

Executive Session - Sub. on Aging Hearing on Financial Abuse and Exploitation

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Witness:

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Testimony:

Thank you for inviting me to speak on the very important topic of financial abuse. I want to congratulate you for focusing on Elder Abuse and for being among the leaders of the effort to get people off their rockers and do something to help older Americans who are being abused, neglected and exploited. Each year many elderly and disabled American's are taken advantage of, and their health, security and sometimes their lives are cut short because of the actions or inactions of others.

As a long-term care Ombudsman, I am one of 10,000 people from across the country who is trained to advocate on behalf of residents of long-term care facilities. These 10,000 people are staff and volunteers who visit nursing homes and board and care facilities and listen to the issues, complaints and questions of residents, their friends and families. In addition to individual advocacy, it is also the job of each of the 52 state LTC Ombudsmen to ensure that policy makers are aware of places in the "system" where improvements are needed.

Well, here I am, representing not only the Missouri LTCOP, but also the National Association of State Long-Term Care Ombudsman Programs (NASOP). NASOP is a founding member of the Elder Justice Coalition, which is committed to ending elder abuse.

Financial abuse is devastating. Whether the elderly victim is aware of the exploitation or not, it is frustrating that sometimes the perpetrator can get away with taking money and other assets from vulnerable individuals.

Perpetrators can be family members, friends, healthcare professionals or con men (and women). We need to act now. Legislation before this Congress (S.333 and H.R. 2490) will put into place needed training, data collection, legal assistance, investigative assistance, and "beefing" up of the Adult Protective Services programs across the country, as well as assisting law enforcement, prosecutors and judges.

I want to tell you about two Missouri cases that exemplify the growing crisis.

"Mary" is a 91 year-old resident of a nursing home. She is mentally competent and is living in the facility because her Durable Power of Attorney (DPOA) took her to the facility to visit, and just left her there. Mary was afraid to object to this action.

Mary owns several farms and two homes. The local ombudsman was informed that one of Mary's farms and many of her household items had been sold and that Mary was not aware of this. The Ombudsman visited Mary and asked if she knew that one of the farms had been sold. "How could he do that?" Mary was very upset and requested the Ombudsman's help. The person selling the property had Mary's Durable Power of Attorney, which she signed when she was in the hospital and very ill. She does not remember signing the document, and said she certainly had no intention of ever allowing someone to sell her property without her knowledge and permission.

The Ombudsman assisted Mary in getting an attorney, and in repealing the DPOA document. In the meantime, 250 acres of land has been sold and many household items are gone forever. The announcement of the auction of the household items did not list Mary as the owner of the property, because the DPOA “didn’t want her to be upset.”

The second case:

In-home aide stole money from three clients. The aide took \$900 from one client. The case was referred for prosecution and she plead guilty to charges of Class C felony, forgery and Class C felony, stealing. She also has been placed on the Employee Disqualification List for 5 years, which prevents the aide from working in the in-home agency or nursing facility industry.

These two cases demonstrate that the elderly can be exploited by anyone that has access to them. Whether by intimidation or out right stealing, something must be done to make it easier for people to report crimes, something that will assist with the coordination of the investigations between Adult Protective Services, the LTC Ombudsmen, Nursing Home Licensing staff, law enforcement and district attorneys, and something that will ensure equity and making sure there is justice for all, no matter how small the amount of money taken.

There are many groups and organizations in the “aging network,” from the National Association of State Units on Aging (NASUA) to AARP, to local senior centers and long-term care Ombudsmen. Stopping abuse will take more than this network. It will take regular citizens asking questions; courts that are prepared to hear cases, and a better understanding of who can become a victim. The Elder Justice Act will provide federal resources to support State and community efforts on the front lines, to those dedicated to fighting elder abuse with scarce resources and fragmented systems. And maybe more importantly, this Act will bring national attention to the issue of abuse, neglect and financial exploitation.

The time for the Elder Justice Act is NOW. Senator Bond, you just completed a tour of Missouri where you said that Congress had its first hearing on this topic almost 30 years ago. I join you in declaring that the time is now. I believe that it is now time for Congress, elder Americans and elder advocates to “get off our rockers” and get the job done. Senator Bond, Senator Mikulski, the Elder Justice Act is a fine piece of legislation. Please don’t allow another year to pass without its passage.

Thank you again for this opportunity for me to get off my rocker and make a difference. Additional cases from Missouri Department of Health and Senior Services

CASE #1

A terminally ill, elderly adult was in the nursing home. In 1992 she had given her niece a Power of Attorney (POA) and put her name on her bank account – the niece had never used the account until the reported adult went to nursing home. The nursing home bill became over \$30,000.00 and pharmacy was owed over \$2,000.00 in co-payments alone. The pharmacy refused to send more medications. The niece did send some nominal amounts of money towards the bills. The reported adult’s monthly income was almost \$1,200.00. Law enforcement obtained an investigative subpoena which showed the niece had taken over \$60,000.00. She was cashing out the account at the beginning of every

month and had purchased new house and furniture, jewelry, clothes, etc. Meanwhile, the reported adult had no personal funds, and received no new items for over a year. The nursing home staff took up a collection so she could have a perm and the administrator paid, out of her own pocket, for her medications one month. All of this was presented to the prosecutor who ultimately decided that because the niece had POA he could not prosecute.

CASE #2

An In-home Services aide allegedly stole \$700. Upon Department of Health and Senior Services (DHSS) investigation the provider paid the client back \$200 (as the aid admitted to stealing this amount). However, when the case went to court, the court ordered the aide to pay the full amount back. The client died before the court order. However, the court still ordered that the money go to the family. The family obtained a total of \$900.

CASE #3

Our client is a 38 y/o white female with Spinal Bifida who is wheelchair bound. She is also diagnosed with borderline Mental Retardation. While living in a nursing home, she was befriended by an aide who was working there. The aide introduced her 82-year-old grandfather to our client. Our client was 30 years old when they married shortly thereafter. When the elderly man died, the aide/step-granddaughter moved our client into her home with her and her husband. The aide/step-granddaughter became our client's payee for her \$724/mo SSI income. During the approximately 8 months that our client lived with this couple, they got our client to put their telephone in her name and did not pay the bill. They "let" our client buy a \$1,800 computer as a gift for the step-granddaughter's spouse. The only purchases the payee made for our client that she can provide evidence for are 2 skirts and 3-4 tops. When our client's sister became convinced that the couple was not looking out for our client's best interests, she took our client out of the payee's home. Our client did not have any money from her checks, which had been saved in her name. The only possessions that our client had were a television set that was sold by the caregiver family, and an electric wheelchair that had been delivered to their home while our client lived there. The wheelchair could not be found but our client still owes on the bill for it. There is also evidence of physical neglect, along with adult abuse. This case has been reviewed by Legal Services who stated that we have enough to take before a judge. We are going to pursue a case of Adult Abuse against the payee/caregiver.

CASE #4

The grandchildren allegedly charged \$327.79 to a mail order catalog under the client's name. Upon DHSS investigation grandchildren agreed to pay what they had charged, and the catalog agreed to clear the client's credit with them. Law enforcement was notified. However, the client elected not to prosecute as the grandchildren repaid the amount and promised not to do this again. To this date, we have not been notified that the grandchildren have tried anything like this.

CASE #5

In February 2003 DHSS received a report of theft and financial exploitation on a client. The Client lived with her sister and both received around the clock care from privately paid caregivers, Mrs. S and her daughter, Ms. J. The daughter had been working for the two sisters approximately 6 months when she obtained Power of Attorney. She wasted no time in depleting the shared accounts of the client, the sister and the niece.

An employee at the local bank noticed rapidly depleting funds, including cashing of CD's and checks written for large sums of money, since Ms. J became POA. The bank employee reported her concerns to the niece. An investigation from the county Sheriff's Office ensued. The financial exploitation totaled approximately \$400,000.

Ms. J received a suspended imposition of sentence, 5 yrs unsupervised probation, and she was ordered to pay restitution. Two savings accounts established by Ms. J were frozen. The money was returned to the client, her sister and niece.

Property purchased by Ms. J was seized, including two homes in a neighboring county and two vehicles. Our staff recently contacted the niece to see if she had been satisfied with the legal outcome. She said she was satisfied and that most of the assets had been recovered. The niece's stepdaughter is now involved in over seeing her and her mother's financial affairs. The client passed away in November 2002.

CASE #6

DHSS received a hotline report in October alleging a client's son was not giving the client her medicine correctly and had financially exploited her. An investigation was completed and a report made to the police. Evidence was found that the son had put his name on all the client's money, and had used Power Of Attorney papers to withdraw large amounts of money from the client's accounts. The client had assets of approximately a half million dollars. The son was charged and convicted of stealing. He did plead guilty and was placed on probation. He also received one-week "shock time" in jail and must pay restitution of \$1,000.

CASE #7

DHSS received hotline on 74-year-old client who was being exploited by her daughter and namesake. The daughter was using her mother's name to cash in on her mother's stocks, deplete her mother's bank accounts and then forged both her mother and brother's names on stock certificates. She has stolen to date, \$14,512 in cash of the client's life savings, depleted \$32,637 in the bank accounts and attempted to cash in on 400 shares of stock from her brother and mother. The stock company became suspicious of the signatures on the stock certificate. They stopped her cashing the stock that would have been close to \$50,000 in value. Currently, a plea is on the table. Charges being brought against her are Financial Exploitation of the Elderly and Forgery. These are both felony crimes.

The prosecutor's terms are:

A guilty plea to both felony Financial Exploitation and Forgery charges

Serve 5 yrs supervised probation under a Suspended Imposition of Sentence (SIS)

Pay full restitution to the victim (\$14,512) and,

No further employment or dealings with the elderly & disabled.

The prosecutor has advised that he will accept nothing less. The Defendant has until Monday September 15, 2003 to make her decision. If she refuses, then we will re-indict and go to trial.

CASE #8

DHSS worked in collaboration with the FBI. This case involved a suspect who was a financial planner, insurance salesman and con artist. He convinced three individuals to "loan" him money. One victim, 93 years old, "loaned" him \$306,000. The loan note that the perpetrator prepared indicated "0% interest, payable in full upon the death" of the

client. The perpetrator had also done what is called "churning" which is where he convinces clients to move from one Annuity Company to another, each time costing the client a penalty for early withdrawal and he would make a commission. He then "borrowed" \$37,000 from another victim. Both of these clients are elderly. He completed the same scam with one of the client's sons, unbeknownst to the client, for an amount of \$20,000.

DHSS received this case from the local Prosecuting Attorney's office and discovered that it was better to bring in a federal agency. The DHSS report is four volumes thick and includes over 3,000 exhibits. After taking the case to the FBI, the US Attorney's office, based on everything we had, agreed to indict the perpetrator on numerous mail fraud and banking fraud charges.

The perpetrator's attorneys felt that the potential case was so great against their client that they have agreed to plead guilty on the information and forego a formal indictment. He has agreed to the following conditions:

1. Plead guilty to the felony charges of Bank Fraud and Mail Fraud
2. Pay directly to the victims the following amounts: NOTE: Checks are already being written to victims
 - a) client 1 \$338,326.00 (includes penalties for early withdrawals)
 - b) client 2 \$37,000.00
 - c) son of Client 2 \$20,000.00

This is a total recovery for the victims in the amount of \$395,326.00

3. Forfeit any and all licenses to sell annuities, securities and/or insurance.
4. Placed on Probation for a period to be determined by the judge.

This is a great victory for us. It shows what can happen when DHSS works collaboratively with other state and federal agencies. In this case, we were actually able to recover all of the losses to the victims. The perpetrator won't spend time in jail, but he is out of the business. Also, our case does not preclude the IRS from initiating their own case, since he hasn't paid taxes in over 12 years! Bottom line, the Feds are willing to work with us and we can be successful.