INTERDISCIPLINARY RECOMMENDATIONS ON COURT RESPONSES TO ELDER ABUSE

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The long-neglected problem of elder abuse, exacerbated by the “graying” of the “baby boomer” population, will have a tremendous effect on the nation’s health, social, and justice resources. Courts must act now to put mechanisms in place that will improve their awareness of and response to elder abuse.

Elder abuse and financial exploitation will appear in increasing numbers on the civil and criminal dockets. . . . Every court needs to take a close look at their preparedness, because the numbers are coming whether they’re prepared or not.

Sally Hurme, AARP

In 2006 the first of the “baby boomers” (those born between 1946 and 1964) began turning 60 and are rapidly approaching retirement age. By 2030, the number of people older than 65 in the United States will exceed 71 million—double the number in the year 2000. In fact, the U.S. Census Bureau reports that the 85-plus group is the fastest-growing demographic, with projections that the number of people age 85 and older could quadruple by 2050.

Elder abuse will become more ubiquitous as a consequence of the changing demographics of the United States. State courts are uniquely positioned to create programs and policies that will improve court responses to the growing problem of elder abuse. Problem-solving tools can be adapted and modified to build elder-friendly programs. The time for strong judicial leadership that will hasten innovative solutions to the millions of older persons who experience abuse, neglect, and exploitation is now. This article outlines recommendations made in a policy paper by the National Center for State Courts in 2007.

Defining and Measuring Elder Abuse

Legal definitions of elder abuse vary across states, tribes, and territories. In general, elder abuse refers to the abuse, exploitation, and neglect of older persons. The National Center on Elder Abuse describes seven primary types of elder abuse:

- physical,
- sexual,
- emotional,
- financial exploitation,
- neglect,
- abandonment, and
- self-neglect.  

While damage inflicted by physical abuse may be obvious, the effects of emotional or psychological abuse—humiliation, intimidation, and fear—are much more difficult to detect.

The abuse of older Americans is poorly documented, particularly by the courts. Yet evidence indicates an increase in elder abuse—a 2004 survey of Adult Protective Services (APS) investigations showed a 20 percent increase since 2000 in the combined total of reports of elder and vulnerable adult abuse and neglect. Indeed, at any point in time, between one and two million vulnerable elders may be experiencing mistreatment. Current estimates suggest that there may be at least five million elderly victims of financial abuse each year. The overwhelming majority of elder abuse occurs in a domestic setting, and most alleged perpetrators are adult...
children, spouses or partners, or other family members. There is a continuing need for research about the incidence and prevalence of elder abuse.

Innovations

The problem of elder abuse is becoming increasingly apparent to judges and court staff. In 1997, the American Bar Association (ABA) published the first curriculum for judges and court staff, based on the ABA Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse. In 1999 Florida’s 13th Judicial Circuit Court established the Elder Justice Center to assist the elderly with issues related to guardianship, criminal, family, or other civil matters. In 2002 the Alameda County Superior Court in California created the nation’s first specialized court docket for elders—the Elder Protection Court program, which provides civil remedies for elders and hears felony elder and dependent-adult abuse cases. In 2004, the state of Louisiana provided elder abuse training for its entire bench at their annual judicial institute, and the American Judges Association offered its first seminar on elder abuse.

In 2005 the National Center for State Courts (NCSC) created the Elder Abuse and the Courts Working Group, a multidisciplinary group of experts and practitioners whose mission is to improve court identification of and response to elder abuse. In 2006, the Working Group held its first national meeting in Williamsburg, Virginia. In 2007, members of the Working Group helped the NCSC identify four issues that encumber court responses and develop recommendations to improve court responses.

The Complexity of the Problem

Elder abuse is a complex civil and criminal issue. Definitions of elder abuse vary from state to state, compounded by varying legal classifications of types of mistreatment. Some of the risk factors, particularly social isolation and mental impairment, make it difficult for the justice system to identify the problem and to follow up with appropriate remedies. Additionally, cases of financial abuse that target the elderly specifically (e.g., consumer scams, telemarketing fraud) often cross traditional legal jurisdictions, creating challenges for limited-jurisdiction courts in states that lack unified court systems. Solutions require innovative approaches, such as coordinated responses across agencies and jurisdictions.

Low Levels of Awareness Among Judges and Court Staff

Older persons appear in court every day as victims, defendants, petitioners, jurists, and witnesses. Yet very few older persons will demonstrate obvious signs of physical, financial, and emotional abuse. Rather, elder abuse is subtle—abusers often rely on the vulnerability of an individual and the court’s reluctance to address questions of mental capacity, consent, and undue influence. While elder abuse is a growing problem, few cases ever come to the attention of the authorities.

From a criminal standpoint, elder abuse cases are challenging to prosecute; a survey of prosecutors found that the most difficult aspects of prosecuting elder abuse cases are diminished mental capacity or physical health of the victim, cooperation by the victim, proof of undue influence, and witness intimidation. Consequently, courts hear a relatively small number of cases that are identified as elder abuse, and without screening mechanisms and training to detect the more-subtle nature of abuse and neglect that may be present in a variety of cases, the problem remains hidden.

Access to the Courts

Access to justice is a basic American right. Accessibility includes courtroom modifications that provide maximum access to elders and people with disabilities. To
date, few courthouses have been retrofitted to accommodate the growing number of older persons. The Eleazer Courtroom at Stetson University College of Law is the only model courtroom in the country designed specifically with the needs of elderly parties in mind. Accessibility also calls for docket management that takes into account the age and health of the parties involved—cases can be sped up to ensure that justice is served during an older person’s lifetime. Similarly, cases involving older victims can be scheduled around physical impairments or limitations that impact cognitive ability during certain hours of the day. The ABA’s Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse lays out specific case management strategies that can be used in cases where an older person’s capacity is at issue.  

Traditional Court Structures vs. Problem-Solving Approach

The traditional court structure compartmentalizes cases by type—criminal, civil, family, probate. Yet cases with an underlying element of elder abuse often occur in a variety of guises. While each type of court addresses the specific complaint, there is no systemic coordination to ensure that the courts’ actions are consistent, or that the remedies are followed. A problem-solving approach that incorporates input from local, community-based victim-services organizations to provide holistic remedies and links to resources is ideally suited to providing recourse to victims of elder abuse. With few exceptions, courts have yet to embrace practices geared toward the aging community. While impediments and challenges remain, there are solutions that can help courts improve the identification of and response to elder abuse. Judicial and court staff awareness is the first step toward recognizing ways in which elder abuse may be impacting cases in front of the court. Innovation, communication, and outreach can be used to create processes and partnerships that serve the interests of older persons. Above all, leadership is instrumental for the courts to address the problem of elder abuse and take concrete actions that signal more balanced and appropriate justice.

Policy Paper Recommendations

In 2007 the NCSC crafted a policy paper aimed at improving court responses to elder abuse, neglect, and exploitation. At the time of this writing, the policy paper was being considered for a resolution of support from the Conference of Chief Justices and the Conference of State Court Administrators. The following recommendations strive to improve court capacity to identify and respond to elder abuse, neglect, and exploitation.

**Recommendation 1: Create a national resource for the courts on aging issues, elder abuse, and guardianship.**

A centralized clearinghouse—the Center for Elders and the Courts (CEAC)—should be created to provide resources, training, research, and technical assistance to state courts. The CEAC will be guided by a steering committee of judicial, court, and academic experts to create the foundation and mission of the organization. In addition, the CEAC will work closely with an advisory board representing multiple disciplines (e.g., judiciary, court staff, attorneys, adult protective services, elder-rights advocates, law enforcement, academia) to enhance cross-agency collaborative efforts. The Center for Elders and the Courts will initially focus on aging issues, elder abuse, and guardianship.

**Recommendation 2: Develop national and statewide model practices.**

National model practices pertaining to matters such as case screening, judicial
and court staff training, community coordination, and court responses must be researched, implemented, evaluated, and documented. Using the national model practices, state courts should develop models that will guide courts in responding to cases involving elder abuse. State model responses will be specific to the laws and court systems operating in each state.

Recommendation 3: Encourage local courts to examine current responses and develop innovative solutions to elder abuse.
Each court should examine its current response to elder abuse as it appears in criminal, civil, family, and probate cases. This examination will include, at minimum, an analysis of how cases enter the court, ways in which elder abuse are identified, and issues that routinely affect these types of cases. Courts will develop strategic action plans that include input from a variety of disciplines and agencies with expertise on the local aging population and court statistics that are currently collected on elder abuse cases. Courts must be innovative in creating solutions such as specialized dockets, vertical case management, case screening, judicial training, and community partnerships.

Recommendation 4: Ensure that both judicial and nonjudicial staff are trained on aging issues and elder abuse.
Court systems should recommend that judicial and nonjudicial staff be regularly trained and updated on both aging issues and elder abuse. At minimum, training should include a discussion of the physiological and sociological aspects of aging; the definition and social costs of elder abuse, neglect, and exploitation; and how elder abuse affects courts in terms of access, efficiency, case management, equal protection, and community coordination.

Recommendation 5: Develop court performance standards and case management systems that improve documentation and oversight of cases involving older persons.
National performance standards specific to elder abuse and guardianship cases must be developed to guide the collection and evaluation of court-level data. Courts should evaluate their case management systems and coding schemes to ensure elder abuse and guardianship cases are well-documented. In addition, courts should collect information on the age of parties to improve their identification of cases that are more likely to involve older persons. Technology that enables staff to access automated reports and assists in the oversight of cases (such as guardianship-reporting requirements) should be explored.

Recommendation 6: Encourage judicial and court participation in multiagency partnerships to combat elder abuse.
Judges and court staff will be active participants in multidisciplinary efforts that address elder abuse in their communities. Court rules will be examined and modified where appropriate to ensure that judges can collaborate with nonjudicial partners in a manner that is consistent with the judicial role. Chief justices and presiding judges will lend credibility to this effort through their leadership and support. Courts will consider therapeutic jurisprudence as a way to involve agencies in a problem-solving approach.

Recommendation 7: Support local, state, and federal budgets and legislation that provide the court with the resources it needs to address elder abuse.
The judicial system supports proposed budgets and laws that provide resources for the courts that enable them to develop practices and responses to a host of issues impacting the older population, especially elder abuse. Additional court resources will become critical as the courts experience an increase in cases involving elder abuse and an aging population as a result of the demographic shift in American society.

ENDNOTES
1 See the National Center on Elder Abuse, www.elderabusecenter.org, for more detailed definitions.
2 For example, in 2005 only two courts were able to provide elder abuse data in the National Center for State Courts’ annual collection of court data.
3 Pamela Teaster et al., The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older (Washington, DC: The National Center on Elder Abuse, 2006). The report, a follow-up to the 2000 survey, can be found at http://www.elderabusecenter.org.

6 Lori A. Stiegel, Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff (Washington, DC: American Bar Association, 1997).


9 For more information, see www.law.stetson.edu/Eleazercourtroom/.


11 Recommendations are based on discussions held during the first national meeting of the Elder Abuse and the Courts Working Group, which met in Williamsburg, Virginia, in April 2006. The National Center for State Courts is grateful to the Archstone Foundation for their support of activities associated with the Elder Abuse and the Courts Working Group and acknowledges the valuable input and effort contributed by members of the Working Group who participated in the April meeting.