



By *Randolph W. Thomas and Candace J. Heisler*

# Law Enforcement and Adult Protective Services— Critical Collaboration in Elder Maltreatment

Historically, abuse and maltreatment of older and vulnerable adults has been viewed as a “family” matter, best handled with a social services response. Perpetrators were viewed as abusive because of overwhelming demands for care placed on them by frail family members with whom they lived. The abuser was portrayed as a “stressed caregiver,” unable to cope with the competing demands of family, job, marriage, and a needy, frail relative. Not surprisingly under this view, when legal actions were deemed necessary, they were seen as civil in nature.

As our knowledge of elder abuse has grown, we have come to realize that earlier theories simply did not fit or explain what was happening. Abuse occurred even when the victim was not frail or vulnerable. Many victims did not live with their abusers. Indeed, rather than relying on perpetrators for their basic needs, many victims provided the food, clothing, spending money, and shelter, that perpetrators lacked. In some cases, abusers were known to target elderly strangers, believing they are easy prey.

It is now apparent that elder abuse, in many cases, is criminal conduct. Elder abuse cases are part of the family violence continuum. Other cases are predatory stranger criminal conduct. As our awareness has increased, traditional civil and social services responses have come under consideration. Criminal justice agencies and court systems must learn to handle such matters. In order to be effective, law enforcement must develop new partnerships, including building inter-disciplinary relationships with adult protective services. Rather than viewing elder abuse as just a social services problem, law enforcement and adult protective services must both define incidents as potentially criminal in nature and build cases with prosecution issues in mind. As attorneys, health care professionals, and financial specialists join law enforcement and

adult protective services in addressing elder abuse matters on multidisciplinary teams and task forces, as attorneys counsel clients on situations which may involve elder abuse, and as legislators amend statutes to best serve the nation’s fast-growing population of elderly, it is important that each understands the need for multidisciplinary responses, potential barriers to success, and components of effective models. An effective response must meet the victim’s needs while also allowing the criminal justice system to collect evidence against perpetrators and build a criminal case. A collaborative and coordinated approach is critical to allow each discipline’s needs to be met while addressing shared concerns and employing each component’s specialized and exclusive skills.

How can law enforcement and adult protective services combine their professional viewpoints in a way that best serves the victim? Each discipline must recognize and accept that inter-disciplinary partners share certain unifying, common goals. These are to protect the victim; stop the abuse; hold the perpetrator accountable; and, when possible, make the victim whole. The tools, focus, and mandated role will vary by discipline. First, each discipline must have a clear understanding of the other disciplines’ respective roles. Law enforcement’s role is to investigate reports and complaints to determine if a crime has been committed; locate and collect evidence; and interview victims, witnesses and suspects and make an arrest, when appropriate. Adult protective services’ role is to assess the victim’s needs, offer services that meet these needs, and protect the vulnerable adult to the extent permitted or possible. Because the disciplinary roles and goals are quite distinct, it might be expected that little conflict would occur. The reality is often different. Effective collaboration is sometimes impeded by a variety of individual and organizational barriers.

Individuals, particularly seasoned professionals, often bring their own values, attitudes and beliefs, acquired through education and experience, to every incident. Excessive case loads, lack of time to accomplish quality investigations, staff turnover resulting in declining experience levels, and frustration with system outcomes may also affect inter-disciplinary collaboration.

Organizational issues can also affect an investigation and create inter-disciplinary conflicts. Disagreements over “turf,” who is in charge and agency priorities are not uncommon. Legal restrictions such as information sharing, access to records, constraints and legal precedents, and confidentiality can make collaboration more difficult. In reality, each of these barriers can be addressed effectively and constructively through: 1) the development of common definitions; 2) agreement on what burden of proof will be sought; and 3) the adoption of a common investigative framework.

A system that promotes collaboration and meets the needs of the vulnerable adult population requires common definitions. Unfortunately, all too often law enforcement and adult protective services view a case from different definitional perspectives. For example, what adult protective services typically refer to as “physical abuse,” law enforcement labels as “assault.” To law enforcement, definitions are composed of elements that must each be proven to obtain a conviction. This definitional problem may also extend to who is covered by the adult protection statutes. Many states require that the victim/client be a “vulnerable or dependent adult” before adult protective services can offer assistance. Thus the victim/client must meet some threshold standard of frailty or incapacity to qualify for adult protective services.

This is not true for law enforcement. Most criminal statutes do not require victims to meet any particular physical

or mental condition. Every state has dozens of criminal statutes which apply to any person. Protective services may take a case based solely on the vulnerability of the victim. In contrast, before it can take action, law enforcement evaluates a matter based upon the presence of elements of a crime. When adult protective services and law enforcement both look for the same elements, know what terms to use to describe what is discovered, and communicate using their shared definitions, the likelihood that crimes will be discovered, evidence collected, and the needs of the victim met is increased.

Creating a common definitional framework is possible. In 1994, the State of South Carolina revised its adult protection law and established common definitions for both adult protective services and law enforcement. For example, "physical abuse" has been defined by elements that support investigations conducted by both adult protective services and law enforcement.

**Physical Abuse** means intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery as defined in 16-3-651, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedures to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between vulnerable adults.<sup>28</sup>

This definition establishes the elements of a crime so that various disciplines can structure their investigations to identify and prove these elements. The definition also addresses issues found in elder maltreatment cases such as the use of

restraints or the use of medication to control behavior. California has adopted a similar approach in the Welfare and Institutions Code.<sup>29</sup> The definition of "physical abuse" directly refers to criminal statutes in the California Penal Code.<sup>30</sup> This approach directly links the adult protective service definition to the penal code. It cannot be overemphasized that a

protective services should share a common investigative focus. At the initial stages of any investigation, the focus should be on the facts: what happened and how it happened. Early focus on why an incident occurred instead of what and how, can lead to incorrect conclusions. When an investigator enters a case with a predetermined focus or belief on why an incident

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common definitional framework is critical to collaboration; every discipline needs to address the same problem.

Another critical issue is that of investigative standards. Typically, investigations by adult protective services develop cases based on the burden of proof required for civil court: preponderance of evidence. The burden of proof for a criminal conviction is beyond a reasonable doubt. This is the highest standard of certainty in our judicial system, and it is a long way from "preponderance of evidence" to "beyond a reasonable doubt." When investigations are only built to a preponderance standard, the criminal justice system cannot take action; prosecution cannot commence with the result that offenders will not be held responsible for their actions. It should be understood that not every case can reach this standard, but it should be "the standard" whenever possible. This may be the most critical issue when the investigation's goal is to hold the offender accountable.

When building cases, there are three essential components to a quality criminal and/or adult protective services investigation(s). They are: physical evidence, witnesses and confessions. The strongest cases have at least two of the three components. While all may not be available in every investigation, each should always be sought. When law enforcement and adult protective services develop the same components in every case, stronger more prosecutable cases result.

Both law enforcement and adult pro-

took place—i.e. caregiver stress—then the tendency is to structure the investigation to support that motive. The investigator may then discount or ignore evidence which is inconsistent with that theory. Why a crime occurred is an important issue, but not at the investigation's outset. Rather, it is only after all evidence is collected and evaluated that the best information about why the crime occurred becomes available. Such information is helpful to the prosecutor when developing a theory of the case for the jury. Unfortunately, premature focus on motive may lead to incorrect conclusions about what happened or even who committed the crime. In addition, there will be some crimes for which motive will never be known.

Successful collaboration between adult protective services and law enforcement is possible when each is viewed as an integral part of a coordinated response devoted to building successful cases. Successful collaboration requires a foundation of a common definitional framework, working toward proof beyond a reasonable doubt, and development of multidisciplinary protocols.

Successful approaches and models of collaboration already exist. Drawing from years of experience in the child abuse arena, the most effective approach for an elder maltreatment investigation is the use of multidisciplinary teams. This approach is not necessary for cases involving self-neglect unless the participation of law enforcement is required for



protective custody decisions. A common set of definitions and a clearly defined protocol should guide law enforcement's involvement. Law enforcement should always be involved when evidence preservation is a critical factor and the case is very time sensitive. South Carolina has developed a helpful matrix tied to statutory reporting provisions that is used in initial decision-making regarding law enforcement involvement. The Lexington (SC) County Sheriff's Office has a special team composed of law enforcement and social services representatives who provide 24-hour response to protective custody cases involving both children and adults. Other law enforcement agencies such as the Hillsborough (FL) County Sheriff's Office, Chicago Police Department and others have trained officers to address elder maltreatment cases. Agencies in other jurisdictions have specialized units which deal only with elder abuse or which address the issue within specialized domestic violence units. Because each approach relies on specific state statutes, available resources, and local priorities, no single model is appropriate for every community.

Innovative multidisciplinary responses to financial exploitation cases have been developed as well. Examples include the Los Angeles Police Department and Orange County (CA) Fiduciary Abuse Specialist Team (FAST), and the Massachusetts Bank Project. From an anecdotal standpoint, financial abuse appears to be the most prevalent form of criminal elder abuse. It often presents complex and difficult investigative issues, which require skills not often found in most law enforcement or social services agencies. The greater the involvement of specialists, the better the investigation. The TRIAD program is another approach to increase community involvement in elder abuse matters.<sup>31</sup> Each of these models has been helpful in building cases possibly preventing additional abuse and neglect, and meeting the needs of the victim.

All approaches require that there be a comprehensive and multidisciplinary training program in place. Elder abuse investigations are often complex and require expertise not often addressed by

current training programs. The development and presentation of multidisciplinary training can contribute to successful case management and outcomes.

As our awareness of, and responses to, elder abuse and maltreatment increase, we have realized that no single agency or discipline can successfully intervene alone. Traditional law enforcement models of call responses to crimes in progress, followed by an on-scene investigation and arrest do not fit most elder abuse calls. Crimes are often discovered late, evidence is absent or hard to locate, victims are unable or unwilling to provide information, and taking the perpetrator into custody may leave a frail elderly person alone and unable to care for themselves. In such cases, coordination with adult protective services has become a necessity. Building cases now may mean that law enforcement must rely on outside experts to interpret evidence and guide the course of investigations. Elder abuse has been called the crime of the 1990s. Successful responses require that we adopt innovative approaches and new partnerships to protect the increasing number of elderly and vulnerable adults who are falling prey to family members and unscrupulous strangers. **VA**

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28. SC Code of Laws, 43-35-10.

29. See section 15610.07, which defines elder abuse reporting responsibilities.

30. Penal Code 240, 242, 245 and others.

31. TRIAD was created in 1988, when the American Association of Retired Persons (AARP), the International Association of Chiefs of Police (IACP), and the National Sheriffs' Association signed a cooperative agreement to work together toward a reduction in both crime victimization and unwarrented fear of crime affecting older persons. A TRIAD consists of a three-way effort among a sheriff, the county police chief(s), and an AARP or older/retired leader in a given area. TRIADs provide the opportunity for the exchange of information between law enforcement and senior citizens. Each local TRIAD is tailored to meet the specific needs of its community and is governed by a senior advisory council (S.A.L.T.).