

DEPARTMENT OF JUSTICE

# ElderJustice INITIATIVE

## Identifying and Prosecuting Power of Attorney Abuse

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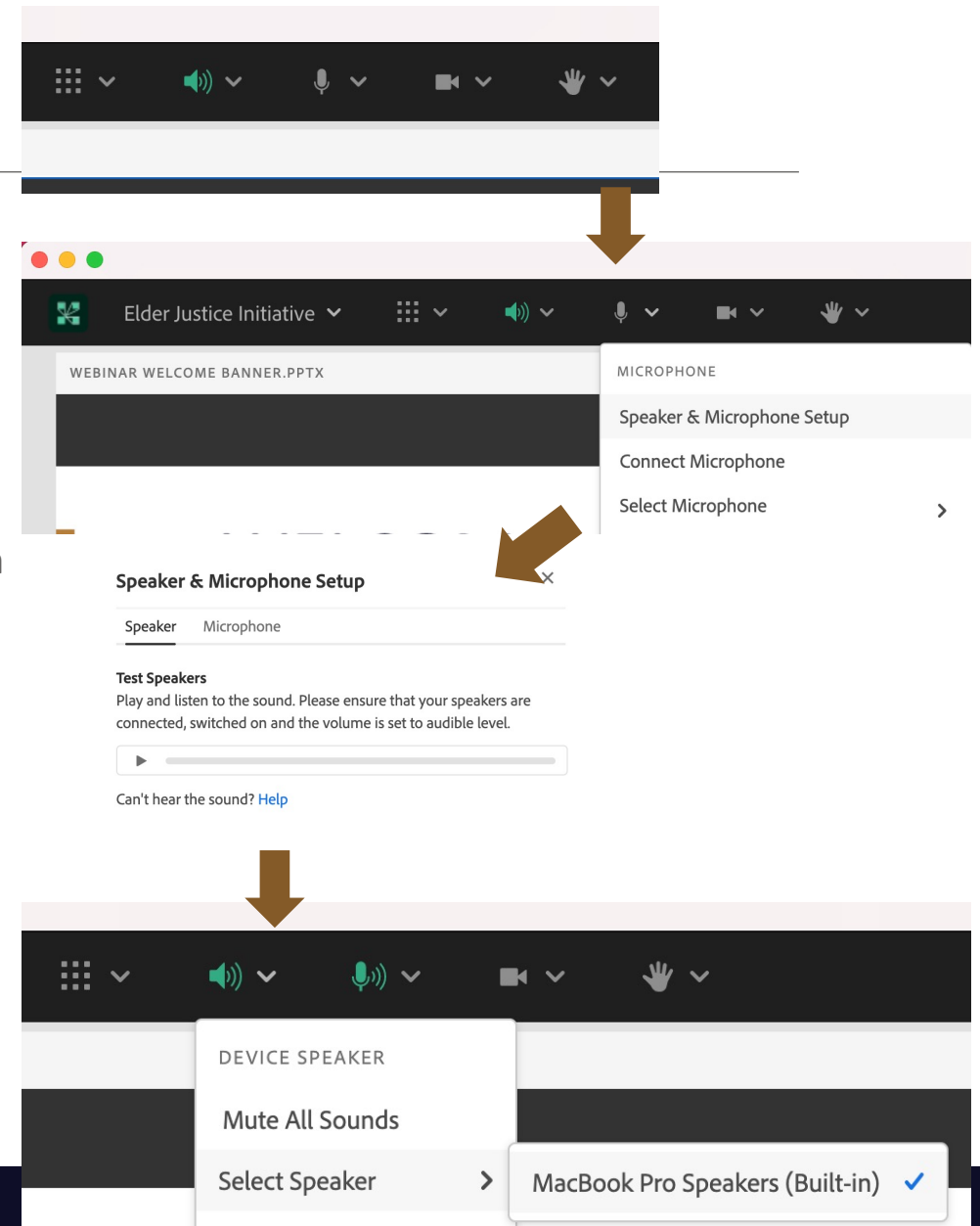
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# ELDERJUSTICE.GOV

The mission of the Elder Justice Initiative is to support and coordinate the Department's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target our Nation's seniors.



## Outreach Materials

Get involved, get safe community presentations, pamphlets, and materials on all types of elder abuse.



## Prosecutor Video Series

Training videos geared toward successful prosecution of elder abuse cases.



## Elder Abuse Research

References to articles, books, and government reports on all types of elder abuse and financial exploitation topics.



## Elder Abuse Statutes

State statutes relevant to elder abuse cases.



## MDT Guide & Toolkit

Start or grow a local elder abuse case review multidisciplinary team with this research- and resource-rich toolkit.



## Financial Exploitation & Reporting

Learn about financial scams and find the right reporting agency.



## Webinars

Webinars targeted to elder abuse professionals and those interested in elder abuse topics



# POWER OF ATTORNEY BASICS

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- ▶ Power of Attorney for Finances (POA) - legal document used by an individual to allow someone else to manage money and property on their behalf
- ▶ Tool for planning for future incapacity because a trusted person (“agent”) can stand in for an individual (“principal”) who can no longer make/communicate financial decisions
- ▶ “Durable” - continue in effect even after the principal loses the ability to make financial decisions
- ▶ Document lists things agent can do; can be tailored to the needs of the principal
- ▶ Health care power of attorney is different

# WHAT IS POWER OF ATTORNEY ABUSE?

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The many forms of POA abuse:

- ▶ Self-dealing: Agent might spend the individual's money on items for his or her own use rather than for the individual's needs
- ▶ Exceeding scope of intended authority: Agent might do things that the document doesn't allow, such as making gifts when that power hasn't been granted
- ▶ Deviating from the principal's expectations: Agent might have the authority but undermine the principal's plans, e.g. make gifts or transfers that undermine the estate plan
- ▶ POA document itself might be forged or fraudulent in some other way

# WHY IT'S EASY TO COMMIT POA ABUSE

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- ▶ Sometimes known as “license to steal”
- ▶ Broad decision-making authority
- ▶ Lack of monitoring – private arrangement, no court oversight
- ▶ Lack of awareness of risks
- ▶ Delayed detection of abuse



# ROLE OF STATE LAW

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- ▶ State laws prescribe basic requirements (formal requirements like witnessing/notarization, whether it's durable, rules about co-agents, how to revoke....)
- ▶ May have provisions that prevent or limit POA abuse
- ▶ For example, Uniform Power of Attorney Act, adopted in over half the states, permits a third party such as a bank to refuse to honor a POA when abuse is suspected and the third party reports it to an adult protective services agency

# POWER OF ATTORNEY FRAUD AND ELDER FINANCIAL ABUSE



United States Attorney's Office,  
Northern District of Iowa

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# INTRODUCTION

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The Northern District of Iowa

Counties north of approximately Highway 30

Main office in Cedar Rapids

Branch office in Sioux City

Acting U.S. Attorney Sean R. Berry





# ELDER JUSTICE INITIATIVE

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FOR IMMEDIATE RELEASE Wednesday, March 30, 2016

**Department of Justice Launches 10 Regional Elder Justice Task Forces**

**Northern District of Iowa**, Northern District of California, Northern District of Georgia, District of Kansas, Western District of Kentucky, District of Maryland, Southern District of Ohio, Eastern District of Pennsylvania, Middle District of Tennessee and the Western District of Washington.

# ELDER JUSTICE INITIATIVE

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- 17% of lowans are age 65 or older
- 28% of lowans age 65 and older live alone
- 19% of lowans age 65 and older are veterans and 37% of those have a disability

# DETECTING CRIME

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As a practical matter

- Lying,
- Cheating, or
- Stealing



# POA

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- Not always “just a civil matter”
- POAs can be dangerously effective instrument of fraud
- Forging signature/capacity issues
- Gifts to agent; agent not acting in best interest of the principal



# POA

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Mail Fraud: 18 U.S.C. § 1341

Wire Fraud: 18 U.S.C. § 1343

Bank Fraud: 18 U.S.C. § 1344

False Statement to Financial Institution: 18 U.S.C. § 1014

Aggravated Identity Theft: 18 U.S.C. § 1028A

# POA

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To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss to another or bringing about some financial gain to oneself or another to the detriment of a third party.

# POA CASE STUDY NO. 1

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- POA used to defraud disabled elderly widow and nursing home resident of nearly \$500,000; sentenced to 70 months in federal prison on one count of wire fraud.
- obtained POA despite knowing victim clearly lacked capacity to understand actions due to severe cognitive and physical disabilities
- Used POA to drain victim's accounts for own benefit

## POA CASE STUDY NO. 2

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- POA used to defraud elderly disabled veteran and nursing home resident of over \$120,000; sentenced to 27 months in federal prison on one count of wire fraud.
- Victim signed POA form despite obvious cognitive and physical disabilities. Form stated agent could not make gifts to self but did so.
- Victim lost life savings and unable to pay for his nursing home care.

## POA CASE STUDY NO. 3

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- Married couple used two POAs to steal over \$200,000 from husband's elderly mother.
- Spent all of victim's funds for own benefit, and victim could no longer afford assisted living facility, so had to move in with perpetrators.
- Over the next three months, the victim lost over 23 pounds, broke her wrist, and was hospitalized. The victim later died.

# RED FLAGS

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# RED FLAGS

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- Isolation of victim
- Sudden wealth/lifestyle changes: expensive cars, jewelry, homes, clothes
- Behavioral changes: these may be an indication of drugs, alcohol, gambling
- Significant personal debt and credit problems

# RED FLAGS

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- Newly expressed interest in finances, promises to provide care, or ingratiates.
- No visible means of support and overly interested in financial affairs.
- Expresses concern over the cost of caring, or is reluctant to spend money for necessities.



## MORE RED FLAGS

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- Sudden change in financial habits, e.g., bills stop being paid
- Isolates elder. Or at the bank, the elder is accompanied by person who refuses to let speak for himself, or the elder appears nervous or afraid of the person accompanying him or her

# WARNING SIGNS

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- Implausible explanations about finances
- Elder is unaware of or unable to explain the arrangements made.
- Account statements are sent to a relative or caregiver and are not accessible to the elder.

# MORE WARNING SIGNS

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- The elder is concerned or confused about "missing money."
- There are suspicious signatures on the elder's checks, or the elder signs checks and another party fills in the payee and amount sections.
- There is an unusual amount of banking activity, particularly just after joint accounts are set up or someone new starts helping with the elder's finances.

# CONTACT US

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# STATE-LEVEL APPROACHES TO PREVENTION AND RESPONSE

# INVESTIGATION AND PROSECUTION—LOCAL LEVEL

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- ▶ A reported/suspected crime is a crime is a crime... Or is it?
- ▶ Whose case is it? Who initiates and develops it?
- ▶ APS v. elder abuse v. plain-old theft

# CHALLENGES AND BARRIERS

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- ▶ Civil v. criminal (shocker!)
- ▶ Often not a “clean” report
  - Two Minutes: too much story v. too little story
  - Uncertainty or lack of knowledge re: adult’s situation/capacity/ability
  - Suspicion, but maybe not hard facts/the “smell test”
- ▶ No check on refusal to take a report

# CHALLENGES AND BARRIERS

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- ▶ Lack of education/training/empowerment
  - Familiarity with child abuse cases, maybe one or two APS cases—probably neglect
  - Familiarity with DV, but not correlating the two
  - Few, if any, financial crimes cases
  - Applying *standard* investigative techniques
  - Why learn? Retiring/rotating LE; prosecutors with stacks of cases driven by LE-based priorities
  - Defense: “We just don’t have any of these cases.”
  - “Excel, please.”



# CHALLENGES AND BARRIERS

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- ▶ Welfare checks. Let's talk about the "Welfare Check Effect."
- ▶ Lack of knowledge re: witnesses and resources
  - No established process and resource pool for POA abuse as for child abuse and other crimes
  - Capacity and cognitive issues may be trickier to identify and prove
  - Unfamiliar with law re: POA (and that includes the attorneys who prepare POAs)
- ▶ What's the outcome here? What are we doing? Will this help or even matter?

# UNDERLYING ISSUES

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- ▶ **Ageism**
- ▶ Lack of community responsibility and connectedness—not my business/problem/nothing I can do
- ▶ Isolation
  - Adult children move; uninvolved; busy
  - No family/friends
  - Lack of transportation/access
  - Ignored
  - Lifestyle choice/personality

# UNDERLYING ISSUES

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## ▶ Mental health

- Feeling irrelevant/unvalued/without purpose (because it's real)
- Fear of death and loss of opportunity
- Grieving
- Coping with illness or physical limitations
- Fear of losing all independence/dignity
- Stress re: family, money, legacy, mistakes
- Feeling responsible for the way the abuser turned out
- Shame, embarrassment, devastation

# SOLUTION!

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- ▶ ALL-CCR—Abuse in Later Life Coordinated Community Response Team
  - VAWA grant
  - “Enhanced Training and Services to End Abuse in Later Life”
  - Multidisciplinary team PLUS
- ▶ Iowa’s CCR
  - 150+ members
  - Statewide
  - But...who is missing?

## CCR, CON'T.

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- ▶ Training and education
  - Professionals, laypersons, community members
  - Monthly meetings
- ▶ Case studies
  - John Doe v. *all* the John Does
  - Who? What? When? Where? Why? Why not? Can we do better? How? What did we miss? What needs to change?

## CCR, CON'T.

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### ▶ Collaboration

- Talk. Know. Understand. Use. Support.
- Challenge each other--criticism is not a four-letter word (but, first, see above)
- MDTs and other teams/interactive opportunities—open it up!

## CCR, CON'T.

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- ▶ Policy work
  - APS intakes and specialization
  - Court forms and accessibility
  - Why? Why? Why? Why not? Why not? Why not?
- ▶ Legislation (outside of grant!)
  - Review of existing statute and rules
  - Proposed EA legislation
- ▶ Outreach—internal and external

## CCR, CON'T.

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### ▶ Advocacy

- Calling out and counteracting ageism
- Empowering older persons—bringing them to the table and showing them they matter
- Creating and supporting connections between and amongst generations
- Discussing the fear of aging and death and how it shapes our response to abuse victims
- Tough conversations = change



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# QUESTIONS?

If we cannot get to your question today, please e-mail us at [elder.justice@usdoj.gov](mailto:elder.justice@usdoj.gov)