

# VICTIMIZATION OF THE ELDERLY AND DISABLED™

## Preventing Abuse, Mistreatment, and Neglect

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### Improving the Court System's Response to Elder Abuse

by Dana Shilling, J.D.\*

Although it is clear that elder abuse and neglect are serious problems, the vast majority of instances of abuse never lead to court cases. Perhaps even worse, cases that end up in court can be frustrating for abused elders and their advocates because the court system is ill-prepared for the idiosyncratic needs of elderly litigants.

#### Focus on California Courts

The Archstone Foundation's Elder Abuse and Neglect Initiative made a two-year grant to study courts that have developed effective specialized tactics for handling elder abuse cases. Focusing on California's Alameda, Orange, San Francisco, and Ventura Counties (the so-called "study courts"), the report analyzes why it is difficult for courts to deal justly with complaints of elder abuse and makes many suggestions for improvement that could be implemented nationwide. The researchers interviewed court personnel, looked at court files, and observed courts in operation. (Judicial Council of California, Administrative Office of the Courts, "Effective Court Practice for Abused Elders: A Report

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### "Atypical" Sexual Abuse Survivors and Perpetrators, Part I

by Loree Cook-Daniels

*Editor's Note: Part one of this two-part series looks at some of the data and resources on these "atypical" victims and perpetrators, mostly coming from the child sexual assault literature. The second installment will examine some of the reasons why this data is not better known or universally replicated in studies of assaults on adult (including elder) men, and what the implications of that are for victims, perpetrators, the professionals who investigate abuse and serve victims, and even society at large.*

When Michael Munson and I did the largest study to date on transgender survivors of sexual violence in 2004, we were very surprised at one of our findings: 29.29% of the survivors had been sexually abused by one or more women. As we presented those findings at various conferences and workshops, we would note that we did not know what to make of this data, since it seemed so high. We also noted an "extremely high" rate of sexual assault survivors who were perceived as male at the time of their assault(s). This data was easier to explain: We knew from personal experience that law enforcement and social services providers often literally "dis-count" male accounts of sexual assault. We knew of cases in which police refused to open a

case for male victims, even when they were cut up and bleeding in the local sexual assault treatment center. When a local sexual assault service provider told us that 50% of the men who called asking for services "were lying," it was even more obvious: Many "official" counts of male victims are systematic undercounts.

As we moved into providing services to these "atypical" survivors (those who are male and those who had a female perpetrator), we began looking more closely at the existing literature. We were surprised again: Not only were our data echoed in other studies, but there was a vast and rich literature on why the popular conception of sexual assault is that it's done by men to women, end of story.

#### Female Perpetrators

Although this article is by no means a comprehensive literature review, it may be helpful to look at some studies' findings about the number of sexual abuse perpetrators who are female. Unfortunately, nearly all the available studies of female perpetrators are based

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to the Archstone Foundation” (Feb. 2008); available online at <http://www.CourtInfo.ca.gov/programs/cfcc/resources/publications/articles.htm>; (415) 865-7739; Judicial Council of California, Administrative Office of the Courts, Center for Families, Children, and the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102-3688.) An important facet of the problem is that elder abuse cases reach the courts in many procedural postures—as elder or dependent adult abuse, domestic violence, guardianship or conservatorship, restraining orders, and tort or family law cases—and this dispersion of energy and resources makes it hard to view the response to elder abuse as a single phenomenon.

The report is divided into five chapters, namely:

1. Chapter 1: overview of the elderly population and elder abuse, especially from the viewpoint of the court system;
2. Chapter 2: elder abuse programs nationwide and the trends that affect them;
3. Chapter 3: California state court approaches to elder abuse cases;
4. Chapter 4: elder abuse initiatives in the four study courts; and
5. Chapter 5: suggests specialized programs and initiatives courts can join to improve their response to elder abuse.

### California’s Growing Problem

In 2000, more than 3.6 million senior citizens (defined as persons aged 65 and older) lived in California, constituting 11% of the population. For 2020, the projection is 6.3 million or 14% of the population, and close to 10.5 million in 2040—approximately 19% of the state’s population. Between 2000 and 2010, California’s population of Alzheimer’s disease sufferers is expected to increase 9%, from approximately 440,000 to 480,000. In 2000, 42% of California’s senior citizens had some kind of disability; 33% of the reported disabilities were physical and 24% affected the sufferer’s ability to travel outside the home.

Although elder poverty is a significant social problem, many elders have accumulated significant assets that render them vulnerable to financial abuse. The report reflects a point

in time at which California elders represented 11% of the population, but held 23% of the aggregate value of owner-occupied homes in the state. Persons over 50 own 70% of the private wealth in California, and senior citizens control 70% of the funds deposited in financial institutions.

### Defining Elder Abuse

California’s statutory definition of elder abuse (Welfare & Institutions Code § 15600) includes the following:

- Physical abuse (assault, battery, assault with a deadly weapon, unreasonable physical constraint, prolonged or continual deprivation of food or water, rape or sexual assault).
- Psychological/mental abuse (using threats, harassment, or intimidation to induce serious emotional distress).
- Financial abuse (taking money or property from an elderly or vulnerable adult through abuse of a position of trust, or when the victim is in the perpetrator’s care or custody).
- Caregiver negligence (failure to provide food, clothing, shelter, protection, or assistance; failure to prevent malnutrition or dehydration).
- Abduction (removing a vulnerable person from California, or restraining an elder who lacks capacity to consent from returning to the state).
- Abandonment (a caregiver’s desertion at a time when a reasonable person would continue to provide care).
- Isolation (false imprisonment, or preventing the elder from communicating with the outside world).
- Neglect (negligent failure to exercise reasonable care, such as failure to provide the necessities of life or medical care; failure to protect the elder from hazards; failure to assist in personal hygiene; failure to provide food and water).

To an increasing extent, APS and law enforcement are finding that self-neglect, including hoarding, is a part of their caseload. (Self-neglect can also be a byproduct of neglect or abuse by others.) Sometimes self-neglect and hoarding cases enter the legal system because housing code enforcement officials get involved.

Many kinds of financial abuse, both by family members and by outsiders, have been reported. (See Sidebar: Types of Elder Financial Abuse.)

### Collecting Statistics

It is very difficult to estimate the prevalence of elder abuse. Statistical collection is difficult because abuse reports go to multiple agencies. APS receives reports about vulnerable adults in general, not all of whom are senior citizens. Elder abuse that is tortious or constitutes a breach of contract but not a crime will not turn up in crime statistics. Underreporting is also a serious problem. The National Elder Abuse Incidence Study estimates that only 16% of incidents of elder abuse and neglect are reported to APS. (National Center on Elder Abuse at the American Public Human Services Association in collaboration with Westat, *The National Elder Abuse Incidence Study: Final Report* (1998).) The House Select Committee on Aging’s estimate is that only one act out of 14 is ever reported. (See California Attorney General’s Crime and Violence Prevention Center, “Elder Abuse Facts”; available at <http://www.SafeState.org/index.cfm?navId=58>.)

**Self-Neglect Cases.** The specific California experience is that, in 2006, California’s APS agencies received more than 69,000 reports of elder abuse. (California Attorney General’s Crime and Violence Prevention Center, County Data; available at <http://www.SafeState.org/statereports/index.cfm?navId=395>.) Out of the cases for which a complete investigation was performed, 39% of the reports were confirmed, 15% were deemed unfounded, and 46% were inconclusive. Nearly half (46%) of the confirmed or inconclusive reports were for self-neglect. (California Department of Social Services, “APS and County Services Block Grant Monthly Statistical Reports” (2006).)

**Emerging Issue.** Elder abuse has often been described as an emerging issue, in the same position as child abuse once was. Either kind of abuse is hard to prove because physical evidence is often lacking, and the victims are often less than optimal witnesses. Caregiver stress is the most common explanation for familial elder abuse, although it is not necessarily a complete explanation because some abuse victims never received significant care and some received none, and services to relieve caregiver stress do not always terminate abuse. Another common explanation is the theory of coercive control—that the abuse is part of a pattern of acts of

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dominance undertaken by an abuser who believes he or she has a legitimate right to control the victim. Definitions of appropriate conduct, and therefore of abuse, are also culturally determined. For example, a financial appropriator may feel justified in taking assets that he or she believes belong to the whole family, not just one member. Nor is an abuse victim likely to make a report if he or she believes that reporting would shame the family. (See Sidebar: Risk Factors.)

### Elder Abuse in the Court Context

There are many reasons for senior citizens to become involved in the court system, and it is common for evidence of elder abuse to emerge in what does not initially seem to be an elder abuse case. For example, what seems to be a simple landlord-tenant case seeking the eviction of a senior citizen could become an APS self-neglect case, perhaps leading to the institution of a conservatorship and the discovery that the self-neglect is part of a constellation including caregiver abuse. Elder abuse can get to court in the context of criminal, civil, family or domestic relations, probate, juvenile court, or even traffic matters. A civil suit can uncover capacity problems in litigants or witnesses.

Unfortunately, however, there is broad agreement that courts are not meeting the challenges of elder abuse. In the National Center for State Courts' study published in 2007, three-quarters of those surveyed described the court system as "fair" or even "poor" at identifying elder abuse issues. (Brenda Uekert and Denise Dancy, "State Courts and Elder Abuse: Ensuring Justice for Older Americans" (National Center for State Courts 2007); see also, Brenda Uekert, "Results From a Needs Assessment Survey: Court and Judicial Needs in the Area of Elder Abuse" (National Center for State Courts 2006), available at <http://www.NCSCOnline.org/famviol/elderabuse/agenda.html>.)

In 2006, the National Center for State Courts (NCSC) suggested improvements of court practices in five broad categories, namely:

1. Detection of elder abuse;
2. Training;
3. Case management;
4. Monitoring conservatorships; and
5. Treating severe abuse as a criminal matter.

## Types of Elder Financial Abuse

### Family Abuse

- Taking money or property;
- Refusal to repay loans;
- Denying medical care to avoid paying the cost of care;
- Selling or giving away a senior's possessions without his or her consent;
- Confiscating pension or Social Security checks;
- Forcing or inducing the elder to surrender resources or sign over property; and
- Abuse of Durable Powers of Attorney, including misappropriating funds and falsifying records.

### Stranger Abuse

- "Sweepstakes" in which the prize is valueless (or nonexistent), but the "winner" must pay to collect the prize;
- Fraudulent investment schemes;
- Requiring cash deposits for repairs—including unnecessary repairs recommended just to extort funds;
- Predatory lending; and
- Lottery scams.

### Institutional Abuse

- Inadequate staffing;
- Neglect or failure to provide adequate care;
- Failure to provide nutrition and hydration; and
- Falsifying patient charts.

## Risk Factors

(From Lori Stiegel, *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff* (ABA 1997).)

### Victim

- Dependence on the abuser;
- Physical or mental frailty;
- Social isolation; and
- Psychiatric or substance abuse history.

### Abuser

- Dependence on the victim (e.g., the elder has assets, the caregiver does not);
- Psychological disturbance;
- Psychiatric or substance abuse history; and
- History of being abusive in past caregiver relationships.

### Bars to Enforcement

According to respondents in the social services, the law enforcement system makes it difficult to obtain prosecutions, or even arrests. Law enforcement tends to give elder abuse a low priority, either because of failure to accept the seriousness of such cases or because financial abuse cases often involve small amounts of money (although often the amount is of great significance to the victim). In a vicious circle it is difficult to obtain complete and current incidence figures. Without this information, the court system is less likely to make punishing elder abuse a high priority. It is difficult to plan or budget for resources without insight into what will be required.

Some potential complainants and witnesses have cognitive problems that render their testimony problematic. Others are willing or even eager to testify, but cannot physically get to the courthouse,

or may be unable to leave a dependent spouse, children, or grandchildren at home alone. Furthermore, even if the court system provides all the remedies at its disposal, they may not be what the victimized elder needs or wants. Services may be theoretically available, but budget factors preclude their actual availability for everyone who needs them. Funding for the services comes from multiple federal programs, creating a risk that persons needing services will "fall between the cracks"—or that each participating agency will assume that the others are coordinating and managing the case.

**Capacity.** The issue of capacity arises in many types of court cases. It is the central issue in a guardianship or conservatorship case in which the alleged incapacitated person's ability to manage personal safety and financial affairs must be assessed. In a criminal case, the prosecutor may consider

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reduced capacity as an aggravating factor, whereas the defense may raise it to challenge the reliability of testimony. A civil case (whether one that seeks to foreclose on an elder's mortgage or collect a debt, or one in which the senior tries to enforce or rescind an abusive contract) may turn on whether the senior had the capacity to enter into the contract at all.

**Undue Influence.** Undue influence (suggesting but not forcing a vulnerable person to make gifts or alter legal instruments) is another problem. Undue influence is not a phenomenon limited to incapacitated persons, but diminished capacity increases vulnerability.

### **Elder Abuse Programs, Initiatives, and Other Trends**

A number of agencies and programs have the task of helping the vulnerable elderly—so many, in fact, that it is often difficult to coordinate all of their operations.

Every county in California has an APS agency to investigate reports of abuse or neglect occurring in the community, hospitals, or health clinics (but not reports of abuse of institutionalized persons by facility staff, which are handled by the LTC Ombudsprogram). APS caseworkers evaluate reports, arrange for services such as conservatorship, counseling, or money management.

**Multipurpose Senior Services Program.** The Multipurpose Senior Services Program (MSSP) operates local sites where social and health care management services are provided for frail elders who require a nursing home level of care but wish to remain in the community. Typical services are adult day care, housing assistance, personal care and chores, supervision, case management, respite, transportation, home-delivered meals, and social and communication services.

**Area Agencies on Aging.** Under a contract with the California Department of Aging, the Area Agencies on Aging manage federal and state-funded services such as assistance to family caregivers and support to elders living in the community.

**Multidisciplinary Teams.** Multidisciplinary Teams (MDTs) are groups of professionals who review elder abuse cases, are available for consultation by service providers, do advocacy and training, and update team members about developments in services, programs, and

legislation. Their job is to combat the fragmentation of services and improve care plans. When possible, they keep cases out of court by using alternative case resolution methods. If this is not possible, they help cases get to court with the evidence better developed. Usually, an MDT has representation drawn from law enforcement, APS, mental health services, prosecutors, providers of aging services, public guardians, advocates for victims of domestic violence, and health care providers.

**Specialty MDTs.** Specialized teams can also be fielded. For example:

- **FASTs:** Financial (or Fiduciary) Abuse Specialist Teams, focusing on asset preservation and other issues in financial elder abuse cases. Rapid Response FASTs handle emergency situations.
- **EDRTs:** Elder Death Review Teams, whose job is to determine if a death is accidental. Sacramento pioneered this type of team in 2000, and Napa, Orange, San Diego, San Francisco, and Santa Barbara counties followed suit by developing their own EDRTs.
- **Elder abuse forensic centers** bring together professionals in law, medicine, social services, etc., to identify abuse and make appropriate responses, sometimes including prosecution. The first such center in the United States opened in Orange County in 2003.

**Other Modalities.** The Crime and Violence Center (part of the California Attorney General's office) publishes "A Citizen's Guide to Preventing and Reporting Elder Abuse," a free 36-page guide on identifying abuse and finding services. The office also created a core curriculum to instruct the staff of long-term facilities in abuse reporting. The Bureau of Medi-Cal Fraud and Elder Abuse within the Attorney General's Office sponsors a multidisciplinary training conference about elder abuse in alternate years.

Title IIIB of the Older Americans Act is designed to encourage establishment of legal services for senior citizens. Title VII of the OAA funds state systems for protecting the rights of vulnerable elders.

Many prosecutors' offices and other law enforcement agencies have specialized elder abuse units (either separate or as part of domestic violence unit).

### **History of Initiatives Within the Courts**

The current California state survey is an outgrowth of the mid-1990s study of court practices done by what was then

known as the ABA Commission on Legal Problems of the Elderly. (Currently, the Commission on Law and Aging.)

In 2005, the NCSC established its Elder Abuse and the Courts Working Group, consisting of members from the bench, bar, criminal justice agencies, APS, advocacy organization, academia, and government. The group focused on ways that courts can improve their response to elder abuse.

In 2006, the working group supervised NCSC staff in surveying the courts' and judges' needs to improve their handling of elder abuse cases. The worst problem they found was the lack of time to give thorough consideration to elder abuse cases. Another major challenge was training court personnel. Also perceived was a need to improve case management (e.g., by improving information systems and adopting special dockets). (Brenda Uekert, 2006, *supra*; Brenda Uekert and Denise Dancy, 2007, *supra*.)

The NCSC published a white paper, "State Courts and Elder Abuse: Ensuring Justice for Older Americans" (Jun. 2007), which concluded that state courts need better strategies for dealing with the complexity of the problem of elder abuse. Judges and other court personnel need more awareness of the problems. Access to the courts should be improved—traditional court structures are not necessarily responsive to the needs of the abused elderly. (See Sidebar: NCSC Recommendations.)

### **Training Efforts for the Justice System**

For more than a decade, the justice system has been making formal efforts to improve its response to elder abuse. In 1997, *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff*, a joint project of the American Bar Association, State Justice Institute, and National Association of Women Judges, was released. This was also the year in which California passed Assembly Bill 870, mandating elder abuse training for field and investigative law enforcement personnel. (California Attorney General's Crime and Violence Prevention Center; <http://www.SafeState.org/index.cfm?navId=11>.)

In 2005, the New York City Elder Abuse Training Project embodied the ABA guidelines in a detailed curriculum for the court system. AARP's National Legal Training Project published

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*Enhancing Law Enforcement Response to Elderly Crime Victims* in 2007. Also in 2007, the Office on Violence Against Women supported the “Enhancing Judicial Skills in Elder Abuse Cases” workshop, with the cooperation of the National Council of Juvenile and Family Court Judges and the Family Violence Prevention Fund.

### **Elder Abuse in California Courts**

Under California’s Elder Abuse and Dependent Adult Civil Protection Act, the Request for Orders to Stop Elder or Dependent Adult Abuse is filed on Form EA-100. California law provides for reimbursement to the court for the cost of processing the filing, which enables the state’s Administrative Office of the Courts (AOC) to compile quarterly data on the number of petitions filed. In fiscal year 2005-2006, there were five EA-100 filings statewide per 10,000 elderly residents. Filings were 59% higher than 2001-2002.

However, the figures have some methodological flaws. Some courts did not submit quarterly statistics, although it is not clear whether they had no cases or simply failed to respond.

**Abuse by Family Members.** In almost half of the probate conservatorship cases, there was either a formal allegation of abuse or neglect of the proposed conservatee, or the court investigator suspected abuse or neglect. In another 20% to 25% of the cases, the court file contained some other indication of abuse or neglect. More than three-quarters of cases (both conservatorship and restraining order) had involvement from an outside agency, usually APS or law enforcement. Financial abuse was most likely to be an issue in conservatorship cases, whereas emotional abuse allegations predominated in restraining order cases. Physical abuse was alleged in one-third of petitions for restraining orders but in very few conservatorship petitions. Nearly all alleged abusers were family members, especially adult children—and, among adult children, sons were accused more often than daughters.

**Direct Calendaring.** “Direct calendaring” is the practice of maintaining the same judicial officer throughout an entire case. The objective is to permit the judge, magistrate, arbitrator, or hearing officer to become familiar with all aspects of the case, and perhaps move it through the system more efficiently. Two-thirds of the California courts surveyed have direct

calendaring for elder abuse cases; faster processing of cases means that fewer cases will be terminated prior to resolution by the death of the alleged victim. (See Sidebar: ABA Recommendations.)

The ABA called for further study before recommending alternative dispute resolution (e.g., arbitration or mediation) in elder abuse cases. More than half (54%) of the courts surveyed made referrals to ADR in cases of family disputes or dysfunction, but viewed such referrals as inappropriate in civil fraud cases.

**Special Accommodations.** According to the NCSC, 89% of the California courts surveyed said they provided some kind of special services or accommodations. Eighty-four percent provided assistive listening devices, 75% provided non-English language or American Sign Language interpreters, and 68% permitted appearances by telephone. (Some of these modalities were required by the ADA for all cases, not just elder abuse cases, so they do not constitute a specific response to the needs of elderly litigants.) Almost half (41%) of the respondent courts gave priority to, or expedited, senior citizens’ cases; 36% granted frequent breaks during hearings; 32% made a priority of expediting applications for temporary restraining orders; and 23% had flexible scheduling or special calendar times for senior litigants. Thirty-eight percent of courts said they make victim/witness advocates available. Forty-three percent use outside experts to perform capacity assessment; 38% also use experts to give medical opinions, 38% to perform psychiatric evaluations, 18% to make assessments of possible undue influence, and 13% for analyzing forensic evidence.

Half of the surveyed courts were not involved in any community activities relating to elder abuse. Among those that did participate, 21% maintained a program of community education and outreach on court services for elders. Twenty percent participated in multidisciplinary teams. The most common recipients of court referrals were public guardians, legal services, and domestic violence programs or shelters. They were given referrals to APS, regional centers, fair housing and consumer watchdog groups.

### **Courtroom Innovations**

Chapter five of the report addresses innovations and promising practices for court systems. (Chapter four is a county-

by-county discussion that is probably of greater interest within California than in other states.) There has been a great deal of interest in specialized elder abuse courts that place an emphasis on providing services rather than punishing wrongdoers, bearing in mind that medical, mental health, and substance abuse problems are common both among the abused elderly and their abusers. (See, e.g., A. Freiberg, “Problem-Oriented Courts: Innovative Solutions to Intractable Problems,” 11 (1) *J. of Judicial Admin.* 8-27 (2001).)

For example, the Superior Court of Alameda County’s Elder Protection Court gives scheduling priority to elderly litigants and allows certain appearances by telephone rather than in person for parties or witnesses who find it hard to travel. The Elder Protection Court drafts customized orders intended to preserve family relationships and makes referrals to services. Two of Florida’s judicial districts have Elder Justice Centers that combine agency offices with a resource library, communications devices, public advocacy, and case management for guardianships.

**Controlling the Calendar.** Calendaring practices are often used to benefit seniors involved in the court system. For example, all cases of a particular type or subtype can be heard at a regular, specified time or place. Efforts can be made to maintain just one judicial officer throughout a case. Not only is continuity reassuring for abused elderly persons, but it is beneficial for judges hearing these complex cases to develop expertise not just on the topic in general but by maintaining control over a case. (These points are raised by “Less-Than-Affluent Elderly and Access to the Courts,” the minutes of a meeting held November 19, 2003 by the California Senate Subcommittee on Aging and Long-Term Care.)

The Ventura County Superior Court maintains a conservatorship calendar for pro se litigants, with volunteer attorneys available in the courtroom to offer help as needed. All elder abuse cases involving criminal allegations are heard by the same judge in the Family Violence Court. In San Francisco County, applications for an adult abuse restraining order are heard on the domestic violence calendar and are called first.

Courts must also learn to draft effective orders that fit into a safety plan, protect the

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assets of the abused person, and support the continued independence of the victim. In appropriate cases, steps (such as family therapy) can be undertaken to preserve and improve the relationship between the victim and abuser. Properly drafted court orders can also work to direct the abused person to necessary services and obtain restitution of stolen money or property. (Lori Stiegel, *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff* (ABA 1997); Lori Stiegel, “37 Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse” (ABA 1996).)

**Plea Bargains.** It is far more common for criminal cases of all kinds to be resolved through plea agreements than through full trial, and this is especially true in criminal elder abuse cases.

ABA guidelines point out that plea bargains can be helpful, especially if the victim is reluctant to press charges, but the agreement must be crafted carefully to prevent the continuation of abuse. In response to the ABA suggestion that courts should accommodate the specialized needs of elderly abuse victims, the California courts try to hear elder abuse cases at mid-morning. This is late enough to give people with mobility limitations extra time to get to court and early enough that “sundowning” is not a problem. The ABA also recommends maintaining an ombudsman to help litigants deal with the court system itself. A variety of self-help services can improve the likelihood that cases will get to court. Examples include training for conservators, especially if they are family members rather than professional fiduciaries; giving out instructional materials for caregivers at senior centers; and doing outreach on health care advance directives.

### California Taking the Lead

For a number of reasons, including a lack of hard evidence, the court system has often failed to respond fully to the true seriousness of elder abuse as a personal and social problem. As this report shows, California’s court system is moving forward both to improve data collection and to use the data to improve the courtroom experience of abused elders. California’s courts are striving to improve the physical environment (for example, using non-glare lighting that does not buzz annoyingly, soothing

## NCSC Recommendations

The NCSC made seven recommendations, namely:

1. Create a national resource for the courts covering aging issues, elder abuse, and guardianship.
2. Develop statewide and national codes of model practices.
3. Encourage local courts to develop innovative solutions for elder abuse.
4. Train court staff (judges and others) on aging issues, especially elder abuse.
5. Issue standards for court performance, including the development of case management systems that track and oversee cases involving the elderly.
6. Encourage courts and judges to participate in multiagency initiatives to combat elder abuse.
7. Advocate legislation and budgets that give courts adequate resources to fight elder abuse.

## ABA Recommendations

ABA recommendations include the following:

- Coordinate the efforts of the various courts in which abuse or neglect cases might be heard—e.g., allow conservatorship cases (normally handled in the probate court) to be added to the special calendar for elder abuse cases, even if that is maintained in the civil or criminal court; institute a practice of checking calendars of other courts for related matters.
- Participate in elder abuse task forces and coordinating councils.
- Accommodate the physical and mental impairments of persons involved in abuse cases; if necessary, hold hearings in a more accessible and less daunting setting than the courtroom.
- Appoint appropriate experts to give testimony.
- Be flexible in scheduling hearings to cope with fluctuations in capacity.
- Give elder abuse cases priority in the calendar.
- Research techniques for making it less frightening for victims to testify, such as holding hearings in a less confrontational setting and allowing testimony or cross-examination on video or closed-circuit television or closing the courtroom to the public. (However, in criminal cases, these measures may not be allowed if they conflict with the defendant’s constitutional right to confront his or her accusers.)
- Have victim and witness advocates available in both criminal and non-criminal cases.
- Train advocates to understand the dynamics of elder abuse, the workings of the APS system, and available resources for elders; every victim/witness program should include an elder abuse specialist.

colors, a witness box that does not require climbing). Sometimes judges come off the bench to speak face to face with hearing-impaired elders. Some courtrooms have hearing amplification devices or software to print out words. Volunteer attorneys are sometimes available to help pro se litigants, and there may be financially trained volunteers to review conservatorship accountings.

The respondents to the NCSC’s survey identified the following areas in which judicial training is still required:

- The physiological and social aspects of aging;
- Mental capacity;
- Undue influence and consent;
- Conservatorship;
- Laws covering social service agencies;
- The dynamics of abuse, neglect, and domestic violence in later life; and
- Community resources.

In order to stem elder abuse, the legal system must get serious about learning how and when it occurs, and making the court system work for victims. California is taking the lead in this initiative.

*\*Dana Shilling, editor of VED, writes extensively on elder and disability law issues, and is the author of Legal Issues of Dependent and Incapacitated People (CRI 2007). ■*