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FINANCIAL EXPLOITATION OF THE ELDERLY:

LEGAL ISSUES • PREVENTION • PROSECUTION
SOCIAL SERVICE ADVOCACY

by Rose Mary Bailly, J.D. and Elizabeth Loewy, J.D.

with

Margaret A. Bomba, J.D. and James J. Lynch, M.D.



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About the Authors

Rose Mary Bailly, J.D.

Rose Mary Bailly, J.D. is the executive director of the New York State Law Revision Commission and special counsel to the Aging Law and Policy Program of the Government Law Center of Albany Law School. She is the executive editor of the *Government Law & Policy Journal*, a publication of the Government Law Center and the New York Bar Association. Ms. Bailly is also an adjunct professor of law at Albany Law School, where she teaches guardianship practice and New York administrative law and co-teaches elder law. She is a member of the American Bar Association, the New York State Bar Association's Elder Law Section, and a fellow of the Brookdale Center on Aging. She is a graduate of Fordham University School of Law, where she was a member of the *Fordham Law Review* and a commentary editor of the *Review*.

Elizabeth Loewy, J.D.

Elizabeth Loewy, J.D. has been employed as an assistant district attorney in the Manhattan District Attorney's Office for twenty-one years. She is presently the Attorney in Charge of the Elder Abuse Program in the Office. A graduate of the University of Pennsylvania and Albany Law School, she began her career in one of the Office's trial bureaus, where she prosecuted general street crime, domestic violence, child abuse, sex crimes, and homicides. A.D.A. Loewy previously served as the Attorney in Charge of the Domestic Violence Unit, from 1990 until 1995. She has been a guest lecturer at New York University and Pace University on the subject of domestic violence and elder abuse and has also conducted training sessions for various entities, including the New York State Bar Association, the New York City Bar Association, the New York State Society of Certified Public Accountants, Adult Protective Services, the Department for the Aging, hospitals, financial institutions, and all levels of the New York City Police Department. She has testified before subcommittees of the New York State Senate and the New York City Council. She is currently the chairperson of the New York County Task Force on Elder Abuse, chair of the Elder Abuse Legislative Committee of the New York State District Attorneys' Association, a member of the New York State Coalition on Elder Abuse, and co-chairperson of the Coalition's Laws Committee.

Margaret Ann Bomba, J.D.

Margaret Ann Bomba is a graduate of Brooklyn Law School and St. Francis College. She is admitted to the Bars of New York and New Jersey. Her practice is devoted to representing estates of decedents and incapacitated persons with specific emphasis on litigation on behalf of elderly people who have been financially victimized.

James J. Lynch, M.D.

Dr. James Lynch is a board-certified psychiatrist in private practice in New York, specializing in adolescent and adult psychiatry as well as forensic psychiatry. He received his medical degree from Albany Medical College in 1990. He completed his adult psychiatry residency at St. Vincent's Hospital and Medical Center in New York and his public psychiatry fellowship at Columbia University. He holds a certificate in forensic psychiatry from the Department of Psychiatry, New York University School of Medicine. Dr. Lynch is a medical expert for both the Marriage Tribunal for Annulments and the Review Board on Sexual Abuse, Diocese of Brooklyn. He is also a consultant psychiatrist for St. John's University. From 1995 to 1999, he was staff psychiatrist for the New York City Human Resources Administration, Office of Health and Mental Health.

Preface

According to the United States Census Bureau, our nation's elderly population increased elevenfold between 1900 and 1994, while the non-elderly population merely tripled.¹ Moreover, one million people now turn age sixty every month, which means that for the first time in world history, elderly people will soon outnumber the young.² And as the population of senior citizens continues to grow, so does the potential for elder abuse. It has been estimated that between 4 and 10 percent of older Americans are victims of elder abuse annually.³

According to the National Elder Abuse Incidence Study completed in 1998,⁴ the best national estimate is that 551,011 elderly persons age sixty and over experienced abuse, neglect, or self-neglect in domestic settings in 1996. Recent studies suggest that between one and two million Americans age sixty-five and older have been abused or exploited by someone they depended on for care.⁵ The lack of certainty regarding how many people suffer abuse results from differing definitions, poor detection, and under-reporting. The victims may be reluctant to come forward for several reasons. They may be afraid of their abusers; completely reliant on them for meals, medication, physical assistance, financial support and survival; or terrified by the prospect of being "sent" to a nursing home or subjected to the appointment of a guardian. Elders who finally decide to press charges against their children often express guilt and remorse. They wrongly assume that the reason for their child or grandchild's criminal behavior is somehow rooted in their own mistakes in child rearing. Other victims may be mentally incapable of recognizing that they are being abused or exploited.

This lack of detection, or recognition, of elder abuse is the primary issue that thwarts bringing the abusers to justice; it has been called the hidden crime. Abuse is typically performed secretly and in private circumstances. The victims may have limited contacts in the community as a result of the natural attrition of their companions and the physical and mental infirmities that limit their mobility. Thus, no interested third person is on

¹ Frank Hobbs, "The Elderly Population," U. S. Census Bureau, available online at: www.census.gov/elderly.

² Emma Daly, "U.N. Says Elderly Will Soon Outnumber Young for First Time," *The New York Times*, April 8, 2002, p. 6A, citing UN Second Assembly on Aging: *Building a Society for All Ages*, United Nations Second World Assembly on Aging, Madrid, April 2002.

³ Georgia Anetzberger, "Elder Abuse Identification and Referral: The Importance of Screening Tools and Referral Protocols," 13 *Journal of Elder Abuse and Neglect* 4 (2001), citing U.S. House Select Committee on Aging, 1981, 1990; Council on Scientific Affairs, 1987, "Elder Abuse and Neglect," 257 *Journal of the American Medical Association* 966-971.

⁴ National Center on Elder Abuse, *The National Elder Abuse Incidence Study* (September 1998), pp. 1-4. Prepared for the Administration for Children and Families, and the Administration on Aging, U.S. Department of Health and Human Services, in collaboration with Westat, Inc., a Maryland-based social science and research firm. It is available online at: http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/ABuseReport_Full.pdf

⁵ National Center on Elder Abuse Fact Sheet, *Elder Abuse Prevalence and Incidence*, April 6, 2005, citing Richard J. Bonnie & Robert B. Wallace (Eds.), *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (National Academies Press 2002).

the scene to question or prevent the actions of a suspected abuser. Those elders who live alone and are without family members in near proximity appear to be among the most vulnerable. The elderly who have no children or grandchildren are particularly susceptible. During their lives they have often relied on now-deceased siblings, friends, or work-related associates for their social interactions. When the elderly become physically frail and leave the home infrequently, they become more defenseless and must rely on others for the simplest activities of daily living, such as shopping for food.

Conversely, able-bodied elders who are highly functional are often easily persuaded to exercise their compassion and largesse towards family members, friends, or others who appear to be in need. Frequently, elders who have been financially victimized will state that while they believed they had ample funds to take care of themselves for the balance of their lives, they were also persuaded that others close to them needed monetary support in order to survive.

Although elder abuse is finally gaining recognition as a serious issue in the nation, social workers, medical professionals, and the legal community all define the term in somewhat different ways. It is often said to fall into five general categories: physical abuse, emotional or psychological abuse, neglect or self neglect, abandonment, and financial exploitation.

Financial offenses involving elderly victims often prove to be the most challenging cases, but legal remedies are available and the criminal court process may be the appropriate resolution. Too often, cases go unreported because the victim is unable to seek help, or the person who is in a position best able to report the abuse is misinformed about the available legal options or disillusioned with law enforcement and the justice system. Therefore, if we are determined to address the problem of financial exploitation of the elderly, we must educate those who are most likely to witness the first signs of a senior's vulnerability to exploitation: the bank teller who notices unusual cash withdrawals from an elderly person's account or the appearance of a new, overbearing companion, the adult protective services ombudsman who observes strangers coming in and out of an elderly person's residence, the ambulance attendant who responds to a domestic dispute from an elderly victim's residence, the health care worker who notices signs of change in the elderly client's physical or mental condition, the attorney who is asked to execute new documents for a senior citizen who appears to be confused, the doorman who observes the appearance of a new individual "assisting" a senior in a disturbing manner, or even the neighbor who notices that the elderly woman living next door is treated inappropriately by her aide.

Many service providers to the elderly do not realize that civil and criminal proceedings may be initiated simultaneously and proceed concurrently against an exploiter. The diverse needs of the elderly victim will be best met, however, by a coordinated network of attorneys, law enforcement officers, social service agencies, mental health workers, medical professionals, local bank employees, trustworthy friends and family members, and others who are dedicated to stopping the exploitation and bringing the abuser to justice. The focus of this book is on financial exploitation of the elderly: what it looks like, how it can be detected, who the players are, whether criminal charges or a civil cause of action may be warranted, and how to investigate and prepare an exploitation case for trial.

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