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Taking the Stand



Financial Exploitation of Seniors: Untangling the 'How Much' Conundrum

By David R. Spiegel

How vulnerable are your aging mom and dad and their friends to financial crime and exploitation? What particular acts are they most vulnerable to? How much are they losing?

Questions such as these have been on the national radar screen for at least four decades, dating back to the hearings of the late U.S. Rep. Claude Pepper about elder abuse in the 1970s. Not surprisingly, they have been asked with increasing frequency as the senior age demographic becomes an increasingly large proportion of the United States' total population. Persons 65 years and older are currently 13 percent of our population; by 2030, propelled by a huge influx of baby boomers, the senior population will swell to 20 percent.

Unfortunately, despite more than two decades of research on financial crime and exploitation targeting seniors, answers to the question of "how much" remain riddled with uncertainties.

Key terms lack definition; data collection methodologies blur distinctions between entirely different forms of financial predation—for example, frauds induced by strangers and frauds committed by the elder's relatives—and hard data, to the extent it exists, is often misunderstood or misinterpreted. Finally, and even more importantly, it is unclear if prevalence research is focused on the most relevant issues.

Targeted or Not?

If you only read bullet points in headlines, you're likely to think that financial exploitation of the elderly represents an out-of-control crime wave. "Studies show that up to five million seniors fall prey to financial fraud every year," U.S. Sen. Herb Kohl (D-Wis.) proclaimed at a 2005 Senate hearing investigating crime against seniors.^[1] Putting the issue of senior crime on a more personal level, the Senate Special Committee on Aging, which Kohl chairs, invited 91-year-old actor Mickey Rooney to testify at a March 2011 hearing. Rooney, whose story of abuse involved members of his own family, asserted: "If elder abuse happened to me ... it can happen to anyone."^[2]

According to a study released in June 2011 by the MetLife Mature Market Institute, elder victims of financial abuse suffer an estimated \$2.9 billion annual financial loss.^[3] On the other hand, data collected by the Federal Trade Commission (FTC), the government agency charged with protecting consumers against "unfair or deceptive" trade practices, appears to indicate that seniors are actually in better shape than other age



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groups. The most recent report of the FTC's Consumer Sentinel Network, a repository of complaints received through a hotline as well as through numerous reporting partners, showed that of the 459,568 fraud complaints reported to the FTC in 2010 in which consumers provided their age, just 14 percent involved persons 60 years and older.[4]

Moreover, two separate studies conducted by the FTC in 2004 and in 2007, each using randomly selected consumer samples, concluded that seniors were the least likely of any age groups to be victims of fraud.[5] "Perhaps the most noteworthy finding here is that consumers aged 65 or over do not appear to be at greater risk of being a victim than those who are somewhat younger. Indeed, the cross-tab results suggest that seniors face the lowest risk of being a victim," the FTC said in its 2004 study.[6]

The seeming clash between the FTC's data and the alternative perspectives of MetLife, Sen. Kohl, and Mickey Rooney is not what it appears to be. However, it does illustrate the methodological issues involved in discussions about financial predation against seniors.

Broken Trust

Fraud, in the vernacular of the FTC, refers in the vast majority of cases to stranger-induced scams: illicit acts such as fake credit card schemes, lottery and prize promotions, and phony investment sales—all of which typically are sold through the Internet, through telemarketing, or by direct mail. However, according to elder care experts, these scams constitute only a small part of financial crimes and exploitation committed against elders.

Indeed, a case can be made that seniors are more resistant to third-party fraud than other age groups because they are more suspicious and know more, observes Dr. Laura Carstensen, a professor of psychology at Stanford University.[7] Carstensen, founding director of the recently established Stanford Research Center on Prevention of Financial Fraud, has extensively studied issues involving aging and life span development. Among other things, the center serves as a clearinghouse for studies on financial fraud against seniors.

Of greater concern to Dr. Carstensen and other gerontology experts are frauds and other financial crimes committed by "trusted others"—individuals such as relatives, caregivers, attorneys, guardians, and other persons who are in close relationships with a vulnerable senior and, therefore, in a position to exploit that relationship. These crimes can include fraud. However, in the vast majority of instances, they simply involve naked theft (for example, a relative or legal guardian steals money from an elder's account).

Taking note of the "trusted others" issue, the multidisciplinary authors of a 2003 seminal study on elder mistreatment recommended that the commonly used phrase "elder mistreatment," which includes financial exploitation as well as other forms of abuse, be specifically defined to *exclude* "victimization ... by strangers." [8] In other words, the definition would eliminate a significant majority of exploitative acts reported to the FTC.

However, in contrast to stranger-induced fraud, there is no central national repository for "trusted others" predation data. Instead, the data is scattered among numerous state and local Adult Protective Services (APS) groups that operate under the

separate laws and regulations of the states in which they are located. Not surprisingly, there is no uniformity in definitions or data collection methodologies. For instance, some states separate abuse by categories—such as financial exploitation, caregiver neglect, and psychological abuse—while others do not; some states use the age of 65 to define a senior, others use 60.^[9]

Further complicating matters, a huge proportion of predatory financial acts involving “trusted others” are unreported. An often-cited 1998 study of this “iceberg theory,” using APS records, estimated that for every elder abuse and neglect case reported, over five other cases go unreported.^[10] A May 2011 study on the prevalence of elder mistreatment in the state of New York revealed that for nearly every 24 cases of abuse (including neglect by a responsible caregiver, financial exploitation, and emotional and physical abuse) reported by older residents, only one was documented or referred to social service, law enforcement, or legal authorities. With respect to financial exploitation specifically, the ratio was even higher at 44 to 1.^[11]

Beyond the Numbers

The recently enacted Elder Justice Act (EJA), signed into law by President Obama on March 23, 2010, offers hope that data collection processes related to “trusted others” exploitation will improve. Among other things, the EJA establishes a framework for coordination of APS programs and a series of grants to support them. However, untangling the separate methodologies of the numerous APS groups will prove a daunting task.

In addition, there is a practical difficulty: notwithstanding the good intentions of the act, Congress still has not appropriated the more than \$500 million it authorized for the EJA’s various programs. Indeed, lack of funds has been a substantial historic impediment to research involving financial exploitation of elders. In fiscal year 2009, federal agencies expended a mere \$11.9 million on *all* elder justice activities, according to Kay E. Brown, director of education, workforce, and income security at the U.S. Government Accountability Office (GAO), in her testimony during the same March 2011 Senate hearing at which Rooney testified.^[12] Not surprisingly, a 2011 GAO report stated that only four national studies of elder abuse have been undertaken during the past two decades.^[13]

In the end, like it or not, discussions about the prevalence of senior financial crime and exploitation boil down to guesstimates. Undoubtedly, there is something to be said for improving the accuracy of these guesstimates. More reliable data may provide a better foundation for decisions about the deployment of scarce social service and law enforcement resources on senior-related matters.

On the other hand, current (admittedly imprecise) data clearly indicates that seniors are indeed a vulnerable group when compared to other age demographics. Assuming funding in the elder justice research pipeline remains small, does it make sense to continue seeking better data to answer questions of “how much?” Or is this simply a red herring, a diversion from more meaningful issues?

“We don’t have to see all older persons as more vulnerable with regard to financial exploitation in order to be attentive to issues involving them,” says Dr. Carstensen. “The question is what personal, social, and environmental factors make subsets of the senior population vulnerable and what interventions work best.”

That's where we need to focus our research and our social and political energies." [14]

There are numerous theories about the causes of financial vulnerability of elders, particularly for the huge subset of victims who fail to report egregious acts of financial predation for fear of loss of independence, cognition and physical issues such as dementia and loss of hearing, and reluctance to turn in a family member on whom the senior depends. In addition, there is the problem of where to turn for help. In all too many jurisdictions, a financially mistreated senior will be confronted with a bewildering array of choices that would leave even a determined younger person helpless. [15]

However, the theories are just that: theories. Research regarding seniors most vulnerable to financial crimes and exploitation and the best preventive strategies to address their vulnerability is extremely limited, according to Dr. Laura Mosqueda, director of the Program in Geriatrics at the University of California, Irvine's School of Medicine. Mosqueda's group has been in the forefront of research in this area. Victim research is still at an early stage, she notes. Moreover, there is virtually no research regarding predators.

"Our explanations are based as much, if not more, on experience as on research," she states. "Ultimately, when you attempt to lay your hands on hard data, it's like trying to hold JELL-O that hasn't quite set and keeps leaking through your fingers." [16]

Putting aside our national obsession with "how much" will not be easy, but it is a necessary step. The numbers merely underscore the need for social action. The harder issue is developing data and programs that will make that action a reality rather than a talking point.

David R. Spiegel is an attorney with the Federal Trade Commission whose work includes consumer protection issues affecting the elderly. The views expressed in this article are solely those of the author and do not represent the views of the FTC or its individual commissioners. Additionally, a conference on this topic will be held November 3–4 at the Sofitel Hotel in Washington, D.C. For details, visit <http://fraudresearchcenter.org/events/>.

Notes

[1] S. Rep. No. 109-13, at 2 (July 2005).

[2] Justice for All: Ending Elder Abuse, Neglect, and Financial Exploitation, Hearing Before the U.S. Senate Special Committee on Aging, 112th Cong. (March 2, 2011) (Testimony of Mickey Rooney, at p. 2).

[3] *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders*, MetLife Mature Market Institute (June 2011), at p. 2. The estimate is based on an analysis of newsfeeds from April to June 2010.

[4] *Consumer Sentinel Network Data Book for January–December 2010*, Federal Trade Commission (March 2011), at 10, available at www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf (accessed July 25, 2011). The FTC actually received 725,087 fraud complaints, but in many cases the consumers did not supply their ages. *Id.* at 5, 10.

[5] *Consumer Fraud in the United States: An FTC Survey*, Federal Trade Commission (August 2004) (2004 FTC Consumer Fraud Survey), at 67–69; *Consumer Fraud in the United States: The Second FTC Survey* (October 2007), at 32, 40.

- [6] 2004 FTC Consumer Fraud Survey, at 68.
- [7] Author's interview with Dr. Laura Carstensen, Professor, Department of Psychology, Stanford University (Jan. 13, 2011).
- [8] Richard J. Bonnie and Robert B. Wallace, eds., *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America*, National Research Council (2003), at 40.
- [9] Author's interview with Kathleen Quinn, Executive Director, National Adult Protection Services Association (July 19, 2011); *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*, National Committee for the Prevention of Elder Abuse and National Adult Protective Services Association (February 2006), at 2, 9, 17–18, available at www.ncea.aoa.gov/NCEARoot/Main_Site/pdf/021406_60PLUS_REPORT.pdf (accessed July 20, 2011).
- [10] *The National Elder Abuse Incidence Study*, National Center on Elder Abuse (1998), at 5–1– 5–4.
- [11] Mark Lachs, et al., *Under the Radar: New York State Elder Abuse Prevalence Study*, Lifespan of Greater Rochester, Inc.; Weill Cornell Medical Center of Cornell University; and New York City Department for the Aging (May 2011), available at www.lifespan-roch.org/documents/undertheradar051211.pdf. The study also found that financial exploitation was the highest form of abuse. See also Hearing Before the U.S. Senate Special Committee on Aging, Testimony of Marie–Therese Connolly, Senior Scholar, Woodrow Wilson International Center for Scholars, at pp. 2–5.
- [12] Hearing Before the U.S. Senate Special Committee on Aging, Testimony of Kay E. Brown, Director of Education, Workforce, and Income Security, U.S. Government Accountability Office, at p. 8.
- [13] *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse*, Government Accountability Office, Rpt. No. 11–208 (March 2011), at 8–9.
- [14] Author's interview with Professor Carstensen, see n. 7.
- [15] Thomas L. Hafemeister, "Financial Abuse of the Elderly in Domestic Settings," in *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America*, at 414–415; author's interview with Thomas L. Hafemeister, Associate Professor, University of Virginia School of Law (Feb. 4, 2011).
- [16] Author's interview with Dr. Laura Mosqueda, Director of Program in Geriatrics, University of California, Irvine's School of Medicine (July 31, 2011).

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