

Invasion of Independence: A Case Study

Lessons From the Case Involving the Exploitation of Dr. Charles Sifford

Presented by:

Adriann S. McGee, Esq., and Paul R. Shugar Esq.,
Reminger Co., L.P.A, and Natasha Yovich Pietrocola,
Cuyahoga County Senior and Adult Services

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Elder Population in the U.S.

Over 100 million adults are over age 50

- One in three Americans is now 50 or older.
- By 2030, one out of every five people in the U.S. will be 65 or older.
- It is estimated that more than 1 in 10 seniors experience some form of abuse.
- Seniors who have been abused have a 300% higher risk of death in the next three years compared to those who weren't.
- In almost 90% of elder abuse and neglect incidents, the perpetrator is a family member. Two thirds of the perpetrators of these crimes are adult children or spouses.
- For every reported incident of elder abuse, five others go unreported.



Sources:
http://www.aos.acl.gov/AoA_Programs/HPW/Behavioral/docs2/California.pdf
<http://www.dosomething.org/facts/11-facts-about-elder-abuse>
<http://transgenerational.org/aging/demographics.html#zz3eUfekVtb>



KASEM CARES
FOUNDATION

For more information on ELDER ABUSE
please visit: www.KasemCares.org

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What are the Consequences of Elder Abuse

- 300% greater risk of death
- 2 times more likely to be hospitalized
- Annual Financial Loss suffered by victims of elder financial exploitation was estimated to be \$2.9 Billion in 2009
- National Centers on Elder Abuse: How to Answer Tough Questions about Elder Abuse, 2015.
- Source: Center for Disease Control: Understanding Elder Abuse 2013.
www.cdc.gov/violenceprevention.
- National Center on Elder Abuse, Bureau of Justice Statistics, 2014.
<http://www.ncea.aoa.gov> fast fact 2013

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"Sometimes the transition from being in control of your life to having absolutely no control is swift, but other times it is so gradual that you wonder exactly when it truly began." —*Mickey Rooney*



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Guardianship Models

- Should a guardian assume the role of a parent to the ward, acting in the ward's best interests? Or should a guardian act as a surrogate in order to make decisions that are as close as possible to the decision the ward would have made in the same situation?
- According to the National Guardianship Association ("NGA")*, a guardian entering into this debate should evaluate the underlying cause of disability as only understanding the ward's current and past functional status can ensure the proper model is applied.
- Has the ward been suffering from a disability since a young age? Does the ward only struggle to make decisions when medication compliance is discontinued? Has the ward voiced opinions on decisions prior to becoming incompetent in old age?

*A Model Code of Ethics for Guardians, National Guardianship Association, by Michael D. Casassanto, Mitchell Simon, and Judith Roman

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Best Interests Standard*

- A guardian "is to make an independent decision on behalf of the ward which will be in the ward's best interest as defined by more objective, societally shared criteria. This standard is often employed with individuals who have no history of previous competency. "
- This model should be employed as a "last resort", or when the ward has provided no indication of preference to provide the guardian with guidance in making the decision.
- Even then, the NGA does not believe this standard should be used to authorize custodial care and protection because of the growing belief that individuals are entitled to assistance in developing their abilities/capabilities. So this standard should be applied to provide individualized habilitation and education.

*A Model Code of Ethics for Guardians, National Guardianship Association, by Michael D. Casassanto, Mitchell Simon, and Judith Roman

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Substituted Judgment Standard*

- “The principal of substituted judgment requires the surrogate to attempt to reach the decision the incompetent person would make if that person was able to choose.”
- The NGA believes that this model for decision making should be utilized as much as possible and imposes a duty upon guardians to attempt to find such information.
- Depending on the prior relationship between the guardian and the ward, the guardian might turn to relatives, friends, caretakers, and other interested persons for such information. The ward’s behavior and choices prior to the onset of incompetency can also provide assistance.
- In the end, though, after weighing all the information available, only the guardian will make the decision.

*A Model Code of Ethics for Guardians, National Guardianship Association, by Michael D. Casassanto, Mitchell Simon, and Judith Roman

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Best Interests vs. Substituted Judgment*

- The two standards can conflict when the ward has “intermittent incompetence”, and neither model can offer a solution.
- Best interests will not apply to a ward who is functional when complying with medication as that individual likely is, and will, express wishes. Yet substituted judgment cannot apply as, while the ward is functional, the ward is not legally competent. Yet the NGA’s ethical principles favoring self-determination appear to require that the ward’s wishes be adhered to if the ward is in a lucid state despite the legal determination of incompetency.
- NGA’s Model Code supports “that a guardian is obligated, in limited situations, to respect the wishes of the ward even if contrary to the guardian’s notion of best interest.” In short, the guardian is still applying substituted judgment based upon present statements instead of past ones.

*A Model Code of Ethics for Guardians, National Guardianship Association, by Michael D. Casassanto, Mitchell Simon, and Judith Roman

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NGA on Decision-Making

“A guardian shall exercise extreme care and diligence when making decisions on behalf of a ward. All decisions shall be made in a manner which protects the civil rights and liberties of the ward and maximizes independence and self-reliance.”

*A Model Code of Ethics for Guardians, National Guardianship Association, by Michael D. Casassanto, Mitchell Simon, and Judith Roman

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Rules of Superintendence for the Courts of Ohio

Rule 66.09
(took effect on June 1, 2015)

- **(A): Professionalism, character, and integrity:** A guardian shall act in a manner above reproach, including but not limited to financial exploitation, sexual exploitation, and any other activity that is not in the best interest of the ward.
- **(B): Exercising due diligence:** A guardian shall exercise due diligence in making decisions that are in the best interest of a ward, including but not limited to communicating with the ward and being fully informed about the implications of the decisions.
- **(C): Least restrictive alternative:** Unless otherwise approved by the probate division of a court of common pleas, a guardian shall make a choice or decision for a ward that best meets the needs of the ward while imposing the least limitations on the ward's rights, freedom, or ability to control the ward's environment. To determine the least restrictive alternative, a guardian may seek and consider an independent assessment of the ward's functional ability, health status, and care needs.

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Rule 66.09 continued

- **(D): Person-centered planning:** A guardian shall advocate for services focused on a ward's wishes and needs to reach the ward's full potential. A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest.
- **(E): Ward's support system:** A guardian shall strive to foster and preserve positive relationships in the ward's life unless such relationships are substantially harmful to the ward. A guardian shall be prepared to explain the reasons a particular relationship is severed and not in the ward's best interest.

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Rule 66.09 continued

(F): Communication with ward:

1. A guardian shall strive to know a ward's preferences and belief system by seeking information from the ward and the ward's family and friends.
2. A guardian shall do all of the following:
 - Meet with the ward as needed, but not less than once quarterly or as determined by the probate division of the court of common pleas;
 - Communicate privately with the ward;
 - Assess the ward's physical and mental conditions and limitations;
 - Assess the appropriateness of the ward's current living arrangements;
 - Assess the needs for additional services;
 - Notify the court if the ward's level of care is not being met;
 - Document all complaints made by the ward and assess the need to report the complaints to the court of common pleas;

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Rule 66.09 continued

(I) Extraordinary medical issues:

1. A guardian shall seek ethical, legal, and medical advice, as appropriate, to facilitate decision involving extraordinary medical issues.
2. A guardian shall strive to honor the ward's preferences and belief system concerning extraordinary medical issues.

(J) End of life decisions: A guardian shall make every effort to be informed about the ward's preferences and belief system in making end of life decisions on behalf of the ward.

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The Case of Dr. Charles Sifford



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How Dr. Sifford lost control

- Isolation from family members, friends, and longtime support network;
- Dependence upon financial exploiters; and
- Fearful to speak out about abuse.

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Sudden move to Ohio

- "... Charlie was lonely. He wanted to go out, but he didn't really have anyplace to go. That's why he—that's why he always said he wanted to go back to North Carolina because he said he was so lonely."
- "She just [wanted] to seclude him and keep—she just wanted him to be miserable."
- "She didn't like him having visitors."



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Cutting off phone access

- “[O]ne time she took his phone for a whole two weeks. It was like – it was like a punishment.”
- “Or sometimes she would take his phone and she [would] hide it, trying to make him think that he misplaced it, but he didn’t misplace it. She would take it, like when it was time for him to go to bed, she would come over and take his phone and then the next day he’d be looking for it.”
- “... [S]he had the house phone blocked, too. Where when they called they would get a busy signal.”



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Losing control of medical care

- “She would switch his days in his mind. Like he went to dialysis on Monday, Wednesday, and Friday, so Sunday she [would] push the day back or forward. She would tell him that today is Tuesday or today is Sunday. You went to dialysis yesterday or she would tell him you went—you’re going to dialysis tomorrow, but actually it would be that day.
- She just—she just didn’t want him to take his medicine ever. All I can say is she really did not like Charlie and I guess he was living too long. He was living too long for her. ... She wanted to travel the world and be free. I guess he was like a burden for her even though she didn’t take care of him, you know.”



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Scared of being put in a nursing home

- "He would tell me, he was like, Pudding, I have a lot of money put to the side that I should never have to be in a nursing home. He was like that's what I worked for all my life, I don't want to be in a nursing home."
- "... [S]he told him that before that, if he talk[ed] to anybody outside of this house, he would be in a nursing home."
- "... Charlie was scared to talk to [APS] because Charlie was afraid to go to a nursing home and [sic] Charlie's biggest fear was a nursing home. So he was scared to talk to them the first time because he believed they were going to put him in a nursing home."



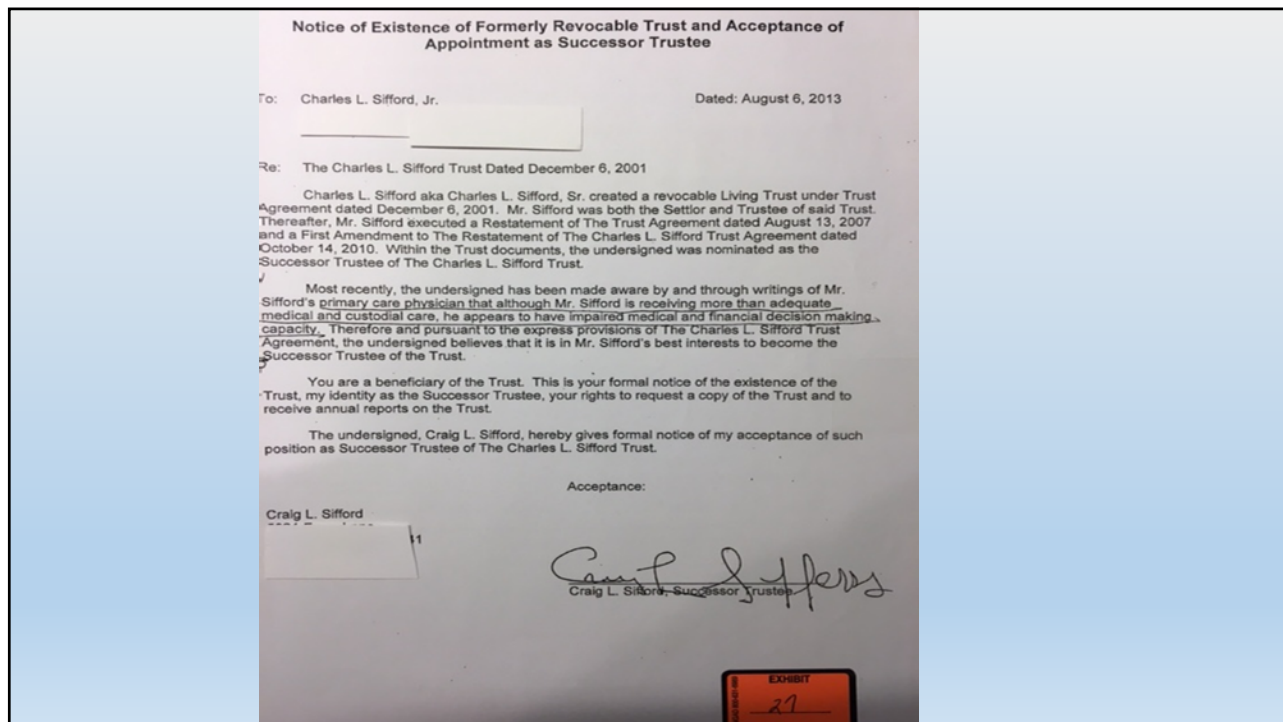
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Losing himself

- "She wanted to—she wanted to make him seem like he was crazy or dement—you know, demented, Alzheimer[s], and wanted to—she wanted to get him locked away."
- "Charlie didn't like [her]. Charlie was scared of [her] and didn't trust her. If she made dinner, he wouldn't eat her food. He was scared to eat her food because he said that [sic] lady is trying to poison him."



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Look to the Trust – Limitations on Distributions during Period of Incapacity

- Article III: Distributions During Lifetime of Settlor:
 - If during my lifetime, I shall, in the trustees reasonable judgment, be unable to make such directions because of my incompetency, incapacity or otherwise, then so long as such conditions shall continue, the Trustee may distribute to the benefit of me so much of the net income and, if the income is insufficient therefor, so much of the principal that the trustee deems necessary or proper to provide for my welfare, health and maintenance...

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CHARLES I. SIFFORD TTEE

CMA Cash Management Account[®] 678
DATE 4-27-12 87-176/843

PAY TO THE ORDER OF Craig P. Hays/James Inc \$25,500.00
Twenty five thousand Five hundred DOLLARS

Bank of America
MEMO Bill Charles Sifford/Carol Sifford - P.O. #1084

(Vertical signature on right: Craig P. Hays)

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Do Signatures Match?

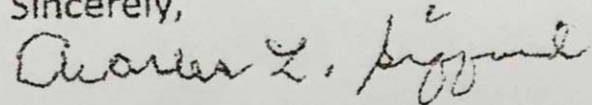
CHARLES I. SIFFORD TTEE

CMA Cash Management Account[®] 676
DATE 4-27-12 87-176/843

PAY TO THE ORDER OF Charles Sifford \$2,000.00
Two Thousand DOLLARS

Bank of America
MEMO BILLS Charles Sifford

Sincerely,



Charles L. Sifford

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But This is What Dad Wanted

- Q: So your drivers, when they use cash, how are they reimbursed?
- A: They give me receipts
- Q: You won't reimburse without a receipt?
- A: Exactly
- Q: Why Not?

Q: Did Dr. Sifford like to track or at least understand what was being purchased with his money?

A: Yes.

Q: So when you purchased with dad's money, you provided receipts?

A: Yes

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Reimbursements in Round Numbers:

The image displays a collage of eight checks, four from Bank of America and four from CMA Cash Management Accounts. The checks are dated between 2012 and 2013 and are payable to Charles L. Sifford or Cash. The amounts are round numbers: \$2,000, \$3,000, \$1,000, and \$1,600. The checks are signed by Charles L. Sifford or Cash. The checks are from Bank of America and CMA Cash Management Accounts.

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Financial Records Tell Different Story

- Within a period of 18 Months, cash transactions, transfers, gifting, and credit-card purchases with Dr. Sifford's financial assets totaled approximately \$1.2 million.
- Shocking amounts spent on things such as clothing from Victoria's Secret, women's hair care, furnishings that were not put in Dr. Sifford's home, landscaping at his son's home, and other spending that had nothing to do with Dr. Sifford's care and/or needs.

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Dr. Sifford Needs a Guardian

- Worried about potential physical and financial exploitation of his father, Dr. Sifford's other son filed for guardianship in the Cuyahoga County Probate Court on August 12, 2013. Craig Sifford files a competing application on September 3, 2013.
- In a review of Dr. Sifford's financials while the guardianship applications are pending, records demonstrate that Craig continues to use Dr. Sifford's assets for his own personal benefit in violation of R.C. 2111.04(D). Roughly \$50,000 is spent in only one month.
- Attorney Kathryn Joseph appointed as independent guardian on September 29, 2014.
- Dr. Sifford dies on February 3, 2015.

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Best Interests v. Substituted Judgment

- Social Worker – told client that he has reason to believe that his son Craig, his power of attorney, was using client's money for own personal gain. Client does not believe it.
- SW showed client deed to his home that demonstrated that the home purchased with client's was jointly owned with Craig. Client didn't believe it.
- SW asked Client if he knew son was trying to stop Client's dialysis. Client didn't believe it.
- When Court investigator asked who he wanted to serve as guardian, he said he wanted his son Craig.
- When SW asked client to sign a release, client said he needed to check with POA.

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Misguided Zealous Advocacy

- Dr. Sifford's attorney learned of APS investigation when Craig called him about it.
- Dr. Sifford's attorney badgered APS worker to disclose who made APS referral, stating "I know it was other son."
- Dr. Sifford's attorney instructs client not to sign a release for financial information.
- "I am sure the client has plenty of money and we don't have to tell you how much as that is none of your concern."
- Investigator felt that the attorney was coaching the client and interfering with the investigation.

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Did Dr. Sifford have Sufficient Capacity to Advocate for Himself?

- Impairments in orientation, memory, concentration/comprehension;
- No insight into presence or severity of cognitive impairment; limited insight into impact on functional capacity
- Cannot manage own medication or finances;
- Inability to address potential emergency situations.
- Fails to understand that his son is not his savior, healer, advocate, or protector as the complete abandonment of Dr. Sifford's pre-incompetency wishes has left him isolated from friends/family and completely reliant upon his exploiters.

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Cuyahoga County Court of Common Pleas Criminal Court Division		
State of Ohio, VS. Craig Sifford	Plaintiff Sandra W. Sifford, Defendants	A True Bill Indictment For Theft - F1 §2913.02(A)(1) 5 Additional Count(s)
Dates of Offense (on or about) 01/01/2010 to 12/18/2013	The Term Of May of 2013	Case Number 397837-13-CR
The State of Ohio, Cuyahoga County } SS.		CR15597857-A 90301728
Count One	Theft - F1 §2913.02(A)(1)	
Defendants	Craig Sifford, Sandra W. Sifford	
Date of Offense	On or about January 1, 2010 to December 18, 2013	
<p>The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO, do find and present, that the above named Defendant(s), on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully</p> <p>did with purpose to deprive the owner, Charles Sifford, Sr., of money or services, knowingly obtain or exert control over either the property or services without the consent of the owner or person authorized to give consent.</p> <p>FURTHERMORE, and the victim of the offense is an elderly person or disabled adult and the value of the property or services stolen is \$100,000 or more.</p> <p>The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.</p>		
<p>RECEIVED FOR FILING</p> <p>JUL 28 2015</p> <p>CUYAHOGA COUNTY CLERK OF THE COURT OF COMMON PLEAS</p> <p>By _____ Deputy</p>		
<p><i>[Signature]</i> Foreperson of the Grand Jury</p>		<p><i>[Signature]</i> Prosecuting Attorney</p>
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Takeaways for Guardians from Dr. Sifford

- **The importance of substituted judgment:** When Dr. Sifford's original plan to retire in North Carolina was undone, this put him on a slippery slope that led to the application of the best interests standard at the end of his life. If substituted judgment had been employed, the exploitation could have continued.
- **Context matters:** Friends, family members, and caretakers all knew something was wrong as Dr. Sifford's pre-exploitation wishes were not being honored. Guardians must be vigilant to get a whole picture when examining these issues.
- **Who has the power?** When the ward has limited independence and self-reliance like Dr. Sifford, these circumstances demand scrutiny of how this affects the ward's judgment.

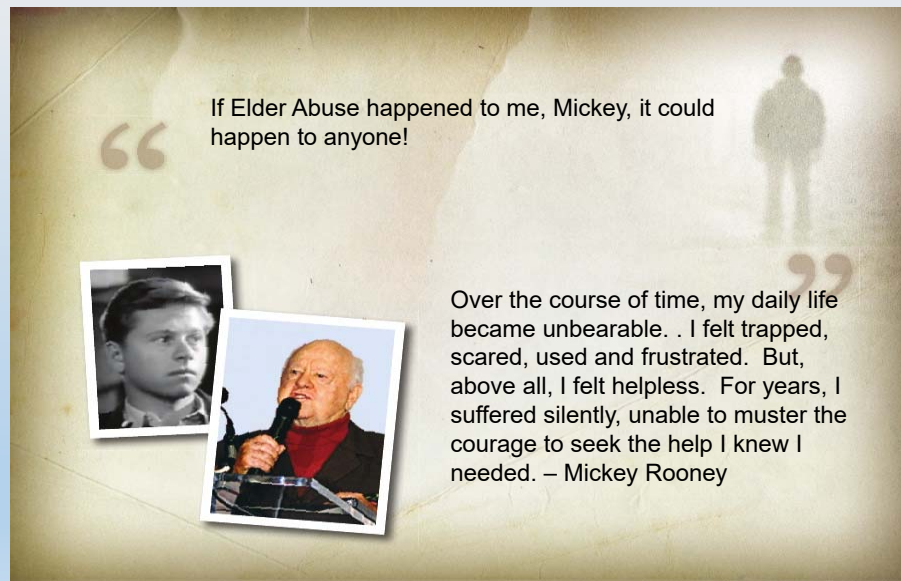
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The Insidious Nature of Adult Exploitation

"It is widely recognized that it is difficult to distinguish an unwise but legitimate financial transaction from an exploitative transaction resulting from undue influence, duress, fraud, or a lack of informed consent. The seasoned professional can also be tested by the complex and varied nature of these transactions. It may be difficult to distinguish abusive conduct from well-intentioned but poor, confused, or misinformed advice and direction. . . . Further complicating efforts to establish parameters of financial abuse of the elderly are that both the elder person and the perpetrator may feel that the perpetrator has some entitlement to the elder person's assets. Elder persons may feel a desire to benefit their heirs or to compensate those who provide them with care, affection, or attention. It can be difficult to discern a transfer of assets made with consent from an abusive transfer." *Elder Mistreatment: Abuse, Neglect, and Exploitation in Aging America*, National Research Council at p. 387.

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“What may appear to be generosity may in reality be exploitation, emotional blackmail”



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THANK YOU

For your attendance during this presentation.
Feel free to contact us should you have any other
questions regarding the material covered in this
presentation.

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