

PARTICIPANT MANUAL



Investigating APS Criminal
Cases: An Advanced Course



Creating experiences that transform the heart, mind and practice.



This training was developed by the Academy for Professional Excellence, with funding from the California Department of Social Services, Adult Programs Division.



**Curriculum Developer, 2018
Candace Heisler, JD**

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INTRODUCTION

THE ACADEMY FOR PROFESSIONAL EXCELLENCE

We are pleased to welcome you to the Investigating APS Criminal Cases: An Advanced Course Participant Manual, developed by APSWI, a program of the Academy for Professional Excellence under a grant from the California Department of Social Services, Adult Programs Division.

The Academy for Professional Excellence, a project of San Diego State University School of Social Work, was established in 1996 to provide exceptional workforce development and organizational support to the health and human services community by providing training, technical assistance, organizational development, research, and evaluation. Serving over 20,000 people annually, the Academy continues to grow with new programs and a diversity of training focused on serving the health and human services community in Southern California and beyond.

The Academy is a project of San Diego State University School of Social Work (founded in 1963), which offers both a bachelor's and master's degree in Social Work. The School of Social Work at San Diego State University was founded in 1963 and has been continuously accredited by the Council of Social Work Education since 1966.

APSWI (Adult Protective Services Workforce Innovation) is a program of the Academy for Professional Excellence. APSWI is designed to provide competency-based, multidisciplinary training to Adult Protective Services professionals and their partners. APSWI's overarching goal is the professionalization of Adult Protective Services professionals to ensure that abused and vulnerable older adults and adults with disabilities receive high quality, effective interventions and services. In partnership with state and national organizations, APSWI has developed a nationally recognized Core Competency Training Curriculum for Adult Protective Services professionals. This curriculum is reviewed and approved by experts in the elder and dependent adult abuse fields.

APSWI's partners include:

- National Adult Protective Services Association (NAPSA) Education Committee
- California Department of Social Services (CDSS), Adult Programs Division
- County Welfare Directors Association of California (CWDA), Protective Services Operations Committee (PSOC)

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Agencies

California Department of Social Services, Adult Programs Division
County of Los Angeles Workforce Development, Aging and Community Services
Orange County Social Services Agency
Riverside County Department of Public Social Services
San Bernardino County Department of Aging and Adult Services
County of San Diego Aging & Independence Services

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Committees

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National Adult Protective Services Association Education Committee
Protective Services Operations Committee of the County Welfare Directors Association of California

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Executive Summary

Course Title: *Investigating APS Criminal Cases: An Advanced Course*

This interactive and challenging training course is designed to advance skills learned in the Module 22 Core Curriculum about responding to criminal cases in ways that serve the program needs of APS, serve and assist clients, and support a criminal prosecution in appropriate cases. The goal is **not** to make APS professionals part of the Criminal Justice System but to better prepare participants to recognize, document, and support cases in which a client has been the victim of a crime. How APS handles its investigation can profoundly affect whether a crime can be prosecuted. This course is intended to better prepare APS for such situations, including when APS professionals are called to testify as witnesses in various types of courts.

The following instructional strategies are used throughout the course: short lectures (lecturettes), interactive activities/exercises including individual, class and small group discussions; many which are built around case studies, PowerPoint slides, the Participant Manual which encourages interaction with the course content, resource material, and applications for use in practice, and video clips to stimulate discussion and skill development.

Course Requirements:

This course was specifically designed to build upon concepts explored and mastered in NAPSA Core Curriculum Module 22. Participants should complete Module 22 (ILT or eLearning) prior to attending this course which is available at <https://theacademy.sdsu.edu/programs/apswi/core-competency-areas/>.

Experienced APS professionals with at least 18 months of field experience who have worked with the Criminal Justice System may have sufficient expertise to benefit from this Advanced Course. Those individuals should complete the Core Curriculum or complete the Self-Assessment found at <https://theacademy.sdsu.edu/programs/apswi/advanced-training/investigating-aps-criminal-cases-ilt/> to assure that they have the foundational information required for this Advanced Course. *Please note that all participants are expected fully to participate in a variety of class activities designed to enhance the learning experience and reinforce the content as well as to evaluate the effectiveness of the content.*

Target Audience:

This course is designed for APS professionals, including Supervisors and Training Staff who have completed the Module 22 Core Curriculum. It is also designed for experienced APS professionals with demonstrated knowledge of and experience working with the criminal justice system as well as Aging and Adult Services partners such as IHSS, Long Term Care Ombudsman, etc.

Course Training Goal:

To improve APS professional's documentation, increase their ability to investigate allegations alleging criminal conduct including exploring justifications and defenses, and provide better understanding of the court process, and their role in it.

Outcome Objectives for Participants:

By the end of this training participants will be able to:

1. Describe the role of APS professionals in cases in which a client has been the victim of a crime
2. Enhance the APS professional's understanding of the relationship between effective documentation and likelihood the case will result in filing of charges and prosecution
 - a. Identify the elements of effective documentation
 - b. Describe the link between effective documentation by an APS professional and later testifying in a court case
3. Describe relevant defenses to various forms of older and vulnerable adult abuse
4. Demonstrate the ability to read and understand a criminal statute and identify its elements
5. Demonstrate the ability to evaluate a fact pattern to prove the elements of a crime

Understand the role of the APS professional in a court setting and describe the elements of effective court testimony

COURSE OUTLINE

<u>CONTENT</u>	<u>MATERIALS</u>	<u>TIME</u>
WELCOME, INTRODUCTIONS, COURSE OVERVIEW	<i>Activity #1- /Handout #1- Review Quiz</i>	TOTAL: 30 minutes
<i>Activity #2-Lessons from Core</i>		
THE ROLE OF APS IN A CASE THAT MAY INCLUDE CRIMINAL CONDUCT		TOTAL: 30 minutes
<i>Activity #3-Sort the tasks</i>	<i>Task Labels and Chart Paper</i>	
DOCUMENTATION		TOTAL: 65-70 minutes
<i>Activity #4- Documentation (Part 1)</i>	<i>Handout #2</i>	
BREAK		15 minutes
<i>Activity #5- Documentation (Part 2)</i>	<i>Chart Paper</i>	
<i>Activity #6- Documentation (Part 3)</i>	<i>Handout #2, Participant Manual, Handout #3-Sample Documentation (from Trainer)</i>	
<i>Activity #7- Documenting Ms. Mary</i>	<i>Video clip, Handout #4</i>	
DEFENSES AND JUSTIFICATIONS		TOTAL: 45-60 minutes
<i>Activity #8: Anticipating Defenses (Part 1)</i>	<i>Assigned allegation, chart paper</i>	

<i>Activity #9: Anticipating Defenses (Part 2)</i>	<i>Assigned allegation, chart paper, Handouts #5 & #6</i>	
LUNCH		TOTAL 60 minutes
TESTIFYING IN COURT		TOTAL: 30-40 minutes
<i>Activity #10: Documentation and Cross Examination (Part 1)</i>	<i>Handout #2, Handout #7</i>	
<i>Activity #11: Documentation and Cross Examination (Part 2)</i>	<i>Handout #3</i>	
<i>Activity #12: Mock Direct</i>	<i>Handouts #8 & #9</i>	
BREAK		TOTAL 15 minutes
CRIMES AND ELEMENTS		TOTAL 60-70 minutes
<i>PC 338</i>	<i>Handout #10</i>	
<i>Activity #13: Mary and Mark (Part 1)</i>	<i>Handout #11& Handout #12</i>	
<i>Activity #14: Proving the Elements</i>	<i>Handout #13</i>	
<i>Activity #15: Mary and Mark (Part 2)</i>	<i>Handout #12 & #13, chart paper</i>	
<i>Activity #16: Mary and Mark (Part 3)</i>	<i>Participant Manual</i>	
WRAP-UP AND EVALUATIONS		TOTAL: 20 minutes
TOTAL TIME (INCLUDING BREAKS AND LUNCH)		7 hours

REVIEW QUIZ**HANDOUT #1**

1. Select the four components of the Criminal Justice System that APS works most often with:
 - a. Prosecution
 - b. Corrections
 - c. Judge
 - d. Victim Witness Assistance Program
 - e. Defense Attorneys
 - f. Law Enforcement
 - g. All of the above
2. What APS calls a “client”, the Criminal Justice System calls a _____.
3. What APS calls an A/P, A/A, or suspected abuser, the Criminal justice System calls a _____.
4. The person who represents someone accused of a crime with a duty of loyalty to that person is a _____.
5. The standard of proof for APS to confirm or sustain an allegation is
 - a. Reasonable suspicion
 - b. Preponderance of evidence
 - c. Clear and convincing evidence
 - d. Beyond a reasonable doubt
6. Crimes are composed of building blocks called _____.
7. The burden of proof for a prosecutor to prove a case is
 - a. Reasonable suspicion
 - b. Preponderance of evidence
 - c. Clear and convincing evidence
 - d. Beyond a reasonable doubt
8. The three types of evidence to build a case are witnesses, confessions and admissions, and _____.
9. The strongest way to build an older adult or dependent abuse case is:
 - a. Victim-based
 - b. Defendant/suspect-based
 - c. Evidence-based
10. Reasonable suspicion is:
 - a. Evidence sufficient to allow law enforcement to make an arrest
 - b. Sufficient evidence to place an offender on a state registry
 - c. Strong evidence of guilt
 - d. Unverified information sufficient to initiate an investigation

11. The Criminal Justice System is:
- Client focused
 - Victim focused
 - Offender focused
 - Child focused
12. APS documentation:
- Should be sufficient to refresh the APS witness' memory for court
 - Is a measure of the professionalism of the APS staff member
 - May be admitted in a criminal court
 - Should be provided to the prosecutor in a criminal case to permit the prosecutor to meet discovery requirements
 - All of the above
13. APS investigators should focus on the _____ and _____ from the start of their investigation.
- What
 - Motive
 - How
14. How many elements of a crime must be proven to meet the beyond a reasonable doubt legal standard of proof?
- Most
 - More than Half
 - All
 - Half
15. In the following Crime Statute, CA Penal Code 273.5, select the first element that has to be proven:
- Any person who willfully inflicts corporal injury resulting in a traumatic condition upon.. [the offender's spouse or former spouse; cohabitant or former cohabitant; fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, or the mother or father of the offender's child...is guilty of a felony.*
- Corporal injury
 - With intent to harm
 - Spouse or former spouse
 - Making unwanted physical injury

Course Goal



Advance participant's skills and knowledge from Core Curriculum Module 22: "Working the Criminal Justice System".

This course will: improve APS professional's documentation, increase their ability to investigate allegations alleging criminal conduct, and provide better understanding of the court process and their role in it.

Learning Objectives



- Describe the role of APS professionals in cases in which a client has been a victim of a crime
- Enhance the APS professional's understanding of the relationship between effective documentation and likelihood case will result in filing of charges and prosecution
 - Identify elements of effective documentation
 - Describe the link between effective documentation by an APS professional and later testifying in a court case
- Describe relevant defenses to various forms of older/dependent adult abuse

Learning Objectives- (continued)



- Demonstrate the ability to read and understand a criminal statute and identify its elements
- Demonstrate the ability to evaluate a fact pattern to prove the elements of a crime
- Understand the role of the APS professional in a court setting and describe the elements of effective court testimony

Lessons from the Core Curriculum



- What did you learn in the Core Curriculum that has been helpful in your work?
- Which are the 2 most valuable to those at your table?
- Criminal Justice System-Review:
 - Law Enforcement, Prosecution, CJS-based Advocates, Corrections

Who Does What?



- Activity: Sort the Tasks
 - APS, CJS, Both
 - Some tasks may vary between jurisdictions



Working Across Systems:
Joint Investigations



- How many of you conduct joint investigations with law enforcement?
- How many have considered conducting such investigations?
- What are the benefits of a joint investigation?
- What are the challenges of conducting a joint investigation?

Possible Benefits and Challenges



Benefits

- Avoid duplication of effort
- Law enforcement engaged in case from beginning
- May capture scene as it appears at time of alleged conduct, including victim's appearance, suspect's demeanor and role in case
- Victim and suspect's statements captured on officer's body camera (if LE has body cams)
- Evidence is secured and collected by law enforcement
- May act as deterrent to potential perpetrator that conduct is known and being monitored

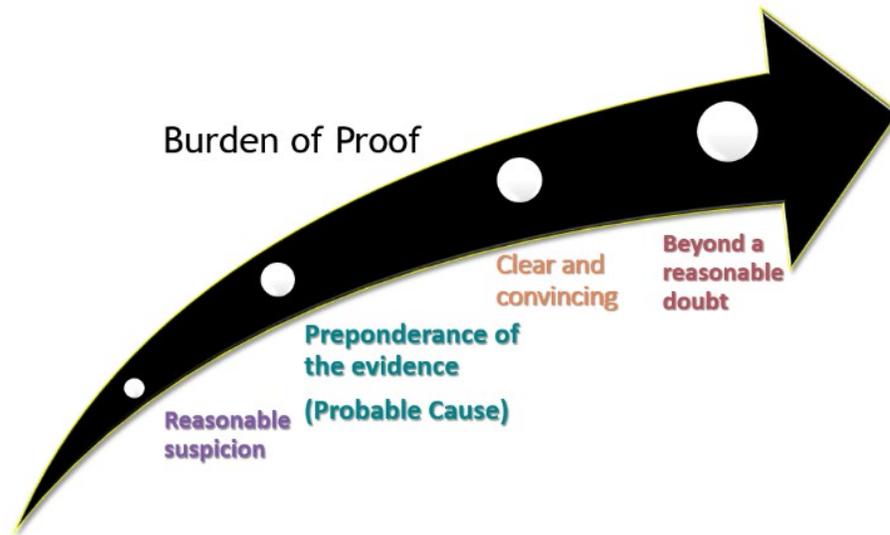
Challenges

- APS will be a witness to LE's actions at scene
- Officers may arrest before all evidence and information needed by APS is known
- Investigation will be seen as criminal case from beginning and APS may be viewed as arm of law enforcement
- Client has no choice in whether s/he wants to be captured on body cameras -- raising privacy and confidentiality issues.

How to Work Best Effectively & Collaboratively



- Understand the roles and principles of your system to "stay in your own lane"-assure that your client's needs are addressed.
- Many intersecting roles between APS and CJS—you need one another to be most effective in meeting the needs of your clients
- Understand standard of proof/burden of proof for a prosecution and how different BRD is from preponderance.
- Importance of MOUS and protocols when there are concurrent or overlapping APS and CJS investigations Shared goals—
 - Protect client/victim and restore what has been taken from them
 - Offer rehabilitation to the alleged perpetrator/suspect-defendant
- There are many intersecting roles between APS and CJS—you need one another to be most effective in meeting the needs of your clients



Documentation:
What you Already Know



- What is one helpful hint or suggestion you would give to other APS professionals on the topic of documentation?
- What's different when documenting a case that may involve criminal conduct?

Documentation Specific to Criminal Cases



- Criminal cases often turn on the strength of the documentation of all investigators, including APS and CJS
- Poor documentation likely means the case cannot even be filed.
 - Poor documentation nearly always leaves gaps in information and proof
 - Defense in a criminal case will use these gaps to establish reasonable doubt if case is filed
 - Affects credibility and reputation of the writer in this case and for the future
 - Does not serve the APS client

Elements of Effective Documentation:
Class Discussion



What are the elements of effective APS documentation?

- Complete
- Accurate
- Factual
- Concise
- Neutral and objective



What the CJS Considers When Evaluating APS Documentation



- Clarity
 - **Unclear:** There were 3 people in the house. They told me the client was being taken advantage of.
 - **Clear:** I spoke with the client's son, James; the client's neighbor, Sally Martin; and the client's friend, Maria. James said that he reviewed his mother's bank account and found strange purchases his mother did not recall. Sally Martin said the client came over yesterday and said money was missing from her purse and the only one who had been in the house was caregiver, Mollie Mains.
- Completeness
- Contradictions
- Admissibility of the Information

Admissibility of APS Observations



- APS observations almost always admissible if APS witness is testifying to what perceived through senses
 - Did you have the right to be there to make the observation?
 - Were observations relevant to your role as APS?
 - CAVEAT: Were you acting only as an agent of the CJS and would not have made these observations except as their agent
 - Observations may be subject to objection and exclusion
 - Acting as an agent is doing something the APS professional would not do as part of an APS investigation but does because they are directed to do so by LE.

Admissibility of the Information: Believability



- Statement is scrutinized for believability
 - All persons present and duration of interactions included
 - Source of all statements clearly stated
 - Time between interview and its documentation
 - Goes to reliability of your conclusions
 - Document as closely in time as possible what you observed or heard
 - Key information is forgotten or mis-recalled as time passes
 - Notes made during interview?
 - OK to make notes in front of client, especially questions and answers, key statements in quotes
 - Completeness and level of detail—actual quotes in context of question asked?

Admissibility of the Information: Objectivity



- Types of questions asked—leading vs. open ended
- Questions appropriate to APS role or more CJS type questions?
- Inclusion of unnecessary opinions or conclusions especially if they reflect on the APS professional's objectivity and neutrality



Admissibility of the Information: Other



- For Reasoning and Convincing Force
 - Any corroborating information or evidence?
 - Based on what you have perceived through your senses, including what you have been told
 - Required conclusions clearly supported by statements attributed to their sources and corroborative evidence--documents, photos, other witnesses/collaterals, and A/P
- Other Factors
- If the APS professional did not confirm/sustain the allegation, why and will this undermine the prosecution case (e.g., Not meet eligibility standard vs. Did not believe the client's account)

Admissibility of Client's Statement



- Statements of Client to APS or LE
 - Hearsay and inadmissible unless an exception such as an excited utterance/spontaneous statement, present sense impression, statement for medical diagnosis, etc.



Admissibility of A/P's Statement



- The interview of the suspect/alleged perpetrator
 - Should be conducted to assure process is fair and to have a full picture of event upon which to base conclusion and potential case plan
 - A/P given opportunity to provide information, any information provided by A/P is verified, injuries documented in same way client's are
 - Exceptions
 - When LE is actively investigating a crime and asks that APS delay or not conduct an interview
 - When it may endanger a client
 - **Be sure that your documentation explains decision to delay or not interview**

Documentation Activity (Part 1)



- Refer to the Participant Manuals for the case study.
- Read the case study and work individually.
- Make a list of accurate/helpful documentation and a separate list of problematic areas and why they are problematic.



Allegation and Documentation**HANDOUT #2**

Received case - allegation is neglect by client's son.

“Conducted visit at hospital. Client's daughter, Cheri, was with client when SW arrived. Client being treated for heel ulcer and reportedly had an operation yesterday. SW attempted to speak to client but she did not respond. CL was curled up in fetal position. She allegedly has pulled out her IV so there is something wrapped on each arm to keep this from happening.

Daughter's story is that her mother broke her foot a while back and cannot take care of herself so her son (Cheri's BRO) helping the mother. He has been medicating client's sores with OTC medication after talking with client's primary physician. PCP reportedly told brother he cannot treat what he has not seen. Daughter indicated that brother is a lazy bum who is just being stubborn and insisted on treating sores himself.

Daughter admits she and her brother do not get along. I can see for myself just how argumentative and obnoxious she is. She told me I was not doing my job and should have gotten to the bottom of this a lot sooner.”

Accurate:

Problematic:

Documentation Activity (Part 2)



Work with your table partners and discuss what everyone noted:

- Develop a combined list of what was documented in a helpful and/or effective way
- Develop a combined list of documentation problems
- Document ideas on flip chart and select a spokesperson for your group

Activity Recap:
(Helpful Documentation)



- Location of the interview
- Some medical history included
- Describes a caretaker relationship and names the caretaker
- Includes some observations;
- Includes information on relationship between brother and sister

Activity Recap
(Problematic Documentation)



- Use of abbreviations makes statements unclear
- Cannot clearly tell source of each statement (info from primary care doctor)
- Quotations not in quotes (e.g., "lazy bum")
- Gratuitous, judgmental statements (I can see for myself just how argumentative and obnoxious she is.)
- Critical information missing—what is wrapped on mother's arms to prevent her pulling out her IVs; context for what primary care doctor told brother and source of this information
- Reframe client "didn't respond" to better reflect that she is ill and may be unable to respond. Clarify if unable to respond.
- Use of terms such as allegedly, story suggests disbelief. Should use words like told me, said, or stated instead
- Information is not presented in logical, chronological order.

Abbreviations



- Can use abbreviations that are commonly acknowledged and understood
- Problem is with personalized abbreviations
- Will CJS understand the abbreviations? If not,
 - Provide a guide
 - Spell out term and then indicate hereinafter (abbreviation)
 - Be careful with using the same abbreviation for more than one person

Documentation Activity: (Part 3)



- Work with your table partners and redraft the case study documentation so it is **clear** and **effective**.



Documentation Activity (Part 3)

Redraft the prior example to improve the documentation entry:

“Conducted visit at hospital. Client’s daughter, Cheri, was with client when SW arrived. Client was treated for heel ulcer and reportedly had an operation yesterday. SW attempted to speak to client but she did not respond. CL was curled up in fetal position. She allegedly has pulled out her IV so there is something wrapped on each arm to keep this from happening.

Daughter’s story is that her mother broke her foot a while back and cannot take care of herself so her son (Cheri’s BRO) helping the mother. He has been medicating client’s sores with OTC medication after talking with client’s primary physician. PCP reportedly told brother he could not treat what he has not seen. Daughter indicated that brother is a lazy bum who is just being stubborn and insisted on treating sores himself.

Daughter admits she and her brother do not get along. I can see for myself just how argumentative and obnoxious she is. She told me I was not doing my job and should have gotten to the bottom of this a lot sooner.”

Spontaneous Statements/ Excited Utterances



- Made while someone is under the effects of an event that produces nervous excitement and before that person has time to deliberate or consider an answer. (Blurted out w/out deliberation)
- W/out thinking can respond in words
- The key to capturing these statements is:
 - Documenting the context, actual words ("in quotes"), and the behaviors that show the person is under the stress of excitement from the startling event.
- Don't try to decide what is and what is not an excited utterance/ spontaneous statement but document fully all statements.
- These statements are especially important because the person who heard the statement and saw the declarant's behaviors testifies rather than the person who made the statement (the declarant).

Ms. Mary- Video Clip



PLEASE NOTE: THIS VIDEO MAY BE TRIGGERING

- Ms. Mary's grandson sexually assaulted and physically attacked her when she was in her 90s.
- This is her first call after the attack—her call to 911.
- Refer to the Spontaneous Statement chart in your Participant Manual
- As you listen, **document what you hear** in the appropriate column—Context, Quotes, and Behaviors.

HANDOUT #4

Documenting Excited Utterances/Spontaneous Statements

Foundational Category	Examples
Context	
Statements/Quotes	
Demeanor/Conduct	

Summary Points: Documentation



- Effective documentation by APS is critical to successfully building a criminal case
- Documentation will help you as much as it will help the case and assist your client
- One important kind of documentation is an excited utterance, also called a spontaneous statement
- APS professionals rise and fall on the strength of their documentation



Defenses and Justifications



- A defense is a legally permissible reason for making otherwise criminal conduct, non-criminal
 - Begins with perpetrator admitting committing the act and then claiming it is not criminal because of why it was done
 - Acted in self-defense, defense of others, duress or necessity
 - Unable to form requisite intent due to mental illness or mistake of fact
- It can make an action lawful or reduce the perpetrator's degree of culpability

Why Discuss Defenses?



- If a valid defense is present, there is no crime
- Cannot arrive at a valid conclusion such as confirming an allegation without exploring and evaluating possible defenses
- Difficult to arrive at an effective care plan without exploring defenses as they may go to why the act was done ("intent")



Activity (Part 1): Anticipating Defenses



Work with your table partners and develop a list of possible defenses for your assigned form of abuse.

Put the defense in the words of an A/P (e.g., she bruises easily, she wanted me to have it)

Put list on a flip chart.



- Group 1: Physical abuse
- Group 2: Sexual abuse
- Group 3: Caretaker neglect
- Group 4: Financial abuse by adult child
- Group 5: Financial abuse by agent/attorney in fact under Power of Attorney for a client with an intellectual disability.

Activity (Part 2): Anticipating Defenses



Develop questions to ask the A/P and an investigative strategy for following up on what the A/P states for your assigned defense.

- Put your findings on a flip chart and present to the group.
- Use the grid in your Participant Manual
 - Group 1: She came at me and I had to defend myself
 - Group 2: It was consensual
 - Group 3: I am not the caregiver
 - Group 4: It was a gift
 - Group 5: I am the POA so this spending is within my legal authority

HANDOUT #5

Defenses Planning Template

Type of Abuse	Justification/Defense	Follow Up Questions from APS (3-5)	Further Investigation in Light if Justification

ABUSER JUSTIFICATIONS AND DEFENSES¹

HANDOUT #6

APS CONSIDERATIONS

FORM OF ABUSE	Justification / Defense	Investigation Considerations
Physical	"She fell."	<ul style="list-style-type: none"> Does the medical or physical evidence match suspect's/victim's/witness' description of events?
	"He's just clumsy."	<ul style="list-style-type: none"> Does the medical or physical evidence match suspect's/victim's/witness' description of events?
	"I was trying to help."	<ul style="list-style-type: none"> Does the medical or physical evidence match suspect's/victim's/witness' description of events?
	"She bruises easily."	<ul style="list-style-type: none"> Does the medical or physical evidence match suspect's/victim's/witness' description of events? Is the victim taking medications that can cause a person to bruise easily?
	"It was an accident."	<ul style="list-style-type: none"> Does the medical or physical evidence match suspect's/victim's/witness' description of events?
	"He has Alzheimer's disease or he's crazy. You can't believe what he says."	<ul style="list-style-type: none"> Do the medical history and/or mental health experts support this assertion? What are your observations of victim/suspect/witness at different periods of time?

¹ Excerpts taken from Barron, T. (1998) *Financial Exploitation of Infirm Adults: A Prosecutor's Perspective*. Violence Against the Elderly and Disabled. 1(4), 53 – 64.

	<p>"I was defending myself."</p>	<ul style="list-style-type: none"> • Is there sign of a defensive injury? • Who is the predominant (or primary) physical aggressor?
<p>Neglect</p>	<p>"She has always lived like this. She's not a good housekeeper."</p>	<ul style="list-style-type: none"> • Are there sufficient resources to provide for the victim's needs? • Has the victim's capacity changed over time? • Is there a caregiver? • Do friends or family members support this statement?
	<p>"I'm doing the best I can. Taking care of him is very difficult."</p>	<ul style="list-style-type: none"> • Does the victim have sufficient capacity to make informed decisions about care, including refusing to accept care or treatment? • Does the victim have a history of refusing help? • Does the suspect have a duty to provide care? • Is the suspect receiving payment to provide care? • Has the caregiver been instructed on the victim's condition, care needs and how to provide care? • Does caregiver have any special training in providing care? • Are the victim's care needs obvious and would be apparent to the average person?
	<p>"He doesn't want medication/medical treatment. I'm honoring his wishes."</p>	<ul style="list-style-type: none"> • Is there documentation of person's wishes (for example, a do not resituate order [DNR])? • What is the victim's capacity, as documented by a trained professional? • Are there historical statements of intent or the desires of the victim?
	<p>"She refused to eat."</p>	<ul style="list-style-type: none"> • What is the health history of the person's condition?
	<p>"I didn't know how sick she was or what she needed."</p>	<ul style="list-style-type: none"> • Is there a medical history indicating how often victim was taken to a doctor and what was told to the caregiver about the patient's condition?

	<p>“I’m just doing what she (the victim) wants.”</p>	<ul style="list-style-type: none"> • Do wills or advanced directives describing what the victim wants exist?
<p>Sexual</p>	<p>“She wants to have sex with me.” or “She likes watching pornographic movies with me.” (Suspect is trying to show consent.)</p>	<ul style="list-style-type: none"> • If the victim has capacity, what is the victim’s account of what happened? • If the victim does not have capacity, the victim cannot consent.
	<p>“She’s my wife/girlfriend.”</p>	<ul style="list-style-type: none"> • If the victim has capacity, what is the victim’s account of what happened? • If the victim does not have capacity, the victim cannot consent.

	<p>“I was just cleaning or bathing him. This is not sexual abuse.”</p>	<ul style="list-style-type: none"> • What does a health care provider say about whether appropriate caregiving techniques were being used?
	<p>“She came on to me.”</p>	<ul style="list-style-type: none"> • If the victim has capacity, what is the victim’s account of what happened? • If the victim does not have capacity, the victim cannot consent.
	<p>We’re consenting adults.”</p>	<ul style="list-style-type: none"> • If the victim has capacity, what is the victim’s account of what happened? • If the victim does not have capacity, the victim cannot consent.
	<p>“She acted like she liked it.”</p>	<ul style="list-style-type: none"> • If the victim has capacity, what is the victim’s account of what happened? • If the victim does not have capacity, the victim cannot consent.
	<p>“She’s my wife. I have the right.”</p>	<ul style="list-style-type: none"> • Check state marital rape laws. If the victim has capacity, what is the victim’s account of what happened? • If the victim does not have capacity, the victim cannot consent.
<p>Financial Exploitation</p>	<p>Loan</p>	<ul style="list-style-type: none"> • What is the capacity of lender? • Is there written proof of the loan including the amount and period of loan and were other loans made? • What are the terms of repayment and were any repayments made?
	<p>Gift for self or children</p>	<ul style="list-style-type: none"> • What is the capacity of the donor? • What is the value of the gift? • What is relationship between donor & victim? • Is there evidence of donor’s intent to make a gift? • Why was a gift made? (Any promises or other inducements?)
	<p>Services Provided</p>	<ul style="list-style-type: none"> • What is the capacity of the person seeking the services? • What were the services; were they needed; how often were services provided; how well performed; were supplies provided? • What is the value of services vs. amount paid for them?

	Permission	<ul style="list-style-type: none"> • What is the capacity of the victim? • Is there evidence of actual permission? • Were there promises or other inducements to get permission? • Who benefited? • How often was permission used? • What is the value of items obtained? • Did victim understand what permission was used to do?
	Quid Pro Quo (“She lets me live with her in exchange for helping with errands.”)	<ul style="list-style-type: none"> • What is the capacity of the victim? • Was the marriage reasonable given the relationship between the parties? • Was the suspect legally able to marry? • Are there any suspect misrepresentations?
	Favor (“She freely gave me use of her car as a favor to me.”)	<ul style="list-style-type: none"> • What is the capacity of the victim? • Who benefits from the favor; what did victim receive in return; is the benefit reasonable? • How does it fit prior financial planning and actions of the victim? • Did suspect receive payment to provide care? • What is victim’s relationship to business or person?
	Lack of Knowledge (“But I do not know her PIN”)	<ul style="list-style-type: none"> • What is the contrary evidence? • Did the suspect have access to information? • Were there other acts for same goal? (e.g., forged her signature to get an ATM card in victim’s name)
	Legal authority	<ul style="list-style-type: none"> • What is the capacity of the victim? • Is there legal authority in writing? • What does the legal authority cover and expressed or implied limitations?
	Victim is crazy	<ul style="list-style-type: none"> • Is there a medical opinion of victim’s mental health? • Are there statements from friends and family about victims behavior prior to and after suspect came into life? • Does the victim take any medications?

		<ul style="list-style-type: none"> • What was the victim’s behavior around time of questioned events? Is this conduct consistent with earlier times?
	I’m the real victim	<ul style="list-style-type: none"> • Who is benefiting financially?
	<p>“We’re in love” married/in a relationship”: “We’re family”; “She’s like a mother to me; therefore, we share resources.”</p>	<ul style="list-style-type: none"> • Who is benefiting financially? • What is true nature of relationship? • Are any cultural norms relevant for consideration? • Does suspect have other relationships or marriage licenses? • Does suspect have other income or debts? • Are victim’s basic needs met?
	Purchase made as part of care	<ul style="list-style-type: none"> • Is there evidence of purchase being used to provide care? • Is the purchase necessary for care?

Summary Points



- A complete, objective, and fair investigation requires APS to think about possible defenses/justifications that an A/P may offer.
- Important to explore them in interviews with the A/P
 - Who else knows what has been happening?
 - Have you confided in anyone? Who is the first person you told?
 - Any records or documents that bear on this situation?
- Explore with client (and other witnesses)
 - What do you think (A/P) will say about what has been occurring?
 - Have you confided in anyone?
 - Has anything like this happened before?
 - Any records or documents that bear on the situation?
- Look for other evidence that supports or refutes the defense

Testifying in Court



- APS professionals may be called to testify in a variety of tribunals such as criminal, civil, and probate courts, a grand jury, or an administrative hearing
- No matter what the court setting or type of case, the rules for testifying are largely the same
- Content applicable to criminal and other court settings



Testifying: Your Reality



- › What are your fears and concerns?
- › How do you address and hopefully overcome these fears and concerns?
 - What has been helpful?
- › Recognize that you are not in control of what you will be asked
 - Less of a concern when you are thoroughly prepared and have documented fully



Connecting the Dots



- Complete and well written documentation will make the court experience easier
 - Better document to refresh your memory
 - Raises fewer areas for other side to attack
 - Clearly demonstrates your credibility and professionalism
 - May result in fewer and shorter court appearances



Activity: Documentation and Cross Examination (Part 1)



- Refer back to Participant Manuals, (“bad sample entry”).
- Review the original APS entry.
- If you were the **defense attorney representing the brother** in a neglect prosecution, how would you attack this documentation?
- Draft 2-3 questions the **attorney for the brother** would ask the APS professional.

Handout #7**The Connection Between Documentation and Testifying**

Look at Handout #2

You are the defense attorney representing the brother in a neglect prosecution. How will you attack the documentation of the APS professional?

Challenges:

Cross Examination Questions:

Activity: Documentation and Cross Examination (Part 2)



- Review the improved documentation handout received this morning.
- Look at your areas for cross examination and your cross examination questions.

Has the improved documentation addressed these concerns?

How will the documentation you are now reviewing affect the cross examination of the APS professional?

Your Role as an APS Witness



- The APS witness is a source of neutral and objective information
- NOT an advocate for the prosecution
- Should testify the same no matter who asks the questions
 - Same tone of voice
 - Same type and length of answers
 - Same demeanor
- You may appear less credible and less convincing if you come across as favoring one side over the other



Court Process



- Process is governed by rules intended to assure the defendant receives a fair trial.
- Expect that witnesses will be excluded from the courtroom until they testify
- There is an order to the trial
 - Selection of jury (if a jury trial)
 - Opening statement—roadmap of what the sides expect to prove
 - Testimony of Prosecution/Plaintiff Witnesses
 - If one is presented, the defense case
- Closing Arguments
- Court instructing jury (if a jury trial)

When You Testify



- Direct examination
- Cross examination
- Redirect examination—address any issues raised during the cross examination
- Recross examination—address any issues raised during the redirect examination



My Cousin Vinny



Testifying:
What Can You Talk About



- **Lay Witness:** what you know personally as perceived through your senses.
 - Usually cannot testify to what someone else told you (hearsay)
- **Expert witness:** subject beyond common experience that will assist the judge or jury (trier of fact) in arriving at a verdict and expertise from training, education, experience, skill, or knowledge
 - Does not require an advanced degree
- APS is most often called as a lay witness. But there are times when APS professionals testify as expert witnesses

Expert Witnesses



- Can rely on information from other sources, including hearsay, in forming an expert opinion
- If you asked to serve as an expert witness determine the nature of the expert testimony you are expected to provide
- As an expert APS witness you are expected to be neutral and objective.
 - Serve as an expert for either side
 - May be expected to talk to other side about your findings, if asked
 - Must keep track of cases in which you are consulted, by whom, and when you testify

Preparing to Testify



- You should receive a subpoena in advance of the trial date.
- It is a court order commanding you to appear in court.
 - If you no longer work for APS:
 - You should contact the attorney who subpoenaed you and advise on your changed employment and determine if you are still needed
 - You may also want to contact your former employer to learn if you can review your file or if someone else will be testifying for you.
 - Prosecutor may have to call an additional APS witness in addition to you to be the file custodian

Helpful to confirm receipt with the attorney who sent subpoena

Tips for Testifying



Handout #8-Tips for Testifying

- Meet with Counsel
- In Court
- When Testifying
- Can you take notes with you to the witness stand?
- Prepare, prepare, prepare. YOU MUST KNOW YOUR CASE



Tips on Being a Witness

HANDOUT #8

Issue	Suggestions
<p>Attributes of an Effective APS Witness</p>	<ul style="list-style-type: none"> ○ Prepared ○ Honest ○ Careful listener ○ Professional ○ Not an advocate ○ Not argumentative ○ Tell only what you know
<p>When You Receive a Subpoena</p>	<ul style="list-style-type: none"> ○ Subpoena or informal notification depending on local practice
<p>Steps to Prepare to be a Witness</p>	<ul style="list-style-type: none"> ○ If applicable, carefully review the file and any notes you may have made ○ Contact the attorney handling the matter ○ Schedule time to discuss case, preferably in person, and ideally prior to the court date
<p>The Pre-Trial Meeting With Counsel</p>	<ul style="list-style-type: none"> ○ Determine <ul style="list-style-type: none"> ▪ the nature of the proceeding ▪ the issues and what the attorney expects to prove through your evidence ▪ your role-- are you being called as an expert or lay witness ▪ anticipated attacks and perceived weaknesses in the case and with your evidence ▪ the likely areas of cross examination ○ Examine every exhibit you may be asked about on direct or cross ○ If you are testifying as an expert review any hypothetical question you will be asked to address ○ Determine if any subjects or evidence have been excluded by the court. ○ Ask for a specific date and time to testify or to be placed on stand-by status ○ Be candid about what you can and cannot say. Do not let an attorney put words in your mouth.

<p>In Court</p>	<ul style="list-style-type: none"> ○ Dress appropriately <ul style="list-style-type: none"> ▪ You are a professional ▪ Reflects on your credibility
<p>When Testifying</p>	<ul style="list-style-type: none"> ○ Listen carefully ○ Do not volunteer information ○ Don't try to "fake it" ○ Testify only to what you know ○ If you don't know - just say so. ○ Never guess or over reach ○ If you are asked a yes or no question, respond with a yes or no answer. ○ If you need to expand on an answer, say so and wait for another question if you need to clarify an answer ○ Listen to the question carefully and completely before answering ○ If you do not understand the question ask to have it repeated or clarified ○ If you forget a question you can ask to have it repeated ○ Remain calm and professional; do not become angry or emotional ○ Refrain from using humor in nearly any courtroom setting; court is a serious place
<p>If an objection is made when a question is asked</p>	<ul style="list-style-type: none"> ○ If there is an objection to a question, wait for the court to rule before answering. <ul style="list-style-type: none"> ▪ "Overruled" means answer the question ▪ Sustained means do not answer ○ If you have forgotten the question you can ask to have the question repeated
<p>Can you take notes with you to the witness stand?</p>	<ul style="list-style-type: none"> ○ Varies by jurisdiction so check with the attorney calling you ○ If permitted, anything you look at may be subject to discovery and review by opposing side's attorney
<p>What If?</p>	<ul style="list-style-type: none"> ○ You forget something <ul style="list-style-type: none"> ▪ The attorney can refresh your memory ○ You misstate something <ul style="list-style-type: none"> ▪ Attorney can refresh memory ▪ Attorney can use a prior inconsistent statement you have made

Can APS Read the Prosecution/Plaintiff's File?



Probably not because:

- Your testimony should be the result of your actions and your recollections
- If you read the file you will obtain information from others which can cloud your independent memory
- Your testimony will be challenged as not your independent memory but that of others
- Your testimony can even be excluded

Objections



- Challenges to questions based on legal grounds
- Many objections - you do not need to understand them but need to know what to do
- "I object. The question is.../calls for..." STOP SPEAKING and listen for court's ruling
 - Overruled—the objection is without merit, ANSWER THE QUESTION once you are told to do so by the judge.
 - If you do not recall the question you can ask for it to be repeated
 - Sustained—the objection is proper, DO NOT ANSWER THE QUESTION
 - Wait for a new question



What If I Forget?



- We are all human and have memory slips. Court can be stressful and we may momentarily forget something we really know.
- When that happens in court there are procedures to help.
 - Refresh memory
 - Past recollection recorded
- If you misspeak
 - Acknowledge the error
 - Indicate you know the correct answer
 - Answer with the correct answer



Direct Examination



- Be able to talk about yourself and your work
 - Job, how long, duties
 - What is APS
 - What you do
 - What you do not/cannot do
 - Education and training
 - Work experience



Maintaining Your Professional Edge



- Create and regularly update your CV or professional resume
- What should be included
 - Education including courses relevant to APS work, degrees, certificates, CEUs
 - Training - class, length, when completed, key topics covered
 - Experience—# of cases handled as APS, approximate # by case type
 - Any supervisory duties
 - Serve on MDT or CCR
 - Have you ever served as an expert witness (if you are an expert witness)
 - Consulted by which side (keep list of cases)
 - Nature of proceedings (e.g., criminal, probate)
 - Courts, tribunals
 - Testified as expert
 - Trainings and presentations conducted
 - Any writings for or about APS

HANDOUT #9

Field Experience

Total Number of cases investigated	
Number of cases where supervised another	

Number of Interviews of:

Elders	
Alleged Perpetrators	
Collaterals	

Prior Court Cases

Role in Case	Number of Times Testified
APS Worker	
APS Supervisor	
Expert	

Testified as Expert Witness in EA Case

Name of Case	Type of Court**	Date	Court Number/Docket	Side Calling You	Notes

EDUCATION

Name	Type	Date	
College			
Post Graduate Education			

TRAINING ATTENDED

Course Name	Length	Relevant Topics	Date	Where Course Given	Misc

RELEVANT DEGREES AND CERTIFICATES

- 1.
- 2.

TRAININGS PROVIDED

Name of Presentation	Length	Date	Sponsor of Training

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Articles Written

1.

Awards and Recognition

1.

Number of Consultations

Prosecution; Criminal Defense; Civil Attorney, Probate Attorney; Others (List)

Getting More Instruction About Testifying



- MDT cross trainings on testifying
- Inviting attorneys to attend APS training to offer training on testifying
- Going to court and observing other APS professionals testifying



Crimes and Elements



- What did you learn in the core curriculum (ILT or eLearning) about crimes?



Review Points



- Crimes are composed of building blocks called elements
- Must prove every element beyond a reasonable doubt
 - This is how the Criminal Justice System evaluates if a case can be proven
- Need to be familiar with common crimes to recognize possible criminal conduct
- Best way to build a case is “evidence-based”
- What does “evidence-based” case building mean?



Evidenced-based Case Building

The diagram consists of three overlapping circles. The top circle is grey and labeled 'Physical Evidence'. The bottom-left circle is purple and labeled 'Confessions'. The bottom-right circle is teal and labeled 'Witnesses'. The intersections between these circles represent the combined strength of the evidence.

Penal Code §368

- Elders- person 65 years or older
- Dependent adults—
 - 18 to 64
 - has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights,
 - including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.
 - Persons admitted as an inpatient to a 24-hour health facility

Crimes in Penal Code §368

“Caretaker” ++

- Neglect
- Caretaker financial abuse

+++Must prove suspect was a caretaker- had the care and custody of, or who stands in a position of trust with, an elder or dependent adult

“Any Person”**

- Infliction of physical pain
- Infliction of mental suffering
- Financial abuse
- False Imprisonment

**Must prove perpetrator knew or reasonably should have known the victim was an elder or dependent adult.

Penal Code Section 368 (Summary)**HANDOUT #10****Penal Code Section 368-Elder/Dependent Adult Abuse****Penal Code Section 368—Included Conduct**

Any person ...having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

"Elder" means any person who is 65 years of age or older.

Willful Infliction of Unjustified Physical Pain or Mental Suffering (368(b))

Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

"Elder" means any person who is 65 years of age or older.

"Mental Suffering" means fear, agitation, confusion, other serious emotional distress brought about by intimidating behavior, threats, harassment, or deceptive acts, or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress.... (WIC 15610.53)

Financial Abuse (368(d))

Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable ...

Felony if taking is more than \$950.00; misdemeanor if taking is less than \$950.00.

"Elder" means any person who is 65 years of age or older.

Financial Exploitation by a Caretaker (368(e))

Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable ...

Felony if taking is more than \$950.00; misdemeanor if taking is less than \$950.00.

"Elder" means any person who is 65 years of age or older.

"Caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

False Imprisonment of an Elder (368(f))

Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable ...

"False imprisonment is the unlawful violation of the personal liberty of another." (Penal Code 236)

Mary and Mark (Part 1)



- Review Handout #11-the case of Mary and Mark in Participant Manual, carefully

- Review Handout #12- Case Building Framework
 - What is the crime?
 - What are its elements?
 - As to each element,
 - What facts will prove that element (list facts)?
 - Who will say that fact?
 - What evidence proves that fact?
 - Is the information corroborated?
 - Is the information/evidence supportive of any other interpretation?
 - What is/are the likely defense(s)?
 - How can the defense(s) be overcome?

Mary Portnoy and Mark Johnson**HANDOUT #11****Report to APS:**

Allegation of financial exploitation and isolation of Mary Portnoy, age 82.

Report to APS made by Mary Portnoy's niece, Linda Spencer, after she received calls from Mary's neighbor, Sam Gregory.

Social History:

- Mary Portnoy is 82. She is legally blind and suffers from shortness of breath due to chronic obstructive pulmonary disease and other respiratory problems. She has great difficulty moving around. She has not ever driven a car.
- She was married to husband Richard for more than 50 years. He died about 18 months ago of cancer.
- She and her husband lived in the same home for nearly all of their marriage. Mary loves her home and is able to move around as it all on one story. 6 months ago she told her niece Linda that she would never leave her home and that she intended to leave it to Linda.
- Mary and her husband did not have children but were very close with other family members including niece Linda who visited several times a year though she lives some 400 miles away.
- Linda is married and has 2 high school age children of her own. She and her spouse are both teachers.

Financial Information:

- 25 years ago Mary and Richard established two trusts, worth more than a million dollars, for Mary's benefit. Mary was named the sole beneficiary of one trust. Mary and Niece Linda were the beneficiaries of the second trust. The trustee is family friend, Everett Green.
- Mary has had a checking account and a savings account at City Bank for over 40 years. She is well known to the branch manager, Frances King, as a longtime customer. When Mary visits the bank Frances often invites her into her office to have coffee.
- Mary's bank accounts at City Bank are valued at over \$250,000.

Mary's Increasing Needs:

- Mary has employed a gardener, Mark Johnson, for the last 3 years. He comes weekly to cut the grass, trim hedges, and plant flowers and is paid \$100.00 a month. On his visits he and Mary often chat. She enjoys the company and his ability to make her laugh.
- Six months ago she needed to see her doctor and Mark offered to drive her instead of using a taxi. She agreed. Since then, Mark has begun taking her to her doctor's appointments, the bank, the hairdresser, and to an occasional movie. Mary is

appreciative of his help and enjoys his company. She pays Mark for his time, usually about \$100.00 each time.

- In the last 3 months Mark has taken over her grocery shopping, helps her pay bills, reads her mail for her, and has taken her dog to the groomer. Mary is appreciative as her vision is making it difficult for her to manage these tasks.
- Mark has 2 children in their early twenties, Tina and Billye. Mark has arranged for them to clean Mary's home. Mary does not know that Mark fired Mary's long time cleaner. Mark told Mary the cleaner had quit after a death in her family.
- Mary is becoming confused about her finances and is grieving for her late husband. Her doctor has prescribed medication to help with her depression symptoms. The medicine makes her tired and she has difficulty concentrating. Her late husband always handled the finances and Mary does not understand all the arrangements he put into place.

Changing Financial Picture:

- Because of Mary's confusion and difficulty understanding the financial arrangements Mark offered to help Mary by becoming her power of attorney for financial matters. He suggested that she should be examined by a doctor to see if she is capable of executing the POA. She agreed. She wanted to see her old doctor but was told he was not the "right kind of doctor."
- Mark took her to a doctor she did not know. Mark drove her to the appointment and accompanied her as she met with the doctor. The doctor talked with her for about 20 minutes, asked her if she knew where she was, the date, and the name of the President. He then asked her if she wanted Mark to be her POA agent to handle her financial matters and she said yes. The attorney handed her a document and asked her to read and sign it. He did not ask if she could read the print or if she understood what she was signing. She signed the document.
- Over the next month, Mark made numerous withdrawals from Mary's accounts at City Bank. Frances King, the bank manager became concerned because the amount was far more than Mary had ever spent in a month and tried to contact Mary. The call was answered by a man who said Mary was unable to come to the phone. The bank manager tried to speak with Mark when he came to the branch but he refused to talk with her. Thereafter he stopped coming inside the branch and did his banking at the ATM.
- Mark tried to make withdrawals from the trusts for the purchase of a truck and for other expenditures in an amount of \$540,000 but was prevented by the trustee, Everett Green.
- Neighbors tried to see Mary several times but were turned away by Mark or one of his daughters.
- Neighbors saw a for sale sign on Mary's property and again tried to contact Mary to no avail. The house sold quickly.

- Mark purchased a small condominium with many stairs in a neighborhood across town and moved Mary there. Linda learned of the move when Frances, the bank manager, contacted her.
- **Linda reported the case to APS**

The APS Investigation:

- Interviewed niece Linda who said that she visited Mary 4 months ago and observed the following:
 - Mary did not appear to be eating properly; there were no signs of dishes
 - Mary was confused about her age
 - Mary was alone much of the time but had nothing to do with her former long-time neighbors or her long-time friends
 - Mary was now showing her financial documents to other people and talking about her financial matters with them. She had previously been very private about her financial matters, so this behavior was unusual.
- Spoke to broker who handled sale of Mary's longtime home
 - Mark represented himself as the agent under a POA with authority to make the sale
 - Never met Mary but was told she now lived in a nursing home
 - Will provide relevant documents
 - Home sold for \$479,000. Agent presented Mark with the check for the sale as the POA.
- Spoke to the real estate broker for the purchase of the condominium
 - Mark's name is on the title to the condominium
 - The property is not accessible and there is no elevator
 - The property was purchased "as is" and needs remodeling and a new heating and cooling system
 - She only dealt with Mark who said the property was a "flip"
 - She never met Mary
 - Can identify Mark
 - Will provide all sales documents
 - Property paid for with check drawn on Mary's account in amount of \$280,000.00
- Spoke to Frances King, City Bank manager
 - Confirmed spending from accounts at City Bank exceeding \$329,000.00 in 3 months
 - Will provide bank records and ATM tapes
 - Confirmed efforts to reach Mary without success and called niece Linda about her concerns
 - Has seen Mary's condition deteriorating in last 6 months—is confused, has called Mark by her late husband's name, looks less kempt, has worn

- mismatched clothes which is very uncharacteristic), and defers to Mark in making financial decisions.
 - Can identify Mark
- Spoke to Client, Mary Portnoy
 - She sold her house and moved into the condominium because Mark was concerned that her old house was unsafe.
 - Said that she had not met any neighbors in the condo subdivision and that she did not keep in touch with any of her old friends.
 - Says that she and Mark were going to be married.
- APS arranged for a psych assessment at Mary's home. The Police Department (PD) had to be called in to secure the situation. The psych assessment indicates:
 - Mary is limited by vision problems and dependent upon Mark and easily manipulated by him.
 - She is uninformed about his actions with her finances and true marital intentions.
 - Her cognitive functioning was estimated to be in the low average to average and has severely impaired verbal short-term memory, poor verbal fluency, and mildly impaired judgment.
 - Over the last 6 months she has had a history of depression and anxiety. Her medical and memory problems are increased by stress. Mary completed the 11th grade and worked in a restaurant prior to her marriage but has not worked outside the home since that time.
- Spoke with Mark who was present during a home visit with Mary
 - Says that neighbors were nosy and that they bad-mouthed him to Mary and that he had moved her out of that terrible neighborhood.
 - Said in front of Mary that Mary's husband didn't do anything with her and that her late husband had committed suicide.
 - Mark does not live with Mary in the condominium. He lives with his two daughters about 20 minutes away from the condominium.
 - Says he is very fond of Mary but that is all.
 - Says he acted in Mary's best interest as her POA agent
 - Said he could not find his POA paperwork but would locate it and share with APS
 - Says he has stopped working and spends all his time helping Mary

Other Interviews by APS:

- Attorney Who Prepared the New POA
 - Said could not say much about meeting due to attorney-client privilege

- Said he felt that Mary knew what she was doing and wanted Mark to be her decision maker
- Said he could produce a copy of the POA if subpoenaed
- Mary's former Attorney Florence Samson
 - Said she had written to Mark after becoming concerned about Mark's withdrawals from Mary's trust.
 - Said that several checks had been written to cash and that in the letter she had asked Mark to account for the cash.
 - Within two weeks of mailing the letter, Mary's trust account was transferred to another bank.
- Mary's Medical Doctor stated that Mark had accompanied Mary for all recent medical appointments.
- Trustee Everett Green
 - Had refused previous attempts to name Mark as a beneficiary of the trusts.
 - Said that Mary, in the presence of Mark, had asked for money so that Mark could purchase a truck for Mary. Mary said that Mark needed the truck in order to drive her.
 - Reported to APS that Mary had appointed Mark as her agent for her Power of Attorney and that Mark was trying to liquidate the trust.

Case Building Framework**HANDOUT #12**

The Crime is:

The Legal Elements are:

Element 1:

What facts will prove that element (list facts)?

- a. Who will say that fact?
- b. What evidence proves that fact?
- c. Is the information corroborated?
- d. Is the information/evidence supportive of any other interpretation?
- e. What is/are the likely defense(s)?
- f. How can the defense(s) be overcome?

Element 2:

What facts will prove that element (list facts)?

- a. Who will say that fact?
- b. What evidence proves that fact?
- c. Is the information corroborated?
- d. Is the information/evidence supportive of any other interpretation?
- e. What is/are the likely defense(s)?
- f. How can the defense(s) be overcome?

Element 3:

What facts will prove that element (list facts)?

- a. Who will say that fact?
- b. What evidence proves that fact?
- c. Is the information corroborated?
- d. Is the information/evidence supportive of any other interpretation?
- e. What is/are the likely defense(s)?
- f. How can the defense(s) be overcome?

Element 4:

What facts will prove that element (list facts)?

- a. Who will say that fact?
- b. What evidence proves that fact?
- c. Is the information corroborated?
- d. Is the information/evidence supportive of any other interpretation?
- e. What is/are the likely defense(s)?
- f. How can the defense(s) be overcome?

Element 5:

What facts will prove that element (list facts)?

- a. Who will say that fact?
- b. What evidence proves that fact?
- c. Is the information corroborated?
- d. Is the information/evidence supportive of any other interpretation?
- e. What is/are the likely defense(s)?
- f. How can the defense(s) be overcome?

Proof Elements for PC §368



- How would you prove that a non-caregiver knew or reasonably should have known that the victim is an elder?
- How would you prove that the suspect is the victim's caretaker?
- How would you prove that the circumstances are those likely to result in great bodily injury or death?



Activity: Mary and Mark (Part 2)



- Individually, use Handouts #12 & #13 and look at PC 368 (d) and (e) to prove THEFT and value over \$950.
 - THEFT: “to steal, take, or carry away the personal property of another”
- Fill in the elements using information and witnesses in the case file
- Include any defenses in the defenses column and add any evidence that supports or refutes the defense claim
 - You have **15 minutes**



Activity: Mary and Mark (Part 3)



- **Individually** write a 1 minute case overview for the prosecutor highlighting what the prosecutor needs to know to want to prosecute your case



Reports Back



Taking Stock and Conclusion



- Revisit the Review Quiz (Activity 1)
- Refer to Participant Manual
- Think about what you have learned from the Core Curriculum and this Advanced course
- Write down what you believe are the 3 most important things you will take from this training and apply to your work.



Continuing your Ability to Work Effectively with the CJS



- Meet and develop relationships with local LE and local prosecutors
- Develop or enhance a case review process for older/dependent adult abuse criminal cases with the CJS for early and ongoing case development so you have early information from the prosecutor of possible concerns and legal issues
- Cross training on crimes and their elements
- Joint responses with LE, **after** agreeing to when to step in and step out
- Warm handoff process to introduce victims to the victim advocates and prosecutor
- Have a system to communicate with correctional officers about victim concerns

Final Questions and Comments



- Thank you for your commitment to older and dependent adults in your community and making them safer with improved quality of life
- Thank you for attending and participating in this training!
- Please fill out your evaluations.



References

The below work contributed to the content in this curriculum

California Evidence Code § 1240.

CJ Social Worker. (March 9 2018). Tips for Testifying in Criminal Court. CJ Social Worker Blog Spot. Retrieved from <http://cjsocialworker.blogspot.com/2008/03/tips-for-testifying-in-criminal-court.html>

Federal Rules of Evidence §803(2) Commonwealth v. Wholaver, (PA, 2010) 989 A.2d 883

Gray, B. You've Been Served: How to Handle the Stress of Subpoenas, *The New Social Worker*. Retrieved from https://www.socialworker.com/feature-articles/practice/You%27ve_Been_Served:_How_to_Handle_the_Stress_of_Subpoenas/

Hopper, J., Lisak, D.(December 2014). Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories. *TIME*. Retrieved from <http://time.com/3625414/rape-trauma-brain-memory/>.

National Crime Victims Research and Treatment Center, Medical University of South Carolina. Victim Reactions to Traumatic Events Handout. Retrieved from <https://www.dartmouth.edu/~eap/reactionstotrauma.pdf>.

The University of Queensland, Australia. Where are Memories Stored in the Brain, *Queensland Brain Institute*. Retrieved from <https://qbi.uq.edu.au/brain-basics/memory/where-are-memories-stored>.

Wiglesworth, A. and Mosqueda, L. (April 2011) "People with Dementia as Witnesses to Emotional Events" US DOJ, Document No. 234132, Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/234132.pdf>

Wilson, C., Lonsway, K.A., Archambault, J. (November 2016). Understanding the Neurobiology of Trauma and Implications for Interviewing Victims. *End Violence Against Women International (EVAWI)*. Retrieved from <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=842>