S. HRG. 108–226

ELDER JUSTICE AND PROTECTION: STOPPING THE ABUSE

HEARING

BEFORE THE

SUBCOMMITTEE ON AGING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

EXAMINING THE SERIOUS PROBLEM OF ELDER ABUSE, DETERMINING WAYS OF PREVENTION AND ENSURING THAT CRIMES AGAINST THE ELDERLY ARE REPORTED AND THOSE RESPONSIBLE ARE PROSECUTED

AUGUST 19, 2003 (KANSAS CITY, MO)

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C O N T E N T S

STATEMENTS

TUESDAY, AUGUST 19, 2003

ADDITIONAL MATERIAL

ELDER JUSTICE AND PROTECTION: STOPPING THE ABUSE

TUESDAY, AUGUST 19, 2003

U.S. SENATE,
SUBCOMMITTEE ON AGING, OF THE
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:30 p.m., in Room 7D, Whittaker Federal Courthouse, 400 E. 9th Street, Kansas City, MO, Senator Bond presiding.

Present: Senator Bond.

OPENING STATEMENT OF SENATOR BOND

Senator BOND. Ladies and gentlemen, the special hearing of the Aging Subcommittee of the Health, Education, Labor and Pensions Committee will come to order. We appreciate very much being able to use the fine facilities of the Whittaker Courthouse and thank our witnesses and our guests for coming out today to talk about something that is very, very important.

As I trust all of us here today know, abuse, neglect and exploitation of seniors is an all too tragic issue. We simply cannot afford to look the other way and sweep the problem under the rug. However unthinkable these crimes against vulnerable seniors are, they really do occur. And we cannot pretend that they do not exist.

Tragically, some of the worst instances we hear about are not isolated. And the number of victims will only continue to increase as our population ages, unless we take decisive and effective steps to prevent the abuse from occurring in the first place.

Abuse and mistreatment of our seniors takes many forms. It can physical, sexual, psychological or financial. The perpetrator may be a stranger, an acquaintance, a paid caregiver, a spouse, another family member, or a corporation. And elder abuse happens everywhere. In poor, in middle class and in upper income households. In cities, in suburbs and in rural areas. In the homes as well as in institutions.

Elder abuse does not discriminate. It knows no demographic or geographic boundaries. Some abusers are criminals who prey on the elderly. Others are caregivers or relatives pushed to the brink because they are overwhelmed. Some are institutions that do not provide residents the care they need. Some are scam artists who profit at the expense of seniors.

There are studies that report that 4 to 6 percent of America's seniors may at some time become victims of some form of abuse or

neglect. Others estimate there are anywhere from 500,000 to 5 million potential victims each year. Because the research is inconclusive, we do not know just how many seniors have been victimized, but we do know that this issue has not received the type of attention it deserves.

Experts agree that we have only scratched the surface. There is one authoritative study that estimates that 84 percent of all cases of elder abuse are never even reported. Despite the scarcity of reliable research, we do know one thing. Elder abuse and neglect shortens the victim's life and often triggers a downward spiral that has devastating consequences for an otherwise productive, self-sufficient life.

In large part, societies are judged by how well they care for those who cannot care for themselves, the young, the old, the disabled. In a modern and humane society, we simply cannot sit idly by and let some seniors suffer from harm and neglect instead of the attentive and protective care they need and deserve.

The studies and statistics on this issue, though incomplete, are judgment enough. No longer can we avoid the problem. We have to confront it and take appropriate steps necessary to deal with these issues that touch every community. Most importantly, we have a moral obligation to move beyond the statistics and look at the human beings beyond them, our mothers, fathers, grandmothers, grandfathers.

Abuse and neglect of an elderly, frail individual is no different than neglecting a child. Both are defenseless and lack a strong voice. Both are vulnerable and suffer at the hand of those who are nothing more than cowards and criminals. Abuse of the elderly should be treated no differently than abuse of children. A crime is a crime is a crime, whether the victim is 5 years old or eighty-5 years old.

Congress has embraced initiatives to guard against child abuse and domestic violence, and rightly so. But there is been no comparable effort to protect seniors from elder abuse, and that is why we are here today. We have to ensure that crimes against the elderly are reported and those responsible are prosecuted. Most importantly, we need to do everything we can to prevent the abuse before it has the opportunity to occur in the first place.

That is why I am an original co-sponsor of something called the Elderly Justice Act, S333. It is a first comprehensive Federal effort to address the issue combining law enforcement and public health to study, detect, treat, prosecute and prevent elder abuse, neglect and exploitation.

The measure is based on a successful approach that has been applied to combat child abuse and violence against women. It creates Federal leadership and resources to assist families, communities and states in the fight against elder abuse. It coordinates Federal, State and local elder abuse prevention efforts, establishes new programs to assist victims, provides grants for education and training of law enforcement, and facilitates background checks to elder care employees.

The challenges we face in fighting elder abuse are formidable. The public, in part, is unaware of the problem. State efforts to address elder abuse are too often underfunded. The perpetrators are

too seldomly prosecuted. And front line responders often lack training and expertise to identify the problem. And we do not always have government agencies working together. And I think the Elder Justice Act is an important step.

I welcome our witnesses here today who have come to share their stories and I thank all of you for coming. Testimony today will focus on abuse that occurs in some nursing homes. But it is important to remember that elder abuse is not confined to institutions.

Right here in Kansas City we have heard the chilling story of a woman whose husband has now been charged. According to the Kansas City Star, when police arrived at her home, they found a 65 pound woman covered with large, deep bed sores lying motionless on her living room floor barely able to speak, suffering from malnutrition and dehydration. She told authorities her husband left her on the floor when he went to work. According to court records, she was covered with large infected bed sores infested with maggots and the carpet was embedded in her skin and part of her flesh stuck to the floor where she had been lying.

This is a horrific reminder of abuse that can occur at home. Whether it occurs in a nursing home or in a home, elder abuse has been ignored for far too long.

The purpose of today's hearing is bring awareness of the problem and provide an opportunity to hear testimony of victims of elder abuse and their advocates who will speak about the causes and the problems.

I thank you all for being here today, and I assure our witnesses that your full statement will be included as part of the record. If you could keep your statements perhaps to five minutes, we will have time for questions. I have read the testimony and have questions for all of you.

Senator BOND. So with that, our first panel is Tom Klammer, who is a representative of Walter Leonard Klammer. He is an advocate, comes from Kansas City, MO. Tony DeWitt, an attorney with Bartimus, Frickleton, Robertson & Obetz, PC of Jefferson City, MO, a former healthcare workers who has become an attorney representing some of these victims.

Now, for the testimony, let us begin with Mr. Klammer.

STATEMENT OF TOM KLAMMER, REPRESENTATIVE OF WALTER LEONARD KLAMMER, ADVOCATE, KANSAS CITY, MO

Mr. KLAMMER. Mr. Chairman, members of the committee, thank you for giving me the opportunity to speak today. I have no formal credentials related to elder care, but I work with a small local group that advocates improved quality in Missouri nursing homes. Several of these people are here today.

We have held public meetings with area prosecutors and other speakers urging the public to call 911 in cases of elder abuse and write letters to State legislatures. Currently, we are preparing to listen to focus groups in order to get suggestions for reducing neglect and abuse for Missouri citizens who have had loved ones in nursing homes.

We also meet with State legislators. And while I believe all of these things are very important, I think there are major systemic

national problems. My father went into a nursing home in 1998 after a series of strokes left him seriously impaired with dementia.

Our experience with an HCR Manor Care facility are recounted in some detail in testimony before the Senate Special Committee in Aging in 1999. But I will just say the care was not good, vital medications were allowed to run out with no notification to anyone. State agencies were of little or no help, and when I complained widely about the poor care, a Manor Care vice president found the time to call me at home and threaten me with a lawsuit if I did not stop.

I am still complaining and Manor Care, one of the largest nursing home corporations in the country is still providing poor care in many of its facilities. Among many examples I could cite, the company was featured prominently in the Pittsburgh Post Gazette last year for major and numerous problems in its 47 Pennsylvania homes. It was singled out for poor care by an official with the State of Iowa, and entered into a consent order with the Federal government in a case alleging violation of the False Claims Act. Recently the Kansas City Fox TV affiliate featured the facility my father was in when it did a piece on area homes with the highest numbers of deficiencies on their inspection reports.

The next facility we put my father in was, for a time, wonderful. But this facility was purchased by another national chain, Alterra, and almost immediately things went bad. The administrator was forced out, aides were fired or had their hours and benefits cut until they quit, and agency staff that did not know the facility or the residents were brought in to replace them. Confused residents, including my father, eloped undetected to wander along a very busy street until someone by chance brought them back. We found another facility to place my father, but not until after he had mysteriously acquired five broken ribs. Alterra facilities have also been prominently featured in the press for major problems.

Immediately after getting my father out of Manor Care, I began researching that company and the other big players in long-term, and what I found then was Enron and WorldCom and Arthur Andersen. I looked at the SEC filing for the half dozen giants in the field and found that they all lavished multimillion dollar compensation packages on their CEOs and other top executives.

Integrated Health Services sought a 50 to 60 million dollar golden parachute for departing CEO, Dr. Robert Elkins, who had led them to bankruptcy, and a Federal bankruptcy judge approved it. In addition to lavish salary and bonuses, HCR Manor Care CEO, Paul Ormond, realized a gain of 23.7 million dollars from stock options exercised in fiscal 2001.

Seems like all these companies have money to burn, yet they continue to work together to lobby for more money, with no strings attached, wrapping themselves in a phoney free market flag while typically getting 70 percent or more of their billions of dollars of total revenues from tax dollars and Medicare and Medicaid.

In 1999, I found Gail Wilensky, then head of the Congressionally mandated Medicare Payment Advisory Commission, was also serving on the board—and I will correct her, it was the audit committee, not the compensation committee of HCR Manor Care—as well

as on the boards of a health care related companies. She later resigned from MedPAC due to the appearance of conflict of interest.

But today we have former For Profit hospital lobbyist, Tom Scully; he is the administrator of Centers for Medicare and Medicaid Services. It seems all the corporate interests are always very well represented.

A Health and Human Services study released in 2002 concluded that 90 percent of nursing homes in the U.S. have staffing levels too low to provide adequate care. Inadequate staffing contributes minimally to problems of bad care, abuse and neglect.

The nursing home chains continue to cry poverty, but an analysis last year by U.S. News debunked that claim and also said that, "Even when they received higher payments, staffing actually went down rather than up. They spent it on executive port union investing consultants, lobbyists, and expensive campaign to spread specious arguments for so-called tort reform to further limit their accountability in an environment that already has the deck highly stacked in their favor."

Anything but more staff at McDonalds level wages. When I asked Administrator Scully on a national call in radio program about tying future increases in payments to staffing mandates, he said, We do not believe in staffing ratios.

Early on, I had heard some advocates refer to the treatment of the Nation's elderly with terms like holocaust, and I thought at the time that this was a bit of shrill if understandable exaggeration. I no longer think that. We are not talking about isolated incidents in a system that is generally working well.

People like Tom Brokaw piously write about the greatest generation waving the flag and praising their service in and out of uniform during World War II. Then we turn our backs as many die untimely and needlessly miserable deaths in nursing homes. I am troubled by how decisions are made to put our military personnel at risk, but I salute, Senator Bond, your efforts to see that Veterans and others are properly cared for.

Still, too many of the greatest generation starve in nursing homes, some are beaten, some suffer pressure ulcers with flesh rotted to the bone, and some, as in a St. Louis suburb case, that I am sure most of the people here today are aware of, were allowed to cook to death one after another until paramedics returned and refused to leave the facility. Many more suffer less traumatic misery, like spending hours in wet diapers.

Companies like Manor Care continue year after year to operate facilities with major problems related to quality care, accepting the imposition of fines and settling of lawsuits as a cost of doing business. CEOs like Paul Ormond, certainly aware of these continuing problems, continue year after year to pocket the big bucks rather than fix the problems and provide the care they are being paid to provide.

Given the political and social realities we live in, I do not expect to see it happen, but I can conceive of no logical, moral or ethical, or even legal arguments against criminally prosecuting these people at the top and sentencing them to hard time followed by a sort of parole as very closely supervised nursing home aides.

Thank you for your time.

Senator BOND. Thank you very much, Mr. Klammer.

[The prepared statement of Mr. Klammer may be found in additional material.]

Senator BOND. Mr. DeWitt.

STATEMENT BY ANTHONY L. DeWITT, ATTORNEY WITH BARTIMUS, FRICKLETON, ROBERTSON & OBETZ, PC., JEFFERSON CITY, MO

Mr. DEWITT. Senator Bond, members of the committee, thank you very much for asking me to be here today. I will try to hit the highlights of my somewhat extended remarks that I submitted to the committee.

Senator BOND. I appreciate that.

Mr. DEWITT. A little background. I am a Registered Respiratory Therapist. I hold that credential from the National Board for Respiratory Care. And for 13 years before going to law school, I worked in hospitals across the United States, and I also worked in the long-term industry in St. Louis for about a year while I was attending law school. Currently, I work as an advocate for victims of nursing home abuse and neglect and my fondest hope, Senator Bond, is that you will put me out of business. And I want to be put out of business because the care improves. That is what I would view as the best of all possible alternatives.

I have had the opportunity to assist numerous victims in obtaining redress through the courts and I have to tell you, it is a pale victory for these folks because all we ever get is money. We do not usually get the opportunity to prevent the abuse.

I am here today to talk about two issues that are central to me. First of all, the scope of the problem of elder abuse and the lack of adequate remedies for seniors. I think, as you pointed out in your opening remarks, Senator Bond, it is a real and serious issue affecting the life and health of all of our nations senators. As Violet King, an advocate for the elderly in the St. Louis area is fond of saying, We are but a stroke away from spending time in the nursing home.

These folks are particularly vulnerable to the abuses that are heaped upon them by virtue of having little practical remedy. Root causes of rampant abuse in nursing homes and elsewhere, even in the home care industry, are insufficient staffing and low wages paid to workers. As a respiratory therapist, I had the opportunity—no, make that the privilege—to care for some very sick people during my time in the hospitals and health care environment.

I never went in to a hospital without the belief that somebody was going to go out that day feeling better because I was there. I call that the clinician's ethic. True clinicians go to work every day with the idea that somebody will be feeling better when they leave. Unfortunately, in the long-term care industry, that attitude, that ethic is missing.

I want to tell you real briefly about Katie Misuraca and Thelma Magruder. Katie called me to tell me that she was being denied visitation in a nursing home in St. Charles, MO. I tried first to work with the administrator by making him aware of 42 C.F.R. 483.10, the Federal regulation that mandates 24 hour a day, 7 days a week visitation for family members. This fell on deaf ears.

I pointed out that the doctor had written a specific order granting Ms. Misuraca a 24 hour a day, 7 day a week access. He told me they could not meet the needs of the resident and that we should move the resident. Katie was very concerned about transfer trauma, as her grandmother had a very severe case of Alzheimer's disease. So I went to St. Charles Circuit Court and sought a protective injunction and the Circuit Court granted me that injunction.

Six days after that injunction was made permanent, Senator Bond, Thelma was found in the facility by her granddaughter with four broken ribs, three crushed vertebrae, and shoe shaped bruise in the middle of her back. She never recovered from those injuries and ultimately she died.

This sort of underscores my concept here that residents and heirs have a remedy of law, but it is often difficult to prove. In just this year, we have seen, with the HIPPA regulations coming out, nursing homes continually stonewalling. They simply will not turn over records to family members, irrespective of the mandate in the Code of Federal Regulations to do so, because the fact is, there is no real sanction if they do not.

As a result, when people come to me, I am always in the position of closing the barn door after the horse is gone. I do not get involved until after someone has been grievously injured or neglected for a long period of time. And that is a tragic situation. I have had to sit with family members and have them tell me the story of going in and finding armed dislocated or shoulders dislocated.

A good example of why these records are important, we had patient named Marshall Rhodes at the facility in Clay West in St. Charles. It was an Alzheimer's patient who was beaten to death by a man wanted in the State of Mississippi for a drive by shooting. The Elder Justice Act improves the ability the get background checks on individuals like the man who beat this man to death. And I think that is a very important step in the right direction.

This facility was warned of the violent behavior 2 weeks before the death and they told the family, when they asked what happened to their loved one, that he had simply fallen out of bed, when they knew, in fact, that he had been beaten and it was obvious to everyone who had seen him.

Well, there are a lot of other things that happen in nursing homes. As I mentioned before, I have seen shoulder joints yanked out their sockets. I had a patient who was allowed to linger with an oxygen saturation of 79 percent for eight hours. Seventy-nine percent is a great test score on a final exam, but it is not such a great saturation indicating, as it does to me, that this patient was at or near the point of death for at least eight hours before intervention.

I had one patient who had her cane and glasses taken away, even though she needed them to see and to walk. She fell, she broke her hip and ultimately she died. I have seen the most horrible forms of abuse against residents, and I want to show a clip for the committee that is both sad and shocking, and I would caution those who are listening and watching, that this is not pleasant and you may want not to listen to it. The nurse who is testifying here is Glenda Cushing, who is a charge nurse at Clay West.

[Video shown.]

Mr. DEWITT. No, it should not. And yet that was sort of the norm at Clay West. I am here to ask for better resources for the states. I would like to see the Federal regulations amended to provide access by family members to medical records after death. I think the mandates from the Federal government need to be clearer.

And I do not know if Mr. Graves, who testifies later, will agree with me, but I would like to see a Federal regulation that says that if you are continually caught with deficiencies by State investigators and State surveyors, that those constitute false claims and those are actionable under the False Claims Act. I think we need definitive information in that regard.

Finally, I would like to see license revocation procedures and imposition of fines be swift, and where warranted, painful. During the entire period of time that Clay West was under a mandate to improve its staffing, it never really had to worry about losing its license because the numerous appeal processes that are in place in the State of Missouri to allow it to continue operating placed a higher premium on having it retain its license than on protecting the seniors who were there. And I think that is something that needs to be remedied.

Senator Bond, I thank you and your staff for inviting me to come and present today.

Senator BOND. Mr. DeWitt, thank you very much.

[The prepared statement of Mr. DeWitt may be found in additional material.]

Senator BOND. Very chilling testimony both of you provided. Let me ask just a couple of questions of Mr. Klammer. In light of your experiences, what kind of advice would you give to people in Missouri, anywhere across the Nation, if they are faced with placing a loved one in a nursing home. And that is a picture of your father, I believe——

Mr. KLAMMER. Yes.

Senator BOND. —back in better days.

Mr. KLAMMER. Yes, sir.

Senator BOND. If you wanted to care for a person, what would you do before you placed them in a nursing home?

Mr. KLAMMER. Well, and I do not mean to be frivolous here, but I did say in the Kansas City Business Journal some years ago that, if it happened to me, I hope somebody put a bullet in my head. I do not mean to lightly answer your question, but, go often, go at different times, once your loved one is in a facility. They will take better care of the person if they know that there is somebody——

Senator BOND. Somebody is watching.

Mr. KLAMMER. —out there that cares. In selecting one, I mean, go several times. Take the canned tour, but also go unannounced at different times and let them know that somebody is watching. There are some wonderful places, there are some wonderful people, but the way the whole environment system is, there are all too many bad places and you need to keep an eagle eye on them.

Senator BOND. What kind of effect did this experience with your father's maltreatment have on you and your family?

Mr. KLAMMER. It was very stressful, depressing. It caused—you know, and I am very fortunate in that my father has a lady friend that watches for him and is, you know, very much a lovely lady in

all respects except she is a bulldog in terms of tenacity and making sure my father is cared for.

And I have siblings, and one of them handles most of the red tape, and the couple of years it took us to get him on Medicaid with spend-downs and so forth. I cannot imagine how it is for a single caregiver dealing with this with all the strange and unknowable red tape of rules and how hospitals and nursing homes cherry-pick people that they can make the most money off of and whatnot.

And I have read recently of a study that there is long-term physical effects on the caregiver that can persist for years, and I believe that now. It is depressing; it is physically debilitating and, like I said, I am very lucky because I have had a lot of help that a lot of people do not have.

Senator BOND. Mr. DeWitt, you mentioned a number of things, criminal background checks, license revocation without numerous appeal, you suggested that damage remedies were not enough. Is there more equitable relief, or what other things could you recommend that we do to help residents and their families that were most in need?

Mr. DEWITT. Well, Senator Bond, I have had the opportunity to work a lot with the ombudsman's office up in northwest Missouri. I have been involved with them. I think if the ombudsmans are truly independent and are armed and cloaked with some responsibility and given some funding and some training, that they would be a good resource. I think if you talked to some of the advocates who have—that they are sort of a mixed bag of—I have an ombudsman—and that the results have been sporadic.

But my work with the ombudsman up in northwest Missouri has been very rewarding. I have worked with some ombudsmen up in the Kirksville area and had some good results with them. I believe, by and large, that many of those people are very caring and very concerned.

The problem for them is that, because their status is sort of unique, a lot of times they wind up being rendered ineffective by virtue of nursing homes deciding that they do not want the ombudsmen to come in. So there are some problems there.

Senator BOND. Yes.

Mr. DEWITT. In addition to the ombudsmen, I think the courts are a bad place to deal with this. There needs to be some type of functional alternate dispute resolution procedure to deal with the issues like I raised with Katie Misuraca where the facility believes that it should not be allowed or should be allowed not to let somebody in. There just needs to be somebody to take a hard look at how families and facilities can work better together. I do not think the resident committees and I do not think the sort of mechanisms that are built into the CFR are working very well.

Senator BOND. That is an interesting point. I talked this morning with an ombudsman from southwest Missouri and I think finding a quicker, more effective way of getting a resolution of this is that is something we need to explore and I appreciate that.

Most effective way of improving justice for elders, would you say an alternative dispute resolution——

Mr. DEWITT. In terms of the civil side of things, before anyone has been harmed, yes. I think if you have got an issue with the

nursing home and the nursing home is not responding, then, yes, there might be something we can do with ADR that would make that better. Unfortunately, until such time as there really is an improvement in the accountability, I think we need to preserve the right to go to court to seek a damages remedy because, unfortunately, the industry does not seem to listen.

We sued American Health Care Management, which was the parent company for Clay West, two or three times and you would have thought that that would have caused them to immediately rewrite their policies and try and improve their care. I believe we are close to 20 lawsuits against that entity between 1999 and 2001. Ultimately, that entity went out of business because it could not longer afford insurance. And it is difficult to think of my profession as sort of the opportunistic packaging in the industry. But to a certain extent, we do serve a purpose in putting entities that have no business providing that care out of business. And I would just say that I will be more than happy to work with anyone to try and improve justice for elders. And the other person I know that—Mr. Gregory is going to speak before the committee in St. Louis tomorrow, and I think that he has a lot to say and his testimony will be very valuable to the committee.

Senator BOND. Well, thank you very much. And I very much appreciated your opening statement that you want to be put out of business by seeing the care problems dealt with. That would require a very effective State or State and Federal entity that was actually doing something, was out on the forefront responding to these horrible cases.

I appreciate very much the testimony that both of you provided. This will be available for my colleagues on the full committee, the Health, Education, Labor and Pensions Committee. If you have any further thoughts, please do not hesitate to share them with us. And for those who are here as guests listening, we would welcome and we will take for the record any statements or additional thoughts that you have.

So, Mr. Klammer, Mr. DeWitt, thank you very much.

Mr. KLAMMER. Thank you.

Mr. DEWITT. Thank you, Senator Bond.

Senator BOND. Now, I would like to call up Todd Graves, United States Attorney for the Western District of Missouri; Sheriff Paul Vescovo of the Clay County Sheriffs Department; and Ms. Norma Collins, who is Associate State Director for Advocacy for the AARP. [Pause.]

Senator BOND. All right. Todd, if you begin please?

STATEMENT OF TODD GRAVES, U.S. ATTORNEY, WESTERN DISTRICT OF MISSOURI, KANSAS CITY, MO

Mr. GRAVES. It is going to take some getting used to. I am not used to being allowed to sit down while I speak in this room, but——

Senator BOND. I am not used to being on this side of the bench either. I have spent a little time out in the no-man's land out where you are. It is a different experience, so if you feel awkward, how do you think I feel?

Mr. GRAVES. Mr. Chairman, I want to thank you for your invitation to appear today and testify on my office's experience regarding elder abuse. I appreciate the subcommittee's attention to these issues, specifically to nursing home abuse and neglect. As a Missourian, I know that you, Senator Bond, have been a leader on the health care issues and elder issues in this State.

Two cases successfully handled by the United State Attorney's office for the Western District of Missouri may serve to illustrate the nature of this issue. Both cases involve egregious instances of painful injuries and unhealthy conditions suffered by elderly residents as a result of gross neglect on the part of nursing home operators.

To address these cases, we took an innovative approach, filing civil actions against the operators under the Federal False Claims Act. In April 2000, we filed a civil lawsuit against NHC Healthcare Corporation, the corporate operator of a nursing home in Joplin, MO. This lawsuit was filed after a 149 page statement of deficiencies had been prepared by the Missouri Division of Aging, which cataloged numerous violations that threatened the health and safety of the nursing home residents.

The Division of Aging survey found repeated instances in which patients developed pressure sores, lost significant amounts of weight, and were left lying naked and unattended in their own urine while smeared with their own feces. At least two patients eventually died as a result of this neglect.

Our lawsuit alleged that these instances of patient harm and abuse were attributable, in large part, to NHC's failure to provide adequate staff to meet the needs of nursing home residents. NHC was so severely understaffed that it could not possibly have provided the level of patient care it was obligated to provide for reimbursement under the Medicare and Medicaid programs.

Aware of these staff shortages, yet still billing Medicare and Medicaid for services it clearly had not adequately provided, NHC was knowingly submitting false and fraudulent claims to the Medicare and Medicaid programs and thus violating the Federal False Claims Act.

In other words, we prosecuted a civil fraud against the government, rather than actual elder abuse because there is no actual elder abuse law at the Federal level. At the time, there was no precedent in the 8th Circuit for this use of the False Claims Act and very little case law from other circuits.

But a series of ground breaking rulings by Judge Fetera [ph], the district court in this district upheld the use of the False Claims Act to enforce quality of care standards in nursing homes. And I have got those two opinions, I will provide them to your staff later if you want to have them. As a result, NHC agreed to pay a $250,000 fine and submit to ongoing monitoring to settle the suit.

In a second case, Woodbine Healthcare and Rehabilitation Center in Gladstone, MO agreed in December of 2002 to pay the United States $25,000 to resolve allegations that it failed to provide necessary services to its residents. Our lawsuit alleged that Woodbine's failure to care for its patients led to, for example, repeated maggot infestations in one patient, and the development of penile gangrene in pressure sores in another resident.

Both nursing home operators, as part of their agreement, also submitted to corporate integrity agreements requiring them to perform audits and reviews to determine whether residents were receiving care that meets Federal quality of care standards.

The difficult of the approach of the False Claims Act arises in establishing when a nursing home fails to provide the services for which it is reimbursed by Medicare and Medicaid. As I stated, these programs reimburse the nursing homes on a per-diem basis for the general care rather than according to specific services. The specific services, essentially, are left up to them. For that reason, the Federal False Claims Act is ill suited for ensuring adequate care for most nursing home residents.

In the two examples I have shared, both nursing homes failed so egregiously to provide even a minimal quality of care that there was no question they fell far below any reasonable standard, and thus we were successful in our civil actions against them.

But in many cases, it is likely that even a deficient quality of care would fall into what the court—and the court talked about this quite a bit in its opinions—described as a "gray area". In fact, the court opined that the point of which the over all quality of care crosses the line from what is required for Medicare and Medicaid reimbursement, to be no negligent, that those claims are fraudulent is "a very blurry point". The Court further noted that somewhere "between gross neglect and perfect care lies an amorphous standard in need of further clarification". There is a large gray area under the False Claims Act.

Our prosecution of NHC was initially launched as a parallel proceeding, which means that we were pursuing both criminal and civil alternatives, and some of those alternatives would include mail/wire-fraud statutes, which we use in many areas, health care fraud statutes, and, of course, the Federal False Claims Act.

But due to the nature of the nursing home industry in which the billing function is separated from the provision and care, that a separate staff is responsible for these functions and they may even be housed in separate buildings or work for separate corporations. It can be very difficult to bring a successful criminal action against the responsible parties.

Again, the focus of what we can do at the Federal level is a fraud focus. It is the fraud against the government, or in some cases, against those paying the insurance companies, not a crime directed specifically on what is done to the patient.

With that, I will wrap up and I want to thank you, Mr. Chairman, for your invitation and for your attention to these issues, and I look forward to answering your questions.

Senator BOND. Thank you, Mr. Graves, and thank you for a very innovative and ground breaking approach to getting at this problem.

[The prepared statement of Mr. Graves may be found in additional material]

Senator BOND. Sheriff Vescovo, I welcome your testimony, sir.

STATEMENT OF PAUL VESCOVO, CLAY COUNTY SHERIFFS DEPARTMENT, LIBERTY, MO

Mr. VESCOVO. Thank you. Mr. Chairman, I would like to thank you for giving me the opportunity to address the issue of elder abuse and neglect. As the population of older Americans grows, so does the hidden problem of elder abuse and neglect.

Every year, an estimated 2.1 million older Americans are victims of physical abuse and neglect, however, those statistics do not tell the whole story, because for every case of elder abuse that is reported to authorities, it is estimated there may be as many as five cases that have not been reported.

Elder abuse is a complex problem and it is easy for people to have misconceptions about it. For many people, when the subject of elder abuse comes up, they think it is about older people living in nursing homes or elderly people living alone and never having visitors. Actually, most instances of elder abuse do not occur in nursing homes. Only about 4 percent of older adults live in nursing homes, and the majority of these residents are having their physical needs met without experiencing abuse or neglect.

Most elder abuse takes place at home. The great majority of older people live on their own or they are with spouses, children or other relatives, not in nursing homes. When elder abuse happens, most often it is family or paid care givers who are usually the abusers.

Investigating cases of elder abuse poses unique challenges for law enforcement. As I mentioned earlier, elder abuse is a complex problem which calls for comprehensive training for law enforcement officers so that elder abuse incidents can be effectively investigated.

Elder abuse is largely a hidden problem in our society that only recently has received attention from the criminal justice system. Training will increase the awareness of this unique problem and allow us to more effectively respond to elder abuse incidents.

A concern that I have as a law enforcement leader, when it comes to the issue of elder abuse, is the ability of social agencies to assist law enforcement in adequately responding in cases of elder abuse. Successful investigation and resolution of elder abuse cases requires a collaborative and support from adult protective services.

Intervention by law enforcement in instances of elder abuse almost always results in police agencies accessing social service agencies to assist the victim. Due to recent budget shortfalls and declining revenues, cuts in social service fundings are inevitable. Without adequate funding to support those social service agencies, we in law enforcement will find it increasingly difficult to assist victims of elder abuse and neglect in obtaining the support and care that they need.

Social service agencies also provide counseling for behavioral or personal problems in the family, which can play a significant role in preventing violence against older family members.

I also feel that education of the public on elder abuse and neglect would go a long way toward preventing elder abuse. Public education and media coverage concerning domestic violence and child abuse has made the public more knowledgeable and proactive in

the reporting of such abuse, and has garnered support for the funding of programs to combat such abuse.

Because most abuse occurs in the home by family members or care givers, their needs to be a concerted effort to educate the public about the special needs and problems of the elderly.

I would again like to thank you and this committee for inviting me to voice my thoughts on this issue.

[The prepared statement of Mr. Vescovo may be found in additional material.]

Senator BOND. Well, thank you for your very thoughtful analysis. I have some questions for you about the law enforcement side of it.

Ms. Collins, thank you very much for being here. We certainly appreciate the support of the AARP and the great amount of work that you have done in this area. You speak with a great deal of knowledge on this issue.

STATEMENT OF NORMA COLLINS, ASSOCIATE STATE DIRECTOR FOR ADVOCACY, AARP, KANSAS CITY, MO

Ms. COLLINS. Thank you, Mr. Chairman, panelists and other guests. On behalf of 740,000 AARP in Missouri, I want to thank Senator Bond for convening this hearing on S333, the Elder Justice Act. State and national attention to elder abuse concerns is highly valued by AARP members and America's older population generally.

Our members tell us that protecting themselves and their loved ones from abuse and fraud is one of their major concerns. The risk of harm is real, and that risk is growing with the dramatic increase in the number of people living into advanced old age. Engaging all sectors of society in the fight against abuse, neglect and exploitation is essential.

Elder abuse is a hidden problem. Only the most visible and recurring cases get reported. Like an iceberg, the bulk of the problem remains hidden from view. Despite under reporting, there has been a very substantial increase in the number of official reports of domestic elder abuse. Between 1986 and 1996, the number of reports rose from 117,000 to 293,000, an increase of 150 percent. This number is expected to continue to rise in the future. In Missouri, the census projects the population group aged 65 plus to increase from 755,000 in 2000 to 1,258,000 in the year 2025.

Developing the support services and enforcement network to meet the needs of the larger number of potentially vulnerable persons poses a significant challenge. Current laws addressing elder abuse in our system of protective services are far from perfect.

Not too long ago, it was difficult, if not impossible, to get an abuse case investigating and prosecuted. Fortunately, that situation has changed, but there still is a great need for specialized knowledge that will allow successful prosecutions and encourage further development of case law.

I refer you to my full statement for examples of the many gaps in the network of services for abused and vulnerable adults. Recognizing the need for a coordinated approach to the problems of abuse and neglect, AARP joined a number of organizations in supporting the Elder Justice Act of 2003. This legislation would great-

ly enhance the Federal government's ability to partner with states and communities to develop the tools needed to ensure the safety of their most vulnerable citizens.

Again, I refer you to my full statement for the specific provisions of the proposed legislation. While advocating strongly for Federal proposals like the Elder Justice Act, AARP recognizes the need for ongoing efforts at the State level to improve public awareness, the quality of investigations and enforcement in cases of abuse and neglect. These efforts are particularly important, as Missouri and other states struggle with a likely prolonged period of fiscal austerity.

Enforcement and prosecution play a key role in redressing abuse and neglect after they have occurred. But just as important is the role of prevention. Early detection of warning signs through the encouragement of wider reporting and community policing can make a critical difference.

Also, AARP has historically been concerned about financial fraud, the fastest growing form of abuse. The main hurdles to successful prosecution of these crimes, are getting the cases reported to law enforcement, having them thoroughly investigated, and obtaining timely and appropriate prosecution.

Senator Bond, AARP appreciates your leadership in efforts to ensure the safety and well being of older Missourians and all American citizens. We look forward to working with you toward that end.

Thank you again, and I would be more than happy to answer any questions you might have.

[The prepared statement of Ms. Collins may be found in additional material.]

Senator BOND. Well, thank you very much, Ms. Collins, and the testimony of all five have been very helpful.

Mr. Graves, obviously, you were stretching a little bit and reaching to get the False Claims Act to apply to nursing home inadequate care or abuse. Were you one of the first in the 8th Circuit to use this, and what other challenges did you face in trying to make this fit into a False Claim action?

Mr. GRAVES. Well, certainly there were other districts in the country that had done this and were leaders in this area. I believe we were one of the first in the 8th Circuit, not the first, the opinions did not have any case law to address for the 8th Circuit.

But, again, the real challenge is that you have to show—it is essentially a common law standard rather than having clear statutory standards.

It is being developed by common law, which is slower and less effective. What they did fell so far below the standard, that essentially the government got nothing for its money. Not that the government got—you know, and where is that break? Is it they got 10 percent of what they paid for? Clearly, that would fit in the False Claims Act, if the government only got 10 percent and therefore the patient was not cared for.

If they got 50 percent, now you are starting to get into a gray area, and although the patient was not cared for, was it so bad that we could prove to a judge or a jury that they did not do anything. And you have to be able to show that their staffing is so low or

something that rises all the way to the top of the organization that they have to know that it is going on and not just an isolated incident.

Senator BOND. Is this initiative of yours something from your office or is the national Department of Justice pursing this?

Mr. GRAVES. Nationally, the False Claims Act cases are being pursued across the country, but, again, our ability to pursue is limited by what we have to work with.

Senator BOND. What other efforts are you doing working with other agencies, collaborating with regulatory or other advocacy groups—what are you doing? Making any efforts there?

Mr. GRAVES. Well, with investigative agencies, when the Missouri Division of Agents submits a notice of deficiency, we receive that as well as the Department of Health and Human Services receive that. And if something gets kicked off, if we are both working parallel—we have a very good working relationship with the Missouri authorities and prosecutors.

But what we do not have is—if you asked me what kind of working relationship I had say in drug crimes, I know that, you know, there are cops out there that I could work with, State cops or Federal agents, but in this area, there are not really a lot of cops that get called out or investigators that get called out. We do not necessarily work with State investigators in the same way in this area as we would in a drug case.

Senator BOND. For your legal background and training, what tools or training or resources do you think would be most helpful for your office to be able to make a difference? What do we need to do? We need to make additions or modifications to the Elder Justice Act?

Mr. GRAVES. Well, just speaking broadly, and not speaking on behalf of the Department, I can only speak to my experience in this office, of course, we have to be cognizant of the difference between what should be handled at the Federal level and what should be handled at the State level. But with that in mind, if this is a problem that rises to the Federal level, then we need to have something that addresses what is actually going on. Rather than a fraud theory, we need to have something that addresses the patient is a victim rather than the government is a victim.

Senator BOND. All right. What about the idea that Mr. DeWitt had, some kind of alternative dispute resolution. He was talking about something quicker, something proactive and preventive. What would you see in that area?

Mr. GRAVES. Well, that is something I think can be handled at the regulatory level through the Health and Human Services, and I think can be very helpful. I do not see that our office would necessarily have a role in that.

Senator BOND. Well, I was just asking your advice, from your knowledge of the justice system. So you think this could well be in the regulatory area?

Mr. GRAVES. Sure.

Senator BOND. All right. Sheriff, you have obviously done a lot of thinking, a lot of work on this issue. You say that for every case that is reported, five may go unreported. What is the reason? What

can you do to get more reporting? How can we get a better handle on this?

Mr. VESCOVO. Well, as I mentioned in my testimony, I think that there needs to be not only more training for law enforcement officers concerning the issue of elder abuse and neglect, but public education. As I stated earlier, the issues of domestic violence and child abuse, those are very hot button issues, and justifiably so.

But when you talk to someone about elder abuse, again, they think of something, well, someone is not getting the best of care in a nursing home or their locked up by themselves at home and no one is visiting them. Those are two areas that I think that would help immensely in bringing this issue to the fore front.

Senator BOND. There is a real challenge when abuse occurs in the home. Getting that reported, I guess, is the number one problem. But finding out how and why it is happening, how do you get information on that?

Mr. VESCOVO. Yes, Senator, but also, in the event that an officer is dispatched to the home, it is very difficult for that officer, who has no medical training, no background training—you have a victim that claims that they are being malnourished and not being taken care of. Well, are they malnourished or do they have some type of debilitative disease which is causing them to lose weight?

Obviously, very blatant issues of abuse that just recently occurred here in Clay County, it is very obvious that it was abuse and neglect. At times it would be very difficult for a law enforcement officer to make a decision with really no medical background, except maybe basic first aid.

And that is why when I said that these investigations are a collaborative effort, it is a collaboration between the medical professions to diagnose whether it is abuse or neglect, as well as the social service agencies being able to assist a victim of elder abuse.

Senator BOND. Well, so training and perhaps one or two specialized personnel in the Department who would have specific training as you have people trained specifically for methamphetamine busts and so forth would be helpful.

Mr. VESCOVO. Right.

Senator BOND. You know, one of the interesting concerns I have heard today that—it apparently is not a problem in your area—one representative of the area agency on aging said, Oh, we cannot get anybody to prosecute these things.

The victims of elders abuse do not want to prosecute. We ought to be talking to the law enforcement and prosecutory officials because there may be many circumstances where an abused elderly victim really is frightened to death of the abuser and would not say, oh, yeah, go ahead and prosecute this person, they may be stuck with them.

Do you have any problem taking action, law enforcement action, when somebody will not file a complaint, if the victim will not file a complaint?

Mr. VESCOVO. Well, although I am not a prosecutor, I think some of the hurdles, particularly in prosecuting elder abuse cases is that, just as you mentioned, they do not really want to testify against someone because that is probably all they have. Also, a number of times you are dealing with elderly people that have a diminished

mental capacity, and I am not an attorney, but I would assume how good a witness is this individual is going to be because of their mental diminishment? That is also a hurdle.

Senator BOND. I might refer back to the U.S. Attorney, Mr. Graves, on that because that is more of a prosecutorial question.

Mr. GRAVES. Well, speaking as a former State prosecutor in my role that I had there, I mean, that sounds — those two arguments are exactly the same argument that you deal with in child abuse and spouse abuse. Three year olds do not make good witnesses, but you still do the case, if it is important. And that is because society and the system has conveyed that message to law enforcement and given them training, and prosecutors training.

And in spouse abuse, in most of your cases, the spouse does not want to go forward with the prosecution for the same reasons. And most offices now have a No Drop policy. They go forward with or without the spouse and that takes that off of them. You know, what we have been taught in the spouse abuse arena is, the worst thing you could do is, in front of the perpetrator and go to the victim and say, do you want to prosecute? Well, you know what the answer is going to be. And so you do not ask the question.

And so both of those issues—again, from speaking as a former State prosecutor—training and leadership in that area could address both of those issues I think.

Senator BOND. All right, we need to get you to talk to some of your former brethren and sisteren in southwest Missouri, because that, to me, was shocking because the same thought occurred to me, I mean, this is an area where I could see a great deal of reluctance of the victim to come forward. That may be the only person they see every day.

You talked about collaboration, Sheriff, social services agencies, law enforcement, anything we can do to assist in that collaboration other than perhaps some training? What could we do through our Elder Justice Act to improve on it?

Mr. VESCOVO. Well, as I stated earlier in my testimony, we were rely heavily on the social service agencies. In fact, I think it was about 3 weeks ago, our detective unit, one of my investigators got a call on an issue of an elderly person that it was probably neglect, but not neglect on purpose. They just did not have the resources to take care of this woman. And we referred them to the Division of Aging in the State of Missouri and they handled it from there.

But without that support, we are, for the most part, and particularly in those type of issues, which are not really something where you are going to charge someone because it was not intentional, that we rely heavily on those agencies, so I would say support of those social agencies would be a big help.

Senator BOND. Yes, that and trying to avoid the problem so it does not get to a criminal prosecution is ought to be the goal and certainly that has been the theme here.

Now, Ms. Collins, you mentioned the other groups coming together along with the AARP. I bet in my last count I think there were over 190 organizations, and we very much appreciate your support and leadership on the legislation.

Do you hear from your members what—based on your membership, how important, how widespread do you think this problem is in Missouri?

Ms. COLLINS. Well, let me just share with you, Senator Bond, that the importance and relevance of this issue is supported by our membership data. Thirty-seven percent are extremely interested in protecting themselves or loved ones from elder abuse. Fifty-four percent are extremely interested in protecting themselves from consumer fraud, which is ranked higher than Medicare, Social Security or staying healthy.

Now, let me also share with you that two of the five top concerns of African-Americans are fraud and abuse. Sixty-four percent for protection from consumer fraud, and fifty-eight percent for protection from elder abuse. And then thirty-two percent are interested in receiving information on services on protection from financial fraud.

So I think that those statistics can go to show you that our membership data supports this issue as being very relevant and important.

Senator BOND. You know, I am interested because, obviously, one of the abuses that I mentioned earlier was financial abuse, and a long, long, long time ago I used to be in the consumer fraud racket, and fighting consumer fraud in the attorney general's office, and I guess we did not get the problem solved before I left.

Would your members tell you if they have been the victim of either physical abuse, or financial abuse?

Ms. COLLINS. Senator Bond, some of our members will share that with us, but many of them are very embarrassed. And these are not just people who might be low income or just do not know.

These are people who are very highly educated, who are just embarrassed to tell you, look, I have been bilked out of $80,000 because this telemarketer kept calling me, or whatever. So we do not have as many people expressing that publically as we would like. So it is something we need to continue to work on.

Senator BOND. Yes, well, the first time I went to a county fair and a sharp operator bilked me out of my week's allowance, I was too embarrassed to tell my parents I had blown the whole two dollars. And the guy plucked me like a chicken, so I could see that problem.

You mentioned the importance of prevention, and that is really what we keep circulating around here. We talked about lawsuits, we talked about criminal prosecution, the False Claims Act, what do you see as the best way to prevent this in the first place? If prevention does not work, we need to have the legal remedies on the civil side, and, I think, on the criminal side.

But, going back up stream, what are the most important things we can do to really reduce the number of incidences?

Ms. COLLINS. I have made some notes on some things that AARP has been involved in and sent some of current investments and they include, AARP policy has supported a comprehensive range of elder justice positions, that is nursing home quality care, financial security and personal and legal rights.

And, in case you do not know, AARP was very actively involved at the State level this year in getting a very comprehensive nursing

home bill passed. And we worked along with the governor, lieutenant governor, and a bipartisan group of legislators. AARP for many years received a grant from the administration on aging to provide national support, training and technical assistance on protective services issues, including elder abuse.

AARP was invited as a participant in the 2001 national summit on elder abuse, which produced a blueprint for action that included a priority to support a national elder abuse act and the recommendations in that priority are addressed in your bill that was recently introduced in Congress.

We had been a leading advocate in the development of State laws on elder abuse. We have been most prominent in developing national and State policy and programs addressing financial abuse in conjunction with the Administration on Aging, Department of Justice, the National Association of Attorneys General, and Health and Human Services and a broad compliment of law enforcement and consumer organizations.

Now, also, for more than a decade, AARP, through its consumer affairs, consumer protection unit, has concentrated on financial exploitation of older persons. Several years ago, the former Womens Initiative Department that we had at AARP, took the national lead on domestic violence and older women.

And right now, their ongoing current investments that include Federal regulatory, programmatic and legal advocacy with the Department of Justice, State Attorneys Generals, Federal and State agency officials and State courts. And this includes 17 states, which Missouri is one of them, and the U.S. Supreme Court and several international countries.

So, we are still working on this issue. It is a very important issue to us, as well as our members.

Senator BOND. Well, we certainly appreciate your testimony and we look forward to working with all of you and with those of you here as we seek to find ways to prevent this. There is no question that elder abuse is something that is very personal to all of use. It can affect our husbands, wives, grandmothers, grandfathers, family, friends, and ourselves down the road, so I appreciate the witnesses sharing the stories from their personal experience.

And no family should have to endure the unspeakable acts of abuse that we have heard of today. And, as I said in my opening, elder abuse touches every community, no demographic or geographic boundaries and because the number of those of us who are getting older is growing, there is a growing target for neglect, exploitation and abuse.

We have to recognize and address the problems in a system that too often has left our citizens susceptible to some of the worst kinds of abuse. The harm or the threat of harm is real and the need is clear.

As I said earlier, Congress has focused a lot of attention on guarding against child abuse and domestic violence, and rightly so, but it is time that we mounted a comparable effort to do something about elder abuse.

And they are, as you all have said, multifaceted problems, multiagencies, public health, social service, law enforcement. There needs to be Federal funding, there needs to be Federal leadership.

I like the idea of establishing a dispute resolution system, strengthening the ombudsman role.

These ideas are all very helpful, and we will be working on these as the Bill gets marked up, and it is in the Finance Committee, but we will be holding a hearing on it and providing insights to the Finance Committee.

And I thank you again for coming. As I said earlier, we will keep the record open if you wish to submit further statements or if testimony by others today have spurred ideas, please feel free to address us in Washington DC.

I can give you the number. It is 202-228-4838. Just call the committee up. Thank you all very much.

Ms. COLLINS. Thank you.

Senator BOND. The committee is closed. Thank you.

[Additional material follows:]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF TOM KLAMMER

Mr. Chairman and Members of the Committee, thank you for giving me the opportunity to speak today.

I have no formal credentials related to elder care, but I work with a small, local group that advocates improved quality in Missouri nursing homes. We have held public meetings with area prosecutors, and others as speakers, urging the public to call 911 in cases of elder abuse, and to write letters to State legislators. Currently, we're preparing to listen to focus groups in order to get suggestions for reducing neglect and abuse from Missouri citizens who have had loved ones in nursing homes. We also meet with State legislators. While I believe all of these things are very important, I also think there are major systemic national problems.

My father went into a nursing home in 1998 after a series of strokes left him seriously impaired with dementia. Our experience with an HCR ManorCare facility is recounted in some detail in testimony before the Senate Special Committee on Aging in 1999, but I will just say that the care was not good, vital medications were allowed to run out with no notification to anyone, State agencies were of little or no help, and when I complained widely about the poor care, a ManorCare vice president found the time to call me at home and threaten me with a lawsuit if I didn't stop. I am still complaining. And HCR ManorCare, one of the largest nursing home corporations in the country is still providing poor care in many of its facilities. Among many examples I could cite, the company was featured prominently in the Pittsburgh Post Gazette last year for major and numerous problems in it's 47 Pennsylvania homes, was singled out for poor care by an official with the State of Iowa, and entered into a consent order with the Federal Government in a case alleging violation of the False Claims Act. Recently the Kansas City Fox TV affiliate featured the facility my father was in when it did a piece on the area homes with the highest numbers of deficiencies on their inspection reports.

The next facility we put my father in was, for a time, wonderful. But this facility was purchased by another national chain, Alterra, and almost immediately things went bad. The administrator was forced out, aides were fired, or had their hours and benefits cut until they quit, and agency staff that didn't know the facility or the residents were brought in to replace them. Confused residents, including my father, eloped undetected to wander along a very busy street until someone by chance brought them back. We found another facility to place my father, but not until after he had mysteriously acquired 5 broken ribs. Alterra facilities have also been prominently featured in the press for major problems.

Immediately after getting my father out of ManorCare, I began researching that company and the other big players in long term care. What I found was Enron and Worldcom. I looked at the SEC filings for the half dozen giants in the field and found that they all lavished multi-million dollar compensation packages on their CEO's and other top executives. Integrated Health Services sought a $50–$60 million dollar golden parachute for departing CEO Dr. Robert Elkins who had led them to bankruptcy, and a Federal bankruptcy judge approved it. In addition to lavish salary and bonuses, HCR ManorCare CEO Paul Ormond realized a gain of $23.7 million from stock options exercised in fiscal 2001. They all seem to have money to burn yet they continue to work together to lobby for more money with no strings attached, wrapping themselves in a phony free market flag while getting typically 70 percent or more of their billions of dollars of total revenues from tax dollars.

In 1999, I found that Gail Wilensky, then head of the congressionally mandated Medicare Payment Advisory Commission was also serving on the board and the compensation committee of HCR ManorCare, as well as on the boards of a whole list of healthcare related companies. She later resigned from MedPAC due to the appearance of conflict of interest. But today we have former for-profit Hospital lobbyist Tom Scully as the Administrator of CMS. It seems all the corporate interests are very well represented.

An HHS study released in 2002 concluded that 90 percent of nursing homes in the U.S. have staffing levels too low to provide adequate care. Inadequate staffing contributes mightily to problems of bad care, abuse and neglect. The nursing home chains continue to cry poverty, but an analysis last year by US News debunked that claim and also said that even when they received higher payments staffing actually went down rather than up. They spent it on executive pork, union busting consultants, lobbyists, an expensive campaign to spread specious arguments for so-called tort "reform" to further limit their accountability in an environment that already has the deck highly stacked in their favor—anything but more staff at McDonald's level wages. When I asked Administrator Scully on a national call-in radio program

about tying future increases in payments to staffing mandates he said, "we don't believe in staffing ratios."

Early on, I heard some advocates refer to the treatment of the nation's elderly with terms like "holocaust." I thought then that this was a bit of shrill, if understandable, exaggeration. I no longer think that. We are not talking about isolated incidents in a system that is generally working well. People like Tom Brokaw piously write about the "greatest generation", waving the flag and praising their service in and out of uniform during World War II, but then we turn our backs as many die untimely and needlessly miserable deaths in nursing homes. I am troubled by how decisions are made to put our military personnel at risk, but I salute Senator Bond's efforts to see that veterans and others are properly cared for. Still, too many of the greatest generation starve in nursing homes, some are beaten, some suffer pressure ulcers with flesh rotted to the bone and some, as in a St. Louis suburb case that I'm sure most of you are aware of, were allowed to cook to death one after another until paramedics refused to leave the facility. Many more suffer less dramatic misery, like spending hours in wet diapers.

Companies like ManorCare continue year after year to operate facilities with major problems related to quality care, accepting the imposition of fines and settling of lawsuits as a cost of doing business. CEO's like Paul Ormond, certainly aware of these problems, continue year after year to pocket the big bucks rather than fix the problems and provide the care they are being paid to provide.

Given the political and social realities we live in I don't expect to see it happen, but I can conceive of no logical, moral, or ethical arguments against criminally prosecuting these people at the top, and sentencing them to hard time followed by a sort of parole as very closely supervised nursing home aides.

Thank you for your time.

PREPARED STATEMENT OF ANTHONY L. DEWITT

Mr. Chairman and Members of the Committee, I am honored to have been asked to address this Committee on an issue of great importance to me, and to every American. Each of us is only a stroke away from a long stay in long term care, and the system is failing. I know this as a clinician. I know it as an attorney. I have seen its impact on the lives of my clients, and I am here today to argue in favor of increasing the protections available to our nations seniors.

Perhaps some background on me will be helpful for the committee. Upon leaving military service in 1980, I became a respiratory therapist, achieving the highest credential in Respiratory Care, that of Registered Respiratory Therapist bestowed by the National Board for Respiratory Care, in 1982. I worked as a critical care therapist in hospitals in the Midwest and Florida until 1983, when I became a department manager in the best hospital in the United States, Blessing Hospital, Quincy, Illinois. I worked there for 5 years before going to Mt. Sinai in Hartford, Connecticut, and to St. Charles Hospital in Oregon, Ohio. When I decided to become an attorney, I practiced as a therapist while in law school at the Vencor Hospital (essentially a long-term-care facility for ventilator patients).

It is a difficult world for clinicians who care for the elderly. Clinicians who care for the elderly have a calling more noble than most, and duties far more difficult than most-people realize. Wiping bottoms and changing beds is physically taxi and mentally emending work. Unfortunately, because facilities gouge extreme pro—its by doing so, these physically demanding and mentally taxi tasks are often very poorly compensated. A nurse or certified nurses aide in a Skilled Nursing Facility is often paid a disproportionately low wage compared to the administrators and financiers who profit from their toil. As a result, simple economics tell us that the highest quality people tend to go where the wages are highest. The result in the long term care industry is that the truly excellent caregivers, those with compassion, caring, and a sense of duty to the patient, frequently don't last in the nursing homes.

Why? Because they know that a certain number of people are needed on all shifts and at all times to safely care for the residents. [1] They know that the work of the CNAs in turning, repositioning, cleaning, and feeding the residents is backbreakingly brutal work. They know that caring for the residents means going the extra mile, and without sufficient staff, you often can't even go a few extra feet. As a result, because they can make more money nursing in the hospital or home care industry, they leave the nursing homes, and the nurses and CNAs that remain are

[1] As the horrific fire in Hartford, CT, showed, bad things happen in nursing homes, and insufficient staffing during a fur is a recipe for patient deaths.

often those who do not view caring for the elderly as a calling, but simply as a means to pay the mortgage.

As a clinician at Vencor I saw patients mistreated by clinicians (and I use that term charitably) who were only there to work their eight or twelve hour shift and go home. These caregivers didn't care about the patient, about the resident's disease processes, or about the needs of the residents and their families. Instead, they cared about their meal break, their smoking breaks, and the numerous opportunities the would get to sleep during a shift. I saw patients made to he in dirty and wet belly ding because the nurse had changed their bed only four hours earlier, and decided to leave the next cleanup to the next shift. I saw patients in need of comfort who were ignored. I saw patients punished by withholding personal items. I saw aides go through patient drawers and personal items looking for valuables that might be easily pilfered. [2]

When I saw these things, I reported them to management. I saw my hours shrink. Was there a correlation? I do not know if there was or not, but it seemed so to me. [3]

My job, as a therapist at Vencor, was to care for life support equipment. Most of the nurses and aides did not understand the equipment, and wanted no part of it. Now, with the PPS system in the long term care industry aimed at reducing rampant fraud, the sad effect on nursing home care is to have removed from the nursing homes another set of eyes and ears that kept patients safe. As a Fellow of the American Association of Respiratory Care, I urge the committee to Consider improving the care of elders by requiring nursing homes to have an on-call respiratory care practitioner to assist, advise, and where applicable, to treat respiratory ailments in the nursing home. [4] The AARC has been trying to have its message heard in Washington. I would urge this committee to invite testimony from them on this subject.

With my background as a clinician, you may think I came to my job as an advocate for the elderly in nursing home abuse and neglect cases by virtue of my clinical experiences in long term care. But that would only be partially the case. I became a nursing home attorney quite by accident.

In late August of 1999 I was approached by a lovely woman named Bonnie Thorpe. Bonnie had gotten my name from Violette King, a vocal and tireless advocate for the elderly. Bonnie asked me if I could tell her why her mother had died of pneumonia in the Claywest Nursing Home. I told her I would look at the chart and let her know. After all, I was a respiratory therapist, and if anyone could tell why a patient might have developed pneumonia, I figured it would be me.

I learned from a review of the record and from looking at the paramedic call records that Bonnie's mother (Edyth) had not been fed for 7 days prior to her untimely passing. For 5 of those days her chart was completely devoid of any nursing notes. Although her chart indicated that she had eaten "good" [sic] at all three meals for the prior 7 days, the same chart showed no stools or other output. [5] The paramedics reported to the hospital that Claywest staff had told them she "hadn't eaten or drank [sic] anything in a week."

As I was trying to get to the bottom of Edyth's death, Bonnie introduced me to another woman, Katie Misuraca, and her grandmother, Thelma Magruder. With Bonnie and Katie, two caring and compassionate women, I found my calling. And I started out simply by trying to help Katie get access to her grandmother at Claywest.

Katie wanted nothing more than to be able to continue to visit her grandmother in the nursing home. There is a Federal regulation that requires nursing homes to permit 24-hour a day, 7-day-a-week access by family members. Were that Federal mandate not enough, the resident had a written physician's order mandating hour visitation. In spite of these two clear mandates, the nursing home call the police and had Katie escorted off the premises whenever she came to visit her grandmother after official visiting hours were over. They told Katie that she should move her grandmother because they couldn't meet her needs by providing 24-hour a day access.

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[2] To be fair, I also saw many good clinicians who did care about the patients. By and large many of these caregivers only stayed a week or two after realizing that the culture of the facility did not support or encourage excellence.

[3] When our firm depose nurses at Claywest, in St. Charles, Missouri, we found that nearly all of them knew that a report of abuse or neglect to management might be tolerated on an odd occasion, but a report to the State entity, the Division of Aging, would be grounds for dismissal.

[4] Of the wrongful deaths that occurred at Claywest from 1999 to 2001, at least three could have been prevented had respiratory therapists been available and in attendance to care for nursing home patients. The failure to have these caregivers is proving deadly for patients.

[5] It is a matter of common understanding that if a patient eats regularly, they eliminate regularly. There was no record of elimination.

Was Katie disrupting the facility? Was she causing patient injury? Was she in some way interfering with the giving of care? No. What Katie was doing, while visit her grandmother to make sure that no harm came to her, was handing out, to residents and family members that wanted them, a flyer on resident's rights produced by the Missouri Division of Aging. Of much greater concern to the facility staff, however, Katie was documenting, in a notebook, when it would take upwards of 3 weeks for a patient's linens to be changed on their beds, when there was insufficient staffing to meet the needs of the patients, and when she would find patients in a compromised state. She was telling staff when patients had fallen, or were calling out for help, or hadn't been able to find their call lights. Katie was trying to make things better for her grandmother, and the other residents, and for this she was retaliated against by trespassing complaints made to the local police.

I sought a Court order from the Circuit Court of St. Charles County, and the circuit court issued a temporary injunction granting her visitation twenty-four-seven. Incredibly, after serving a copy of that court order on the facility, the facility called the police to come escort Katie off the grounds.[6] That order was made permanent and official on October 1, 1999. On October 6, 1999, Katie came into the facility to see her grandmother. Her grandmother was slumped over in a wheelchair, in obvious physical discomfort.

"What's the matter," she asked her grandmother. "Katie, I fell out of bed," Thelma explained.

At this point a nurse came by, explained that Thelma had "dreamed she fell out of bed," and that she had been given a Tylenol for her pain.

Katie asked if x-rays had been obtained. They hadn't. She took her grandmother in her car to a local hospital. When the results of the examination were in, Katie learned that the "dreamed fall" had been a horrifying reality. Four rib fractures and three crushed vertebrae were detected by radiograph The doctor later told us that there had been a "shoe-shaped bruise" in the middle of Thelma's back. Thelma never recovered from her injuries.

I had to stand at the foot of Thelma's bed and explain to my client why the injunction had not been enough to ensure her Grandmother's safety. Even though I know I did my best, I will never stop feeling responsible for that woman's pain and suffering.

Starting in 1999, and continuing forward through this past month, I have been actively engaged in litigating nearly a score of abuse and neglect cases against Claywest, its corporate parent American Healthcare Management, Inc., and its affiliated nursing homes and companies.

Some of the cases are so outrageous they may seem hard to believe. But let me tell you some of the things we learned about Claywest and American Healthcare Management, Inc., during the litigation:

American Healthcare Management and Claywest hired a man wanted for a drive-by shooting in Mississippi.

An employee at the facility knew of the man's criminal record, but said nothing.

Nurses at the facility noted that he was abusing and harassing patients, and reported his behavior. Nursing and facility management did nothing.

In July, 1999, he beat a resident to death.

The nursing home reported that the resident fell out of his bed, and was later convicted for failing to report the abuse.

One resident, a paralyzed veteran, was smothered when he tried to prevent his personal items from being stolen.

Another resident had her shoulder yanked from its socket.

One resident had her cane and eyeglasses taken despite two pleas from family members to keep them with her so she could see and ambulate. She fell and broke her hip, dying after only 7 days in the facility.

One nurses aide was placed on the locked Alzheimer's wing with residents but given no training and provided no supervision.

One resident was allowed to die from malnutrition.

Another resident was taken off lifesaving kidney medication and allowed to die from kidney failure.

One resident was shut in her room with the door closed when she complained of intense abdominal pain, and she died in her clothes sitting in her wheelchair.

When Claywest ran short of help they would take their bus to the Salvation Army Homeless Shelter and recruit ten homeless people to work in the facility as nurses aides.

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[6] I provided the police with a copy of the temporary restraining order, and they refused to honor the request of the facility. At no time did the St. Charles Police Department ever act in an inappropriate manner.

Virginia Bryant, a lovely woman who started the first food pantry in St. Charles County, was allowed to go more than 8 hours with an oxygen saturation of 77 percent. That saturation manifests a degree of oxygen starvation so profound that if it occurred in a hospital most clinicians would have activated the emergency system (code blue). As a result of there being no respiratory care provider in the facility, the patient ultimately suffered such severe cardiac injury that she died.

One patient, a mother, suffering from dementia, died strangling in her restraints on Mother's day. The family was told she passed away quietly in her sleep.

Administrators at all AHM facilities were held to a budget of 40 percent of the amount paid by Medicaid for staffing. [7]

These are only some of the problems. I have brought today a video clip that I would like to pray for the Committee. For ease of transcription, the text of this sworn testimony by a Claywest charge nurse is set forth below. I caution the faint of heart that this video clip is unsettling and may cause you nightmares; it did me:

25 Q. (By Mr. Dollar) The ant problem you saw in this facility was worse than any other situation?

A. Than I had ever seen. I've never seen—

MR. WENDLER: Oh, okay. I'll agree with that.

A. I never seen ants like that crawling on anybody.

Q. (By Mr. Dollar) And when we're talking about Ruth Cawthon, we're talking about a situation in which she was literally covered in ants?

A. Covered.

Q. From head to toe?

A. Yes. She had ants everywhere.

Q. They were swarming all over her body?

A. Yeah.

Q. Is that right?

A. Uh-huh. That's true.

Q. And are you aware that her daughters came into the facility to visit their mother and walked into the room and found their mother completely covered in ants?

{Objection Omitted}

A. It's gross.

Q. (By Mr. Dollar) It's what?

A. It's gross. I mean they were crawling in areas that theatrics were needed.

Q. Well, tell me about that. What do you mean?

A. It was bad.

Q. What do you mean?

A. They were crawling in and out of—by her vagina. They were on her face, around her ears. I mean that was really bad. It was bad. I didn't know the family had found her like that. I just know that the time they had come and said, "Well, what do we do."

I said, "One, get her out of the room. If you have to, bathe her. You know, get rid of them."

This was the norm at Claywest. Sharon Patton, an LPN, testified at length that before American Healthcare Management took over Claywest, it was a good home with adequate staffing and caring management. After the takeover the facility was stripped of staff and patient care routinely suffered. Unfortunately, this tendency toward taking over a facility, stripping its staff to the bare bones, and milking the facility for all the profits a corporation can take out of it, is becoming the norm all over the country. As budgets become tighter, facilities will continue to squeeze staff and the result will be similar horror stories.

And don't expect nursing homes to voluntarily disclose their non-compliance. Armed with HIPPA guidelines, nursing homes are now refusing to produce medical records in response to requests from next of kin. Claiming that HIPPA prevents it, nursing facilities now regularly refuse to comply with the mandate of 42 CFR 483.10 to provide medical records to the legal representative of the resident. Claiming that the next of kin, the individuals with the legal authority to bring a wrongful death claim, lack standing to obtain medical records, the nursing homes simply refuse to provide the records. In order to find the true cause of a patient's death, family members must open an estate and petition for letters. This paces a $500 to $700 administrative burden on the family just to obtain the records. It is an effective shield against most lawsuits because the facility simply stonewalls until the family forgets. This issue should be one of immediate concern for the committee. HHS should be directed to reform 42 CFR 483.10 to state that the "legal representative" includes

[7] In most health care facilities the average cost of human resources is about 70 percent of the facility budget. At Claywest it was 40 percent, and that proved fatal for many of my clients.

a member of the class of persons authorized by statute to bring an action for wrongful death.

I urge this committee to adopt standards for nursing staffing and standards for nursing care that are enforceable, not only by attorneys like me after the fact, but by surveyors in the field and county prosecutors. It is my understanding that this committee will hear testimony from one such courageous prosecutor, Jim Gregory, who prosecuted the management of Claywest for its failure to report abuse. Isn't it sad that where patients were left to lie in their own urine and feces for hours at a time, where they were allowed to serve as a feeding ground for ants, and where residents were beaten to death by wanted felons, that the only thing that could be done to the facility, and its management, under State law, was to punish them for lying about what caused a patient's death? Why couldn't the facility be prosecuted for the horrors it inflicted on the elderly? I hope you will ask Mr. Gregory that question, and I hope you will listen carefully to his answers and address them. [8]

This past week I have spent investigating a claim of abuse and neglect where the majority of the investigation was done by the State by telephone. State agencies are strapped for cash and have had positions eliminated because of budget cuts. This has not escaped notice in the nursing home industry. The nursing homes are using that lack of State resources to their advantage. I know that Shane McClain at the Missouri Department of Health and Senior Services is doing the best job he can with the resources he has, but he needs more resources to protect the elderly, and States need to be able to impose the equivalent of the death penalty on a nursing home when it flaunts its regulatory non-compliance.

I would urge this committee to give Federal law enforcement agencies like the HHS OIG and the U.S. Attorney clear direction by establishing mandates and standards for the nursing home industry that can be used to prosecute claims of abuse and neglect. These standards should err on the side of protecting the residents, and not on the side of giving the nursing home corporations lengthy appeals processes that effectively allow them to circumvent the regulations. [9]

Right now under Missouri law, even Class I violations, violations so serious that life and health are jeopardized, may not be enough to bring a licensure revocation proceeding. The fact is that while Claywest was neglecting residents right and left in 1998 and 1999, and while it was being cited with over 300 regulatory violations during that period of time, it never had to worry about losing its license because it knew how to play the system.

That process should be reviewed, revised, and made summary. I believe a corporation is as entitled to due process as is an individual, but that right to due process should take a back seat to protecting the elderly. When the needs of the elderly residents, almost all of whom have no effective advocate unless they are seriously injured or killed, are weighed in the balance against the corporate right to continue operations, the margin for error should be on the side of protecting the residents. It should not be on the side of protecting the profits of the corporations. These corporate entities annually drain billions from the Federal budget while delivering care so substandard that many advocates have compared them to prison camps. Nationally the U.S. Attorney, including the U.S. Attorney here in Kansas City, has been active in using the False Claims Act to go after this grossly substandard care. But the standards under the False Claims Act are vague, and special legislation is needed to hold corporate entities responsible for proving slipshod care.

As our firm learned when it undertook the Claywest litigation, the only effective means of inducing any corporate change is to impact the corporate pocketbook. [10]

There need to incentives and mechanisms where caregivers can alert the Federal and State governments to unsafe staffing conditions and violations without fear of retribution. While an anonymous hotline exists, very few clinicians use it because any activation of that hotline inevitably leads to termination. Now, that termination is never "because of the hotline report-it is always for tardiness, or insubordination, or some other purported work rule violation. But the clinicians know that a phone call to the hotline will be quickly followed by a phone call to Employment Security.

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[8] Mr. Gregory undertook a prosecution that other prosecutors have shied away from. When four residents of the Leland Care Center in St. Louis County died from heat injuries, the St. Louis County Prosecutor failed to get indictments against the facility for an act of abuse and neglect.

[9] Although Federal surveyors recommended penalties against Claywest approaching $300,000 for acts of abuse and neglect in 1999, the government settled this matter and imposed a cloak of confidentiality on the settlement amount. It took intervention by Senator Grassley's office to bring the matter into the sunshine.

[10] After nearly a score of lawsuits in 2 years against its facilities, American Healthcare Management, Inc., left the nursing home business in 2001. It was a victory for patient care.

This is a subject that requires further study, and I hope the committee will undertake it.

Many of the men and women whose family I have served as an advocate were caring, compassionate folks. Many were veterans and members of that Greatest Generation. They did not deserve to die alone and neglected in a nursing home. Over the last 3 years I have worked steadfastly on behalf of these men and women, trying very hard to see the wrongs righted. I have stood with my clients and listened to them cry as they told their stories. I have held the hands of the elderly nursing home residents I have helped and seen the fear in their eyes. I have seen the genuine joy in the eyes of a son or a daughter who received the satisfaction of knowing that a nursing home had been held accountable.

This is my chosen career. It is how I justify my existence. I love my job because, like my job as a respiratory therapist, I get to help people who truly need my help every day. But the reason I have a job is because nursing homes, many owned by large for-profit entities that seek profits over patient care, are injuring and killing the elderly. The problem continues to grow. There has been a 22 percent increase in the number of healthcare organizations and healthcare executives who have been convicted of health care fraud, according to the HHS OIG. As I view the long term care landscape today, I see no end in sight to the abuse and neglect.

This committee has the power to change that. This committee should seize the day and take action to stop abuse and neglect.

Nothing would please me so much as to be put out of a job in that fashion.

PREPARED STATEMENT OF TODD P. GRAVES

Mr. Chairman, and Members of the Subcommittee: Thank you for your invitation to appear today and testify on my experience regarding elder abuse. I appreciate the Subcommittee's attention to these issues specifically nursing home abuse and neglect.

Two cases successfully handled by the United States Attorney's Office for the Western District of Missouri may serve to illustrate the nature of the issue. Both cases involve egregious instances of painful injuries and unhealthy conditions suffered by elderly residents as a result of gross neglect on the part of nursing home operators. To address these cases, we took an innovative approach, filing civil actions against the operators under the federal False Claims Act.

In April 2000, we filed a civil lawsuit against NHC Healthcare Corporation, the corporate operator of a nursing home in Joplin, Mo. This lawsuit was filed after a 149-page statement of deficiencies had been prepared by the Missouri Division of Aging, which catalogued numerous violations that threatened the health and safety of the nursing home's residents. The Division of Aging survey found repeated instances in which patients developed pressure sores, lost significant amounts of weight, and were left lying naked and unattended in their own urine while smeared with their own feces. At least two patients eventually died as a result of this neglect.

Our lawsuit alleged that these instances of patient harm and abuse were attributable in large part to NHC's failure to provide adequate staff to meet the needs of nursing home residents.

We believe NHC was so severely understaffed that it could not possibly have provided the level of patient care it was obligated to provide for reimbursement under the Medicare and Medicaid programs. Aware of these staff shortages, yet billing Medicare and Medicaid for services it clearly had not adequately provided, NHC was knowingly submitting false and fraudulent claims to the Medicare and Medicaid programs and thus violating the False Claims Act. In other words, we prosecuted as civil fraud against the government, rather than as actual elder abuse.

There, was no precedent in the Eighth Circuit for this use of the False Claims Act, and very little case law from the other circuits. But in a series of groundbreaking rulings, the district court upheld the use of the False Clams Act to enforce quality of care standards in nursing homes. As a result, NHC agreed to pay $250,000 and submit to ongoing monitoring to settle the civil suit.

In the second case, Woodbine Healthcare and Rehabilitation Center in Gladstone, Mo., agreed in December, 2002 to pay the United States $25,000 to resolve allegations that it failed to provide necessary services to its residents. Our lawsuit alleged that Woodbine's failure to care for its patients led to, for example, repeated maggot infestations in one patient and the development of penile gangrene and pressure sores in another resident.

Both nursing home operators also submitted to corporate integrity agreements requiring them to perform audits and reviews to determmine whether residents are receiving care that meets federal quality of care standards.

The difficulty with this approach arises in establishing whether a nursing home fails to provide the services for which it is reimbursed by Medicare and Medicaid. Those programs reimburse nursing homes on a per diem basis for general care, rather than according to specific services rendered, For that reason, the False Claims Act is ill-suited for insuring adequate care of nursing home residents.

In the two examples I've shared, both nursing homes failed so egregiously to provide even a minimal quality of care that there was no question they fell far below any reasonable standard, and thus we were successful in our civil actions against them. But in many cases, it is likely that even a deficient quality of care would fall into what the court prescribed as a "grey area." In fact, the court opined that the point at which the overall quality of care crosses the line from what is requited for Medicare and Medicaid reimbursement to being so negligent that those claims are fraudulent is "a very blurry Joint." The court noted that somewhere "between gross neglect and perfect care" lies "an amorphous standard in need of further clarification."

Our prosecution of NHC was initially launched as a parallel proceeding, pursuing both the criminal and civil alternatives, which include mail and wire fraud statutes, health care fraud statutes, and the False Claims Act. But due to the nature of the nursing home industry, in which the billing function is separate from the provision of care (that is, separate staffs are responsible for those functions, Sand they may even be housed in separate buildings or work for separate corporations) it can be very difficult to bring a successful criminal action against the responsible parties.

Thank you again, Mr. Chairman, and Subcommittee Members, for your invitation and for your attention to this issue. I look forward to answering your questions.

PREPARED STATEMENT OF PAUL C. VESCOVO III

Mr. Chairman, and Members of the Committee, I would like to thank this committee for giving me the opportunity to address the issue of elder abuse and neglect.

As the population of older Americans grows, so does the hidden problem of elder abuse an neglect. Every year an estimated 2.1 million older Americans are victims of physical abuse and neglect. However, those statistics do not tell the whole story because for every case of elder abuse and neglect that is reported to authorities, it is estimated that there may be as many as five cases that have not been reported.

Elder abuse is a complex problem and it's easy for people to have misconceptions about it. For many people when the subject of elder abuse comes up they think it's about older people living in nursing homes or elderly people living alone and never having visitors.

Actually, most incidents of elder abuse don't occur in nursing homes. Only about 4 percent of older adults live in nursing homes and the majority of these residents are having their physical needs met without experiencing abuse or neglect. Most elder abuse takes pace at home. The great majority of older people live on their own, or with their spouses, children, or other relatives; not in nursing homes. When elder abuse happens most often it is family or paid caregivers who are usually the abusers.

Investigating cases of elder abuse poses unique challenges for law enforcement. As I mentioned earlier, elder abuse is a complex problem which calls for comprehensive training for law enforcement officers so that elder abuse incidents can be effectively investigated. Elder abuse is a largely hidden problem in our society that only recently has received attention from the criminal justice system. Training will increase the awareness of this unique problem, and allow us to more effectively respond to elder abuse incidents.

A concern that I have as a law enforcement leader when it comes to the issue of elder abuse, is the ability of social agencies to assist law enforcement in adequately responding to cases of elder abuse and neglect. Successful investigation and resolution of elder abuse cases requires collaboration and support from adult protective services.

Intervention by law enforcement in instances of elder abuse almost always results in police agencies accessing social service agencies to assist the victim. Due to recent budget shortfalls and declining revenues, cuts in social service funding are inevitable. Without adequate funding to support these social service agencies, we in law enforcement will find it increasingly difficult to assist victims of elder abuse and neglect in obtaining the support and care they need.

Social service agencies also provide counseling for behavioral or personal problems in the family, which can play a significant role in preventing violence against an older family member.

I also feel that education of the public on elder abuse and neglect would go a long way toward preventing elder abuse. Public education and media coverage concerning

domestic violence and child abuse has made the public knowledgeable and proactive in the reporting of such abuse and has garnered support for the funding of programs to combat such abuse. Because most abuse occurs in the home by family members or caregivers, there needs to be a concerted effort to educate the public about the special needs and problems of the elderly.

I would again like to thank this committee for inviting me to voice my thoughts on this issue.

PREPARED STATEMENT OF NORMA COLLINS

Mr. Chairman and Members of the Committee, on behalf of AARP members in Missouri, I want to thank Senator Bond for convening this hearing on service and commitment to protecting older and dependent adults from abuse and neglect through S. 333, The Elder Justice Act. State and national attention to elder abuse concerns is highly valued by AARP members and America's older population.

Elder abuse is an issue of critical importance for AARP. Our members tell us that protecting themselves and their loved ones from abuse and fraud is one of their major concerns.

The risk of harm is real as the number of people living into advanced old age increases dramatically. Fully mobilizing the law enforcement community and engaging all sectors of society in the fight against abuse, neglect, and exploitation is essential.

ELDER ABUSE—A HIDDEN PROBLEM

Elder abuse, like other forms of domestic violence, is a hidden problem.

It is not discussed because, in many cases, it's occurring within a family—90 percent of the abusers in domestic cases are relatives. Two-thirds of these are adult children (47 percent) and spouses (19 percent).

The secrecy, personal embarrassment, and fear that surrounds abuse leads to significant under-reporting of incidents.

The National Elder Abuse Incidence Study, commissioned by the U.S. Administration on Aging and released in 1998, provides a starting point for gauging the extent of the problem. The study estimated that in domestic settings, some 450,000 older persons, aged 60 and over, experienced abuse and neglect in 1996. The census projects the population group aged 65+ in Missouri to increase from 755,000 in 2000 to 1,258,000 in 2025.

Most significantly, the Study concluded that over five times as many incidents of elder abuse and neglect went unreported. Only the most visible and recurring cases get reported. Like an iceberg, the bulk of the problem remains hidden from view.

The Study also confirmed reports by enforcement personnel across the nation with regard to the demographic characteristics of victims. The Study found:

Persons 80 years of age or older are abused and neglected at rates two to three times their proportion in the older population.

Women are disproportionately victims.

Older persons with physical and mental frailty are more likely to suffer abuse and neglect. Over ¾ (77 percent) of victims of abuse are unable or only partially able to physically care for themselves. Sixty percent of abuse victims are suffering from some degree of confusion. Further, close to half of abused older persons exhibit depression.

Other effects of abuse are helplessness, alienation, guilt, shame, fear, anxiety and denial.

These characteristics have significant implications for the detection and successful prosecution of abuse cases. Older victims must be removed from an offender's reach to appropriate shelter. Specialized protocols are often required where victims are unable to testify on their own behalf due to cognitive impairments or poor physical health.

Despite under-reporting, there has been a very substantial increase in the number of official reports of domestic elder abuse. Between 1986 and 1996, the number of reports rose from 117,000 to 293,000, an increase of 150 percent. Indeed, a study in the Journal of the American Medical Association (1998) revealed that only 9 percent of abused elders survived beyond the 13-year study versus 40 percent of non-abused elders in the control group for the same period.

In addition, a recent Congressional report found that 30 percent of all nursing homes between the years 1999 and 2001 were cited for an abuse violation that caused or had the potential to cause harm to a resident. The study also found that reported abuse violations in nursing homes had tripled between 1996 and 2001.

These figures help to demonstrate the seriousness of today's problem. But dramatic changes in the older population portend a substantial increase in the number of abuse and neglect cases in the not too distant future.

MEETING THE DEMOGRAPHIC CHALLENGE

By the year 2030, the number of people over 85 years of age—those most at risk of abuse—will more than double. This is the fastest growing segment of the older population. Developing the support services and enforcement network to meet the needs of a larger number of potentially vulnerable persons poses a significant challenge.

Current laws addressing elder abuse and our system of protective services are far from perfect. Many State elder abuse statutes lack adequate provisions to encourage wider reporting of incidents and thorough investigation and prosecution of abuse cases. Not too long ago, it was difficult, if not impossible, to get an abuse case investigated and prosecuted. Fortunately, that situation has changed but there is still a great need for specialized knowledge that will allow successful prosecutions and encourage further development of case law.

There are also many gaps in the network of services for abused and vulnerable adults. These include a lack of:

Emergency temporary housing and in-home care for abuse victims;

Responsible guardians to act on behalf of victims who lack the capacity to manage their own affairs;

Training for adult protection, law enforcement, and prosecutorial staff;

Coordination between Federal, State and local agencies; and

Reliable national and State data.

THE ELDER JUSTICE ACT OF 2003

Recognizing the need for a coordinated approach to the problems of abuse and neglect, AARP joined a number of organizations in supporting S. 333, the Elder Justice Act of 2003, which was recently introduced in Congress on a bipartisan basis. This legislation would greatly enhance the Federal Government's ability to partner with States and communities to develop the tools needed to ensure the safety of their most vulnerable citizens. A number of provisions are particularly relevant to the enforcement community. These include:

Creation of an Office of Elder Justice within the U.S. Department of Justice, similar to the Department's Office of Juvenile Justice and Delinquency, to be responsible for developing a national strategy to improve the elder justice system in the United States.

Creation of an Elder Justice Coordinating Council as a forum at the Federal level for States and private non-profit agencies working on abuse issues. The bill would also authorize funding for similar coordinating committees at the State level.

Authorization of grants to establish forensic centers to enhance forensic expertise in the area of elder abuse. This would include development of forensic markers and methodologies to aid in the detection and diagnosis of abuse.

Authorization of grants for multi-disciplinary response teams and training of professionals from a variety of disciplines including prosecutors, police and sheriffs, and adult protective services.

Creation of a Center at the American Prosecutor Research Institute to provide support to local prosecutors working on elder abuse cases. (similar to the National Center for Prosecution of Child Abuse)

Authorization of grants to develop community policing efforts designed to make communities safer for older persons living in all settings. Such efforts could include expanding the TRIAD program-a collaboration of the National Sheriffs Association and other entities-to address not only street crime but abuse and neglect, particularly against older persons living in isolation.

While advocating strongly for Federal proposals like the Elder Justice Act, AARP recognizes the need to encourage and support ongoing efforts at the State level to improve public awareness, the quality of investigations and enforcement in cases of abuse and neglect. These efforts are articularly Important as Missouri and other States struggle with a likely prolonged period of fiscal austerity.

FOSTERING COLLABORATIVE EFFORTS

Enforcement and prosecution play a key role in redressing abuse and neglect after they have occurred. But just as important is the role of prevention. While research has indicated a number of potential risk factors for abuse—a history of marital abuse, financial dependency on the part of the abuser, and twing in isolation—we still do not know why abuse occurs in some instances, such as the recent Kansas

City case covered in media reports, but not in others. Studies suggest that persons who are isolated and in declining health are more reluctant to report abuse or testify regarding their abuse.

This situation makes early detection of warning signs through the encouragement of wider reporting and community policing extremely important. Similarly, prosecution of abuse draws a line in the sand and indicates that we, as a society, will not tolerate such conduct. Sending this message is especially critical because elder abuse is a crime that has long remained out of public view.

AARP has historically been concerned about financial fraud-the predominant type of reported elder abuse after self-neglect, and the fastest growing form of abuse. The main hurdles to successful prosecution of these crimes are getting these cases reported to law enforcement, having them thoroughly investigate and having them prosecuted in a timely and appropriate manner.

CONCLUSION

The challenges we face in stopping the abuse of our most vulnerable citizens are formidable. However, more efficient use of the talent and creativity of local, State and Federal protective services agencies and programs—as envisioned by S. 333, the Elder Justice Act—offers tremendous hope. Once again, AARP appreciates your leadership in efforts to assure the safety and well-being of older Missourians and all American citizens; we look forward to working with you toward that end. Thank you.

PREPARED STATEMENT OF BETTY WILLSON

Dear Committee Members: I appreciate this opportunity to tell about my experience with nursing home abuse. My mother, who passed away in April, 2003, spent six years in our local Beverly, Inc. facility. It was a nightmare for both of us. It's not that we didn't make our problems known to State; we even formed a family Council to deal with the suffering and death we saw (see enclosed copy of a letter we wrote to State just last year). As usual, the State cited them for these serious problems, let the facility "correct" them, and did nothing else, even though the facility had a long history of being out-of-compliance and should have been shut down.

When my mother suffered two broken ribs and a chipped elbow, it could have been prevented by the facility which allowed trainee aides to transfer her and other residents over the objections of the CNA who reported it to his superiors. Since a monitor was in the facility at the time (because of many previous violations), they did not report my mother's injuries either to me or to the State. They tried to explain to me that she screamed and cried because she had osteoporosis or arthritis.

I finally took her to the hospital myself for X-rays. They had plenty of time to send a nurse over to the "facility friendly" ER doctor to tell him what they had told me, so he told me that all he saw on the X-rays was "some arthritis". That evening, I got hold of Mom's family doctor. He saw the X-rays and made an appointment for Mom the next day with a bone specialist. He found two broken ribs and a chipped elbow. By this time, Mom had suffered seven pain for over 30 hours, with no treatment other than Tylenol.

Later, a team from State came in, determined what had happened, validated my claim of abuse, cited the place for not reporting the injuries, and (guess what?) did nothing else. Even the monitor buried the incident in her weekly report with only eight words: "One resident received multiple fractures of unknown origin". We later discovered that this "neutral" monitor was a former employee of a Beverly facility.

Most abuse is rooted in neglect, and neglect is exacerbated by understaffing, undertraining, and the nursing homes' blatant cover-ups because they do not fear getting penalties or fines. Facilities are almost always aware of imminent inspections, so they have time to bring in extra staff, cover up problems, and re-do records, in order to obtain good surveys.

As for abuse, I have seen residents given the wrong medications, sitting or sleeping for hours in wheelchairs, falling and suffering injuries and even death, not being fed at mealtime, choking to death, going for days or weeks without showers or having their teeth brushed, teeth rotting out, eyeglasses and dentures lost but not replaced, etc. (See our Family Council letter enclosed.)

The answer to abuse lies in having consistently and strictly enforced laws addressing minimum staffing, required training of aides, and penalties that fit the crime of elderly abuse. Until we achieve those goals, the suffering will go on and on and on . . .

CAREGIVERS FAMILY COUNCIL,
NEOSHO, MO 64850-1726,
July, 3, 2002.

Mr. H. DAVID MORGAN,
Jefferson City, MO 65102-0570.

DEAR MR. MORGAN: Your letter of June 7 to Janet Clayton was recently shared with me because my name was mentioned in it. Since I am Chairman of our Family Council here at Beverly Healthcare of Neosho, I would appreciate it if you would review with me some of the statements made in the letter.

In their May 2 survey, this facility was given two "J" tags for federal violations, which were dropped to "H"s. Since they received two of these, plus an "E" and a "G" (plus yet another "G" for an accident investigation just two months before), we believe these violations warrant being moved to "K"s rather than being dropped back to "H"s. When nine out of 14 residents (60%) were assessed with Stage IV bedsores acquired after being admitted, and when the facility has a long history of being out of compliance (7 out of the last 8 years), we believe it is time to stop giving them more chances to "correct" their problems, only to repeat them again and again.

All of their violations also received a State rating of Category II, which requires penalties of varying severity. We hope each of these violations will receive a penalty, with daily fines being imposed for the "H"s. This facility has had several less stringent penalties in the past, but, to our knowledge, has never been given a fine. Such a monetary penalty would be the only way to get the attention of a huge corporation such as Beverly, Inc. As caregivers, we are convinced that daily fines would bring about faster results in obtaining better care for our loved ones.

In paragraph three you stated that "the pressure sores did not show signs of infection". In the survey, they were described as "growing", "tunneling", "sloughing", "undermining tissue", "macerated", "containing dead tissue", etc. A Stage IV pressure sore is described on page 22 of the Survey as "A full thickness of skin and subcutaneous tissue is lost, exposing muscle and/or bone". Pressure sores are treatable and preventable and should never be allowed to reach this stage where they can cause agonizing pain, shock to the body, and death—whether or not the wounds are infected. This week, one resident died from the effects of her horrible Stage IV pressure sores. This is not the first time this has happened here, and we feel the facility should be held accountable.

In paragraphs 7 and 8, you mentioned the list of concerns I presented to a surveyor on behalf of our Family Council at the January 25 survey. You stated that "we could not prove the allegations contained within Betty Willson's list, except to a sink having lukewarm water." Why, then, was the facility cited for two of the concerns—cold water not only in the dining room sink, but also on one hall of the facility for weeks, as well as a lack of activities for residents. Five more of our concerns on the list became proveable and were cited on the 4/2 survey just 10 weeks later. (These were (1) understaffing, with aides working 12, 16, and 20 hour shifts; (2) Charts and records in disarray: (3) visible sores on patients (especially my mother), (4) Bottlenecks of wheelchairs after evening meals, causing late bedtimes for patients, and (5) Aides not using rubber gloves and/or handwashing between patients to prevent infection.

I presented our other concerns also: (1) understaffed kitchen causing late meals and unbalanced menus consisting mainly of starches: (2) numerous serious injuries from falls; (3) wrong medications being given; and (4) the facilities apparent foreknowledge of the times of State visit plans. We felt that these complaints were evident at the time (1/25) we reported them. We do not understand why some could not be proved until 10 weeks later.

At I left the surveyor, I told her CONFIDENTIALLY that there was a nurse who was willing to be contacted to verify, or add to, our list of concerns. I gave her telephone number, and the hours she could be reached. She waited for a call, but was not contacted during the entire time of the visit. After the team left, the administrator called her "on the carpet" where she was accused of "talking to state and to residents' caregivers about confidential matters". Her hours were cut to only 8 per week and she was so upset she almost quit, even though she had been a loyal employee for over a decade. This incident undermined what little faith we had in our confidentiality being preserved.

On January 30, I received a letter from Julie McCarty, the surveyor who recorded our list of concerns, stating that "several residents, family members, and staff were interviewed" (regarding our list). However, no member of our Family Council was interviewed, except myself. Nor was the nurse who volunteered to be interviewed. The letter said, "records were reviewed", but if they were, why didn't they discover

how chaotic they were until 10 weeks later? The letter said that "all shifts were observed", but members of our Family Council were in the facility during the entire time (except for some of the late-night shifts) and none of them saw a surveyor in the facility after 7 p.m. The after-supper bottlenecks continued.

PREPARED STATEMENT OF JOE MAXWELL

Thank you Senator Bond and Members of the Subcommittee on Aging for allowing me to submit written testimony in conjunction with the hearings held in Missouri to discuss the issue of nursing home reform and efforts at the federal level to pass legislation.

As the state of Missouri's official advocate for the elderly, I would have appreciated the opportunity to testify in person at the hearings in Kansas City and St. Louis. In the future, please feel free to contact my office when you need assistance in addressing policies affecting Missouri seniors and their families.

I have long advocated and fought for nursing home reform in our state. Unfortunately, it is long overdue. As Elderly Advocate, my office handles inquiries and concerns from seniors and their families on a daily basis. In the last two years, my staff and I have dealt with some horrific abuse and neglect cases—far too many of which have resulted in death. We've seen seniors who have suffered from severe bums or have choked to death due to a lack of proper supervision. We've seen far too many cases of sexual abuse. And we've seen bedsores so bad that amputation was the only remedy.

This year, after three years of trying, we were finally able to pass meaningful nursing home reform with the passage of The Senior Care and Protection Act of 2003 (SB 556/311). This important legislation was the product of a bi-partisan effort that included a lot of hard work and negotiation on both sides of the aisle.

The Senior Care and Protection Act of 2003 sought to rid our state of the "bad actors" in the nursing home industry by holding them accountable and making them pay the price for non-compliance, while at the same time creating provisions that support the majority of homes that do provide good, quality care. The major provisions in SB 556/311 include:

Increasing fines for violations and making them stick for the most serious violations (prior to this legislation, fines had not been increased in Missouri since 1979 and state regulators had not been able to collect fines that were levied)

Increasing accountability for nursing home administrators by making it a Class D felony for those who conceal abuse or neglect

Requiring criminal background checks for all employees, whether they live in or out of state

Requiring background checks for owners by allowing the state to consider compliance history in other states before granting them a license to do business in Missouri

Protecting nursing home employees from employer retaliation for reporting abuse and neglect

SB 556 passed both houses of the general assembly with overwhelming bipartisan majorities, and enjoyed the strong support of senior advocates throughout the state. At the end of the day, the nursing home industry was divided among those who could support the bill (some reluctantly) and those who finally agreed they could "live with the bill."

Missouri's new nursing home law goes into effect next week on August 28. I am confident that the laws enacted in this legislation will provide our seniors residing in nursing homes with greater protections against abuse and neglect.

I encourage Members of the Committee to take a close look at nursing home reform legislation passed in Missouri and other states in order to ensure that any federal legislation supports, rather than hinders, reform efforts at the state level. I have attached a copy of SB 556/311 for your review and would be happy to respond to any questions you may have.

MISSOURI COALITION FOR QUALITY CARE,
JEFFERSON CITY, MO, 61502,
August 21, 2003.

Hon. KIT BOND,
U.S. Senate,
Jefferson City, MO, 65101.

SENATOR BOND: As a citizen of Missouri and officer of the Missouri Coalition for Quality Care (MCQC), I applaud you on your testimony before the Committee on Finance on July 17, 2003.

This past week I was called by your staff to inquire if I would be interested in testifying at your field hearings in Kansas City on August 19. I was looking forward to this opportunity to express my opinions on the subject of elderly abuse and neglect but obviously the quota had been reached.

I have over 15 years experience as a volunteer ombudsman, both in Iowa and Missouri. I resigned from the Missouri Ombudsman Program in 1997 because my reports on serious complaints were not addressed and facilities were allowed to dictate the ombudsman's role and participation. I joined MCQC in 1998 and find that I can accomplish far more than being confined to an unsuccessful ombudsman program.

The Long-Term Care Ombudsman Program was initiated in 1972, and today—31 years later—Missouri only has ombudsmen assigned to 312 nursing homes out of 1,232 facilities. It is appalling that 920 facilities (75%) are without an ombudsman who is defined as the primary facilitator throughout any complaint or grievance process on the behalf of residents. THIS IS A TRAGEDY!

In your testimony you spoke of the tragic deaths of four elderly residents at Leland Health Care Center in University City, MO., in April of 2001. I am well aware of this catastrophe and the failure to prosecute those responsible. We at MCQC wrote many letters appealing for accountability measures. You know the outcome, you spoke of it in your testimony. A special MCQC recognition award was presented to the paramedics and fire-fighters who responded to the Leland call. It was chilling to hear the details of that tragedy. We were sorry you were unable to attend the ceremony.

I've also encountered many heartbreaking, unresolved problems while serving as an ombudsman. It is incomprehensible that no one wanted to get involved when an elderly couple lost their substantial life savings, when they were forced to sell their last possession of 40 acres for a measly sum of $3,000 so they could receive Medicaid, when the wife's guardian failed to enter funds from—sale of property into her records, when the gentleman had to wear the same colostomy pouch for three days and tie candy wrappers around it to prevent leaking, when the gentleman expressed a desire to move to another facility he was threatened that he would never see his, wife again because her guardian refused to let her move with him—and on, and on, and on. However, we took the guardian to court, the judge ruled that the wife of 65 years should be with her husband, and we moved this couple to another home. They have both passed away within the last two years. We saw to it they were not buried in a pauper's grave. They are buried at a beautiful country cemetery in Yarrow, MO., with a large granite headstone bearing the family name. This gentleman and his wife saved their money and planned well, never dreaming they would be so victimized.

Senator Bond, I am proud that you represent us in the U.S. Senate and was delighted to hear you comment that nursing home residents and their families have suffered and been victimized by problem nursing homes for far too long.

The Missouri Coalition for Quality Care will continue with our mission and goal to improve the quality of care and quality of life of residents in Missouri's long-term care facilities and recipients of in-home care.

Sincerely,

MRS. PHYLLIS KRAMBECK,
Vice President.

TWO AREAS FOR CONSIDERATION—HENRY KRAMBECK

1. Shortage of Volunteer Ombudsmen and Suggestion for Remediation.

With the recent move to limit state inspections of nursing home facilities in Missouri from two per year to one (and in same instances none) it is crucial that all facilities have volunteer ombudsmen on board. However, recent statistics indicate that 75% of the nursing homes in Missouri do nat have ombudsmen serving in their facilities! This is a tragic situation. I believe the student ombudsman program implemented at Truman University in Kirksville, MO. (now in its third year) would dramatically impact the ombudsman program if duplicated state-wide. The accompanying materials explain the program and detail its success in this area: "A Student Ombudsman Project—An Overview", "Need An LTC Ombudsman? Consider This . . .", "Local Ombudsmen Highlighted in National Publication" and "A Success Story". I hope you would have time to peruse these materials.

2. Nursing Home Bill Needed.

It is a truism that some nursing home administrators do not want volunteer ombudsmen in their facility. This attitude immediately suggests that the facility is not operating efficiently. It is also a fact that some ombudsmen have been terminated

by administrators despite the fact they were doing a good job of advocating for the residents. In many instances these terminations were without due process or just cause. Last year I suggested a Bill to Mr. Sam Berkowitz that would remedy this situation. Mr. Berkowitz was anxious to sponsor this Bill but lost his bid for a Senate seat. The Missouri Coalition for Quality Care (a non-profit advocacy group) of which I am a member, is currently looking for someone to sponsor the Bill. The Bill would make it mandatory for a nursing home to accept an ombudsman if one were. available. Further, the ombudsman could be recalled only by the regional ombudsman coordinator and only after due process and just cause.

Thank you for your attention to these suggestions. I firmly believe that, if implemented, the two ideas stated above would have a profound, positive impact on the Missouri state ombudsman program. This would result in better care for nursing home residents as well as to provide a training vehicle for students planning a career in health services.

TRUMAN STATE UNIVERSITY—"A STUDENT OMBUDSMAN PROJECT"

Eta Sigma Gamma is a national professional health education honorary established in 1967. There are approximately ninety-nine chapters nation wide. The only Missouri chapter is located at Truman State University in Kirksville and is coordinated by Dr. Carol Cox of the University. The three elements forming the basic purpose of the organization are teaching, research and service. The organization is designed specifically for professionals in health education. During the year 2001 Dr. Carol Cox came across an article in a periodical relating to the ombudsman program. Realizing this was a program that would fit well with the objectives of the Honorary, she called the toll free number listed in the article. After several subsequent calls she was put in contact with the Mark Twain Legal Services in Canton, Missouri which is the office of the Regional Ombudsman Coordinator for the area wherein the university is located. Arrangements were made for training the student participants and this was accomplished.

On March 14, 2001 I received an email from Clare Wheeler of the Canton office requesting that I interact with the eight trained students and attempt to place them in suitable facilities in the local area. Realizing that time was of the essence (the school year was coming to a close) I decided on a plan that would result in maximum student placement and one that would provide an ongoing source of future participants. It was decided to place student ombudsmen in teams of two, preferably a male and female and to initially utilize juniors and seniors for obvious reasons. After gaining some experience and with the end of the school year in sight, it would be the responsibility of the "experienced" student ombudsmen to select and indoctrinate their successors. We used the analogy of a relay team on a track squad. This plan not only made use of a maximum number of students but afforded the chosen facilities an opportunity for increased resident/patient contacts. It should also be mentioned that some of the students were already certified CNA's. Initial placements were made at Northeast Regional Health Center and the Twin Pines Adult Care Center Both facilities were eager to participate in the program and placement was affected following a brief training session with the students and a placement staffing involving the students, myself and administrators/staff of the facility. Although of short duration because of the school year, the plan worked well and one of the students elected to remain on the job during the summer. I prevailed upon my wife to act as ombudsman of the Twin Pines facility during the. summer. She was successful to the point that I was considering adding additional student ombudsman to that facility under her supervision this school year. Placing a student in each wing would make possible a contact with every resident once each week - an optimal situation. Unfortunately, recent events at Twin Pines relating to staff and communication problems with the facility Board of Directors has undermined this unique opportunity.

Twelve students are participating this school year, four returning students and eight new candidates. They have completed training and we are in the process of placement. Recently I place two students with Mr. Karen Stone, administrator of the LaPlata facility. A few weeks after placement I followed up with Mr. Stone to determine if he was satisfied with the program and his reaction was immediate. He declared it a wonderful program not only for the facility and the residents but for the students as well. It is cooperation such as Mr. Stone's that result in approaching optimum care for our nursing home residents and hospital patients. Dr. Cox and I also have high praise and appreciation for the following people who eagerly participated in the initial program: Marilyn Powell, former administrator of Twin

Pines; Louise Smith former social services coordinator of Twin Pines and=Beverly Howard on the staff at Northeast Regional Health Center.

Finally, it should be evident to all concerned that this "pilot program" is deserving of further implementation and analysis. Dr. Cox, my wife and I have contended from the outset that such a program would be worthy of implementation state-wide if not nation-wide. Students would not necessarily have to be members of a health honorary. Most colleges and universities in Missouri have health programs or service programs from which these students could be selected. It would provide an ongoing source of young, energetic people who are interested in the health field for the ombudsman program. Students would benefit significantly from the experience, facilities would benefit from the additional help and, most of all, the residents/patients would be assured of receiving the highest level of care possible. Programs such as described above in conjunction with continuing improvement of the state-wide ombudsman program could result in significant benefits for all citizens.

NEED AN LTC OMBUDSMAN? CONSIDER THIS . . .

Are long term care ombudsman volunteers difficult to recruit in your area? Would a continuing source of trained ombudsmen volunteers be welcome in your community? If your answer to the above questions is a resounding "yes" you might consider developing a program similar to the one currently functioning in Kirksville, Missouri and the surrounding community.

Based on the Truman State University campus in Kirksville, MO is a group of students who are members of Eta Sigma Gamma, a national professional health education honorary established in 1967. Totaling ninety-nine chapters nation wide, only one chapter is located in Missouri. Dr. Carol Cox of the university coordinates the program that is comprised of three basic elements i.e., teaching, research and service. Realizing that the Missouri State Ombudsman program would be a perfect vehicle to realize the basic purposes of the honorary, Dr. Cox made provisions for her students to receive the necessary training for placement as ombudsmen in the surrounding community. Assistance was provided by the Regional Ombudsman Coordinator housed in Canton, Missouri. Administrators of local Nursing Home facilities, Residential Care facilities and the N.E. Regional Health Center were contacted for possible placement opportunities. In almost every instance administrators were eager to participate in the program. Following a pre-placement orientation by a representative of the Canton office, students were presented to the facility administrator and staff for a placement orientation meeting. A supervised facility tour was then undertaken and arrangements made for continuing service. After the student ombudsmen achieve some experience a follow-up meeting is usually held to discuss any problems or concerns. Students are placed in teams of two where possible. Juniors and seniors are placed first for obvious reasons. The analogy of a relay team on a track squad is used in that student ombudsmen who graduate from the University have the responsibility of indoctrinating their successors thus creating a continuing source of trained student volunteers. At this date, all of the students in the program have been placed and are functioning successfully in local facilities within Kirksville and in the outlying communities of LaPlata and Queen City.

It should be stated that the above program could be implemented anywhere in the country. Students would not necessarily have to be members of a health honorary. Most colleges and universities have health or organized programs that are service oriented. Projects similar to that described above would tend to keep interested students in the health field. (It should be noted that some of the students in the Truman project are already CNA's). Students would benefit significantly from the experience, facilities would benefit from the additional help and, most of all, the residents/patients would be assured of receiving the highest level of care possible.

Finally, the following people should be acknowledged for their eager cooperation that led to the initial success of the Truman project: Marilyn Powell, former administrator of Twin Pines Adult Care Center; Louise Smith, former Social Service Director of that facility; Beverly Howard, Administrator with the N.E. Regional Health Center; Nan Blickhan, Director of Social Services for that facility and Karen Stone, administrator of the LaPlata Nursing Facility in LaPlata, MO.

LOCAL OMBUDSMEN HIGHLIGHTED IN NATIONAL PUBLICATION

Sara Clouse, Alan Toigo, Henry Krambeck BSwD, MA and Carolyn C. Cox PhD,CHES have recently published an article entitled, "The Student Ombudsman Model" in the nationally recognized journal, "Annals of Long-Term Care - Clinical Care and Aging" from the American Geriatrics Society May 2003 edition. Sara and

Alan are both enrolled in the Health Science program at Truman University and are members of the national professional health and science honorary Eta Sigma Gamma. They currently serve as ombudsmen at the LaPlata Long-Term Care facility in LaPlata, MO. Mr. Krambeck is it former educational administrator and has functioned as an ombudsman in Iowa and Missouri since 1989. He currently assists Dr. Cox with the Student Ombudsman Program and serves as liaison person for MCQC (Missouri Coalition for Quality Care). MCQC has formed a partnership with the twenty member student group. Dr. Carolyn Cox is faculty advisor for the award winning Eta Sigma Gamma honorary. Dr. Cox originated the Student Ombudsman Model two years ago with assistance from Mr. Pat Wheeler and Clare Wheeler, regional ombudsman coordinators from Canton, MO. Now in the second year of the program, sixteen student ombudsmen serve all facilities in the area with one exception including LaPlata, Schuyler County, N.E. Regional Health Center, Manor Care and Kirksville Residential Care Center.

A SUCCESS STORY

MCQC's alliance with the Truman University Student Ombudsman Model continues along successful lines. The program, now in its third year, has received local, state and national recognition. Some recent accomplishments include: Student participation with the Coalition in legislative advocacy activities in Jefferson City; Conclusion of a state-wide study, "Long-term Care Administrators' Perceptions of the Ombudsman Program in the State of Missouri" (in review by the journal, The Director; Publication of the Model in the national professional journal, "Annals of Long-Term Care". In addition, the number of area ombudsmen increased six-fold over a two year period with volunteers making over two hundred visits to each area facility (Adair and surrounding counties), impacting 450. residents. All of the participating students have been trained and certified by the Arthritis Foundation as PACE (People with Arthritis Can Exercise) Instructors and teach senior exercise classes in the area (Adair County). Interestingly, some student ombudsmen have changed their major emphasis to Health Care Administration in hopes of becoming a nursing home administrator after graduation!

Sadly, approximately 75% of nursing homes in the state do not have ombudsmen. With the recommended reduction of state nursing home inspections from two visits per year to only one it is critical that an ombudsman be an integral component in every facility. A statewide adoption of the Student Ombudsman Program as utilized in Kirksville could solve the problem. The student volunteers have enjoyed a unique bond with residents while positively impacting that individual's life. In the process, the students amass that body of knowledge necessary to become successful in their chosen career. These students are our health providers of tomorrow!

[Whereupon, at 3:47 p.m., the committee was adjourned.]

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