

**TRUST BETRAYED: FINANCIAL ABUSE
OF OLDER AMERICANS BY GUARDIANS
AND OTHERS IN POWER**

HEARING
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

WASHINGTON, DC

NOVEMBER 30, 2016

Serial No. 114-29

Printed for the use of the Special Committee on Aging



Available via the World Wide Web: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

47-692 PDF

WASHINGTON : 2022

SPECIAL COMMITTEE ON AGING

SUSAN M. COLLINS, Maine, *Chairman*

ORRIN G. HATCH, Utah
MARK KIRK, Illinois
JEFF FLAKE, Arizona
TIM SCOTT, South Carolina
BOB CORKER, Tennessee
DEAN HELLER, Nevada
TOM COTTON, Arkansas
DAVID PERDUE, Georgia
THOM TILLIS, North Carolina
BEN SASSE, Nebraska

CLAIRE McCASKILL, Missouri
BILL NELSON, Florida
ROBERT P. CASEY, JR., Pennsylvania
SHELDON WHITEHOUSE, Rhode Island
KIRSTEN E. GILLIBRAND, New York
RICHARD BLUMENTHAL, Connecticut
JOE DONNELLY, Indiana
ELIZABETH WARREN, Massachusetts
TIM KAINE, Virginia

KEVIN KELLY, *Majority Staff Director*
DERRON PARKS, *Minority Staff Director*

C O N T E N T S

	Page
Opening Statement of Senator Susan M. Collins, Chairman	1
Opening Statement of Senator Claire McCaskill, Ranking Member	3

PANEL OF WITNESSES

Kathryn A. Larin, Acting Director, Forensic Audits and Investigative Services, U.S. Government Accountability Office, Washington, D.C.	5
Cate Boyko, Manager, Minnesota Judicial Branch Conservator Account Auditing Program, Ramsey, Minnesota	7
Jaye L. Martin, Executive Director, Legal Services for The Elderly, Augusta, Maine	8
Jessica Kruse, Attorney, Ozarks Elder Law, Springfield, Missouri	10

APPENDIX

PREPARED WITNESS STATEMENTS

Kathryn A. Larin, Acting Director, Forensic Audits and Investigative Services, U.S. Government Accountability Office, Washington, D.C.	31
Cate Boyko, Manager, Minnesota Judicial Branch Conservator Account Auditing Program, Ramsey, Minnesota	39
Jaye L. Martin, Executive Director, Legal Services for The Elderly, Augusta, Maine	53
Jessica Kruse, Attorney, Ozarks Elder Law, Springfield, Missouri	58

TRUST BETRAYED: FINANCIAL ABUSE OF OLDER AMERICANS BY GUARDIANS AND OTHERS IN POWER

WEDNESDAY, NOVEMBER 30, 2016

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The Committee met, pursuant to notice, at 2:29 p.m., in Room 562, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Flake, Scott, Tillis, McCaskill, Casey, Blumenthal, Donnelly, Warren, and Kaine.

OPENING STATEMENT OF SENATOR SUSAN M. COLLINS, CHAIRMAN

The CHAIRMAN. Good afternoon. Before we begin the hearing today, I would like to just take a couple of moments to thank the Committee's Ranking Member for her extraordinary service during this past Congress. Regrettably, Senator McCaskill, while she will still remain, I believe, a member of the Committee, has decided to accept another position as Ranking Member of another Senate committee, which will preclude her remaining as Ranking Member of this Committee. I cannot understand that decision, but I am going to have to accept it, but in all sincerity, I want to say that it has been such an honor and pleasure to work so closely with a Senator who cares so much about the issues facing our seniors in this country, a Senator who never hesitated to wade into the most complicated of issues, such as our drug-pricing hearings and investigation, and who has initiated many important projects that this Committee has taken on.

As a friend, I will say that it has also been wonderful to work with Senator McCaskill on a personal level, so I just want to thank her and her staff for all of your hard work, your caring, your probing, your compassion, and I believe that, working together in a completely bipartisan way, we have made a real difference for the seniors of this country through the work we have accomplished together, so I will miss you sitting immediately to my right, but if you want to come back, you always are welcome.

Senator MCCASKILL. Well, thank you, Madam Chairman, and let me just say that there were times that the Chairman and I played good cop/bad cop, and I will let you guess which one I was.

She is always so prepared and so substantive, and I think the saddest thing about us parting ways at this point is that it is too

bad that more Americans do not realize that this kind of work goes on. It is too bad that the cynicism that is out there about Government does not bother to look into committee hearing rooms where there is a Republican and a Democrat working as hard as they know how toward a common interest, and the reason that is possible is because the Chairman was never interested in scoring political points. She was interested in scoring policy achievements on behalf of the senior citizens of this country, and it is that that makes the working relationship possible, developing the trust and the confidence in one another that none of us, neither one of us were going to try to score points at the other one's expense.

It happens here, and I wish more Americans realize it happens here. They would probably feel a little bit better about Washington, DC, and in the long run, that is an essential part of our democracy, that the people who we represent have some faith that we are, in fact, working in their best interests, so this Committee will remain in very good hands with Susan Collins. My colleague Bob Casey I believe is going to take my place as Ranking. Now, you may have a little trouble because he is a lot nicer than I am, so you may end up having to be the bad cop with Bob Casey because he is so sweet and so nice, but I will continue to be very interested in these issues, and I am confident we will find places to work together again, and it has been truly my honor to enjoy the friendship and the respect that you so kindly afforded me. Thank you.

The CHAIRMAN. Thank you.

We will now turn to our hearing. Earlier this year, an attorney in the small coastal city of Belfast, Maine, was sentenced to 30 months in prison for bilking two elderly female clients out of nearly a half a million dollars over the course of several years.

The lawyer's brazen theft was uncovered when a teller at a local bank noticed that he was writing large checks to himself on the clients' accounts. When confronted by authorities, he offered excuses that the prosecutor later described as "breathtaking." For example, according to press reports, he put one of his clients in a nursing home to recover from a temporary medical condition, but then kept her there for 4 years until the theft of her funds came to light. Meanwhile, he submitted bills for "services," sometimes totaling \$20,000 a month, including charging her \$250 per hour for 6 to 7 hours to check on her home, even though his office was just a 1-minute drive down the road.

Another tragic case of theft and abuse of an elderly woman was brought to light in an article that appeared just this last weekend in the Maine Sunday Telegram, and as you can see, it was the lead article and talks about a senior citizen, whose age is now 90, who was ripped off by people who allegedly befriended her and then got her power of attorney, sold her home, moved her from California to a cabin in Maine, where she was found abandoned, and as the headline says, "With Friends Like These." When she was found in 2012, she was alive, but not healthy. The three people who had befriended her years earlier had just left her there after gaining control of her finances. They sold her home, and they stole her money, and today this 90-year-old woman is a ward of the State and lives in a nursing home in rural Maine, thousands of miles away from the life that she once knew.

These Maine cases represent shocking breaches of trust, but as this Committee knows—and as we will learn further today—financial abuse of our seniors by those whom they trust is far too common. Sometimes, that abuse is perpetrated by “friends” or family members who are handling the victim’s affairs informally. Other times, the abuse is committed under color of a fiduciary relationship, such as a power of attorney in the Maine cases, or what is known as “guardianship.”

One would hope that this abuse would be unusual where guardians are involved since these fiduciaries are formally appointed and overseen by State courts, but experience has shown that this is not always the case.

In a 2010 report, the Government Accountability Office identified hundreds of allegations of abuse, neglect, and exploitation by guardians. We also learned that a key challenge to combating this abuse is the lack of clear data on guardianships and inconsistent oversight.

That is why, last year, I joined with Ranking Member McCaskill in asking the GAO to update its analysis to help us better understand the extent to which our seniors remain at risk of financial exploitation by guardians and what is being done to protect them. This issue continues to be of interest to other members of our Committee, including Senator Scott, who is here today, and Senator Hatch, who joined as a co-requestor of the report. GAO’s work shows that progress is being made, but much more needs to be done to put best practices in place to oversee guardians and create the tools needed to uncover potential abuse in time to stop it. Seniors in need of assistance to manage their financial affairs should not have their trust betrayed, leaving them destitute in some cases. Guardians should be protecting vulnerable seniors, not stealing from them.

I thank all of our witnesses for agreeing to appear today, and I very much look forward to hearing your comments on this important topic.

I now will turn to our Ranking Member for her opening statement.

**OPENING STATEMENT OF SENATOR
CLAIRE McCASKILL, RANKING MEMBER**

Senator McCaskill. Thank you, Chairman Collins, and thank you for your leadership on this issue and many others.

Elder abuse and exploitation of any kind is a tragedy, but it is particularly painful when abuse is being perpetrated by those who have been entrusted to protect the victims. According to the most recent published statistics, the Missouri Department of Health and Human Services received over 17,000 initial reports of abuse, neglect, and financial exploitation of seniors in 1 year. It is unclear, however, how many of these cases involve financial exploitation specifically. Unfortunately, the extent of elder abuse by guardians is relatively unknown to us due to the limited data that we have available. It is important that we continue to prioritize data collection in this space so that we can better understand the breadth and scope of this issue.

I am pleased to be here today with Chairman Collins for the unveiling of this important GAO report that we requested last year. I have been proud of the work we have been able to do together on the Aging Committee to help combat elder abuse. From our work highlighting senior scams, to exposing the financial exploitation of seniors, and now to our closer look at guardianship abuse, I have been proud to sit beside you as we work to protect our seniors.

Unfortunately, we still have limited information on the prevalence of guardianship abuse across the country, and data varies widely State to State. However, innovative work is being done in several States and by outside groups to bridge the information gap. GAO identified a number of steps that States can take to help protect seniors from detrimental guardianship arrangements. For example, State courts should do their due diligence to make sure that a guardian is truly needed for an individual before one is appointed; allowing seniors to remain in the "least restrictive option" can protect the individual while also maintaining as much freedom as possible. Additionally, State courts should periodically reexamine whether guardianships are working well for both parties over the course of the arrangement and make adjustments where necessary.

While the Federal Government does not have the authority to regulate guardianship, there are steps being taken to offer indirect support to States and to encourage data collection. Early next year, the Department of Health and Human Services will be launching the National Adult Maltreatment Reporting System to provide accurate national data on elder abuse. The system will draw on data submitted by Adult Protective Services agencies and will identify multiple types of elder abuse, including instances involving guardians. I am looking forward to reviewing this important information as we continue this fight.

I would like to take a moment now to introduce one of the witnesses on today's panel from my home State of Missouri. Jessica Kruse is an attorney with Ozarks Elder Law in Springfield. Ozarks Elder Law does very important work in southwest Missouri helping seniors and their families with many elder law issues, including guardianship. In addition, Jessica is a statewide leader on elder law issues as the president of the Missouri chapter of the National Academy of Elder Law Attorneys and the Chair of the Elder Law Committee for the Missouri Bar. I look forward to hearing her testimony today and learning about the important work that she is doing in my State.

I also look forward to hearing the testimony from our other distinguished witnesses about how we can continue to confront this challenge. Thank you, Chairman Collins, for this important hearing, and thank you to our witnesses for taking the time to be here today.

The CHAIRMAN. Thank you.

Senator Scott, I know that you can be here only briefly, so I would love to give you an opportunity for some comments given your interest in this important issue.

Senator SCOTT. Thank you very much, ma'am. Thank you, Chairwoman, for this opportunity, for this hearing, and to the Ranking

Member as well for your participation, and other members who are certainly invested in looking for solutions.

As I have said several times on this Committee, I have spent 25 years or so in the insurance industry and had an opportunity to have many interactions with folks and their finances, and the level of abuse that is in this space is tremendous. In South Carolina, we are looking at about a 36-percent increase in senior population between now and 2030. These issues will become more important, and unfortunately, we will see more abuse, and looking for ways to solve the problems before they start seems to be perhaps the most important part.

Ms. Cate Boyko, your program, the online approach that creates accountability, is such an important part of that. The one thing that I learned through the industry was that the more folks know someone else is watching or has access to it, the better off the senior is, and the thing that really saddens me the most—and I spoke to my probate judge in Charleston County, Irv Condon, about this issue—is that the most vulnerable folks financially are oftentimes our seniors, and that family members and friends take advantage of their situation. Just beyond the fact that it is unethical, it is absolutely immoral, and so having an opportunity for y'all—which is Southern for “you all”—to weigh in on this very important issue is critically important to our seniors, and this hearing alone will educate seniors who are watching this hearing prepare for their own situation and put them in a better place going forward, so thank you very much for your testimony. I have had an opportunity to read through some of the testimony, and I truly appreciate that part. Thank you, Chairwoman, for holding the hearing, and to the Ranking Member as well.

The CHAIRMAN. Thank you.

I want to give our other members also, if they want to take a couple of moments—fine. Great. Thank you. We will then move to our witnesses.

First we will hear from Kathryn Larin. Ms. Larin is the Acting Director of the Forensic Audits and Investigative Services team at the U.S. Government Accountability Office, better known as GAO.

Next we will hear from Cate Boyko. She is the manager of the Conservator Account Auditing Program for the Minnesota Judicial Branch, and Minnesota has been a real leader in this area.

We will then hear from a very important witness because she is from the State of Maine, Jaye Martin, who is the executive director of Legal Services for the Elderly in Augusta, Maine, and our final witness, Jessica Kruse, has already been introduced by the Ranking Member.

Ms. Larin, we will start with you. Thank you.

**STATEMENT OF KATHRYN A. LARIN, ACTING DIRECTOR,
FORENSIC AUDITS AND INVESTIGATIVE SERVICES,
U.S. GOVERNMENT ACCOUNTABILITY OFFICE,
WASHINGTON, D.C.**

Ms. LARIN. Chairman Collins, Ranking Member McCaskill, and members of the Committee, I am pleased to be here today to discuss our most recent report on elder abuse by guardians.

Over the past several years, GAO has produced several reports on the critical issue of elder abuse and elder financial exploitation.

Today I am going to focus on a particularly vulnerable segment of the older adult population—those with guardians. When an older adult becomes incapable of making informed decisions, a guardianship may be necessary. Guardianships are legal relationships created by State courts giving a person or entity the authority to make decisions on behalf of an incapacitated individual. While many guardians act in the best interests of persons under their guardianship, some have been reported to engage in the abuse of older adults.

My remarks today highlight two key issues: what is known about the extent of elder abuse by guardians, and what measures have Federal, State, and local agencies taken to help protect older adults with guardians.

First, on the extent of elder abuse by guardians, unfortunately we know very little. There are currently no national statistics on the number of guardians assigned to older adults, the number of older adults in guardianships, or the number of abuse cases involving older adults with guardians.

Because guardianship is typically the responsibility of State and local court systems, we talked to court officials in six States and found that data limitations prevent reliable estimates of elder abuse by guardians, even at the State level. For example, while a State may have statistics on cases involving assault, battery, or theft, cases are often not identified as elder abuse or elder financial exploitation. Likewise, courts may not classify cases by the age of the victim or by whether a guardian was involved.

In the absence of reliable data, information on individual cases can provide some insight into the types of abuse guardians have been found to inflict on older adults in guardianship. We describe eight cases in which guardians were found to have financially exploited or neglected older adults under guardianship in the past 5 years. For example, one professional guardian misappropriated more than \$200,000 over 6 years from persons under his care.

There are some efforts underway to collect better data on elder abuse and guardianship. The Department of Health and Human Services plans to launch the National Adult Maltreatment Reporting System by early next year. This system will compile data from State Adult Protective Services agencies to provide consistent national data on abuse and financial exploitation of older adults. It will have the capacity to identify cases where guardians are involved. This will be an important resource for better understanding the scope of this problem.

Turning now to measures that help protect older adults with guardians, the Federal Government does not regulate or directly support guardianship, but Federal agencies do offer grant programs to support State and local guardianship efforts. These grants help to share best practices and facilitate coordination between courts and those directly involved in caregiving, because State and local courts have primary responsibility over the guardianship process, they have a key role in preventing elder abuse by guardians. Measures taken to help protect older adults with guardians vary but generally include four key elements: screening, for example, to ensure only those in need are assigned a guardian; education of guardians, including certification programs; monitoring of

things like caretaking, fees charged by guardians, and complaints against guardians; and enforcement, to ensure that guardians who have committed elder abuse are removed from their positions and face consequences.

In conclusion, the number of adults over the age of 65 is expected to nearly double by the year 2050. Older adults who do not have the capacity to make informed decisions about their own welfare are an extremely vulnerable population. As their numbers increase, it will be important for those at all levels of Government to be aware of the potential for abuse and take steps to prevent it.

This concludes my prepared statement. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.

**STATEMENT OF CATE BOYKO, MANAGER, MINNESOTA
JUDICIAL BRANCH CONSERVATOR ACCOUNT
AUDITING PROGRAM, RAMSEY, MINNESOTA**

Ms. BOYKO. Chair Collins, Ranking Member McCaskill, and other members of the Committee, I am Cate Boyko, manager of the Conservator Account Auditing Program for the Minnesota Judicial Branch, and I have had the privilege of managing this statewide audit program since its inception in 2012. In Minnesota, conservatorship is used to describe the court appointment of someone to handle the financial matters of a vulnerable person. Conservators in Minnesota file annual accountings to the court on the anniversary of their appointment. In 2015, Minnesota conservators filed accountings reporting over \$908 million in assets. Minnesota is one of the very few courts that know how much money is under our court jurisdiction.

The Minnesota Judicial Branch has developed a multipronged approach to ensure our courts provide oversight of vulnerable persons in Minnesota under conservatorship. This includes biannual background checks, online training, auditing of accountings, and court hearings to address the audit findings. I believe the Minnesota approach is a national model to address the issue of financial abuse of older Americans by conservators.

There is a need to ensure that courts provide oversight for the growing population of the vulnerable under court jurisdiction. However, with court budgets being cut and public safety being a priority, probate case types tend to receive lower priority and attention throughout the Nation. Courts do not always have the right staff to provide the specialized monitoring and auditing of financial accounts.

From 2010 to today, Minnesota courts have evolved from the unwieldy process with conservator accounts submitted to the court on paper, often accompanied by a shoe box of receipts, to our current approach: professional auditing of the accountings and an online account filing system.

In 2012, I was hired as the audit manager to build the auditing component—the Conservator Account Auditing Program, or CAAP. CAAP is a statewide account auditing center created and funded to monitor and audit financial activities of conservators.

With a staff of ten auditors and a part-time help desk person, we audit all conservator accountings from both professional and non-

professional conservators. The conservator must report all transactions—income, expense, and debt—that occur during the annual reporting period using the online system.

The audits completed by CAAP are extensive. The auditor reviews the account that is filed, reconciles the accounting, and reviews all third-party financial statements, canceled checks, invoices, fee invoices, receipts, and tax returns. The auditor also reviews the spending to determine if it is appropriate for the protected person's station in life.

Once the audit is complete, the auditor files an audit report with the court and provides a copy to the conservator. The audits are rated upon completion by findings; 12 percent of the cases audited have concerns of loss.

Examples of what the auditors have found in our most egregious cases are missing income; cash withdrawals; unreported assets; money disappearing when accounts are closed; multiple dining-out and vacation expenses for multiple people; unauthorized purchases of pools, houses, cabins, boats, cars, campers; household repairs conducted by unqualified family members without permits billed at professional rates; loans from the protected person's funds; fraudulent documentation; extraordinary fees. The list goes on and on.

Once the audit is filed, a hearing is held, and the judge addresses the issues presented in the audit report. Examples of outcomes include discharge or termination of the conservator, referral to the prosecutor for criminal investigation, criminal charges of financial exploitation of a vulnerable adult, repayment of funds, orders for judgment, and surcharging of the surety bond.

The online filing system used by conservators by Minnesota Conservator was created with the assistance of a grant from the State Justice Institute. With the philosophy of keeping it simple for the conservator, the application was designed similar to other online financial applications. Short video tutorials walk the conservator step by step through processes. MMC is not just an application to report annual accountings to the court but provides a financial management tool to the conservator.

One of the greatest benefits of MMC is the red flag logic, and as part of the Conservator Accountability Project with the National Center for State Courts, the National Center has analyzed 1 year of audit data and developed ten empirically based risk indicators. We are currently testing those risk indicators.

Numerous jurisdictions have shown interest in the Minnesota model and obtaining the Minnesota source code. To date, we have shared our source code with six States and the National Center for State Courts. Other jurisdictions are doing good things in tackling this problem. I believe that sharing our best practices is the most effective way to combat financial abuse of the vulnerable under court jurisdiction.

The CHAIRMAN. Thank you very much, Ms. Boyko.

**STATEMENT OF JAYE L. MARTIN, EXECUTIVE DIRECTOR,
LEGAL SERVICES FOR THE ELDERLY, AUGUSTA, MAINE**

Ms. MARTIN. Chairman Collins, Ranking Member McCaskill, and members of the Committee, I am Jaye Martin, executive director of Legal Services for the Elderly in Maine. I am honored to be here

today and grateful for the Committee's focus on abuse by guardians and others in a position of trust.

LSE is a private, nonprofit organization that was formed in 1974 when legal services were first added to the list of potential funded services under the Older Americans Act. LSE provides services to seniors when their basic human needs are at stake.

We have a four-decade-long history of representing victims of elder abuse in an effort to restore safety and recover assets through civil litigation. In the past 12 months, LSE assisted 260 victims of elder abuse. This is up 24 percent from the prior year, and yet we estimate we are serving about 1 percent of Maine's total victims.

Elder abuse is a pervasive problem. One in 10 people age 60 and older who live at home will experience abuse, neglect, or exploitation. This means as many as 5 million seniors are abused each year. Studies show only 1 in 24 cases are ever reported to authorities.

At LSE, 48 percent of the elder abuse cases we handle involve financial exploitation, and 75 percent of those involve family members as the perpetrators.

I want to share a typical LSE case with you that involved financial exploitation. LSE's cases generally involve the abuse of a power of attorney, but the situations we see directly parallel the abuse by guardians and conservators.

An 82-year-old veteran had suffered two strokes and was confined to a wheelchair and homebound. After his wife passed away, he bought a mobile home, and his daughter moved in with him. He also named his daughter agent under a power of attorney and added her to the title of his home and his bank accounts. The daughter isolated her father and took complete control over his money. When he finally sought help from LSE, he believed he had \$20,000 in his bank accounts, but \$15 remained. Bank records revealed that his daughter had taken the money for her personal use, opened and charged thousands on credit cards taken in his name, and purchased a new car using the power of attorney to add him as the co-signer. The money was long gone, but LSE was able to evict the daughter from the home, recover the home, and clear his credit history.

We have seen thousands of cases like this over the years. They are too common, and as the Chairman mentioned, just recently in the newspaper in Maine, there was a particularly horrific tale of a 90-year-old woman from California, abandoned in a cabin in Maine after she was robbed of \$1 million in life insurance and real estate proceeds.

In States like Maine, where the rate of homeownership among seniors is high and the only valuable assets that many seniors have is their home, the theft of a senior's home is an all-too-common form of exploitation. Here is one typical theft-of-home case that ended up in the Law Court, Maine's highest court:

Frederick and Patricia were exploited by their son, John, after Frederick became terminally ill. One month after his father's diagnosis, John insisted that his mother go with him to a title company and transfer the home to him to protect it from MaineCare—Maine's Medicaid program. She was exhausted from taking care of her husband and needed her son's help. She did what she was told.

Soon after, John padlocked several rooms in the house, alleging his mother was selling off his father's property. When Frederick died, it came to light that John had obtained a power of attorney from his father and used the power of attorney to transfer all the money from his father's account to a new joint account. As soon as his father died, he withdrew all the funds.

In summary, most financial exploitation of seniors involves a family member or person in position of trust, and it is very common for the perpetrator to have obtained some form of legal authority. That authority is then abused as the agent proceeds to steal from the senior.

As today's GAO report notes, we are essentially blind to the scope of this problem due to a lack of data. This is leaving guardians and agents free to act with impunity.

Federal leadership and investment are needed. It is time to launch a Federal-State partnership to improve data collection and monitoring of guardians. There is no doubt that rampant abuse is going to come to light. That means dedicated resources will also be needed to ensure that States are able to respond effectively when suspected abuse is identified, and resources will also be needed to ensure that all elderly victims have the help of an attorney to restore their safety and recover their stolen assets.

Thank you for inviting me to speak with you today.

The CHAIRMAN. Thank you very much for your compelling testimony.

Ms. KRUSE.

**STATEMENT OF JESSICA KRUSE, ATTORNEY,
OZARKS ELDER LAW, SPRINGFIELD, MISSOURI**

Ms. KRUSE. Chairman Collins, Ranking Member McCaskill, and other distinguished Committee members, thank you for the opportunity to provide testimony on this important issue. Today I will simply highlight certain areas within my written report that I think will be important for you to take away from this hearing.

First, physical and financial elderly abuse occurs by those who have legal authority, like those under a durable power of attorney or guardianship, and by those who lack legal authority, like a family member or caregiver exerting undue influence over a vulnerable person. It is likely elder abuse is highly underreported in all of these areas. In my experience, there is far more elder abuse that occurs outside the realm of guardianship. Examples of these situations include an example of a daughter taking her elderly Mom who has memory problems to the bank and convincing her Mom to put her name on the account as the sole beneficiary, leaving out siblings who were already named in an eState plan the Mom had carefully laid out; or a niece who prints off a durable power of attorney from the Internet and takes it to her aunt in a nursing home, telling her if she does not sign that durable power of attorney, they will kick her out of the nursing home, and then proceeding to use the document to put her name on all the assets. Unfortunately, these cases happen far too often and are caught too late.

Although statistics in this area vary, the evidence is showing that a fairly high percentage of elder abuse occurs by family mem-

bers, whether they have legal authority or not. These statistics are consistent with my experience in my practice. Oftentimes guardianship actions can be used as a tool to combat against elder abuse when it is occurring under the radar by a person acting under a durable power of attorney or by a family member, caretaker, or friend.

The important thing to remember about our guardianship system is that it is a State law-driven system. However, the Federal Government does have an interest to ensure that fundamental constitutional rights are adjudicated in a manner that is fair and only under necessary circumstances.

Another important thing to keep in mind is in every guardianship case, there are a unique set of conditions that make each case very different from one another. These conditions include things such as medical conditions that contribute to an alleged incapacity that vary from case to case; individuals who are alleged to be incapacitated that have very different wishes for how he or she wanted to carry out their life; and then there are very different situations involving the family and support system dynamic for each person.

In addition to this, each State has its own statutory system for guardianships that are carried out inconsistently within each county and each State. These are just a few of the factors that contribute to the complexity of creating solutions to combat elder abuse specifically within guardianship cases.

I want to take a minute to highlight the positive things being done to correct some of the problems on a State level. These issues are not being ignored. Organizations like the National Academy of Elder Law Attorneys, the National Guardianship Association, the National Guardianship Network, the Uniform Law Commission, and the American Bar Association have been working for several years to address some of the deficiencies at the State level. These organizations are collaborating with groups outside the legal field to come up with comprehensive solutions.

In my experience, one focus area for improvement is court monitoring of an appointed guardian or conservator. In Missouri, we refer to individuals who are in charge of a person's personal decisions as "the guardian" and the person in charge of the money as "the conservator." Unfortunately, resources for this monitoring is lacking, especially in rural areas. In these areas, judges are often handling a variety of cases ranging from debt collection to custody modification to guardianships. It is very difficult for these judges and their clerks to keep tabs on each guardian and conservator within their jurisdiction. In these same courts, those involved as parties in the guardianship action also have very limited resources. It is not uncommon for me to come across individuals who may own a home that is only worth \$40,000, have a bank account that is under \$5,000, and monthly income reaching \$1,200 a month. Those are individuals that cannot pay an attorney or anyone else to monitor the person who is in charge of their assets. Funding for monitoring programs is one area where the Federal Government can assist and reduce financial abuse occurring within guardianship cases.

I want to end by creating a sense of urgency. On a daily basis, I am seeing individuals walk into my office who do not have any

traditional support systems, family or otherwise. These are widows or widowers who never remarry, individuals who do not have living children or who are estranged from their children or other family, individuals living States away from any other relatives. I encourage you to think about your own families for 1 minute, think about your aunts and your uncles, cousins, or siblings who may be in this position. Who will be there to step in and help them if they have a health event that takes away their capacity? Who will be interacting with them on a daily basis to make sure their needs are met? Can you ensure those individuals have good intentions? I guarantee potential abusers are watching and they are waiting. There is a Federal interest here, and it must begin with public awareness of this problem so that potential abusers know someone will be watching them.

Thank you.

The CHAIRMAN. Thank you very much.

Ms. Martin, you testified that Legal Services for the Elderly in Maine has seen a 24-percent increase in elder abuse cases over the last year. You also have told us that oftentimes seniors who fall victim to financial exploitation are exploited or abused by members of their own family, such as the case you described, which is particularly tragic.

I have two questions for you. First, do you know why you are seeing such a big increase, 24 percent in 1 year? Second, in your years of experience, what have you learned about what motivates family members to commit such acts against people they should love and care for and protect during their vulnerable years? Is it just greed?

Ms. MARTIN. In large part. There are other drivers as well, though, although greed is a significant one. We talk about it in our office, about accelerating the inheritance, and that is really what people think they are doing when they are being kind to themselves in their own minds.

In addition to that, we see families where family members have drug-related problems, and that is driving the issue. We see gambling-related problems, and that is driving the issue, and we also see significant debt issues in the generation following this one that was one that saved and paid their bills on time and is being followed by a generation with considerable debt, so all of those are drivers.

As to that increase, which is remarkable, we can point to at least two factors. One is just the increasing elderly population in Maine. With the oldest median age in the Nation, our older population is growing rapidly, and so that is part of it, but the other thing that has gone on in Maine is that we have been conducting an extensive public awareness campaign trying to raise awareness of financial exploitation. We have had the good fortune of being able to do that with the support of the John T. Gorman Foundation, and we think that has made a real difference and that public awareness efforts can make a real difference.

The CHAIRMAN. People are more willing to come forward, or their relatives or friends, and that actually brings me to a bill that Senator McCaskill and I have introduced, which is the SeniorSafe bill, and the first example that I outlined in my statement, it was a

bank teller who was alert enough to notice these unusual withdrawals by the attorney from his clients' accounts and reported it to the appropriate authorities.

Has the law worked well in Maine, in your judgment? Is this something that we should be extending nationwide?

Ms. MARTIN. It has been an extraordinary success, and we were thrilled to see your leadership in taking the concept to the Nation. Our Office of Securities, Judy Shaw, has been instrumental in leading the SeniorSafe effort in our State, and hundreds of financial institution managers and employees have been trained, and we are really seeing that increase the number of seniors that are getting help before it is too late.

The CHAIRMAN. Thank you. I am going to need you to talk to one member of the Senate who is holding up the bill from passing. It would make such a difference.

Ms. Boyko, I just have time for one question for you. As Minnesota is scoring the results of the audit—and I am so impressed with the system that you have devised—I am told that 12 percent of the guardianships that your program has examined have been placed in Level 4, which is the level that indicates that either removal of the guardian is warranted or repayment of the funds to the protected person's estate, so when you identified—it is troubling, first of all, that there is that many when they know they are being watched. Think if they were not being watched, but what happens then? That is my question.

Ms. BOYKO. After we identify the issues in the audit, it is put on for a hearing in front of the judge, and the judge addresses the issues in the audit and identifies whether they need to be removed. Oftentimes a successor conservator is appointed to take over. A judgment may be issued by the court for repayment of those funds, or the successor conservator may surcharge the surety bond that is in place to make sure that the protected person becomes whole on the issues.

The CHAIRMAN. Thank you.

Senator McCaskill?

Senator MCCASKILL. I will start with Mrs. Kruse. Tell me how many cases that you have been involved in or you are aware of have criminal charges been filed in Missouri, based on your time working in this area.

Ms. KRUSE. I cannot tell you an exact number, but I will tell you it is a small percentage, and the resources that prosecutors' offices have in our area are focused primarily, in my experience and in my observation, on drug-related issues or on public safety issues, and the States that have higher levels of prosecution of these type of cases have very specialized elder abuse units within the prosecutor's office. These are hard cases to prove, and I know with your prosecuting background you can maybe related to some of that, but we have a situation—it is a situation very similar to the domestic violence cases and child abuses cases where we have a victim who cannot always testify and speak out on their behalf, or they do not want to testify or speak out on their behalf because they are afraid, you know, they are not going to have somebody to drive them to the doctor anymore or care for them on a daily basis, and so these

are difficult cases, but the prosecution rate is very low in Missouri, in my experience.

Senator MCCASKILL. I know when I was the prosecutor in Kansas City, we had a working relationship with the public administrator, and we had someone on our staff. Now, we had a large office, but we had somebody on our staff that was designated to take information from the public administrator for cases similar to this, but they are many times circumstantial cases, and hard, because the witness—if the witness were going to be a really good witness, they would not have ever been in the position to get taken advantage of in the first place, so it is one of those inherent problems with these kinds of cases, which means prevention becomes even more important.

Let me ask this to you about the law in Missouri and if you—I do not know what the law is nationally on this, but what ability—we are trying to do SeniorSafe Act so that financial institutions can report factual patterns that would be troubling, that maybe somebody might be taking advantage of a senior financially. What about doctors? What about the designation of somebody as incapacitated? At the point in time an Alzheimer's diagnosis is made or at the point in time severe dementia is identified by a doctor, is there any way that doctor can contact the court? Because, obviously, that is the most fertile ground once that diagnosis has occurred.

Ms. KRUSE. I think doctors feel very limited in their ability to do that given HIPAA regulations and whether or not they are willing to disclose that health information. I do not know of any specific reporting requirements that a doctor's office has for that type of abuse. I know that it can be difficult for a doctor say that this patient is incapacitated. I think that it—and to determine whether somebody is incapacitated differs doctor to doctor, and I think they a lot of times rely on family members talking to them. The amount of time that a doctor spends with a patient in the doctor's office is becoming less and less, and so they do not always have time to gather a lot of information from their patient sitting across from them, and so they are working with—it is easier for them, and they are working with adult children oftentimes who have an ability to talk quicker, process information quicker sometimes, and they are taking a lot of information from them, and so I do not see a lot of direct reporting from doctor's offices. I think you are exactly right. That is certainly fertile ground and a lot of times where that abuse first shows up, and I—

Senator MCCASKILL. We would be subpoenaing the doctor's records after the fact to prove the incapacity, because that would be an important element of the case.

Ms. KRUSE. Yes.

Senator MCCASKILL. If you have to subpoena the records afterwards to find out, wouldn't it be great if we could figure out some way that that information could prevent this kind of heartbreak and this kind of abuse?

Let me ask you, finally, Ms. Larin, I noticed in a footnote in the GAO audit that the representative payee programs, the Social Security Administration and VA have an enormous amount of data on—because many times in your written testimony you talked about where there would be a fight in court as to who was going

to get the conservatorship or the guardianship, and whoever lost would immediately run down the street and become the payee on the Social Security or become the payee on the VA benefits, and when Social Security finds out that there is a fraud, they are not sharing that information with State courts, even though they share that information without other Federal agencies. Can you explain what their rationale is? If they have caught someone ripping someone off, what in the good Lord's name are they doing keeping that information from State authorities to prevent further tragedy around this person's life?

Ms. LARIN. You know, it is a good question. This is something that we looked at several years ago, and we found that representative payees or guardians could get away with chronically taking advantage of older individuals because of this lack of information sharing. Even if someone was disqualified from being a representative payee for a Federal program, as you said, that information was not shared with the State court system, and they would not have that information.

Senator MCCASKILL. They could be continuing as a guardian after they have been disqualified as a representative payee due to misconduct.

Ms. LARIN. Now, GAO made a recommendation to the agencies that they share this information, that they—

Senator MCCASKILL. They have not done it.

Ms. LARIN [continuing]. share information with each other and with the State court system, and they disagreed with that recommendation citing privacy concerns. We continue to believe that that is something that should be done.

Senator MCCASKILL. Privacy concerns? The person has a guardian. I mean, they are the ones that are the victim here. It just drive me—this drives me crazy, so this—if I were staying, this would be at the top of our list. I am going to turn to—

I am going to turn to Senator Casey and say you guys need to put this at the top of your list to get the Social Security Administration and the Veterans Administration to share information with State authorities, and with that, I drop the mic and I am out.

The CHAIRMAN. Senator Tillis.

Senator TILLIS. Well, that is a great segue, because I hope to continue to help. I am kind of new to this Committee. I am only 2 years into it, but Madam Chair, I guess it is inappropriate for me to ask who the one Senator is that is holding up the SeniorSafe Act, but we need to get to that person and talk some sense into him. One member's opinion.

I want to get to the veterans issue. I serve on Veterans' Affairs. I come from North Carolina. Ten percent of our population of 10 million are veterans. I would like to find out what more maybe we can do in Veterans' Affairs where some of the benefits that may be being exploited are coming from the VA, what more we may be able to do to push the issue of information sharing or other initiatives, and I will open that question up to anyone. It sounds like there have been some recommendations to the agencies, but other ideas that you may have, and we can start with Ms. Larin.

Ms. LARIN. The Veterans Administration does have oversight authority over the representative payees that it puts in place for VA

beneficiaries, so there is an oversight mechanism there. It just—it is limited to VA benefits, and you know——

Senator TILLIS. I would like to find out more, though, if there is more that we can do. I think that in my case, also, I come from a State that has one of the most rapidly growing aged populations, and many of them by extension are going to be aged veterans, but I am looking at both populations, so we can follow-up if there is any other recommendations with your office.

Ms. LARIN. Yes.

Senator TILLIS. Ms. Boyko, if you all want to give me other suggestions on the VA piece, I would appreciate it, but in your testimony and in Ms. Kruse's testimony, I thought I heard two different approaches to try and address a similar problem. In your case, through the CAAP program and through accounting, you found some 12 percent of people who have appeared to have engaged in some inappropriate practices. Probably some could be explained, others cannot, but you seem to be doing that as after someone is designated, you are going through a general accounting of the programs, you are finding the bad actors, you are leaving the good actors alone, the 88 percent, and you are not weighting them down with having to deal with any sort of accountability so that they can perform their and maybe reduce the cost of their service to their client.

Ms. Kruse, it sounded like to me that you were suggesting more of a court monitoring approach, and the question that I had about that, if one of the roles we can play in the Federal Government for a lot of these things that are State-run programs is to make sure that we are sharing best practices, the best way to go about getting the bad actors and leaving the good actors alone to provide good services, so why would maybe additional funding for a court monitoring program be an appropriate role for the Federal Government versus funding grants for best practices that may be around an accounting-oriented role that seems to be in place elsewhere? I just want your feedback on that, either one of you.

Ms. KRUSE. I do not necessarily think our testimony is contradictory to one another. I think we are really saying the same thing; it is just how does the court go about monitoring, so I think if the Federal Government could provide grants for software similar to what we heard about before that is happening right now in Minnesota, I think that would be consistent with what my testimony is today.

Senator TILLIS. That is what I am really getting at, because this sounds like—I do not know if it is a best practice or a better practice relative to the peer States, but I think one thing that we can do is provide a kind of clearinghouse and hopefully intellectual property sharing mechanisms so that you do not reinvent the wheel.

I came from the accounting profession. There is probably a pretty consistent way you can take the things that were in the shoe box and account for them and perform an audit, so I would like for us to discuss possible recommendations about how we can help play that role and then within the Committee's jurisdiction to promote programs that would do that. It sounds like some good work is going on.

Ms. Boyko, I did not give you a chance to respond.

Ms. BOYKO. Thank you. First of all, I would like to address the VA issue. I think it is very important that States work with the Social Security Administration and VA, and we have in the CAAP program in Minnesota established relationships within our State and within our jurisdiction with those two entities, and it has been extremely helpful, and we have had some successful prosecutions as a result of that, but I think more better laws from the Federal level to those entities to allow them to share information with the courts is very important.

Senator TILLIS. Absolutely, and I get the whole point about the difficult situation you may put a health care provider in to get the information that I agree with Senator McCaskill would be great to get, but there may be others—just like the SAFE Act with banking institutions, there may be other people who are touching—there could be other Government agencies. You know, there may be some way to go into county title agencies and be able to identify a flag that is within safety parameters to say it is odd that somebody who is 80 years old is transferring their title to someone else who may be 25 years old. Does that potentially set off a trigger that allows someone to confirm whether or not that is an appropriate action or not? So we need to think that if there are limits that would be a legitimate reason why we cannot implement it one way, let us look at other ways that we could as a Federal body incent local agencies to provide the information, maybe we provide some infrastructure for a clearinghouse and information sharing, so thank you all for your testimony and your great work.

Ms. Martin, I certainly hope that the two people that were involved in the cases that you listed have served time or have absolutely been shunned in their communities because they are a disgrace.

The CHAIRMAN. Thank you very much.

Ms. Martin, did you want to respond to that briefly?

Ms. MARTIN. You would be disappointed with the result in most circumstances, but in Maine, great strides are being made to change that, and a FAST team, financial abuse specialist team, has been developed by our Adult Protective Services, and I think we are moving things in the right direction.

Senator TILLIS. I was almost certain of that, which is why I think we need to figure out if there are aggravating factors or other things that we can put into the prosecutors' playbook to make this something that there is a real consequence, because most of the time there is nothing more than the long time that you have to do to restore their creditworthiness and to maybe get their homes back, and the other person just walks away having very little accountability, and I think that is wrong. These people are despicable.

The CHAIRMAN. Thank you.

Senator Kaine, welcome back.

Senator KAINE. Thank you. Thank you, Madam Chair, and thanks to the witnesses. It is a very important hearing, and I am proud cosponsor of the SeniorSafe Act. I am thrilled with the leadership of our Chair and Ranking in pushing this.

On the family dynamic, a couple of you talked about the majority, one of you—I think it was Ms. Martin—said three-quarters of the cases in your experience, the abuse in this kind of a situation is financial abuses by a family member. For those of you who did not talk about that, is that generally the case? Do you see this more predominantly as family members than people who are unconnected as we are talking about this kind of financial abuse?

Ms. BOYKO. We do not have statistics specific to that, but, yes, in general, I would say the majority are family members.

Senator KAINE. I think Ms. Kruse said the same thing. Ms. Larin, is that your experience as well?

Ms. LARIN. Again, there is not data. There are three types of guardians: there are family guardians, there are professional guardians, and then there are public guardians for people who cannot afford to pay their one.

Senator KAINE. Right.

Ms. LARIN. The majority of guardians I believe are family guardians, but we do not have any statistics on abuse.

Senator KAINE. On the family side, that has got to make the enforcement issues different, too, than if you are going after a professional or an appointed guardian, because it is often a family member doing something, and then there are other family members who were not aware of it, so talk a little bit about the enforcement challenges. If this is heavily a family member, heavily involvement by family members in this kind of defrauding of a senior, what are the enforcement challenges in going after family members?

Ms. MARTIN. Well, I will pick up on that and then let others respond as well, but it really follows the thread from the earlier question, which is that there can be a view that this is a family matter and, therefore, is not—

Senator KAINE. Probably less likely for a prosecutor to want to take it up.

Ms. MARTIN. Right, right, and when you look at it through that prism, whether it is law enforcement or criminal justice, you just walk away from the case. Now, that is part of the reason civil legal remedies are so important because we are going to look at a case and figure out if we can get somebody's money back or home back or make them safe, and so while I agree that criminal prosecution needs to be improved, I also do not think it is actually a substitute for somebody having a lawyer on the civil side.

Senator KAINE. I was intrigued with the discussion about the Minnesota program. I want to make sure I understand this, so if there is a court-ordered guardianship or, in your case, conservatorship, then this audit requirement kicks in. You were hired to form the CAAP program. Is that audit—there is a required accounting document that everybody has to file if there is a court-ordered conservatorship or guardianship. Does everyone get audited, or do you, you know, audit the third of the accounts and you do not know whether you are going to be audited or not? Because that is a strategy for dealing with the cost issue of audits that some jurisdictions use. We will always do an audit of at least a third; you do not know whether you are going to be audited or not, but knowing that you are going to potentially be looked at can have a positive outcome. I am curious about that.

Ms. BOYKO. We tell all our conservators they will be audited, and we try and audit all first accountings that are filed, and then we audit periodically after that.

Senator KAINE. OK.

Ms. BOYKO. Judges and court staff can also refer accountings for audit at any time.

Senator KAINE. If they feel that there is something odd about it, yes.

Ms. BOYKO. Yes, if there is something odd, they can definitely refer it to us.

Senator KAINE. Now, this audit program, though, is for the conservatorships or guardianships that have been ordered by courts, and so if we get into powers of attorney or things like that that are done that do not have to be filed in court, there really is not any oversight of what might be happening.

From your own experiences in this area, you know, what kind of abuse do you think happens in these scenarios, like a power of attorney, it is a legal document, but that no court has supervision over or necessarily needs to examine?

Ms. KRUSE. I see that type of abuse far more often than I see abuse within guardianship cases, and I think it is because durable powers of attorney are so easy to print off the Internet. People know just enough to know what they need to search for in the Google bar, and then they print it out, and they stick it in front of people, and they do not really explain what it is. On a durable power of attorney, it is required to be notarized, but if the banks and the institutions that are usually notarizing these documents that are printed off the Internet do not really know what to look for, you have a capable person who is walking into the bank that is requesting to have their signature notarized, they are going to notarize it without many questions asked.

I think there are some protections that have been built in, but sometimes those protections are not always effective. I think it is a lot of what we were hearing earlier, people justifying in their minds that, you know, "I am going to inherit it anyway, so why not take it not?" Or, "I am the only one that is sitting here caring for Mom, so I deserve a little bit more than my brother that lives out of State."

When it comes to catching those things, it usually happens by other family members looking in on the situation thinking something is a little bit off, or neighbors, and then it is a civil action after the fact to try and correct for that. In Missouri, we have an accounting that can be filed requesting that fiduciary to account for the things that they have done while they were acting as an agent under those documents, but it oftentimes catches things too late.

Senator KAINE. That is just, I think, a tribute of another point that many of you made, which is we think this is dramatically underreported, so even a really good CAAP program for guardianships and conservatives would not pick up power of attorney abuses. This is the kind of thing that is really underreported. The scope of this is very big.

Thank you, Madam Chair.

The CHAIRMAN. Thank you.

Senator Casey, soon to be the Ranking Member on this Committee, welcome.

Senator CASEY. Madam Chair, thank you very much, and I know I was not here when you welcomed me into that new position, so in Washington, you really get complimented or referred to when you are not here.

It usually only happens when you are present, so that is pretty rare, so thank you for that, and thank you for your leadership of this Committee.

I want to say in this town, where often we have an abundance of discord and rancor and partisanship, I want to commend both Senator Collins and Senator McCaskill for the way they have run this Committee in the last 2 years and on the working relationship they had, and I pledge to continue that.

To Senator McCaskill, I have big shoes to fill now. She brought the zeal and intensity of a prosecutor and the passion and the heart of an advocate to the work that she did on this Committee, and I am not a bit surprised, but she set the bar high for fellow Democrats, so I am going to be trying to measure up to that, and if I do not measure up, I am sure someone out there will tell me, but we will try our best.

I wanted to start with the question of the limitations in terms of what the Federal Government can do to better protect seniors and especially in the context of guardianships, but in the GAO report, I know that on page 15 it says, "While the Federal Government does not regulate or directly support guardianship, Federal agencies such as HHS may provide indirect support to State guardianship programs by providing funding"—I think that is an important word to focus on—"for efforts to both share best practices, No. 1, and, No. 2, facilitate improved coordination." That is a pretty good summary, and I appreciate that.

I wanted, for the panel, to open it up. If you—I do not want to say "have a magic wand" because they do not exist in Washington or even in the States, but if you had the opportunity to enact one measure or hope that we would either enact or better implement existing policy, what would it be in terms of the Federal role that can be played, albeit limited? And then maybe the second question would be: In addition to your own States, what States do you think have a set of best practices or programs that you would like every State to imitate or replicate? Maybe we can start left to right—or maybe I will just start on the right because—speaking from the perspective of a State, the great State of Missouri.

Ms. KRUSE. The great State of Missouri. If I had a magic wand, I would say Federal funding for systems similar to what Minnesota has in place would be incredibly helpful, especially to the rural counties in southwest Missouri, because as I mentioned in my testimony earlier, these are counties that have very low resources and the judges just simply do not have time.

I mentioned in my written report that I had submitted that there was a guardianship case that I have seen—guardianship and conservatorship case that I have seen recently where there had not been an accounting filed in 3 years, and the court did not file any citations. In Missouri, you are supposed to file them annually. By the time I got a hold of the case, there had been—they just simply

did not know what they were doing. They had gotten bad advice when they initially took on the conservatorship case, and then they were just basically doing what they wanted with the funds, and it was, quite frankly, a mess.

These are situations where the court just simply did not have enough resources to make sure they were doing what they needed to do in a program like that is in Minnesota right now would have been very helpful in that situation.

Senator CASEY. Just one quick follow-up, so the funding can—one of the variables is just geography or the region you are in. Is that—

Ms. KRUSE. Yes. As far as the resources? Yes, yes.

Senator CASEY. That is helpful. Thank you. I am impressed that you referred to another State, too. That does not—

Ms. KRUSE. To answer your second question, actually, let me just briefly—I know that Texas is also implementing a statewide audit of their guardianship cases.

Senator CASEY. Okay.

Ms. KRUSE. I have recently talked with an attorney in Texas that has been a leading figure in that audit process, and they had initially audited just a few counties and then requested additional funding to audit the remaining counties, and I think that they are literally going file by file through the guardianship cases that are currently in effect right now, making sure that things are being done correctly; in addition to that, making sure that people are under a guardianship that really need to be under a guardianship. Sometimes guardianships can be terminated after a certain point, and so when they are going back and looking into the files, those things are being caught as well.

Senator CASEY. I appreciate that. Thank you.

Ms. Martin?

Ms. MARTIN. Well, I may be able to make things a little easier because I can say I would support every single thing that my colleague to my left and your right said, and the one thing I would point out that may not be clear to everyone is that in many circumstances—and I will take Maine as an example. Again, we have a county-based probate system. We do have regular reporting requirements that apply to conservators but not to guardians, and so there were some observations made earlier that perhaps all States need is access to a clearinghouse where they get the great work of Minnesota and can apply it. Well, we need a data collection system. We need help first with getting the filings done and the information into a data base that could even then be mined.

I think that is important to keep in mind, that that is part of what many, many States do not have right now, and this would be a chance to make an exponential leap forward. We may have no reporting, we may have no system, but we could create a system that is parallel across the States so we could also learn something about what is happening in the country if we rolled out something that could be useful across every one.

Senator CASEY. Ms. Boyko?

Ms. BOYKO. Thank you. I do not think there is one specific answer to answer all of it. I think it is a multipronged approach with multiple different necessary changes to take place, such as the

SeniorSafe Act, such as auditing conservatorship accounts, looking at more controls over power of attorneys. I think there are a lot of things that we need to do, and I think there are a lot of States that are doing things. We have shared our source code with six other States. It is available to give to anybody for free. I do not think it is the be-all and the end-all answer, but it is a start, and any other State that takes it on, I am really happy because they will improve it, and then we will get a better system out of it.

I think all of us need to work together, and I think in order to work together, agencies like the National Center for State Courts can help be that clearinghouse and can help us all work together and share those resources so we are not reinventing the wheel and we are not out there all alone.

Senator CASEY. Thank you. I am out of time, but I want to thank all of you for your great work. This is important. Thank you.

The CHAIRMAN. Thank you.

Senator Warren?

Senator WARREN. Thank you, and thank you very much again, Madam Chair, for holding this hearing and for our Ranking Member. It is a very important topic, and I appreciate your doing this.

I want to ask just a little bit more about monitoring guardians and how this is done, so when the State court appoints someone as a guardian to make decisions on behalf of someone who is no longer able to make decisions for themselves, guardians obviously—most of them do a good job, but some abuse this responsibility and exploit vulnerable seniors, so when the exploitation of a senior is suspected, the burden of investigating the case falls on the States for legal action here.

Ms. Martin, as the executive director of Legal Services for the Elderly in Maine, you see the effects of senior financial abuse every day. I took a look at your testimony, and I see that you emphasized the importance of State Adult Protective Services agencies in preventing senior financial abuse. Could you say just a bit more about why these agencies play such an important role in preventing this abuse?

Ms. MARTIN. Well, in our experience, Adult Protective Services is there for individuals for whom there may be no one else to respond, no one else to investigate, no one else to ensure safety or take action to ensure safety, and our statewide help line gets hundreds if not thousands of calls every year that we actually refer on to Adult Protective Services. They are calls from concerned neighbors and family members and individuals in the community worried about seniors, and that is where we are sending those calls.

Senator WARREN. Do State Adult Protective Services agencies have adequate funding to tackle the scale of the senior abuse problem that you see?

Ms. MARTIN. No. There is not adequate resources there. My hat goes off to my colleagues in Adult Protective Services. They do tremendous work, but they do not have adequate resources. Our Adult Protective Services in Maine saw a 29-percent increase in calls related to vulnerable seniors from 2010 to 2014, so that is a tremendous increase.

If we did some of the things we are talking about today in this room which we need to do, you can imagine how those numbers would go up even further.

Senator WARREN. Right, so I appreciate this. You know, as you know, the Social Security Act of 1974 gave the States the authority to use Federal funds for Adult Protective Services to protect vulnerable seniors from financial exploitation, and for decades this funding, which has been administered by the U.S. Department of Health and Human Services through the social services block grant has been used to protect seniors from financial exploitation.

As you testified—and I assume everyone would pretty much agree with this—the States do not have enough money to do the critical job that they are called on to do, but rather than focus on ways to strengthen State fights against financial exploitation of seniors, just this year Paul Ryan, the Speaker of the House, has proposed to entirely eliminate this funding from the 2017 budget plan, and Representative Kevin Brady, the Republican Chairman of the House Ways and Means Committee, has introduced a bill actually in the House of Representatives to do exactly that, and it got substantial support. Every Republican and four Democrats voted to support that bill and move it forward, and this bill is called the “Reducing Duplicative and Ineffective Federal Funding Act.”

Ms. Martin, let me ask you, do you believe that the social services block grant funding for Adult Protective Services who fight senior financial abuse is duplicative and ineffective?

Ms. MARTIN. Well, to my knowledge, it is not duplicative, and I certainly can tell you that their work is extraordinarily effective and valuable and essential in our communities.

Senator WARREN. Well, I appreciate that. Thank you, Ms. Martin. You know, I do not think that this funding is duplicative or ineffective either. I kind of think the bill should be renamed the “Reducing Critically Important and Already Inadequate Federal Funding Act.”

It seems pretty clear to me that if Congress is serious about preventing senior financial abuse, then we should be increasing the funding for Adult Protective Services agencies, not talking about eliminating it. You know, we beat this bill back the first time it was proposed, but all the signs indicate that the House may try again to cut this important program, and I think that trying to destroy Adult Protective Services by taking away Federal funding is absolutely the wrong way to go, and if that is where Speaker Ryan wants to go, he should explain that to the American people.

I just want to say I appreciate the work that all of you do. I know that this is very difficult work done under very difficult circumstances, but it makes such a human difference to the people that you touch every day, so thank you for all that you do.

Thank you, Madam Chairman.

The CHAIRMAN. Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Madam Chair, and thank you for having this hearing. I feel like I have been at this hearing before a number of times, and that may well be because I am a member of the Judiciary Committee, and actually the Judiciary Committee almost unanimously reported out a bill called the “Elder Abuse Prevention and Prosecution Act.” I led it with Senator

Grassley, the Chairman of the Judiciary Committee, and it is obviously a bipartisan bill. This is an issue that cuts across committee jurisdictions in the U.S. Senate, which is just one reflection of how broad an issue and a problem it is in this country.

I also introduced a measure called the "Robert Matava Elder Abuse Protection Act," which is named after a Connecticut World War II veteran, a member of the Greatest Generation, Robert Matava, Purple Heart recipient and survivor of the Battle of Iwo Jima, who was literally defrauded by his son. When he left to go to Florida, the son took over the business, took over his house, and then refused to let him come back, so some of this stuff is really blatant and criminal, and I know that none of you, at least so far as I know, is a prosecutor, a criminal prosecutor, but let me just ask all of you how diligent and responsible you think prosecutors are in enforcing the criminal law against these crimes, because, after all, we are calling it "elder abuse," but that is a nice way of saying they have defrauded, stolen, criminally abused people who are among the most vulnerable, and maybe because of the embarrassment and stigma involved or their age, decline to report it to criminal authorities, so how diligent have the prosecutors been? What more can be done to encourage reporting?

Ms. MARTIN. Well, I can speak just to the situation in Maine, but I think we know there is real room for improvement, but there are really some rays of hope on the horizon. Our Attorney General convened a task force to look at what those barriers were to prosecution. A number of recommendations were made. Most of those have been implemented, including the formation of a financial abuse specialist team through our Adult Protective Services DHHS offices and leadership there, and I think there is great commitment to increasing the rate of prosecution and to make sure that people are held accountable for these actions that, as you say, are criminal actions.

Senator BLUMENTHAL. Any other observations?

Ms. KRUSE. Just briefly, I see the most success in States where they have specialized elder abuse prosecution units, and I referred to that a little bit earlier, and I think you were alluding to that as well, but the evidence in these cases can be very difficult to comb through. The financial aspect of this can be very complex, and it takes a lot of time, and it takes a lot of resources to comb through this.

In addition, there needs to be proper training in the prosecutor's office regarding the family dynamics that you are going to see in some of these cases, and so I think having these specialized units will provide the most effective prosecution in these type of cases.

Senator BLUMENTHAL. Because it not only provides a mechanism or vehicle, a team, to go after these cases, but also reflects a priority that is going to be given to it, and I know the Maine Attorney General's office because I was Attorney General of Connecticut, and we dealt frequently with that office, and like Connecticut, it is a relatively small office, so devotion of resources to this kind of issue is a major commitment for that office, is it not?

Well, my time is about to expire, but I just want to say finally how important reliable information is about this problem and how lacking, I believe—and you should disagree with me if I am

wrong—how wanting and lacking good information is about this problem, and one of the reasons we are here and why, again, I thank the Chair and our Ranking Member, who is herself a former prosecutor, this kind of awareness is very important to raise.

Thank you very much.

The CHAIRMAN. Thank you, Senator.

I want to thank all of our witnesses for appearing today and enhancing our understanding of the tragic issue of financial exploitation of our seniors. When a senior becomes incapacitated such that someone, whether a court-appointed guardian or a friend or family member, needs to take over the senior's financial affairs, the senior should not have to fear theft, abuse, financial exploitation, and yet over and over again, that is what we hear happening.

Many cases are truly shocking, such as some of the ones that we have read about or heard described today. At times, the elderly person is left destitute with their hard-earned savings gone. In other cases, they are physically abused as well as emotionally and financially exploited.

A key challenge that I have learned about today is that it seems every State has a bit of a different system for handling guardianships and for making sure that protections are in place. In that regard, I particularly want to salute the State of Minnesota for the work that you are doing and the fact that you are willing to make your software available to other States for free, even though it is going to cost them something to set it up, monitor it, run it, et cetera.

I am very proud of the work that Legal Services for the Elderly is doing in my State of Maine, working with other advocates for our seniors, and I very much appreciate the work, Ms. Martin, that you and your nonprofit organization are doing. The fact that you have had a 24-percent increase in reports is both good news and bad news. The good news is people are starting to report these cases. The bad news is it is probably the tip of the iceberg of what is going on. All of our witnesses have added a great deal to our understanding.

This is the last hearing of this Committee for the 114th Congress unless the month of December goes very badly here.

In which case we may have two more hearings, but I believe that it is our last hearing, so I want to especially thank our staffs today. They have worked extremely hard. They have worked as a team. They may have differences at times, but they are united in their goal to improve the quality of life for our seniors.

As a Senator who does represent the State with the oldest median age in the country—it is not Florida; it is Maine—I am particularly passionate about making sure that our seniors spend what are supposed to be their golden years in security and with their well-being protected, and that is why we have covered just a host of issues in this Congress, but we have focused on three in particular: one is financial security for our retirees; the second is biomedical research so that we can make progress against Alzheimer's and other diseases that particularly plague our seniors; and, third, we have focused on financial exploitation and scams, and we have a hotline that is very busy. It just seems that every

time I am home myself I get at least two or three scam calls, and one of these times I am going to set up a sting operation.

Senator McCASKILL. Now you are talking.

The CHAIRMAN. Yes. I have learned from our Ranking Member, and most of all, I want to thank again our Ranking Member. It has been such a great pleasure working with you, and I do not know whom I am going to whisper to during a hearing when a legal term with which I am unfamiliar comes up.

Senator McCASKILL. Bob can help.

The CHAIRMAN. He can help? You have trained him that well? Okay, but I do look forward to working closely with Senator Bob Casey, who will be our new Ranking Member starting in January.

I am most proud of the fact that throughout this Congress this Committee has acted as a team and, with very few exceptions, it has not been a partisan Committee at all, and certainly not in the way that the Ranking Member and I have conducted it, and that is what we need more of in Washington.

Thank you all for being here. Committee members have until Friday, December 9th, to submit questions for the record. This concludes our hearing. Thank you.

[Whereupon, at 3:57 p.m., the Committee was adjourned.]

APPENDIX

Prepared Witness Statements



United States Government Accountability Office

Testimony
Before the Special Committee on Aging,
U.S. Senate

For Release on Delivery
Expected at 2:30 p.m. ET
Wednesday, November 30,
2016

ELDER ABUSE

The Extent of Abuse by
Guardians Is Unknown,
but Some Measures Are
Being Taken to Help
Protect Older Adults

Statement of Kathryn A. Larin, Acting Director, Forensic
Audits and Investigative Service

Chairman Collins, Ranking Member McCaskill, and Members of the Committee:

Thank you for the opportunity to discuss our report on elder abuse and guardianship, which is being released today.¹ The number of older adults—those over age 65—is expected to nearly double in the United States by 2050. When an older adult becomes incapable of making informed decisions, a guardianship may be necessary. Generally, guardianships are legal relationships created when a state court grants one person or entity the authority and responsibility to make decisions in the best interest of an incapacitated individual—which can include an older adult—concerning his or her person or property.² While many guardians act in the best interest of persons under guardianship, some have been reported to engage in the abuse of older adults. State and local courts are generally responsible for overseeing guardianship appointments. The federal government does not regulate or directly support guardianship, but federal agencies may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination.

My remarks today highlight the key aspects of our report on elder abuse and guardianship. Specifically, this testimony describes what is known about the extent of elder abuse by guardians, and what measures federal agencies and selected state and local guardianship programs have taken to help protect older adults with guardians.

To conduct this work, we reviewed relevant research, reports, studies, and other publications issued by organizations with expertise on elder abuse and guardianship issues. We also conducted interviews with various guardianship stakeholders including officials from federal agencies such as the Department of Health and Human Services (HHS), six selected state courts, and nongovernmental organizations with expertise in guardianship-related issues. In addition, we identified eight closed cases of abuse by guardians in which there was a criminal conviction or finding of civil or administrative liability to use as nongeneralizable illustrative examples. Our report includes a detailed

¹GAO, *Elder Abuse: The Extent of Abuse by Guardians Is Unknown, but Some Measures Exist to Help Protect Older Adults*, GAO-17-33 (Washington, D.C.: Nov. 16, 2016).

²Courts can generally appoint different types of guardians, including professional guardians. A professional guardian may be hired for a fee to be paid by the older adult, and may serve more than one older adult at a time.

explanation of the methods used to conduct our work. The work on which this testimony is based was performed in accordance with generally accepted government auditing standards.

Regarding the first question we addressed in our report, the extent of elder abuse by guardians nationally is unknown due to limited data on the numbers of guardians serving older adults, older adults in guardianships, and cases of elder abuse by a guardian. While courts are responsible for guardianship appointment and monitoring activities, among other things, court officials from the six selected states that we spoke to were not able to provide exact numbers of guardians for older adults or of older adults with guardians in their states. Also, on the basis of our interviews with court officials, none of the six selected states appear to consistently track the number of cases related to elder abuse by guardians. Court officials from the six states we spoke with described the varied, albeit limited, information they have related to elder abuse by guardians and noted the various data limitations that prevented them from providing reliable figures on the extent of elder abuse by a guardian, including incomplete information about the ages of individuals with guardians.

Representatives from nongovernmental organizations we spoke with also told us that the way cases are classified in the court system makes collecting data on elder abuse by guardians difficult. For example, representatives from the Center for Elders and the Courts told us that few cases appear to be clearly labeled with phrases such as "elder abuse" in the court system, making it difficult to identify the universe of these cases. These representatives explained that cases of elder abuse may appear as other charges, such as assault, battery, or theft. Identifying all cases involving elder abuse, and more specifically that by a guardian, would require a difficult manual review of a large volume of court cases. Further, stakeholders we spoke to noted that instances of elder abuse by guardians can be difficult to prosecute, presenting an additional challenge to identifying the extent of elder abuse by guardians.

In the absence of reliable data, information on individual cases can provide some insight into the types of abuse guardians have been found to inflict on older adults under guardianship. Table 1 provides a summary of eight cases in which guardians were found to have financially exploited or neglected older adults under guardianship in the last 5 years. Seven of these cases were identified using public-record searches, while the eighth was referred to us during one of our interviews. We examined court records, police reports, or other relevant documents to corroborate key information about each case. The illustrative examples of selected closed

cases of elder abuse by a guardian we identified are nongeneralizable and cannot be used to make inferences about the overall population of guardians.

Table 1: Selected Closed Cases of Elder Abuse by a Guardian

Case number	Type of elder abuse	Case details
1	Financial exploitation	<ul style="list-style-type: none"> According to a complaint filed by an official in the Office of the State Attorney in Florida, over the course of 21 months a family guardian spent money of the person under guardianship—an elderly disabled adult—on items unrelated to the care and welfare of that individual including personal bills, services, restaurant purchases, and cash withdrawals. In 2013, the guardian pleaded guilty to the exploitation of an elderly or disabled adult, and was sentenced to 120 days in jail and ordered to pay over \$33,000 in restitution.
2	Financial exploitation	<ul style="list-style-type: none"> According to Supreme Court of Ohio documents, a professional guardian misappropriated funds from persons under guardianship—at least one of whom was elderly—to support his drug addiction. The court found that the guardian's misconduct caused harm by misappropriating more than \$200,000 over a 6-year period. In 2014, the guardian was convicted of three felony counts of theft from the elderly, and was sentenced to a 4-1/2-year prison term, and ordered to pay restitution. In 2016, he was indefinitely suspended from the practice of law in Ohio.
3	Financial exploitation	<ul style="list-style-type: none"> According to a criminal complaint in Virginia, a family guardian spent money of the person under guardianship—her 83-year-old aunt—on personal expenses including an \$11,645 pickup truck for a friend and \$360 at a sunglasses retailer in Tennessee, and told law enforcement that she believes she is entitled to be taken care of using her aunt's funds. In 2012, the guardian pleaded guilty to intent to defraud, and agreed that total losses were no less than \$29,000. The guardian was sentenced to 12 months in prison and ordered to pay restitution of over \$32,000.
4	Financial exploitation	<ul style="list-style-type: none"> According to a criminal complaint in Virginia, the legal assistant of a professional guardian in Virginia used her unauthorized access to the bank accounts of an elderly person under guardianship to obtain more than \$100,000 to support a drug habit by issuing and cashing fraudulent checks. The guardian initially discovered the thefts but, because of a personal relationship with his assistant, he failed to remove the access to the accounts, thereby allowing the thefts to continue, and attempted to conceal the scope and extent of the thefts from law enforcement officials and others. In 2014, the guardian pleaded guilty to misprision of a felony, agreed to repay the stolen funds, and in 2015 consented to the revocation of his law license.
5	Financial exploitation and neglect	<ul style="list-style-type: none"> According to documents from the Certified Professional Guardian Board in the state of Washington, a professional guardian violated the Certified Professional Guardian Standards of Practice by (1) failing to properly manage the financial affairs of an elderly person under guardianship including the untimely filing of tax returns and payment of medication bills, (2) not providing basic clothing, (3) not visiting regularly or making arrangements for qualified visits, and (4) improperly taking guardian fees without consultation of the person under guardianship when the guardian was already being paid by the Office of Public Guardianship. The mismanagement of the funds of the person under guardianship represented a potential loss of up to \$25,000 and accounted for up to 25 percent of the person's assets. In 2015, the state Certified Professional Guardian Board revoked the guardian's certification, and the guardian was required to pay administrative costs of approximately \$20,000.

Case number	Type of elder abuse	Case details
6	Financial exploitation and neglect	<ul style="list-style-type: none"> According to documents from the Texas Judicial Branch Certification Commission, a professional guardian was responsible for more than 50 persons under guardianship statewide, including at least 6 older adults in two facilities 400 miles from the guardian's home and place of business. For the persons under guardianship in these two facilities, the guardian went months without contacting these individuals, did not provide them with shoes and clothing, was late in paying facilities, withheld moneys from their monthly stipends, and was nonresponsive to communications from their facilities. This conduct resulted in 16 violations of provisions of Texas's Minimum Standards for Guardianship Services. On the basis of these and other unrelated violations, the guardian was required to pay an administrative penalty of over \$25,000 and is not permitted to renew her guardian certification.
7	Financial exploitation	<ul style="list-style-type: none"> According to court documents, a professional guardian in Nevada withdrew money from the bank accounts of persons under guardianship including over \$78,000 in cash from an elderly person, falsified payments to her own company, and inappropriately used the funds of persons under guardianship for other personal purchases such as jewelry items and payment to a cell-phone company. In 2013, the guardian pleaded guilty to the exploitation of an elderly or vulnerable person, which is a felony in Nevada, and was sentenced to 8 years in prison and ordered to pay over \$160,000 in restitution.
8	Financial exploitation	<ul style="list-style-type: none"> According to court documents, a professional guardian in Oregon mistreated or stole money from 26 persons under guardianship including at least five older adults. The guardian, among other things, (1) intercepted checks made out to persons under guardianship, third-party care providers, and ambulance companies to deposit them in her own personal bank account and (2) when persons under guardianship died, the guardian diverted funds to her own personal bank account. In total, the guardian was convicted of five counts of Criminal Mistreatment in the First Degree, four counts of Aggravated Theft in the First Degree, one count of Theft in the First Degree, one count of money laundering, and one count of tax evasion. The guardian was sentenced to 48 months in prison and was ordered to pay more than \$117,000 in restitution to the victims. The guardian's certification was also revoked.

Source: GAO analysis of court, police, state certifying board, and other state agency data. | GAO-17-273T

According to stakeholders, financial exploitation is among the more common types of elder abuse. Similarly, all eight of the closed cases of elder abuse by a guardian we found, presented above in table 1, were examples of financial exploitation. A prosecutor in one of the states we spoke to shared her observation that the majority of financial exploitation by professional guardians is done through overcharging for services that were either not necessary or were never performed.

While the extent of elder abuse by guardians nationally is unknown, some efforts are under way to try to collect better data on elder abuse and guardianship at the federal, state, and local levels to support decision making and help prevent and address elder abuse by guardians. For example, HHS plans to launch the National Adult Maltreatment Reporting

System—a national reporting system based on data from state Adult Protective Services (APS) agency information systems—by early 2017. According to HHS and its contractor, this system has the capability to collect information that could specifically help identify cases of elder abuse where a guardian was involved. We also identified state and local initiatives to capture key data points and complaint data as well as identify “red flags” such as unusually high guardian fees or excessive vehicle or dining expenses.

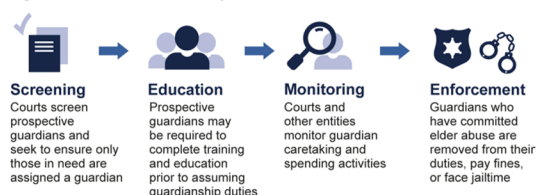
Turning to the second question we addressed in our report, as I previously noted the federal government does not regulate or directly support guardianship. Nevertheless, federal agencies, such as HHS, may provide indirect support to state guardianship programs by providing funding for efforts to share best practices and facilitate improved coordination. For example, HHS has assumed a national role for funding grants to support coordination and information sharing that could help educate guardians and other parties. The federal government also shares information that state and local entities can use related to guardianship. For example, the Bureau of Consumer Financial Protection has developed materials that can be used by various parties to help better protect older adults with guardians from abuse.

Since state and local courts have primary responsibility over the guardianship process, they have a role in protecting older adults with guardians from abuse. In 2014, the National Association for Court Management published an adult guardianship guide with detailed information about how to plan, develop, and sustain a court guardianship program.³ This report laid out detailed suggestions for practices to effectively establish guardianships, monitor guardians, and train relevant stakeholders. Guardianship laws can also vary by state, but organizations such as the Uniform Law Commission—an organization that drafts legislation for states intended to bring clarity and stability to state statutory law—have developed model legislation to promote uniform procedures for appointing guardians and conservators and strengthening due process protections for individuals in guardianship proceedings and jurisdictional conflicts. On the basis of our review of published materials and interviews with various state courts and nongovernmental stakeholders, we observed that measures states can take to help protect older adults with

³National Association for Court Management, *Adult Guardianship Guide: A guide to plan, develop, and sustain a comprehensive court guardianship and conservatorship program*, 2013–2014 Guide (Williamsburg, Virginia: 2014).

guardians vary but generally include screening, education, monitoring, and enforcement, as shown in figure 1.

Figure 1: Measures Used to Help Protect Older Adults with Guardians from Abuse



Source: GAO analysis of selected state courts' guardianship oversight roles. | GAO-17-273T

Promising practices related to screening include periodically reexamining guardianship, and performing criminal history and credit checks. Promising practices related to education include having standards of practice and certification, and providing support for guardians. Promising practices related to monitoring include conducting in-person visits and well-being checks, and examinations of guardian expenditures. Promising practices related to enforcement include setting up complaint systems, having dedicated investigative resources, and utilizing appropriate disciplinary measures.

Chairman Collins, Ranking Member McCaskill, and Members of the Committee, this concludes my prepared remarks. I look forward to answering any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

For further information on this statement, please contact me at (202) 512-6722 or larink@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Individuals who made key contributions to this statement are Gabrielle Fagan, Assistant Director; John Ahern; and Nada Raoof.

GAO's Mission	The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.
Obtaining Copies of GAO Reports and Testimony	The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's website (http://www.gao.gov). Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to http://www.gao.gov and select "E-mail Updates."
Order by Phone	<p>The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, http://www.gao.gov/ordering.htm.</p> <p>Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.</p> <p>Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.</p>
Connect with GAO	<p>Connect with GAO on Facebook, Flickr, Twitter, and YouTube. Subscribe to our RSS Feeds or E-mail Updates. Listen to our Podcasts. Visit GAO on the web at www.gao.gov.</p>
To Report Fraud, Waste, and Abuse in Federal Programs	<p>Contact: Website: http://www.gao.gov/fraudnet/fraudnet.htm E-mail: fraudnet@gao.gov Automated answering system: (800) 424-5454 or (202) 512-7470</p>
Congressional Relations	Katherine Siggerud, Managing Director, siggerudk@gao.gov , (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548
Public Affairs	Chuck Young, Managing Director, youngc1@gao.gov , (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548
Strategic Planning and External Liaison	James-Christian Blockwood, Managing Director, spel@gao.gov , (202) 512-4707 U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548



Please Print on Recycled Paper.

**Written Testimony to the United States Senate Special Committee on Aging
Cathy (Cate) Boyko, Manager
Minnesota Judicial Branch Conservator Account Auditing Program**

I. Introduction

Chair Collins, Ranking Member McCaskill, and other members of the Committee, I am Cate Boyko, manager of the Conservator Account Auditing Program for the Minnesota Judicial Branch. I have been the manager of this statewide audit program since its inception in 2012.

This testimony addresses: 1) Financial abuse in conservatorships in Minnesota, 2) Action taken by the Minnesota Judicial Branch to improve the courts oversight of vulnerable persons under conservatorship, and 3) Findings of conservator account audits.

I believe the Minnesota experience and approach can be a national model to address the issue of financial abuse of older Americans by guardians (conservators). The State Justice Institute has provided funding to the National Center to State Courts for the purpose of replicating the Minnesota software in other states¹.

II. The Minnesota Story

The amount of money lost through exploitation of elders is staggering and growing. A 2011 MetLife Study² estimated the national annual financial loss at \$2.9 billion dollars- an increase of 12% over their findings in 2008. A more current study in 2015 by True Link³ estimates the loss at \$36.48 billion dollars.

¹ The Conservator Accountability Project

² MetLife Study of Elder Financial Abuse Crimes of Occasion, Desperation, and Predation Against America's Elders (2011) MetLife Mature Market Institute, Roberto, K. A., Teaster, P.B., National Committee for the Prevention of Elder Abuse (2011, June) *The MetLife Study of Elder Financial Abuse Crimes of Occasion, Desperation, and Predation Against America's Elders* (p. 2)

Retrieved from: <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>

³ True Link Report on Elder Financial Abuse 2015, Orlov, Laurie, True Link data science team.

Retrieved from : <https://www.truelinkfinancial.com/research>

With a more than twelve times increase from the Met Life study, there is no question these losses are increasing at an alarming rate.

While this exploitation can occur in many forms such as neglect, mismanagement, fraud, swindle, and theft; when the loss is occasioned by the very conservators, guardians, or fiduciaries the court has appointed to protect the assets of the vulnerable person, it leaves a bold black mark on the court's performance – often under banner headlines reading, “A License to Steal?” or “Money Disappears Under Court's Watch”. The losses erode the public confidence and trust placed in the courts. When the court appoints someone to protect the assets and manage the estate of a protected person who is unable to handle those financial issues and decisions themselves, the court has a special responsibility to ensure the assets are being handled appropriately.

However, with court budgets being cut and public safety being a priority, “probate” case types tend to receive lower priority and attention throughout the nation. Moreover, courts don't always have the staff – or staff with the necessary expertise – for the specialized monitoring and auditing of financial accounts required to discover losses or inappropriate expenditures. The work can be tedious, difficult, and time-consuming. Minnesota and other jurisdictions are developing new approaches to help with these tasks. While states may define terms differently and use the terms guardianship and conservatorship interchangeably, in Minnesota conservatorship is used to describe the court appointment of someone to handle the financial matters of a vulnerable person.

Conservators in Minnesota are required to file annual accountings of the assets under conservatorship with the court on the anniversary of their appointment. In 2015, Minnesota conservators filed inventories and annual accountings that reported over \$908 million in assets under court jurisdiction. Many courts are not aware of the value of assets under their jurisdiction. When Minnesota courts first determined the amount under court jurisdiction in 2011 it was eye opening.

Previously, our state had no way of knowing how much money was under court jurisdiction. I believe the same is still true today for many other states.

As recently as 2010, conservator accountings in the state were submitted to the court largely through a paper-based process, which often included the submission of boxes of receipts and other documentation. This unwieldy process put a heavy burden on the local district court staff responsible for overseeing the work of conservators – staff who often lacked the specialized skills needed to conduct this complex and sophisticated auditing work.

In 2005, a Minnesota professional conservator was found to have exploited her clients in one of our county courts. Unbeknown to that county, the conservator was exploiting clients in two other counties as well. At the time, our state did not have a consistent, reliable way to share information between counties about conservators whose work had come under suspicion. This allowed this conservator to continue exploiting clients in other parts of the state, even after the conservator was removed from cases in one county. The professional conservator was eventually charged with stealing from 10 vulnerable adults⁴.

In response to losses at the hand of this professional conservator, the Ramsey County Probate Court in Minnesota developed an online conservator accounting system called the Conservator Account Monitoring Preparation and Electronic Reporting, better known as CAMPER. The design captured all transactions made by a conservator and provided a spreadsheet to make sense of the shoebox full of receipts that often accompanied an annual financial report. It saved conservator and staff time by automatically performing mathematical calculations, as well as allowing ready access to expense and receipt details. Time that was previously spent organizing or checking the arithmetic of the account

⁴ In 2010 Terri Ann Hauge was charged with stealing \$68,000 for 10 vulnerable adults.
<http://www.startribune.com/unfit-to-be-lawyer-yet-a-guardian-for-200/117860934/>

would instead be devoted to looking at the transactions themselves and whether they were appropriate to meet the needs of the protected persons.

As part of a Minnesota Judicial Branch transformational study, CAMPER was identified and recommended as a statewide solution to improve conservatorship oversight and reduce administrative costs. It was already apparent that – despite the existence of statewide rules and forms – there was a lack of consistent statewide court practices in conservatorship cases. There were also varying levels of training being done by court staff for conservators and varying comfort levels by court staff when examining accounts. While court staff in some counties actually verified receipts and required entry into specific categories, others were simply running adding machine tapes to be certain the amounts matched. Any discovered losses by a conservator were generally handled on a county-by-county basis, and there was no communication to other counties using the same conservator. Some counties allowed conservators to request account waivers for amounts under \$3,000 or even under \$10,000, while others allowed waiving of the hearing on the account if there were no apparent issues. It was evident that informal practices and frequent use of reporting waivers had obscured the lack of understanding on the part of many conservators about their responsibilities.

The Minnesota Judicial Council, the statewide policy-making body of the Minnesota Judicial Branch, determined that the use of the CAMPER system should be implemented statewide. Implementation work, along with software upgrades needed to allow for multi-county use, statewide support, and monitoring was funded. In August 2010, the Minnesota Judicial Council mandated use of this electronic system for all conservators appointed on or after that date and for any accounts filed after January 1, 2011. This ambitious rollout schedule underscored how eager Minnesota was to improve its monitoring of conservatorship cases.

The announcement was met with a variety of responses from stakeholders. For conservators in Ramsey County already using the CAMPER system, the response was, “it’s about time.” They very much

appreciated the ability to file in all 87 counties using the same software program. Conservators with limited computer skills, expressed a significant amount of trepidation about moving away from the traditional paper-based system. Based on those concerns, as part of the statewide rollout, Minnesota added one element that Ramsey County had not allowed: the option to designate an agent to complete and file the accounts online. Some conservators were already using bookkeepers, accountants, or lawyers; now those professionals could be designated to enter transactions and file reports on the conservator's behalf. In addition, training and support was offered through presentations to conservator groups; video materials and a telephone help line were provided; and slowly the use of CAMPER on a statewide basis took hold.

The critical first step to improve oversight in Minnesota was the statewide roll out of CAMPER. The initial plan did not consider an enhancement of the existing application. However, it was understood that the application would require improvement and specialized staff to ensure that auditing of the annual accounts would be done.

It was also understood that while having an automated system to do the mathematical calculations provided some relief to court staff, there was still a piece missing with respect to the level of auditing needed for these accounts. Specialized auditing skills and management, plus statewide coordination were needed. In September 2011, the Judicial Council authorized the State Court Administrator to implement and operate the Conservator Account Auditing Program or CAAP. This centralized account auditing center was created and funded to monitor and audit financial activities of conservators to safeguard the assets of protected persons through professional, impartial compliance audits. In 2012, the Court hired me as the audit manager to build the auditing component for the new program from the ground up.

Part of the challenge was to scale the resources that had been allocated with the amount of work that needed to be done. The decision was made to focus the resources where they would have the

greatest impact. The first priority was to audit every first annual account with an asset balance greater than \$3,000. This would accomplish four things:

- First, the expectation would be created so the new conservator would better appreciate how the accounts had to be filed and documented. It also reinforced the training that had been provided to the conservator. If the conservator could complete the first audit to the new auditing standards, the conservator would know what was expected for future accountings. Accounts less than \$3000 are still examined by local court staff and, should staff feel they need more assistance, may be referred to the CAAP unit.
- Second, the court wanted to make sure there was a complete audit before the account was approved by a judge. In Minnesota, accounts must be submitted every year, but a hearing to formally allow those accounts only needs to be held every five years. As part of this statewide transformation, Minnesota established a best practice to set cases for a hearing every four years, and provided that a CAAP audit would be completed before the hearing was held. It was determined that local court staff would continue to monitor and review annual accounts between hearings for any red flags.
- Third, the new unit was to be a resource to local courts so that when court staff discovered an issue during their review, they could refer the account to CAAP for a full audit or contact the unit to seek their input and guidance.
- Fourth, one of the deficiencies of the pre-CAAP system was the lack of coordination and review of conservators who may be operating in multiple jurisdictions. Now, if a problem is discovered with a conservator having multiple accounts under his or her care, an audit can be initiated to sample the status of other accounts in other locations to make sure that there is no pattern of inappropriate transactions in other files. Previously there was no coordination with the

Veterans Administration and the Social Security Administration. CAAP works with both these entities when auditing concerns arise and there are VA or SSA funds.

III. The Audit Program

CAAP has a staff of ten auditors, (seven full time and three part time), one half time help desk person, and a manager. CAAP audits all conservator accountings from both professional conservators and non-professional conservators. The audits completed by CAAP are extensive; the auditor reviews the account that is filed and reconciles the accounting with all financial statements. The conservator must submit, electronically or on paper, all supporting documentation to determine if the information has been accurately reported in the annual accounting. The annual account contains all transactions (income, expense, and debt) that occurred during the annual reporting period. Financial statements, canceled checks, invoices, fee invoices, receipts, and tax returns are just some of the documents that are reviewed during the audit. The audit also reviews the spending to determine if the spending is appropriate for the protected person's ⁵ station in life. Once the audit is completed, the auditor files an audit report with the court and provides the audit report to the conservator. The average time to complete an audit is 8 hours, but this varies from one hour for well-organized and well-done accountings to over 40 hours for highly complex accountings.

IV. Audit Findings

At the conclusion of the audit, the auditor completes and files an audit report with the court and rates the audit according to the audit findings. Once the court receives the audit report, a hearing is

⁵ A person under conservatorship in Minnesota is referred to as a protected person

scheduled to address any issues identified in the audit. There are four possible audit levels, with level 1 having no issues and level 4 having the highest level of concern.

Level 1: No issues found in the accounting. The auditor recommends approval of the accounting by the court. In 2016 (Jan. to Oct.), 17% of cases audited have been identified as Level 1.

Level 2: The auditor has found minor issues, such as the accounting period is incorrect, expenses or income are placed in incorrect categories, or transaction numbers are manipulated to balance the account. The auditor recommends an adjustment to the next accounting to “fix” the issue. If the accounting issue is more significant, the auditor can recommend an amended account be filed with the correction prior to the next accounting. The auditor has no concerns of loss found or misuse of assets and recommends court approval with recommendations on technical issues to the conservator. In 2016 (Jan. to Oct.), 48% of cases audited have been identified as Level 2.

Level 3: The auditor has identified multiple accounting issues, and adjustments to the accounting are needed. Issues identified could be items such as the account balance may be incorrect, income and expenses are omitted, there is comingling of funds when the conservator and protected person have a marital or parental relationship. However, the auditor has not found any concern of loss or misuse of assets and recommends court approval once the adjustments have been made to the account. These are the cases where the conservator may not understand their responsibility or may not have the skills to manage the protected person’s assets appropriately. In 2016 (Jan. to Oct.), 23% of cases audited have been identified as Level 3.

Level 4: In level 4 audits, the auditor has found concerns of loss, loans from protected person, expenditures without court approval or expenditures not in the best interest of the protected person, or comingling of funds between conservator and protected person. The auditor may recommend to the

court removal of the conservator and or repayment of funds to the protected person. In 2016 (Jan. to Oct.), 12% of cases audited have been identified as Level 4.

Audits that result in Level 4 are identified differently in the court case management system so that the court knows that these cases should be addressed promptly. Some examples of findings in level 4 cases are:

- Missing income
 - Social Security income or VA income within the reporting period cannot be identified in the financial statements as deposited
 - Cash withdrawals with no substantiation of where the money was spent and who benefited from the spending
- Questionable expenses, (expenses are not appropriate based on the vulnerable persons station in life)
 - An elderly man in a nursing home with a traumatic brain injury with expenses to nail salons, women's hair salon, women's clothing stores
 - The purchase of a Ford F150 truck with high end accessories for a vulnerable person in a nursing home without a drivers' license
 - Multiple dining out expenses for multiple people
 - Vacation expenses for multiple people
 - A pool
 - A house
- Irregular expenses
 - Hundreds of dollars spent on candy and a generator for an individual in a group home
- Nepotism

- Household repairs conducted by unqualified family members without permits billed at professional rates
- Care services provided by family members billed at professional rates
- Charging excessive rent when the conservator and protected person are related and the protected person lives with the conservator; usually a parent
- Sale of assets below fair market value to family
- Gifting of assets
 - Gifts given to family members without court approval and not consistent with past gifting of the vulnerable person
 - Gifts to the conservator
 - Gifts to choice family members
- Loans from the protected person's funds to the conservator or family members
- Assets omitted from the inventory or annual accounting that are discovered during the audit
 - Unreported investment accounts
- Fraudulent Documentation
 - Invoices and receipts provided during the audit have been created by the conservator to make it look like the expense was for the benefit of the protected person when in fact the expense benefited the conservator
 - Creation of an invoice for a pre-paid burial account when in fact no pre-paid burial account existed
- Fees
 - Extraordinary Guardian fees, conservator fees, or attorney fees
- Money repaid after receipt of an audit letter from the Conservator Account Auditing Program

The auditor may be required to testify at the account hearing, although in most cases the audit report provides significant detail for the court to understand the issues of concern. At this hearing, the protected person may be represented by an attorney appointed by the court. The judge addresses the issues presented in the audit report. Examples of results of accounts hearings include:

- Discharge of the conservator
- Termination of the conservator
- Referral to the county attorney for criminal investigation
- Repayment of funds
- Order for Judgement
- Request for further documentation
- Filing of amended accountings

There have been cases where the court has referred the case to the prosecutor and the audit staff have provided forensic accounting of the conservatorship accounts for the court and, upon court order, the county attorney. The CAAP has worked in conjunction with investigators from the Social Security Administration and the Veteran's Administration on conservator cases that involved misuse of Social Security and Veteran's funds. These relationships and cooperation are extremely important to the success of the program. One example is the case of a professional conservator who was charged with stealing over \$120,000 from multiple vulnerable persons⁶.

V. MyMNConservator (MMC)

⁶ <http://www.startribune.com/former-conservator-admits-stealing-120k-to-feed-gambling-habit/268931441/>

As the audit program was developed, it became evident that the CAMPER system was not a robust application and did not provide adequate tools for auditors. With the assistance of a grant from the State Justice Institute (SJI), the Minnesota Judicial Branch developed a new application in 2014.

The philosophy for the design of MyMNConservator (MMC) was to keep it simple for the conservator. It was important that the look and feel of the application be similar to other online financial applications. Both professional and lay conservators were involved and consulted during both the design and testing phases. Short video tutorials walk the conservator step by step through the process related to the page in the application they are working. Textual help provides specific directions that pertain to the page shown in the application. The template and instructions are available within the application. MMC is not just an application to report annual accountings to the court. Conservators can use the application as a financial management tool to reconcile the assets under their control.

For the court, MMC is a much more robust and intuitive application with integrations into the court's current case management system to avoid duplication and manual entry of information. The automation from integrations between the two systems reduces work for court staff. System logic sends the annual account to the appropriate work queue for audit or court review.

VI. Red Flags and Risk Indicators

One of the greatest benefits of MMC is the red flag logic that assists in the court review and audit process. There are red flags⁷ that have been programed into the application. When the accounting is filed, the system logic reviews the accounting in its entirety and by line item for these logic flags.

⁷ The current red flags are based on information from the National Center for State Courts; the ICM Fellows Paper PROTECTING THE ASSETS OF OUR MOST VULNERABLE IN MINNESOTA and CAAP audit experience

A very exciting improvement was recently made to the MMC application. As part of the Conservator Accountability Project, we provide one year of audit data to the National Center for State Courts (NCSC). The NCSC conducted an analysis of our data and developed 10 empirically based risk indicators. These risk indicators predictably identify accountings that would result in a level 4 audit. These have been integrated into our application and we will be testing them during the next 12 months to determine the benefit for assisting for differentiated case management.

VII. Replication of the Minnesota Model

Minnesota is fortunate to have an online reporting program for conservatorship accountings. Other states have reported a significant need to increase their oversight of these cases. Numerous jurisdictions⁸ have shown interest in the Minnesota model and obtaining the MMC source code. We have worked with numerous other courts to share our source code, and the processes and procedures we have developed for auditing. The National Center for State Courts has been instrumental in promoting the Minnesota model through the State Justice Institute funded Conservator Accountability Project. Other jurisdictions are doing good things in tackling this problem. Sharing our best practices is the only way we can all become better at what we are trying to accomplish; protecting those that are vulnerable.

MMC was an ambitious undertaking, and although under funded was completed on an aggressive rollout schedule. Minnesota has successfully delivered a robust application that is meeting the needs of court staff, judges, conservators, and protected persons. It is notable that MMC has mandated the use of an online application by members of the public. It should be noted in Minnesota, most conservators, even if represented initially, do not maintain legal representation after appointment. Most electronic

⁸ Palm Beach County, Florida, Washington, Colorado, Idaho, Michigan, Arizona, Indiana, Wisconsin, South Carolina, Iowa, Texas, New Mexico, Nevada, New Jersey, Netherlands and Finland.

filing systems do not plan for self-represented litigants or provide a tool for them to use. Most online systems make self-represented use optional. This project provides a significant system for the self-represented conservator to use.

The Minnesota Judicial Branch's aggressive approach in recognizing the problem, applying resources, and moving forward with a solution demonstrates the importance of building trust and confidence in our court system for the citizens of Minnesota. The idea of improving the courts ability to protect assets of the vulnerable is intriguing to all courts. MMC is a tool that provides benefits to conservators, court personal, and, above all, increases oversight of assets for the benefit of vulnerable persons.

**Trust Betrayed:
Financial Abuse of Older Americans by Guardians and Others in Power**

Testimony of Jaye L. Martin
Executive Director of Legal Services for the Elderly

Before the
United States Senate
Special Committee on Aging

November 30, 2016

Chairman Collins, Ranking Member McCaskill, and Members of the Committee, I am Jaye Martin, Executive Director of Legal Services for the Elderly in Maine. I am honored to be here today and grateful for the Committee's focus on the serious and ongoing problem of elder financial exploitation being committed by guardians and others in power.

LSE is private, nonprofit agency that was formed in 1974 when legal services were first added to the list of potential funded services under the Older Americans Act. LSE provides free legal help to seniors when their basic human needs are at stake. This includes things like safety, food, shelter, public benefits and health care. LSE provides legal assistance to over 7,000 seniors each year. The seniors helped by LSE have nowhere else to turn for help. Maine is unique in having a resource like LSE. There are very few legal aid organizations in the nation devoted exclusively to meeting the needs of disadvantaged seniors. This is in large part because there are no dedicated federal funding sources to support the provision of legal representation for disadvantaged seniors.

LSE has a four decade long history of representing victims of elder abuse in an effort to restore safety and recover assets through civil legal action. LSE also advocates for public policies that improve the response to elder abuse. In the past twelve months, LSE assisted 260 victims of elder abuse. This is up 24% from the prior year and yet we estimate we are serving less than 1% of Maine's total victims. The large increase this past year is in part due to the growing elderly population and in part a direct result of an extensive public awareness campaign being conducted in Maine that is focused on prevention and early detection of financial exploitation. That campaign is funded exclusively by a private foundation, the John T. Gorman Foundation.

LSE represents elderly victims of abuse who can ask for our help and provide us with at least some direction as to their wishes. We refer victims who no longer have capacity to seek help for themselves to one of our partner agencies. This includes Adult Protective Services ("APS"), Maine's Long Term Care Ombudsman Program, the Office of Securities, and the Attorney General's Office.

Elder abuse is a rapidly growing problem. One in 10 people age 60 and older who live at home experience abuse, neglect or exploitation. This means as many as 5 million seniors are abused each year. Add to this alarming picture of pervasive abuse the fact that 10,000 Baby Boomers turn 65 every day and will do so for the next 19 years. That means we are adding 1,000 potential new victims to the population every day and we will continue to do so for the next 19 years.

Social isolation and cognitive impairment are among the known risk factors for elder abuse. This is supported by Maine's APS reporting data showing that 46% of the substantiated reports of abuse of seniors involved seniors with cognitive impairment. We also know from both LSE and Maine APS data that those over 75 years of age are at higher risk of abuse, in particular financial exploitation. Why don't we hear more about the problem of abuse given the magnitude of the problem? It is likely because only 1 in 24 cases of elder abuse are ever reported to authorities.

At LSE, 48% of the elder abuse cases we handled in the past year involved financial exploitation, with 75% of those involving family members as the perpetrators. This is consistent with national research which found that in 90% of reported elder abuse cases with a known perpetrator, the perpetrator is a family member.

I want to share a typical LSE case with you that involved financial exploitation by someone who had been given legal authority to take actions on behalf of a senior. LSE's cases generally involve the abuse of a Power of Attorney ("POA"), but the situations we see directly parallel those involving abuse by guardians and conservators.

An 82 year-old WWII veteran had suffered two strokes and was confined to a wheelchair and homebound. After his wife passed away, he needed help so he bought a mobile home and asked his daughter to move in with him. He also named his daughter agent under a POA and added her to the title of the home and his bank accounts. The daughter systematically isolated her father and took complete control over his money. He finally sought help from LSE after she refused to give him money to buy birthday gifts for his grandchildren. When he sought help he believed he had \$20,000 in savings, but only \$15 remained in his accounts. Bank records revealed that his daughter had taken his money for her personal use, opened and charged thousands on credit cards in his name, and purchased a new car using her POA authority to add him as a co-signer. The money was long gone, but LSE was able to evict the daughter from the home, recover the home, and clear his credit history.

And one need look no further than the November 27, 2016, edition of the Portland Press Herald for another horrific tale of exploitation that led to a 90 year old woman being abandoned in a tiny cabin in Maine after she was robbed of \$1 million in life insurance and real estate proceeds and taken on a three year long cross country trek that led her further and further from her home in Los Angeles. The thieves in this case used a POA as one of the methods for exploiting this woman. Although she was awarded \$2 million

by a Maine court, it appears she will never see any of it, and she is living out her life in a nursing home in Fryeburg, Maine.

At LSE we have seen thousands of cases like this over the years. These victims are our grandparents and our parents and the legions of victims will soon include hundreds of thousands of Baby Boomers. Among the various factors that appear to be driving the actions of the family-member perpetrators are drug-related problems, gambling addiction, debt problems, and greed.

In states like Maine where the rate of home ownership among seniors is high and the only valuable asset many seniors have is their home, the theft of the senior's home is an all too common form of exploitation. Here is one very typical theft of home case that ended up at the Law Court, Maine's highest court:

Frederick and Patricia were exploited by their son, John, after Frederick became terminally ill. One month after his father's diagnosis, John insisted that his mother go with him to a title company and transfer the home to him to protect it from MaineCare (Maine's Medicaid program). She was exhausted from taking care of her husband and trusted her son. She did as she was told. After Frederick suffered a stroke and was hospitalized for an extended period, John placed padlocks on several rooms in the house including the living and dining rooms, justifying it by accusing Patricia of selling Frederick's property. At that point, Patricia sought the help of a private attorney and filed suit to recover the full use of her home. When Frederick died it came to light that John had also obtained a POA from Frederick five days before his stroke and used the POA to transfer all the money from Frederick's accounts to a new joint account. As soon as his father died, John had withdrawn all the funds. Using the Improvident Transfer of Title Act, a statute unique to Maine, a private attorney assisted Patricia in recovering her home and some of the stolen assets.

In Maine, just as the GAO found in its report, we also sometimes see situations where the perpetrator is actually a trusted professional, though these types of cases are far less common:

In a case in Belfast, Maine, an attorney lost his license and was sentenced to 30 months in prison for stealing nearly \$500,000 from two elderly clients who happened to live in the same assisted living facility. Both women had appointed the attorney as their financial agent under a POA due to declines in cognitive ability and other medical complications. Both had lacked family members to assist with that role. Each believed she was appointing a trusted professional. The thefts were identified by a local bank teller who spotted the questionable transactions and alerted the authorities.

In summary, in Maine, and in the nation, most financial exploitation of seniors involves a family member or person in position of trust and it is very common for the perpetrator to have obtained legal authority through a POA, guardianship or conservatorship. That

authority is then abused as the agent proceeds to steal from the senior. The GAO report includes many more stories like the ones I have shared with you today, as did the GAO report published in 2011.

As today's GAO report notes, we are essentially blind to the scope and nature of the problem of abuse by guardians and conservators due to a lack of data. Even less is known about the scope of abuse by agents under POAs. This leaves these guardians and agents free to act with impunity. This is coming at a great cost to our country. In 2015 alone, LSE recovered assets stolen from elderly victims of exploitation in excess of \$710,000 in value. One study estimates the annual national cost of financial exploitation at \$36.5 billion. It is time to collect data on these abuses on a national basis and a good place to start is with the state courts and guardianships and conservatorships. If data were collected, we would then have opportunities to use technology to efficiently and effectively analyze that data and identify red flags for abuse, just as they are finding they are able to do in Minnesota.

Leadership and investment by the federal government are needed to support data collection and monitoring using an approach that leaves each state with some latitude on how to proceed given the great variation in the state court structures. Perhaps the type of funding formula used under the Older Americans Act might provide a roadmap for a federal-state partnership and coordinated response to this challenge facing our seniors' health and financial safety.

Data collection and monitoring will only be the first steps in a coordinated solution. There is no doubt that rampant abuse will come to light if data is collected and guardians are monitored. The GAO report goes on to note the importance of dedicated resources in combating abuse and dedicated federal and state resources will be needed to ensure the states are able to effectively audit, investigate, and prosecute dishonest agents and all elderly victims have the help of an attorney to pursue civil legal actions to recover their stolen assets.

What difference could monitoring of guardians and conservators really make in the lives of our nation's seniors? Here is just one example of a situation where the need for and potential value of monitoring of guardians is quite clear:

An elderly woman in her 80's came to Maine to visit her daughter. She owned a very valuable out of state residential property and extensive assets. She was held by her daughter against her will in unsafe living conditions while the daughter repeatedly attempted to force her to sign a POA. She steadfastly refused. She eventually escaped and flagged down a passing motorist. She was hospitalized briefly after her escape and during that time the daughter obtained guardianship over her mother. APS got involved when the woman first escaped from the daughter's home, but refused to remain involved after she was placed in a nursing home by her daughter because APS then viewed the woman as no longer in danger. When the woman finally sought legal help she was under guardianship and living in a nursing home. She desperately wanted to return to her home. She

did have another child who lived near her home, but that child did not wish to become engaged in a conflict with a sibling. It was concluded that nothing further could be done to assist this woman because there was no legal action that would achieve her desired goal.

There was not one single document filed with the probate court after the guardianship order was issued in this case. It is far too easy to imagine what would have come to light if this guardian's actions had been monitored.

It is time for the federal government to take a leadership role in partnering with the states to bring the pervasive problem of abuse by guardians and others in power out of the shadows and into the light of day.

Thank you for inviting me to speak with you today.

Testimony of Jessica Kruse

**United States Senate Special Committee on Aging
 “Trust Betrayed: Financial Abuse of Older Americans by Guardians and Others in Power”
 11/30/16**

Chairman Collins, Ranking Member McCaskill, and other distinguished members of the committee: Thank you for the opportunity to provide testimony today. My name is Jessica Kruse and I am an attorney who provides Elder Law services to individuals in Southwest Missouri. I am the president of the Missouri Chapter of the National Academy of Elder Law attorneys and the Committee Chair for the Elder Law committee for the Missouri Bar. My firm has 7 full time attorneys, including myself and my law partner and we have four offices throughout Southwest Missouri. As elder law attorneys, a large part of our practice involves guardianship proceedings in which we represent both respondents (person over whom the Guardianship is sought) and petitioners (proposed Guardians and/or Conservators). In addition to handling guardianship matters, I also represent those who are acting as agents under Durable Powers of Attorney (legal document under which a person – the Principal – designates someone to act on his/her behalf – the Agent or Attorney-in-fact), those acting as the Principal under Durable Powers of Attorney, and at times, litigants in fiduciary actions brought against agents taking allegedly inappropriate actions under Durable Powers of Attorney. Today I look forward to sharing my perspective as one attorney working daily to improve the lives of older Americans who cannot act for themselves.

I. Abuse by fiduciaries or others in authority outside of guardianship proceedings

In my practice I see far more cases of elder abuse in situations involving fiduciaries or others in authority outside of guardianship proceedings. From an elderly woman made to live in a chicken coop in the back of her step-daughter’s property, to a man found stuck to his chair by his own feces because those caring for him did not move him, to the caregiver who befriends the vulnerable care recipient for the sole purpose of manipulating the care recipient into giving over assets. These are the stories that Elder Law attorneys hear on a regular basis.

These individuals are sometimes tricked into signing a Durable Power of Attorney the abuser printed off the internet or their vulnerabilities are exploited because they have no one else to take them to the doctor or prepare their meals. In these cases, there are no monitoring mechanisms unless a prosecutor is willing to take a case from the Adult Protective Services investigator or unless another party brings a civil action against the abuser. Both enforcement mechanisms come too late and often after all the vulnerable person’s assets have been taken or physical damage has been done.

If those abused or vulnerable individuals later become my clients, I will ask about what documents they may have signed and it is all too common to hear stories like “I thought I was signing a paper required for the bank” or “I was relying on the person to take me to the doctor so if I didn’t sign, I wouldn’t be able to get to the doctor.” Many times, the person doesn’t even remember signing the document 10 minutes later in the case of a more advanced Alzheimer’s or dementia diagnosis.

Once the document is signed, the abuser has full reign over bank accounts, investment accounts, real estate, and pensions. In other cases, I have seen abusers bully/coerce/persuade the incapacitated individual into putting the abusers name directly on bank accounts or real estate as a co-owner which can give them rights as the owner of the asset and can eliminate the ability to hold the abuser accountable as a fiduciary.

In these cases, there is far less accountability and monitoring as compared to guardianship and conservatorship cases. Once financial abuse is caught under these circumstances, the guardianship and conservatorship court action is one of the main ways to stop the abuse even though most of the damage is done by that point and there are little resources to bring the abuser to justice. Investigators from the Adult Protective Services investigate but the case generally ends there unless there is a public outcry demanding more. The cases are rarely prosecuted and there are generally few resources to go after the abuser civilly because there is a small chance any money would be recovered.

II. Abuse by Those Appointed by the Court as Guardians and Conservators

In Missouri, a guardian has authority to make personal decisions over one who is deemed to be incapacitated.¹ A conservator has authority to make financial decisions over one who is deemed to be disabled.² This terminology is different depending on the jurisdiction. In my experience, abuse by guardians and conservators is far less common than by those who were not appointed by the court or, if there is abuse, it is caught faster due to court monitoring.

The cases in which I have seen financial abuse occur within a guardianship and conservatorship have generally occurred in situations where court monitoring is lacking. One example of this occurred in a case in which family member co-conservators had been allowed to take actions on behalf of an incapacitated person for 2 years without submitting annual accountings for court approval. In that case, the co-conservators were given very little guidance by the attorneys who helped them petition the court for the conservatorship to begin with and then turned loose to basically do what they wanted to do with the estate. Once an attorney got involved in the proceeding, property had been sold, assets had been liquidated and property was given away all without court order and with some alleged misappropriation by one of the two co-conservators.

On the other hand, another county about 60 miles away from the county mentioned in the previous paragraph submits citations if annual accountings are not filed in a timely fashion and when the accountings are filed, an auditor reviews the accountings to make sure the figures balance. In addition, the clerk and Probate Commissioner review the entries within the accounting to make sure money is being spent on the person who is under the guardianship and conservatorship, which monitors the care being provided.

¹ Mo. Rev. Stat. § 475.010 (10) (2016)

² Mo. Rev. Stat. §475.010 (5) (2016)

With respect to the overlap in duties that arise between representative payees for SSA and VA, there is some frustration in that the SSA and VA do not tend to give preference to the court appointed fiduciary.³ As you may imagine, there can be highly contested guardianship and conservatorship proceedings in which the court will hear evidence on who may be the best person to act as the Guardian and/or Conservator. It is not surprising then when the party who lost the battle in the Guardianship and Conservatorship proceeding marches down to the SSA or VA to become the representative payee. This can clearly cause problems for the person under the guardianship and conservatorship because there are two people at odds with one another in charge of their assets. I am not suggesting a change to the representative payee requirement but rather providing the SSA and VA with the ability to give preference to the court appointed fiduciary unless there is a reason to separate the duties.

Additionally, there is some controversy on a national level about professional guardians and conservators vs. individuals.⁴ I do not see this personally in Southwest Missouri, as there are elected officials (public administrators) who are appointed to act in situations where family or individuals are not considered the appropriate choice and very few, if any, professional guardians and conservators in my area. In talking with colleagues of mine from other states who specialize in this area, they also have concerns regarding professional guardians and conservators. These concerns include the fees that are charged by professional guardians and conservators, in addition to the conflicts of interest that may arise (for example, the professional guardian or conservator appointed may also own the home health care company providing the services to the individual over whom they have guardianship). Professional guardians and conservators can fill a much-needed gap in communities that do not have elected officials to act as the guardian and conservator of last resort or provide services for individuals who do not have family or others willing to act as the guardian or conservator but, again, there appears to be inconsistency in monitoring the guardians and conservators in these situations as well.

My office practices regularly in about 10 counties and just within Southwest Missouri, judicial practices for guardianship cases varies widely. This inconsistency is multiplied over the approximately 3200 jurisdictions that adjudicate guardianship and conservatorship cases across the country. Some states, like Missouri, have elected officials serving as the guardians and conservators of last resort. Some jurisdictions have private individuals serving as professional guardians. Some jurisdictions require that a guardian be bonded in every case and some jurisdictions do not. Some jurisdictions take the time to determine the specific needs of the incapacitated and disabled person to determine whether a full guardianship is needed vs. a limited guardianship but some jurisdictions prepare full guardianship orders for everyone regardless of the specific abilities of the person under the guardianship. These are inconsistencies that are recognized by the legal industry and are not being ignored.

³ S.S.A. Program Operations Manual § GN 00502.100 (2016).

⁴ See generally Diane Dimond, Who Guards the Guardians, Albuquerque Journal, Nov. 28, 2016, at A1.

III. Steps Currently Being Taken to Address Issues

The problems I am pointing out about the guardianship process are not new and there are current efforts to address these issues by several guardianship organizations throughout the country. The approaches being taken are multidisciplinary with the hope that concerns will be addressed not only from the legal perspective but also from the perspective of those acting as guardians/conservators and those having to implement the actions that will be taken by guardians/conservators. The efforts taken by these guardianship organizations focus on making the process more consistent between jurisdictions and requiring anyone acting as a guardian to meet certain baseline requirements. One problem with many of the proposed changes is funding, or lack thereof, in a lot of jurisdictions.

The National Guardianship Network (hereinafter “NGN”) is a collaborative organization that brings together several national organizations to improve guardianship standards. These organizations include the National Academy of Elder Law Attorneys (“NAELA”), the National Guardianship Association (“NGA”), and the American Bar Association (“ABA”) to name a few. One of its accomplishments include the 2011 Summit which provided recommendations to improve the guardianship system across the country. These recommendations were published in the *Utah Law Review* in 2012⁵. In addition to the 2011 summit, the NGN has helped to provide funding for state Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS).

Missouri, for example, has MO-WINGS which has been meeting for several years to examine the guardianship section of the Missouri Revised Statutes dealing with guardianship proceedings. The MO-WINGS group has been made up of “representatives of persons with disabilities, parents, family members, lay guardians and conservators, service providers, AARP, NAMI, Alzheimer’s Association, Missouri Developmental Disabilities Council, Missouri Bar Probate and Trust and Elder Law Committees, Missouri Association of County Developmental Disability Services, public administrators, social workers, nurses, psychologists, Missouri Protection and Advocacy, lay guardians, advocacy groups, long-term care ombudsmen, University of Missouri-Columbia Center for Health Ethics, Departments of Mental Health and Health and Senior Services, and Area Agencies on Aging with input from judges and national experts.”⁶ This is one example which shows that the WINGS groups are obtaining input from a vast array of individuals and groups who experience guardianship issues with the end goal of improving guardianship proceedings at the state level.

The National Guardianship Association is one example of an organization that is working to address some of the shortfalls in guardianship proceedings at the state level, which ultimately can reduce the instances of abuse within guardianship proceedings. The mission of the National Guardianship Association (hereinafter “NGA”) “is to advance the nationally recognized

⁵ Symposium, *Third National Guardianship Summit: Standards of Excellence*, 2012 *Utah Law Rev* 1155 (2012)

⁶ <http://mo-wings.org/>

standard of excellence in guardianship.”⁷ The NGA has developed 25 standards which serve as guidance to guardians, in addition to creating the Center for Guardianship Certification, which has certified approximately 2000 guardians across the country. The focus of the NGA is to educate guardians with the hope that this will improve the lives of those under a guardianship.

The Uniform Law Commission is also an organization that has worked to reduce abuse within guardianship and conservatorship proceedings by clarifying which court has jurisdiction to solve the jurisdictional disputes that would often arise and prevent abuses of a potentially incapacitated person being “kidnapped” and taken to a friendlier jurisdiction for the guardianship proceeding. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) was finalized by the Uniform Law Commission in 2007 and has since been adopted by 34 states. This act was narrowly focused on jurisdiction but there is a committee working on continuously revising this uniform law to address the concerns that arose at the 2011 Guardianship Summit. There are also current efforts to reform the Uniform Guardianship and Protective Proceedings Act (UGPPA) to address issues outside of the jurisdictional issues addressed by the UAGPPJA.

The National Academy of Elder Law Attorneys (NAELA) also focuses on education and advocacy for people as they age and people with special needs. NAELA has a national chapter in addition to local state chapters. Within NAELA there are committees based on practice area, including guardianships. The attorneys that belong to NAELA are dedicated to making sure the voices of older Americans and those with disabilities are heard.

Finally, the Commission on Law and Aging through the American Bar Association provides educational material to attorneys and judges on several different topics related to elder law abuse. This includes guide books on determining capacity. In addition, the Commission on Law and Aging assists in the implementation of the volunteer guardian monitoring system developed by the Legal Counsel for the Elderly, Inc., of AARP in 1992.⁸

IV. Conclusion

In conclusion, through my testimony today I would like to emphasize the positive work being done to reduce abuse in the guardianship and conservatorship system across all 50 states. Although there is still improvement to be made, there are grass roots efforts funded by private money that are making a difference at the local level. Unfortunately, the statistics show an overwhelming percentage of this type of abuse occurs by family members, whether dealing with abuse within Guardianships or otherwise. This can contribute to the difficulty in reducing the abuse, as Courts tend to give preference to family members who are available and willing to act as Guardians/Conservators. Also, older Americans tend to rely on family over all others

⁷ <http://guardianship.org/overview.htm>

⁸ http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/vol_gship_intro_1026.authcheckdam.pdf

when deciding who to name as agents under Durable Powers of Attorney or who they would want as a caregiver.

As with domestic violence and child abuse, more public awareness is needed so that communities can watch out for the most vulnerable members of society. In my experience, it can be difficult to balance the two goals of respecting the wishes of the older client and doing what I believe needs to be done to protect my older client. These two goals can be in opposition to one another if a client tells me they only want their child or caregiver or neighbor to act for them when I believe that child, caregiver or neighbor is not acting in their best interest. Far too often in our society, younger people bulldoze over the wishes of the older generation and it is always important to keep the older Americans voice at the forefront. Thank you again for this opportunity to speak. I hope that my testimony today makes a difference in some small way.