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(III)
PHYSICAL AND FINANCIAL ABUSE OF THE ELDERLY

FRIDAY, APRIL 3, 1981

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON AGING,
SUBCOMMITTEE ON RETIREMENT INCOME AND EMPLOYMENT,
San Francisco, Calif.

The subcommittee met, pursuant to notice, at 10 a.m., in the Crystal Ballroom, San Franciscian Hotel, Hon. John L. Burton (chairman of the subcommittee) presiding.

Members present: Representatives John L. Burton, Oakar, and Lantos.
Also present: Assemblymen Felando and Filante of the State of California Assembly.
Staff present: Merrill S. Randol, staff director and counsel, Subcommittee on Retirement Income and Employment. Val Halaman-daris, senior counsel, and Kathleen Gardner, professional staff, of the Select Committee on Aging.

OPENING STATEMENT OF CHAIRMAN JOHN L. BURTON

Chairman Burton. The Subcommittee on Retirement Income and Employment of the House Select Committee on Aging will come to order.

It is a pleasure to hold this hearing and to welcome you to San Francisco.

The subject of our hearing today is the physical and financial abuse of older Americans by their relatives and by their caretakers.
We are particularly fortunate that our hearing coincides with the first National Conference on Elder Abuse, a gathering which includes some of the foremost experts on domestic violence.
We look forward to hearing from our witnesses this morning and to include some of their recommendations of the National Conference in our hearing record. We are also pleased to include in the appendix of our hearing record an excellent manual on elder abuse, "Elder Abuse and Neglect: A Guide for Practitioners and Policy Makers." This manual was prepared for the Oregon Office of Elder Affairs by the National Paralegal Institute.
We have chosen this time and place to release the Committee's report of the first national investigation on the issue of elder abuse. This report, entitled "Elder Abuse: An Examination of a Hidden Problem," is the result of more than a year's work. A summary of this report will be included in the appendix of today's hearing record. The executive summary follows:
EXECUTIVE SUMMARY

The current roadblock to understanding the nature and incidence of family violence, in general, and elder abuse, in particular, is that the topic is so emotionally charged. Many would prefer not to acknowledge that such abuse exists—it is alien to the American ideal. Even abused elderly are reluctant to admit that their children, loved ones, and those entrusted with their care have assaulted them. For this reason, the abuse of our elderly at the hands of their children until recent times has remained a shameful and hidden problem.

This report was an attempt to explore what is known about elder abuse. How much is there in America? Is it increasing? What causes children and caregivers to abuse their parents and wards? And, can we prevent it?

To answer these questions, the Committee undertook the following steps:
- Collected, reviewed and tabulated letters and case histories received by the Committee over the past five years as well as letters received by Congressional offices.
- Reviewed all State studies including those prepared by experts in academic settings, and interviewed these experts.
- Interviewed experts with the U.S. General Accounting Office who are involved in an investigation of one aspect of financial abuse of the elderly by their relatives and/or caretakers.
- Reviewed indictments, Grand Jury presentments and other public Court records in several States.
- Prepared and sent a questionnaire to all State Human Service Departments at the Chairman's request. The responses to these questions were tabulated and appear in Section IV of this report. The questionnaire can be found in Appendix I.
- Conducted follow-up telephone interviews with over one-third of the State Human Service Departments. A Directory of Offices responsible for Adult Protective Services appears in Appendix VII.
- Reviewed all books, periodicals, and newspaper references relating to elder abuse and family violence in the possession of the Library of Congress.
- Reviewed all hearings and reports on abuse of the elderly by Congressional Committees and administrative agencies.
- Prepared and sent a questionnaire to police chiefs of major metropolitan cities across the United States at the Chairman's request. The responses to these questions were tabulated and appear in Section II of this report. The questionnaire can be found in Appendix V.
- Prepared and sent a questionnaire to staff of Visiting Nurses Association in the District of Columbia, Maryland, and New Jersey. The answers to these questionnaires were tabulated and appear in Section II of this report. The questionnaire can be found in Appendix VI.
- Reviewed and summarized case histories of abuse forwarded to the Committee by the States, the police chiefs, visiting nurses, and abused elderly. These case histories can be found in Section I of this report.
- Prepared and sent a letter, under the signature of the Chairman, to a number of notable and respected authorities on elder abuse to ascertain their views with respect to the nature and extent of such abuse.
- Communicated with numerous organizations and service providers representing the elderly to ascertain their views on the problem of elder abuse.
- Contacted the Emergency Nurses Association to determine their experience with elder abuse.
- Held hearings in Massachusetts, New York, New Jersey and Washington, D.C. for the purpose of gathering information on the issue of elder abuse, including a joint hearing with the Senate Committee on Aging.

This report, which culminates more than a year of work for the House Select Committee on Aging, is the first full-scale national investigation of the subject of elder abuse ever undertaken. As such, it is not and cannot be the final and definitive study in this area. The Committee found that many States had no data with which to answer its questionnaires. It is fair to say that all of the States now realize that the problem of elder abuse exists in sizeable proportions and that they need to take steps to deal with it. It is also fair to say that, with the exception of a few States, most local jurisdictions do not have effective programs underway at present and that there are tremendous gaps in State legislation as it relates to the protection of the aged from abuse.
Notwithstanding the limitations on data from the States, the Committee was able to reach a number of conclusions which were supportable beyond doubt. They were as follows:

-The Committee found that elder abuse is far from an isolated and localized problem involving a few frail elderly and their pathological offspring. The problem is a full-scale national problem which exists with a frequency that few have dared to imagine. In fact, abuse of the elderly by their loved ones and caretakers exists with a frequency and rate only slightly less than child abuse. There is no question but that the problem is increasing dramatically from year to year.

-The Committee learned that abuse of the elderly is far less likely to be reported than the abuse of children. While one out of three child abuse cases is reported, only one out of six cases of adult abuse come to the attention of authorities.

-The Committee concluded that some 4 percent of the nation's elderly may be victims of some sort of abuse from moderate to severe. In other words, one out of every 25 older Americans, or roughly one million older Americans may be victims of such abuse each year.

Section I of this report provides hundreds of examples of elder abuse from virtually every part of the United States. These recent examples range from what may seem a trivial theft of the social security check of the elderly by their relatives all the way to murder, mayhem, assault, fraud, larceny and rape. It should be pointed out that the expropriation of a social security check has almost the same devastating consequences for the elderly. It deprives them of their livelihood, of their identity and their sense of security. It may put them at the complete mercy of those who wish to control their every action. The theft of the income of the elderly along with occasional use of violence are two tools with which some family members carry out a reign of terror against their seniors.

-Physical violence including negligence is the most common form of abuse, followed by financial abuse, the abrogation of basic constitutional rights and psychological abuse. However, there are numerous examples in the Committee files in which all four of these abuses are perpetrated simultaneously. In most cases, the abuse was active and involved acts of omission by children who are placed in a caretaking role although there are numerous examples of passive abuse or negligence which have come to the Committee's attention.

-Most instances of elder abuse are recurring events rather than single incidents. Cases are included in Section I which involve the aged who have been physically or financially abused over a 10-year period or more.

From the hundreds of cases included in Section I and from similar examples in the Committee's files, it is possible to draw a profile of the most likely victims of elder abuse and those most likely to perpetrate it:

-The victims are likely to be very old, age 75 or older. Women are more likely to be abused than men. The victims are generally in a position of dependency—that is, they are relying on others (and generally on those who abuse them) for care and protection.

As to why they do not report cases of abuse, it appears that the elderly who are abused are often ashamed or may not want to bring trouble to their children or they may fear reprisals if they complain. Some seniors do not have the physical ability or sometimes have been deprived of the opportunity to register complaints by one means or another even if they wished to do so. Even with the limited resources at their disposal, the States have confirmed that at least 50 percent of the complaints about elder abuse are substantiated, while 80 percent were not and the remainder were inconclusive. This suggests that complaints of a frivolous nature are not a common phenomenon:

-The likely abuser will undoubtedly be experiencing great stress. Alcoholism, drug addiction, marital problems and long-term financial difficulties all play a part in bringing a person to abuse his or her parents. The son of the victim is the most likely abuser accounting for about 21 percent of all instances, followed by the daughter of the victim in about 17 percent of all cases. Third in line was the spouse of the victim when acting in a caregiving role, with the male spouse slightly more likely to be the abuser than the abused. It is also interesting to note that those who were abused by their parents as children are more likely to abuse their aged parents.
Section II of this report provides the reader with at least 14 different categories of support for the Committee's conclusion that elder abuse is a widespread, serious and growing problem. The Committee's hearings, of course, are a prime source of support for the conclusions which are stated in this report. The hundreds of letters and cases received by Members of Congress and referred to the Committee on Aging are another source. The Committee's questionnaires to 80 police chiefs, to home health agencies and to State Protection Service Departments add reinforcement, as do newspaper exposes and numerous studies by universities. The testimony and hearings before the State legislative committees, Grand Jury investigations and investigations by the U.S. Postal Service all help to create the picture of a desperate problem which can no longer be ignored.

As noted in Section III, no one theory provides the entire explanation for the cause of elder abuse. Any one or a combination of any of the following factors may explain why our elders are abused: the abuser may lack community resources to assist them in their caregiving role; the abuser may have been abused as a child and returns to abuse the parent; the abuser may be suffering from psychological, alcoholic or drug-related problems; the abuser may resent caring for a dependent relative or may be frustrated in their inability to assume the additional financial responsibilities which accompany such care; the abuser may accept violence as a way of life or lack close family ties—the love and friendship accumulated over time which are necessary to counteract the hardships in caring for a dependent family member; or the abuser may be experiencing some major stress-producing event which triggers abusive behavior. On the other hand, the abused may be too demanding or simply ungrateful and thus initiate abusive situations.

Section IV describes data received from the States and supports the following conclusions:

- Numerically, there are three times as many child abuse cases as adult abuse cases. Therefore, it should seem that one-third of the State's budgets should be devoted to adult protective services. However, the States are spending the great bulk of their limited funds to combat child abuse. On the average, they commit only 6.8 percent of their protective service budgets to the elderly, with 86.7 percent going to children, and the remainder being spent on adults age 18 to 64.
- Twenty-six States have what they consider to be adult protective service laws, which vary widely in scope. Only 16 of the States with adult protective service laws also require the mandatory reporting of elderly abuse cases. There is, however, little consistency among these States as to whom is required to report and what penalties will apply when there is a failure to do so. Of the States without adult protective services laws or mandatory reporting provisions, 20 have sponsored bills in their State legislatures. Only 10 States do not have adult protective services laws, mandatory reporting provisions, or legislation pending consideration.
- The majority of States agreed that their statutes relating to adult protective services are ineffective and the needs of the abused elderly are currently not being met through these existing laws.
- The overwhelming majority of the States reported that they would favor legislation to establish model mandatory reporting requirements for elder abuse to be adopted by the States.
- The overwhelming majority of the States support the passage of legislation which would provide incentives to the States to develop adult protective service programs with mandatory reporting provisions, as incorporated in H.R. 769.

Section VIII includes a number of policy options for consideration of the Congress and States:

- The Congress may wish to enact H.R. 709, the Prevention, Identification and Treatment of Elder Abuse Act of 1981. This bill would provide for the financial assistance for programs of prevention, identification, and treatment of elder abuse, neglect and exploitation, and establish a National Center for Adult Abuse. The bill would provide Federal funds to States which had mandatory reporting laws and provided for immunity from prosecution for persons reporting incidences of abuse, neglect and exploitation. Additionally, States should have trained personnel and services available to abused, neglected and exploited elders.
Congress may wish to amend Title XX, Medicare, Medicaid and SSI to provide for more social services to families who are caring for an older person, such as respite care, home health services, personal services, homemaker services, home-delivered meals, and adult day care.

The States may wish to consider enacting legislation incorporating the provisions included in H.R. 769, the proposed “Prevention, Identification and Treatment of Elder Abuse Act of 1981,” as introduced in the U.S. Congress.

Additional recommendations can be found at the end of this report. [See appendix 3, p. 109 for summary of report.]

We have found that elder abuse is truly a national tragedy. Up to 1 million older Americans are being victimized every year. Although such abuse is often associated with nursing homes and institutions, our report leaves little doubt that there may be much more abuse taking place in private homes at the hands of the elderly’s relatives than in any of the institutions.

It is also clear that little has been done to address this serious problem. Legislatures and Congress have tried to deal with the problem of domestic violence and child abuse, but the hidden problem, as we call it, has not been addressed, partly because it is a hidden problem. We hope that these hearings and the report will make it a problem that is right up front in the matter of concern to all of our colleagues.

The fact that only 1 in 6 cases is reported to authorities is the reason that it is a hidden problem. The States spend only 6 percent of their protective services money on the elderly. Only 26 States have any form of protective services laws, and only 16 of those State laws include the essential mandatory reporting provisions; 10 do not.

There is legislation pending here in our State to upgrade our protective services. And I am sure that that will get good reception, good action in the State legislature, having served up there. Also knowing the leadership, they are approaching the status of the elderly, themselves, and pretty soon they may be interested in the issue more than years ago.

It seems to me that at the Federal level we can accomplish a great deal by providing small amounts of grants, and to get President Reagan’s support, we will call them block grants, to help the States upgrade their protective services programs.

The current mood in Washington, and throughout the country, is not to get involved in new programs and save money. And we all agree with saving money. Many of us feel that saving the mental health and the physical health and the lives of the elderly should be weighed against the saving of money.

I, for one, find that the saving of a person’s life and dignity do outweigh the money if efficiently and prudently spent.

We owe a debt to our forebearers, the elderly of this Nation, which can really never be repaid. They suffered through the depression. They suffered through World War II. Many of them fought in it. They suffered through problems that those of us who still consider ourselves young did not have to face. And it would be an immoral act on the part of our Government to enjoy the fruits of their labors and deny them their basic rights.

The elderly, in my judgment, have been among the most short-changed in our society, if you weigh it on equity or if you weigh it just on what they have done for this Nation in return for what they have received from this Nation.
And, it is the test of the society how we treat those less fortunate than ourselves and how we provide for people in the autumn of their lives. We believe this hearing in bringing out this hidden problem might be able to lead the way to some legislation this year and, hopefully, some money, if not within this fiscal year, within the next year.

I do believe that we have to get legislation on the books and if the funding cannot come this year, we will have it come next year, but we must take this step to do it and do it now. And I think that we will probably find a little bit of money invested will probably reap not only a moral return but a financial return to our Nation's Treasury.

At this time, I would like to introduce my distinguished colleague, Ms. Mary Rose Oakar from Cleveland, Ohio.

Mary Rose.

STATEMENT OF REPRESENTATIVE MARY ROSE OAKAR

Ms. Oakar. Thank you, Mr. Chairman.

I am very, very pleased to be here today in your beautiful city of San Francisco, joined by our colleague, Mr. Lantos. I appreciate your having this hearing. I think that it is important that our subcommittee and our committee get into areas of the country to see, at the grassroots level, the dimensions of this problem.

I have a prepared statement that I wish to submit to you for your record, Mr. Chairman.

I just want to say I was heartened that our report recommended, and the State agencies agreed that we need some Federal mandate in order to deal with this problem. That is why I introduced a bill related to elder abuse and prevention. I was joined by yourself and Congressman Pepper as sponsors so we can provide for a national center on elder abuse and we can have mandatory reporting and immunity from prosecution, which I think is the key area.

We can provide for the kinds of services that those who do the abusing need very often in order to remove some of their stress.

Finally, I would like to say that it is interesting that in 1874, the first public awareness of child abuse came in a case of an 8-year-old abused girl. She was represented by the American Society for the Prevention of Cruelty to Animals. They represented her in showing that this child was abused. Finally, there was some protection provided by the courts in New York City.

It was not until 100 years later that Congress passed the Child Abuse Prevention and Treatment Act, which is so important to assist States in dealing with this very traumatic and difficult problem.

In 1979, our committee finally had some hearings on this issue. And then, ultimately, we introduced the elder abuse bill. We are hoping that it does not take us 100 years to deal with this problem of elder abuse which is a phenomenon that is affecting more than 1 million older Americans each year. And those are just the ones that we can document.

I am really very grateful for the witnesses who have the courage to be here too, particularly, those who have been abused.
Thank you very much, Mr. Chairman, for your leadership and for having us here.

[The prepared statement of Representative Mary Rose Oakar follows:]

**PREPARED STATEMENT OF REPRESENTATIVE MARY ROSE OAKAR**

Mr. Chairman, thank you for holding this important hearing today on physical and financial abuse of the elderly. This is the sixth hearing of the Select Committee on Aging during the past two years dealing with abuse of our older Americans and we are sadly aware that we have only discovered the tip of the iceberg when we discuss the serious national scandal of elder abuse. I am pleased that our Subcommittee on Retirement Income and Employment is holding this hearing today to hear testimony from unfortunate victims of financial and physical abuse. Additionally, we will hear from the service providers and legal counselors who have helped these victims through their horrendous ordeals and from members of your California State Assembly who are knowledgeable about the problem of elder abuse.

I think it is most appropriate that our Subcommittee on Retirement Income and Employment holds this hearing as part of the two national conferences on elder abuse which have been funded by the Administration on Aging and jointly sponsored by the National Paralegal Institute and the Legal Research and Services for the Elderly. Additionally, I am pleased that today our esteemed Chairman of our Select Committee on Aging, Senator Claude Pepper, has released the results of the year-long staff investigation of the hidden problem of elder abuse. I have read this report and I am deeply saddened and disheartened by the harsh realities of elder abuse uncovered by this investigation. However, at the same time, I am heartened by the fact that this report will provide a factual basis for educating American citizens and lawmakers about the serious extent and impact of this national problem which affects an estimated one million older Americans each year.

I am also heartened by the recommendations of this report which include the suggestion that Congressional action be taken to pass H.R. 709, the Elder Abuse Prevention and Treatment Act which I authored and introduced with Chairman Claude Pepper. This bill proposes to establish a National Center on Elder Abuse and to provide Federal funds to States for elder abuse prevention and treatment programs. In order to qualify for these funds, States must have in effect an elder abuse, neglect, and exploitation law which provides for mandatory reporting and immunity from prosecution for persons who report suspected instances of elder abuse, neglect, and exploitation. Additionally, States must investigate suspected cases of elder abuse, neglect, and exploitation, and must have trained personnel and services available to help abused older Americans.

Results of the Committee Report on Elder Abuse released today indicate that only 16 States have laws requiring mandatory reporting of elder abuse. Further results show that 63 percent of the States reported that the greatest hinderance to their ability to help abused older persons was lack of appropriate statutory authority—the second most frequent hinderance was lack of skilled staff, community resources, and funding. H.R. 709 is aimed at overcoming both of these major barriers faced by States in dealing with the problem of elder abuse. It is unfortunate that this kind of legislation is necessary to provide incentives for States to enact appropriate legislation dealing with the serious problem of elder abuse. However, as long as child abuse services are mandated by law and there is no Government mandate for elder abuse services, we will continue to see the vast majority of State protective service monies spent for child abuse services, while on a nationwide average less than 7 percent of State protective service funds are used for elder abuse services.

In the report released today on “Elder Abuse: The Hidden Problem,” we have documented literally hundreds of examples of elder abuse, exploitation and neglect. Additionally, we will be hearing today from several older Americans who will be detailing first-hand accounts of their own examples of financial exploitation and physical abuse by their caregivers. In my own Congressional office in
Cleveland, Ohio, we have received many reports of older persons who were victims of financial and physical abuse. Many times we have received calls from social workers who suspect that an older person is being abused or financially exploited by a caregiver, but there is no legal recourse or established mechanism for initiating an investigation of suspected cases in Ohio. We have had reports of an 81 year old woman who lived with her son and daughter-in-law and was brought to the emergency room with a fractured skull reportedly resulting from a fall out of bed. In another instance an aide in a nursing home reported to our office that a 96 year old female patient had been raped by an employee in the nursing home. In a third instance, legal action was taken by the Legal Aid Society and a nursing home operator was convicted of stealing $500 from an 80 year old resident of his nursing home.

This operator is now serving a jail sentence, but he is only one of the unscrupulous nursing home operators who has been discovered and convicted. While I believe that the vast majority of nursing home operators are dedicated and honest people, we cannot ignore the fact that a few are unscrupulous and will use any opportunity they have to financially exploit their nursing home residents. Certainly these older Americans, as well as those who are exploited by unscrupulous caregivers in their own homes, deserve the protection of the law as would be provided by the Elder Abuse bill which I have introduced and hope to see passed.

Again, Chairman Burton, thank you for holding this hearing today to explore the sad realities of financial and physical abuse of our older Americans who deserve our highest honor and respect. Lastly, I would like to acknowledge the hard and fine work of those who have helped with this Congressional hearing, the two National Conferences on Elder Abuse, and the excellent report on "Elder Abuse: The Hidden Problem." Particularly, I would like to thank Carol Miller on my own staff and Kathy Gardner, Merrill Randol, and Val Halamandaris of the Aging Committee staff. Additionally, I appreciate the work and planning of Carolyn Farren, of the National Paralegal Institute, and Jim Bergman, of the Boston Legal Research and Services for the Elderly, who have made the two conferences so successful. Also, my sincere thanks to the Administration on Aging for the financial support of these conferences.

Chairman Burton. Thank you, Mary Rose.

Next is the "professor," as I call him, because when I went to San Francisco State College, he was a professor and the word was out, don't take Lantos, if you want to get an easy grade, and I never did.

It is a great pleasure to introduce a long-time friend, a person that I admired greatly from afar when I was a student, the Honorable Tom Lantos, newly elected Member of Congress from San Mateo County, and a tremendous addition to the House of Representatives.

STATEMENT OF REPRESENTATIVE TOM LANTOS

Mr. Lantos. Thank you, Mr. Chairman.

At the outset, I want to commend the chairman of our subcommittee for taking the leadership on this critical issue.

Congressman Burton has shown a remarkable degree of foresight and courage and leadership in this field which is only part of his general pattern of compassion.

Mr. Chairman, the quality, the caliber, the character of a society is measured by how it treats those of its members who are at the dawn of life, its children, how it treats those of its members who are in the shadows of life, its poor, it sick, its handicapped, and by how it treats those of its members who are in the twilight of life, its elderly.

Today, as we release the report of the first national investigation into the topic of elder abuse, we will be hearing from some highly
qualified panels as we explore the problem of elder abuse in general and the financial abuse of the elders, in particular.

Unfortunately, a number of the people on the panel know about this abuse from first hand experience. They are people to whom we will be long indebted because of their willingness to share a personal experience with us in the hope that others might be spared a similar trauma. And their unselfishness is deeply appreciated.

The idea of abuse of older persons is as shocking as it is alien to the American spirit. Most people would be skeptical that this practice exists even on a limited scale.

Personally, I am appalled that this problem can exist in our Nation, among a people presumably dedicated to respect and protection of human life.

The report makes very difficult reading. There are hundreds of heart-wrenching illustrative examples which only begin to describe this hidden problem. Our report is just the tip of the iceberg, down to what for me is the most unbelievable evidence, which is that the perpetrators of these outrages are most often family members, frequently, a son or a daughter in the privacy of the home.

As one who was brought up on the biblical injunction that thou shall honor father and thy mother, it strained my imagination as I was working my way through the horrid examples.

The report includes examples of physical, psychological, and sexual abuse, of neglect, of financial abuse, and abrogation of personal rights.

The pattern is one of repeated abuse, rather than isolated incidents stemming from a momentary loss of patience. The cases include beatings, stabbings, rape, and murder. They include stories of severe malnutrition, deprivation of life sustaining medical care, and incredibly filthy living conditions. It is a chamber of horrors.

One of the most heartbreaking series of examples involved the elderly who lived independently until an injury or an illness necessitated a stay in the hospital. And, upon being discharged, many older Americans have learned that their families have literally sold their homes out from under them.

Equally heartbreaking are those family members who have their loved ones committed to a public institution as a means of obtaining their property. Many family members rationalize that it is a pity to waste money even if it belongs to the elderly and old people presumably near death.

In addition, the elderly are often vulnerable to legal trickery and fraud, occasionally at the hands of unscrupulous attorneys in collusion with family members.

Our report reveals that elder abuse may occur as frequently as child abuse but, for obvious reasons, it is not as frequently reported. On the average, there may be a million or several million cases each year. Perhaps 1 in 10 of our older citizens may be abused. And the abuse occurs nationwide and it occurs without regard to social, economic or racial characteristics.

Although our committee report provides us with vital information regarding this problem, we still have much to learn and much to do.
The cumulative weight of the evidence is devastating. The facts must not be ignored. We know that we need to question the appropriate Federal role. What can the Federal Government then do to prevent or respond to cases of elder abuse? How can we do it without violating individual freedom or interfering with State responsibilities?

I am, personally, interested in learning more about the likely causes of elder abuse and possible preventive action that we might take.

Recent studies on this issue seem to indicate that stress in many forms is a key factor. Life crises, economic uncertainties, limited resources, drugs, alcohol, and personality factors contribute to these festering sores in our society.

I have some questions, Mr. Chairman, about the State protective service that we designed to help abused adults. What are the possible legal ramifications in helping elder abuse victims who either will not or, because they fear reprisals, cannot ask for help.

It is clear that we urgently need more social services for families caring for an older person. We need to consider and support legislation such as H.R. 769 which would create a national center on adult abuse and provide appropriate assistance to the States.

In conclusion, there are many unanswered questions about the prevention of elder abuse. Hopefully, these hearings will begin to answer some of our questions and help us determine what the appropriate role of the Federal Government should be in dealing with elder abuse.

Arnold Toynbee reminded us that the character of a civilization is related to the way it treats its elders. I hope that our civilization will pass the test.

Thank you, Mr. Chairman.

Chairman Burton. Thank you very much, Congressman Lantos. I would like to identify the other people on the dais who will be testifying later.

First, to the left, far left, at least he was in the 1964 primary, a longtime friend of mine, John Delury, who is a consultant to the State Senate Committee on Aging, and is here representing Senator Henry Mello who could not be present.

Because Mr. Delury will not be testifying, if you want to make some opening remarks and submit something for the record on behalf of the senator, we would appreciate it, John.

Mr. Delury. Thank you, Congressman Burton. As was indicated, there now exists a subcommittee on aging in the senate and Senator Henry Mello is chairing that subcommittee. This is the first specific assignment of the field of aging to some entity within the committee structure of the State senate.

There has been a much longer development in the State assembly and the Chair of the assembly committee on aging is here and I know will be introduced to you.
This is a new development in the State senate. I am here to report back to Senator Mello so that he can be part of the process of defining what additional creative role can be played by State government in dealing with the very severe and troublesome problem that is being described this morning.

Thank you.
Chairman Burton. Thank you, John.
Next, we will be hearing informal testimony from the chairman of the State assembly committee on aging, the Honorable Gerald Felando.

And we have you appearing with the State witnesses, or however you would like to do it.
Mr. Felando. I have a statement that I can read right now and then produce my witness later.
Chairman Burton. That would be perfectly fine. Anytime Mr. Brown picks a chairman, that is all right with me.
Mr. Felando. There has also been a little talk about a Republican being selected as chairman of this committee, however, I think that as a Republican we can go a little bit further and we are having great results.

STATEMENT OF GERALD N. FELANDO, CHAIRMAN, CALIFORNIA STATE ASSEMBLY COMMITTEE ON AGING

Mr. Felando. I wish to thank you, Mr. Chairman, for giving me the opportunity and giving the State assembly the opportunity to testify before this committee.

I am chairman of the California State Assembly Committee on Aging. The topic of this hearing is of great concern to me, personally, and to all of the members of the subcommittee on aging.
Abuse of older persons has existed for many many years, but has only recently received public attention. We know that many cases go unreported, but we really do not know how widespread that problem is.
Cases are reported to California as an adult protective services program, but we do not know the age of the people subjected to abuse. I have introduced legislation to require that the aged abused persons be reported to the State.
There are two major problems concerning elder abuse. The first involves the reasons that older persons are abused. The reasons are circumstances that result in older persons being abused, or, as you are aware, they are really complex.
It can be a case of deliberate criminal abuse, or it can be a more subtle type of abuse resulting from the pressure or guilt felt by family or friends. And they are simply incapable emotionally or financially to care for the older person.
In America, we are only just beginning to address this problem by offering respite care providers. Adult day care centers are emerging
and proving to be a great assistance to families who are trying to care for their own elderly. Other innovative programs are being designed to help older persons get back into the mainstream of the community.

These programs are, unfortunately, few and far between. I believe that the family support system should be encouraged or assisted in any way possible, whether through tax assistance or forms of community support.

The second problem involves reporting and treating abuse. The reporting and treating of abuse to older persons is sporadic at best. Most cases go unchecked, mainly because people in this society are afraid. Older persons are afraid to seek help because of the threat of retribution or the unwillingness to turn in a family member or friend.

Neighbors are afraid to report suspected or blatant cases of abuse often because they would rather not get involved. State and federally support care givers such as Homemaker Chore or in-home supportive service workers sometimes do not report evidence of neglect or abuse. Medical, social, or law enforcement officials do not report suspected cases of abuse, because they are afraid of being sued. This is an attitude which has gradually emerged in our society today and it is wrong.

The legislation that I have introduced also contains protection of and confidentiality for people who step forward to report suspected cases. I know that there is more work that can be done in that legislative arena and I pledge my efforts to correct the system in whatever way that I can.

We all know, however, the laws are only as good as the people who carry them out or the society that lives by those laws. We cannot legislate or regulate concern or caring. We cannot legislate empathy or compassion for our fellow man.

The Government alone cannot put an end to elderly abuse. It must be a partnership with individual citizens, private industry, and civic leaders.

I am encouraged by this hearing today and confidence that preceded it. I hope that we do not consider this to be an end unto itself, but rather a beginning; now a campaign must begin which reaches down to the very cities, neighborhoods, and homes of this Nation.

We must all be made keenly aware of what is happening to many older persons today. And we must make everyone aware that abuse will not be tolerated any longer.

Chairman Burton. Thank you.

Other people on the dais, to my immediate right, is Merrill Randol, who is the staff director of this subcommittee; to her right, is Kathy Gardner, professional staff member of the Aging Committee; then there is Val Halamandaris, senior counsel of the Aging Committee, friend of the elderly for years and one of the great exposers of nursing home and institutional abuse.

And Ed Villmoare, director of the Paralegal Institute, who has a few brief remarks.

Mr. Felando. Then we will make a statement at the end summing things up.

Chairman Burton. Mr. Villmoare.
Mr. VILMOARE. On behalf of the four organizers of the just completed Conference on Elderly Abuse and Neglect, Legal Research and Services for the Elderly in Boston, my organization, the National Paralegal Institute in San Francisco, the UCLA/USC Long Term Care Gerontology Center, and the Harvard Medical School, I want to thank the House Subcommittee on Retirement Income and Employment for holding this hearing in conjunction with the conference.

We believe that the interaction between the conference and the hearing will help stimulate the special attention needed to address the challenge of elder abuse.

Later, during the testimony, Margaret O'Rourke and I will summarize briefly the recommendations developed during the conference. Thank you.

Chairman BURTON. I see the assemblymen from that great county of Marin and parts of that equally great county, Sonoma, that have something in common with the very great county in the city of San Francisco. Dr. William Filante, it is nice to have you here.

Our first panel consists of persons who have encountered situations of abuse. They will be accompanied by their protective service workers. Because of the certain concerns of reprisals or for their own personal reasons, many of them have expressed a desire to not have their full names made a part of the record, and we will honor that request.

I will go down the list of the persons that we will hear from. And then we will start the testimony that we are all so interested in.

We have Mrs. X. She will be joined by Ms. Leigh Hubert, executive director of Native Americans Senior Center in San Francisco, then Mrs. B of Palo Alto, who will be joined by Lucy Fitzpatrick, a legal worker with the Senior Adult Assistance in Palo Alto.

We will also hear from Mr. C of Hayward, who will be joined by Chuck Paussa, from Citizens for Better Nursing Home Care.

And, lastly, we will be hearing from Mr. Ephraim Lugo, from the San Jose Department of Social Services.

I am pleased to have you here. I understand that Reverend Pete is here in the audience and he will submit testimony for the record. He has been one of the great fighters of the injustices of the elderly for also many many years, as well as injustice everywhere.

And many of the things that we were able to accomplish in the State legislature on behalf of the elderly were due to the organizational efforts throughout the State of Reverend Peter, from the California Legislative Council of Older Americans, that he put together.

If there was ever a statue built by the elderly blind and disabled for or of this State for the one individual who has worked hardest and longest and helped accomplish the most, it is going to be that gentleman.

We have been through many fights together, lost a few and won a few. And ones we won are important to the standard of living of the elderly and the aged blind and disabled groups in the State of California.

We will first hear from Mrs. X and from Ms. Hubert. And if I could ask the TV people, as far as the witnesses wanting anonymity, to shoot them from the front would kind of blow that.
Ms. Hubert. She does not care as long as they do not know her name.
Chairman Burton. Fine.
Proceed, Ms. Hubert.

STATEMENT OF LEIGH HUBERT, PROGRAM DIRECTOR, NATIVE AMERICAN SENIORS CENTER, SAN FRANCISCO, CALIF.

Ms. Hubert. Mrs. X is 65 years old. As you can see, she is a fairly small statted Indian lady.

Her problem that caused this disability began when her son came home to live with her from the Army. He was discharged under undesired circumstances and she took him in.

Everything went along pretty well until her payday. Then he demanded that he have the whole check. He demanded sexual gratification. He had already confiscated all of her medicines that she had had prior to this time for pain and arthritis and the usual things that go along with people who are elderly.

She lived upstairs so he broke her wrist, beating it over the bathtub. Then he broke most of the fingers in the other hand. He knocked her downstairs and the fellow downstairs came to see what had happened.

He heard him coming so he dragged her back upstairs. And when the fellow finally went away, then he threw her down again which did some more damage.

He would not take her to the hospital, so finally she agreed that she would let him cash the check if he would take her to the hospital, so he took her and told her that whatever you do, you keep your mouth shut. So she was so frightened she told them at the hospital that a stranger did it.

Things went along for 2 more weeks, when the other small part of her check came, and even worse happened that time. The oral copulation affair began again and all of the abuse, plus he had gotten ahold of some more dope and things like that between times, somehow, on his own, and he kept this woman prisoner all of this time.

He would take the telephone off when he went out and warned her as to what would happen to her if she said or did anything while he was gone to raise any fuss.

He took all of her furniture. He took her TV, everything that she had piece by piece and sold it. And so when the second altercation came, he absolutely threw her downstairs that time and was kicking her ribs and broke several of her ribs.

So the person that lived downstairs this time caught them. And he still would not take her to the doctor, but, of course, she was taken to the hospital.

This time she was afraid to lie to them, so she told them the truth, that he had done it. Since then, there has been a really sad court case.

She was in the court the day of the trial. And he walked up to her that day and said, keep your mouth shut, you dare say anything. That why she is trying to be so brave as to tell everyone all about this.

And since he is the only one that knows her actual name that would do her harm, we hoped that he can be kept confined until such time as her life is safe. And I realize that you think that this is a drastic thing and that it just might happen only in the Indian community.
Let me tell you something. I have worked in this work since I was a young woman. I am now 60 years old, myself. And I have seen black, white, pink, purple, and if there were Martians here, they would get the same thing. I have seen a lot of it. It happens every day.

And if you would like to ask her any questions, it is all right if you ask her noncommittal questions just so you do not get her upset.

Does the panel want to ask her any questions?

Chairman Burton. I am sorry, but I fail to understand what a noncommittal question would be. In other words, I am sympathetic with what you are saying, but I do not know what to ask.

Ms. Hubert. Would you like to ask her, for instance, the age of her son approximately? I know vaguely about it, but I do not know exactly how old he is and things like that.

I do not think that it is confined to age. I just think that it is done from the time that they are physically large enough to do this type of thing, until they are old enough to be getting it, themselves, but you might have some questions that I would not anticipate.

She wants to try to help you, if there is something that you want to know.

Chairman Burton. I think that what we will do is hear from the panel first and then ask questions afterwards that might eliminate some redundancy.

Next, we will hear from Mrs. B.

STATEMENT OF LUCY FITZPATRICK, LEGAL WORKER, SENIOR ADULTS LEGAL ASSISTANCE, SAN JOSE, CALIF.

Ms. Fitzpatrick. My name is Lucy Fitzpatrick. I am with Senior Legal Assistance in San Jose.

I am here today with Steve Andasola of the independent and aging program of Santa Clara County and this is Mrs. B, our client, who is 86 years old.

Mrs. B does not read or write English, and she asked me to read a short statement of hers to you.

By way of background, I would first like to state that Mrs. B had her possessions converted, was placed under conservatorship and was admitted to a nursing home, all against her will, by her relatives and her neighbors. This is her statement.

STATEMENT OF MRS. B, GIVEN BY LUCY FITZPATRICK

Ms. Fitzpatrick [reading]. The neighbors and my relative made a trick on me that made me cry. They said, sleep at our house, then took out of my house everything that I own, everything, even the nail in the wall.

I went home. They had taken everything, even my citizenship paper, my husband's picture, all my pictures of all of my family. I got no clothes, nothing, only what I got on.

For maybe 4 or 5 days, I stayed in the house. I did not sleep or eat. I just stared at the clock.

One night when I went out, my relative grabbed me and shoved me into the car. He brought me to a place. I did not know the place before. I spent 11 months over there and it cost a lot of money.
You think I was sick? Sometimes my head hurt, but I have never been sick in all of my life. I spent 6 months there before I saw him once.

He went to the bank and he stole all of the money that I had. He and the neighbors took everything that I have got.

Now I am home. I have to buy furniture, buy sheets, buy clothing, buy everything.

That is the end of her statement, if you have any questions.

Chairman Burton. We are going to have questions, I think, as we go through the panel.

Mr. C.

STATEMENT OF JAMES C. BRIDGEWATER, NURSING HOME RESIDENT

Mr. Bridgewater. Good morning, Mr. Chairman and members of the committee and others.

My name is James C. Bridgewater. I reside at the nursing home in Hayward. I have been there for a few weeks. The only thing that I can say about the place is that it is very clean.

If there is any other evaluation of the place, I cannot say. My testimony here is about the treatment that I have received at the nursing home, for the last 6 years. And that was before I came to this new one.

It started back in 1974, December 27, 1974. I was at the VA Hospital in Martinez. And when they could not do any more for me, about my physical condition, they put me in this here rest home in Oakland. the name of this rest home in Oakland is Highview. It is 2 blocks from the back of Highland Hospital, and East Oakland.

I have rheumatoid arthritis and I am almost totally disabled. This is the shape that arthritis has left me in. I will just name a few of the things that it has done to me. My right leg is crooked. I have a crooked pelvis. And my knees are frozen. And I have lost all of my strength. And I cannot walk.

I was given an artificial knee in 1974. And I walked about 2 weeks and then it collapsed. I have not walked since then.

When I arrived at this nursing home there, I could sit there for approximately 20 minutes to eat. They would come, the nurses would come, and sit me up all right. Then I would finish eating. Then I would ask to lay back down. And they never would lay me back down. I don't know why they never did, but the pain got very bad.

I had to sit up 1 hour to 90 minutes before they would lay me back down. I was a new patient there and I could not understand why I was being treated this way, because I knew nobody there personally, and, as I said, I was new.

As time went on there and I began to gain a little bit of strength, I got up and I would move around in my electric wheelchair. I have seen two patients having an altercation one day in the hallway. One knocked the other one down and walked away.

The patient asked the nurse to help him up. Three nurses walked past the patient for at least 30 minutes to an hour, and no one picked
him up, so I went over there with my wheelchair and asked him could he reach and grab hold of it and I was going to try to pull him up.

He did not have enough strength to pull himself up, so I reached down and tried to pull him up. And by trying to help him, I put my- self back in bed, because I got hurt in the process of trying to help a sick brother that was injured in the same place that I was.

Those people there, at the time that I was in Highview, they have no compassion. They did not show no love or concern for nobody. The only thing that they are concerned about is when they got paid. And the less they could do for the patient, the better off they were.

Now I am a veteran of World War II. And I was in the medics for a long time. I went to nursing school at Fort Sam Houston, Tex.

Our first priority in the hospital was the patient. And we were taught to treat the patient with the utmost courtesy and do what you could for them, because they said then that one day you may be in the same position.

Those people that they have there at Highview and most of these nursing homes that I know of, those people are not trained for noth- ing. They just pick them up off of the street and give them a white gown or something and tell them to go to work. They don't know how to speak to people. They do not know how to handle you and they do not care. It is just that way.

There is nothing that you can do about it. Most of the other people that were in there, they were elderly people. They were a lot older than I was. They were scared to speak up. I am not a senior citizen. I have had arthritis for 17 years and I am 52 years old, so I am not a senior citizen, but I figured, like this here, I was a young man when I went there and I was treated like I was dirt. And they treated them older people worse than they did me.

And there was nothing that I could do to help. The State would come in and the State would evidently see what they wanted to see. I was there for 6 years.

And they walked in, they could see that the place was in a shambles, bad shape, and they would only write them up maybe if they see cock- roaches running around or some ants on the floor or something of that sort.

The food was terrible. It was not worth eating, but you did not have a choice. It would fill you up and that is about all it did. It did not give you any nutrition whatsoever and most of the people there were starv- ing for nutrition.

They wasn't starving because they were hungry. They would eat the food, but the food was doing you no good. As I said, I believe the patients were scared.

And one night there, around 2 o'clock in the morning, a fellow came in off the street. His eyes were all glassy and he grabbed one of the nurses and he put a knife upon her throat and he threatened to cut her, and that went on for about an hour. The nurses were jumping off the ramp, two stories up, trying to get out of his way, and things like that up there. They said that the man was actually crazy.

I am talking about the nurses in this here home. I don't want people to think that all of the nurses were the same, because they had a nurse there. See she was, her life was threatened that if she tried to straighten
things out and she talked to me about it. I told her that it was best to quit, because I could not help protect her, because I had trouble protecting myself as a man and I knew I could do nothing to help her.

She then quit her job and she left the work, working with patients, but she was threatened by the other personnel there. If she opened her mouth, they were going to get her and it was just that way.

The supervisory personnel there, they showed no interest in no one. They was only concerned about themselves, because in the course of the 6 years that I was there, they had about 16 supervisors. And that is changing supervision too much for one job.

Chairman Burton. Thank you, sir.

Next, there is one witness who I think at this time it would make a great deal of sense to bring her up.

Then we will hear from Mr. Lugo and then we will be able to ask questions.

Mrs. D.

Mr. Felando. Would you bring Mrs. D up, please.
Charlotte Humphrey will be speaking for her, while she is coming forward. Charlotte has been the director of this agency on aging for 4 years. She is here to tell us about Mrs. D’s experience, abuse, and how fully prepared communities are to help abused older people.

Mrs. D is 93 years of age and she is a warm and astute person.

Mrs. D has asked that Charlotte answer any question for her.

Charlotte.

STATEMENT OF CHARLOTTE HUMPHREY, DIRECTOR, AREA AGENCY ON AGING, SACRAMENTO, CALIF.

Ms. Humphrey. Thank you, gentlemen and ladies.

My friend with me today is Rosie. She is 92 years old and the mother of 12 or 13 children. Six of them are still living.

I met Rosie several months ago under a set of strange circumstances. Rosie and her dog had been left deserted on the streets of a small town in the valley by her daughter. Rosie had nowhere to go, no money. Even her memory seemed to fail her. Her daughter had left on a 3-week trip with a friend.

My office was called about 12:30 on a rainy Tuesday afternoon. As the bureaucracy begins to wind down about that time and as there was no existing plan in our county for deserted 92-year-olds, I picked up Rosie and took her to my home for dinner and to spend the night, until we could find placement for her the next day.

During that evening and many times since, Rosie has unraveled a horror story of neglect and abuse while living with her daughter.

According to Rosie, 2 weeks prior to being deserted on the streets, she had been locked out of her daughter’s home overnight in the rain. She had walked 2 miles for help and then, finding none, as they lived in the country, she walked back and begged to get in.

Her begging caused some of the neighbors to come up. They witnessed this abuse but did not wish to get involved. This was only the beginning to Rosie’s comments over the last 2 months.
Abuse has included taking her social security checks and threatening to kill her if she did not endorse them, or beating her into submission.

And then, more subtly, there was the giving her only a thin blanket during the winter for her bed. She was always cold and complained of being cold.

They told her that there was a water shortage so that she could not bathe or wash her hair for long periods of time and then they rationed her food. She was only given a minimum amount to eat and then there was very painful physical abuse.

Rosie does not always talk about her abuse or the bad times. She loves her daughter and her family. She talks about the good times. She makes excuses for her daughter's behavior like many a good mother has done.

Rosie was placed in a retirement home about 2 blocks from my home. Her social security proves to be adequate to pay for the room and board, and a few expenses that she has. She is a frequent guest, as I still have her dog. The retirement homes does not take dogs.

Rosie loves her dog very much, says that Snoopy saved her life the night that she was locked out of the house in the rain.

As a result of Rosie's unfortunate desertion, the county board of supervisors set up an elder abuse council to specifically design a plan and seek funding for the many Rosie's that exist.

Unfortunately, like Rosie, the many, many abused elderly continue to make excuses and try to hide the abuse of their family and their loved ones.

Rosie and I appreciate very much being invited here today. Thank you very much.

Chairman Burton. Thank you.

Mr. Paussa.

STATEMENT OF CHUCK PAUSSA, CITIZENS FOR BETTER NURSING HOME CARE, OAKLAND, CALIF.

Mr. Paussa. My name is Chuck Paussa. And I work for the Citizens for Better Nursing Home Care which is the ombudsman program for Alameda County.

We are the only people given access to nursing homes by law. And without that law many nursing homes would not let us in to find out about abuses like Mr. Bridgewater had told us about.

Most of the abuses that are in nursing homes are of simple neglect. We find people laying around with bed sores or very filthy, have not been washed in weeks. They do not receive their physical therapy, Their buzzers are not working and there is a severe shortage of staff.

Chairman Burton. Could that be the result of what you said, short staffing standards which have brought about the neglect, as opposed to intentional neglect?

Mr. Paussa. Often, yes, but most of our cases are that the staff does not pay attention. It is not really intentional. They just walk on by, pretending that it is not in existence.

Chairman Burton. Thank you, sorry to interrupt.
Mr. PAUSSA. The real problem is not that the staff is bad or the nursing home is bad. We find that the problem is that there is no one around to come in and ask people what is wrong with you, to treat people with respect, and to notice when things like this happen.

There are only 36 of us in Alameda County and we have to cover 60-something nursing homes. We only cover these skilled nursing facilities. We do not cover residential care.

There are many other groups who would like to do what we do, the friendly visitors groups, but they cannot go into many nursing homes, because the nursing homes do not want them in there raising trouble, causing things to happen. They are not allowed to or they are not backed up by law to enter the nursing homes.

It is not because there are not people willing to do that. There are people willing to do it, but it, the problem, is that the laws are not there to back us up so that we can go in.

Also, when we do report the problems, we do not report most of our problems, but solve them in-house by threatening to report or by just going in and saying, you must do this.

When we do report problems, often they are not prosecuted because of the problems in prosecution. The regulations are very vague so that nursing homes can say, this, or they go back and forth and say, this is not really a violation and they are given the chance to do something about it before it happens. That is my statement.

Chairman BURTON. Thank you, Mr. Paussa.

Mr. Lugo.

STATEMENT OF EPHRAIM LUGO, SOCIAL WORKER, DEPARTMENT OF SOCIAL SERVICES, SAN JOSE, CALIF.

Mr. Lugo. Mr. Chairman, members of the subcommittee, good morning, and thank you for inviting me to come before you to testify on the problem of physical abuse and financial exploitation of our elderly.

My name is Ephraim Lugo. I am a social worker from San Jose and I am employed by the Department of Social Services in Santa Clara County.

I am an adult protective social services worker. I had originally planned to accompany and to support the testimony to be given before you by one of my clients who, unfortunately, at the last moment was unable to come here due to ill health.

I would like to present to you today, however, a brief summary of his problem as well as summarize two other cases to give you an idea of the extent of the problem, that is, of physical abuse and financial exploitation of the elderly in our community.

The client whom I was to accompany today is a 71-year-old former cab driver from Chicago, who came to the West after the death of his spouse in 1964. He lives alone in a mobile home in San Jose. He has a married daughter living in Chicago, and a son who was married and lives in San Jose also.

My client's problem begins several years ago when his son, who has a drinking problem, began borrowing money from him.

The borrowing soon became a problem to my client as his only income is social security benefits and SSI. When my client began refus-
The requests for money, the results were beatings, and money, as well as other valuables, were taken from him forcefully by his son. The problem was reported to us by a friend and neighbor of my client. In discussing the situation with her, she was asked if she had actually witnessed the son hitting his father. Her reply was: “No, I have never actually witnessed the son’s striking his father, but I live not too far away and I can say that I did hear the sound of flesh striking flesh.”

When I interviewed my client, I asked him if the reports of physical beatings were true. He replied; “No man can hit me and get away with it, least of all my son.” However, after talking for a while longer, my client shamefully hung his head and tearfully admitted; “Yes, my son hits me, but it is because he drinks or he needs to drink so badly.”

The second case that I would like to present to you is a case of 79-year-old black man, a veteran who has a 100-percent service-connected disability, a man who became permanently disabled while serving in the military. A year and half ago, he became even further disabled by a stroke. The results of the stroke caused paralysis of one arm, his left, and the right leg and left him totally unable to care for himself.

A brother and his wife offered to help him. They agreed to take care of my client and to meet all of his needs, handle his money for him, and to help in whatever way was necessary.

To do this, they required or they asked my client to agree to open up a joint savings account into which my client’s veterans pension checks and his social security checks were deposited. They were to withdraw money from the savings account to pay my client’s expenses, all of his bills and other financial obligations.

After nearly 1 year of having this responsibility, my client’s brother, with the exception of some utilities bills and groceries, had paid for nothing, although withdrawing large sums of money from the savings account. My client’s brother also, through the assistance of a private attorney, had himself named conservator for my client.

When we became involved, we found that the mortgage payments on the house of my client were 6 months in arrears, and that he had no knowledge of what he owed or who he owed money to, since the bills were being sent to his brother’s home for payment, or so he thought.

Since we have become involved, we have been able to have the brother removed as the conservator and we have been able to get the court to name the Santa Clara County Public Guardian’s Office as conservator for my client.

The third and last case that I wish to summarize is a case of 76-year-old Mexican widow who until 1975 had her 45-year-old emotionally disturbed daughter living at home with her. This case was referred to us by a physician from one of the local hospitals as he suspected that my client had been physically abused by her daughter.

The physician noted that he found numerous bruises and contusions on her face, head, and upper body, when my client was taken to the emergency room by another one of her other daughters.
Since my client speaks no English, the physician, using the daughter to interpret for him, asked if she had been beaten by the daughter. As the daughter was translating the question to my client, the physician stated that the look of fear that came over my client’s face when she understood the question was an immediate confirmation of what he suspected even though my client vehemently denied the obvious.

She did later admit to her daughter in the privacy of the automobile on the way home from the hospital that, yes, she had been kept up all of the previous night by her daughter who had her backed into a corner and slapped her continuously, pushed her repeatedly up against a wall and at the same time demanded that her mother sign a paper giving the home in which they were both living to her.

As I think I have illustrated the abusive behavior and financial exploitation of our elderly, appears to occur over all racial and ethnic groups and is a problem which many of us who work in that field believe is only beginning to surface. Many feel that we are barely scratching the surface and that beneath lies a problem of gross dimensions.

No one is willing to admit that our elderly are treated cruelly. Most feel that this happens only in institutions by unrelated, uncaring hirelings and are least of all treated cruelly by their own kin.

It is thought to happen only in a few cases like the old senile mother who continuously wet and soiled herself, while standing beside the toilet. She would bring her son, with whom she lived with tears of frustration which later became blows of frustration and of shame and of guilt. As the problem of child abuse, abuse of the elderly is a phenomenon which requires careful study. We need to know more of the abusive behavior toward our elderly. I spoke of some very obvious behavior on the part of relatives who exhibited in two cases some very obvious and common problem behavior.

But what of the cases mainly unreported as we have heard this morning, in which elders are abused by seemingly kind, loving relatives?

If all of our elderly and their families are to realize the pleasures of their golden years, we must find the answers to some of the questions that have been raised in this hearing in this conference, and I am confident that we will.

Ms. Oakar. Thank you very much, Mr. Lugo.

I am going to begin by asking a few questions. Let me ask Mrs. X, for the moment, does she have any other children?

Mrs. X. Pardon.

Ms. Oakar. Do you have any other children?

Mrs. X. Yes, I have.

Ms. Oakar. What was their response to the abuse?

Mrs. X. They did not believe it.

Ms. Oakar. They did not believe it?

Mrs. X. No.

Ms. Oakar. So you really could not go to them?

Mrs. X. No.

Ms. Oakar. For help.

Mrs. X. No.

Ms. Oakar. How did you finally get help?
Mrs. X. I finally asked the nurse at the hospital and the doctor. And he said, that was your son, that was the second time, and I said yes. And I started to cry.

It all started up with him drinking and taking drugs. And he took my money. And I had to satisfy his sexual needs. He spoke obscene language to me.

Ms. Oakar. Mrs. X, we really want to thank you for being here. We know this is hard for you.

As I think Ms. Hubert mentioned, your being here is very important to the other thousands of people who are in the same boat that you are, so thank you very much.

I want to ask Mrs. B, then, a question. Has she received her possessions back that were taken away from her or was there any legal recourse that she could turn to.

Ms. Fitzpatrick. She received back most of the money that was taken, because it was placed into a conservatorship account after her relative became the conservator. And most of that was then returned that was not used.

As far as her possessions, they cannot be recovered. There may be an action against the relative who took them, but we have not determined, as yet, whether to pursue that action for her.

Ms. Oakar. How did she come in contact with some help then?

Ms. Fitzpatrick. The ombudsman of the nursing home contacted our office. We helped arrange to have the public defender terminate the conservatorship and we then represented her at the conservatorship’s final accounting and were able to have several thousands of dollars of proposed conservatorship fees disallowed.

The Independent Aging people helped settle her back into her home. We also helped her regain possession of her home.

Ms. Oakar. So the kinds of services that you provide are very very important, aren’t they? We hope there is no crush in the budget, or they would not have any recourse, would they?

Ms. Fitzpatrick. Thank you for that.

Ms. Oakar. That is for sure.

I was interested in your mentioning the ombudsman program and, of course, Mr. Paussa who is obviously involved, because we have a very fine program in Cleveland. They are always walking on a tightrope trying to get funded, but in my own city we had the case of an individual nursing home operator who was confiscating the checks of the elderly. He is now serving time in prison, thanks to the ombudsman program.

It is a great program.

I was interested in the fact that both Mr. Lugo and Mrs. B have mentioned cases with language handicaps and we have a bill related to helping the elderly with respect to language handicaps. It is a very real problem, isn’t it?

Ms. Fitzpatrick. May I comment on that?

Ms. Oakar. Sure.

Ms. Fitzpatrick. Mrs. B does not read or write English. And we believe that she gave her relative a power of attorney without realizing it, a voluntary conservatorship, and she also signed her admission papers into the nursing home without realizing what they really were, because they were printed in English.
Ms. OAKAR. Very interesting.

Would you like to comment on a language handicap, Mr. Lugo? Is that a proven problem with the additional difficulty of people with handicaps?

Mr. Lugo. Yes; it is, because so many of my clients are Spanish speaking we often find that in many cases a client will have to take the word of a son, daughter, or some other relative that a document has been presented to him or her for signature really states what they say it does, without really knowing what effect this document is going to have, once they sign.

My wife works with an agency that provides assistance to persons whose homes are going into foreclosure. She was telling me about an elderly Mexican woman who could not read or write, who knows absolutely no English, but who has signed all of the documents necessary turning her property over to a son, who is now in the process of losing the home through foreclosure.

This is one example. There are many that we come across routinely.

Ms. OAKAR. Mr. C, obviously you have had some training with respect to patient care?

Mr. BRIDGEWATER. Yes. I have 6 years.

Ms. OAKAR. You, yourself have been victimized by poor nursing care?

Mr. BRIDGEWATER. Yes.

Ms. OAKAR. What kind of advice would you give? What would you like to see happen to the patient's rights, so the patient's rights are protected? What changes would you like to make so that this will not be happening?

Mr. BRIDGEWATER. One of the changes is that they ought to give those people a course in human relationship, learn them how to get along with others.

In those homes, you have people from all walks of life in there and when they do come in, they are bringing these new people. And these new people turn up their nose at those people because they are down flat on their back. And they feel they have never been nothing in their life.

You find some other influential people in these rest homes that were very successful in their younger lives and something has happened to them mentally or physically, but that don't make them no old rag that you can kick around. They have feelings and they would like to be treated like humans. And they are still human.

Ms. OAKAR. But you had no one to go to at this nursing home that was in a position of authority? Were you afraid to tell the administrator?

Mr. BRIDGEWATER. They would call and tell them but they would not do anything about it. That is what surprised me. And the supervisory personnel was turning over faster than the people that came in to wait on the patients sometimes around there.

Every time we looked up, we had a new supervisory staff in the office. And it got so bad there that they were coming in the rooms and pulling the rings off the women's fingers at night, stealing TV's, and everything.
I lost a brand new TV in the place. I stepped out of the room. I wasn't gone more than 10 minutes. And I came back in my wheelchair, I seen the door closing and my TV was gone. I could not do nothing about it.

Ms. Oakar. That is a form of financial abuse, isn't it?

Mr. Bridgewater. That is right.

Ms. Oakar. Thank you.

I have just one last question for Mrs. D. Does she—and it is probably one of the more heartless stories, I suppose, as much as you think that you have heard them all—does she have any other children or grandchildren or great grandchildren who would have been aware of this difficulty?

Ms. Humphrey. She has other children. Rosie has other children. They, themselves, are elderly, like 60 or 70. The grandchildren, she has many, but they are all scattered.

And she really does not have recall about where they are.

Ms. Oakar. How old was the daughter who deserted her?

Ms. Humphrey. Fifty-three.

Ms. Oakar. She was 53, and the others are not able or not interested to care for her?

Ms. Humphrey. She has one in Yuma that would like to take care of her, but Rosie said that she would get the same treatment from that daughter as the other one.

She has another daughter that is up north who just underwent cancer surgery and, herself, is not well. They are older as well.

Ms. Oakar. So your problem is that when you do not have a crisis center or anything, when you were confronted with the problem and had nowhere to place her that evening, you, yourself, had to take on the responsibility.

You know, there were some legal ramifications in what you did. You really took a gamble, didn’t you?

Ms. Humphrey. Yes.

Ms. Oakar. Because you are not protected under the law, are you?

Ms. Humphrey. No.

Ms. Oakar. For that sort of thing.

Ms. Humphrey. No.

Ms. Oakar. Which is really very courageous, I must say. Have you had a chance now to finally place her in a better situation?

Ms. Humphrey. Yes; she is placed in a retirement home several blocks from my home. The problem is with the dog. She really loves that dog. And, of course, the retirement home does not allow dogs and that is very much a part of Rosie’s life. And so as a result, her being within 2 blocks, she comes over and visits with the dog.

Ms. Oakar. Thank you. Mr. Lantos.

Mr. Lantos. Thank you. I do not have any specific questions to ask any of our witnesses, but I would like to make an observation.

In the first place, I think that we all owe all of you a deep debt of gratitude for being willing to go through this experience which is a very difficult one for each of you.

And I want to particularly comment on the extent of compassion and professionalism which I see displayed by the women and men who have accompanied our witnesses.
I must say, Ms. Humphrey, you made my day, because at a time when public officials and so-called bureaucrats are belittled day in and day out, your story of human warmth and compassion is a beautiful one.

And, finally, I would like to make a suggestion to the Chair, if I may. I suggest that both the written copy of these hearings and selected highlights of the tape be sent to our new budget director, Mr. David Stockman, of the Office of Management and Budget.

Ms. Oakar. If you will yield for a second, you know that Mr. Stockman is going to appear before our Aging Committee on Monday, so maybe we can talk to him then.

Mr. Lantos. Yes, I know that, Madam Chair, and I would very much hope that my colleague, Mr. Burton, will request his most able staff, if at all possible, to prepare selected highlights of the tape which we can then present to Mr. Stockman. I think that it would be singularly educational and get involved with some human problems. Thank you.

Chairman Burton. I think the staff will do that. My own subcommittee has a hearing that day on an aviation safety matter. And so I guess we will leave Mary Rose to meet and deal with David.

Actually, it is very tough to educate a kid who knows everything and Dave does, but I consider him a friend and do have great respect for him.

I think it is our duty to help educate Dave, really, that things are not solved with a magic wand, be they economic problems or other things and there are some real human needs that must be met. And I worked on the welfare reform program in this State with our Governor, not President Reagan, and we are talking about the truly needy.

And Governor Reagan has always supported help for the truly needy. I think that it is easy to see that this representative group of people appearing before the subcommittee are not the greedy, but the truly needy.

Dave has even said that he wants to help them.

Mr. Lantos. Thank you, Mr. Chairman.

Ms. Oakar. We do have a request from our assemblymen for some questions. We are running overtime and I will wield the gavel a little more strongly.

I am going to limit your questions to one question, if I may, because we are running almost to 11:30, and we have a whole series of other people. And we also have a time problem with respect to this room.

I will be happy to yield to whomever would like to ask the question.

Mr. Felando. Do I understand that between the two of us we have one question?

Ms. Oakar. No; just one question each. I can get away with it.

Mr. Felando. You were talking about Stockman moving that ax, but you are pretty good with it, yourself, Madam Chairman.

Chairman Burton. I would say that it is a rare privilege for a member of the State legislation to sit with the House subcommittee, so I think that it is fair. I would not worry about being able to ask one or two questions. And that goes for my good friend, Bill Filante.

I would not really try to come down too hard on Mary Rose, because you talk about an ax. She comes from a pretty tough area of Cleveland.
Nobody wants really to mess with her and I would just advise my friends of that.

Mr. FELANDO. I just would have one comment or one question for Mrs. X. Would Mrs. X support society placing her son in prison for life?

MRS. X. Yes, I would.

Mr. FELANDO. Thank you.

Mr. FILANTE. Thank you, Madam Chairwoman, and thank you, Congressman. I appreciate the invitation that was given to all members of the assembly committee on aging to participate in this conference. It is very valuable.

I felt that it was absolutely necessary for me to come here even though I could not stay for the whole meeting, because I am the only physician in this legislature in California.

Because I have faced this problem as a physician for over 30 years, it is my opinion, frankly, that people are not worse people today than they used to be. I think that the same people are in our society today as were here before, but I think that things have changed in the last 30 years.

I have a problem in trying to take care of the elderly. I very much like the comment that was just made. And I would simply like to refer to the comment that was made on the budget, because the nursing homes that in many cases are abusing their patients, or elderly, and what have you, in some cases have to.

They are caught between a rock and a hard place, because of rates they are allowed to charge and wages that they are allowed to pay.

I really appreciate the elderly coming in and telling us what the situation is. There was a case where a nursing home made an effort to upgrade their help and train them more so they can take care of the people and then, as soon as they were trained, since they could not and were not allowed to pay them any more, people left to go to work for an acute hospital. That is a case where they simply are not paid enough.

I have one nursing home—that I have been trying to help—run by an individual. It is not a chain or a big corporation, and he has to go to the bank every month to borrow money to meet his payroll. He cannot take in enough money to do it.

So there is a mixture of things going on out there. The Medi-Cal problem, in terms of budget, is that our budget, although in this State it is 5 billion—half of it coming from the Federal Government, thankfully, and half from our State—could be cut by 20 percent and not cut one wit of care if we were to change, we are able to change, and get rid of some of the bureaucracy there.

It has now been proposed in the State of Massachusetts. I proposed it here a couple of years ago.

I would like to increase the care and not save quite so much money, but we are at an impasse right now, because people do not understand that you need an incentive not only for people to come in and tell us what the trouble is, but for providers to upgrade their care.

And I would hope that those of you who represent not only individuals but groups today can work with us either at the State or at the Federal level. Dr. Felando and I are both on the Aging Committee and on the Health Committee, and working desperately to change this
situation, but I would just like to close, after I have asked for your help on the budget problems and the administration problems on the care of the elderly.

I would like to close with one note that I hope will not go unnoticed, and that is these horrible and sickening reminders of what has happened to many of our people in society is just a small portion of what I call abuse of the elderly by society at large.

Within the last 30 years, we have created an entire generation of the elderly who are now destitute who, in former generations, could take care of themselves.

We have thrown them out of their jobs, because they have reached a certain age. We have thrown them out of housing areas. They can live in some special place.

And we have actually encouraged people to get along and not learn English and to vote or whatever it is without learning English, and then be placed in this horrible situation of being manipulated by families or people or government.

And it is a crime against the elderly, but in this case, it is perpetrated by the entire society. All of us in this room are part of that. And I would hope that we can kind of change our attitude and say that the elderly have to be taken care of which means to give them a chance.

Thank you, Mr. Chairman and Madame Chairman.

Ms. Oakar. Thank you, doctor.

I must say that it is great to see people of a variety of professions in the assembly, I think that it is very "healthy", if you will excuse the pun.

Mr. DeLury. It is a small sacrifice.

I have one brief question. I noticed that in the example of Mrs. B and in the example that Mr. Lugo presented that there was the apparent abuse of conservatorship.

Do you have any recommendations with respect to how prior investigation or whatever could occur in respect to conservatorship to prevent this kind of thing from happening?

Mrs. Fitzpatrick. I would just suggest that the investigators who go out even on voluntary conservatorships do a better job, be required to do a better job, to really discuss with the person and find out what their situation is and if they really require such a conservatorship. I do not think that was done in this case.

If they had spent much time with Mrs. B, they would have discovered that she did not need a conservatorship and that she would have rather been at home.

Mr. Lugo. In my client's case, the court interviewer did go out. She spoke with my client and noted that my client did not want his brother named as his conservator. The judge went ahead and acted against my client's wishes. And we were on that basis, and because his brother was not handling anything, able to have him removed.

Ms. Oakar. Thank you very much.

And on behalf of the subcommittee, we certainly want to thank all of you for adding to our testimony and that, hopefully, will lead to some type of solution at a Federal level and will compliment what the gentlemen are trying to do in the assembly here in California.

That is the intention of our bill, to compliment what the State does. I am happy to see that you have introduced an elderly prevention of
abuse bill also on a State level which is very important. Thank you very much.

Ms. Oakar. Our last panel before receiving the summary of the conference recommendations consists of legal service experts.

We will hear from George Alexander, the dean of Santa Clara Law School. Dean Alexander will discuss with us a number of practices which are employed for people who are judged no longer able to care for themselves.

He will be joined for the panel by Alfred Chiplin of the National Senior Citizens Law Center.

And also on the panel will be Mike Gilfix, the director of the Palo Alto Senior Adults Legal Assistance;

Bruce Feder, an attorney with the Legal Assistance for the Elderly, San Francisco;

Both will describe to the subcommittee experiences that they have encountered in attempting to provide legal assistance for the abused elder persons.

So if you gentlemen will come up, we would like to hear your testimony.

Some of you are coming up and I notice that some of you will be leaving the conference and I, certainly would like to say how much we have appreciated the fine conference that was held here and also in Boston. And we really certainly need your help, those of you who are in the audience, I know that some of you will be leaving to catch planes and so on, but you are the providers and we certainly welcome the direction you give us.

We will be happy to take your testimony. If you have written testimony and want to summarize it, we would put your entire testimony in the record, but you can proceed in any way that you would like.

We will begin with Mr. Alexander.

STATEMENT OF GEORGE ALEXANDER, DEAN, SANTA CLARA LAW SCHOOL, SANTA CLARA, CALIF.

Mr. Alexander. Good morning.

I want to thank you and the committee for having this time made available to me to express my point of view. I will try to be fairly brief and would be more than happy to respond to any questions that you might have.

The principal concern that I would like to share with you really takes off on the last question asked; mainly, what is to be done about conservatorship?

Conservatorship has been a device that has particularly been used in all of the States of the United States that has greatly disadvantaged the elderly in the management of their lives.

Through conservatorship the elderly have been robbed of their property and wrested of control of their health and other care needs. And very often the very act of conservatorship, itself, has caused tremendous damage.

I would like to trace very quickly how we got ourselves into that position and suggest a small path that might lead us out.

The biggest problem, of course, comes from the fact that we conceive of the institution of conservatorship as beneficial, rather like we
conceive of a number of so-called services for the elderly as beneficial before we have the opportunity better to examine them.

Conceiving of the services as beneficial, we then broaden it to the extent possibly legally in order to make it available. It is made available to a large range of people who can bring a petition for conservatorship and it applies to a tremendous range of potential wards that may be put under conservatorship for a variety of reasons and in many States, simply because they are old.

They are incompetent, that statute says, because of old age, Conservators in some States make such basic decisions as to whether to institutionalize their elderly wards, rather than having decisions made by the wards themselves.

The kinds of activity for which we normally require a person's consent are consented to by others—often others, as you have heard, who have interests that fundamentally adverse to the interest of their wards.

There is, of course, in many cases, a financial conflict between the conservators and the conservatees, the conservators often being the beneficiaries of whatever wealth will be left over, that is, after the ward has passed away.

We would normally look to those who stand to benefit to direct the lives of those whose funds that they hope to acquire, but in this area we do.

Similarly, with respect to health care, we allow conservators in many States, I am pleased to say not in California, involuntarily to hospitalize their wards as a means of taking care of their problem.

What they may succeed in doing in many cases simply is removing the elderly from homes in which they are a bother. The elderly people can then be put somewhere else, without their consent at all, somewhere else where they can languish without treatment—there is no treatment for being old—and very often suffer great deprivation.

Now, lawyers have begun to see the problems in conservatorship lately, I am pleased to say, and I wish I could say that they have found a good solution. I think they have not, but in the main what lawyers have done is to look to due process as a way of saving people from conservatorship.

Can't we have better investigations? Can't we have more hearings? Can't we involve more lawyers?

Of course we can. The problem is that in this area, what we are involving outsiders in, is an issue so fundamentally imprecise and so fundamentally difficult to deal with that due process simply does not help much.

Now it certainly is better to exclude from conservatorship proceedings people who obviously are totally competent, but those cases are not the ones of which we normally hear.

And in other cases, such questions as whether a person is or is not competent is not either a medical question or a legal question that anyone can answer with any skill.

A physician knows how to treat a person, but a physician cannot make a professional judgment about how that person is able to live in society, able to react to financial stress and the like.

A lawyer, on the other hand, can probably help illuminate any precisely put legal issue. But competency is not one of them. The
result is that while we have improved the procedure, the process simply will not benefit from legal help.

What is needed is a reintroduction of individual autonomy which is somehow the last thing that people think about in this area. People need to be given back the management of their lives.

And the way that you give people back the management of their lives is to provide, at every opportunity, a method for people to express their self-determination.

I have suggested in an article which I have left with the committee as my testimony a single device that might lead in that direction. I do not come to promote that idea. I come to promote, instead, the notion that we need to think again about making devices available by which people can tell us what they want and especially so at a time when nobody had or has any doubt about their clarity of mind.

The more we look to them and to their decisions to guide us at a time when we have become confused about their competence the better it seems to me treatment for the elderly will be.

Thank you very much.

Ms. Oakar. Thank you, Mr. Alexander. You had very interesting testimony.

Mr. Felando. May I add just one comment to what the Dean has said?

Ms. Oakar. Just so that we have a sense of direction here, we will hear from all of the panel and then we will be happy to respect your question.

Mr. Felando. This was just a short statement in response to what he had said.

Ms. Oakar. I would rather proceed in this other matter, because there might be related questions or a point that is raised.

Mr. Alexander, we will insert your booklet that you brought with you at this point into the record.

[The material submitted by Mr. Alexander, “Premature Probate: A Different Perspective on Guardianship for the Elderly,” which was reprinted from the Stanford Law Review, Volume 31, No. 6, July 1979, has been retained in committee files.]

STATEMENT OF ALFRED CHIPLIN, JR., NATIONAL SENIOR CITIZENS LAW CENTER, LOS ANGELES, CALIF.

Mr. Chiplin. My name is Alfred Chiplin.

I am an attorney with the National Senior Citizens Law Center in Los Angeles, Calif.

I would like to say that I have prepared testimony that I have submitted to your staff to be included in the record on behalf of myself and Neal Dudovitz.

Ms. Oakar. Without objection.

Mr. Chiplin. I have some general concerns that follow in the same vein as the Dean who just spoke.

It is our feeling that conservatorship, guardianships, the representative payee process, and the use of various power of attorney provisions are often misused and abused by people in their efforts to provide solutions in elder abuse cases.
It is our feeling that legislative proposals designed to remedy elder abuse be mindful of due process issues such as the elder’s right in notice and an opportunity to contest the imposition of any incursion on their liberty, including their ability to manage their affairs.

It is very important that the people who are responsible for investigating and reporting elder abuse cases carefully evaluate the situation, and that the investigators do not make presumptions about the competency or incompetency of the elders involved.

Often, we equate being elderly with being a child. This is just not the case.

There seems to be very much in play the feeling that being old really is tantamount to being incompetent.

I am also concerned that when we talk about mandatory reporting laws and begin to move in that direction of enacting them, that we are careful to make sure that our society has put in place efficient and effective service so that when you go into someone’s home with the suggestion or promise of help that we can actually deliver that service.

The cost of putting those services in place represents a significant financial commitment. This too should be considered.

In closing, I would like to say that I think it is important that we approach any notion of reporting laws, protective service devices, and the like, with extreme caution. We should evaluate the services and procedures that we already have in order to see if perhaps we already have the basic rudiments of the protections that we need.

Thank you very much.

[The prepared statement of Mr. Chiplin follows:]

PREPARED STATEMENT OF NEAL S. DUDOVITZ AND ALFRED CHIPLIN, JR., OF THE NATIONAL SENIOR CITIZENS LAW CENTER, LOS ANGELES, CALIF.

We are Neal S. Dudovitz and Alfred J. Chiplin, Jr., attorneys with the Los Angeles office of the National Senior Citizens Law Center.

As this committee well knows, the National Senior Citizens Law Center is a national support center, with offices in Los Angeles and Washington, D.C., which specializes in legal problems of elderly poor people. We are primarily funded by the Legal Services Corporation in order to provide support and assistance to legal services attorneys throughout the country on legal problems of their elderly clients. In this connection, we work directly with legal services attorneys on behalf of their clients on litigation, legislation, and administrative advocacy.

We are also currently funded by the Administration on Aging as a national support center for legal problems of the elderly. In that capacity, we work directly with legal programs funded under the Older Americans Act, as well as many state and area agencies in aging, legal services developers and nursing home ombudsmen with regard to legal issues affecting the elderly throughout the United States.

The work of the attorneys at the National Senior Citizens Law Center, as our many experiences with this committee have demonstrated, covers a myriad of areas of the law that affect elderly people. We have, however, since the beginning of our program placed special emphasis on the mental health problems facing the elderly, particularly with regard to guardianship/conservatorship programs, protective services issues, and public guardianship issues. One of our former attorneys who has specialized in this issue, Peter Horstman, has written one of the seminal law review articles on this subject and both of us have had a long history of working with elderly people who have been the subject of numerous guardianship and protective services mechanisms in various parts of the United States.

We believe that our office has a unique perspective on the issues of physical and economic abuse which are the subjects of today’s hearings before the com-
We not only are in a position to have discussed these issues with attorneys, state officials, aging organizations, and legislators, but more importantly, we have viewed these problems from the perspective of the elderly person who is the subject of the alleged abuse. Our office, and our constituent legal services and Older Americans Act attorneys, have represented people who have been dragged through the various guardianship and protective services programs that are being advocated as solutions to the abuse problem. We believe, therefore, that our experience will aid this committee in its deliberations and offer some insight into the limitations of government programs to combat abuse problems.

The issues surrounding physical and economic abuse of the elderly involve social, moral and legal issues of the highest order. It is, of course, impossible in a short period of time to extensively cover all of the aspects of this problem. Today, we would like to concentrate our testimony on two issues.

First, we will provide the committee some of our general views on the civil rights and civil liberties issues which are raised by the various solutions to the elder abuse problem that have been proposed. Unfortunately, in our experience in discussing and working on these issues, many people with the best of intentions have neglected to consider the constitutional and civil rights violations resulting from their actions. We must not lose sight of the fact that the persons about whom we are talking today are adult citizens of the United States possessing all of the rights of citizenship and you and I. They have the same right to be free of unwanted government intrusion as do any other citizens.

Second, our testimony will focus on one particular aspect of economic abuse of the elderly—economic abuse by the federal government. We raise this issue today for two reasons. One, we believe that it has been an area long overdue for analysis and review by Congress. Second, as opposed to many of the other abuse issues which largely fall within the province of state and local governments, economic abuse by the federal government is totally within the control of Congress. Consequently, this is an area which you can affect directly and immediately.

I. PROTECTING THE CIVIL RIGHTS AND LIBERTIES OF THE ELDERLY

A fundamental principle of our form of government, which is, of course, enunciated in our Bill of Rights, is the fact that every citizen is entitled to protection from unwarranted and unwanted government intrusion in their lives. We have been loath to sanction forceful government action and in fact, outside of the criminal law context, it occurs rarely, if at all, in our legal system. There is, if you will, a fundamental constitutional right of people to be left alone, as long as they do not violate our criminal laws.

These issues are raised in the physical and financial abuse area by the solutions that are proposed to the problem. Certainly, we do not condone in any way physical or financial abuse of any persons, including the elderly. On the other hand, even if that abuse occurs, we must remember in proposing solutions that the answer cannot merely be involuntarily imposing government upon the alleged abused person. The consequences of that government intrusion can indeed be great.

As an example, which is drawn from our experience, will help illustrate our point. A neighbor may report that Ms. A appears to be incoherent, has some bruises, is heard moaning, and Ms. A's daughter has been heard screaming and yelling at Ms. A. That report is made to appropriate local officials who send out a protective services worker to investigate. The protective services worker forces him or herself into Ms. A's home, talks to her, and decides that indeed Ms. A has been abused and that it is not in her interest (according to the worker) to remain in her home as that will have detrimental physical and emotional effects. The worker asks Ms. A if she is willing to leave the home and Ms. A refuses, noting that she really does love her daughter and would under all circumstances prefer to live in her present home. Nevertheless, the worker feels Ms. A cannot make a rational judgment and under the authority of state protective services and reporting laws determines that Ms. A must be immediately removed from her home and proceeds to take the necessary actions to produce that result. Ms. A very quickly against her will ends up in a nursing home, becomes very depressed and withdrawn as a result of her involuntary incarceration in the nursing home, quickly goes downhill and dies within a short period of time.
We wish that we could say that this example is unusual. Our experience shows it is not. It illustrates for this committee how, under the guise of helping someone, government intervention can produce disastrous results. It further illustrates that the rights of the elderly person are in many, if not most, cases ignored in the process of determining what is best for that person. Elderly people are not children. They maintain, in the eyes of the law, the civil rights and liberties of any other adult citizens of this country, and they must be treated accordingly.

In studying and proposing possible solutions to aid and help with problems of physical and financial abuse of the elderly, we urge this committee to be extremely wary of programs and statutes which do not provide inherent protections of the rights of the elderly person. We believe no services ought to be provided on an involuntary basis, unless the elderly person has been found incompetent under the appropriate guardianship or conservatorship statutes, to make decisions for him or herself. Further, only a guardianship statute which fully and adequately protects the constitutional due process rights of the person is sufficient for a determination of incompetency. In fact, the President's Commission on Mental Health specifically made such recommendation a few years ago.

We do not support protective services laws or abuse reporting laws which provide for involuntary services outside of the guardianship/conservatorship mechanism. We believe an adequate, well drafted, and constitutional guardianship/conservatorship statute provides a sufficient mechanism under our constitutional system to provide necessary services. We must recognize that those people who are service providers cannot always substitute their judgment of what is in the best interest of a person for that person's own judgment. Our Constitution protects the right of our adult citizens, including our elderly, to make their own judgments, except possibly when they are found to be incompetent to make those judgments. We cannot have protective services laws or reporting laws which try to evade guardianship programs which ignore due process of law protections under the guise of helping people. One recent protective services and reporting statute which we believe comes very close to our views is that adopted in the State of Missouri last year. That law allows for reporting but does not allow for involving protective services unless the person has been brought to court through the guardianship procedures.

Similarly, we believe this committee ought to be extremely wary of support of any public guardianship program. We in California, as Representative Burton is well aware, have had a fairly lengthy experience with the public guardian system. We wish we could tell you that the system works; unfortunately, our view is that it does not.

In our judgment, the public guardian system as it has been used in most areas of California results in extreme over and unnecessary institutionalization of other persons. We have, in fact, filed suit on various occasions against the Los Angeles County Public Guardian's office on this very point. It is our view that if you have a public guardian, you can be sure within an extremely short period of time that you will be in a nursing home and that, in our view, is the beginning of the end for the elderly.

Public guardians are not a panacea. They may in fact do significantly more harm than good and need to be extensively analyzed and evaluated before they are supported as an answer to the abuse problem. Questions need to be asked, not just about how the public guardian handles an extremely incoherent and incompetent person with medical problems, but also about how the public guardian handles someone who merely wants to be left alone and does not live in an environment that some people think is in their best interest. Are those latter people going to be harmed or helped by a public guardian putting them in a nursing home? Each of us may have different views of the answer to that question but none of us knows for sure, as public guardians are a recent phenomena whose impact has not as yet been adequately measured.

Thus, for us, the recent issues that have been discussed in the newspapers in San Francisco concerning the fact that the public guardian does not accept wards persons with incomes below a specific amount is not an issue of whether or not income guidelines are appropriate. Instead, the real issue is whether those poor people are better off without public guardians than with them. We believe it is incumbent upon the aging community, this committee, and those people
who are proponents of public guardians to demonstrate the benefits before they impose that system upon the elderly.

This committee must remember that legally what happens when a person receives a public guardian is that a person's civil rights and liberties have been granted to the state for the state to exercise on their behalf. We can think of no other law in our constitutional system that gives over a person's civil liberties and rights to the government. If we are going to let that happen, we must be extremely vigilant in viewing that kind of system and must assure that constitutional rights are protected in the exercise of that system.

II. FINANCIAL ABUSE OF THE ELDERLY BY THE FEDERAL GOVERNMENT

We believe that one important aspect of financial abuse of the elderly has been ignored by most of the various studies and commentators on this subject. That issue is the abuse perpetrated on the elderly by the Federal Government's representative payee systems.

Most of the Federal benefit programs and in particular Social Security and Supplemental Security Income (SSI) statutorily provide that the agency may unilaterally determine that a person is not capable of handling their own funds. As a result, the agency will appoint a representative payee who is another person, organization, or agency who is to receive the government benefit and spend it on behalf of the recipient.

There are, of course, serious constitutional issues about the mechanism by which representative payees are appointed. There are also serious statutory and constitutional issues about the ability of various organizations and agencies, such as a nursing home where the recipient resides, becoming representative payees. We will not discuss those problems today but by glossing over them, we do not mean to suggest they are not serious and ought to be of great concern to this committee.

What we would like to concentrate on today, however, is the Federal Government and in particular the Social Security Administration's failure to control and police the representative payee system. Frankly, what our experience and our clients have shown is that the Federal Government hands out millions, indeed perhaps billions, of dollars to representative payees and has (1) no idea what happens to that money, and (2) even when they do find out, tries to wash their hands of it and not to protect the elderly recipient.

We have firsthand knowledge and information about this subject, as we represent a nationwide class of recipients who have had representative payees in a suit now pending in Oklahoma. That case is Jordan v. Harris, No. 79-994T (W.D.Okla). The suit raises serious and important questions about the fact that the Social Security Administration has in the past unilaterally decided to halt all accounting of representative payees. By that action, the government directly condones, in our view, financial abuse of the elderly, SSI and Social Security recipients who are on the representative payee system. How are those recipients going to protect themselves against abuse by payees when the agency that gives out the money closes its eyes as soon as it signs the checks?

The payee system allows for enormous fraud and abuse. For example, there were many reports that the Rev. Jim Jones received thousands of dollars monthly directly to him as representative payee for persons in his camp in Guyana. How was Rev. Jones able to become payee for so many people? Why did the government never, as far as we know, audit Rev. Jones' expenditures of the Social Security and SSI dollars he received?

In addition, even if SSA were to audit and take some control over how the payee spends dollars, there is another question that must be answered. The second question is, if an abuse occurs, how can it be remedied?

SSA takes the position, which in fact they have clarified in recent proposed regulations, that when an abuse is discovered, there is no government liability or no government involvement. In other words, the elderly person whom SSA has already determined is unable to care for his or her own financial means is left to his or her own devices for a remedy. We are then left with an older person having to discover on their own that their payee is misspending dollars and then to find a mechanism on their own to remedy the situation. They receive no help, no assistance, no advice, no responsibility from the Social Security Administration who administers the benefit programs.
We believe that this representative payee system, as run by the Social Security Administration and as apparently authorized by Congress, encourages financial abuse of the elderly. We believe that if Congress cannot assure that its basic benefit programs for the elderly are not used to financially abuse them, then Congress cannot insert itself in private relationships that may result in financial abuse. We urge this committee to begin a full and complete investigation of the representative payee system of the Social Security Administration. Such a study should attempt to clarify the fraud and abuse which we believe is rampant in that system and to propose clear and distinct protections for the benefit recipients that will make the Social Security Administration accountable for its errors and will allow the elderly to in fact receive the benefits for which they are entitled.

Of course, our office would be more than happy to work with the committee on such a study and to aid them in drafting legislation that will prohibit this financial abuse of the elderly by the federal government in the future. We will continue our fight through the courts to remedy this enormous problem, but it would be far better, we believe, if Congress would attempt to tackle this problem and resolve it affirmatively by appropriate legislation.

'We hope that this testimony will prove useful to the committee in its consideration of the issues of physical and financial abuse of the elderly. In closing, we would like to remind the committee of the comments of U.S. Supreme Court Justice Louis Brandeis more than 50 years ago: "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent... The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning, but without understanding." Olmstead v. United States, 277 U.S. 479 (1928) (Brandeis, J., dissenting)

Ms. Oakar. Thank you, Mr. Chiplin.

Mr. Gilfix.

STATEMENT OF MIKE GILFIX, DIRECTOR, SENIOR ADULTS LEGAL ASSISTANCE, PALO ALTO, CALIF.

Mr. Gilfix. Thank you, I would also like to thank you for the opportunity to present my views, both here and in written testimony.

I would also like to present some brief personal background. I have been director of a legal services program serving elders for over 7 years. In this capacity, I have had the good fortune to have been involved both in individual cases in the community and in the development and pursuance of legislation and regulations at the national level.

I would like to address the problem of elder abuse from two perspectives. The first is the broader of the two and, I believe, the most important. It is my grave concern when I see our society respond to problems like this by focusing on the crisis. Our response in such circumstances tends to be visceral, emotional, and myopic.

I am concerned when we focus on gross physical abuse cases and want, above all, to punish the perpetrator. Such a response is after the fact and does not help individuals who have been abused.

I must say that I strongly disagree with the implicit suggestion by California Assemblyman Felando that life imprisonment as a punitive approach is the solution to this kind of problem.

We have to realize that over 70 percent of the abusers are family members. This makes the problem much more complicated and raises serious questions about a punitive type of approach. We have, instead, to look at the causes of elder abuse: economic stress; the fact that so many of the abusers have mental, psychological, alcohol, drug problems. These factors—the real cause of abuse—can be addressed only
by looking to more basic societal factors that are unavoidably included in the equation.

We have to think about spousal abuse. We have to think about child abuse. We must acknowledge the close relationship of these phenomena to elder abuse and address them at the same time.

If we are, in other words, to productively address the problem we must adopt a preventive strategy and look at the root causes.

The conclusion, I suppose, is obvious at this point. I am calling upon each of you to increase your vigilance in Washington. I am calling upon each of you to realize that the Oakar-Pepper bill, as good as it is, is not a solution if it must stand alone as other relevant programs are slashed to nonexistence.

For example, we see radical cuts in funding that would result in the elimination of many of the staff members that you saw here with victims today. Consider Mrs. B, who testified earlier. The legal worker from our office, Ms. Lucy Fitzpatrick, who brought her here today and who is helping Mrs. B is a VISTA volunteer being paid the outrageous salary of $3,500 a year. That program is scheduled by the Reagan administration for expiration in 1983.

A minimal amount of Federal money is doing an incredible amount of good.

My second, more specific comment relates to the Oakar-Pepper bill, which I strongly support. It focuses on financial, rather than physical abuse, and raises ethical questions for key service providers who are asked or told to report cases of abuse to an outside authority. I am worried that this legislation presumes away some of the most serious problems in this context.

In presenting my recommendation, I would like to focus on lawyers, because I am a lawyer and that is the profession that I know best.

Congressman Lantos earlier suggested that some attorneys will join their clients in unscrupulous acts to take advantage of older persons. I suggest that it is not always an unscrupulous lawyer. I think it is often a typical lawyer, somewhat amoral, looking exclusively at his or her client's needs in instances where the conservator or guardian is the client. In most such cases, the attorney is not looking at the impact of a conservatorship, or of actions of the conservator, on the real party in interest, the conservatee.

The lawyer's canons of ethics are relevant to this discussion. They are designed to protect the lawyer as well as the lawyer-client relationship. Of the most time honored is the proscription against revealing any information obtained in the confidential lawyer-client relationship. Its implications for mandatory reporting are obvious.

The question I raise, then, is: Where is the critical link in financial abuse cases of which we are aware? In many cases, that critical link is made by the attorney. Analogously, I refer you to legislation now requiring physicians to report cases of venereal disease to health officials. The reasoning is clear: physicians are uniquely in a position to discover the problem and, therefore, must be compelled to report it if it is to be controlled. When it comes to child abuse, we also look at those who will discover it. As indicated, attorneys are often the only ones who are going to discover financial abuse.
In the context of conservatorships, it is obvious that an attorney representing the conservator must be involved in or become aware of manipulation of the conservatee’s assets.

In nonconservatorship cases, attorneys may advise the use of and prepare powers of attorney that can be as complete as a conservatorship in conveying control of an elder’s assets to a friend or relative. In our work, we have also seen living trusts, deeds of conveyance, and other legal documents—all prepared by attorneys—that convey an elder’s property, or control of such property, to another. Please see case histories in my written testimony.

Is a particular elder being financially exploited by another? In a great many cases, only your lawyer knows for sure.

What I would like to recommend in support of the Oakar-Pepper bill is that we liberalize the confidentiality rules. Attorneys in some cases might be compelled to reveal confidences or at least allowed to do so in cases where they feel they must do so.

Right now they are actually prohibited from doing so. If they object to what a client wants to do, they can withdraw from the case, and say no more. I think that is wrong.

There is precedent for my recommendation. The American Bar Association has appointed the Kutak commission which has recommended many changes in the canons of ethics of the ABA. The canons of ABA are adopted wholesale in over 40 States, so you see their significance.

In proposed Rule 1.7, they address precisely this point of confidentiality. They are recommending that in some cases a lawyer shall disclose information when it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm to another person, or in some other limited circumstances.

Subpart C (2) says that a lawyer may disclose information about a client to the extent that it appears necessary to prevent or rectify the consequences of a deliberately wrongful act by the client. This represents a radical departure from tradition.

It is most significant that an American Bar Association commission has recommended this departure. There is, then precedent for my recommendation. The commission is relying on a development that argues for a change. It is in the form of two cases. The first, Tarrasoff v. Regents of California, involved a psychiatrist whose patient revealed an intention to kill someone. The patient did so, and the psychiatrist was successfully sued by the victim’s relatives.

In In Re Four Seasons Litigation, a law firm was held liable in a stock fraud case, because they knew what was going on and they did not do anything to prevent it. Four Seasons is, in my view, precisely on point and argues compellingly for my recommendation.

We must acknowledge, in other words, that some values must transcend that holy of holies, the inviolability of the attorney-client relationship.

In conclusion, I again stress the need for approaching the problem of elder abuse as a systemic, societal problem with multiple causes demanding multiple responses. We must not respond only after it has happened.

[The prepared statement of Mr. Gilfix follows:]
I am pleased to have this opportunity to present testimony on the subject of elder abuse. Unfortunately, I have encountered examples of such abuse on numerous occasions in the delivery of direct services in Santa Clara County, California. I have also encountered it as a statewide and nationwide problem in addressing both legislation and regulations pertaining to long-term care.

Indeed, Senior Adults Legal Assistance (SALA), which maintains offices in San Jose, Gilroy, and Palo Alto, California, has grown increasingly concerned about this problem over the past year. We have been involved—often in cooperation with other service agencies—in preventing financial abuse by an elder's closest relative. In too many cases, we were contacted after the damage was irrevocably done. To illustrate cases of financial abuse of elders, I will now present brief summaries of cases we recently encountered in our office.

The case of Mrs. B

Mrs. B is an eighty year old woman who was victimized by her only relative, her nephew. Her health is quite good and she is competent. Her primary language is Italian, although she can communicate in English.

After a short absence from her home in San Jose, California, for medical reasons, she returned to find an empty house. Her household possessions were literally sold out from underneath her. Her immediate reaction to this discovery was depression, shock, and resignation. For the next two days she sat in her home, neither eating nor communicating with anyone.

She was in the habit of eating lunch at the Sears store across the street. Sears' employees became concerned about her failure to come in and contacted the police. The police found her at home and contacted her only known relative, her nephew. They did not know that the nephew was responsible for the sale of her possessions.

When discovered, she was suffering from malnutrition and needed medical attention.

At the urging of her nephew, she signed a voluntary consent to a conservatorship and signed an admission contract to a nursing home. There remains serious doubt about whether she understood what she was signing. Parenthetically, Mrs. B now refuses to sign any document unless it is offered to her by a SALA worker or another service worker in Santa Clara County whom she has come to trust.

Fortunately, a housekeeper in the nursing home spoke Italian and became friendly with Mrs. B. The housekeeper contacted the nursing home ombudsman volunteer who, in turn, contacted our office. After assessing the facts, our staff took the following actions:

1. brought the Public Defender's office into the case to have the conservatorship terminated;
2. evicted the tenants who were placed in the home by, and making all the payments to, the nephew;
3. obtained the early release of some conservatorship funds so that her home could be prepared for her return;
4. represented Mrs. B in court at a final accounting of the conservatorship and convinced the court to disallow thousands of dollars of costs that were claimed by the conservator, the nephew;
5. drafted a Will to insure that the nephew will receive no funds as the sole heir to Mrs. B's estate;
6. worked with the Independent Aging Program of San Jose to remove the nephew's name as representative payee for her Social Security checks.

The case of Mrs. O

Mrs. O is in her seventies and was victimized by her daughter.

Several months ago, she suffered a heart attack. While recuperating—in an apparent "state of confusion"—she was convinced by her daughter to sign a document which was a power of attorney. Mrs. O does not remember signing this document.

Soon thereafter, her daughter withdrew almost all of her life savings from her bank accounts—almost $4,000—and took possession of her car. The daughter later sold or otherwise misappropriated all of Mrs. O's possessions, including furniture, clothing and (of greatest value to Mrs. O) heirloom jewelry and family photographs.
Mrs. O has asked SALA to help her regain her car, her money, and all possessions that have not yet been sold by the daughter. Litigation based on fraud and conversion are clearly available, as are actions in equity to have possessions returned to Mrs. O. SALA is contacting the Department of Motor Vehicles to insure that any accidents caused by Mrs. O's daughter do not become the responsibility of Mrs. O, the owner of the car.

The difficulties inherent in a mother suing a daughter are obvious. There are very real fears of physical retaliation since the daughter has hit Mrs. O on one or two occasions in the past. There is some evidence that the daughter has mental and alcohol problems, which further complicate the situation. Another very practical point is that the daughter is financially irresponsible and has likely dissipated all funds.

The case of Mrs. M

Mrs. M is eighty years old and is apparently being victimized by a "friend" she met at church.

She contacted SALA because she became confused when her "friend" told her that she could live in her house until she died, but that he would get it at that time. Upon investigation, we discovered that Mrs. M conveyed the house to her "friend"—apparently without compensation—and that the "friend" then conveyed back to her a life estate. Mrs. M does not recall this transaction. Unfortunately, her memory is very poor and she is often confused. She is clearly susceptible to trickery and fraud.

The "friend" has also induced Mrs. M to place his name on all bank accounts and her car registration. He now has complete control of her funds and limited stocks.

Mrs. M's questionable legal competency substantially complicates the case. For example, she may not be able to represent herself in litigation and a conservatorship action may have to precede litigation. The "friend" will undoubtedly learn of such developments and, we fear, will seek to liquidate or otherwise abscond with all assets. While the filing of a lis pendens would be a likely course, it is a further complicating factor when there can be no certainty that the "friend" has, in fact, taken advantage.

While many conclusions can be drawn from these case histories, I at this point emphasize the utilization of legal documents and the legal system by those who financially abused their elders.

ASSESSMENT AND RECOMMENDATIONS

I would first like to express my support for H.R. 769, The Prevention, Identification, and Treatment of Elder Abuse Act that was recently introduced by Representatives Oakar and Pepper. As in all legislation, there are some problems, but the concepts and approach are both timely and sound. Later in this testimony, I will address myself in depth to one aspect of this legislation.

In the balance of my testimony, I would like to address the problem first from the broadest possible perspective and then in very specific terms.

SYSTEM-WIDE RESPONSE

The subject of "elder abuse" is receiving increased attention in the media and the legislature. It is described as a new "national crisis" which demands immediate attention. My concern is that, in reacting to a crisis, we will focus only on the most physical aspects and react viscerally, such as by demanding serious punishment for abusers. Aside from the fact that the overwhelming majority of abusers are close family members and the psychological implications of punitive measures taken against them, research data and logic compel the conclusion that the causes are complicated, multi-faceted, and in need of comprehensive attack. In other words, causative factors must be addressed. Doing so is less politically popular, less visible, and far more costly. We must ask, however, how serious we are about eliminating elder abuse and what price has to be placed on the security and dignity of our older citizens.

Data presented at these hearings and in the report of this Committee on the issue of elder abuse identify the causes of abuse. They include economic stress on a family that is supporting an older person, the myriad psychological and physical needs of elders that must be addressed by untrained family members who may or may not have time and energy, abusers with histories of
mental, alcohol, and drug problems, families with a consistent history of abuse toward children and spouses.

All of us, and members of Congress in particular, must increase our vigilance and realize that impending cuts in social and human services can only exacerbate this problem and insure its growth. We must ask what impact the emaciation or elimination of in-home support services, nursing home regulatory controls, legal services, senior day care services, and others will have on the problem.

On another level, I am concerned that the increasing exposure of the problem will heighten expectation on the part of abused elders and the community at large. We must ask: what good are we doing if we expose the problem and do not have community resources that can address them? The proposed Elder Abuse Act would require specialized facilities and procedures to address these problems. This might be the most significant provision of this legislation.

ETHICAL ISSUES IN MANDATORY (OR VOLUNTARY) REPORTING

H.R. 769 provides for the mandatory reporting of both known and suspected cases of elder abuse, neglect, and exploitation. Without question, this requirement is a cornerstone of the Act. It is also a requirement that raises many serious questions without answering them.

Not the least of these questions involves the ethical and, in some cases, legal implications of compelling a professional to reveal confidential information. This can be particularly problematic in cases of financial abuse, which is the focus of this testimony.

Parenthetically, note that physical abuse is a) more visible, and, therefore, easier to detect, and b) most often revealed to the medical profession, which has faced mandatory reporting issues in the contexts of child abuse and venereal disease. The reporting requirement in H.R. 769 opens an entirely new professional and ethical frontier as it relates to financial abuse. This fact may have been overlooked or, at least, under-emphasized in drafting this legislation because cases of physical abuse most readily come to mind and are more clearly documented.

My concern, then, is with the viability of the mandatory reporting requirement, particularly as it pertains to attorneys and other professionals who may encounter incidents of financial exploitation.

FOCUS ON ATTORNEYS

In fact, current state legislation is entirely inconsistent with the mandatory reporting provision as it pertains to attorneys. California's approach is typical of virtually every state. Section 6068(e) of the California Business and Professions Code requires an attorney "to maintain inviolate the confidence, and at every peril to himself to preserve the secrets of his clients."

California is typical in that almost every state has adopted the Code of Ethics of the American Bar Association by incorporating it into state law. Before suggesting how to resolve this conflict, I again emphasize the need to include attorneys in the mandatory reporting provision. Without doing so, most cases of financial abuse will not be discovered.

The critical point bears emphasis: attorney are often the critical, vital link in these cases. They prepare the legal documents or give the legal advice that enables the abuser—who is also the attorney's client—to engage in conduct that takes advantage of an older relative or friend.

Consider the three examples presented at the beginning of this testimony. In the case of Mrs. B, an attorney prepared all documents pertaining to the supposedly "voluntary" conservatorship. That same attorney also prepared a lease for the rental of Mrs. B's home and helped the nephew, his client, prepare the final accounting of the conservatorship.

An attorney prepared the power of attorney that enabled Mrs. B's daughter to abscond with all of her funds. An attorney prepared the deed and life estate document that resulted in the loss of Mrs. B's home and helped the nephew, his client, prepare the final accounting of the conservatorship.

In each case, the attorney's client was the abuser. It is highly unlikely that any of these attorneys considered the implications of their work for the older persons involved. Thus the importance of educating the private bar about the problem and then eliminating any barriers to their involvement is a preventive force.
KUTAK COMMISSION

Fortunately, my recommendation has already been incorporated in Model Rules of Professional Conduct, which were prepared by the Commission on Evaluation of Professional Standards (best known as the “Kutak Commission”). Published on January 30, 1980, these proposed Rules are not yet adopted. They propose many major changes in the Code of Professional Responsibility, which is also referred to as the Code of Ethics.

Proposed Rule 1.7 provides, in pertinent part:
(b) A lawyer shall disclose information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm to another person, and to the extent required by law or the rules of professional conduct.
(c) A lawyer may disclose information about a client only:

(2) To the extent it appears necessary to prevent or rectify the consequences of a deliberately wrongful act by the client, except when the lawyer has been employed after the commission of such an act to represent the client concerning the act or its consequences;

These recommendations represent a radical and, I believe, needed change in rules pertaining to the confidentiality of attorney-client communications. In instances where, for example, an attorney learns that her client desires legal assistance in gaining control of a frail elder’s estate for personal reasons, it is not enough to simply withdraw from the case. That client will either find a willing attorney (perhaps by veiling motives in the next interview) or another means of achieving exploitation. Unless that attorney informs an appropriate authority of the threat to an elder’s assets (and independence), no one will.

The reason: no one else will know.

SPECIFIC RECOMMENDATION

My specific recommendation is that the Committee and its staff:
1. research and assess the conflicting implication of reporting requirements in H.R. 769 and of state law, which prohibits such reporting by attorneys;
2. express its support for and work with the ABA Kutak Commission to have ABA Rules of Professional Conduct modified by adopting proposed Rule 1.7; and
3. communicate and work with state legislatures and state bar associations to ensure adoption of proposed Rule 1.7 into state law.

Ms. Oakar. You are talking about preventive types of things. And I think that is an incredibly broad statement.

Mr. Gilfix. It is indeed, and necessarily so. In closing, I would also like to reiterate that you must give real consideration to modifying an unnecessary absolute constraint currently placed on attorneys, social workers, and other professionals who are dealing with this problem on a day-to-day basis.

Thank you.

Ms. Oakar. Thank you very much. That was very thoughtful testimony.

Mr. Feder.

STATEMENT OF BRUCE A. FEDER, MANAGING ATTORNEY, LEGAL ASSISTANCE TO THE ELDERLY, INC., SAN FRANCISCO, CALIF.

Mr. Feder. My name is Bruce Feder.

I am the managing attorney of Legal Assistance for the Elderly here in San Francisco.

We are in a law office for senior citizens in San Francisco. We currently have 7 attorneys in our office but we do stand to lose about 75 percent of our service in the next year.
I would like to review my comments which will only take a few minutes. And then I would welcome any questions that the committee might have.

During the past 2 years, our office has received an increasing number of requests for assistance with regard to physical or financial abuse of elderly persons. These requests come primarily from friends, relatives, social workers, or sometimes the abused victims, themselves. The abuser might be anybody’s son, daughter, spouse, just a friend, brother, sister, nurse, or government employee. More often than not, the victim is a woman and too often the victim is either too confused, too intimated, or too isolated to seek appropriate assistance.

Mrs. Smith, whose real name I cannot reveal, is a 60-year-old woman who has been married for 10 years. Although she owns the house in which they live, the Smith’s only income is Mr. Smith’s pension of over $1,200 per month.

Mrs. Smith is a few years older than Mr. Smith and he drinks away a significant portion of his monthly check. And he drinks heavily and routinely abuses Mrs. Smith both verbally and emotionally and occasionally he physically beats her. Even when he does not actually strike her, the constant threat of being battered at any time is terrifying. Occasional intervention by police has proven to be short-term, temporary relief, at best.

When the police leave, the source of the problem still exists and Mr. Smith is angrier. Mrs. Smith would have left her husband years ago if she had had either income of her own or some other source of support which would have helped her to pay the mortgage on her home and purchase the daily necessaries of life.

Mrs. Smith’s story is, indeed, an unfortunate one. And she would be here today, herself, to tell her story were she not fearful of retaliation by her husband.

Mrs. Smith’s story demonstrates only one aspect of that which can occur in a variety of circumstances and which can manifest itself in numerous ways.

We have worked with older persons who are literally held captive in their own bedrooms by their own adult children. We have assisted older persons who are being financially abused by their conservators. We have represented older bedridden persons who are left without assistance by their younger spouses.

We have encountered several cases where elderly people have had their life savings or their homes taken away from them by dishonest or older reaching children, their adult children.

There are various legal remedies which are of some assistance when dealing with the problem of elderly abuse. Most of those legal options provide some relief for a problem, then, rather than solving or getting a solution to the problem, itself, or a method by which the source of such problems can be altogether avoided or eradicated.

There are other people here who have had or spent substantial amounts of time studying possible solutions to elderly abuse, and they would, therefore, be more qualified to describe to you their specific ideas for potential solutions.

I do have some general suggestions based on our experiences in working with the elderly, which are perhaps appropriate for congressional consideration.
It is important for people such as Mrs. Smith, who I previously mentioned, to have access to appropriate temporary shelters to escape the physical and emotional abuse which threatens them at home.

Such shelters should provide the public assistance and counseling that may help to lead to a resolution of the problem.

It is also important for local law enforcement agencies to have the funding to acquire and train special staff who can effectively deal with problems involving elderly abuse.

Further, I believe that some elderly people are generally in need of someone to handle their affairs, but conservatorships and guardianships are overused and often imposed or impose unnecessary restrictions on an elderly person's power to make his or her own decisions.

Agencies, both public and private, nonprofit, which provide financial and personal management services for elderly persons should emphasize a need to assist people in a manner which is least restrictive of their personal liberty and which maximizes their ability to live independently.

An additional manner in which elderly persons can be encouraged to continue living in an independent setting is the adequate provision of comprehensive day care centers where older people can receive their various health, recreational and social services that are needed.

Too often an adult child that shares a home with an elderly person cannot provide the many hours of daily care that the parent may require. Frequently, the unfortunate result is that the child, out of frustration, either physically abuses or inappropriately institutionalizes the parent due to an unwillingness to continue providing the necessary care.

It seems likely that the availability of day care centers and respite care which would enable the caretaker to temporarily get away from the caretaking responsibilities will help avoid many instances of elderly abuse.

Serious consideration should also be given to the establishment of reporting laws which are required and a person is likely to encounter to report any such instances to the appropriate agency.

Perhaps this would assist those victims who are afraid or are too confused to know when to go for help or those who have not sought assistance because of the emotional upset which accompanies the process of reporting to a stranger that a member of one's own family is guilty of abuse.

Finally, I would urge the Congress to continue to grapple with the physical and emotional abuse that too often occurs in the nursing homes, keeping in mind that the profit motive inherent in the private nursing home industry and its effect on the relatively helpless patients who are often institutionalized against their own wishes.

Abuse of elderly persons is an all too common occurrence, the prevention of which will require comprehensive planning. It is imperative that the entire problem be brought before the public eye and that the public be educated as to its widespread existence and the need to coordinate our efforts.

Thank you for the opportunity to present the testimony.

Ms. OAKAR. Thank you, Mr. Feder.
I want to thank the panel. I do not have questions, but I would like to make a very brief statement.

I notice that both Mr. Chiplin and Mr. Gilfix centered around an isolated piece of legislation in terms of it being the end-all to end this terrible problem. I can assure you that on behalf of Congressman Pepper and myself, who are the major sponsors of our elder abuse bill, that we really agree with you that we need emergency shelters, respite care, day care, home health care, tax incentives for the families, which would perhaps relieve some of their financial stress, some kind of home rehabilitation, maybe a low-interest-loan program to provide for their having an area in the home to help them stay, certainly counseling which is provided for in the bill for those who did the abusing. They obviously need some help.

We are very disturbed by some of the proposed cuts at this point that are being made, as is my good friend and colleague, Congressman Lantos, also.

Now we respect your helpful suggestions also about the legislation. Congressman, do you have a point to make?

Mr. LANTOS. Just a couple of minutes.

I would like to recognize Ms. Janet Levy who has headed up our State program for years with great distinction in this area.

I have one question which relates to the impact that the elimination of legal aid to the poor would do to these kinds of efforts. May I have a very brief response from each of you, gentlemen?

Mr. Alexander.

Mr. ALEXANDER. I have really been concentrating this morning on aspects of help for the elderly that do not require Federal funding. That is obviously unaffected.

I certainly believe that some of the cuts that I proposed are going to have a very serious effect, but the brunt of my concern at the moment is to find ways of doing the sorts of things that are necessary without financial help.

Mr. LANTOS. Right.

Mr. CHIPLIN. As I said earlier, I am with the National Senior Citizens Law Center in Los Angeles. It is a federally funded legal services program that provides legal assistance to the legal services community and also to senior citizens' advocacy groups funded through the Administration on Aging of the Department of Health and Human Services.

In general, legal services to the elderly will cease to exist. This is particularly alarming in regard to people who are in situations of confinement. They will lose an important means of protecting their rights.

There is little likelihood of help from the private bar. It will not be interested in these cases unless there is possibility of a meaningful fee.

If there is a cutback in legal services funding, it is very likely that the backup centers will be one of the first groups of services to be deleted.

That will have a tremendous and detrimental impact on the entire legal services community. We distribute a wealth of information to program attorneys and to groups like the Gray Panthers, to legislatures around the country and the like.
We also do significant impact litigation on all types of matters. We have been involved in the whole area of looking at protective services laws and the problem of representative payee for many years. I think if our services are cut out that there will be a tremendous shortfall in the ability of the individuals to obtain the kinds of services that they need, as often, we are in situations where you need an adversarial relationship in terms of attorneys on every side of an issue so that people can be heard.

More often than not, the kinds of abuse issues that come up are not necessarily attractive cases to the private bar, so you will often find that the abused elderly as well as other significant groups in a community just will not be able to engage in this adversarial process.

Mr. Lantos. I thank you very much.

Mr. Gilfix.

Mr. Gilfix. My first response is to ask, who else? In the context of elder abuse, for example, 99 percent of the legal workers representing abused elders are funded either by the Legal Services Corporation or by the Older Americans Act. Significantly, title III of the Older Americans Act does not mandate legal services. At this time, our program and many others are funded by title III.

Moreover, private attorneys have neither the capacity nor desire to do outreach in the elder community, as our programs do. If we do not go into the nursing homes and if we do not go into senior day care programs and tell them what we are doing, and tell them what alternatives there are, they are simply not going to know what their legal recourse is in various situations.

And, being very realistic, there are rarely fees in these cases that are commensurate with the work involved. Such cases take an enormous amount of time and necessitate a thorough knowledge of the entire social service network. Private attorneys almost always lack such expertise.

To suggest that legal services needs of disadvantaged persons will somehow be addressed even if public funds are eliminated is naive, at best. At worst, it is unconscionable.

Mr. Lantos. Mr. Feder.

Mr. Feder. I don't want to repeat what Mike said. That is pretty much a summary, but I think that it takes offices such as ours to help provide the needs and be most sensitive to the needs of elderly clients. The public bar has, now in my experience, not shown that sensitivity, or the responsiveness.

Perhaps another point that showed be made is that our obligation is to the elderly community and not specifically or only to individual clients, I think that it is important that the elderly have that available.

The bottom line really for the elderly people, it may be best summarized by an ad I saw in a magazine for the Legal Aid Society asking for contributions and it simply said, due to a lack of funding this year, there will be a shortage of justice. And that is what it is going to mean to elderly and poor people in this country, if those cuts are made.

Mr. Lantos. It is the judgment of this member of Congress that equal justice under the law is not feasible for the abused elderly if these programs are eliminated.

I want to apologize, Madam Chair, but I have another meeting that I have to go to.
Ms. Oakar. Thank you and I want to thank you for your hospitality in this area of the country. Both you and Congressman Burton, thank you.

Did you have a question, doctor?

Mr. Filante. Madam Chairman, I do have a couple of comments and I really appreciate Congressman Lantos bringing up this point, because I would say that if we were to see some drastic cuts in Federal funding that it could well result in some sort of a disaster, whatever your definition is, unless it was also accompanied by a decrease in inflation so that we were not taking away people's wealth and money, unless it was also accompanied by an increase in personal responsibility to individuals and families. And we have not seen that in the last 10 or 20 years; that is, with the various Government programs.

Unless we had an increase in funding of local programs with the tax dollars that might be left over from Federal tax cuts. I think that it is crucial that people get the Federal and local and State level and the private sector to understand their interrelationship, so that no matter which policy direction we take we are prepared.

Along this same line, Mr. Feder mentioned I thought a very important point and that is that, one, we are thinking about the elderly, especially, and the financial cost that we need to take care of and include the ideas such as day care and respite.

We have found in our studies here at the State level which, as I said, involves usually half Federal funded money, that that type of alternative is often less expensive than another one, such as hospitals and it is crucial that we get that through some of the heads of the bureaucrats or whomever, making and imposing these decisions.

We have had to also make many changes in the profession lately and I do not know what the right answer is, but at least it is beyond what I am talking about.

Dean, I apologize for interrupting you before, but you have brought up a good point. I think in your comments you were only looking at the disease trained in a narrow sense. I think that is partly the fault of the medical profession and the teaching professions. It is also partly the fault of the Federal Government that has put the emphasis on Federal funding for research.

I am glad that we are beginning to understand. I would take exception to your statement that a physician cannot interpret and evaluate the factors about how a person can cope or can relate to the various factors in his life environment.

Because of my own personal experience, my wife and I have been family doctors for 30 years, and we remember that. I am an ophthalmologist and she is a specialist in what is called physical medicine and rehabilitation. Her primary job is to do what you say physicians cannot do, and that is to interpret the physical and mental state and evaluate that in relation to the job, home, and family, government, and whatever else is there and to the extent that the services of such physicians are not known or used, you are absolutely correct, but to the extent that we say physicians cannot be doing this, I strongly disagree.

Thank you.

Ms. Oakar. Do you want to respond, Dean?

Mr. Alexander. Yes.