

# **ELDER FINANCIAL EXPLOITATION FROM A PROSECUTOR'S PERSPECTIVE**

**Illinois Department on Aging  
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**Page Ulrey  
King County Prosecutor's Office  
Seattle, Washington**

# A Few Preliminaries

- Though my focus is on elders, much of this talk applies to adults with disabilities
- These slides are the property of the presenter and may not be copied, modified, or distributed without permission
- Thank you to Maureen Squires, Dana Wilkerson, Karen Kloppe, Holly Zeilke and the Illinois Department on Aging
- I need to hear from you!

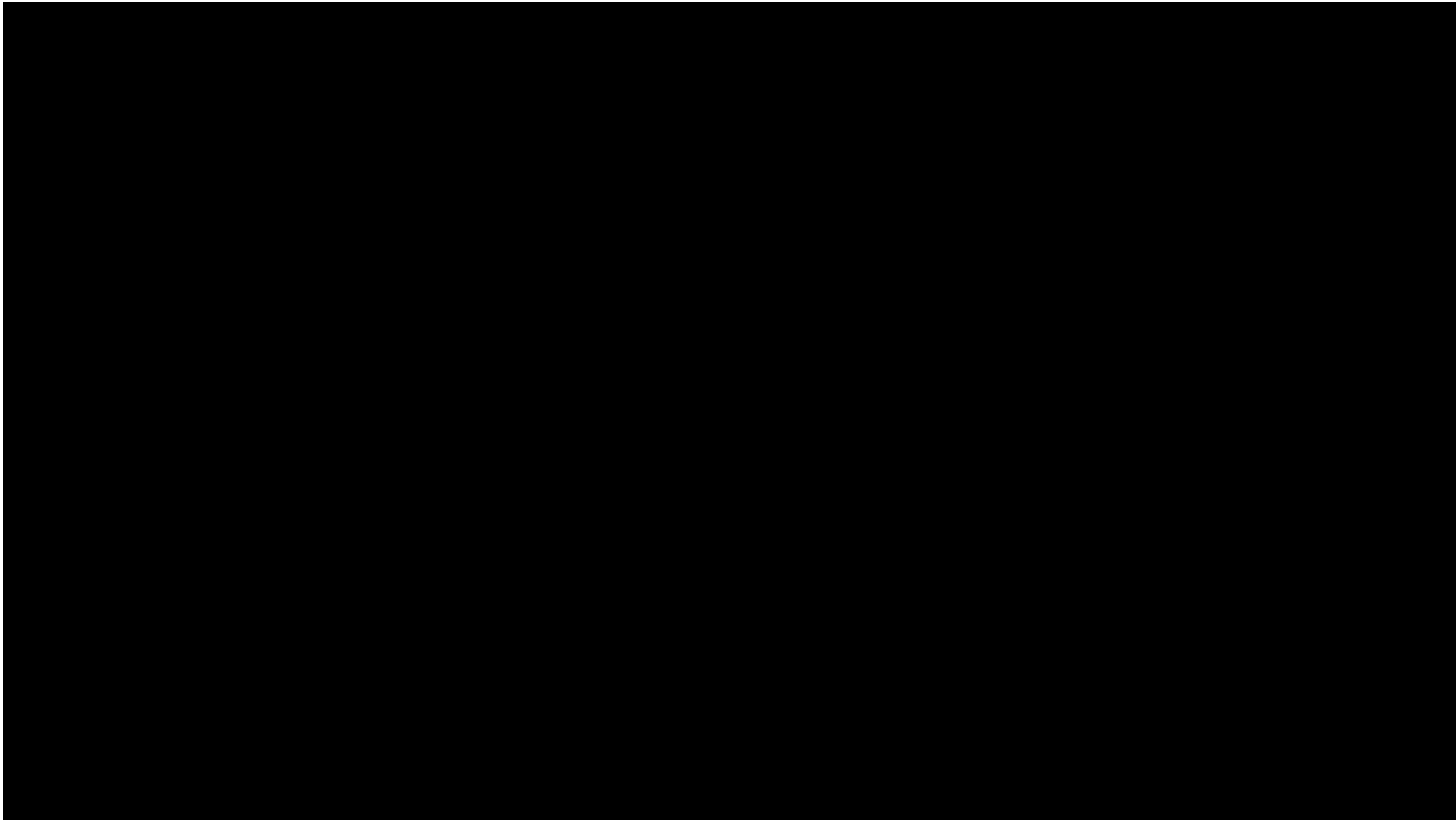
# Agenda

1. Case Example
2. Overview of Elder Financial Exploitation
3. Dementia and Capacity
4. Powers of Attorney
5. Relevant statutes and charging theories
6. Lessons Learned

# Case Example

# Mariana Cooper

- Early 80s, retired, husband had died a few years earlier
- Lived alone in her own home outside Seattle
- Had a son and a daughter, both grown with children of their own
- Estranged from daughter; lived several hours away from son
- Active in her church



# **Elder Financial Exploitation is a Growing Crisis**

# Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends

Office of Financial Protection for Older Americans



# Findings by CFPB

## Suspicious Activity Reports

- \$1.7 billion in suspicious transactions reported in 2017
- 80% of elderly victims lost an average of \$34,200
- One-third of those victims was 80 years and older
- Adults age 70 to 79 had the highest average loss (\$45,300)
- Loss was greater with known suspects, averaging over \$50,000/victim
- Financial institutions reported fewer than one-third of these transactions to authorities

# Recent Study of Filed Criminal Elder Abuse Cases

Weill-Cornell School of Medicine

King County Prosecutor's Office

- Financial Exploitation 45%
- Physical Abuse 32%
- Verbal/Psychological Abuse 15%
- Robbery/Burglary 12%
- Neglect 3%
- Sexual Abuse 2%

**Elder Financial Exploitation Is Most Often  
Committed by Someone the Elder Trusts**



- Caregivers
- Guardians
- Financial Advisors
- Attorneys-in-Fact (Powers of Attorney)
- Strangers who target and befriend the elder
- Family members, partners, and trusted individuals

**It Is Rarely Reported**



For every one case  
of elder financial  
exploitation that is  
reported,

**1**

another forty-three cases  
never come to light.

**43**

Source: NYC Elder Abuse Prevalence Study, Weill Cornell Medical College, NYC Department for the Aging, Lifespan, (2011)

# Why Involved Professionals Often Don't Report

- Difficulty in determining whether it's exploitation or elder's choice
- Lack of training
- Fear of intruding on elder's privacy
- Fear of losing elder's business
- Fear of liability

# New York State Financial Exploitation Study

- 50% of victims were largely unaware of their mistreatment
- Only 2% of the reports were made by victims



# Why Victims Often Don't Report

- Fear of losing independence
- Fear of retaliation by perpetrator
- Lack of knowledge or disbelief that exploitation is occurring
- Emotional dependence on, love for perpetrator
- Belief that if they report, they will lose all hope of getting their money back
- Dementia

# Two Most Common Victim Risk Factors for Elder Financial Exploitation

- Isolation
- Some degree of dementia

# Case Example

# What Bauml Told Mariana

- Needed money:
  - to feed and clothe her children
  - for her son's drug treatment
  - for therapies and medical care for the child abuse she suffered
  - to start a new business
- Each check was a loan
- Would repay her with money she said she was getting from a car accident and from her job

# Mariana Calls Amy

- Unable to pay for her new roof, Mariana finally calls Amy
- Amy gets Mariana's financial records, learns:
  - Over three-year period, Mariana wrote and signed 25 checks to Bauml totaling over \$217,000
  - Mariana has also taken out credit card advances and reverse mortgage to lend money to Bauml
- Amy calls 911 and reports

# Group Discussion

- Are Janet Bauml's actions criminal? (Poll)
- Why/why not?

# Police Response

- Patrol officer responds to Amy's call
  - Has no training or experience in investigating elder financial crimes
  - Takes a report
  - Police agency does not assign a detective—not enough resources

# APS Response

- Police make report to APS
  - APS investigator responds
    - Interviews Mariana
    - Concludes she is not a “vulnerable adult” under Washington law
    - Closes case



# Group Discussion

- If this had happened in Illinois, would APS have opened an investigation? (Poll)
- “Financial exploitation” = the use of an eligible adult’s resources by another to the disadvantage of that adult or the profit or advantage of a person other than that adult. 320 ILCS 20/2(f-1)

# Criminal Investigation

- Patrol officer works on case for months, but has little time and doesn't know what to do
- Eventually, detective is assigned, begins to investigate
- Calls elder abuse prosecutor to consult
- Prosecutor recommends she obtain:
  - Search warrants for suspect's and victim's bank records dating back 6 months prior to when takings began

# Criminal Investigation

- Follow-up warrants to investigate reasons Bauml gave Mariana for needing money:
  - Janet's medical records
  - Son's drug treatment billing records
  - Accident reports involving Janet
  - Janet's employment records
- Mariana's medical records
- Capacity evaluation of Mariana

# Group Discussion

- Why get medical records and a capacity evaluation of Mariana?

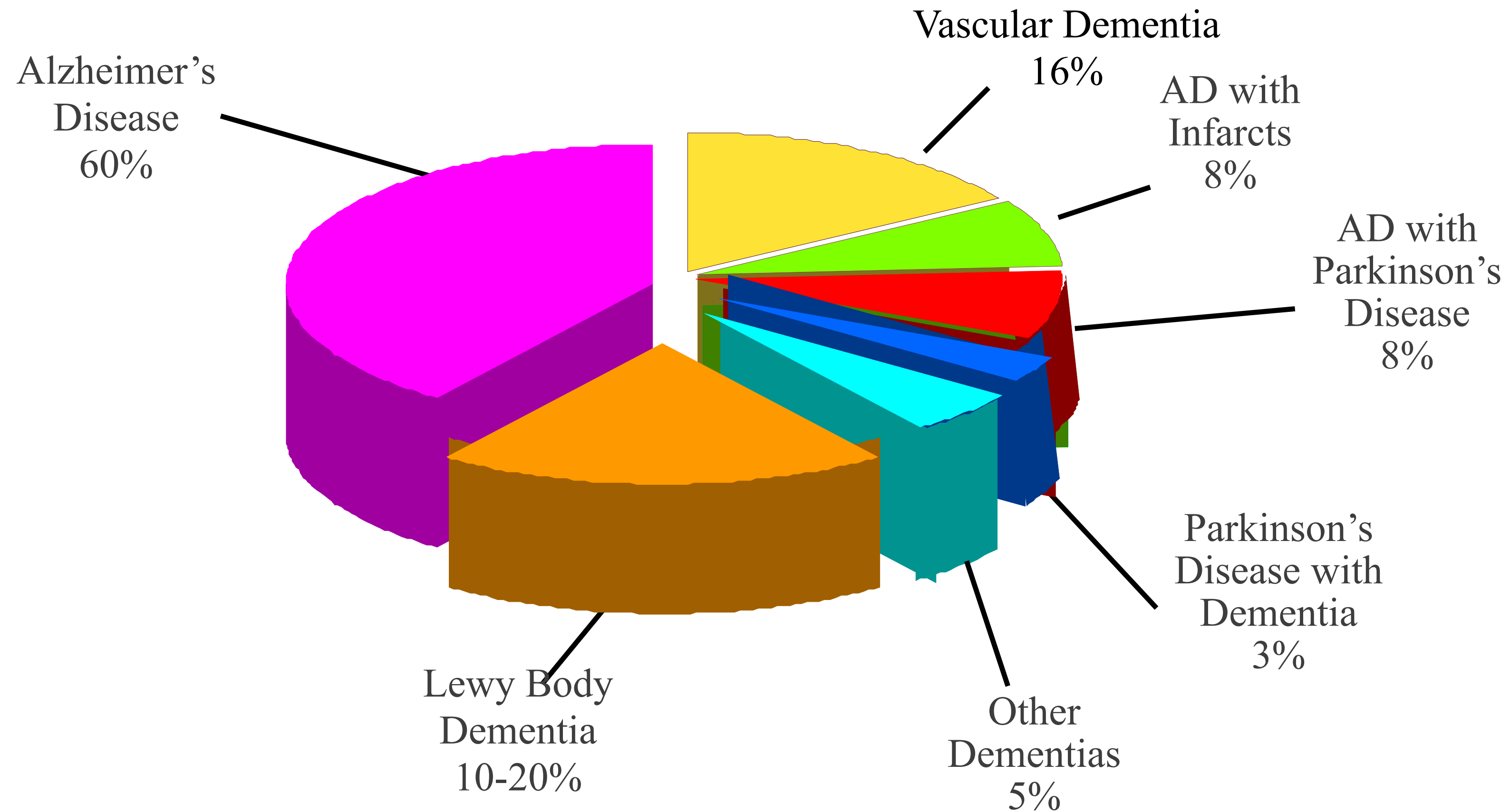
# Dementia and Cognitive Capacity



# Dementia

- A general term for loss of memory, language, problem-solving, executive function and other thinking abilities severe enough to interfere with daily life
- Short-term memory usually goes before long-term memory
- Executive function may decline before memory does

# Types of Dementias

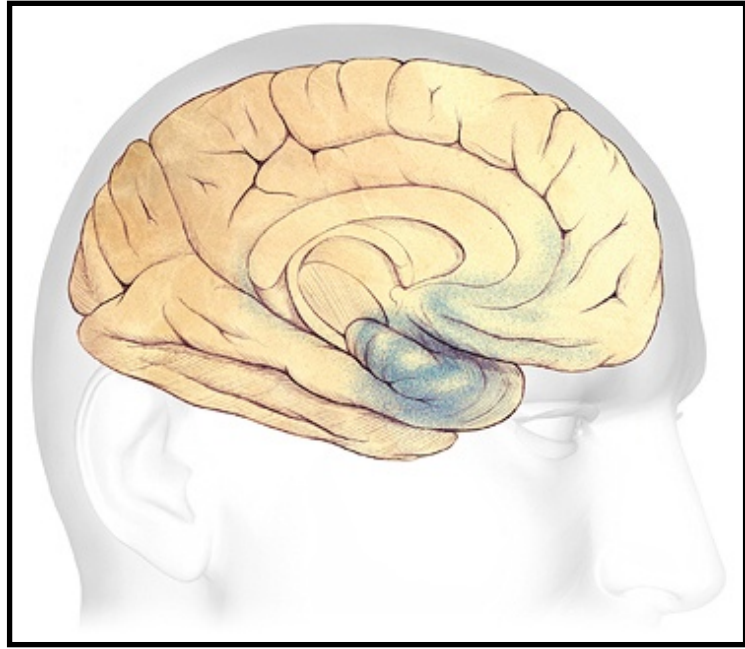


Morris JC. Clin Geriatr Med. 1994(May);10(2):257-276

**Almost 50% of people with dementia  
experience some form of abuse.**

Cooper, C., Selwood, A., Blanchard, M., Walker, Z., Blizard, R., & Livingston, G.



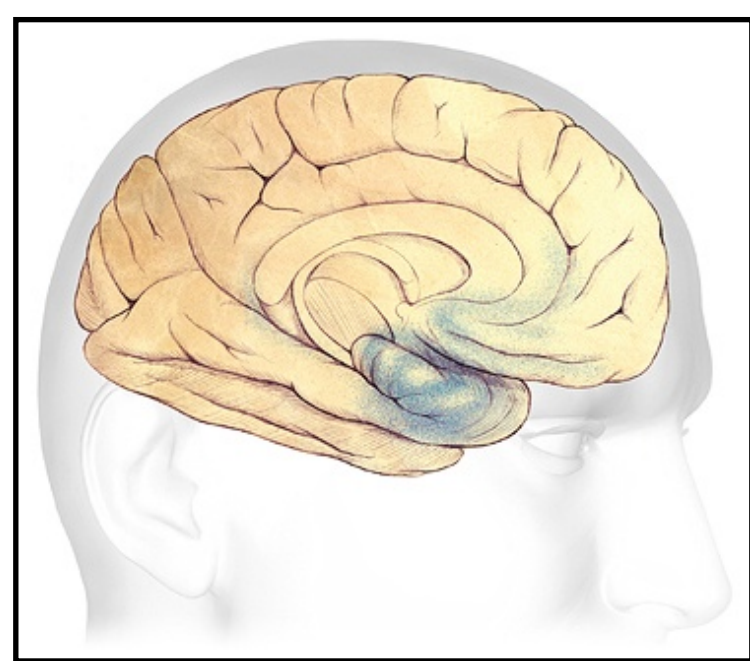


# Early Alzheimer's Disease

## Symptoms:

- Short-term memory loss
- Word loss
- Judgment impairment

**Financial Abuse**

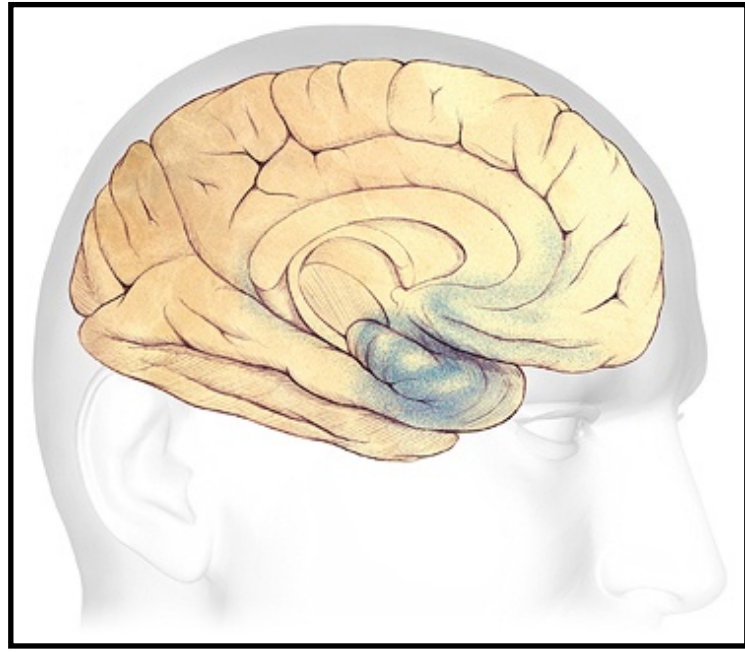


# Moderate Alzheimer's Disease

## Symptoms:

- Behavior Changes
- Loss of Insight

**Physical Abuse**



# Advanced Alzheimer's Disease

## Symptoms:

- Loss of Ability to Communicate
- Loss of Mobility
- Swallowing Impairment

**Neglect**

**Sexual Abuse**

# Cognitive Capacity

- Clinical term and assessment made by psychologist or psychiatrist of a person's mental abilities, what he/she can do
  - Whether can handle finances, make medical decisions, consent to a particular transaction
- One may have capacity to do one thing, but not another
- Loss of financial capacity extremely common in early stages of dementia
- Loss of other capacities typically occurs as dementia progresses

# Why Capacity Matters

- Consent is most common defense raised in elder financial cases:
  - “I was the only one who took care of her. She wanted me to have all of her money.”
  - “The money was a loan. I was going to pay him back.”
- We can't figure out if an elder consented unless we know whether they had capacity to consent

# Identifying and Assessing Cognitive Impairment

# Capacity Screening Tests

- Short, standardized tests that give basic information as to elder's functioning, whether need for full-blown evaluation
- Often conducted by PCPs when concerns about memory loss arise
- Can be conducted by APS, other non-mental health professionals with training
- Common screening tests:
  - SLUMS – St. Louis University Mental Status Exam

# Capacity Screening Tests

- MoCA – Montreal Cognitive Assessment
- SPACED – Jason Karlawish
- Frontal Assessment Battery
- Mini-Mental Status Exam (MMSE)\*
  - Screens for memory loss alone, not for impairment of executive function
  - Often misses cases of early dementia



# Capacity Screening for People with Developmental Disabilities

- Is a great diversity of patterns of functioning at baseline, therefore, no screening tests work well
- Best to focus on change in functional abilities through reviewing ADLs and IADLs
- Can also use conventional screening tools to measure change in function

# Capacity Evaluations

- Lengthier interview and testing
- Done by geriatricians and psychiatrists, psychologists, neuropsychologists, MSWs with expertise in working with older patients
- Best done in the home
- Usually essential to accurate determination of whether victim had capacity at the time of the incident

# Capacity Evaluations

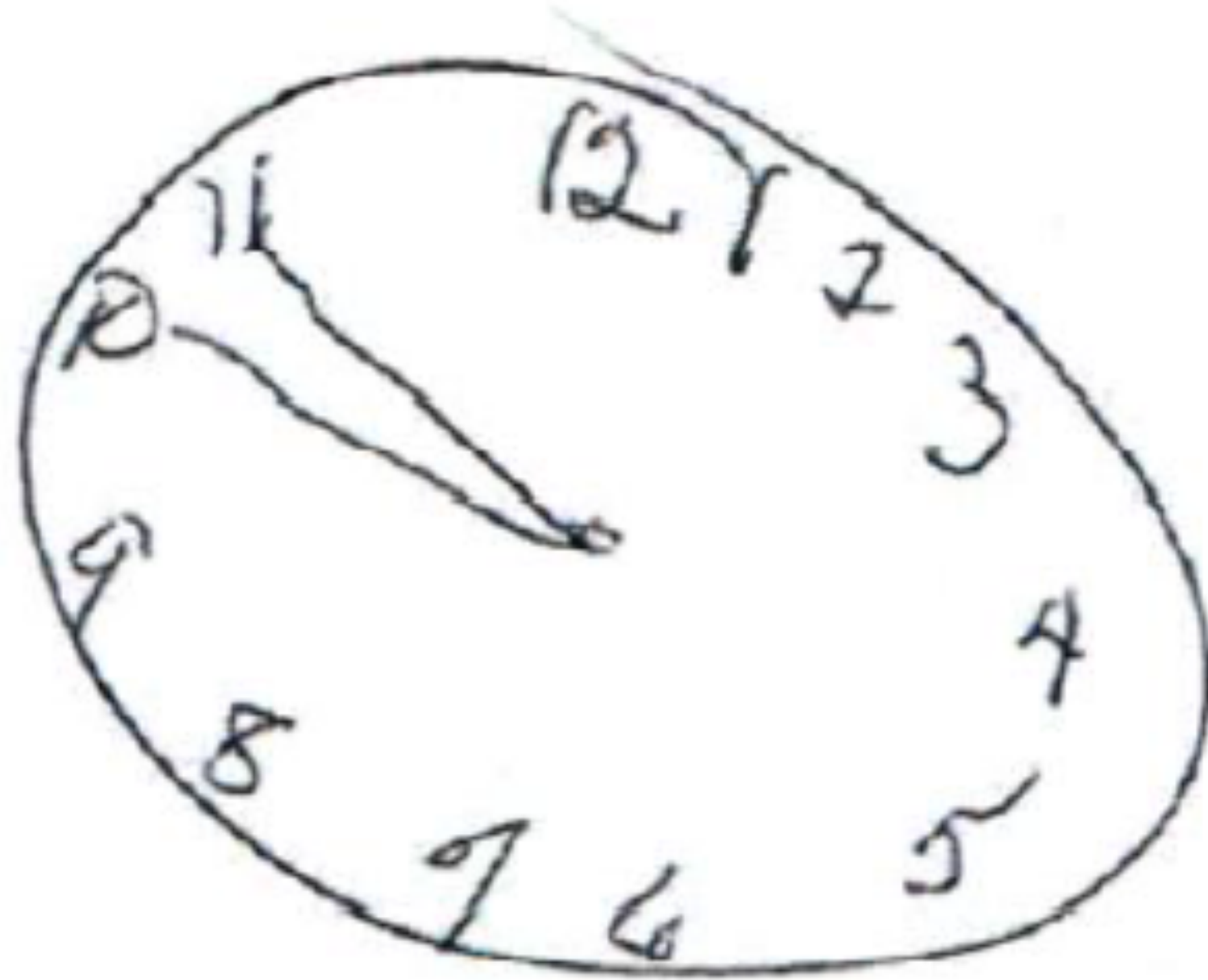
- Can assess for:
  - Financial capacity
  - Undue influence
  - Capacity to make medical decisions
  - Capacity to consent to sexual act

# Case Example

# Capacity Evaluation of Mariana

- 19/30 SLUMS, 11/18 Frontal Assessment Battery
- Deficits in clock drawing
- No insight into her impairment
- Diagnosis: Dementia NOS

“Draw a clock showing the time as ten minutes after 11:00”



# What the Investigation Revealed

- Mariana's medical records – clinic where she was long-time patient
  - Prior scam victim
  - Concern by certain providers of possible dementia
  - Normal MMSE
- Bauml's medical records:
  - Only medical treatment was for underactive thyroid, had insurance
- Bauml's son's drug treatment records:
  - He did receive treatment and it was paid for by the State

•\n•

# What the Investigation Revealed

- Bauml's credit reports:
  - Lots of debt, unpaid credit cards
  - No accident reports involving Bauml
  - No large payments from Bauml's work expected
- Bank records:
  - Bauml spent Mariana's money on trips, restaurants, clothes, spiritual healing
  - Mariana had signed Power of Attorney appointing Bauml as her attorney-in-fact



# Powers of Attorney

# Power of Attorney

- A written instrument in which one person, the **principal**, appoints another, the **attorney-in-fact** (or **agent**), to perform certain acts on the principal's behalf
- Usually pertain to health care and/or financial decisions
- Does not deprive principal of ability to act (unless springing)
- Not monitored, filed, or registered by a court

**An attorney-in-fact owes a fiduciary  
duty to the principal**

**A fiduciary duty = a duty to act in the best  
interests of the principal**

# Power of Attorney

- Attorney-in-fact may not make a loan to self from principal's assets unless specifically authorized in the POA
- May not make a gift to self unless POA specifically authorizes
- POA is **not** a license to steal
- Abuse of Power of Attorney is a crime

# Types of POAs

- **Durable power of attorney**

- Goes into effect when signed
- Operates even after incapacity
- Lasts until revoked or principal's death
- Does not deprive principal of ability to make own decisions, transactions

- **Springing durable power of attorney**

- Goes into effect only after a particular event occurs, usually incapacity
- Often requires letters from doctor to prove incapacity
- Does deprive principal of ability to make decisions

# Case Example

# We File Charges

- One aggregate count of Theft 1 by Deception
  - With sentencing aggravators
- Standard range: 0-90 days jail
  - Up to 10 years prison with aggravators

# Group Discussion

- Could this case be charged criminally in Illinois? (Poll)
- If so, what charges could be filed?



# Charging Elder Financial Exploitation in Illinois

# Crime of Elder Financial Exploitation

720 ILCS 5/17-56(a)

- Perpetrator stands in a **position of trust or confidence** with elder; and
- knowingly
  - by **deception** or intimidation, obtains control over their property; or
  - **Illegally uses their assets or resources**

# Position of Trust or Confidence

720 ILCS 5/17-56

- Is a parent, spouse, adult child, or other relative by blood or marriage
- Is a joint tenant or tenant in common
- Has a legal or fiduciary relationship
- Is a financial planning or investment professional
- Is a paid or unpaid caregiver

# Illegal Use of Assets

720 ILCS 5/17-56(c)

- Misappropriation of assets or resources by:
  - undue influence
  - breach of a fiduciary relationship
  - fraud
  - deception
  - extortion
  - or use of assets/resources contrary to law

# Undue Influence

- The activities of a dominant person in either overpowering or inducing another to do something which that person would not do without such influence
- Usually involves pattern of grooming including lying, undermining of confidence, creating dependence, intermittent acts of kindness

# Deception

720 ILCS(b)(4)

- The use of any misrepresentation, false pretense, or false promise
- in order to induce, encourage, or solicit the elder
- to enter into a contract or agreement

# Common Charging Theories in Elder Financial Exploitation Cases

- **By taking** = assets taken without victim's knowledge or permission; or when victim lacks capacity
- **By embezzlement** = assets taken when person in trust, fiduciary relationship to elder uses elder's assets for a purpose that is not for the elder's benefit

# Common Charging Theories in Elder Financial Exploitation Cases

- **By deception** = perpetrator lies to victim; victim gives them assets in reliance on those lies
- **By undue influence** = perpetrator obtains victim's "consent" to transfer assets by manipulation, isolation, creating dependence



# Case Example

# After We File Charges

- Months of negotiations
- Worried about the strength of our case, we offer 12 months jail, unagreed
  - Mariana and Amy unhappy with offer
- Janet rejects offer, wants lower jail term
- Sets case for trial

Trial:

State of Washington v. Janet Bauml

# Charges Amended for Trial

- Individual counts for each of the larger checks
  - 7 Counts of Theft First Degree
  - 5 Counts of Theft Second Degree
  - Sentencing aggravators

# What We Had to Prove

- Each specific charged check was obtained by the defendant “by color or aid of deception”
- Defendant “intended to deprive”
- Value exceeded \$5000/\$750

# Our Trial Strategy

- Abuse of PoA was not our theory because Bauml didn't use it to perpetrate the thefts
- PoA was offered into evidence at trial to show that Bauml had duty to act in Mariana's best interests

# Our Trial Strategy

- Show the big picture
- Show Bauml's lies
- Offer evidence of Mariana's dementia to explain her poor judgment

# Defense Strategy

- Mariana gave the money willingly (consent)
- Bauml did intend to one day pay it back
- Bauml didn't lie about everything
- Mariana didn't rely on Bauml's lies (would have given her the money anyway)



# State's Witnesses

- Mariana Cooper
  - Deposition not needed
- Mariana's granddaughter, Amy
- Capacity evaluator
- Detective
- Patrol officer
- Our financial analyst

# Defense Witnesses

- Bauml's son
  - Did need drug treatment, mother paid
- Bauml's daughter
  - Bauml was a good mother
- Mariana's treating physician
  - Noticed no dementia in Mariana
  - On cross:
    - Administered only the MMSE
      - Mariana scored well
    - Unaware of other screening tests

# Verdict

- Guilty of 10 counts of Theft 1 and 2
  - Sentencing aggravators
- Sentenced to standard range sentence of 43 months in prison

# Afterwards

- We lobbied for WA legislature to pass crime of Theft from a Vulnerable Adult
- Amy and Mariana came to hearings, testified
- After two years of lobbying, the law passed
  - Six-year statute of limitations
  - Significantly harsher penalties (12+ to 14 months)

# Financial Abuse of the Elderly: Sometimes Unnoticed, Always Predatory

## Retiring

By ELIZABETH OLSON NOV. 27, 2015



## Retiring

Examining the challenges and opportunities of life in retirement.

[Migrant Workers in Recreational Vehicles](#) OCT 21

[The Future of Retirement Communities:  
Walkable and Urban](#) OCT 14

[How to Improve Your Retirement Income if You  
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[Honoring a Loved One With a Charitable Fund](#) SEP 30

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Mariana Cooper, 86, with her granddaughter, Amy Lecoq, 39. Ms. Cooper was bilked out of much of her savings by someone she considered a friend. Ruth Fremson/The New York Times

# Lessons Learned

- **The importance of looking beyond apparent consent**
  - When an older adult has made unusual, substantial gifts of their assets, we must look beyond apparent consent, for:
    - Deception by perpetrator
    - Cognitive impairment of victim
    - Undue influence of victim

# Lessons Learned

- Need for trained, dedicated elder abuse detectives and prosecutors to handle these cases
- Need for multidisciplinary, coordinated response to these cases
- Need for our APS to implement adequate and consistent capacity screening tools
- Elder financial exploitation is devastating


# As a Result of the Exploitation

- Mariana was forced to declare bankruptcy
- Had to move into an assisted living facility
- Lost trust in others
- Lost trust in herself



**Even mild abuse, neglect, or exploitation  
increase premature deaths in the elderly by  
300%**

—Mark Lachs, MD

A blue-tinted photograph of a cave opening overlooking the ocean. The cave's interior is dark and textured, with light streaming in from the opening, illuminating the sea and a bright sky. The overall mood is serene and contemplative.

**How wonderful it is that nobody  
need wait a single moment  
before starting to improve the  
world.**

**— Anne Frank**

# Feel Free to Contact Me

- Page Ulrey
- [pulrey@kingcounty.gov](mailto:pulrey@kingcounty.gov)
- (206)263-3318
  
- Thanks to Laura Mosqueda, Candace Heisler

# For More Information

**To report abuse, call:**

**1-866-800-1409, Adult Protective Services Hotline (24-Hour)**



**Direct questions about this presentation to  
Maureen.Squires@Illinois.gov.**

**Thank you for joining us today!**