

**SCAMMING THE ELDERLY: AN INCREASED
SUSCEPTIBILITY TO FINANCIAL
EXPLOITATION WITHIN AND OUTSIDE OF
THE FAMILY**

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INTRODUCTION

The elderly population in America has grown substantially over the last century. In 2009, it was estimated at 39.6 million persons, 12.9 percent of the entire United States population.¹ This percentage is expected to rise to at least nineteen percent by the year 2030.² Sadly, as the number of elderly individuals increases, so does the potential for elder abuse.

Abuse of the elderly is a growing, and often times hidden, phenomenon which affects millions annually.³ “Elder abuse is present in every community, at every income level and in every social and cultural group.”⁴ It includes physical abuse, neglect, self-neglect, and financial exploitation.⁵ Although the estimated number of victims of elder abuse is high, there are no official national statistics due to the varying definitions of elder abuse, as well as the lack of a uniform reporting system throughout the states.⁶ The National Center on Elder Abuse estimates that “for every one case of elder abuse . . . [that is] reported to authorities, about five more go unreported.”⁷

Financial elder abuse has been classified by many scholars as “the crime of the 21st century.”⁸ The difficulty of detecting this type of abuse suggests that it may be more prevalent than

¹ *Aging Statistics*, DEP’T OF HEALTH AND HUMAN SERVS.: ADMIN. ON AGING (May 8, 2013, 10:03 AM), http://www.aoa.gov/aoaroot/aging_statistics/index.aspx.

² *Id.*

³ Bonnie Brandl & Tess Meuer, *Domestic Abuse in Later Life*, 8 ELDER L.J. 297, 298 (2000). See also *Fact Sheet, Elder Abuse Prevalence and Incidence*, NAT’L CTR ON ELDER ABUSE, <http://www.ncea.aoa.gov/Resources/Publication/docs/FinalStatistics050331.pdf> (last visited Oct. 7, 2013) [hereinafter *NCEA Fact Sheet*].

⁴ *Shining Light on the Hidden Problem of Elder Abuse: New York State Elder Abuse Prevention Training Manual*, LIFESPAN OF GREATER ROCHESTER, INC., at ii (2011), <http://www.nyselderabuse.org/documents/ElderAbusePreventionTrainingManual.pdf> [hereinafter *Training Manual*].

⁵ *Types of Abuse*, NAT’L CTR ON ELDER ABUSE, http://ncea.aoa.gov/FAQ/Type_Abuse/ (last visited Oct. 7, 2013).

⁶ *NCEA Fact Sheet*, *supra* note 3.

⁷ *Id.*

⁸ BROKEN TRUST: ELDERS, FAMILY, AND FINANCES, METLIFE MATURE MKT INST. 4 (Mar. 2009), <http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf> [hereinafter *BROKEN TRUST*] (quoting J.F. Wasik, Journalist). See *Financial Abuse Costs Elders More Than \$2.6 Billion Annually, According to MetLife Mature Market Institute Study, Though Four in Five Cases Are Not Reported*, METLIFE (March 17, 2009, 9:00 AM), http://www.gerontology.vt.edu/docs/MetLife_Fin_Elder_Abuse.pdf [hereinafter *Financial Abuse Costs Elders*].

physical abuse.⁹ While many cases of financial exploitation of the elderly go unreported, “the annual financial loss by victims of elder financial abuse is estimated to be at least \$2.6 billion.”¹⁰

When financial abuse occurs, “the health, dignity, and economic security of millions of older Americans” is breached and sometimes there is no way to mend this injury.¹¹ The cost of financial exploitation surpasses that of the elderly victim’s finances; it has also been estimated to cost Americans billions of dollars annually, from healthcare costs to investigative and legal costs.¹² Unfortunately, financial elder abuse is a crime which is “underreported, under-recognized, and under-prosecuted.”¹³

I. DEFINING FINANCIAL EXPLOITATION

The Administration on Aging has defined exploitation as “the illegal taking, misuse, or concealment of funds, property, or assets of a [vulnerable elder].”¹⁴ This abuse often comes from relatives or caretakers; however, there are many common scams, perpetrated by businesses and strangers, which heavily affect the elderly population.¹⁵ “Financial exploitation is the fastest growing [type] of elder abuse” and arguably the most devastating to older victims.¹⁶

Financial elder abuse encompasses a broad range of misconduct, including “fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets,” as well as undue influence and abuse of fiduciary relationships.¹⁷ The many aspects of this abuse make it difficult to detect and sometimes even harder to rectify.

⁹ Carolyn L. Dessin, *Financial Abuse of the Elderly*, 36 IDAHO L. REV. 203, 205 (2000).

¹⁰ BROKEN TRUST, *supra* note 8, at 4, 5, 7.

¹¹ *Id.* at 5, 10.

¹² *Financial Abuse Costs Elders*, *supra* note 8.

¹³ *The MetLife Study of Elder Financial Abuse*, METLIFE, [https://www.metlife.com/mmi/research/elder-financial-abuse.html#key findings](https://www.metlife.com/mmi/research/elder-financial-abuse.html#key%20findings) (last visited Oct. 7, 2013).

¹⁴ *What is Elder Abuse?*, DEP’T OF HEALTH & HUMAN SERVS.: ADMIN. ON AGING (Sept. 4, 2013, 2:51 PM), http://www.aoa.gov/AoA_programs/Elder_Rights/EA_Prevention/whatIsEA.aspx.

¹⁵ See BROKEN TRUST, *supra* note 8, at 7.

¹⁶ *Training Manual*, *supra* note 4, at IV-1.

¹⁷ N.Y. SOC. SERV. LAW § 473(6)(g) (McKinney 2003); Denise W. Wong, *Utah’s Adult Protective Services Statute: Preventing the Fleecing of Grandma and Grandpa*, 6 J. L. FAM. STUD. 429, 433 (2004).

As a result, most victims are never the same afterwards.¹⁸

Elder financial abuse by strangers can occur through telemarketing fraud, sweepstakes fraud, disaster scams, as well as many other scams.¹⁹ These strangers prey on the vulnerabilities of elderly individuals, and are many times very successful because they know which elderly individuals to target and they appear very friendly and helpful.

II. A VULNERABLE CLASS

The typical victim of elder financial abuse is a white female, between the ages of seventy and eighty-nine, who is frail, cognitively impaired, and very trusting of others.²⁰ However, it has been found that victims of abuse have very diverse profiles and many characteristics that increase their susceptibility to financial exploitation.²¹

Elderly women may be more likely to experience financial abuse for a number of reasons. Women tend to live longer than men, increasing the chance that they will outlive their spouse.²² Many women may be managing their own finances for the first time and they tend to be more trusting in taking advice from others.²³ Also, women traditionally have held the role of mother or caregiver and might be more likely to contribute to a troubled child or relative.²⁴ Women are also less likely to report the financial abuse for fear of getting anyone in trouble.²⁵

Elderly men tend to be more susceptible to the “Sweetheart Scam” after the loss of a spouse or loved one.²⁶ Generally, they are befriended by perpetrators who have “the intention of creating a coercive relationship through which he or she gains

¹⁸ BROKEN TRUST, *supra* note 8, at 7.

¹⁹ See *Top 10 Scams Targeting Seniors*, NAT'L COUNCIL ON AGING, <http://www.ncoa.org/enhance-economic-security/economic-security-Initiative/savvy-saving-seniors/top-10-scams-targeting.html> (last visited Oct. 7, 2013).

²⁰ *Financial Abuse Costs Elders*, *supra* note 8.

²¹ *Id.*; SHELLY L. JACKSON & THOMAS L. HAFEMEISTER, FINANCIAL ABUSE OF ELDERLY PEOPLE VS. OTHER FORMS OF ELDER ABUSE: ASSESSING THEIR DYNAMICS, RISK FACTORS, AND SOCIETY'S RESPONSE 235 (U.S. Dept. of Justice 2010) <https://www.ncjrs.gov/pdffiles1/nij/grants/233613.pdf> [hereinafter DOJ REPORT]. See BROKEN TRUST, *supra* note 8, at 8.

²² BROKEN TRUST, *supra* note 8, at 9.

²³ *Id.* at 9, 10.

²⁴ *Id.* at 10.

²⁵ *Id.*

²⁶ *Id.* at 11.

financially at the expense and lasting emotional anguish of the elderly man.”²⁷ These perpetrators are usually younger women who befriend the older man and act as caregivers or companions to fill the void left behind by a deceased spouse.²⁸ This type of scam may result in expensive gifts made to the younger women, a change in the man’s power of attorney or will, or a complete depletion of the elderly man’s assets and bank accounts.²⁹

A vulnerability which affects both elderly men and women may be the amount of wealth held by our older population. Significantly, a large portion of the nation’s wealth is possessed by the elderly, with seventy percent of all funds deposited in financial institutions being controlled by those over the age of sixty-five.³⁰ Many elderly people tend to be very trusting individuals³¹ and this character trait might greatly affect the probability that they will be targeted by perpetrators, especially when they hold a large amount of assets.

Additionally, changes in technology have left many elderly individuals open to Internet scams and have even affected their ability to manage their assets.³² A lack of understanding of these changes has made it more difficult and complicated for the elderly, and many victims may not even realize that their funds are being depleted.³³ The presence of elderly individuals using the Internet is increasing exponentially.³⁴ Generally, older adults have a more difficult time maneuvering the Internet than many younger adults because it is a technology that simply did not exist while they were growing up. However, the Internet is widely used by the elderly population as a source for healthcare information, entertainment, keeping in touch with family and friends, and also engaging in commercial transactions.³⁵ Without proper knowledge of common Internet scams and how to safely

²⁷ *Id.* at 10–11.

²⁸ BROKEN TRUST, *supra* note 8, at 11.

²⁹ *Id.*

³⁰ Dessin, *supra* note 9, at 205 (“The fact that approximately seventy percent of all funds deposited in financial institutions are controlled by persons age sixty-five and older makes senior citizens prime targets for those desiring to take financial advantage of someone.”).

³¹ DOJ REPORT, *supra* note 21, at 29.

³² *Id.* at 30.

³³ *Id.*

³⁴ Eric L. Carlson, Note, *Phishing for Elderly Victims: As the Elderly Migrate to the Internet Fraudulent Schemes Targeting Them Follow*, 14 *ELDER L. J.* 423, 425 (2006).

³⁵ *Id.* at 427.

browse the Internet, many elderly individuals fall prey to perpetrators.

As old age approaches, there is a significant increase in conditions or disabilities which affect one's memory. Forgetfulness or other cognitive impairments make a person more susceptible to financial exploitation.³⁶ Elderly individuals also tend to be more socially isolated and may experience loneliness, especially after the loss of a loved one.³⁷ These individuals are more susceptible to financial exploitation—scams in particular—because they are willing to let others in, even if just simply for conversations sake. While elderly individuals who live alone are less susceptible to physical or mental abuse, they are at an increased risk for financial abuse.³⁸

When financial exploitation occurs, and the victim is aware of the abuse, different problems arise. Many elderly victims are embarrassed and do not want to admit that someone has taken advantage or tricked them.³⁹ There is a fear of asking for help because they do not want to appear weak or as if they lack capacity to make decisions;⁴⁰ however, it is not always the case that those who are financially abused lack capacity or need a guardian. These individuals are just more susceptible to the abuse because of certain character traits that come with age.

A major concern is the lack of reporting by elderly victims who are financially exploited by family members. They might not report financial abuse because they do not want to get their loved ones in trouble or they feel as if they are supposed to be helping the abuser. Additionally, many victims believe “recourse through the law is unavailable or unavailing.”⁴¹ They do not think that any good will come of reporting and that there is no help out there for them,⁴² therefore, they do not report. They are not entirely wrong in this belief. There is little that can be done to restore an elderly person's assets after substantial financial

³⁶ DOJ REPORT, *supra* note 21, at 30.

³⁷ See Shelby A.D. Moore & Jeanette Schaefer, *Remembering the Forgotten Ones: Protecting the Elderly from Financial Abuse*, 41 SAN DIEGO L. REV. 505, 518, nn. 55–56 (2004).

³⁸ *Id.* at 517.

³⁹ DOJ REPORT, *supra* note 21, at 31; Dessin, *supra* note 9, at 211 (stating that often times, victims of financial exploitation are embarrassed to admit that someone they love or trust has taken advantage of them).

⁴⁰ Moore & Schaefer, *supra* note 37, at 519–20.

⁴¹ Seymour Moskowitz, *Saving Granny from the Wolf: Elder Abuse and Neglect-The Legal Framework*, 31 CONN. L. REV. 77, 100 (1998).

⁴² See *id.*

exploitation occurs.⁴³ Many victims are never repaid or made financially whole again.⁴⁴

The New York State Office of Children and Family Services (NYSOCFS) lists indicators of financial abuse on their website, including: unexplained or sudden inability to pay bills, unexplained withdrawal of money from bank accounts, disparity between assets and living conditions, and an interest by family members or other individuals into an older persons assets.⁴⁵ Additionally, the office puts out public service announcements regarding elder abuse and how to recognize it, as well as pamphlets with advice on reporting.⁴⁶ By putting the community on alert that these issues are real and affecting people that they may know, it may influence those people to report any suspicions of abuse that they may have. As will later be discussed, reporting elder abuse is not mandatory by anyone other than practitioners reporting abuse in an institutionalized setting in New York State, but increased awareness in how and where to report may prevent some of these crimes from going any further. The pamphlets inform the community that it is a shared responsibility to protect vulnerable adults and there is no civil liability for making reports in good faith.⁴⁷

III. THE PERPETRATOR

Perpetrators of financial abuse range from close family members, to a stranger's voice over the telephone.⁴⁸ In 2008, the NAPSA/NCEA Newsfeeds reported that forty percent of financial abuse cases involved close associates of the victim, including family, friends, neighbors, and caregivers.⁴⁹ However, the largest

⁴³ See Lori A. Stiegel, *Financial Abuse of the Elderly: Risk Factors, Screening Techniques, and Remedies*, BIFOCAL, (ABA Commission on Legal Problems of the Elderly) 2002, at 10.

⁴⁴ See DOJ REPORT, *supra* note 21, 382–83.

⁴⁵ *Adult Protective Services: Risk Factors & Indicators*, N.Y.S. OFFICE OF CHILDREN & FAMILY SERVS., <http://www.ocfs.state.ny.us/main/psa/risks.asp> (last visited Sep. 25, 2013).

⁴⁶ See generally *Adult Protective Services*, N.Y.S. OFFICE OF CHILDREN & FAMILY SERVS., <http://www.ocfs.state.ny.us/main/psa/newsletters.asp> (last visited Sep. 25, 2013) (providing FAQs, newsletters, public service announcements, and other information).

⁴⁷ *Protecting Adults: A Community Responsibility*, N.Y.S. OFFICE OF CHILDREN & FAMILY SERVS., <http://www.ocfs.state.ny.us/main/publications/Pub1328.pdf> (last visited Oct. 7, 2013).

⁴⁸ BROKEN TRUST, *supra* note 8, at 4.

⁴⁹ *Id.* at 12.

single group of perpetrators was trusted professionals, such as attorneys, financial professionals, and fiduciary agents.⁵⁰ Anyone who has gained the confidence of an elderly person may be a potential abuser; particularly dangerous are those individuals who have obtained access to bank accounts and financial information.⁵¹

Financial abuse by family members is highly underreported and many professionals agree that the number of cases that are reported represents only the tip of the iceberg.⁵² Thirty-four percent of financial abuse by family members, investigated by Adult Protective Services, involved adult children taking advantage of their elderly parents.⁵³ There are many ways that family members can financially exploit their elders. Often, a parent will trust a child with bank account information which results in the child stealing money from the account, as well as making unauthorized purchases.⁵⁴ Additionally, adult children are likely to act as fiduciary agents for their parents through powers of attorney, and many tend to take advantage of this power.⁵⁵ Some domestic perpetrators start small and then increase to convincing their elders to change their wills or sign over the deed to the house.⁵⁶

In domestic situations of financial exploitation, many perpetrators, and sometimes even the elderly victim, believe that they are entitled to the elder's assets.⁵⁷ The victim may want to provide for his or her heirs and might even feel guilty for being dependent upon that heir for care.⁵⁸ The perpetrator might believe he or she deserves compensation for efforts in caring for the elderly individual.⁵⁹

Another group of perpetrators consists of those unrelated to the victim, such as neighbors or caregivers.⁶⁰ These perpetrators—

⁵⁰ *Id.*

⁵¹ See D. WAYNE STEWART, COLORADO HANDBOOK OF ELDER LAW § 18.1.4 (3d ed. 2007).

⁵² *Id.* at § 18.1.3.

⁵³ *Adult Protective Services: The Abusers*, N.Y.S. OFFICE OF CHILDREN & FAMILY SERVS., <http://www.ocfs.state.ny.us/main/psa/Abusers.asp> (last visited Oct. 7, 2013).

⁵⁴ See STEWART, *supra* note 51, at § 18.1.4.

⁵⁵ See *id.*

⁵⁶ See *id.*

⁵⁷ DOJ REPORT, *supra* note 21, at 31.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ BROKEN TRUST, *supra* note 8, at 16.

usually very persuasive and conniving—use their position of trust and confidence to take advantage of the elderly.⁶¹ Some are career professionals, others are just overcome by greed and a position of power.⁶² “In these cases, the perpetrator uses his or her role and power to exploit the trust, dependency, or fear to gain psychological control over the older adult’s decision-making, usually for financial gain.”⁶³

“Commercial” elder abuse is committed by a different type of perpetrator. These abusers generally target elderly individuals because of their increased vulnerabilities as previously discussed. The elderly are very trusting individuals and businesses appear trustworthy to the elderly.⁶⁴ While the largest percentages of perpetrators are close family members and friends, the dollar amount lost through commercial elder abuse tends to be the greatest.⁶⁵ This is because commercial scams move large quantities of money and involve hundreds of victims.⁶⁶

Financial abuse, like many other forms of elder abuse, occurs because the abuser—or perpetrator—wants to exert power and control over the elder victim.⁶⁷ Punishing wrongdoers does have some deterrent effect.⁶⁸ “Prevention of the wrongs, however, will efficiently protect the vulnerable while avoiding many of the costs of criminal and civil proceedings.”⁶⁹

IV. STRANGER SCAMS

A “scam” is defined by the dictionary as “to cheat or swindle, as in a confidence game.”⁷⁰ Popular scams amongst the elderly population range from telemarketing fraud to home repair fraud and affect the elderly at rapid rates due to increased

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 14.

⁶⁵ *Id.* at 15.

⁶⁶ *Id.* at 15.

⁶⁷ Brandl & Meuer, *supra* note 3, at 302.

⁶⁸ See, e.g., Kellie Singleton, *New Law Aims at Strengthening Elder Abuse Cases*, FRANKLIN COUNTY TIMES, (May 29, 2013), <http://www.franklincountytimes.com/2013/05/29/new-law-aims-at-strengthening-elder-abuse-cases/>.

⁶⁹ Irene D. Johnson, *Preventing Identity Theft and Other Financial Abuses Perpetrated Against Vulnerable Members of Society: Keeping the Horse in the Barn Rather than Litigating over the Cause and/or Consequences of his Leaving*, 79 UMKC L. REV. 99, 105 (2010).

⁷⁰ Dessin, *supra* note 9, at 207 (citation omitted).

susceptibility to, as well as a lack of knowledge of, common scams.⁷¹ This area of financial exploitation is commonly referred to as consumer fraud and costs elderly the most financially.⁷² Elderly individuals grew up in a “kinder and gentler world” and are more trusting of strangers than younger individuals; therefore, they are more willing to let strangers inside or engage in a telephone conversation with someone they don’t know.⁷³ Unfortunately, while there are many statutes which attempt to redress the abuse, current laws do little to protect the elderly from the initial exploitation.

Some scams affecting the elderly are illegal; however, the majority are legal and while still considered scams, are just poor financial deals made by an uneducated, elderly individual who has little guidance or protection in dealing with conniving, persuasive scam artists.⁷⁴ The elderly are specifically targeted by many “commercial” perpetrators of financial abuse for a variety of reasons. Perpetrators know exactly who to reach out to and are, generally, very successful in their schemes due to practice, as well as people skills.⁷⁵ While many elderly victims do not like to admit it, capacity to understand and make rational decisions greatly decreases in some individuals as age increases.⁷⁶ Diminished capacity may impair one’s ability to rationally evaluate proposed courses of action when dealing with a telemarketer.⁷⁷ Additionally, “difficulties of living on a fixed income may enhance one’s willingness to try a ‘get-rich-quick’ scheme[,]”⁷⁸ ultimately resulting in a large financial loss that an elderly victim might never recover from.

Credit card offers are another example of large companies taking advantage of the elderly.⁷⁹ While many elderly individuals veer away from credit card offers because of the danger they present, others run willingly towards these offers because the idea of easy money is attractive.⁸⁰ When the younger generation

⁷¹ Wong, *supra* note 17, at 430. See BROKEN TRUST, *supra* note 8, at 18.

⁷² Wong, *supra* note 17, at 430. See BROKEN TRUST, *supra* note 8, at 15.

⁷³ Nathalie Martin, *Consumer Scams and the Elderly: Preserving Independence Through Shifting Default Rules*, 17 ELDER L.J. 1, 5 (2009).

⁷⁴ *Id.* at 2. See generally JOHN J. REGAN ET AL., TAX, ESTATE & FINANCIAL PLANNING FOR THE ELDERLY § 11.04 (2013).

⁷⁵ See BROKEN TRUST, *supra* note 8, at 16.

⁷⁶ Dessin, *supra* note 9, at 207.

⁷⁷ See *id.*

⁷⁸ *Id.*

⁷⁹ Martin, *supra* note 73, at 9.

⁸⁰ *Id.* at 8–9.

falls for these schemes they have more of an opportunity to recover, whereas the elderly might never get back on their feet after what has the potential to be such a tremendous loss.⁸¹ As previously stated, true fraud is a crime, but many scams affecting the elderly population are not. Until the law becomes more shielding of consumers, the losses to the elderly will continue to rise.⁸²

V. NATURAL DISASTER SCAMS

“Scam artists come out of the woodwork after natural disasters, taking advantage of the chaos, panic, and distraction.”⁸³ After a devastating disaster strikes, scams increase exponentially because of the vulnerability of all those affected.⁸⁴ The Federal Trade Commission (FTC) has a webpage dedicated to educating people on popular scams which arise after natural disasters hit.⁸⁵ These scams range from job scams, where an advertisement indicates to call an 800 number for a job, to fake disaster officials pretending to help you qualify for disaster relief payments for a fee.⁸⁶

While these scams affect many types of people, the elderly are particularly vulnerable to their damaging effects. Studies have shown that elderly individuals are at a greater risk than others for “incurring debt and economic losses as a result of a disaster.”⁸⁷ Because of the vulnerabilities which characterize many elderly individuals, they are more susceptible to disaster scams than their younger counterparts.⁸⁸ They are also less likely to recover from these disaster scams, like any other scam, which deplete assets and put the elderly in a poor financial situation.

⁸¹ *Id.* at 9.

⁸² *See id.* at 14.

⁸³ Martha C. White, *Avoid Getting Scammed in Sandy's Aftermath*, TIME.COM (Oct. 31, 2012), <http://business.time.com/2012/10/31/avoid-getting-scammed-in-sandys-aftermath/>.

⁸⁴ *See id.*

⁸⁵ *Id.* *See generally* *Hurricane Recovery*, FED. TRADE COMM'N, http://www.ftc.gov/bcp/edu/microsites/recovery/hurricane/consumer_info.html#job (last visited Sept. 25, 2013).

⁸⁶ *Hurricane Recovery*, *supra* note 85.

⁸⁷ Isiah Marshall Jr. & Shannon Mathews, *Disaster Preparedness for the Elderly: An Analysis of International Literature Using Symbolic Interactionist Perspective*, J. AGING EMERGING ECONOMIES 79, 85 (2010).

⁸⁸ *See, e.g.*, DOJ REPORT, *supra* note 21, at 29 (discussing vulnerabilities including wealth, trusting disposition, and unsophistication).

The home improvement scam is one of the most popular, in which contractors promise to make “necessary” repairs, take the money, and then either do not finish, or do a very poor job.⁸⁹ The second most popular disaster scam is the charitable donations scam, in which scam artists trick individuals into donating to relief efforts, but they really end up paying salaries and administrative costs rather than helping a deserving cause.⁹⁰

The FTC suggests that, when dealing with home improvement opportunities, the consumer be wary of anyone who tries to provide disaster related services and to check into contractors, businesses, and organizations by asking friends, family, or claims adjusters for referrals.⁹¹ The consumer should always question those people who show up prepared to do the job offering a low price for a payment up front.⁹² It is important that one ask to see licenses and credentials, as well as insurance information, and it is equally as important that you get everything in writing and read through contracts very carefully before signing anything.⁹³ When dealing with charitable scams, the consumer should always check online at websites such as charitynavigator.org to make sure that the charity is spending donations the way they say they are, and the consumer should also be wary of fake charities and those that seem to have appeared overnight.⁹⁴

VI. FIDUCIARY AGENTS AND BANKING

Fiduciary Agents exist in many forms and often play different roles in an elderly person’s life. These agents are generally assigned by different documents which “give another person the legal right to act as an older adult’s proxy” in different situations.⁹⁵ These arrangements are beneficial in many situations when an elderly or incapacitated person is unable to manage their own finances or healthcare needs. However, there is the potential for abuse, and sadly, abuse of fiduciary relationships occurs all too often.⁹⁶

⁸⁹ White, *supra* note 83.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Training Manual, supra* note 4, at IV-1.

⁹⁶ BROKEN TRUST, *supra* note 8, at 12 (finding the largest category of elder abuse perpetrators held a fiduciary relationship to the victim of abuse).

Pursuant to Article 81 of the New York Mental Hygiene Law, a guardianship is a court-ordered appointment where an incapacitated individual has his or her personal needs and property rights managed by another party.⁹⁷ This party could be a family member, public agency, a corporation, or anyone else that the court chooses.⁹⁸ The duties of the guardian are explicitly laid out in the order of appointment and not all orders are the same.⁹⁹ For example, one individual may require a guardian to manage all aspects of their life due to complete incapacity, whereas another individual may maintain capacity in some areas and therefore the guardianship would be more limited.¹⁰⁰ Because guardians are appointed and overseen by the court, it is less likely that these orders will be abused,¹⁰¹ however, the possibility is still there.

A “power of attorney” (POA) is a document which gives an individual or an agency, the “agent,” the authority to act on behalf of another, the “principal.”¹⁰² It is a highly effective, and largely inexpensive, instrument for the management of the principal’s finances and estate in the event that the principal becomes incapacitated.¹⁰³ All POAs are different and can be specific or general depending on the needs of the principal.¹⁰⁴ For example, one principal may assign all rights to his or her agent, while another might only assign the right to access his or her bank accounts. One major difference between a POA and a guardianship appointment is that the principal creates and signs the POA while he or she still maintains capacity.¹⁰⁵ Therefore, the conditions within the POA are more tuned to what the principal wishes. In 2009, New York amended its POA law (General Obligations Law, Article 5, Title 15) “in order to provide safeguards against the potential misuse of powers of attorney.”¹⁰⁶

⁹⁷ *Training Manual*, *supra* note 4, at IV-1.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at IV-2.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at IV-1, IV-2 (stating that guardianship is court-ordered when an individual is deemed “incapacitated,” whereas an individual authorizing POA does not relinquish their control or authority over their own affairs).

¹⁰⁶ *Changed to New York Power of Attorney Law: New York Amends Power of Attorney Retroactively*, SULLIVAN & CROMWELL L.L.P., Aug. 15, 2010, <http://apps.americanbar.org/buslaw/tribar/materials/20100815000000.pdf>.

These new safeguards are vital in protecting elderly individuals from the possibility of financial abuse by the assigned agent.¹⁰⁷

The potential for abuse by fiduciary agents is large and occurs far too frequently. Many elderly individuals find themselves victims to situations where the person they trust most to manage their finances ends up abusing their authority and getting away with it. Once POAs are signed by both the agent and principal they can be used solely by the agent without any further authorization by the principal; therefore, the principal might never realize what is happening to their finances.¹⁰⁸

This is where banking institutions come in. The New York Bankers Association's Task Force on Financial Exploitation of the Elderly developed *Best Practices on Reporting of Possible Financial Exploitation on the Elderly* in order to protect vulnerable customers from financial exploitation.¹⁰⁹ The *Best Practices* are intended to minimize exploitation by creating a standard by which banks report possible financial exploitation or abuse.¹¹⁰ The guidelines apply primarily to elderly individuals, who arguably need the most protection, as well as those who are dependent upon others, such as someone with a physical or mental disability.¹¹¹ Financial abuse is "suspected" when "someone observes behavior or unusual circumstances that would reasonably lead an ordinary person to believe that an elderly or dependent customer is being victimized."¹¹²

Under the *Best Practices*, each bank appoints a party within the institution who will be responsible for accepting reports of suspected financial exploitation from bank officers and employees.¹¹³ Reports include forms with recorded evidence of possible abuse, which are then investigated by the proper authority within the bank, who determines whether a further report must be filed.¹¹⁴ If necessary, a report is made to the local social services agency's Protective Services for Adults (PSA) unit,

¹⁰⁷ See *id.* (stating that new requirements require inclusion of a "cautionary statement" that lists the applicable law and its requirements as means to prevent misuse of POAs).

¹⁰⁸ *Training Manual*, *supra* note 4, at IV-2.

¹⁰⁹ *Best Practices on Reporting of Possible Financial Exploitation of the Elderly*, N.Y. BANKERS ASS'N, revised Sept. 6, 2012, at 1, <http://www.brookdale.org/brookdale-assets/aati-2012/resource-disc/nyba-best-practices-reporting.pdf>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 2.

¹¹⁴ *Id.*

law enforcement, NYSOCFS and any other agency that the responsible party believes, in good faith, will take appropriate action.¹¹⁵

In order to assist an elderly or dependent customer who one believes is being financially exploited, a banker can inquire as to possible reasons for the “customer’s unusual or inconsistent transactions,” warn the customer that withdrawing, carrying, or wiring large amounts of cash can be very dangerous, separate the elderly customer from their apparent caregiver in order to ask further questions, and observe whether the customer appears frightened or confused.¹¹⁶ The *Best Practices* suggests that reports be filed as soon as possible in order to provide the most protection to elderly and dependent customers in need of help.¹¹⁷

The work of the New York Bankers Association Task Force will be instrumental in detecting and preventing financial exploitation of the elderly. While banks are required to accept POAs and guardianship orders, these *Best Practices* will put bankers on the look-out for suspicious activity.¹¹⁸

VII. REDRESSING THE ISSUE

“Mistreatment of older adults has joined economic insecurity, chronic disease and cognitive impairment as recognized major threats to the health and general welfare of individuals in the second half of life.”¹¹⁹ A study by Cornell University found that the incidence rates of elder abuse in New York State, in particular, were almost twenty-four times greater than the number of cases reported to law enforcement, social services, or legal authorities.¹²⁰ It has been argued by experts and advocates in the field, that inadequacies in the definition of the crime make it difficult to prevent and remedy the problem.¹²¹ Additionally, even seasoned professionals find it difficult to determine whether “financial abuse actually occurred or if an elder willingly and knowingly made a poor financial decision.”¹²² In determining whether abuse is present, these professionals should be on the

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 3.

¹¹⁸ See generally *id.* at 1; *Training Manual*, *supra* note 4, at IV-1.

¹¹⁹ UNDER THE RADAR, LIFESPAN OF GREATER ROCHESTER, INC. 7 (2011).

¹²⁰ *Id.* at 2.

¹²¹ BROKEN TRUST, *supra* note 8, at 8.

¹²² *Id.*

look-out for older adults who may be suffering from physical or mental impairments which might make it difficult for them to handle their own finances.¹²³

Financial exploitation of the elderly is usually regarded as a state issue, and is mentioned in most states by statute; however, the problem is most of these statutes vary as to the definition of exploitation, who is covered, who the perpetrators are, and what a solution to the problem is.¹²⁴ In New York, for example, financial exploitation is defined under Social Services Law § 473 as “improper use of an older adult’s funds, property or resources by another individual, including but not limited to, fraud, false pretense, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.”¹²⁵

A tremendous issue in dealing with financial exploitation of the elderly in New York is the lack of a cohesive system in prevention, control, and remedial efforts.¹²⁶ There are several agencies throughout the state that are responsible for serving older adults, such as Adult Protective Services, New York State Office for the Aging, and New York State Office of Children and Family Services.¹²⁷ Additionally, there are numerous not-for-profit programs in New York which specialize in investigating elder abuse, while reports are also made to law enforcement agencies on a regular basis.¹²⁸ There are multiple doors open through which financial exploitation can be reported from either the public or the victims themselves, and while this sounds like a solution, it tends to be more problematic.¹²⁹ A lack of communication amongst these agencies and programs prevents consistency, an issue in remedying the problem.¹³⁰ Also, while the remedial efforts of these agencies are commendable, they do little to prevent the initial abuse.¹³¹

New York has several Penal Code provisions in place classifying financial abuse as a crime; however, there are few

¹²³ *Training Manual*, *supra* note 4, at IV-1.

¹²⁴ *See id.* (explaining financial exploitation is most devastating for older victims). *See, e.g.*, N.Y. SOC. SERV. LAW § 473(6)(g) (McKinney 2003); N.J. ADMIN. CODE § 8:90-1.5 (2001).

¹²⁵ N.Y. SOC. SERV. LAW § 473(6)(g).

¹²⁶ UNDER THE RADAR, *supra* note 119, at 16.

¹²⁷ *See generally* N.Y.S. OFFICE FOR THE AGING, <http://www.aging.ny.gov/> (last visited Sep. 30, 2013); *Adult Protective Services*, *supra* note 46.

¹²⁸ UNDER THE RADAR, *supra* note 119, at 16.

¹²⁹ *See id.*

¹³⁰ *See id.*

¹³¹ Johnson, *supra* note 69, at 112.

statutory provisions that deal with preventing the crime from happening altogether.¹³² Punishing the perpetrators and restoring monetary loss to victims is hardly comforting to those elderly individuals whose lives will never be the same.¹³³ Prevention of elder financial abuse must be addressed in order to decrease the number of victims, and the laws which are currently in place at the federal and state levels are inadequate to redress the problem.¹³⁴

VIII. ADULT PROTECTIVE SERVICES

All fifty states and the District of Columbia have Adult Protective Services (APS) agencies in place to investigate reports of elder abuse, and to provide vulnerable individuals and victims of abuse with protective services and treatment.¹³⁵ Other services offered by APS range from counseling victims and their families to long-term legal interventions.¹³⁶ APS units are normally maintained in each county by the department of social services.¹³⁷ When reports of suspected abuse of an older adult are received, APS staff screens the case and makes a determination of APS eligibility.¹³⁸ If eligible, the case is assigned to a caseworker, who then makes contact with the suspected victim to assess risk, investigate alleged abuse, and determine if the abuse is substantiated.¹³⁹ If substantiated, and the elderly individual wishes to voluntarily accept help, then APS can provide for a variety of services to protect the adult.¹⁴⁰ Additionally, if the substantiated case involved criminal activity, then it must be

¹³² See generally N.Y. PENAL LAW § 155.05(1) (Consol. 2013); N.Y. PENAL LAW § 260.32 (Consol. 2013); N.Y. PENAL LAW § 260.34 (Consol. 2013); N.Y. PENAL LAW § 485.05(1)(a) (Consol. 2013).

¹³³ Johnson, *supra* note 69, at 112.

¹³⁴ Dylan Fallik, Note, *Incomplete Protection: The Inadequacy of Current Penalty Enhancement Provisions in Deterring Fraud Schemes Targeting the Elderly*, 18 ELDER L.J. 335, 354 (2011).

¹³⁵ ALICE YICK FLANAGAN, ELDER ABUSE: CULTURAL CONTEXTS AND IMPLICATIONS, CME Resource 27 (2011).

¹³⁶ *Adult Protective Services: Services*, N.Y.S. OFFICE OF CHILDREN & FAMILY SERVS., <http://www.ocfs.state.ny.us/main/psa/services.asp> (last visited Sept. 29, 2013).

¹³⁷ YICK FLANAGAN, *supra* note 135, at 27.

¹³⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-208, ELDER JUSTICE: STRONGER FEDERAL LEADERSHIP COULD ENHANCE NATIONAL RESPONSE TO ELDER ABUSE 15 (2011) [hereinafter GAO].

¹³⁹ *Id.*

¹⁴⁰ *Id.*

referred to the proper authorities.¹⁴¹

While many people think of APS as being similar to Child Protective Services (CPS), there are a few major differences. APS is for the benefit of any individual over the age of eighteen needing protective services.¹⁴² These individuals, unlike children, are all presumed competent and they all have the right to make their own decisions.¹⁴³ In contrast, children are considered legally incompetent until they reach the age of eighteen in most states.¹⁴⁴ Having the right to exercise free choice creates a problem for those who are in need of protective services, yet refuse help.¹⁴⁵ Competent adults have the right to refuse APS services, as well as an investigation.¹⁴⁶ It is likely that elderly victims who are being exploited by family members might be unwilling to let APS help them or investigate because they are in denial, embarrassed, or want to protect their abuser.

Therefore, the job of APS workers might be to convince those individuals that they need professional help. Sometimes, if persuasion is not possible, APS can force involuntary services in cases where it is shown that the affected individual lacks the capacity to understand the consequences of his or her actions.¹⁴⁷ The Supreme Court of the United States held in *Shelton v. Tucker* that regardless of whether the government has a legitimate, substantial purpose in providing protection, they must use the least restrictive means in doing so.¹⁴⁸ This means that APS should always start with interventions which are voluntary and move to involuntary interventions only if absolutely necessary.

Another distinction between APS and CPS is the availability of resources. State CPS agencies have access to a number of federally funded national resource centers which provide

¹⁴¹ *Id.*

¹⁴² *Protective Services for Adults Frequently Asked Question*, N.Y.S. OFFICE OF CHILDREN & FAMILY SERVS., <http://www.ocfs.state.ny.us/main/psa/faq.asp> (last visited Sept. 25, 2013).

¹⁴³ *Scope of Protective Services for Adults*, N.Y.S. OFFICE OF CHILDREN & FAMILY SERVS., <http://www.ocfs.state.ny.us/main/psa/protectiveservices.asp> (last visited Sept. 25, 2013).

¹⁴⁴ *See, e.g., Commonly Asked Questions About Guardianship*, GUARDIANSHIP ASS'N OF UTAH, <http://guardianshiputah.org/learn/commonly-asked-questions-about-guardianship/> (last visited Sept. 25, 2013).

¹⁴⁵ *Protective Services for Adults Frequently Asked Questions*, *supra* note 142.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Scope of Protective Services for Adults*, *supra* note 143; *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

guidance and assistance to states regarding promising practices, as well as legal and judicial aspects.¹⁴⁹ Compare that to APS, where the availability of federal resources is incredibly limited,¹⁵⁰ especially regarding the information that APS caseworkers need the most. A survey by the Government Accountability Office found that APS programs would benefit exponentially from “more easily accessible and centrally available information on effective interventions, recommended caseload sizes, financial exploitation, and appropriate outcomes for APS cases.”¹⁵¹

The central role that APS plays in elder abuse intervention is critical, but it is unknown just how effective APS has been due to the number of APS agencies throughout the country which do not necessarily follow the same guidelines.¹⁵² Therefore, research into all types of elder abuse is challenging because of the lack of information available about current interventions. Researchers have said that “[w]hat we know about elder abuse [is lagging] some 40 years behind child abuse and 20 years behind domestic violence.”¹⁵³ While APS appears to be a very effective program, it is hard to determine which aspects of APS work and which do not. Furthermore, when a case reaches APS, it might require legal, medical, or financial expertise, which are generally not available to staff because of the major lack of resources at the state level.¹⁵⁴ This want of resources is exacerbated by the lack of standards at the federal level and could be greatly improved if the federal government could provide a central resource center for APS as it does for many other systems.¹⁵⁵

Although every state has APS agencies, there are inconsistencies amongst the states as to who is legally required to report incidents of suspected elder abuse.¹⁵⁶ As of 2011, New York is one of four states that do not require anyone to report elder abuse to APS.¹⁵⁷ This is in contrast to the fourteen states which

¹⁴⁹ GAO, *supra* note 138, at 20.

¹⁵⁰ *See id.*

¹⁵¹ *Id.*

¹⁵² *Justice for All: Ending Elder Abuse, Neglect and Financial Exploitation: Hearing Before the S. Special Comm. on Aging 9* (2011) [hereinafter *Justice for All*] (statement of Marie-Therese Connolly, Senior Scholar, Woodrow Wilson International Center for Scholars).

¹⁵³ *Id.* at 8.

¹⁵⁴ *Id.* at 12–13.

¹⁵⁵ *Id.* at 12.

¹⁵⁶ *See* YICK FLANAGAN, *supra* note 135, at 27. *See also* GAO, *supra* note 138, at 15.

¹⁵⁷ GAO, *supra* note 138, at 15–16, 41.

require mandatory reporting by everyone.¹⁵⁸

In some states, there is a limited reporting requirement, which means that practitioners are only mandated to report in cases where the elderly individual is residing in an institutional setting and, similarly to child abuse reporting, the practitioner need only suspect abuse without having to prove it.¹⁵⁹ While there are several bills that have been presented regarding mandatory reporting, it is yet to be required in New York State.¹⁶⁰ There are many reasons why this state might benefit from mandatory reporting laws. For example, if there was a mandatory reporting requirement, then all cases or suspected cases would be reported to a central location, which would be beneficial when conducting studies on elder abuse and financial exploitation, in particular. As was previously stated, reports of financial exploitation of the elderly are made to numerous agencies and programs throughout the state¹⁶¹ resulting in a disconnected system.

Reporting may not be mandatory in New York, but if one suspects financial elder abuse, it is important that they report their suspicions to the proper authorities.¹⁶² Even when you are not one hundred percent sure that abuse is occurring, it is better to err on the side of caution and report.¹⁶³ New York has made it clear that reports are confidential and there are no civil liabilities for reports which are made in good faith.¹⁶⁴

IX. PREVENTION OVER PUNISHMENT

Mandatory reporting in New York would help to create a cohesive system, but it would not help in preventing the initial abuse. Prevention is the most important aspect of any abusive situation. It has been said, "it is certainly better to prevent a disease than to cure it."¹⁶⁵ If we can prevent abuse from happening in the first place, then the need for punishment or

¹⁵⁸ *Id.* at 15.

¹⁵⁹ YICK FLANAGAN, *supra* note 135, at 27.

¹⁶⁰ *Financial Crimes Against the Elderly 2012 Legislation*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/issues-research/banking/financial-crimes-against-the-elderly-2012-legis.aspx#NY> (last updated Jan. 15, 2013).

¹⁶¹ See NEW YORK BANKERS ASS'N, *supra* note 109, at 2.

¹⁶² BROKEN TRUST, *supra* note 8, at 28.

¹⁶³ *Id.*

¹⁶⁴ *Factsheets: Elder Abuse and the Law*, N.Y.C. ALLIANCE AGAINST SEXUAL ASSAULT, http://www.svfreenyc.org/survivors_factsheet_74.html#2 (last visited Sept. 28, 2013).

¹⁶⁵ Johnson, *supra* note 69, at 119.

remedial measures will decrease. While financial exploitation of the elderly is not a crime that is likely to go away, it is something that should be prevented as early on as possible.

Research has shown that a strong social support system is very effective in preventing all types of elder abuse and the lack of a support system can be a strong indicator of potential victims of abuse.¹⁶⁶ Ongoing connections with others are important to all individuals, especially in old age, in order to create a sense of value and feeling of importance amongst a social network.¹⁶⁷ When an individual has people in his or her life that care or take an interest, then it is almost as if a monitoring system is in place to protect the vulnerable person from abuse.¹⁶⁸ These support systems could include friends, family members, and neighbors and have the potential to be beneficial for every person in the system.

The New York State Elder Abuse Prevalence Study suggested that in addition to focusing on prevention and intervention, particular attention should be paid to education and training concerning signs of elder abuse, as well as the resources available to assist victims.¹⁶⁹ Educating older adults as to potential scams, or potential perpetrators, is a beneficial course of action that legislators should be taking.

With regard to computer education, many communities offer classes for the elderly on how to use the Internet safely and how to avoid potential scams.¹⁷⁰ The more individuals who partake in these types of educational opportunities, the less of a problem Internet scamming will be. It would also be advantageous if close friends or family members of at-risk elderly individuals attempted to safeguard the elder's computer to protect from unwanted scams or viruses that an elderly person might not spot. While this may pose a problem when it comes to invading the decision-making power of competent older individuals, it would also be helpful in protecting against outside threats. A community-wide response to elder abuse would be effective in increasing detection as well as reporting and prosecution.¹⁷¹

¹⁶⁶ GAO, *supra* note 138, at 13.

¹⁶⁷ *Id.*

¹⁶⁸ *See id.*

¹⁶⁹ *See* UNDER THE RADAR, *supra* note 119, at 57.

¹⁷⁰ *See generally* What Exactly is Senior CompuCare?, SENIOR COMPUCARE, <http://seniorcompucare.com/> (last visited Sept. 25, 2013) (providing day-to-day computer training for senior citizens).

¹⁷¹ *Training Manual*, *supra* note 4, at ii.

In addition to family and friends, professionals such as lawyers and bankers are in a position to educate vulnerable individuals regarding, for example, the types of consumer fraud and scams or how to assign fiduciary responsibility to an outside person if they are worried about family members as perpetrators.¹⁷² An elderly person is more likely to listen to someone in a position of power when taking advice on financial matters. As previously discussed, bankers are also in a position to determine whether a person's finances have changed suddenly and unexpectedly, therefore, they should be on the look-out for these changes in order to stop financial abuse as early on as possible.¹⁷³

Education with regard to financial abuse should transcend the possible victims into the community. All persons who come into contact with these elderly individuals should receive the proper training and education when it comes to spotting potential exploitation and listening to individuals who may be in need of assistance. Bank tellers and physicians are examples of people who may be in a position to prevent further exploitation if they are properly trained to notice potential abuse.¹⁷⁴ Training for these individuals is inexpensive and an effective method of prevention.¹⁷⁵

Another proposal for a preventative method has been to require a third party, described as "the evaluation official," to witness the signing of important financial documents by elderly individuals.¹⁷⁶ The official would be someone who has no relation whatsoever to the elderly person or the person which the document might benefit, in other words they would be "disinterested."¹⁷⁷ The purpose of requiring a disinterested official to witness the execution of documents would be to make sure that the person signing is competent, to create a presumption of validity of that document, and also to prevent against fraudulent transactions between an elderly individual and another person.¹⁷⁸ Officials

¹⁷² See BROKEN TRUST, *supra* note 8, at 29.

¹⁷³ See generally NEW YORK BANKERS ASS'N, *supra* note 109, at 1, 3.

¹⁷⁴ See *id.* at 2; *Elder Abuse Treatment & Management: Emergency Department Care*, MEDSCAPE, <http://emedicine.medscape.com/article/805727-treatment> (last visited Oct. 2, 2013).

¹⁷⁵ Terrie Lewis, *A Minnesota Comparative Family Law Symposium: Fifty Ways to Exploit Your Grandmother: The Status of Financial Abuse of the Elderly in Minnesota*, 28 WM. MITCHELL L. REV. 911, 952 (2001). See *Elder Abuse Treatment & Management: Emergency Department Care*, *supra* note 174.

¹⁷⁶ Johnson, *supra* note 69, at 115.

¹⁷⁷ *Id.* at 116.

¹⁷⁸ See *id.* at 118–19.

should also be required to witness the signing when an individual wants to change an important financial document or change a specific fiduciary appointment because these are prime examples of when financial abuse may be occurring.

One argument against this method is that it impedes autonomy by requiring older adults to do something that is not required of younger adults.¹⁷⁹ While this may be true, the purpose of the official is not to have someone tell you what you can and cannot do, but to have someone there to make sure that the person signing the document is a competent individual in the eyes of an objective third person.¹⁸⁰ The advantage of requiring a disinterested person to oversee the signing of important documents is far greater than the possible impediment.¹⁸¹

A significant barrier to redressing elder abuse is funding. Sufficient funding is a major issue for agencies working toward protecting elderly individuals.¹⁸² However, in October 2012, the New York State Office for the Aging received a three-year, one million dollar grant for the prevention of elder abuse from the United States Administration for Community Living.¹⁸³ The purpose of this grant is to initiate a program to combat financial exploitation and elder abuse in New York.¹⁸⁴ The goal of the program will be to prevent financial exploitation “by bringing together entities with resources and skills to form a coordinated E-MDT [enhanced multidisciplinary team] that will provide improved and effective systems collaboration and specialized responses, resulting in restored safety and security to older adults.”¹⁸⁵

CONCLUSION

Financial abuse of the elderly is an expansive crime affecting millions of individuals every year, and unfortunately the number

¹⁷⁹ *Id.* at 119.

¹⁸⁰ *Id.* at 120.

¹⁸¹ *Id.* at 121.

¹⁸² Donna Schuyler, *Reconceptualizing Elder Abuse: Treating the Disease of Senior Community Exclusion*, 15 ANN. HEALTH L. 275, 285 (2006).

¹⁸³ *Elder Abuse Prevention Grant Awarded to NY State Office for the Aging*, N.Y.S. OFFICE FOR THE AGING (Oct. 19, 2012), <http://aging.ny.gov/news/2012/2012PR04.cfm>.

¹⁸⁴ *Id.*

¹⁸⁵ *NYS Awarded \$1 Million Federal Elder Abuse Prevention Grant*, N.Y.C. ELDER ABUSE CTR. (Oct. 19, 2012), <http://nyceac.com/nys-awarded-1-million-federal-elder-abuse-prevention-grant/>.

of victims is only expected to increase as time goes on.¹⁸⁶ In the year 2013, it is hard to foresee a decline in financial exploitation of the elderly due to the expected growth of the elderly population and the lack of preventative measures in place to protect vulnerable individuals from potential financial abuse. While there are many programs available to help elderly victims, there is a tremendous lack of communication between these programs, resulting in chaos and disorder, especially when it comes to research and the availability of information in this particular field.

In New York, there are many programs, such as the NYS Office of Children and Family Services and the NYS Office for the Aging, that are attempting to educate the public and potential victims about financial exploitation;¹⁸⁷ however, a lack of proper resources and funding thwarts the opportunity for growth.

It is hard to determine what financial abuse of the elderly will look like fifty years from now. Certain questions come to mind: What new technologies will be available? Will the vulnerabilities remain, but for different reasons? Will future generations be better prepared to deal with financial exploitation? The answers remain unknown, but it is safe to say that if we continue to deal with financial exploitation by focusing on remedial measures and punishment of perpetrators, the same problems will persist.

¹⁸⁶ See BROKEN TRUST, *supra* note 8, at 5; DOJ REPORT, *supra* note 21, at 4; *Elder Abuse Prevention Grant Awarded to NY State Office for the Aging*, *supra* note 183.

¹⁸⁷ *Adult Protective Services: Bureau of Adult Services*, N.Y.S. OFFICE OF CHILDREN & FAMILY SERVS., <http://ocfs.ny.gov/main/psa> (last visited Sept. 25, 2013).