on information required to properly investigate neglect

• Assist prosecutors in determining whether charges should be filed

• Develop protocols
Mandatory Reporting Subcommittee

- Conducted trainings for
  - Police officers
  - Firefighters
  - E.R. Doctors, nurses, social workers
  - Nurses’ organizations
Care Facility/law Enforcement Task Force

- Nursing home administrators, law enforcement, DSHS administrators, A.G.’S office, prosecutors, Ombudsman, jail administrators, county mental health workers
Care Facility/Law Enforcement Task Force

• Addressed issues regarding:
  • Violent residents
  • Reporting by facilities as a means of getting rid of difficult residents
  • Improving communication between nursing homes and jail where resident is arrested
  • Improving police response to calls to facilities
Five Years Later. . .

- Left elder abuse to run Juvenile Division of our office
- Was asked to become part of OVW’s national training team for Abuse in Later Life grant
- Realized importance of work I had been doing, role that it had played in my life
2007

- Returned to elder abuse in our office
- Economic Crimes Unit
- Increased support from office
- Second elder abuse prosecutor
- Involved and supportive supervisor
- Expansion of caseload
2007 to Present

- Prosecute cases of elder financial exploitation, neglect, homicides, some DV and some sexual assault
- Co-chair Elder Abuse Council
- Awarded OVW grant
- Successfully lobbied for improved criminal laws
- Received tentative funding for MDT to be housed in our office
Building an Elder Abuse Case
Address the hidden issue..
Sexual Assault
Problems associated with sexual abuse of elderly /dependent adult

- Delays in reporting
- Victim often cannot provide history
- Physical findings may be “clouded”
- Resident on resident – dementia?
- Employee on resident – eye witness?
- Victim allegations – how to handle?
Neglect
Historically Overlooked by Criminal Justice System

- Due to:
  - Long history of CJS staying in our silo
  - Lack of coordination with other disciplines
    - Health care providers (potential fact and expert witnesses)
    - Medical examiners / coroners
    - Social service agencies
    - APS
    - MFCU
  - Under-reporting by mandatory reporters, families, victims themselves (true of all forms of elder abuse)
Why Neglect is Under-reported

Lack of training of mandatory reporters
Difficulty in discerning whether neglect or underlying disease
Sympathy for caregivers
Victims’ inability or reluctance to report
Reluctance by public to get involved
Ageism
Most Common Defense to Neglect

Consent (Self-Neglect)

“I promised her I’d never put her in a nursing home.”

“He told me he wanted to die at home.”

“She said she didn’t want any doctors.”

“I was just following his wishes.”
Assessing Claims of Consent or Self-Neglect

Look at:

Victim’s history of seeking medical care
Whether victim had an Advanced Care Directive or POLST saying what care they wanted
Whether victim had dementia
Whether suspect had a financial motive to keep victim in the home / facility
Signs of Neglect

Malnourished
Dehydrated
Presence of urine, feces
Inadequately clothed
Untrimmed toenails, matted hair
Pressure sores (bedsores)
Poor oral hygiene
Lack of proper assistive devices
Common Caregiver Characteristics

Financially motivated
  If family member:
  Enmeshed relationship with victim
  Often unemployed
Shopping, drug, gambling addiction
  If facility:
  Chronic understaffing
  Signs of neglect in other residents
  Insufficient supplies
Financial mismanagement, fraudulent billing, etc.
What Makes a Neglect Case a Viable Criminal Case

Clear financial motive
Perpetrator without significant cognitive impairment or mental illness
Multiple Stage III or IV pressure sores plus other signs of neglect
Usually osteomyelitis or sepsis
Jury appeal?
Do you have a sympathetic defendant?
Gathering the evidence...

- In many situations it is preferable not to arrest suspect - so as to allow time to develop case

- Non-custodial statement from suspect - to establish whether they admit to having a caregiver role & allow for possible defenses to be disclosed
Physical Abuse
Building a case.. nothing like a video..
Profile of the classic physical abuser:

- Son in his late 30’s to late 50’s
- Living at home with Mom
- Divorced/ returns or single and unmotivated or just out of jail
- Lazy and unemployed
- Drugs, alcohol or gambling
- Feeds habit off Mom
- Sometimes history of mental illness
Using photos in opening statement
Photos that document the injuries..
San Diego recently introduced its first ever Blueprint
SAN DIEGO COUNTY ELDER AND DEPENDENT ABUSE BLUEPRINT 2018

COORDINATED. CARING. COMMUNITY RESPONSE.
ADDENDUM C: SAN DIEGO COUNTYWIDE 
ELDER AND DEPENDENT ADULT ABUSE SUPPLEMENTAL 

CASE #: [Reporting Officer & ID]

PRIMARY VICTIM
- Elder (65 years and older)
- Dependent adult (18-64 years)
- Dependent adult has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

RELATIONSHIP OF SUSPECT TO VICTIM
- Adult child of victim
- Minor child of victim
- Other family member
- Caregiver/care custodian (not related by blood or family)
- Friend
- Acquaintance
- Stranger
- Self
- Other

VICTIM
- VICTIM NAME (Last, First, Middle)
- DATE OF BIRTH: M __ F __

SUSPECT
- SUSPECT NAME (Last, First, Middle)
- DATE OF BIRTH: M __ F __

EMOTIONAL DEMEANOR UPON ARRIVAL
- Upset
- Crying
- Frightened
- Calm
- Angry
- Nervous
- Not at Scene
- Flat Affect

INJURIES
- Report of pain
- Bruise(s)
- Abrasion(s)
- Head injury
- Loss of consciousness
- Possible broken bones
- Soreness
- Other:

INJURIES
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- Other:

Reported Types of Abuse (check all that apply)
- Physical: Assault, Battery, Sexual, Restraint, Chemical, Medication over or under dosing, Overmedication
- Neglect: General, Emotional, Physical, Sexual, Fiduciary, Others
- Financial: Theft, Misuse of funds or property, Extortion, Fraud
- Mental Suffering: Verbal assaults, Threats, Fear, Unaddressed mental health challenges, Unaddressed cognitive challenges/losses
- Self Neglect: General, Emotional, Physical, Sexual, Fiduciary, Others
- Unaddressed mental health challenges, Unaddressed cognitive challenges/losses

Page 1 of 2
Mental/emotional suffering
False imprisonment
Financial exploitation of elders
Financial Abuse:

- Theft
- Credit card fraud
- Real Property transfers
- Home Improvement scams/burglaries
- Work by unlicensed contractors/overcharging
- Telemarketing, sweepstakes & e-mail scams
- Investment fraud
Typical theft scenarios

- Jewelry
- Checks
- ATM card
- Credit card & identity theft
- Transfer of title - POA & quitclaim deed
- Bogus investment scams
HOW TO PROVE STEALING?

• Taking property
• belonging to another
• without consent &
• with intent to permanently deprive
Lack of consent

- To consent to a transaction a person must:
- Act freely & voluntarily & not under the influence of threats, force or duress
- Have knowledge of the true nature of the act or transaction involved
- Possess the mental capacity to make an intelligent choice whether or not to do something proposed by another person
• Consent requires a free will and positive cooperation in act or attitude
Three prosecutable scenarios

- Classic case of theft from a competent victim
- Theft from an incompetent victim
- Theft from a marginally competent victim [by undue influence]
SCENARIO # 1

- Victim testifies
- Did not give permission
- Did not owe monies to suspect
- Victim is credible
Bank surveillance photos are crucial...
SCENARIO # 2

- Victim cannot testify
- Medical testimony that victim suffers from dementia/ Alzheimer’s/ Parkinson's or some other illness that deprives victim of necessary understanding
- Incapacity was present at time of transaction
SCENARIO # 3

• Is it theft, a loan, or a gift?
• Victim is marginally competent
• Suspect exploited victim’s vulnerability
• Victim was unduly influenced or was defrauded
Undue Influence

• Victim ‘was pushed in a direction that he did not want to go.’

• The influence by suspect was sufficient to remove the voluntariness of the transaction

• No longer free will

• Victim has been evaluated by a geriatric psychiatrist/psychologist
How to prove undue influence?

- Length of relationship
- Place of first meeting
- Prior spending habits
- Prior “charitability”
- What is left?
- Multiple escalating transactions
- Statements & conduct by suspect
Witnesses

- Bank teller
- Pastor
- Neighbor
- Doctor, pharmacist, optometrist of V
- Family
- Ex-spouse of suspect
- Business contacts of suspect
Evidence collection

• Bank, credit card statements
• Bank surveillance tapes
• Prior medical records
• Look for the inappropriate purchases
• Ask questions, questions, questions!!!
People v. Harris

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

- Obtaining a consent release form
- If V has mental capacity problems, then do NOT get a release
- Obtain through search warrant or if after case has been issued, through subpoena
Interviewing an elderly victim

- Venue is important
- Build a rapport
- Look for achievements
- Try to identify areas of vulnerability
- Preserve the interview on video
We must bring elderly victims into court at earliest opportunity to allow confrontation to take place.

- Investigations are time sensitive.
- Prosecutors should minimize delays in filing.
Crawford v. Washington cont’d

- Try to avoid any defense request for a continuance
- Once the victim has testified in a preliminary hearing, the testimony is preserved
Seniors and the court process:

- Getting them to court
- Bringing the court to them
- Waiting at court
- Testifying in court
- After court - to prevent further victimization
Paul’s Work with Long-Term Care Facilities
Taking what I have learned along the journey in the past 18 years...
And applying it to an untapped area of identifying, investigating & prosecuting crimes committed in long term care facilities
Talking to
State agencies that regulate SNF’s
& Board & Care facilities
Department of Social Services
& Department of Public Health
Assess the impact of the crime

- Financial
- Emotional
- Residual
A Message to Seniors:

• We respect and honor you!
• We commit to seeking justice for you
• We prosecute with:
  • Passion
  • Purpose
  • Perseverance
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