

Committee on
Public Safety
jointly with
Aging

Date	6/23/2008
Start Time	
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DISTRICT ATTORNEY
QUEENS COUNTY
125-01 QUEENS BOULEVARD
KEW GARDENS, NEW YORK 11415-1568
(718) 286-6000

Richard A. Brown
District Attorney

Re: Public Hearing : Res. No. 1421; Res. No. 1422; Res. No. 1423

Date: Monday June 23, 2008

To: Chairperson Vallone and Members of the City Council Committee on Public Safety
Chairperson Arroyo and Members of the City Council Committee on Aging

Statement: Queens County District Attorney's Office
A.D.A. Kristen Kane, Chief, Elder Fraud Unit
Economic Crimes Bureau

On behalf of Richard A. Brown, Queens County District Attorney, I would like to thank you for the invitation and the opportunity to be heard regarding issues that affect the elderly of our community. Queens County has one of the largest elder populations in New York City; With over 375,000 seniors, they represent a large and vital part of our community. In recent years, our Office has seen a rise in the level of all types of financial crimes against the elderly. Seniors, and others on their behalf, are reporting financial related crimes in increasing numbers on a wide array of issues. Mortgage and deed fraud along with identity theft represent the most prevalent crimes committed against seniors in Queens County today.

To combat the growing problem of financial elder abuse, District Attorney Brown has developed the Elder Fraud Unit within the Economic Crimes Bureau. The Unit employs a three prong approach to financial elder abuse, which includes, firstly, a specialized investigation and prosecution unit, social service staff, and community outreach and training. This multi-disciplinary approach has assisted in successful investigations and prosecutions of elder abuse and financial exploitation. And, while we will continue in our efforts to prosecute those who commit financial crimes against the elderly and to better protect our seniors, we support the resolutions and amendments proposed by your Committees as they are vital and necessary steps toward that end.

By way of example, please consider the case of Mr. M. Last year Mr. M, a 93 year old man, came to our office with his daughter and told us that someone had taken out two mortgages on his investment property in Bayside and had sold his primary residence in Jamaica where he has been living for the past 30 years. He said that he learned of these transactions when he received foreclosure notices on both properties. During the year long investigation, we discovered that these transactions took place in 2004 and 2005 and were orchestrated by a

"family friend" of Mr. M. As it turns out, Mr. M was present at both the closing to refinance his Bayside property and the sale of his Jamaica home and did sign documents at the closings. He did not remember this. We learned through his doctor that he has been suffering from dementia since that time and that this "friend" must have been aware of the dementia as she was present at the doctor's office with Mr. M.

We received subpoenaed records and reached out to possible witnesses in an attempt to sort through Mr. M's financial disaster. We learned that Mr. M was not represented by an attorney at either closing. This "family friend" was present, brought Mr. M to the closings, and represented herself as either Mr. M's niece or daughter. She arranged for and worked directly with the mortgage brokers, notaries, and title companies and gave her own telephone number as the contact number in the event of any questions. She also arranged for the buyer of Mr. M's home, a person known as a "straw buyer" who essentially buys the home, gets a mortgage to purchase the property, shares in the proceeds, and has no intention of actually living in the home or paying back the mortgage.

The proceeds of both property transactions totaled in excess of \$300,000. Checks were cut at the closings and made payable to Mr. M., but these checks were taken by the "friend" and deposited into a joint account in both her and Mr. M's name but which Mr. M knew nothing about. This "friend" then proceeded to withdraw all the money to pay for her own bills and expenses. Mr. M never saw any of the money. Both mortgages went unpaid; the mortgage banks are now pursuing foreclosure on both Mr. M's residence and his investment property.

The investigation of Mr. M involved examination of documents and records relating to three separate closings; we also needed to analyze records and trace money from about a half a dozen bank accounts and credit card accounts to determine who profited from the exploitation of Mr. M. Some of our potential witnesses may not be available given the time frame and may have difficulty recalling details. At least one financial institution has since gone out of business.

The case of Mr. M is a quintessential example of the complexity of issues involved in both financial elder abuse cases and mortgage/deed fraud cases. These cases typically involve complex schemes and require exhaustive examination and analysis of voluminous documents and financial records. Even where we have witnesses and victims with no mental or physical impairments, these cases can be difficult to prove. We may be delayed as financial institutions frequently buy and sell mortgages and are unaware of the current status of the loan, lenders may take six months or more to return requested documents; we find mortgage brokers out of business or no longer at the same location; often the true identities of buyers and sellers are unknown as identity theft is a frequent component of elder mortgage/deed fraud. Potential witnesses may be unavailable as the incidents have often occurred several years ago. Thieves hide behind legal instruments and arrangements such as the use of a power of attorney or a joint account to facilitate their thefts. Each case needs to be reviewed independently to determine whether there exists a viable, prosecutable crime.

Resolution No. 1422, calling upon an amendment to Criminal Procedure Law section 660.20 to include the advanced age of a witness as a ground for an order directing the conditional examination of that witness, is vital to elder abuse prosecutions. In Queens County, as well as in other counties across the state, prosecutors have had to dismiss or close elder abuse cases where the crime cannot be proven due to a victim's sudden illness or death. Elderly witnesses must be given the opportunity to testify regarding the crimes committed against them despite the fact that the case itself may be prolonged or delayed for other reasons. In the case of Mr. M, he may have to wait months or perhaps years before he is called to testify at trial unless a judge orders a conditional exam allowing his testimony to be taken earlier. As of now, this may only be done if we can prove Mr. M is "physically ill or incapacitated"; we cannot move for a conditional examination of Mr. M solely based upon his advanced age of 93. A conditional examination of Mr. M, that is, to allow him to give his sworn testimony through both direct and cross examination before the court, at an earlier date in light of his age, would serve to preserve his testimony in the event that he is not available by the time the case is brought to trial.

Additionally, we concur with Resolution 1423, recommending an amendment to Criminal Procedure Law section 190.30 concerning the receipt of business records in Grand Jury proceedings. We must allow the use of affidavits and/or the certified business records exception for records and documents of financial institutions and other businesses. Currently, we are required to call a live witness merely to admit the relevant documents into evidence. This is an unnecessary burden placed upon prosecutors attempting to hold offenders accountable for financial crimes against the elderly. In the case of Mr. M, for example, we were required to fly in witnesses from California simply to put one of the mortgage related documents into evidence. Under the current law, their live testimony was necessary even though their only role was to provide routine information relating to the origin of the mortgage business records, information which could have been easily submitted via sworn affidavit, saving significant resources of time and money and conversely, resulting in more expedient prosecutions without any compromise of defendant's rights.

We also strongly support Resolution No. 1421, calling for an amendment to the larceny statute of Penal Law section 155. Presently, prosecutors faced with a victim suffering from dementia or other mental incapacity may not be able to prove a larceny from that victim. We need to prove that the victim did not give his/her permission for the thief to take the property and the victim may not be able to testify to such. Currently, the larceny statute itself does not address financial exploitation of a mentally disabled or incapacitated person. Instead, prosecutors must look to present case law and argue under various decisions, such as *People v. Camiola*, that a larceny has in fact occurred; we must argue that transfers of money or property were done while the victim was incapable of consenting to these transfers as a result of dementia or incapacity and that the defendant knew that the victim was incapable of consenting to any of the transfers. This may be the only way to prosecute Mr. M's "friend." But relying on case law alone, without the elements of the crime clearly defined in the larceny statute, is extremely difficult and may result in the inability to proceed. The financial exploitation amendment to the Penal Law, to essentially codify the *Camiola* theory of larceny, is essential to better protect our seniors who suffer from mental infirmities. It will greatly improve the ability to hold offenders accountable for preying upon impaired seniors and vulnerable victims.

Our experience to date has demonstrated that the problem of financial exploitation of the elderly represents a significant and growing challenge for law enforcement. As we have all undoubtedly seen, crime can have a particularly devastating effect on our seniors; many are not able to recover as quickly as other victims. We are making substantial progress in acquiring the skills, experience, techniques and staffing to address elder abuse in a comprehensive and compassionate way. With statutory reform, we can help prevent financial exploitation of the elderly, effectively prosecute those who commit such crimes and provide caring and compassionate support to elderly victims in the process.

District Attorney Brown remains dedicated to seeking justice for the elderly of Queens County. We will continue in our commitment to combat financial exploitation of our seniors through the Elder Fraud Unit, we commend the City Council Public Safety Committee and the Committee on Aging for the important work they do, and look forward to working with you in our joint commitment to the seniors of our community.

Manhattan Delegation of the Council of the City of New York
Budget Hearings
June 23, 2008

Testimony submitted by: Rachel Sherrow
Director of Programs and Community Affairs
Citymeals-on-Wheels
355 Lexington Avenue, NYC 10017
(212) 687-1234
Rachel@citymeals.org

My name is Rachel Sherrow and I am the Director of Programs and Community Affairs at Citymeals-on-Wheels. I would like to begin by thanking you for giving me the opportunity to testify today about such a critical issue facing our elderly neighbors.

As most of you know, Citymeals-on-Wheels is a not-for-profit agency working in partnership with the New York City Department for the Aging. Each year we raise private funds from over 50,000 donors so that frail elderly New Yorkers have something to eat over weekends and holidays when centers do not deliver meals-on-wheels, as well as in times of emergency. These 115 days a year are occasions when our elderly neighbors would otherwise be without food or human company. However, we do not only underwrite meals; we also fund friendly visiting programs throughout the city. These programs connect volunteers with homebound elderly meal recipients for companionship.

A 2006 study by Citymeals-on-Wheels and the Cornell University's Center for Transitional Research on Aging revealed that 8%, or 1,400 meal recipients, have no one with whom to talk... ever. The friendly visiting program addresses the psychological health of our clients by alleviating loneliness

and extreme isolation and bringing caring people right into their homes on a regular basis.

Over the years, Citymeals-on-Wheels came to realize how very isolated our meal recipients are and how very little time the meal deliverer has for a visit. A volunteer visitor has more time to bring real human contact to an older person. Each visit is an opportunity for communicating and reminiscing, and between visits, the older person is comforted to know that there is a special friend who cares. Regular contact also gives a trained volunteer an opportunity to assess the senior's physical and emotional status and report any concerns to their case manager.

The goal of the friendly visiting program is to create an organized visitation service in an effort to alleviate isolation of homebound older persons and provide consistent, meaningful socialization and monitoring. Volunteers visit the elderly in their homes for one to three hours per week and are required to make a commitment of at least six months.

The Volunteer Coordinator who is funded through Citymeals and based locally at a senior center, is responsible for administering the volunteer screening process including interviews and reference checks, training volunteers on the needs of the homebound elderly and emergency protocols, maintaining ongoing communication with friendly visiting volunteers via phone calls and emails, and with the homebound elderly through in-home visits and phone calls.

Citymeals currently oversees nine Friendly Visiting programs throughout Manhattan, Brooklyn and Queens with nearly 800 matches between

homebound elderly and volunteers. Therefore, because we maintain regular contact with an extensive network of contracted meal providers throughout the City, we feel uniquely qualified to enhance their capacity to address the social and psychological needs of an increasingly aged, isolated, and vulnerable elder population.

We hope you, our partners in city government, will continue to support and appreciate these kinds of programs that are necessary to assure our homebound elderly are cared for in their fragile years. Together we are keeping 18,000 elderly New Yorkers in their own homes and out of nursing homes for as long as possible. It is in their interest and ours to keep them with us, safe and right here in the communities where they have lived for so long.



DEPARTMENT FOR THE AGING

2 LAFAYETTE STREET
New York, New York 10007-1392
(212) 442-1100

Edwin Méndez-Santiago, LCSW
Commissioner

TESTIMONY

Presented by

Caryn Resnick, LMSW

Deputy Commissioner

&

Aurora Salamone

Special Assistant in the Bureau of Long Term Care & Active Aging

at a Hearing On

Intro 737

before the

New York City Council

Committees on Aging

& Public Safety

on

Monday, June 23, 2008

11:00 A.M.

at the

Committee Room, City Hall

New York, New York, 10007

Good morning Chairs Arroyo, Vallone and Vacca and members of the Committees on Aging, Public Safety, and Sub-committee on Senior Centers. My name is Caryn Resnick and I am the Deputy Commissioner of the Department for the Aging (DFTA). Joining me today is Special Assistant to DFTA's Bureau of Long Term Care and Active Aging, Aurora Salamone.

First, I would like to thank Council Member Vacca for his efforts to put a spotlight on the important issue of Elder Abuse through the introduction of Intro 737. DFTA supports the language in intro 737 which stands to strengthen DFTA's current training opportunities by mandating them for senior center directors and senior participants. We look forward to working together with the Council on the remaining aspects of the bill.

Today, DFTA welcomes the opportunity to highlight the City's efforts to combat elder abuse through education, outreach, direct services and community collaboration. As you know, elder abuse refers to any knowing, intentional, or negligent act by a caregiver or any other person who has a trusting relationship with a vulnerable older adult, defined as someone over 60 years of age, who causes harm or a serious risk of harm to that older adult. Broadly defined, abuse may be physical, emotional, sexual, or financial and may involve neglect and abandonment.

Because the problem of elder abuse remains largely hidden, it is difficult to quantify how many older Americans are abused, neglected, or exploited. One study from the National Elder Abuse Incidence Study suggests that more than 500,000 Americans aged 60 and over were victims of domestic abuse in 1996; another study estimates that between 3 percent and 5 percent of the elderly population has been abused. DFTA receives more than 1,500 calls a year regarding elder abuse. More than half of the calls relate to financial abuse; however, victims often present with more than one type of abuse.

To respond to this often underreported problem, the Department for the Aging has taken a multifaceted approach to identifying and tackling elder abuse in New York City. Through the combined efforts of the Department's direct services, contracts with non-profit agencies, broad-based coalition collaboration, outreach and education the Department reaches hundreds of thousands of New Yorkers every year.

The Elderly Crime Victims Resource Center, a division of DFTA, provides direct resource and referral to victims of elder abuse as well as coordinates our education and prevention efforts. This Center can be contacted by phone from 9 to 5, Monday through Friday by calling 311. After hours, callers are transferred to Safe Horizon's hotline (212-577-7777) to ensure that 24/7 hotline assistance is available. The Department's Center has also educated the NYPD, judges, district attorneys, and other law enforcement officials on the signs and symptoms of elder abuse. In fact, the Department wrote the curriculum that many agencies continue to use across the country to train their law enforcement officials.

In addition to our Resource Center, DFTA contracts with nine community based service providers to provide direct services to victims of elder abuse, as well as to develop prevention activities which include trainings and outreach. The work of these contracted agencies goes far beyond resource and referral. These community partners provide long-term case management services, which often involve highly complex cases. They assist victims of elder abuse by: helping them secure orders of protection; providing long-term counseling; accompanying victims to court; examining powers of attorney and other legal documents; working with police to place victims on high propensity lists; and working closely with District Attorneys to aid in prosecution

of cases. Five of the nine community-based contractors have attorneys on staff to provide legal services on behalf of clients.

In 2007, contracting agencies assisted 674 victims of elder abuse, providing over 20,000 direct service hours to these clients. As part of their contract, providers are also required to conduct trainings and workshops on elder abuse for both seniors and professionals such as: Adult Protective Service staff, District Attorneys, Judges, Police, and Social Workers to name a few. In 2007, the nine community-based organizations conducted 246 workshops, which were attended by 3,431 participants.

In addition to the direct and indirect services that we provide, DFTA believes that collaboration is essential to this fight. In 2006, DFTA provided the leadership to establish the New York City Elder Abuse Network (NYCEAN). Currently, NYCEAN has 50 members, including mayoral agencies, medical and academic centers, district attorney offices, senior advocacy groups, social service agencies, banking industry entities, community councils and umbrella organizations. I am pleased to report that last year, the Network won a national award from the National Association of Area Agencies on Aging for its broad reaching collaborative efforts to combat Elder Abuse in New York City.

As a part of this Network, two Elder Abuse Case Coordination and Review Teams (EACCRT) have been launched. The teams—headed by Weill Cornell Medical College's Division of Geriatric and Gerontology and the Brooklyn DA's Office—meet to review, analyze and discuss cases collaboratively. Team members represent social service agencies, academia, the legal and medical communities, public agencies, Adult Protective Services, district attorneys and others in law enforcement. This approach has already resulted in cross-referrals and a collegial sharing of support on challenging cases of elder abuse.

The issue of Elder Abuse is far reaching and other City Agencies play a key role in combating this insidious crime. In a continuing effort to strengthen inter-agency collaboration and responsiveness, DFTA and the Human Resources Administration have been working closely together in what we call "cluster meetings" to bridge our case management agencies and Adult Protective Services. With an established common ground, we have seen far greater case consultation and advocacy on behalf of seniors at risk of isolation and elder abuse.

NYPD addresses elder abuse through initial, on-going and specialized training. Officers are instructed on how to recognize and address elderly victims of crimes, abuse and neglect. The Police Department also conducts preventive outreach through its Community Affairs Bureau and Domestic Violence Unit. Their crime prevention and domestic violence officers lecture at various senior centers throughout the City and provide information, safety tips and available resources.

Another key facet to DFTA's efforts to combating elder abuse, is education. DFTA conducts on-going training and education for the staff of senior centers, case management agencies, home care providers and other aging professionals. One training, entitled "*The Abuse, Neglect and Exploitation of Older People*," is held at least twice yearly and educates staff in our contracted agencies on topics such as: the definition of elder abuse; signs and symptoms; risk factors; appropriate interventions; engaging the victim in seeking help; and, linking to community resources for elder abuse victims.

DFTA also conducts on-going training for Adult Protective Services supervisors and staff to enhance their skills in recognizing elder abuse and providing effective interventions for victims. Elder abuse trainings are conducted every other month for students enrolled in the Personal Care

Aide Program offered through DFTA and HRA BEGIN Program. Many of these students will become caregivers in the homes of older New Yorkers. In addition, we continue to work with the Hebrew Home for the Aged and Union 32BJ providing training and education to building workers, superintendents, porters, and doormen on the signs and symptoms of a senior in distress, including elder abuse.

Recognizing the increasing prevalence of financial abuse, DFTA is currently partnering with the Department of Consumer Affairs and the Federal Trade Commission to conduct trainings at DFTA senior centers on fraud prevention. The Department has also joined the US Department of the Treasury in its 'Go Direct' campaign. This campaign encourages seniors to use direct deposit for all their entitlement checks. This should further eliminate financial abuse. Furthermore, we have developed a financial literacy and financial abuse program called "Its My Money." The program is available in English, and is presently being piloted in Spanish at senior centers around the five boroughs.

We also host educational events and forums which address the issue of elder abuse. DFTA co-sponsors an annual conference at the New School University on Elder Abuse. This year's conference "Elder Abuse and the Family: Not a Private Matter" attracted well over 300 professionals from the field of social work, law, nursing and academia. The conference's keynote speaker, Dr Evan Stark, author of "*Coercive Control: How Men Entrap Women in Personal Life*," is a pioneer in the field of Domestic Violence. We also participated in a conference hosted by the Wurzweiler School of Social Work at Yeshiva University entitled "*The Trusting Generation: Protecting Elders and Their Money*." In addition, the Department collaborates with the NYC Housing Authority to conduct a Financial Fitness Senior Fair in Riverbank State Park.

As you have heard, the Department is active on many fronts in working with the community to combat elder abuse. This is an issue that requires on-going vigilance and DFTA is committed to remaining a national leader in elder abuse services, education and prevention.

I would like to again thank the Chairs of the committees for their attention to this issue. By introducing this legislation, Council Member Vacca has shown his dedication and commitment to the seniors in this city and to the thousands of seniors who have suffered in silence as a result of elder abuse. We clearly support the vision and spirit of Intro 737 and look forward to working with this committee and Council Member Vacca to assure that elder abuse training is provided for all of our senior center directors, their staff and senior participants of our programs.

We would also ask you to support the federal Elder Justice Act and NY State Bill A642 and S4996A. Both of these re-codify provisions of the general obligations law in relation to powers of attorney, and provide clearer guidelines regarding mandatory reporting of elder abuse.

It is my hope that today marks the beginning of a real dialogue that will go a long way in preventing and addressing elder abuse for older New Yorkers. Thank you for your commitment to this important issue. I will now take your questions.