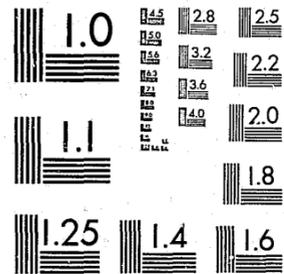


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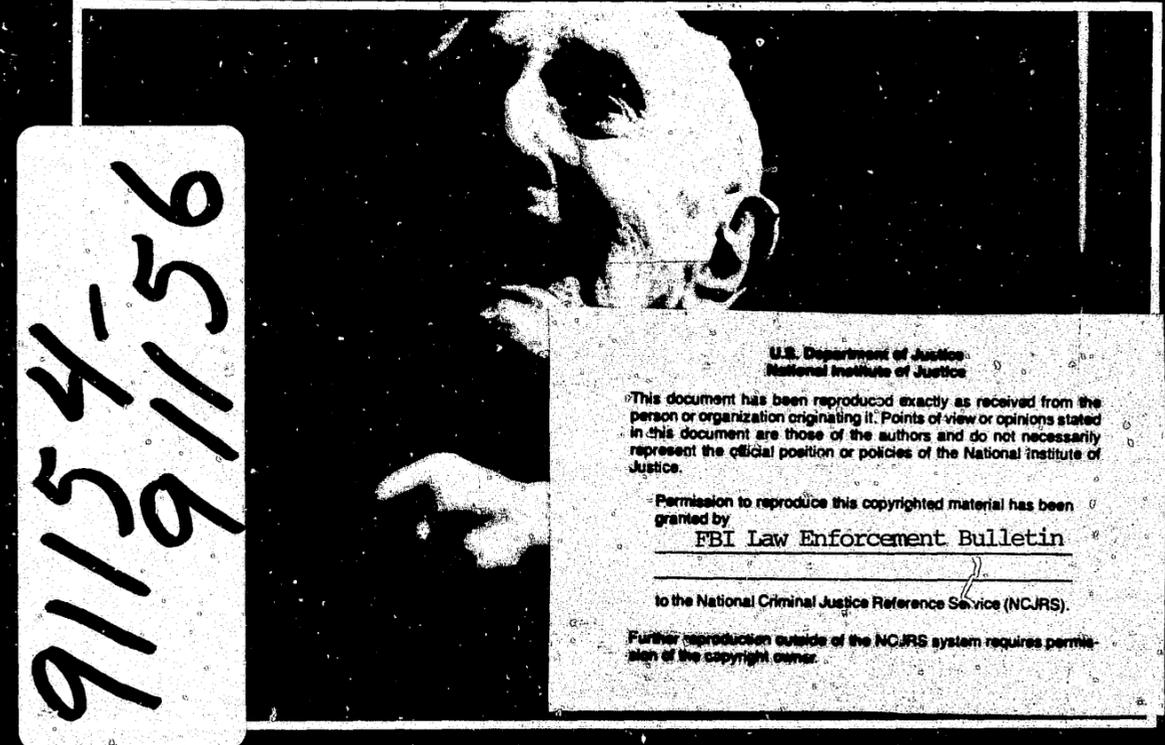
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FBI LAW ENFORCEMENT BULLETIN

SEPTEMBER 1983



U.S. Department of Justice
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The Police and the Elderly

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FBI LAW ENFORCEMENT BULLETIN

SEPTEMBER 1983, VOLUME 52, NUMBER 9

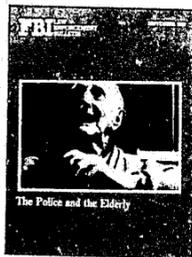
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William H. Webster, Director

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Police-Community
Relations

The Police and the Elderly (Part II)

The Rights of the Elderly— Evolution of Legislation

The passage of the Social Security Act in 1935 signaled the beginning of major national legislative action concerning the health, safety, and welfare of older citizens. Basically, Social Security provides a minimum income for eligible workers and their families when the worker retires, becomes severely disabled, or dies. The act did not provide direct assistance for medical expenses until 1950, when amendments were incorporated which provided for Federal matching funds to States that offered public assistance, including medical payments to hospitals, physicians, and other providers of medical care. Disability insurance (DI) was added to the program in 1956, Medicare in 1965, and early

retirement with actuarially reduced benefits in 1956 for women and in 1961 for men. In 1974, the Supplemental Security Income (SSI) program was enacted to provide a nationally uniform minimum income to aged, blind, and disabled persons who were not covered by Social Security as wage earners or dependents of wage earners or whose income from Social Security and other sources was not sufficient to provide basic maintenance needs. Medicaid was instituted in 1965 for older persons with very low incomes and pays the amounts the Medicare program does not, if various requirements are met. Congress has enacted, in a largely piecemeal fashion, over 40 additional programs to help the elderly. In 1965, Congress passed the Older Americans Act as the centerpiece of its legislative activities. In 1982, Congress extended the Older Americans Act for another 3 years and set funding levels for a separate Administration on Aging through September 30, 1984.

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Hundreds of preparatory meetings all over the country were conducted as a prelude to the 1981 White House Conference on Aging, which had as its theme "The Aging Society: Challenge and Opportunity." Approximately 2,200 delegates, 1,200 observers, and 2,000 volunteers attended. Two major issues found unanimity among the delegates: The necessity of preserving the Social Security system for both current and future recipients and the elimination of mandatory retirement. The conference also recommended that older persons should be encouraged to play an active role in crime prevention and should be made aware of the steps they can take to minimize the risk of being victimized.³¹

Legal Issues

The growing emphasis on legislative programs to assist the aged should strengthen the resolve of local law enforcement agencies to adjust their operations in order to assist the elderly.³² As already indicated, the passage of the Older Americans Act of 1965 and its subsequent amendments spawned a new era in services available for the elderly. However, the benefits and services which these statutes have established may represent a bewildering bureaucratic maze for many older people. Added to these laws are innumerable others which deal with Social Security, Supplemental Security Income, Medicare, Medicaid, public and private pensions, taxes, wills and probate, patients' rights, consumer affairs, age discrimination, energy, food stamps, housing, guardianship, adult protective services, rights of victims and witnesses, and the rights of offenders.

The scope of this article does not permit a complete description of the many laws pertaining to the elderly. In fact, any definitive analysis of such laws would probably require the preparation of a many-volumed legal encyclopedia. However, we shall attempt to summarize some of the more useful statutes and rules which police personnel should be acquainted with in order to make appropriate referrals and to take specific action in order to protect the safety and welfare of the disabled elderly.

The police have a duty to insure that nursing home regulations are enforced and that the civil rights guaranteed by the Constitution and by State and Federal statutes to all citizens are not denied nursing home residents. Nursing home facilities and operators are regulated by State health and welfare departments. In addition, they must comply with Federal fire, health, and safety standards if they receive Federal Medicare and Medicaid payments. Periodic inspections are conducted and the summaries of the inspection reports are available to the public. Generally, few individuals review this information before selecting a home and the sanctions imposed for violations have been unsatisfactory. Some States have begun to reform their regulatory system and have developed a nursing home patients' bill of rights, but the process has been slow.³³

The elderly may suffer psychological abuse, physical neglect, and the loss of property or money because of the deceit or threats of their caretakers. On such occasions, outside help may be the only means for ending the abuse. The main feature of many new elderly abuse laws is the establishment of a free hotline number which any abused victim or concerned person may call to report

an abusive incident. Protective services will be offered if an incident of abuse is validated by an authorized investigator.

There exist wide variations with respect to the new laws protecting the elderly in many States. Generally, laws under the title "Adult Protective Services" provide for voluntary and involuntary (with court authorization) transfer of adults to institutions other

than mental health hospitals (e.g., nursing or foster care homes). The criteria used for transfer involve a decision about whether adults are able to manage their own affairs or to protect themselves from exploitation, abuse, neglect, or physical danger. In States with no law specifically protecting the abused elderly, the police may generally not enter a private home unless consent has been obtained or a court order has been signed. On the other hand, some State laws may allow for entry without consent and even force may be used, if necessary.

Many adult protective services statutes include the provision of social casework, psychiatric and health evaluation, home care, and day care. The costs for these services are paid by the provider, unless the elderly person agrees to pay or a court authorizes reimbursement from the assets of the client.³⁴ However, while these statutes appear at face value to be directed at salutary goals, some States have failed to review their procedures for involuntary guardianship, "thereby threatening the civil liberties of the very persons the programs are intended to protect."³⁵

All States have laws concerning the granting of a "power of attorney," as well as procedures for the establishment of guardianship over an individual's estate and/or person. An ill-

Who Are The Elderly?

Benefits provided by:

**Age Discrimination
and Employment Act
Comprehensive
Employment Training Act**

Social Security

Older Americans Act

Medicare

**40
55
60
62
65**

Gerontologists define older as:

55 - 65 young-old
65 - 75 middle-old
75 & over old-old

“ . . . the police are in a unique position to help insure that State laws and the constitutional requirements of due process and equal protection [for the elderly] are maintained.”



ness or other misfortune may require that another person act for the one who has become incapacitated. Civil commitment proceedings always lead to a similar loss of control regarding the management of one's affairs. The commitment process is initiated with the filing of a petition in probate court or its equivalent by an interested party. The petition usually states that the prospective ward is unable to take proper care of his or her person or property due to one of several conditions (e.g., mental illness, retardation, physical disability, senility, and old age). Most States require some form of notification to the alleged incompetent that such a petition has been filed. Although many States explicitly provide for jury trials in incompetency proceedings, these trials are rarely held in practice. Moreover, appeals of incompetency determinations are rare, though there are a large number of guardianships imposed yearly.

Police personnel may be called to the scene of a domestic dispute and/or be asked to state the law with respect to guardianship at any time. In all such cases, the police are in a unique position to help insure that State laws and the constitutional requirements of due process and equal protection are maintained. The new protective service laws in most States

do not modify or replace the existing procedures concerning guardianship and civil commitment, but rather provide legal authority to intervene in situations requiring less drastic interference with a person's civil rights.

Police departments can also assist the aged population by keeping current on the Age Discrimination in Employment Act Amendments of 1978 that prohibits mandatory retirement below age 70 for roughly one-half of the Nation's employees and the U.S. Department of Justice rules applying section 504 of the Rehabilitation Act of 1973. The regulations to section 504 adopted by the Justice Department provide specific requirements that police, courts, and correctional agencies must follow to ensure effective communication for hearing-impaired people. Law enforcement agencies should ensure the availability of qualified interpreters by contacting the local or State chapter of the Registry of Interpreters for the Deaf (RID) or State associations of deaf people for a list of certified interpreters. Some police departments video tape all communications with hearing-impaired defendants in order to substantiate the effectiveness of the communication and the quality of the interpretation. In addition, the installation of telecommunication devices

(TDD's or TTY's) would be of tremendous value for the hearing-impaired.

Another often overlooked subject in most police training classes concerns the civil and criminal liabilities for withholding or withdrawing extraordinary or heroic care from patients. Hospitals commonly refer to this decision as "Orders Not to Resuscitate" or "ONTR."³⁶ The term "resuscitate" in this context usually refers to the following techniques: Intubation/ventilation, closed chest cardiac massage, and defibrillation. It does not mean or refer to ordinary or reasonable methods used to maintain life or health.

The applicable legal principle in cases involving ONTR is that a physician must obtain the consent of his patient or his patient's representative. Caution needs to be exercised so that patients do not unwittingly consent to an ONTR as a result of any temporary distortion in their ability to choose among alternatives. Such distortions could result from the experience of pain and the digestion of medication.³⁷ It should be emphasized that what may constitute "extraordinary" care today may at some future date be termed "ordinary." Inasmuch as police are often involved in cases leading to the emergency room, they are in a strategic position to safeguard the rights of patients in such settings.

It has been a longstanding American tradition that the primary responsibility for the care of the needy rests first with an individual's own family. When the family has been unavailable or incapable of meeting the problem adequately, it is appropriate to turn to community agencies or to the government for help. Today, any disabled elderly person may seek benefits from a number of public programs.

Each month 35.2 million persons in the United States receive a Social Security check.³⁸ Current eligibility for Social Security benefits depends on how long an individual has paid into the system as a worker—10 years minimum in order to fully qualify for benefits for life. However, a lesser number of years may also be enough for full coverage if the worker has achieved a certain amount of "work credit." The exact amount of work credit required depends on whether a person is applying for retirement benefits or whether a worker's spouse and dependents are applying for survivor's benefits after the worker's death. Eligibility for disability benefits depends on the seriousness and type of impairment, recent employment, and a person's accumulation of prior work credit.³⁹

The Social Security Administration also administers a Supplemental Security Income (SSI) program. This



“The growing emphasis on legislative programs to assist the aged should strengthen the resolve of local law enforcement agencies to adjust their operations in order to assist the elderly.”

program provides a basic monthly income to the blind, the disabled, and senior citizens (age 65 or older) who are in special need of financial help. The SSI law defines a person as disabled if he/she is unable to engage in any gainful employment due to a physical or mental impairment which has lasted or is expected to last for at least 12 months or is expected to result in death. Unlike FICA, a person can obtain assistance even if he/she has never worked.⁴⁰

Persons who receive SSI are automatically eligible for Medicaid. Medicaid is a joint Federal-State program which helps pay for health care for low-income persons who are either over 65, disabled, or have dependent children. Benefits vary from State to State. In 1977, Congress reacted to estimates of Medicaid fraud (\$2.5 to \$6.2 billion) by authorizing 90 percent Federal funding for the States to establish Medicaid fraud units within the offices of the State attorney general. Only 30 States have applied for Federal financing to establish such fraud units.⁴¹

Medicare is an entirely separate Federal health insurance program which is administered by the Social Security Administration. Medicaid and Medicare are in no way related, and a person over 65 may receive both. Medicare, which can be considered a type of insurance, is available to any individual who falls within its designated categories, regardless of that person's income or resources. All persons 65 or older, including veterans,



who are entitled to or receive Social Security benefits, SSI, or railroad retirement are eligible for Medicare protection. Certain disabled persons under 65 are eligible for Medicare health care coverage and persons over 65 who are not receiving or entitled to Social Security benefits can purchase Medicare protection if they meet certain requirements. There are two separate parts to Medicare health insurance—hospital and medical. Regardless of the type of coverage, Medicare will never pay for medical expenses that are not reasonable or necessary or custodial care. Persons who are automatically eligible for Medicare because they are entitled to Social Security pay nothing for hospital insurance under Medicare. However, everyone must pay premiums for medical insurance under Medicare.⁴²

The Federal Government funds a rental subsidy program known as the "Section 8 Rental Assistance Program." The program is administered through local area agencies on aging. A low-income person may qualify if handicapped, disabled, or over 62 years of age. Under the program, the tenant pays no more than 25 percent of the gross family income for rent. Moreover, in these days of ever-increasing food prices, low-income elderly may apply for benefits under the Federal Food Stamp Program. The Government provides coupons under this program which can be used like money at the grocery store and an individual need not be receiving other assistance payments to qualify. Other benefits under title XX of the Social Security Act (e.g., adult day care, adult foster care, homemaker services, etc.) and under title III of the Older Americans Act (e.g., transportation, senior center activities, information and referral, etc.) are also availa-

"Police personnel can play a vital role in assisting the disabled elderly. . . ."

"Law enforcement agencies should . . . develop appropriate policies in order to insure that the civil rights of the disabled elderly are maximized."

ble to qualified older persons. Local area agencies on aging and local departments of social services can provide detailed information about each of these programs.

Summary

The foregoing represents only a small sample of the various laws applicable to the disabled elderly and certainly points to this population's overwhelming need to have access to qualified legal help. However, older persons may be reluctant to seek legal assistance because they fear retribution from agencies or persons on whom they totally depend or because they do not want to receive a "handout" or benefit that is reserved for the poor. In some cases, the elderly may be ashamed to report that they have been the victims of consumer fraud or exploitation. Some elderly may just be unaware that their problems require the services of a lawyer due to their isolated living habits. Police personnel can play a vital role in assisting the disabled el-

derly by ascertaining which law firms, local bar associations, and law schools are providing low cost or *pro bono* (free) legal services.

The Legal Services Corporation was created by Congress in 1974 to provide legal services to the poor or to those who cannot obtain the services of a private attorney because their case will not support a fee. The corporation administers a network of civil law office projects throughout the United States. Legal aid societies also render assistance to low-income clients. They are nonprofit and predate the Legal Services Corporation.⁴³

Legal aid programs have generally been available to needy offenders, but they have consistently not been available to assist victims. Recent amendments to the Older Americans Act attempt to address this problem, but much remains to be done to protect the rights of victims. Police are usually the first societal agents to come to the aid of the elderly crime victim. They should also be the first to provide appropriate guidance with re-

spect to the availability of legal services.

Many additional legal issues concerning the aged and the role of the police exist. Law enforcement agencies should survey their community's needs and then develop appropriate policies in order to insure that the civil rights of the disabled elderly are maximized. **FBI**

(Continued next month)

Footnotes

³¹ White House Conference on Aging, *Final Report Vol. 1: A National Policy on Aging* (Washington, D.C.: Department of Health and Human Services, 1981), p. 105.

³² For an excellent overview of the critical issues involving the law and the elderly, see "Law and the Aged: A Symposium," *Arizona Law Review*, vol. 17, 1975, pp. 267-545.

³³ R. N. Brown, "Aging in America: A Bill of Rights for Nursing Home Patients," *Trial*, vol. 13, May 1977, pp. 22-28.

³⁴ Senate Special Committee on Aging and the House Select Committee on Aging, *Joint Hearing on Elder Abuse, Washington, D.C. June 11, 1980* (Washington, D.C.: U.S. Government Printing Office, 1980), p. 153.

³⁵ J. Regan, "Intervention Through Adult Protective Services Programs," *The Gerontologist*, vol. 18, 1978, p. 250.

³⁶ Northwestern Memorial Hospital, "Patient Care Administration: Do Not Resuscitate Orders," *Critical Issues in Health Law* (New York: Law Journal Seminars Press, Inc., 1978), p. 144.

³⁷ M. Rabkin, G. Gillerman, and N. Rice, "Order Not to Resuscitate," *Critical Issues in Health Law* (New York: Law Journal Seminars Press, Inc., 1978), p. 136.

³⁸ J. Montgomery, "The Economics of Supportive Services for Families with Disabled and Aging Members," *Family Relations*, vol. 31, 1982, p. 22.

³⁹ Arkansas Bar Association, *The Young Lawyers Section, Arkansas Senior Citizens' Handbook* (Little Rock, Ark.: Arkansas Bar Association, 1981), p. 1.

⁴⁰ *Ibid.*, p. 2.

⁴¹ "Medicaid Fraud Continues," *Journal of Gerontological Nursing*, vol. 8, 1982, p. 353.

⁴² W. Wishard, *Rights of the Elderly and Retired: A People's Handbook* (San Francisco: Cragmont Publications, 1978), p. 6/5.

⁴³ M. Bigel, *Program Development Handbook for State and Area Agencies on Legal Services for the Elderly* (Washington, D.C.: Administration on Aging, Department of Health, Education and Welfare, 1977), p. II-7.



(Photographs courtesy of the American Association of Retired Persons)

END