



NDA

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ELDER ABUSE – GENERAL INFORMATION – TALKING POINTS ***February 8, 2006***

PROSECUTORS MUST TAKE THE “LEAD” ON PLACING GREAT VALUE ON AMERICA’S ELDERS. *It’s important that prosecutors are accurately portrayed as champions of, and advocates for, elders who become crime victims. Americans need to know that we “revere” elders – they educate and enrich our society. Elders deserve the highest level of our respect and protection as they enter into a more fragile and vulnerable stage of their life. Prosecutors and others who work within our criminal justice system must demonstrate that they will not tolerate those family members, caretakers and scam artists who target and abuse elders – and that these abusers will be held accountable and prosecuted to the full extent of the law.*

1. Elder Abuse – Scope of Problem

Crimes against the elderly are, perhaps, some of the most unreported, heinous and misunderstood compared to any other crimes committed in America. Experts say that ***for every one elderly abuse case reported – 14 more cases are not reported.***

As great numbers of our nation’s population ages (Baby Boomer Generation) – ***projections*** are that ***America’s 65+ population will nearly triple to more than 70 million by the year 2030.*** *Elder abuse* is rapidly becoming ***one of the fastest growing crimes against the most vulnerable and fragile segment of our society. More than 2 million elder Americans are victims of neglect or mal treatment every year.*** Fortunately, many *District Attorneys* fully recognize this ***tragic problem*** and are directing personnel and resources to set up programs to help elder victims of crime and aggressively prosecute those who commit crimes against them.

2. Defining “Elder Victims of Crime” Presents a Challenge

At this time, ***there is not a standardized definition of “Elder Victim.”*** Some states use an ***age-based definition***, for example, California uses the age of 65. Other states focus on ***“vulnerable adults.”*** ***This definition then places a requirement on state officials to define the meaning of who qualifies as an adult considered to be “vulnerable.”*** ***This can be burdensome and especially difficult, particularly if the victim is made to feel embarrassed or exposed because they must be labeled as being “vulnerable.”***

3. State Laws Vary Concerning What Is and Is NOT Elder Abuse

Astonishingly, ***some states still view certain types of elder abuse as a misdemeanor crime even though the conduct may be quite serious.*** For example, when an able-bodied 35-year-old male is pushed – which is considered to be misdemeanor conduct -- that ***same push/force may have a very different outcome if it is applied to a fragile 80-year-old lady.***

4. Myths and Truths About Prosecution of Elder Abuse Cases:

MYTH 1: It is ***commonly thought*** that ***elder victims*** make poor witnesses – that they are ***forgetful, senile, long-winded, fragile and poor historians.***

FACT: ***Elderly victims*** tend to be ***remarkably resilient*** and ***engaging***, and ***have enormous jury appeal.***

MYTH 2: Some prosecutors think that if the alleged ***transaction involves a Power of Attorney (POA), NO CRIME*** has been committed.

FACT: The existence of a POA does not give the holder the right to steal from the victim. Many cases never get investigated because law enforcement frequently dismisses them as “civil in nature”.

MYTH 3: When an elder victim is reluctant to report a crime and testify -- police and prosecutors should not pressure the victim.

FACT: Police and prosecutors must treat elder victims the same way they would treat a victim of domestic violence in this same situation. (Classic Scenario: An elderly widowed 78 year old mother has been assaulted by her lazy, unemployed drug addicted 48 year old son who lives with her. After son’s arrest, victim calls up prosecutor to say there has been a misunderstanding and that the police overreacted. Victim states that she wants to “drop the charges” and will not testify against her own son in court. We need to treat this case just like a domestic violence case.)

5. Mandated Reporters of Elder Abuse

Definition of mandated reporters varies from state to state. Anyone may be determined as a mandated reporter in a few states. Majority of states require that a list of mandated reporters be created and updated to cover as many professions as reasonably possible. IMPERATIVE that prosecutors are aware of who is included in their state’s list. Prosecutors should make every effort to work with and train the reporters concerning elder abuse awareness. ALL financial institutions should be required to be designated as mandated reporters. Prosecutors, law enforcement officials, elder victim advocates, and everyone working with elder victims should encourage ALL PEOPLE who suspect that an elder is being abused to REPORT IT to the police, Adult Protective Services and other proper officials. It should be the duty of ALL OF US to help protect elder victims of crime.

6. Specific Challenges and Recommendations Concerning Elder Abuse Cases

Challenge: Time constraints based on Crawford v. Washington. The effect of this Supreme Court decision requires that all elder abuse cases are time sensitive. Defendant can insist on right to confront witness. (Example – elder is victim of financial abuse; suspect flees; prosecutor files case as arrest warrant; suspect apprehended after 1-2 year passage; victim has died.

Recommendation: Prosecutors must file cases and bring elderly witness into court to testify ASAP. If year(s) have passed since suspect flees and victim is no longer alive – or able to testify – we need to work to change state laws – or do whatever possible -- to protect the victim’s testimony by having a court appointed attorney cross examine the victim even though the defendant is absent.

Challenge: For states that use Grand Juries for commencing criminal proceedings – when the victim is elderly, prosecutor should always proceed by way of preliminary examination thereby giving defense counsel an opportunity to cross-examine. In event elder is unavailable at time of preliminary hearing (i.e., medical reasons) it is imperative that a conditional examination of elder be held ASAP. Such hearing should be video taped.

Recommendation: Preliminary hearings should always be used in elder abuse cases and if a conditional examination of the elder is held, the hearing should be videotaped.

7. General Recommendations

- We should work with Federal and State Legislators to develop a uniform definition of crimes that are clearly defined as “elder abuse” throughout America. This will help us standardize and strengthen laws against those who abuse elders and make it easier to arrest, charge and try abusers.
- We must help elder victims understand the importance of reporting to law enforcement that they are a victim of crime. The elder’s fear of reporting abuse presents our biggest problem in holding criminals accountable. Prosecutors should join forces with local agencies to establish a public campaign that includes public service announcements, posters, billboards, and newspaper articles. This campaign would focus on:
 - Assuring elders that reporting helps us apprehend suspects. It is NOT meant to impinge upon their liberties
 - Reminding the public that they should not hesitate to contact their local Adult Protective Services if they suspect that a relative, neighbor, friend, client, etc. is being abused or financially exploited.