NOT QUITE A GOLDEN AGE: ELDER ABUSE AND AN EXPLORATION OF MULTI-DISCIPLINARY SOLUTIONS

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Not Quite a Golden Age: Elder Abuse and an Exploration of Multi-disciplinary Solutions

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“The son, if he sees his father living to a ripe old age, gets annoyed.” ¹

I. Introduction

For millennia, mistreatment of the elderly has been a pervasive problem which impacts the lives of people across the world from a variety of socio-economic and cultural backgrounds. As the world’s demographic population continues to shift, becoming older and grayer, this phenomenon will only become more prevalent. Discovering and reacting appropriately to elder abuse is beyond the scope of any one discipline. It is even more difficult to discover and utilize proactive solutions to stop the abuse before it starts. Therefore, it is imperative that greater communication and collaboration occur across a multitude of disciplines.

Part II of this paper will attempt to define elder abuse-- its forms, prevalence, and origins. The history of care for the elderly and the genesis of the nursing home as an institution will be examined in Part III. Next, Part IV will explore the legal history of common and statutory law and attempts to reduce elder abuse, regulate behavior and punish abusers. The Elder Justice Act and the burgeoning multi-disciplinary team approach will be inspected in Part V. Future steps for New York State in addressing elder abuse as well implementing multi-disciplinary initiatives will be addressed in Part VI. Ethical challenges and potential solutions will be reviewed in Part VII. Finally, Part VIII will provide synthesis and conclusion.

II. Elder Abuse Comes of Age

¹ Tim G. Parkin, Old Age in the Roman World A Cultural and Social History 203 (2003) (citing John Chrysostom in Epist. ad Coloss. 1.1.3 62,(303)).
Around the end of January of 2014, Richard Englander, a seventy nine year old veteran and retired small business owner who suffered from multiple sclerosis, posted an advertisement on Craigslist looking for a live-in home health aide. Mr. Englander’s previous aide, who had worked for him for over two years, had to quit after her mother fell and broke her hip. On February 2, 2014, based on his Craigslist ad, Mr. Englander hired Sarah Moore, whose previous occupation was a hairdresser. Less than a week after being hired, Ms. Moore allegedly stole one of Mr. Englander’s checks and attempted to cash it at his bank. Mr. Englander’s bank became concerned and called to alert him. While Mr. Englander was on the phone with the bank Ms. Moore began to argue with him and a struggle ensued. The bank became alarmed and alerted the Albany Police who arrived at Mr. Englander’s home to find him in his wheelchair, severely beaten with his throat cut. Mr. Englander died shortly after sustaining his injuries and Ms. Moore was charged with committing the first homicide in Albany, New York in 2014. On September 15, 2014 Ms. Moore plead guilty to second degree homicide and on October 14, 2014 she was sentenced to 25 years to life in prison.

The tragic death of Mr. Englander highlights the fact that profound social changes are occurring within our society regarding care for the elderly. The stark reality faced by too many of our nation’s elders is that they find themselves needing to rely on someone else for caregiving

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5 Id.
6 Id.
7 Id.
8 Id.
services so that they can remain in the community and not become institutionalized. Mr. Englander’s heartbreaking homicide calls into question the value society places on this increasing percentage of our population, and the readiness of an individual to assume a filial duty of providing adequate protection and services. Additionally, this tragedy underscores the challenge of finding appropriate assistance for the elderly in an era of inadequate funding and poor communication among various disciplines that are essential to serve them.

To best explore this increasing dilemma it is important to understand the complex and shifting attitude about the elderly in various societies, and the socio-cultural factors that have impacted the care and respect (or lack thereof that) they have received over time. Addressing the challenge of elder abuse in our country requires not only a multidisciplinary approach but also an appreciation of its possible historical origins. Regrettably, elder abuse has only very recently been identified as a social ill whose origins lie in a “complex constellation of problems, that similar to other issues such as child abuse and . . . domestic violence . . . require a three-prong integrated health care, social service, and legal approach.”10 Nevertheless, funding to mitigate elder abuse and development of multidisciplinary programs and solutions still remain in their infancy when compared with other forms of interfamily violence.

Even defining elder abuse itself and determining its prevalence is complex, as is delegating and focusing the necessary resources to make an impact in this critical area. While “[f]amilies still provide the bulk of care for elders [t]he family structure, and thus perceptions of who is responsible to provide care, are altered due to divorce, alternate living arrangements, and step-families. There are approximately 3.3 million long-distance caregivers and their number is expected to double over the next 15 years. Non-family members, paid and unpaid, are providing

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more care . . .”11 This trend has necessitated greater intervention by the State into the lives of the elderly as concerns are now increasingly being raised about their care. In fact, evidence “shows that most older people are abused, neglected or exploited by their caregivers . . .”12 A study of 220 adult caregivers of family members caring for their relatives with dementia found that “[m]ore than half . . . reported [that they have] engaged in some abusive behavior-including screaming, insulting, or cursing-directed at the person in their care . . .”13

Elder abuse is not a new phenomenon, but merely “the most recent variety of domestic violence to command public concern.”14 The “discovery” of elder abuse by social scientists was an outgrowth of investigations into other forms of domestic violence “uncovered” in the 1960s and 1970s, including child and spousal abuse.15 This unearthing of various forms of interfamily violence at first induced federal action, with the passage in 1974 of the Child Abuse Prevention and Treatment Act as well as Adult Protective Services (“APS”) under Title XX of the Social Security Act.16 APS was initially designed to provide a “‘system of preventive, supportive, and surrogate services for the elderly living in the community to enable them to maintain independent living and avoid abuse and exploitation.’”17 While the development of APS at a federal level raised awareness of this disturbing issue, finding solutions to it was left up to the states.18 Moreover, APS services have largely been an unfunded mandate which until recently

13 Id.
14 Seymour Moskowitz, Saving Granny from the Wolf: Elder Abuse and Neglect the Legal Framework, 31 Conn. L. Rev. 77, 82-83 (Fall 1998).
15 Id. at 83.
16 Id.
17 Id. at 83-84 citing John Regan, Intervention Through Adult Protective Services Programs, 18 The Gerontologist 250, 251 (1978).
was entirely funded through the Social Security Act’s Title XX block grants. These block grants dramatically decreased “during the 1980s [forcing states] to fund and develop their own responses to elder mistreatment, which soon proved inadequate.”

As early as 1985, Congress was aware that states were spending $22.14 per child resident “on protective services versus $2.91 per older resident for elderly protective services.” This disparity was discussed again in 1990, when Congress found that in the prior year, states spent $45.03 per child resident for protective services compared to $3.80 on elders. Concerned about this disparity, Congress had approved five million dollars for states to assess the need for elder abuse prevention services in 1988, 1989, and 1990, but inexplicably failed to actually appropriate any money. Disproportionate funding continued to persist and in 2004 total federal expenditures directed towards mitigating elder abuse was less than one percent of all federal funds spent on family violence.

This inequality in funding for elder abuse emphasizes that while lip service is paid towards elder abuse, the well-being of older adults is not given equal consideration compared to other groups. This is despite the fact that elder abuse has been understood to be fairly prevalent in the community. Attempts to establish the prevalence of elder abuse have taken place in order to demonstrate the true scope of this societal problem. The first study which attempted to establish its prevalence was conducted in Boston in 1986, and found a figure of 2.6% of elders

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20 Id. at 84.
22 Id.
23 Seymour Moskowitz, supra note 14, at 84.
were abused in the past year and 3.2% since the age of 65.\textsuperscript{25} Since then, prevalence studies of elder abuse have been conducted around the world, including: “1990 Canada 4.0%; 1992 UK, 5.0%; 1994 Holland, 5.6%; 1999 Canada, 7.0%; 2002 Hong Kong, 20% and 2005 in Israel at 18.4%.”\textsuperscript{26} More recently, a 2011 study conducted in New York found that 3.4% of residents over the age of 60 had experienced some form of elder abuse.\textsuperscript{27} The incidence of elder abuse cases reflected in this study should be considered as merely the tip of the iceberg as it was found that the self-reported incidence rate of elder abuse was twenty-four times greater than reported to social services, law enforcement, or legal authorities.\textsuperscript{28} In 2014, a meta-analysis was conducted of studies which attempted to ascertain the prevalence of elder abuse in the United States and found that “seven studies [which] used validated measures [had] found a wide variety of prevalence rates, ranging from 3.2% to 27.5% . . .”\textsuperscript{29} Differences in the prevalence of elder abuse in the United States have also been noted amongst people from different ethnic backgrounds. African Americans in Allegheny County Pennsylvania self-reported rates of financial and psychological abuse at 24.4% versus 13.2% for non-African Americans.\textsuperscript{30} It is unclear whether this difference implies that African Americans conceptualize abuse more broadly or are more willing to self-report it. Nonetheless, African Americans have been found to be overrepresented by 100% in the nation’s elder abuse victim population.\textsuperscript{31}

\begin{thebibliography}{10}
\bibitem{id} \textit{Id.}
\bibitem{id_2} \textit{Id.} at 10
\end{thebibliography}
This great divergence in prevalence rates is not only a byproduct of the willingness by participants to divulge that they have been abused, but more importantly by how elder abuse and neglect is defined and conceptualized. While repeated attempts have been made to create a universal understanding of what this phenomenon is there is no single definition that encompasses all of its forms.”\textsuperscript{32} The term elder abuse and neglect is only the latest phrase used. In the past this phenomenon has been known as: “granny battering, elder mistreatment, the battered elder syndrome, elder maltreatment, granny bashing [and] old age abuse . . .”\textsuperscript{33} The World Health Organization has defined it as “a single or repeated act, or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person.”\textsuperscript{34} The United States Senate has characterized elder abuse as “the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.”\textsuperscript{35} The Centers for Medicare and Medicaid Services define abuse in a nursing home as the “willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.”\textsuperscript{36} Defining elder abuse, neglect and exploitation is challenging as these terms “defy neat categorization in any one discipline. They imply combined conclusions of law, social service, or ethics, on the one hand, and medicine on the other, making it virtually impossible to examine the issue through a single lens.”\textsuperscript{37}

Analogous to the difficulty in defining elder abuse, it can be problematic to establish universally accepted definitions of the kinds of behaviors which are abusive. At a fundamental

\begin{itemize}
\item\textsuperscript{32} Moskowitz, supra note 14, at 89-90.
\item\textsuperscript{33} Sana Loue, Elder Abuse and Neglect in Medicine and Law the Need for Reform, J.L. Medicine 159, 159 (2001).
\item\textsuperscript{35} 111 S. 17965 (2009).
\item\textsuperscript{36} 42 CFR 488.301 (2003).
\item\textsuperscript{37} Marie-Therese Connolly, supra note 10, at 38.
\end{itemize}
level, abuse is a deviation from what is culturally prescribed normative behavior. As such it is difficult to universalize. For example, it was a routine practice until the 1950s, and not considered abusive by the aboriginal people of the pacific island of New Britain, for a widow’s brother or son to strangle her to death immediately after her husband’s death. We would characterize this behavior as homicide and elder abuse. Likewise, many other aboriginal cultures might consider our ability to abdicate our filial duty to the State (where our elders will be intentionally segregated in institutions) as abuse; yet increasingly this is seen as normative.

Therefore, our concept of what is elder abuse is shaped by a variety of factors including: our individual history, family history, family norms, cultural norms, and cultural or extra cultural stressors, and cultural tolerance for punishment and aggression. In fact, research indicates that in the United States, individuals from different cultural and ethnic backgrounds have different tolerance levels and understandings of elder abuse. Nevertheless, like other forms of family violence, elder abuse “cuts across all social, economic, and national borders with . . . most perpetrators of abuse [being] family members . . .” While initial studies focused on physical

38 See Thomas Goergen & Maire Beaulieu, Ageing Criminological Theory and Elder Abuse Research-Fruitful Relationship or Worlds Apart?, Ageing Int. 185, 186 (2010).
40 See US House Select Committee on Aging, Elder Abuse An Examination of a Hidden Problem (1981) (which had included deprivation of an elder’s persona liberty as abusive, but today this is not generally considered abuse).
42 See Kathleen Malley-Morrison, Nyryan E.V. Nolido, & Sonia Chawla, International Perspectives on Elder Abuse: Five Case Studies, Educational Gerontology, 32: 1, 5 (2006) (“Native American[s] viewed various forms of elder mistreatment as more abusive than did White[s:] Black respondents [more] than White or Korean Americans rated a set of 13 elder mistreatment scenarios as abusive [and] were less tolerant than Whites of verbal and financial abuse, and the most resisting to seeking outside help when elder mistreatment was occurring . . . Japanese Americans [and] Taiwanese Americans were less tolerant of tying a physically or mentally impaired adult to a bed and yelling at [them,] financial exploitation was most tolerated by Korean Americans . . .”).
44 United Nations Economic and Social Council, Abuse of Older Persons: Recognizing & Responding to Abuse of Older Persons in a Global Context, 2002, at 4 (where physical abuse is defined as “single acts that may be repetitive, or enduring . . .”).
and psychological abuse, there is a general consensus that financial and sexual abuse, as well as neglect, and self-neglect are all different behaviors which are abusive to elders.

While elder abuse was “exposed” at the same time as other forms of interfamily violence there continues to be a considerable dearth of research into the mistreatment of elders as compared with other forms of interfamily violence. Furthermore, those theories and models that do exist have largely been adapted from our understanding of interfamily violence including: the situational model, social exchange theory, social learning theory, and ecological systems theory. However, underlying all of these attempts to understand elder abuse is a common framework of a power imbalance, diminished resources, stress, and opportunity.

A plethora of factors have been hypothesized that put an elder in the community at risk for abuse, including: age, gender, physical and mental health status, maladaptive psychological

45 See Id., (which defines psychological or emotional abuse as “chronic verbal aggression, include[ing] words and interactions that denigrate older individuals, are hurtful and diminish their identity, dignity and self-worth . . .”).

46 See Id., (defining financial abuse as including “(a) the illegal or improper use, or misappropriation of an older person’s property and/or finances; (b) forced changes to his/her will and other legal documents; (c) denial of right of access to and control over persona funds; and (d) financial scams and fraudulent schemes . . .”).

47 See National Committee for the Prevention of Elder Abuse, Sexual Abuse, (2008), http://www.preventelderabuse.org/elderabuse/s_abuse.html, (defining elder sexual abuse as: “any form of non-consensual physical contact [including] rape, molestation, or any sexual conduct with a person who lack the mental capacity to exercise consent.”).

48 See Simon Biggs & Irja Haapala, supra note 25, at 174(which defines neglect as a “lack of action to meet an older individual’s needs by . . . not providing adequate food, clean clothing, a safe, comfortable place to live [or] denying the person social contact.”).

49 See Madelyn Iris, John Ridings, & Kendon Conrad, The Development of a Conceptual Model of Understanding Elder Self-neglect, Gerontologist Vol. 50 No. 3 302, 303 (2009) (defining self-neglect as: “the inability (intentional or non-intentional) to maintain a socially and culturally accepted standard of self-care with the potential for serious consequences to the health and well-being of the self-neglecter and perhaps even to their community.”).

50 See Marie Therese Connolly, Testimony Before the Senate Special Committee on Aging, (2011) http://www.aging.senate.gov/imo/media/doc/hr230mc.pdf.

51 See Sana Loue, supra note 33, at 170 (which argues that: as situational stress or other structural factors increase so does abuse.).

52 Id., 170-171, (arguing that elder financial abuse is explained by the fact that they are easy targets and therefore predators can seek to maximize their “rewards” while minimizing punishment.).

53 Id., at 171, (social learning theory argues that if children are reared in an environment where familial violence is normative this background will lead to greater abuse of their parents and grandparents.).

54 Jose Ruben Parra-Cardona, Emily Meyer, Lawrence Schiambert, & Lori Post, Elder Abuse and Neglect in Latino Families: An Ecological and Culturally Relevant Theoretical Framework for Clinical Practice, Family Process Vol. 46 No. 4, 452 (2007) (this theory views elder abuse as being influenced by multitude of systems that affect both the perpetrator and the victim family as family of origin, economic pressure and cultural beliefs relating to ageing.).
and behavioral patterns of abusers, lack of social support, lower economic status, wealth, higher population density, living in a rural area, stress, substance abuse, mental health problems, a prior history of abuse, social isolation, cognitive impairments or other disabilities, a caregiver living constantly with an elder, poverty, tension between the elder and caregiver, lack of medical insurance, being a person of color, a history of being abused, inexperience in caregiving, having high expectations for a dependent elder, and the abuser’s dependence on the elder. This “kitchen sink” approach indicates that everyone is a potential victim. One might conclude that the overarching feature is that if an elder has to rely on others to assist or provide caregiving services he or she is at risk. This conclusion is extremely problematic when one considers that really only three caregiving options are available: care for yourself (with the risk of being labeled as being a victim of self-neglect); care from a family member or stranger (who might abuse them); or segregation in an institutional setting. Elder abuse could be seen as an outgrowth of social constructs towards our elders that “increasingly ‘marginalized, institutionalized, and stripped [them] of responsibility, power and ultimately, their dignity.’”

Discrimination towards our elders or ageism is rampant and appears to act the master category within which abuse thrives. While the United States Supreme Court found that the


56 Sana Loue, supra note 33, at 160-161.

57 See Bethany Imbody, Elder Abuse and Neglect: Assessment Tools, Interventions & Recommendations for Effective Service Provision Bethany, Educational Gerontology 37: 634, 646-(2011) (citing Nelson, 205,208); see also Robert B. Wallace, Research Directions in Elder Mistreatment Research Robert B. Wallace, MD, MSC Departments of Epidemiology & Internal Medicine, College of Public Health, University of Iowa (2012) (at 6 which argues that it imperative to re-conceptualize the terms elder neglect and self-neglect as a diagnostic social problem.).

58 Bridget Penhale, supra note 55, at 252 (citing Penhale et al. (2000)).
elderly were not a discrete or insular minority which necessitated special protection,\textsuperscript{59} studies indicate that ageism is widespread and “72% of American elders . . . reported some level of personal or institutional discrimination.”\textsuperscript{60} It is believed that ageism allows younger generations to see their elders as inherently different from themselves, allowing them to deny the fact that they might one day become old.\textsuperscript{61} Derogatory language commonly used to describe elders as “hags”, “old farts”, “fossils”, and “geezers”, signifies that elders are perceived as inherently different from younger generations.\textsuperscript{62} This negativity is rooted in the perception that elders lack social worth and make “few social contributions and [are a] drain [on] existing social resources.”\textsuperscript{63} Perceptions that elders are different from the younger generations is reinforced by physiological changes part of the aging process such as wrinkles, grey hair, and muscle loss.\textsuperscript{64}

Discrimination is probably reinforced by our culture, which enshrines “youth” even despite the tremendous growth in those over the age of sixty. Images of the elderly which do exist are overwhelmingly negative and we are told as a culture that the ways “to feel good about ourselves are related to beauty, productivity, and strength [qualities which elders are perceived as lacking.]”\textsuperscript{65} It has been argued that the lack of positive images of elders is due to the fact that they remind us of our inherent mortality. Elders remind us of death as they fail to meet the standards of our death-denying culture.\textsuperscript{66} This discrimination and negativist attitudes toward our elders has caused some social scientists to question whether a filial duty to ones’ parents still

\textsuperscript{62} Id. at 199
\textsuperscript{63} Michael N. Kane, Imagining Recover, Resilience, & Vulnerability, 34 Educational Gerontology, 30, 32 (2008).
\textsuperscript{64} Id. at 34.
\textsuperscript{65} Dagmar Grefe, Combating Ageism with Narrative & Intergroup Contact: Possibilities of Intergenerational Connections Pastoral Psychology 99, 101 (2011).
\textsuperscript{66} Id. at 102.
exists among the youth.\textsuperscript{67} Moreover, those youth who do fulfill this obligation might only exacerbate elder abuse when care is combined with a lack of social support, misunderstanding of aging and insufficient interaction with elder triggering resentment rather than respect.\textsuperscript{68}

Finding solutions to elder abuse is no easy feat and mostly likely entails the difficult and lengthy process of reshaping our societal attitudes, a process in which we all should be stakeholders for our own personal interests when we grow old. Aging is a natural process that is biologically driven and affects everyone from the moment they are born; yet it is also a social process.\textsuperscript{69} Historically what we deem as “old age” encompasses a variety of assumptions and value judgments. When a society characterizes someone as “old” it implies that the individual lacks social and economic value and he or she has been relegated to a position of dependence.\textsuperscript{70}

In classical antiquity, as today, “old age” was conceptualized as an age cohort of somewhere around sixty or sixty five.\textsuperscript{71} However, in attempting to define what it means to be “old” a variety of social, economic, and political considerations are taken into account as well as the person’s social status, class, gender, and health which is then “filtered through social, psychological, and biological phenomena [which] shape[s] others’ expectations of [them].”\textsuperscript{72}

Human beings have a tendency to glorify the past as a lost golden age unburdened by the complexities of the present “modern” era. This perspective not only allows us to mythologize, but also lament the world we have lost. “We are particularly prone to myth-making with regard to the aged; we imagine a past where extended families coexisted peacefully and the aged

\textsuperscript{67} Baozhen Luo, Kui Zhou, Eun Jung Jin, Alisha Newman, & Jiayin Ling, supra note 60, at 60.
\textsuperscript{68} Id.
\textsuperscript{69} See John A. Vincent, Inequality & Old Age, (1995).
\textsuperscript{71} Old Age in Greek & Latin Literature, 1 (Thomas M. Falkner & Judith de Luce State eds., 1989); see Robert Garland, The Greek Way of Life From Conception to Old Age, 223(In Ancient Athens and Sparta a man was considered an elder or geron when they were no longer liable for military service at 60); see also Tim G. Parkin, Old Age in the Roman World A Cultural and Social History, 127 (2003) (Rome mandated retirement from the military at sixty and from the Senate at seventy.).
\textsuperscript{72} Old Age in Greek & Latin Literature, 223 (Thomas M. Falkner & Judith de Luce State eds., 1989).
received loving care.”73 While our ancestors were ascribed greater cultural value in pre-literate cultures as they were repositories for oral traditions and customs, evidence indicates that these societies were not free from elder abuse or neglect. Even so-called aboriginal cultures, where the word elder is synonymous with leader, did not always exemplify the treatment of elders with utmost respect.74 Within these societies it was possible to hold contradictory views of the elderly, venerating them as the important societal figures (including chiefs, midwives, priests and medicine men) while at the same time also being able to engage in culturally sanctioned geronticide when caring for them began to handicap these societies’ ability to function effectively.75 In fact, these societies were apt to neglect, abuse, or murder their elders when there was a lack of resource as they are seen as the group’s least economically productive members.76

The challenge of protecting elders from abuse will most likely become a larger challenge for our society in the twenty-first century. At the beginning of the twentieth century “adults aged 60 and older constituted about 6% of the population . . . By 2030, elders 60 years of age and older will comprise nearly 25% of the U.S. population.”77 This will be the first instance in recorded history that elders will constitute such a significant proportion of the population. There are two interrelated explanations for this shift: the baby boom population of 1946-1963 along with the improvement in health care.78 As a result of this shift, we are quickly approaching a precipice in which our social welfare institutions (as currently structured) will become depleted, probably leading to greater intergenerational conflict and elder abuse. The Trustees of Social Security and Medicare have projected that Social Security will become insolvent around 2033,

73 Moskowitz, supra note 14, at 81.
74 Jared Diamond, supra note 39, at 219.
75 Id., at 214.
76 Id.
77 Id., at 17.
and Medicare funds will be depleted around 2030.\textsuperscript{79} If nothing is done soon to address these structural issues, like some aboriginal groups, we might face the grim prospect of deciding whether to abandon our elders.

III. Care of the Elderly: A Brief History

History can reveal more than shifting attitudes about respect for elders and the need to care for them. Ancient societies also give us a window into past efforts to deal with significant legal issues pertaining to the elderly. Society has long held contradictory views regarding the elderly: on the one hand respecting them while also seeing their care as a burden. This disparity has resulted in intergenerational conflicts which we have attempted to mitigate through religious, cultural, social, and political values mandating a duty to care for one’s elders. The fact that the sacred texts of Judaism,\textsuperscript{80} Christianity,\textsuperscript{81} Buddhism,\textsuperscript{82} Hinduism,\textsuperscript{83} and Islam\textsuperscript{84} all mandate filial duty appears to suggest that elder abuse and neglect was problematic from the very beginning of civilization.

The ancient pre-cursor of both the modern nursing home and state sponsored welfare for the elderly can be traced back to the Byzantine Empire, created in 330 C.E. by Emperor Constantine.\textsuperscript{85} In Byzantium the early Christian Church held a privileged economic position within the Empire, and its leaders “needed a highly visible symbol of how they were deploying the wealth generated not only through the[ir] immunities but also through the patronage of emperors and . . . donations [by] ordinary citizens”\textsuperscript{86} Thus, beginning in the fourth century C.E.,

\textsuperscript{80} Exodus 20:12 “Honor your father and mother.”
\textsuperscript{81} 1. Timothy 5:1 “Do not speak harshly to an older man, but speak to him as to a father . . .”.
\textsuperscript{82} Sutta Nipata 262 “Supporting one’s father and mother . . . this is the greatest blessing.”
\textsuperscript{83} Taittiriya Upanishad 1.11.2 “Do not neglect the [sacrificial] works due to the gods and the fathers!”
\textsuperscript{84} Qur’an 17:23 “[B]e kind to parents. If [they] attain old age . . . say not . . . a word of contempt, nor repel them.”
\textsuperscript{86} Id., at 637.
under the direction of St. Basil of Caesarera, the Church began the construction of a variety of philanthropic organizations attached to monasteries to care for the poor, sick, and aged. These organizations evolved into the forerunners of the hospital, poor house, and nursing home.

In the West, care for the poor, infirm, and aged remained the prerogative of one’s family. Nonetheless, the Church assisted with the care of individuals whose families lacked adequate financial resources. However, this changed dramatically in Europe after the 14th century when the Black plague wiped out between 30% to 50% of the English population. After this cataclysmic event the State took a more active role in regulating the poor. The evolution of modern social welfare policy can be traced to the period after this devastating pandemic, with its origins lying in the Statute of Labourers of 1351 and the Poor Law Act of 1388. These laws sought to address the issue of disposed landless peasants who were described as “vagrants” criminalizing them from traveling in search of higher wages. During this time period vagrancy was considered a major threat to social order because “poor people would migrate around the country in search of work or financial support [which] was difficult to cope with because social control relied on local knowledge and relationships.” In England and Wales “a system developed utilizing pre-existing local courts and the office courts and the officers of the Justices of the Peace, who . . . had the role of regulating wages and fixing prices . . . the poor who needed aid were ordered to return to the where they were born.” The implicit purpose of these laws was to control the poor. However, they were largely ineffective, since social upheaval continued and was later exacerbated following the enclosure of grazing farmland that had been held in

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88 Chris Gilleard, supra note 85, at 637.
90 Id.
91 Lorie Charlesworth, Welfares’ Forgotten Past A Socio-Legal History of the Poor Law. 36 (2010).
92 Malcom Payne, supra note 89, at 21.
93 Lorie Charlesworth, supra note 91, at 36.
common and privatized when the economy shifted from feudalism towards agrarian capitalism and mercantilism. Thus the fear of potential social disorder only increased and culminated in the passage of the Elizabethan Poor Law of 1601 (43 Elizabeth, c. 2).  

Queen Elizabeth’s Poor Law of 1601 was a watershed event in the history of social welfare “in that it recognized state responsibility for the indigent.” The Elizabethan poor law helped to refine the early system of relief for the poor, establishing “English parish officers [whose duty it was] from time to time, to raise, weekly or otherwise, in their respective parishes, competent sums to relieve the old, blind, lame, and indigent . . .” This law was the foundation of poor relief not only in England, but also for colonial America. This law continues to impact our social welfare policy today, making the distinction between the so-called worthy and unworthy poor. Out “of this distinction there developed a threefold system of institution[al] provision for dependents: (1) the poorhouse, for the ‘impotent’ poor; (2) the workhouse, for the able-bodied poor who were ‘worthy’; and (3) the house of correction, for the able-bodied poor who were ‘unworthy’[those] known as ‘valiant rouges’ and ‘sturdy beggars.’” 

Not long after Henry Hudson’s 1609 voyage to present day New York on behalf of the Dutch East India Company, the Dutch “colonial government in 1626 [sent] several sieckentrooster [or] minor ecclesiastical functionaries . . . to the colony charged with the duty of visiting sick persons in their homes. They may be considered the first social workers in what is now the Empire State.” During the Dutch period of rule social welfare for the poor, sick and

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94 Malcom Payne, supra note 89, at 21.
96 Gourley v. Wallister 5 Cow. 644, 648 (1825).
98 Id., at 474.
aged was almost entirely a function of the Dutch Reformed Church, which also established
“several poorhouses in the colony . . . for its indigent members.” 100 The Dutch legal system was
considerably different from the English system as Dutch judges were likely to order litigants to
arbitrate their differences, not merely to “save the litigants expense; [but] ‘to conciliate the
parties if possible.’” 101 After 1664, when the colony came under English rule and became “New
York, the poor-relief pattern was gradually transformed in accordance with English customs.” 102

Since the first colonial settlements, the place of those people who because of disability,
age, or other structural inequalities are unable to sustain themselves by competing in free market
has been a chronic problem challenging the ethos behind the capitalist economic ideology. 103
The plight of individuals “who fall by the wayside, for whatever reason, becomes a question
central to the maintenance of capitalism. Too generous a relief program [would] damage the
incentive of low paid workers to stay with dangerous, boring, and terminal jobs. . .” 104 In order
to maintain the burgeoning economic system, the state began to increase its role in caring for
marginalized groups like those deemed aged or disabled who increasingly found “that their
livelihood and integration were no longer perceived as a matter of familial and community
responsibility, instead, they were to be officially classified by scientific techniques adopted for
producing objectifying taxonomies of the body.” 105 Those people who were deemed by society
as disabled became labeled as dependent and “[l]ike slaves and indenture servants, disabled
people occupied roles as vagrants ruled incapable of entering into voluntary contracts of labor as

100 David M. Schneider, supra note 97, at 11.
104 Id., at 3-4.
a result of dependency . . . ‘it was an axiom of eighteenth-century political thought that dependents lacked a will of their own, and . . . did not deserve a role in public affairs.’” 106

Historically attitudes towards the disabled, elderly, infirm, and poor have shifted and evolved over time due to a variety of factors beyond mere economics, including religious, cultural, customs, and social mores. When a society finds it pragmatic for whatever reason to devalue the elderly because they appear to be dependent, non-contributory, and a burden, the foundation is laid for them to become abused. This is particularly a concern when economic and social support is not accessible or woefully inadequate. This process of labeling as dependent on the State those people who, because of disability or age, were unable to compete economically, allowed family members to abdicate their familial and filial responsibility. Such care for the disabled or aged increasingly began to be seen as the responsibility and function of the State. As early as 1664 in Portsmouth Rhode Island the son of “ould John Mott” delegated his care to the town overseers; and rather “than caring for his father personally, the son agreed to pay ‘A Cowe foever and 5 bushels of Corne by the yeare so longe as the ould man shall live . . . that so he might be dischrdged from any further Chardge’”107. Nevertheless, this care was not free from social stigma and those individuals receiving relief were required to wear on their right sleeve a badge with a large letter “P”. 108 Those individuals who refused to do so were punished by the local justice of the peace, who could order their “relief allowance reduced, suspended, or withdrawn altogether, or else to commit [them] to the house of correction, there to be whipped and kept at hard labor for a term not exceeding twenty-one days.”109

106 Id.
107 Jill S. Quadagno, supra note 95, at 417.
108 David M. Schneider, supra 97, at 467.
109 Id.
In the early colonial period legislation was enacted distinguishing the so-called “worthy” poor (those who were unable to work due to their age or a disability) from the “un-worthy” poor and in 1683 the colonial New York government passed an act for maintaining the poor and preventing vagabonds. Thus even early on, institutionalized charity served a function of barring the able bodied from relief and allowing charity only for those “‘who would be willing to work, but are incapable of Labour, by Refon of Sicnefs, or Lamenfs, or the Decays of an infirm old Age.’” In 1686, New York’s Governor Dongan would proclaim that “[e]very Town & County are obliged to maintain their own poor, which make them bee soe careful that noe Vagabonds, Beggars, nor Idle Persons are suffered to live here.” In New York local responsibility for the poor “was vested in the hands of the Overseers of the Poor, two of whom were elected at the annual town meeting . . . the Poormaster . . . became the point of contact between the faceless poor and the numerous governmental responses to their existence . . .” These Overseers deemed a pauper “worthy” if the individual was “‘blind, lame, old, sick, impotent or decrepit, or in other way disabled or enfeebled, so as to be unable by [their own] work to maintain [themselves.]’” The Overseers’ of the Poor functioned as the gatekeepers of relief and were designed to control the lower classes. Those on relief were barred from resettling outside their place of birth or settlement and if they happened to wander into another town or county and sought relief there they would be “removed from one town to another . . .”

The struggle between funding in-home care services versus institutional care for the aged has been ongoing for centuries. Even in colonial New York it was debated whether the best

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111 Poverty U.S.A. The Historical Record, 7 (David J. Rothman ed., (1971), (citing Dr. Chauncey’s Sermon Preach’d before the Society for encouraging Indstyr AND employing the poor (Auguft 12. 1752).
112 David M. Schneider, supra note 97, at 464-465.
113 Cornel Reinhart & William W. Culver, supra note 103, at 4.
114 People ex rel. Wheel v. Weissenbach, 60 N.Y. 385, 391 (1875) (citing 1 R.S., 616 § 14).
approach was to relieve the worthy poor through in-home subsides or rather at an institutional setting like the poorhouse. By 1788 the “general poor law of New York specified that in towns with a poorhouse a pauper refusing to be maintained there was not to receive any other relief . . . .”116 Prior to the passage of this act relief was provided in a variety of different manners. Between 1724 and 1729 the colonial government of New York City’s Mayor’s Court recorded 51 cases where relief was provided to worthy paupers, 18 were providing funds to support them at home, 19 were boarded out to a neighbor and 14 were sent to the almshouse.117 Those individuals sent to “board with neighbors were usually unable to care for themselves and were without relatives to assist them . . . Those of whom the Mayor’s Court sent to the almshouse had much more serious ailments [they] were very sick or very old ‘ancient.’”118 Individuals sent to the almshouse were characterized as “inmates” and between 1736 and 1746 the Mayor’s Court recorded the inmates who entered the almshouse as those who “could not have been easily relieved within a household—were strangers, not likely to be taken into a family. One quarter of them were lame or blind, insane or idiotic, another quarter were not only very old but infirm, sickly and weak—in all likelihood, senile and incapacitated.”119

New York’s colonial assembly was particularly concerned with its aged and infirm slave population and it “appears to have been a widespread practice for slave owners to manumit [or free] aged or infirm slaves in order to escape responsibility for their care.”120 In response to this practice, New York’s colonial Assembly passed the first elder neglect legislation penalizing

116 See Benjamin Joseph Klebaner, Public Poor Relief in America, 1790-1860, 279 (1976); at 279; see also Michael B. Katz, Poorhouses & the Origins of the Public Old Age Home, Memorial Fund Quarterly, Health & Society, Vol. 62 No. 1. 110, 115 (Winter 1984) (“According to poor relief critics, private charity and outdoor relief (assisting people outside of institutions) encouraged idleness by undermining the relation between work and survival . . . by draining the working class of its incentive, relief for the poor interfered with the supply of energy available for productive labor . . . Their dissipation was a cancer, demoralizing the poor . . .”).
117 David J. Rothman, supra note 110, at 36.
118 Id.
119 Id., at 38-39.
120 David M. Schneider, supra note 97, at 493.
“with a ten pound fine any slave owner who allowed his slaves to beg.”121 After New York became a State in 1788 the legislature passed an act which allowed for masters to manumit their slaves, but required owners to remain liable to support them if they were unable to do so.122 This legislation was insufficient to stem the tide of masters neglecting to care for the aged slaves so an act was passed voiding a master’s sale or disposal of “any aged or infirm slave, to any person who is unable to maintain such slave . . .”123 In 1818, the Supreme Court of Judicature voided the sale of Sarah, an elder and infirm slave of Peter Van Rensselaer, who paid a poor man, Asel Woodworth, $40 dollars to take him off his hands.124 Mr. Woodworth was unable to care for her and allowed her to wander off and seek respite at the City of Hudson’s poorhouse.125

Those individuals like Sarah who were unable to support themselves and were unwanted were forced to turn to the poorhouse for relief. After the Revolution, New York State passed the State’s first poor law which in 1784 secularized relief, placing it in the hands of civil officers.126 In 1824, New York State directed sixteen counties which had not constructed poorhouses or farms to “buy not more than two hundred acres and erect thereupon a poorhouse, at county expense.”127 An overarching concern of the Overseers of Poorhouses across New York State was to make relief unappealing and inmates were deemed to be “vagrants.” Those who were deemed able-bodied “were required to perform a certain amount of hard labor, usually consisting

121 Id.
123 Overseers of the Poor of the Town of Claverack v. The Overseers of the Poor of the City of Hudson Supreme Court of Judicature 15 Johns. 282, 284 (1818) (citing 2 N. R.L. 206).
124 Id., at 282.
125 Id., see also Link v. Beuner, 3 Cai. R. 325, 329 (1805) (citing sess. 40, ch. 137, sec 7 it was required that a master obtain a certificate demonstrating that a slave is able to support themselves prior to their manumission and if a former slave ended up in a county poor house the former master was charged for their maintenance.).
126 See David M. Schneider & Albert Deutsch, supra note 99; although see Cornel Reinhart & William W. Culver, supra note 103, at 5-6 (after the War of 1812 some New York Towns briefly experimented with the ‘New England System’ whereby the poor were auctioned off annually to the lowest bidder who willing to board them.).
127 Benjamin Joseph Klebaner, Public Poor Relief in America, 1790-1860, 80 (1976); however see Id., at 279 (in 1827 the act was amended to allow Overseers to provide temporary relief to keep the poor out of the almshouse; nevertheless this debate appears to be ongoing in social welfare policy and is evident even today in the preference and higher funding for institutional nursing home care.
of stone-breaking or woodcutting, before they could have food and lodging.”

However, that did not mean that the so-called impotent or deserving poor were not forced to provide labor to offset their care. In New York City, the “Common Council appropriated $800 for Thomas Haynes, who had agreed to erect his pin-making machine at the almshouse; this would furnish ‘light and easy work’ for the aged, the infirm and children . . . .”

Free labor on behalf of paupers was an integral part of the poor house system. In fact, in 1823, New York Secretary of State John Van Ness Yates argued that labor from the county poor farm and poor house system “would save not less than $250,000 each year, which was over half the expenditures then made on the poor. The prediction seems to have been borne out: nine years later, in 1832, savings resulting from the adoption of the system were put at $275,000, an amount almost equal to the ordinary expense of running the state government.”

The 1824 Poorhouse Act lumped all of New York States’ “worthy” dependents together, indiscriminately herding orphans, the infirm, the aged, the disabled, the insane, and others into the poorhouses which “resulted in abuses so shocking as to lead to constant pressure for proper classification and segregation of different types of dependents.”

In most counties those inmates who did not follow “the rules,” were punished with some form of “corporal punishment: in Allegany and Clinton [counties,] a rawhide was sometimes used; Cortland and Montgomery counties put perverse inmates in dark cells.” The poorhouse system implemented by New York State to provide relief quickly began to reflect some of the most egregious forms of abuse of the elderly and disabled. Conditions in 1832 were deplorable and in the New York City

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129 Benjamin Joseph Klebaner, supra note 127, at 139; (In 1827, at the almshouse in Philadelphia it was noted that ninety nine elderly inmates between the ages of sixty and ninety helped power machines by walking on treadmills).
130 Id., at 105; But see Documents of New York State Assembly Vol. 1 No. 33, 25 (1832) (inmates at the Broome County poorhouse “were principally old and infirm, and the county realized nothing from their labor).
132 Benjamin Joseph Klebaner, supra note 127, at 247.
poorhouse 653 of the 3,433 paupers who sought relief died in that year alone.\textsuperscript{133} Investigations regarding the conditions of inmates in the poorhouses were periodically conducted between the 1830s and 1890s, yet it appears that very little changed. Between 1842 and 1845 social reformer Dorothea Lynde Dix visited over five hundred poorhouses, and in New York State she found the Essex almshouse to be “‘ill-arranged, ill-furnished, ill kept . . . and very inconvenient.’ . . . Schoharie’s was ‘deficient in everything necessary to secure comfort, decency, or order.’”\textsuperscript{134} In 1879, William Letchworth, the Commissioner of the State Board of Charities, conducted inspections of the poorhouses and found the inmates packed into cells that were constructed for one inmate, and oftentimes there “were no bathing facilities and such ablutions as were possible, had at much inconvenience to be performed during the summer . . .”\textsuperscript{135} Individuals like Earl Parish, a seventy-nine year old man in poor health, preferred to die at home rather than receive help at the Argyle, New York poorhouse into which he was placed and stayed “for a few weeks, and being dissatisfied left.”\textsuperscript{136}

From the 1830s onward calls were made by a variety of “reformers” to segregate and classify the inmate population of the poorhouse, removing most of them to asylums which they believed were “an everlasting monument of the active philanthropy and munificence of this Society . . . This humane system has succeeded one in which whips, and chains, and dungeons were the only instruments of management . . .”\textsuperscript{137} The lack of classification of the poorhouses’ inmates was of concern and it was lamented that the “‘poor of all classes and colors, all ages and habits, partake of a common fare, a common table, and a common dormitory.’”\textsuperscript{138} By 1867, the

\textsuperscript{133} Documents of the New York State Assembly Vol.1 No. 33, 40 (1832).
\textsuperscript{134} Benjamin Joseph Klebaner, \textit{supra} note 127, at 237-239.
\textsuperscript{135} New York Senate Documents 102\textsuperscript{nd} Session Vol. 2, No. 28, 20 (1879).
\textsuperscript{136} Parish v. Juckett, 157 A.D. 27, 29 (1913).
\textsuperscript{137} New York State Assembly, \textit{supra} note 133, at 18-19.
\textsuperscript{138} Documents of the New York State Senate 80 Session Vol. L No. 8, 212 (1857) (\textit{citing} Senate Documents No. 72 (1855)of particular concern was the position of the “respectable” widow who as a “‘consequence of pecuniary
New York State Board of Charities identified 15 separate classes of dependents in the poorhouse including: “children under 16, homeless women on account of death or abandonment of her husband, aged and destitute, permanently diseased, temporarily diseased, crippled, deformed, blind, deaf, insane, idiots, epileptics, feeble-minded, vagrant, and idle.”139 In a relatively short span of time, between the 1820s and 1840s, a variety of institutions were created to house those individuals believed capable of being reformed and “prisons, mental hospitals, orphan asylums, and renovated or newly constructed almshouses proliferated . . .”140

Those deemed to be mentally ill were a particular target for redemption and as early as 1827 the New York State Legislature passed a law “prohibiting the confinement of lunatic and idiot paupers, in prisons or houses of corrections. But still, however, these wretched beings . . . continue[d] to be confined in county poor-houses . . .”141 Prior to 1843, the mentally ill whose families could not afford treatment at a private asylum were kept in poorhouses where they “received little or no medical attention and were frequently subjected to extreme forms of brutality.”142 In 1843, New York State opened the first mental institution at Utica for “acute cases--that is, those whose illness dated back less than one year . . . chronic cases, that is, those whose illness was of more than one year’s duration, were for the most part confined in the poorhouse as before.”143 Finally in 1865, New York State passed the Willard Act which required that all chronic cases in poorhouses be transferred to the new Willard institution being

misfortune in her declining years, is compelled to resort to the poor house . . . and is compelled the whole day to associate on equal terms [with] creatures who are utterly revolting . . . Such a woman undergoes a daily martyrdom. To call such relief a public charity, is a misnomer and a satire.”

139 Cornel Reinhart & William W. Culver, supra note 103, at 10.
140 Jill S. Quadagno, supra note 95, at 429.
143 Id.; see also NY Assembly Documents Vol. 11, 1280 (1884) (describing a treatment pioneered there known as the “Utica Crib” which was “like an ordinary child’s crib, with addition of a slatted cover . . . prevent[ing] the patient from sitting up or getting out of bed.”).
constructed in the Finger Lakes Region. In 1869 the construction of the institution was completed on over six hundred acres of farmland and became “dependent upon unpaid patient labor to sustain its operations.” Over the course of the Willard’s 126 years of operation over 54,000 people were sent there. Of these individuals many were elders characterized as chronically mentally ill but most likely suffering from Alzheimer’s or other forms of “mental confusion linked to aging . . .” Charles Farkas, an elderly man, was sent to Willard after he was arrested by the police for sleeping in a train station in Queens and deemed to be a nuisance. At his commitment hearing he told the judge that “‘I am 75 years old . . . I had a good name. I don’t drink. I don’t gamble. I got no place to go . . . I don’t have any friends.’”

Despite the fact that New York had directed all Overseers of the Poor to transfer their chronically insane inmates to the institution many counties resisted and continued to send elder senile resident to “almshouse because costs were lower.” This practice indicates that the prevailing issue of importance for the Overseers of the Poor was the cost of service and not the quality of the care of their inmates. In response to this practice, in 1890 the State Care Act was passed which shifted the expense for care in mental institution from the counties to the State.”

One result of this shift in the financial burden for the insane in State mental institutions was that the Overseers of the Poor quickly began to reclassify elders in the poorhouse as mentally ill so they could be sent to institutions. Evidence indicates that the practice of sending indigent

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144 David J. Rothman, supra note 142, at 91.
145 Darby Penney & Peter Stastny, The Lives They Left Behind Suitcases From a State Hospital Attic, 23 (2008).
146 Id., at 36.
147 Jennie Jacobs Kronenfeld & Marcia Lynn Whicker, Captive Populations Caring for the Young, the Sick, the Imprisoned, & the Elderly, 157 (1990).
148 Darby Penney & Peter Stastny, supra note 145, at 41.
149 Jill S. Quadagno, supra note 95, at 433.
150 New York Senate Documents 113 Session Vol. 5, 2 (1890).
151 Jill S. Quadagno, supra note 95, at 433.
elders suffering from dementia (who had no one willing to care for them) into mental institutions continued well into the middle of the twentieth century.152

Institutional care was designed to “seal off individuals from the corrupting, tempting and distracting influences of the world long enough for a kind but firm regiment to transform their behavior and reorder their personalities. Even poorhouses shared in this rehabilitative vision, they would suppress intemperance the primary cause of pauperism, and inculcate the habit of steady work.”153 While the development of these institutions was cloaked in language of rehabilitation, they also served the purpose of segregating “the old and sick away from their friends and relatives in order to deter the working class from seeking relief. In this way, fear of [institutions] became the key to sustaining the work ethic in nineteenth-century America.”154 Institutions which were initially touted as curative quickly became merely custodial in nature and persons “designated as ‘defective’ found that a temporary stay to effect a cure invariably metamorphosed into a permanent imprisonment when their disorder refused to vanish.”155

Institutions all served the purpose of creating a readymade population to be studied, providing advantages for the medical profession whose “department[s] of knowledge [were] comparatively in a state of infancy.”156 In almost a two generation time span, from 1825-1880,

152 See Certification of Anonymous No. 1 to Anonymous No. 12, 206 Misc. 909, 909-910 (1954) (twelve elders applied to the Court under the Mental Hygiene Law for certification as mentally ill so that they could be placed at Mental Institutions having no one else to care for them. The Judge certified them as mentally incompetent since the elders were “[l]ike children whose minds have not fully developed [and l]ike children, they may not be left alone and must be cared for else they are capable of self-harm.” Moreover, the judge felt compelled to certify them as mentally ill as “the welfare department of the city claim[ed they] lack[ed funds] for their placement in a private institutions or old-age-homes.”; see also Schoff v. State, 8 misc. 2d 940 (1950) (Nicholas Schoff an 84 year old senile man was pushed by another patient a schizophrenic child causing him to fracture his right femur.).
154 Id., at 118.
156 New York State Assembly, supra note 141, at 6; see also Sharon L. Snyder & David T. Mitchell, supra note 155, at 117 (documenting how institutions became inextricably linked with the development of the field of eugenics in the nineteenth and early twentieth centuries. Eugenicists such as Henry H. Goddard argued that so-called defectives
entire fields of knowledge were developed as the result of institutionalization and “[d]uring these years of societal transformation, technical and scientific knowledge and specialized skills of all sorts developed at a rapid rate, transforming older occupations and creating entirely new ones.” At the beginning of this time period the early administrators of the poorhouses, school systems, penitentiaries, reform schools, and mental hospitals had no occupational identity or formalized knowledge base from which to draw, but by the end of this period all of these institutions had generated specialized knowledge bases and the new professions including: school superintendent, penologist, psychiatrists, social worker, and public welfare official.

Over this time period New York State created a variety of institutions to help “cure” a variety of groups that were found in the early poorhouses including: “feebleminded,” “crippled,” “mad”, “unchaste women,” orphaned, epileptic, and alcoholic. Noticeably absent from these groups of individuals were the elderly who were consciously omitted from the redeemable as they were determined to have “little left to contribute and who ‘are likely to continue unable to earn their support, and consequently to be permanently dependent.’ Nonetheless, this parsing out of other “curable” dependent groups eventually transformed the “poorhouse into old age homes. When everyone else had been siphoned off elsewhere the only group remaining was the elderly.” In fact, in less than 100 years, by the end of World War One, the poorhouse was conceptualized as an “institution mainly for the care of the aged and infirm.” For these

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158 Michael B. Katz, supra note 153, at 122.
159 See David J. Rothman, supra note 110.
160 Jill S. Quadagno, supra note 95, at 431.
161 Michael B. Katz, supra note 153, at 132.
162 Id., at 136; see also Records of an Investigation into the Administration of the Rensselaer County Almshouse, 1905-1906, 55 (1906).
individuals the county or town poorhouses became the forerunners of today’s nursing homes, providing custodial care for the aged at taxpayer expense.\textsuperscript{163}

In the early twentieth century the vast majority of the elderly in New York State continued to receive care at home by their family and it is estimated that in “the 1920s less than 2 percent of those New Yorkers aged 70 and over lived in institutions and probably a similar number received other forms of charity.”\textsuperscript{164} Nonetheless, “old age” began increasingly to be seen not solely as a biologically driven process, but increasingly pathologized as a disease.\textsuperscript{165} From the 1890s onward institutionalization of the elderly began to be seen as an essential part of their treatment even though they were “in perfect health, age made one a potential patient. ‘[T]o be old was to be terminal’ and an institution was the best place for the needy to quietly await death.”\textsuperscript{166} The predominance of elderly men in the poorhouse was thought to be a result of their intemperance and contraction of venereal diseases and most of them were “‘homeless childless men, who [had] outlived their industrial usefulness.’”\textsuperscript{167}

By the end of the Great Depression, public care for all elders became formalized as a function of the State. During the Great Depression the elderly were particularly hard hit. In 1928, it was estimated that “approximately 30 percent of those sixty-five and over were dependent on others for support; by 1935, the percentage had risen to an estimated 50 percent—this at a time when the proportion of the aged in the population was rising, having doubled since 1900 . . .”\textsuperscript{168} By 1930 the existing system of care was overwhelmed by the influx of elders seeking help from public homes for the aged (the former almshouse), and the New York City

\textsuperscript{163} Jennie Jacobs Kronenfeld & Marcia Lynn Whicker, supra note 147, at 156.
\textsuperscript{164} N. Sue Weiler, Religion, Ethnicity & the Development of Private Homes for the Aged, J. American Ethnic History Vol. 12 No. 1, 64, 66 (Fall 1992).
\textsuperscript{165} Id., at 67.
\textsuperscript{166} Id.
\textsuperscript{167} Id., at 69.
\textsuperscript{168} Francis Fox Piven, Regulating the Poor the Functions of Public Welfare, 101 (1971).
Bureau for the Aged could only accommodate “13 percent of the people applying for admission to institutions.” In 1930, New York State responded to the crisis by enacting the Old Age Relief Law which provided a small pension to residents who were over the age of seventy and not in need of institutional care because they did not have a disability. Initially it was believed that this pension program would reduce the number of elders over seventy in almshouses. However, by 1931 it was estimated that only 250 persons across New York were reintegrated back into the community as a result of this law. On a national level a variety of pension program ideas were floated, the most popular being Dr. Francis E. Townsend’s, which called for “a monthly pensions of $200 for all citizens over sixty years of age, to be paid on the conditions that they forego gainful employment and . . . spend ever pension dollar within thirty days.”

Instead of the Townsend Act, Congress passed the Social Security Act of 1935 which appropriated “grant-in-aid program to the states for old age assistance . . .”

Like New York State’s Old Age Relief Law, old age assistance grants under the Social Security Act prohibited “the payment of any cash grant to any inmate of public institutions.” This provision ultimately spelled the destruction of the almshouse while inadvertently providing the stimulus necessary for the eventual proliferation of private-for-profit institutions for the elderly; and nationally between 1939 and 1950 nursing home facilities increased from 1,200 institutions to 9,000. In 1950, the Social Security Act was modified to allow for direct payments to nursing homes which further incentivized the growth of nursing homes as a

169 N. Sue Weiler, supra note 164, at 73.
171 Id., at 114-115.
172 Id. at 100.
174 Id.
175 Id., at 157-158.
privately owned governmental subsidized industry.\textsuperscript{176} This publicly funded service has very quickly eroded the ancient filial duty to care for one’s parents. While nursing homes could be viewed as a model to lessen elder abuse and neglect they not only fail to address the underlying root causes, but might in fact contribute to negative perceptions of the elderly by segregating them away from the rest of the community. Furthermore, this model of care is likely unsustainable given the current yearly cost of a nursing home in New York which ranges from $103,740 to $137,076\textsuperscript{177} and the estimate that at least “70 percent of people over age 65 will need long term care services and support at some point in their lives.”\textsuperscript{178} Consequently, it is imperative to develop new models of care drawing from multitude disciplines, providing options which are not only cheaper, but also allowing for greater inclusion within the community while being free from neglect and abuse.

IV. Legal Tradition Attempts to Address Elder Abuse & Neglect

The laws of ancient Greece and Rome have profoundly influenced our own legal tradition, particularly with regard to the necessity of state intervention on behalf of the elderly. The State’s ability to intervene on behalf of its citizens is premised on either its police powers or the doctrine of 	extit{parens patriae} (Latin for parent of one’s country.)\textsuperscript{179} The State’s police powers are used to “establish and enforce laws protecting the public’s health, safety and general welfare.”\textsuperscript{180} The ancient Greek city states used their police powers to protect the elderly by

\textsuperscript{176} Mary Adelaide Mendelson, \textit{Tender Loving Greed How the Incredibly Lucrative Nursing Home “Industry” is Exploiting America’s Old People & Defrauding Us All}, 34-36 (1975).


\textsuperscript{178} Id.

\textsuperscript{179} Marie-Therese Connolly, \textit{supra} note 10, at 39.

\textsuperscript{180} Sana Loue, \textit{supra} note 33, at 181.
imposing severe penalties against anyone who did not fulfill their filial duty.\footnote{181}{Robert Garland, Daily Life of the Ancient Greeks, 65-66 (1998).} For instance, in Delphi, failure to care for one’s parents could lead to imprisonment.\footnote{182}{Id.} In Athens, neglecting one’s parents or grandparents could lead to fines and deprivation of their rights as a citizen.\footnote{183}{Id.}

Nonetheless, in antiquity, much like today, the threat of being neglected in old age “was all too real and was a constant source of insecurity . . . those few who survived to old age [could] survive all of their children, spouses, slaves, and friends [and] little help was available.”\footnote{184}{Andrew T. Crislip, From Monastery to Hospital Christian Monasticism & the Transformation of Health Care in Late Antiquity, 45 (2008); see also Robert Garland supra note 181, at 66 (it was customary in ancient Greece for a man with no heirs to adopt a male heir whom he would leave his estate to under the condition that they would provide care for him in old age, a proper burial, and visit his tomb.).}

Today it is currently feasible to punish individuals who engage in all forms of elder abuse under current non-elder specific common law and statutory definitions of crime. However, by enacting elder specific statutes, society indicates that such crimes are particularly egregious.\footnote{185}{Moskowitz, supra note 14, at 97 (“Physical abuse . . . could be assault, battery, or perhaps even attempted murder; financial exploitation may be theft, larceny, or extortion . . . . courts can also protect victims by ’no-contact’ order, requiring the abuser to vacate the residence, ordering restitution for theft or medical expenses . . . ”).}

Recognizing the need to specifically penalize certain types of elder abuse, New York State has utilized its police powers to pass statutes specifically addressing elder physical abuse and neglect. In New York State it is a felony to endanger the welfare of a vulnerable elder by neglecting them.\footnote{186}{N.Y. Penal Law § 260.32 (2008) (Second degree class E felony); N.Y. Penal Law § 260.34 (2008) (First degree class D Felony).} A venerable elder is defined as “person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional dysfunction to [and that] person is incapable of adequately providing for his or her own health or personal care.”\footnote{187}{N.Y. Penal Law § 260.31 (2008).}

Additionally, in 2008, New York amended its assault in the secondary degree statute to provide heightened felony sanctions for someone ten years younger than their victim who intentionally causes physical injury to
someone over the age of sixty-five.\textsuperscript{188} This amendment was passed with the recognition that there should be increased penalties for perpetrators of physical abuse of our elders as “‘seniors are generally more vulnerable to injury and less able to protect themselves than a younger person.’”\textsuperscript{189} Similarly New York State has increased penalties which mandate restrictive placement in juvenile correctional facility for youthful offenders who are convicted of inflicting serious physical injury against an individual over the age of sixty-two.\textsuperscript{190} The New York State Legislature has determined that “juveniles who commit crimes of violence against the elderly receive disparate treatment from those who perpetrate crime against the general population.”\textsuperscript{191} However, unlike California\textsuperscript{192}, New York has failed to exercise its police powers to pass heightened civil protections against elder abuse in the community,\textsuperscript{193} with the potential for the award of attorney’s fees and costs potentially incentivizing civil litigation.\textsuperscript{194}

New York States has not only exercised its police powers to criminalize elder abuse in the community, but has also enacted a variety of provisions to penalize abuse in nursing homes and assisted living centers. Both federal\textsuperscript{195} and New York State\textsuperscript{196} law recognizes that elders

\textsuperscript{188} N.Y. Penal Law § 120.05(12).
\textsuperscript{189} People v. Riley, 32 Misc. 3d 626, 629 (2011) (citing Assembly Memo in Support, Bill Jacket L. 2008, Ch. 68, at 5).
\textsuperscript{190} N.Y. FCT. Law § 353.5.
\textsuperscript{192} Cal Wel & Inst Code § 15610.07 ( abuse is defined as “Physical abuse neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering [or] (b) the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.”).
\textsuperscript{193} NY CLS PUB Health § 2801(d), (provides a private right of action for individuals residing in nursing homes and victims of patient abuse and neglect); but see Daniel M. Gitner, Nursing the Problem: Responding to Patient Abuse in New York State 28 Colum. J.L. & Soc. Pros. 559, 573 (Summer 1995) (describing a private right of action as an ineffective tool as “patients rarely have the means or presence to seek legal help . . . injuries sustained in nursing homes are often difficult to quantify; elderly patients with little earning capacity ‘translate into meager damage awards’ and those do not make attractive clients in a contingency fee system.”).
\textsuperscript{194} Cal Wel & Inst Code Sections § 15657, (stipulating that “[w]here it is proven by clear and convincing evidence that a defendant is liable for [elder abuse] the court shall award to the plaintiff reasonable attorney’s fees and costs [including] reasonable fees for the services of a conservator . . .”).
\textsuperscript{195} See, 42 CFR 483.10, (residents of nursing homes have a “right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility.”); see also 42 CFR 483.13(1)(i), (a facility must not “use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion”).
residing in nursing homes and assisted living centers have a legal right to be free from abuse. While New York State penalizes elder abuse in a nursing home these penalties are a weak deterrent, amounting to only a two thousand dollar fine for each violation by the operator of a nursing home.\(^{197}\) Violations are prosecuted by the Attorney’s General Office,\(^{198}\) which in the past has placed hidden surveillance cameras in nursing homes across the state to catch instances of patient abuse.\(^{199}\) New York State mandates that a variety of professionals working within nursing homes are required to report suspected abuse or neglect;\(^{200}\) additionally, individuals who fail to report are subject to penalties.\(^{201}\) While prosecutions have taken place for patient abuse they are often few and far between with the conduct generally outweighing the penalty.\(^{202}\)

In addition to the State’s police powers, the doctrine of \textit{parens patriae} plays an important role in the State’s duty to protect its elder citizenry who might lack capacity and need a guardian to act on their behalf. \textit{Parens patriae} is derived from the Roman belief that the State has the authority and duty to care for citizens who are deemed to lack the capacity to make their own decisions and as such the State may circumscribe their liberty.\(^{203}\) In ancient Rome the patriarch

\begin{footnotes}
\footnote{\textit{E.g.} NY CLS Pub Health § 2803(g), (patients have a “[r]ight to receive courteous, fair, and respectful care and treatment); \textit{accord} NY CLS Pub Health § 2803(h), (patients have a right to be “free from mental and physical abuse and from physical and chemical restraints.”).} \\
\footnote{NY CLS Pub Health § 12(1)(a).} \\
\footnote{NY CLS Pub Health § 12(5), (on the recommendation of the Commissioner of the Department of Health).} \\
\footnote{Amanda Bassen, \textit{Patient Neglect in Nursing Homes and Long-Term Care Facilities in New York State: The Need For New York to Implement Programs & Procedures to Combat Elder Neglect}, 8 Cardozo Pub. L. Pol’y & Ethics J. 17, 186 (Fall 2009); \textit{see also} Tracey Kohl, \textit{Watching Out For Grandma: Video Cameras in Nursing Homes May Help to Eliminate Abuse}, 30 Fordham Urb. L.J. 2083 (September 2003) (arguing for cameras in nursing homes.).} \\
\footnote{NY Pub. Health Law § 2803(d), (requires mandatory reporting for elders in nursing homes.).} \\
\footnote{NY Pub. Health Law § 2803(d)(7), (stipulating that anyone who “fails to report such an act as provided in this section, shall be deemed to have violated this section and shall be liable for a penalty . . .”).} \\
\footnote{Choe v. Axelrod, 141 A.D.2d 235 (1988) (attendant ordered to pay $150 fine for leaving a patient unattended in a shower and then spraying the patient with scalding water on his face causing second degree burns); \textit{see Reid v. Axelrod}, 164 A.D.2d 973 (1990) (orderly punched 91 year old patient whom he claimed hit him with a cane); \textit{see also} Buchanan v. Axelrod, 152 A.D.2d 568 (1989) (attendant ordered to pay $50 fine for physically forcing a patient out of her room causing her to sustain bruises); \textit{c.f.} Demisay v. Axelrod, 177 A.D.2d 876 (1991) (court reduced penalty from $12,500 to $6,750 for a nursing home operator whose facility was described as regulators as being unsanitary evidenced by foul odors, dirty conditions, and unsterilized equipment. Moreover, twenty-five patients were found to have dirty clothing, greasy hair, dirty nails, and stains from food and urine.).} \\
\footnote{Marie-Therese Connolly, \textit{supra} note 10, at 39.} 
\end{footnotes}
of a family maintained control of the household and its wealth until his death. However, a son could in court accuse his father of being non componis mentis (not of his right mind) and take guardianship of his father’s estate, but this was considered “an extreme step, and not one that the legal system regarded lightly.” If it was determined by a Roman court that the patriarch suffered mental incapacity (dementia or insania in Latin) the law would invalidate his contracts and all other legal acts. This practice was in place from the earliest Roman legal code, the Twelve Tables of “mid fifth century B.C. [which] provided that [those who lacked capacity] should be placed under the guardianship of his kinsmen.” However, like today’s guardianship proceedings, there was no definitive answer as to what qualified as being non componis mentis, and it was left to the courts “to determine, no doubt with the same resultant confusion [as] modern courts . . .” The Roman philosopher, politician and lawyer Cicero reports in his De Senecute that the Greek playwright Sophocles’ sons “indicted their father on a charge of senile incompetence . . . hoping to divest him of his authority [Sophocles defended this charge by reciting] to the judges the play which he had in hand and had last written, Oedipus at Colonus, and asked whether the poem seemed the product of an incompetent mind. After the recitation, he was acquitted . . .”

Guardianship is a legal relationship “created by state law in which a court gives one person or entity (the guardian) the duty and power to make personal and/or property decisions for another (the ward or incapacitated person). A judge appoints a guardian upon finding that an

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204 Tim G. Parkin, supra note 1, at 231.
205 Id., at 232.
206 Thomas M. Falkner & Judith de Luce eds., supra note 72, at 16.
207 Id.
208 Id.
adult lacks capacity to make decisions for him or herself.” 210 While guardianship can be a powerful tool to assist an individual in need, finding someone to be incompetent carries serious consequences for their autonomy and ability to “carry out their own life plans and goals so long as their actions do not infringe on the rights of others.” 211 An individual who is deemed to be competent is legally entitled to be autonomous and make eccentric, risky and detrimental choices. 212 However, those people who are construed as being incompetent are “not permitted to make, of his/her own accord, even reasonable and sensible choices.” 213 Additionally, profound social stigma accompanies this designation depriving them of their right to manage their assets which “may also have a substantial, and sometimes controlling impact on liberty rights, including the choice of where to live, the choice to refuse medication, or medical treatment, and the choice not to be involuntarily admitted to an institution.” 214

As such, the decision to take guardianship over an individual should not be made lightly and should not simply be based on the premise that someone can make a “better” decision. Moreover, it can be extremely problematic to determine whether an individual truly lacked legal capacity and thus should have a guardian. In fact, APS has long recognized that one problem with determining capacity is that “[b]eyond some broad descriptions of those apt to be in need of help, no attempt has been made to record the nature and degree of incompetence and the relationship between environmental factors and incompetency.” 215 Capacity and the lack thereof remains a nebulous designation which the United States Senate Special Committee on Aging in 2004 noted was often “situational because different degrees of capacity are required for different

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212 Id.
213 Id.
tasks and transient because individuals can have both periods of relative lucidity and confusion. At any given point in time, capacity also may be influenced by external forces, such as lack of sleep or medication.\textsuperscript{216}

While guardianship is designed to protect incapacitated persons it may in fact facilitate elder abuse, neglect, and financial exploitation, resulting in a power imbalance stifling the elders’ ability to advocate for themselves.\textsuperscript{217} Some social scientists have theorized that legal guardianship by one family member over another may in fact increase the possibility of elder financial abuse in addition to other forms of mistreatment.\textsuperscript{218} It is estimated that for every reported case of elder financial abuse that another four to five cases go unreported to authorities.\textsuperscript{219} Moreover, it is also believed that at least 2.6 billion dollars is stolen annually as a result of elder financial abuse.\textsuperscript{220} Financial abuse of the elderly is particularly problematic given the fact that “[o]ne in every 5 of those individuals age 65 and older survives on an average of $7,500 a year.”\textsuperscript{221} In fact, one study found that “nearly one-half (46%) of elder victims of financial abuse had incomes between $5,000 and $9,999 while just under a third (30%) were those whose incomes fell between $10,000 and $14,999.”\textsuperscript{222} For elders living on fixed incomes, becoming a victim of financial abuse can not only be economically ruinous, but also emotional.

\textsuperscript{216} Joseph A. Rosenberg, \textit{Regrettably Unfair: Brooke Astor & the Other Elderly in New York}, 30 Pace L. Rev. 1004, 1040-1041, (Spring 2010) (\textit{citing} Hollis E. Clow & Edward B. Allen, \textit{Psychiatric Aspects in the Mental Competency of Aging}, 50 J. Am. Geriatrics Soc’y (2002)); see also Bridget Penhale, \textit{Responding & Intervening in Elder Abuse \\and Neglect} Ageing Int., 235, 237 (2010) (\textit{citing} Penhale \\& Parker, (2008) (capacity and so-called “[v]ulnerability appears to be largely situational; that is not solely the characteristics of the individual that result in the assignment of the status ‘vulnerable’ but it is, rather the interaction with other, situational and circumstantial factors that lead to a vulnerable state for the individual.”)).

\textsuperscript{217} Marie-Therese Connolly, \textit{supra} note 10, at 48 (\textit{citing} Pamela B. Teaster, Erica F. Wood Winsor C. Schmidt \\& Susan A. Lawrence, \textit{Public Guardianship After 25 Years: In the Best Interest of Incapacitated People?} (The Retirememt Research Foundation, 2008.).

\textsuperscript{218} Marcus Patterson \\& Kathleen Malley-Morrison, \textit{supra} note 41, at 78.

\textsuperscript{219} MetLife Mature Market Institute, \textit{Broken Trust: Elders, Family and Finances a Study on Elder Financial Abuse Prevention}, 7 (March 2009).

\textsuperscript{220} Id., at 4.

\textsuperscript{221} United States Senate Older Americans Act of 2012 112 S. 2037 (1/26/2012).

\textsuperscript{222} MetLife, \textit{supra} note 219, at 20.
traumatizing and might cause them to unnecessarily have to leave their communities, forcing them to move into nursing homes at taxpayer expense.\textsuperscript{223}

Elders are particularly attractive targets for dishonorable individuals to financially abuse not only because they are perceived as “vulnerable,” but also due to the fact that they control the majority of household wealth in the United States.\textsuperscript{224} While elders who have become victims of elder financial abuse can be preyed upon from a variety of sources including scam artists and con persons,\textsuperscript{225} a review of national newsfeeds regarding elder financial abuse (from April 2008 through June 2008) found that “the largest percentage of cases involved close associates of the victim--families, friends, caregivers,\textsuperscript{226} and neighbors--as the perpetrator of the abuse [and] the largest single category included a variety of financial professionals . . .\textsuperscript{227}” Sadly, even attorneys who have a duty to conduct themselves in an ethical manner conforming to the law in their

\textsuperscript{223}E.g. Government Accountability Office, GAO-13-110, 2 (November 15, 2012) (monies stolen from elders are “rarely recovered, and the loss can undermine both the health of older adults and their ability to support or care for themselves. Consequently, the burden of caring for exploited older adults may fall on various state and federal programs.”); see Lorna Fox O’Mahony, \textit{Aging, Difference & Discrimination: Property Transactions in the Crucible of Human Rights}, Norms Kings L. J. Vol. 24 No. 2, 202, 205-206 (August 2013) (“Ageing is associated with reduced earning capacity so that, with limited opportunity for financial recovery losses incurred at this stage may have disproportionate consequences on financial well-being for the remainder of the older person’s life.”); see also United States Federal Trade Commission, \textit{Prepared State of Federal Trade Commission on Elder Fraud & Consumer Protection Issues}, 7 (2013) (the “Commission anticipates that as the Affordable Care Act is implemented, scammers will exploit changes in Medicare to sow confusion and trick consumers into paying for worthless products or providing their financial account information.”).

\textsuperscript{224}MetLife, supra note 219.at 17, (“People over 50 years of age control at least 70% of the net worth of the nation’s households.”).

\textsuperscript{225}United States Federal Trade Commission, \textit{Prepared State of Federal Trade Commission on Elder Fraud & Consumer Protection Issues}, 2-3 (2013) (identified eight common scams perpetrated on elders including: ”(1) sweepstakes, prize promotions, and lotteries; (2) timeshare sales and resale; (3) medical alert devices; (4) investments; (5) discount medical and prescription services; (6) business opportunity or work from home programs; (7) bogus advance fee loans; and (8) charitable donations.”), accessible at: http://www.ftc.gov/sites/default/files/documents/public_statements/prepared-statement-federal-trade-commission-elder-fraud-and-consumer-protection-issues/130516elderfraudhouse.pdf.

\textsuperscript{226}See \textit{People v. Provost}, 25 A.D.3d 1016, 1017 (2006) (“Defendant and his wife operated an adult home in Ulster County. After a criminal investigation revealed that significant sums of money had been systemically take forma a number of the residents, they were charged . . . . 19 elderly residents and involved the theft of over $ 1,329,000.”).

\textsuperscript{227}MetLife, \textit{supra} note 219.at 17.
professional and personal affairs with their clients, have also been found to engage in elder financial abuse.

In addition to outright theft under a guardianship, elder financial abuse can occur through a process of undue influence whereby a trusted individual subtly manipulates an individual, exploiting their position so as to make them a tool for their own pecuniary interest. Courts will invalidate a will which has been modified by a testator who is deemed to have been a victim of undue influence. However, demonstrating that an individual was a victim of undue influence can be difficult, and such a decision is influenced by factors and pitfalls similar to those which determine whether or not a person lacks capacity. Courts have long struggled with determining when undue influence has occurred: “‘[i]t is impossible to define or describe with precision and exactness what ‘undue influence’ is. Like the question of insanity, it is to some degree open and vague . . .’” In order to determine that undue influence has occurred and was sufficient to invalidate a will, a court will look to “the strength or weakness of the mind to the testator; and the influence which would subdue and control a mind naturally weak, or one which had become impaired by age, sickness, disease intemperance, or any other cause . . .” This

229 See In re Rouse 107 A.D.2d 338 (1985) (Attorney was found to have converted over $15,000 dollars from his 83 year old client); see also In re Rapoport, 215 A.D.2d 32 (1995) (Attorney stole over $170,000 dollars from client’s trust accounts for own use); e.g. In re Simpson, 280 A.D.2d 127 (2001) (Attorney transferred $375,000 to his own personal brokerage account; c.f. In re Casey 230 A.D.2d 72 (1997) (Attorney of two elderly clients withdrew $200,000 from their accounts for his own personal use); accord In re Pariser, 114 A.D.2d 208 (1986) (Court disbarred attorney who stole over $24,000 from an elderly and infirm client); accord In re Baker, 184 A.D.2d 9 (1992) (Attorney commingled elderly client’s money depositing over $28,000 into his law practice’s operating account); accord In re Paul 308 A.D.2d 130 (2003) (attorney stole almost $44,000 from his elderly client.).
231 In re Van Ness’ Will, 78 Misc. 592, 600 (1912) ( explaining that the “genesis of the English and American will was peculiarly Roman, and in ever country where wills exist Roman law affecting them remains potentially, even if not expressly adopted.”).
233 Id. (citing Huguenin v. Baseley, 14 Ces. 287).
type of proof is challenging and is often not the subject of direct proof.\textsuperscript{234} Rather, undue influence is shown by facts that indicate the testator was a victim of “moral coercion, which restrained independent action and destroyed free agency or which by importunity could not be resisted (and) constrained the testator to do that which was against his free will and desire, but which he was unable to refuse or too weak to resist.”\textsuperscript{235}

Financial abuse by a trusted individual under a guardianship or undue influence can be difficult to uncover, but yet are common and “rarely are pursued by local prosecutors because of lack of training and . . . the misperception that such cases are not criminal.”\textsuperscript{236} Furthermore unlike crimes against other age cohorts, financial exploitation of the elderly can be complex as it involves capacity, guardianships and undue influence.\textsuperscript{237} Consequently, this difficulty in determining whether an individual lacks capacity or has been a victim of undue influence should compel attorneys who advocate for individuals with a potential disability or cognitive impairment to seek out guidance from individuals in other disciplines. Moreover, greater communication is needed between disciplines in order to better understand the intricacies and concepts often involved in elder financial abuse so that these cases can be more effectively prosecuted. “From the 911 dispatcher to the patrol officer to the detective to the prosecutor – if just one of these essential players fails to recognize a report as criminal, the case will likely end there, with the exploitation continuing until APS or the family intervenes civilly, or the elder’s

\begin{footnotesize}
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\item In re Van Ness’ Will, supra note 231 at 599 (citing Rollwagen v. Rollwagen, 63 N.Y. 519). \\
\item In re Burke, supra note 230, at 269 (citing Matter of Walther, 6 NY2d 53-54); e.g. In re Estate of Brandon, 55 N.Y.2d 206, 208-214 (1982) (Where a 75 year old widow visited a nursing home and expressed her reluctance to adjust to institutional living and was offered to stay in the private home of the nursing home operator, Mrs. Murphy for a $600 a month fee. However, during the last eight months of the descendants life over $130,000 was transferred from her account to Mrs. Murphy’s for “assistance.” The Court found these circumstances sufficient circumstantial evidence of undue influence existed and that Mrs. Murphy lulled an elderly individual into a false sense of security with the intent of stripping her of her money.). \\
\item Marie-Therese Connolly, supra note 10, at 42. \\
\end{enumerate}
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resources are gone.”238 Not only is greater interdisciplinary communication beneficial, but multi-disciplinary collaborations could alleviate many of the difficulties faced by an elderly victim of financial exploitation “who may be suffering from dementia, health issues, physical disabilities, financial and legal issues, isolation and fear of loss of independence, need for housing and lack of caregiver and social support and advocacy.”239

V. The Elder Justice Act & Multiple Disciplinary Elder Abuse Teams

A. The federal government’s response to elder abuse

For several decades now the federal government has realized that many of our elderly citizens, both in the community and within institutional settings, are being victimized by their caregivers. However, this recognition had not translated into any substantive action until very recently. For the last fifty years the federal government has made a series of piecemeal attempts to address a variety of issues affecting older Americans. As part of President Lyndon Johnson’s Great Society legislative agenda, Congress enacted the Older Americans Act of 1965. The purpose of this statute was to secure for elder Americans a variety of nebulous objectives including: adequate retirement income; physical and mental health; sustainable housing; community based services; employment opportunities; retirement with honor and dignity; participation in meaningful community opportunities; low cost transportation; benefit from research knowledge; freedom with the ability to initiate, plan and manage their own lives; full participation in the planning and operation of community based services; and protection against

238 Id. at 3. See also Marie-Therese Connolly, supra note 10, at 47 (arguing that financial abuse could be prosecuted utilizing “federal, criminal, civil, and civil rights laws and may involve interstate or international schemes, such as mass-marketing fraud, sweepstakes fraud, and predatory lending.”).

239 Id., See also National Center for State Courts, Prosecution Guide to Effective Collaboration on Elder Abuse, 10 (2012) (“Financial abuse cases can be complex and typically require that prosecutors make connections with financial institutions and the civil bar . . . multidisciplinary groups that respond to individual cases of financial abuse . . . may develop or improve systemic responses.”).
abuse, neglect, and exploitation. In addition, the Older Americans Act established The Administration on Aging ("AoA"), within the Department of Health and Human Services as the federal focal point on issues concerning the elderly and invested it with the authority to issue grants to States for community based elder services.

Despite the Older Americans Act of 1965, which called for the protection of elders from abuse and neglect, the AoA failed to take any tangible steps to address these issues until 1988 when it authorized the creation of the national elder abuse resource center. Four years later it would finally became a permanent fixture within the AoA as the National Center on Elder Abuse. Since this time the Center has served as the national clearinghouse on information, materials, expertise, and support to enhance State and local efforts to prevent and address elder abuse. However, federal funding of the Center has been extremely limited and in fiscal year 2010 it had an operating budget of only $811,000. In addition, since 1992 the AoA has cumulatively awarded only roughly $4.5 million dollars in grants for programs designed to prevent elder abuse, neglect and exploitation. Moreover, comprehensive federal action on elder abuse remained illusive despite Congress being well aware of the issue for some time.

During Senate hearings on the Child Protective Services Act of 1973, a member of Congress “pointed out that ‘there are lots of horrible crimes committed against persons over the age of 18. There are lots of old folks being abused.’” Yet the first federal attempts to address this issue began in 1980, when Representative Mary Oaker introduced comprehensive federal legislation

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243 Id.
244 Id.
246 US House Select Committee on Aging, Elder Abuse An Examination of a Hidden Problem, 102, (1981) accessible at: http://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=1137&context=govdocs
known as the Elder Abuse Treatment and Prevention Act. This legislation was modeled after federal anti-child abuse legislation and sought to create a national center on elder abuse as well as funding for prevention, identification, and treatment of elder abuse and neglect, however the bill failed to make it out of committee. Nevertheless in 1981, the House Committee on Aging held the first hearings on elder abuse and found its occurrence to be much more widespread than they had anticipated. The Committee was deeply concerned that even though the United States Constitution granted all Americans, regardless of age or infirmity, with inalienable rights, millions of elders were being denied personal liberties such as the right to move freely in their communities and were becoming imprisoned in their own homes. Their findings highlighted the various forms of elder abuse including physical, emotional, sexual, and financial, noting that federal polices such as Medicare, Medicaid, and the Supplementary Security Income program might in fact “encourage the financial exploitation of the elderly.” Committee Chair Florida Representative Claude Pepper remarked that although “[m]ost Americans do respect and honor their parents . . . there are disquieting signs of the erosion of this great moral value.”

Like social scientists today, the Committee proposed a myriad of factors contributing to elder abuse, such as financial abuse being rooted in the rationalization of family members “that it is a pity to waste money (even if it belongs to the elderly) on old people near death . . .”. In addition, the Committee speculated that elder abuse might be a “form of retaliation, or revenge, in which the abuser was mistreated as a child and returns to abuse the parent.” Alternatively,

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247 Id., at 103-104.
248 Seymour Moskowitz, supra note 14, at 84; see also Id.
249 US House Select Committee on Aging, supra note 246, at 25.
250 Id.
251 Id., at 14.
253 US House Select Committee on Aging, supra note 246, at 25.
254 Id. at 59.
another rationale ventured for elder abuse was the “widespread acceptance of violence in American society, which fosters a climate in which it is acceptable to express frustration and stress in violent ways.” Nonetheless, the Committee correctly recognized that “theories concerning why elder abuse exists are likely to be debated by social scientists for years to come.”

While in the past, elderly abuse and neglect was easily overlooked and undetected, the Committee realized it could no longer be ignored as the demographics had shifted and greyed as modern antibiotics allowed individuals to live longer with help from medical and supportive services. The Committee realized that this demographic shift would be new for America, and that this combined with “declining birth rates and galloping inflation leads to the conclusion that fewer and fewer people are going to be supporting more and more elderly disabled relatives and having a tough time doing it [and these environmental] factors and the lack of community resources [could] play a part in creating a climate [for] abuse of the elderly [to] exist.”

Furthermore, the Committee accepted that because of the multitude of factors which played a role in causing elder abuse, it was necessary to utilize “multidisciplinary programs and services to deal effectively with the special problems of elder abuse, neglect, and exploitation.” Consequently, based on its findings, H.R. 769 was proposed by the Committee and called for “the establishment and maintenance of centers, serving defined geographic areas, staff[ed] by multidisciplinary teams of personnel trained in the special problems of elder abuse, neglect, and exploitation cases to provide a broad range of service . . .” Instead of the Committee’s report

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255 Id. at 60.
256 Id. at 122.
257 Id.
258 Id. at 122-123.
259 Id. at 126.
260 Id. at 165.
being a call for Congressional action attempting to mitigate the growth of elder abuse, the
proposed legislation fell on deaf ears and did not gain any traction outside of the Committee.

Following the publication of the Committee’s report in 1981, despite the realization that elder
abuse was a growing problem, little if anything was accomplished at a federal level to address
this troubling development. In 1985, another report entitled Elder Abuse: A National Disgrace
was issued by House Subcommittee on Aging and echoed earlier recommendations that the
federal government take comprehensive action to assist states in combating elder abuse.\footnote{Senator John B. Breaux & Senator Orrin G. Hatch, supra note 21, at 214 (citing Select House Comm. On Aging, 99th Cong., Elder Abuse: A National Disgrace (Comm. Print 1985)).} This
report estimated that that “one out of every twenty-five older Americans, or more than 1.1
million persons were subject to abuse each year [and] that states spent $22.14 per child resident
for child protective services versus $2.91 per older resident for elderly protective services.”\footnote{Id.}
However, no comprehensive legislation was passed in response to this report. Then in 1990, the
House Subcommittee on Health and Long-Term Care issued a report entitled Elder Abuse: A
Decade of Inaction which again highlighted the disparity in spending by States on child
protective services, at $45.03 per child, with $3.80 spent per elderly citizen for adult protective
services.\footnote{Id.}

It was not until 1992 that Congress took its first specific steps to address elder abuse when it
reauthorized and amended the Older Americans Act of 1965 adding Title VII, the Vulnerable
Elder Rights Protection Activities section.\footnote{Library of Congress, Summaries for the Older Americans Act of 1992, (1992) accessible at: https://www.govtrack.us/congress/bills/102/s3008/summary} This section authorized the establishment of what
would become the National Center on Elder Abuse, creating outreach, counseling, ombudsman,
elder abuse prevention, and elder rights and legal assistance development programs.\footnote{265} Moreover, Congress authorized appropriations for the AoA to make allotments to the States to pay for the cost of creating elder rights protection programs as well as grants to tribal agencies for their own elder rights programs.\footnote{266} However, by 2012, twenty years after the passage of the provision authorizing grants to tribal agencies for elder abuse programs, Congress had failed to actually appropriate a single dollar.\footnote{267}

Nonetheless, the early 1990s saw the first directed federal efforts to tackle elder abuse. Shortly thereafter awareness of elder abuse as a phenomenon began to slowly percolate throughout the United States, and a variety of different disciplines advocated that their members take steps to address this issue. In 1992, the American Medical Association (“AMA”), modified their guidelines to doctors encouraging them to become more aware of elder abuse and intervene when necessary.\footnote{268} The AMA guidelines recognized that doctors ““are ideally situated to play a significant role in the detection, management, and prevention of elder abuse and neglect [since] physician[s] may be the only person outside the family who sees the older adult on a regular basis, and . . . is uniquely qualified to order confirmatory diagnostic tests [and] recommend hospital admission or to authorize services such as home health care.””\footnote{269}

Similarly, in 1993, the American Bar Association’s (“ABA”) Commission on Law and Aging conducted a study examining guidelines on how to enhance the ability of state courts to address

\footnotesize{\textsuperscript{265}Id.  
\textsuperscript{266}Id.; see also Patricia Holkup, Emily Matt Salois, Toni Tripp-Reimer, & Clarann Weinert, \textit{Drawing on Wisdom from the Past: An Elder Abuse Intervention With Tribal Communities}, Gerontologist Vol. 47 No. 2 248, 249 (2007) (asserting that elder abuse in tribal communities cannot be addressed through “Euro-America based legal policies [which] emphasize punishment and criminalization of deviant behaviors [that do not mirror] Tribal culture . . .”).  
\textsuperscript{269}Id.}
elder abuse cases. The ABA identified a variety of problems including: a “lack of knowledge about and sensitivity to elder abuse by judges was seen as inhibiting prosecutor, civil lawyers, and abused persons from bringing court cases.” In addition, court staff’s failure to explain the legal process to abused elders along with embarrassment and cognitive impairments posed a barrier to the pursuit of legal remedies. Moreover, the ABA recognized that courts are often unaccommodating places for an abused elder who is often homebound and incapable of traveling to court to testify and court delays typical or otherwise can be burdensome. In response, the ABA developed 29 guidelines for state courts to assist them in becoming more accessible for elders. These principles later contributed to the development of five pilot “court focused elder abuse initiatives.” While the ABA was at the forefront in attempting to identify and advocate for restructuring the judicial process to assist abused elders in accessing justice, it nonetheless recognized that over twenty years after beginning this process the bulk of the work remains undone. In 2012, Lori Stiegel of the ABA’s Commission on Law and Aging stated that federal leadership on elder abuse is needed as it can encourage State courts to adapt in response to the growing elder population, and that “State judges need to be informed about myriad issues interrelated with elder abuse including decision-making capacity, undue influence, case management issues and procedural innovations.”

The early 1990s also saw the first recorded instance of a targeted ad campaign to raise public awareness about elder abuse with a series of posters placed in New York City subway cars.

271 Id.
272 Id.
273 Id.
274 Id.
275 Id., at 2.
that urged people to report elder abuse. One of the ads “bore the caption, ‘If the granddaughter of 70-year-old Jenny steals from her purse, checking or savings account that’s elder abuse. Any questions?’” In addition, the Elder Crime Victims Resource Center, an eight-person office within New York City’s Department of the Aging which sponsored the ad campaign, conducted seminars for police officers and ambulance workers on elder abuse and distributed booklets to senior centers and clinics listing the warning signs of elder abuse.

These signals included “‘inadequately explained bruises cuts or burns, shame, fear, embarrassment, sudden withdrawals or closing of bank accounts and indications of unusual confinement (closed off in a room; tied to furniture; [or] a change in routine activity.)’”

Although some positive steps were made in the 1990s, with the creation of the National Center on Elder Abuse and some cursory “awareness raising” about elder abuse, this remained a far cry from the comprehensive federal legislation identified as necessary in the 1981 House of Representatives report Elder Abuse an Examination of a Hidden Problem, which could spur the creation of multidisciplinary programs and solutions across the country. Inexplicably, despite bipartisan support in both Houses of Congress, federal legislation (which would create a federal multidisciplinary coordinating community on elder abuse) continued to be stymied. In 2003, Republican Senators John Breaux and Orrin Hatch, along with Democrat Blanche Lincoln and

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277 Id.
279 Id.
forty-one other co-sponsors introduced the Elder Justice Act in the Senate; an identical bill was introduced in the House of Representatives by Democrat Rahm Emanuel. The Elder Justice Act recognized that elder abuse is “a public health, social services, and law enforcement issue that requires a multi-faceted solution.” As such, the bill proposed the creation of an Elder Justice Coordinating Council, which “shall coordinate the activities of the DOJ, HHS, other relevant federal agencies, states, communities, and private and not-for-profit entities regarding elder abuse, neglect, and exploitation of the elderly.” The bill called for grants for the development of elder abuse forensic centers to develop professional expertise in identifying abuse, neglect, and exploitation. Additional grants would help fund the creation of community programs for resources such as: “court appointed advocates, legal services for older victims, public guardians, monitoring of guardianship and enhanced volunteers, and faith based and not-for-profit work in prevention of elder abuse and assistance of victims.” Furthermore, the bill recognized that there had been a longstanding and widespread consensus that the complexity of elder abuse requires a multidisciplinary response and thus grants were to allocate funding for the creation of “multi-disciplinary teams comprised of some combination of APS, geriatricians, gerontologists, statisticians, psychologists, forensic psychiatrists, medical examiners, police, and prosecutors on an as-needed basis.” Moreover, it was recognized that this multidisciplinary approach would help allow professionals from a variety of fields learn from each other about abuse while facilitating communication and collaboration among diverse professionals who

282 Senator John B. Breaux & Senator Orrin G. Hatch, supra note 21, at 232.
283 Id., at 235.
284 Id., at 244-245.
285 Id., at 248.
286 Id., at 249.
“may come in contact with victims of elder abuse and neglect [who would not ordinarily] have any protocol or internal reporting mechanism to address it.”

Ultimately, the Elder Justice Act of 2003 was sent to the Senate Committee on Finance and was later reported out of Committee by Senator Grassley and placed on legislative calendar in September of 2004. However, no actual vote ever took place on the bill. In the House of Representatives the Elder Justice Act received even less favorable treatment and was referred to several Committees including: Ways and Means, Judiciary, Energy and Commerce, and Education and the Workforce; however it failed to make it out of any of these Committees. In 2005, Senator Hatch reintroduced the Elder Justice Act in the Senate, with Democratic Congressman Peter King reintroducing it in the House of Representatives. The bill was sent to the Senate Committee on Finance, and was reported upon favorably by the Committee in August of 2006 by a vote of 20 to 0. Shortly thereafter, Senator Grassley reported the Committee’s action to the Senate and the bill was placed once again on the calendar for a vote, which again never occurred. In the House of Representatives, the Elder Justice Act of 2005 repeated its earlier fate, dying in a variety of Committees without any substantive action. This repeated inability to pass comprehensive federal legislation to address elder abuse for over twenty-five years highlights how significant issues affecting the elderly are regarded.

287 Id., at 251-252.
289 Id.
292 Office of Legislative Policy & Analysis, supra note 280.
294 Id.
B. Multidisciplinary Solutions to Elder Abuse

Even though Congress remained unwilling to support and even vote on the Elder Justice Act, advocates for the elderly were able to muster enough support to obtain some incremental progress towards the ultimate goal, finally enacting comprehensive federal legislation. In 2006, Congress reauthorized the Older Americans Act of 1965, this time amending the law so that it endorsed multidisciplinary elder abuse prevention solutions. The law authorized within the AoA a designated point person responsible for elder abuse prevention and services. When authorized, this individual would have the responsibility for developing “priorities, policies, and a long term plan for- facilitating the development, implementation, and continuous improvement of a coordinated, multidisciplinary elder justice system in the United States . . .” In addition, this individual would be tasked with providing federal leadership in support of State efforts in developing their own elder justice programs and activities. Furthermore, in response to both the paucity of knowledge and reliable data regarding elder abuse, the amendment required the recording and sharing of data collected relating to elder abuse, neglect and exploitation. This amendment also called for the utilization of a clearinghouse to “collect, maintain, and disseminate information concerning best practices and resources for training, technical assistance, and other activities to assist States and communities to carry out evidence-based programs to prevent and address elder abuse . . .” Moreover, this clearinghouse would assist in carrying out research on elder abuse and studies on its national incidence and prevalence. Finally this clearinghouse would help promote collaboration, thus “diminishing duplicative

efforts in the development and carrying out of elder justice programs at the Federal, State, and local levels . . .” 302

Shortly after this amendment to the Older American’s Act, in 2006 the AoA issued a grant to the New York State Office for Children and Family Services (“OCFS”), for a Statewide Legal Assistance program “designed to promote the development of integrated legal services delivery systems that coordinate the efforts of the Legal Assistance Developer, Title III-B legal providers, senior legal help-lines, private bar pro bono activities, law school clinics, and self-help sites to ensure maximum impact from limited resources.”303 New York was not alone, across the nation the AoA began to write grants for the development of a multidisciplinary team approach (“MDT”) to elder abuse. An elder abuse MDT has been defined as “‘professionals from diverse disciplines who work together to review cases of elder abuse and address [systemic problems]’”304 An MDT is typically “comprised of primary care providers, social workers, social services, legal professionals, ethicist, mental health professionals, community leaders, and residents.”305 This model, borrowed from the fight against child abuse and domestic violence, is believed by social science researchers to be the best practice against elder abuse as its effects are “often time consuming and complex to address in a delivery system that is typically fragmented and underfunded.” 306

While there remains a dearth of research into efficacy of the MDT model to prevent elder abuse it is clearly better than no model or strategy. Even though MDTs are not a panacea,
evident from the continued prevalence of child abuse with over 3.5 million allegations of abuse reported to officials in 2013 alone,\textsuperscript{307} research indicates that “child abuse MDTs . . . provide more accurate assessment and prediction of risk, more adequate intervention, decreased fragmentation in the delivery of services, reduction in contamination of evidence, and reduced duplication of services.”\textsuperscript{308} A cynic might argue that MDTs are ineffective in preventing social ills, merely asking diverse groups to do more for the latest cause celebre without adequately funding their efforts. While the formation of MDTs may be an example of ‘action over evidence,’ the team members’ belief that these meetings are highly effective implies the utility of this mechanism for handling elder mistreatment and deserves further study.”\textsuperscript{309}

Advocates of the MDT model assert that there are three ways it can benefit the detection and intervention of elder abuse.\textsuperscript{310} First, MDTs “offer a more holistic perspective to the situation of elder abuse than could be offered by any single discipline alone. Combining the orientations, expertise and philosophies of several disciplines (or systems) is perhaps the best guarantee that all aspects of a situation are assessed and all possible remedies considered.”\textsuperscript{311} Second, MDTs “assure that no single discipline has the sole responsibility for handling complex and challenging elder abuse situations that often seem to defy resolution. Rather, responsibility is shared among multiple disciplines.”\textsuperscript{312} Finally, MDTs “help forge relationships among professionals that

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\item \textsuperscript{308} Jeanette M. Daly & Gerald J. Jogerst, Multidisciplinary Team Legislative Language Associated with Elder Abuse Investigations, 26 J. Elder Abuse & Neglect, 4, 45 (2014) (citing Kolbo & Strong (1997)).
\item \textsuperscript{309} Xinqi Dong, supra note 305, at 157.
\item \textsuperscript{310} Georgia J. Anetzberger, Carol Dayton, Carol A. Miller, John F. McGreevey, & Maria Schimer, Multidisciplinary Teams in the Clinical Management of Elder Abuse, 28 Clinical Gerontologist No. ½, 157, 160 (2005).
\item \textsuperscript{311} Id.
\item \textsuperscript{312} Id.
\end{itemize}
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transcend consideration of individual cases, and serve to promote a community-wide approach to elder abuse prevention and treatment.

Anecdotally, it is believed that collaboration through an elder abuse MDT provides additional benefits to elders by “strengthening community relationships, promoting teamwork, and cooperation, ensuring victim safety and security, providing assistance on cases referred to guardianship, helping older clients secure improved medical care, and enhancing members’ understanding of services.” MDTs are generally not rigid organizations, but flexible and can “have a single focus, such as a financial exploitation action team or fatality review team, or may be [multi-focused,] such as an MDT concerned with implementation of services for all types of elder abuse . . .” Generally, an MDT can be designed to have a variety of purposes and “can be superimposed on current delivery systems . . . improve[ing] communication and problem solving, without fundamentally altering the service delivery structure.” Through an MDT, a variety of different complementary interventions can be used, including: “legal assistance, victim advocacy, and emergency and long-term housing for elder abuse victims; respite and adult daycare services provided to families; cooperation of the criminal justice system with other public agencies; and community coordinating mechanisms such as case identification, case management, crisis intervention, and communication linkages.”

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313 Id.
315 Jeanette M. Daly & Gerald J. Jogerst, supra note 308, at 45.
317 Etty Vandsburger, Victoria Curtis, & Bethany Imbody, Professional Preparedness to Address Abuse & Neglect Among Elders Living in the Rural South: Identifying Resiliency Where Stress Prevails, 37 Ageing Int. 356, 359 (2012) (citing Fontelo, at 461); see also Bridget Penhale, Responding & Intervening in Elder Abuse & Neglect, 35 Ageing Int. 235, 248 (2010) (MDT interventions can include: “domiciliary support at home to rescue apparent care giver stress . . . . use of appropriate legal systems to prosecute theft in financial abuse . . . . [t]herapy to improve relationships . . . . protection and safety . . . [and a f]ocus on autonomy and empowerment to enable the victim to survive and change their situation.”).
The MDT model is a drastic departure from the aims of 19th century social reformers whose idea of social policy reform in response to the poorhouse was to create institutions, so that its residents could independently be sorted and isolated from society and could be helped, studied, and hopefully “cured.” From the organization and operation of these various institutions, narrow specialized fields of knowledge slowly developed, including psychology, psychiatry, social work, law, education, economics, and political science. This ongoing symbiotic relationship created a large corpus of data about human behavior, but resulted in a variety of fields becoming disconnected, allowing for each individual discipline to speculate as to supposed “root causes” and best practices in response. This lack of communication and dialogue between social science fields has erected an inevitable Tower of Babel where “law enforcement, social service agencies, and public guardianship officials do not interact on a daily basis, and in effect speak different languages and have different (and sometimes competing) priorities and definitions of what constitutes a good outcome in an elder abuse case.”

Consequently, each discipline is not as efficient at attempting to control long-standing, complex, and multi-faceted social ills like elder abuse. By constructing these barriers and acting individually rather than in unison it is more difficult for them to achieve their common goal of supervising, assessing, and correcting maladaptive behaviors so that they can become more normative and useful. Due to scarce resources in order to effectively address an issue like elder abuse, it will be necessary for collaboration between systems like law, medicine, psychology, psychiatry, social work, education, and criminal justice over the cacophony of

319 See Michel Foucault, Discipline & Punishment the Birth of the Prison, 304 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977) (“The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the social worker-judge; it is on them that the universal reign of normative is based; and each individual, wherever he may find himself subjects to it . . .”).
individual voices. Moreover, collaboration amongst various systems and networks is vital as methods of correcting maladaptive behaviors have “become medicalized, psychologized, [and] educationalized.”\textsuperscript{320} In modern society this nonjudical use of power fulfills a function for the justice system by “no longer punishing individuals’ infractions, but correcting their potentialities.”\textsuperscript{321} Even the ABA acknowledges that elder abuse cannot be dealt with by simply “prosecut[ing] our way out of this.”\textsuperscript{322} In fact, historically, elder abuse has been under-prosecuted due to gaps within the criminal justice and social service systems which oftentimes as mistakenly characterized as merely a civil matter.\textsuperscript{323} Elder abuse victims might also be reluctant to seek prosecution because of love for the perpetrator, mistrust of the legal system, fear of losing their independence, as well as denial, embarrassment, and shame.\textsuperscript{324}

Beginning in the 1980s on a limited basis, the MDT model began to be applied to elder abuse emerging from the recognition of “clinical and systemic issues that abuse cases frequently pose[d] exceed[ed] the boundaries of any single discipline or agency.”\textsuperscript{325} In 1986, the Department of Health and Human Services (“DHHS”), publicly acknowledged that it needed “to do a better job at coordinating the efforts of medicine and health, social services, and law enforcement at all levels – national, State, and local – if it wish[ed] to conduct more effective

\textsuperscript{320} Id. at 305.
\textsuperscript{321} Michel Foucault, \textit{Power}, 57 (James D. Faubion ed., 1994).
\textsuperscript{323} National Center for State Courts, Prosecution Guide to Effective Collaboration on Elder Abuse, 1 (2012)
\textsuperscript{324} Id. at 2; \textit{see also} Jose Ruben Parra-Cardona, Emily Meyer, Lawrence Schiamberg, & Lori Post, \textit{Elder Abuse & Neglect in Latino Families: An Ecological and Culturally Relevant Theoretical Framework for Clinical Practice}, 46 Family Process No. 4, 451, 461 (2007) (arguing that collaborative approaches to elder abuse are necessary since “if radical actions are taken, such as permanently separating caregivers from victims, elders can experience new challenges that protective services may be unable to address, such as social isolation, extreme financial hardship, or placement in a shelter that lacks culturally competent services.”).
multidisciplinary campaigns against violence in our families and communities.”

Almost thirty years ago DHHS recognized elder abuse was a new area of serious concern, necessitating multidisciplinary solutions and services for elder abuse victims including “legal assistance, victim advocacy, and emergency or long-term housing, services which also recognize and ensure the right of the elderly to live free from abuse.”

Despite this recognition federal leadership in developing multidisciplinary solutions to elder abuse remained sorely lacking.

Nevertheless, independent from federal leadership, elder abuse MDTs began to appear sporadically around the nation. In 1997, from an interdisciplinary collaboration between Baylor College of Medicine Geriatrics Program and Adult Protective Services, the Texas Abuse Elder Abuse and Mistreatment or TEAM Institute was born, which sought to improve the lives of abused and neglected elders through clinical care, research, and education.

Sometime later in Virginia, a working group was developed on elder abuse which “focused on getting pertinent information quickly to responding entities including police, regulators, and social service agencies.”

In June of 2000 a multidisciplinary elder abuse team was created through the University of California at Irving after funding was secured through a three year grant from the Archstone Foundation assisting “APS, law enforcement, and DA’s office with access to trained medical experts who are available to examine the medical and psychological injuries of the alleged victims, assess capacity to consent . . . document injuries for subsequent legal action,

327 Id. at 12.
328 Senator John B. Breaux & Senator Orrin G. Hatch, supra note 21, at 227.
answer medical questions, and testify in legal proceedings.”

Then in January 2006, Los Angeles County created an MDT known as the Elder Abuse Forensic Center (“Center”).

The Center’s mission is “‘to improve the quality of life for vulnerable older and dependent adult who have been victims of abuse and neglect.’” The Center meets weekly to review two to four new elder abuse cases as well as to provide updates on ongoing cases and investigations. The Center is staffed by one full-time project manager whose salary is covered through grant funding. In addition to the project manager, the Center is composed of stakeholders from a variety of disciplines including law enforcement (LAPD, County Sherriff, District Attorney), Adult Protective Services, Victim/Witness Assistance Program, Office of Public Guardian, the County Department of Mental Health, USC Keck School of Medicine, and a civil pro-bono elder legal services provider Bet Tzedek. On an ad-hoc basis other stakeholders participate in the Center’s meetings, including the Long-Term Care Ombudsman, County Department of the Coroner, and the Regional Centers of the Department of Developmental Services. This collaborative and holistic process has assisted in not only increasing knowledge about elder abuse but more significantly the identification and litigation of elder abuse cases as well as assistance for victims and their families.

The Center’s assistance can include “medical and neuropsychological assessments, court testimony, linkage to assistance...”

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330. L. Mosqueda, K. Burnight, S. Liao, & B. Kemps, Advancing the Field of Elder Mistreatment: A New Model for Integration of Social & Medical Services, 44 Gerontologist No. 5, 703, 704 (2004).
331. Id.
333. Id. at 705.
334. Id.
335. Id.; see Janet R. Morris, The Bet Tzedek Legal Services Model: How a Legal Services Model Addresses Elder Abuse and Neglect, 22 J.Elder Abuse & Neglect, 275, 275 (2010) (for a discussion on how a civil attorney can play a vital role on an MDT by assisting with the creation of wills, dealing with creditors and handling a Medicare denial); see also Lori Stiegel, supra note 322 (which argues that civil attorneys should receive “[t]raining on how to prevent, detect, and redress elder abuse, ideally beginning in law school and then through continuing legal education programs; and Technical assistance and other resources to help them provide high-quality, cost-effective civil legal services . . .”).
336. Id.
337. Id.
from outside services (e.g., case management, mental health services, legal representation), and enhanced support to both APS and law enforcement investigators.”338 Moreover, these activities have also served as a “gateway to protection and support services, including conservatorship, civil judgments, restitution, and prosecution.”339 A qualitative study of the Centers’ stakeholders “indicated that all collaborating groups were enthusiastic about the enhanced effectiveness they were able to achieve through working together . . . to manage and process abuse cases . . .”340

The Center has been successful in assisting the county’s APS program in their goal of protecting vulnerable elders whom live within the community. Support for APS is integral as nationwide APS programs are funded at a fraction of their counterparts in Child Protective Services and a survey of “APS workers indicated that prosecution [of elder abuse] was the most difficult service to obtain form criminal justice professionals”341 Likewise, a nationwide survey of prosecutors has shown that they oftentimes have difficulty in “investigating and prosecuting elder abuse cases, [needing] added resources such as better training and education for prosecutor, judges, law enforcement, and other professionals.”342 Consequently, the MDT model can serve as a mechanism to bring together a variety of professional knowledge bases in an effort not only to combat elder abuse, but also to assist those who been already victimized. While elder abuse has been recognized as a disturbing phenomenon, it has rarely been acknowledged as a cultural issue and it can be difficult to hold abusers accountable through prosecution.343 Studies of the Center have shown that there is a ten “times greater odds of

338 Id., at 708.
339 Id.
342 Id. (citing Miller & Johnson, 2003).
343 Id., at 309 (citing Connolly, 2010; Jackson & Hafemeister, 2010; Miller & Johnson, 2003.).
getting an APS case submitted to the DA for review, when the Forensic Center was involved.”

Furthermore, cases addressed by the Center “had over eight times greater odds of a successful prosecution.” While holding those that abuse elders accountable can serve as a powerful deterrent, mere prosecution alone is a “blunt instrument that is unlikely to make the victim whole [and future efforts should focus on] alternative approaches to resolving elder abuse [such as] psycho-social approaches . . .”

C. Passage of the Elder Justice Act

Finally after years of advocacy, comprehensive federal legislation on elder abuse passed Congress when a version of the Elder Justice Act (“EJA”), was tucked into the 2010 Affordable Care Act. The EJA authorized “$777 million dollars spread over the next four years for programs to prevent and prosecute elder abuse.” Of this money, $400 million dollars would be allocated to the APS and would be the first instance of dedicated federal funding for the states APS programs. This first-time federal funding for APS, came at a crucial time when a survey of 30 states showed that “60% of APS programs have faced budget cuts on average [and] whereas two thirds of the APS reported an average increase of 24% in elder abuse reports.”

The EJA defines elder justice from a societal perspective as efforts to “prevent, detect, treat, intervene in and prosecute elder abuse [and to] protect elders with diminished capacity while

344 Id., at 310.
345 Id.; see also Kathleen Wilber, Adria Navarro, & Zachary Gassoumis, supra note 316, at 36 (the “Center is effective in bringing cases to the DA for review and many of the cases (21.5%) go on to prosecution . . . overall number of cases that resulted in conservatorship [were] (25.3%) compared to the usual care [of (2%)].”).
346 Id., at 311.
348 Id.
349 Elisa Gatmen Kupris, supra note 245, at 48.
350 Xinqi Dong, supra note 305, at 158.
maximizing their autonomy . . .”

From an individual perspective the EJA recognizes that elder rights include “the right to be free of abuse, neglect, and exploitation.”

In an attempt to implement these goals the EJA called for the establishment of elder abuse forensic centers which could “develop forensic expertise regarding, and provide services relating to elder abuse, neglect, and exploitation.” In addition the EJA established an Elder Justice Advisory Board who would “create short and long-term multidisciplinary strategic plans for the development of the field of elder justice and to make recommendations to the Elder Justice Coordinating Council.” Senator Orrin Hatch explained that the work of the Elder Justice Advisory Board and the work of the Elder Justice Coordinating Council (“EJCC”) would not be duplicative and that their shared goals would “encourage a comprehensive and coordinated response by these Federal agencies to elder abuse . . .” The EJCC’s mission is to “coordinate activities related to elder abuse, neglect, and exploitation across the Federal Government [with AoA having the] responsibility for implementing [the] Council’s [recommendations.]” The EJCC represents a multidisciplinary federal approach to dealing with elder abuse and it is currently chaired by the Secretary of Health and Human Services Sylvia Burwell along with the heads of: the Social Security Administration, Consumer Financial Protection Board, U.S. Postal Inspector Services, the U.S. Department of Housing and Urban Development, the United States Department of the Treasury, United States Department of

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352 Id.
354 111 P.L. 148 § 2022 (2010); see also United Nations General Assembly, Social Development: Follow-up to the International Year of Older Persons: Second World Assembly on Ageing, 13 (July 2010) (where the UN has also endorsed the use of a multidisciplinary approach to elder abuse as “it is often difficult to ascertain whether an older person is being abused, doctors, nurses, social workers and other health-care professionals are the first line of defense in detecting and preventing elder abuse.”).

While the EJA was a huge step forward for a comprehensive federal response to elder abuse, the law and its implementation has not been without criticism from advocates for the elderly. Lori Stiegel of the ABA’s Commission on Law and Aging referred to the law as a “partial victory” since it did not fully recognize that elder abuse is a “multifaceted problem that often requires the involvement and intervention of the criminal and civil justice systems to meet the needs of victims . . .” In 2011, attempts were made in to strengthen the EJCC by enacting the Elder Abuse Victims Act, which sought to “better protect, serve, and advance the rights of victims of elder abuse and exploitation by establishing a program to encourage States and other qualified entities to create jobs designed to hold offenders accountable, enhance the capacity of the justice system to investigate, pursue, and prosecute elder abuse cases, identify existing resources to leverage to the extent possible, and assure data collection, research, and evaluation to promote the efficacy and efficiency of [elder justice] activities . . .” These goals would be further advanced by creating an Office of Elder Justice within the Department of Justice. Even though the EJA was enacted in 2010, it would be more than two years before the first meeting of the EJCC would be convened in October of 2012. It is unclear why it took over two years for the EJCC to meet and discuss elder abuse and develop a coordinated federal response. Since its inaugural meeting, the EJCC has met on a handful of other occasions.

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357 Id.
360 Id.
361 AoA, supra note 356.
362 Id.
Despite the criticism of the EJA and the slow response by the EJCC, the federal government has finally taken initial steps towards providing federal leadership on elder abuse. At the inaugural October 2012 meeting, the EJCC reviewed several white papers from an interdisciplinary group of experts on elder abuse. At the EJCC’s May 2014 meeting it endorsed eight recommendations derived from these white papers. These recommendations include:

- supporting the investigation and prosecution of elder abuse cases by providing training and resources to federal, state, and local investigators and law enforcement;
- enhancing services to elder abuse victims;
- developing a national adult protective services system;
- developing a federal elder justice research agenda to identify best practices for identification and prevention of elder abuse;
- developing a broad based public awareness campaign about elder abuse;

363 See Page Ulrey, supra note 237, at 2 (which advocates for increased training and coordination on elder abuse “[f]rom the 911 dispatcher to the patrol officer to the detective to the prosecutor – if just one of these essential players fails to recognize a report as criminal, the case will likely end there, with the exploitation continuing until APS or the family intervenes civilly, or the elder’s resources are gone.”).

364 See Id. at 3-4 ( noting that “[a]dding to these difficulties are the often pressing needs of the victim, who may be suffering from dementia, health issues physical disabilities, financial and legal issues, isolation and fear of loss of independence, need for housing, and lack of caregiver and social support and advocacy. . . . Because there is no advocacy available for victims of elder financial crimes in most communities, it is not at all unusual for the detective or prosecutor to be drawing into playing that role. Additionally, due to the current lack of coordination between the criminal justice system and civil legal services on these cases, many victims are never referred to civil attorneys to assist them in repairing their credit and the other damage.”).

365 See William F. Benson & Kathleen Quinn, supra note 267, at 2-4 (finding that “state and local APS investigators, case workers and other do the best they can to deal with an onslaught of difficult, complex and growing caseloads, they do so with virtually no national infrastructure behind them . . . over past five years 87% state APS programs report that the number of their reports and caseloads have gone up, while at the same time 48% have had their staff levels reduced . . . . OAA should be amended to ensure that APS client are de facto considered a top priority.”).

366 See Robert B. Wallace, Research Directions in Elder Mistreatment Research, 7-11 (2012) (advocating Orwellian like “research on ways in which [elder abuse] can be ‘automatically’ suspected or detected in home and institutional circumstance . . . in the era of the ‘smart home’ and highly monitored institutional settings, this should be increasing possible . . . . There is an already a precedent for assessing the quality of social interactions electronically with electronic sensors . . . . [A] federal data base [should be created which] include[s] prior histories of arrest and conviction, work related social malfunction, divorce and family violence histories in past records, behavioral disorders in federal medical record data bases, disciplinary problems in the military, excessive numbers of automobile citations, and related clues that may identity EM perpetrators . . . this approach may turn out to be ineffective, but it needs to be explored.”) accessible at: http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Wallace_White_Paper.pdf

367 See Hillery Tsumba, Toward an Elder Abuse Prevention Campaign, 4-5 (2012) (“Members of the public who are aware of APS may have outdated views and think of them as ‘the men in white coats’ who will lock their friend or neighbor away in a facility. A social marketing campaign can improve the public’s knowledge, understanding, and trust of APS . . . .Search engine optimization(SEO) techniques can increase the visibility of online information about
discipline training on elder abuse to educate stakeholders across multiple disciplines on prevention and detection;\textsuperscript{369} combating elder financial exploitation;\textsuperscript{370} and improving screening for dementia and cognitive capacity,\textsuperscript{371} financial capacity and financial exploitation.\textsuperscript{372} The EJCC has attempted to implement these recommendations through a two-pronged approach by supporting the development of local multidisciplinary elder abuse centers while also instituting court focused elder abuse initiatives.\textsuperscript{373} In 2012, then director of the EJCC Kathleen Sebelius announced $5.5 million dollars in grants for States and Indian Tribes to prevent elder abuse by piloting multidisciplinary “models involving individual and institutions that can play a role in combating abuse, such as health professionals, law enforcement and legal services agencies, social workers, clergy, and community organizations.” Since this announcement and federal support, MDTs have begun to slowly develop around the country.

The second prong of the EJCC strategy has entailed developing reforms to courts to make them more elder friendly so that they “are sensitive to the special needs required of the elderly in the legal process and that ensure that seniors are able to obtain justice.”\textsuperscript{374} These types of “court-focused elder abuse initiative[s are] ‘either (1) a court or court-based program or (2) a program [elder abuse,] deliver[ing] tailored messages to target audience such as caregivers, older adults, and senior service providers . . . media can also enable tracking of the reach and effectiveness of the campaign messages.”’) accessible at: http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Tsumba_White_Paper.pdf\textsuperscript{369} Id., at 5 (“multiagency coordination under the [EJA] will help create an infrastructure for communication and outreach.”).

\begin{itemize}
\item \textsuperscript{369} Erica Wood, Statement on Federal Approaches Toward Elder Financial Exploitation by Fiduciaries – Representative Payees & Guardians, 1-4 (October 31, 2012) accessible at: (discussing how Social Security’s representative payee program can help actually help facilitate financial elder abuse. The author argues that there is a need for either third party review of payees or a “program of volunteer payee monitors for selected cases . . . SSA offices could select, screen, coordinate, train and supervise a cadre of dedicated volunteers to visit and interview beneficiaries and payees and to report back.”) accessible at: http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Wood_White_Paper.pdf/\textsuperscript{370}
\item \textsuperscript{371} Page Ulrey, supra note 237, at 5 (“victims who suffer from dementia pose issues with which the criminal justice system is unfamiliar . . . the defense raised most often is that the victim consented to the act at issue . . .”).\textsuperscript{372}
\item \textsuperscript{373} Elder Justice Coordinating Council, Eight (8) Recommendations for Increased Federal Involvement in Addressing Elder Abuse, Neglect, & Exploitation, (2013) accessible at: http://www.aoa.gov/AoA_programs/Elder_Rights/EJCC/docs/Eight_Recommendations_for_Increased_Federal_Involvement.pdf.\textsuperscript{374}
\item \textsuperscript{374} Elisa Gatmen Kupris, supra note 245, at 49, \textsuperscript{374} Id., at 49.
\end{itemize}
conducted in partnership with a court, both of which serve victims or potential victims of elder abuse.”

Since the 1990s the ABA had been at the forefront of piloting a handful of court based reforms for elder abuse victims and had found that common “impediments that elders face include (1) unawareness of remedies available, (2) deficiencies in legal services for the elderly, (3) mobility problems affecting the ability to travel to and to sit in court, (4) fear or ignorance of procedures, (5) unawareness of professionals, and (6) disparate impact resulting from typical court practice.”

Modifications to the courts are necessary as courts are often skeptical of elder abuse victims as “unreliable witnesses because of limited mental capacity-impaired by the consequences of old age.” In fact, in “Boyce v. Fernandes, the Court of Appeals for the Seventh Circuit noted that ‘accusations by demented persons must always be viewed with a certain skepticism, especially since paranoid suspicions are a common incident of dementia.’”

Elder friendly court initiatives are hardly unique in that there “are hundreds of specialized courts, dockets, and procedures in the country that focus on juvenile cases, family matters, drug prosecutions, [and] complex multidistrict litigation.” One court-focused elder abuse initiative

375 Id., at 62 (citing Lori A Stiegel & Pamela B. Teaster, Am. Bar Ass’n Comm’n on Law and Aging, Final Technical Report to the National Institute of Justice on “A Multi-Site Assessment of Five Court-Focused Elder Abuse Initiatives (2011) accessible at: http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011_aging_ea_multi_assess.authcheckdam.pdf; see also Marie-Therese Connolly, supra note 10, at 50 (discussing court innovations in Jefferson County Kentucky since 2005 have enabled “homebound and medically frail older persons to seek and obtain emergency protective orders from their homes, avoiding the necessity of personal courtroom appearances.”).

376 Id. (citing Lori A Stiegel., Court Focused Elder Abuse Initiatives: Results of an Assessment, 2 accessible at: http://cspl.uis.edu/ILLAPS/DOA/conferences/documents/Handouts/Court-Focused%20Elder%20Abuse%20Initiatives%20Results%20of%20an%20Assessment.pdf; see also Marie-Therese Connolly, supra note 10, at 49 (“Bureaucratic and often inflexible court procedure are not inherently ‘elder friendly.’ The times elders are required to be in court may not be their most lucid, nor time they can manage logistically, and court personnel often are unaware of steps they could take to maximize elders’ access to the courts and meaningful participation in the justice system.”).


378 Id., (citing Boyce v. Fernandes, 77 F.3d 946, 948 (7th Cir. 1996)).

379 Marie-Therese Connolly, supra note 10, at 51.
has been undertaken in the Illinois Circuit Court of Cook County where Chicago is located.\textsuperscript{380} In December of 2010, the Honorable Timothy C. Evans, Chief Judge of the Circuit Court of Cook County, created a new division within the court system known as the Elder Law and Miscellaneous Remedies Division (ELMR). The goal of the ELMR is to “adopt a holistic approach to the legal issues of Cook County’s elderly population—most notably, those issues involving elder abuse, neglect and financial exploitation.”\textsuperscript{381} This division was created with the realization that the inclusion of “elder abuse, neglect, and financial exploitation in the general caseload of all divisions and districts hinder[s] the ability to capture critical data, to coordinate legal and social services, to develop partnerships [with] the objectives of detecting, impeding, and preventing elder abuse . . . and to broaden the elderly’s access to justice.”\textsuperscript{382} Like other multidisciplinary solutions, the ELMR has brought together a variety of interdisciplinary stakeholders including: the City and County department on Aging; the Offices of the Public Defender, the State’s Attorney, the Public Guardian, Attorney General, city and county law enforcement; elder law practitioners; and local law schools with elder law programs.\textsuperscript{383} This team assists EMLR judges and staff by executing a holistic legal approach to elder abuse cases.

The ELMR includes a full-time veteran judge and support staff which helps identify elder abuse cases that are appropriate for diversion to the ELMR division.\textsuperscript{384} The ELMR is composed of both criminal and civil divisions which have undergone special “training to deal with issues of elder abuse, neglect, and financial exploitation.”\textsuperscript{385} Within the ELMR, victim advocates assist with providing “links and referrals to social and legal services. Understandings have been

\begin{itemize}
  \item \textsuperscript{381} Id.
  \item \textsuperscript{382} Id.
  \item \textsuperscript{383} Id., at 2.
  \item \textsuperscript{384} Id.
  \item \textsuperscript{385} Id., at 3.
\end{itemize}
reached between ELMR and other divisions; [and] dually assigned [civil] judges with special expertise will preside over cases such as involuntary commitments, tax deeds adoption cases and domestic violence matters involving litigants, age 60 and over.\textsuperscript{386} The ELMR’s criminal division consists of “three dedicated judges [who] receive assignments of all elder abuse, neglect and financial exploitation cases in which the victim is an elderly person . . .”\textsuperscript{387}

Along with the development of the ELMR, Cook County has also developed the multidisciplinary Cook County Elder Justice Center (“CCEJC”). The CCEJC is intended to deliver “support to litigants aged 60 and over [with] numerous services to [elders, their] family members, and caretakers including but not limited to training and education; legal and social counseling; assessments; mediation; victim advocacy; hotline; informational brochures; availability of senior peer counselors; access to enhanced communication devices . . . courthouse orientations, [and] direct links to social services . . .”\textsuperscript{388} The CCEJC is open Mondays through Fridays from 9 am till 4 pm\textsuperscript{389} and is “staffed by a multidisciplinary team, including a court coordinator, victim advocate(s), case manager(s), law enforcement representatives, senior peer counselors, and volunteers, linking law school and social work externs and community members.”\textsuperscript{390}

The biggest challenges in implementing the ELMR has been the “considerable investment of people, materials, space and resources [and getting] judges to think outside the box and look beyond the form in which the case presents itself to arrive at recommended solutions

\textsuperscript{386} Id.
\textsuperscript{387} Id.
\textsuperscript{388} Id.
\textsuperscript{389} Circuit County Court of Cook County Elder Justice Center, Mission, (2015) accessible at: http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment/ElderLawMiscellaneousRemediesDivision/ElderJusticeCenterEJC.aspx
\textsuperscript{390} Hon. Patricia Banks, supra note 380, at 3.
that address the major issues facing the elder.” Additionally, the ELMR has struggled with getting third party witnesses in elder financial exploitation cases to report it to authorities. Another issue for the ELMR has been “collecting and storing data that could impact on follow-up strategies and future planning . . . The fifth challenge [has been] the development and implementation of continuing training and education of the public on aging issues.” Finally, steps need to be taken to make “the Court accessible, friendly, accommodating of physical impairments, and doing the necessary infrastructure planning to implement [this] plan.” Despite these challenges, the ELMR is a step towards increasing the access to justice for elders and similar innovations should be replicated across the nation.

V. Next Steps for New York

“‘Making sure our seniors are safe from elder abuse isn’t only a family, caregiver, or law enforcement responsibility. It’s beyond a community responsibility, it’s a global responsibility.’” Unfortunately, while New York has begun to take some responsibility for addressing elder abuse (such as proclaiming June 15, 2014 Elder Abuse Awareness Day), it continues lag behind efforts implemented by other states in its response to this troubling phenomenon. Since 2004, groups within New York State have been exploring the development of MDTs and regional multidisciplinary coalitions to identify and prevent elder abuse. Around 2013, previously existing multidisciplinary coalitions on family and domestic violence like:

\[\text{References}\]

391 Id., at 4.
392 Id.
393 Id.
395 Governor Andrew Cuomo, Elder Abuse Awareness Day Proclamation, (declared that “causing physical, emotional, or mental harm or injury, using methods of intimidation, taking advantage of a senior, or jeopardizing his or her health or welfare – is inexcusable and intolerable.”) accessible at: http://ocfs.ny.gov/main/proclamations/Elder%20Abuse%20Awareness%20Day%20-%202014.pdf
396 Lifespan, New York State Coalition on Elder Abuse Membership Application Form, accessible at: http://nyselderabuse.org/documents/NYSCoalitiononElderAbuseMembershipForm.pdf.
Broome County Family Violence Prevention Council, Nassau County Coalition on Against Domestic Violence, New York State Coalition Against Domestic Violence, New York State Coalition Against Sexual Assault, and the Syracuse Area Domestic & Sexual Violence Coalition began to incorporate elder abuse as an issue within their existing coalitions. Additionally, several multidisciplinary elder abuse specific coalitions have also been pioneered across New York State including: the Coalition on Elder Abuse in Duchess County, Erie County Council on Elder Abuse, New York State Elder Abuse Network, the Oneida County Elder Abuse Coalition, and the New York State Coalition on Elder Abuse.

Sadly, leadership in New York State on elder abuse and the development of multidisciplinary coalitions has largely not come from State government, but rather from the Rochester based non-profit Lifespan, which convened and coordinates the multidisciplinary New York State Coalition on Elder Abuse. Since 1987, Lifespan pioneered an elder abuse prevention program in Monroe County, which, beginning in 1998, was expanded into nine additional counties. In May of 2004, Lifespan convened the first New York State wide Summit on Elder Abuse, and in 2006 it trained “more than 1,200 first responders and probation officers to recognize, investigate and prosecute instances of elder abuse.” Later in 2011, Lifespan, along with other community partners, completed the first comprehensive, statewide study of the prevalence of elder abuse. Finally, Lifespan coordinates and manages the New

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397 New York State Coalition on Elder Abuse, Regional Coalitions, accessible at: http://nyselderabuse.org/regional-coalitions.html
398 Id.
399 Lifespan, supra note 396.
401 Id.
402 Id.
York State Coalition on Elder Abuse. In addition to Lifespan, this coalition consists of the New York State Office of the Aging, OCFS, and the Weil Cornell Medical Center.

In 2012, after the passage of the EJA, Lifespan, along with other members of the Coalition, were awarded a grant from the AoA “to pilot an intervention to prevent and address [elder abuse] through the creation of [MDTs which] will seek to provide improved, effective cross-system collaboration and specialized response, including the investigation and intervention to protect adults at risk of such abuse.” The Coalition was able to utilize this funding to develop two elder abuse MDTs: one based in New York City and the other located in Monroe County. In 2013, Lifespan was able to build upon its success in Monroe County and expanded to seven surrounding counties developing MDTs which consisted of: Lifespan, APS, Weil Cornell Medical Center, law enforcement, psychiatrists, financial institutions, and Certified Public Accounts, Assistant Districts Attorneys, and a Licensed Social Worker from Lifespan. To date this MDT has responded to around one hundred elder abuse cases with half of these cases dealing with financial exploitation. Despite some challenges with getting law enforcement to understand the seriousness of elder abuse, Lifespan believes that the MDT model is one that with dedicated funding could be replicated statewide.

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403 Id.
404 Telephone Interview with Paul Caccamise, Vice President for Program Life, Lifespan (December, 18, 2015).
405 Commissioner Gladys Carrion, Esq. supra note 303.
406 See New York City Elder Abuse Center, About Us, accessible at: http://nyceac.com/about/ (New York City’s MDT initiatives which includes: a Manhattan enhanced financial response team which is composed of various interdisciplinary stakeholders that meet twice a month for an hour and half at the Manhattan District Attorney’s office to evaluate cases of elder financial abuse; a Manhattan Elder Abuse Case Consultation and Review Team which is consists of 40 different interdisciplinary members from a broad spectrum of organization that meet monthly for an hour an half typically discussing two to three cases; and a Brooklyn MDT which meets three times a month at Brooklyn APS for an hour and half at each meeting to provide interdisciplinary solutions to elder abuse cases.).
407 Telephone Interview with Paul Caccamise, supra note 404.
408 Id.
409 Id.
410 Id.
Unlike what has occurred in New York, as early as 1998 the Commonwealth of Kentucky began the process of establishing multidisciplinary “Local Coordinating Councils on Elder Abuse (LCCEAs) . . . to intervene in cases of elder abuse in local communities and to develop crisis response teams.”\(^\text{411}\) In 2005, Kentucky enacted legislation mandating the creation of a state-level Elder Abuse Committee which recommended the expansion and continued formation of LCCEAs “to prevent, remedy, intervene, and coordinate services and resources by community partners . . .”\(^\text{412}\) To date, Kentucky has created thirty LCCEAs,\(^\text{413}\) who have worked to identify elder abuse “service gaps and system problems and advocated for needed change . . .”\(^\text{414}\) Half of these LCCEAs reported that they provide multidisciplinary review of alleged elder abuse cases.\(^\text{415}\) Finally, these LCCEAs play a valuable function as community educators on elder abuse conducting numerous “[t]raining events including conferences, workshops, and seminars [targeting groups including] bank employees, clergy, law enforcement, and medical students.”\(^\text{416}\) Kentucky’s LCCEAs could serve as a model for New York government to enact legislation requiring all of New York’s sixty-two counties, through their Office for the Aging, to develop local elder abuse coordinating councils and multidisciplinary prevention and response teams.

Besides Kentucky,\(^\text{417}\) several other States and territories have already enacted legislation mandating a multidisciplinary response to elder abuse including: California,\(^\text{418}\) Guam,\(^\text{419}\) Iowa,\(^\text{420}\)

\(^{411}\) Pamela Teaster & Tenzin Wangmo, supra note 314 at 191-192.

\(^{412}\) Id.

\(^{413}\) Id. at 195.

\(^{414}\) Id. at 196.

\(^{415}\) Id. at 197.

\(^{416}\) Id. at 204.

\(^{417}\) See Ky. Rev. Stat. Ann. § 209.030(6)(b) (“The cabinet shall . . . support specialized multidisciplinary teams to investigate reports [of elder abuse.] This team may include law enforcement officers, social workers, Commonwealth’s attorneys and county attorneys, representatives from other authorized agencies, medical professionals, and other related professionals with investigative responsibilities . . .”).

\(^{418}\) E.g. Cal. Welf. & Inst. Code § 15760 (APS “shall include investigations, needs assessments, remedial and preventive social work [and] use multidisciplinary teams . . .”); see Cal. Welf. & Inst. Code §15763(a) (“Each county shall establish an emergency response [APS] program [which includes establishment of] multidisciplinary teams to develop interagency treatment strategies . . . coordination with existing community
Louisiana, Montana, and South Carolina. In addition, a number of states such as Colorado, Florida, Minnesota, and Nevada have authorized the use of multidisciplinary resources ... and to avoid duplication of efforts.”); see also Cal. Welf. & Inst. Code § 15763(f) (“Each county shall . . . establish and maintain multidisciplinary teams including, but not limited to, [APS,] law enforcement, probation departments, home health care agencies, hospitals . . . the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.”).  

420 See Iowa Code Ann. § 235B.1(1) (APS shall establish “local or regional multidisciplinary teams to assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services . . . membership of a team shall include individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, law, law enforcement, or other disciplines . . .”).  

421 See La. Rev. Stat. Ann. § 403:2(E)(5) (APS shall “convene a regional level coordinating council composed of representatives of both public and private agencies providing services, with the objectives of identifying resources, increasing needed supportive services, avoiding duplication of effort, and assuring maximum community coordination of effort.”).

422 See Mont. Code Ann. § 52-3-805(1) (“County attorney or the department of public health and human services shall convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons . . . who are victims of abuse . . . Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney . . .”).  

423 E.g. S.C. Code Ann. § 43-35-560 (creating “a multi-disciplinary Vulnerable Adults Fatalities Review Committee . . .”); see S.C. Code Ann. § 43-35-310 (creating “the Adult Protection Coordinating Council . . .”); see also S.C. Code Ann. § 43-35-330 (duties of the council are to “coordinate the planning and implementation efforts of the entities involved in the adult protection system. Members shall facilitate problem resolution and develop action plans to overcome problems identified within the system. The council shall develop methods of addressing the ongoing needs of vulnerable adults, including increasing public awareness of adult abuse . . .”).  

424 See Colo. Rev. Stat. Ann. § 26-3.1-103(3) (“It is the general assembly’s intent to encourage the creation of an at-risk adult protection team for each county . . . the purpose of [each] team shall be to review the processes used to investigate [elder abuse,] to review the provision of protective services for [elders,] to encourage interagency cooperation, and to provide community education on [elder abuse.]”).  

425 See Fla. Stat. Ann. § 415.1102 (“Subject to an appropriation, [APS] may develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of the districts [APS.] Such teams may be composed of . . . Psychologists, psychologists, or other trained counseling personnel . . . Police officers or other law enforcement officers . . . Medical personnel who have sufficient training to provide health services . . . Social workers who have experience or training in preventing the abuse of elderly [and] Public guardians . . .”).  

426 See Minn. Stat. Ann. § 626.557, Subd. 1 (“A county may establish a multidisciplinary adult protection team comprised of the director of the local welfare agency or designees, the county attorney or designees, the county sheriff or designees, and representatives of health care. In addition, representatives of mental health or other appropriate human service agencies and adult advocate groups may be added to the adult protection team.”); see also Minn. Stat. Ann. § 626.557, Subd. 2 (“A multidisciplinary adult protection team may provide public and professional education, develop resources for prevention, intervention, and treatment, and provide case consultation to the local welfare agency to better enable the agency to carry out its adult protection functions . . .”).  

427 See Nev. Rev. Stat. Ann. § 200.5091(2) (the “administrator of the aging services division . . . may organize one or more teams to assist in strategic assessment and planning of protective services, issues regarding the delivery of services, programs or individual plans for preventing, identifying, remedying or treating abuse, neglect, exploitation or isolation of older persons . . . The team may include representatives of other organizations concerned with education, law enforcement or physical or mental health.”).
teams to address elder abuse. The surest way for New York to guarantee the proliferation of multidisciplinary teams across the State and in each county would be through a mandate other state have done, using their laws as models. However, if New York lacks the political resolve to take this bold step forward, it could easily modify its own law to merely authorize a multidisciplinary response to elder abuse. If New York fails to take either step, multidisciplinary approaches to elder abuse will continue to progress in a piecemeal manner rather than in an efficient and better coordinated fashion. Such a failure to act will result in the continued perception that New York is lagging behind the innovative approaches taken by other States and Territories and is failing to provide an adequate response to control elder abuse.

For several decades, New York State has required certain groups of professionals (like doctors, social workers, educators, and others) to report suspected child abuse to protective services. Yet there is no comparable mandate for these same professionals to report suspected elder abuse on behalf of individuals living in the community. It has long been suspected that those cases of suspected elder abuse reported to protective services constitute merely the “tip of the iceberg.”\footnote{Lifespan, \textit{supra} note 27, at 12.} However, as of January 2015, New York is the only State in the nation failing to mandate that certain professionals like doctors and social workers are required to report to protective services suspected abuse of elders who live in the community.\footnote{Ryan Patrick Backer, \textit{New York State Doesn’t Have Mandatory Reporting: Good or Something to Change}, (2015) accessible at: http://nyceac.com/elder-justice-dispatch-new-york-state-doesnt-have-mandatory-reporting-good-or-something-to-change/#footnote_0_7967.} Nevertheless, while New York has not taken steps to mandate the reporting of suspected abuse, it does provide protection for individuals who in good faith chooses to voluntarily report that an individual “may be an endangered adult or in need of protective services [or] testifies in any judicial or
administrative proceeding arising from such report [has] immunity from any civil liability . . .”

While it is important to legally protect whistleblowers, legal remedies alone can sometimes prove to be an inadequate remedy.

Attempts to institute a mandated statewide elder abuse reporting hotline have been attempted, and several bills have been introduced at the New York State Capitol but have failed to garner enough support from lawmakers in both the House and Senate. Unlike New York, other States like Florida have modified their laws to mandate the reporting of elder abuse, expanding them to include financial professionals like bank and credit union officers and employees in an attempt to root out elder financial abuse. Even though New York is now in a club all of its own, mandating the reporting by certain professionals of suspected elder abuse for individuals living in the community remains a contentious issue.

Advocates for mandated reporting assert that it will raise awareness of elder abuse and increase the number of reported cases to APS “from a variety of sources, including health care and legal professionals, community organization, city workers (postal worker, utility worker, etc.), family members, or concerned neighbors or friends who have contact with elderly individuals.” However, even in other States where reporting has been mandated “‘reporting of abuse and neglect is a disaster at nearly all levels.’” It is believed that this lack of reporting is a result of “[f]ear of increased abuse or retaliation, social stigma, or lack of whistleblower

430 NY CLS Soc Serv § 473-b
431 See N.Y. A.B. 2207 (2013) (introduced by Assemblyman Lopez which sought to “amend social services law, in relation to establishing a statewide toll-free elderly abuse hotline for purposes of reporting endangered adults . . .”)
432 Fla. Stat. §415.1034
Victims of abuse are reluctant to self-report, believing that abusive treatment by a caregiver is normal, or that interventions will only exacerbate the problem. More importantly “[n]obody wants to report they’re suffering at the hands of their children.”

Mandated reporting remains “controversial, and a long debate has raged regarding its propriety and efficacy.” Opponents of mandatory reporting oppose it not necessarily because they lack compassion for at risk elders, but traditionally ground their opposition in one of four different theoretical groups. The first group’s argument is that “compulsory reporting is said to violate the elder’s right to self-determination and to constitute an ageist response to this social problem.” Moreover, these critics argue that mandated reporting “perpetuates the perception that elders are helpless and childlike [and] the loss of a caregiver (albeit an abusive and/or otherwise flawed caregiver) will be perceived as leading to institutionalization and other negative consequences.” The next theoretical basis for attacking mandatory reporting is that it violates the confidentiality which is inherent in professional relationships such as those between doctors and their patients. A third group asserts that a mandated reporting system is disempowering by “discourage[ing] elders from reporting abuse themselves and deters victims from seeking [help.]” The final group of challengers believes that “mandatory reporting will flood the existing social service system [and] prevent informed decision-making distinguishing valid reports from those based on suppositions and fear of legal consequences for not reporting . . .

435 Id.
437 Seymour Moskowitz, supra note 14, at 108.
438 Id.
439 Id. (citing Faulkern, supra note 182 at 84-86).
440 Id., at 109.
441 Id.
442 Id.
443 Id.
These valid concerns against instituting a mandated reporting system are further compounded by the fact it is unclear whether compelling reporting of supposed abuse is actually efficacious. “While some studies demonstrate that higher investigation rates are associated with a mandatory reporting system, typically the penalties for failing to report elder abuse are too weak or infrequently enforced to produce effective reporting.” A 1991 study by the Government Accountability Office on mandated reporting concluded that it “is not necessarily the most effective measure to decrease elder abuse.”

It is claimed that doctors can be an integral part in the fight against elder abuse since mistreated elders “often have limited access to people and environments outside their everyday home life. Hospitals are often the only venue in which elder victims of abuse . . . interact with professionals who have the power to help.” However, doctors are often unaware of what elder abuse is and thus when they should report it even when they are mandated to do so. One study from Alabama found that 77 percent of doctors are unclear “about the definition of abuse; over one-half reported they were not sure that Alabama had procedures for dealing with abuse, and 60% were uncertain of the procedure for reporting abuse cases . . .” Another study from North Carolina and Michigan found that an “overwhelming majority (84%) of physicians [were] uninformed about the existence of their

444 Marie-Therese Connolly, supra note 10, at 54 (citing Jeanette M. Daly, Gerald J. Jogerst, Margaret F. Brining & Jeffrey D. Dawson, Mandatory Reporting: Relationships of APS Statute Language on State Reported Elder Abuse, 15 J. Elder Abuse & Neglect 1 (2003)).


447 Seymour Moskowitz, supra note 14, at 114; see also Mark Yaffe, Christina Wolfson, & Maxine Lithwick, Professions Show Different Enquiry Strategies for Elder Abuse Detections: Implication for Training & Interprofessional Care, 23J. Interprofessional Care, 646, 647 (November 2009) ( noting that “[i]n the United States a mail survey of 2000 family doctors and internists observed that 72% reported no learning exposure to elder abuse, 63% had never or almost never asked about it, more than half had never identified a case, and the average of their educated guesses about the general prevalence of elder abuse was less than 25% . . .”).
state’s mandatory reporting laws.” A survey of APS professionals suggested that “doctors were the least likely group to uncover new cases, after social workers, nurses, paramedic personnel and other health professionals.”

Undoubtedly pressure will continue to mount for New York to enact some sort of mandatory reporting scheme for elder abuse given the fact that it is now the only State which lacks such a law. While passing some sort of legislation will most likely contribute to raising awareness about the issue of elder abuse, this alone will not necessarily mitigate its prevalence. In fact, it might cause several unforeseen consequences, such as overburdening the already severely underfunded APS system with meritless claims while also disempowering competent elders of the ability to make decisions regarding their own lives. In addition, current interventions such as removing an abused or neglected elder from the community to a more protective segregated institutional setting might be merely moving them from the frying pan and into the fire. Consequently, a mandatory reporting system should not be viewed as a cure all against elder abuse. If such a system is to be implemented, significant funding should contemporaneously be enacted for APS. Additionally, there would be a need for alternatives to institutionalization as the main intervention for abused and neglected elders since this could force them to leave the community and live in a nursing home. In the interim, while New York remains the only State without a mandatory reporting system, this could provide a fertile environment for social science researchers, with a readymade control group for further study on the mandatory elder abuse reporting systems.

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448 Id.
449 Senator John B. Breaux & Senator Orrin G. Hatch, supra note 21, at 225 (citing Mark Lachs, Nat’l Inst. Of Justice, Selected Clinical & Forensic Issues in Elder Abuse, in Elder justice: Medical Forensic Issues Concerning Abuse and Neglect (Draft Report) (2000)); see also Xinqi Dong, supra note 305, at 156 (noting that a “survey of APS workers in 43 states found that of 17 occupational groups, physicians were rated in the least helpful category for detecting abuse and neglect.”).
Since 2005, non-profits in New York have experimented with piloting elder friendly court initiatives. The first program, based in Kings County and sponsored by the New York City Family Justice Center (“NYCFJC”) in Brooklyn, is known as the Elder Temporary Order of Protection (“ETOP”) initiative. Without any dedicated funding, the ETOP initiative began assisting “eligible older victims of domestic violence who are unable to travel and appear in court personally . . . in obtaining temporary orders of protection. Social workers and lawyers are [also] available to assist . . . abused [elders with] emergency counseling, direct services, and information regarding services . . .” Since its creation ETOP has helped on average one client a month with referrals typically coming from the DA’s office, police, family court, or community agencies. As of 2011, the ETOP program operated without a dedicated staff, and social workers assisted clients in drafting orders of protection in addition to their other duties. Once drafted, the order will be faxed to family court with the social worker in the ETOP program providing continued support for the client as needed. A 2011 study of ETOP by the ABA found that the initiative provided a much-needed service to homebound elders, increasing their access to justice by now having the ability to receive assistance from family court.

In 2011, the ABA recommended dedicated funding with the expansion of the ETOP program to all other boroughs of New York City, along with similar programs in other courts such as housing and guardianship paring attorneys with social workers. However, proliferation of these kinds of initiatives has been slow. In New York City in addition to the ETOP program, the

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451 Id. at App. A4 1.
452 Id. at App. A4 2.
453 Id.
454 Id.
455 Id. at App. A4 12.
Jewish Association Serving the Aging (“JASA”) operates an initiative in Queens, Manhattan, and Brooklyn and it provides civil attorneys and social workers to elders who have been victims of financial abuse and are at risk for eviction, foreclosure, or are victims of real property fraud.  

This initiative, the Legal/Social Worker Elder Abuse Program or (“LEAP”), assists victims of elder abuse “by providing comprehensive legal and social work services including: case management services, individual, family, and group counseling, assistance with entitlements, accessing safe temporary shelter and transportation, [while also providing] legal representation to obtain orders of protection and assists older persons to recover property in cases of fraud and financial abuse.”  

This program could serve as a model across New York State if funding for new elder justice initiatives was not met with such significant barriers in many communities.

New York has begun to take the lead in financing new initiatives. In December of 2014, tucked within $6.2 million dollars worth of grants for domestic violence prevention programs, New York State awarded a one-time $35,000 grant to the Albany, New York non-profit Equinox for “criminal and family court advocacy services for domestic violence victims, with a focus on elderly victims . . .”. While this is a start, dedicated leadership and funding is needed to develop and sustain new intervention models in the fight against elder abuse like MDTs and elder friendly courts. For too long, New York has been slow to react to the growing threat that elder abuse poses to its own elder citizens. While piece meal and decentralized solutions are better than nothing, they remain a far cry from comprehensive statewide initiatives that have been undertaken in other States and which advocates in New York have argued are necessary.
here as well. Due to demographic changes, we might be quickly approaching a critical mass of elder abuse, forcing New York to undertake comprehensive solutions already implemented elsewhere.

VII. Potential Challenges to Creating Multidisciplinary Elder Abuse Solutions

It well established that significant financial barriers exist making it difficult for all people access to justice. Roughly one third of New York State residents live below the poverty line and every year around 2.3 million low-income individuals have to face the discouraging prospect of litigating in civil court without having even minimal access to an attorney. Not only does this issue highlight the fundamental aspects of unfairness in our judicial system, but it also increases litigation costs as “‘the opportunity to resolve disputes without litigation or to settle cases expeditiously is lost.” While organizations such as the Legal Aid Society provide civil legal services for low-income individuals, in 2010 they estimated that because of a lack of resources they could only assist one out of every nine New Yorkers who sought their assistance. This is despite the fact that every dollar invested in civil legal services generates more than six dollars in cost savings. However, rather than adequately funding access to justice for all New Yorkers it has been proposed instead that collaborative interdisciplinary models be developed between attorneys and those in the other fields which would “permit appropriately trained nonlawyer advocates to provide out-of-court assistance in a discrete substantive area.”

A variety of terms have been utilized to describe this model, including interdisciplinary, collaborative, multidisciplinary, or holistic lawyering. Regardless of the terminology used, this

461 Id., at 2.
463 Id., at 17.
464 Id., at 1.
model has been described by the American Bar Association (“ABA”), as “‘a partnership, professional corporation, or other association or entity that includes lawyers and nonlawyers [who] holds itself out to the public as providing nonlegal, as well as legal service[s]’”\(^{465}\) It has been stressed that there is a need to employ this model due to the increasing complexity of cases and the realization that clients’ problems are never solely “legal” in nature.\(^{466}\) It is believed that this holistic legal services model was first pioneered in work with children “at risk of abuse or neglect, drawing on a team of professionals including lawyers, pediatricians, social workers, psychiatrists, child developmental specialist, and community planners.”\(^{467}\) Proponents of holistic legal services assert that it is consistent with an attorney’s role as an advisor who may “refer not only to the law but to other considerations such as moral, ethical, social, and political factors that may be relevant to the client’s situation.”\(^{468}\) Advocates have argued that this model should be adapted from the field of child welfare and used to address a range of issues facing elders.\(^{469}\)

Professionals from a human services background such as social workers are seen as an integral part of this multidisciplinary approach as they possess “specialized training in human behavior, interpersonal dynamics, mental health assessment, psychosocial assessment, and systems theory [which] are able to help lawyers develop their practice knowledge and skills.”\(^{470}\) Social workers can also play an important role in facilitating the development of MDTs and assist in the collaboration across systems to help to prevent, assess, and correct elder abuse.

Social work as a profession has embraced a multidisciplinary approach to practice, reflected in


\(^{466}\) Id., at 347.

\(^{467}\) Id.

\(^{468}\) Heather A. Wydra, Keeping Secrets Within the Team: Maintaining Client Confidentiality While Offering Interdisciplinary Services to the Elderly Client, 62 Fordham L. Rev 1517, 1519 (March, 1994) (citing Model Rule 2.1).

\(^{469}\) Id.

\(^{470}\) J. Michael Norwood & Alan Paterson, supra note 465, at 662.
its ethical standards which call for the promotion of multidisciplinary team collaborations among individuals and organizations “to support enhance and deliver effective services to clients and client support systems.”\textsuperscript{471} This standard has been interpreted to require social workers to play an “integral role in fostering, maintaining, and strengthening collaborative partnerships on behalf of clients, families and communities . . .”\textsuperscript{472} Social workers can facilitate this multidisciplinary collaboration by delineating and communicating the roles and responsibilities that each collaborating organization can play in supporting a client.\textsuperscript{473} Furthermore, they can help to restructure “professional identities with a focus on mutual understanding and shared values and practices, establishing greater role clarity.”\textsuperscript{474} Finally, social workers are in a unique position to identify, treat, and prevent elder abuse by being able to assist in the implementation of both a Control Model and Support Model to deal with abuse.\textsuperscript{475} The Control Model “views abuse as a crime, emphasizing the responsibility of the perpetrator and using legal means to intervene.” The Support Model “takes into account the personal situation of the aggressor [focusing] on therapeutic interventions that rely largely on dialogue, mediation, group therapy and support services . . .”\textsuperscript{476} Social workers can complement the work of civil attorneys in the fight against elder abuse by helping “to evaluate cases and provide assistance to the family in finding home care, placing the client in assisted living or nursing facilities, and even addressing family


\textsuperscript{472} Id.

\textsuperscript{473} Id.

\textsuperscript{474} William Lauder, Isobel Anderson, & Aileen Barclay, \textit{Housing & Self-neglect: The responses of Health, Social Care & Environmental Health Agencies}, 19 J. Interprofessional Care, 317, 320 (August 2005); (citing King & Ross, 2003)).


\textsuperscript{476} Id.
dynamics issues [by] address[ing] the needs of the caregiver as well as the care recipient . . . allow[ing] the attorney to concentrate on the legal issues.”

Nonetheless, a variety of perceived ethical and professional barriers exist impeding the development of multidisciplinary legal services, including the impermissibility of legal fee sharing between attorneys and non-attorneys. However, a more fundamental concern regarding a collaborative process between social workers and attorneys is the potential clash of professional orientations and ideologies. While attorneys as advocates for their clients are obligated to “zealously assert[ their] client’s position under the rules of the adversary system[;]” social workers’ ethical rules require them to consider “their responsibility to the larger society [which] may on limited occasions supersede the loyalty owed clients . . .” This paternalism inherent in the social work profession’s code of ethics goes so far as to allow them to “limit [their] client’s right to self-determination when, in [their] professional judgment, client’s actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.” These divergent professional orientations could serve as a source of tension when attempting to create a holistic legal practice.

However, in 2009 the New York Bar Association modified their rules of professional responsibility and no longer require attorneys to be zealous advocates on behalf of their clients. Consequently, there may no longer be an

478 J. Michael Norwood & Alan Paterson, supra note 465, at 343.
481 Id., Rule 1.02 Self Determination
ethical barrier for New York attorneys to enter in collaborative relationships with fields like social work, whose ethical orientation is inherently paternalistic.

Another perceived concern for attorneys entering into collaborative practice with social workers is their status as mandated reporters of abuse. While in New York this is not currently a concern since mandated reporting is not required (for people living in the community), if New York were to change this law then potential ethical problems could develop. This could occur if a social worker’s duty to report suspected abuse would in effect breach the attorney’s ethical duty to “not reveal information relating to the representation of a client unless the client gives informed consent . . .”484 It has been argued that one way to limit any potential conflict of interest is to construct multi-disciplinary teams in such a manner that social workers are not free standing professionals, but instead employees of the attorney or a law firm and thus obligated to abide by the ABA’s ethical rules and not that of their own professions.485 While this approach is not truly collaborative and would establish a hierarchy within a multidisciplinary team, it would most likely obviate any ethical and professional considerations while allowing for an attorney’s clients to benefit from the skill set which social workers could provide, such as counseling or referrals to social service agencies. Law school clinics are one area in which this model could be piloted and studied further.

The most significant barrier to developing multidisciplinary teams between attorneys, social workers, and other fields to fight elder abuse is not perceived ethical differences, but rather a failure of understanding, motivation, leadership, and funding. Erroneously it is believed that fields like the law and social work are inherently distinct and have different goals, when in

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fact they use differing tools to achieve similar goals of changing maladaptive behavior while providing assistance for victims. A united front against elder abuse encompassing these fields could be complimentary and potentially more effective than the continued lack of communication and collaboration between these individual systems of social control. The elusive and proverbial so-called “paradigm shift” in thinking would most likely be necessary to achieve this goal. Most likely this could only be able to be achieved by leadership, dedicated funding, and a motivation for each group to change the way they have traditionally functioned as professions. All of these barriers have existed for some time and unfortunately there is no indication of significant change between the ways these fields function that would allow for the widespread collaboration and development of multidisciplinary teams.

VIII. Conclusion

What responsibility society has to its elders is a question which has been pondered for millennia across civilizations. It appears that since the beginning of recorded history the idea that elders have a right to be free from abuse has been recognized. In spite of this longstanding idea, elder abuse has been a phenomenon which has persisted in every society. Ancient cultures attempted to mitigate and address elder abuse by incorporating a filial duty to one’s parents into its religious values, legal traditions, and through moral suasion. Over time, as societies’ values (particularly in the West) have shifted, eroding a filial duty, it has been increasingly necessary for the State to assume the political duty of caring for its elderly population. For centuries the poorhouse, which became transformed into the nursing home, was the tool by which the State fulfilled this new duty to its elder citizens. Through State funded programs such as Social Security, Medicare and Medicaid the State has assumed an ever-increasing responsibility for the care of its citizens. Care of elders, particularly those with medical or cognitive issues, is no
longer seen as merely something to be taken care of by families, but rather through State sponsored and tax payer funded programs. As demographics continue to shift because of the miracles of modern medicine, it is inevitable that the State will continue to bear more than ever an increased responsibility for care of more of its elderly population. In fact, it is projected that by 2050 there will be more people in the world who are over the age of 60 than under the age of 18, a first in recorded history. As this historic development continues, the State’s role as parens patria should require it to ensure that its elders be free from abuse and neglect.

Even though the federal government and New York State have been aware of the growing threat that elder abuse poses, substantive action has been slow and the progress that has occurred on developing new interventions has been sorely lacking and largely underfunded. The general public remains largely unaware of the extent and prevalence of elder abuse.

“Despite the occasional highly publicized cases like the one involving the actor Mickey Rooney who told Congress he had been mistreated by relatives, or the conviction of the heiress Brooke Astor’s son on charges of defrauding her and stealing millions of dollars from her, the biggest challenge is that aging is something that everyone wants to ignore.” Elder abuse is an issue that effects everyone and all people who hope to one day grow old and enjoy their imagined golden age, everyone should selfishly have a stake in eliminating elder abuse. Moreover, when “financial, physical or other abuse means that an older person cannot live independently, taxpayers pick up the bill for costly . . . long-term care via Medicare or Medicaid . . . .”

488 Id.
Legal remedies alone are often inadequate for victims of elder abuse. “Many victims are unable to obtain an attorney, even when the abuse is obvious and shocking; there is little financial incentive for lawyers to become involved. Because of the slow pace of litigation, many of the frail elderly do not survive long enough for a lawsuit to come to judgment . . .”489 Even when elder abuse is investigated and prosecuted it may end up ripping families apart causing unforeseen consequences.490 This impact is best “exemplified by the case of 96-year-old Mary McCauley. ‘Ms. Mary’ lived with her grandson and his wife, cooking and cleaning for them and helping to support them. Over time, they stole her money and eventually her grandson raped her . . . No family member believed or supported Ms. Mary during the investigation or prosecution of the case.”491 Sadly, after her grandson’s conviction, Ms. Mary ended up living the last three years of her life in a nursing home “with victim advocates and other professionals as her only regular visitors and friends.”492

Elder abuse cannot successfully be addressed through legal solutions alone. Elder abuse cases oftentimes “present impossibly difficult factual solutions--perpetrators who lack capacity; victims who prefer not to leave dangerous situations; the same person may be caregiver and perpetrator; aides providing care may lack necessary training or be so shorthanded that providing decent care is impossible . . . And the interventions available to the justice system often are no panacea, may not be what victims would choose, and ironically, may not be the best path to justice.”493 While multidisciplinary solutions might prove more effective in combating the menace that elder abuse poses, this too might not be a panacea. Even though for some time now

489 Seymour Moskowitz, supra note 14, at 104.
490 Marie-Therese Connolly, supra note 10, at 63.
491 Id.
492 Id.
493 Id. at 73.
multidisciplinary solutions have been employed in the fight against child abuse and domestic violence, it is clear that these social evils continue to persist.

There are no easy answers, models, interventions, or silver bullets to stop elder abuse. “Perceived wealth and physical weakness combine to make the elderly likely targets and their living arrangement often leave them dependent and isolated.”\textsuperscript{494} In addition to developing more MDTs, New York and the rest of the nation also need to explore alternative interventions to elder abuse and neglect than just institutionalizing and segregating elders from those in the community who would neglect and abuse them. Segregation of the aged and dying from the rest of society most likely perpetuates the notion that the elderly are somehow inherently different. This practice is even more troubling when one considers that nursing homes are now largely a publicly funded corporate enterprise.\textsuperscript{495} A number of studies have indicated these for-profit corporate nursing homes are “related to poorer quality of care than nonprofit ownership . . . .”\textsuperscript{496} Recently, the United States Government Accounting Office [in 2009,] found that the most poorly performing nursing homes in the United States tended to be owned by for-profit chains.\textsuperscript{496}

The nursing home as an institution has most likely outlived its usefulness as the main intervention against abuse and neglect. In order to adequately address elder abuse, MDTs must have alternative interventions other than just the nursing home, and this necessitates increased and adequate funding for person centered in-home services. Despite deinstitutionalization for other individuals like those with developmental disabilities and mental illness, nursing homes remain the asylum of the present and studies indicate that being in one is “positively associated

\textsuperscript{494} Seymour Moskowitz, supra note 14, at 99.


\textsuperscript{496} Charlene Harrington, Brian Olney, Helen Carrillo, & Taewwon Kang, Nurse Staffing & Deficiencies in the Largest For-Profit Nursing Home Chains & Chains Owned by Private Equity Companies, 47 Health Service Research, 106,107 (2012).
with the segregation factor of discrimination.” Moreover, if MDTs are to truly function at their best in the fight against elder abuse they must be responsive to the needs of the elder. Ideologically and structurally all of our institutions must adapt in their perception of elders, with the goal being to allow for the maximum inclusion and participation of elders themselves in these institutions, including MDTs. Elders can no longer be viewed as mere subjects upon whom to be acted. Instead, images should be promoted “of older people as autonomous, rights-bearing citizens rather than being defined by their needs and dependency on the state.” Only after this attitudinal shift occurs will conditions ripen to allow for a true golden age to emerge.

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497 Perla Werner, Discriminatory Behavior Towards a Person with Alzheimer’s Disease: Examining the Effects of Being in a Nursing Home, 12 Aging & Mental Health No, 6, 786, 792 (2008).