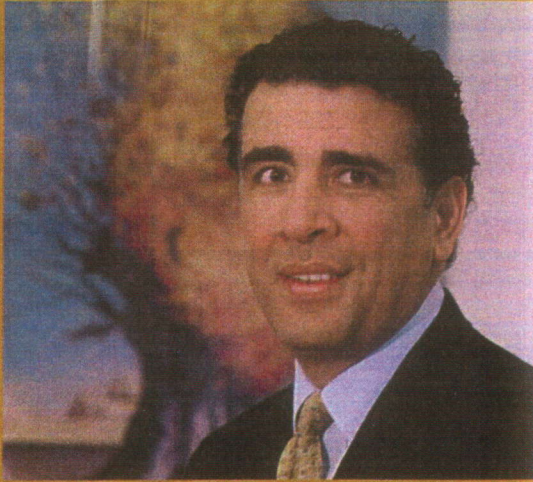


ELDER ABUSE

WILKES & McHUGH PA SPONSORS

ELDER ABUSE PROFESSORSHIP AT LOYOLA



STEPHEN GARCIA '85

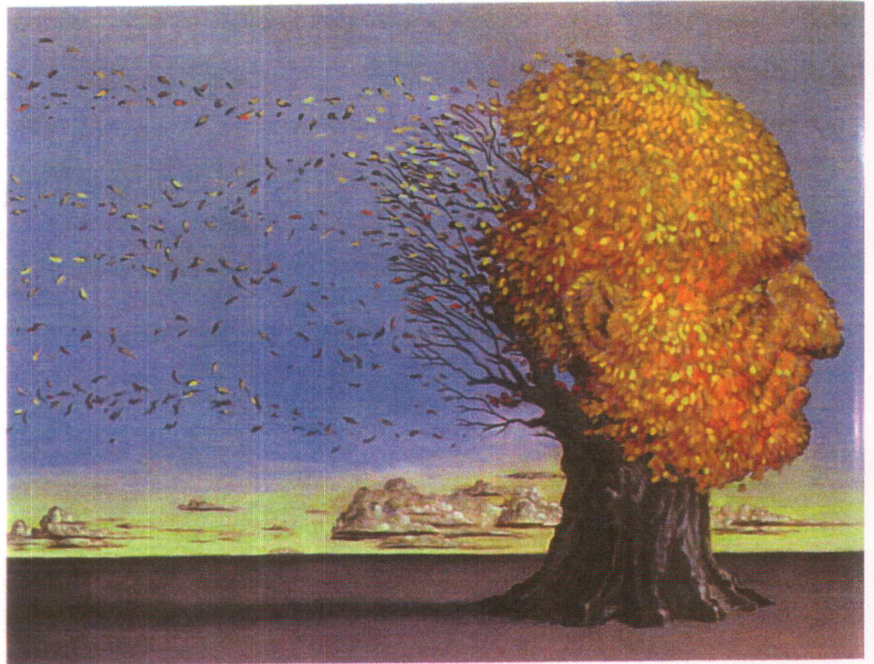
began working exclusively in elder abuse law after a man named Jesus Noy came to his office eight years ago. Noy told the story of his aged mother who had fallen in the shower and due to the heat of the water was scalded, receiving burns over 18 percent of her back. Mrs. Noy was prone to fainting and was frail, but was left unattended at her nursing home because they were understaffed and uncompassionate. Stephan took the case and remembers the nursing home's defense was, "She's gonna die soon anyway." This incident is typical of the way our elders are treated in nursing homes, and the way the "caretakers" view their clients, er... patients. Mrs. Noy was lucky. Had she fallen a few years earlier, neither she nor Jesus could have sued for anything but injunctive relief.

Now, because of government intervention and the tenacity of men like Garcia and his colleagues at Wilkes & McHugh, elders and their relatives can fight the nursing homes and come home with something to show for it, other than large attorney fees. Because of the growing need for law in this area, Wilkes & McHugh, sponsors of the Elder Abuse Symposium last spring, have sponsored an Elder Abuse Professorship at Loyola.

Garcia, the main speaker at the spring symposium, views himself and his fellow advocates as just that, advocates for those who cannot protect themselves from abuse, neglect and the like. It is the goal of Wilkes & McHugh, Garcia and almost any other attorney who braves this field of law, to wipe out elder abuse and neglect in nursing homes. Garcia said that it is his personal quest to fight until nursing homes staff their facilities properly, treating our elders with respect and dignity, and cease the rampant exploitation of the very people nursing homes were designed to protect. Garcia triumphantly stated that he will be delighted when he and his brothers in arms are all unemployed because there aren't enough elder abuse cases to keep their firm afloat. But until that day, they will fight on.

After some regrettable and tough years following his graduation from Loyola, Garcia has righted himself, partly due to sheer will and partly due to the morality embedded in him by Loyola, and his college *mater*, Loyola Marymount University. Garcia fights on with the strength of his ethic, the tools learned at Loyola Law School (which he said he'd put up against any other institution's teachings), and the love of his wife and two children.

And by the way... Mrs. Noy is still alive.



Honor Thy Mother and Thy Father? Confronting Elder Abuse

By Ryan McEachern '02

Until recently it was advantageous and profitable for some nursing homes to cut corners, commit fraud and hide all improprieties from the public, the government, their staff and their clients. The law insulated nursing homes—now the mighty for-profit nursing home industry has lost its impervious nature and humanity is slowly returning to the face of the senior community in this nation.

The over-60 crowd is the fastest growing age group in this country. It won't be long before that age group represents the majority. Yet some nursing homes treat them like cattle, financial institutions treat them like easy prey, and gambling and telemarketing corporations see them as "suckers." As these societal gaffes are finally reaching the surface, legally related groups and institutions need to address these issues straight on to hasten remedial measures. Thanks to the generosity of Wilkes and McHugh, a leader in elder abuse suits, "Honor thy Mother and Father: Symposium on the Legal Aspects of Elder Abuse" was fea-

sible. This symposium occurred in May, 2002 and invited scholars and attorneys in the field to come together to inform and discuss this present tragedy.

Among the speakers were alumnus Stephen Garcia '85, a specialist in elder abuse law with Wilkes and McHugh, who will be teaching a class on the subject here at Loyola Law School in the fall; State Attorney General Bill Lockyer; Jeanne Finberg, a staff attorney with the National Senior Citizens Law Center; Kurt Eggert, a professor of law from Chapman University who specializes in fiduciary fraud; Seymour Moskowitz, a professor of law at Valparaiso University, who has written extensively in the elder abuse field; and the Honorable Carl J. West '78 of the Los Angeles Superior Court. The symposium focused on the current changes in the law, local, state, and federal, which are sealing the cracks that have allowed such blatant mistreatment toward a very large group of Americans. Attorney General Lockyer stated that his office is currently working diligently to enforce the current laws and draft new protective statutes in order to prevent and protect. After the attorney general's introduction, the symposium discussed four broad topics: financial abuse (individual fraud, theft, false pretenses), lending and gambling abuse (coercion, institutional fraud, inducement), physical and mental abuse within medical care facilities, and how the law is changing to reflect these abuses.

The most notorious of the elder abuses is the physical and mental torture that has occurred for decades in a number of for-profit nursing homes. Many nursing homes have been understaffed for years, and as a result, the clients/patients are denied adequate care and comfort. Not only is the staff unable to adequately serve the physical health and maintenance needs of the patients, they are spread so thin that eventually the stress causes the staff to execute their anger in the form of beatings and apathy. Of course, while one can blame the orderlies, or claim that the patients are a burden, the fact of the matter is that the corporations who run the homes are doing so for a profit. In many instances, these business owners often cut back on staff, substitute cheaper and less effective medicine, hire less experienced workers, cut back on janitorial concerns and so on, resulting in the *de facto* torture of our parents, grandparents and other loved ones. So, rather than enjoying the last few years of one's life in a comfortable setting, every day is suffering.

Until 1991, victims of abuse or neglect at a nursing home would have three battles to fight. First, victims would have to secure an attorney. This was very difficult, because there was a great financial disincentive for an attorney to even consider taking the case. Litigation, especially against large corporations, is difficult and time consuming, in other words, expensive. Most nursing home residents cannot afford to pay hourly wages of a competent attorney, and contingency arrangements

were out of the question since recoveries were typically small and often injunctive in nature. The next two battles were concurrent. The victims had to fight the home and death. The home had the cash, control and a cornucopia of attorneys. The victims were probably already in poor health when they arrived at the facility, and if they were physically injured that was sure to exacerbate their condition, and the stress of a trial is hard on any person, let alone someone more than 70. Yet, the major problem was that if the victims did pass away during the litigation, their cause of action died with them (another reason it was hard to find an attorney to take the case).

Therefore, nursing homes could act any way they wanted, because they knew no one could successfully sue them, even in the face of constant senior complaints and Congressional studies. Yet, when the epidemic hit the proverbial fan in the mid-1990s, Congress stepped forward despite heavy lobbying from the nursing home industry. Now when seniors are victimized in a home, they can sue for serious damages, their claim survives their death, and attorney's fees are automatically attached. (As well, it doesn't hurt that these offenses are more and more in the social consciousness). Unfortunately, nursing homes are still winning more than half the cases; maybe in time that trend will reverse.

The preceding is an example of the kind of action that is being taken in elder abuse law. It gets much trickier when it comes to financial and lending issues, because competency of seniors gets called into issue. It would be equally insulting to hold that seniors are unable to handle their fiscal affairs, yet we all know a loved one who was "talked into" buying insurance or making repairs they really didn't want or need.

Gambling is a very common recreational activity for the elderly, and the casinos know this and target them. Of course, it is not a crime to market to a group, but there is a point where such inundation becomes inducement or coercion. Laws of protection in this area would be more beneficial than laws of persecution. One such law allows seniors addicted to gambling to register with gaming bodies to prevent their entrance.

What is ironic and sad is that old age is inevitable. At some point all of us will be amongst the "target" groups, yet that doesn't seem to prevent exploitation. Maybe with more public debates on the subject, like the symposium held here at Loyola, we can move back to admiring our elders instead of condemning and exploiting them. ❖

