

Perspectives on Elder Abuse

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I. Introduction

Abuse of elders is an international concern.¹ As a preliminary step in understanding how abuse happens in the community and addressing appropriate measures to halt its spread, representatives from five countries outlined their perspectives on elder abuse in a workshop at the NGO Forum on Aging.² The NGO Forum, held in conjunction with the May 2002 United Nations World Assembly on Aging, provided an opportunity for experts around the world to discuss the substantive issues facing World Assembly. This paper is a composite of the perspectives of experts from Argentina,³ India,⁴ Japan,⁵ Spain,⁶ and the United States.⁷

¹ Report of the United Nations Secretary-General, Abuse Against Older Persons, March 2002, <http://www.un.org/esa/socdev/ageubg.waa.ioldrep1.htm/>

² The workshop was organized by AARP (formerly the American Association of Retired Persons). AARP is a nonprofit, nonpartisan membership organization for people 50 and over. It provides information and resources; advocates on legislative, consumer, and legal issues; assists members to serve their communities; and offers a wide range of unique benefits, special products, and services for members. This paper's focus on abuse of adults in the community does not denigrate the potential for abuse of persons residing in institutions. However, in more developed countries less than 10 percent of older persons reside in institutions; in less developed countries few residential care facilities for older persons exist.

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II. Demographics of Older Population

An understanding of the older population in general is essential to an understanding of elder abuse. Our global population is aging, and aging at an unprecedented rate.⁸ In 2002, 17 percent of all Japanese were aged 65 or older, the only non-European country among the world's oldest countries.⁹ Older Spaniards, similarly, are 16.9 percent of the population. By comparison, the United States, with 12.6 percent of the total population 65 and older, is rather young by developed-country standards.¹⁰ The number of older Americans has increased by 8 percent (2.6 million) since 1990, as compared to a 6 percent increase for the under-65 population.

In all parts of the world, there is a preponderance of women at older ages. The longer life expectancy found among women is reflected in the ratio of men to women among the older age cohorts. In both the United States and Argentina 65+ populations, there are 71 men for every 100 women.¹¹ One-fifth of all Indian men fall into the 60+ age group, while two-thirds of all women are sixty and older.

Additionally, older women are more likely than older men to be widowed. Sixty-five percent of American women are widowed by age 75, while in Argentina the percentage is 70 percent, and in Japan it is 75 percent.¹² The majority (67 percent) of older Americans live in a family setting. About 30 percent live alone. Only 4 percent of the 65+ live in nursing homes, but that number increases dramatically for persons over 85 to 15 percent. In all of India there are about 700 old age homes, with only a negligible proportion of the aged population living there and with waiting lists of over two years to be admitted.

Finally, the number of older adults who are living alone will also increase. In the United States, this percentage is projected to increase from 9.2 percent in 1990 to 15.2 percent in 2020. As older adults' age increases, so does the number living at home alone. By the year 2020 the number of Americans 85 years of age and

⁸ Kinsella, Kevin & Victoria A. Velkoff, U.S. Census Bureau, Series P95/01-1, *An Aging World: 2001*, U.S. Census Bureau, U.S. Government Printing Office, Washington, DC 2001.

⁹ U.S. Census Bureau (2001).

¹⁰ U.S. Census Bureau (2001).

¹¹ U.S. Census Bureau (2001).

¹² U.S. Census Bureau (2001).

older who live alone will double from 1990 to 2.3 million persons.¹³ Individuals with such living arrangements are more likely to live in poverty and less likely to receive help with activity limitations than older couples who co-reside.

Projected Changes in the Older Adult Population

World population projections anticipate explosive growth of older persons. India, which currently counts 77 million older persons, projects an increase by 174 percent between 2000 and 2030.¹⁴ Argentina can expect an 81 percent increase and Japan's elderly will increase by 54 percent. In the United States, estimates predict a projected 70 million by 2030, a 102 percent increase.

With an expanding older adult population come changes in our societies. Demographic projections for American Baby Boomers (76 million persons born after World War II between the years 1946 and 1964) indicate that collectively, the older adult population will be better educated, better off financially, living in the suburbs, and the beneficiaries of more government services than their parents. However, they are a highly diverse population.¹⁵

Marriage and other family patterns will also be different for future American cohorts. Generally, American Boomers have married later, have higher divorce rates, and have had fewer children than previous generations. In addition to blended families, Boomers live in more nontraditional families, including single-parent households, cohabitating heterosexual and same-gender couples, and intergenerational families. Such family patterns will alter present caregiving patterns for older Americans. Fewer informal supports will likely be available for families who chose not to have children at all. One consequence of an older adult population with greater need for assistance with activities of daily living and fewer available caregivers is an increase in the potential for elder abuse

Changed and changing demographics around the world point to an increased potential for abuse. In India, as well as other countries, westernization and industrialization have been identified as social factors exacerbating abuse. Westernization fosters materialistic attitudes and the loss of traditional cultural

¹³ U.S. Senate Special Committee on Aging (1991).

¹⁴ U.S. Census Bureau (2001).

¹⁵ For example, although the Boomers will have higher levels of education than any generation in the United States, more than 3 million will not have higher than an eighth grade education. Boomers' wealth will be comparable to their parents' income at similar life stages, but, due to an increasing unequal distribution of wealth in the past two decades, 4 million Boomers in 2030 will have incomes below 150percent of the poverty level. The poverty gap between whites and persons of color was as wide in 1994 as in 1959, a rate of 3:1.

values including respect for the elderly. Industrialization and technology disrupt traditional family economic patterns, family size, and inter-generational values. Migration of younger generations to urban areas and other countries for employment isolates older persons, leading to potential abandonment and increased poverty. Rapid social change and increased economic pressures may strain households with scarce resources, resulting in abuse against older members who are perceived as a family burden.

III. Demographics of Elder Abuse

Elder abuse is a hidden problem, frequently cloaked under the shroud of family secrecy. Particularly in countries like Japan and India, where elders are traditionally revered, awareness is just now developing that abuse does occur. No country reports with certainty how much elder abuse occurs. However, in the United States a 1998 study does estimate abuse occurrence, based on statistical sampling techniques. According to the report, “The best national estimate is that a total of 449,924 persons, aged 60 and over, experienced abuse and/or neglect in domestic settings in 1996”¹⁶ The report acknowledges wide latitude in its projections:

The standard error suggests that nationwide as many as 688,948 elders or as few as 210,900 elders could have been victims of abuse and/or neglect in domestic settings in 1996. This range indicates that between 1.7 and 9.0 times as many elders were abused and not reported to [authorities].¹⁷

The most recent estimate is that between one and two million older Americans are abused each year. American researchers estimate that only 1 out of every 14 elder abuse cases is reported. In 1994, the U.S. National Center on Elder Abuse data shows 241,000 reports of elder abuse. This is an increase of 106 percent of reported cases since 1986. This dramatic increase is probably more a function of heightened awareness and new reporting and tracking capabilities, rather than an increase in actual incidents. Nevertheless, what is seen is only the tip of the iceberg.

During 2001 in Spain there were 2,203 reported cases of elder abuse, comprising a prevalence of 3.2 per 10,000 older persons. Of these registered cases, 57 were of physical abuse, 22 percent emotional abuse and 21 percent including neglect and economic abuse.

Who are the Perpetrators?

¹⁶ National Elder Abuse Incidence Study (1998). Online at <http://www.aoa.gov/abuse/report/default.htm/>

¹⁷ National Elder Abuse Incidence Study (1998).

Abusers come from as varied backgrounds as the abused. In the United States they are most likely to be adult children, with a spouse, grandchildren and other relatives also being likely perpetrators. American perpetrators can be informal or formal caregivers, or aides in a nursing home. Financial abuse can occur by agents under a power of attorney, a court appointed guardian, a bank officer or stockbroker, or a scam artist. A friend, volunteer, employee, or contractor can exploit older persons.

Japanese studies find a high incidence of caregivers abusing the elder. Because Japanese women are usually responsibly for care giving, they make up the larger proportion of abusers. It is extremely rare for a person other than a family member to be the abuser in Japan. In India, where the norm is for adult children to care for their parents, sons- and daughters-in-law are the most likely perpetrators. In Spain, 80 percent of the abuses were men, with intimate partners being responsible for 29 percent of these cases. The aggressor is likely to be a close relative who lives in her home, is economically dependent on the victim, and is a substance abuser.

Perpetrators abuse older persons for a variety of reasons, but the main causes have to do primarily with dependency and vulnerability. If an abuser is the primary caregiver and the caregiver views the dependency of an older adult as burdensome and stress producing, the caregiver may exhibit abusive behavior. If the abuser is not the caregiver, the dependency of an older adult creates vulnerability to persons who seek to exploit dependence. Finally, if an abuser simply does not know how to care for an older adult, abuse may occur through passive neglect.

Who are the Victims?

Persons from all social classes, races and parts of the world are the victims of abuse. The typical American elder abuse victim is a woman over 75 years old, frail due to physical or mental impairments, with low to modest income and who lives with family members or relatives.¹⁸ Spanish victims are most likely to be women (65%) who are dependent and living at homes (80%). Frequently, the abuse victim is living with a relative who is the only caretaker. Likewise, Japanese women are the predominate victims of elder abuse; if for no other reason than they comprise the higher percentage of older Japanese. In Japan, the percentage of abused elderly rises with age. Those with dementia or who are bedridden also show rising incidence in Japan, indicating that those who require a higher degree of care are more likely to be abused. Nevertheless, even those Japanese who are able to care for themselves are experiencing higher levels of abuse.

¹⁸ The median age of reported elder abuse victims in 1994 was 76.5 years, excluding self-neglecting elders. National Elder Abuse Incidence Study (1998).

The possible consequences to the victims are many. Depression, learned helplessness and alienation, post-traumatic stress disorder, guilt, shame, fear, and denial are among the physiological consequences. Loss of health, assets, respect, self-esteem, and even life may follow. The United Nations Secretary-General has reported incidences of scapegoating, in which the older person is blamed for ills befalling the community, such as drought, flood, or medical epidemics. The person (normally a woman) may be ostracized as a witch, tortured, maimed, or even killed if she fails to flee the community.¹⁹

IV. Theoretical Models to Explain Elder Abuse

Elder abuse, like other domestic violence, is extremely complex. Generally, a combination of psychological, social, and economic factors, along with the mental and physical conditions of the victim and the perpetrator, contribute to elder maltreatment. Because there are different types of abuse, it is likely that there are different causal factors. Researchers do not necessarily agree on any one particular model. The causes of elder abuse are still a matter of conjecture.

Caregiver Stress

Caring for a frail older person can be very difficult, complex, and stress provoking, especially if the older person is mentally or physically impaired, if the caregiver is ill prepared for the task, or if needed resources are lacking. Increased stress and frustration may lead to abuse or willful neglect, especially if the victim is in poor physical and cognitive state. A 1991 American Medical Association report on elder abuse stated that 63 percent of reported abuse cases cite caregiver stress as a causal factor.

However, other studies caution against saying that caregiver stress causes domestic violence because it puts the emphasis on caregiving behaviors at the expense of downplaying the abusive behavior. Though the family may have social needs, the fact of a crime and the need for criminal justice involvement should not be minimized. The caregiver stress model essentially blames the victim for the situation. When victims are blamed, abusers are freed of responsibility for the violence. It also contributes to the victim's misperception that abuse is expected or deserved.

In addition to the pressures of caregiving, other factors in the context of caregiving may contribute to abuse. For example, many caregivers do not understand the difference between normal aging changes and treatable pathological changes in older adults. Some caregivers think that, if they physically

¹⁹ UN Secretary-General Report on Abuse Against Older Persons (March 2002).

discipline an impaired older adult, they will have control over problems associated with their care.

Another contextual problem with caregiving is obstacles that impede giving adequate care. Physicians and other health professionals may not communicate so that caregivers understand them, or caregivers may not be offered the assistance that they need. Caregivers may be too intimidated to ask for help or clarify questions. Additional obstacles may be a lack of respite care or models of good caregiving. Many caregivers do not know where to turn for help and think that they must “go it alone.”

A final stress may be the former relationship between the older adult and the caregiver. A relationship that was not cordial before an older adult became dependent will not likely improve when caregiving relationships are altered.

Cycle of Violence

Stress, poor communication skills, conflict and/or frustration do not necessarily cause violence. Violence is a learned behavior, transmitted from one generation to another. Abusive behavior by a child may be the learned normal response in that family to tension or frustration, because that is the way the elder treated the child as a youth.

The family pattern may be that violence is the acceptable way to deal with family problems. The child saw the parents slap each other; a parent may have stood by while the other parent abused the child. Even without a history of aggressive family interactions, poor coping skills may cause the person to lose control and raise a hand against an elder.

Lack of Knowledge

In the opposite direction of violent reactions, is the neglect reaction. A caregiver may give up on a parent and walk away. Americans report cases of persons tied to a bed in a locked room to keep them “safe” from wandering. The caregiver of a person with dementia may not understand how the disease progresses and that the sometimes bizarre behavior is the result of the disease. They may think that incontinence or forgetfulness is intentional and punish the adult for soiling their pants or losing the keys. The lack of knowledge of how to properly care for an older person, particularly one with Alzheimer’s or who is bedridden, may result in unintentional, but devastating abuse.

Dependency

United States researchers have found that abusers tend to suffer from such problems as mental disorders, alcoholism, drug addiction, and financial difficulty.

When these problems occur with adult children, they frequently become dependent on their elders for support. The abuser, who is still dependent on parents or in-laws, may feel especially powerless, as his or her dependency violates society's expectation of normal adult behavior. Thus, abusers may ill-treat the elder as a compensation for their lack of power. Further compounding the dependency issue, the victim may have a strong sense of loyalty to the perpetrator, making the elder reluctant to reveal the abuse.

Abuser Impairment

In some instances of abuse, the abusers have disabling conditions such as addictions to alcohol or other drugs, a sociopathic personality, grave psychiatric disturbances, dementia, mental retardation, or an inability to make appropriate judgments regarding the care of a dependent older person. In one American study based on 328 cases of elder mistreatment, alcohol abuse was a strong correlate of physical and financial abuse. However, allowing alcohol consumption as an excuse for normatively unacceptable behavior frees the abuser from the blame for willful and abusive acts of violence or exploitation.

Societal Attitudes

The way societies around the world view older persons may also contribute to elder abuse, such as ageism, sexism, and greed. People are commonly valued in our societies for the contributions that they make to productivity. When older persons withdraw from, or become unable to continue, paid work, they may be avoided, mistreated, or considered a financial burden. Also, a disproportionate number of victims of maltreatment are women, whose role may become unclear as they may change from primary familial caregiver to the person needing care.

Proteger, the Buenos Aires elder abuse program, encounters similar social barriers in addressing elder abuse: ageism resulting in discrimination and prejudices against older persons; the assumption that abuse is a family problem that should be "fixed" at home without involving strangers; the belief that "nothing can be done" when mistreatment occurs; and more media coverage and social awareness of violence against women and children.

Prevention of elder abuse is further complicated by victims' frequent reluctance to admit the abuse has occurred and refusal to report it when the victim is dependent on the abuser. Recognizing this reluctance, the Medical Association of Spain recommends that doctors question older patients about the possibility of family violence, even when no signs or reports of abuse are present.

Fear of retaliation and financial insecurity create other barriers. The economic reality for many older women is continued violence or certain poverty. Further, the elder victim may lack the capacity to seek assistance, to even get into

and through the court system. Abusers frequently use isolation to keep control over their victims and may physically or psychologically prevent the victim from seeking help. Denial or minimization of the seriousness of the abuse may prevent the victim from seeking help. They may rationalize or excuse their abuser's behavior.

Victims may chose to protect their abusers also through self-blame, economic dependence, or a pattern of co-dependent behavior between the victim and abuser. The older person may have a long history of protecting and "saving" the abuser, often an alcohol or drug dependent adult child. There is shame and guilt when the child you raised is now mistreating you.

When the abuser provides personal care assistance as the victim's only caregiver, the victim may not want an investigation or criminal charges, because the only result may be the victim's institutionalization. They may be willing to put up with known abuse in their own homes, rather than face the unknown in an institution.

V. Forms of Abuse

Elder abuse encompasses several forms of maltreatment of an older person by someone who has a special relationship with the elder. The stories of abuse are sad, complicated, sometimes mean-spirited, and other times pitiful.

First, there is **physical abuse**,²⁰ the use of physical force that may result in bodily injury, physical pain, or impairment. This would obviously include hitting, beating, shoving, kicking, pinching, burning. It could also include inappropriate use of drugs or physical restraints, force-feeding, physical punishment. According to United States data, physical abuse comprises 15.7percent of all types of elder abuse.²¹ In India, on the other hand, there is little evidence of physical abuse.

A possible physical abuse scenario in America would be a woman, with a black and blue eye, who lives with her 40-year old son. He drinks heavily and has been diagnosed as suffering from manic depression and post-traumatic stress

²⁰ The Code of Virginia, § 3.1-55.2, for example, defines abuse as "the willful infliction of physical pain, injury or mental anguish or unreasonable confinement." Abuse includes battery and other forms of physical violence including, but not limited to, hitting, kicking, burning, choking, scratching, rough handling, cutting, biting, etc.

²¹ National Elder Abuse Incidence Study (1998). In Canada, 15 percent of reported cases of abuse concerned physical abuse, 55 percent were neglect, and 12 percent financial exploitation. In a small Indian sample of persons over 70 in an urban setting, 20 percent reported they were neglected in their households. Forty-five percent of an urban sample of older persons in Argentina reported mistreatment, with psychological abuse the most frequently reported form. UN Secretary-General Report on Abuse Against Older Persons (March 2002).

syndrome after Vietnam. At first, she may say her son had nothing to do with her bruised eye. Later, she may acknowledge that he had been throwing things around the room, and maybe the vase might have hit her.

A well-known elderly Indian actor, who was known for a good physique in his younger days, was over-sedated by his son and daughter-in-law, who were systematically getting hold of his keys and possessions. The old actor had bought them a house of their own, but this young couple had their eyes on the old actor's apartment, which was prime property. Although bed-ridden, he was alert enough to inform his two daughters living in two different cities, who filed a suit against their own brother and his wife, who, on the pretext of taking care of and helping the old man, were clearly, physically harming him.

Restrictions to use toilet and bath facilities are torturous for Indian elders who are forced to stay in unhygienic conditions. In one case a son and daughter-in-law rented out an elderly widow's living room and bathroom to a paying guest. The widow uses the small balcony to sleep, but is left without a bathroom and ends up using a newspaper when she wants to use the toilet.

Sexual abuse is nonconsensual sexual contact with an elderly person. This would include unwanted touching, sexual assault, rape, sodomy, coerced nudity, sexually explicit photographing. Sexual contact with a person who is incapable of giving consent is also sexual abuse. Of all types of abuse, sexual abuse is the most hidden, due largely to its taboo nature.²²

Psychological or Emotional Abuse is the infliction of anguish, pain or distress through verbal or non-verbal acts. This could include verbal assaults, insults, threats, intimidation, humiliation, isolation, harassment and destruction of self-esteem.

Treating the older person like an infant; isolating the elderly person from her family, friends or regular activities; or enforced social isolation is abusive. It can be by way of deliberate over-sedation or confining an older person to her bed, a room, or a corner in the kitchen or verandah. Confinement is common in Bombay, a city where lack of living space a crucial problem. Other manifestations, in the Indian context, include being taken for granted; being used as unpaid domestic help; not being included in the family's social events; being made the focus of cruel jokes; and not being appreciated or acknowledged for contributions made in the household chores or expenses.

²² American data indicates that sexual abuse comprises approximately .5percent of all types of elder abuse. National Elder Abuse Incidence Study (1998).

Another American example of psychological abuse might be threatening to put an older person in a nursing home if he or she does not comply with the abuser's requests.

Neglect is the refusal or failure of a person's implied or agreed-upon obligation or duties to provide an elder with necessities, such as food, water, clothing, shelter, personal hygiene, medicine, or safety.²³

Typically in America,²⁴ this could be a family member who is responsible for the care for an older person but fails to do so, by not buying groceries or prescribed medication. Or it could be a failure on the part of an in-home service provider who is paid to provide care but does not. The caretaker may mean well, but becomes overwhelmed and negligent when faced with the unending demands of a disabled, bedridden person who is incontinent and hooked up to tubes. In India, there are reports of families dumping an older person in the hospital, leaving a false residential address so the relatives cannot be traced.

Self-neglect is characterized as the behaviors of an elderly person that threaten his or her own health or safety. The usual manifestation is a refusal or failure to provide self with adequate food, clothing, hygiene, medication and safety precautions. Self-neglect cases typically account for more than half of U.S. reported cases of neglect, but are rarely reported in India.

A typical American scenario might be reports from neighbors that an elderly lady is out late at night in chilly weather without a coat, or perhaps even shoes. She bangs on others' doors, wanders to a neighborhood store confused and disoriented, begging for a donut or a cup of coffee. In both urban and rural areas the person can become reclusive and get too confused or depressed to eat.

It may be someone with chronic mental illness who has stopped taking prescribed medication and can no longer take care of themselves or their home. With declining competency and increased frailty, people can begin to neglect themselves because life becomes too difficult and no family members live nearby.

²³ Virginia Code § 63.1-55.2 defines neglect as "an adult living under such circumstance that he is not able to provide for himself or is not being provided such services as are necessary services as impairs or threatens to impair his well-being." Included in this definition are those who are self-neglecting.

²⁴ American data indicates that neglect accounts for 58 percent of types of abuse. National Elder Abuse Incidence Study (1998).

Financial exploitation is the illegal or improper use of an elder's funds, property or assets.²⁵ Financial abuse tends to be the result of a relationship gone wrong, or a betrayal of trust, rather than outright theft. A person—family, friend or stranger—may develop a trusting relationship with the older person with the expectation that they can derive financial gains from the relationship. If the older person becomes vulnerable or dependent, it becomes easy to abuse that trust.²⁶

This can happen in multiple ways: cashing a pension check without authorization, forging a person's signature, misusing or stealing a person's money or possessions, coercing or deceiving an older person into signing documents such as will, contract, deed. A daughter won't put her extremely ill and disabled person in a care facility because she needs her mother's pension to live on. An unemployed middle-aged son may wait for his mother's pension check to buy cigarettes and beers. They need their parent's money to live on and can't take care of themselves or their parents.

Greed may play a role when family members coerce an elderly person to sign over the deed to their home, or prevent the person from selling assets to pay for nursing care so the property will be available for the children to inherit.

The attractive young man may prey upon the rich, lonely widow, befriend her, developing a trusting relationship, running errands, maintaining property, and then suddenly disappearing with the bank accounts.

Of course, in real life abuse doesn't break down into neat categories. The types of abuse combine and overlap. In a typical case, the abuse may be continuous and multi-faceted.

VI. Responses to Elder Abuse

Older people, like all members of any society, have the right to be free from abuse, neglect, or exploitation. Violation of this right is particularly harmful for older persons who may be less able to protect themselves because of frailty or incapacity. Thus, countries are developing laws to provide special protections for older persons from abuse. These laws are based on the premise that older persons require special statutory protection—in addition to other laws—because of the

²⁵ Virginia Code §63.1-55.2 defines exploitation as “the illegal use of an incapacitated adult or his resources of another's profit or advantage.” Exploitation may include crimes of larceny, embezzlement, theft by false pretenses, burglary, forgery, false impersonation, and extortion.

²⁶ Financial/material exploitation cases are 12.3percent of all American elder abuse cases. National Elder Abuse Incidence Study (1998).

association between age and increased vulnerability to abuse. They include criminal sanctions, as well as social service responses.

U.S. Adult Protective Services Laws

In the United States, there is no federal elder abuse law. It is considered an area of state law. Thus, there are multiple laws and procedures and a variety of responses. How “elder” and “abuse” are defined, as well as what levels of prevention, services, and prosecution are available can have multiple answers.

All American states have laws setting up Adult Protective Services (APS) programs. The program goal is to protect a vulnerable adult’s life, health, and property without a loss of liberty and, when this is not possible, to provide care with the least disruption of life-style, with full due process protection, and to restore the person’s liberty in the shortest possible period of time. Adult protective services programs seek to achieve, simultaneously and in order of importance, freedom, safety, least disruption of life-style, and least restrictive care.

The salient characteristics of adult protective services are to have professional staffs investigate reports of abuse, neglect, or exploitation; assess the competency and needs of the victim; and provide social services to help the victim. Any person may report to the local department of social services (or to a toll-free telephone hotline) that an older person or an adult with disability is in need of protective services.

By law certain professionals are required to report suspected abuse to APS. While who has to report varies from state to state, it is generally those who have personal contact with the elderly, such as doctors, nurses, social workers, mental health professionals, police officers, and paid caregivers.²⁷ They are immune from civil and criminal immunity unless the reporter acts in bad faith or with malicious intent.

A very important social policy that underlies, and at times appears to complicate, American APS laws is the recognition that adults have the right to make their own decisions, as long as they are mentally competent. All adults must consent to any assistance offered following an APS investigation. Simply, the law is structured to allow persons to make dumb, stupid or eccentric decisions—as long

²⁷ According to Virginia Code § 63.1-55.3, the following are mandated reporters: any person licensed to practice medicine or any of the healing arts; any hospital resident or intern; any person employed in the nursing profession; any person employed by a public or private agency or facility and working with adults; any person providing full-time or part time care to adults for pay on a regularly scheduled basis; any person employed as a social worker; any mental health professional; and any law enforcement officer.

as they are competent—even if they place themselves or wish to stay in the range of danger.

If the APS worker believes that the victim is not competent and is in need of emergency services and the victim does not or cannot provide consent, then the worker must petition to court for authorization to intervene and the court must find the victim incompetent. Usually the definition of “emergency” is a situation that is either life threatening or poses an imminent risk of serious physical harm. If court authority is given, the worker would be able to enter the abused person’s setting, remove that person from the setting, and obtain stabilizing medical treatment. Usually the order is limited as to duration and specific about what steps the caseworker can take. For example, the order might be to place a cognitively impaired person with severe malnutrition and dehydration in a medical center for 72-hours of treatment.

While the specific services vary, adult protective services generally include housing, homemaking, meals, money management, transportation, friendly visitors, information and referral, mental health counseling, health and legal services, respite care or adult day care. They may also obtain emergency shelter, call the police, or refer the case to a prosecuting attorney. Because of the strong association between dependency between the abuser and victim, the usual emphasis is on bringing to the victim services that encourage independence, as well as services to the abuser such as job training and substance abuse counseling. The extent of the services actually available depends on governmental budget constraints and the gravity and type of the abuse.

Mandatory reporting laws are patterned after our child protective services laws. In the child protection scheme certain categories of persons must report child abuse, a state agency must investigate that report and make recommendations for services or intervention. Founded reports frequently call for the prompt removal of the child from a dangerous environment, counseling for the abusing parents, and restoration of the family situations as soon as it is safe.

Argentine Process

Elder abuse must be reported by the victim’s legal representative, and by care, social or educational service personnel, public and private health officials, and any official on account of his or her task. Any person suffering physical mistreatment or any family member can report the abuse orally or in writing to a civil Family Court judge (Tribunales de Familia), requesting preventive measures. However, the law is not well known and has not been well publicized. Medical and financial officials admit to not being well prepared to detect or prevent abuse and generally ignore the existence of reporting requirements. Law enforcement is required to notify either a civil or criminal judge, depending on the degree of injury.

In Buenos Aires City one governmental program specifically and exclusively addresses elder abuse. Proteger (To Protect) engages social workers, psychologists, physicians, lawyers and community workers to protect the rights of older persons through prevention of violence and intervention in the case of elder abuse. It also maintains a free help line for mistreated elders.

Spanish Process

In Spain, with its ready access to public health care, free medicine and hospital care, the family doctor is a key player in detecting elder abuse. A doctor who suspects injury due to abuse, can report the concern to the police who will put the facts in front of the prosecutor. The court then takes declarations and requests information. Measures then can be taken to protect the victim and bring the responsible party to justice.

While there is no specific protocol for bank employees to follow if they suspect financial exploitation, there are police programs to encourage bank officials to report to the police if they suspect exploitation. To coordinate the police response to elder abuse reports, the police commission is developing specially trained departments who will give priority to the most vulnerable including children, women and elders.

Aware that abuse can be caused by the stress of caring for an older person while being employed, Spain has adopted a law that facilitates combining elder's care and access to the labor market. Caregivers can take leave for up to a year to care for a gravely ill elder or reduce their workday by a third to a half to provide direct care.

Spanish social services are developing a Plan Gerontológico to increase access to assisted living facilities and to family assistance, as well as encourage unification and integration of diverse agendas in the separate communities. Hotlines are used to help victims find necessary assistance and referrals to appropriate organizations. Nine out of ten requests are resolved by the volunteers to receive the calls.

Japanese Process

Protective orders, originally designed to address the problem of spousal abuse, are available to the abused elder. The judge would order an abuser to stay out of the house and not contact the abused in any way. In these proceedings, the judge can order the offender to pay the victim's attorney fees, to obtain counseling, or to make restitution to the abused. Violation of the protective order is a crime, for which the abuser can be arrested.

VII. Other Legal Responses to Elder Abuse

Domestic Violence Laws

Other laws may be available to provide remedies and interventions in elder abuse. American states have laws prohibiting spousal abuse, or domestic violence laws, may be useful in the right circumstances. These laws are different than APS laws because the focus is on the victim seeking help who wants it, rather than offering services to someone who someone else has reported as being a victim of abuse.

Domestic violence laws provide assistance and remedies for victims who come forward asking for help. Shelters are available to ensure the safety of the victim if she wants to get out of harm's way. Courts can remove the perpetrator from a family home (rather than the victim) and issue orders that the perpetrator must stay away from the victim or risk arrest and imprisonment for violation of the court order.

In most aspects, older battered women are no different than younger abused spouses—they are ambivalent, frightened, and circular in their response to leaving and returning to the abuser. They may have the added burden of decades of abuse and dependence on the abuser, whether it is a spouse or a child.

Although some aspects of American domestic violence laws are an improvement over adult protective services limitations, they still do not address many instances of abuse against an elder, particularly financial abuse. To be able to take advantage of the domestic violence remedies, in many states the victim must be married to the abuser. If the perpetrator is a son or granddaughter, the statute is not available. Also if the abuse is financial, rather than physical, the statute may not help.

Civil Sanctions

Persons who have been assaulted or exploited may be able to seek protection under other regular civil remedies.

An American abuse victim of any age could apply to a civil court for an injunction, restraining or protective order. This would be an order requiring another to do or, more frequently, to not do something. The order might direct the abuser to not call, contact, get closer than 100 feet, and not enter the victim's home or work place. It might order a bank to freeze a checking account so that no more money could be withdrawn. It could order a person to return property or rescind a deed fraudulently obtained. Violation of the court order could result in arrest, contempt of court, fine or imprisonment.

Other possible civil remedies that are available to the general population might be appropriate to the elder victim. Suits for monetary damages for assault, exploitation, fraud, and conversion could be initiated. False imprisonment is a possible action for use of excessive restraints.

Successful civil actions can bring protection, a sense of security, and the restoration of property. Of course, the victim, as the plaintiff in a civil suit, must be capable of obtaining an attorney and paying the costs of the litigation, including attorney's fees.

Criminal Sanctions

Many existing criminal statutes may also be available to the abuse victim in the United States and Japan. Assault, battery, rape, theft, manslaughter and extortion are a few. One innovative approach that some American states are taking is enhanced punishment. This calls for higher fines or longer incarceration if the victim is within the defined class, such as over 85+ or otherwise frail or vulnerable. However, most countries recognize that law enforcement officers need special training in responding to elder abuse, due to the vulnerability of the victims and to the general societal attitude that elder abuse is a family problem, rather than a crime.

Some American states are implementing other specific legislation on elder abuse, such as one state's success in creating the crime of neglect of care-dependent persons. Caretakers who cause serious bodily injury to care-dependent persons through failing to provide adequate care, goods, or services may be found guilty of a first-degree felony if serious bodily injury results, or a misdemeanor if lesser injury results.²⁸

Mandatory arrest of physical abusers is required under Spanish law, with the perpetrator subjected to fingerprinting and interrogation, just as would any other criminal.

Guardianship

Another judicial remedy that can be called into play in the face of elder abuse is guardianship. This is the process by which a court determines that a person has some incapacity to the level that they are at risk of harm to their personal or financial

²⁸ According to Virginia Code § 18.2-369, any person who has responsibility for the care, custody, or control of an incapacitated person and who abuses or neglects him or her is guilty of a Class 1 misdemeanor. If an individual is convicted a second or subsequent time, he or she is guilty of a Class 6 felony. In either case, if the abuse or neglect results in serious bodily injury or disease to another, the offense shall be punishable as a Class 6 felony.

well-being. If the person is found incapacitated, the court will delegate some or all decision-making responsibility to another person.

U.S. Guardianship. The exact procedures vary in American states, but in general a family member or social agency files a petition with the appropriate court. A relatively brief hearing is held, giving the alleged incapacitated person basic due process rights, such as notice, cross-examination of witnesses, right to counsel, and possibly an investigation of the need for guardianship by a disinterested person. If the person is found by the evidence to be incapacitated and at risk, the court will appoint a guardian. The guardian may be a family member, public guardian, or professional guardian. The court may give the guardian a few specific rights, such as determining where the ward will live, consenting to medical treatment, or managing assets. But in most cases the guardian will be given fairly extensive decision-making powers.

Japanese Guardianship. When Japan revised its guardianship system in April 2000, it introduced new reforms that play an important role against elder abuse. The new guardianship code is designed to protect adults suffering from dementia, impaired intelligence, or a mental disorder, who lack sufficient capacity to make sound judgments. The law harmonizes the traditional goal of protecting the vulnerable with newer concepts of respect for autonomy, effective use of one's capacity, and enabling a person to live as normal a life as possible. Under statutory guardianship the guardian is required to respect the ward's wishes, paying full attention to the mental and physical condition, and state of livelihood of the ward.

One reform introduced is voluntary guardianship, a contract-based protective arrangement in which a person with capacity appoints a guardian to act in the future, if there is loss of capacity. An alternative intervention, the new advisership arrangement, allows a spouse or close relative to apply to the family court for a surrogate for a person insufficiently capable of making sound judgments due to an impairment of his or her mental faculties. The advisership can only be filed with the consent of the person, because any advisership proceeding commenced against a person's will is considered incompatible with respect for that person's autonomy.

Spanish guardianship. A person with an early diagnosis of Alzheimer's disease can designate a person to serve as guardian from a registry of available guardians. Most court ordered guardianships are limited in that the orders provide only the protection the person actually needs.

VIII. Social Responses to Elder Abuse

Public awareness of the problem of elder abuse is crucial to all countries' responses. Before steps can be taken to remedy elder abuse, families, religious leaders, law enforcement and legislators must fully comprehend the extent of the problem and its impact on older residents.

One effort to raise awareness on the international level is the International Network for the Prevention of Elder Abuse. Through international collaboration, it strives to bring together experts from around the world to work to ensure that persons are free of maltreatment in their later years.²⁹ INPEA joined with the World Health Organization ask older persons to identify what they consider to be the components of elder abuse. Using focus groups in eight countries, the study defined the meaning of elder abuse from the perspective of older persons as neglect, violation, and deprivation.³⁰

Two programs in India begin to address community awareness and response. A group of young volunteers have started a neighborhood watch program to ensure the safety and security of older persons living alone who may be easy targets of criminals. In Bombay, a number of Nana-Nani (Grandparents) Parks have been set aside especially for older people, where they can socialize and share.

Even the smaller Spanish towns have meeting areas for the elderly, where they can congregate to talk, play games, attend cultural activities and engage in sports. Such community centers play an important role in maintaining well-being and preventing abuse.

Buenos Aires has a governmental program, Proteger (To Protect), that deals exclusively with elder abuse. The professional staff runs a free help line and provides counseling and assistance to abuse victims, as well as providing day care, home care, and assistance in nursing home admission and legal matters.

In the United States, the federal Older Americans Act and the National Elder Abuse Center form the core of efforts to address elder abuse. The Older Americans Act (OAA) is the only U.S. federal legislation specifically addressing elder abuse. It mandates and funds programs for the prevention of abuse, neglect, or exploitation. Also created by the OAA, and on the front line of elder abuse, are area agencies on aging (AAAs). The 670 AAAs provide a wide array of services at the local community or county level. The staff maintains referral lists of where and how to get senior services and assistance. They may run meals-on-wheels programs, senior transportation vans, or day care centers. For more difficult cases, the AAA will provide case management by obtaining services in an effort to keep the person in their home, including visiting nurses and homemakers. All of the persons involved with AAA services can become eyes and ears, detecting and deterring elder abuse.

²⁹ www.inpea.net/

³⁰ *Missing Voices: Views of older persons on elder abuse*, World Health Organization and International Network for the Prevention of Elder Abuse (2002).

The National Center on Elder Abuse (NCEA) is funded by a grant from the U.S. Administration on Aging and consists of a consortium of six partners: National Association of State Units on Aging (NASUA), the lead agency; Commission on Legal Problems of the Elderly of the American Bar Association (ABA); the Clearinghouse on Abuse and Neglect of the Elderly of the University of Delaware (CANE); the San Francisco Consortium for Elder Abuse Prevention of the Goldman Institute on Aging (GIOA); the National Association of Adult Protective Services Administrators (NAAPSA); and the National Committee to Prevent Elder Abuse (NCPEA).

NCEA exists to provide elder abuse information to professionals and the public; offer technical assistance and training to elder abuse agencies and related professionals; conduct short-term elder abuse research; and assist with elder abuse program and policy development. NCEA's website contains many resources and publications to help achieve these goals.³¹

The National Center on Elder Abuse connects professionals, researchers, and others interested in elder abuse and sponsors an online discussion group. For reports, articles, or other publications on elder abuse, the Clearinghouse on Abuse and Neglect of the Elderly (CANE) produces individualized, annotated bibliographies based on their holdings of more than 3,000 items.

NCEA produces biannual compilations state Adult Protective Services data, and helped conduct the National Elder Abuse Incidence Study.

NCEA's newsletter covers legislative and policy developments; reviews of new resources; best practices; and other elder abuse developments. NCEA also publishes a listing of upcoming conferences and other training events about elder abuse and related topics.

Eighty American experts from a wide variety of professions met in Washington, DC in 2001 to develop a national elder abuse policy agenda.³² Recognizing the importance of focusing resources and developing a unified approach to the problem of elder abuse, these leaders formulated recommendations to guide changes in the field.

- 1) Develop and implement a sustained national strategic communications program to educate the public on elder abuse.
- 2) Enact a National Elder Abuse Act that would create a nationwide structure for raising public awareness, supporting research, funding critical services, and coordinating state and national resources.

³¹ NCEA can be reached by website at www.elderabusecenter.org, by phone at (202) 898-2586, by fax at (202) 898-2583; by e-mail at NCEA@nasua.org; and by mail at 1225 I Street, N.W., Suite 725, Washington, D.C. 20005

³² www.elderabusecenter.org/agenda/index.html/

- 3) Improve the justice system response to elder abuse through better laws, protocols, procedures and infrastructure to improve the judicial response to elder abuse
- 4) Fund the development and implementation of a national elder abuse education and training curriculum.
- 5) Make available age-appropriate mental health services including services for victims, persons with substance abuse, and with dementia-related diagnosis.
- 6) Examine current and potential state and federal expenditures.
- 7) Increase awareness with the justice system of abuse as a priority crime issue.
- 8) Create an entity to explore and develop innovate programs and policies to improve research, data collection and reporting on elder abuse.
- 9) Create a national resource center for Adult Protective Service departments.
- 10) Involve the federal executive branch in a review of all federal policies to better coordinate preventions, interventions, and services.

IX. Conclusion

Unifying themes of national leadership, research, training, public education, and funding highlight the critical issues in every country seeking to better address the growing problem of elder abuse. International forums and discussions, such as the Madrid Forum, contribute to the exchange of effective strategies and policies that lead to the implementation of worldwide solutions.