

**COMBATING FINANCIAL ABUSE OF THE ELDERLY:
THE EXPERIENCE OF THE COOK COUNTY PUBLIC GUARDIAN OFFICE,
ILLINOIS, U.S.**

Good morning Dr. Burgess Chairman of this committee, Ranking Member Congresswoman Schakowsky, and all of the members of the committee. I am very honored to being invited to share the experiences that my office has had with the financial exploitation of the elderly individuals that we serve.

I am the Cook County Public Guardian, an attorney, and I was appointed by the Chief Judge of the Circuit Court of Cook County, Timothy Evans in 2004. The Office of the Cook County Public Guardian in Chicago is a county based law office that acts as the attorney and guardian ad litem for approximately 6000 children in Cook County's abuse and neglect courts; guardian for adults with cognitive disabilities such as dementia and Alzheimer's disease; and as the child representative for approximately 600 children in contentious custody and divorce cases. We are unique in the country for combining the representative of children and the elderly.

For the purposes of this hearing, I will focus on our work in the Adult Guardianship Division of the office and the Financial Recovery Unit which has recovered approximately \$50 million in assets stolen from the people we serve. The Adult Guardianship Division of the Public Guardian's Office, serves as the guardian of last resort, for some 600, mostly elderly people with cognitive disabilities such dementia and Alzheimer's disease who need a guardian but who have no appropriate family member to serve as their guardianⁱ. With an interdisciplinary staff of more than 80 peopleⁱⁱ (including attorneys, social workers, MBAs, financial services personnel, paralegals, and support staff) and we manage nearly \$100 million in assets (cash, real and personal property) that belongs to the people under my guardianshipⁱⁱⁱ, it is one of the largest public guardianship offices in the United States.^{iv} The average age for the people we serve is 72 (the youngest is 21 and the oldest 103), approximately 70 are of over 90 years old. Our goal is to maintain them in their own homes or in a community setting, with approximately 1/3 of them living in the community.

Unfortunately, we see elder abuse, neglect, and financial exploitation every day. Each year, our intake referrals reflect a growing percentage of new cases with abuse, neglect, or financial exploitation.

To give a flavor of how widespread the problem has become, in more than a third of our new intake cases, elder individuals had been financially exploited before the case was referred to our office.^v That is just looking at financial exploitation, and it does not include new intake referrals with issues of abuse or neglect. Of course, in many of the financial exploitation referrals, the elder had also been neglected or abused physically or emotionally. Some of the people we serve

had been swindled out of virtually every cent, including their longtime family homes, before they came to the attention of authorities and were referred to our office.^{vi}

The experience of our office is consistent with national trends. According to a 2011 joint study by the National Committee for the Prevention of Elder Abuse, Virginia Tech University, and the Metlife Mature Market Institute – known as the Metlife Study – the loss by victim of elder financial abuse in the United States in 2010 was at least \$2.9 billion.^{vii} That represents a 12% increase from just two years earlier, 2008, when the amount was \$2.6 billion.^{viii}

As disturbing as these numbers are, they are likely low, as elder financial abuse remains underreported, under-recognized, and under-prosecuted.^{ix} In his treatise, *Alzheimer's and the Law*, Kerry Peck observes that seniors often do not report financial and other abuse for a variety of reasons including embarrassment, fear of being placed in a nursing home if the exploiter is a relative or caregiver or if the elder is deemed unable to manage his or her money, and fear of turning in the abuser.^x He further observes that the abuser often knows, and takes advantage of, this fact.^{xi}

Older women in the United States are twice as likely to be victims of financial exploitation as older men.^{xii} Most victims are between the ages of 80 and 89, live alone, and need some level of assistance.^{xiii} In other words, the exploiters seek out, find, and prey on the most vulnerable and isolated members of our society.

Referring to elder financial abuse as the “Crime of the 21st Century,”^{xiv} the Metlife Study found that financial exploitation engenders health care inequities, fractures families, increases mental health issues among elders, and results in the loss of human rights and dignity.^{xv} Elder financial exploitation often occurs in combination with physical abuse.^{xvi} Pick notes empirical evidence that when a senior has been a victim of a crime, it can hasten their death.^{xvii}

On a more positive note, the Metlife Study observed that the recently passed Elder Justice Act^{xviii} has the potential to make a real difference in reducing elder abuse, including elder financial exploitation, in the United States.^{xix}

To combat the growing problem of elder financial exploitation, the Cook County Public Guardian's Office created more than a decade ago a specialized unit of three senior attorneys whose full-time practice is to litigate complex cases against financial exploiters and to recover money and property stolen from the people we serve before we become their guardian.

Over the years, the lawyers in this unit have litigated hundreds of recovery lawsuits. The respondents in our litigation have included, *inter alia*, family members, “friends,” financial advisors, accountants, business partners, landlords, tenants, neighbors, prior guardians, agents

under purported powers of attorney, home repair personnel, bank tellers, police officers, clergy, caregivers, doctors, nurses, and most unfortunately, longtime trusted family attorneys. In the majority of cases, the exploiter was someone in a unique position of trust or authority over the elder. Again, our experience is consistent with national trends.^{xx}

Examples of scams that we have encountered include: Forged and fraudulent deeds transferring property to a third party; Drafting and execution of new estate planning documents; Conversion of money and personal property; Construction and home repair scams.

The Financial Recovery Unit has been tremendously successful. Over the past ten years, we have recovered nearly \$50 million for the people we serve. We are then able to use the money to take care of them in their golden years. In appropriate cases, we pursue and obtain punitive damages against the exploiters. It is particularly satisfying when we are able to recover a longtime home and move the individual back into the place that brings them comfort and holds so many memories for them.

In the process, we have won significant victories in the Illinois Supreme Court and the Appellate Court that have resulted in favorable precedential published opinions.^{xxi} Some of our cases have resulted in legislative initiatives to protect seniors.^{xxii} We have also called attention to the problem of elder financial abuse through extensive positive coverage of our cases in the news media.^{xxiii} One of our financial recovery cases was featured in the award-winning documentary film *Forbidden Lie\$*.^{xxiv}

We believe that our office has the largest financial exploitation recovery practice of its kind in the country in terms of the number of cases litigated and amount of money recovered. We would like to see the program replicated in other jurisdictions.^{xxv}

Some suggested solutions:

- 1) Educate seniors and the public regarding the dangers of financial exploitation through local community organizations, places of worship and community centers. Ask family members to check in on elderly relatives and friends to ensure that unscrupulous or strangers haven't insinuated themselves into the elderly individual's life.
- 2) Utilize organizations like the National Guardianship Association (NGA) to play an important role by promoting standards of best practices for guardians and probate courts; by providing education and training; and by providing advocacy on issues that impact seniors including elder abuse and financial exploitation. My Deputy of my Adult Guardianship Division serves on NGA's national board of directors and other attorneys in my office hold key leadership positions in other national organizations that focus on these issues.

- 3) Develop court systems and processes that don't work against seniors and consider the urgency of time for the elderly—such as the Elder Law and Miscellaneous Remedies court in Chicago. Many exploiters try to simply wait out the life span of older victims through lengthy court proceedings.

ⁱ OFFICE OF THE COOK COUNTY PUBLIC GUARDIAN, <http://www.publicguardian/about/>

ⁱⁱ Charles P. Golbert, *Justice for Children, Adults with Disabilities, and the Elderly: Reflections from 15 Years as an Attorney with the Office of the Public Guardian of Cook County, Illinois*, 1 DePaul J. for Soc. Just. 69 (2007)

ⁱⁱⁱ OFFICE OF THE COOK COUNTY PUBLIC GUARDIAN, <http://www.publicguardian.org/guardianship/about/>.

^{iv} Charles P. Golbert, *Health Care Surrogate Decision Making and Bioethics: Case Studies from the Files of the Office of the Cook County Public Guardian*, 6 NAELA J. 155 (2010).

^v OFFICE OF THE COOK COUNTY PUBLIC GUARDIAN, <http://www.publicguardian.org/guardianship/about/>.

^{vi} Charles P. Golbert, *Using the Probate Act to Recover Assets Stolen from Persons with Disabilities*, 88 ILL B.J. 510 (Sept. 2010).

^{vii} THE METLIFE MATURE MARKET INSTITUTE ET AL., METLIFE STUDY OF ELDER FINANCIAL ABUSE: CRIMES OF OCCASION, DESPERATION, AND PREDATION AGAINST AMERICA'S ELDERS 2, 7 (June 2011), available at www.metlife.com/mmi/rsearch/elder-financial-abuse.html#key, [hereinafter METLIFE STUDY].

^{viii} *Id.*

^{ix} *Id.* at 3-4, 16, 23.

^x KERRY PECK & RICK L. LAW, ALZHEIMER'S AND THE LAW: COUNSELING CLIENTS WITH EMENTIA AND THEIR FAMILIES, 285, 309 (1st ed. 2013).

^{xi} *Id.* at 309.

^{xii} METLIFE STUDY, *supra* note 7 at 3, 8, 16.

^{xiii} *Id.* at 3, 8, 16, 22.

^{xiv} *Id.* at 5.

^{xv} *Id.* at 4, 23.

^{xvi} *Id.* at 3, 17-18.

^{xvii} PECK & LAW, *supra* note 10, at 314.

^{xviii} 42 U.S.C. §§ 132b-25 (2014); 42 U.S.C. §§ 1395i-3a (2014); 42 U.S.C. §§ 1397j-1397m-5 (2014). >

^{xix} MELIFE STUDY, *supra* note 7, at 4, 19-21. For an excellent article about the history and substance of the Elder Justice Act, and its potential to curb elder abuse, see Brian W. Lindberg, Charles P. Sabatino, & Robert Blancato, *Binging National Action to a National Disgrace: The History of the Elder Justice Act*, 7 NAELA J. 105 (2011).

^{xx} See PECK & LAW, *supra* note 10, at 290 (the majority of financial exploiters are in a unique position to take advantage of the elder such as fiduciaries, family members, and trusted members of society).

^{xxi} See, e.g., *In re Estate of Powell v. Wunsch*, 2014 IL 115997, 12 N.E.3d 14 (Ill. 2014); *In re Marriage of King*, 802 N.E.2d 1216 (Ill. 2004); *In re Estate of Davies v. Pasamba*, 2014 IL App

(1st) 133551, 17 N.E.3d 763 (Ill. App. Ct. 2014); In re Estate of Hoellen v. Owsley, 854 N.E.2d 774 (Ill. App. Ct. 2006).

^{xxii} See generally Janna S. Dutton et al., *CBA Subcommittee Achieves Protections for the Elderly*, 15 C.B.A. REC. 20 (Jan. 2001); Robert F. Harris et al., *When Disabled Homeowners Lose Their Homes For A Pittance in Unpaid Property Taxes: Some Lessons From In re Mary Lowe*, 5 NAELA J. 190-91 (2009); see also OFFICE OF THE COOK COUNTY PUBLIC GUARDIAN, <http://www.publicguardian.org/guardianship/developments> (last visited Nov. 17, 2014)

^{xxiii} See, e.g., Tina Sfondeles, *Cop Accused of Forging \$20,000 Check from Man with Dementia*, CHI. SUN-TIMES, Dec. 28, 2013, at § 1, p. 5; David Jackson, *Lawyer Punished in Elder Cases: License Suspended After Allegations of Financial Misdeeds*, CHI. TRIB., Jan 24, 2013, at § 1, p. 9; Jason Meisner & Annie Sweeney, *Brothers Get 14 Years in Fraud Case: Judge Lambastes 'Financial Vampires;' For Preying on Vulnerable Targets*, CHI. TRIB., Nov. 14, 2012, at § 1, p. 4; Cynthia Dizikes & David Jackson, *Bill Due for Nonprofit Chief: Public Guardian Wants CEO Robert Wharton Jailed After Default on \$71,000 He Owes to Disabled Ex-Secretary*, CHI. TRIB., Jan. 10, 2012, at § 1, p. 1; David Jackson, *Priest Investigated Over Estate Deal: With Help From Law Firms Pastor Obtained Ownership of Elderly Parishioner's Home*, CHI. TRIB., Feb. 14, 2011, at § 1, p. 7; Serena Maria Daniels, *Disabled Man's Fortune Stolen: Authorities Say Savings Drained By Family Friends*, CHI. TRIB., Sept. 23, 2010, at § 1, p. 11; Annie Sweeney, *Cop Probed in Senior's Mission \$400K: Officer Assigned to Help Elderly Residents But that 'Nice' Teller was Siphoning Away 86-Year-Old Jessie McDonald's Cash, the Public Guardian's Office Says – And So Far Chase Hasn't Paid It Back*, CHI. SUN-TIMES, June 24, 2008, at § 1, p. 8; Susan Chandler, *This House Was a Steal: How Fraud Led to This Property Changing Hands Three Times as Son of Owner Sat Dead Inside*, CHI. TRIB., Feb. 24, 2008, at § 1, p. 1; Lorene Yue, *Widow's Finances Run Dry: Neighbor Allegedly Bled Retiree Big-Time*, CHI. TRIB., Oct. 12, 2005, at § 2, p. 1; Debra Pickett, *Discredited Author Accused of Ripping Off Elderly Neighbor*, CHI. SUN-TIMES, Aug. 22, 2004, at § 1, p. 14.

^{xxiv} *Forbidden Lie\$* (World Cinema 2007).

^{xxv} OFFICE OF THE COOK COUNTY PUBLIC GUARDIAN, <http://www.publicguardian.org/guardianship/about/> (last visited Nov. 17, 2014). More information about the financial exploitation recovery practice of the Office of the Cook County Public Guardian, and some of the cases litigated, can be found at Cook County Public Guardian, www.publicguardian.org/guardianship/about/departments/; www.publicguardian.org/guardianship/about/success-stories/ (last visited Nov. 17, 2014). See also Charles P. Golbert, *Justice for Children, Adult with Disabilities, and Elderly: Reflections from 15 Years as an Attorney with the Office of the Public Guardian of Cook County Illinois*, 1 DEPAUL J. FOR SOC. JUST. 69-79 (2007); Charles P. Golbert, *Using the Probate Act to Recover Assets Stolen from Persons with Disabilities*, 88 ILL. B.J. 510, 517 (2010)