



# What Judges Should Know About Elder Abuse

AUGUST 10, 2018

DEPARTMENT OF JUSTICE  
**ElderJustice**  
INITIATIVE



**OVCTTAC**  
OFFICE FOR VICTIMS OF CRIME Training and Technical Assistance Center



# TECHNICAL OVERVIEW

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- ▶ If you are experiencing any technical issues with the audio for this session, please let us know in the feedback box.
- ▶ If you have technical difficulties during the webinar, contact Jason Adams, who is providing technical support for this webinar. His email address is [jadams@ovcttac.org](mailto:jadams@ovcttac.org).
- ▶ Today's session will be recorded and made available on the training website.
- ▶ If you have questions, type them in the feedback box. We will address as many as possible throughout the webinar.

# ELDER JUSTICE INITIATIVE

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The **mission** is to support and coordinate the Department of Justice's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target older adults.

The Initiative does so by—

- Promoting justice for older adults.
- Helping older victims and their families.
- Enhancing state and local efforts through training and resources.
- Supporting research to improve elder abuse policy and practice.

# ELDERJUSTICE.GOV

## You're fighting elder abuse on the front lines. We've got your back.

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.



# PRESENTER

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**Hon. Karen Aileen Howze**

Judge-in-Residence

National Council of Juvenile and  
Family Court Judges

# What Judges Should Know About Elder Abuse

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AUGUST 10, 2018

HON. KAREN HOWZE (RET.)

*JUDGE-IN-RESIDENCE*

*NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES*

# Learning Objectives

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**As a result of this webinar, you will be better able to:**

- ✓ Identify the signs of elder abuse.
- ✓ Understand the dynamics of elder abuse to fashion appropriate relief to meet the safety needs of individual victims.
- ✓ Discuss, promote, and lead efforts to address abuse later in life in your courts and community.

# The Numbers and a Few Facts

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- ✓ Population of older Americans is expanding—one in five Americans will be a senior citizen by 2030.
- ✓ In the past century, life expectancy has increased by almost 30 years.
- ✓ Just as domestic violence is underreported in the general population, abuse of elders is also underreported for many reasons.
- ✓ Seniors are almost as likely to be stalked as younger people (Jasinski & Dietz, 2003).
- ✓ Seniors' voices are often left out of the national conversation.

# The Numbers and a Few Facts

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Older women are more likely to be assaulted in their homes than younger women. (Ekert & Sugar 2008).

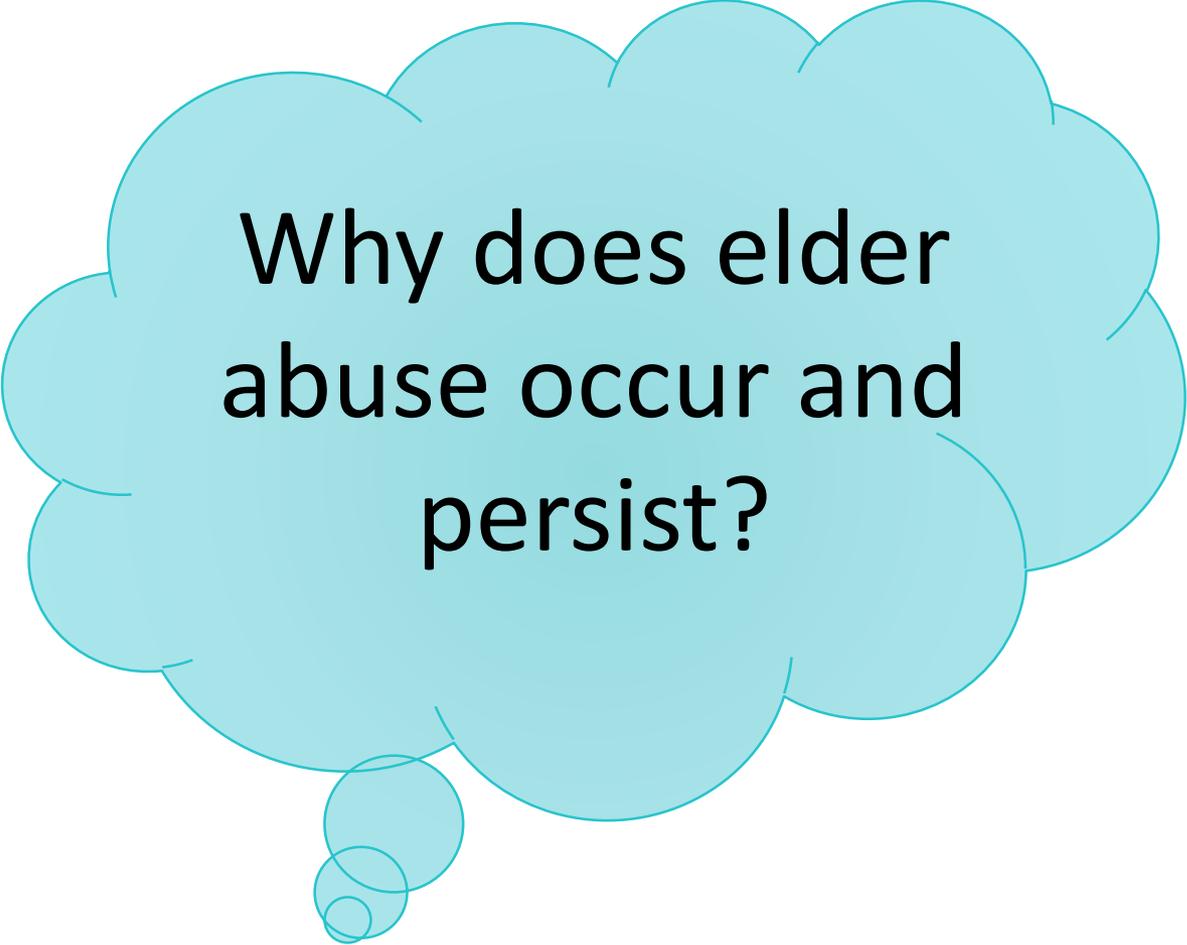
Older women are more likely to be sexually assaulted by family and caregivers than by strangers.

Older women victims of sexual assault are more likely to sustain physical injury in addition to psychosocial injury.

Senior incest victims are often dependent upon the abuser for care, and many abusers depend on the elder for housing.

Elder victims of sexual assault are commonly disbelieved due to misconceptions about age/capacity and due to ageist assumptions.

<b>Signs of Alzheimer's and Dementia</b>	<b>Typical Age-Related Changes</b>
Poor judgement/decisionmaking	Making a bad decision once in a while
Inability to manage a budget	Missing a monthly payment
Losing track of the date or the season	Forgetting what day it is and remembering it later
Difficulty having a conversation	Sometimes forgetting which word to use
Misplacing things and being unable to retrace steps to find them	Losing things from time to time



Why does elder  
abuse occur and  
persist?

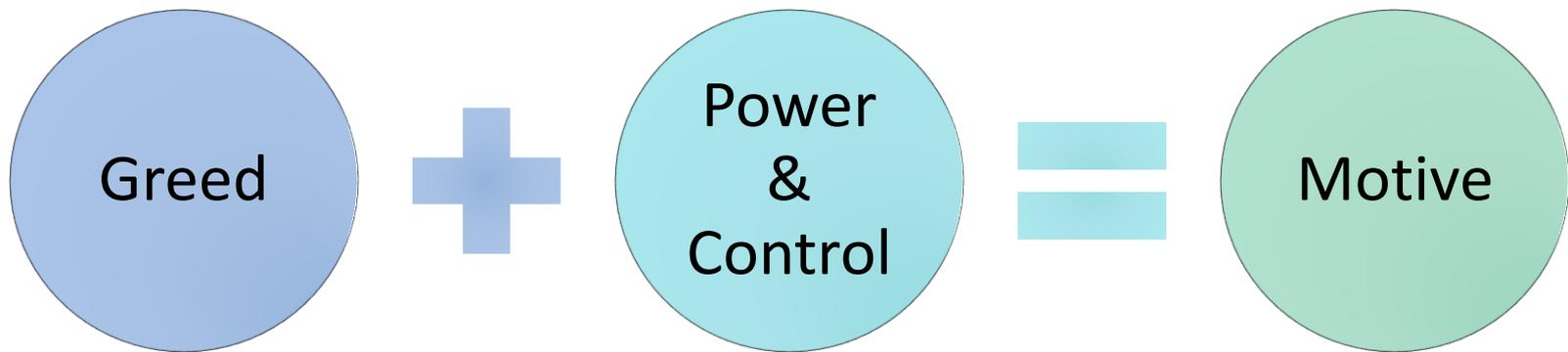
# How Are Older People Harmed?

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- ✓ Accidents.
- ✓ Well-intended caregivers.
- ✓ Contact with persons with physical or mental health conditions that manifest in aggressive behavior.
- ✓ Elder abuse: physical, emotional, sexual, neglect, etc.

# Individual Actions

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# Common Abuser Justifications and Excuses

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SECTION 2

# Caregiver Stress

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- ✓ Providing care can be stressful.
- ✓ Sometimes the stress is overwhelming and can lead to problems.
- ✓ Caregivers often experience overeating, lack of sleep, depression, etc.

## Abuse vs. Caregiver Stress

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# **Caregiver Stress is Not a Cause of Elder Abuse.**

Abusers use caregiver stress as an excuse to justify their behavior so they will not be held accountable and to create sympathy for themselves.

## Abuse vs. Caregiver Stress (2)

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- ✓ Everyone experiences stress—most do not abuse, neglect, or exploit a parent or partner.
- ✓ The target is the older adult, not just anyone.
- ✓ Generally, there is a pattern—not an isolated incident.
- ✓ We would not tolerate similar circumstances with children or pets.

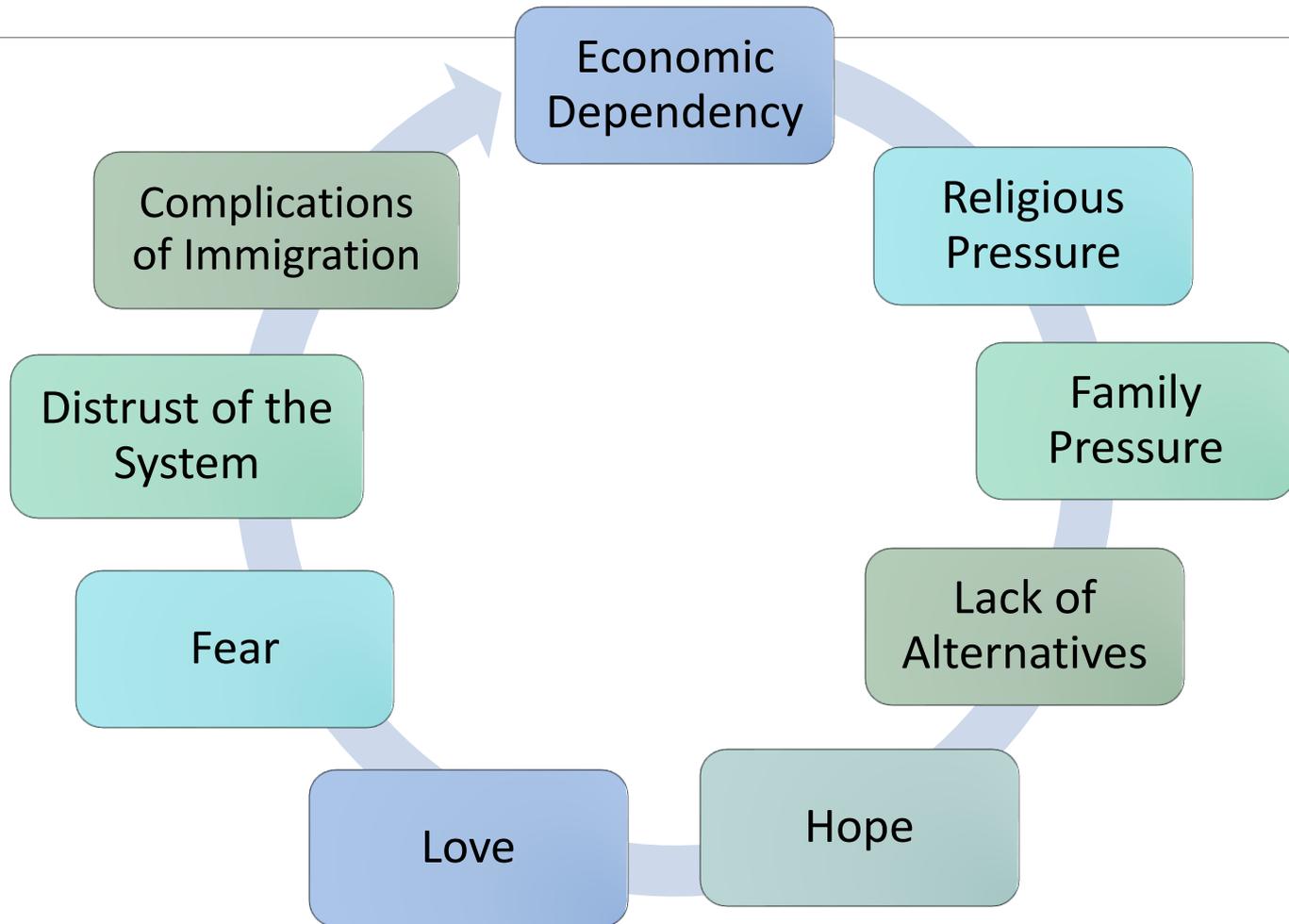
# Abusers Create Smoke and Mirrors

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## **Abusers often—**

- ✓ Lie
- ✓ Manipulate
- ✓ Charm
- ✓ Justify their behavior
- ✓ Blame the victim and others

# Abusers Exploit Vulnerabilities



# What Are Judges Looking For?

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SECTION 3

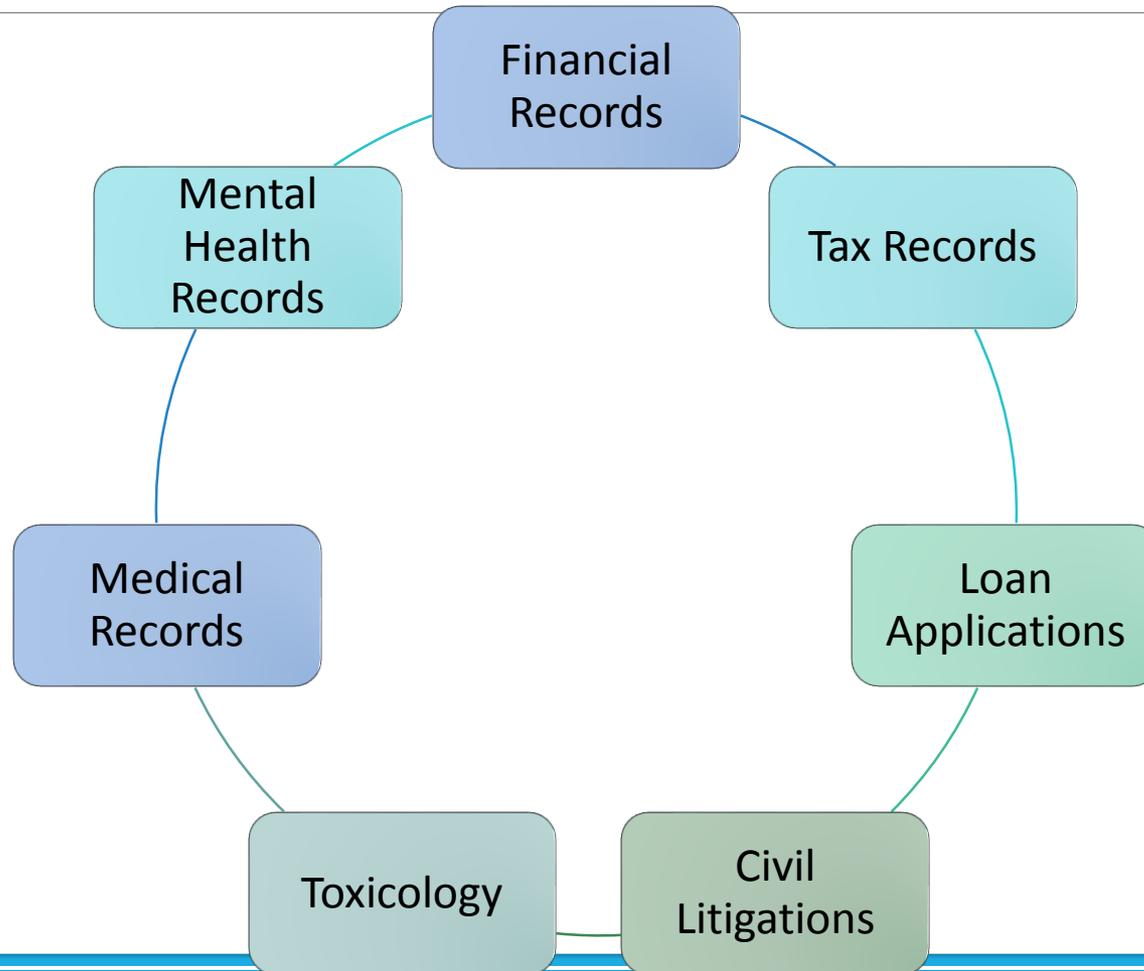
# Undue Influence

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A pattern of manipulative behaviors that enable an exploiter to get a victim to do what an exploiter wants, even when the victim's behaviors are contrary to his or her previous beliefs, wishes, and actions.

# Evidence of Undue Influence

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# Evidence of Capacity

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- ✓ Capacity: Continuum of decisionmaking abilities
- ✓ Capacity is situational: What is happening now?
- ✓ Capacity is contextual: What is the context of this person's life?
- ✓ Varies by complexity of the task to be done or decision to be made.
  - The more significant the decision and the consequences of the decision, the higher the level of capacity required.

# Capacity (2)

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**Mental capacity includes the ability to—**

- ✓ Think clearly
- ✓ Recall accurately
- ✓ Organize thoughts
- ✓ Express thoughts through communication
- ✓ Plan and execute actions

# Capacity (3)

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- ✓ Capacity can fluctuate.
  - Medical condition, illness
  - Medication
  - Time of day
  - Events in a person's life, e.g., grief, loneliness
- ✓ Experience and education may be related to the ability to understand complex financial transactions.
  - Literacy and the extent of education may be related to the ability to understand complex financial transactions.
  - Language capacity may be relevant to the ability to understand these transactions.

# Deciding Capacity

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- ✓ Requires an expert's assessment
- ✓ Focuses on a person's abilities
- ✓ Presumption of capacity
- ✓ Courts must—
  - Fact find with competent evidence
  - Determine capacity
  - Incapacity: Tailor a guardianship that is based on the individual's capacity, is appropriate, safe, and respects the elder's wishes.

## Deciding Capacity (2)

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### **If the person has capacity—**

- ✓ Court may suggest other community resources to assist the elder.
- ✓ Presence of undue influence? *Court may seek information about the degree to which the subject is making decisions that are contrary to long-held patterns of behavior or beliefs.*

# Self-Neglect

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- ✓ Self-neglect occurs when a person fails to meet his or her own physical, psychological, and/or social needs.

# Self-Neglect (2)

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## **Signs include—**

- Dehydration
- Malnutrition
- Hypothermia/hyperthermia
- Excessive dirt or odor
- Hazardous, unsafe, or unclean living conditions
- Inadequate or inappropriate clothing
- Absence of needed eyeglasses, hearing aids, dentures, or prostheses
- Unexpected or unexplained deterioration of health
- Bedsores
- Signs of excessive drugging
- Refusal to take medication or other drug misuse

# Abuse or Self-Neglect?

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- ✓ The danger for courts is to mistake these symptoms as self-neglect when they can be indicative of abuse. The distinction will impact the appropriateness of interventions.
- ✓ Intervention in cases of self-neglect must always recognize the rights of elders.
- ✓ When legal considerations have been respected, family, community and social services, and health care interventions can, in many cases, help make the situation better.

# Guardianships

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If the judge determines that a subject lacks capacity, you must then consider **all** of the options to best preserve the elder's dignity, keep the person safe, and protect his or her interests, whether financial or physical.



# Remember the Capacity Concepts

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Capacity is situational



Capacity is contextual



Varies by complexity of the task or decision

# Balancing Protection with Autonomy in Guardianship Cases

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## **The goals in these cases are—**

- ✓ Balance well-being with rights.
- ✓ Promote self-determination.
- ✓ Provide guidance to guardians.
- ✓ Make determinations of restoration.
- ✓ Prevent undue influence.

# Victim Safety and Autonomy in Protection Order Cases

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- ✓ No easy answers!
- ✓ When considering whether to drop a protection order:
  - Consider modifying the order to better meet the petitioner's specific needs.
  - Provide an explanation if issuing the order against the petitioner's wishes.
  - Consider each request individually; avoid the per se rule.
- ✓ Ensure that petitioners have multiple opportunities to obtain advocacy, from filing of the petition through the entire course of proceedings.
- ✓ Success = safety. And success is what each victim defines it to be.

# What Judges and Court Personnel Should Know

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## SECTION 4

# Institutional Accountability: What Can Courts Do?

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- ✓ Adapt court culture to meet the needs of the individual to ensure access to justice.
- ✓ Consider—
  - Is it safe for the victim to be in the courtroom?
  - Is the signage adequate throughout the court?
  - Are forms in large fonts?
  - Are the interpreters being used appropriate for the case?
  - Are there any special accommodations needed (oxygen, hearing assistance, where is it best for the elder to sit to maximize access, etc.)?

# Accommodations

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- ✓ Consider relocating services and hearings to someplace accessible, even the victim's home.
- ✓ Change the time of hearings.
- ✓ Provide aides or personal assistants or allow already assigned aides to remain with the elder throughout the hearing.
- ✓ Reposition parties in the courtroom when necessary, **even the judge!**

# Coordinated Community Response to Elder Abuse

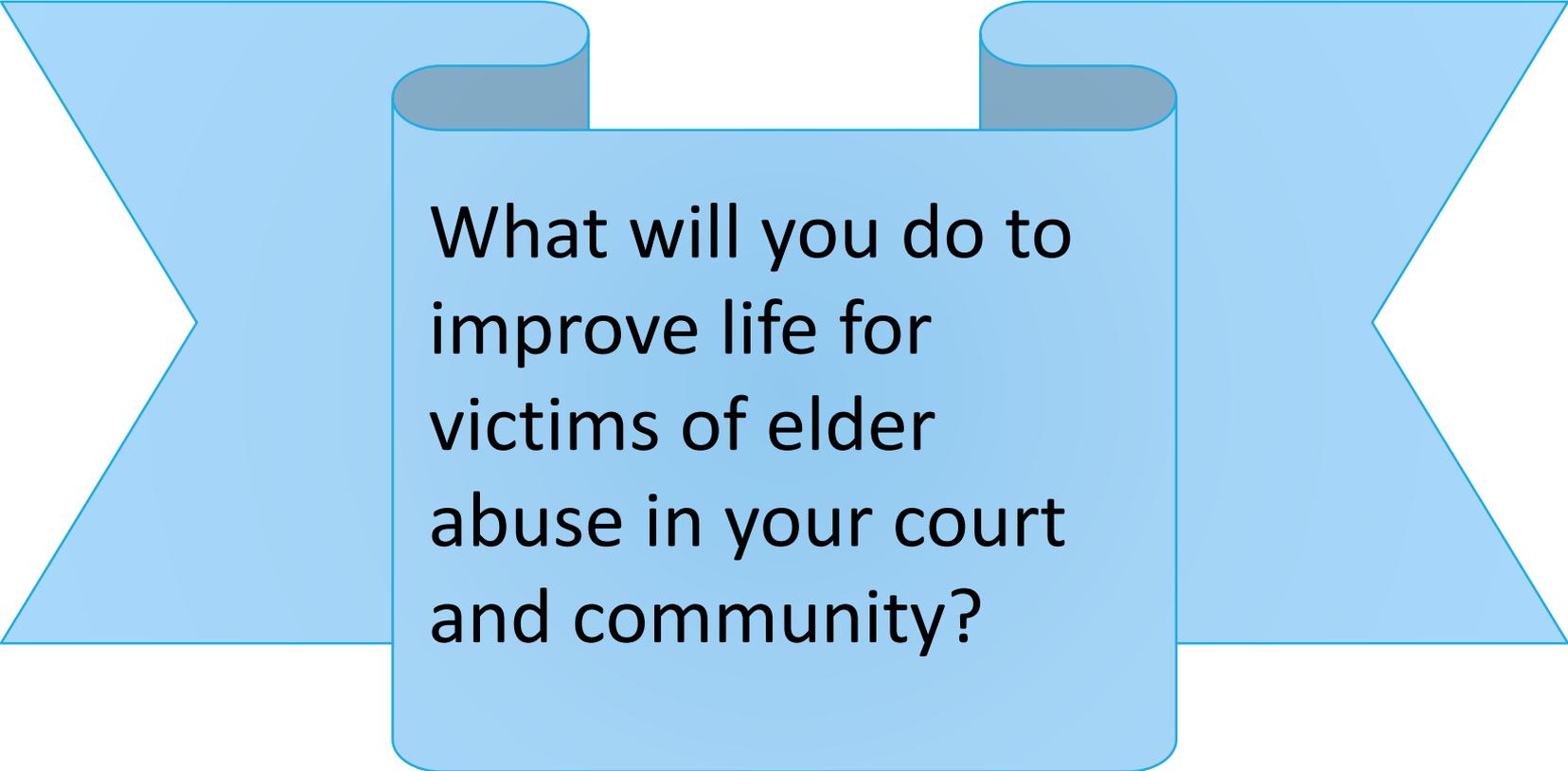
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- ✓ Elder abuse cases are complex and demand that professionals and community members identify solutions, services, and responses that are least restrictive, and promote victim safety and autonomy.
- ✓ Multidisciplinary collaborations can prove most effective because of the increased array of resources, coordination of effort, and shared knowledge of all who are responding to the needs of older adults.
- ✓ Judges should consider promoting—and even leading—the creation of such teams in their communities.

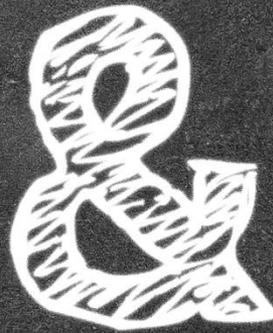
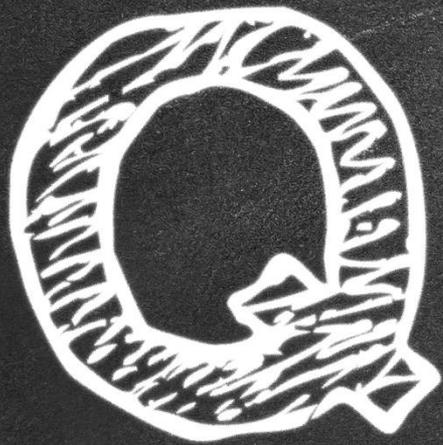
# Coordinated Community Response to Elder Abuse (2)

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- ✓ Adult Protective Services
- ✓ Advocacy (program- and system-based)
- ✓ Aging services
- ✓ Financial institutions
- ✓ Housing
- ✓ Community organizations
- ✓ Health care (including public health)
- ✓ Courts
- ✓ Law enforcement (prosecutors, police)
- ✓ Defense bar (criminal and civil)
- ✓ **Anyone else?**



What will you do to improve life for victims of elder abuse in your court and community?



# Thanks for Joining the Webinar

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NATIONAL JUDICIAL INSTITUTE  
ON DOMESTIC VIOLENCE

The NJJDV is a partnership of Futures Without Violence, the National Council of Juvenile and Family Court Judges, and the Office on Violence Against Women, U.S. Department of Justice.

# Questions

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**Elder Justice Initiative**

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