

Safe Seniors

Newsletter for the Prevention of Elder Abuse in San Diego County

Court's Ruling Will Hinder Elder Abuse Prosecution

By Paul Greenwood, Deputy District Attorney in charge of the Elder Abuse Prosecution Unit

In March, in the case of Crawford vs. Washington, the U.S. Supreme Court made a ruling which will have immediate and dramatic consequences for elder abuse prosecutions (at least in California).

By way of background, when I first started prosecuting elder abuse cases eight years ago, I was frustrated that I ended up dismissing some cases because my victim had either died or had slipped into severe dementia or Alzheimer's. These were cases in which the suspect had fled after the crime, and where I had filed a case with an arrest warrant. By the time the suspect was caught - sometimes two or three years later - the victim had died or was suffering from a major impairment and we would be unable to get in the victim's prior statements because of hearsay rules.

So I assisted with drafting a new exception to the hearsay rule which became known as Evidence Code section 1380. This section gave the trial judge discretion to allow the prosecutor to play the videotaped interview of the elderly victim if at the time of the trial the victim was either deceased or mentally incompetent (and thus unavailable). That law was challenged but was held to be constitutional by a California appellate court. And then came along this recent landmark decision from the U.S. Supreme Court.

Sharper legal minds than mine have reviewed the decision and there is general consensus that it effectively wipes out a prosecutor's ability to use Evidence Code section 1380. We are now faced with the harsh reality of possibly having to dismiss some cases that have been filed prior to this ruling if in fact we are (as is probable) prevented from playing the videotape of a victim's interview at trial.

The major tenor of the Supreme Court decision is that laws such as Evidence Code section 1380 violate the defendant's right to confront the accuser.

So we can fully expect there to be an increase in the targeting of elderly victims. Why? The answer is simple....

(RULING -- Continued on Page 2)



President George W. Bush with San Diego City Attorney Casey Gwinn during an event that launched the national Family Justice Center Initiative.

Family Justice Center Honored

The White House has recognized San Diego's Family Justice Center as a model for similar centers being planned throughout the country.

City Attorney Casey Gwinn, the driving force behind the center, which offers counseling, health care and law enforcement assistance to victims of domestic violence, was honored in Washington as President Bush unveiled the national Family Justice Center Initiative.

The initiative will take \$20 million from the Justice Department's Violence Against Women programs to pay for the creation of 12 new one-stop domestic violence assistance centers across the country.

The San Diego center operates from a downtown high-rise and was the first in the country to house an entire police department domestic violence unit and offices for prosecutors, along with forensic medical teams that treat, evaluate and document domestic violence injuries.

"In San Diego, the runaround is over," the president said. "There is a central location where somebody who desperately needs help can find compassion and help."

**The County has a
Domestic Violence
Hotline: (888)
DVLINKS (385-4657)**

The Elder Abuse Reporting Line: 1-800-510-2020

National Elder Abuse Awareness Month **Volunteers Advocate** **for Facility Residents**

By Pamela B. Smith, Director, Aging & Independence Services

During a facility visit, a Long Term Care Ombudsman volunteer was talking with a resident who disclosed that she had been molested by a male aide and had not told anyone. Initially, the resident did not want any action taken, but eventually gave the Ombudsman permission to launch an investigation. The facility administrator, state licensing and the police were all involved. A few weeks ago, the perpetrator pled guilty and will be sentenced to jail.

If that Ombudsman volunteer had not been a familiar and friendly face in the facility, the criminal might have gone unpunished. And worse, there might have been more victims.

May is Elder Abuse Awareness Month, and Ombudsman staff and volunteers regularly help fight the victimization of older adults. The Ombudsman program focuses on abuse reports that involve residents of nursing homes, board and care homes and other long-term care facilities. The County's Adult Protective Services (APS) workers investigate cases of abuse in people's homes or the community at large.

The Long Term Care Ombudsman Program recently recognized its volunteers for their commitment to advocating for residents.

Nearly 800 elder abuse and neglect allegations were investigated by San Diego County's Ombudsman office last year. Cases involved financial abuse, as well as physical harm.



(From left) Joseph Rodrigues, State Long Term Care Ombudsman; Sharon Cordice, local Ombudsman program coordinator; honored volunteers Fran Nash and Sid Selzer; and Chuck Matthews, division chief for AIS.

One nursing home resident told an Ombudsman that a staff person from her previous board and care facility had visited recently and talked her into writing a large check. Our Ombudsman volunteer encouraged the resident to file a police report and she helped the woman close her bank account and open a new one.

Again the resident had turned to a familiar and friendly face. Someone who asked questions. Someone who listened to the answers. That's what these folks do best.

They are a dedicated bunch. Among those attending the recognition luncheon last month were Fran Nash who has been an Ombudsman volunteer for 21 years, and Sid Selzer, who is just behind her at 20 years. About 20 percent of the volunteers have been active for at least five years.

If you know anyone who has the patience, persistence and diplomacy to make a great advocate for facility residents, call the Ombudsman office at **(858) 560-2507** or **(800) 640-4661**.

(RULING -- Continued from Page 1)

Choose a victim that may not be around at the time you get caught. Then successfully argue that because your accuser is not in court, the prosecutor cannot use prior out of court statements made by the accuser before their death or before they suffered a mental disability.

Over the past few years Evidence Code section 1380 has enabled us to convict several defendants of elder abuse that otherwise would have got away with their crime. Perhaps some or all of those particular convictions will now be revisited. Time will tell.

Frustrated? Yes! Disillusioned? No! Determined? Yes!

I am currently thinking about suggesting emergency legislation that would somehow allow for the presiding judge of any courthouse in California where a case is filed - and where the suspect has not been apprehended - to appoint a public defender to represent the "in absentia" defendant at a special deposition type hearing within 10 court days of the



Paul Greenwood

initial filing. The prosecutor would then bring the victim into court for the hearing and the defense attorney would have the opportunity to cross-examine and confront the victim.

I can anticipate already that this proposal would be criticized because of the absence of the defendant. People will argue that the attorney would be unable effectively to cross-examine the defendant without having first taken instructions from the defendant. I strongly disagree.

But we need to do something as a matter of urgency. I hope that we can enlist support for such a legislative initiative. If we do nothing, I truly fear an escalation in the number of incidents of financial exploitation against elders and prosecutors may be left powerless to counter them.

The court's decision also affects child abuse and domestic violence prosecutions.

Keep Your Eye on Elder Abuse Legislation

By Noelle Dorman
Sen. Dede Alpert's Office

Here are some key bills that can impact elder abuse issues. To get the full language or analysis of a bill, or to check the status of a bill, go online to www.sen.ca.gov, or click "Legislate" on the Network of Care Web site: www.sandiego.networkofcare.org. Also, you can always contact your state legislators' offices.

AB 2316 (Chan) - This bill would create the Senior Protection Fund in the State Insurance Fund, and provide that a \$1 fee levied against insurers based upon each life insurance or annuity policy issued or renewed to a resident of this state would be dedicated to protecting senior consumers of insurance products. This bill would provide that the Insurance Commissioner distribute 50 percent of the funds within the department for senior consumer protection functions, and the remainder of the funds to district attorneys for investigating and prosecuting senior financial abuse cases involving licensees and for other projects beneficial to senior insurance consumers. **Passed Assembly Insurance Committee; sent to Assembly Appropriations.**

AB 2474 (Wolk) - Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. This bill would revise the definition of mandated reporter by adding the following categories of individuals, but would limit the mandated reporting for these individuals to financial abuse: a) bankers; b) credit union officers; c) savings and loan officers. The bill also include a provision for training, immunity against lawsuits, and misdemeanor liability for failure to report financial abuse. **Passed Assembly Aging and Long-term Care and passed the Assembly Public Safety Committee. Sent to Appropriations Committee.**



AB 2611 (Simitian) - Among other related elder abuse issues, this bill will 1) require financial institutions to report suspected cases of financial abuse to local law enforcement authorities; 2) give prosecutors stronger tools to go after elder abusers and 3) strengthen seniors' private right of action against nursing homes that have violated residents' rights, which are part of State law. **Passed Assembly Aging and Long-term Care and Assembly Public Safety Committees; sent to Assembly Appropriations.**

AB 2852 (Laird) Existing law requires that specified supervisory law enforcement officers complete an elder and dependent adult abuse training course. AB 2852 would make this training optional as opposed to mandatory. It states that the Legislature encourages local agencies and officials to continue taking actions formerly mandated by these provisions. **Passed Assembly Public Safety; sent to Assembly Appropriations.**

AB 3095 (Committee on Aging and Long-term Care) - Existing law proscribes various crimes committed against an elder or dependent adult related to physical and financial abuse, including causing or permitting an elder or dependent adult to suffer or inflict-

ing unjustifiable physical pain or mental suffering and violating any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the person or property of an elder or dependent adult. This bill would provide that in any case in which a person is convicted of violating these provisions the court may order, as a condition of probation, that the defendant be placed in an appropriate counseling program. This bill would require the defendant to pay the expense of his or her participation in the counseling program. **Passed Assembly Aging and Long-term Care Committee and Assembly Public Safety Committees; sent to Assembly Appropriations.**

ACR 183 (Dymally) and ACR 198 (Garcia) - Both measures would encourage all Californians to become aware of elder and dependent adult abuse, to learn the ways to recognize and report incidents of elder abuse, and to educate themselves on ways to prevent the mistreatment of elderly and dependent adults, and would proclaim the month of May of every year as Elder and Dependent Adult Abuse Prevention Month. **No committee or date set yet.**

SB 1305 (Vasconcellos) - This bill would require the Judicial Council, to the extent resources are available, to establish within the Administrative Office of the Courts a unit to assess the treatment of elder and dependent adult abuse cases in the courts, and to devise administrative and educational strategies for improving the handling and coordination of these cases in California's civil and criminal courts. The bill would also require the Judicial Council, to the extent resources are available, to incorporate elder and dependent adult abuse issues into its existing educational programs for judicial officers, court staff, and other public offices and public entities, as specified. The bill would require the

(LEGISLATION -- Continued on Page 4)



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Prosecution Update

The following are the results of some of the cases recently prosecuted by the District Attorney's Elder Abuse Prosecution Unit:

Matthew L. Powell: Convicted in home invasion robberies, with injuries. There were five elderly victims, including a 92-year-old who was tied up on the floor. Powell faces extended prison time.

Ronald C. Bacus: Pled guilty to sexual assault in a care facility. He's awaiting sentencing.

Windy S. Thompson: Pled guilty to stealing an ATM card from a 90-year-old victim and taking \$1,800. She is awaiting sentencing.

Paul E. Brooks: Pled guilty to felony elder abuse and a misdemeanor of doing contracting work without a license. Awaiting sentencing.

Sally M. Wenzel: Pled guilty in an identity theft case. Was working as a live-in caregiver for a 79-year-old dementia victim. Awaiting sentencing.

(LEGISLATION -- Continued from Page 3)

Judicial Council to report to the Legislature by December 15, 2005, and annually thereafter, on its progress. **Passed the Senate Judiciary Committee; sent to Senate Appropriations.**

SB 1475 (Vasconcellos) - This bill would require the office of the Attorney General, in consultation with the California Health and Human Services Agency, the Department of Insurance, and the Department of Corporations, to convene an Elder and Dependent Adult Abuse Prevention and Prosecution Coordinating Council, to bring together representatives of various entities responsible for investigating, reporting, and prosecuting elder and dependent adult abuse cases. The bill would set forth the council membership, and would require the council to report findings, recommendations to the Legislature by Jan. 1, 2006. **Passed Senate Judiciary Committee; sent to Senate Appropriations.**

SB 1644 (Romero) – This bill would require a long-term health facility to report the death of any resident of the facility to the medical examiner or coroner of the county in which the death occurred. It would also require a mandated reporter to report an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect and that involves a resident in a long-term health care facility and that resident who is the subject of the report dies, to immediately report to the county coroner or medical examiner the death of the resident. In addition, any person who is not a mandated reporter, under specified circumstances, may report the abuse or death to the medical examiner or coroner. **Passed Senate Health and Human Services Committee and Senate Public Safety Committee; sent to Senate Appropriations.**