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ELDER ABUSE AND NEGLECT: PREVENTION AND INTERVENTION

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BEFORE THE

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SATURDAY, JUNE 29, 1991

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Birmingham, AL.

The Committee met, pursuant to notice at 10:20 a.m., in the Wynfrey Hotel Ballroom, Birmingham, Alabama, Hon. Richard C. Shelby (acting chairman of the Committee) presiding.

Present: Senator Shelby, and Representatives Erdreich and Harris.

Also present: Laura Williams, Leslie Lazarus, and Tricia Primrose.

WELCOMING REMARKS OF MR. BAUMHOVOR

Mr. BAUMHOVOR. I am delighted to have all of you here. We're overwhelmed by the response and certainly delighted to have our panel members here today. I'm going to briefly introduce Senator Richard Shelby, and he will introduce the panel himself.

Senator Shelby is known to many of you here in Alabama. As a personal note, he was my attorney about 20 years ago in Tuscaloosa, and he helped me out a lot.

I really appreciated getting to know you then and certainly since then.

Senator Shelby was a long-term member of the Alabama State legislature, having served for many, many years prior to his election to the House of Representatives in 1978, where he served four terms. He was elected to the U.S. Senate in 1986 and, of course, is here as a member of the Senate Special Committee on Aging. Senator Shelby is a graduate from the University of Alabama, a law school graduate also of the University of Alabama, and a recent—1991—recipient of the Friends of Seniors award from the National Committee to Preserve Social Security and Medicare.

Senator Shelby.

OPENING STATEMENT OF SENATOR RICHARD SHELBY

Senator SHELBY. Thank you.

I have joining us today on my right, who is no stranger to Birmingham, Congressman Ben Erdreich, who is a long-term, veteran Congressman, who was also in an earlier day a member of the Alabama legislature with me. He serves on the Banking Committee in the U.S. House of Representatives, where he chairs a subcommittee, he serves on the Government Operations Committee, and he

serves on a committee special to all of us here, the Select Committee on Aging in the House.

Further on my right, I have another Congressman, Congressman Claude Harris, who also represents as part of his Congressional district some of Jefferson County, as I did at one other time in my life. Congressman Harris serves as a member of the Committee on Energy and Commerce and the Committee on Veterans Affairs, and he's certainly no stranger. He's very interested in the issues of the elderly.

Claude, we're glad to have you here with us today.

On my left, I have David Barber, who is the District Attorney for Jefferson County, and since the topic we're going to cover today, among other things, is elderly abuse and neglect, I thought he would be, as the chief law enforcement officer and prosecutor for Jefferson County, appropriate for this panel.

David, we're glad to have you here with us.

To all of you, I want to say good morning. Maybe a little late morning for several of us. I would like to extend a welcome to those of you who have joined us for this morning's field hearing. I would also, along with my friends and colleagues who join me on the panel, like to extend a sincere thanks to those of you who agreed later to present testimony.

These hearings are one of our most valuable tools in Congress in gathering facts and information on issues of importance in today's world, and it would be a grave oversight if I did not mention that public policymakers owe a great debt of gratitude to persons all over the country who are willing to take time to attend these hearings, to compile data, and to often share very personal and painful experiences with us.

Today's hearing is an important one on an important topic that is difficult to discuss—elder abuse and neglect. There is no one definition of elder abuse; however, a consensus seems to emerge among researchers which identifies three major types of maltreatment, and they are: physical abuse, including sexual abuse; psychological abuse; and neglect, active or passive. Additionally, a significant number of studies have come to identify a fourth category: financial exploitation. I'm appalled that there is a need even today to discuss this subject, because I'm sickened that something such as elder abuse exists in America. It does, however, and we must face the facts.

We're aging in America. Today approximately 32 million Americans are age 65 years and older. Census Bureau projections predict that the number of people over age 65 will increase to nearly 57 million and those over 85 and older, our fastest growing and our most vulnerable segment, will represent approximately 8 million people by the year 2020. Twenty years from now, nearly one person in seven will be over the age of 65.

Fifty years ago, President Roosevelt delivered what has come to be known as his famous "Four Freedoms" speech. A lot of you heard that speech. In the speech, he declared that every American should be guaranteed what he believed to be basic rights: one, freedom of speech; two, freedom of religion; three, freedom from want; and freedom from fear. I share President Roosevelt's belief in these basic freedoms and highlight as the basis of today's hearing the

freedom from fear. We all deserve the freedom from fear, most especially the fear of physical and psychological abuse, the fear of neglect, and the fear of financial exploitation during our elderly years.

The information gathered at today's hearing here in Birmingham will be incorporated into recommendations for the Senate Special Committee on Aging to use as we work to further the agenda of senior citizens' issues in the 102nd Congress. Again, I want to thank you for your participation here.

Senator SHELBY. Congressman Erdreich.

STATEMENT OF CONGRESSMAN BEN ERDREICH

Mr. ERDERICH. I would like to take this opportunity to thank you all for attending our hearing this morning on elder abuse—a still largely hidden problem affecting hundreds of thousands of our Nation's most helpless and vulnerable citizens.

Unfortunately, abuse of the elderly is increasing. The House Subcommittee on Health and Long-Term Care, on which I sit, has found that about 5 percent of the Nation's elderly may be victims of abuse from moderate to severe. To put this another way, about 1 out of every 20 older Americans, or more than 1.5 million persons, may be victims of such abuse every year.

Physical violence, negligence and financial abuse appear to be the most common forms of elder abuse, followed by abrogation of basic constitutional rights and psychological abuse. The victims are generally in a position of dependency on their abuser and are either unable or unwilling to report that their children or loved ones have assaulted them.

Today, the majority of States have adopted mandatory reporting provisions as part of their adult protective service statutes. We in Jefferson County are particularly fortunate to have a number of knowledgeable professionals who can assist victims of elder abuse once the problem has been identified. However, a great deal remains to be done in offering protection to the infirm and dependent elderly.

I am eager to hear how we in Alabama are coping with the problem of elder abuse and to learn what Congress may be able to do to help ease the burden of State and local agencies who are forced to confront this phenomenon.

I look forward to the testimony of today's witnesses.

Senator SHELBY. Congressman Harris.

STATEMENT OF CONGRESSMAN CLAUDE HARRIS

Congressman HARRIS. Mr. Chairman, I would like to thank you for giving me this opportunity to hear the testimony of our distinguished guests on the subject of Elderly Abuse and Neglect. I understand the Senate Special Committee on Aging organized this 3-day conference to educate the public about this distressing subject.

It is a sad fact that the structure of the American family is changing. We, as a society, have spent a great deal of time studying the impact of these changes on our children and developing

plans on how to handle the problems of the growing numbers of "latchkey kids." However, we have failed to note that our children are not the only ones vulnerable to the disintegration of the traditional family structure. Our senior citizens have been impacted in ways that we are only now beginning to see and understand.

When I was growing up, it was not uncommon to see three generations of a family under the same roof or living so close you just looked over the fence to see your kinfolk. Senior members were an integral part of the whole family and unless a medical condition made it necessary, they continued to live at home. That rarely seems to be the case today.

I am told we are a "mobile society" and that having roots in one community is practically unheard of. We have an extremely high rate of broken marriages and homes. All of this is to say, that our seniors cannot rely on their being a family support system for them in their time of need. And frankly, government programs have not been the best substitute for the care that comes from a home filled with loving friends and family.

We think we need to take a good, long look at the services that we are providing for our seniors. Certainly, we could do a lot more in the areas of preventive medicine, home-health care, and the use of daily helpers to allow more seniors to remain in their own homes. If, however, health reasons require that a senior must seek professional treatment outside of the home, then we must ensure the highest quality of care and service. The fact that abuse and neglect exists today is a shaming indictment on our society. One case of elderly abuse is one case too many.

I want to especially thank our three witnesses today who themselves were victims of abuse or neglect. It must be very difficult to share these experiences with others and I applaud your courage. I would like to assure you that I will be listening very closely to your words and will carry your message to Washington.

Senator SHELBY. We're going to have a number of panels here, and I'm going to ask the first panel to come up. Panel one will be Dr. Williamson and Mrs. Brooks.

We've got an involved, lengthy hearing here. We're going to try to move it along as quickly as possible, because we're gathering stuff for the record. I want to say at the outset that your written testimony will be made part of this hearing in its entirety, and if you could sum up your testimony orally as fast as you could, then it will give us a chance to ask some questions.

Do you want to go ahead, Doctor?

Dr. WILLIAMSON. Yes, sir. I assure you I will not take the 10 minutes.

STATEMENT OF DR. DONALD E. WILLIAMSON, DIRECTOR, BUREAU OF DISEASE CONTROL AND REHABILITATIVE SERVICES, ALABAMA DEPARTMENT OF PUBLIC HEALTH

Dr. WILLIAMSON. Gentlemen, thank you.

I am Don Williamson, Director of the Bureau of Disease Control and Rehabilitative Services for the Alabama Department of Public Health. I appreciate the opportunity of sharing a few very brief comments with you.

The Department of Public Health has been involved in the provision of home health services since the Medicare law went into effect in July 1966. We've seen our program grow and become a dynamic force in the provision of services to patients of all ages and with all types of insurance, including indigent patients.

We recognize that elder abuse is on the increase. It has recently been estimated that 5 percent of the Nation's elderly—approximately 1 in 20—may be victims of abuse ranging from moderate to severe. It is also concerning to note that the reporting of elder abuse may be less today than in the past. While in 1980 approximately one in five cases were reported, only one in eight cases are believed to be reported today. We also recognize that funding for elder abuse prevention, detection, and treatment is scarce.

As indicated by a recent survey conducted by the General Accounting Office, in-home services are considered the most effective way to prevent and treat elder abuse. Rosalie Wolf, President of the National Committee for the Prevention of Elder Abuse and who participated in this conference, has stated that bringing services into the home is believed to not only assist the frail, older person with the activities of daily life, but also to act as a deterrent to any further mistreatment at the hands of the perpetrator.

The effects of abuse are devastating to the American way of life. The individual, the family, and the community suffer when nothing is done to break the cycle of abuse. A coordinated effort on the local, State, and national level will be needed to combat elder abuse, which is far more serious than we have thus far been able to determine.

It is our belief that Congress must address the need for a comprehensive program of long-term care services for the chronically ill and disabled elderly. The testimony you will hear today will lend credence to these remarks.

In a recent edition of the report of the National Association for Home Care, the statement is made that elder abuse is becoming a hidden problem. We cannot let this occur. The citizens of this State and this country deserve better.

Gentlemen, we are certainly most grateful that you have taken time from your busy schedule to hear from your constituents on this issue. Again, thank you for the opportunity of sharing these brief comments with you.

Senator SHELBY. Ms. Brooks, Bessie Brooks, on my right here is a home-health care aide from Lowndes County.

Mrs. Brooks, as I said earlier, your testimony will be made part of the record in its entirety, your written testimony, if you will briefly sum up the highlights of what you have to say.

STATEMENT OF BESSIE BROOKS, HOME HEALTH AIDE FROM LOWNDES COUNTY, AL, REPRESENTING THE ALABAMA DEPARTMENT OF PUBLIC HEALTH

Ms. BROOKS. Thank you, Senator Shelby.

I shall not go into details about the definitions of certain words, but I will tell you that abuse is wrongly or improperly treating, misusing or trying to treat some of our patients that we have worked with, and we have not had much physical abuse in our

town, but we do know that physical abuse is willfully hitting with intent to hurt.

Now, we have had quite a bit of neglect. I have a patient that I go to see twice a week, Tuesday, and Thursdays, and I have done many things around in that patient's room to see if anyone would decide to move it, and when I leave him in the clothes that I leave him in, I find him in those clothes. Nobody worries about emptying the commode or anything. He sleeps in the clothes, and nobody changes his bed until we get back.

I have a patient there that lives in a home with the granddaughter. The granddaughter has three children. One time there, the granddaughter was taking the grandmother's money and spending it and buying clothes for herself and for her children, so the grandmother decided that she would hide the money. So the daughter would leave the room and leave one little boy there to spy on the grandmother. They would watch what she'd do with the money, and if he could find it, they would still use it for themselves.

So I said to the grandmother, "Well, we're going to have to get our bills paid up and get everything together," and I found one thing about it: those old people are afraid to do things that would make the caring person angry, because they have the fear of being put into a nursing home, they have a fear that the caring person will really do more abuse, and then there are people who were abused when they were young, and they feel like, "Well, I'm just getting my payback, because I abused my children, my parents abused me, so now it's my turn to be abused," and they try to sell on this thing.

But if you notice, in a rural community, most of the people who are being abused are where we have four generations in one house. There is the grandmother, the daughter, the granddaughter, and most of the granddaughters have two or three little children. I'm saying to myself, "What can we do to make this situation better?" Maybe if we had housing for every generation, it might get a little better. Then you look and you say, "Well, if we move every generation out, who will see about the older generation?"

And we're still looking and wondering and hoping and trying to do what we can to better the situation, and I thought of support groups and community activities and many things that we could do to help our people who are being neglected, because neglect is the big thing in Lowndes County.

Thank you.

[The prepared statement of Ms. Brooks follows:]

TESTIMONY OF BESSIE BROOKS

Abuse is defined by the dictionary as, "to wrongly or improperly use or to misuse; to trick or deceive; to hurt or injury by maltreatment. This may be both physical and psychological.

Physical abuse may be the willful hitting of someone with the intent to cause injury, neglecting someone in such a way as to cause harm, financially depriving someone of basic needs, or psychologically causing distress which may lead to medical problems.

The abuse we see most often in our county is caused by neglect and financial abuse. Many times the elderly are in home situations where the caring person is unwilling to do any care for them. I have one such patient that I see twice a week, on Tuesday and Thursday. No one bothers to see that the patient has clean clothes or clean living area when I'm not in the home. He is always in the same clothing I

placed him in when I return. He sleeps in these clothes. His bedside commode is left by his family for the aide to empty and clean when she returns. Neglect comes in many forms. The patient himself can cause neglect by refusing personal care such as combing hair, allowing us to help with ambulation, etc. Many times, we see family members take the checks of our patients for their own use. In some instances utilities are cut off because a family member will take the money. There was one patient whose phone was cut off because a young family member ran up a $300 phone bill that the patient was unable to pay. The phone is still disconnected and she is yet paying this bill. Still others use the checks of elderly parents or grandparents to buy clothing for themselves or their children leaving the bills unpaid and groceries not purchased. When groceries are bought, the others in the home will eat up everything with no thought to replacing them. Often the patient is ignored and isolated from the family activity. If the patient does handle her own finances, many times younger family members will watch where this money is put and then steal it for their own use.

Psychological abuse is another common occurrence. We find that in very poor families there may be two or three generations living in one small house. The younger members don't have the patience or respect for the older members that they should. The children are often seen talking ugly to the elderly or even threatening them. In this type family situation, it is not uncommon to find grandchildren responsible for the medical well being of their grandparents. They either don't understand or don't care about the need of seeking proper medical attention and distribution of medications for these elderly people. They will fail to have medicine refilled properly or if the patient shows any resistance to taking the medicines, they won't force the issue.

I spend a lot of my time talking to families about the patient's needs. I try to explain that the patient needs to be made to feel important, to be of some value. They need to have their self esteem built up, to feel as if they have something to contribute to the lifestyle of the family. Don't keep the patient, "in the dark," so to speak about what is happening in the family.

We need to make the Community aware. We can do this by developing adequate support systems; establishing outreach programs and providing educational opportunities. We all know that there are many good caring persons out there. The poor, upset, low income families need our help and support to keep them from taking advantage of the elderly and to keep them from taking out their own hurts and disappointments on them.

Many times the abused will not speak out because of fear, shame or even guilt. They feel like they have failed in some way to do their part and, therefore, are deserving of the abuse. They may fear worse treatment if they speak out. The thought may be that, "I beat my child when he/she was small," so now they are, "getting even". They may even fear abandonment. They may think, "who will take care of me if my daughter/son, etc is jailed because I told about my treatment".

There is one thing that we as providers of care must keep in mind. We too may be guilty of abuse if we do not take a stand when we see a need and don't move on it. Education is the key. We must seek education ourselves so we can recognize these needs; then we must educate others so that these needs will be met, therefore, improving the quality of life of all the family, not just the elderly.

Senator SHELBY. Let me ask you a question, Dr. Williamson. Do you believe that there is an underreporting of abuse, both psychological, financial exploitation, and other types of elderly abuse?

Dr. WILLIAMSON. Well, I think, sir, there clearly is. I can't quantify the magnitude. The number of reduced elder abuse reporting compared to 1980 comes from a report called "Elder Abuse: A Decade of Shame and Inaction," which I think was given at a hearing before the Subcommittee on Health and Long-Term Care of your committee in May 1990.

I think, as Ms. Brooks has alluded, clearly one of the things that you and we have to be aware of is that individuals who are dependent on another person for their care may be very, very reticent to report any sort of mistreatment by that individual simply for fear that it's going to get worse, and I think that the real thing, as you suggested in your opening comments, is that as the population ages, the possibility for a dramatic expansion in the number of

people at risk of abuse by the turn of the century is just going to be phenomenal.

Senator SHELBY. Congressman Erdreich.

Mr. ERDREICH. Thank you, Senator.

I appreciate both of your opening testimony, and I thank you for being a witness here today. I look back—in fact, I've got a copy of my Subcommittee on Health and Long-Term Care on the House Select Committee on Aging and its report on this very topic entitled "Elder Abuse: A Decade of Shame and Inaction," I guess what you're reading from as well. It pointed out that it was in 1978 that Claude Pepper, who then was, of course, chairman of the Select Committee—in fact, created it in the House and got it going; a native Alabamian, I guess, as we all know—but at any rate, Claude Pepper's initial hearing was in 1978. A hearing a decade later indicated that not really much more or much of anything had been done, and one thing that Dick touched on is the reporting, I guess.

There's an effort—in fact, there's legislation, as you probably know, pending in Congress to establish a national center that would try to just get a better information flow to a central government to compile and get information from 50 States. I guess I'd like to get a little bit better feel from you as to your sense of just the information that we're getting in Alabama. How good is it? Some figures I've seen that maybe one in eight are reported cases of abuse or neglect. What's your sense of how well we're doing in Alabama on reporting?

Dr. WILLIAMSON. As not being the agency that is the Adult Protective Services, I'm going to defer, sir, if you don't mind, to those people who actually have the numbers. My sense is that one of the problems in elder abuse reporting is very much what it was a few years ago in child abuse

If I can paraphrase something I learned in residency, WNL, which historically has meant "within normal limits," also means "we never look," and if providers are unaware that elder abuse may be occurring and what the signs of elder abuse are, then it won't be reported. So I think one of the major focuses of data collection must be to make providers more aware of what the signs and symptoms of elder abuse are.

Mr. ERDREICH. WNL is "we never look," and if we don't see the problem, there's not a problem out there, and I guess that's part of what the committee found back in 1978, when it started holding initial hearings, and the Senate counterpart committee as well. I thank you for your testimony and thank you for your comments.

Senator SHELBY. Congressman Harris.

Mr. HARRIS. Thank you, Senator.

Of course, this is the same problem that we've experienced in spousal abuse. People, for economic reasons, security reasons, I suppose, they just don't know where they'll be if they're not in that particular setting, so they just don't report it.

I know—and I'm not sure about the Alabama law on reporting—I know it's a requirement that different professions report if they see child abuse. Now, do we have that same thing under our Adult Protection Services Act? When I was on the bench in Tuscaloosa, I only had one experience with this statute, and I just didn't remember.

Dr. WILLIAMSON. Again, the Department of Health is not the agency that receives the reports, and I quite honestly do not know, sir.

Mr. HARRIS. In other words, if you saw someone at the Department of Health, do you know whether or not there is a responsibility on the part of your people to report that fact?

Dr. WILLIAMSON. Yes, we do apparently have a law that does require reporting.

Mr. HARRIS. Of course, sometimes the abuse is hard to see because it can take other forms other than physical abuse. What can we do at the Federal level, Dr. Williamson and Ms. Brooks, that would help this situation?

Dr. WILLIAMSON. Well, I'll defer for any additional comments to Ms. Brooks, but I think certainly Federal activities which will, number one, make providers more aware that elder abuse occurs, that it's more than just unexplained bruises and unexplained falls, that there is, as has been suggested, financial abuse that goes on, that there is—one of the things that we've heard in this conference is that one of the things which often triggers abuse is the loss of independence, the loss of certain physiological functions of the elder individual. They're no longer able to take care of themselves, they're no longer able to perform the activities of daily living, and one of the things that I think that leads to is obviously a frustrated caregiver. They now have additional responsibilities.

Again, going back to what Mrs. Wolf suggested, I think some system to provide in-home services, whether that's home health, whether that's an extension of a Medicaid waiver sort of program so that elder Americans who need assistance in-home can get that assistance, will go a long way toward reducing that abuse that occurs because caregivers are so frustrated and so tired and they don't have the assistance that they need. That's an initial response.

Mr. HARRIS. Ms. Brooks, do you have any response?

Ms. BROOKS. I believe education, to educate, and if you have noticed, I've told you that most of our neglect comes from families of lower income and where there are so many people living in the house, and I believe if we could educate our people to the fact that it can be better, create programs, encourage our elder people who are able to get out to the daycare centers to go, the nutritional sites, and mainly we should try—the people who are unable to go to the sites, we need to find a way to get the nutritional sites to deliver food into the home.

Where there are so many people in the home, money is so scarce in that home, and as I told you, it would go back to education. Some of our people get money and have not been trained to budget that money. The money is gone by the middle of the month, and the older people need food for the whole month. So if we could get the site to bring food into that home and be sure that the patient gets a chance to get that food, and then there are so many things that I have in mind that I wish we could do, but I would like for us to try to educate our people to the fact.

And I've also said that the caregivers should be very careful that they are not abusing the patient, too, because if we fail to do our work and do our work well, then we are just as bad as the families who are unable to do it because they don't know any better.

Mr. HARRIS. Thank you. I think one of the things, too, that's very helpful—and we see a lot of it in Tuscaloosa and I'm sure in other areas—is where you have seniors that are in good shape that serve as volunteers and work with other seniors in Meals on Wheels and so many different programs, and I think probably we need to encourage everyone to be more involved to help those that are not able to help themselves.

Thank you, Senator.

Senator SHELBY. Mr. Barber, District Attorney.

DAVID BARBER, JEFFERSON COUNTY DISTRICT ATTORNEY

Mr. BARBER. I'd like to ask Dr. Williamson and Ms. Brooks both—and I'd also like to ask the other witnesses to be thinking about a reply to this and make a comment toward it—do you see a problem or a lack of addressing the problem with State laws as they exist or simply a failure to follow up on what's in place, a failure to enforce what's there?

Dr. WILLIAMSON. Mr. Barber, the mechanism which we at the Department of Health use for reporting is our nurses, our aides, our physicians would report directly to the Department of Human Resources, who have that responsibility. Obviously, ultimately it becomes, after their investigation, up to you and to others to make a decision about whether prosecution is necessary. I suspect that there perhaps is at times maybe less enthusiastic prosecution than some would like. I suspect also there are very real limitations to what the right solution is. I'm not sure that prosecution is in all cases the correct solution. Certainly in some cases it is.

I really don't think I have a feel for whether or not more vigorous prosecution is the answer. I think that perhaps the real concern is simply underreporting so that in many instances you and the appropriate agencies never have the opportunity of making a decision whether prosecution needs to be ongoing.

Ms. BROOKS. If you've noticed, I've told you that the fear of the patient to really get up and say what is being done—the caring person can say, "Mama fell." I can go in the room and say, "What happened to you, Mama?" "I fell." They have well-rehearsed what's happened. And then the patient is afraid that it may happen again. It's hard to find enough proof to even have a case, and neglect is a big thing, and the patient—"Well, it could get worse." That's the first thing that patient is going to think. It could get worse. "If I tell on my daughter, she may not feed me tomorrow. She may not do as much for me afterward as she's doing for me now." In other words, you don't want to make your business worse. That's the thing. You can't find much to go to court on.

Mr. BARBER. What do you perceive as the role of either the Federal Government or the State government? How far do you think we ought to go in providing another place for these people to go so that they don't have that fear of having this sole person to depend on? How far should government go into the home, I guess I'm asking, to make that decision of removing that elderly person from the home so that they no longer fear having to depend on this one caretaker and they know somebody else is going to take care of them?

Ms. BROOKS. I don't know. At least from Lowndes County.

Mr. Barber. I know it looks different than it does from Jefferson County, I'm sure, but sometimes I think Jefferson County is in another State or another world. But, you know, I guess what I'm trying to balance is how far do we go with our laws? I mean, the solution in a sense could be, "Well, let's appropriate all the money that we've got and appoint everybody a guardian over the age of whatever age," and then we remove that, and I think you can see the problems with that.

Senator SHELBY. David, if you'd yield, I don't think we can appropriate all the money that we have for anything. We don't have a lot of money to appropriate.

But I think what he's getting at is how far can we go? What do we need to do on a State level or on a Federal level? I've said before I think one thing is important, to bring it out in the open, because we're not going to find any solutions on the State level, local level, personal level, as long as it's hidden out there and people are living in great fear of everything in their daily lives, especially our elderly.

Ms. BROOKS. This brings us back to education, to try to educate the families.

Senator SHELBY. Dr. Williamson.

Dr. WILLIAMSON. Mr. Barber, I would, in terms of—I think it very much has to be individualized. I think something that you've alluded to is very true. It would be very nice to simply say if a person is in danger, whatever that danger is, they ought to be removed, but I suspect to many of the individuals who may be in danger, they are much more afraid of the unknown that comes after any action you might take.

So I think it very much does have to be a balance between what's the real physical or other danger to them, what remediation is possible, absent moving them from the home or the caregiver, and then using perhaps removal from the caregiver and the attachment with what they are familiar only as an absolute last resort, perhaps.

Senator SHELBY. Dr. Williamson and Mrs. Brooks, on behalf of the panel, I want to thank you for appearing and being the first panel here. We appreciate your remarks and your testimony here today, and this will be, as I said, made part of the record of the proceedings. Thank you.

Our next panel will be Ms. Victoria Watkins, representing the Alabama Department of Human Resources—Ms. Watkins will discuss unmet needs at the county level; Carol Lindsey, Adult Protective Services Administrator, Alabama Department of Human Resources; Janice McIntosh, Registered Nurse, Coffee County, Alabama, representing the Alabama Department of Public Health; and Dr. Daniels, representing the Center for the Study of Aging at the University of Alabama.

We appreciate this panel and appreciate you appearing. As I said earlier, your written testimony will be made part of the record of this proceeding in its entirety, and I wish you would sum up your oral testimony as fast as possible so we can have a little time for questions and answers.

Who wants to start?

Ms. Watkins.

STATEMENT OF VICTORIA WATKINS, ADULT PROTECTIVE SERVICES WORKER, MADISON COUNTY DEPARTMENT OF HUMAN RESOURCES, HUNTSVILLE, AL, REPRESENTING THE ALABAMA DEPARTMENT OF HUMAN RESOURCES

Ms. WATKINS. Distinguished panelists, I want to thank you for the opportunity to share with you my experiences as an Adult Protective Services worker responsible for protecting elderly and handicapped people from abuse and neglect.

My name is Victoria Watkins. I'm a social worker with the Madison County Department of Human Resources in Huntsville. As an Adult Protective Service worker, I investigate reports of alleged abuse, neglect, and exploitation of adults who are elderly or mentally and physically incapacitated.

The Madison County Department of Human Resources' Adult Protective Services Unit receives approximately 32 reports a month. This is a 50 percent increase over our 1990 average. We have three social workers who investigate these complaints. My case load averages about 60 ongoing cases and additional new cases as the month progresses. To some, that might not seem like a lot of cases, but the recommended case load is 10 new investigations per month or 25 ongoing cases. Some cases take an entire day. Depending on the complexity of the case, it could take several days, weeks, or months.

An Adult Protective Services worker encounters many experiences in working with the aged and disabled. In conducting an investigation for abuse, neglect, or exploitation, we never know how the client or the alleged perpetrator will respond to us. Alcohol, drugs, and mental illness are unpredictable factors in many cases, but a well-trained worker with a caring attitude is an important part of the success of the investigation. Each case is different, but I would like to share with you some of the situations I have encountered.

An elderly stroke victim is partially paralyzed and completely bedridden. He is cared for by his elderly wife, who is mentally ill and has emotional problems. She had become isolated from her friends and frustrated because of the 24-hour care she had to give her husband. I investigated a report alleging that the patient was being mentally and physically abused by his wife. Following the investigation, we were able to arrange home health services to assist with the patient's personal care, homemaker services to assist with household duties, and mental health services for the caregiver. The victim and his wife have been able to remain in their home, and there have been no further reports of abuse.

Another situation involved a 56-year-old mentally retarded woman living with her aunt and uncle. The initial report was that she was unable to care for herself, needed help with personal hygiene, was improperly fed, and that her family was misusing her SSI check. I found a house with broken-out windows, no screens, and loose, wet and rotten flooring. The house was infested with flies and other bugs. Dirty clothing was thrown all over the floors

and piled as high as the beds. Plumbing and electrical wiring were in need of repair.

These family members, with constant encouragement and the assistance of service agencies, are improving their living conditions. One agency will assist with home repairs and provide storm windows and screens. We have also addressed the proper use of the victim's check. This is a situation that will require adult protective services for a long time.

Another case involved the exploitation of an elderly man who resided in a health care facility. The son, who had power of attorney and access to the victim's substantial income and resources, was not using the money to pay his father's bills. We received a report that the victim was being evicted for nonpayment of bills to the nursing home. Several months passed and various informal agreements were made and broken by the son. Only after we filed a petition for the appointment of a conservator did the son agree to a consent agreement that involved another relative handling his father's financial matters.

Another type of case that is very difficult is what we call self-neglect. Victims of self-neglect have inadequate food, shelter, clothing, or medical care because they are mentally or physically impaired and have no one to provide their care. In the cases I have described above, what would happen if the wife of the stroke victim was hospitalized or died? What would happen if the aunt and uncle were no longer in the home with their retarded niece? These clients would then be victims of self-neglect. It would be much more difficult to improve their situations without the help of family members.

In Adult Protective Services, our philosophy and State law require that services be provided in the least restrictive setting. In-home and community-based services are preferred, but out-of-home placements are sometimes necessary. We need access to more placement resources for people who have no family or friends with whom they can live. There is a desperate need for out-of-home care for individuals who don't require nursing home care. The need is most critical for mentally ill and mentally retarded people. It is also difficult to find nursing home placement for heavy care patients and for patients with no one to pay their bills that Medicaid won't pay.

I know that my words cannot convey to you the pain and suffering felt by the elderly and handicapped victims of abuse and neglect. I invite you to visit us in Huntsville or the adult protective services agency in your own community to better understand what this problem means to all of us.

In closing, I would like to thank you for giving me the opportunity to talk with you about an area of social work that is so dear to me. I also challenge each of you to make a difference in the lives of these victims.

Thank you.

Senator SHELBY. Ms. Lindsey.

STATEMENT OF CAROL LINDSEY, MSSW, ADULT PROTECTIVE SERVICES ADMINISTRATOR, ALABAMA DEPARTMENT OF HUMAN RESOURCES, HUNTSVILLE, AL

Ms. LINDSEY. My name is Carol Lindsey. I'm the Adult Protective Services Administrator for the Alabama Department of Human Resources, and I also speak to you as a board member of the National Association of Adult Protective Services Administrators.

Since the passage of Alabama's Adult Protective Services law, we've seen a dramatic increase in the number of reports of suspected abuse, neglect, and exploitation of elderly and handicapped adults. Like many States, Alabama's law charges the adult protective services agency with ensuring the protection of elderly people as well as mentally and physically impaired younger adults. This responsibility includes adults residing in private homes, boarding homes, nursing homes, and institutions for the mentally ill and mentally retarded. In addition to providing for services for victims, a 1989 amendment to our law substantially strengthened the criminal penalties for persons convicted of violating it.

I've worked in this field for 12 years, but I'm continually shocked at what is suffered by our vulnerable citizens. A trusting aunt, who transfers her home and resources to a nephew who promises a lifetime of care, finds herself homeless, penniless, and suddenly ineligible for Medicaid benefits. An elderly handicapped man is sexually assaulted by an orderly in a health care facility. The mentally ill mother of a profoundly retarded young man desperately seeks a placement for him but learns there are no available resources for the mentally retarded and that new Federal requirements prohibit his admission to a nursing home. A 65-year-old retarded man suffers from the effects of uncontrolled diabetes because his mother has died and he has no other caregiver. Our workers daily work with families and victims who face these kinds of situations.

The problem of elder abuse was first recognized at the State and local level. Adult protective services laws exist in some form in all 50 States and the District of Columbia. These programs are operational because communities recognized a problem, State legislators passed laws, and State and local governments have funded these programs through various sources, primarily the Social Services Block Grants and general State revenues. But with no Federal matching funds available and no corresponding program requirements, adult protective services programs stand in the back of the line for State budget appropriations.

The combination of Medicaid funds and State dollars has expanded the services that are available to vulnerable adults at risk of abuse and neglect, but the services currently provided by public welfare agencies, the aging network, and private agencies are not sufficient for the growing case load. Addressing these issues requires action at the local, State, and Federal levels. While there is still much to be done locally, particularly in the area of coordination and public awareness, the needs of these victims of abuse and neglect should immediately be addressed in the Federal legislative, budgetary, and regulatory processes.

We have four primary recommendations:

We urge that Congress and the Executive Branch recognize and build on the existing State and local agencies with the statutory authority and responsibility for protecting victims of elder abuse. We cannot afford to fund and develop duplicate local systems.

Federal funding for investigating reports of abuse and neglect and providing services to victims needs to be made available to the State and local agencies that have the statutory responsibility to protect adult victims.

Enhanced Federal funding is needed for the development of automated adult protective services information systems. Like many other States, Alabama is unable to track repeat perpetrators or a series of incidents that occur over a period of time at a particular address.

We also need some relief from the well-intentioned Federal requirements that preclude nursing home admission for certain mentally ill or mentally retarded adults. While appropriate habilitation services may not be available in a nursing home, it's a leap backwards to deny adequate food, shelter, clothing, and medical care for a retarded person who will continue to be abused and neglected while waiting years for placement in a facility that provides the desired habilitation services.

We eagerly await the reauthorization of the Older Americans Act and are hopeful that certain provisions of the Prevention, Identification, and Treatment of Elder Abuse Act of 1991—H.R. 385 and S. 951—may be included as part of the reauthorization. We hope the Federal move to address the issues of elder abuse will not be slowed by a debate about mandatory reporting of abuse, neglect, and exploitation. Our need for assistance with services delivery, staff training, public education, and automation overshadow that question of mandatory versus voluntary reporting. We hope to see in this reauthorization a strong commitment to services to prevent and remedy elder abuse in the community as well as in institutions, with an eye to avoiding duplication.

I and other members of the National Association of Adult Protective Services Administrators will be happy to discuss these issues with you. There's an attachment that lists the board members and officers. You may count on all of us to work hard to see that the provisions I've described are included and to work cooperatively for a successful implementation of the elder abuse provisions of the act.

I want to thank all of you for coming to Birmingham today and showing your concern for vulnerable adults. As Alabama's adult protective services agency, the Department of Human Resources and its staff look forward to seeing what each of you will do to address the problem of elder abuse.

[The prepared statement of Ms. Lindsey follows:]

UNITED STATES SENATE SPECIAL COMMITTEE ON AGING
CONGRESSIONAL HEARING
ELDER ABUSE AND NEGLECT: PREVENTION AND INTERVENTION
Birmingham, Alabama
June 29, 1991

Submitted by:
Carol Lindsey

Distinguished panelists, we appreciate the opportunity to share with you the experiences of the Department of Human Resources during the fourteen years since the passage of Alabama's adult protective service law. We also want to share our hopes and recommendations for the future.

My name is Carol Lindsey. I am the Adult Protective Services Administrator for the Alabama Department of Human Resources and speak to you also as a board member of the National Association of Adult Protective Services Administrators.

Since passage of Alabama's Adult Protective Service Law in 1977, we have seen the number of reports of suspected abuse, neglect, or exploitation of elderly and handicapped adults increase from 511 in Fiscal Year '78 to over 7,000 per year. Like many states, Alabama's law charges the adult protective service agency with ensuring the protection of elderly people as well as mentally and physically impaired younger adults. This responsibility includes adults residing in private homes, boarding homes, nursing homes, and institutions for the mentally ill and mentally retarded. In addition to providing for services for victims, a 1989 amendment to the Adult Protective Services Law substantially strengthened the criminal penalties for persons convicted of violating this law.

Though I have worked in this field for twelve years, I am constantly shocked by the abuse that is suffered by our vulnerable adults. The trusting aunt who transfers her home and resources to a nephew who promises a lifetime of care, finds herself homeless, penniless, and suddenly ineligible for medicaid benefits. An elderly handicapped man is sexually assaulted by an orderly in a health care facility. The mentally ill mother of a profoundly retarded young man desperately seeks a placement for him, but learns there are no available resources for the mentally retarded and that new federal requirements prohibit his admission to a nursing home.

Situations like these are faced daily by our vulnerable citizens. The service delivery system works with them and their families and friends to help solve these problems.

The problem of elder abuse was first recognized at the state and local level. Adult protective services laws exist in some form in all fifty states and the District of Columbia. The programs are operational because communities recognized a problem, state legislators passed laws, and state and local governments have

funded these programs through various sources, primarily the Social Services Block Grants and general state revenues. With no federal matching funds available and no corresponding program requirements, adult protective service programs stand in the back of the line for state budget appropriations. The combination of medicaid funds and state dollars has expanded the services that are available to vulnerable adults at risk of abuse. However, the services currently provided by public welfare agencies, the aging network, and private agencies are not sufficient for the burgeoning caseload.

Addressing these issues requires action at the local, state, and federal levels. While there is still much to be done locally, particularly in the area of coordination and public awareness, the needs of these victims of abuse and neglect should immediately be addressed in the federal legislative, budgetary, and regulatory processes. We have four primary recommendations:

(1) We urge that Congress and the executive branch recognize and build on the existing state and local agencies with statutory authority and responsibility for protecting victims of elder abuse. We cannot afford to develop and fund duplicate local systems.

(2) Federal funding for investigating reports of abuse and neglect and providing services to victims needs to be made available to the state and local agencies that have the statutory responsibility to protect adult victims.

(3) Enhanced federal funding is needed for development of automated adult protective services information systems. Like many other states, Alabama is unable to track repeat perpetrators or a series of incidents that occur over a period of time at a particular address.

(4) We need some relief from the well-intentioned federal requirements that preclude nursing home admission for certain mentally ill or mentally retarded adults. While appropriate habilitation services may not be available in a nursing home, it is a leap backwards to deny adequate food, shelter, clothing, and medical care for a retarded person who will continue to be abused or neglected while waiting years for placement in a facility that provides the desired habilitation services.

We eagerly await the reauthorization of the Older Americans Act. We are hopeful that certain provisions of the Prevention, Identification, and Treatment of Elder Abuse Act of 1991 (H.R. 385 and S. 951) may be included as part of this reauthorization. (Detailed comments on those bills are attached.) We hope the federal move to address the issues of elder abuse will not be slowed by a debate about mandatory reporting of abuse, neglect, and exploitation. Our need for assistance with service delivery, staff training, public education, and automation overshadow the question of mandatory vs. voluntary reporting. We hope to see in this reauthorization a strong commitment to services to prevent and remedy elder abuse in the community as well as in institutions, with an eye to avoid duplication. I and other members of the National Association of Adult Protective Services Administrators would be happy to discuss these issues with you. A list of officers and board members is attached. You may count on us to work hard to see such provisions are included and work cooperatively for a successful implementation of the elder abuse provisions of the Act.

I want to thank you for demonstrating your concern for our vulnerable adults by participating in this hearing.

As Alabama's adult protective service agency, the Department of Human Resources and its staff look forward to seeing what each of you will do to address the problem of elder abuse.

NATIONAL ASSOCIATION OF PROTECTIVE SERVICES ADMINISTRATORS

NAAPSA Officers and Regional Representatives

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President Elect:	Judy Rouse Division Administrator Adult Protective Services Texas Dept. of Human Services P.O. Box 149030 (M.C. 330-W) Austin, Texas 78714-9030	Telephone: 512-450-3211
Secretary:	Greg Giuliano, Director Adult Community Services New York State Department of Social Services 40 North Pearl Street Albany, New York 12243	Telephone: 518-432-2979
Treasurer:	Handy D. Brandenburg, L.C.S.W. Program manager Adult Protective Services Social Services Administrator Maryland Dept. Human Services 311 West Saratoga Street Baltimore, Maryland 21201	Telephone: 301-485-6809
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Thomas Fort, Director
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SC Department of Social Services
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Southwest: Barbara Kidder, Program Supervisor
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West Coast: Aileen Kaye, Program Manager
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Bob Barton, Chief
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Adult & Family Services
CA Department of Social Services
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Sacramento, California 95814 Telephone: 916-324-8776

Central: Carolyn Stahl, Supervisor
Planning & Program Development
Illinois Dept. on Aging
421 East Capitol Avenue
Springfield, Illinois 62701 Telephone: 217-785-3386

Mountain: Joanne Marlatt
Colorado Dept. of Social Services
1575 Sherman, 10th Floor
Denver, Colorado 80203 Telephone: 303-866-5910

Senator SHELBY. Ms. McIntosh.

STATEMENT OF JANICE McINTOSH, REGISTERED NURSE, COFFEE COUNTY, AL, REPRESENTING THE ALABAMA DEPARTMENT OF PUBLIC HEALTH

Ms. MCINTOSH. I'm Janice McIntosh. I'm the Nursing Supervisor of the Division of Long-Term Care for Coffee County Health Department.

In the 10 years that I've been involved in home health nursing, I've become increasingly aware of the plight of the elderly in the United States. The existing laws fall short in our effort to protect the elderly versus the laws that we have to protect our children. Is an elderly person who is physically or mentally incapable of meeting their basic activities of daily living any different from a child who has to have these needs met? And if this is true, why don't we have the same concern for our elderly abuse and neglect that we have for children?

The following two cases are some cases that I have been personally involved with in my role as Nursing Supervisor at Coffee County Health Department.

Mrs. O is an 83-year-old female. She has chronic health problems and has been maintained in her home setting over the past few years with the services of Coffee County Home Health and our community-based Waiver Services. Over the last several months, her physical condition has deteriorated to the point that she can no longer get out of bed on her own, and what this means is that our services alone are not sufficient to keep her in the home setting.

But we could not impress on the daughter the need that her mother required 24-hour care, so what happened in this case is that Mrs. O lay unattended from Friday p.m. when our homemaker left until Monday a.m. this means that she went without food and water and also that she was forced to lay in her own body excrement. The Department of Human Resources was notified by our community-based Waiver Services case manager, and with a doctor's help, we were able to force the family to take some action. A granddaughter took Mrs. O into her home. She kept Mrs. O for 1 week, but she returned her to her own home. Legally, DHR or the Health Department could do nothing because this lady is mentally competent, and she did not want to leave her home.

What finally happened was that she became so ill that we were able to force the daughter to take her to the hospital, and from the hospital we did place here in a nursing home. Sadly, this was a 9-month period which the lady was in this condition.

My next case is a little more complicated, and it has become a legal battle. Mr. J is an 86-year-old black male. Due to vascular insufficiency, he's a bilateral amputee. He has been on home health care in Coffee County for 15 years. We have helped maintain him in the home setting.He was one of the first clients to be signed up for the community-based Waiver Services under Medicaid. He has no family. He lives in a little community. One family, the L's, have met his needs minimally.

Two months ago, Mr. J had a stroke. After a partial recovery, we took him home to see if, with our services, he could continue to live

at home, but after 2 weeks we found that he was just too weak. He could not stay at home. He could not transfer himself from the bed to the chair. He did not want to go to the nursing home. He was frequently incontinent of urine. With DHR's help, we placed him in foster care.

What happened was the L's came to the foster care home and physically removed him after we had placed him in the foster care and said that we had removed him against his will. Well, we had some legal difficulties with our judge being out of the county, and it took us about a week to get him back into the foster care home, and during this time, the L's did take him into their own home, but they did not take care of him adequately. Our home health nurse identified new health problems—some skin breakdown that was directly related to inadequate care.

While we have him back in the foster care home now, the L's have hired a lawyer, and they're now suing DHR, saying that they have removed him from his home against his will. This is where we are right now in this case. All we have attempted to do is to protect this elderly gentleman who has no family, he has nobody to meet his basic needs, and what we need are adequate laws to help us meet this goal.

Thank you.

[The prepared statement of Ms. McIntosh follows:]

COFFEE COUNTY HEALTH DEPARTMENT,
Enterprise, AL, June 18, 1991.

In the ten years that I have been involved in home health nursing, I have become increasingly aware of the plight of the elderly in the United States of America. The existing laws fall short in the effort to protect the elderly, who are unable to care for themselves, as opposed to children who cannot take care of themselves. Is an elderly person who is physically and mentally incapable of performing the basic activities of daily living any different from a child who must have those same needs met? If this is true, why is there not the same concern for elderly abuse and neglect as there is for child abuse or neglect?

The following two cases are examples of elderly neglect that I have personally been involved with in my role as Nursing Supervisor of Coffee County Health Department. Mrs. O is a 83-year-old white female living alone in a small apartment. She has chronic health problems and has been maintained in her home with the services of Coffee County Home Health and community-based Waiver Services. Over the last several months, her physical condition has progressively worsened to the point that she could no longer get out of bed without assistance. What this means is that our services were no longer sufficient to keep her safely in her home. Her daughter refused to accept the fact that her mother needed 24 hours care and made no effort to help us get this lady's needs met. The situation deteriorated to the point where Mrs. O lay in her bed from Friday PM when our homemaker left until Monday AM when she returned. This meant that Mrs. O was without food and water and had to lie in her own body excretment.

DHR was notified by the community-based Waiver Services Case Management and with the MD's help, we forced the family to take some action. Mrs. O's granddaughter consented to take her into her home. What happened was the granddaughter kept Mrs. O for one weekend and then returned her back to her own home, leaving her alone. Legally, DHR and the county health department could do no more because Mrs. O was mentally competent and refused nursing home placement. Finally, Mrs. O got so ill that we were able to force the daughter to take her to the hospital and she was placed in a nursing home upon discharge.

My next case is more complicated and has become a legal battle. Mr. J is an 86-year-old black male. Due to vascular insufficiency, he is a bilateral amputee. He, too, has been maintained in the home setting for fifteen years with the services of Coffee County Home Health and community-based Waiver services. Mr. J has no family. His neighbors, the L's, have been the people who have seen about him, minimally, over the years. Two months ago, Mr. J had a stroke. After a partial recovery, we took him home to see if with our services he could continue to live at home.

After two weeks, we found that he was too weak to transfer himself from the bed to the wheelchair. In addition, he was frequently incontinent of urine. Mr. J did not want to go to a nursing home, therefore, we arranged to place him in foster care. After three weeks, the L's went to the foster home and removed Mr. J taking him back to his own home. Because of legal difficulties, it took us one week to get Mr. J back in foster care. Our judge was out of the county on a murder trial and the alternate judge refused to sign the court order because his brother owns the land on which the L's live. During this week, the L's took Mr. J into their home. However, the home health nurse identified new health problems (skin breakdowns) directly related to inadequate care. After receiving the signed court order, the sheriff and DHR once again removed Mr. J. to the foster care home. The L's have now hired a lawyer and are attempting to sue DHR on the grounds that they removed Mr. J from his home against his will. All we have attempted to do is to protect this elderly gentleman who has no family and no one to meet his basic needs. What we need are adequate laws to help us meet this goal.

JANICE MCINTOSH,
Nursing Supervisor, LTC,
Coffee County Health Department.

Senator SHELBY. Dr. Daniels, we're glad to have you on our program. Your written testimony, as I said at the beginning, will be made part of the record.

STATEMENT OF R. STEVEN DANIELS, REPRESENTING THE CENTER FOR THE STUDY OF AGING, UNIVERSITY OF ALABAMA

Mr. DANIELS. Good morning and thank you for this opportunity to speak to the panel concerning the issue of elder mistreatment.

I am R. Steven Daniels, a political scientist with the University of Alabama at Birmingham. I act as a consultant to the Center for the Study of Aging at the University of Alabama in Tuscaloosa, Alabama. I research policy issues in gerontology and welfare policy.

I wish to address today the issue of mandatory reporting statutes for elder mistreatment. Although some researchers working in the field of gerontology would suggest that a mandatory reporting statute at the national level is a necessary requirement to ensure standardization of definitions and reporting requirements across the States, I believe that several issues must be addressed before such a step is taken.

The primary purpose given for mandatory reporting statutes is the discovery of existing cases of elder mistreatment. Now, ideally, mandatory reporting laws seek to combine clear definitions, well-informed reporters, well-funded and clearly targeted investigations, adequate services, and legal protection of alleged victims to achieve a balanced solution to the problem of mistreatment.

In practice, many State mistreatment statutes have weak definitions, vague identification of reporters, and inadequate justification of mandatory reporting, and are backed by inadequate commitment of resources for investigation and service delivery. The laws, in fact, are symbolic. They exist to express State legislative commitment to the goals of case discovery and protective services without requiring the disbursement of substantial State resources.

The Alabama Adult Protective Service Act of 1976 is one example. The program provides protection to adults who are judged incapable of providing for themselves. Regulated behavior include abuse, neglect, and exploitation. All physicians and other practitioners of the healing arts are mandated to report. Reports are mandated to the State or county Department of Human Resources

or to the chief law enforcement officer in the jurisdiction. The act requires DHR to both investigate cases of mistreatment within 72 hours and provide services through existing resources.

The Alabama act suffers many of the weaknesses associated with such mandatory reporting statutes. First, the reporting population is not clearly defined. DHR limits practitioners to physicians, chiropractors, and osteopaths; however, many other medical professionals believe themselves legally responsible to report. Second, examination of allegations of mistreatment reported to DHR during 1987 and 1988 reveals that only 3 percent of all reports came from mandated reporters as defined by DHR. Only about 30 percent came from all medical professionals.

Third, surveys conducted by the Center for the Study of Aging indicate that after 14 years of operation, many medical professionals are still uncertain about important aspects of the Protective Services Act, including the existence of standard procedures for reporting. Fourth, approximately 50 percent of the allegations in 1987 and 1988 were unfounded, placing a considerable burden on limited resources. Fifth, the program is chronically underfunded because the act provided no separate appropriation and must cobble together funding from existing programs.

Sixth, the act requires the adult to be dependent before services are provided and, in many cases, places them on the same legal status as dependent children. Finally, the act does not link reporting, investigation, and services in a comprehensive package. The act does mandate protective services, but does not identify specific sources or funding for those services.

The Alabama act is typical of many State mandatory reporting laws. At a time when adult abuse was surfacing as a major political issue, the State copied the statute directly from the existing child abuse legislation. It provides a perfect example of no-cost rectitude, a statute that demonstrates the State's commitment to eradicating adult mistreatment without guaranteeing any State resources to honor that commitment.

In light of the Alabama experience, I urge caution in the passage of a national mandatory reporting law. It is true that mandatory reporting may increase the likelihood of identifying cases of mistreatment; however, the majority of these cases are not the dramatic examples that are reported in hearings and press conferences. Alabama data suggests the majority are in fact cases of self-neglect. Abuse makes up only about 14 percent of all allegations. Any legislation dealing with mistreatment needs to recognize the very different procedures and services needed to deal with abuse on the one hand and neglect on the other.

Of equal importance is an explicit linkage between reporting, investigation, and service delivery. Reporting and investigation are only part of the process; adequate funding and coordination needs to be provided for services as well. Perhaps most importantly, a national mandatory reporting law must recognize the legal rights of the alleged victim. Too many State laws treat adults legally as children. New legislation must recognize that adults retain the right of refusal.

In conclusion, I believe that mandatory reporting laws are a too deceptively simple solution to elder mistreatment. The passage of

such laws lulled many States into believing they were dealing effectively with the problem of mistreatment when in fact they were contributing to a proliferation of definitions and contradictory procedures. However, I also believe that such laws have become a permanent part of the political landscape. Federal action and coordination is needed, but only if it does not repeat the organizational and funding mistakes of the States. Only if elder mistreatment is dealt with in a unified fashion will any significant steps be taken to eradicate the problem.

Thank you for your attention and your time.

Senator SHELBY. Thank you.

I want to announce that Congressman Harris is going to have to be at another meeting, so I'm going to call on him first.

Congressman Harris.

Mr. HARRIS. Thank you, Senator.

Mr. Daniels, you're raising many of the points that I was trying to ask about. I know when I was on the bench in Tuscaloosa, we had one case—I started in 1977 and left there in 1985—where we had an elderly gentleman that the family would handcuff to the bed when they would leave.

I see some of you out there from Tuscaloosa, and you probably remember this case.

Hot summertime, no air conditioning, 100-degree weather, and the neighbors reported it is the way the Department of Health and Human Services got involved in it. It was really a sad situation, and I guess I can't ever forget my school days at Alabama and the fraternity I was in. One of the things we did was we went out to an old folks home, they called it, and carried just the most basic of things to them, and they were so proud to get them. I never will forget coming back and calling my parents and telling them if I had a dollar in my pocket that they would never, never have to do that.

But I think that today, in our society, we call it a mobile society, where people are on the move. It was not uncommon years ago that family units were in place, and you may see three generations there under the same roof, or at least right over the fence from each other, and we don't have that now. I know in this particular case that I was mentioning, we had to get a son that was living up north to come back and take care of his dad.

So it's a real problem, and I'm sure there are a lot of simple solutions that folks might offer up, but it's a very complex problem. But it's one that I'm very interested in and I know all of you here are, and I hope one of these days to reach the ranks of being a senior citizen, so I have a stake and vital interest in that.

I look forward to reading all the testimony. I will have to leave, but I'll be working with Senator Shelby and Congressman Erdreich and all of the people that are very interested in this problem, and certainly any time that we can be of help to any of you, I certainly would encourage you to call on us, because it is something that is very troublesome and troubling to me, and I guess it's just that it's hard for me to understand how people can treat other people the way they do.

But your first recommendation, as I understand it, Dr. Daniels, is that we need to get our Alabama law in shape. That's a good first start. Is that correct?

Mr. DANIELS. Yes, that would be my first recommendation. It is clearly inadequately funded. I have to agree totally with Carol Lindsey on that point.

Mr. HARRIS. Well, I know we've done several things at the national level dealing with Medicaid and trying to help. Alabama is one of the, I think, eight States where we were having contributions from hospitals and nursing homes and different things so they could take and get more matching dollars with it, and, of course, there's a movement—I think we got it extended 1 year in this last budget agreement, but the current philosophy of the Administration in Washington, the Bush Administration, is to shift more and more responsibility to the State, and that's not just the responsibility of action, but it's the responsibility of paying for it.

So if any of you have any good solutions as to helping us in trying to find the necessary funds for a very real problem, then please don't hesitate to present them to us.

Thank you, Senator Shelby.

Senator SHELBY. Congressman Erdreich.

Mr. ERDREICH. When I heard Dr. Daniels' testimony, it made me feel like these figures that we're seeing are so uncertain as to accuracy that I would almost throw the figure out the window now after I heard what he said.

Can we indeed cure the Alabama reporting requirements without having with the reporting what you end up saying is—and I quote you back at yourself—"a unified fashion to deal with the problem"? What do you mean by "a unified fashion to deal with the problem"?

Mr. DANIELS. I guess basically what I'm referring to is that most State statutes, not necessarily Alabama, but most State statutes, simply linked reporting and investigation, and then said, "Oh, well, we'll deal with services by using the services that we have currently available," and most adult protective services divisions did a remarkable job trying to create that linkage.

But that linkage has no statutory basis in most of the legislation. It just says that you will provide services and doesn't define what those services are, the circumstances under which they're supposed to occur, and where you're supposed to get the money, and that's where I think the real serious weakness is in most—in essence, what I'm telling you is mandatory or voluntary reporting are actually irrelevant. It doesn't make any difference whether it's mandatory or voluntary; what matters is that once the case is reported, is it possible to actually give them anything or do something for them when you reach the other end of the process?

Mr. ERDREICH. You know, we just passed—the Senate may have a companion version dealing with infant mortality—a comprehensive community-based approach in trying to get agencies to cooperate and also some funds coming down to agencies to cooperate at the Federal, State, and local level, but to coordinate the effort.

Ms. Lindsey, I was noticing in your statement, among other things, that just jumped up at me the apparent lack of automated adult protective services information, which I realize we've got a

lot of automated needs in various areas, but you identify that as therefore being our inability in Alabama to track a repeat perpetrator or to identify a series of incidents by a particular address or location. Is there a plan afoot or an effort afoot at the State level to indeed engage in automation of those records?

Ms. LINDSEY. Congressman, there's always a plan afoot, but there's no funding available, and you're aware of Alabama's budgetary crisis.

Mr. ERDREICH. Right.

Ms. LINDSEY. In Alabama, in the Department of Human Resources, the automated reporting systems for various programs have been made available through enhanced Federal funding with State matching, and so we have Federal funding for food stamp programs, for AFDC benefit payments, for tracking absent parents and payment of child support, and for child abuse and neglect reporting, but there has been no Federal initiative offered to the States for automated reporting systems for adult abuse.

Mr. ERDREICH. I thought it was—maybe I'm wrong on the date, but at least I thought in 1987 we amended the Older Americans Act to provide additional funding back to State Agencies on Aging specifically in this area. Maybe we authorized it and no funds came. I'm not sure. Are you aware of Federal funds coming specifically, whether for automation or other services, from the Older Americans Act, at least beginning in 1987? Maybe earlier, but I remember a 1987 effort.

Ms. LINDSEY. The only funding that I'm aware of for elder abuse activities that has been made available through the Older Americans Act is last year the $3 million for elder abuse prevention, and Alabama's amount, I'm not sure, I think it was less than $50,000 for the entire State. It went to the Area Agencies on Aging, but I'm not aware of any funding available at the State level to develop any kind of automated reporting and tracking system.

Mr. ERDREICH. Well, again, I think all your testimony was excellent, and I see, no question, the need for, to put it mildly, a more comprehensive effort at our local and State level, and whatever the Federal Government can do to help, it may be, of course, needed, but we need to get our own State in order. Thank you, Senator.

Senator SHELBY. Mr. Barber.

Mr. BARBER. Thank you, Senator.

I guess I keep hearing the same thing from a lot of the witnesses, and I keep getting back to the financial aspect of it, I guess, the funding of these programs. For instance, Doctor, you made a statement about the act does not link reporting, investigations, and services, but even if it did, we don't have the personnel to do those things, right?

Mr. DANIELS. That's true. You don't have the funding. Adult Protective Services is understaffed besides, and even if the act itself detailed explicitly everything that should be done and under what circumstances, there is simply no funding. You know, the Adult Protective Services basically has to rely on money from the State and money from Title XX and that's it, and it competes with every other program that's also relying on those services.

Mr. BARBER. Okay. Somebody give me some idea of how we address the problem that the doctor brought up about approximately 50 percent of the allegations in 1987 and 1988 were unfounded,

placing a considerable burden on limited resources. From the investigative side of my job, I'm trying to get a handle on where does Protective Services or DHR draw a line or how do you preliminarily screen those? How far do you go with them to decide that it's unfounded? I've always taken the position that if we've got a report, we've got to look into it.

Ms. LINDSEY. Yes. When the Department of Human Resources receives a report of suspected abuse or neglect, we are required to investigate to the point that we determine whether the person is in any danger, whether they're in need of any protective services. The 50 percent is comparable to what the child welfare founded and unfounded rate is across the country, and while it certainly does take staff time and resources, we would not want to screen out a report that seemed to have some substance to it in an effort just to reduce staff time.

Mr. BARBER. Too early.

Ms. LINDSEY. Too early.

Mr. BARBER. Okay. I don't know how it works in your jurisdictions. The Jefferson County office turns all of their 959's on the elderly and the child abuse over to my office, and then we have an Assistant DA that also participates in that screening, and I would hope that if that's not being done in other places that maybe that's something that can be encouraged.

Ms. LINDSEY. Sharing with law enforcement officials such as the Office of the District Attorney is encouraged. Each county is asked to work with the District Attorney, and as you might imagine, each jurisdiction does have a different request.

Mr. BARBER. Different response. I understand. Okay.

Thank you, Senator.

Senator SHELBY. Could I ask—he's not down there, but he's up here, and he is a District Attorney.

Mr. Barber, How difficult is it here in Jefferson County—you're the District Attorney—to prosecute a case of elderly abuse? I know you have to weigh the circumstances, witnesses, everything that comes. You know, there are many aspects, and I guess it's tough.

Mr. BARBER. Well, you know, we could be having this same conference or this same hearing on child abuse.

Senator SHELBY. That's right.

Mr. BARBER. It's both ends of the spectrum. The reason these people are abused and neglected a lot of times in the first place is that they're being taken advantage of because of their age. Children are physically and sexually abused because of their age and so are elderly people because, number one, they don't make good witnesses. They don't have maybe the recall potential that some people have.

Another thing I wrote myself a note about a while ago is a situation with children and the elderly not realizing they're being victimized in a lot of cases. They don't know that—of course, if it's physical abuse, they realize that that's happening, but neglect, as someone pointed out a while ago, is something that they suffered through and their parents suffered through and now they're suffering through, and the monetary aspect of it——

Senator SHELBY. Financial abuse.

Mr. BARBER. People taking their money, and as long as they've got a roof over their head and a place to lay down, then they think, "Well, this is the best I can do." They're told that's the best they can do. And that's the same basic problem we run into at both ends of the spectrum as far as elderly abuse and child abuse.

Senator SHELBY. But it's not just in Jefferson County, it's all over America.

Mr. BARBER. Right.

Senator SHELBY. And we know it. Thank you.

I want to thank the panel for appearing here today, and we appreciate that and I know the people in the audience do.

Senator SHELBY. On our next panel, we have Mrs. Witherspoon, Mrs. Lindsey, and Mrs. Stanfield.

If you would come up to the table, please.

Go ahead. Tell us your name.

STATEMENT OF MIRIAM D. WITHERSPOON, LEGAL COUNSEL FOR SENIOR CITIZENS OF JEFFERSON COUNTY, AL, REPRESENTING THE AREA AGENCIES ON AGING

Ms. WITHERSPOON. I'm Miriam Witherspoon, and I'm legal counsel for senior citizens in Jefferson County. Senator Shelby, Congressman Ben Erdreich, Congressman Claude Harris, and District Attorney David Barber, ladies and gentlemen, I am honored by this opportunity to present testimony on elder abuse and neglect.

As legal counsel for senior citizens of Jefferson County, I provide legal services and legal counsel for persons 60 years of age or older, spouses, or family members of persons 60 years of age or older who reside in Birmingham, Bessemer, parts of Leeds, and all surrounding areas comprising Jefferson County. Over half of my clients experience physical and/or mental abuse, neglect, and exploitation from family members, friends, neighbors, and most often from individuals operating under the guise of business affiliations.

The testimony you will be privy to this morning is indicative of the types of abuse, neglect, and exploitation senior citizens are experiencing. Ms. Hazel Lindsey, Ms. Sadie Stanfield, and Ms. Switzer graciously consented to share their unfortunate experiences with you. These are only three of many who face similar situations and who will face such situations in increasing numbers.

Senior citizens are susceptible to abuse and exploitation because of their frail physical condition and their need for care and accommodations. Senior citizens become lonely and dependent and rely on family members, friends, and even strangers for assistance and services.

Ms. Hazel Lindsey, who is a little late and she is on her way, will render testimony concerning physical abuse, neglect, and exploitation from family members. Ms. Lindsey decided to rely on her son and daughter-in-law to assist her during her retirement years. Ms. Lindsey owned her own home, and her son convinced her to move in with him and his wife and sell her home. Out of love for her son and no desire to live alone, Ms. Lindsey agreed to her son's proposal. The home was deeded to her son, which he assured her was necessary in order to sell her home. The home was sold, and the proceeds of said sale were never received by Ms. Lindsey. Shortly

thereafter, Ms. Lindsey's daughter-in-law began physically abusing her. Ms. Lindsey was forced to leave the son's home because of the abuse, and she now resides in Birmingham with relatives, and her son refuses to assist her financially.

Ms. Sadie Stanfield entered an agreement with her sisters which entailed loaning them $40,000 to remodel their home. In exchange, her name would be placed on the deed as joint owner of the home, and she was assured a home for the remainder of her life. Ms. Stanfield rendered the $40,000, thereby complying with the terms of the agreement. One month later, she was forced to move from an upstairs bedroom to the basement and was instructed to pay for meals which her sisters provided for her. Ms. Stanfield's sisters further informed her that she had 1 month to locate a new residence because she could no longer live with them in a home that she believed she had one-third ownership. A new deed was never executed.

Ms. Switzer is a victim of nursing home abuse, and she will share her concerns with you.

Senior citizens are this Nation's well of wisdom and knowledge. Experiencing years of growth, nurturing children into adulthood, providing direction and guidance to a society that expresses its gratitude through abuse, neglect, and exploitation is clearly a tragedy non-deserving.

Thank you, Senator Shelby, Congressman Ben Erdreich, and District Attorney David Barber.

I now present Ms. Sadie Stanfield, Ms. Switzer, and Ms. Lindsay, upon her arrival.

Senator SHELBY. Which one will testify first?

Ms. WITHERSPOON. This is Ms. Stanfield.

STATEMENT OF SADIE STANFIELD, VICTIM OF ABUSE

Ms. STANFIELD. My name is Sadie Stanfield, and I live in Jefferson County.

My husband became ill, and my brother-in-law came over and mowed my yard and did everything for me that he could to persuade me to put my house in his name and also my financial support—my bank accounts, everything I own—in his name to provide for me a home for the rest of my life, that I would not have to go to the nursing home unless I lost my mind completely. So I asked him before I moved in, "What is this going to cost me?" He said, "It will cost you nothing. You are paying your dues right now with the $40,000." Also, you will be a member of our family. You will be treated as a member of our family.

So I was there a short while, and they both set me down and talked to me and told me that I had told things on them about their business, which I had not. I was falsely accused. They told me to get in the wet bar, which they called "apartment," and to stay there. So I did give up my bedroom upstairs and lived in the apartment, where part of it was the garage where the cars were kept and also the dogs at night. If anyone came to see me, they had to come through the garage to get to my apartment, which I had no keys to the door. I couldn't lock myself out. I had no place to cook, no stove or anything. I went other places to cook bread. I bought

me a hot plate to boil things on. Also, every time I turned the hot plate and my T.V. on, the circuit lights would go out. I asked him would he get a larger box so the fuse wouldn't blow every time I hooked up my hot plate, so he said, "If you'll buy the circuit, I'll put it in." So I told him it wasn't my place to buy that.

So anyway, he had the access to all my financial support. That was in the agreement. I had no receipt for my money, no deed. My name wasn't on the deed to the house. It was supposed to be shared three ways. I'd pay a third and they'd pay two-thirds of the price of the home. So I paid my third, and I got nothing for my money.

I thank the panel for being a part of this today. I appreciate it. Thank you.

Senator SHELBY. Thank you.

Ms. Witherspoon, do you want to introduce the next witness?

Ms. WITHERSPOON. Ms. Switzer is living in a nursing home, and she would like to express her concerns.

STATEMENT OF MS. SWITZER, VICTIM OF ABUSE

Ms. SWITZER. My situation is unique in that I'm a younger person put in the nursing home with elderly parents living at home. I broke my neck when I was 12 years old and was put in a nursing home when I was in my 30's simply out of love, because they didn't know what else to do with me. I went into the nursing home on Valentines Day of 1984 and lost my father to cancer in July 1985. I have seen the good and the bad and the ugly since I have been there, and I can tell you from my own personal experience that the emotional abuse can be just as devastating as the physical, even to the point of contemplating suicide. I no longer consider that an option.

I feel there should be an alternative, that there should be options in the community, that the hopelessness and the despair, regardless of age—abuse is no respecter of age. The finances needed to support severe injuries and mental diseases are no respecter of age. I share the same common problems as the one who's 107 on the front hall. We share a great many financial and physical problems. None of us want to be there. We all feel that there should be alternatives that the community can provide with housing, with benefits.

I got my driver's license last year. I'm very proud of that, but I cannot afford the van or the hand controls.

I would like to see some changes made from the Federal level and from the State level to increase the incentive of those in nursing homes. Whatever job I may be able to hold while I'm in a nursing home goes to the nursing home because I'm on Medicare. I cannot build up a savings. I have no way to work my way out. I look at the walls. It's a lovely nursing home. I have not, fortunately, endured some of the horror stories that you have heard this morning. However, the desperation, the hopelessness and despair, the emotional traumas can be just as devastating and just as lethal in their own way.

There should be more help on a full spectrum, both emotionally and physically, and hopefully maybe nursing homes in themselves will be passe one day when the communities can take more respon-

sibilities, when the options can be greater. But until then we do need help. We do need laws on the books preventing these abuses, and we need laws that increase the incentives and the possibilities of being able to pull ourselves up and out. There are many who aren't as lucky as I am in that regard. There are a great many of us who are older who could still have a vibrant life somewhere else under different situations. Many of us were not put there—in fact, most of us—because we wanted to be, but the physical needs seemed to dictate lifestyle. That can be changed, but we need help in changing it.

I hope that Congress and the Senate will address the issues of not only the young abuse or the young problems and the elderly problems, but the young, severely disabled who fall in a middle ground that seems to be, for the most part, somewhat unrecognized, and yet there I am living in the same nursing home in the same setting as the ones who we address today with the elderly abuse. I fall under the same abuse. I am in a comparatively good nursing home, but I have felt the same fears, the same anxieties, and the same desperation.

None of this is a respecter of age or finance. We all need the help, and I hope that when you get back to Congress that you will broaden the spectrum and make it all-inclusive, not segregated by age or disability or disease, but address the full spectrum of humanity that suffers at the hands of humanity.

Thank you.

Senator SHELBY. Thank you.

Ms. Witherspoon, you have one more.

Ms. WITHERSPOON. This is Ms. Hazel Lindsey, and she's going to tell you her story concerning abuse from a family member.

STATEMENT OF HAZEL LINDSEY, VICTIM OF ABUSE

Ms. LINDSEY. My name is Hazel Lindsey. I'm from Michigan City, Indiana, and I have been here in the South since February 1990.

My son brought me down here because I had a stroke, and they were supposed to have kept me, but he's in the Air Force, and I tried to stay with him, but I couldn't stay there because his wife was so mean to me. I couldn't stay there. God knows I couldn't.

He lives in South Carolina, and I just can't help myself, so I had to call my cousin from Cleveland, Ohio, and I have cousins in Alabama, and so they told me to call my cousin, Merrilee Jordan—she's my double cousin—and she's taken me in her family, and they treat me so nice I don't know how to act. Her name is Merrilee Jordan.

So you all pray for me that I may continue to grow stronger. I do go to the senior citizens group every day. I really have fun down there, and I have exercise, and we have good food down there. I just can't help myself.

Senator SHELBY. Thank you.

Ms. WITHERSPOON, I want to first thank you, as the legal counsel for the senior citizens of Jefferson County, for being involved in an area that people need help at all levels, and you've demonstrated this here today, your sensitivity to the problem and your dedication to doing something about it. I want to thank you.

Congressman Erdreich.

Mr. ERDREICH. Thank you, Senator.

I just want to thank Ms. Witherspoon, of course, but each of the other folks that testified for your courage to, in public, talk about some very tough individual situations that each of you have been through. It was moving to all of us on the panel, and I can assure you that if there's any way we as a society can deal better with these problems—it's what a lot of the witnesses earlier have said, but you by your really courage to come foward and testify publicly will help we as a country and as a State and a community understand these sorts of problems that we have a deal with them. We're not going to deal with them if they're in essence hidden and not talked about, and as hard as it is to talk about, again, I applaud you for coming forward and doing so. This is what will help us, I'm convinced, do something in a significant way at every level, be it community-based, private initiatives, State level, or indeed Federal level.

One of the comments indeed was, which I would echo, that we need to try to develop more so options for individual living and independent living. We have been able to develop some of those in our country and across America, but additional options so that those who can and have the will and desire and, obviously, the ability to can be helped in individual living to be independent from an institutional setting, as one of the witnesses stated.

Again, thank you for coming, and, Ms. Witherspoon, thank you for your help.

Senator SHELBY. Mr. Barber.

Mr. BARBER. Ladies, let me echo the Congressman and the Senator's sentiments. I know it took a lot for you to come up here and open yourself up. I also know that probably one of the reasons you're here is that you realize you're not alone in this plight, and maybe your voice will open up some more voices in the wilderness. As the Senator pointed out earlier, one of the functions of this meeting is to identify some problems and bring these to our attention and to the public's attention. Once you get something identified, then it's a lot easier to work on if you've got a clear picture of what the problem is

Ms. Witherspoon, I've just got a request that crossed my mind while Ms. Switzer was talking about the mental abuse, the things that you can be subjected to that don't leave a bruise, that don't leave a cut, that don't leave a mark, and I would be very interested in trying a work with you and any others in developing some legislation to address that. But as an attorney, I know that you realize the proof problems in those kinds of situations. Anything that you run across or any ideas that you have that you think would maybe help open a door in that direction, I would be very much interested in hearing from you all. Thank you.

Senator SHELBY. Thank all of you for appearing here. Thank you.

Our next panel, our last panel, will be Mr. Bill Garrett, Assistant Alabama Attorney General, representing the Alabama Commission on Aging; Mr. Bill Whatley, Director, Medicaid Fraud Control Unit, Office of Alabama Attorney General; and Dr. Richard Powers, who is an expert on geriatric care. Dr. Powers will discuss neglect in the institutionalized settings, I understand.

Gentlemen, welcome to the hearing here today. Your written testimony, as I've said at the beginning of each panel's hearing, will be made part of the record of this proceeding in its entirety, and if you would briefly sum up your written testimony orally. I welcome you.

Mr. Garrett, do you want to start first?

STATEMENT OF BILL GARRETT, ASSISTANT ALABAMA ATTORNEY GENERAL, REPRESENTING THE ALABAMA COMMISSION ON AGING

Mr. GARRETT. I have a brief statement on behalf of Attorney General Jimmy Evans.

Senator Shelby, Congressmen, Mr. District Attorney, on behalf of Attorney General Evans, I bring greetings to you and members of the U.S. Senate Special Committee on Aging, both here and in Washington, as you examine this national tragedy plaguing our senior citizens.

Attorney General Evans is committed to continuing his long-time battle on behalf of Alabama's senior citizens, a battle first begun many years ago when he became District Attorney of Alabama's capital city. His commitment to prosecuting perpetrators of crimes against the elderly has never wavered. In fact, his awareness of the extent and horror of this national tragedy has grown. So has Mr. Evans' commitment to prosecuting those persons abusing the elderly and to protecting those innocents who have become victims of one of the most horrendous crimes against humanity: elder abuse.

Since taking office as Attorney General, Mr. Evans has developed a close relationship with Alabama's Commission on Aging and has demonstrated his desire to work together with that commission toward the goal of creating a better and safer place for Alabama's senior citizens to live without fear and to live without harm. Mr. Evans believes that our senior citizens are one of our most valuable resources. Senior citizens groups in this State provide encouragement, advice, and inspiration to all Alabamians and, as such, deserve—in fact, have earned—special protections and special considerations.

Succinctly, crimes against the elderly will not go unanswered in the Evans administration. The Evans administration stands ready to work with the Senate Special Committee on Aging, the Alabama Commission on Aging, the District Attorneys Association, and other groups to make Alabama a safe place for senior citizens to share knowledge gained from a lifetime of experience and to be productive citizens.

Senator SHELBY. Thank you.

Mr. Whatley.

STATEMENT OF WILLIAM W. WHATLEY, JR., DIRECTOR, MEDICAID FRAUD CONTROL UNIT, OFFICE OF THE ALABAMA ATTORNEY GENERAL

Mr. WHATLEY. Senator Shelby, Congressman Erdreich, Mr. Barber, my name is Bill Whatley, and I'm Director of the Alabama Medicaid Fraud Control Unit. That's a division of the Alabama Attorney General's Office.

As Director of the Medicaid Fraud Control Unit, I am the person responsible for investigating and prosecuting cases of elder abuse and the abuse of any incapacitated adult in the State of Alabama. The Medicaid fraud control units throughout the country are the sole governmental agency with the responsibility to investigate and prosecute elder abuse and abuse of incapacitated or disabled adults.

Unfortunately, the Medicaid fraud control units have a dual purpose. Congress, when enacting the statutes to create the Medicaid fraud control units, made the primary purpose of the fraud units to investigate and prosecute instances of provider fraud in the Medicaid programs. This would go in tandem with the U.S. Attorney's Office. They would investigate and prosecute instances of Medicare fraud in the U.S. courts. Almost as an afterthought, Congress added the responsibility of investigating and prosecuting complaints of patient abuse in institutional settings.

Now, this was back in 1978, when the laws were first enacted to provide for these units. Since that time, there has been a tremendous increase in the amount of patient abuse cases in this State as well as in other States. Luckily, in the State of Alabama, there was a statute on the books to provide for criminal penalties for those that would abuse, neglect, or exploit those that were unable to care for themselves or their needs. The Alabama Adult Protective Services Act of 1976 was passed by the Alabama legislature and enacted in 1977.

The primary purpose of that act was to provide a mechanism to provide protective services to those people that could not care for themselves or their needs. There was a very small subsection that provided a criminal penalty as well. Unfortunately, the maximum criminal penalty for abuse, neglect, or exploitation, no matter how egregious, was a fine of $500 or a maximum term of imprisonment of 6 months. Over a period of some 12 years, this criminal section of this act was almost never utilized. In fact, recently when I spoke to groups about this law, I said it was never utilized, but I did find an instance in which there was one case prosecuted in the State of Alabama.

In 1989, the Unit developed and introduced in the Alabama legislature an amendment to the Adult Protective Services Act which radically changed the criminal provisions of this act, as well as making some other changes in the protective placement proceedings section. Along with many long hours of work in the legislature with the Department of Human Resources, the Department of Public Health, and the Commission on Aging, and any other State agency that we could get to go up and talk to the legislators, we were able to convince them to pass this amendment, and it took effect in May 1989.

Since that time, my staff has been very actively involved in investigating and prosecuting these cases, and I'm happy to say that, for the first time, we now have individuals serving behind bars in this State for abusing, neglecting and exploiting individuals. It's a far cry from what we had years ago when the criminal penalty for abusing an elderly person was less than what it was for being cruel to an animal, but we still have so far to go.

There are so many things that this committee can do to help us to do our jobs. There is a bill pending in Congress, S. 951 by Sena-

tor DeConcini, which this committee is aware of or it will soon be brought to your attention. It's attached as Appendix C to my testimony. This effort is to be applauded. It's a step in the right direction, because it provides for the creation of the National Center for Elder Abuse and provides financial assistance for programs for the prevention, identification, and treatment of elder abuse, neglect, and exploitation.

But this committee and Congress as a whole must be very careful. There is a provision in here that would allow for funding of grants to States that have mandatory reporting laws. Now, this is a very good step in the right direction to say that States have to have a mandatory reporting law, but there's a provision in here that says the mandatory reporting law must grant immunity for those that report the abuse. There is no provision in this statute that would keep a perpetrator who reported his own abusive acts from being given blanket immunity.

Congress must be very careful with something like this, because the State legislators know nothing about the topic which we're discussing here today. I know the Alabama legislature knows very little, because I was the one that dealt with them, with some of these other people up here, trying to convince them we had a serious problem on our hands.

Appendix B to my testimony is a listing of the State statutes, 51 jurisdictions in the country, and it deals with reporting requirements, whether they're mandatory or voluntary, whether there are specific definitions of abuse, neglect, and exploitation, and whether there is in fact a criminal offense for those crimes. As you can see, all but one of the 51 jurisdictions have some form of reporting requirements. As Mr. Daniels said earlier, most of these are not worth the paper they're written on.

Now, my point is that the definitions that define the criminal offense are not clear at all. They're very limited in who they're covering. This committee and Congress must be very aware that the problem is not just with elderly citizens in this State or throughout the country being abuse; it's any incapacitated adults—the physically handicapped, the mentally debilitated, the mentally retarded, the developmentally disabled. Any person at risk must be protected. Don't limit it just to those that are elderly.

By the same token, the protection cannot be limited to just those that are in institutions. I'm very proud of the statute in Alabama now that we amended it, because it covers an incapacitated adult regardless of whether they're in a nursing home, a hospital, a boarding home, a clinic, or a private home. It protects the citizen regardless of the type of facility in which they are residing.

Mr. Barber, you asked a question a few moments ago, and let me respond to that, about the infliction of abuse without any bruising. The law provides a definition for emotional abuse: "The willful or reckless infliction of emotional or mental auguish or the use of physical or chemical restraint, medication, or isolation as a punishment or as a substitute for the treatment or care of any protected person." And in the criminal penalty section of this statute, there is no requirement that there be a physical injury, as there is with the abuse and the neglect sections that we provide the penalties for.

As a Medicaid fraud control unit, we're a very small unit. I have two attorneys, myself included. Mr. Randall Houston, who is here with me—in fact, he's the chief prosecutor that we have in our unit. We have five criminal investigators, we have three auditors, and we have two staff people. I could use 5 or 10 or 15 more criminal investigators. We could take all of our time and all of our money and investigate just abuse cases, but we can't do that because of the realities of the politics in this country, not just in this State.

We're federally funded. Seventy-five percent of our operation is funded with Federal dollars, 25 percent with State funds. We are overseen in operation by the Department of Health and Human Services' Office of the Inspector General. We are constantly receiving pressure from the Office of the Inspector General to recover more dollars in fraud cases. Unfortunately, in abuse cases, you don't recover a single penny, but there's no way to measure how much good we do when we prosecute an individual for abusing people that can't protect themselves. We have to be very careful to make sure that the pressure is not placed on the Medicaid fraud control units to prevent them from carrying out this very essential role, but those that count pennies in Washington, as you're well aware, are always looking over our shoulders to see how much we recover. Constantly.

We cannot investigate and prosecute every abuse case in the State of Alabama. We are limited to those in institutional settings. There are many more cases that occur in private homes, boarding homes, and other facilities that my people, by regulation, cannot be involved in the investigation and prosecution. We're very limited in that sense. A case may be referred to me; in fact, hundreds of cases are referred to me on a monthly basis that I have to decline because I cannot prosecute. In many instances, we try to go to the local District Attorney and bring it to their attention and say, "This is a problem" and try to educate them. Unfortunately, more times than not, the District Attorney is not interested.

You have a great lack of interest in law enforcement in this area, and it's not just in Alabama, but I see it in Alabama. You have a problem with police officers not being trained in the area, you have a problem with the court system not being sensitized to the problem, you have a problem with judges not being aware that this is even a crime.

There was a circuit judge, in another circuit Mr. Barber, that, after we had completed the case and the jury had returned a guilty verdict, came up to me and said that he didn't even feel like this was a crime, even though the victim had been brutally beaten with a metal coat hanger. He said, "There's no reason that this guy should even be here." He accused us of using gestapo tactics to merely prosecute an individual that had ruthlessly beaten a mentally retarded man with a metal coat hanger.

We have some very serious problems. We have a recognition problem. The question about victims—our victims never testify. They can't testify. The ones that are abused are those that the abusers know will never tell anyone what happened. So unlike a child victim in a child abuse case that may later be able to testify upon recognition of what happened to them, our victims will never

get any better than they are at that point. They'll always go downhill.

This is a very difficult job. It's very hard to prosecute these cases, but it's challenging in the sense that there are so many people out there that need the protection of law enforcement and the court system in this State. There are very few rewards for the prosecutors in this, but there's one that brought it home to me personally.

At the end of a trial in Mobile a few months ago, the jury was out deliberating, and the family members were talking with me, and I was trying to say, "You don't know how they'll come back. We could well lose, even though we put on all we can," trying to prepare them for an acquittal. One family member in particular came up, and she said, "It doesn't matter to me. It doesn't matter what they do, because you stood up. You stood up for him, you stood up for the victim, and that's the first time anybody's ever done that, and I thank you for that."

I thank you for your time today. We appreciate any help that you can give us.

[The prepared statement of Mr. Whatley follows:]

OFFICE OF THE ATTORNEY GENERAL

JIMMY EVANS
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June 29, 1991

United States Senate
Special Committee on Aging

The Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, Pub.L.No. 95-142 was designed to encourage state efforts to investigate and prosecute Medicaid Provider Fraud. Congress regarded uncovering evidence of patient abuse an equally important endeavor and as a result the state Medicaid Fraud Control Units were given a dual responsibility of fraud and abuse. The investigation and prosecution of patient abuse cases was limited to allegations of abuse that occur in institutional settings such as nursing homes, hospitals, mental institutions and other Medicaid-reimbursed facilities.

The Alabama Medicaid Fraud Control Unit (Unit) was established in April 1978 as a division of the Alabama Attorney General's Office and was staffed with attorneys, investigators, auditors and clerical personnel. The unit was a charter member of the National Association of Medicaid Fraud Control Units which was established to improve the quality of investigations and prosecutions by fostering interstate cooperation on legal and law enforcement issues affecting the Units and conducting training programs, providing technical assistance to member units as well as providing the public with information on the Medicaid Fraud Control Unit Program.

In 1979, the administrative responsibility for the Unit's operation was transferred from the then Department of Health, Education and Welfare's Health Care Financing Administration to the Office of Inspector General. The State Fraud Branch, Office of Inspector General certifies and recertifies the Unit to insure that it complies with federal regulations. As part of this responsibility, it makes on-site visits to observe Unit operations and collects statistical data on the number of indictments, convictions and identified overpayments.

The Unit is currently composed of two attorneys, five investigators, three auditors, a clerk stenographer and a paralegal.

The Alabama Legislature enacted the "Alabama Adult Protective Services Act" in 1977 which provided, among other things, a criminal penalty for wilfull abuse, neglect or exploitation of any adult unable to care for himself or his needs. The maximum penalty for any form of abuse was a term of imprisonment not to exceed six months or a fine of not more than $500. In the following twelve years there were very few prosecutions under this statute due to ambiguities in the definitions and the minimal criminal penalties. While other provisions of the Alabama Criminal Code were updated and refined to deter and punish criminal activity, no attempt was made to upgrade the law designed to protect helpless adults from cruel and malicious abuse, neglect and exploitation. During the 1989 session of the Alabama Legislature the Unit drafted and submitted a substantial amendment to the Alabama Adult Protective Services Act. With the support and tireless work of the Attorney General's Office, the Alabama Department of Human Resources, the Alabama Department of Public Health and the Alabama Commission on Aging, the Legislature adopted the proposed amendment. The statute was enacted on May 16, 1989 and is codified at Alabama Code Section 38-9-7 (Appendix A).

The criminal penalties for intentional or reckless abuse or neglect now range up to a maximum term of imprisonment of twenty years and a possible maximum fine of $10,000. There are clarified definitions of abuse, neglect and exploitation as well as a criminal penalty for acts of emotional abuse against any "protected person." For the first time the Unit has an effective tool to prosecute any individual that abuses aged or handicapped adults.

With a renewed cooperation between Alabama agencies that provide services to adults that cannot protect themselves, the Unit has initiated numerous prosecutions against defendants in a wide variety of care facilities. As an example the Unit has recently completed the following cases:

Curtis Carter was an orderly at a Birmingham nursing home that abused a cerebral palsy patient by tying his arm to a bed siderail and "spanking" him. Carter was charged with Intentional Abuse, but the jury convicted him of a lesser included offense of Reckless Abuse.

Gwen Johnson was an L.P.N. at Bryce Mental Hospital in Tuscaloosa who struck a mentally handicapped patient. Johnson was also charged with Intentional Abuse, but the jury convicted her of Assault, which was also a lesser included offense. Johnson was sentenced to a six month jail term and fined.

An employee at Glenn Ireland Center in Jefferson County, Stacey Thomas, viciously slapped a mentally retarded patient and was charged and convicted of harassment.

Jacketta Jemison was an employee of Partlow Developmental Center in Tuscaloosa that was charged with several counts of harassment and abuse against several patients. Jemison pled guilty to two counts of Reckless Abuse and three counts of Harassment. Jemison was fined, served 14 days in jail and agreed to testify in nine other pending cases against Partlow employees who had been abusing clients. Eight of these cases ended with convictions or guilty pleas against seven defendants and one case is pending trial.

Clifton Richardson was an employee of the Brewer Center in Mobile that repeatedly struck a patient with a wire coat hanger. Richardson was convicted of Intentional Abuse and was sentenced to serve two years in prison.

Linnie Turner was an employee at Searcy Hospital in Mt. Vernon who hit a wheelchair-bound patient. Turner pled guilty to a charge of Reckless Abuse.

Era Lynn Denton was a nurses aide at an Ozark nursing home who slapped an elderly patient. Denton pled guilty to a charge of harassment.

Mark Pritchett, Michael Rawls and Derek Miller were employees of Tarwater Center in Wetumpka who slapped, hit and kicked a patient. Pritchett and Rawls pled guilty to Assault and agreed to testify in other cases. Miller pled guilty to Assault and Conspiracy to falsify a Governmental Record. Miller pled guilty to the charges against him and agreed to testify in other cases. Robert Ziegler was also charged and convicted of assaulting another patient at Tarwater.

A review of these cases shows that abuse occurs in a variety of facilities throughout the state. There are similar charges pending against individuals in Mobile, Jefferson, Morgan, Elmore and Tuscaloosa counties that have not come to trial. The Unit is charging perpetrators with other crimes in addition to abuse under the new Alabama statute.

These cases are very difficult to successfully investigate and prosecute. The victims of physical abuse are almost never competent to testify against their abusers. The elderly and handicapped are easy prey to unscrupulous and sadistic people. Law enforcement is limited to physical evidence of the abuse and whatever documentation is available concerning the injury. Reporting of abuse in care facilities by poorly trained and poorly educated staff is woefully inadequate. Timely reports of abuse are usually insufficient to enable investigators to determine the identity of the abuser. Government agencies face an almost impossible task in investigating these cases.

From a law enforcement standpoint, the investigation and prosecution of abuse is a frustratingly difficult job. The Unit is referred hundreds of cases of suspected abuse that can not be investigated much less prosecuted because the only evidence available is that of an injury that could only have been caused by an intentional or reckless act against an elderly or incapacitated adult who could never provide information as to who inflicted the injury. In most cases elderly abuse is harder to investigate and prosecute than child abuse. An abused child may eventually be able to provide testimony against his abuser, while an elderly victim will probably never be able to testify in any manner. Sadly, the perpetrators of this form of abuse seem to realize that they will never be charged for their heinous actions.

The Unit will continue to vigorously investigate and prosecute these cases. Our investigators and prosecutors are becoming more experienced in developing criminal cases against abusers. Public awareness of this aggressive prosecution of these crimes has deterred individuals who would commit these offenses. There remains much that can still be done to combat elderly abuse. The Department of Health and Human Services, Office of Inspector General and the Health Care Financing Administration must continue to support the aggressive investigation and prosecution of patient abuse cases. Congress must make certain that the emphasis on prosecution of provider fraud cases does not emasculate the vital role of the Medicaid Fraud Control Units as the sole governmental agency charged with investigating and prosecuting patient abuse. Too often the Unit's financial recoveries overshadow these difficult cases that protect those unable to protect themselves.

Congress should take action to make certain that each state is pursing an active campaign against all forms of patient abuse. My research has indicated that there are states which do not have a mandatory requirement to report all instances of patient abuse, definitions of abuse, neglect or exploitation or any type of criminal offense statute for these crimes (Appendix B). While proposals such as S.951, the "Prevention, Identification and Treatment of Elder Abuse Act of 1991" (Appendix C) by Senator DeConcini, are to be applauded, Congress must make certain that serious points are not overlooked. For example, on page 8 of the bill there is a requirement that for a state to qualify for assistance from the proposed Center on Elder Abuse, that state must have an abuse law. But that abuse law must include "provisions for immunity for persons reporting instances of elder abuse, neglect and exploitation, from prosecution arising out of such reporting ..." This language makes no provision to limit the immunity of individuals that commit the abuse. If enacted without change, this could lead states to inadvertently provide the abusers themselves with a mandatory grant of immunity for abuse, just by reporting the abuse themselves.

As this committee has heard from other speakers, the abuse of the elderly and incapacitated is sadly on the rise. The investigation and prosecution of abuse, neglect and exploitation is new to law enforcement and Congress must insure that a concerted effort by all government agencies is made to combat this growing problem. With the inevitable growth in our elderly population will come an increasing strain on our health care facilities. Already understaffed facilities, poorly trained staffs, and a lack of adequate supervision of direct care personnel are forcing an inexorable increase in abuse cases.

Congress must assist these agencies in their uphill battle against abuse. Society has a moral obligation to protect those who cannot protect themselves from abuse.

William W. Whatley, Jr.
Director
Medicaid Fraud Control Unit
Assistant Attorney General

APPENDIX A

§ 38-9-1. Short title.

This chapter shall be known and may be cited as the Adult Protective Services Act of 1976. (Acts 1977, No. 780, p. 1340, § 1.)

§ 38-9-2. Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

(1) ADULT IN NEED OF PROTECTIVE SERVICES. A person 18 years of age or older whose behavior indicates that he is mentally incapable of adequately caring for himself and his interests without serious consequences to himself or others, or who, because of physical or mental impairment, is unable to protect himself from abuse, neglect or exploitation by others, and who has no guardian or relative or other appropriate person able, willing and available to assume the kind and degree of protection and supervision required under the circumstances.

(2) INTERESTED PERSON. Any adult relative, friend or guardian of a person to be protected under this chapter, or any official or representative of a public or private agency, corporation or association concerned with his welfare.

(3) CARETAKER. An individual who has the responsibility for the care of the elderly or handicapped person as a result of family relationship or who has assumed the responsibility for the care of the person voluntarily, by contract or as a result of the ties of friendship.

(4) OTHER LIKE INCAPACITIES. Those conditions incurred as the result of accident or mental or physical illness, producing a condition which substantially impairs an individual from adequately providing for his own care or protecting his own interests or protecting himself from physical or mental injury or abuse.

(5) SENILITY. Organic brain damage caused by advanced age or other physical illness in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care.

(6) ABUSE. The infliction of physical pain, injury, or the willful deprivation by a caretaker or other person of services necessary to maintain mental and physical health.

(7) EMOTIONAL ABUSE. The willful or reckless infliction of emotional or mental anguish or the use of a physical or chemical restraint, medication or isolation as punishment or as a substitute for treatment or care of any protected person.

(8) NEGLECT. The failure of a caretaker to provide food, shelter, clothing, medical services, and health care for the person unable to care for himself; or the failure of the person to provide these basic needs for himself when the failure is the result of the person's mental or physical inability.

(9) EXPLOIT. The expenditure, diminution or use of the property, assets or resources of a person subject to protection under the provisions of this

chapter without the express voluntary consent of that person or his legally authorized representative.

(10) PROTECTED PERSON. Any person over 18 years of age subject to protection under the provisions of this chapter or any person including but not limited to persons who are senile, mentally ill, developmentally disabled, mentally retarded or any person over 18 years of age that is mentally or physically incapable of adequately caring for himself and his interests without serious consequences to himself or others.

(11) PROTECTIVE SERVICES. Those services whose objective is to protect an incapacitated person from himself and from others.

(12) DEPARTMENT. The department of human resources of the state of Alabama.

(13) COURT. The circuit court.

(14) PHYSICAL INJURY. Impairment of physical condition or substantial pain.

(15) SERIOUS PHYSICAL INJURY. Physical injury which creates a risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or the impairment of the function of any bodily organ.

(16) PERSON. Any natural human being.

(17) INTENTIONALLY. A person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his purpose is to cause that result or to engage in that conduct.

(18) RECKLESSLY. A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation. A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication, as defined in subdivision (e)(2) of section 13A-3-2, acts recklessly with respect thereto. (Acts 1977, No. 780, p. 1340, § 2; Acts 1989, No 89-825, p. 1652, § 1.)

The 1989 amendment, effective May 16, 1989, in subdivision (6) deleted "wilfull" preceding "infliction," and deleted "or mental anguish" following "injury"; redesignated former subdivision (7) as subdivision (8); added present subdivision (7); in present subdivision (8), deleted "basic needs such as" preceding "food, shelter," and inserted "clothing, substance, medical services"; deleted former subdivision (8) which read: "EXPLOITATION. An unjust or improper use of another person or another person's resources for one's own profit or advantage or for the profit or advantage of another person;" redesignated former subdivisions (9) through (11) as subdivisions (11) through (13); and added present subdivisions (9), (10), (14) and (15).

Code commissioner's note. — Section 5 of Acts 1989, No. 89-825 provides: "Nothing contained in this Act shall be deemed to repeal any other section of Code of Alabama, 1975."

Once guardian was appointed to represent mother, plaintiff-daughter no longer had capacity to sue on behalf of her mother pursuant to the Adult Protective Services Act; the guardian had stepped into the plaintiff-daughter's shoes to ensure that her mother's interests were protected. Should the plaintiff-daughter take issue with the guardian's representation of her mother, suit would

lie thereto. Burnett ex rel. Friday v. Burnett, 497 So. 2d 511 (Ala. Civ. App. 1986).

§ 38-9-3. Legislative findings and intent.

The legislature recognizes that there are many adult citizens of the state who, because of the infirmities of age, disabilities or like incapacities, are in need of protective services. Such services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, neglect, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect. (Acts 1977, No. 780, p. 1340, § 1.)

§ 38-9-4. Arrangements for protective services; liability of department for protective services; services to conform to wishes of person to be served; duty of department to ascertain persons in need of care and protection.

(a) Protective services may be arranged when an adult person is in need of care and protection because of danger to his health or safety; provided, that nothing in this chapter shall be construed to mean that the department is chargeable for the cost of such care except where such care is specifically provided for by law or departmental regulations and funding exists for such purpose. All protective services shall be in conformity with the wishes of the person to be served unless the person is unable or unwilling to accept such services, and if the person is unable or unwilling to accept such services, the court may order such services. The department may be required to provide or arrange for services only for persons it is equipped to serve and agrees to serve.

(b) The department shall seek out, through investigation, complaints from citizens or otherwise, the adults in the state who are in need of care and protection because of danger to their health or safety, and shall, as far as may be possible, through existing agencies, public or private, or through such other resources as are available, aid such adults to a fair opportunity in life. (Acts 1977, No. 780, p. 1340, § 3.)

§ 38-9-5. Emergency protective services.

When there is brought to the attention of a county department of human resources a person who is unable, because of physical or mental disabilities, to provide for his basic needs for shelter, food, clothing or health care, and whose health or safety is in immediate danger, the department may arrange for protective services with the consent of the person. If the person is incapable of giving consent or does not consent, the department shall petition the court for an order authorizing the department to arrange for care for such person

immediately. Upon a determination by the court that such care is urgently and immediately necessary to protect the health or safety of the person, an appropriate order of the court shall be issued authorizing the department to arrange for the placement of such person in an approved foster home, licensed nursing home or other similar facility immediately. At the proceeding to obtain the necessary order, any relative or other interested person may appear to oppose or join in the petition of the department. In the event of such involuntary protective placement the court shall thereafter, within 10 days, cause notice to be given, as appropriate, to the person, his spouse and other interested persons of the action of the court, the present whereabouts of the person and setting a time for a hearing on the matter of the person's need for protective placement, the appropriateness of the present placement and arrangements for future care. (Acts 1977, No. 780, p. 1340, § 9.)

§ 38-9-6. Protective placement.

(a) An interested person may petition the court to order protective placement of an adult for purposes of care. No protective placement may be ordered unless there is a determination by the court that the person is unable to provide for his own protection from abuse, neglect or exploitation. Upon such petition, setting forth the facts and name, age, sex and residence of such person, the court of the circuit in which such person resides has authority, and it is a duty, to appoint a day, not more than 30 days from the filing of such petition, for the hearing thereof. If, on the hearing of such petition, the person is not represented by counsel, the court shall appoint a guardian ad litem to represent him. A jury of six persons shall be impanelled for said hearing to serve as the trier of facts.

(b) Costs of court proceedings under this chapter shall be paid as other civil court costs are paid, as provided for by law.

(c) The court shall give preference in making a determination to the least drastic alternative considered to be proper under the circumstances, including a preference for noninstitutional care wherever possible. Before ordering the protective placement of any person, the court shall direct a comprehensive evaluation of the adult in need of services, if such an evaluation has not already been made and is necessary. The court may utilize available resources in the community in determining the need for placement. The department shall cooperate with the court in securing available resources for the person to be served. A copy of the comprehensive evaluation shall be provided to the guardian or to the guardian ad litem or attorney of the person if a guardian has not been appointed. The court obtaining the evaluation shall request appropriate information which shall include at least the following:

(1) The address of the place where the person is residing and the person or agency who is providing services at present, if any.

(2) A resume of any professional services provided to the person by the department or other agency in connection with the problems creating a need for placement.

(3) A medical, psychological, social, vocational and educational evaluation and review, where necessary.

(d) The department which arranges for a protective placement shall make an evaluation and submit a written report to the court at least once every six months covering the physical, mental and social condition of each person for whom it is acting and shall recommend an alternative arrangement where appropriate.

(e) Any record of the department or other agency pertaining to such a person shall not be open for public inspection. Information therein shall not be disclosed publicly in such a manner as to identify individuals, but may be made available on application for cause to persons approved by the commissioner of the department or by the court.

(f) Placement may be made in an appropriate alternative living arrangement such as a licensed nursing home, licensed personal care facility or approved foster care home. No person may be committed to a mental health facility under this chapter.

(g) If the person is eligible for the adult services program of the department, usual department policies will be followed in regard to fees or payments, or both. If the person's income or resources, or both, make him ineligible for department services other than protective services, payment for services in relation to his evaluation and to his care in a protective setting is to be made from his income or resources, or both. A guardian, a conservator, or both, may be appointed by the court; provided, that the department shall not be appointed as guardian or conservator and provided further, that the department shall not be appointed custodian other than for the limited purpose, where appropriate, of transporting an adult for protective placement as ordered by the court. If it is agreeable with the person to be served, the court may appoint a guardian, or conservator, or both, having the same powers, duties and obligations, including having a bond, as a guardian of an incapacitated person or a conservator under the Alabama Uniform Guardianship and Protective Proceedings Act and it shall not be necessary to have a hearing on that issue; otherwise, the court may appoint a guardian, a conservator, or both, following the procedures provided by the Alabama Uniform Guardianship and Protective Proceedings Act. If a jury is requested or required, the jury impanelled in this court according to subsection (a) of this section shall serve that function.

(h) When any adult in need of protective services is unable to manage his estate and thereby is in danger of being reduced to poverty and want, an interested person may petition the court to preserve the estate of such person, to direct use of the estate for the needs of the person and for the general relief of the person.

(i) No civil rights are relinquished as a result of any protective placement under this chapter. Nothing in this chapter shall be construed to authorize or require medical care or treatment for a person in contravention of his stated or implied objection thereto upon the grounds that such medical care and treatment conflict with his religious beliefs and practices.

(j) As far as is compatible with the mental and physical condition of the adult in need of services or claimed to be in need of services under this chapter, every reasonable effort shall be made to assure that no action is taken without the full and informed consent of the person. (Acts 1977, No. 780, p. 1340, § 4; Acts 1989, No. 89-825, p. 1652, § 2.)

The 1989 amendment, effective May 16, 1989, in subsection (g), in the third sentence, inserted "a conservator, or both" and "or conservator"; in the fourth sentence, inserted "or conservator, or both," and "duties and obligations including having a bond," substituted "an incapacitated person or a conservator under the Alabama Uniform Guardianship and Protective Proceedings Act" for "a person of unsound mind," "hearing on that issue" for "sanity hearing," and the language beginning "a conservator, or both, following the" for "in accordance with procedures as provided by law for the appointment of a guardian for a person of unsound mind"; and added the last sentence.

Code commissioner's note. — Section 5 of Acts 1989, No. 89-825 provides: "Nothing contained in this Act shall be deemed to repeal any other section of Code of Alabama, 1975."

Waiver of right to jury trial. — The right to a jury trial under this section is not of a mandatory nature and thus is capable of waiver. Tillery v. State Dep't of Pensions & Sec., 481 So. 2d 386 (Ala. Civ. App. 1985).

Agreement entered into by all the parties, with the assistance of capable legal counsel, and adopted by the court, operated as an implied waiver of any right to trial by jury as provided for under subsection (a) of this section. Tillery v. State Dep't of Pensions & Sec., 481 So. 2d 386 (Ala. Civ. App. 1985).

Once guardian was appointed to represent mother, plaintiff-daughter no longer had capacity to sue on behalf of her mother pursuant to the Adult Protective Services Act; the guardian had stepped into the plaintiff-daughter's shoes to ensure that her mother's interests were protected. Should the plaintiff-daughter take issue with the guardian's representation of her mother, suit would lie thereto. Burnett ex rel. Friday v. Burnett, 497 So. 2d 511 (Ala. Civ. App. 1986).

Standard of proof. — The proper standard is one which requires that the burden of proof be met by a preponderance of the evidence with regard to the "least drastic alternative" chosen for the protected person. Tillery v. State Dep't of Pensions & Sec., 481 So. 2d 386 (Ala. Civ. App. 1985).

Placement in nursing home upheld. — Trial court's conclusion finding that the least restrictive means of caring for adult in need of protective services at her home was not feasible and ordering her placed in a nursing home would be upheld where the evidence sufficiently showed that she could not be adequately protected in her home given continued actions by her son to interfere with her care. Tillery v. State Dep't of Pensions & Sec., 481 So. 2d 386 (Ala. Civ. App. 1985).

§ 38-9-7. Abuse, neglect and exploitation prohibited; initiation of charges; penalty.

(a) It shall be unlawful for any person to abuse, neglect or exploit any adult subject to protection under the provisions of this chapter. Charges of such abuse, neglect or exploitation may be initiated upon complaints of private individuals or as a result of investigations by social service agencies or on the direct initiative of law enforcement officials.

(b) Any person who intentionally abuses or neglects a person in violation of the provisions of this chapter shall be guilty of a Class B felony if the intentional abuse or neglect causes serious physical injury.

(c) Any person who recklessly abuses or neglects a person in violation of the provisions of this chapter shall be guilty of a Class C felony if the reckless abuse or neglect causes serious physical injury.

(d) Any person who intentionally abuses or neglects a person in violation of the provisions of this chapter, shall be guilty of a Class C felony if the intentional abuse or neglect causes physical injury.

(e) Any person who recklessly abuses or neglects a person in violation of the provisions of this chapter, shall be guilty of a Class A misdemeanor if the reckless abuse or neglect causes physical injury.

(f) Any person who emotionally abuses a person in violation of the provisions of this chapter shall be guilty of a Class A misdemeanor.

(g) Any person who exploits a person in violation of the provisions of this chapter shall be guilty of a Class C felony, where the value of the property, assets or resources exceeds $100.00.

(h) Any person who exploits a person in violation of the provisions of this chapter shall be guilty of a Class A misdemeanor, where the value of the property, assets or resources does not exceed $100.00.

(i) If a violation of this section is also a violation of any other Alabama criminal statute, then a conviction or acquittal under either statute bars prosecution under the remaining statute. (Acts 1977, No. 780, p. 1340, §§ 5, 11; Acts 1989, No. 89-825, p. 1652, § 3.)

The 1989 amendment, effective May 16, 1989, substituted "subject to protection" for "protected" in subsection (a); rewrote subsection (b); and added subsections (c) through (i).

Code commissioner's note. — Section 5 of Acts 1989, No. 89-825 provides: "Nothing contained in this Act shall be deemed to repeal any other section of Code of Alabama, 1975."

§ 38-9-8. Reports by physicians, etc., of physical abuse, neglect or exploitation — Required; method of reporting; contents.

(a) All physicians and other practitioners of the healing arts having reasonable cause to believe that any adult protected under the provisions of this chapter has been subjected to physical abuse, neglect or exploitation shall report or cause a report to be made as follows:

(1) An oral report, by telephone or otherwise, shall be made immediately, followed by a written report, to the county department of human resources or to the chief of police of the city or city and county, or to the sheriff of the county if the observation is made in an unincorporated territory.

(2) Within three days following such oral report, an investigation shall be made by the county department of human resources or the law enforcement official, whichever receives the report, and a written report prepared which will include the following:

a. Name, age and address of such person.

b. Nature and extent of injury suffered by such person.

c. Any other facts or circumstances known to the reporter which may aid in the determination of appropriate action.

(b) All such reports prepared by a law enforcement official shall be forwarded to the county department of human resources within 24 hours. (Acts 1977, No. 780, p. 1340, § 6.)

APPENDIX B

STATE STATUTES

	REPORTING REQUIREMENT	DEFINITIONS	CRIMINAL OFFENSE
ALABAMA	M	X	X
ALASKA	M	X	
ARIZONA	M	X	X
ARKANSAS	M	X	X
CALIFORNIA	M	X	X
COLORADO	V	X	
CONNECTICUT	M		
DELAWARE	M	X	X
DISTRICT OF COLUMBIA	M	X	
FLORIDA	M	X	X
GEORGIA	M	X	X
HAWAII	M	X	
IDAHO	M	X	
ILLINOIS	M	X	X
INDIANA	M		
IOWA	M	X	
KANSAS	M	X	
KENTUCKY	M	X	X
LOUISIANA	M	X	
MAINE	M	X	
MARYLAND	M	X	X
MASSACHUSETTS	M	X	X
MICHIGAN	M		X
MINNESOTA	M	X	X
MISSISSIPPI	M	X	X
MISSOURI	M	X	X
MONTANA	M	X	X
NEBRASKA	M	X	X
NEVADA	M	X	X
NEW HAMPSHIRE	M	X	X
NEW JERSEY	M	X	
NEW MEXICO	M	X	X
NEW YORK	M	X	
NORTH CAROLINA	M	X	X
NORTH DAKOTA	V	X	
OKLAHOMA	M	X	
OHIO	M	X	X
OREGON	M	X	X
PENNSYLVANIA	V	X	
RHODE ISLAND	M	X	
SOUTH CAROLINA	M	X	X
SOUTH DAKOTA		X	X
TENNESSEE	M	X	X
TEXAS	M	X	
UTAH	M	X	X
VERMONT	M	X	X
VIRGINIA	M	X	
WASHINGTON	M	X	
WEST VIRGINIA	M	X	X
WISCONSIN	V	X	X
WYOMING	M	X	X

M = MANDATORY
V = VOLUNTARY

This information is current through June 1, 1990

APPENDIX C

II

102D CONGRESS
1ST SESSION

S. 951

To provide financial assistance for programs for the prevention, identification, and treatment of elder abuse, neglect, and exploitation, to establish a National Center on Elder Abuse, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 1991

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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A BILL

To provide financial assistance for programs for the prevention, identification, and treatment of elder abuse, neglect, and exploitation, to establish a National Center on Elder Abuse, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Prevention, Identification, and Treatment of Elder Abuse Act of 1991".

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) The term "abuse" means—

(A) the willful infliction of—

(i) injury;

(ii) unreasonable confinement;

(iii) intimidation; or

(iv) cruel punishment with resulting physical harm or pain or mental anguish; or

(B) the willful deprivation by a caretaker of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

(2) The term "Center" means the National Center on Elder Abuse, established in section 3.

(3) The term "elder" means any person who has attained the age of 60 years.

(4) The term "caretaker" means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, by receipt of payment for care as a result of family relationship, or by order of a court of competent jurisdiction.

(5) The term "exploitation" means the illegal or improper act or process of a caretaker using the resources of an elder for monetary or personal benefit, profit, or gain.

(6) The term "neglect" means the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness, or the failure of a caretaker to provide such goods or services.

(7) The term "physical harm" means bodily pain, injury, impairment, or disease.

(8) The term "Secretary" means the Secretary of Health and Human Services.

SEC. 3. NATIONAL CENTER ON ADULT ABUSE.

(a) ESTABLISHMENT.—The Secretary shall establish a program within the Administration on Aging, to be known as the National Center on Elder Abuse.

(b) FUNCTIONS.—The Secretary, through the Center, shall—

(1) compile, publish, and disseminate a summary annually of recently conducted research on elder abuse, neglect, and exploitation;

(2) develop and maintain an information clearinghouse on all programs, including private programs, showing promise of success, for the prevention, identification, and treatment of elder abuse, neglect, and exploitation;

(3) compile, publish, and disseminate training materials for personnel who are engaged or intend to

engage in the prevention, identification, and treatment of elder abuse, neglect, and exploitation;

(4) provide technical assistance (directly or through grant or contract) to public and nonprofit private agencies and organizations to assist the agencies and organizations in planning, improving, developing, and carrying out programs and activities relating to the special problems of elder abuse, neglect, and exploitation;

(5) conduct research into the causes of elder abuse, neglect, and exploitation, and into the prevention, identification, and treatment of elder abuse, neglect, and exploitation; and

(6) make a complete study and investigation of the national incidence of elder abuse, neglect, and exploitation, including a determination of the extent to which incidents of elder abuse, neglect, and exploitation are increasing in number or severity.

(c) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—The Secretary may carry out functions under subsection (b) of this section either directly or by way of grant or contract. The Secretary shall promulgate regulations setting forth criteria for programs receiving funding under this subsection and shall review programs funded under this

subsection to determine whether such programs comply with such criteria. The Secretary shall, not later than 30 days after the date of any determination by the Secretary that a program fails to comply with such criteria, terminate funding for such program.

(2) RESEARCH PRIORITIES.—The Secretary shall establish research priorities for making grants or contracts under subsection (b)(5) and, not later than 60 days before the date on which the Secretary establishes such priorities, publish in the Federal Register for public comment a statement of such proposed priorities.

(d) STAFF AND RESOURCES.—The Secretary shall make available to the Center such staff and resources as are necessary for the Center to carry out effectively the functions of the Center under this Act.

SEC. 4. DEMONSTRATION PROGRAMS AND PROJECTS.

(a) ELDER ABUSE, NEGLECT, AND EXPLOITATION.—

(1) GRANTS OR CONTRACTS.—The Secretary, acting through the Center, is authorized to make grants to, and enter into contracts with, public agencies or nonprofit organizations (or combinations of the agencies or organizations) for demonstration

programs and projects designed to prevent, identify, and treat elder abuse, neglect, and exploitation.

(2) USE OF GRANTS OR CONTRACTS.—Grants made or contracts entered into under this subsection may be used—

(A) for the development and establishment of training programs for professional and paraprofessional personnel, in the fields of health, law, gerontology, social work, and other relevant fields, who are engaged in, or intend to work in, the field of prevention, identification, and treatment of elder abuse, neglect, and exploitation;

(B) for the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams of personnel trained in the special problems of elder abuse, neglect, and exploitation cases, to provide a broad range of services related to elder abuse, neglect, and exploitation, including direct support and supervision of sheltered housing programs, as well as providing advice and consultation to individuals, agencies, and organizations that request such services; and

(C) for furnishing services of teams of professional and paraprofessional personnel who are trained in the special problems of elder abuse, neglect, and exploitation cases, on a consulting basis, to small communities where such services are not available.

(3) APPLICATION.—To be eligible to receive a grant or enter into a contract under this subsection, an agency or organization shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(b) STATE PROGRAMS.—

(1) GRANTS.—The Secretary, acting through the Center, is authorized to make grants to the States for the purpose of assisting the States in developing, strengthening, and carrying out programs for the prevention and treatment of elder abuse, neglect, and exploitation.

(2) QUALIFICATIONS.—To be eligible to receive assistance under this subsection, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including information demonstrating that the State—

(A) has in effect a State elder abuse, neglect, and exploitation law that includes provisions for immunity for persons reporting instances of elder abuse, neglect, and exploitation, from prosecution arising out of such reporting, under any State or local law;

(B) provides for the mandatory reporting of known and suspected instances of elder abuse, neglect, and exploitation;

(C) provides that receipt of a report of known or suspected instances of elder abuse, neglect, or exploitation an investigation shall be initiated promptly to substantiate the accuracy of the report, and, on a finding of abuse, neglect, or exploitation, steps shall be taken to protect the health and welfare of the abused, neglected, or exploited elder;

(D) has throughout the State, in connection with the enforcement of elder abuse, neglect, and exploitation laws and with the reporting of suspected instances of elder abuse, neglect, and exploitation, such administrative procedures, such personnel trained in the special problems of elder abuse, neglect, and exploitation prevention and treatment, such training

procedures, such institutional and other facilities (public and private), and such related multidisciplinary programs and services as may be necessary or appropriate to assure that the State will deal effectively with elder abuse, neglect, and exploitation cases in the State;

(E) provides for methods to preserve the confidentiality of records in order to protect the rights of the elder;

(F) provides for the cooperation of law enforcement officials, courts of competent jurisdiction, and State agencies providing human services with respect to special problems of elder abuse, neglect, and exploitation;

(G) provides that an elder participate in decisions regarding the welfare of the elder, and provide that the least restrictive alternatives are available to the elder who is abused, neglected, or exploited;

(H) agrees to pay, with funds from non-Federal sources, 50 percent of the cost of the program for which assistance under this subsection is made available;

(I) provides that the aggregate of support for programs or projects, related to elder abuse,

neglect, and exploitation, assisted by State funds shall not be reduced below the level provided during the 12 months preceding the date of the enactment of this Act, and sets forth policies and procedures designed to assure that Federal funds made available under this Act for any fiscal year will be so used as to supplement and, to the extent practicable, increase the level of State funds that would, in the absence of Federal funds, be available for such programs and projects; and

(J) provides a State clearinghouse for dissemination of information to the general public with respect to—

(i) the problems of elder abuse, neglect, and exploitation;

(ii) the facilities; and

(iii) prevention and treatment methods available to combat instances of elder abuse, neglect, and exploitation.

(c) CONSTRUCTION LIMITATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), assistance provided pursuant to this section shall not be available for construction of facilities.

(2) RENTAL OR REPAIR.—The Secretary is authorized to supply assistance under this section for the lease or rental of facilities where adequate facilities are not otherwise available, and for repair or minor remodeling or alteration of existing facilities.

(d) DISTRIBUTION OF ASSISTANCE.—The Secretary shall establish criteria designed to achieve equitable distribution of assistance under this section among the qualifying States, among geographic areas of the Nation, and among rural and urban areas. To the extent possible, citizens of each qualifying State shall receive assistance from at least one project under this section.

SEC. 5. AUTHORIZATION.

There are authorized to be appropriated to carry out this Act $10,000,000 for fiscal year 1992 and such sums as may be necessary for each of the subsequent fiscal years.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect on January 1, 1992.

Senator SHELBY. Thank you.
Dr. Richard Powers.

STATEMENT OF RICHARD E. POWERS, M.D., DIRECTOR, GERIATRIC PSYCHIATRY, DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION, AND PHYSICIAN, UNIVERSITY OF ALABAMA, BIRMINGHAM

Dr. POWERS. Senator, I have a written testimony——
Senator SHELBY. Your written testimony will be made part of the record in the entirety for the proceeding, and you can sum up—you're the last witness to sum this up.
Dr. POWERS. Thank you for inviting us to discuss this very important issue.
I'm the Director of Geriatric Psychiatry for the Department of Mental Health and Mental Retardation. I'm also a physician at the University of Alabama, Birmingham. I'd like to just very briefly discuss abuse and neglect in the institutional setting, and for purposes of definition, I'm going to lump State hospitals, nursing homes, and general hospitals that are handling demented patients together, primarily because we don't have terribly good statistics in some of these other settings, but we do have good statistics for the nursing home setting.
First of all, what's the size of the problem in the institutional setting? About a third of all staff in nursing homes will say that they have seen incidents of abuse of patients, the most common being the inappropriate physical restraint of the patient, and about three-quarters of the staff will say that they see incidents of psychological abuse, such as inappropriate yelling by the staff at the patients. I guess the question is: Why does this happen? The answer is that it is the action and the inappropriate response of the staff. Pure and simple. I think that the root cause of this lies, first of all, in the epidemiology of these disorders, and then, second, it lies in the education of the staff themselves.
First of all, when you look at the epidemiology, the most recent studies indicate that 80 percent of patients in nursing homes suffer from some form of mental illness or from a cognitive impairment—dementia. Now, 5 percent of those patients will be seen by a psychiatrist while they are in the nursing home. Only 7 percent of them will ever see a mental health professional during the course of their nursing home stay or prior to being placed in the nursing home. However, 45 percent will receive neuroleptics, which are powerful mind-altering drugs, and 41 percent will be restrained—physically restrained—which is, for the psychiatric community, the ultimate behavioral control.
Who cares for these people? Who's down in the trenches taking care of these folks? Seventy percent of the staff in a nursing home is composed of nursing assistants, and only 15 percent consists of registered nurses. The average nursing assistant is not necessarily well-educated. Often times they're just high school graduates. Frequently, they have very minimal training in handling very complicated behaviorial problems. Who is their supervisor? Well, it's an R.N. How many of them have in-depth experience in neuropsychia-

tric disorders? Very few. Nor does, usually, the Director of Nursing, who is managing this whole operation from the clinical side.

Who's backing these folks up? Well, when you talk about nursing homes, in most instances, it's a family practitioner. The fact is that the kind of sophisticated neuropsychiatric problems that many of these patients have are not necessarily within the realm of specialty of the family practitioners. I used to be a family practitioner, so I can tell you first-hand that you can't be an in-depth expert in all things. So consequently, at every point in the chain of command for the clinical care of these patients, the level of knowledge often times is quite thin with regard to sophisticated neuropharmacological or behavioral approaches to these patients.

Consequently, I don't think it's surprising that the person who's most likely to abuse a patient, whether it be physically or psychologically, in a nursing home is the nursing assistant with the least amount of education, with the least amount of experience, and with the least amount of training.

What can be done in order to achieve the legislative mandated goal of a chemical- and restraint-free environment in the nursing home? Well, I think that education is the key. I believe that the majority of abuse that occurs in our institutions results from a lack of understanding by the staff of the behaviors that they are attempting to manage. Likewise, I believe that often times this behavior results from just plain exasperation with what's going on and an inability to find anybody in the chain of command who can help them.

For example, the patient who has been at the nursing station for the last 15 minutes asking the same question over and over and over again can be viewed either as a nuisance and obstinate, as they often times are, or they can be viewed as a disoriented, amnestic patient who cannot remember that he just asked the same question 3 minutes ago. The difference is that when they're viewed with obstinacy, they wind up being inappropriately medicated. In fact, if you look at statistics, the most common reason for a "PRN" medication, which is that medication that the nursing staff calls for, is asking the same question repetitively. I believe that education is the key here.

First of all, I don't believe that it's going to be possible to put a geriatric psychiatrist or a geriatrician into every nursing home. In fact, the number of people with this kind of specialty training is relatively stable at this point, and I don't see it taking off and expanding. Moreover, most clinicians, especially psychiatrists, dislike going to nursing homes, and in many instances, especially for the GP out in the rural community where the support systems are the thinnest, it's a money-losing operation. Many of these GPs are doing this just pro bono. It's something that they have to do as part of their community service.

We need to increase the number of physicians who have specialty training in sophisticated neuropsychiatric diseases, both in the assessment and in the behavioral management. I think that we need some creative, innovative approaches to bring sufficient manpower on-line to provide the kind of care and education that the nursing homes are going to need in order to deal with this rising tide of cognitively impaired individuals.

I would suggest that perhaps what we need to look at is a system of clinical nurse specialists or physicians assistants specially trained in this area functioning with a backup network of geriatric psychiatrists or geriatricians who are expert in this area for whom they could fall back on. These individuals, whether they be nurses or physicians assistants, could participate in the evaluation, competency assessments, participate in the pharmacological management of these patients, and educate staff in the nursing homes at all levels and help them craft effective behavioral managements for these patients.

In conclusion, I believe that education, not further regulation, is probably the solution to the problem of both the behaviorally disturbed patient in the nursing home and also it will probably be the most effective weapon that we have in diminishing both the physical and the emotional abuse that goes on in the institutional setting.

Thank you.

[The prepared statement of Dr. Powers follows:]

UAB SCHOOL OF MEDICINE
Brain Resource Program

June 28, 1991

TESTIMONY OF RICHARD E. POWERS, M.D.

ELDER ABUSE AND NEGLECT: PREVENTION AND INTERVENTION

SUMMARY

Abuse and neglect in the institutional setting are significant problems. The frequency of abuse of elderly patients in state hospitals is unclear but statistics are available for community nursing homes. Thirty-six percent of community nursing home staff have seen physical abuse by other staff such as excessive restraints, and 81% have seen psychological abuse such as staff yelling at patients. Eighty percent of nursing home patients are mentally ill or demented. Only 5% will receive psychiatric care. The recent OBRA regulations that pertain to nursing homes will not solve these problems and could drive many mentally ill or demented patients out of the nursing home system. The solution to these problems lies in the education of nursing home staff and physicians about the diagnosis, medical management and behavioral intervention necessary for appropriate care. It may be necessary to train clinical nurse specialists in geriatric psychiatry to screen, diagnose and treat these patients in conjunction with supervising geriatric psychiatrists or physicians with specialty training in geriatric psychiatry.

Elder abuse is a national problem that has many causes and occurs in many settings. Abuse of elderly patients in chronic care institutions is one form that will increase with the rising use of community nursing homes and domiciliaries to care for our aging population. Eighty percent of nursing home patients suffer from some form of mental illness or intellectual impairment (dementia). This group is at particular risk for abuse and neglect.

Two types of institutions provide long term care for the elderly mentally ill or demented person in Alabama. The first is the state public mental hospital. The second is the private nursing home and domiciliary system. Most staff in long term facilities want to provide professional, compassionate care. The staff's lack of knowledge is the major cause of abuse and neglect as well as the major obstacle to improvement of care in the institutional setting.

An elderly patient can be committed to a state mental hospital in Alabama only if the patient suffers from a mental illness that is treatable and the state hospital is the least restrictive environment for that treatment. There is a slow, steady and alarming rise in the number of elderly patients committed to Alabama state mental hospitals as a placement of last resort. A distinct subpopulation, perhaps 5 - 10% of committed elderly patients, are sent because the rural area in which they live has few or no resources to care for demented patients. The families of the patient and the county probate judge are forced to commit the patient to distant state hospitals for appropriate custodial care. There is no infrastructure e.g., nursing homes, adult day care center and/or mental health workers, with essential expertise in geriatrics, in many rural areas of Alabama. There is no clear public consensus that caring for these individuals is a community rather than a state responsibility. This problem will worsen in rural areas where 11% of Americas population lives. Few studies document the availability and quality of psychogeriatric services in rural settings, however, we conclude that few high quality services are available.

Abuse and neglect in the institutional setting results from staff actions and attitudes. No reliable data are available regarding the frequency of abuse of elderly patients in state hospitals, however the frequency is probably no greater than that in nursing homes. Some data are available for abuse and neglect in community nursing homes. Fifteen percent of all direct care personnel in a nursing home are RN's, 14% are LPN's and 71% are nursing assistants. The nursing assistant provides the most direct patient care. The director of nursing is in control of the staff and their education. Few directors of nursing in community nursing homes were previously psychiatric or geriatric nurses and few members of their professional staff have such experience. Previously published surveys of nursing homes have shown that 36% of staff acknowledged incidents of physical abuse by other staff to residents, such as excessive use of physical restraints, and 81% saw psychological abuse, such as yelling at the patient. Ten percent of the staff admitted to physically abusing patients themselves and 40% admitted to psychologically abusing patients. Most abusive actions were not physically harmful and were inappropriate responses to patient behavior that exasperates the staff. In many cases, the nursing staff does not understand the cause of the patients behavior. Many disruptive patient behaviors, such as repetitive asking of the same question, are misinterpreted by staff as intentional (e.g., obstinacy) rather than symptoms of brain damage. Past studies have shown that younger nursing aides with few years of experience, and less education are more apt to abuse elderly patients. A second set of predictors of abuse are dissatisfaction amongst the nursing staff, increased staff/patient conflict and increasing burn-out amongst professional staff. The consequence of this is clear. A population of elderly patients that is at highest risk for abuse, as predicted by their multiple psychiatric and medical problems, is cared for predominantly by young, marginally educated individuals. They in turn are supervised by professional staff with limited experience in psychiatric diseases. The psychiatric back-up for

nursing home personnel is quite limited. Fewer than 5% of patients in nursing homes will receive a psychiatric consultation for their potentially, treatable psychiatric symptoms, despite that fact that 43% will receive neuroleptics and 41% will be physically restrained. Only 7.5% of these patients will be seen by a mental health worker prior to admission to the nursing home facility. Much of the psychiatric care is provided by the family practitioner or the internist who may have little experience in the area of geriatric psychiatry. Most psychiatrists do not visit nursing homes. Psychiatric training and consultation for nursing staff is extremely limited.

There is a consensus of opinion that education is the most powerful weapon for eliminating elder abuse from the institutional setting. Physicians and nurses (RN) need to be educated about the behavioral manifestations of mental illness and dementia in the elderly. The senior nursing staff needs appropriate support to educate their nurse-assistant staff about the behaviors that they will manage in one-on-one situations with patients. Creative alternatives are needed to provide specialty psychogeriatric care in the nursing home setting. Insufficient geropsychiatrists or geriatricians will be available to consult on all of the mentally ill patients in nursing homes in the future. Psychogeriatric clinical nurse specialists may provide the necessary manpower and expertise to accurately assess cognitive status, educate staff, and provide the sort of useful liaison with referral geriatric psychiatrists for the skillful management of patients. In conclusion, education and physician extenders are the most likely method to meet the needs of the rapidly expanding population of elderly, demented and psychiatrically ill institutionalized patients.

Senator SHELBY. Doctor, what kind of statistics do you have, if you have any, regarding abuse? You talked about institutional settings. Let's talk about nursing homes in Jefferson County, since we're in Jefferson County.

Dr. POWERS. I don't have the statistics.

Senator SHELBY. Okay. What about State hospitals, veterans hospitals?

Dr. POWERS. I went through and reviewed the literature, looking for statistics on the elderly, and quite frankly, there are no valid statistics out there that I could find for the elderly.

Senator SHELBY. Okay.

Congressman Erdreich.

Mr. ERDREICH. Thank you, Senator.

Did I get it right that the Medicaid fraud activities of the Attorney General were put on the AG's nationwide at the same time that, almost after the fact, they said also get involved in elderly abuse areas? Is that what you were saying earlier?

Mr. WHATLEY. That's correct. The Medicaid fraud control units were enacted following a series of rather spectacular fraud cases in New York State that were heavily covered by the media and "60 Minutes," and it seemed almost an afterthought that they added the responsibility for investigating and prosecuting instances of abuse in institutional settings.

Mr. ERDREICH. So you've got this dual role, among other roles, that keeps you pretty busy. You mentioned that 75 percent of your funding is Federal. How much funding is coming to Alabama, if you know, for your activity?

Mr. WHATLEY. I don't have the figures on that. The Unit's been in existence since 1978, and we've been a fairly small unit. You know, your cost is based on your salaries and your operations, but the general cost on the Federal end is insignificant compared to some of the other social service agencies in the State of Alabama, as well as Medicaid, which is a substantial amount itself, but we are not a part of the Medicaid agency in the State of Alabama.

Mr. ERDREICH. You also mentioned the amendments to the Alabama Adult Protective Services Act. Was that the 1989 amendments?

Mr. WHATLEY. Yes, sir.

Mr. ERDREICH. Is it since that time, then, that you have had more prosecutions in the area? I'm trying to get some sense of how many cases annually that you are prosecuting that deal with elderly abuse.

Mr. WHATLEY. Well, in the 12 years—well, the Medicaid Fraud Control Unit was set up in 1978, and the amendment was passed in 1989. So in 11 years, there were probably fewer than 10 abuse cases that were prosecuted. Now, that's not to say they weren't investigated, but there was no statute to actually prosecute individuals other than the criminal code.

The problem we ran into was trying to apply the assault statutes, which was by and large what was used, to a situation where you had no victim to testify that they suffered substantial pain. So one of the things we did in the change was to define a "protected person", a protected class of individuals, very much like is done in child abuse cases, to say that this is a special person and they are

entitled to additional protection rather than your ordinary man on the street that might be a victim of an assault case.

Mr. ERDREICH. Okay. Can you give me a figure like in 1990 or 1991—of course, we're only halfway through 1991—of what number of cases have you prosecuted?

Mr. WHATLEY. I saw a figure just last week as I left the office to come up here, and in this calendar year, three-quarters through this calendar year, we have been involved in the investigation of some 210 cases. Of course, you don't have that many to prosecute, because we have to decline—I'll be honest—the majority of those cases for a variety of reasons, most of which is there's no way to substantiate that the abuse actually occurred. We have an injury that could only be caused by an intentional or a reckless act against a victim, but you have no eyewitness, you have no victim that can testify; therefore, you have no case to prosecute under the criminal law.

Mr. ERDREICH. Last question. You said that by regulation you're limited to prosecute institutional settings, and that is because you're deferring to local DAs in any other setting? Why are you limited?

Mr. WHATLEY. We're limited by Federal regulation to cover only those institutions that are Medicaid-reimbursed.

Mr. ERDREICH. Okay, the link to Medicaid again that is the funding basis for what you're doing.

Mr. WHATLEY. As a result, there are cases—there was a very big case here in Bessemer, in fact, a few months ago that went to trial that the District Attorney had to handle. We could not be involved in it. We were aware of the facts and had talked with the Jefferson County Health Department about the facts, and I talked to the Assistant District Attorney that handled the case, but myself and my staff could not be involved in it because it was a boarding home and received no Medicaid reimbursements.

Mr. ERDREICH. Okay.

Thank you, Senator.

Senator SHELBY. Mr. Barber.

Mr. BARBER. I appreciate, Doctor, you and both Bills from the AG's office appearing today.

If you ever want to watch trout swim upstream, salmon swim upstream, these guys here do a whole lot with a very little. I get to feeling sorry for myself every now and then, and I look at what they're doing and realize I haven't got anything to complain about.

Bill, what I was alluding to earlier is the proof problems in the emotional abuse situations. If you can, quickly just give us a couple of things that you've encountered as far as trying to prosecute or even trying to put together a prosecution in a case of emotional abuse where it's just your elder victim, and you don't have anybody else in the room that witnessed anything that this employee of this nursing home did.

Mr. WHATLEY. Well, it's like running into a stone wall, because, again, as I said, most of the time the victim can't testify. What you have is a situation where a caregiver, an employee of a facility, will threaten an individual.

We had a case in a county in east Alabama where a nurses aide would come up and would tell the elderly lady that she was going

to kill her or that they were just going to let her die and when she died they were going to bury her right outside her window in the bushes and nobody cared about her, and just would drive her into tears, and she feared constantly. But by the time we were ready, we put together the information, the victim had progressed to a stage of dementia where she had no recall, even though she had told our investigators this was what had happened and how she felt threatened. By the time we were ready to go to a grand jury, she couldn't testify at all, and so we had nothing to go with.

Mr. BARBER. Okay.

Mr. WHATLEY. At one point, we attempted or had at least discussed the possibility of amending the Code of Alabama through our abuse statute to allow the victims in these cases to use their prior testimony when we came to trial, but we ran into confrontation clause problems with that, as well as the monumental task of anything we attempt to do in this area, the health care industry is very well-funded, very well-oiled, well-heeled, and gets whatever they want from the Alabama legislature, and we're stuck with just poor government workers that go up and try to say, "But we have victims out there suffering," and we can't get anyone to listen to us.

If I had had this many people go with me to the legislature, we'd have a much better abuse statute than we've got now. But, unfortunately, it's a very large, silent group that is very concerned about this area. The professionals that have testified in front of this committee today spend all of their time and get very little results when it comes down to politics to try to get additional funding or better laws to help us do our jobs better. It's very discouraging at times. Like I said, the rewards are few.

Mr. BARBER. Again, thanks for what you all are able to do. I appreciate it.

Senator SHELBY. I want to thank all of you for coming here today, the panels——

Mr. ZUKOWSKI. Mr. Chairman, before you go on with your closing remarks, we have a lot of citizens up here who might like to say something.

Senator SHELBY. Absolutely. Go ahead.

Mr. ZUKOWSKI. We have a very well-organized program, and a few of us up here might have a few ideas. Would you give me 3 minutes?

Senator SHELBY. Sure. Go ahead.

STATEMENT OF CHARLES ZUKOWSKI, BIRMINGHAM, AL

Mr. ZUKOWSKI. I'm Charles Zukowski of Birmingham, and I'm very much concerned about the problems of the elderly. I'm almost 93 years old now myself, and I'm very much anxious to see all of the forces that we have in this country dealing with the problem.

Obviously, the problem is not only that of the Federal Government, but the problem is that of families who ought to be taking care of their elders. The problem is for the States, for the localities, for charities, for the private efforts, but I think the Federal Government has a tremendous obligation because it has the taxing

power, it has the concern of the whole country to deal with, and it should be actively dealing with the problems of the elderly.

To do that requires money, and we are strapped right now with a terrific debt and with a deficit that is getting entirely out of control. At the present time, the public debt is over $3 trillion—$3.25 trillion. The Federal deficit is $300 billion a year. This year and probably next, the debt is going to approach $4 trillion. Do you know how much a trillion is? It's a million millions. It's a thousand billions. Until we get the Federal Government's fiscal affairs in shape, we're not going to be able to deal with this and many other problems.

Now, the House committee recently voted for $295 billion just for the defense budget. In Birmingham here a few years ago, we had all the former defense ministers. They testified, many of them, that the defense budget, now that the Cold War is over, could be reduced at least a third. Some said a half. We have no business spending $295 billion on defense when these other needs are so critical.

So what I ask you to do on behalf of the citizenship is to consider this fiscal situation. You've got to do two things. You've got to cut expenditures. A lot can be done in that direction on national defense. But you've also got to increase taxation. This is wealthy nation. We can meet these needs, many of them, and you in the Federal Government can give us great help in doing so, but you've got to decide this fiscal problem.

The Bush and previously the Reagan Administration provided no leadership in this direction. Congress, for the most part, has gone along—including the Democrats, some of you are Democrats—with this process of borrowing our way into a kind of prosperity, but the main problem now is to aim toward that balancing of the budget, toward some reduction of the debt, and to providing the funds that we need to meet these needs, including those of the elderly.

Senator SHELBY. Thank you.

I agree with Mr. Zukowski that the number one and I believe the central problem of America is the national debt and the deficit, and you're absolutely right.

Lastly, I want to include a statement prepared by State Representative John Curry, a member of the Alabama Legislature, which will be made part of the record.[1]

Thank you for coming.

The Committee is adjourned.

[Whereupon, at 12:30 p.m., the committee adjourned, to reconvene at the call of the Chair.]

[1] See appendix, p. 70

Item 1

June 29, 1991

PREPARED STATEMENT BY
ALABAMA STATE REPRESENTATIVE JOHNNY CURRY,
R-HUEYTOWN

Good morning, I am Johnny Curry, state representative from Hueytown, Alabama.

Mr. Chairman, you are to be commended for your efforts on conducting this hearing on the important issue of elder abuse and neglect. This issue is a serious one that demands consistent attention and action both at the federal level and at the state level. I would like to share with this committee what our efforts have been to address this problem at the Alabama state legislature.

It is a great concern of mine and shocking to know that approximately five percent of our nation's senior citizens suffer from some form of elder abuse. The estimate of over 1.5 million victims does not fully convey the extent of this problem. Certainly, as we all know, victims of elder abuse are timid and fearfully hesitant to report incidents of abuse. Research data indicates that only one of every eight cases of elder abuse is reported. Recent Congressional hearings ominously document that the rate of abuse is on the increase.

For example, here in my home county of Jefferson, between the months of October 1990 through May 1991, 914 cases of elder abuse were reported to the Alabama Department of Human Resources. Through October 90 to March 91 3,622 cases were reported statewide. It does not take a whole lot of calculation to figure, if typically, only one case in eight are reported these official numbers do not give us a true accounting of abuse incidence.

I have submitted a bill in the Alabama state legislature to address our concern for abuse reporting. Republican state senator, John Amari, has introduced this bill in the upper chamber. My bill requires by law for employees of nursing homes and other care facilities to report the neglect or abuse of the sick or elderly to law enforcement or to the Alabama Department of Human Resources.

One of the biggest problems with cracking down on abuse of the elderly is that almost all abuse is hidden and never reported to anyone. This bill will change that. For instance, once this bill is implemented if an employee saw that a patient is being neglected by not being properly fed, or not turned regularly and is eaten up by large bed sores, or a nurses aid is physically or mentally abusing a patient, or raping a patient who is incapacitated, or improperly strapping or restraining a patient for convenience or punishment, when an employee finds this out, he or she must report by law the abuse.

There is also an anti-retaliatory feature in this bill that makes it illegal for an owner or operator of a nursing home to retaliate in any way against an employee or patient who does report abuse under this law. Prosecutors will tell you that too many times when a care facility employee follows his or her conscience and reports abuse of a patient, their reward is they get fired. This anti-retaliatory provision will protect those who do the right thing by reporting abuse and neglect.

Mr. Chairman, America is undergoing an historic transformation -- the greying of our population. By the end of this century, there will be 31 million people in the 65 age and over category. By the time the entire Baby Boom generation retires there will be some 55 million Americans over 65, and they will comprise about 18 percent of the population. According to a study by the Agency for Health Care Policy and Research - one of every 11 Americans who turned 65 in 1990 will spend at least five of his or her remaining years in a nursing home environment. Women turning 65 in 1990 are over three times more likely than men to need five years or more of nursing home care. In fact, almost eight of every ten persons who will spend five years or more in a nursing home will be women. In Alabama our senior population of sixty-five and older is approximately 523,000. Our state is a growing but graying state.

Coming to grips with the problems of abuse associated with the aging of the American population is a task that needs to be addressed presently. I and my colleagues in the Alabama legislature take seriously the invocation to "Honor thy father and thy mother." Through hearings such as this -- elder abuse is not swept silently under the carpet but is made a part of the public conscience and public agenda.

I will keep my colleagues in the state legislature apprised on the findings of this hearing. We will also keep this U.S. Senate Committee informed on the status of our elder abuse reporting bill. Thank you.

Item 2

JUN 1 ? 1991

AMERICAN PUBLIC WELFARE ASSOCIATION

6-8

James L. Solomon, Jr., President
A. Sidney Johnson III, Executive Director

May 17, 1991

Mary Rose Oakar
U.S. House of Representatives
2231 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Oakar:

On behalf of the American Public Welfare Association, thank you for introducing H.R. 385, the Prevention, Identification, and Treatment of Elder Abuse Act of 1991. We appreciate your recognition of the federal government's role in assisting states to respond to elder abuse and the importance of establishing a National Center on Elder Abuse to support these efforts.

The enclosed is a summary of comments on H.R. 385 from several administrators of adult protective services agencies. While not all states participated in our discussions of the provisions, these comments represent the majority view of the states that did participate. We believe that the proposed changes will strengthen the bill by taking into account the wide variety in state administrative structures, policies, and laws relating to elder abuse, neglect, and exploitation.

We are pleased that you are taking steps to include the legislation as part of the Older Americans Act reauthorization package. This vehicle may represent the best prospect for successful passage of the bill this session. Please do not hesitate to contact me or Jennifer Miller of my staff if we can be of any assistance.

Sincerely,

A. Sidney Johnson III
Executive Director

enclosure

810 First Street, N.E., Suite 500, Washington, D.C. 20002-4205 (202) 682-0100 FAX: (202) 289-6555

Summary of Comments on H.R. 385, the Prevention Identification and Treatment of Elder Abuse Act of 1991

Definitions
Section 3, Page 3 (line 25)

State adult protective service (APS) administrators would like clarification on whether or not the state definitions must be identical to the definition in this Act in order to qualify for funds. State definitions of elder abuse and neglect vary widely, but for the most part, are consistent with the intent of the definition in H.R. 385. State administrators would like to be assured that the law will not require exact conformity with the definition in the Act as a condition of eligibility for federal funds. We believe this distinction must be made in the legislation.

(Line 25) - "willful" is a subjective phrase not suited for inclusion in a federal definition. In addition, several states investigate for reasons of sexual exploitation. Finally, states believe the last phrase "or the willful deprivation by a caretaker of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness" should be deleted. This phrase is encompassed in the definition of "neglect" at page 4, line 16.

Proposed change: The definition should read: (1) the term "abuse" means the infliction of injury, unreasonable confinement, intimidation, sexual exploitation, or cruel punishment with resulting physical harm or pain or mental anguish.

Page 4 (line 9) - We are assuming that a comma (,) is needed after the word "care" for the sentence to make sense.

Page 4 (lines 13 and 19) - We propose replacing the word "caretaker" with the word "person" in recognition that it is not only a caretaker who may be exploiting an elderly vulnerable adult. This may also be amended by adding the language "or of any other individual" after the word "caretaker" on lines 13 and 19.

Page 5 (line 3) - State APS administrators support the activities outlined in (1) - (3), but believe it should read "may be, but are not limited to" to allow for changing priorities and the development of innovative programs.

The states also believe there should be language to require coordination with existing APS activities in the state to avoid duplication of services and to enhance communication between agencies with similar functions.

Page 6 (lines 1-5) - States are not clear on which entities are eligible to receive state grants. They believe that open ended language in this regard may lead to funding of agencies who do not have statutory responsibility for adult protective services in the state, which would only lead to further duplication of efforts and lack of coordination.

Proposed Language - "funds for this section are available to the agency that has the statutory responsibility for adult protective services in the state."

Page 6 (line 6) - States believe that some of the eligibility requirements (A-J) are essential, while others are activities that the state should undertake with the funds provided in this Act. States are in very different stages in developing their APS systems, and are concerned that some items are unreasonable as conditions that must be met in order to receive funds intended to assist in "developing, strengthening and carrying out elder abuse, neglect, and exploitation prevention and treatment." Items D, F, and J are identified as not appropriate as conditions that must be met in order to receive funds. The following proposed changes will take into account these concerns:

(A) - O.K. as written;

(B) - This should read "provide for the mandatory reporting of known and suspected instances of elder abuse, neglect, and exploitation; or have a statewide public education outreach program that assures that suspected incidences of elder abuse are identified."

This amendment is intended to allow those states that have not adopted mandatory reporting laws to choose the option of a statewide public education outreach program, which can be as effective as mandatory reporting laws.

(C) O.K. as written.

(D) While the states in no way disagree with the importance of well trained personnel, training procedures, and multidiscipiinary programs, they believe the funds provided under this Act should be used to help improve these functions. This section should be included in a section on activities states should undertake with the funds provided under the Act.

(E) O.K. as written.

(F) States believe this is a goal they should work towards with funds provided under the Act, and should not be an eligibility requirement.

(G) O.K as written

(H) States would like to see a 75 percent federal match for this program. State agencies have been developing their adult protective services systems over the past several years with little federal assistance, and given the current fiscal crises in most states, we believe that a 75 percent match is more appropriate.

(I) O.K. as written.

(J) States believe the establishment of clearinghouses is an activity that can be undertaken with the funds provided under the Act, and should not be an eligibility requirement. Several states commented that clearinghouses can be expensive to develop and maintain, and are not effective if poorly funded or staffed. We note, too, that the establishment of a clearinghouse is a function proposed for the National Center on Elder Abuse. In that respect, state clearinghouses might constitute unnecessary duplication of effort.

States also suggest that the Act encourage the development of statewide hotlines. Hotlines are envisioned as an activity to be suported by the Act, not a condition for receiving funds.

Page 9 (Line 3) - States seek clarification on the phrase "to the extent possible, citizens of each qualifying State shall receive assistance from at least one project under this section." States are concerned that this language bears relation to the funding formula and think it should be clarified.

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Item 3

THE NEW YORK TIMES **NATIONAL** MONDAY, JUNE 24, 1991

Electronic Fraud Victims Seek Congress's Aid

Special to The New York Times

WASHINGTON, June 23 — It is a paradox of the electronic age that the technology that has saved lives, work and time for millions has also provided the unscrupulous with new techniques for bilking the unwary. Victims of those techniques are now turning to the Government for help.

Facing this explosion in electronic fraud, totaling billions of dollars in losses each year, Congressional subcommittees began a series of joint hearings last week focusing on the methods, victims and solutions for fraudulent solicitation.

Advances in technology have made theft by fraud difficult to distinguish, with victims, many of them elderly, often remaining ignorant of their losses until they receive an unusually low bank statement or when a delivery of second-rate merchandise leaves them to search for hucksters who have already picked up and moved.

The telephone is the weapon of choice among a new generation of electronic criminals. Once they have a potential victim on the phone, dishonest telephone solicitors use a variety of lures and offers to make money, members of a Congressional subcommittee were told last week. Such solicitors often sell low-quality and over-priced merchandise, sometimes offering "free gifts" as an added inducement. But often, witnesses said, the goal is to persuade victims to disclose a credit card or bank check number, which can be used to rob their accounts electronically.

Many Victims Are Elderly

About a third of the victims of such fraud are older than 65, said Representative Edward R. Roybal, Democrat of California, who is chairman of one of the subcommittees holding the hearings, the Subcommittee on Health and Longterm Care. The elderly are especially susceptible to phony investment schemes, a Federal Trade Commission document says, because of "their desire to increase their retirement income." Other schemes to which the elderly are particularly vulnerable include those offering time-share properties and vacations.

"There are hundreds of thousands if not millions of victims of telemarketing fraud each year," Dennis Brosan, security director of Visa USA Inc., the credit card company, told a joint hearing of two House panels, the subcommittees of the Committee on Small Business and the Select Committee on Aging.

Emerging as one of the latest and potentially most dangerous means of fraudulent telemarketing is the use of bank debit drafts.

Witnesses described how unscrupulous telemarketers will persuade victims to reveal the numbers printed on their checks. The numbers are then printed onto a magnetically encoded form, which the operator deposits in his own bank, and money is withdrawn from the victim's account without any other authorization. When the fraud is caught, the victim's bank will restore the money. But by that time, the company often has moved, setting up under a new name and leaving the telemarketer's bank liable for the money.

A Victim Testifies

Highlighting the ease with which fraudulent telemarketers can bilk unsuspecting victims of hundreds and thousands of dollars and the immense profits that can be made through such operations, a victim of such a telemarketer testified at the hearing.

James Searles of Orange, Conn., said he was defrauded of $396.12 after he ordered 100 pens imprinted with the name of his business. He was told that along with his pens, he would receive a free home entertainment center and a refund certificate worth $400. He received the pens, with a misprinted address, the refund certificate, which he said appeared to be redeemable for food coupons, and another certificate promising the home entertainment center if he sent another $69 for shipping and handling.

Mr. Roybal and Representative Ron Wyden, Democrat of Oregon, chairman of another subcommittee involved in the hearings, the subcommittee on Regulation, Business Opportunities and Energy, are drafting legislation that would require bonding and registration and would speed the prosecution of fraudulent operators.

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