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Blurred Lines: Financial Exploitation constitutes Elder Abuse and Neglect

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Definition of "The Elderly"

- First, the definition of "Elderly" according to the Merriam-Webster dictionary is:
  - Somewhat old;
  - Advanced beyond middle age;
  - Bordering on old age;
  - Aged (pronounced as two syllables) members of society;
  - Federal law defines "older individuals" as those aged 60 years and older.

Federal Definition of Exploitation

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- Older Americans Act, 42 U.S.C. 3002 (24)

  The term "exploitation" means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit or gain.

The Statistics for an Aging Population

- 41 million Americans are over the age of 65
- By 2060, older Americans will be top 90 million of the population and will outnumber children under the age of 18
- The first Baby Boomers turned 60 in 2006
- 77 million Baby Boomers are expected to retire within the next 20 years
- The fastest growing segment of the population is those aged 85 and older

- Sources:
- Pew Research: "Attitudes about Aging, A Global Perspective", www.pewglobal.org.
- Administration on Aging, "Aging Statistics", www.aoa.gov.
- National Research Council, "Aging", www.nationalacademies.org.

The Statistics for an Aging Population (continued)

- The projection for 2050 is that there will be 19 million individuals aged 85 and older
- More and more seniors are choosing to “age in place” at home which leads to greater isolation and the risk of exploitation

Source: National Center on Elder Abuse 2010

The Crime of the 21st Century

- The Crime of the Century does not involve computer hacking but rather the financial exploitation of the elderly in the United States
- Approximately 90% of the perpetrators are family members

- Source: National Center on Elder Abuse 2011

Understanding the Crime

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11.2 Trillion

Total wealth held by high net worth households with at least one member over the age of 60

Source: 2010 Evaluserve

The Actual Breakdown of Abusers

▪ Adult Children	40%
▪ Spouse	15%
▪ Grandchildren	9%
▪ Parents	9%
Others	8%
▪ Other Relatives	8%
▪ Siblings	5%
▪ Service Providers	3%
▪ Friends	2%
▪ Unknown	1%

Source: National Center on Elder Abuse 2011

Mental State of the Financial Exploiters

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According to the National Center on Elder Abuse:

- The family member abuser tends to have alcohol or drug addiction and/or
- Some kind of mental illness AND
- Is overwhelmed by his/her caregiving responsibilities

When Advisors Fail: Mrs. Huguette Clark as a Case Study

- At the age 84, the reclusive Huguette Clark finally relented and sought outside help for her poor health
- She had been occupying 15,000 square feet at 907 Fifth Avenue for decades
- Having acquired the 2 largest apartments plus her own in Manhattan after her her mother's death in 1963
- Huguette was 57 years of age at the time her mother passed away

- All of the information within the case study is from the book, Dedman, Bill and Paul Clark Newell, Jr.: *Empty Mansions: The Mysterious Life of Huguette Clark and the Spending of a Great American Fortune,* New York: Ballantine Books, 2013.

Huguette Clark (continued)

- Huguette Clark was the daughter of William A. Clark a copper king that has largely been forgotten despite the fact that in his day he was as wealthy as the Astors, Vanderbilts, Morgans, Rockefellers. Despite his vast fortune, he ran his businesses as sole proprietorships and they collapsed upon his death and were sold.
- His fame during the Gilded Age was rather infamy as he crassly sought to purchase a senate seat while living in the state of Montana and was ultimately forced to resign as senator.

Huguette Clark (cont'd)

- W.A. Clark passed away in 1925.
- Huguette inherited in today's dollars $1.1 million per year until age 21 (she was 17 when her father passed away) and then outright with her siblings. His wealth was estimated around $250 million which Huguette shared with her surviving 5 half siblings from her father's first marriage.

Huguette Clark (cont'd)

- Huguette's mother, Anna was in her 40s when the 86 year old patriarch of the family died.
- Anna received 2.5 million in cash, furnishings from a Paris apartment, an undisclosed sum from an antenuptial agreement and Bellesguardo, the Santa Barbara mansion.

Huguette Clark (cont'd)

- This is how at age 84 and in ailing health, a woman that had occupied 15,000 square feet and owned two huge, impressive empty mansions was discovered weighing less than 80 pounds, existing on sardines and crackers with skin cancer that had partially eaten away at a lip and eyelid.
- She had paid staff to maintain her properties that had never met her and communicated via letters.
- It was the widow of her former attorney that called emergency services to pick up Huguette at her Manhattan apartment.

Huguette Clark (cont'd)

- W.A. Clark and his spouse, essentially made specific bequests in their wills and did not prepare their daughter Huguette to manage her financial affairs.
- As a result, when Huguette's mother passed away in 1963, Huguette at age 57 had never managed her life or finances. Her mother bequeathed nearly everything to her.

Red Flags at the Hospital

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- It was 1991 and Huguette was nursed back to health and had plastic surgery on those areas affected by skin cancer.
- She elected to remain in the hospital in a small, dark room, in good health for the next 20 years.
- She was worth $300 million.
- During this time, she enriched her nurse, Hadassah Peri with $31 million in cash and gifts (even paid off her tax bill as a result of her new-found wealth)
- The hospital received ca. $51,785 per month for her stay (adjusted for cost increases and inflation over those 20 years)

Red Flags (cont'd)

- She started to spend around 1 million per year once hospitalized; had previously spent around $300,000.
- She kept nearly 6 million dollars in a regular checking account –despite repeated requests to at least put some of it in a certificate of deposit.
- Her attorney and accountant were aware of the spending for all accounts except for this personal checking account.
- Sold a Renoir for $23.5 million due to cash flow problems.
- Sold a Stradivarius violin, "La Pucelle" for $6 million.

Red Flags (cont'd)

- Essentially, Mrs. Clark would give sums of money to anyone with a "sob story".
- Many nurses profited as well as the hospital itself with 10 million gift.
- The day nurse, Hadassah Peri, received 15 million in cash in addition to her salary of $131,040 per year.
- Purchased two homes for Hadassah worth around 2 million today, gave her son a Stradivarius valued at $1.2 million, an apartment, paid school tuition for her children, summer camp, vacations, medical bills were covered.

Strong-willed and Reluctant to Plan

- Previous attorney spent 17 years trying to get her to update a will and died without accomplishing this task;
- Her most recent will was signed after her brief marriage ended in 1930 in which she left everything to her mother.
- It was now 2005 and Huguette was 98 with pneumonia.
- Her apparent impetus to finally sign another will is owed to her nurse, Hadassah, who was promised $5 million and who apparently wanted to collect.

First Will with Second Set of Advisors An Attorney and an Accountant

- Her father's descendants
- $5 million to Hadassah Peri, nurse
- Attorney and accountant named as executors

Second Will– 6 weeks later

- Family members expressly left out of will
- Creation of the Bellosguardo Foundation which would receive the Santa Barbara estate and should foster and promote the arts
- Also left the Foundation with her very valuable masterworks, musical instruments
- $1 million to Beth Israel Hospital
- $100,000 to her doctor
- $500,000 to her personal assistant

Second Will (cont'd)

- $500,000 to accountant
- $500,000 to attorney
- $25,000 to handyman
- Her very valuable antique doll collection and houses to Hadassah Peri
- A Monet painting valued at $25 million to Corcoran Gallery
- Remainder, 60 percent to Hadassah Peri

Second Will (cont'd)

- 25% to goddaughter
- 15% to Bellosguardo Foundation
- Problems:
- Drafted by a beneficiary
- Only individual that discussed Huguette's wishes was also a beneficiary and a felon (the accountant)
- Will signing was not videotaped or photographed
- Nurse, Hadassah reportedly helped her sign
- No independent doctor verified her capacity

The Settlement

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- Descendants of W.A. Clark sued the estate following Huguette’s passing
- Descendants won $34.5 million to be divided amongst the 19 of them
- Bellosguardo Foundation which will receive the $85 million mansion and some cash
- The nurse will not receive the estimated $30 million as a remainder beneficiary but was ordered to pay back $5 million (she did receive $30 million in cash and gifts during Clark’s lifetime)

The Settlement (cont'd)

- The accountant and the attorney will not receive any money and have been removed as executors. As executors, they would have received $6 million each.

Discussion Points: How to handle a client such as Huguette Clark

- Reportedly “sharp” and able to still feed herself and walk at the age of 104.
- Very clear in what she would do and would not do and often deferred decisions until “after the holidays” or ”state that it was not a good time”.
- Last seen by relatives in 1968 at a funeral; never introduced to younger relatives.
- Did not want relatives to know that she lived in a hospital

Huguette’s Red Flags

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- Unusual activity in a older person’s bank account
  - Large check amounts sometimes twice a day to her nurse and other friends, employees
  - Bouncing checks
  - Refused to meet with advisors in person, conducted all business over the phone or in letters
  - Changed her will within a short period time after first refusing to update
  - Sales of significant masterworks due to lack of cash

Huguette as the perfect "victim"

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- Outlived her father's advisors; he passed away in 1925
- Huguette lived to be 104 and passed away in 2011
- Was reclusive and private
- Was stubborn and never fully relinquished control
- Died owing the IRS $82 million in gift taxes with mounting penalties as her advisors failed to file proper returns or provide proper planning
- Between 1997-2003, she gave away approximately $56 million in gifts

Risk Management

- Assume that you were the attorney or accountant in this scenario? How would you manage Mrs. Clark’s assets?
- Assuming that your institution was not acting as a trustee but managing Mrs. Clark’s assets, how would you handle Mrs. Clark’s requests?
- What would be the appropriate policies and procedures avoid this scenario?

Before Reporting Bank-Employees Often Consider

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- Privacy laws
- Gramm-Leach-Bliley Act
- Seniors reluctance to acknowledge abuse even when APS investigates
- Seniors often have poor memories and do not make the best witnesses
- Failure to acknowledge by Senior because of fear of abandonment by family, caregiver and/or confidant

Source is "Stopping Financial Abuse of Seniors" by Leslie Callaway and Jerry Becker, ABA Bank Compliance, July-August 2011, pp.12-13

Right to Financial Privacy Act
12 U.S.C. Sec. 3401 et seq.

- 3403. Confidentiality of financial records
  - *"Nothing is this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity."*

Gramm-Leach-Bliley Act: Exceptions with regard to privacy and information sharing

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- Exceptions to privacy rules allow a financial institution to disclose nonpublic personal information
  - With the consent or at the direction of the consumer
  - To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability
  - To the extent specifically permitted or required under other provisions of law, to law enforcement agencies or for an investigation on a matter related to public safety and
  - To comply with federal, state, or local laws rules and other applicable legal requirements.

Proper Planning Prevents Poor Performance (of Ultimate Wishes)

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- Individuals need to plan well ahead of decline, preferably in middle age or earlier if wealthy.
- Advisors need to have these conversations very early and very often with clients reluctant to plan.
- Should provide trusted advisors/institutions with some limited powers as a “test run” such as an agency account or trust relationship with a financial institution.
- POA should be specific for planning with specific powers including power to fund a trust.

Some Factors

- Within the elder and vulnerable adult populations, there is a subset of individuals who are especially at risk and special attention should be paid when assessing risk or investigating suspected financial abuse.
- **Age**
  - Age is not always a factor in potential fraud, but traditionally individuals over the age of 85 are at greater risk.
- **Status**
  - Frequently victims of financial abuse are female and single, or individuals who have had little opportunity to learn and understand the components of a financial transaction.
- **Limitations**
  - Individual suffers from macular degeneration, which impairs sight, dementia, or other cognitive problems that compromise understanding.
- **Transition or life event**
  - Individual is in the middle of life event or transition such as death of spouse, sickness, move to new location

Steps to Help Prevent Fraud

- **Procedures**
  - Follow established procedures that are attentive to risk. Maintain care when requested to make exceptions to common practices.
- **Knowledge of client**
  - Know the person who is party to transaction. When in doubt, ask for identification.
- **Controls**
  - Sound fiduciary procedures include controls. Use controls.
- **Capacity of client**
  - Pay attention to client's capacity. Use common sense if behavior appears compromised.

  - **Report to Adult Protective Services**
  - When become aware of exploitation or neglect, report to Adult Protective Services and possibly local or Federal law enforcement.

Steps to Help Prevent Fraud (cont'd)

- **Look to questionable account changes**
  - Attention to checking activity
  - Retitling of assets
  - Addition of signer, joint owner
  - Increase in account activity
  - Large transactions, inconsistencies
  - Sudden overdrafts
  - Account openings, closings
  - Inconsistent gifting or donations
  - Co-Signers on lines of credit
  - Requests for funds over and above normal expenditures
  - Changes in terms of estate planning documents

Steps to Help Prevent Fraud (cont'd)

- **Separation**
  If elder or vulnerable adult is accompanied by helper, separate helper from customer to ascertain intent of client/customer
  Socialization
  - Pay attention to socialization needs of family member or client
  - Pay attention to loneliness of family member or client
  - Family systems are important
- **Common sense**
  - Trust common sense
  - Trust intuition
  - Delays in transactions are rarely significant and can prevent fraud

Final Thoughts

- When paying attention to economic crime, elder and vulnerable adult abuse, and undue influence, disconnects arise and frequently delay investigation.

- **Stereotypes**
  - Be careful of stereotyping elderly client or vulnerable adult. Frequently professionals discount information from the alleged victim of fraud and as a result miss significant information.
- **Capacity**
  - Do no confuse capacity with memory. Information can be garnered from someone that may be useful, although the person giving the information may not remember his or her conversation with you.
- **Care and fraud**
  - Frequently the perpetrator of fraud or undue influence is giving excellent care to the victim. This causes a significant "disconnect" for many professionals and family members and delays appropriate action.

For further information

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