

Prosecuting Elder Abuse:

A First-Hand Account

Page Ulrey

I didn't know what elder abuse was when I agreed to become our office's first dedicated elder-abuse prosecutor. It was 2001 and Norm Maleng, my boss and the elected prosecutor for King County, Washington, had decided it was time for our office to respond to this growing issue. He had seen Paul Greenwood, San Diego County's elder-abuse prosecutor and a passionate advocate for abused elders, speak on the subject and was inspired to create a similar position here. At that time, there were only a handful of dedicated elder-abuse prosecutors in the country, most of them in California.

Maleng had the foresight to know that my job would involve more than simply prosecuting cases. My duties were threefold: to prosecute cases, to train first responders and other professionals to better recognize and report abuse, and to work on improving the coordination between the county agencies who respond to it.

Elder abuse from a criminal-justice perspective is physical or sexual abuse, neglect, or financial exploitation of an elder by a trusted other. The trusted other may be a stranger who targets the elder and develops a trust relationship with them, or it may be someone who takes advantage of a preexisting relationship and perpetrates a crime against them. The results, even when the crime is financial exploitation, are devastating. According to a recent study, any form of even modest elder abuse increases the elder's risk of premature death by 300%.¹

As I educated myself on the subject, I began to look around the office for cases to handle. I found them scattered throughout our various units: financial exploitation was being handled by our fraud unit, physical abuse by our domestic-violence and mainstream trial units, and sexual assault by our special-assault unit. The one form of abuse, I found, that none of the units seemed to be prosecuting was neglect. So it was on that issue that I chose to focus my new practice. Neglect was the second most common type of referral received by Adult Protective Services (APS), so I thought there shouldn't be an issue with getting the cases.

I began to do outreach to the larger police agencies in the county, to APS, and to local hospitals. But despite my efforts, the number of neglect cases that came in was frustratingly low. Tracing them upstream, I found that few reports of neglect were being made to law enforcement. Even when they were reported, the police were rarely, if ever, investigating the cases. This, I came to learn, was due to the fact that these cases were extremely complicated, involving medical, financial, and cognitive-capacity issues. For law enforcement to respond to them properly, they needed both substantial training and access to experts with whom they could consult—they had neither. Further, law enforcement rightfully felt that there was no point in investigating these cases because they would not result in prosecution. Adult neglect had historically resided in a land of civil

lawsuits and administrative sanctions, not criminal charges. Despite the fairly robust criminal-neglect statutes in Washington State, no one was treating these cases as criminal.

I soldiered on. I began to conduct trainings of law enforcement and other first responders on how to identify and respond to neglect and other forms of elder abuse. With the assistance of our Medical Examiner, I formed the King County Elder Abuse Council, a group of stakeholders in the community who came together every month to discuss the many systemic changes that were needed in our county in order for us to begin to prevent and properly respond to elder and vulnerable-adult abuse. I developed working relationships with a handful of nurses and doctors, in particular Laura Mosqueda, M.D., a wonderful geriatrician at the Keck School of Medicine and one of the leading experts on the medical aspects of elder abuse and neglect. Very slowly, the cases began to trickle in.

As I acquainted myself with actual cases of neglect, the barriers to prosecuting them quickly came into view. In most of my early cases, there were serious failures not only of the individual caregivers, but of the system as a whole. Rather than one person being responsible for the neglect, there were numerous people or agencies who had contributed to it. In one death case I handled, the state agency that oversaw the quadriplegic victim's care failed to take action despite clear signs he was no longer leaving the house, was severely underweight, and had a foster mother who herself appeared to be ailing. In that case, the victim's doctors had also done nothing when his foster mother stopped taking him to his appointments. He died weighing fewer than 40 pounds. In another case, the nurse hired by the state to examine the bedbound quadriplegic victim simply asked the caregivers how she was doing rather than examining the victim herself. When the caregivers said she was doing fine, the nurse simply checked the boxes on her form as if she had examined the patient herself. A few weeks later, the victim ended up in the emergency room with massive pressure sores on her knees; she died a few months later. In another case, APS had closed their case after the alleged victim of neglect, an elderly woman with probable dementia, refused to be evaluated. She was later found dead, lying in filth, with maggots consuming her lower extremities. Because these early cases involved such significant failures of the system as well as the individual caregivers, rarely could I file charges. Besides being unethical, such prosecutions would likely have resulted in not-guilty verdicts.

As the months passed, law enforcement, APS, and the public became more aware of my office's interest in these cases. Reports increased and investigations improved. I eventually expanded my practice to bring in cases of financial exploitation, a form of elder abuse with which we have much greater success in prosecuting. Eventually, my current boss, King

Footnotes

1. iXinQi Dong, et al., *Elder Self-Neglect and Abuse and Mortality Risk*

in a Community-Dwelling Population, 302(5) J. AMER. MED. ASS'N. 517-26 (2009).

County Prosecuting Attorney Dan Satterberg, appointed a second prosecutor to handle the office's elder-abuse cases. Now, 16 years later, we have never been busier.

Over the years, I have come to learn that what makes a case of serious physical neglect potentially criminal: multiple, severe untreated or improperly treated pressure sores combined with other physical signs of poor care; a treating physician or medical expert who is of the clear opinion that the victim's symptoms are due to neglect versus underlying disease; a caregiver, whether paid or unpaid, who is unambiguously responsible for the victim's care; and a financial motive for the caregiver to neglect the victim, such as hastening the victim's death to speed up an inheritance or keeping the victim in the home to continue to have access to her income.

At the heart of most cases of elder abuse is the issue of cognitive capacity. The defense most often raised is consent—that the victim wanted to give her money to the suspect, agreed to the sexual act, or, in the case of neglect, refused medical care. For us to determine whether the victim truly did consent, we must answer the question of whether he or she had capacity to do so. Obviously, if so, and if the consent was knowingly and freely given, then, no matter how much we don't like the decision to consent, we have no criminal case.

Our first task in a case where consent is likely to be raised is to look at what evidence we have of the victim's mental capacity at the time of the incident. This can be challenging, because we often don't receive these cases until months or even years after the crime has occurred—often, the victim is severely demented or dead. Records from the victim's primary-care provider are essential. Sometimes these records show a well-documented history of dementia with thorough testing to back it up. More often, however, they don't.

This is true for a number of reasons. One is that most people suffering from dementia don't know it and thus don't complain about it to their doctor. Even when patients do complain of memory loss, health-care providers often conduct insufficient screening for it. The most common screening tool we see implemented by doctors is the Mini-Mental State Examination, a short test that assesses for memory loss but not for the loss of judgment that so often accompanies early dementia. In many of our cases, victims of financial exploitation who have given away their life savings to someone they barely know have scored well on this test. Only when they were given other tests that include assessment of executive function, such as the St. Louis University Mental Status test (SLUMS), the Montreal Cognitive Assessment (MOCA), or the Frontal Assessment Battery, was their impairment revealed. Perhaps another disincentive for doctors to conduct thorough testing is the lack of viable treatment and cure for this awful disease. Whatever the explanation, it's a rare case we receive where a primary-care provider has done a thorough work-up of the victim's cognitive impairment.

When we are without good medical evidence, we instruct law enforcement to obtain a capacity evaluation of the victim.

In Seattle, we are blessed with geriatric psychologists and social workers with experience in conducting capacity evaluations at a reasonable cost. However, prosecutors in many—if not most—other jurisdictions have no one to turn to for such an evaluation. Often, they will rely entirely on the records of the primary-care provider. So if that provider has failed to recognize that a patient is suffering from dementia, the prosecutor is likely to interpret those records to mean that the patient had cognitive capacity and, thus, that he or she consented to the act that's at issue.

Cases of elder abuse almost always require a multidisciplinary response. Capacity evaluators are crucial partners to the criminal-justice system, as are APS workers, advocates, civil attorneys, forensic accountants, and geriatricians. We need APS and advocates to address the victim's many service needs after the abuse, neglect, or exploitation is uncovered and civil attorneys to help them with their legal needs. We need forensic accountants to help us sort through and analyze the stacks of financial records that often make up these cases. This is true even in some of the neglect and abuse cases we bring, as financial exploitation is often co-occurring or financial gain is the perpetrator's motive. We need geriatricians to help us determine whether the victim's injuries were due to the intentional actions of a perpetrator versus a fall or underlying disease process.

Even in my relatively resource-rich jurisdiction, it is the unusual case of elder abuse that is actually reported, investigated, and prosecuted. One recent study found that for every one case of abuse that comes to light, another 23 do not.² Financial exploitation is reported even less often, and neglect even less than that. I am not an advocate of prosecution for every one of these cases. Some of the less serious ones may be better handled by APS or family members through the use of civil legal tools like protection orders or powers of attorney, by offering treatment to the perpetrator, or simply by reducing the elder's isolation, connecting him or her with social services or financial monitoring or both. This is particularly true in cases of financial exploitation when the victim wasn't substantially harmed and the perpetrator is a family member, someone with whom the victim wants to continue to have a relationship. In so many of our cases, the victim is widowed with few if any friends or family members left, so cutting the perpetrator completely out of the victim's life could isolate and traumatize him or her even further.

But because we handle felonies, the cases of mild abuse, neglect, and exploitation are ones we rarely see. Our neglect cases are serious, the victim usually dead. Our financial cases most often involve a victim who is depressed and deeply ashamed, having lost an entire life savings to someone who was deeply trusted. Our physical-abuse cases involve serious injuries, sometimes homicides. And our sexual abuse cases are usually rapes, most often involving victims with advanced dementia. The victims are male and female, from all ethnicities and socioeconomic brackets. The qualities they tend to share are dementia and social isolation.

2. MARK LACHS, ET AL., UNDER THE RADAR: NEW YORK STATE ELDER ABUSE PREVALENCE STUDY (LIFESPAN OF GREATER ROCHESTER, INC., WEILL CORNELL MEDICAL CENTER & NEW YORK CITY DEPT. FOR THE

AGING 2011), available at <http://ocfs.ny.gov/main/reports/Under%20the%20Radar%2005%2012%2011%20final%20report.pdf> (last visited June 12, 2017).

I have been working on elder-abuse issues for 15 years now. Though the grimness of the cases remains the same, we have made some progress. Thanks to a small grant program of the Office of Violence Against Women, there are now dozens of dedicated elder-abuse prosecutors and detectives across the country. The program funds a national prosecutor's course and a judicial training on elder abuse, not to mention local trainings for law enforcement and direct service providers. Federal funding for research and assistance to local prosecutors and law enforcement is increasing somewhat. There is more and better media coverage and public awareness of the issue, resulting in increased reporting, and, in some jurisdictions, better responses to those reports.

With any luck, judges across jurisdictions will see an increasing number of these cases in the coming years. It's crucial that judges learn about dementia and cognitive impairment, including the fact that older adults whose memories are fairly intact and who may be competent to testify may nevertheless suffer from significant deficits in their executive function, which controls their ability to make good decisions for themselves—their judgment. Judges need to know about the various capacity-screening tools and what they can—and cannot—tell us about a person's cognitive status.

It's similarly crucial that judges be made aware of the damage that can be done to these cases—and to these victims—when cases are allowed to languish. It's important for judges to be given information on how much is at stake for elder-abuse victims themselves—the shame they may feel at the fact of their victimization, their legitimate fear that its airing could result in loss of their independence or their home, their frequent belief that cooperating with the justice system against someone they love will result in that relationship forever being severed. Elder abuse needs to become a standard part of judicial training.

We are finally making a small degree of headway on this

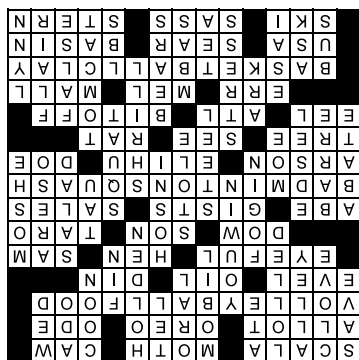
complex and devastating problem, but we need to make so much more. We need to fund more research, prevention, training, multidisciplinary teams, dedicated detectives and prosecutors, public-awareness campaigns, and services to protect elders and reduce social isolation. If we continue at our current pace, we will be entirely ill-equipped to handle the tsunami of cases that is steadily making its way toward us as our population ages.



Page Ulrey is a Senior Deputy Prosecuting Attorney at the King County Prosecutor's Office. She graduated from Amherst College and Northeastern University School of Law. Page was appointed to the newly created position of elder-abuse prosecutor in the Criminal Division of her office in 2001. In that position, she prosecuted cases of elder and vulnerable-adult neglect, financial exploitation, sexual assault, physical assault, and homicide. She also founded and chaired the King County Elder Abuse Council and Criminal Mistreatment Review Panel. Since September 2007, Page has been working as an elder-abuse prosecutor in her office's Economic Crimes Unit, where she specializes in the prosecution of cases of elder financial abuse and neglect. For the past seven years, she has worked on protocol development and been a member of the national training team on elder-abuse investigation and prosecution for the Office on Violence Against Women. She has conducted trainings for the National District Attorneys Association, the Office for Victims of Crime, and the National Institute of Justice. She has testified before the U.S. Senate Special Committee on Aging, has spoken twice at White House conferences on elder justice, and is currently involved in the production of videos on elder-abuse prosecution for the Department of Justice.

Answers to Crossword

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