

## Breaking the Silence on Elder Abuse

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By Kathryn Alfisi



The issue of elder abuse made front-page news in 2009 when famed philanthropist Brooke Astor's son, Anthony Marshall, was convicted on 14 of 16 counts for financially exploiting his mother, stealing millions of dollars from her.

A few years earlier in the District of Columbia, a similar case played out on a much smaller scale and away from the media glare.

D.C. resident Hattie Mae Goode was a housekeeper who, along with her husband, had scrimped and saved, bought a house (in which she took great pride), and wanted to be independent in her elder years. Several years after her husband died, Goode was introduced to Reginald Rogers by a mutual friend. Rogers, a lawyer, soon became indispensable to Goode, taking her to doctor appointments, to the bank, and eventually obtaining power of attorney over her.

"She trusted him to take care of her and her financial affairs, which turned out to be a very bad idea. He just cleaned her out," says Goode's niece Alma Robinson, who is executive director of the California Lawyers for the Arts.

"It was such a horrible story. This widow by herself with nobody looking after her, and then he convinces her that her family is trying to take advantage of her," Robinson says.

Cases such as Goode's and Astor's are all too common, say experts, yet the issue of elder abuse often goes unnoticed.

### Vulnerable and Exploited

While statistics are hard to come by, a recent report by the U.S. Department of Justice and U.S. Department of Health and Human Services states that elder abuse—which includes physical, sexual, and psychological abuse, as well as neglect, abandonment, and financial exploitation—affects about five million Americans each year. According to the report, just one in 24 cases of elder abuse is reported to authorities. [\[1\] \(/bar-resources/publications/washington-lawyer/articles/february-2015-elder-abuse.cfm#ftnref1\)](#)

While elder abuse may not be garnering a lot of public attention, there appears to be growing sensitivity to the issue among lawyers, says David English, a professor at the University of Missouri School of Law and chair of the American Bar Association's (ABA) Commission on Law and Aging. English recalls leading an ABA program on elder abuse in 1995 that only about 10 people attended; now such programs are sold out.

Lawyers are likely seeing an increasing number of elder abuse cases for several reasons: There are now more individuals who are considered elderly; people are living longer than ever before, but are not necessarily in a state of good health; and the power of attorney is more widely used and, therefore, more likely to be abused.

In a 2003 report, the National Research Council defined elder mistreatment (both abuse and neglect) as "(a) intentional actions that cause harm or create a serious risk of harm (whether or not harm is intended) to a vulnerable elder by a caregiver or other person who stands in a trust relationship to the elder or (b) failure by a caregiver to satisfy the elder's basic needs or to protect the elder from harm." [\[2\] \(/bar-resources/publications/washington-lawyer/articles/february-2015-elder-abuse.cfm#ftnref2\)](#)

The Web site of the U.S. Administration on Aging's National Center on Elder Abuse (NCEA) provides statistics and data that help to paint a picture of the problem. Citing figures from the U.S. Census Bureau, the NCEA states that people age 65 or older are expected to account for 20 percent of the country's total population by 2050. Currently, seniors 85 years old and up comprise the fastest growing segment of the U.S. population: 5.8 million as of 2010, a number that is projected to increase to 19 million people by 2050.

The NCEA also offers various findings that reveal the prevalence of elder abuse. One such finding, from the 2003 report by the National Research Council, showed that only 1 in 14 cases of elder abuse ever come to the attention of authorities.

Another finding, from a 2011 report on New York State elder abuse prevalence, revealed that major financial exploitation was self-reported at a rate of 41 per 1,000 older residents surveyed, higher than other forms of abuse. [\[3\] \(/bar-resources/publications/washington-lawyer/articles/february-2015-elder-abuse.cfm#ftnref3\)](#)

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### **Misplaced Trust**

Traci Tait often deals with elder abuse cases at her job as assistant Bar counsel with the D.C. Office of Bar Counsel. Tait handled the Goode case, which in many ways was not that different from the many cases concerning the elderly that are taken by Bar Counsel. However, the U.S. Attorney's Office also became involved with the Goode case, and Tait ended up working collaboratively with the FBI.

The investigation into Goode's attorney started as a cold call by Robinson, Goode's niece, to the Office of Bar Counsel. Not wanting to jump to conclusions, Tait first suggested that Robinson take certain steps, such as taping a conversation with Rogers (with his permission) with a witness present, before filing a complaint against him. Tait also advised Robinson to file a complaint with the U.S. Attorney's Office, which agreed to take the case.

Robinson, along with Goode's sister, decided to fly from California to the District of Columbia when they heard that Goode was in the hospital. Once in the District, they soon became aware of how much control Rogers had over Goode's financial affairs.

Following Tait's advice, Robinson set up a meeting with Rogers in which he told her that the books were open and he had nothing to hide. But when Robinson and her aunt went to the bank, they discovered that Rogers had withdrawn all the remaining cash (close to \$6,000) from Goode's accounts. Meanwhile, Goode's phone had been disconnected because the bills weren't being paid, according to Robinson.

With Tait's assistance, Robinson was able to terminate Rogers' power of attorney over Goode and bring charges against him, including intentional misappropriation, within six months of Robinson's initial call.

"The things that will get you disbarment are misappropriation, theft, and dishonesty, depending on how big the dishonesty is," says Tait.

Goode lost more than \$260,000 in savings and was able to only recover \$75,000, the most money allowed from the D.C. Bar's Clients' Security Fund.

Despite the successful outcome of the case, the whole situation was very upsetting to Robinson.

"It was just horrible to think that someone would take advantage of her like this when she was so vulnerable," she says.

### **The Silent Crime**

As upsetting as the case was, at least Goode was able to see the situation resolved. Many elder abuse cases are never reported or investigated because there's no family member or loved one involved. And the elderly often make unreliable witnesses due to dementia, making it difficult to bring a case without a third-party witness. But this is why the elderly make such easy targets.

"The elderly are an at-risk group for a lot of reasons, including, but not limited to, diminished capacity, isolation from family or other caregivers, lack of sophistication when it comes to purchasing property, financing, or using computers," says Amy Mix of the AARP Legal Counsel for the Elderly (LCE).

Mix heads up the Consumer Fraud and Financial Abuse Unit at LCE, which works closely with the D.C. Department of Human Services' Adult Protective Services and the Metropolitan Police Department. She has seen cases where, like with Goode, someone has convinced an elderly person to assign them the power of attorney, and then used that authority to either take the senior's home—often a target of predatory lenders or con artists—or strip their bank accounts of all their money.

Which is what happened to an 86-year-old client of Mix whose case she had been litigating for four years. A family friend of the client had convinced her that she was in financial distress and had her sign some paperwork that ended up being a deed transferring the title to her home. The "friend" then took a mortgage out on the property and walked away with \$320,000 in cash.

"A lot of defendants are family members, lots are friends, often people who befriend a senior through church or some other community group. We had a senior victim who had given her life savings away to some scammer who told her she'd won the lottery and would have to pay the taxes ahead of time," says Mix. The scammer found the victim using information in her husband's obituary.

There are also repeat offenders, according to Mix. "There are people who make a living off of this," she adds.

Mary Ann Parker also works for LCE, but as an attorney for the Office of the D.C. Long Term-Care Ombudsman Program, which monitors individuals in long-term care facilities in the District, including nursing homes, group homes, and assisted living facilities, as well as people who are getting a high level of service at home through the Medicaid waiver.

Parker says the program received about 50 complaints within the last year or two concerning elder physical or sexual abuse or neglect. The complaints take a lot of investigation and, similar to financial exploitation, it can be difficult to prove that abuse or neglect had taken place.

"When you talk about a vulnerable population that might have cognitive impairment, it's very difficult to find out if there was abuse. When you look at [elderly persons] with a big bruise on their cheek you might think that someone hit them, but it could be because their medication makes them bruise easily. They may be able to tell you or they may not," she says.

Parker believes education and training are crucial in combating elder abuse.

"In our nursing homes and assisted living facilities we advocate for culture change, because if you're not educating people they may not even understand it. Also, we do a lot of education with the police. We go to their roll calls now just to talk about the population, about their rights, and also what signs to look for," she says.

### **Advocating for the Elderly**

There are several national programs and initiatives intended to address the issue of elder abuse. In July 2014 the Department of Justice and Department of Health and Human Services published the "Elder Justice Roadmap" as a guide for teams, communities, states, and national entities to combat elder abuse.

The agencies sought the input of experts and stakeholders from across the country to identify and prioritize actions that direct services providers, educators, and researchers can take to help the elderly. The report also provides a roadmap for strategic investment and engagement by policy makers in the public and private sectors at the local, state, and national levels.

While many priorities were identified in the report, the top five were awareness, brain health, caregiving, economics, and resources. Awareness includes increasing public knowledge of elder abuse through a holistic, well-coordinated response in services, education, policy, and research. Brain health priority calls for research and focus on cognitive capacity and mental health.

Under caregiving, the report seeks better support and training for both paid and unpaid caregivers. Economics means quantifying the costs of elder abuse, "which is often entwined with financial incentives and comes with huge fiscal costs to victims, families, and society," and resources means strategically investing more in services, education, and research, and expanding knowledge to reduce elder abuse.

The 15-member ABA Commission on Law and Aging examines a wide range of legal issues affecting older persons. Among its recent projects is a booklet on elder abuse for law enforcement that was created with the help of the Department of Justice.

"It's a handy reference for law enforcement to use when they're investigating incidents," says English.

For another project, the commission worked with the Consumer Financial Protection Bureau to publish four fiduciary guides to help family members and others who are called to manage someone else's money or benefits.

Although abuse can be a big problem in this area, English says sometimes it's not intentional. "Some people really don't have an understanding of their responsibilities as an agent or trustee," he says.

A third project saw the commission partner with the Investor Protection Trust to create assessment-type educational materials for lawyers about elder abuse. The two groups, with the Investor Protection Institute, announced this past summer that they were launching the Elder Investment Fraud and Financial Exploitation (EIFFE) Prevention Program—Legal, which will work to develop, test, and implement a model national continuing legal education program to teach lawyers to recognize clients who may be vulnerable to financial fraud and exploitation due to mild cognitive impairment, identify signs of such abuse in their clients, and report suspected incidents to authorities.

A survey that was conducted as part of the program showed that more than nine out of 10 attorneys say elder investment fraud and financial exploitation is a "very serious" or "somewhat serious" problem. In addition, more than one out of three attorneys say they are aware that they are or may be dealing with victims of elder investment fraud and financial exploitation. Roughly nine out of 10 attorneys who responded to the survey were willing to participate in a continuing legal education program concerning this problem.

### **DC TROV**

Closer to home, a new project was recently established to address elder abuse in the District. Launched in October, the District's Collaborative Training and Response to Older Victims, or DC TROV, is a joint effort by the Network for Victim Recovery of DC (NVRDC), Adult Protective Services, the Metropolitan Police Department, LCE, the U.S. Attorney's Office for the District of Columbia, and the DC Coalition Against Domestic Violence.

One person who is following the project closely is Bridgette Hardwood, who directs the legal, criminal, and civil legal services program at NVRDC, which is administering DC TROV.

"At the official launch, it was amazing to [hear] all the perspectives in the room and the excitement about building this coordinated response. I think it's going to be a great tool for our senior population," Hardwood says.

The three-year project was made possible by a grant from the Department of Justice's Office on Violence Against Women, with training provided by the National Clearinghouse on Abuse in Later Life.

"DC TROV was established to create a coordinated community response to . . . elder abuse in the District, and we do that through basically a very formalized collaboration with key partners that may confront this issue in different arenas," says Hardwood. "The purpose of the project is essentially to bring all these partners together and . . . train them to better reorganize and respond to elder abuse, but also to create a long, sustainable partnership where we have a streamlined approach when a case of elder abuse comes up."

In December, DC TROV trained 80 police officers on how to recognize and respond to elder abuse; more trainings are planned in early 2015. Training sessions also will be conducted for the victim services team this year.

DC TROV has been working with the District of Columbia Courts as well, building on the courts' own training on domestic violence in the elderly population. In 2014 DC TROV sent five prosecutors to a four-and-a-half day training on elder abuse, and more will likely be trained in the future.

"The long-term goal of the project is for all of these critical members of the response—law enforcement, prosecutors, judges, and victim advocates—to receive some sort of baseline training and also an advanced level of training in areas we've determined are really specific to what the community here needs," says Hardwood.

Year one of the project is focused on getting all the key partners trained, while year two is about implementation. Assessments among the elderly population and among service providers will be conducted during the first two years of the project. Money will be set aside for year three to increase the services identified in the assessments.

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#### Notes

[1] ([/bar-resources/publications/washington-lawyer/articles/february-2015-elder-abuse.cfm#ftn1](#)) "The Elder Justice Roadmap: Responding to an Emerging Health, Justice, Financial, and Social Crisis." available at [http://ncea.acl.gov/Library/Gov\\_Report/docs/EJRP\\_ExecutiveSummary.pdf](http://ncea.acl.gov/Library/Gov_Report/docs/EJRP_ExecutiveSummary.pdf) ([javascript:HandleLink\('cpe\\_0\\_0','CPNEWWIN: blank^@http://ncea.acl.gov/Library/Gov\\_Report/docs/EJRP\\_ExecutiveSummary.pdf'\);](javascript:HandleLink('cpe_0_0','CPNEWWIN: blank^@http://ncea.acl.gov/Library/Gov_Report/docs/EJRP_ExecutiveSummary.pdf');))

[2] ([/bar-resources/publications/washington-lawyer/articles/february-2015-elder-abuse.cfm#ftn2](#)) Richard J. Bonnie & Robert B. Wallace (eds.), *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America*, The National Academies Press (2003).

[3] ([/bar-resources/publications/washington-lawyer/articles/february-2015-elder-abuse.cfm#ftn3](#)) *Under the Radar: New York State Elder Abuse Prevalence Study*, Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University, and New York City Department for the Aging (2011).