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Assessing Knowledge of Elder Financial Abuse:

A First Step in Enhancing Prosecutions¹

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Abstract

Financial exploitation by a family member is the most common form of elder mistreatment, yet is a difficult crime to detect and prosecute. Psychologists have traditionally assisted prosecutors by assessing decisional capacity and opining in court whether an alleged victim was able to consent to the contested transactions. This paper proposes and evaluates a novel form of psychological expertise in financial abuse trials—social framework testimony to reeducate jurors who are misinformed about aspects of this largely hidden crime. Findings suggest that, as in cases of child and spousal abuse, social framework testimony on the general dispositional and situational factors inherent in elder financial abuse may enhance prosecutions.

Assessing Knowledge of Elder Financial Abuse:

The First Step in Enhancing Prosecutions

In recent years the media have provided lurid examples of financial abuse of prominent elderly victims. The children of J. Seward Johnson Sr.—co-founder of Johnson & Johnson—claimed that his third wife (and former maid) browbeat Johnson into revising his will one month prior to his death, leaving nearly all of his \$500 million fortune to her. The children alleged that their father was not mentally competent at the time he signed his will. In arguably the most notorious case, the 85-year old son of wealthy philanthropist Brooke Astor was sentenced to prison after jurors found him guilty of grand larceny for pressuring Alzheimer’s disease-stricken Astor to change her will. According to a lawyer involved in the trial: “The Astor case is this phenomenon (elder financial abuse) writ large...but maybe not...it just involves bigger numbers or bigger celebrities” (Peltz, 2009).

Indeed, elder financial abuse (EFA) extends well beyond the rich and famous and takes many forms. It includes highly-sophisticated scams perpetrated on large numbers of unwary older adults by telemarketers and online thieves as well as unscrupulous and deceptive business practices. It includes the taking of money, property, or identity by staff in nursing homes, long-term care facilities, and hospitals and the use of deception, coercion, and undue influence to gain the trust of older adults in order to defraud them.

The prevalence and incidence of EFA are hard to gauge. Elder financial abuse leaves no physical mark, is largely hidden from public view, can occur over time and in the context of interpersonal relationships that involve issues of entitlement and familial obligation, can be difficult to distinguish from well-intentioned but misguided advice, and sometimes lurks only in private financial records (Hafemeister, 2003; Rabiner, O’Keeffe, & Brown, 2006). Many

professionals who have contact with older victims (e.g., physicians, nurses, bankers, attorneys, mental health providers) have not been properly trained to recognize the signs of EFA and state laws vary in terms of who is required to report.

The most recent data on the prevalence of financial abuse come from the National Elder Mistreatment Study (Acierno, Hernandez, Amstadter, et al., 2010), a nationally representative sampling of 5777 respondents who answered a telephone survey in 2008. Findings showed that financial mistreatment by a family member was the most common form of elder victimization, experienced by 5.2% of respondents in the previous year. Examples of financial mistreatment involved (in descending order of frequency) a family member who spent the elder's money, did not make good financial decisions, did not give copies, forged signatures, forced respondents to sign documents, and stole money. The likelihood of financial exploitation was associated with low social support and the need for assistance with activities of daily living (ADLs).

Considering the likelihood of vast under-reporting—one researcher estimates that for every known case of financial exploitation, 24 go unreported (Wasik, 2000)—there are millions of victims of EFA per year. A faltering economy only compounds the problem as more adult children move back in with their parents and victimize them. Yet many older adults are unaware that financial exploitation has occurred. Others hesitate to report because they are embarrassed or ashamed, lack understanding of protective and legal processes, are reluctant to inform on family members for fear of reprisal, or are concerned that reporting may lead to their loss of independence (Rabiner et al., 2006).

Complicating this issue is the fact that EFA is defined in a number of ways, and a variety of state laws, involving different reporting requirements and statutory language, are relevant to EFA. Some state statutes recognize the role of undue influence—a process by which a

perpetrator exerts control over a victim so as to commit financial exploitation—and others do not. The result is an inconsistent pattern of identifying, reporting, responding to, and prosecuting instances of financial exploitation.

For these reasons, elder financial abuse is a difficult crime to detect and prosecute. The focus of the current study is on the role of psychological evidence in enhancing the prosecution of EFA.

There are potentially two roles for psychologists knowledgeable about the etiology and consequences of EFA. The first is as forensic evaluators, interviewing and assessing alleged victims to determine their functional and decisional capacity, particularly regarding financial matters (Rabiner et al., 2006). Tests now exist that measure financial capacity, the ability to independently manage one's financial affairs (Griffith, Belue, Sicola, et al., 2003).

Geropsychologists or neuropsychologists who perform these assessments are able to offer victim-specific information to family members, adult protective service professionals, elder law attorneys, prosecutors, jurors, and judges, addressing the question of whether the older adult possessed the cognitive ability to understand and consent to the contested transactions (Wood, 2010).

The second role for psychologists, as experts able to convey information on the general dispositional and situational factors inherent in EFA, prompted the present study. We wondered whether a body of empirical research now exists on which professionals knowledgeable about EFA agree. This type of general information, referred to as social framework evidence (Monahan & Walker, 1988), is based on the results of empirical research studies, rather than forensic examination of any particular individual. Information of this sort can explain how people *generally* tend to respond, behaviorally and emotionally, to particular situations. If

presented in court as expert testimony, it could provide a context in which jurors can evaluate the facts described by witnesses including the alleged victim, family members, and others with personal knowledge of the situation. It could be especially useful in cases in which the victim cannot or will not testify.

With regard to EFA, this social-framework expert testimony might include issues such as the subtle manipulative techniques used by perpetrators in situations of undue influence, as well as the dependency, isolation, lack of social support, and life circumstances that may contribute to an older adult falling victim to EFA. Social framework evidence could also explain why older witnesses sometimes lack clarity and consistency regarding the details of illegal financial transactions, why they tend not to report abuse even when they know it has occurred, and why they may recant or change their testimony. Social framework evidence could be used both in conjunction with a clinician's opinion about the financial capacity of an older adult and in cases where victim-specific evidence is lacking (because the victim is deceased, for example) and thereby provide fact finders with an understanding of the subtle interpersonal dynamics that typify EFA.

Although victim-specific psychological evidence regarding financial capacity is used with some regularity in probate court (e.g., in cases involving wills, trusts, and estates, the testator's mental capacity is sometimes an issue) and occasionally in criminal court, more general social framework evidence has not, to our knowledge, been offered in EFA prosecutions (though certain aspects of this testimony—such as what constitutes undue influence, how it is perpetrated, why victims stay in abusive relationships—may, in conjunction with victim-specific evidence, already be admissible in EFA cases involving undue influence). Yet social framework testimony has been presented in court on several other psychological issues. We describe this

use of “generic” psychological evidence in more detail and ponder its formulation in cases of EFA below.

Social framework information could provide insights to jurors that could affect their decisions regarding a perpetrator’s guilt or innocence, particularly if they are otherwise misinformed or uninformed about these factors. It could also be useful to police, prosecutors, and judges. Although not the focus of this study, social framework information relevant to EFA could affect police officers’ interactions with alleged victims, and prosecutors’ willingness to press charges and pursue lawsuits against alleged perpetrators.

The purpose of the current study was to determine whether there exists a body of social framework information relevant to financial abuse perpetrated on community-dwelling older adults by people whom they know. More specifically, its objective was to assess whether a set of empirically-based statements regarding situational and dispositional characteristics of EFA are endorsed by experts but poorly understood or misunderstood by laypeople. (As we will explain, expert testimony is admissible in court to the extent that it is helpful to the trier of fact, among other things, and demonstrating that jurors lack understanding about an issue suggests that they would be helped by experts.) To determine which characteristics of EFA are agreed upon by experts and not generally known to laypeople, we reviewed the literature on EFA and derived 25 findings that were supported by empirical research studies (e.g., the fact that the majority of perpetrators of elder financial abuse are relatives of the victim). We then asked respondents—both experts and jurors—the extent to which they agreed with each finding. Empirically-based facts about which experts agreed and about which laypeople did not could then constitute social framework evidence whose impact on jurors (as well as police and prosecutors) can be evaluated in subsequent studies.

A few other researchers have examined experts' assessments of factors related to EFA. For example, Kemp and Mosqueda (2005) devised a framework that included eight elements considered important and present in the majority of EFA cases: (1) the presence of a vulnerable elder, (2) a trusting relationship with the perpetrator, (3) isolation and control of the elder and/or transaction, (4) the exertion of undue influences, (5) a lack of concern for the welfare of the older person, (6) a lack of ethics in the transactions, (7) secretiveness, and (8) a change of assets during the period of vulnerability. They presented the framework to professionals with considerable familiarity with EFA and asked these professionals to rate how well the framework matched their experiences. Ninety percent reported that the model very much or almost entirely captured their understanding and experience of EFA. Our goal was to probe a bit deeper into expert knowledge related to EFA, to evaluate whether there is consensus among experts on more specific interpersonal and dispositional precursors to such abuse, and to compare experts' understanding and knowledge with that of laypeople.

Why Elder Financial Abuse is Difficult to Detect and Prosecute

The secrecy involved in financial transactions makes detecting abusive conduct extremely difficult. Financial misconduct can appear as legitimate transactions when there are jointly-held deeds, titles, or bank accounts or when a perpetrator is able to exploit the trust of an older adult through the use of coercive tactics. In fact, perpetrators employ a variety of subtle techniques (i.e., undue influence) to achieve control of victims' decision making.

The likelihood of detecting EFA is related to the extent to which the older adult is isolated and the nature of that person's family, social, and community network. Family members or trusted friends may identify financial exploitation when they discover unpaid bills, valuables missing from the household, or the presence of a new "best friend" or romantic interest (Brandl,

Dwyer, Heisler, et al., 2007). Bank personnel, attorneys, health care providers, and mental health professionals sometimes perceive incongruities in their interactions with victims, as, for example, when bankers notice erratic spending behavior or changes in spending habits or attorneys are asked to make sudden changes to wills or property deeds. But abuse often goes undetected in victims lacking regular and meaningful contact with family members, close friends, or professionals.

Detecting EFA is further complicated by the need to determine whether the elderly person is cognitively, emotionally, or physically compromised such that financial decision making is impaired. Unless older adults are determined to be incompetent they are entitled to make their own financial decisions – even when those decisions are ill-advised (Brandl, 2000).

In the type of EFA on which we focus, there is a pre-existing relationship between the alleged offender—often a family member or caretaker—and the elderly victim. In these situations, investigators must attempt to discern whether the relative or caretaker was acting in good faith, whether the elderly person’s needs were being met, whether trust had been established between the relative or caregiver and the alleged victim, and whether the relative or caregiver had reaped excessive financial rewards from the relationship (Heisler, 2000; Kemp & Mosqueda, 2005; Tueth, 2000). The process of evaluating whether financial abuse has occurred often requires complex and subjective distinctions between legitimate transactions and exploitive conduct, and between honest mismanagement of funds and wrongdoing (Hafemeister, 2003).

For multiple reasons, even when EFA is detected, successful prosecutions are rare (Wilber & Reynolds, 1996). Until recently, it was considered a civil, rather than a criminal matter (Heisler & Stiegel, 2002; Sklar, 1999). Prosecutors are generally not trained to handle cases of EFA and many have little knowledge about elder abuse in general (Hodge, 1998). Cases

tend to lack compelling evidence of abusive behavior or intent. Alleged abusers often assert that the victim consented to the exchange, and investigations require locating and analyzing financial records. In addition, victims sometimes recant their stories, and older adults often make poor witnesses when testifying in court (Hafemeister, 2003).

In recent years though, states have begun to enact specialized criminal statutes under which perpetrators of EFA can be charged, and in some states perpetrators can be prosecuted under criminal laws related to theft, forgery, or false impersonation. For many years, evidence standards were relaxed so that hearsay statements by an older adult were admissible if that person was unable to testify (*Ohio v. Roberts*, 1980), though courts now interpret hearsay exceptions more strictly (*Crawford v. Washington*, 2004). We wondered whether psychological findings related to the social and relational dynamics of EFA could also be admitted into evidence in order to enhance laypeople's understanding of the complex and nuanced nature of this crime.

Admissibility of Expert Psychological Testimony

We discuss issues related to the admissibility of expert testimony because they guided our thoughts about methodology in the present study. For psychological expert evidence to assist jurors in understanding financial exploitation of older adults, that evidence has to meet various standards for admission into court. Hence, we designed our study to assess whether empirical findings regarding EFA meet those standards.

Rules outlining the factors that judges should consider when determining the admissibility of expert testimony have evolved over the years. An early ruling came in the case *Frye v. United States* (1923). The standard that resulted from that case—known as the *Frye test*—requires an assessment of whether there is general consensus about the reliability of a

theory or practice in the relevant scientific community, in which case the judge should admit the evidence. But as more difficult cases began to appear, opponents of the *Frye* test argued that it was preventing new research from being used in trials.

In 1975, new rules pertaining to evidence admissibility, the Federal Rules of Evidence (FRE), were enacted. Under FRE 702, expert testimony is admissible if it can assist the trier of fact—that is, if it is beyond the normal understanding of laypeople. Although this rule was originally applied only to federal courts, all states adapted their own rules of evidence based on the federal rules.

Most recently, the admissibility of expert scientific evidence was addressed in *Daubert v. Merrell Dow Pharmaceuticals* (1993). The *Daubert* standard suggests that for expert testimony to be admissible in court, the expert must provide findings based on reliable scientific methodology. The U.S. Supreme Court defined the criteria for determining whether methodologies were reliable: whether they were based on hypotheses which could be falsified or tested, whether the research was peer-reviewed and published, whether the technique in question had a known error rate, and whether the findings were generally accepted in the scientific community

Importantly, the *Daubert* guidelines only apply to federal cases and although some states have adopted their rules, many states, including the most populous states in the U.S.—New York, Florida, and California—have retained the *Frye* rule (Krauss, Cassar, & Strother, 2009). Analyses of court decisions and appellate opinions concerning the admissibility of scientific evidence show that judges tend not to use the *Daubert* criteria in deciding evidence admissibility, even though *Daubert* is the prevailing law. Rather, judges' decisions are informed by the *Frye* standard related to general consensus concerning reliability (Dixon & Gill, 2002) and by the FRE

requirement that among other things, the evidence must assist the trier of fact (Groscup, Penrod, Studebaker, Huss, & O'Neil, 2002). Hence, we can ask generally whether a body of scientific knowledge regarding EFA now exists, whether there is consensus about its reliability, and whether it can assist the trier of fact—jurors in our study. This is the purpose of our research.

Social Framework Evidence on Psychological Issues

Social framework evidence has been used in cases of child abuse (Kovera & Borgida, 1997; Quas, Thompson, & Clarke-Stewart, 2005), spousal abuse, particularly battered women defendants (Schuller & Jenkins, 2007; although see Biggers, 2005), sexual assault (Raitt & Zeedyk, 2000; although see Boschen, Sales, & Koss, 1998), and employment discrimination (Goodman & Croyle, 1989). In each of these realms, psychological expertise is offered in court to address the seemingly counterintuitive actions of victims prior to, during, and after the incident. Expert testimony of this sort is most likely to be offered if it explains behavior that seems inconsistent with being victimized (Faigman, Kaye, Saks, et al., 2005). Hence, we can look to these realms for guidance on effective ways that psychological research data can be applied to cases of financial abuse and exploitation (Pillemer & Finkelhor, 1988).

Elder financial abuse has features in common with spousal and child abuse. Victims may appear to be willing participants and recant their testimony for many of the same reasons, including a desire to protect the alleged perpetrator. Each of these crimes can be difficult to detect, is typically committed by people known to the victims, and is largely hidden from public view. All often involve on-going relationships between powerful, authoritative figures and more vulnerable individuals dependent on them for security and protection (Brandl, Heisler, & Stiegel, 2005).

The specific purpose of this study was to determine whether there is expert consensus about typical precursors and responses to financial abuse in older adults, and to assess jurors' knowledge of those facts. We suspected that experts would show broad agreement on some aspects of EFA about which jurors would be ill-informed. Such a finding would suggest a role for social framework expert evidence to enhance the prosecution of elder financial abuse.

Method

Participants

Participants came from two populations – “jurors” and “experts.” The juror sample was recruited through the jury pool at the county courthouse of a mid-sized western city. Of the 132 jurors, slightly more than half were female (54.5%) with ages ranging from 20 to 79 ($M = 48.31$, $SD = 14.91$). In terms of educational attainment, the sample was fairly well educated: although 44% had only a high school degree or some vocational training, 26% were college graduates and an additional 30% had completed post-graduate work. Over half of the jurors (56.1%) indicated having no previous knowledge of personal finance, powers of attorney (55.3%), or specialized knowledge of elder abuse (78%). One-fifth (20.5%) of the juror sample reported being a primary caregiver for an older adult. Of that group, only 12.1% reported having some control over the older adults' finances. Jurors were paid \$5.00 to participate in the study.

The expert sample was comprised of researchers, clinical practitioners, policymakers, and law professionals experienced in elder financial abuse. We obtained their names through reviews of relevant literature and from directories listed on the websites of the National Center on Elder Abuse and the National Association of Elder Law Attorneys. We sent email messages that included a link to the survey to 62 individuals and received completed surveys from 28 (45% response rate). Of the 28 experts, more than half were female (57.1%) with ages ranging

between 35 and 62 ($M = 47.91$, $SD = 8.89$). Only 7.1% reported being the primary caregiver for an older adult.

Materials

Based on an extensive review of the literature on EFA, we developed a 25-item questionnaire on which jurors indicated their level of agreement with each statement. Questionnaire items stated the findings about which there appeared to be general consensus in the literature. Topics included examples of EFA, characteristics of typical victims and offenders, offense characteristics, and offender and victim behaviors. In this section we describe the literature supporting 18 questionnaire items on which expert consensus existed.² To eliminate response bias, 8 of those items were worded to correctly state the relevant empirical finding (e.g., “financial victimization of an elder is associated with other forms of elder abuse”) and 10 items were worded to incorrectly state the relevant finding (e.g., “perpetrators of elder financial abuse are most likely to be spouses of elderly person”). For the latter, a correct answer would be “disagree.”

Three questions addressed *examples of EFA*. A critical reason why EFA is underreported is that there are no uniform definitions of this crime among various jurisdictions, making assessment, investigation, and prosecution difficult. Furthermore, financial abuse involves a broad range of offenses including financial mistreatment; fiduciary, monetary, or material abuse; and exploitation by use of manipulative tactics such as undue influence (Brandl, Heisler, &

² Because professional consensus is essentially a pre-requisite for scientific expert testimony and because we were interested in establishing a body of evidence that could be presented by EFA experts, there is no reason to consider further the seven items about which experts did not agree. We describe this decision in further detail in the Results section.

Stiegel, 2007; Hafemeister, 2003; National Clearinghouse on Family Violence, 2001; National Committee for the Prevention of Elder Abuse, 2001) which also leads to underreporting.

Four questions addressed *offense characteristics*. A common method of researching the nuances of EFA involves examining archival evidence in cases that have been reported or prosecuted. In an analysis of case files from an adult protective services program in New York, Choi, Kulick, and Mayer (1999) identified characteristics of EFA including risk factors such as an elder's cognitive impairment and need of assistance with daily activities, as well as the co-occurrence of other types of abuse or neglect. The 2008 National Elder Mistreatment Study (Acierno et al., 2010) found that these variables correlated with the likelihood of financial exploitation within the past year. Jayawardena and Liao (2006) reported financial abuse being the primary precursor to other forms of abuse. In addition, reported cases of EFA show that financial abuse is more likely to be perpetrated against economically poor people as opposed to wealthy people (Choi et al., 1999; Choi & Mayer, 2000), that it occurs more often in residential than in institutional settings (Kosberg & Nahmiash, 1996; Marshal et al., 2000; Moskowitz, 1998), and that it often remains undiscovered until the elder has been depleted of his or her assets (Nerenberg, 2000; Sklar, 2000). These factors, in addition to the presence of undue influence, complicate detection of EFA. For these reasons, few cases of EFA are tried in court (Heisler, 2000; Hwang, 1996; Wilber & Reynolds, 1996; Wasik, 2000).

Four questions addressed *typical offender and victim characteristics*. EFA is frequently linked to family members, trusted caregivers, and close friends. A study conducted by the MetLife Mature Market Institute (2009) reported that 55 percent of all documented cases of EFA are committed by family members and caregivers. Other studies have shown that elderly victims are most often white, widowed women between the ages of 70 and 89 who suffer from some

form of cognitive impairment (Choi & Mayer, 2000; Choi et al., 1999; National Center on Elder Abuse [NCEA], 1998; Quinn, 2000; Sklar, 2000).

Several studies have examined *typical offender and victim behavior* and we included seven questions on that topic. *Offender behavior* includes the use of manipulative tactics such as isolating the victim from friends, family, and other concerned parties (Quinn, 2000; Tueth, 2000; Wilber & Reynolds, 1996). In situations involving offenders who are related to their victims, researchers and practitioners suspect that the offender's drug use and/or financial dependency on the elder family member often coincides with, or perpetuates, the abuse (Dessin, 2000; Hwalek, Neale, Goodrich, & Quinn, 1996; MetLife Mature Market Institute, 2009; Tueth, 2000). While the largest number of reported cases of EFA involves family members, the MetLife study revealed a startling new discovery: that trusted individuals such as financial professionals, attorneys, and fiduciary agents pocketed more money in these crimes than did the relatives of elderly victims.

Characteristics of *victim behavior* have also emerged from the literature. Elder victims are often hesitant to report the abuse to authorities (Choi & Mayer, 2000; Coker & Litter, 1997; Hwang 1996; Kleinschmidt, 1997; NCEA, 1998; Tueth, 2000) and may even be unaware that financial abuse is considered a crime that can be reported (Coker & Little, 1997; Deem, 2000; Wilber & Reynolds, 1996). Furthermore, shame, embarrassment, and a sense of personal responsibility for the abuse reduce the likelihood that an elder victim will report these incidents to authorities (Capezuti, Brush, & Lawson, 1997; Deem, 2000; Nerenberg, 2000). Because of the apparently close, trusting relationship between the victim and exploiter, elderly victims who eventually become aware of the abuse may still experience positive feelings for their perpetrators and not want to see them punished (Malks, Schmidt, & Austin, 2003; U.S. Department of

Justice, 2004). Similarly, victims may feel sympathy for their “captors,” especially when experiencing moments of kindness, even though those offerings of kindness fit with the constellation of behaviors known as undue influence (Quinn, 2000).

Procedure

While awaiting jury selection, juror participants first read and signed the consent form. Next they rated the extent to which they agreed or disagreed with 25 statements using a 6-point Likert-type scale where *1 = strongly disagree* and *6 = strongly agree*. They completed a demographic questionnaire providing information on age, race, educational background, whether they had personal or professional knowledge or experience in finance or various end-of-life legal documents (e.g., advanced directives), whether they had been a primary caregiver for an older adult and if so, whether they were responsible for that person’s finances. They were debriefed and paid \$5 each. Average time to complete the questionnaire was 30 min.

Expert participants were contacted via email and asked to respond to the same 25-item questionnaire online. Experts were also asked about their demographics, work setting, years of employment in their field, and whether they had been a primary caregiver and responsible for and elder’s financial decisions. Following Dillman’s (2000) recommendations for conducting internet surveys, they received a series of email messages over several weeks, reminding them of the study and asking them to participate.

Results

Expert Consensus

Expert consensus is important because if experts do not generally agree about a particular issue related to EFA, then that topic will not be included in their expert testimony, regardless of

what jurors know (or do not know) about that issue. Some admissibility standards related to scientific evidence actually require consensus in the relevant scientific community. So we first asked whether experts tended to agree with our statement of each of the 25 research findings on the questionnaire and planned to omit from further analysis those items on which there was little consensus.

We defined expert consensus as slight, moderate, or strong agreement with a statement that seemed to be supported by the literature and slight, moderate, or strong disagreement with a statement that seemed to lack support. We arbitrarily established that 80% percent agreement with an empirically supported statement or disagreement with an unsupported statement reflected expert consensus. Using this standard, we found consensus on 18 of the 25 (72%) items consistent with our interpretation of the literature on a particular topic. Only these 18 questions were used in subsequent analyses that compared jurors' knowledge with experts' knowledge. These items are shown in Table 1.

Insert Table 1 here

Overall Knowledge of Jurors' Versus Experts'

Admissibility standards also generally require that any proffered expert testimony must assist the trier of fact. Thus, our primary objective was to compare jurors' knowledge on each of these 18 topics with that of experts in order to assess whether jurors could be assisted by expert testimony.

Initial scoring used a strict criterion: we scored as "correct" only those items on which participants (both jurors and experts) marked *Strongly disagree* (1) or *Strongly agree* (6) in the direction consistent with the empirical research. Using this criterion, the mean percent of correct

responses from jurors was 33% and the mean percent of correct responses from experts was 54%. These frequency data are shown in Table 1.

Because some courts use a more lenient standard in assessing whether expert testimony can assist jurors, we conducted subsequent scoring using looser criteria: items marked *moderately disagree/moderately agree* (2, 5) and *slightly disagree/slightly agree* (3, 4) in the direction consistent with the literature were also scored as correct. In other words, participants were deemed to have correct knowledge if they slightly, moderately, or strongly agreed with a statement that was supported by the empirical literature and slightly, moderately, or strongly disagreed with a statement that lacked support. By these criteria, the mean percent correct for jurors was 77% and the mean percent correct for experts was 94%. These data are also shown in Table 1.

Prior to conducting parametric tests, we recoded responses to the 10 items that were incorrectly stated on the questionnaire. (We show these items with an “R” in Table 1). Consequently, for all items, the higher the number on the 1-6 Likert-type scale, the more strongly participants agreed with a correct statement of the research-based finding.

Two univariate analyses of variance (ANOVA) were conducted to assess differences between experts and jurors on the mean number of correct responses using the loose and strict criteria. Using the loose criterion (where an answer of 1, 2, or 3 was “incorrect” and an answer of 4, 5, or 6 was “correct”), we found that the mean number of correct responses was 13.89 for jurors and 16.86 for experts. These scores were significantly different, $F(1, 158) = 42.28, p < .01$, partial $\eta^2 = .21$. The mean number of correct responses using the strict criterion, where 1 equaled “incorrect” and a 6 equaled “correct,” was 6.02 for jurors and 9.57 for experts. These

scores were also significantly different, $F(1, 157) = 25.77, p < .01$, partial $\eta^2 = .14$. Experts' overall knowledge was greater than jurors' with both the loose and strict scoring criteria.

Comparison of Juror and Expert Knowledge on Individual Items

Using the loose criteria, univariate ANOVAs revealed significant differences between jurors and experts on 10 of the 18 items (55%). Using the strict criteria, univariate ANOVAs revealed significant differences between jurors and experts on 5 of the 18 items (28%). Areas in which experts demonstrated significantly greater knowledge than jurors included statements involving examples of EFA, offense characteristics, victim characteristics, offender behavior, and victim behavior. On 11 of the questions, the variability among experts' scores was less than that of jurors. These findings are shown in Table 2.

Insert Table 2 here

Predictors of Correct Responses

We conducted standard multiple regressions to assess whether any of the demographic variables predicted total correct responses for jurors and experts. For both groups, we included gender, age, and level of education in the model. For the juror sample, we included participants' report of specialized knowledge about personal finance, elder abuse, and power of attorney, whether the participant had been a primary caregiver for an older adult and whether that involvement had entailed control over the older adult's finances. The overall regression for the jury group was significant ($F = 4.891 [8, 123], p < .001$) with demographic variables accounting for 24% of the variance in total correct responses. Level of education (beta = .42, $p < .001$) and responsibility for an elder's finances (beta = .17, $p < .05$) had statistically significant effects on the total number of correct responses. The overall regression for the expert group was not significant ($R = .22, F = 1.290 [5, 22], p = .30$).

Discussion

This study addressed factors related to expert testimony in cases of elder financial abuse. It evaluated whether empirical research that could form the basis of social framework evidence is generally accepted within the professional community and whether such testimony could assist jurors in understanding the evidence and reaching informed judgments in cases of financial exploitation. These issues—general acceptance and jury assistance—are typically considered by judges in determining whether expert testimony is admissible in trials.

Consensus among the experts was strong on 18 of 25 questionnaire items. The 18 items were related to examples of elder financial abuse (e.g., forging an older person's signature), offense characteristics (e.g., financial victimization of an elder is associated with other forms of elder abuse), offender and victim characteristics (e.g., the majority of perpetrators are relatives of the victim), and offender and victim behavior (e.g., offenders often claim that the older adult consented to the suspicious transaction; the elder person may not realize that financial abuse is a crime that can be reported).

There was less consensus among the experts on issues related to victim characteristics (e.g., that white elderly females are at greater risk for financial abuse than are minority females and white or minority males; that a victim's understanding of interactions with an alleged perpetrator is an important factor in determining whether elder financial abuse occurred; and that if asked to testify in court, older adults are less likely to provide credible and consistent statements.) In addition, there was a lack of consensus on some items pertaining to offense characteristics (e.g., that elder financial abuse is more likely to occur to economically poor people than to wealthy people; that old age alone is not a risk factor for financial abuse; that caregiver stress is a common precursor to elder abuse; and that determining an elderly person's

ability to make complex financial decisions requires an evaluation by a physician or mental health professional).

One explanation for the lack of consensus among experts centers on the sources of information about EFA. As noted previously, many cases of EFA go unreported (Nerenberg, 2000). Those cases that eventually come to the attention of researchers do so primarily through retrospective studies (Heisler & Stiegel, 2002) and the facts in these cases may not be representative of elder financial abuse cases more generally. This means that findings presented in the scientific literature may not exactly mirror the experiences of practitioners. In addition, the information is obtained primarily through self-report, a potentially unreliable technique if some victims suffer cognitive impairment or undue influence, causing them to be confused or not forthcoming about what happened.

A second objective of this research was to assess whether expert testimony could assist jurors who may be uninformed or misinformed about aspects of EFA. To determine whether expert testimony could assist jurors, we measured their knowledge of various components of EFA and compared their responses with those of experts on items for which expert consensus was reached.

Results indicated that relative to experts, jurors are not well informed on several issues for which there was consensus among experts. Jurors were less knowledgeable than experts that (a) coercing or deceiving an older person into signing a document is considered EFA; (b) unlike physical abuse, financial abuse is often not discovered immediately; (c) EFA most commonly occurs in residential settings rather than in institutional or long term care facilities; (d) most reported cases are *not* tried in court; (e) the majority of perpetrators of EFA are relatives of the victim and (f) unlikely to be spouses; (g) victims of EFA are less likely than domestic violence

victims to be married; (h) drug usage is associated with perpetrators of EFA; (i) most elderly victims do not report the abuse to the authorities; and (j) do not want to see the offender punished.

Jurors tend to evaluate trial evidence in the context of their pre-existing knowledge and experiences (Smith, 1991) and those who bring misconceptions into the deliberation room may contribute to unjust verdicts. Although our findings showed that jurors with more education and those with experience caring for older adults tended to be more knowledgeable about these issues than others, the variability among jurors' responses suggests that without expert evidence, they may have some difficulty agreeing on whether the allegations constitute a crime.

Although results support the conclusion that relative to experts, jurors have limited knowledge with regard to EFA, there are indications that jurors are well informed about *some* issues. For example, a large majority correctly indicated that cashing an elder person's check without authorization or permission and forging an older person's signature are both considered forms of elder financial abuse; that perpetrators often isolate the elderly victim from friends, family, and other concerned parties; that offenders often claim that the older adult consented to the suspicious transaction; and that the elder person may not realize that financial abuse is a crime that can be reported. Based on our findings, expert testimony on these factors may be unnecessary as jurors already have correct understanding.

Some limitations to these data should be acknowledged. First, the juror survey was conducted in one mid-sized city and at one point in time. Knowledge and attitudes about EFA may vary by location and grow as more cases come to light. Furthermore, brief questionnaire items obviously do not tap decision making processes used by laypeople in the context of an actual trial where aspects of EFA are embedded in a rich narrative nor the possibility that, during

deliberation, a few jurors who are correctly informed on a given point can persuade the misinformed minority. We were necessarily selective in the EFA-related topics we studied and the way we studied them. Although we attempted to extract from the literature the most well-established findings and assess knowledge of these findings, our survey was not an exhaustive measure of attitudes and beliefs surrounding EFA. Finally, some of the issues we examined, including characteristics of perpetrators, may be deemed overly-prejudicial because they suggest that the offender fits the profile of an elder abuser. Subsequent studies should focus more directly on the thoughts and behaviors of victims, including why they are hesitant to report and to cooperate with police and prosecutors, why they remain in abusive relationships, etc.

The strength of the study is that it is the first to examine perceptions of EFA among laypeople, researchers, and clinicians alike. Our findings suggest that expert testimony on selected topics involving EFA could assist jurors by informing them about techniques used to manipulate elders in situations of undue influence, as well as social and personal circumstances that may lead an older adult to fall victim to, hesitate to report, and then recant allegations of EFA. Our results also raise the intriguing possibility that similar data could be collected and social framework expert testimony be formulated on the complex interpersonal dynamics of sexual assault and neglect of elderly victims (crimes in which the defense is frequently consent and self-neglect, respectively). In short, the methodology we have established here could be extended to a number of other crimes involving elderly victims with the possibility of further enhancing prosecutions.

Studies have shown that jurors have inaccurate perceptions regarding aspects of both child abuse (Quas et al., 2005) and spousal abuse (Dodge & Greene, 1991) and that expert testimony can effectively reeducate them about psychological issues related to these crimes

(Cossins, 2008; Schuller, McKimmie, & Janz, 2004). The commonalities between these crimes and elder abuse suggest that psychologists could also assist jurors and legal professionals in understanding the latter. As the population of older adults grows, financial abuse—already the most prevalent form of elder mistreatment—may become as widespread and concerning to legislators, policymakers, and the public as child and spousal abuse. Our findings suggest that as the research literature continues to mature, experts in elder financial abuse may be increasingly able to formulate opinions based on reliable data and supply valuable information to assist jurors in cases involving these largely hidden crimes and vulnerable individuals.

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Table 1

Percent correct for jurors and experts using loose and strict criteria for the 18 items on which there was expert consensus

Item	% Correct Jurors		% Correct Experts	
	Strict	Loose	Strict	Loose
Examples of Elder Financial Abuse				
Cashing an elder person’s check without authorization or permission is an example of elder financial abuse.	87.1	93.2	64.3	100
Coercing or deceiving an older person into signing a document is not considered to be elder financial abuse. R	78.8	80.3	92.9	100
Forging an older person’s signature is considered elder financial abuse.	79.5	95.5	67.9	92.9
Offense Characteristics				
Financial victimization of an elder is associated with other forms of elder abuse.	30.3	85.6	35.7	85.7

Table 1 (continued).

Item	% Correct Jurors		% Correct Experts	
	Strict	Loose	Strict	Loose
Much like physical abuse, financial abuse is often discovered immediately following the offense. R	38.6	81.1	67.9	96.4
Most reported cases of elder financial abuse are tried in court. R	32.6	78.8	78.6	96.4
Elder financial abuse most commonly occurs in institutional or long term care facilities rather than in residential settings. R	14.4	75	67.9	100
Offender Characteristics				
Most financial abusers of the elderly are bankers or real estate agents. R	20.5	68.2	64.3	89.3
The majority of perpetrators of elder financial abuse are relatives of the victim.	21.2	81.8	42.9	100
Perpetrators of elder financial abuse are most likely to be spouses of elderly person. R	18.2	72.7	46.4	96.4

Table 1 (continued).

Item	% Correct Jurors		% Correct Experts	
	Strict	Loose	Strict	Loose
Victim Characteristics				
Victims of elder financial abuse are as likely to be married as are victims of domestic violence. R	4.5	52.3	21.4	82.1
Offender Behavior				
Perpetrators often isolate the elderly victim from friends, family and other concerned parties.	40.9	91.7	64.3	96.4
Drug usage is not typically associated with perpetrators of elder financial abuse. R	7.6	49.2	25	82.1
Offenders often claim that the older adult consented to the suspicious transaction.	47.7	90.9	67.9	96.4

Table 1 (continued).

Item	% Correct Jurors		% Correct Experts	
	Strict	Loose	Strict	Loose
Victim Behavior				
Most elder victims of financial abuse want to see the offender punished. R	7.6	36.4	25	85.7
Many elder victims of financial abuse believe they are at least partially to blame for their financial losses and are responsible for the consequences.	12.9	83.3	28.6	92.9
Most elderly victims of financial abuse report the abuse to authorities. R	25.8	79.5	60.7	100
The elder person may not realize that financial abuse is a crime that can be reported.	29.5	93.9	42.9	92.9
Overall Mean Percent Correct	33.2	77.2	53.6	93.6

Table 2

Juror and expert mean responses and standard deviations (on 1-6 Likert-type scale where 1 = Strong agreement with incorrect statement and 6 = Strong agreement with correct statement)

Item		Juror	Expert
Examples of Elder Financial Abuse			
Cashing an elder person's check without authorization or permission is an example of elder financial abuse.	<i>M</i>	5.62	5.64
	<i>SD</i>	1.20	0.49
Coercing or deceiving an older person into signing a document is not considered elder financial abuse. R	<i>M</i>	5.04 ^a	5.89 ^b
	<i>SD</i>	1.91	0.42
Forging an older person's signature is considered elder financial abuse.	<i>M</i>	5.59	5.46
	<i>SD</i>	1.04	1.00
Offense Characteristics			
Financial victimization of an elder is associated with other forms of elder abuse.	<i>M</i>	4.66	4.64
	<i>SD</i>	1.28	1.47
Much like physical abuse, financial abuse is often discovered immediately following the offense. R	<i>M</i>	4.81 ^c	5.54 ^d
	<i>SD</i>	1.32	0.79
Elder financial abuse most commonly occurs in institutional or long term care facilities rather than in residential settings.	<i>M</i>	4.19 ^a	5.46 ^b
	<i>SD</i>	1.28	0.74
Most reported cases of elder financial abuse are tried in court. R	<i>M</i>	4.70 ^c	5.64 ^d
	<i>SD</i>	1.28	0.99
Offender Characteristics			
Most financial abusers of the elderly are bankers or real estate agents. R	<i>M</i>	4.29	5.29
	<i>SD</i>	1.33	1.30
The majority of perpetrators of elder financial abuse are relatives of the victim.	<i>M</i>	4.42 ^c	5.29 ^d
	<i>SD</i>	1.24	0.71
Perpetrators of elder financial abuse are most likely to be spouses of elderly person. R	<i>M</i>	4.27 ^c	5.28 ^d
	<i>SD</i>	1.33	0.81

Table 2 (continued)

Item		Juror	Expert
Victim Characteristics			
Victims of elder financial abuse are as likely to be married as are victims of domestic violence. R	<i>M</i>	3.47 ^a	4.50 ^b
	<i>SD</i>	1.31	1.26
Offender Behavior			
Perpetrators often isolate the elderly victim from friends, family and other concerned parties.	<i>M</i>	5.05	5.43
	<i>SD</i>	1.10	1.07
Drug usage is not typically associated with perpetrators of elder financial abuse. R	<i>M</i>	3.52 ^a	4.43 ^b
	<i>SD</i>	1.40	1.35
Offenders often claim that the older adult consented to the suspicious transaction.	<i>M</i>	5.09	5.61
	<i>SD</i>	1.24	0.93
Victim Behavior			
Most elder victims of financial abuse want to see the offender punished. R	<i>M</i>	3.04 ^a	4.71 ^b
	<i>SD</i>	1.52	1.33
Many elder victims of financial abuse believe they are at least partially to blame for their financial losses and are responsible for the consequences.	<i>M</i>	4.31	4.86
	<i>SD</i>	1.21	0.93
Most elderly victims of financial abuse report the abuse to authorities. R	<i>M</i>	4.56 ^c	5.54 ^d
	<i>SD</i>	1.30	0.64
The elder person may not realize that financial abuse is a crime that can be reported.	<i>M</i>	5.03	5.14
	<i>SD</i>	0.93	0.93

Note. Reverse-coded statements are shown with an **R**. Within rows, means with superscripts ^{ab} are significantly different using the strict criterion and means with superscripts ^{cd} are significantly different using the loose criterion ($p < .05$).