

# Exploring Ethical Challenges of Legal Services Working on Elder Abuse Issues



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- <http://www.nlrc.aoa.gov/>
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# Presenter – Penny Hommel

- Penny is the Co-Director, The Center for Social Gerontology. She was one of the first to specialize in legal rights of older persons and to develop a university-based law and aging program.
- She established TCSG in 1985 and has guided it to prominence as a national legal support center. She is the national leader in supporting state legal services developers and has particular expertise in legal services delivery systems for vulnerable elders.

# Presenter – Jaye Martin

- Jaye is Executive Director of Legal Services for the Elderly in Maine. LSE is a statewide legal services organization focused on meeting the unique legal needs of disadvantaged seniors. LSE is actively involved in elder abuse litigation and developing state, regional and local efforts to improve the response of the legal system to elder abuse.

# Presenter – Denis Culley

- Denis Culley works as a Staff Attorney for Legal Services for the Elderly in the Augusta office. He represents Maine residents sixty and older before courts and in administrative hearings before state agencies along with providing other civil legal services to Maine's elderly.
- He began his work with Legal Services for the Elderly in the fall of 2004. Since that time he has represented hundreds of elders in state and federal administrative appeals and in all divisions of Maine's State Courts.




**EXPLORING ETHICAL CHALLENGES  
OF LEGAL SERVICES WORKING ON  
ELDER ABUSE ISSUES**

# OVERVIEW OF THE WEBINAR

1. ABUSE IN THE CONTEXT OF AGEIST SOCIETY:  
HISTORY AND THREE CAUTIONS  
(PENNY HOMMEL)
1. CRITICAL NEED FOR DEVELOPER TO ENSURE  
POLICIES & PROCEDURES ARE IN PLACE BEFORE  
PROVIDERS GET INVOLVED  
(JAYE MARTIN)
1. HANDS-ON CHALLENGES FOR PROVIDERS ONCE  
CASES COME THROUGH THE DOOR  
(DENIS CULLEY)

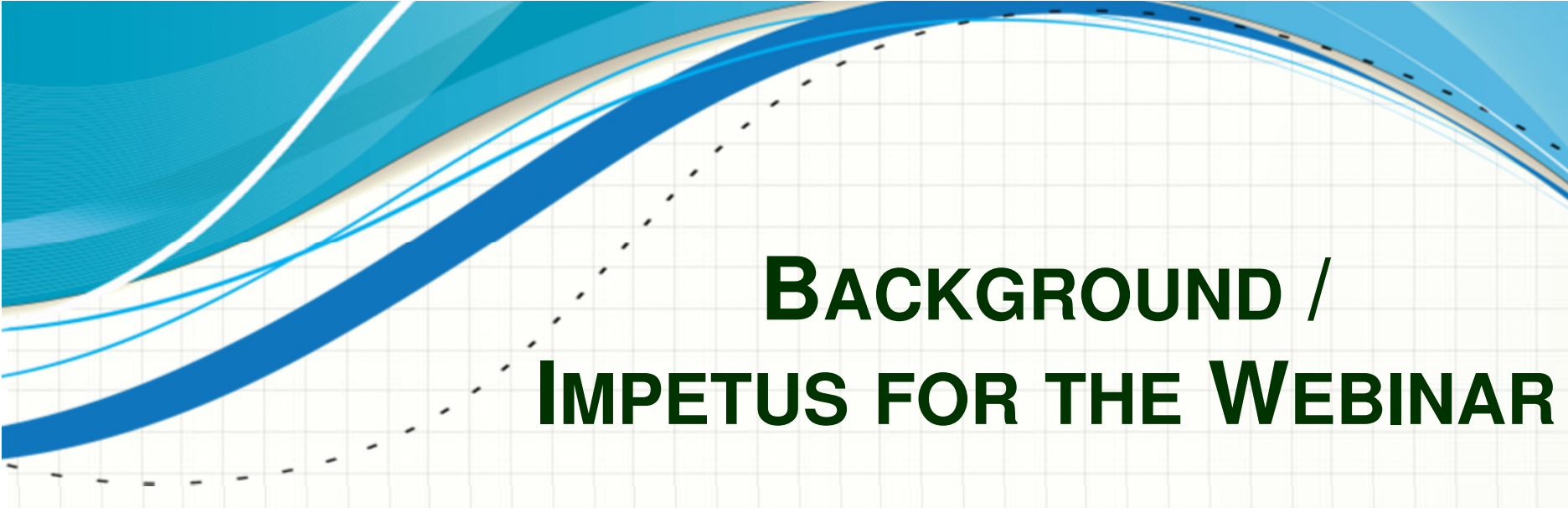




**ELDER ABUSE IN THE  
CONTEXT OF AN  
AGEIST SOCIETY:  
HISTORY OF ELDER ABUSE  
– THREE CAUTIONS**

PENELOPE (PENNY) HOMMEL  
*CO-DIRECTOR,  
THE CENTER FOR SOCIAL GERONTOLOGY*





## **BACKGROUND / IMPETUS FOR THE WEBINAR**

- **RECENT RESURGENCE OF ACTIVITY IN BROAD AREA OF ELDER ABUSE, NEGLECT AND FINANCIAL EXPLOITATION.**
- **A PUSH FOR GREATER INVOLVEMENT OF LEGAL SERVICES, PARTICULARLY IN FINANCIAL EXPLOITATION.**



# POSITIVE DEVELOPMENT, BUT...

## POSITIVE BECAUSE:

- AFTER FIRST TWO DECADES OF INTENSE ACTIVITY, (1980s AND 90s), FADED INTO BACKGROUND;
- RECENT YEARS, ATTENTION AGAIN BEING GIVEN AND GREATLY INCREASED ACTIVITY:
  - FEDERAL LEVEL: AoA/ACL, ELDER JUSTICE ACT/ COALITION, CONSUMER FINANCIAL PROTECTION BUREAU, ETC;
  - STATE & LOCAL LEVELS: SUAs, LEGAL SERVICES DEVELOPERS, AAAs, OMBUDSMEN, LEGAL SERVICES PROVIDERS, ETC.



**BUT EXTREME CAUTION NEEDED –  
REMEMBER THE HIPPOCRATIC  
OATH; “FIRST, DO NO HARM.”**

**THREE REASONS FOR CAUTION...**



# REASON #1: AGEISM STILL RAMPANT IN AMERICA

DR. ROBERT BUTLER, ONE OF THE FIRST TO PUT SPOTLIGHT ON “AGEISM,” DEFINED IT AS: *A FORM OF SYSTEMATIC STEREOTYPING AND DISCRIMINATION AGAINST PEOPLE SIMPLY BECAUSE THEY ARE OLD.*


## IMPORTANT CONSEQUENCES –

- ELDERS NOT TAKEN SERIOUSLY, ARE PATRONIZED.
- OTHERS MAKE DECISIONS FOR THEM
- OVERRIDE THEIR EXPRESSED WISHES/DESIRES.

## VERY SERIOUS IMPLICATIONS FOR LEGAL SERVICES PROGRAMS

- REQUIRES EXTREME CAUTION IN GETTING INVOLVED IN ABUSE & EXPLOITATION CASES.
- MUST ESTABLISH PROTOCOLS/POLICIES PRIOR TO GETTING INVOLVED.





**REASON #2:  
AGEIST ATTITUDES REFLECTED  
NOT ONLY IN STATES' ABUSE  
LAWS, BUT EVEN IN LANGUAGE  
WE USE, E.G. --**

**AGING NETWORK**

- ELDER ABUSE
- CASE MANAGEMENT  
(THOUGH BEGINNING TO CHANGE...)
- VICTIMS

**DISABILITY COMMUNITY**

- DISABILITY RIGHTS
- PERSON CENTERED  
PLANNING
- PERPETRATORS



## REASON #3: HISTORIC EVOLUTION OF STATES' ABUSE LAWS

### PASSED VERY RAPIDLY

- FIRST NATIONAL ATTENTION IN 1979 – JUNE HEARING BY CONGRESSMAN DRINAN (MA). BASED ON VERY EARLY RESEARCH BY A VERY FEW.
- STATES VERY QUICKLY BEGAN TO PASS LAWS – FROM 4 STATES IN 1976 TO 30 BY EARLY 1983
- IN MOST STATES, INADEQUATE MONEY TO IMPLEMENT; IN SOME STATES NO ADDITIONAL MONEY (E.G. MICHIGAN).
- INADEQUATE CONSIDERATION OF DIFFICULT BALANCE OF INDIVIDUAL RIGHT OF ADULTS TO AUTONOMY/SELF DETERMINATION VS POWER OF STATE TO INTERVENE TO “PROTECT.”

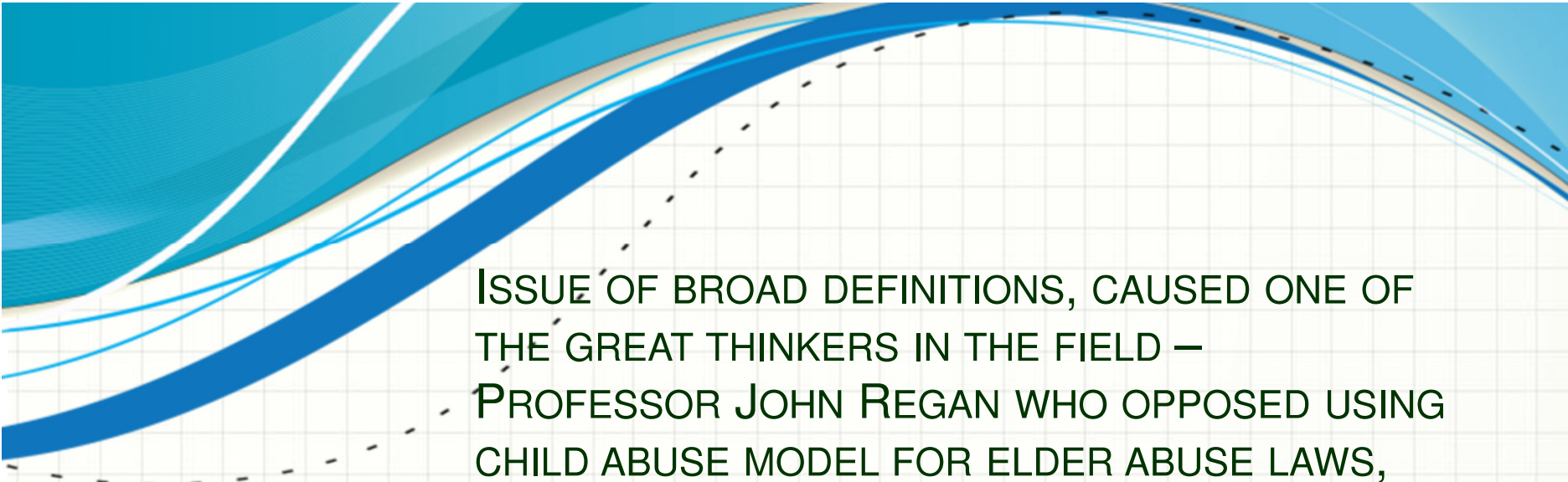


## REASON #3: HISTORY OF LAWS (CONT.)

### RESULTS:

- MOST IMPORTANT, ALMOST ALL STATE LAWS PATTERNED AFTER CHILD ABUSE LAWS. EARLY FOCUS ON MANDATORY REPORTING & INVESTIGATING. UNDERLYING ASSUMPTION THAT, AS A CATEGORY OF THE POPULATION, ELDERLY NEED PROTECTION LIKE CHILDREN.
- SOME STATES EVEN ALLOWED INVOLUNTARY INTERVENTION, E.G. “SHORT TERM” INSTITUTIONALIZATION OF SELF-NEGLECTING ELDERERS.
- ISSUE OF BROAD DEFINITIONS - MOST LAWS DEFINED ABUSE VERY BROADLY – PHYSICAL/EMOTIONAL ABUSE, NEGLECT BY OTHERS, SELF NEGLECT AND EXPLOITATION. SOME APPLIED SPECIFICALLY TO ELDERERS; OTHERS TO ALL VULNERABLE ADULTS. CASTS A VERY WIDE NET.





ISSUE OF BROAD DEFINITIONS, CAUSED ONE OF THE GREAT THINKERS IN THE FIELD – PROFESSOR JOHN REGAN WHO OPPOSED USING CHILD ABUSE MODEL FOR ELDER ABUSE LAWS, MANDATORY REPORTING OF ELDER ABUSE WITH ITS PATERNALISTIC UNDERPINNINGS – TO REMARK:

*“... THE UNDERLYING POINT IS WORTHY OF YOUR REFLECTION, THAT A MANDATORY REPORTING LAW, TAKEN SERIOUSLY, NOT ONLY IMPOSES SIGNIFICANT OBLIGATIONS ON PROFESSIONALS AND SERIOUS PENALTIES ON THOSE WHO BREACH THAT DUTY, BUT MAY DEFINE THAT DUTY IN TERMS SO BROAD AS TO MAKE IT MEANINGLESS.”*

PROF. JOHN J. REGAN, UNPUBLISHED PAPER,  
ELDER ABUSE PREVENTION & INTERVENTION POLICY: A WORKING CONFERENCE,  
CHICAGO, JULY 1985



## **IMPLICATIONS FOR LEGAL SERVICES ATTORNEYS WORKING IN THE AREA**

FOR ALL THREE REASONS, EXTREME CAUTION IS ADVISED, AND IT IS CRITICAL TO EVALUATE THE CAPACITY OF THE LEGAL SERVICES PROGRAM TO HANDLE THESE COMPLEX, CHALLENGING CASES, AND TO PUT IN PLACE CLEAR PROGRAM PROTOCOLS/PROCEDURES BEFORE GETTING INVOLVED.

NOW ON TO JAYE MARTIN'S DISCUSSION OF THAT EVALUATION AND THOSE PROTOCOLS...