Elder Financial Fraud Prosecution

FIRMA Conference

Spring 2017

Financial Exploitation of Seniors

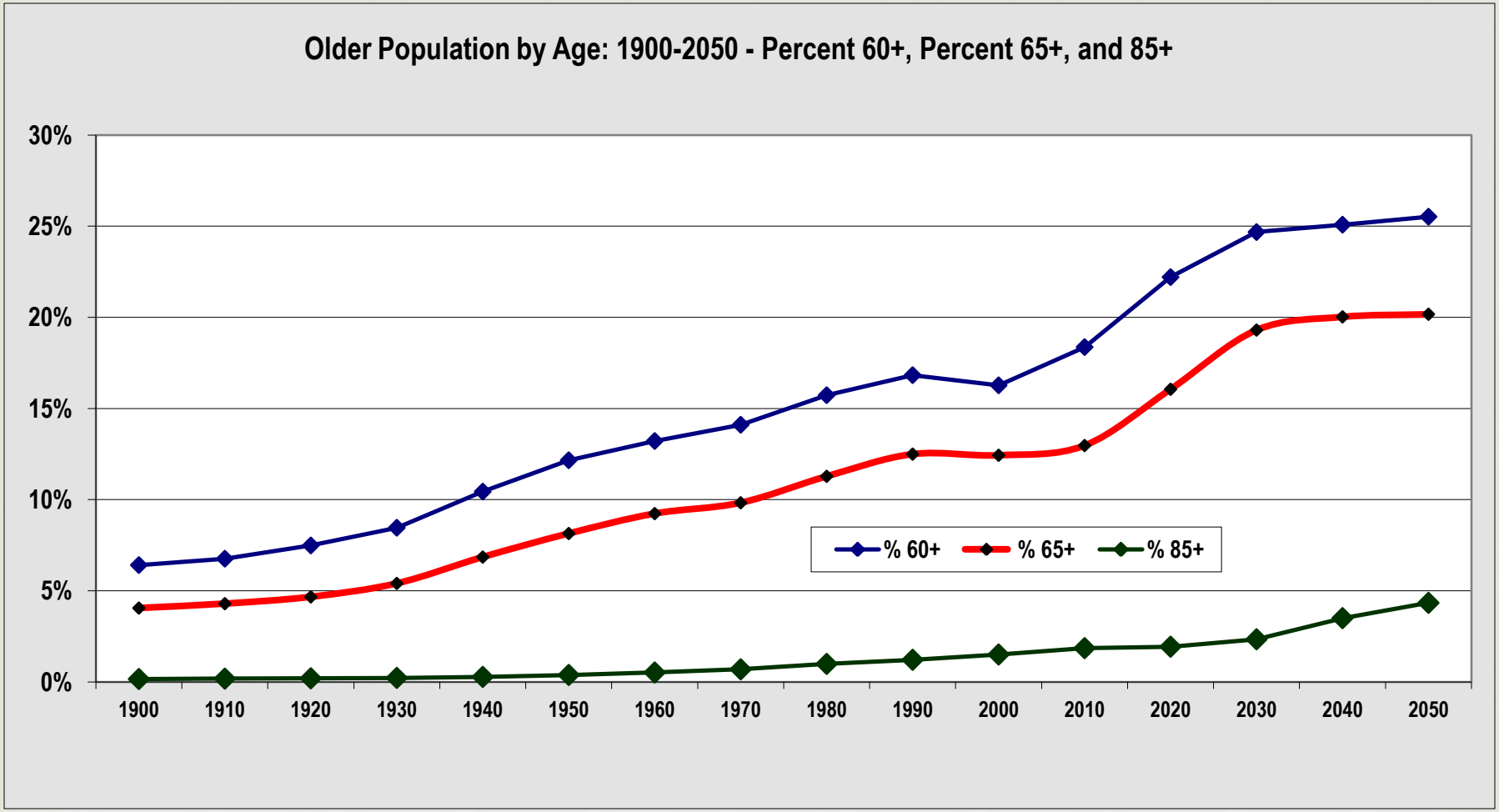
Brandon Jackson
Elder Fraud Prosecutor
Bexar County District Attorney's Office

Bexar County District Attorney

Nicholas "Nico" LaHood

www.bexar.org/da

Click on "Elder Fraud" tab



Sources:

Projections for 2010 through 2050 are from: Table 12. Projections of the Population by Age and Sex for the United States: 2010 to 2050 (NP2008-T12), Population Division, U.S. Census Bureau; Release Date: August 14, 2008

The source of the data for 1900 to 2000 is Table 5. Population by Age and Sex for the United States: 1900 to 2000, Part A. Number, Hobbs, Frank and Nicole Stoops, U.S. Census Bureau, Census 2000 Special Reports, Series CENSR-4, Demographic Trends in the 20th Century, 2002.

This table was compiled by the U.S. Administration on Aging using the Census data noted.

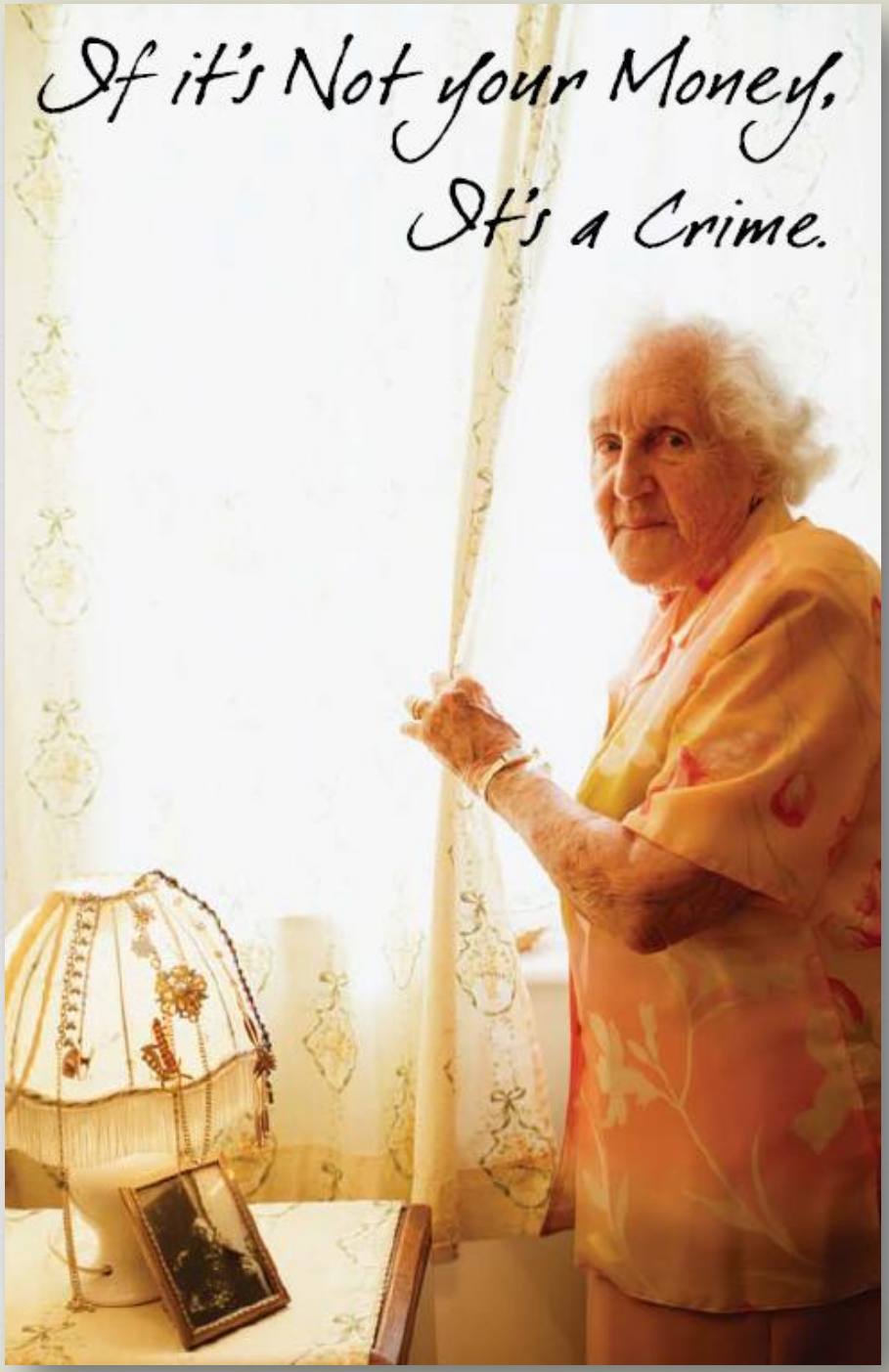
65+ in the USA

*US Department of Health and Human Services

Administration on Aging (AoA)

Aging Statistics

The older population—persons 65 years or older—numbered 46.2 million in 2014 (the latest year for which data is available). They represented 14.5% of the U.S. population, about one in every seven Americans. By 2060, there will be about 98 million older persons, more than twice their number in 2014. People 65+ represented 14.5% of the population in the year 2014 but are expected to grow to be 21.7% of the population by 2040. The information in this section of the AoA website brings together a wide variety of statistical information about this growing population.


If it's Not your Money,
It's a Crime.

Financial Exploitation

$2,900,000,000

Estimated 2009 annual financial loss to victims of elder financial exploitation, a 12% increase from 2008

(Statistics from: National Committee for the Prevention of Elder Abuse, Virginia Tech, Metlife Market Institute 2011)

A More Recent Study

- The 2015 True Link Senior Vulnerability Survey, a survey of family caregivers for older Americans that includes 2,335 cumulative years of data on incidents of financial abuse, and an,
- Expert panel of fraud researchers convened by the Financial Fraud Research Center at the Stanford Center on Longevity.
- Conducted a more recent study in 2015.

Financial Exploitation

- Prior to this report, the most frequently cited estimate of the amount of money lost to elder financial abuse was $2.9 billion.
- This is a dramatic underestimate:
- **$36.48 billion each year** to elder financial abuse.
- Approximately 36.9% of seniors are affected by financial abuse in any five-year period.

(Source: *The True Link Report on Elder Financial Abuse 2015)*

Included Data

- "What's more, the highest proportion of these losses – to the tune of **$16.99 billion a year – comes from deceptive but technically legal tactics designed to specifically take advantage of older Americans."**

(*The True Link Report on Elder Financial Abuse 2015*)

- Large variations in the data seem to be due to differing definitions of what constitutes fraud.

Elder Justice Act

- The Elder Justice Act (EJA) was signed into law in 2010 - the law took Congress eight years to enact.
- The EJA is the first comprehensive national legislation enacted on elder abuse.
- The EJA authorized over $600 million in funding.

NO CELEBRATION JUST YET

- First, there was NO FUNDING allocated until June 2014, then only $10 million was funded.
- Second, JUSTICE-RELATED PROVISIONS were removed that would have provided the funding to support the involvement and intervention of the criminal and civil justice systems to meet the needs of the victims.

MATT RASANT PHOTOGRAPHY

Who are “they”?

- Victims
- Law Enforcement
- Bankers
- Judges

Bexar County District Attorney's Office

- October 1, 2004, awarded a 421 Grant from the Governor's Office for one prosecutor for one year
- Grant was renewed for a second year
- Prosecutor position approved by Commissioner's Court, starting October 1, 2006
- Additional Elder Fraud Prosecutor added March, 2008
- Elder Fraud Advocate and Investigator added March, 2010

Purposes of grant and permanent position

1. Prosecute those accused of financial fraud against the elderly; and
2. Make awareness presentations to the community and to law enforcement agencies regarding elder fraud.

Enhanced Offenses

1. **Theft** (TX Penal Code § 31.03)
2. **Misapplication of Fiduciary Property** (TPC § 32.45)
3. **Securing Execution of Document by Deception** (TPC § 32.46)
4. **Forgery** (TPC § 32.21) F3
5. **Credit/Debit Card Abuse** (TPC § 32.31) F3
6. **Fraudulent Use/Possession ID Info** (TPC § 32.51)

Exploitation of Child, Elderly Individual, or Disabled Individual (TPC § 32.53) F3

A person commits an offense if the person intentionally, knowingly, or recklessly causes the exploitation of a child, elderly individual, or disabled individual.

THEFT

A. A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

B. Appropriation of property is unlawful if:

   1. It is without the owner's effective consent. Consent is not effective if induced by deception or coercion; . . . or **given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.**

The
Twilight
Zone

Executive Function

More Susceptible to:

- Lottery Scams
- Greedy neighbors, relatives, friends, contractors – Tree Trimmers, Foundation Contractors, Roofing Contractors, Gypsies
- Email Phishing Scams

Once executive function starts to go, the rest isn't far behind. This will create issues for subsequent prosecution.

The Sixth Amendment of the U.S. Constitution

*"In all criminal prosecutions, the accused shall enjoy the right to a **speedy** and **public** trial, by an **impartial** jury of the **State and district** wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be **confronted** with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the **Assistance of Counsel** for his defence."*

Crawford Issues

What is *Crawford?*

- *Crawford* refers to *Crawford v. Washington,* a U.S. Supreme Court Case handed down in 2004. "Testimonial" statements made by witnesses, who are not available to testify, may not be admitted into evidence because the statements violate the defendant's Constitutional Rights.

How does *Crawford* affect Elder Fraud prosecution?

Our elderly victims:

- may die before trial
- may not be fit to testify for health reasons (bedridden, comatose, etc.)
- may not be fit to testify for mental health reasons (Alzheimer's, dementia, memory loss, etc.)
- may be competent at the time of the offense, but become incompetent by trial time

How do we avoid *Crawford* issues?

- Code of Criminal Procedure Art. 39.025 Depositions of Elderly or Disabled Persons
- Get to trial as soon as possible
- Document, document, document

Writing Good Reports

Carefully document all interactions with elderly patients, clients, or customers.

- Who was in attendance?
- What were you told by the elderly person and what did you observe about the elderly person's mental state?
- What was the elderly person's demeanor?

Why is this important for a criminal case?

Hearsay Exceptions

Certain statements are not "testimonial" in nature, making them exempt from the *Crawford* issue and the hearsay rule. Some examples are:

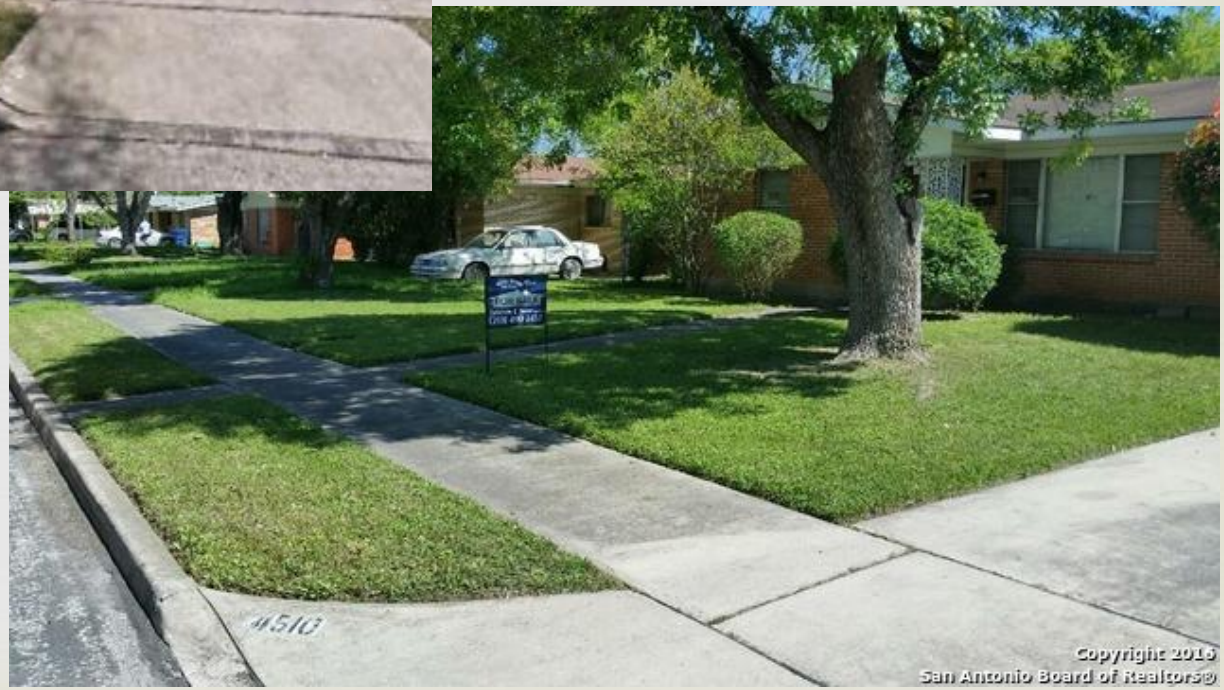
- Excited Utterance
- Present Sense Impression
- Bank Records
- Medical Records

Samuel Perkins

Adverse Possession

- Mr. Perkins is currently charged with Theft 100k-200k against the elderly.
- Operating under the guise of an archaic common law that still exists. Mr. Perkins laid claim to two residential homes and three commercial lots… That we know of.
- We have identified 16 properties where his name has popped up, yet we only have five victims

- Mr. Perkins would identify property that is free and clear using the county records, then he would go find out if any were “vacant”
- Vacant is defined as:
- homes that are currently for sale by any realty company, complete with sign and lock box
- The two residential homes both had a lock box cut off and signs taken.
- Perkins would then occupy the property (renters), change the locks, and file an affidavit of adverse possession. His affidavit would claim the properties were distressed, disused, and abandoned.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Confrontation

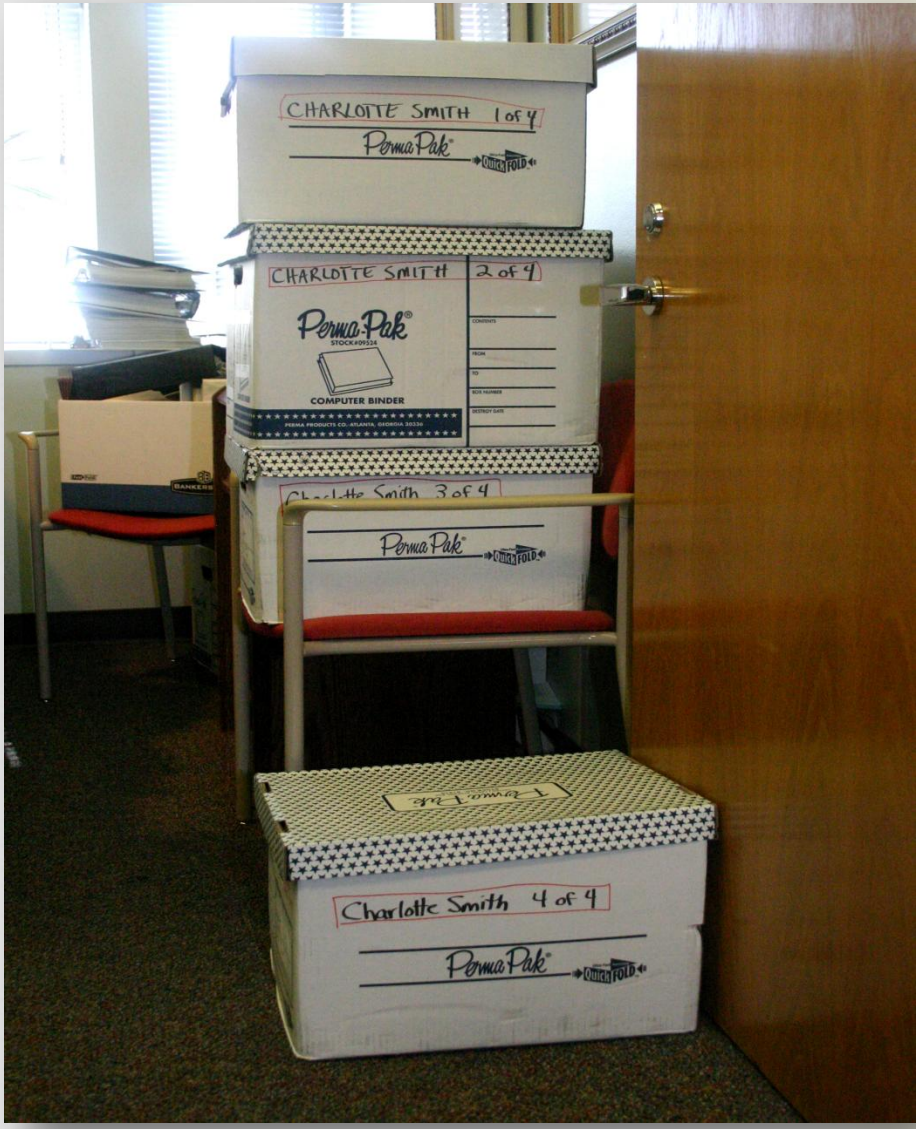
- When confronted, Mr. Perkins was very assertive and ready to show his file stamped affidavit.
- Perkins is a fast talking con-man and was able to dupe most patrol officers into thinking this was a civil situation.
- Finally, the case was brought to the attention of a white collar detective, who put the pieces together

Case Status

- One deceased elderly victim,
- One incapacitated elderly victim,
- And
- One crazy defendant???
- Competency evaluation number 2, plus a pending jury trial on competency.

State v. Charlotte Smith

Wallace Moore - Victim


CHARLOTTE SMITH 1 of 4
Perma-Pak
QUICK FOLD
CHARLOTTE SMITH 2 of 4
Perma-Pak
COMPUTER BINDER
Charlotte Smith 3 of 4
Perma-Pak
QUICK FOLD
Perma-Pak
Charlotte Smith 4 of 4
Perma-Pak
QUICK FOLD

Age/Sex: 8 1 MOOR WALLACE T ODORE (ADM
Unit #: M00547968
Account#: M252402664
Admitted: 03/03/03 at 1413

M.REB-M.REB-09
Contreras-Urby,Dolores
Metropolitan Hospital

Page: 1

OT (2) - WEEKLY SUMMARY

~~~~~~~~~~ @ 2 2 MAX ASSIST 25% OR MORE

Dressing (UE): 2 2 MAX ASSIST 25% OR MOR

~~~~~~~~~~ @ 1 1 TOTAL ASSIST (<25%)

Dressing (LE): 1 1 TOTAL ASSIST (<25%)

rep ~~~~~ @ 0 0 ACTIVITY DID NOT OCCUR Meal Prep: 0 0 ACTIVITY DID NOT OCCU

ity ~~~~~ @ 0 0 ACTIVITY DID NOT OCCUR Kitchen: 0 0 ACTIVITY DID NOT OCCU

~~~~~~~~~~ : CONTINUES W/ POOR COGNITION.SCORED 13 OF 30 ON MINI MENTAL
: STATUS EXAM. POOR ABILITY TO FOLOW DIRECTIONS AND ATTEND TO
: TASK. POOR INTAKE-CAN FEED SELF BUT DROOLS,TAKES LONG TIME T
: TO CHEW AND SWALLOW.MAKES MINIMAL EFFORT TO DO SIMPLEST GROO
: AND HYGIENE TASKS

~~~~~~~~~~~~

ADL/COGNITIVE TRAINING,ADL MOBILITY TRAINING, THER EX,

		~~ Initial Status ~~		~~ Current Status ~~
Feeding ~~~~~~~~~~~~~~	@ 3 3	MOD ASSIST 50% OR MORE	Feeding: 4 4	MIN ASSIST 75% OR MORE
Grooming and Hygiene ~	@ 3 3	MOD ASSIST 50% OR MORE	Grooming: 4 4	MIN ASSIST 75% OR MORE
Bathing ~~~~~~~~~~~~~~	@ 1 1	TOTAL ASSIST (<25%)	Bathing: 1 1	TOTAL ASSIST (<25%)
Tub Transfers ~~~~~~~~	@ 1 1	TOTAL ASSIST (<25%)	Tub, Shower: 1 1	TOTAL ASSIST (<25%)
Toileting ~~~~~~~~~~~~	@ 1 1	TOTAL ASSIST (<25%)	Toileting: 1 1	TOTAL ASSIST (<25%)
Toilet Transfers ~~~~~	@ 1 1	TOTAL ASSIST (<25%)	Toilet: 2 2	MAX ASSIST 25% OR MORE
UE Dressing ~~~~~~~~~~	@ 2 2	MAX ASSIST 25% OR MORE		
			Dressing (UE): 2 2	MAX ASSIST 25% OR MORE
LE Dressing ~~~~~~~~~~	@ 1 1	TOTAL ASSIST (<25%)		
			Dressing (LE): 1 1	TOTAL ASSIST (<25%)
Simple Meal Prep ~~~~~	@ 0 0	ACTIVITY DID NOT OCCUR	Meal Prep: 0 0	ACTIVITY DID NOT OCCUR
Kitchen Mobility ~~~~~	@ 0 0	ACTIVITY DID NOT OCCUR	Kitchen: 0 0	ACTIVITY DID NOT OCCUR

Assessment ~~~~~~~~~~~ : CONTINUES W/ POOR COGNITION.SCORED 13 OF 30 ON MINI MENTAL
: STATUS EXAM. POOR ABILITY TO FOLOW DIRECTIONS AND ATTEND TO
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: TO CHEW AND SWALLOW.MAKES MINIMAL EFFORT TO DO SIMPLEST GROO
: AND HYGIENE TASKS

PLAN ~~~~~~~~~~~~~~~~~~~

: ADL/COGNITIVE TRAINING,ADL MOBILITY TRAINING, THER EX,
: SITTING BALANCE, INC FXL ACTIVITY TOLERANCE, DME REC,
: D/C PLANNING

This profile is a part of the PERMANENT PATIENT MEDICAL RECORD
DO NOT THIN!!! DO NOT DISCARD!!

000501

Sx 53

3/10/03 Noted (D) Lowe RN

3/10/03 (1) Plan for discharge should be discussed with his wife. (Maxie Moore).

(2) ask the daughter to call me for change: 561-

(3) Later on 3/11/03

METHODIST HEALTHCARE

MOORE, WALLACE

3/10/03 Noted (D) Lowe RN

3/10/03 (1) Plan for discharge should be discussed with his wife. (Maxie Moore).

(2) ask the daughter to call me for change: 561-

(3) Later on 3/11/03

METHODIST HEALTHCARE

"Serving Humanity to Honor God"

www.SAHealth.com

Physician's Orders

MOORE, WALLACE THEODORE

M25402664 ADM IN M.REB-09

03/03/03

DOB:07/16/20 82 M MR# M00547968

Metropolitan Hospital

@ 1455h 3/10/03

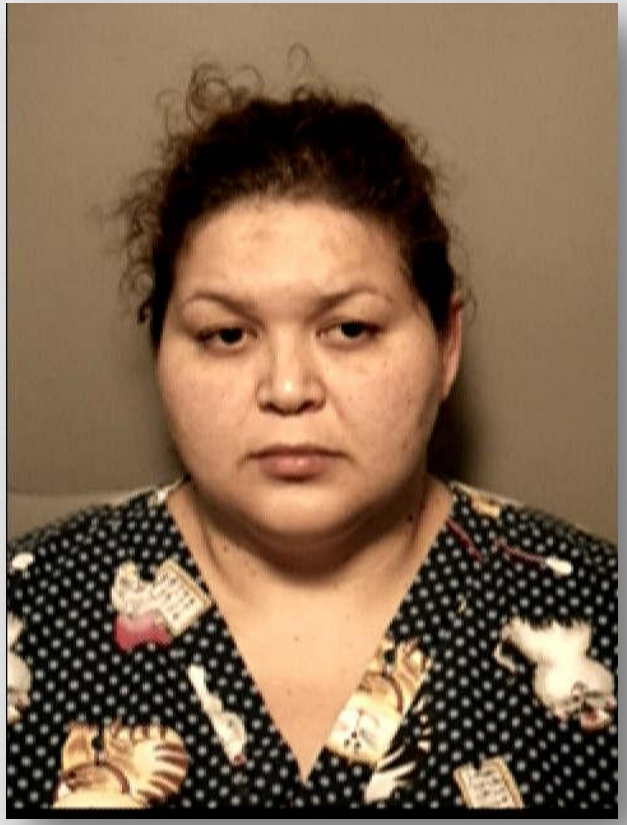
000349

Noted T. Crayon

3/11/03 2400 Sx 57

Charlotte Smith Before and After Mr. Moore's Money

State v. Flor Arriaga



Mary Kelly – Victim

(deceased at time of trial)

ATM/FREEDOM CARD FRAUD RESEARCH

DATE: 10/12/05 **ACCOUNT#:** 483044-2

____ ATM or X FREEDOM X PIN transaction or ____ Signature transaction

Primary Member Name: MARY E KELLEY Name on Card: MARY E KELLEY

Daytime phone number: 210-658-8090 Additional phone number: _____

Date, Time, and Amount of transaction in question: 10/12/05 06:30:00 302.50 / 10/07/05 06:30:00 202.50 / 10/11/05 06:30:00 302.50

Institution/Location where transaction took place: ATM WITHDRAWALS

Address: _____ City: _____ State: _____

Is the card in your possession? X Yes ____ No If not, what do you think happened to your card? _____

Have you ever authorized anyone to use your card? X Yes ____ No

Name, phone number, and relationship? FLORA/ DOMESTIC AGENCY CARE TAKER

When did you notice the card missing? 10/12/05

Do you know who may have used your card? X Yes ____ No

Name, phone number, and relationship? FLORA CARE TAKER

Was card signed? ____ Yes X No Was PIN with the card? X Yes ~~X~~ No Mrs Kelley stated that the pin was in her wallet wit the card on a part of pa

Police Report? ____ Yes X No City, and Case#: _____

Hot Card? X Yes ____ No Date of Hot Card: 10/12/05

Has an **Affidavit of Fraudulent Use of a Debit or Credit Card** been completed? ____ Yes X No

Member's Comments: Card has been in possession. The first time Mary Kelley used the card was Tuesday afternoon at the Live Oak Branch + withdre $150. Mary Kelley and Flora are the only ones to Mrs Kelley's knowledge that know the card number.

Member must read and initial the following:

I understand there may be a **$15.00** per hour research fee. **Member's Initials:** _____

I understand that I may be responsible for the first **$50.00** on a fraud claim and a refund may result in the Loss of ATM/Freedom card privileges. **Member's Initials:** MEK

Member's Signature: M. E. Kelley

Employee Name: (Please Print) Patricia Sandlesky

Cardholder Dispute Form
Fraudulent Use of a Credit or Debit Card

☐ Credit Card ☒ Debit Check Card ☐ ATM

MEMBER INFORMATION

I make this Cardholder Dispute Form for the purpose of establishing the fraudulent use of my card. I did not give, sell or trade my credit/debit card to anyone nor did I give anyone permission to use my card(s). I have no knowledge that my spouse or minor children made any transaction(s) on or after the date of the first fraudulent transaction indicated below. I did not receive any benefit from the unauthorized use of my credit/debit card.

Name	Home Phone	Work Phone
MARY E KELLEY	210-658-8090	

Mailing Address / Street	City	State	Zip
117 SUNRISE CANYON DR	UNIVERSAL CITY	TX	78148

No. of Cards Issued	Credit Union Name	Card Number	Type of Card Loss: ☐ Lost ☐ Never Received ☐ Stolen ☒ Card in my possession
1	Randolph-Brooks Federal Credit Union	5142-1510-4830-4421	

Date Cardholder Discovered Loss	Date Cardholder Reported Loss to Credit Union/Processor	Date of First Fraudulent Transaction
10/12/05	10/12/05	10/07/05

I did not use this card nor authorized the use of this card by anyone else after I discovered the plastic card was lost, stolen or counterfeited.

Total amount of unauthorized transactions: $ 807.75

I have examined all of the unauthorized transactions and in each instance I did not originate the transaction or authorize it. Further, I did not receive any of the proceeds or benefits of any such item(s) on the above total.

Name and Address of Unauthorized User (if known)

Has this loss been reported to police department? NO

Please provide details (if necessary) on a separate sheet.

SIGNATURES

I give my consent to the credit union to release any information regarding my card and/or card account to any local, state and/or federal law enforcement agency so that the information can, if necessary, be used in the investigation and/or prosecution of any person(s) who may be responsible for fraud involving my card and/or card account. I swear this Cardholder Dispute Form is true and understand that making a false sworn statement is subject to federal and/or state statutes and may be punishable by fines and/or imprisonment.

☒ YES ☐ NO THE ABOVE CARD WAS REQUESTED BY ME

STATE OF Texas

COUNTY OF Bexar

Subscribed and sworn to before me this

12 day of October, 2005.

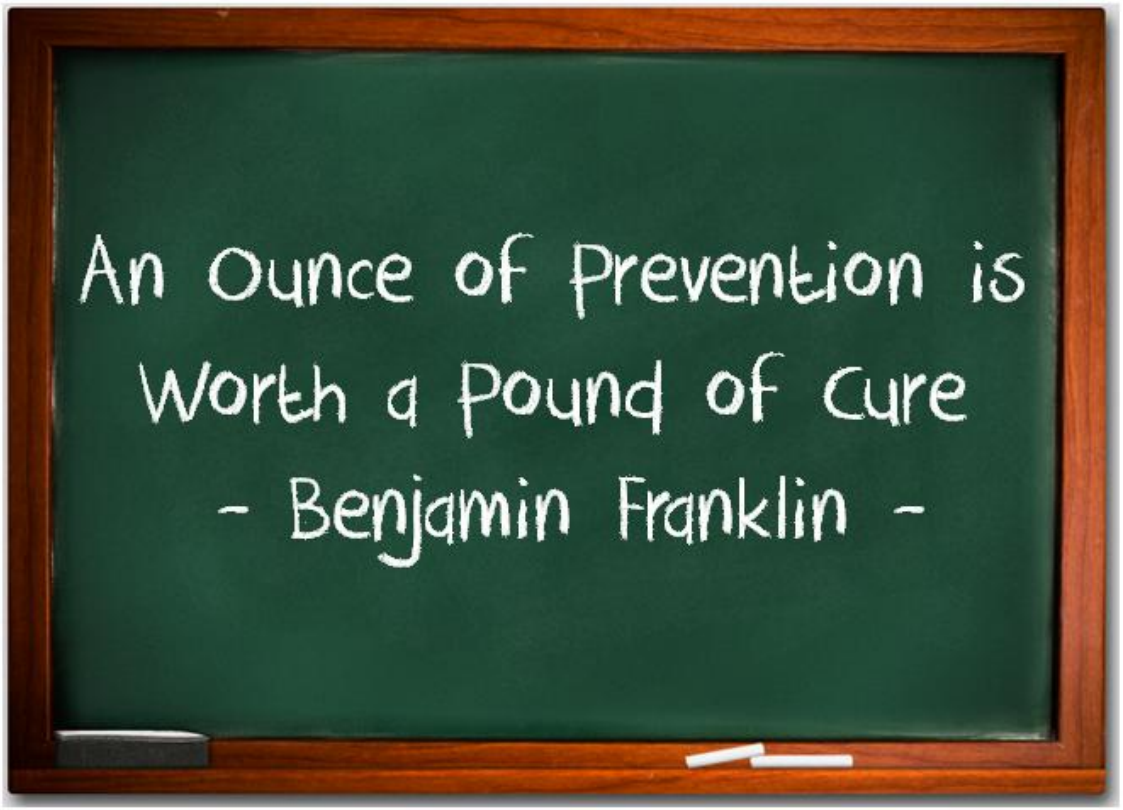
Mary E Kelley — Member's Signature — 12 Oct 05 Date

Patricia Sandusky (Notary Public)

Co-Applicant Authorized Signature — Date

PATRICIA SANDUSKY

Prevention


An Ounce of Prevention is
Worth a Pound of Cure
- Benjamin Franklin -

Who Can Help?

- Adult protective services – They have funding and subpoena power from the State to investigate crimes. They are an excellent resource when elder abuse is suspected. Anonymous Reporting.
- DADS (Dept. of Ageing and Disabilities Services) – Are also an excellent resource and can help with the investigation of fraud or abuse.
- Police – Like the DA's office, have special units to address crimes against the elderly, and they work closely with the DA's office.

Credit Checks

- Credit Reports give you the whole picture
- Annual Credit Report . Com – this is the only web site authorized by federal law to pull your credit and its free!!
- You get by law a free copy of your credit report from each of the three bureaus, per year
- You can request a report from each bureau every 3 – 4 months and this will give you a great indication if something has gone awry

Bank Statements

- Banks typically give you 90 days to dispute charges, deposits, or movements of funds.
- Check your account statements regularly, at least every month.
- If you see something that is wrong, call your bank, and dispute the charge.
- Fill out a forgery affidavit with the bank. This will help document the case for any future legal action.
- If someone is stealing, they typically start small.

Paper Weapons

- Trusts
- POA
- Bank Account Access
- Wills

Trusts

- Trusts are legal documents that require a trustee to administer the directives
- Revocable or non-revocable
- Support trust
- You can act as the trustee, however what happens when you become incompetent
- Don’t require probate
- Talk to your attorney to see if a trust can benefit you

Power of Attorney

- A power of attorney is a revocable written authorization to represent or act on another's behalf.
- The powers given can be very specific, or very broad, i.e. healthcare only.
- Generally a POA would expire automatically once the principle becomes incapacitated in any way.
- Durable POA survives until death
- Springing POA starts once the principle becomes incapacitated

Bank Access

- Shared Accounts
- Full Access
- If your bank allows; you can give someone access to your statements only
- Be very careful who you give access to!

Wills

- A legal declaration o will be distributed aft
- Require
- W ju
- Vi
- Mir the surv
- What ng spouse becomes incomp

Trusted People

- All the aforementioned paper weapons require something very very important!!
- A TRUSTED PERSON
- BE VERY CAREFUL WHO YOU TRUST!
- Can everyone here trust your children?
- Siblings?
- Nieces or nephews?
- Neighbors?

Who Can You Trust

- Children- even if you do trust your children, can they be trusted against each other?
- Entitlements have a life of their own
- Neighbors, friends, siblings… even if trustworthy will they be around long enough
- Nieces and nephews, we have no shortage of cases against nieces and nephews
- Look at their character and history. Deep down, you know who you can trust

Professionals

- Attorneys
- Certified Public Accountants
- Bound by rules of ethics within their profession
- But, will they be around long enough?
- BANKS
- Every major bank has a dept. that manages property and assets
- Banks have deep pockets, so if they mess up…
- Banks are also great monitors and can catch problems.

Variety of Cases

- Gypsies (very prevalent in central and south Texas)
- Foundation and Roofing Scams (Durizon Roofing)
- Pigeon Drops / Lotto Scams (Luz Perez)
- IRS fraud (telemarketing)
- Grandparent scams
- Impatient Children and Neighbors
- Funeral Scams (Carlos Alfonso)
- Romance Scams

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Brandon Jackson, Amanda Vasquez
Elder Fraud Prosecutors
Phone: 210-335-2404

Norma Alatorre, Advocate
Phone: 210-335-2348

San Antonio, Texas