

METHODOLOGY

This research project extracted opinions from a national panel of experts about: whether the number of elder abuse cases being litigated or prosecuted is commensurate with the apparent number of cases existing in the community and its institutions; the legal and practical determinants of judicial involvement; and how court practices, other institutional practices, state statutes and court rules could be changed to enhance handling and adjudication of such cases.

A two-pronged approach was used to gather the information necessary to develop recommended guidelines regarding state court handling of elder abuse cases. Project staff established a baseline of knowledge by examining existing practices and procedures through analysis of civil and criminal statutes pertaining to elder abuse and review of the legal and social science literature. At the same time, using the Delphi Methodology, the project developed a vision for the future of the courts' involvement in these types of cases. This forecasting and consensus-building research methodology was used to tap the expertise of judges, court administrators, lawyers, prosecutors, Adult Protective Services and social services personnel, staff of state Medicaid Fraud Control Units and Attorneys General offices, health care providers, long term care ombudsman program staff, researchers, victim/witness advocates, and others.

The project was guided by an expert advisory committee, chaired by Judge Gladys Kessler of the U.S. District Court for the District of Columbia (formerly seated on the District of Columbia Superior Court). The advisory committee also included a probate judge, a trial judge, a prosecutor; an attorney general, a law enforcement officer, a director of a state adult protective services unit, an attorney experienced in elder abuse law and practice, a victim/witness program coordinator, a long term care ombudsman, and representatives of national organizations involved in elder abuse -- the U.S. Administration on Aging, the National Committee to Prevent Elder Abuse, the National Association of State Units on Aging (which runs the Administration on Aging-funded National Center on Elder Abuse and State Long Term Care Ombudsman Programs), and the National Association of Medicaid Fraud Control Units. In addition to providing general guidance about the project and its recommendations, advisory committee members were actively involved in selecting Delphi study participants and in pre-testing the draft Delphi Study instruments.

The project utilized the Delphi Methodology to elicit from selected experts their opinions about the state courts' involvement in elder abuse cases. The goal of this method was to, ideally, reach consensus among the participants about recommendations for change. The Delphi method simulates focus-group discussion and decisionmaking by assembling respondents' perceptions and ideas and providing feedback, thus enabling researchers to refine the issues and solutions. This interactive process develops research that is both formative and more thorough than a single-survey format.

Specifically, the project employed two written study instruments to gather information on elder abuse and the courts. The first instrument was broad and partially open-ended in order to allow the expert respondents relatively free scope to elaborate on the issues. The second questionnaire built on the information provided by the respondents in the first round, although in a much more structured manner. Consensus was reached on so many critical issues that a third questionnaire was not necessary.

At the project's inception, staff generated a list of 399 potential expert respondents; 276 of those individuals accepted the staff's invitation to participate in the study. This was an ideal number, as Delphi research experience indicates that half or more of the selected experts will drop out of the process over time. The staff hoped to end the study process with 165 participants, and 170 individuals actually completed the second round study instrument.

Respondents included probate court judges and other civil court judges who hear guardianship, civil commitment, or other protective services cases; criminal court judges; court administrators; prosecutors; state attorneys general; state adult protective services workers; legal services and private attorneys; state Medicaid Fraud Control Unit staff; health care providers; victim/witness advocates; long term care ombudsman; and other professionals relevant to the inquiry. Also involved were representatives of relevant national organizations such as the ABA National Conferences of Special Court Judges and State Trial Judges, American Public Welfare Association, Conference of State Court Administrators, Metropolitan Court Judges Association, National Association of Adult Protective Services Administrators, National Association of Area Agencies on Aging, National Association of Attorneys General, National Association for Court Management, National District Attorneys Association, and the National Association of State Units on Aging.

The first round study instrument addressed such issues as:

- What are the practical “triggers” for court involvement in elder abuse cases? What should they be? Do any barriers need to be removed in order to implement those triggers?
- Are available judicial procedures and remedies adequate?
- How do questions of capacity affect the process?
- What can be done to enhance linkages among the courts, law enforcement agencies and service providers?
- Are there statutory or procedural barriers that make prosecutors reluctant to press elder abuse criminal cases? How can those barriers be overcome?
- Why aren't more elder abuse cases brought to court?

Two hundred fourteen of the participants completed the first round study instrument, a response rate of 78%. Their responses were analyzed and grouped using the Paradox software program and a team of volunteer students recruited by Dr. Laura Wilson, the project researcher who directs the Center on Aging at the University of Maryland.

The answers and comments to the first round formed the basis of the second round study instrument (which was 52 pages in length). The ideas suggested by the participants in the first round, as well as the ideas originally generated by the project staff and advisors, were raised again in the second round in order to give participants an opportunity to assess and reach consensus on those issues.

Again using the Paradox software program, the project staff determined which of the many ideas had generated consensus (defined as agreement by 75% or more of the respondents who answered the question). Those ideas were clustered by the project director, who then

developed a draft of the recommendations based on the consensus issues. Members of the Advisory Committee and the ABA Commission on Legal Problems of the Elderly met jointly to discuss the draft recommendations. Their valuable suggestions were incorporated into a second draft which was disseminated to the Committee and Commission members for a final review. The project director wrote the commentary to those recommendations; that commentary was reviewed by the Commission Director and by the SJI Project Officer.

In order to identify issues suitable for consideration by the respondents during the Delphi process, project staff conducted an extensive review of state statutory provisions regarding civil and criminal adjudication of elder abuse cases and the legal and social science literature on elder abuse knowledge and practice. Additionally, staff took advantage of every possible opportunity to speak with judges, court administrators, adult protective services workers, publicly-funded and private elder law attorneys, long term care ombudsmen, prosecutors, and attorneys general to probe their knowledge and opinions about the current role(s) of the courts in elder abuse cases, existing barriers to the system, and contemporary relationships among the courts, aging/social services networks, and protective services systems. Besides identifying issues for the Delphi study, this process yielded useful anecdotal and factual information about the courts' handling of elder abuse cases.

Nine focus groups were held throughout the project with members of the National Association of Adult Protective Services Administrators, the National Conference of Special Court Judges, the National Conference of State Trial Judges, the National College of Probate Judges, the National Academy of Elder Law Attorneys, the National District Attorneys Association, and with participants at the annual Joint Conference on Law and Aging. The focus groups provided review of the potential recommendations at critical stages by professionals who were not involved in the Delphi Study.