

DOMESTIC ABUSE IN LATER LIFE

Bonnie Brandl, M.S.W. and Tess Meuer, J.D.

Meredith is seventy-eight years old and has lived in her current home for forty-seven years. Her husband died eight years ago. She suffers from asthma and high blood pressure. Although she used to be active in her church and the community, she is now afraid to drive and stays home most days. Last year, her son moved in to help her with yard work, chores, and transportation.

The arrangement with her son has not worked out as she planned. He lost his job shortly before moving in with her, something he forgot to mention when they were making plans. In the beginning, he went out on interviews.

Recently it seems the "interviews" are visits to the local bar. Even though Meredith does all the laundry and prepares their meals, her son insists that she sign over her Social Security check every month. The time she argued with him, he slapped her hard across the face. Now she simply signs the checks without complaint. Last week he took some of her prized antiques and jewelry. She is afraid to ask where they are. Around her neighbors, her son is charming and attentive. They think Meredith is fortunate to have a devoted son. She is afraid if she tells anyone about his behavior, no one will believe her. Who would believe that he forces her to watch pornographic movies? He also threatens to send her to a nursing home. Even if someone did believe

Bonnie Brandl is the Project Coordinator of the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV).

Tess Meuer is the Senior Staff Attorney at WCADV. They can be reached at (608) 255-0539 or wcadv@inxpress.net.

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her, what would happen to both of them? She doesn't want to leave her home. She certainly doesn't want him to end up in jail.

I. Introduction

We have entered an era commonly called the "Aging of America."¹ Currently, 44 million Americans are over age sixty.² By the year 2030, 70 million Americans will be over the age of sixty-five.³ Furthermore, "one in four elderly Americans will be a member of a minority group."⁴ We have long recognized that abuse and domestic violence transcends racial, ethnic, and socio-economic boundaries. More recently, we have discovered that domestic abuse knows no age limit.⁵

Elder abuse is a growing but often hidden problem in the United States.⁶ It affects hundreds of thousands of elderly people, yet it remains significantly underreported.⁷ Despite this fact, "[f]rom 1986 to 1996 there was a steady increase in the reporting of domestic elder abuse nationwide."⁸

1. See Administration on Aging, *The Administration on Aging and the Older Americans Act* (visited Oct. 10, 2000) <<http://www.aoa.dhhs.gov/aoa/pages/aoafact.html>>.

2. See Administration on Aging, *The Administration on Aging and the Older Americans Act* (last modified Nov. 6, 1998) <<http://www.aoa.dhhs.gov/may97/aoa-oaa.html>>.

3. See Administration on Aging, *The Growth of America's Older Population* (visited Sept. 26, 2000) <<http://www.aoa.dhhs.gov/may97/growth.html>>.

4. Administration on Aging, *Older Women: A Diverse and Growing Population* (last modified Mar. 2, 1999) <<http://www.aoa.gov/factsheets/ow.html>>.

5. One study estimates that almost one-half million older persons in domestic settings were abused or neglected. Additionally, persons 80 years and over are abused or neglected at two to three times their proportion of the elderly population. See Administration on Aging, *Elder Abuse Prevention* (last modified May 16, 2000) <<http://www.aoa.gov/factsheets/abuse.html>>.

6. See National Ctr. on Elder Abuse, *Types of Elder Abuse in Domestic Settings* (visited Sept. 4, 2000) <<http://www.gwjapan.com/NCEA/basic/fact1.pdf>>.

7. See Karl Pillemer & David Finkelhor, *The Prevalence of Elder Abuse: A Random Sample Survey*, 28 GERONTOLOGIST 51, 54 (1988). One study estimated that only one in fourteen cases of elder abuse is reported to authorities. See *id.* at 56; cf. Administration on Aging, *supra* note 2 (estimating that one in five cases of abuse go unreported).

8. NATIONAL CTR. ON ELDER ABUSE, TRENDS IN ELDER ABUSE IN DOMESTIC SETTINGS 1 (Elder Abuse Info. Series No. 2, 1997). Over this 10-year period, reports of elder abuse rose from about 117,000 to 293,000, which represents a 150% increase. See *id.*

Elder abuse can occur in institutions, such as nursing homes, or in the community. This article will focus on elder abuse that occurs in the community, and specifically in individuals' homes. Institutional abuse is a prevalent and serious problem;⁹ however, it is beyond the scope of this article.

Family members or caregivers perpetrate the majority of elder abuse.¹⁰ This is referred to as domestic or family violence in later life. Family relationships include long-term marriages/partnerships, recent marriages/partnerships, and relationships between the elderly and their adult children or grandchildren. Caregivers may be paid or unpaid for the assistance they provide, such as help eating, toileting, bathing, or getting around. Some caregivers live with the victim; others come to the home for a specified number of hours. Often caregivers have an ongoing, personal relationship with the older person they care for.¹¹ Because the majority of victims are female, this article will focus on women.¹² However, many of the intervention strategies discussed in this article may also apply to male victims.

Each state has its own definition of elder abuse. Definitions usually include physical and sexual abuse, financial exploitation, neglect and self-neglect.¹³ Generally, these forms of abuse are used in combination along with emotional abuse, threats, coercion, and isolation.¹⁴ This article focuses on abuse that involves a perpetrator using any or all of these forms. We will not discuss self-neglect because intervention strategies are different in those cases.

Professionals such as lawyers, health care providers, social workers, and financial planners are in a unique position to identify elder abuse and domestic violence. Because most victims are reluctant to acknowledge and most professionals neglect to ask, many key issues that affect the matters presented by clients are overlooked. Some victims may not understand how their decisions could compromise their safety. Others may find themselves being pressured by family members to make decisions that are not in their best interest.

9. See LAWRENCE A. FROLIK & RICHARD L. KAPLAN, *ELDER LAW IN A NUTSHELL* 400 (2d ed. 1999).

10. "More than two-thirds of the perpetrators are family members of the victims." *Id.*

11. See National Ctr. on Elder Abuse, *Who Are the Abusers?* (visited Sept. 4, 2000) <<http://www.gwjapan.com/NCEA/basic/index.html>>.

12. See NATIONAL CTR. ON ELDER ABUSE, *supra* note 8.

13. See FROLIK & KAPLAN, *supra* note 9, at 394-96.

14. See *id.*

A professional can help clients resolve difficult decisions more effectively by understanding key family violence dynamics.¹⁵

This article will answer in detail four broad questions: (1) What is abuse in later life?; (2) What can a professional do to help intervene?; (3) What criminal and civil laws address elder abuse?; and (4) What interventions are most helpful for older victims of family violence?

II. What Is Abuse in Later Life?

The first question explores the age at which abuse is considered elder abuse, the types of elder abuse, victims' relationships with their abusers, and why abuse occurs.

A. At What Age Is Abuse Considered Elder Abuse?

All fifty states and the District of Columbia have investigation systems for suspected elder abuse and statutory definitions of "elder."¹⁶ Some states define "elder" as age sixty and older.¹⁷ Other states have designated age sixty-five and older.¹⁸ In the remaining states, elder abuse is included in abuse against vulnerable adults.¹⁹ Adult protective services agencies respond to abuse of any vulnerable adult, eighteen years or older.²⁰

B. What Are the Types of Elder Abuse?

Specific definitions of abuse vary from state to state.²¹ Generally, elder abuse includes the following components:

Physical abuse: Infliction of physical pain or bodily harm (e.g., beating, hitting, pushing, and restraining);

15. See generally A.B.A. COMM'N ON DOMESTIC VIOLENCE, *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK* (1996).

16. See A.B.A. Comm'n on Legal Problems of the Elderly, *Information About Laws Related to Elder Abuse* (visited Sept. 5, 1999) <<http://www.gwjapan.com/NCEA/laws/index.html>>.

17. See *infra* Appendix A.

18. See *id.*

19. See *id.* For purposes of this article, vulnerable adults are generally defined as people with physical and/or cognitive difficulties that limit their ability to protect themselves.

20. See National Ctr. on Elder Abuse, *The Basics: What Is Elder Abuse?* (visited Sept. 4, 1999) <<http://www.gwjapan.com/NCEA/basic/index.html>>.

21. See *id.*

Sexual abuse: Any form of sexual contact or exposure without consent or when the victim is incapable of giving consent (e.g., rape, fondling, forcing victim to watch pornography, or participate in unwanted sexual acts);

Emotional abuse: Infliction of mental anguish (e.g., threatening, humiliating, intimidating, and isolating);

Financial exploitation: Illegal or improper exploitation of funds or other assets (e.g., stealing money or property, committing fraud through undue influence);

Neglect: Refusal or failure to fulfill caregiving obligations such as abandonment or isolation; denial of food, shelter, clothing, medical assistance, or personal needs; or the withholding of necessary medication or assistive devices (e.g., hearing aids, glasses, false teeth);

Abandonment: Desertion of an elderly person by a person who has assumed caregiving responsibility or physical custody of the elder (e.g., leaving elder in home unattended or dropping them at a hospital).²²

Abusers may use a variety of these tactics, usually in combination, to victimize older persons.

C. What Relationships Do Victims Have with Their Abusers?

Most victims have an ongoing relationship with their abuser.²³ Victims may want different remedies based on the type of relationship they have with their abuser. Often victims of violence perpetrated by strangers want the abuser to be punished.²⁴ In contrast, victims with ongoing relationships with the abuser often want the abuse to stop but the relationship to continue.²⁵ Like Meredith, they fear that the abuser will end up in jail or a psychiatric facility or on the streets.

22. *See id.*

23. One study found that in almost 90% of reported domestic elder abuse and neglect cases, the perpetrator was a family member. *See* Administration on Aging, *The National Elder Abuse Incidence Study; Final Report September 1998* (visited Sept. 4, 1999) <<http://www.aoa.gov/abuse/report>> at pt. H. Upon further analysis, two-thirds of the perpetrators are adult children or spouses. *See id.* at pt. G.

24. *See generally* Carolyn L. Dessin, *Financial Abuse of the Elderly*, 36 IDAHO L. REV. 203, 223–25 (2000).

25. *See id.* at 210–11.

D. Why Does Abuse Occur?

Older people are hurt in a variety of ways and under a variety of circumstances.²⁶ Injuries may occur in accidents when well-intended family members and caregivers who lack necessary skills hurt the person they are trying to help.²⁷ Individuals with physical or mental illnesses (e.g., Alzheimer's) that manifest in violent behavior may harm others.²⁸ These are *not* cases of intentional abuse.

Some family members or caregivers, like Meredith's son, hurt older people to exert power and control over the victim.²⁹ These abusers harm elderly people to get their needs met, believing they are entitled to use any means necessary to achieve their goal. As is true for abuse of younger battered women, abusers feel justified, thinking they have a moral right to control their victim.³⁰ They also hold rigid stereotypes about the victim over whom they have power.³¹

This control can take a variety of forms. Some abusers insist on control of the household activities and make sure they get their way through emotional and physical abuse.³² They dictate things like when dinner will be served, what television shows are watched, and who enters or leaves the house. Others demand access to the victim's finances and property for their own benefit.³³ Still other abusers enjoy dominating, punishing, or humiliating their victims.³⁴ The most overt and often the only illegal forms of power and control are physical and sexual violence.

The experiences older victims of abuse have shared with the Wisconsin Coalition Against Domestic Violence matches that of sev-

26. See Bonnie Brandl, *Power and Control: Understanding Domestic Abuse in Later Life*, GENERATIONS, Summer 2000, at 40.

27. See *id.*

28. See *id.*

29. See Zanita E. Fenton, *Mirrored Silence: Reflections on Judicial Complicity in Private Violence*, 78 OR. L. REV. 995, 1038 (1999). See generally Pillemer & Finkelhor, *supra* note 7, at 179-83.

30. See Brandl, *supra* note 26, at 41.

31. Abusers believe they deserve unquestioned obedience from the victim. See WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, ELDER ABUSE, NEGLECT, AND FAMILY VIOLENCE: A GUIDE FOR HEALTH CARE PROFESSIONALS 8 (rev. ed. 1999). In general, the abuser feels that a woman is less qualified to control family finances, that a woman's role is to keep the house clean, and that a woman should engage in sexual activities whenever the abuser wants. See generally SUSAN SCHECHTER, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, GUIDELINES FOR MENTAL HEALTH WORKERS (1987).

32. See Brandl, *supra* note 26, at 41.

33. See *id.*

34. See *id.*

eral researchers who conclude that many elderly victims are not dependent on the abuser for care but rather the abuser depends on the victim.³⁵ Many abusers, like Meredith's son, are adult children who are still living at home and relying on their elderly parent's financial resources.³⁶ In other cases, abusive husbands or partners believe that women are responsible for taking care of them and responding to their every wish or desire.³⁷ In the latter example, they are older adults experiencing domestic violence, similar to the battering experienced by younger women.

The wheel on the next page illustrates the forms of abuse often used against victims to gain or maintain power and control.³⁸ Older women attending support groups for battered women created this tool.³⁹ They described the physical abuse, sexual violence, isolation, financial exploitation, emotional abuse, and/or other tactics used against them by their spouse, partner, adult children, or caregiver. Most abusers use several or all of the tactics illustrated on the wheel.⁴⁰

35. See Pillemer & Finkelhor, *supra* note 7, at 180; Elizabeth Podnieks, *National Survey on Abuse of the Elderly in Canada*, J. ELDER ABUSE & NEGLECT, Vol. 4(1/2) 1992, at 5-58.

36. See National Ctr. on Elder Abuse, *supra* note 20.

37. See Brandl, *supra* note 26, at 41.

38. See *id.* at 40-41.

39. See *id.* at 41.

40. See *id.* at 40.

FIGURE 1
Power and Control Wheel⁴¹

An abuser may:

- a. Take walker, wheelchair, glasses, dentures; Understand but not follow or report medical, therapy, or safety recommendations; Deny/create long waits for food, heat, or care
- b. Deny access to church/temple/clergy; Ignore/ridicule religious or cultural traditions
- c. Humiliate, demean, insult; Engage in behavior which makes her think she is crazy; Use silence or profanity; Degrade, blame
- d. Mislead family members about extent/nature of illness/condition; Force family to keep secrets
- e. Control what she does, who she sees, or where she goes; Limit time with friends and family; Deny access to phone/mail/outside world
- f. Make all major decisions; Treat like a servant
- g. Steal/hide/take over money, possessions, or accounts
- h. Threaten to leave, divorce the woman, commit suicide, or institutionalize; Abuse/kill pets; Destroy property; Display or threaten with weapons

41. See WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 31, at 13.

E. What Is the Relationship Between Elder Abuse and Caregiver Stress?

Caregiver stress is often described as a primary cause of elder abuse. The caregiver stress theory describes well-meaning individuals who commit isolated acts of abuse when they lose control under significant pressure.⁴² Caregiving can be difficult and stressful. The work is often hard and the hours long. Many caregivers work for low pay or are family members giving of their time and resources.⁴³ Because of these factors, many people believe that stressed caregivers occasionally snap, become abusive, and say or do things they would not normally do.⁴⁴

However, research has found that in most cases of elder abuse the dynamics are more similar to traditional domestic violence than to caregiver stress.⁴⁵ Due to lack of information about the dynamics of domestic abuse in later life, well-meaning professionals often respond inappropriately to victims by responding to elder abuse as a case of caregiver stress.⁴⁶ Remedies such as stress reduction and improved communication may provide some relief. But without an analysis of potential power imbalances, elder abuse seen as caregiver stress can: (1) blame victims; (2) collude with batterers' excuses; and (3) discourage criminal justice system involvement in remedies. To provide safety and support to elderly victims, we must look to service models and legal remedies long established for younger victims of domestic abuse.

42. See Pillemer & Finkelhor, *supra* note 7, at 179–80.

43. *See id.*

44. *See id.*

45. See RISA S. BRECKMAN & RONALD D. ADELMAN, STRATEGIES FOR HELPING VICTIMS OF ELDER MISTREATMENT 28–29 (1988); *see also* Sara Harris, *For Better or For Worse: Spouse Abuse Grown Old*, J. ELDER ABUSE & NEGLECT, Vol. 8(1) 1996, at 2; Pillemer & Finkelhor, *supra* note 7, at 186; Podnieks, *supra* note 35; Linda Vinton, *Abused Older Women: Battered Women or Abused Elders*, J. WOMEN & AGING, Vol. 3(3) 1991, at 5–6; Rosalie Wolf, *Elder Abuse in Domestic Settings*, PMA, Nov.–Dec. 1998, at 9.

46. *See* Brandl, *supra* note 26, at 41.

III. What Can Professionals Do to Help Intervene?

A. Identifying Abuse

Family violence occurs in all economic, religious, and racial groups.⁴⁷ Any of a professional's elderly clients may be experiencing family violence. Developing a standard practice of interviewing clients privately and asking direct questions about abuse as part of the intake process may help spot victims of abuse.⁴⁸ The professional should look for specific signs of victimization or abusive behavior.⁴⁹ When possible, confidentiality should be ensured.

B. Interviewing Techniques

Asking about abuse is not easy. Nevertheless, it should be done straightforwardly and sensitively, without experiencing or causing embarrassment. If the professional is a mandated reporter or will need to break confidentiality for any reason, the interview should begin by disclosing this information to the client. Indirect questions about the client's life can lead up to direct questions about abuse or fear of abuse.⁵⁰ Evidence shows that victims of family violence gener-

47. See, e.g., ROBERT BACHMAN & LINDA SALTZMAN, U.S. DEP'T OF JUSTICE SPECIAL REPORT, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 4 (1995).

48. See Bonnie Brandl & Jane Raymond, *Unrecognized Elder Abuse Victims: Older Abused Women*, J. CASE MGMT., Vol. 6(2) 1997, at 65-66.

49. Clients who have been abused may experience repeated "accidental" injuries that are suspicious; minimize injuries; appear isolated from friends, family, and church; lack access to financial resources, transportation, or supportive social services; consistently defer to a certain family member; refer to a family member's anger or temper; express fears of being harmed; flee from home; show signs of alcohol or drug abuse; exhibit signs of depression; consider or attempt suicide; miss appointments and fail to follow through on legal plans; present as a "difficult client"; or may exhibit fear or reluctance to speak to those in authority about family matters. Suspected abusers may appear overly charming, attentive, or protective of the victim; control most of victim's daily activities; refuse to leave you alone with your client; verbally abuse the client or your staff; frequently interrupt or speak for the victim; give reasonable explanations for all suspicious injuries or behavior; blame the victim for relationship and other life problems; allude to victim's dementia, loss of physical abilities due to aging, failing health, and diminished mental capacity; attempt to convince you that the client is incompetent or crazy; or refuse to involve outside parties in the discussion of family matters. See WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 31, at 5-6.

50. Examples of indirect questions are: How are things going in your relationship? You mentioned to me that your partner (or an adult child) loses his temper. Can you tell me more about that? You seem to have some special concern about your partner (or an adult child). Can you tell me more?

ally respond positively to sensitive questioning from concerned professionals,⁵¹ therefore such professionals should not be afraid to ask.

To ensure that questions about domestic abuse are routinely asked, a comfortable, private setting where interviews can take place should be designated. Because anyone can be an abuser (including family members or guardians), professionals should try to interview the client alone. The client should have an opportunity to talk freely and confidentially without fear of retaliation. A reliable interpreter for non-English-speaking or hearing-impaired patients must be made available. Essential to the success of the interview is believing what the victim says. Too often victims' accounts are discounted or erroneously labeled as "he's suffering from dementia" or "she's co-dependent."⁵² The professional should make clear and affirming statements that violence is unacceptable under all circumstances.

If the older person denies abuse is occurring or refuses to talk, the efforts have not been in vain. The victim may believe she cannot escape the abuse and will be in greater danger if she reveals what is happening to her. Her past attempts to get help may have been futile and/or resulted in an escalation of the violence. Often the victim has tried telling friends, family members, and professionals that something was wrong.⁵³ Too often she has been blamed for the abuse, or encouraged to stay and try harder.⁵⁴ Language and cultural barriers may also prevent the victim from confiding in a professional.⁵⁵ Initial attempts to broach the topic may prove beneficial at a later date.⁵⁶ Often victims remember kind, supportive words of encouragement and referrals, even if they do not take action immediately.

The question of whether to stay or to leave is a difficult one for victims of abuse. Some victims of family violence stay with abusive family members. They stay out of fear of being alone, real or per-

Examples of direct questions are: Are you afraid of your partner (or an adult child)? What does your partner (or adult child) do that frightens you? Many women come to me with injuries like yours and tell me a family member has hurt them. Is this happening to you? Have you even been punched, kicked, hit, or hurt in any way by a member of your family? Were you threatened or forced to do things you did not want to do? Are you ever forced to engage in sexual behavior against your will?

51. See WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 31, at 10.

52. *See id.* at 10–11.

53. *See id.* at 11.

54. *See id.* at 14.

55. *See id.* at 11.

56. *See id.*

ceived financial dependency, health concerns, generational ties, or spiritual and cultural values.⁵⁷ Many elderly victims fear retaliation. Research shows that victims are often at greatest risk of being seriously harmed or killed when they seek help or attempt to leave the abusive relationship.⁵⁸

Some victims seek help and leave an abuser, only to return home later.⁵⁹ Many victims leave and return a number of times.⁶⁰ Often these victims leave with great hope that friends, family, and the community will support their new life.⁶¹ Older victims of abuse encounter many obstacles to living free from abuse. They may find that they are criticized for leaving,⁶² cannot find affordable housing,⁶³ or that the abuser stalks them.⁶⁴ Terminating an abusive relationship is complex and difficult. Change of this magnitude often comes slowly and over time, especially for the elderly, who by virtue of aging, may already be experiencing many losses.⁶⁵

IV. Legal Issues Impacting Elder Abuse

When a professional is working with elderly clients who are potentially victims of abuse, he or she needs to be aware of several legal issues and the state's response to these issues. Because the client is both elderly and a victim of domestic abuse, the legal issues may be complex. The following section discusses assessment of competency,

57. *See id.* at 17.

58. *See* Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1232 (1993).

59. *See, e.g.*, Kathleen Waits, *Battered Women and Their Children: Lessons from One Woman's Story*, 35 HOUS. L. REV. 29, 44 (1998).

60. *See id.* at 68.

61. *See* National Coalition for the Homeless, *Fact Sheet Number 8* (visited Oct. 7, 2000) <<http://nch.ari.net/domestic.html>>; Santa Clara County Probation Dep't, *Domestic Violence Information and Referral Handbook* (visited Oct. 7, 2000) <<http://www.growing.com/nonviolent>>.

62. *See* Santa Clara County Probation Dep't, *Domestic Violence Information and Referral Handbook* (visited Oct. 7, 2000) <<http://www.growing.com/nonviolent>>.

63. *See* National Coalition for the Homeless, *Fact Sheet Number 8* (visited Oct. 7, 2000) <<http://nch.ari.net/domestic.html>>.

64. *See* CAROLE WARSHAW & ANNE GANLEY, SAN FRANCISCO FAMILY VIOLENCE PREVENTION FUND, *IMPROVING THE HEALTH CARE RESPONSE TO DOMESTIC VIOLENCE: A RESOURCE MANUAL FOR HEALTH CARE PROVIDERS* 24 (1995).

65. *See* Carol Seaver, *Muted Lives: Older Battered Women*, J. ELDER ABUSE & NEGLECT, Vol. 8(2) 1996, at 11. Older women experience losses of health and social support as they age. *See id.* at 11-12. Other significant losses can include land and housing, access to employment, access to external support systems, and access to support from state or non-state organizations. *See id.* at 10.

elder abuse reporting systems, mandatory arrest/pro-arrest and domestic abuse laws, crimes against the elderly, and civil remedies.

A. Competency/Incompetency

The question of the client's competence or incompetence may arise early on. Professionals often question competency based on the behavior of the client or because they are told by a family member that the client is no longer competent.⁶⁶ On face value, this may seem easy to assess. However, many victims of domestic violence, both elderly and not, display symptoms which the legal system might label as incompetence which are actually manifestations of abuse.⁶⁷

Prior to referring the client to a competency evaluation (preferably by a multidisciplinary medical team), the state's laws governing standard of incompetence and who makes this determination should be reviewed. States vary as to their definitions and procedures. Further, the person(s) responsible for the competency evaluation may or may not have adequate knowledge or training in issues of elder abuse, much less domestic violence in later life.

If, at the conclusion of the first interview, an elderly client appears incompetent, it should be determined if his or her competency has been questioned in the past. Has the diagnosis of incompetence occurred since the client has been in a living arrangement with a potentially abusive individual? As noted earlier, the most common abusers are family members (spouses/partners, adult children or adult grandchildren) or paid caregivers.⁶⁸ If there is a history of questioned or documented incompetence, this history should be assessed as to whether it is credible. Has the diagnosis occurred seemingly quickly without a new medical condition to explain its rapid appearance (e.g., minor stroke)? Or has its rapid onset occurred since the client's living arrangement has included a person who may be an abuser?

66. See WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 31, at 18.

67. See *id.* at 18. These behaviors include: Never voicing an opinion or frequently deferring to the other person (victims are often deferent to avoid or lessen conflict with the abuser); appearing confused or unaware of what is occurring (abusers frequently mislead or withhold information on important matters); appearing absent-minded or unable to track conversation (which may result from a victim's sleep or nutrition deprivation, or mismanagement of the victim's medications by the abuser). See *id.*

68. See Administration on Aging, *supra* note 23, at pt. G.

If it is determined that there is some reason to question the client's competence, the professional should conduct a second and third follow-up interview. The second interview of the client takes place without the suspected abuser present. The client should be well rested and have received proper food and, if applicable, medications. Some clients experience what is known as "sundowner syndrome," the tendency among persons with dementia for the memory to become more disjointed or impaired at the end of the day.⁶⁹ In such cases, mid to late morning meetings are often preferable.

Legal incompetence and limited abilities should not be confused. Some elderly display a lessening of mental and/or physical abilities. If the person is being threatened or abused by a loved one, she may appear even more limited.⁷⁰ Again, the client must be assessed outside the influence of the person who potentially is causing harm. The second interview should begin with questions about the client's background, where she grew up, childhood activities, how the world has changed, and what the client would like to see change for elderly persons in our society. Questions such as these are designed to put the elderly person at ease while allowing the listener an opportunity to determine if the elderly person is lucid, tracking the past from the present, and able to articulate what he or she thinks.

Next, the professional should interview this same client in the presence of the person suspected of elder abuse. Changes in the client's affect, eye contact, ability to track and answer questions, and willingness (or in this case, unwillingness) to share information about herself in the family member's presence must be given notice. It is best to conduct these two interviews at a time when the elderly person has enough stamina to talk for some length of time. If necessary, the final interview could be conducted at the same time of day on another day.⁷¹

69. See Cognitive Neurology & Alzheimer's Disease Ctr., Northwestern Univ. Med. School, *Question and Answer Archive* (visited Sept. 5, 2000) <<http://www.brain.nwu.edu/care/QvA/QvA-sundowning.html>>.

70. See generally WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, *supra* note 31.

71. Suggestions for screening an incompetent person include: using a multidisciplinary medical team, videotaping the interview in the event the victim may be unavailable for court, and considering the client's age and limitations. See Dennis J. Morris, *Interviewing Cognitively Impaired Victims*, PROSECUTOR'S BRIEF, Vol. 21(2) 1999, at 11.

Even in cases where there are suspicions that the client is legally incompetent, investigating allegations of abuse independently should be considered. It is not uncommon for an abusive family member or caretaker to strongly state that alleged abuse is a result of the client's incompetence.⁷² Often caregiver stress will be used to justify abusive behavior.⁷³ It is important to realize that providing support to the abuser will not protect the safety of the client. Competency issues are important in forming a decision on the illegality of certain actions against the client, but regardless of mental status, the safety of the client must be considered foremost in all decisions.

Attorneys are subject to Model Rule 1.14, which discusses ethical obligations when a client has a disability.⁷⁴ However, it may be difficult for an attorney to determine the capacity of a client.⁷⁵ Several sources discuss possible interpretations of Model Rule 1.14.⁷⁶ Although an attorney may need to assess competency, competency should not be confused with the client's so called "poor judgment." The client's decision to stay in an abusive situation, for safety or other reasons, is not an indication of incompetence.

B. Elder Abuse Reporting System

As noted earlier, all states have an elder abuse/adult protective service reporting system(s).⁷⁷ The definition of abuse and how these systems operate vary from state to state.⁷⁸ Most states mandate reporting of any suspected or observed elder abuse.⁷⁹ Six states (Colorado, New Jersey, New York, North Dakota, South Dakota, Wisconsin) mandate only that there be a place to which elder abuse may be reported.⁸⁰ Once reported, the system of response varies.⁸¹

72. See *id.* at 41.

73. See FROLIK & KAPLAN, *supra* note 9, at 461.

74. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.14 (1998).

75. See Daniel L. Bray & Michael D. Ensley, *Dealing with the Mentally Incapacitated Client: The Ethical Issues Facing the Attorney*, 33 FAM. L.Q. 329, 333 (1999).

76. See *id.*

There are several theories on how a lawyer should make the critical threshold determination of whether the client has an impaired capacity, subjecting the client to Model Rule 1.14. In general, being decisionally impaired is an inability to understand, deliberate, or reach conclusions about relevant matters.

Id.

77. See A.B.A. Comm'n on Legal Problems of the Elderly, *supra* note 16.

78. See *id.*

79. See *infra* Appendix A.

80. See *id.*

Lawyers and other professionals may face an ethical dilemma in states with mandatory reporting laws. Some states require lawyers to report abuse.⁸² In other states health care providers, social workers, or

81. *See id.* Note: these laws only refer to the reporting of abuse to Adult Protective Services. State laws may mandate specific professionals to report abuse and these laws are not included.

82. *See* NEV. REV. STAT. ANN. § 200.5093(4)(f) (Michie 2000). "A report must be made pursuant to subsection 1 by the following persons: . . . Every attorney, unless he has acquired the knowledge of abuse, neglect, exploitation or isolation of the older person from a client who has been or may be accused of such abuse, neglect, exploitation or isolation." *Id.*; *see also* OHIO REV. CODE ANN. § 5101.16(A)(6)(g)(ii) (Anderson 2000).

Any attorney, physician, osteopath, podiatrist, chiropractor, dentist, psychologist, any employee of a hospital as defined in sections 3701.01 of the Revised Code, any nurse licensed under Chapter 4723 of the Revised Code, any employee of an ambulatory health facility, any employee of a home health agency, any employee of an adult care facility as defined in section 3722.01 of the Revised Code, any employee of a community alternative home as defined in section 3724.01 of the Revised Code, any employee of a nursing home, residential care facility, or home for the aging, as defined in section 3721.01 of the Revised Code, any senior service provider, any peace officer, coroner, clergyman, any employee of a community mental health facility, and any person engaged in social work or counseling having reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is a result of abuse, neglect or exploitation shall immediately report such belief to the county department of job and family services. This section does not apply to employees of any hospital or public hospital as defined in section 5122.01 of the Revised Code.

Id.; *see also* ARIZ. REV. STAT. ANN. § 46-454(B) & (J) (West 1998).

An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of an incapacitated or vulnerable adult or a person who has responsibility for any other action concerning the use of preservation of the incapacitated or vulnerable adult's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that exploitation of the adult's property has occurred or that abuse or neglect of the adult has occurred shall report or cause reports to be made of such reasonable basis to a peace officer, to a protective services worker or to the public fiduciary of the county in which the incapacitated or vulnerable adult resides. . . . All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday. . . . Any person who violates any provision of this section is guilty of a class 1 misdemeanor.

Id. The statute does not provide for abrogation of the privilege nor does it provide an exception for the attorney who learns of abuse through this abusive client. *See* MONT. CODE ANN. § 52-3-811(3)(f) (1999). "Professionals and other persons required to report are: (f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies." *Id.*

other professionals are mandated reporters.⁸³ In twelve states, “any person” is required to report elder abuse.⁸⁴ How does this mandate interplay with professional ethical rules of confidentiality and client privilege? An older person may discuss abuse with a professional and want the information to stay confidential. In states which present such an ethical dilemma, professionals must weigh issues such as professional confidentiality guidelines and legal obligations.

Adult protective services (APS) or their equivalents are social service agencies mandated to investigate cases of elder abuse or abuse of a vulnerable adult.⁸⁵ Calls come to a central agency, which assigns a trained worker to investigate the allegations of abuse and/or neglect.⁸⁶ State statutes vary on how immediately a worker must respond.⁸⁷ In some states, alleged victims may refuse the investigation.⁸⁸ In other states, an investigation is completed but competent clients have the right to turn down services.⁸⁹

The role of the APS investigative team and law enforcement varies. In some states, law enforcement has no role in alleged elder abuse reported to adult protective services or its equivalent—the agency responsible for receiving and/or investigating allegations of elder abuse.⁹⁰ Professionals must be aware of what role law enforcement has in elder abuse investigations and what training law officers have in domestic violence, specifically domestic violence in later life. Conversely, some states may have APS workers who have not been

83. See, e.g., ARIZ. REV. STAT. § 46-454 (2000); DEL. CODE ANN. tit. 31, § 3910 (2000); D.C. CODE ANN. § 6-2503 (2000); WIS. STAT. ANN. § 146.995 (1999).

84. See FLA. STAT. ANN. § 415.1034 (West 1998); KY. REV. STAT. ANN. § 209.030 (Banks-Baldwin 1998); LA. REV. STAT. ANN. § 403.2(C) (West 1998); N.H. REV. STAT. ANN. § 161-F:46 (1994); N.M. STAT. ANN. § 27-7-30 (Michie 2000); OKLA. STAT. ANN. tit. 43A, § 10-104 (West 2000); R.I. GEN. LAWS § 42-66-8 (1998); S.C. CODE ANN. § 43-35-25 (Law Co-op. 1999); TENN. CODE ANN. § 71-6-103 (1995); UTAH CODE ANN. § 62A-3-302 (1998); WASH. REV. CODE ANN. § 74.31.030 (West 1989); WYO. STAT. ANN. § 35-20-103 (Michie 1998).

85. See, e.g., ALASKA STAT. § 47.24.013 (Michie 1998); DEL. CODE ANN. § 3903 (Michie 1997).

86. See, e.g., ARK. CODE ANN. § 5-28-201 (1997); FLA. STAT. ANN. § 415.104 (West 1998).

87. See *infra* Appendix A.

88. See, e.g., FLA. STAT. ANN. § 415.1034; LA. REV. STAT. ANN. § 403.2(C); N.M. STAT. ANN. § 27-7-30.

89. See, e.g., OKLA. STAT. tit. 43A, § 10-104; UTAH CODE ANN. § 62A-3-302.

90. See *infra* Appendix A.

trained on the dynamics of domestic abuse, but law enforcement officers may be very well versed on this subject.⁹¹

C. Mandatory Arrest/Pro-Arrest and Domestic Abuse Laws

Domestic violence in later life poses very difficult considerations for the criminal justice system. For example, will the criminal justice system arrest and incarcerate an elderly man who has abused his elderly wife, knowing that the man is frail and has special medical needs? Will the criminal justice system arrest and incarcerate a mentally ill woman who is not taking her antipsychotropic medications and has struck and injured her elderly father? Will the justice system arrest and incarcerate an elderly woman's live-in caregiver (whom the county has spent months searching for), when the elderly woman claims the caregiver fondles her? Will the justice system arrest and incarcerate an elderly woman's daughter (who is developmentally disabled), when the daughter repeatedly slaps her incontinent mother? Policies and practices vary from community to community.⁹²

Most states have either a domestic violence mandatory arrest or pro-arrest law.⁹³ An arrest is mandated if specified behavior occurs between persons in a certain relationship as defined by law.⁹⁴ Some states have a pro-arrest law stating that the officer *may* arrest if certain conditions exist, but does not mandate an arrest in all circumstances.⁹⁵ Again, the professional will need to determine if the law includes elderly victims of abuse and includes the types of abuse that occur against the elderly.⁹⁶ For example, if elderly victims are excluded, the ramifications are potentially more lethal. In some states which have a mandatory arrest law, the person is arrested for whatever criminal offense he or she has committed.⁹⁷ Regarding sexual offenses, state laws may include such behaviors as marital rape, exposure to genitals,

91. See, e.g., Lakeland Police Dep't Domestic Abuse Response Team (visited Oct. 23, 2000) <http://www.lpd.lakeland.net/nsb/spec_ops/dart.html>.

92. See ALASKA STAT. §§ 47.24.010–.24.900 (Michie 1999); cf. COLO. REV. STAT. ANN. §§ 26-32-101, 26-3.1-106 (West 2000).

93. See *infra* Appendix A.

94. See Marion Wanless, Note, *Mandatory Arrest: A Step Towards Eradicating Domestic Violence, But Is It Enough?*, 1996 U. ILL. L. REV. 533, 534.

95. See *id.* at 543.

96. See *infra* Appendix A to determine whether a state has a mandatory arrest law and whether the law is inclusive of elder abuse.

97. See generally Wanless, *supra* note 94, at tbls. A.2–A.3. Applicable criminal offenses may include battery, reckless injury, disorderly conduct, sexual assault, theft, and criminal damage to property.

forced sexual activity, or forced viewing of sexual material. Too often, professionals do not consider sexual abuse of the elderly, do not ask appropriate questions, or ignore evidence of sexual abuse.⁹⁸ In cases like Meredith's, caregivers or family members, including husbands or adult sons, may be sexually abusing older victims.

Some states have a separate domestic abuse statute defining the offenses for which a person can be arrested for domestic abuse and under what circumstances they may be arrested.⁹⁹ However, many of these states' offenses focus on physical or sexual assault, and fail to include common offenses against the elderly, such as crimes of financial exploitation or abuse/neglect by a caregiver.¹⁰⁰

Domestic abuse laws can be important interventions when dealing with elder abuse. The civil elder abuse reporting system may fail to do more than make note of the report. Each state should clearly define adult protective service workers' and law enforcement officers' responsibilities and roles in investigating cases. When law enforcement is called to intervene at the time of the incidence of violence, they can be instrumental in stopping the violence. A victim in crisis is more likely to give true statements about the incident,¹⁰¹ which, under the law of evidence, can later be used as an excited utterance exception to the hearsay rule.¹⁰² However, when law enforcement is called to investigate after the fact, they are likely to get a different response from the victim.¹⁰³ The victim may minimize the incident or simply deny the abuse. With arrest and prosecution, the criminal justice system has the authority to take action, which will ensure victim safety and hold abusers accountable.

D. Crimes Against the Elderly

Some states also have separate offenses for crimes against the elderly—which might include offenses not encompassed by the mandatory arrest and/or domestic abuse laws.¹⁰⁴ A professional should

98. See Holly Ramsey-Klawnsnik, *Interviewing Elders for Suspected Sexual Abuse*, J. ELDER ABUSE & NEGLECT, Vol. 5(1) 1991, at 6.

99. See generally Wanless, *supra* note 94, at tbls. A.2–A.3.

100. See *infra* Appendix A.

101. See 6 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 1747 (James H. Chadbourne ed., 1976).

102. See *id.*

103. See Wanless, *supra* note 94, at 544–47.

104. See, e.g., 320 ILL. COMP. STAT. § 20/1 (West 2000).

always determine whether his or her state's statutes include elderly persons as potential victims of such crimes. Crimes might include abuse against elderly or vulnerable adults, presumption of increased harm if the person is over a certain age, theft or other financial crimes against an elderly person.¹⁰⁵ For example, in the introductory scenario, Meredith's son is stealing her Social Security checks and possessions. In the future he may try to get power of attorney or the deed to her home. As an attorney, one should check state law to determine what is considered financial exploitation, neglect, or abandonment in the state.

E. Restraining Orders

In addition to criminal justice issues, restraining orders may be used to assist a victim of domestic abuse in later life. However, elderly victims may find them of limited value. For example, as noted in the section pertaining to mandatory arrest and domestic violence laws, the definition of abuse may not cover the types of abuse frequently experienced by elderly victims, such as financial exploitation or forms of sexual coercion.¹⁰⁶ The definition of the abuser may exclude caregivers (live in or not), a family member not related by blood, or family members who are not covered by the law's definition, such as in-laws or stepchildren.¹⁰⁷ For example, Meredith may have been eligible for a restraining order in some states because her son lives with her.¹⁰⁸ In other states, if the eligibility definition for a domestic violence restraining order is narrowly defined to include only spouse/partner relationships, she might not be eligible.¹⁰⁹

F. Remedies for Abuse of Financial Power of Attorney

Elderly individuals can be abused by the agents to whom they have granted medical or financial power of attorney. Contrary to

105. See LISA NERENBERG, SAN FRANCISCO GOLDMAN INST. ON AGING, FORGOTTEN VICTIMS OF ELDER FINANCIAL CRIME AND ABUSE (1999); Candace Heisler & Jane Tewksbury, *Fiduciary Abuse of the Elderly: A Prosecutor's Perspective*, J. ELDER ABUSE & NEGLECT, Vol. 3(4) 1991, at 23-39.

106. See *supra* notes 92-103 and accompanying text.

107. See, e.g., 750 ILL. COMP. STAT. § 60/103(6); LA. REV. STAT. ANN. § 46:2136 (West 2000).

108. See, e.g., 750 ILL. COMP. STAT. 60/103(6); OR. REV. STAT. § 107.718 (2000).

109. See *infra* Appendix A to check state laws to determine whether another type of restraining order (e.g., harassment order) may be helpful for clients.

popular belief, financial power of attorney documents are not blank checks authorizing agents to do whatever they wish with the principal's financial holdings.¹¹⁰ Despite certain language in power of attorney documents, a wide range of legal remedies exist for addressing power of attorney financial exploitation.¹¹¹ Remedies may include an action in tort for either damages (holding the agent liable) or return of property.¹¹² Remedies may also include such actions as conversion, fraud or misrepresentation, breach of contract, or an action for accounting.¹¹³

Additional civil actions can be taken for the protection of the elder. If the abusive agent is living with the elderly individual under a tenancy-at-will arrangement, the elderly individual can evict the agent in most states.¹¹⁴ State laws vary as to the notification period required to terminate this type of lease.¹¹⁵ Other protection actions might include a request for a conservator, a request for a guardian, a petition to review the agent's performance, or executing a new power of attorney.

In addition to these, a number of other actions may be creatively devised against the agent to remedy abuses of financial power of attorney.

110. See RESTATEMENT (SECOND) OF AGENCY § 382 (1977).

111. See *id.* § 399.

112. See *id.* Conversion generally involves an agent wrongfully taking authority over a principal's property by depriving the principal of the possession of that property either permanently or for an indefinite time frame. See RESTATEMENT (SECOND) OF TORTS § 222A (1965). Claims for fraud or misrepresentation may also be made if an agent makes statements to the principal, knowing those statements to be untrue, to induce the principal to take a certain action for the benefit of the agent only. See RESTATEMENT (SECOND) OF AGENCY § 403 (1977). A breach of contract may occur if the free agency of the principal has been destroyed, resulting in undue influence. See *id.* § 403. Closely related to undue influence is duress. A claim for duress should be considered whenever the agent has used force or threat of force to cause the principal to suffer financial loss to the benefit of the agent. See *generally* RESTATEMENT (SECOND) OF TORTS § 58. If the agent adversely influences expected inheritances to the principal, that agent may be charged with tortious interference. See J. DENNIS HYNES, AGENCY, PARTNERSHIP & THE LAW 50-52 (1997). Check state laws for the existence of and specific elements for tortious interference with expected inheritances. If an agent attempted to convince the principal to enter into a contractual relationship with the agent that is extremely favorable to the agent, and the elderly individual is either incompetent or marginally competent, an action alleging that the principal lacked the mental capacity to enter into such a contract is possible.

113. See RESTATEMENT (SECOND) OF AGENCY § 399.

114. See RESTATEMENT (SECOND) OF PROPERTY § 1.6 (1977).

115. See *id.*

G. Resources for Working with the Legal System

It is useful to create a compilation of state laws, criminal and civil, which can be used by those who work with victims of elder abuse to quickly determine if there are any state laws which can be applied. The Wisconsin Coalition Against Domestic Violence publishes such a booklet entitled *Elder Abuse (including Domestic Abuse in Later Life): Potential Legal Remedies*. The booklet is divided by types of abuse commonly experienced by elder victims of abuse: denial of access, physical abuse, sexual abuse, confinement, stalking, emotional abuse, neglect, and financial exploitation.¹¹⁶ Under each category, a description of specific abusive behavior for each type of behavior is included, followed by a listing of the criminal statutes under which an officer might arrest or a prosecutor charge if such behavior occurs.¹¹⁷ Also listed are potential civil actions, which might be brought by an individual, a private attorney, adult protective services, and/or county corporation counsel when such behavior occurs.¹¹⁸ The booklet also contains information on elements of the crime needed to satisfy the statute, and local resources.¹¹⁹ The booklet helps attorneys recognize the myriad civil and criminal options for an elder victim of domestic abuse. Although the booklet is specific to Wisconsin law, the format has been used as a model for other states who have created their own booklet.

Another important issue is whether court proceedings accommodate the needs of older victims of crime. In some areas, courtrooms and proceedings present challenges for older persons. Some court buildings are not physically accessible or require victims to walk to several different areas for each proceeding. Waiting for a case to be called may be difficult for some older persons. Forms may not be in large print for those with vision limitations.¹²⁰

Attitudes of justice personnel may also create problems for older victims of family violence. In many communities, law enforcement, prosecutors, and judges have received little or no training in elder

116. See WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, *ELDER ABUSE (INCLUDING VIOLENCE IN LATER LIFE): POTENTIAL LEGAL REMEDIES* 2-9 (1996).

117. See *id.*

118. See *id.*

119. See *id.* at 10-21.

120. See LORI STIEGAL, A.B.A. & NAT'L JUDICIAL CTR., *COURT RELATED NEEDS OF THE ELDERLY AND PERSONS WITH DISABILITIES: A BLUEPRINT FOR THE FUTURE* (1991) (training materials for justice personnel).

abuse.¹²¹ Training in domestic violence has most likely focused exclusively on the needs of younger victims.¹²²

V. Interventions with Older Victims of Family Violence

The primary focus of intervention must be on victim safety. Work with younger victims has demonstrated that effective intervention focuses on breaking the victim's isolation, and providing resources regardless of whether the victim stays in the relationship or leaves.¹²³ Services like a twenty-four-hour crisis line, emergency shelter, legal advocacy, support groups, and peer counseling are often helpful interventions.¹²⁴ This section will discuss victim safety planning, documentation of abuse, systemic response, and confidentiality.

A. Safety Planning

Safety planning helps victims pre-plan how to respond to abuse. It is a process, usually a series of questions, that helps victims plan how to stay safe and seek help if they find themselves in a dangerous situation.¹²⁵

Although safety planning does not guarantee victim safety, the process can assist a victim in getting ready for potential problems and preparing a crisis response. Several excellent tools have been created and are available from local domestic violence programs or statewide domestic violence coalitions.¹²⁶ Whenever possible, the professional

121. Cf. Herbert M. Kritzer, *Adult Guardianship in Wisconsin: How Is the System Working?*, 76 MARQ. L. REV. 549, 571 (1993); Molly Dickinson Velick, *Mandatory Reporting Statutes: A Necessary Yet Underutilized Response to Elder Abuse*, 3 ELDER L.J. 165, 181 (1995).

122. See LORI STIEGAL, *ELDER ABUSE IN THE STATE COURTS: THREE CURRICULA FOR JUDGES AND COURT STAFF* (1991) (improving the accessibility of courts for older victims).

123. See Brandl, *supra* note 26, at 43.

124. See *id.*

125. Sample questions include: If your abuser stops by, can he get into your home? If he gets in, which rooms might be safer than others? (unsafe rooms might include kitchens with knives, bathrooms with porcelain surfaces, or rooms with guns) Can you signal a neighbor, family member, or friend if you are in danger (call someone with a code word for trouble, or hang a towel in the window)? Does your abuser have guns and has he threatened to use them? Do you have somewhere to stay if you need to leave your home in an emergency? What important papers, medications and other belongings are essential for you to bring if you leave?

126. See WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, *SAFETY PLAN FOR VICTIMS OF DOMESTIC ABUSE* (1996) (including victims of all ages).

should refer his or her client to the local domestic abuse program and have an advocate do safety planning with the victim in person or over the phone.

B. Documentation

Documenting abuse through photographs, detailed descriptions of injuries, and statements by victims, perpetrators, or witnesses can help victims if they need evidence for court. This documentation can be used in criminal proceedings as well as civil proceedings, such as restraining order hearings or competency proceedings.¹²⁷ Therefore, it is extremely important to document facts and not opinions or judgments.¹²⁸

C. Systemic Response

Most communities have a piecemeal rather than coordinated response to older victims of family violence.¹²⁹ Most domestic violence and sexual assault programs do not serve older victims or serve them inadequately. Adult protective services often have social workers trained to respond to cases of caregiver stress exclusively, not domestic violence in later life.¹³⁰ Law enforcement and other justice professionals may treat elder abuse as a social service problem rather than a crime. Professionals can participate in systemic change by joining or organizing a task force to examine the response in their area to older victims of family violence.

Beyond assisting clients with individual interventions, there are many ways a professional can join systemic efforts to end family violence. For example, a professional can serve as a volunteer or board member of a local shelter or offer to do pro bono work for victims of family violence. Helping create public awareness materials, giving presentations on abuse in later life, encouraging the development of new community services such as support groups for older women are other ways to help end family violence. Finally, one can support pol-

127. See Brandl & Raymond, *supra* note 48, at 66.

128. Statements such as "he's drunk and obnoxious" or "she's hysterical and overreacting" are opinions that may not be accurate and could be used against the victim. See *id.* at 66.

129. See, e.g., Ramsey-Klawnsnik, *supra* note 98, at 6.

130. See Brandl & Raymond, *supra* note 48, at 67.

icy development or legislative initiatives that would improve safety and funding for services for older victims.

Another avenue for participation is with multidisciplinary elder abuse teams or family violence councils.¹³¹ Multidisciplinary teams often consist of professionals from a variety of disciplines throughout the community.¹³² These professionals come together on a regular basis to offer consultation on specific cases of elder abuse. Family violence councils are also multidisciplinary, but their focus is on improving policies and practices in a variety of systems that may work with victims or hold abusers accountable.¹³³ Elder law attorneys would be a welcome addition to both these entities.

D. Confidentiality

Many states and local programs have begun the process of bringing together players who work in the fields of domestic abuse, adult protective services, law enforcement, and prosecution of crimes against the elderly. In some cases, local programs and representatives from these agencies are meeting to discuss how to handle the complexities of such cases. Although such interactions are crucial to establishing a community response, the caveat is that state confidentiality laws may prohibit any one or more of the representatives from engaging in discussions without the consent of the elderly person.¹³⁴ On the other hand, generic discussions about establishing policies and protocols are an important piece of work which such representatives can (and should) do collectively.

Confidentiality laws may mandate confidentiality of records, which pertain to professionals such as attorneys, adult protective service workers, domestic violence advocates, health care workers, or social workers. Each state varies as to which professionals' records are to be kept confidential, but generally those in areas involving mental and physical health have to abide by some confidentiality requirements.¹³⁵ This may mean that it is impermissible for such workers to exchange information concerning what the worker knows about the

131. *See id.*; *see also* Sarah M. Buel, *Family Violence and the HealthCare System: Recommendations for More Effective Interventions*, 35 HOUS. L. REV. 109, 114-17 (1998).

132. *See* Buel, *supra* note 131, at 115.

133. *See id.*

134. *See* FROLIK & KAPLAN, *supra* note 9, at 40.

135. *See id.* at 409.

elderly person. Professionals should check to determine whether and under what circumstances the law allows any exceptions to the rule. For example, a state law may allow that records and information be shared if the person gives a written release to do so.¹³⁶ Professionals should also check to determine if the law mandates the older person give informed consent.

VI. Conclusion

A victim responds to violence and subsequent interventions in different ways. If she is not ready to talk, the professional can let her know that she is not alone and that many people have the same kinds of problems. It should be reiterated that survivors of abuse from all backgrounds and all circumstances have received help and found ways to live free from abuse. The professional should reinforce that she is not to blame and encourage her to contact him or her if at any time she wishes to talk. The professional also can give her a card with information about elder abuse and domestic violence services (if it is safe to do so). Victims remember kindness, compassion and support, even if they do not act on the suggestions immediately. Victims often carry encouraging words for years before deciding they are ready to leave an abuser. Every professional can make a difference by asking about abuse, offering alternatives, and supporting decisions. They can also join local, statewide, and national efforts to end family violence. Only by working together can we improve safety for victims and hope to end family violence.

136. *See id.*

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