

CRIME AND ELDER ABUSE

ABOUT THE AUTHOR

Brian K. Payne received his Ph.D. in Criminology from Indiana University of Pennsylvania in 1993. He is professor and chair of the Department of Sociology and Criminal Justice at Old Dominion University. He has published over fifty articles in scholarly journals on topics such as elder abuse, white-collar crime, and methods of social control. He is the author of four previous books including *Drugs and Policing: A Scientific Perspective*, *Incarcerating White-Collar Offenders*, *Crime in the Home Health Care Field*, and *Family Violence and Criminal Justice: A Life Course Approach* (co-authored with Randy R. Gainey).

Second Edition

CRIME AND ELDER ABUSE

An Integrated Perspective

By

BRIAN K. PAYNE, PH.D.

*Department of Sociology and Criminal Justice
Old Dominion University
Norfolk, Virginia*



CHARLES C THOMAS • PUBLISHER, LTD.
Springfield • Illinois • U.S.A.

Published and Distributed Throughout the World by

CHARLES C THOMAS • PUBLISHER, LTD.
2600 South First Street
Springfield, Illinois 62704

This book is protected by copyright. No part of
it may be reproduced in any manner without
written permission from the publisher.

©2005 by CHARLES C THOMAS • PUBLISHER, LTD.

ISBN 0-398-07566-2 (hard)
ISBN 0-398-07567-0 (paper)

Library of Congress Catalog Card Number: 2004062028

With THOMAS BOOKS careful attention is given to all details of manufacturing and design. It is the Publisher's desire to present books that are satisfactory as to their physical qualities and artistic possibilities and appropriate for their particular use. THOMAS BOOKS will be true to those laws of quality that assure a good name and good will.

Printed in the United States of America
GS-R-3

Library of Congress Cataloging-in-Publication Data

Payne, Brian K.

Crime and elder abuse : an integrated perspective / by Brian K. Payne--2nd ed.
p. cm.

Includes bibliographical references and index.

ISBN 0-398-07566-2 -- ISBN 0-398-07567-0 (pbk.)

1. Older people--Abuse of. 2. Older people--Abuse of--Investigation. 3. Older people--Crimes against. I. Title.

HV6626.3.P39 2005

364.15'55--dc22

2004062028

To Kathleen, Chloe, and Charles

PREFACE

About twenty-five years ago, the concept of granny battering appeared in British medical journals and was used to describe a host of abusive acts committed against elderly persons. Since then, a number of other concepts have been used to replace this politically incorrect concept. Perhaps the most popular concepts are elder abuse and elder mistreatment. Attention from social scientists from various disciplines has increased in the eighties and nineties. Noticeably rare, however, is criminological input into the study of elder abuse. This book offers a criminological foundation from which increased understanding about elder abuse will evolve.

It is my belief that the interdisciplinary nature of the elder abuse problem requires a cooperative effort among scholars researching the topic. Indeed, elder abuse is an issue that relates to several different disciplines including criminology, gerontology, social work, social welfare, sociology, psychology, victimology, medicine, and a host of other social sciences. Further, an integrated effort among practitioners responding to abuse is needed to effectively handle cases of elder abuse. Given the steady increase in the proportion of older persons in our society, it is expected that there will be more elderly victims in the future. Therefore, it is imperative that attention be given to the victimization experiences of elderly persons.

The reader will note that I refrain from using a specific age to describe when abusive actions become elder abuse as opposed to some other type of crime. I avoid setting an age restriction, such as sixty-five which is the age that the Social Security Administration uses to describe what is meant by "elderly," because I am more interested in the general ways in which older victims (as opposed to younger victims) are perceived, handled, studied, and treated. Also of interest is the way that consequences of victimization are experienced differently by elderly persons. It is my belief, however, that "classifying the elderly into a single group can do more disservice than good" (Doerner & Lab, 1998, p. 204).

The basis of Doerner and Lab's quote is that there is tremendous variation in the characteristics of persons over a certain age, such as sixty-five. Age is

certainly a relative concept. As an example, one day I was talking to my neighbor, Alice, who is in her late seventies, when another neighbor who is in his nineties drove by in his automobile. The neighbor I was talking to quickly said, “I hope I’m like him when I get old. I want to be able to get around the way he does.” Neither of my neighbors define themselves by their age; rather, they seem to define themselves by what they are able to do.

So, when I refer to the phrases “crimes against elderly persons” and “elder abuse,” I am talking about general trends and am not suggesting that all persons who are older are going to experience victimization in the same way. In general, though, older victims experience abuse in different ways than younger victims do.

This second edition of *Crime and Elder Abuse: An Integrated Perspective* builds on the earlier edition in five ways. First, new research has been added into each chapter. Second, the tables and figures have been updated, with applied critical thinking questions now included in order to make the tables and figures more interactive with readers. Third, various sections have been added in different chapters—in Chapter 3, discussion about homicides and home health care fraud has been added; in Chapter 5, different law enforcement strategies have been described, and so on. Fourth, Chapters 2 through 7 now include box inserts titled “Voices from the Field,” which include brief overviews written by professionals who are discussing some aspect of elder abuse. Finally, Chapter 7, Preventing Elder Abuse: An Integrated Approach, has been added. It is my hope that this new edition will shed some light on what can be done to prevent elderly persons from being victimized or at least minimize the consequences of victimization when abuse does occur.

B.K.P.

ACKNOWLEDGMENTS

I am indebted to many persons whose input, insight, and assistance made this book possible. Randy Gainey (Old Dominion University), Garland White (Old Dominion University), Ed Stevens (Troy State University), and countless undergraduate and graduate students at Old Dominion University read various parts of this book and challenged me to see and explain ideas from an integrated perspective. I am also indebted to Crystal Carey for her help in her capacity as the graduate intern for the Center for Family Violence Education and Research. She performed numerous tasks that were invaluable.

I express my gratitude to Old Dominion University and the College of Arts and Letters for the research leave granted to work on this second edition. Chandra DeSilva, Dean of the College of Arts and Letters at Old Dominion University, offered much support that helped me complete this project. Thanks also to my friends in the Sociology and Criminal Justice Department at Old Dominion for their encouragement and support.

Also, let me thank the many fine scholars whose works are cited throughout this book. May their efforts continue to expand our understanding of this devastating problem. Thanks also to the professionals who supplied their words of advice in the box inserts in Chapters 2 through 7 in this edition. Their insight will prove to be extremely valuable.

Finally, and most importantly, I would like to thank my family—Kathleen, Chloe, and Charles—for their patience and support.

CONTENTS

<i>Preface</i>	<i>Page</i> <i>vii</i>
CHAPTER ONE: THE YOUNG GET OLDER AND THE OLDER GET VICTIMIZED 3	
Introduction	3
Integrating Crime and Abuse	5
Myths About Crimes Against Older Victims	12
Summary and Plan of Presentation	23
CHAPTER TWO: CRIMES COMMITTED AGAINST THE ELDERLY: WHY HAVE THEY BEEN IGNORED FOR SO LONG? 29	
Introduction	29
Conceptual Ambiguity	30
White-Collar Crime Definitions	31
Elder Abuse Definitions	33
Family Abuse Definitions	34
Political Issues	37
History of Elder Abuse	37
Responses to Domestic Violence	39
Funding of Crimes Against Elderly Persons Research	40
Magnitude Issues	41
Methodological Issues	46
Survey Research and Crimes Against Elderly Persons	46

Field Studies	53
Archival Research	54
Concluding Remarks	63

CHAPTER THREE: ABUSE IN THE LIVES OF OLDER ADULTS

Introduction	64
Physical Abuse	67
Parent Abuse	67
Spouse Abuse	68
Patient Abuse	69
Other Violent Crimes	71
Homicides	73
Sexual Abuse	75
Financial Abuse	79
Exploitation by Primary Contacts	81
Nursing Home Theft	84
Fraud by Secondary Contacts	85
Home Repair Fraud	86
Insurance Fraud	86
Medical Fraud	87
Confidence Games	87
Telemarketing Fraud	88
Phony Contests Fraud	90
Other Property Crimes	92
Neglect	94
Neglect Committed by Caregivers	94
Self-Neglect	95
Abandonment	96
Psychological Abuse	97
Institutional Abuse	98
Health Care Crimes	99
Patient Dumping	102
Institutional Financial Fraud	103
Regulatory Violations	103
Concluding Remarks	106

CHAPTER FOUR: VICTIMIZATION EFFECTS, INTERVENTION MEASURES, AND LEGISLATIVE CONSEQUENCES	108
Introduction	108
Victimization and Vulnerability	109
Consequences of Victimization	115
Deprivational Effects	116
Experiential Effects	123
Fear of Crime and Elderly Crime Victims	127
Intervention and Elder Abuse	131
Institutional Placement	133
Medical Services	134
Social Services	135
Therapeutic Services	135
Educational Services	138
Legal Interventions	138
Positive Consequences of Crimes Against Elderly Victims	139
Protective Services Legislation	144
Restitution Laws	145
Legal Services Funding Legislation	146
Mandatory Reporting Laws	146
Concluding Remarks	148
CHAPTER FIVE: DETECTING, INVESTIGATING, AND RESPONDING TO CRIMES AGAINST ELDERLY PERSONS: A SYSTEM'S APPROACH	150
Introduction	150
Adult Protective Services and Elder Abuse	155
The Criminal and Civil Justice Systems and Elder Abuse	158
The Police and Crimes Against Elderly Persons	160
Assessment	163
Enforcement	164
Support and Referral	165
Medicaid Fraud Control Units	166
Triads	167
Law Enforcement Gerontology	168
Local, Private, and Volunteer Efforts	169

The Courts and Crimes Against Elderly Persons	171
The Role of the Criminal Prosecutor	171
Criminal Court Versus Civil Court	173
Volunteer Court Programs, Legal Aid Societies, and Crimes Against Elderly Persons	176
Improving the Court Response to Crimes Against Seniors	177
Corrections and Crimes Against Elderly Persons	178
Criminal Sanctions	178
Civil Sanctions	180
A Note about the Justice System and Institutional Abuse	181
Concluding Remarks	182

CHAPTER SIX: UNDERSTANDING AND EXPLAINING CRIMES AGAINST SENIORS: ELDER ABUSE AND CRIMINOLOGICAL THEORIES

Introduction	185
The Role of Theory in Understanding Elder Abuse	186
Theories Explaining Crimes Against Elderly Persons	192
Elder Abuse Explanations	196
Intra-individual Explanations	197
Stress	201
Dependency	203
Transgenerational Violence	205
Symbolic Interactionism	206
Isolation	207
Rationalizations by Abusers	207
Patriarchal Theory	210
Explaining Abuse in Nursing Homes	211
Criminological Explanations	213
Deterrence Theory	214
Strain Theory	215
Differential Association	217
Control Theory	219
Routine Activities Theory	220
Social Disorganization Theory	224
Concluding Remarks	226

CHAPTER SEVEN: PREVENTING ELDER ABUSE: AN INTEGRATED APPROACH	228
Introduction	228
Individual Strategies to Prevent Elder Abuse and Fraud	229
Empowering Seniors to Prevent Victimization	229
Familial Caregivers and Elder Maltreatment Prevention	230
Provider Strategies to Prevent Elder Mistreatment	234
Awareness about the Possibility of Elder Mistreatment	235
Watching for Signs of Mistreatment	235
Effectively Documenting Suspected Mistreatment	236
Institutional Strategies to Prevent Abuse	238
Criminal Justice/Social Services Strategies	243
Education as a Criminal Justice/Social Service Strategy	243
Community Service Strategies to Prevent Elder Abuse	244
Investigation/Enforcement as a Crime Prevention Strategy ...	244
Empowerment as a Crime Prevention Strategy	245
Legislative Strategies	245
Mandatory Reporting Laws	245
Penalty Enhancement Statutes	250
Criminal Background Checks	252
The Elder Justice Act	253
Concluding Remarks	253
CHAPTER EIGHT: RECOMMENDATIONS FOR FUTURE POLICY AND RESEARCH	255
Introduction	255
Concluding Remarks	269
<i>References</i>	271
<i>Index</i>	303

CRIME AND ELDER ABUSE

Chapter 1

THE YOUNG GET OLDER AND THE OLDER GET VICTIMIZED

1. Why is it important to study crime against older adults?
2. How does the demographic makeup of society influence crime?
3. What does the author mean by gero-criminology?
4. What are mandatory reporting laws? How effective do you think they are?
5. How does victimization among older adults compare to the victimization of other groups?
6. Is it ageist to separate out crimes against older adults? Why or why not?
7. Why would people who work in criminal justice be concerned about older victims of crime?

INTRODUCTION

At seventy-seven years old, Mary Ann was a retired real estate professional, the widow of a judge, and the parent of a prosecutor. She and her husband had built up a respectable amount of savings that should have ensured that Mary Ann would live comfortably for the rest of her life. Con artists who swindled Mary Ann out of \$74,000 with bogus investments and promises of phony prizes nearly shattered that comfort. Not long thereafter, she moved to North Carolina and got an unlisted phone number. One day a man identifying himself as Virgil Hastings called Mary Ann to say that he was a lawyer who was in charge of her case and that he had recovered her lost money, and that he would be able to send her the money if she sent Hastings \$1,950 to cover legal fees. She sent the money and, as you may have guessed, never heard back from Hastings. This scam is referred to as a “recovery room scam” in that per-

sons who are known to have already been scammed are targeted, contacted, and promised reimbursement in exchange for legal fees (Church, 1997).

Mary Ann is not alone. In fact, elderly persons make up only 12 percent of the population but 30 percent of fraud victims (Wangrin, 1994). Fraud, however, is not the only type of crime committed against older adults. Indeed, there is great variation in the kinds of offenses that threaten the financial, physical, and emotional lives of older adults. Consider the following examples:

1. A woman paid roofers \$4,000 for getting a layer of tar in one spot on her roof. The tar left the roof in worse condition than before (Calvan, 1998).
2. An elderly nursing home patient was blinded because he was punched by his nurse's aide (Payne & Cikovic, 1995).
3. A fraudulent investor convinced a woman in her sixties to pay \$4,000 for a fraudulent living trust (Tighe, 1994).
4. In Buffalo, an elderly woman was charged \$100,000 to have a water line installed. Authorities learned of the scam only after the woman told a neighbor she didn't have the money for the final payment (Kalter, 1995).
5. A home care provider pled guilty to stealing a woman's credit card and running up a \$1,500 bill. The same caregiver had previously been charged with stealing rings from nursing home patients (*St. Petersburg Times*, 2003: 3).
6. An elderly man was pulled from his bed by his nipples because a nurse's aide thought he wasn't being cooperative (Payne, 1998a).
7. A sixty-five-year-old man died "after his wife held him down and hit him repeatedly" (Nelesen, 2003, p. E5).
8. A seventy-five-year-old woman was murdered by her nephew. The murderer placed peeled onions around the room to cover up the smell of the deceased body. Ironically, it was the smell that led concerned neighbors to call the police.
9. A paid caregiver stole \$30,000 from a ninety-year-old woman who was in her care (Mitchell, 2003).
10. A certified nursing assistant was arrested and subsequently admitted to sexually abusing two elderly women (*St. Petersburg Times*, 2003).
11. A fifty-seven-year-old male forcefully entered his eighty-two-year-old father's mobile home and tied him up with nylon rope. Then, he gagged his father with a pillow case and assaulted him (Tisch, 2003).

The list could go on and on; the point is that older adults are victimized in a variety of ways. While official statistics show older adults are less likely to be victimized than younger individuals, the very nature of aging in the United States creates certain situations where older adults are more likely to be tar-

geted for certain crimes than younger people. For example, children and younger adults would rarely, if ever, be victims of patient abuse in nursing homes. Likewise, younger adults are less likely to need health care; therefore, they are less likely to be victims of medical crimes (see Jesilow, Pontell, & Geis, 1985; Geis, Jesilow, Pontell, & O'Brien, 1985; Rosoff, Pontell, & Tillman, 2003). Further, fraudulent telemarketers, repair technicians, and investors are more likely to target older adults who have more money saved for their future (Church, 1997). These offenses (telemarketing fraud, occupational fraud, patient abuse, and medical crimes) are typically not included in official crime statistics. Conversely, older adults are not as apt to join gangs, do drugs, and engage in other risk-taking activities that ultimately lead to much of the crime and the subsequent victimization that official statistics measure. Thus, assumptions about the victimization of older adults should not be made from official statistics.

Rather, what is needed are focused examinations that isolate and specifically consider the social and political ramifications of crimes against older adults. This book represents one of the first discourses that integrates elder abuse issues within the framework of a criminological paradigm. To adequately integrate these issues, the way that the victimization experiences of elderly persons can be conceptualized as involving various types of abuse warrants consideration. This will be followed by a discussion of various myths about elderly victimization that continue to limit our understanding about this important issue.

INTEGRATING CRIME AND ABUSE

A *social harm* approach is useful in integrating the notions of crime and abuse. A social harm definition of crime argues that criminal acts are best defined as "activities that involve demonstrable harm to human beings" (Friedrichs, 2003, p. 6). Because many abuses against older adults are not universally defined as illegal, a social harm conceptualization of crime offers a broader base from which we can begin to understand abuses against older adults. This is important because states vary in their definitions of abuse, and it would be virtually impossible to get all to agree on a consistent legal definition of what many refer to as elder abuse (Macolini, 1995; Wolf, 1996a). Indeed, every state in the U.S. has adopted legislation addressing abuse of elderly persons. The complexity and breadth of the statutes are evidenced by the fact that the state laws vary in at least six important ways: (1) their definitions of elderly; (2) their definitions of abuse; (3) whether the abuse is classified