
Adapting Trial Court Performance Standards to an Aging Society:

**Guardianship, Self-Service, and Criminal Cases
Involving Elder Mistreatment and Domestic Violence**

Prepared for



The State Justice Institute

by

**The Center on Aging
Robert Stempel School of Public Health
College of Health and Urban Affairs
Florida International University**

March 2006

**Max B. Rothman, J.D., LL.M., Principal Investigator
Burton D. Dunlop, Ph.D., Co-Investigator
Laura R. Seff, M.B.A., Research Associate**

**The Center on Aging, 3000 NE 151 Street, AC1-234,
North Miami, FL 33181**

Tel: 305-919-5550 ◆ Fax: 305-919-5585

Web: www.fiu.edu/~coa

CONTENTS

		Page
	Acknowledgements	3
Section 1	Executive Summary	4
	Background	5
	Recommended Substandards & Measures, Listed	7
Section 2	Introduction	19
	Background	20
	Methodology	29
	About Elders	30
	How to Use These Recommended Substandards & Measures	32
Section 3	Recommended Substandards & Measures, by type of court, with commentary	34
Table 1:	Recommended Substandards & Measures that apply to all three subject areas	35
Table 2:	Recommended Substandards & Measures that apply to guardianship cases	47
Table 3:	Recommended Substandards & Measures that apply to self- service centers	65
Table 4:	Recommended Substandards & Measures that apply to criminal cases of elder mistreatment and domestic violence	68
Section 4	References	76
Appendix A	Project advisory panel	83
Appendix B	Site visit interview guides	85

ACKNOWLEDGEMENTS

The authors would like to thank our project site coordinators, Diana L. Clarke, Esq. (Maricopa County), Julie S. Pezzner (Delaware), and Shannon Ramsey (Palm Beach County) for their outstanding efforts and contributions to the quality of our site visits and to the breadth of data obtained. We also want to thank our consultant on Trial Court Performance Standards, Pamela Casey, Ph.D., of the National Center for State Courts, for her guidance and recommendations throughout the project. Lastly, we are indebted to the members of the Project Advisory Panel (Appendix A) who met with us early in the project to help shape our methodology and approach, and who provided invaluable feedback to an early draft of this report.

This report was developed under grant agreement number SJI-05-N-001 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

**SECTION 1
EXECUTIVE SUMMARY**

“The challenges of an aging society continue to dominate the attention of policymakers, academics, particularly those in the sciences and medicine, the popular media, and the public-at-large... Little is known, however, about the impact older people will have on one of the three pillars of American government: the judiciary. Although considerable work has been undertaken concerning specific substantive areas of “elder law”... there has been little effort to examine the implications of aging in America on judicial administration, access to the courts, and resolution of the underlying issues that often precipitate court involvement for older adults. It is important today to understand more about the nature of situations that lead older people to the courts, how courts respond to them, and what policies and court administrative actions are needed to prepare for the future.”

*Judicial Responses to an Aging America
Max B. Rothman & Burton D. Dunlop, 2006*

Background:

In 2004, the State Justice Institute engaged The Center on Aging¹ of Florida International University in a research project to provide recommended substandards and measures for adapting existing, or developing new, Trial Court Performance Standards (TCPS)² targeted to older adult court users³. The proposed elder-specific TCPS substandards and measures are intended to make available self-assessment tools that courts can use to gauge ongoing effectiveness in meeting the needs of older court users. With the anticipated dramatic growth of the elder population over the next 20 to 30 years, court timeliness and efficiency, as conventionally perceived, as well as public opinion about the responsiveness and performance of courts, will be challenged. Courts will have to understand, implement, and measure the effectiveness of court accommodations for older users, especially those who are frail, in order to minimize disruption of court calendars and to respond to the needs and concerns of the community. A number of issues addressed in these proposed substandards that affect persons of all ages are included because of their particular importance to older people.

The research, conducted in Florida’s 15th Judicial Circuit (Palm Beach County), Superior Court of Maricopa County (Phoenix, Arizona), and the State of Delaware Judiciary (in Wilmington), focused on three subject areas that often affect older court users nationwide: guardianship, self-service centers, and criminal cases involving elder

¹ The Center on Aging is part of the Robert Stempel School of Public Health, College of Health and Urban Affairs at Florida International University.

² Based on *Trial Court Performance Standards With Commentary* (1997), NCJ document #161570.

³ Many different age thresholds are used to identify an “older person”. For example, the US Census Bureau makes the cut-off at age 65 and above, as does The Uniform Crime Report. The U.S. Older Americans Act covers persons age 60 and older. Throughout this report, when we provide specific citations, we will indicate which age criterion applies.

mistreatment⁴ and domestic violence. Subsequent to conducting a preliminary survey of the research literature in order to develop our interview guides, we interviewed key court administrators, judges, attorneys, MIS staff, and other professionals engaged in court proceedings. These interviews provided information about current practices, recommendations to improve them, and suggestions for how to measure compliance. Additionally, in each of the three jurisdictions we reviewed information about special courts and programs likely to have an impact on older court users, and conducted focus groups with guardians and APS staff. Finally, after drafting an initial set of elder-specific substandards based on our site visit findings, we conducted an extensive literature review on TCPS, elders and the courts and, more specifically, on elders in self-service centers as well as in probate and criminal courts to enhance commentary on the substandards, based on previous publications concerning these subject areas. The outcome of this multi-step process is a series of recommended elder-specific substandards and measures with commentary that, again, are based primarily on our research in the jurisdictions noted above, but also are well-grounded and documented in the available literature.

Growing interest in the needs and concerns of older adults, the cultural impact of virtually universal acceptance of the importance of performance measurement in all public arenas, and recent trends in judicial administrative reform, as well as our previous research regarding judicial responses to an aging America, led the authors to seek an opportunity to conduct the current research. Each of these “movements” played a unique part in the relatively recent occurrence of initiatives aimed specifically at better understanding and managing issues involving older persons in the courts. Rothman & Dunlop’s (2006) investigation of “whether and how judicial systems in the United States ensure that older adults are provided effective access to the courts, including both civil and criminal jurisdictions”, was logically followed by this effort to adapt existing TCPS, focusing specifically on areas of court performance that are likely to have a significant impact on older court users. The commentaries, which provide a conceptual context for the proposed substandards as well as measures that may be implemented using the same approaches as have been described for the 22 TCPS (*Trial Court Performance Standards With Commentary*, 1997), offer today’s courts powerful self-assessment tools for determining their effectiveness in meeting the needs of this constituency.

Notably, it was not within the scope of this project to obtain consensus regarding substandards and measures from a representative panel of experts. Although all proposed substandards and measures were reviewed by key personnel in the three jurisdictions we visited, as well as by members of the project advisory panel (Appendix A), the authors are solely responsible for the final content of this document. We recommend that each court jurisdiction throughout the United States review this report in the context of its own unique circumstances, and the demographics of its community, and implement those proposed substandards and measures determined to be most appropriate and feasible.

⁴ In this report elder mistreatment is defined as second-party abuse, neglect, or exploitation.

Recommended Substandards and Measures:

ACCESS TO JUSTICE

TCP Standard 1.1 Public Proceedings:

*The trial court conducts its proceedings and other public business openly.*⁵

TCP Standard 1.2 Safety, Accessibility, Convenience:

Trial court facilities are safe, accessible, and convenient to use.

Recommended Substandard 1.2.A.: Escort assistance is readily available to help older court users locate the appropriate destination quickly and efficiently.

Measure(s):

- a. Percentage of older court users who are satisfied with availability of escort assistance.
- b. Proportion of older court users who were apprised by the court of the availability of escort assistance prior to their visiting the courthouse.

Area: All

Recommended Substandard 1.2.B.: Assistive devices such as wheelchairs and motorized carts for elders who are unable to walk at all, or who can walk only short distances and/or stand for short periods of time, are available; court communications make older persons aware of such accommodations prior to a visit to the courthouse.

Measure(s):

- a. Percentage of older court users needing these devices who are satisfied with availability of mobility assistance.
- b. Proportion of older court users who were apprised by the court of the availability of these assistive devices prior to their visiting the courthouse.

Area: All

TCP Standard 1.3 Effective Participation:

The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

Recommended Substandard 1.3.A.: All forms and other court materials and information normally distributed through the clerk's office, self-service center, the court

⁵ All text is italics throughout this document is quoted from the *Trial Court Performance Standards with Commentary*, 1997.

administrator, or on-line are readily available in text size no less than 14-point; and all forms include instructions written at or below a 4th grade level. For sight-impaired older court users, accommodations are made consistent with or they exceed the requirements of the Americans with Disabilities Act (ADA).

Measure(s):

- a. Form readability measures no higher than a 4th grade level on the Flesch-Kincaid scale.⁶
- b. Percentage of older court users satisfied with readability of forms.

Area: All

Recommended Substandard 1.3.B.: All forms of court communications are available in at least the language of the majority non-English-speaking ethnic group(s) in the jurisdiction, as well as in English. Older court users with verbal communication challenges based on language, or on hearing or sight impairment, have no-cost access to the services of foreign language court interpreters, sign language interpreters, and real-time transcription (produced in large print size).

Measure(s):

- a. Percentage of older non-English speaking, or hearing or sight-impaired court users, satisfied with understandability of court communications.

Area: All

Recommended Substandard 1.3.C.: Self-Service Center staff and those in the clerk's office front desk include at least one member who is fully bilingual in at least the language of the majority non-English-speaking ethnic group(s) in the jurisdiction, as well as in English, and have ready access to interpreters, including persons familiar with sign language or any other means of communication required based on visual, hearing, or cognitive impairment.

Measure(s):

- a. Percentage of older non-English-speaking court users satisfied with ability of self-service center and front desk staff to communicate effectively in their spoken language.
- b. Percentage of older court users with hearing or visual impairments satisfied with communication experienced.

Area: Self-Service

⁶ This scale measures readability by educational grade levels. The formula applies measures of number of words per sentence, sentences per paragraph, length of sentence, and polysyllabic words.

Recommended Substandard 1.3.D.: In metropolitan and large geographic areas, the court provides an adequate number of strategically dispersed self-service centers and court dockets in areas where substantial populations of older adults reside.

Measure(s):

- a. Ratio of elders per sub-area (from census data) served by available self-service centers and court docket locations (periodic review).
- b. Percentage of older adult residents in such areas satisfied with court access.

Area: All

Recommended Substandard 1.3.E.: The Self-Service Center establishes procedures to facilitate linkage of litigants with pro-bono counsel should the litigants desire it.

Measure(s):

- a. Percentage of older court users satisfied with this service of the self-service center.

Area: Self-Service

Recommended Substandard 1.3.F.: If it has not happened in the previous 30 days, the court orders a standardized full medical and mental health assessment of the older adult criminal defendant by the date of First Appearance. Where First Appearance must occur within 24 hours of incarceration, an alternative is to implement a standardized “mini assessment” that can be administered in a short time period and used as an indication of the need for a more thorough assessment. Measurement of dementia, other cognitive impairment, and mental health is included in the assessment of elder defendants’ competence to stand trial. Thoroughness of assessments and instruments used for data collection are consistent for all older defendants in the jurisdiction.

Measure(s):

- a. Percentage of cases in which information regarding the results of such an assessment are presented to the court by the date of First Appearance of an older defendant.
- b. Percentage of cases involving older defendants in which the court receives reliable data either ruling out or confirming dementia, cognitive impairment, and/or mental health abnormalities prior to determining competence to stand trial.

Area: Criminal

Recommended Substandard 1.3.G.:

Guardianship specific: To the extent permitted by law, following a guardianship petition filing in contested guardianship cases, the court conducts closely monitored

videotaping, and transcription of alleged incapacitated person's (AIP's) testimony, attended by counsel for all parties, at the earliest opportunity in case the elder suffers some decline in cognitive function or is unable physically to attend the court session scheduled for a later date.

Criminal court specific: To the extent permitted by law, the court allows closely monitored videotaping, and transcription of an elder witness', or victim's and/or elder defendant's testimony, attended by counsel for all parties, at the earliest opportunity following an arrest in case the elder is unable physically to attend the court session scheduled for a later date. Where applicable, available older victims are informed regarding the availability, benefits, and concerns surrounding the submission of a victim impact statement to the court.

Measure(s):

- a. Percentage of cases in which videotaped or transcribed testimony permitted by law is accepted as admissible when the elder cannot attend hearing or trial.
- b. Proportion of applicable cases in which information regarding a victim impact statement is documented in court records.

Area: Guardianship, Criminal

Recommended Substandard 1.3.H.:

Guardianship Specific: The court keeps the alleged incapacitated person (AIP) and all other interested parties informed regarding reasons for all court dates and whether their presence is mandatory.

Criminal Court Specific: The court keeps victims and defendants informed regarding reasons for all court dates and whether their presence is mandatory.

Measure(s):

- a. Percentage of older court users or their representatives who are satisfied with such notification.
- b. Percentage of cases in which notification is documented in court records.

Area: Guardianship, Criminal

TCP Standard 1.4 Courtesy, Responsiveness, and Respect:

Judges and other trial court personnel are courteous and responsive to the public, and accord respect to all with whom they come into contact.

Recommended Substandard 1.4.A.: All court staff, including judges and court-appointed counsel, is familiar with physical and psychosocial issues of aging based on a standardized curricula (for the jurisdiction) that is updated as needed to reflect changes in relevant statutes and case law.

Measure(s):

- a. Percentage of court personnel who can adequately answer questions that assess their familiarity with the specific physical and psychosocial issues of aging relevant to older court users.

Area: All

EXPEDITION AND TIMELINESS

TCP Standard 2.1 Case Processing:

The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

Recommended Substandard 2.1.A.: The court maintains a policy of bringing multiple cases with the same older litigant into a single court, e.g., family court, to the greatest degree possible consistent with such litigant's safety, privacy, and well-being. If a jurisdiction cannot accomplish this, the court designates a staff member to coordinate oversight of all cases involving one elder so that all judges assigned to those cases are fully advised and aware of all pending, related cases.

Measure(s):

- a. Percentage of multiple case situations involving the same litigants that are brought into one court.
- b. Percentage of older court users and attorneys for older court users involved in multiple court case situations who are satisfied with court's processing of case.

Area: Guardianship, Criminal

Recommended Substandard 2.1.B.: The court establishes standard timeframes from time of petition filing for: (1) scheduling an emergency adult guardianship hearing, (2) scheduling a non-emergency hearing in non-contested cases, and (3) scheduling a non-emergency hearing in contested cases.

Measure(s):

- a. Percentage of petitions of each type that meet the timeline goal.
- b. Percentage of guardianship petitioners satisfied with court's meeting of timeline goals.

Area: Guardianship

TCP Standard 2.2 Compliance with Schedules:

The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

Recommended Substandard 2.2.A.: The court enforces a policy of establishing a reasonable number of days past the due date for guardians to file annual reports or to show cause for late filing before such guardian responsibilities are considered delinquent.

Measure(s):

- a. Percentage of times (in which report is delinquent) that the court issues a show-cause summons to the guardian in compliance with established policy.

Area: Guardianship

TCP Standard 2.3 Prompt Implementation of Law and Procedure:

The trial court promptly implements changes in law and procedure.

EQUALITY, FAIRNESS, INTEGRITY

TCP Standard 3.1 Fair and Reliable Judicial Process:

Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

Recommended Substandard 3.1.A.: The court maintains a single list, by specialty, for court-appointed counsel, temporary guardians, and guardians *ad litem* who are trained and/or are experienced in assisting older court users. All judges work off the same list and rotate through these professionals in a consistent order.

Measure(s):

- a. Percentage of cases in which an appointed representative is drawn from the single list.

Area: Guardianship

Recommended Substandard 3.1.B.: All alleged incapacitated persons (AIPs) in guardianship litigation have the right to be represented by legal counsel who serves as the AIP's (and not the guardian's) advocate, regardless of the ability to pay. A guardian *ad litem*,⁷ who generally serves as a representative of the court, will not be considered as constituting such counsel.

⁷ Also referred to as a court visitor, court investigator, court evaluator, court monitor, or guardianship monitor, depending on the jurisdiction.

Measure(s):

- a. Percentage of guardianship cases in which AIP is represented by counsel.

Area: Guardianship

Recommended Substandard 3.1.C.: The court supports an approach to diminished capacity determination that is based on professional standards regarding medical, psychosocial, and functional ability statuses, with assessment performed within the AIP's familiar environment. Specifically, the court works with appropriate professional communities to develop criteria for the process of determining diminished capacity.

Measure(s):

- a. Percentage of cases in which capacity is determined using a standardized instrument that includes medical, psychosocial, and functional dimensions meeting established criteria.

Area: Guardianship, Criminal

Recommended Substandard 3.1.D.: The court customizes guardianship to each ward by (1) selecting an appropriate guardian based on expertise required in each specific situation, and (2) documenting in guardianship orders those rights retained by the ward.

Measure(s):

- a. Percentage of guardianship orders (a) that are customized to the ward, and (b) that mention explicitly rights retained by the ward.

Area: Guardianship

Recommended Substandard 3.1.E.: The court always upholds and never waives requirements regarding education, experience, training, and previous criminal records on all professional guardians, including public guardians. Standards for family guardians also are established for the jurisdiction.

Measure(s):

- a. Percentage of guardianship cases in which this type of information on prospective guardians is reviewed by the court prior to a guardianship order and is recorded in the case file.
- b. Percentage of family guardians who meet court-established criteria.

Area: Guardianship

Recommended Substandard 3.1.F.: In contested guardianship cases, whenever appropriate, the court makes mediation available as an alternative method of resolution.

Mediation may not be appropriate in situations involving abuse or domestic violence issues, particularly where a related criminal case is pending.

Measure(s):

- a. Percentage of contested guardianship cases in which mediation is considered by the court as an alternative path of resolution.
- b. Percentage of mediated guardianship cases in which all parties are satisfied with the outcome.

Area: Guardianship

Recommended Substandard 3.1.G.: The court requires the petitioner for an adult guardianship to demonstrate convincingly that less restrictive alternatives are not appropriate.

Measure(s):

- a. Percentage of cases in which the court record shows that petitioners demonstrated pursuit of alternatives and found them less desirable for the AIP than guardianship.

Area: Guardianship

Recommended Substandard 3.1.H.: The court recognizes and accommodates the fact that older adults may need more time during testimony, more frequent breaks during hearings or trials, more flexible scheduling of court events, and shorter court days, while also recognizing the need to minimize the number of continuances by scheduling ongoing cases across consecutive days when needed.

Measure(s):

- a. Percentage of older court users and their attorneys satisfied with aspects of timing, including (a) not feeling rushed during testimony, (b) adequacy of breaks, (c) number of continuances, and (d) timeliness of bringing case to resolution.

Area: Guardianship, Criminal

TCP Standard 3.2 Juries:

Jury lists are representative of the jurisdiction from which they are drawn.

TCP Standard 3.3 Court Decisions and Actions:

Trial courts give individual attention to cases, deciding them without undue disparity among the cases and upon legally relevant factors.

TCP Standard 3.4 Clarity:

The trial court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.

Recommended Substandard 3.4.A.: Guardianship orders clearly state the responsibilities of the guardian.

Measure(s):

- a. Percentage of guardianship cases in which the order clearly states these responsibilities.

Area: Guardianship

TCP Standard 3.5 Responsibility for Enforcement:

The trial court takes appropriate responsibility for the enforcement of its orders.

Recommended Substandard 3.5.A.:

Guardianship specific: The court recognizes the need to assure that timely submission and substance of guardianship reports are monitored by the appropriate court staff in 100 percent of cases and that the court is notified about non-compliance. When notified of non-compliance, the court takes appropriate action as specified by statute.

Criminal court specific: The court recognizes the need to partner with the agency or agencies in the jurisdiction charged with enforcing court orders for offenders, and specifically, compliance with: (a) mandated treatment for older adult offenders in 100 percent of cases; (b) terms of protection orders in 100 percent of cases involving older victims; and (c) terms of probation in 100 percent of cases involving older victims.

Measure(s):

- a. Percentage of relevant court staff, guardians, and attorneys for wards who are satisfied with the quality and reliability of the monitoring report and later contact with the court regarding non-compliance.
- b. Percentage of attorneys for wards satisfied with the court's action when guardians do not comply with timely submission and substance of guardianship reports.
- c. Percentage of cases involving mandated treatment in which the court receives notification regarding compliance with mandated treatment for older adult offenders.
- d. Percentage of protection order cases involving older adult victims in which the court receives notification regarding compliance with POs.
- e. Percentage of probation cases involving an older adult victim in which court receives confirmation that offenders are in compliance with terms of probation.

Area: Guardianship, Criminal

Recommended Substandard 3.5.B.: The court identifies and monitors key indicators of wards' safety and well-being, including an indicator that the ward resides in the least restrictive environment.

Measure(s):

- a. Percentage of annual reports in which guardians convincingly show that wards are safe and in as good health as possible, based on established indicators.
- b. Percentage of annual reports in which guardians show convincingly that wards are in the most optimal setting, based on established indicators.

Area: Guardianship

Recommended Substandard 3.5.C.: The court initiates investigation and/or civil/criminal action when a report contains evidence of mistreatment of a ward's person or property.

Measure(s):

- a. Percentage of cases with evidence of mistreatment of a ward for which court initiates investigation and/or action.

Area: Guardianship

Recommended Substandard 3.5.D.: At first appointment, all guardians (including family, private, and public), receive jurisdiction-specific information about their roles and responsibilities as guardians and about preventing, recognizing, and reporting elder abuse. Thereafter, as needed, all guardians receive additional information regarding recent advances in knowledge about aging and older persons, as well as changes in statutes and case law relevant to their guardianship responsibilities.

Measure(s):

- a. Percentage of newly appointed guardians who receive initial guardianship information.

Area: Guardianship

TCP Standard 3.6 Production and Preservation of Records:

Records of all relevant court decisions and actions are accurate and properly preserved.

Recommended Substandard 3.6.A.:

Guardianship specific: To the greatest extent allowed by law, the courts have access to data shared by law enforcement and adult protective services in cases involving alleged incapacitated persons (AIPs), particularly with regard to a legal guardian.

Criminal court specific: To the greatest extent allowed by law, the courts have access to data shared by law enforcement and adult protective services on older victims of criminal elder mistreatment and domestic violence as well as on elder perpetrators of such acts.

Measure(s):

- a. Percentage of court staff, law enforcement, and adult protective services staff satisfied with availability of data on shared clients.

Area: Guardianship, Criminal

Recommended Substandard 3.6.B.: The court assures funding and maintenance of an electronic information system with the capacity (hardware, software, staff) to track motions, to compile reports, to review open cases, and to provide demographic profiles of older court users.

Measure(s):

- a. Percentage of court staff satisfied with availability of specific data regarding older court users and aggregate data required for planning and obtaining funding, as allowed by law.

Area: All

INDEPENDENCE AND ACCOUNTABILITY

TCP Standard 4.1 Independence and Comity:

The trial court maintains its institutional integrity and observes the principle of comity in its governmental relations.

Recommended Substandard 4.1.A.: The court establishes and maintains appropriate regular communication with APS, the aging services network, and the health and mental health networks⁸ in its jurisdiction with regard to older adult cases.

Measure(s):

- a. Percentage of judges and appropriate court personnel, on one hand, and APS, aging services, health, and mental health network personnel, on the other, who are satisfied with communication received from each other.

Area: All

TCP Standard 4.2 Accountability for Public Resources:

The trial court responsibly seeks, uses, and accounts for its public resources.

TCP Standard 4.3 Personnel Practices and Decisions:

The trial court uses fair employment practices.

⁸ The aging network, the health network, and the mental health network each include agencies that fund, provide, and/or monitor services to older community residents.

TCP Standard 4.4 Public Education:

The trial court informs the community about its programs.

Recommended Substandard 4.4.A.: The court partners with appropriate community agencies to offer an active public education program targeting potential older court users. That program covers topics specifically relevant and important to elder citizens who may need court services. Elder-specific community training curricula regarding the court and legal system are updated as needed to reflect the most current relevant statutes, case law, and court policy.

Measure(s):

- a. Percentage of attendees satisfied with education provided.
- b. All elder-specific training materials are up-to-date.

Area: All

Recommended Substandard 4.4.B: The court's active public education program regarding older adults targets community agencies that interact frequently with the court. Elder-specific community training curricula regarding the court and legal system are updated as needed to reflect the most current knowledge regarding older persons as well as statutes, case law, and court policy.

Measure(s):

- a. Percentage of attendees satisfied with education provided.
- b. All elder-specific training materials are state-of-the-art.

Area: All

TCP Standard 4.5 Response to Change:

The trial court anticipates new conditions and emergency events and adjusts its operations as necessary.

PUBLIC TRUST AND CONFIDENCE

TCP Standard 5.1 Accessibility:

The public perceives the trial court and the justice it delivers as accessible.

TCP Standard 5.2 Expeditious, Fair, Reliable Court Functions:

The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly, and that court decisions have integrity.

Recommended Substandard 5.2.A.: In order to monitor its own compliance with self-imposed standards, each court maintains court-defined key demographic and case

outcome data on all older defendants, litigants, wards, and self-service center users for use in annual summary reports regarding elder participants.

Measure(s):

- a. Report on elder participation in the court is produced and reviewed annually in light of sociodemographic (census) data on elders in the court's jurisdiction.

Area: All

**SECTION 2
INTRODUCTION**

“The Judiciary is...a co-equal branch of government, neither lesser nor superior to any other. Judicial independence does not excuse the courts from compliance with appropriate standards of accountability: it merely helps define the standards of accountability that are appropriate. How shall we be judged? By what standards should the courts be held accountable? It is critical that the courts themselves define and communicate the standards by which their performance may be properly judged. We must define and communicate not only what the public does not have a right to expect from the courts, but also what the public and other branches do have the right to expect...The public does have the right to expect...that courts will be run efficiently and in a professional manner, and that every person will be treated fairly and equally. The public has the right to expect that judges will be competent, knowledgeable about the law, and willing and able to behave in accord with the highest standards.”

*Roger Warren, July 21, 2005
Justice Robert H. Jackson Lecture, National Judicial College*

Background:

The State Justice Institute engaged The Center on Aging of Florida International University in a research project to recommend substandards for adapting existing or developing new Trial Court Performance Standards (TCPS)⁹ for older adult court users,¹⁰ as well as to suggest measures of the proposed substandards. These elder-specific TCPS substandards and measures are intended to provide self-assessment tools that can be used by courts to determine ongoing effectiveness in meeting the needs of older court users. With the anticipated dramatic growth of the elder population over the next 20 to 30 years, timeliness and efficiency of the courts, as conventionally perceived, as well as public opinion about responsiveness and performance of courts, will be challenged. Courts will have to understand, implement, and measure the effectiveness of court accommodations for older users, especially those who are frail, in order to minimize disruption of court calendars and to respond to the needs and concerns of the community. A number of issues addressed in these recommended substandards that affect persons of all ages are included because of their particular importance to older people.

The research, conducted in Florida's 15th Judicial Circuit (Palm Beach County), the Superior Court of Maricopa County (Phoenix, Arizona), and the State of Delaware Judiciary (Wilmington), focused on three areas that often affect older court users nationwide: guardianship, self-service centers, and criminal cases involving elder

⁹ Based on *Trial Court Performance Standards With Commentary* (1997), NCJ document #161570.

¹⁰ Many different age thresholds are used to identify an “older person”. For example, the US Census Bureau makes the cut-off at age 65 and above, as does The Uniform Crime Report. The U.S. Older Americans Act covers persons age 60 and older. Throughout this report, when we provide specific citations we will indicate which age criteria apply.

mistreatment¹¹ and domestic violence. Subsequent to conducting a preliminary survey of the research literature in order to develop our interview guides, we interviewed key court administrators, judges, attorneys, MIS staff, and other professionals engaged in court proceedings. These interviews provided information about current practices, recommendations to improve them, and suggestions for how to measure performance. Additionally, in each of the three jurisdictions, we reviewed existing policies, standards, and information about special courts likely to have an impact on older court users. Finally, after drafting an initial set of elder-specific substandards based on our site visit findings, we revisited the literature on TCPS, elders and the courts and, more specifically, on elders in self-service centers as well as in probate and criminal courts, to enhance commentary on the proposed substandards, based on previous publications that addressed these subject areas. The outcome of this process is a series of recommended elder-specific substandards and measures with commentary that, again, are based primarily on our research in the jurisdictions noted above, but also are well-grounded and documented in the available literature.

The current research project, *Adapting Trial Court Performance Standards to an Aging Society*, was undertaken in the context of several twentieth-century trends in diverse multidisciplinary arenas: emergence of statutory protections for older persons; measurement of performance and quality; and judicial administration reforms. Each of these “movements” played a unique part in the relatively recent occurrence of initiatives aimed specifically at better understanding and managing issues involving older persons in the courts, and inspired this effort to: (1) suggest adaptations of Trial Court Performance Standards that address issues specific to improving judicial responses to older court users; and (2) propose measures that courts might use to determine how well they meet the recommended substandards they choose to implement.

Emergence of Statutory Protections for Older People in the United States:

The Older Americans Act: As a result of advances in research and practice in medicine, the social services, and related academic disciplines, as well as changing family demographics that will continue well into the twenty-first century, significant developments in public policy regarding aging and older persons began to gather momentum in the 1950's. Notable initiatives in that decade included: the first National Conference on Aging (1950); the first appropriation of federal funds for older persons under the Social Security Act (1952); establishment of the first federal aging agency under the Secretary of Health, Education and Welfare (HEW, 1956); and a 1959 housing act that authorized a low-interest direct loan program for housing for older persons. The First White House Conference on Aging was held in 1961, and on July 14, 1965, the Older Americans Act (OAA) was signed into law, establishing the Administration on Aging within the Department of HEW and calling for each state to establish a State Unit on Aging. Also in 1965, Medicare (Title XVIII) and Medicaid (Title XIX) were created as part of the Social Security Act. Another major policy change came in 1973 when the OAA Comprehensive Services Amendments established Area Agencies on Aging in every state, and added a Title V, which authorized grants to local

¹¹ In this report elder mistreatment is defined as second-party abuse, neglect, or exploitation.

community agencies for senior centers, and created the Community Service Employment grant for low-income persons age 55 and older (History, 2005).

The OAA was reauthorized, with modifications, throughout the 1970's and 1980's. The 1987 reauthorization added appropriations in six new service areas: in-home services for frail elders; a long-term care ombudsman (for elders living in facilities); assistance for special needs; health education and promotion; prevention of elder abuse, neglect, and exploitation; and outreach to persons who might be eligible for benefits under supplemental security income (SSI), Medicaid, and the USDA food stamps program. Other important policy changes came in 1990 when the Americans with Disabilities Act extended protection from discrimination in employment and public accommodations to persons with disabilities, and the Age Discrimination in Employment Act made it illegal to discriminate against older workers in employee benefits. In the 1992 OAA reauthorization, new amendments added Title VII, Vulnerable Elder Rights Activities, which included appropriations for elder rights assurances and legal assistance development (History, 2006).

Guardianship: While protections for elders under the OAA were increasing, the legal issues of probate, guardianship, and treatment and prevention of abuse, neglect, and exploitation received growing attention as well. Early efforts to bring about guardianship reform began in the 1970's. Regan (1972; cited in Wood, 2005) wrote that state statutory criteria for determining incapacity were "insensitive to the needs of the elderly" and "vague or overreaching". He claimed that evidence used by courts to reach a finding of incapacity often did not even comply with state statutory criteria, and called for procedural due process protections for elders. Alexander & Lewin (1972; cited in Wood, 2005) concluded from their examination of more than 400 guardianships that guardianships most often met the needs of the guardians and others rather than the needs of vulnerable older adult wards. Throughout the 1970s and 1980s additional scholars and practitioners continued to investigate the concept and practice of guardianship, creating a factual base for reform (Wood, 2005).

In 1986, the American Bar Association, Commission on Legal Problems of the Elderly, and the National Judicial College published the *Statement of Recommended Judicial Practices on Guardianship Proceedings for the Elderly*. Also in 1986 two Associated Press (AP) national correspondents prepared an investigative report on guardianship of elders. Their preliminary report prompted a one-year, nation-wide AP investigation involving 57 reporters. The final report, a six-part series entitled *Guardians of the Elderly: An Ailing System*, was issued in 1987. The report, which included statistics and individual stories, observed that "the nation's guardianship system, a crucial last line of protection for the ailing elderly, is failing many of those it is designed to protect". Moreover, the report described "a dangerously burdened and troubled system that regularly puts elderly lives in the hands of others with little or no evidence of necessity, then fails to guard against abuse, theft, and neglect", and concluded that, "In thousands of courts around the nation every week, a few minutes of routine and the stroke of a judge's pen are all that it takes to strip an old man or woman of basic rights" (Bayles & McCartney, 1987; cited in Wood, 2005).

Wood (2005) noted that the AP report prompted quick reaction. Five days after the first installment was published, the Subcommittee on Health and Long-term Care of the U.S. House Select Committee on Aging convened a hearing regarding the guardianship issues that were raised in the series. During the following year, the American Bar Association (ABA) Commission on Legal Problems of the Elderly and Commission on the Mentally Disabled convened a national symposium that came to be known as Wingspread.¹² In 1989 the ABA published the 31 recommendations agreed to by the Wingspread attendees, which addressed procedural due process, determination of incapacity, judicial practices, accountability of guardians, and guardianship agencies (ABA, 1989; cited in Wood, 2005).

Many hearings and symposia were conducted by government agencies and private advocacy organizations during the late 1980s, and into the 1990s, seeking to better address guardianship and keeping the issue in the public eye. A major development came with the 1993 publication of *The National Probate Court Standards* (updated 1999) by the National College of Probate Judges and the National Center for State Courts (NCSC). These Standards formally addressed guardianship reforms such as procedural protections for alleged incompetent persons, limited guardianship and use of least restrictive alternatives, and court procedures to monitor guardian activities (Wood, 2005). The ABA's Uniform Guardianship and Protective Proceedings Act of 1982 was updated in 1997 and 1998 to reflect recent advances. In 2001 the Second National Guardianship Conference, named Wingspan, was convened at Stetson Law School in Gulfport, Florida. Sixty-eight recommendations were approved, and the results, with commentary, were published (Wingspan, 2002). A National Guardianship Network was established to coordinate efforts to implement the Wingspan recommendations. Many individual states addressed the issues and concerns that had been raised by modifying statutes, and the courts began making decisions that formed better protections for wards under evolving case law (Wood, 2005).

In July 2004, the General Accounting Office published *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*, which examined: "(1) what state courts do to ensure that guardians fulfill their responsibilities, (2) what guardianship programs, recognized as exemplary, do to ensure that guardians fulfill their responsibilities, and (3) how state courts and federal agencies work together to protect incapacitated elderly people" (GAO, 2004). The GAO found that, while all states had laws requiring courts to oversee guardianships, there were many approaches to implementation. They determined also that state courts and federal agencies generally worked together only on a case-by-case basis, potentially leaving wards unprotected. The report recommended that state courts and the U.S. Social Security Administration (SSA) develop and implement systematic information-sharing for the protection of incapacitated older people, and that the U.S. Department of Health and Human Services (DHHS) support efforts of state and national organizations involved in guardianship programs to compile national data regarding guardianship and its effects on wards. As well, the report urged that states review their guardianship policies,

¹² The name Wingspread came from the Johnson Foundation's Wingspread Conference Center in Wisconsin where the symposium was held.

particularly in regard to interstate transfer and recognition of guardianship appointments. Notably, while DHHS, the Office of Personnel Management, and the Veterans Administration agreed with the GAO recommendations, the SSA disagreed, citing privacy concerns (GAO, 2004).

Most recently, results of a comprehensive national study presenting data and recommendations on public guardianship (Teaster et al., 2005) were published. Teaster and her colleagues addressed individuals served, program characteristics, functions of public guardianship programs, funding and staffing of programs, due process protections, and other reform issues. The report also established 17 “hallmarks of an efficient, effective, and economic program of public guardianship”.

Elder Abuse, Neglect, and Exploitation: Elder abuse, neglect, and exploitation are defined in different ways – depending often on whether the perspective is legal, service, or research-oriented – which creates some significant confusion for the community in terms of developing appropriate responses to this growing problem (Beaulaurier et al., 2005). Legal remedies for elder abuse, most often articulated in state statute under protection of “frail and disabled adults” and/or as penalty enhancements for criminal offenses such as domestic violence, battery, theft, etc., are relatively recent. In 1995, as part of its focus on strengthening rights of older persons (described above), the ABA Commission on Legal Problems of the Elderly published *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*. This report, recommendations, and commentary represented the findings from an expansive Delphi study that included 170 national experts, as well as data collected in interviews and focus groups with key court staff in a number of jurisdictions. The final project report included 29 recommendations with commentary for handling elder abuse cases in state courts (Stiegel, 1995).

Elder abuse, neglect, and exploitation first gained national attention in 1978 when Congressman Claude Pepper held hearings that, for the first time, put a widely-publicized face on the “hidden problem” of elder abuse in US families. The hearings stimulated a great deal of action at the individual state level so that, by 1985, 46 states had designated a responsible agency to accept and investigate complaints regarding elder abuse, neglect, and exploitation (National Research Council, 2003).

In 1989 Congressman Pepper was able to include creation of a national elder abuse center as an amendment to the Older Americans Act (National Research Council, 2003). The National Center on Elder Abuse (NCEA), administered under the auspices of the National Association of State Units on Aging, is a national resource for elder rights advocates, law enforcement and legal professionals, public policy leaders, researchers, and the public. The Center’s mission is to promote understanding, knowledge-sharing, and action on elder abuse, neglect, and exploitation. With partners at the ABA Commission on Law and Aging, the Clearinghouse on Abuse and Neglect of the Elderly at the University of Delaware, the National Adult Protective Services Association, and the National Committee for the Prevention of Elder Abuse, NCEA makes available news and resources; collaborates on research; provides consultation,

education and training; identifies and provides information about promising practices and interventions; answers inquiries and requests for information; operates a list serve forum for professionals; and advises on program and policy development (NCEA web site, September 14, 2005).

Despite these developments, as recently as 2003, Richard Bonnie, chair of the Panel to Review Risk and Prevalence of Elder Abuse and Neglect, observed, “there is no solid understanding of the nature, causes, and consequences of elder mistreatment, the effectiveness and cost of current interventions, or measures that could successfully be taken to prevent it or ameliorate its effects” (National Research Council, 2003, p. xiii). Moreover, “although there are elder abuse laws in every state, not all older victims fall under the statutory definition necessary to qualify for intervention services. Older victims who are reported and investigated, but deemed capable of acting on their own behalf, may be ‘discharged’ from many elder abuse service systems without provision for community support. There is reason to believe that even severe abuse often is not reported, and many older victims of domestic abuse face internal and external barriers that prevent them from seeking help (The National Elder Abuse Incidence Study, 1998). As a result of these factors many older victims of domestic violence and elder abuse are likely to be under- or un-served (e.g., Dunlop et al, 2000; Grunfeld, et al, 1996; Vinton, 1999)” (cited in Beaulaurier et al., 2005).

Growing Interest in Quality and Performance Improvement:

A second important trend that led to the current research was the growing interest in quality and performance improvement. “Quality improvement is based on the science of improvement that pursues knowledge of general truths or operation of general laws, especially those obtained and tested through the scientific method. To create improvement then, you need knowledge relevant to the particular problem at hand. The science of improvement is concerned with how knowledge of a specific subject matter is applied in diverse situations” (Langley et al., 1996; cited in Lighter, 1999).

The quality improvement “movement” in the United States began in earnest in the early part of the twentieth-century, and focused initially on renewing competitiveness of American industry. It is worth briefly describing some specific elements of the theory, because these can be readily applied to the business of the courts.

Based on knowledge of statistics and Robert Brown’s and Albert Einstein’s work on the random movement of atomic particles, Walter Shewhart proposed that “a high quality reliable product need not be ‘perfect’ but ‘in control’ and that a finished product meet specifications that would and could vary to a certain irreducible extent.” (Millenson, 1997, p. 248-252; cited in Lighter, 1999). William Deming identified “certain elements of knowledge that underpin all improvements in the entire spectrum of applications”. Deming developed sensible and realistic quality and productivity improvement methods based on 14 quality principles. His work “led to the development of quality improvement approaches that changed the focus of enlightened managers from trying to change

people to changing processes and systems to improve output and reduce cost through re-design and re-engineering” (Langley et al., 1996, p. xxv; cited in Lighter, 1999).

Joseph Juran proposed a project-by-project, team problem-solving approach to quality improvement, which involved all levels of management and came to be known as Total Quality Management or TQM. His key points focused on: implementing organization-wide planning for quality that included identifying “customers” and their needs; establishing ideal quality goals; creating ways to measure quality; planning processes able to meet quality goals under operating conditions; and producing continuing improvement (Bauer, 2002; cited in Lighter, 1999). Finally Philip Crosby described 14 steps to quality improvement, including concepts such as management commitment, education and training, measurements, costs of quality, quality awareness, corrective action, goal-setting, and recognition, along with the following four “absolutes”: conformance to requirements is the only definition of quality; what causes quality is prevention, not appraisal; “zero defects” is the only acceptable performance standard; and quality should be measured by the price of nonconformance (Bauer (2002, pp. 24-26; cited in Lighter, 1999).

Total Quality Management (TQM) and the Courts. Following on the heels of Osborne & Gaebler’s landmark report, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (1992), the Government Printing Office published *From Red Tape to Results: Creating a Government that Works Better & Costs Less* (Gore, 1993). Gore’s report contained the results of a public opinion poll in which (1) almost three-quarters of respondents said that government wastes a great deal of money, and (2) respondents recommended average spending cuts of 37%. Gore urged the federal government to embrace Osborne & Gaebler’s “reinvention” premise.

Aikman (1994) suggested that courts have significant room to improve productivity and customer satisfaction. In fact, he said that TQM was something courts could do, and indeed, that courts with TQM programs already had done. TQM has many advantages that would apply to any organization, but, according to Aikman (1994) “courts have unique interests and needs that TQM also satisfies”, [p. 7] including expediting resolution of criminal matters to reduce the risk of increased self-service and vigilantism, and improving day-to-day court management functions, better enabling the court to accomplish its purpose of achieving justice and meeting the needs of the community.

Judicial Administration Reforms:

A third important trend that set the context for the current research is judicial administration reform. Several relatively recent developments in judicial philosophy, although not specifically related to issues of elders, have great relevance to this population. Each has advanced somewhat independently, but all relate to the common themes of improving access to the courts, building closer ties to the community, and ensuring more effective use of available services to reduce recidivism – critically

important factors in the context of older people and the courts (Rothman & Dunlop, 2006).

Trial Court Performance Standards. Development of the *Trial Court Performance Standards* (1997) was initiated in 1987 by the Bureau of Justice Assistance of the U.S. Department of Justice and the NCSC. As noted in a July 1997 monograph, “the 22 standards and the accompanying measurement system were designed to be used by State general jurisdiction trial courts to assess and improve their performance”. They were clearly not intended to be used to assess performance of individual judges (*Trial Court Performance Standards With Commentary*, 1997).

Casey (1998) proposed that the TCPS might be useful as a framework for assessing how courts address the need for responding to service issues, and Keilitz (2000) wrote that they “represent a shift from thinking about courts as individual judges making individual decisions (one judge, one court) to thinking about courts as organizations – as a system of structures, people, methods, and practices brought together to achieve specific ends” (cited in Rothman & Dunlop, 2006).

It is easy to recognize the synergy between the TCPS and the growing interest in quality and performance improvement discussed earlier. In fact, Keilitz (2000) noted that, “TCPS significantly advanced the scope of inquiry of performance measurement of the courts and other components of the justice system from one of conceptualization and identification of constructs, variables, and operational definition to one of critical review and evaluation of actual implementation. In contrast to numerous model conceptual approaches to performance measurement and exhortations promoting the idea of court performance measurement, TCPS came with specific directions for how it is to be done. Included are the elements of a complete organizational performance measurement system: (1) the abstract concepts or constructs of desired performance, (2) their concrete representations or variables, and (3) the operational definitions and procedures for measuring the variables.” [p. 559].

In 2005 the NCSC published *CourTools*, a set of ten trial court performance measures that all courts can employ to measure performance in a meaningful and manageable manner, including specifications regarding how to conduct the measurement process. As such, *CourTools* provides an excellent example of the TQM concepts put into practice. In designing the *CourTools*, the NCSC integrated the major performance areas defined by the *Trial Court Performance Standards* (Appendix C, 1997) with relevant concepts from successful performance measurement systems used in the public and private sectors (NCSC, 2005).

Therapeutic Jurisprudence. Therapeutic jurisprudence (TJ) “proposes the exploration of ways in which, consistent with principles of justice, the knowledge, theories, and insights of mental health and related disciplines can help shape the law” (Wexler & Winick, 1996; cited in Rottman & Casey, 1999). Essentially, the concept suggests that judges’ attention be directed toward the needs and circumstances of the people involved in disputes that come into their courts, and not just on the dispute itself.

The primary impetus for this type of judicial reform came as a result of social changes, such as increased incidence of substance abuse, family breakdown, and mental illness that increasingly flooded the court with complex cases, often with high rates of recidivism. Today, many individual judges, trial courts, and entire State court systems have introduced a problem-solving orientation, including court-mandated treatment and social services, in order to enhance the probability of successful dispositional results (Rottman & Casey, 1999). Nevertheless, although this is a strong trend, the appropriateness of courts approaching cases from a TJ perspective of interventions continues to be debated.

Problem-Solving Courts. In 2000, the Conference of Chief Justices and the Conference of State Court Administrators established formal resolutions supporting problem-solving courts and the importance of the TJ principles they implement (Winick & Wexler, 2003). Problem-solving courts, e.g., drug courts, mental health courts, domestic-violence courts, and elder protection courts, are closely related to the concept of TJ. Like TJ, they are responses to increasingly overburdened court dockets with high percentages of cases revolving back to the courts. In fact, Rottman and Casey (1999) describe these courts as a “TJ approach at an organizational level”. Essentially, problem-solving courts share five common elements: (1) immediate intervention; (2) normative social adjudication; (3) hands-on judicial involvement; (4) treatment programs with clear rules and structured roles; and (5) a team approach, including judge, prosecutor, defense counsel, treatment provider, and correctional staff (Rottman and Casey, 1999; cited in Rothman & Dunlop, 2006, pp. 10-11). Rothman & Dunlop (2006) noted, “The challenge is to understand how these principles and experiences of problem-solving courts can be utilized to improve how all courts address issues involving older people.” [p. 11]

Adapting Trial Court Performance Standards to an Aging Society:

Growing interest in the needs and concerns of older adults, the cultural impact of virtually universal acceptance of the importance of performance measurement in all arenas, and recent trends in judicial administrative reform, as well as our previous research regarding judicial responses to an aging America, led the authors to seek an opportunity to conduct the current research. The investigation of “whether and how judicial systems in the United States ensure that older adults are provided effective access to the courts, including both civil and criminal jurisdictions” (Rothman & Dunlop, 2006) was logically followed by this effort to adapt existing TCPS, focusing specifically on areas of court performance that are likely to have a significant impact on older court users. The commentaries, which provide a conceptual context for the proposed substandards, as well as performance measures that may be employed using the same approaches as have been described for the original 22 TCPS, offer today’s courts powerful self-assessment tools for determining their effectiveness in meeting the needs of their constituencies of older adults.

Methodology:

The research underlying our recommendations focused on three areas that often affect older court users nationwide – guardianship, self-service centers, and criminal cases involving elder mistreatment and domestic violence. Three primary data collection approaches were used.

First, we employed an advisory panel comprised of nationally-recognized experts in various aspects of older adults' court experiences (Appendix A) who played an important role throughout the project. At the beginning of the project a full-day meeting with the advisory panel was held in Tampa, Florida, where discussion focused on shaping our methodology and approach to the project. Members of the advisory panel reviewed and provided feedback on draft interview protocols before the site visits were conducted, and later reviewed an early draft of the final report, offering suggestions for additions, deletions, and modifications.

Second, to establish the basis for recommended elder-specific TCPS substandards and measures, data were collected during site visits conducted in three jurisdictions – Florida's 15th Circuit in Palm Beach County, the Maricopa County Superior Court in Phoenix, Arizona), the State Judiciary of Delaware in Wilmington. Structured protocols (Appendix B) developed by the research team, with input from the advisory panel, were used as the basis of site visit interviews with key court administrators, judges, attorneys, MIS staff, and other professionals frequently engaged in court proceedings in the three selected subject areas. These interviews provided information about current practices, recommendations to improve them, and suggestions for how to measure performance. Additionally, in each of the three jurisdictions we reviewed information on special courts and programs likely to have an impact on older court users, and conducted focus groups with guardians and APS staff. Fifty-nine interviews and five focus groups (with approximately 30 participants) were conducted.

After completing the three site visits, we drafted an initial set of elder-specific substandards and measures based on site visit findings. This draft document was distributed to key informants at each site interview location and to the advisory panel to obtain feedback.

Simultaneously, while incorporating feedback on the drafted substandards and measures, we completed a thorough literature review on TCPS, elders and the courts and, more specifically, elders in self-service centers, guardianship proceedings, and criminal courts as victims and/or perpetrators of elder mistreatment. The foci of the literature review were: (1) prior work regarding both TCPS and special issues regarding older court users, and (2) current literature covering best practices and recent developments in the areas of TCPS and older court users.

The outcome of this multi-step process is 33 elder-specific recommended substandards and measures, with commentary, based primarily on our research in the jurisdictions noted above, but also well-grounded in the available literature. Notably, it was not within the scope of this project to obtain consensus from a representative panel

of experts regarding elder-specific substandards and measures. Although, as noted, all proposed substandards and measures were reviewed by key personnel in the three jurisdictions we visited, and by members of the project advisory panel (Appendix A), the authors are solely responsible for the final content. We recommend that each court jurisdiction throughout the United States review this report in the context of its own unique circumstances, and the demographics of its community, and implement those proposed substandards and measures determined to be most appropriate and feasible.

This final project report is organized around the three focus areas selected for research, as indicated above, as well as the five performance areas established in the *Trial Court Performance Standards With Commentary* (1997): Access to Justice; Expedition and Timeliness; Equality, Fairness, and Integrity; Independence and Accountability; and Public Trust and Confidence.

About Elders:

“SEC. 101. The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States and of the several States and their political subdivisions to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives... (6) Retirement in health, honor, dignity – after years of contribution to the economy. (7) Pursuit of meaningful activity within the widest range of civic, cultural, and recreational activities. (8) Efficient community services which provide social assistance in a coordinated manner and which are readily available when needed.... (10) Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives.”

*U.S. Older Americans Act of 1965
Public Law 89-73
July 14, 1965*

The elder segment of the population in the United States is growing rapidly, a trend expected to continue for the next 20 to 30 years. By 2030, almost 20 percent of the population in the United States will be age 65 or older – compared to approximately 13 percent in 2005. The report, *Future Trends in State Courts 2005*, (Peters et al., 2005) predicts that courts will experience an increased number of cases involving older adults, including:

- More cases of probate and guardianship.
- Increases in fraud and identify theft, including intra-familial perpetrators.
- Greater numbers of elder abuse prosecutions, addressing both institutional and domestic abuse.
- More traffic accidents involving older drivers.

- A growing number of cases involving older adults with substance abuse and mental health problems.
- An increased number of cases related to end-of-life issues.

While it is important for courts to understand these population trends, it is equally important that they become familiar with characteristics of older persons and gain a better understanding regarding how older court users are similar to other court users, and how they differ. Perhaps the best place to begin is with a look at several common misconceptions and facts regarding older adults.

MYTH: Persons above a given age can be regarded as a homogeneous group with similar attributes and lifetime outcomes.

FACT: Differences among individuals are more likely to increase, rather than decrease, as they grow older (Ferraro, 1997).

MYTH: As people age, their physical and mental abilities inevitably decline.

FACT: More older people than ever are avoiding disease and disability, maintaining high physical and cognitive functions, and sustained engagement in social and productive activities (Oriol, 1999).

MYTH: Dementia, sometimes called “senility”, is “normal” in older adults.

FACT: In 2004, approximately 12 percent of Floridians age 65 and older experienced “probable” Alzheimer’s disease; only 26 percent of Floridians age 75+ fell in this category (Florida Department of Elder Affairs, 2005). The vast majority of older adults do not suffer from dementia.

Although older adults are generally healthy and do not have special needs, there are unique challenges for some that need to be understood (Oriol, 1999). For example, even with the best of self care and healthy living, disabilities do increase with age. These are generally measured in the form of activities of daily living and instrumental activities of daily living, which assess a person’s ability to independently carry out routine actions such as bathing, dressing, grooming, toileting, moving from bed to chair, being continent, being able to feed oneself, shopping, driving or using public transportation, cooking, telephoning, housekeeping, home and yard maintenance, financial management, and management of medication regimens. While relatively few older adults require complete assistance with most or all of these activities, many who function well overall may need help with some of them (Rothman et al., 2005).

Oriol (1999) described the following special concerns for older persons that may have an effect on how they respond to and deal with stressful situations:

- Sensory deprivation: Older persons’ sense of smell, touch, vision, and hearing are likely to be less acute than that of the general population.

- Delayed response: Many older persons experience age-related slowing of cognitive and motor activity, which means they generally cannot react as quickly as the general population.
- Physical stamina: Arthritis, increasingly prevalent as people age, may prevent an older person from standing in line, walking even moderate distances, and getting up and down from a chair or bench.
- Temporary cognitive and physical “decline”: New medications, temporary suspension of regular medication regimens, interrupted sleep patterns, and extreme stress can cause confusion and increase susceptibility to dehydration, falling, and dangerous changes in blood pressure, which may erroneously be attributed to age-related decline.
- Welfare stigma and unfamiliarity with bureaucracy: Many elders are unwilling to accept any public assistance because of the perceived stigma, and the belief that if they accept assistance, someone else who may need it more will have to go without it. Additionally, many elders fear that any contact with government bureaucracy may place them at risk of involuntary nursing home placement.
- Mental health services: In general, older adults are reluctant to ask for or accept mental health services for many reasons, including the fact that they tend to associate even a temporary mental disorder with personal failure, spiritual deficiency, or other stereotypic beliefs. Additionally, mental health professionals often view older persons as noncompliant, uninteresting, and generally inappropriate candidates for improvement.

Ageism is another challenge often faced by older court users. Finkel & Macko (2000) observed that documenting ageism in the court system would be difficult because, “...the same police, public defenders, and states attorneys are involved with younger people as well. However, sensory deficits, reduced energy, mild memory changes, and a sense of limited number of years to live all alter the elder person’s experience and make for increased stress. Further, the complex and sometimes quickened pace of the courtroom, as well as the slower pace of the process, pose additional stress on the older adult.” [p. 120]

How to Use These Recommended Substandards:

The full set of 33 recommended substandards and measures (see Executive Summary, p.7-18) represents the range of issues that create problems for older court users, particularly those who are frail, that were identified in our site visit interviews and focus groups. Such challenges may ultimately affect a court’s ability to function in an efficient way and impede its effectiveness in the view of the public. Conversely, addressing at least some of these issues is likely to elevate the public’s positive perception of the court as a more responsive societal institution. Therefore, we recommend that the substandards be reviewed informally or used in formal training to inform court personnel, judges, and others in the courts who work with older court users about the unique needs of this group. Courts and self-service centers, particularly those

already implementing a general system of TCPS for the jurisdiction, also can select individual substandards, establish internal policies and procedures to implement those selected, and develop systems to measure internal performance.

To facilitate use of the elder-specific TCPS, the recommended substandards and measures are displayed in four tables. Each table includes the relevant performance areas and original standards (*Trial Court Performance Standards With Commentary, 1997*), description of the elder-specific recommended substandard (each linked to one or more of the original 22 TCPS), the rationale for each recommended substandard, and suggested measures for internal performance monitoring. Table 1 presents recommended substandards that apply in all of the three areas studied. Table 2 lists recommended substandards that apply specifically to guardianship cases. Table 3 focuses on recommended substandards for self-service centers and Table 4, on recommended substandards that apply to criminal cases involving elder mistreatment and domestic violence.

Each recommended substandard and corresponding measure is assigned a unique number, as shown in the Executive Summary; and recommended substandards listed in Tables 1 – 4 use the same master numbering system. As a result, there are some numbers missing in each of these tables. For example, there are no elder-specific recommended substandards for Standards 2.1 and 2.2 that apply to all three research areas. Therefore, Table 1 “skips” from Standard 1.4 to Standard 3.1.

We encourage jurisdictions to review and understand all of the elder-specific recommended substandards. However, we realize that each jurisdiction is unique and not all recommended substandards will apply in all locations. Additionally, many of the suggested measures for the recommended substandards require surveys or other data collection methods that may be beyond the budgetary, manpower, or infrastructure resources in any particular court system. Initially, a court should consider implementing two or three of the recommendations, based on identifying areas most likely to benefit its jurisdiction and that can be readily measured using existing or easy-to-implement data collection systems. Indeed, “courts participating in the demonstration of the TCPS measurement system reported the importance of starting off small by focusing on one or two measures to ‘get their feet wet’ before tackling some of the more complex and lengthy measures” (*Planning Guide for Using Trial Court Performance Standards and Measurement System, 1997*). [p. 20] Additional recommended substandards can be implemented and added to ongoing measurement practices as a jurisdiction becomes more comfortable with its internal monitoring process.

SECTION 3
RECOMMENDED ELDER-SPECIFIC SUBSTANDARDS AND MEASURES, BY TYPE
OF COURT, WITH COMMENTARY

Table 1
RECOMMENDED ELDER-SPECIFIC SUBSTANDARDS AND MEASURES THAT
APPLY TO ALL THREE SUBJECT AREAS

“To most people, courts are mysterious, uncomfortable places. Legal procedures are complex and Latin phrases abound. Courthouses, although majestic symbols of justice to lawyers, court staff and architects, intimidate many of their visitors, the majority if not most of whom are tightly wrapped in their own problems when they arrive at court. Court processes are not welcoming. Stern-looking, black-robed judges are remote and seem preoccupied. Assigned and even retained lawyers scurry around meeting unfamiliar clients and witnesses...”

Toward a NACM¹³ National Agenda: From Critique to Consensus to Action
2005 NACM Annual Conference Briefing Paper
Geoff Gallas & Gordy Griller

Although a majority of the proposed substandards and measures apply specifically to just one or two of the areas studied, i.e., guardianship, self-service centers, or criminal court cases involving elder mistreatment and domestic violence, several substandards apply to all three areas and, indeed, are relevant to serving elders in any court setting. These latter substandards and measures are listed and explained in Table 1 below.

ACCESS TO JUSTICE

Standard 1.2 Safety, Accessibility, Convenience:

*Trial court facilities are safe, accessible, and convenient to use.*¹⁴

Recommended Substandard 1.2.A

Escort assistance is readily available to help older court users locate the appropriate destination quickly and efficiently.

Measure(s)

- a. Percentage of older court users who are satisfied with availability of escort assistance.
- b. Proportion of older court users who were apprised by the court of the availability of escort assistance prior to their visiting the courthouse.

¹³ National Association for Court Management

¹⁴ All text in italics throughout this document is quoted from the *Trial Court Performance Standards with Commentary* (1997).

Rationale

Owen et al. (2002) described the “inherent complexity” of the court system and further observed that it is “so complex that the court itself sometimes provides inaccurate or inconsistent information”. The author explains how limited seating, cumbersome access to court records, and the haphazard, inefficient, and poorly documented physical layout of key court offices result in “an intimidating and sometimes hostile environment” for many court users¹⁵. Many courts employ escorts to reduce physical and emotional stress by expediting movement of court users within the courthouse, eliminating wasteful walking, and avoiding potential confusion of verbal directions. This service, which is particularly helpful for older court users, may be provided by volunteers or specialized professionals.

Some courts (e.g., the New York State Domestic Violence Court) have enhanced the function of “escort” to include trained victim advocates who understand the emotional, physical, and material needs of victims and, in some cases, work with victims for the duration of a case (Wolf et al., 2004). Commentary in the 1995 ABA report, *Recommended Guidelines*, details results of a rigorous Delphi study in which almost 90 percent of Delphi participants believed that an older abused person’s fear of the courts or lack of knowledge about his or her rights and about the judicial system may inhibit their pursuit of appropriate legal remedies (Stiegel, 1995).

Recommended substandard (RS¹⁶) 1.2.A above is supported in standards 21, 22, and 23 of the *Recommended Guidelines* (Stiegel, 1995), where it is suggested that “victim/witness advocates” be available and involved in helping older abused persons throughout the judicial process in both criminal and non-criminal court proceedings. Although potentially costly, this concept holds great promise for older court users in each of the three areas studied. It may produce significant savings in terms of efficiency and effectiveness of court functions when older court users are involved, in addition to increasing “access to justice”. Moreover, these standards suggest that, in the absence of such “victim/witness advocates”, court staff should help explain and “de-mystify” the court process (standards 21 and 23). Standard 22 also proposes that there be an “elder abuse specialist at every victim/witness program”.

Recommended Substandard 1.2.B

Assistive devices such as wheelchairs and motorized carts for elders who are unable to walk at all, or who can walk only short distances and/or stand for short periods of time, are available; court communications make older persons aware of such accommodations prior to a visit to the courthouse.

Measures

- a. Percentage of older court users needing these devices who are satisfied with availability of mobility assistance.
- b. Proportion of older court users who were apprised by the court of the availability of these assistive devices prior to their visiting the courthouse.

¹⁵ Owens’ et al. (2002) project focused on self-represented litigants of all ages.

¹⁶ The abbreviation “RS” will be used for recommended substandard and measure in Tables 1 through 4.

Rationale

Such devices would reduce fatigue and stress for older court users who are impaired or who are likely to tire during a court visit. Knowledge of the availability of these devices prior to their court visit could encourage more elders to pursue their legal “cases” and reduce their level of anxiety surrounding a courthouse visit.

Standard 1.3 Effective Participation:

The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.¹⁷

Recommended Substandard 1.3.A

All forms and other court materials and information normally distributed through the clerk’s office, self-service center, the court administrator, or on-line are readily available in text size no less than 14-point; and all forms include instructions written at or below a 4th grade level. For sight-impaired older court users accommodations are made consistent with or they exceed the requirements of the Americans with Disabilities Act (ADA).

Measure(s)

- a. Form readability measures no higher than a 4th grade level on the Flesch-Kincaid scale.¹⁸
- b. Percentage of older court users satisfied with readability of forms.

Rationale

Little research has been done to determine the effect of readability (e.g., grade level and print size) on older persons’ ability to see and understand written instructions and/or forms. Nevertheless, there is some empirical support for this RS. Holt et al. (1990) noted that half of Americans aged 60 to 69 and almost four-fifths of those 70 to 79 have less than 20/20 visual acuity and suggested that age-induced poor eyesight may be a contributing factor that affects the decision-making process. Sansgiry & Cady (1996) found that elder consumers were significantly more likely to identify “print size on package labels” as an important factor in selecting over-the-counter medication, compared with a group of young adult consumers.

Several other studies (e.g., Ralph, 1982; Vaillancourt, 1991; Vanderplas & Vanderplas, 1980; Wogalter & Vigilante, 2003) documented the benefits of offering information to older adults at a minimum 12 point font size and at relatively low grade-equivalent reading levels (generally between fourth and sixth grade). Ralph (1982) observed that publishing guidelines are needed for “concerned editors and publishers who wish to reach more older people”. These guidelines should cover choice of type size, color and contrast, and other features suited to reduced visual abilities that often accompany increased age. Similarly, Vaillancourt (1991) described how public benefit application forms impede the application process and

¹⁷ Recommended substandards 1.3.A, 1.3.B, and 1.3.D have been previously addressed by Standard 1.1.3 of the *National Probate Court Standards* (1993).

¹⁸ This scale measures readability by educational grade levels. The formula applies measures of numbers of words per sentence, sentences per paragraph, length of sentence, and polysyllabic words.

suggested that revised application forms would be easier for older persons to complete if they include “more simple language and sentence structure, simple blocking to clearly designate areas for applicant completion, large print size and uniform print style, and clear color contrast”.

There is evidence that some courts have initiated efforts to revise standard forms to improve readability and accessibility for certain court users. For example, in the report *Future Trends in State Courts 2004* (Hough, 2004), the NCSC describes the success of a Judicial Council of California initiative to re-design forms by working with a firm that specializes in “plain English”. The “plain language” format is designed for litigants at the fourth to fifth grade reading level.

RS 1.3.A also is supported in *Future Trends in State Courts 2005*, which notes that “courts will need to emphasize ADA compliance, such as signs and forms with large print, to accommodate the aging population” (Peters, et al., 2005).

Recommended Substandard 1.3.B

All forms of court communications are available in at least the language of the majority non-English-speaking ethnic group(s) in the jurisdiction, as well as in English. Older court users with verbal communication challenges based on language, or on hearing or sight impairment, have no-cost access to the services of foreign language court interpreters, sign language interpreters, and real-time transcription (produced in large print size).

Measure

- a. Percentage of older non-English speaking, hearing or sight-impaired court users, satisfied with understandability of court communications.

Rationale

The current and expected continued dramatic increase in racial, ethnic, and cultural diversity in the American population is expected to raise issues in the TCPS “access to justice” area. As a result, *Future Trends in State Courts 2005* speculates that courts will face rising demands for translated forms, written materials, and other accommodations to non-English speakers. Offering materials in multiple languages in courts that serve a multi-lingual constituency will maximize readability and comprehension, thereby greatly enhancing access to justice, particularly for older court users.

Elders are more likely to have at least some vision and hearing-impairment than court users in other age cohorts. Therefore, in terms of verbal communication, it is essential to accommodate not only older foreign language speakers, but also older court users with vision or hearing impairments, by offering sign language interpreters and real-time transcription.

Recommended Substandard 1.3.D

In metropolitan and large geographic areas, the court provides an adequate number of strategically

Measure(s)

- a. Ratio of elders per sub-area (from census data) served by

dispersed self-service centers and court dockets in areas where substantial populations of older adults reside.

available self-service centers and court docket locations (periodic review).

- b. Percentage of older adult residents in such areas satisfied with court access.

Rationale

Older persons are often unable to travel long distances from home, either because of frail health or because available transportation is unmanageable. Additionally, older court users may not have access to the Internet or the skills to use web-based self-service centers, and elders often complain about the difficulties of managing phone calls with multiple options required in order to obtain information by telephone. Although this is likely to change somewhat as the baby boom generation ages, many elders in the 2000s and 2010s will continue to need personal contact in order to be served effectively. Thus, an adequate number of strategically located satellite court sites could enhance effective participation.

Rasnow (2005) noted that there are jurisdictions, e.g., Alaska, where having a physical center location may not be as useful as various other means of remote access. Alaska's [court] self-service program is run almost entirely by telephone, Internet, and e-mail communication, serving the entire state from one centralized location. Other dispersed service models include: (1) branch self-service centers, located in rural or culturally isolated communities or in areas with limited public transportation to the court, such as near a housing office or Head Start program in a low-income or immigrant community, where services may be provided on a rotation basis in partnership with non-profit community assistance programs; (2) providing services on scheduled days and hours at public libraries, community centers, military bases, senior centers, homeless shelters, and other locations where underserved populations live or visit; and (3) specially equipping a van or other vehicle with wireless Internet capability to access on-line resources containing commonly used forms, materials, and resource directories along with self-service attorneys or staff. All of these models are likely to improve access to the historically underserved, including those who would not otherwise avail themselves of the legal system (Rasnow, 2005).

Standard 1.4 Courtesy, Responsiveness, and Respect:

Judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come into contact.

Recommended Substandard 1.4.A

All court staff, including judges and court-appointed counsel, are familiar with physical and psychosocial issues of aging based on a standardized curricula (for the jurisdiction) that is updated as needed to reflect changes in relevant statutes and case law.

Measure(s)

- a. Percentage of court personnel who can adequately answer questions that assess their familiarity with the specific physical and psychosocial issues of aging relevant to older court users.

Rationale

In 1991, a coalition of legal and advocacy organizations for elders and adults with disabilities recommended that judges and other court professionals be educated about the needs of these subpopulations in relation to the courts and the legal system. In response, the National Judicial College developed a standardized court training program (Adams, 2000). One objective for the curriculum was to teach court personnel “to appraise each older person who appears in the court as a witness, judge, defendant, or attorney, as an individual” (Albrecht, 1994; cited in Adams, 2000). In a study regarding New York’s domestic violence court, interviews with prosecutors and defense attorneys identified a need for education among members of court staff, including judges. Interviewees asserted that a lack of understanding of the unique nature of the issues among court staff contributed to frequent dismissals and led to inconsistent responses to potentially dangerous situations for victims of all ages (Wolf et al., 2004). Similarly, in their recently published article, Rothman and Dunlop (2006) devoted an entire section under the heading, “Educate the judiciary and courthouse staff about issues of aging and the special concerns and problems of elders engaged in the legal system”. [p. 13] Their 2004 research found that many judges, court administrators, and human services professionals interviewed during site visits to several jurisdictions nationwide believed that educating the judiciary about aging and older persons is a threshold issue that courts must address to improve access and justice for older people.

In the *Recommended Guidelines* commentary, Stiegel (1995) reported that 80 percent of Delphi respondents believed that the lack of judicial training and education about elder abuse is one reason lawyers and prosecutors do not bring elder abuse cases to criminal or non-criminal court. Lack of such training creates an “unfriendly” environment for this type of litigation. Seventy-five percent of Delphi respondents indicated that lack of training and education about elder abuse among court personnel other than judges had the same effect. Some judges who participated in focus groups expressed concern about the amount of training needed in so many specialized areas, but many judges agreed that the judicial system both had needed and had benefited from training to enhance judicial sensitivity and awareness about domestic violence, and that similar education about elder abuse was important. Almost all respondents (96 percent) supported the need to train judges and court staff regarding specific elder abuse topics.

The first two recommendations in the *Recommended Guidelines* (Stiegel, 1995) address training for judges, court staff, and other participants in the judicial process. They call for training to be designed and presented with input and involvement of advocates, Adult Protective Services, prosecutors, law enforcement, aging services providers, and to include coverage of the roles and resources of each of the community “partners”. The following training topics were recommended: dynamics of elder abuse and family violence; types of cases involving elder abuse; capacity issues; state laws concerning elder abuse; Adult Protective Services system and aging services; case management issues and procedural innovations; crafting effective orders in elder abuse cases, and data collection. Recommendation 22 of the *Recommended Guidelines* (Stiegel, 1995) takes training a step further by suggesting that “victim/witness advocates” be trained with a particular focus on the dynamics of elder abuse, as well as on the Adult Protective Services system and other aging

network services available to assist older abused persons (also see rationale on RS 1.2.A, p. 36).

Support for educating court staff about the court-related needs of older persons who have been abused can be found in ABA policy adapted from the SJI-supported Conference on Court-Related Needs of Older Persons and Persons with Disabilities (American Bar Association, 1991), and in the *National Probate Court Standards* (Commission on National Probate Court Standards, 1993). Recommendation 9 of Wingspan (2002) similarly supports educating judges, court personnel, proposed fiduciaries, and attorneys practicing in the guardianship area with training on guardianship issues and current best practices, including minimum guardianship standards and ethics.

EQUALITY, FAIRNESS, INTEGRITY

Standard 3.6 Production and Preservation of Records:

Records of all relevant court decisions and actions are accurate and properly preserved.

Recommended Substandard 3.6.B

The court assures funding and maintenance of an electronic information system with the capacity (hardware, software, staff) to track motions, to compile reports, to review open cases, and to provide demographic profiles of older court users.

Measure(s)

- a. Percentage of court staff satisfied with availability of specific data regarding older court users and aggregate data required for planning and obtaining funding, as allowed by law.

Rationale

Implementation of this RS will reduce duplication of effort and conflicting rulings regarding the same individuals. One example is the New York domestic violence court where a computer software program that uses Internet technology to connect the court with criminal justice agencies and social service providers allows users, including judges, attorneys, victim advocates, and batterers' intervention programs, to engage in instantaneous information-sharing. This application was developed by the Center for Court Innovation with funding from the US Department of Justice's Violence Against Women Grant to Encourage Arrest Policies program and a STOP Formula grant from the New York state Division of Criminal Judicial Services (Wolf, et al., 2004).

While acknowledging "best practice" examples like the one above, Rothman & Dunlop (2006) reported that most sites they visited during their 2004 research had limited information systems. They suggest, however, that even these systems could produce useful data on elders and should be programmed to do so. In order for this to occur, a judge or court administrator (as was the case in Phoenix) has to establish aging as a priority area and then regularly request information on elder-related indicators (Rothman & Dunlop, 2006).

This RS is consistent with Standards 2.4.1 and 2.4.4 of the *National Probate Court Standards*. Additionally, commentary on Standard 1.4.2 states, “To appropriately carry out its responsibilities, the court should have sufficient financial resources and personnel. The court should seek the resources required to meet its judicial responsibilities...If the legislative (or funding) branch of government does not provide the necessary funding, the court may, if necessary, need to resort to legal proceedings to acquire funding to accomplish its purpose” (Commission on National Probate Court Standards, 1993). [pp. 19-20] Although those standards were suggested in relation to probate courts specifically, they represent sound practices for any type of court or court-sponsored activity (e.g., self-service centers).

INDEPENDENCE AND ACCOUNTABILITY

Standard 4.1 Independence and Comity:

The trial court maintains its institutional integrity and observes the principle of comity in its governmental relations.

Recommended Substandard 4.1.A

The court establishes and maintains appropriate regular communication with APS, the aging services network, and the health and mental health networks¹⁹ in its jurisdiction with regard to older adult cases.

Measure(s)

- a. Percentage of judges and appropriate court personnel, on one hand, and APS, aging services, health, and mental health network personnel, on the other, who are satisfied with communication received from each other.

Rationale

Coordinated community response to issues of older adults allows for development of optimal services, minimizes stress on elders as well as the courts, and maximizes positive outcomes for older adults in the court system and in the community. To assist courts to be responsive to this notion, the ABA Commission on Law and Aging developed a brochure that “encourages collaboration in guardianship practices between the court system and the aging network. By working together, courts and aging organizations – such as agencies on aging, adult protective services (APS), and long-term care ombudsmen – can tackle some of the difficult barriers to good guardianship practice in a cost-effective way. The objective is to get courts and service providers or advocates in the aging field talking to each other about specific constructive improvements in guardianship in their area” (*Good Guardianship: Promising Practice Ideas on Community Links*, 2004).

This RS (4.1.A) also is supported in the Introduction to *Recommended Guidelines* where Stiegel (1995) reports that project Delphi participants often said that the court may benefit

¹⁹ The aging network, the health network, and the mental health network each include agencies that fund, provide, and/or monitor services to older community residents.

from better coordination among all entities involved in investigating elder mistreatment and in providing services to older abuse victims. “Enhanced linkage between these organizations and the courts was viewed as beneficial because (1) it may lead to case resolutions that do not involve the courts unnecessarily or inappropriately, and (2) it may result in better developed cases being brought before the judicial system”.

Standard 1.4.1 of the *National Probate Court Standards* urged the court to “maintain its institutional integrity and observe the principle of comity in its governmental relations” (Committee on National Probate Court Standards, 1993). [p. 19] The commentary states, however, that the court’s independent status “should be achieved without avoidable damage to the reciprocal relationships that must be maintained with others. The court exercising probate jurisdiction is necessarily dependent upon the cooperation of other components of the justice system over which it has little or no direct authority”. [p. 19]

More broadly, but consistent with the spirit of Standard 1.4.1, RS 4.1.A suggests that all courts and court services with older adult constituents should have ongoing communication with agencies in the jurisdiction that are charged with the specific responsibility of assuring safety and providing support services to elder community residents. Taking this one step further, Rothman & Dunlop (2006) urge courts to “ensure that older adults who otherwise come into contact with the court system are referred, as appropriate, to publicly-funded or private attorneys, and to health, mental health, and social services organizations to address non-legal problems that may affect their participation in the legal system”. [p. 14]

Standard 4.4 Public Education:

The trial court informs the community about its programs.

Recommended Substandard 4.4.A

The court partners with appropriate community agencies to offer an active public education program targeting potential older court users. That program covers topics specifically relevant and important to elder citizens who may need court services. Elder-specific community training curricula regarding the court and legal system are updated as needed to reflect the most current relevant statutes, case law, and court policy.

Measure(s)

- a. Percentage of attendees satisfied with education provided.
- b. All elder-specific training materials are up-to-date.

Rationale

As documented throughout this report, a substantial proportion of older adults have unique characteristics and needs in relationship to the court. Many of these can be addressed through outreach into the community. Lindsay and Shilton (2002) observed that public outreach and education are essential to the courts because they allow the court system to enhance its ability to solve problems while providing insight into the court system for the public. Such outreach will help make using court services less stressful and more effective

for elder citizens, in particular.

In the section, “Educate older adults and the general community about issues of access to the courts and typical legal issues that may affect them”, Rothman & Dunlop (2006) discussed their survey and interview findings regarding this issue. In fact, four-fifths of courts responding to their survey indicated that at least some education for older adults regarding court access and common legal issues was offered as part of a general effort to offer community education. Outreach programs included: speaking to groups of elders away from the courthouse (in some cases judges or court administrators did this); offering written materials on self-protection against crimes such as consumer fraud, abuse, neglect, exploitation, and planning for long-term care and end-of-life issues; responding to a Family Court Advisory Council’s request for information about grandparents’ rights such as custody and visitation; and, addressing legal requirements concerning end-of-life decision-making.

Elders may benefit from off-site educational programs regarding the different types of courts, court processes, and other issues of particular concern to older persons, and may also benefit from a “tour” of the courthouse itself, allowing them to acclimate to the actual court environment in positive, non-stressful circumstances.

The commentary section for Standard 1.4.4 of the *National Probate Court Standards* proposed that the court, “either independently or in conjunction with the bar and other interested groups should take steps to inform and educate the public (i.e., provide community outreach)” (Commission on National Probate Court Standards, 1993). [p. 20] Rasnow (2005) suggested that court self-service centers can be a mechanism through which the court works with community organizations, local bar associations, legal services providers, law enforcement, prosecutorial offices, and law libraries to provide educational outreach and inform vulnerable communities about ways to protect themselves.

RS 4.4.A is consistent with the spirit of TCPS 2.3, which states that “the trial court promptly implements changes in law and procedure”. [p. 12] Because statutes, case law, and court policy and procedures change over time, curricula must be kept up-to-date to be relevant and useful, making RS 4.4.A necessary for full compliance with TCPS 2.3, specifically in regard to older court users.

Recommended Substandard 4.4.B

The court’s active public education program regarding older adults targets community agencies that interact frequently with the court. Elder-specific community training curricula regarding the court and legal system are updated as needed to reflect the most current knowledge regarding older persons as well as statutes, case law, and court policy.

Measure(s)

- a. Percentage of attendees satisfied with education provided.
- b. All elder-specific training materials are state-of-the-art.

Rationale

While courts can benefit from the expertise of community agencies that provide assistance

to older adults, and should, therefore, include such agencies in developing public education programs targeting older adults in the community, courts have expertise regarding statutes, court policies, and procedures that should be shared with community agencies to enhance the legal experience for older persons who seek or are forced to use court services. Rothman & Dunlop's (2006) survey and interviews showed virtually universal agreement regarding the need for law enforcement and service providers to be educated about aging and about issues for older court users.

Because statutes, case law, and court policy and procedures change over time, curricula must be kept up-to-date to be relevant and useful. This practice has the added benefit of improving efficiency and reducing inappropriate use of the courts.

PUBLIC TRUST AND CONFIDENCE

Standard 5.2 Expeditious, Fair, Reliable Court Functions:

The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly, and that court decisions have integrity.

Recommended Substandard 5.2.A

In order to monitor its own compliance with self-imposed standards, each court maintains court-defined key demographic and case outcome data on all older defendants, litigants, wards, and self-service center users for use in annual summary reports regarding elder participants.

Measure(s)

- a. Report on elder participation in the court is produced and reviewed annually in light of sociodemographic (census) data on elders in the court's jurisdiction.

Rationale

In order for the public to have confidence that the court is expeditious, fair, and reliable, the court must establish standards and self-monitor compliance with those standards. Moreover, the record of compliance with standards can be shared with the public to assure them that (1) the court monitors itself, and (2) court-established standards are met, or the court is aware of those that are not met and develops strategies for improving performance in these areas. Moreover, in a discussion of the principles of independence and accountability, *The National Probate Court Standards* suggested that a court is unlikely to achieve independence if it does not manage itself. Therefore, among other things, the court must accurately measure its performance against pre-established goals, objectives, and standards, and account for its performance publicly (Commission on National Probate Court Standards, 1993).

Obviously, each jurisdiction requires a management information system in order to carry out RS 5.2.A. Although all courts have such a system, individual systems may not have the capacity to retain self-monitoring information in a manner that allows for later retrieval and analysis. Standard 2.4.2 of the *National Probate Court Standards* speaks to the importance

of regular monitoring and evaluation of the information system and the data retained therein. Moreover, as noted in the commentary, “Such evaluations can provide a useful assessment of the court’s procedures, how cases are handled, the amount of time it takes to process a case from filing to disposition, and how court appointees are selected” (Commission on National Probate Court Standards, 1993). [p. 36]

Collecting and evaluating data on key indicators also will increase court efficiency. For example, a computer application that gives a judge up-to-date case information from a terminal on the bench has been an effective tool to improve monitoring of victims and defendants in the New York State domestic violence court (Wolf et al., 2004).

Table 2
RECOMMENDED ELDER-SPECIFIC SUBSTANDARDS AND MEASURES THAT APPLY TO ADULT GUARDIANSHIP CASES

“Guardianship is a distinct and unique type of judicial matter. Unlike other cases, guardianships may remain open for years or even decades.... Guardianship is also different because, although it begins with an adversarial hearing, once incapacity has been determined, there are usually no “adversaries” to bring concerns to the court’s attention. Thus the court must be proactive to discover and respond to disputes and issues.”

*Guardianship Monitoring in Florida: Fulfilling the Court’s Duty to Protect Wards
Office of the State Court’s Administrator
2003*

With recent demographic patterns of aging and longevity, courts are faced with growing numbers of guardianship petitions, a trend that is expected to escalate over the next 20 years. Guardianship is a relationship created by state law in which a court gives one individual person or entity (i.e., the guardian) the responsibility and authority to make personal and/or property decisions for another individual (i.e., the ward). Generally, the court appoints a guardian after a judge decides that an adult individual lacks competence to make decisions on his or her own behalf. With advances in modern medicine and increased longevity, more people than ever reach an age where capacities may begin to fail and decision-making abilities may be called into question (Teaster et al., 2005).

Guardians²⁰ often are family members or willing friends. However, some older adults do not have willing family/friends and do not have the financial resources to hire a private guardian, e.g., attorneys, corporate trustees, agencies. These vulnerable individuals are at great risk of failing to receive needed services, being victimized by third party interests, and often being inappropriately placed in institutions. A third type of guardian, a public guardian, is a public official or publicly-funded organization appointed by the court to serve as legal guardian in the absence of willing and responsible family members or friends or in the absence of resources to employ a private guardian (Teaster et al., 2005).

Full guardianship constitutes substantial deprivation of a ward’s independence, with the ward often losing most rights he or she has as an adult citizen. This loss includes such basic personal, contractual, and legal rights as choosing where to live, handling one’s own finances, making decisions about medical care and, in some states, voting or choosing to marry.

Since the 1970s inquiries into statutory designs for guardianship relationships and processes have increased, producing criticisms that included inadequate notice to

²⁰ A number of different terms, e.g., conservator, are used for such persons in the various states. As used here, the term *guardian* includes guardians of the person, of finances, or both.

the persons alleged to need a guardian (respondents); inadequate due process protections; lack of legal counsel to represent respondents; and inadequate assessments/evaluations of capacities and incapacities, with the result being frequent imposition of full guardianship and minimal use of less restrictive alternatives. According to one study, approximately 94 percent of all guardianship petitions filed were granted, and the vast majority of these were for full guardianship. Concerns further focused on the fact that the person at risk of guardianship – an older person in over 80 percent of the cases -- typically has little role in the process and often is not present at the hearing (Lisi et al., 1994; cited in Butterwick et al., 2001).

In response, during this time, numerous individuals and organizations worked to modify state laws regarding guardianship. In fact, many state laws now direct courts to find the least restrictive available alternative, to allow the respondent to maintain maximum possible independence, and to respect, if possible, the respondent's present or previously expressed wishes. Guardianship reform actions have resulted in laws with greater due process protections for respondents – for example, notice, hearing, and attorney representation – pushing guardianship hearings to become more formal and more adversarial proceedings. Some recent attention has focused on balancing the need for formality with the needs of all parties to continue to communicate (Butterwick et al., 2001).

In the overview section, *The National Probate Court Standards* stated: “The standards in this category recognize the important liberty interests at stake in a guardianship proceeding and the due process protections appropriately afforded a respondent in conjunction with such a proceeding. However, these standards also recognize that the great majority of guardianships are not contested and that they are initiated by people of goodwill who are in good faith seeking to assist and protect the respondent. Indeed, the initiating petition may have been filed at the behest of or even by the respondent. Furthermore, in the great majority of guardianship proceedings, the outcome serves the best interest of the respondent and an appointed guardian acts in the respondent's best interests. Nevertheless...procedural protections...are needed to protect the significant liberty interests at stake in these proceedings, and attempt to minimize to the greatest extent possible the potential for error and to maximize the completeness and accuracy of the information provided the court with probate jurisdiction” (Commission on National Probate Court Standards, 1993). [pp. 52-53]

In his analysis of guardianship reform efforts in law and practice over the past 20 years, Kapp (2003) questioned whether such efforts have achieved their intended objectives. He argued that there existed little data on how the guardianship system functioned in practice, including whether courts effectively balanced issues of autonomy versus protections, or whether legal interventions had a demonstrable effect on quality of life. The recommendations in this table are, in large part, intended to establish workable standards and measures that will produce evidence to enable courts, and everyone else, to find out.

ACCESS TO JUSTICE

Standard 1.3 Effective Participation:

The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

Recommended Substandard 1.3.G

To the extent permitted by law, following a guardianship petition filing in contested guardianship cases, the court conducts closely monitored videotaping, and transcription of alleged incapacitated person's (AIP's) testimony attended by counsel for all parties at the earliest opportunity in case the elder suffers some decline in cognitive function or is unable physically to attend the court session scheduled for a later date.

Measure(s)

- a. Percentage of cases in which videotaped or transcribed testimony permitted by law is accepted as admissible when the elder cannot attend hearing or trial.

Rationale

Elders may forget important facts or be physically unable to attend by the time a hearing is held. Nevertheless, particularly when a guardianship petition is contested, it may be essential for the court to consider an AIP's feelings and wishes expressed at a time when the potential ward was sufficiently cognitively aware to offer such testimony. Although formal written documents may be considered, use of a video-tape further enhances the court's understanding of the AIP's status at the time personal wishes were expressed. Because guardianship cases involve the potential loss of some or all of the rights of citizenship for the AIP, the 2004 *Crawford v. Washington* Supreme Court decision may apply. Therefore, we add the important caveat that counsel for all parties should be included during any audio- or video-taped testimony²¹.

The commentary for Standard 3.3.5 of the *National Probate Court Standards* regarding appointment of counsel, indicated that the court's interest in an AIP's wishes occurred at several junctures in the process. The first of these was the appointment of counsel. The commentary stated: "in cases where the respondent is unable to assist counsel (e.g., where the respondent is comatose or otherwise incapacitated), counsel should consider the wishes of the respondent when a position was previously made known. This position may be derived from prior statements made by the respondent or from advance directives executed by the respondent while competent" (Commission on National Probate Court Standards, 1993). [p. 59]

Several additional standards remind the court to consider the AIP's personal preferences. For example, commentary for Standard 3.3.10 (less intrusive alternatives) advises the court

²¹ In the *Crawford* ruling, the Supreme Court said the Sixth Amendment prohibits hearsay evidence of a witness' "testimonial" statement -- no matter how trustworthy -- unless the defense has had a chance to cross-examine the witness.

to be “guided by the express wishes of the respondent where available...” [p. 66] Likewise, commentary for Standard 3.3.11 (qualifications and appointments of guardians) states, “The court should attempt, when possible, to appoint as a guardian a person who has been designated for this role by the respondent...” (Commission on National Probate Court Standards, 1993). [p. 67]

Recommended Substandard 1.3.H

The court keeps the alleged incapacitated person (AIP) and all other interested parties informed regarding reasons for all court dates and whether their presence is mandatory. (Similar RS in Table 4, p. 73)

Measure(s)

- a. Percentage of older court users or their representatives who are satisfied with such notification.
- b. Percentage of cases in which notification is documented in court records.

Rationale

The *National Probate Court Standards* connected notice with the concept of due process. Standard 3.1.1 states, “The probate court should ensure that timely and reasonable notice is given to all persons interested in court proceedings. The elements of notice (content, delivery, timing, and recipients) should be tailored to the situation” (Commission on National Probate Court Standards, 1993). [p. 40] This prescription was repeated in Standard 3.3.7.

RS 1.3.H takes this one step further, asking that notice include information regarding the nature of the hearing as well as specific information about who is required to attend. This is important because when older persons are left uninformed, particularly regarding case progress, they are more likely to become anxious and dissatisfied with the court and less likely to participate.

EXPEDITION AND TIMELINESS

Standard 2.1 Case Processing:

The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

Recommended Substandard 2.1.A

The court maintains a policy of bringing multiple cases with the same older litigant into a single court, e.g., family court, to the greatest degree possible, consistent with such litigant’s safety, privacy, and well-being. If a jurisdiction cannot accomplish this, the court designates a staff member to coordinate oversight of all cases involving one elder so that all judges assigned to those cases are fully advised and aware of all pending, related cases. (Same RS in Table 4, p. 73)

Measure(s)

- a. Percentage of multiple case situations involving the same litigants that are brought into one court.
- b. Percentage of older court users and attorneys for older court users involved in multiple court case situations who are satisfied with court’s processing of case.

Rationale

Practitioners and scholars have noted that cases involving older persons that may result in criminal charges stemming from elder abuse or domestic violence, as well as civil actions related to distribution of property, custody, orders of protection, divorce, and guardianship petitions, should come before a single court. Such arrangements make the court process less confusing and inconvenient for litigants and more efficient for the court overall. For example, the idea behind New York's integrated courts is to provide a holistic approach so that a victim is not forced to navigate three court systems (Post, 2004).

Several examples of courts that focus on various aspects of family violence illustrate the premise for this RS. Uekert et al. (2002) conducted a survey of 51 U.S. family courts, specifically focusing on the integration of civil and criminal matters. The survey revealed that a fragmented court system – handling criminal cases in one court and civil cases in another – was more prevalent than the integrated court model. Perceived advantages of the integrated family-criminal model were: (1) improved consistency; (2) better information-sharing leading to better judicial decision-making; (3) increased convenience and resource connections for victims; and (4) enhanced court efficiency. Perceived problems with this model included: (1) fear of high caseloads; (2) differential standards for civil and criminal cases, which may be difficult to ensure in the family court model; and (3) perceptions of judicial bias. Nevertheless, members of the study's national advisory committee strongly supported an integrated court model. Some of the specific recommendations included:

- the full range of criminal sanctions should be available and used appropriately (recommendation 1);
- local resources should be considered when creating a coordinated and integrated response to family violence (recommendation 2);
- coordination of cases and services must include routine information-sharing between agencies and the courts (recommendation 5);
- the judiciary, the bar, and court staff should be trained on criminal law and family law procedures, and on family violence-related matters (recommendation 9).

Wolf et al. (2004) noted that planners for the New York Domestic Violence Court “recognized that the justice system was often fragmented and that communication could be improved between police, prosecutors, defense attorneys, victim advocates, and others.” [p. 6] The solution was to borrow the idea of “resource coordinator” from another special court. This model offers an alternative for courts that cannot reorganize in the manner suggested in RS 2.1.A above. The resource coordinator “is responsible for collecting all necessary case information before every appearance, improving communication between the court and batterers’ programs and developing outreach efforts to educate court partners – as well as the community at large – about domestic violence [in that situation]. Planners felt the court could do more than simply process cases, but serve as a catalyst to improve the way the criminal justice system responds to domestic violence [in that situation].” [p. 6]

Early in January 2006, the Superior Court of California of Alameda County established an Elder Abuse and Protection Court that integrated a felony court with an existing civil Elder

Protection Court. The latter was established in 2002 to provide a venue for seniors to obtain civil remedies for abuse, such as restraining orders and stay-away orders that target abusers. The new Elder Abuse and Protection Court is the first court of this kind – i.e., focusing on elder abuse – in the United States (Ashley, 2005).

Recommendations 17 and 18 in the *Recommended Guidelines* (Stiegel, 1995) support RS 2.1.A. They include the suggestion that judges become aware of cases involving older abused persons that might be underway simultaneously in other divisions or that may have been heard previously but have bearing on the current case, and support for further study regarding applying a “family court” model when handling cases involving elder abuse. Eighty-two percent of Delphi respondents in the ABA study identified lack of intra-court coordination and cooperation as a barrier to the courts’ effective handling of elder abuse.

This rationale, which incorporates literature regarding guardianship and elder abuse court cases, applies to RS 2.1.A, which is restated with slight modification in Table 4 on page 73.

Recommended Substandard 2.1.B

The court establishes standard timeframes from time of petition filing for: (1) scheduling an emergency adult guardianship hearing, (2) scheduling a non-emergency hearing in non-contested cases, and (3) scheduling a non-emergency hearing in contested cases. The court monitors its own performance in complying with established scheduling standards.

Measure(s)

- a. Percentage of petitions of each type that meet the timeline goal.
- b. Percentage of guardianship petitioners satisfied with court’s meeting of timeline goals.

Rationale

In commentary regarding the principles of expedition and timeliness, the *National Probate Court Standards* stated that “unnecessary delay may cause injustice, hardship, and diminished public trust and confidence in the court”. [p.13] RS 2.1.B also is consistent with Standard 1.2.1, Case Processing and Compliance with Schedules (Commission on National Probate Court Standards, 1993).

Standard 2.2 Compliance with Schedules:

The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

Recommended Substandard 2.2.A

The court enforces a policy of establishing a reasonable number of days past the due date for guardians to file annual reports or to show cause for late filing before such guardian responsibilities are considered delinquent.

Measure(s)

- a. Percentage of times (in which report is delinquent) that the court issues a show-cause summons to the guardian in compliance with established policy.

Rationale

This critically important RS is consistent with Standard 3.3.14 of the *National Probate Court Standards*, which suggests in the commentary that “a guardian should make timely and complete annual reports to the court about the respondent” [p.71], and with Standard 3.3.1. The latter deals specifically with the court’s responsibility to monitor the guardian, primarily through review and evaluation of reports filed by guardians to ensure that all information required by the court is included and not subject to question, and to maintain a system that permits the court to know when reports are due, and when a guardian fails to meet the deadline. The commentary further states: “When a guardian fails to meet a deadline, the court should promptly provide notice to the guardian of the delinquency. If the guardian does not respond, the court should immediately investigate the situation to determine the appropriate course of action” (Commission on National Probate Court Standards, 1993). [p. 72]

EQUALITY, FAIRNESS, INTEGRITY

Standard 3.1 Fair and Reliable Judicial Process:

Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

Recommended Substandard 3.1.A

The court maintains a single list, by specialty, for court-appointed counsel, temporary guardians, and guardians *ad litem* who are trained and/or are experienced in assisting older court users. All judges work off the same list and rotate through these professionals in a consistent order.

Measure(s)

- a. Percentage of cases in which an appointed representative is drawn from the single list.

Rationale

In interviews for this project, attorneys and temporary guardians reported that random appointments, often based on the “appointee’s” presence in the court for other cases, create undue burden on some court-appointed representatives for litigants and, therefore, may not assure equality, fairness, and integrity in terms of legal representation for older adults. Moreover, Standard 3.3.11 of the *National Court Probate Standards* states, “The probate court should appoint a guardian suitable and willing to serve as a guardian. Where possible, the court should appoint a person requested by the respondent or related to or known by the respondent.” (Commission on National Probate Court Standards, 1993) [p. 66] This important standard cannot be met when guardian selection is based primarily on convenience.

Recommended Substandard 3.1.B

All alleged incapacitated persons (AIPs) in

Measure(s)

- a. Percentage of guardianship

guardianship litigation have the right to be represented by legal counsel who serves as the AIP's (and not the guardian's) advocate, regardless of the ability to pay. A guardian *ad litem*,²² who generally serves as a representative of the court, will not be considered as constituting such counsel.

cases in which AIP is represented by counsel.

Rationale

By definition in *The National Probate Court Standards*, the responsibilities and roles of legal counsel and guardians *ad litem* differ. Therefore, one cannot substitute for the other and AIPs may need both. In fact, Standard 3.3.4 commentary notes that the role of the "court visitor" (or guardian *ad litem*) "stands in contrast to that of court-appointed counsel..." [p. 56] Moreover, RS 3.1.B is relevant to two specific Standards. Standard 3.3.11 urges the court to "appoint a guardian suitable and willing to serve as a guardian". [p. 66] Standard 3.1.3 cautions the court with regard to appointments to special positions, stating that such appointments should be made "only when it [*the court*] determined that the appointment is required by law, or is necessary to protect the interests of persons needing protection or to decide or manage a case in a fair and expeditious fashion" [p.43] such as a situation where a proposed guardian has a potential conflict of interest with the AIP (Commission on National Probate Court Standards, 1993).

Wingspan (2002) recommendation 28 stated that "counsel [*should*] always be appointed for the respondent and act as an advocate rather than as a guardian *ad litem*". [cited in Quinn, 2005; p. 256] Recommendation 29 refers to the Wingspread Recommendation²³ regarding counsel's role as "zealous advocate", both reaffirming and amending it. The proper advocacy role for counsel included advising the client of all options and consequences of each option, communicating with the client in the language or terms that the client was most likely to understand, and "zealously" advocating for the choices the client made (Wingspan, 2002). Recommendation 30 identified the need for a separate court appointee (e.g., visitor, guardian *ad litem*) to identify the AIP's wants, needs, and values for the court. Finally, recommendation 32 suggested that the court appointee discussed in recommendation 30 should be called an "investigator" or "visitor", noting the frequent confusion between the terms "guardian" and "guardian *ad litem*".

Eighty percent of the ABA Delphi study respondents indicated that, in non-criminal cases, courts should appoint counsel to represent an older abused person immediately if capacity is an issue in the proceedings. This is articulated in recommendation 11, which urges courts to appoint counsel "at the earliest possible stage of the proceedings" (Stiegel, 1995).

Recommended Substandard 3.1.C

The court supports an approach to diminished

Measure(s)

a. Percentage of cases in which

²² Also referred to as a court visitor, court investigator, court evaluator, court monitor, or guardianship monitor, depending on the jurisdiction.

²³ Recommendation II-C of the 1998 Wingspread Symposium; cited in Quinn, 2005; p. 256.

capacity determination that is based on professional standards regarding medical, psychosocial, and functional ability statuses, with assessment performed within the alleged incapacitated person's (AIP's) familiar environment. Specifically, the court works with appropriate professional communities to develop criteria for the process of determining diminished capacity. (RS 3.1.C also appears in Table 4, p. 74)

capacity is determined using a standardized instrument that includes medical, psychosocial, and functional dimensions meeting established criteria.

Rationale

Standardization, inclusiveness of assessments, and evaluation in a familiar environment are needed to provide accurate data, which the court requires to ensure a fair and reliable judicial process for AIPs when *competence*, as determined by the court, is at issue. While the responsibility for assuring that such standards are met clearly does not fall to the court alone, the court is responsible for establishing standards for evidence of *diminished capacity*.

It is important to distinguish the concepts of *capacity* and *competence* as they may be used in guardianship proceedings. Dudley & Goins (2003) noted that these terms are assigned different meaning across disciplines and are applied in different ways between legal jurisdictions, giving rise to some confusion. *Competence* may be defined as "a legal judgment based on a specific legal process supported with appropriate evidence" (Golinger & Federoff, 1989; Moye, 1999; both cited in Dudley & Goins, 2003). [p. 101] *Capacity* is "the functional abilities of an individual that can be objectively determined by a clinical evaluator" (Grisso, 1986; Grossberg & Zinny, 1996; Moye, 1999; all cited in Dudley & Goins, 2003, pp. 101-102; Kapp, 2003). As summarized by Dudley & Goins (2003), "in the legal setting, it is the judge who determines *competence* based, in part, on the assessment of *capacity* provided by" one or more professionals. [p. 102]

Competency is increasingly defined by courts as more functionally-based than diagnostic. With this shift, "the expectation is that courts will move from global determinations of incompetence and rulings of need for full guardianship to use of partial guardianships reflective of specific needs of the individual" (Haldipur & Ward, 1996; cited in Dudley & Goins, 2003). [p. 110] Moreover, some argue for the importance of determining capacity in a context familiar to the AIP, recognizing each individual's adaptations and compensations within his or her customary surroundings (Dudley & Goins, 2003).

Grisso (1986) identified three categories of concern regarding traditional evaluations and reports: ignorance, intrusion, and insufficiency. Dudley & Goins (2003) noted that these concerns still exist, as documented in their study of guardianship in two states. Ignorance errors occur when evaluators provide a diagnosis as the basis for a statement of *incapacity* rather than speaking to functional ability or performance. Intrusion errors occur when evaluators go beyond their role to make statements of *competency*, encroaching on decisions that should be made by the court. Insufficiency errors arise when evaluators provide the court with inadequate information or make "diagnoses" or recommendations based on questionable assessment methods or measures (Dudley & Goins, 2003).

Implementation of RS 3.1.C would minimize and possibly even eliminate all three types of errors.

In developing professional standards and standardized approaches to assessment, courts may want to consider Grisso's (1986) multi-characteristic model of *competency*. This model proposed that *competency* is a function of functional, contextual, causal, interactive, judgmental, and dispositional characteristics, and must be evaluated within each of these frameworks. Grisso's model supported the notion that the court cannot determine the need for guardianship in the absence of information about these factors. Other standards (e.g., Baker, Lichtenberg, & Moye, 1998; Department of Veteran's Affairs, 1997; Moye, 1999: cited in Dudley & Goins, 2003) suggested that more than one type of professional be involved in conducting guardianship assessments for older adults. Specifically, primary care physicians or geriatricians should be asked to evaluate physical status, medical treatments, and prognosis, while psychologists are better trained to evaluate functional capacity, cognitive ability, and other areas of judicial interest (Dudley & Goins, 2003).

Becker (2002) made the important point that *capacity* is not a static state. Therefore, a person who has the capacity to perform certain tasks one day may not have the ability to perform those same tasks in the future. On the other hand, successful treatment of a condition may restore *capacity*, as in the case of a person who exhibits impairment resulting from the dementia syndrome of depression and who may regain the *capacity* to perform certain tasks if the depression is successfully treated. Becker (2002) recommends periodic reassessment of cognitive functioning where there is any potential for *capacity* to change.

RS 3.1.C is supported by recommendations 7, 8, and 9 in the *Recommended Guidelines* (Stiegel, 1995), which stated that courts should use experts' assessments in determining an older person's competence, that courts should understand that capacity is diminished by degrees during a process rather than being a "condition" that a person does or does not "have", and that courts should recognize and respond appropriately to increased risk of abuse for elders who experience any degree of impaired capacity. Similarly, Wingspan (2002) recommendation 2 proposed that functional and multidisciplinary assessment be used by the court in determining "*diminishing capacity*".²⁴

Standard 3.3.9 of the *National Probate Court Standards* (Commission on National Probate Court Standards, 1993) addressed "determination of *incapacity*" in some detail. The commentary section indicated that frequently a physician examination prompts the filing of a guardianship petition. However, "although a physician may provide valuable information regarding the *capacity* of the respondent, *incapacity* is a multifaceted issue and the court may consider using other professionals whose expertise and training may give them greater insight into representations of *incapacity*...Evaluation by an interdisciplinary team may provide the court with a fuller and more accurate understanding of the alleged *incapacity* of the respondent..." (Dudley & Goins, 2003; Hafemeister & Sales, 1985; cited in Commission on National Probate Court Standards, 1993, p.64).

²⁴ Recommendation 2 uses the term "*diminished capacity*" rather than "*incapacity*", "*incapacitated*", and "*incompetent*", terms they recommend be "rejected".

Recommended Substandard 3.1.D

The court customizes guardianship to each ward by (1) selecting an appropriate guardian based on expertise required in each specific situation, and (2) documenting in guardianship orders the rights retained by the ward.

Measure(s)

- a. Percentage of guardianship orders (a) that are customized to the ward, and (b) that mention explicitly rights retained by the ward.

Rationale

In order to ensure a fair and reliable judicial process, each ward's situation must be determined on an individual basis, both in terms of the skills and qualifications required of a potential guardian and in terms of the actual stipulations of the guardianship order, particularly in regard to a ward's rights. Nevertheless, Dudley and Goins (2003) found in their study that guidelines regarding who should be appointed guardian were limited and there were no requirements for evaluation of the suitability of a proposed guardian.

Standard 3.3.11 of the *National Probate Court Standards* addressed item (1) in the above RS. The commentary discussed various aspects at some length, including the need to (1) consider training, education, and experience of the potential guardian in light of tasks that will be required on behalf of the ward; (2) if possible, appoint a guardian who has been selected for this role by the AIP, including written designations prepared while the AIP was competent, even if the AIP is not competent at the time of the hearing; and (3) solicit AIP's current opinions and preferences and take them into account when appointing a guardian, even with an AIP who has been deemed legally incompetent for purposes of the guardianship proceeding (Commission on National Probate Court Standards, 1993). Similar language was used in Wingspan (2002) recommendation 18.

RS 3.1.D above, part (2), is supported by recommendation 10 in the *Recommended Guidelines* (Stiegel, 1995), which specifically addressed the courts' understanding and effective use of limited guardianship and other guardianship alternatives.

Recommended Substandard 3.1.E

The court always upholds and never waives requirements regarding education, experience, training, and previous criminal records on all professional guardians, including public guardians. Standards for family guardians also are established for the jurisdiction.

Measures

- a. Percentage of guardianship cases in which this information on prospective guardians is reviewed by the court prior to a guardianship order and is recorded in the case file.
- b. Percentage of family guardians who meet court-established criteria.

Rationale

An older person who requires a guardian is, by definition, vulnerable to abuse, exploitation, and neglect. The court needs to assure that, at a minimum, the legal remedy does not make the ward's situation worse. This RS is consistent with *National Court Probate Standards*

3.3.11 and 3.3.13 (Commission on National Probate Court Standards, 1993).

Recommended Substandard 3.1.F

In contested guardianship cases, whenever appropriate, the court makes mediation available as an alternative method of resolution. Mediation may not be appropriate in situations involving abuse or domestic violence issues, particularly where a related criminal case is pending.

Measure(s)

- a. Percentage of contested guardianship cases in which mediation is considered by the court as an alternative path of resolution.
- b. Percentage of mediated guardianship cases in which all parties are satisfied with the outcome.

Rationale

Some guardianship advocates and researchers of the last two decades now believe that the adversarial model is not without defects in contested guardianship cases. The foremost of these are the economic and emotional costs to the parties and the frequent increase, rather than resolution, of differences among them. Guardianship cases can involve disputes among family members or caregivers, or between the person alleged to need a guardian and the person petitioning for the guardianship. For example, parents whose children seek guardianship over them may feel demeaned; or siblings may battle over who should be guardian or what is the best plan for the parent, when the real issue may be long-standing sibling rivalries. An adversarial proceeding resulting in the granting or denial of a guardianship is unlikely to ameliorate these types of situations and can make them worse. Additionally, many older adults and their families may be uncomfortable in the formal court setting, and court hearings can be traumatic for them. Disputes raised after a guardian has been appointed also can take a great emotional and financial toll on families (Butterwick et al., 2001).

Mediation may reduce stress and anxiety of ongoing litigation and resolve cases both more quickly and more satisfactorily for all parties. However, abused elders, most of whom suffer the effects of undue influence, cannot participate on an equal footing in mediation with the abuser or others perceived as potentially related to the abuser(s). Recommendation 19 of the *Recommended Guidelines* (Stiegel, 1995), specifically states, "The use of alternative dispute resolutions in cases involving elder abuse is not recommended at this time [1995]." The *Recommended Guidelines* do, however, encourage further study. Nevertheless, no more recent citations have shown evidence of "fairness" when applying mediation to situations in which an elder person is one of the litigants and/or a victim of mistreatment or domestic violence.

Recommendation 22 of Wingspan (2002) speaks to the need for standards and training for guardianship mediators, based on input from the alternative dispute resolution community, regarding issues appropriate for mediation, participants in mediation, use and role of legal representatives, and procedures to maximize self-determination of individuals with diminished capacity. Wingspan recommendation 24 proposes the use of mediation for conflict resolution and as a pre-filing strategy.

RS 3.1.E is consistent with Standard 2.5.1 of the *National Probate Court Standards* (Commission on National Probate Court Standards, 1993).

Recommended Substandard 3.1.G

The court requires the petitioner for an adult guardianship to demonstrate convincingly that less restrictive alternatives are not appropriate.

Measure(s)

- a. Percentage of cases in which the court record shows that petitioners demonstrated pursuit of alternatives and found them less desirable for the AIP than guardianship.

Rationale

“The concept of the least restrictive alternative, a legal doctrine first articulated in the field of mental health, has gained wide acceptance among courts and service professionals. It creates an ethical duty for practitioners [guardians] to fashion individualized solutions that are least intrusive upon their clients’ personal freedom. The concept applies to the personal and environmental care of the elderly and the handling of material resources. It recognizes that elders may have capacities in some areas and lack capacity in other areas. Ideally, the more restrictive the option, the greater the due process protections and the greater the opportunities for an individual to object or to state preferences. The doctrine is primarily civil in nature, although it can be applicable in criminal matters when placement of persons who have been determined to be criminally insane is at issue” (Quinn and Tomita, 1997). [p. 259]

As previously noted, full guardianship generally removes many basic rights, e.g., voting, making health-care decisions, marrying, and buying or selling property. Moreover, guardianship may be expensive, time-consuming, and burdensome. However, in some cases this may be the only way to protect the personal safety or assets of an AIP. Therefore, courts must be diligent in complying with least restrictive alternative to guardianship decision guidelines. Least restrictive measures include limiting the scope of guardianship based on full understanding of the nature of the AIP’s diminished capacity, if any, to those measures that would address specific deficits. Other alternatives may involve partnering with area agencies on aging, Adult Protective Services, or long-term care ombudsmen programs, which can delay or eliminate need for full guardianship orders (*Good Guardianship: Promising Practice Ideas on Court Links for Agencies on Aging, Adult Protective Services, and Long-term Care Ombudsman*, 2004).

Standard 3.3.10 of the *National Probate Court Standards* is quite detailed with regard to the assurance of “less intrusive alternatives” in determining guardianship appointments and individualized terms of guardianship. In fact, it states that due consideration should be given prior to implementing guardianship orders. If the court determines that a guardianship is necessary, “the respondent’s self-reliance, autonomy, and independence should be promoted by restricting the authority of the guardian to the minimum required for the situation, rather than routinely granting full powers of guardianship in every case” (Commission on National Probate Court Standards, 1993). [p. 66]

Finally, two Wingspan (2002) recommendations addressed the least restrictive alternative standard. Recommendation 8 linked assurance of the least restrictive criteria throughout the judicial process with the need for sufficient funding to support multidisciplinary assessments (see discussion under RS 3.1.C, p. 56). Recommendation 20 addressed the need for legislation that requires guardianship petitions to include a review of alternatives and a statement as to why none are appropriate.

Recommended Substandard 3.1.H

The court recognizes and accommodates the fact that older adults may need more time during testimony, more frequent breaks during hearings or trials, more flexible scheduling of court events, and shorter court days, while also recognizing the need to minimize the number of continuances by scheduling ongoing cases across consecutive days when needed. (Same RS included in Table 4, p. 74.)

Measure(s)

- a. Percentage of older court users and their attorneys satisfied with aspects of timing, including (a) not feeling rushed during testimony, (b) adequacy of breaks, (c) number of continuances, and (d) timeliness of bringing case to resolution.

Rationale

Accommodations for older court users may be complex and even seem contradictory, particularly in the intricate and highly structured court environment. Nevertheless, to the degree that these accommodations are feasible, application of RS 3.1.H will reduce the physical and emotional toll on older participants.

Recommendations 4, 5, and 6, in the *Recommended Guidelines* (Stiegel, 1995), include a discussion of the rationale for RS 3.1.H.

Standard 3.4 Clarity:

The trial court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.

Recommended Substandard 3.4.A

Guardianship orders clearly state the responsibilities of the guardian.

Measure(s)

- a. Percentage of guardianship cases in which the order clearly states these responsibilities.

Rationale

Standard 3.3.12 of the *National Probate Court Standards* was quite specific regarding the need for the guardianship order to (1) itemize duties and powers of the guardian, including limitations to those duties and powers and rights retained by the ward; (2) clarify the guardian's responsibilities and requirements to be applied in making decisions and caring for the ward; and (3) require the guardian to provide the ward, and others who received notice of the petition for guardianship, with a written copy of the order of appointment (Commission on National Probate Court Standards, 1993). Implementation of this RS will minimize potential for misunderstanding and harm to wards.

Standard 3.5 Responsibility for Enforcement:

The trial court takes appropriate responsibility for the enforcement of its orders.

Recommended Substandard 3.5.A

The court recognizes the need to assure that timely submission and substance of guardianship reports are monitored by the appropriate court staff in 100 percent of cases and that the court is notified about non-compliance. When notified of non-compliance, the court takes appropriate action as specified by statute. (Similar RS with same number appears in Table 4 on p. 74)

Measures

- a. Percentage of relevant court staff, guardians, and attorneys for wards, who are satisfied with the quality and consistency of the monitoring report and subsequent communication to the court regarding non-compliance.
- b. Percentage of attorneys for wards satisfied with the court's action when guardians do not comply with timely submission and substance of guardianship reports.

Rationale

The importance of this recommendation was emphasized repeatedly in site interviews. Standard 1.3.4 of the *National Probate Court Standards* specifically stated, "The probate court should be responsible for the enforcement of its orders". [p. 17] While recognizing that court responsibility for enforcement and compliance may vary by jurisdiction, program, and case, commentary for this standard indicated that the "integrity of the judicial process is reflected in the degree to which parties adhere to awards, settlements, and decisions arising out of this process" and that "noncompliance may indicate miscommunication, misunderstanding, misrepresentation, or lack of respect toward or confidence in the court" (Commission on National Probate Court Standards, 1993). [p.17]

Although Wingspan (2002) recommendation 54 stated that courts have primary responsibility for monitoring, in some jurisdictions other community agencies may be tasked with assuring timely submission of reports and even with reviewing reports against established criteria. Wingspan (2002) recommendation 58 suggested that research be conducted to determine: (1) whether the court should be allowed to delegate or contract out guardianship monitoring; and (2) the nature and extent of court's oversight responsibility in such cases.

Recommended Substandard 3.5.B

The court identifies and monitors key indicators of wards' safety and well-being, including an indicator that the ward resides in the least restrictive environment.

Measure(s)

- a. Percentage of annual reports in which guardians convincingly show that wards are safe and in as good health as possible,

based on established indicators.

- b. Percentage of annual reports in which guardians show convincingly that wards are in the most optimal setting, based on established indicators.

Rationale

This RS acknowledges the vulnerability of older persons whose liberties and well-being have been potentially compromised based on a court-ordered emergency guardianship, limited guardianship, or full guardianship. Therefore, in addition to monitoring timeliness and substance of guardianship reports, the court should assure that the report includes key measures of safety and well-being, which the court can monitor. These indicators also should be analyzed over time to identify unexpected or unusual changes in the ward's status.

The Supreme Court's landmark ruling on the Americans with Disabilities Act, *L.C. & E.W. v Olmstead*, required that states provide services "in the most integrated setting appropriate to the needs of qualified individuals with disabilities". As a result, public policy and state and local programs serving this population, which included elders, increased emphasis on placement in home and community-based settings. The *Olmstead* decision supported the allocation of additional resources to public guardianship and other surrogate decision-making mechanisms, as well as renewed efforts by public guardianship programs on appropriate placement of wards in community-based settings (Teaster et al, 2005). Moreover, assuring that a ward is living in the least restrictive environment is important much in the same way that it is important to assure that any guardianship order meets the "least restrictive" standard (also see rationale for 3.1.G, p. 60).

Recommended Substandard 3.5.C

The court initiates investigation and/or civil/criminal action when a report contains evidence of mistreatment of a ward's person or property.

Measure(s)

- a. Percentage of cases with evidence of mistreatment of a ward for which court initiates investigation and/or action.

Rationale

Standard 3.3.17 of the *National Probate Court Standards* addressed the court's responsibility for enforcement of court orders related to guardianship and supported the court's use of sanctions, including suspension, contempt, removal, and appointment of a successor when such measures are required for such enforcement (Commission on National Probate Court Standards, 1993).

RS 3.5.B goes beyond enforcement of court orders, recognizing that in some circumstances guardians and/or others who have contact with a ward (of the court) will engage in criminal behaviors that may not be specifically proscribed in a court order because of a presumption of prohibition. Nevertheless, in reviewing annual reports, the court has an opportunity to identify questionable decisions or practices undertaken on behalf of the ward

(or not undertaken although they should have been) and, in such cases, should initiate action through appropriate agencies (e.g., law enforcement, Adult Protective Services).

Recommended Substandard 3.5.D

At first appointment, all guardians (including family, private, and public) receive jurisdiction-specific information about their roles and responsibilities as guardians and about preventing, recognizing, and reporting elder abuse. Thereafter, as needed, all guardians receive additional information regarding recent advances in knowledge about aging and older persons, as well as changes in statutes and case law relevant to their guardianship responsibilities.

Measure(s)

- a. Percentage of newly appointed guardians who receive initial guardianship information.

Rationale

Recommendation 20 of the *Recommended Guidelines* (Stiegel, 1995) indicated that recently appointed guardians should be trained regarding their roles and responsibilities as guardians, including training about preventing, recognizing, and reporting elder abuse. Similarly, Standard 3.3.13 of the *National Probate Court Standards* stated, "The probate court should develop and implement programs for the orientation and training of guardians" (Commission on National Probate Court Standards, 1993). [p. 69] Both recommendations were based on the 1986 *Statement of Recommended Judicial Practices* (National Conference of the Judiciary on Guardianship Proceedings for the Elderly, 1987; cited in, Commission on National Probate Court Standards, 1993). Wingspan (2002) suggested that guardians receive not only training, but technical assistance as well.

Standard 3.6 Production and Preservation of Records:

Records of all relevant court decisions and actions are accurate and properly preserved.

Recommended Substandard 3.6.A

To the greatest extent allowed by law, the courts have access to data shared by law enforcement and adult protective services in cases involving alleged incapacitated persons (AIPs), particularly with regard to a legal guardian. (Similar RS in Table 4, p. 75)

Measure(s)

- a. Percentage of court staff, law enforcement, and adult protective services staff satisfied with availability of data on shared clients.

Rationale

Implementation of this RS will avoid duplicating services, working at cross-purposes with other agencies dealing with the same elder, or allowing problems to slip through the system, even when cases appear to be unrelated. For example, in every state, Adult Protection Services (APS) staff help disabled adults and older persons who are vulnerable to abuse or neglect, as specified in state law. As a result, APS often is able to identify at-risk individuals in need of guardianship (*Good Guardianship: Promising Practice Ideas on Community Links*,

2004) and also may have knowledge of reasons a prospective guardian should not be selected.

Wolf et al., 2004, reported on just such a technology application developed by the Center for Court Innovation with funding from the U.S. Department of Justice's Violence Against Women Grant to Encourage Arrest Policies program, and a STOP Formula grant from the New York State Division of Criminal Justice Services. Information in this database includes defendant's compliance record with a court-ordered batterers intervention program, and, with victims' consent, updates on victim status and reports of alleged violations of orders of protection. This helps communication between the court, criminal justice agencies, and social service providers. For example, orders of protection (POs) are created electronically and electronically signed by the judge, after which the PO is immediately and automatically uploaded to the state's DV registry so there is no delay in this information being accessible to any agency involved (in this case) with victims or offenders. It is easy to see how a parallel application might be applied in probate courts.

A similar system, the Protection from Abuse Database (PFAD), is used in Pennsylvania. A 2003 report on a survey of 62 Pennsylvania counties, of which 42 were actively using the PFAD, indicated high-level satisfaction, citing consistent and automated orders, inclusion of data from most counties, and creation of an automated datasheet as key factors (Uekert et al., 2004).

Table 3
RECOMMENDED ELDER-SPECIFIC SUBSTANDARDS AND MEASURES THAT APPLY TO SELF-SERVICE CENTERS

“By now everyone in the judicial branch in every state knows that we are experiencing an explosion of unrepresented persons appearing in the courts of general jurisdiction of this country. We know that they impose major burdens on judges, court staff, and on court processes. And we have learned that court programs to assist them to understand the law and court procedures, to prepare complete and adequate legal filings, and to prepare themselves for court hearings and trials meet the needs of these litigants to get their cases heard and resolved, and save time and resources of judges and court staff. Or do we?”

*Self Represented Litigants and Court and Legal Services Response to Their Needs: What We Know Prepared for the Center for Families, Children & the Courts, California Administrative Offices of the Courts
Second draft, July 20, 2002
John M. Gracean*

The right to appear *pro se* (i.e., self-represented) exists in both state and federal court. However, *pro se* litigants frequently lack the knowledge required to exercise that right effectively. Often they come to court with the wrong forms or the correct forms improperly completed. Perhaps more seriously, *pro se* litigants also often lack comprehension of the legal consequences of court procedures. As a result, court personnel may need to spend a great deal of time helping *pro se* litigants sort through forms and responding to their questions (Walker, 1997). Therefore, in order to assure access, providing basic assistance to self-represented litigants is a necessary court function (Rasnow, 2005).

Historically, courts assisted self-represented litigants by making referrals to reasonably-priced or free legal services programs, to the extent that such programs existed and that litigants were willing to use them (Owen et al., 2002). Gracean (2002) observed that legal aid programs developed as a response to the chronic lack of resources available to represent low-income persons with legal problems, and that they created an opportunity to help many more people pursue legal remedies than otherwise would be possible.

More recently, self-service programs have become another way for courts to provide assistance to self-represented litigants. Self-service centers generally attempt to simplify court terminology and to standardize court forms. Some self-service centers provide *pro se* litigants with basic information about how the court system works, although there are strict prohibitions on the type of information or advice that may be offered by anyone who is not a licensed attorney (Owen et al., 2002).

Rasnow (2005) suggested that courts should provide a self-service center located in the courthouse, ideally in close proximity to the filing clerks' office, as a

minimum standard. She also noted, however, that there are jurisdictions where having a physical center location may not be as useful to consumers as providing services via various means of remote access. An example would be in Alaska where the self-service program is run almost entirely by telephone, Internet, and e-mail communication, serving the entire state from one centralized location. Rasnow (2005) further remarked that self-service centers that offer only materials and kiosks, without staffing, may be able to help well-educated and technology literate *pro se* litigants, but will likely be of limited or no help to the many users who are marginally literate or who require further explanation or assistance. Even for court users who can understand written instructions, access to a knowledgeable person is reassuring and reflects the court's message of service and equal access.

Gracean (2002) proposed the following "logical flow of questions" that courts can use to determine the effectiveness of court services programs designed to assist self-represented litigants:

1. Access to the service. Did clients learn about the service and were they able to access it?
2. Use of the service. Did clients actually use it?
3. Client satisfaction. How did those who used the service rate it?
4. Client education. Did clients understand the information provided?
5. Court or agency satisfaction. How was the service rated by judges, court staff, and other individuals or agencies whose work was affected by the service?
6. Client outcomes.
 - Did the action taken by the client produce any change in the client's satisfaction?
 - Was the change in the client's situation a positive one from the client's perspective?
 - Was the change in the client's situation sufficient to achieve the client's goal or goals in the matter?

Finally, Rasnow (2005) suggested that self-service centers can be used for "triage", that is, to determine the needs of clients seeking services and to direct them to the help they actually need. This requires additional staff and training, but may result in improved client outcomes and greater efficiencies for the court.

ACCESS TO JUSTICE

Standard 1.3 Effective Participation:

The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

Recommended Substandard 1.3.C

Self-Service Center staff and those in the clerk's office front desk include at least one member who is fully bilingual in at least the language of the dominant non-English-speaking ethnic group(s) in the jurisdiction, as well as in English, and have ready access to interpreters, including persons familiar with sign language or any other means of communication required based on visual, hearing, or cognitive impairment.

Measure(s)

- a. Percentage of older non-English speaking court users satisfied with ability of self-service center and front desk staff to communicate effectively in their spoken language.
- b. Proportion of older court users with hearing or vision impairments satisfied with communications experienced.

Rationale

This RS is based on the same rationale used for 1.3.A (see p. 38) and 1.3.B (see p. 39).

Recommended Substandard 1.3.E

The Self-Service Center establishes procedures to facilitate linkage of litigants with pro-bono counsel should the litigants desire it.

Measures

- a. Percentage of older court users satisfied with this service of the self-service center.

Rationale

Although not a widely accepted practice, some courts, recognizing that *pro se* litigants may lack rudimentary legal knowledge, now offer such litigants a brief session with a practicing attorney on a *pro bono* basis. Delaware, for example, developed the Limited Pro Bono Legal Assistance Program at one courthouse location "to provide that minimal level of assistance that a self-represented litigant sometimes needs just to get his or her foot in the door". The Delaware program was developed following a site visit to San Diego to observe a similar program where the Bar Association sponsored periodic volunteer attorney counseling nights (Batchelor, 2004).

This RS does not specifically incorporate another recent trend, "limited scope representation",²⁵ aimed at assisting *pro se* litigants who lack resources for full legal representation. Nevertheless, older court users might benefit from such an option as long as all of their rights are carefully guarded under statute and in court-specific guidelines for the practice. In limited scope representation, legal services provided to clients are limited to certain agreed-upon tasks. Services offered under this arrangement may include advice and counsel, limited court or administrative appearances, and assistance with documents and pleadings (Herman, 2003).

²⁵ Also referred to as unbundling, discrete task representation, partial representation, or limited representation

Table 4
RECOMMENDED ELDER-SPECIFIC SUBSTANDARDS AND MEASURES THAT APPLY TO CRIMINAL CASES INVOLVING ELDER ABUSE AND DOMESTIC VIOLENCE

“Despite the plethora of elder abuse statutes and protective services, the wide range of potential proceedings involving elder abuse, and keen interest in minimizing abuse and neglect, court systems do not appear to be heavily involved in resolving such cases. Research...indicates that very little of either the legal or social science literature addressing elder abuse discusses the role or involvement of the courts.... Court data on cases involving elder abuse is non-existent, according to the National Center on Elder Abuse, the National Center for State Courts, state court administrators, Adult Protective Services (APS) administrators, and other agencies focusing on elder abuse. Most state courts do not even keep data about the age of the parties involved in court proceedings....Judges, lawyers, prosecutors, law enforcement officers, and protective services workers...reported that there are few elder abuse cases entering the court system.”

Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse
 American Bar Association and State Justice Institute
 Lori A. Stiegel, J.D., 1995

Introduction:

Elder abuse, neglect, and exploitation are burgeoning crimes in the US. It is estimated that 1-2 million Americans ages 65+ who are dependent on others for care have been victims of abuse, neglect, or exploitation (National Research Council, 2003). Many other persons in this age cohort, who do not rely on others for care, also are victims of domestic abuse and mistreatment. Given that the census data project that the 65+ age group in the U.S. will nearly double to more than 70 million by 2030, it is likely that the number of crime victims and perpetrators in this age group will increase accordingly. However, as a National Academies report (National Research Council, 2003) recently noted, the greatest calamity may be that society’s understanding of the problem is so imprecise that a more accurate estimate cannot be made.

Prosecution of elder abuse, neglect, and exploitation is similarly difficult to quantify. At present there are no statistics on the number of prosecuted cases involving older victims. This does not mean, however, that these crimes go uncharged. Depending on the jurisdiction, elder abuse, neglect, and exploitation can be prosecuted under a multitude of statutes and/or specific elder protection laws. Moreover, many DV statutes allow for prosecution of the offender without requiring a victim to press charges. Anecdotal evidence suggests that prosecution of crimes that victimize older Americans is becoming more frequent, and that more state and local prosecutors’ offices are forming elder abuse units or designating a staff member with specific responsibility for these types of cases (Morgan & Scott, 2003).

State legislatures have paid considerable attention to the problem of elder mistreatment. All fifty states and DC have enacted legislation addressing domestic and/or institutional elder mistreatment, along with reporting systems to identify these cases. However, the statutes vary widely in terms of: age at which a victim is covered; definition of elder abuse; classification as criminal or civil; reporting requirements (mandatory or voluntary); investigation procedures; and remedies. Institutional abuse is covered by state statutes – sometimes in the same law covering domestic abuse, sometimes separately – and by federal Medicaid and Medicare statutes, which provide for prosecution of abuse occurring in federally-reimbursed facilities (Quinn & Tomita, 1997; Stiegel, 1995).

Because statutory definitions of elder abuse take many forms and include physical, psychological, and sexual abuse, financial exploitation, neglect, abandonment, and/or self-neglect, courts may see elder abuse in a variety of contexts. These contexts include: criminal cases of assault, battery, rape, or theft (which may carry enhanced penalties when committed against an older person); civil fraud matters; personal injury actions; guardianship or conservatorship; mental health commitment; special protective proceedings initiated through adult protective services agencies; cases involving health care decisions for an incapacitated patient; and criminal or civil cases regarding institutional care in nursing homes or other long term care facilities (Quinn & Tomita, 1997; Stiegel, 1995).

ACCESS TO JUSTICE

Standard 1.3 Effective Participation:

The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

Recommended Substandard 1.3.F

If it has not happened in the previous 30 days, the court orders a standardized full medical and mental health assessment of the older adult criminal defendant by the date of First Appearance. Where First Appearance must occur within 24 hours of incarceration, an alternative is to implement a standardized “mini assessment” that can be administered in a short time period and used as an indication of the need for a more thorough assessment. Measurement of dementia, other cognitive impairment, and mental health is included in the assessment of elder defendants’ competence to stand trial. Thoroughness of assessments and instruments used for data collection are consistent across all older defendants in the jurisdiction.

Measures

- a. Percentage of cases in which information regarding the results of such an assessment are presented to the court by the date of First Appearance of an older defendant.
- b. Percentage of cases involving older defendants in which the court receives reliable data either ruling out or confirming dementia, cognitive impairment, and/or mental health abnormalities prior to determining competence to stand trial.

Rationale

This recommendation is supported by research regarding judicial responses to elders in the courts (Rothman & Dunlop, 2006). Otherwise, where an older adult’s charged offense was caused by or related to dementia, mental illness, or medical condition, the accused elder may languish in jail unnecessarily and be at risk of further decline. Moreover, to the degree that different approaches to assessment may produce different results, older defendants will not have equal access to effective participation unless the same assessment process is followed in every case. Finally, it is important to understand that a change in cognitive status in an older person may occur literally “overnight” or “from one minute to the next” and is not necessarily indicative of onset or progression of dementia. Changes in medication or medication regimens, experiencing a transient ischemic attack (also known as “warning strokes” or “mini-strokes”), and even a simple change of environment may create confusion that mimics the appearance of dementia in an older person. Therefore, aberrant behavior in an older person should be investigated thoroughly, even if a similar examination was conducted at what might otherwise be considered a recent time (e.g., Becker, 2002; Dudley & Goins, 2003).

Recommended Substandard 1.3.G

To the extent permitted by law, the court allows closely monitored videotaping, and transcription of an elder witness’, or victim’s and/or elder defendant’s

Measure(s)

- a. Percentage of cases in which videotaped or transcribed testimony permitted by law is

testimony, attended by counsel for all parties, at the earliest opportunity following an arrest in case the elder is unable physically to attend the court session scheduled for a later date. Where applicable, available older victims are informed regarding the availability, benefits, and concerns surrounding the submission of a victim impact statement to the court.

accepted as admissible when the elder cannot attend hearing or trial.

- b. Proportion of applicable cases in which information regarding a victim impact statement is documented in court records.

Rationale

Elders may forget important facts or be physically unable to attend – possibly even deceased – by the time a hearing or trial is held. Therefore, we propose RS 1.3.G. However, based on the 2004 *Crawford v. Washington* Supreme Court decision, we add the important caveat that counsel for all parties should be included during any audio- or video-taped testimony²⁶.

In situations where a violent crime has been committed, victim impact statements may be used to justify modification to the procedures in order to protect victims from further trauma based on new visual and/or audio contact with the accused. However, it should be noted that in 2004, based on the *Crawford* decision, a state appeals court in San Jose struck down a 1999 elder-abuse law that allowed juries to hear videotaped statements to police from elder or incapacitated adults who later became unable to testify, finding that, because of *Crawford*, victims must be available at court for cross examination.

Paul Greenwood, Deputy District Attorney and Head of Elder Abuse Prosecutions for the San Diego DA's Office, suggested that preliminary hearings are preferable to grand jury proceedings in bringing criminal charges of elder abuse. Grand jury proceedings generally take much longer and defense attorneys have no opportunity for cross examination. Preliminary hearings have the advantage of being faster – generally within a few weeks of discovery of the crime – and the victim's preliminary hearing testimony is presentable at trial because there is no infraction of Sixth Amendment rights in this scenario. Mr. Greenwood further observed that *Crawford* does not preclude "excited utterances" or "spontaneous statements" of a victim in any case and also does not prevent prosecution where a victim is mentally incapacitated and therefore unable to testify (Greenwood, 2005).

Recommendation 12 of the *Recommended Guidelines (Stiegel, 1995)* suggested that courts allow special latitude to prosecutors when they question an older person who has been a victim of abuse, and in offering additional witnesses and corroborating evidence. Recommendations 14 and 15 suggested procedural innovations, including support for the idea of allowing an older abused person's testimony to be videotaped before capacity is lost or the individual dies. They also urged further analysis regarding the ramifications of courts taking steps, when necessary, to reduce the level of fear experienced by an older person who is testifying against his or her abuser, such as allowing the hearing to be held in a less

²⁶ In the *Crawford* ruling, the Supreme court said the Sixth Amendment prohibits hearsay evidence of a witness' "testimonial" statement -- no matter how trustworthy -- unless the defense has had a chance to cross-examine the witness.

confrontational setting than a courtroom, allowing testimony and cross-examination of the older abused person by videotape or closed-circuit television, and closing the courtroom to the public.

Recommended Substandard 1.3.H

The court keeps victims and defendants informed regarding reasons for all court dates and whether their presence is mandatory. (Similar RS in Table 2, p. 51)

Measure(s)

- a. Percentage of older court users who are satisfied with such notification.
- b. Percentage of cases in which notification is documented in court records.

Rationale

See rationale in Table 2, p. 51. RS 1.3.H and rationale is included here because data obtained from site interviews suggested that it also is relevant and important in criminal court.

EXPEDITION AND TIMELINESS

Standard 2.1 Case Processing:

The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

Recommended Substandard 2.1.A

The court maintains a policy of bringing multiple cases with the same older litigant into a single court, e.g., family court or elder justice court, to the greatest degree possible, consistent with such litigant's safety, privacy, and well-being. If a jurisdiction cannot accomplish this, the court designates a staff member to coordinate oversight of all cases involving one elder so that all judges assigned to those cases are fully advised and aware of all pending, related cases. (Same RS in Table 2, p. 51).

Measure(s)

- a. Percentage of multiple case situations involving the same litigants that are brought into one court.
- b. Percentage of older court users and attorneys representing older court users involved in multiple court case situations who are satisfied with court's processing of case.

Rationale

See rationale for RS 2.1.A in Table 2, p. 52.

EQUALITY, FAIRNESS, INTEGRITY

Standard 3.1 Fair and Reliable Judicial Process:

Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

Recommended Substandard 3.1.C

The court supports an approach to diminished capacity determination that is based on professional standards regarding medical, psychosocial, and functional ability statuses, with assessment performed within the alleged incapacitated person's (AIP's) familiar environment. Specifically, the court works with appropriate professional communities to develop criteria for the process of determining diminished capacity. (Same RS in Table 2, p. 61)

Rationale

See rationale for RS 3.1.C in Table 2 on page 61

Recommended Substandard 3.1.H

The court recognizes and accommodates the fact that older adults may need more time during testimony, more frequent breaks during hearings or trials, and more flexible scheduling of court events, and shorter court days while also recognizing the need to minimize the number of continuances by scheduling ongoing cases across consecutive days when needed. (Same RS in Table 2, p. 61.)

Rationale

See rationale for RS 3.1.H in Table 2 on page 61.

Standard 3.5 Responsibility for Enforcement:

The trial court takes appropriate responsibility for the enforcement of its orders.

Recommended Substandard 3.5.A

The court recognizes the need to partner with the agency or agencies in the jurisdiction charged with enforcing court orders for offenders, and specifically, compliance with (a) mandated treatment for older adult offenders in 100 percent of cases; (b) terms of protection orders in 100 percent of cases involving older victims; and (c) terms of probation in 100 percent of cases involving older victims. (Similar RS with same number appears in Table 2 on p. 62)

Measure(s)

- a. Percentage of cases in which capacity is determined using a standardized instrument that includes medical, psychosocial, and functional dimensions meeting established criteria.

Measure(s)

- a. Percentage of older court users and their attorneys satisfied with aspects of timing, including (a) not feeling rushed during testimony, (b) adequacy of breaks, (c) number of continuances, and (d) timeliness of bringing case to resolution.

Measure(s)

- c. Percentage of cases involving mandated treatment in which the court receives notification regarding compliance with mandated treatment for older adult offenders.
- d. Percentage of protection order cases involving older adult victims in which the court receives notification regarding compliance with POs.
- e. Percentage of probation cases

involving an older adult victim in which court receives confirmation that offenders are in compliance with terms of probation.

Rationale

In focus groups conducted in the planning process for New York's Domestic Violence Court, many judges reported that they do not possess enough information about defendants' behaviors to monitor compliance with orders of protection and other court mandates (Wolf et al., 2004). Nevertheless, in addition to getting regular reports from community agencies responsible for monitoring compliance with court-ordered sanctions, specialized courts (e.g., drug courts, domestic violence courts) have found it beneficial to require offenders to return frequently to court to report on their progress. For example, to enforce a monitoring tool that sends offenders the message that the court really cares about the case and would react swiftly to any violation, the New York State Domestic Violence court model requires defendants to return to court on a regular basis to report on their compliance with orders of protection or bail conditions. Additionally, "experience showed that quick judicial action improved defendant compliance." One special court in New York found that having offenders start community service within 24 hours of their appearance before a judge dramatically raised the rate of compliance (Wolf et al., 2004).

Planners for the New York State Domestic Violence Court thought that rigorous monitoring could help the court enforce orders of protection and keep victims safe. Defendants are required to return to court often. Also, the court built relationships with batterers' programs so that the court could stay better informed about defendant compliance. They also sought to improve communication among the various courtroom players so that crucial information – for instance, a report by a victim that a defendant had violated a protection order – would not slip through the cracks. One way they decided to improve monitoring was by developing a computer application that provides the judge up-to-date case information from a terminal on the bench (Wolf et al., 2004).

Standard 3.6 Production and Preservation of Records:

Records of all relevant court decisions and actions are accurate and properly preserved.

Recommended Substandard 3.6.A

To the greatest extent allowed by law, the courts have access to data shared by law enforcement and adult protective services on older victims of criminal elder mistreatment and domestic violence as well as on elder perpetrators of such acts. (Similar RS in Table 2, p. 64)

Measure(s)

- a. Percentage of court staff, law enforcement, and adult protective services staff satisfied with availability of data on shared clients.

Rationale

See rationale for RS 3.6.A in Table 2 on page 64.

SECTION 4
REFERENCES

- Adams, WE, Jr. (2000). Elders in the Courtroom. In: MB Rothman, BD Dunlop, and P Entzel (Eds), *Elders, Crime, and the Criminal Justice System: Myth, Perceptions, and Reality in the 21st Century*. New York: Springer, pp. 87-103.
- Aikman, AB (1994). *Total Quality Management in the Courts*. Williamsburg, VA: National Center for State Courts.
- Albrecht, J (1994). Meeting the needs of the disabled and elderly in court. *Judges Journal*, 33, 10-16, 38.
- Alexander, G & Lewin, T (1972). *The aged and the need for surrogate management*. Syracuse, NY: Syracuse University.
- American Bar Association (1991). *Reports with Recommendations to the House of Delegates (Commission on Legal Problems of the Elderly)*, Report No. 115, August 1991.
- American Bar Association, Commission on Legal Problems of the Elderly, and Commission on the Mentally Disabled (1989). *Guardianship: An Agenda for reform*. Washington, DC.
- Ashley, G (2005). Alameda County elder abuse court. *Contra Costa Times*, December 19, 2005.
- Baker, R, Lichtenberg, P, & Moye, J (1998). A Practice Guideline for Assessment of Competency and Capacity of the Older Adult. *Professional Psychology: Research and Practice*, 29(2), 149-154.
- Bayles, F & McCartney, S (1987). *Guardians of the elderly: An ailing system*. Associated Press.
- Batchelor, J (2004). New Pro Bono Program for Pro Se Family Law Litigants. *Delaware Law Weekly*, 7(9), D3.
- Bauer, JE, Duffy, GL, Westcott, RT (2002). *The Quality Improvement Handbook*. Milwaukee, WI: Quality Press.
- Beaulaurier, RL, Seff, LR, Newman, FL, & Dunlop, B (2005). Internal Barriers to Help Seeking for Middle Aged and Older Women who Experience Intimate Partner Violence. *Journal of Elder Abuse and Neglect*, 17, 3.
- Becker, J (2002). Psychological perspectives on competency. (Client Capacity, Estate Planning, and Malpractice Traps). *Elder's Advisor*, 3(3), 73 (11).
- Butterwick, SJ, Hommel, PA, Keilitz, I (2001). *Evaluating Mediations as a Means of Resolving Adult Guardianship Cases*. Ann Arbor, Michigan: The Center for Social Gerontology, Inc.
- Casey, PM (1998). Court Population in Need of Services: Defining the Court's Role. *Behavioral Science and Law*, 16, 157.
- Casey, PM & Rottman, DB (2003). *Problem-Solving Courts: Models and Trends*. Available on-line at www.ncsconline.org/wc/publications/comm_ProSolProbSolvCtsPub.pdf.

Commission on National Probate Court Standards (1993). *National Probate Court Standards*. A Project of the National College of Probate Judges and the National Center for State Courts, funded by the State Justice Institute (Grant No. SJI-91-12L-C-070) and the American College of Trust and Estate Counsel Foundation, and the Carstensen Foundation.

Coyne, KP & Nielsen, J (2002). *Usability for Senior Citizens*. Available on-line: www.useit.com/alertbox/20020428.html. April 28, 2002.

Department of Veteran's Affairs (1997). *Assessment of Competency and Capacity of the Older Adult: A Practice Guideline for Psychologists*. Milwaukee, WI: National Center for Cost Containment, Department of Veteran's Affairs.

Dudley, KC & Goins, RT (2003). Guardianship Capacity Evaluations of Older Adults: Comparing Current Practice to Legal Standards in Two States. *Journal of Aging and Social Policy*, 15(1), 97-115.

Dunlop, BD, Rothman, MB, Condon, KM, Hebert, KS & Martinez, IL (2000). Elder Abuse: Risk Factors and Use of Case Data to Improve Policy and Practice. *Journal of Elder Abuse and Neglect*, 12, 3/4, 95-122.

Elder Abuse: Decade of Shame and Inaction (1990). US House of Representatives, Select Committee on Aging, Washington, DC: US Government Printing Office.

Ferraro, KF (1997). The Gerontological Imagination. In KF Ferraro (ed.) *Gerontology: perspectives and issues* (2nd edition). New York: Springer.

Finkel, SI & Macko, IJ (2000). Impact of the Criminal Justice Process on Older Persons. In: MB Rothman & BD Dunlop (Eds), *Elders, Crime, and the Criminal Justice System: Myth, Perceptions, and Reality in the 21st Century*. New York: Springer, pp. 105-126.

Florida Department of Elder Affairs (2005). *Florida County Profiles 2004*. Available on-line at: <http://elderaffairs.state.fl.us/English/Stats/DOCS/2004cp.pdf>.

Gallas, G & Griller, G (2005). *Toward a NACM National Agenda: From Critique to Consensus to Action*. 2005 NACM Annual Conference Briefing Paper.

GAO (2005). *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People*. Washington, DC: General Accounting Office.

Golinger, RC & Ferdoroff, JP (1989). Characteristics of patients referred to psychiatrists for competency evaluations. *Psychosomatics: Journal of Consultation Liaison Psychiatry*, 30(3), 296-299.

Good Guardianship: Promising Practice Ideas on Community Links. State Court Partnerships with the Aging Network (2004). American Bar Association Commission on Law and Aging. Available on line: <http://abanet.org/aging/brochure1.pdf>.

Good Guardianship: Promising Practice Ideas on Court Links for Agencies on Aging, Adult Protective Services, and Long-term Care Ombudsman. State Court Partnerships with the Aging Network (2004). American Bar Association Commission on Law and Aging. Available on line: <http://abanet.org/aging/brochure2.pdf>.

Gore, A (1993). *From Red Tape to Results: Creating a Government that Works Better & Costs Less*. Washington D.C.: U.S. Government Printing Office

Greacen, JM (2002). *Self Represented Litigants and Court and Legal Services Responses to Their Needs: What We Know*. Greacen Associates, L.L.C., second draft July 20, 2002.

Greenwood, P (2005). E-mail message via Elder Abuse list-serve, sponsored by the American Bar Association. August 29, 2005, 8:53 a.m.

Grisso, T (1986). *Evaluating Competencies: forensic assessments and instruments*. New York: Plenum.

Grossberg, GT & Zinny, GH (1996). Medical-Legal Issues. In J Sadavoy, LW Lazarus, LF Jarvik, and GT Grossberg (Eds.), *Comprehensive Review of Geriatric Psychiatry-II 2nd Edition*. Washington, DC: American Psychiatric Press, Inc.

Grunfeld, AF, Larsson, DM, MacKay, K & Hotch, D (1996). Domestic violence against elderly women. *Canadian Family Physician*, 42, 1485-1493.

Guardianship Monitoring in Florida: Fulfilling the Court's Duty to Protect Wards (2003). Guardianship Monitoring Committee of the Florida Supreme Court Commission on Fairness. Tallahassee, FL: Office of the State Courts Administrator.

Hafemeister, TL & Sales, BD (1985). Interdisciplinary Evaluations for Guardianships and Conservatorships, *Law and Human Behavior*, 8, 335.

Haldipur, CV & Ward, MS (1996). Competence and other issues. In M. Hersen, CV Haldipur, and MS Ward (Eds.), *Psychological treatment of older adults*. New York: Plenum Press.

Herman, MM (2003). Pro Se: Self-Represented Litigants Trends in 2003: Limited Scope Legal Assistance: An Emerging Option for Pro Se Litigants. *Report on Trends in the State Courts 2003*, Williamsburg, VA: National Center for State Courts.

History (2006). Administration on Aging web site. Available on line at: www.aoa.gov/about/over/over_history_pf.asp.

Holt, GA, Hollon, JD, Hughes, SE, and Coyle, R (1990). OTC Labels: Can Consumers Read and Understand Them? *American Pharmacy*, NS30, 11, 51-54.

Hough, B. *Future Trends in State Courts 2004*. National Center for State Courts. Available on-line: www.ncsc.org.

Kapp, MB (2003). *The Law and Older Persons: Is Geriatric Jurisprudence Therapeutic?* Durham, NC: Carolina Academic Press.

Keilitz, I (2000). Standards and Measures of Court Performance. *Criminal Justice*, 4, 559.

Langley, GJ, Nolan, KM, Nolan, TW, Norman, CL, & Provost, LP (1996). *The Improvement Guide*. San Francisco, California: Jossey-Bass Publishers, p. xxiv.

Lighter, DE (1999). Continuous Quality Improvement-What every physician leader needs to know. In MJ Stahl & PJ Dean, PJ (Eds.). *The Physician's Essential MBA*. Gaithersburg, MD: Aspen Publications.

Lindsay, M & Shilton, MK (2002). The public is willing: public outreach and education on access to justice. *Fordham Urban Law Journal*, 29, 3, 1267(14).

Lisi, LB, Burns, A, Lussenden, K, (1994). *National Study of Guardianship Systems: Findings and Recommendations*, Ann Arbor, MI: The Center for Social Gerontology.

Millenson, M. (1997), *Demanding Medical Excellence*. Chicago, IL: University of Chicago Press.

Morgan, SP & Scott, JM (2003). *Prosecution of Elder Abuse, Neglect & Exploitation: Criminal Liability, Due Process and Hearsay*. Alexandria, VA: The American Prosecutors Research Institute.

Moye, J (1999). Assessment of Competence and decision making capacity. In PA Lichtenberg (Ed.), *Handbook of Assessment in Clinical Gerontology*. New York: John Wiley and Sons, Inc.

NCEA web site. Updated September 14, 2005. Available on-line at: www.ncea.org.

National Center for State Courts (2005). **CourTools**. Available on-line: www.ncsconline.org/D_Research/CourTools.

National Conference of the Judiciary on Guardianship Proceedings for the Elderly (1987). *Recommended Judicial Practices*, House of Delegates, August 1987.

National Research Council. (2003). *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America*. Panel to Review risk and Prevalence of Elder Abuse and Neglect. RJ Bonnie & RB Wallace (Eds.). Committee on National Statistics and Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

Oriol, W (1999). *Psychosocial Issues for Older Adults in Disasters*. Washington DC: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services.

Osborne, D & Gaebler, T (1992). *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*. Reading, MA: Addison-Wesley Publishing, Co., Inc.

Owen, CL, Standt, RW, Pedwell, EB (2002). *Access to Justice: Meeting the Needs of Self-Represented Litigants*. Chicago-Hunt College of Law: Pearson Custom Publishing.

Peters, T, Kauder, N., Campbell, C, and Flango, C (2005). *Future Trends in State Courts 2005*. Williamsburg, VA: National Center for State Courts.

Planning Guide for Using the Trial Court Performance Standards and Measurement System (1997). Washington, DC: Bureau of Justice Assistance, NCJ 161570, July 1997, NCJ 161568.

Post, L (2004). Domestic Violence Courts Become Integrated in New York. *New York Family Law Monthly*, 5(10), 3.

Quinn, MJ (2005). *Guardianships of Adults: Achieving Justice, Autonomy, and Safety*. New York, NY: Springer Publishing.

Quinn, MJ & Tomita, SK (1997). *Elder abuse and neglect: causes, diagnosis, and intervention strategies (2nd edition)*. New York: Springer.

Ralph, JB (1982). Geriatric visual concern: the need for publishing guidelines. *Journal of the American Optometric Association*, 53(1), 43-50.

Rasnow, T (2004). Where We Are and Where We Should Be Going: Helping People Before Court. Paper presented at the Summit on the Future of Self-Represented Litigation, March 2005. Sponsored by the National Center for State Courts and the State Justice Institute.

Regan, J (1972). Protective services for the elderly: Civil commitment, guardianship, and alternatives. *William and Mary Law Review*, 13, 569-622.

Rothman, MB & Dunlop, BD (2006). Judicial Responses to an Aging America. *Court Review*, 42 (1), 8-19.

Rothman, MB, Dunlop, BD, & Entzel, P (Eds.) (2000). *Elders, Crime, and the Criminal Justice System: Myth, Perceptions, and Reality in the 21st Century*. New York, NY: Springer Publishing.

Rothman, MB, Dunlop, BD, Seff, LR, & Pekovic, V (2005). *Disaster Planning for Older Adults in Palm Beach County*. North Miami, FL: The Center on Aging, Stempel School of Public Health, Florida International University, September 2005.

Rottman, D & Casey, PM (1999). Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts, *National Institute of Justice Journal*, 240, 12.

Sanggiry, SS & Cady, PS (1996). How the Elderly and Young Adults Differ in the Decision Making Process of Nonprescription Medication Purchases. *Health Marketing Quarterly*, 14(1), 3-21.

Statement of Recommended Judicial Practices on Guardianship Proceedings for the Elderly (1986). American Bar Association, the National Judicial College, and the Commission on Legal Problems of the Elderly.

Stiegel, LA (1995). *Recommended Guidelines (Stiegel, 1995) for State Court Handling Cases Involving Elder Abuse*. Washington, DC: The American Bar Association.

Teaster, PB, Wood, EF, Karp, N, Lawrence, SA, Schmidt, WC Jr., Mendiando, MS (2005). *Wards of the State: A National Study of Public Guardianship*. Lexington, KY: Graduate Center for Gerontology/Department of Health Behavior, University of Kentucky, March 2005.

The National Elder Abuse Incidence Study: Final Report (1998). Prepared by the National Center on Elder Abuse, in collaboration with Westat, Inc. for the Administration for Children and Families and the Administration on Aging, U.S. Department of Health and Human Services.

Trial Court Performance Standards with Commentary (1997). Washington, DC: Bureau of Justice Assistance, NCJ 161570, July 1997, NCJ 161570.

- Uekert, BK, Keith, A, & Rubin, T (2002). *Integrating Criminal and civil Matters in Family Courts: Performance Areas and Recommendations*. Williamsburg, VA: National Center for State Courts, August 19, 2002.
- Uekert, BK, Wentland, P, & Keilitz, S (2004). *Evaluation of Pennsylvania's Protection from Abuse Database: Survey of Counties*. Williamsburg, VA: National Center for State Courts, March 21, 2004.
- U.S. Older Americans Act, 1965. Public Law 89-73, passed July 14, 1965. Available on line: www.aoa.gov/ABOUT/legbudg/oa/OAA-compilation-unofficial.pdf
- Vaillancourt, B (1991). *Public benefit application forms: how they impede the application process*. Washington, DC: American Association of Retired Persons Public Policy Institute.
- Vanderplas, JM & Vanderplas, JH (1980). Some Factors Affecting Legibility of Printed Materials for Older Adults. *Perceptual and Motor Skills*, 50, 3(1), 923-932.
- Vinton, L (1999). Working with Abused Older Women From a Feminist Perspective. *Journal of Women and Aging*, 11, 2/3, 85-100.
- Walker, VL (1997). Legal needs of the public in the future. *Florida Bar Journal*, 71 (5), 42-48.
- Warren, R (2006). Judicial Accountability, Fairness, and Independence. Justice Robert H. Jackson Lecture, National Judicial College, July 21, 2005. *Court Review*, Spring 2006, 4-7.
- Wexler, DB & Winick, BJ (1996). *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*. Durham, NC: Carolina Academic Press.
- Winick, BJ & Wexler, DB (Eds.) (2003). *Judging in a Therapeutic Key*. Durham, NC: Carolina Academic Press.
- Wingspan – The Second National Guardianship Conference Recommendations (2002). *Stetson Law Review*, 31(3), 595-609.
- Wogalter, MS & Vigilante, WJ (2003). Effects of label format on knowledge acquisition and perceived readability by younger and older adults. *Ergonomics*, 46(4), 327-344.
- Wolf, RV, Aldrich, L, & Moore, S (2004). *Planning a Domestic Violence Court: The New York State Experience*. Center for Court Innovation.
- Wood, E (2005). History of Guardianship. In MJ Quinn (Ed.), *Guardianship of Adults: Achieving Justice, Autonomy, and Safety*. New York, NY: Springer Publishing, pp. 17-48.
- Wood, E, Dooley, JA, & Karp, N (1991). *Court Related Needs of Older Persons and Persons with Disabilities*. Washington, DC: American Bar Association, Commission on Legal Problems of the Elderly [and] Commission on the Mentally Disabled: National Judicial College, 1991.

APPENDIX A
PROJECT ADVISORY PANEL

Project Advisory panel

Michael L. Bridenback
Court Administrator
Administrative Office of the Courts
13th Judicial Circuit
Tampa, Florida

Alan Carlson
President, Justice Management Institute
Kensington, California

Pamela M. Casey
Principal Court Research Consultant
Research Division
National Center for State Courts
Williamsburg, Virginia

Debbie Howells
Executive Assistant
Office of the State Courts Administrator
Tallahassee, Florida

Tommy Jewell
District Judge, Division III (retired)
Bernalillo County
Albuquerque, New Mexico

Marshall B. Kapp
Garwin Distinguished Professor of Law and Medicine
Southern Illinois University School of Law
Carbondale, Illinois

Rebecca Morgan
Boston Asset Management Faculty Chair in Elder Law
Stetson University, College of Law
Gulfport, Florida

Gregory J. Youchock
Chief of Court Services
Office of the State Courts Administrator
Tallahassee, Florida

APPENDIX B
SITE VISIT INTERVIEW GUIDES

INTERVIEW GUIDE: GUARDIANSHIP

The Center on Aging of Florida International University is engaged in a research project funded by the State Justice Institute to develop or adapt existing Performance Standards and Measures to make them relevant to issues involving older adults specifically. The Standards and Measures are intended to be an internal self-assessment tool for courts to measure their ongoing effectiveness.

One of the areas we are exploring is Guardianship. We recognize that most courts may have never addressed standards and performance measures with respect to older adults, which is why our project is important. Therefore, we would like to solicit your opinions and recommendations to better understand what standards and measures would be most appropriate and useful.

1. What are the primary challenges for the court in the area of Guardianship for elders?
2. How does your court address these issues now? Do you have recommendations about how a court can best address these issues?
3. How might a court know if its efforts to address the issues were successful? Do you have any suggestions regarding the kinds of questions a court might ask or guidelines it might use when evaluating its effectiveness and fulfillment of its role?

Probe: For example, what questions might a Probate court ask itself to learn about its efficiency and/or outcomes for older persons under guardianship?

4. **To Be Asked Only With Chief Judge and Superior/Circuit Court Administrator: Why do you think most courts have not focused on issues regarding elders? If your court has chosen to focus on issues regarding elders what resistance did you encounter? How did you overcome it?**
5. Are there issues concerning timeliness of processing of Guardianship cases? Describe. How might a court measure timeliness of processing Guardianship cases?
6. What are the issues concerning the process of determination of the competency of a prospective ward?
 - a. Issues in assessing capacity, specifically?
 - b. To learn how well a court does in terms of determining competency/incapacity of older persons, what questions might it ask about its process and procedures
7. Does the court consider the least restrictive alternative in adjudicating Guardianship petitions? If not, should this be a standard? Why or why not? How might a court determine if a Guardianship represents the least restrictive alternative in a case? What options might be considered?

- a. If guardianship is determined to be the appropriate option in the course of a hearing, is instruction given to the guardian to look for the least restrictive environment, such as finding informal caregivers, support services, or an assisted living facility?
8. What issues are unique to public vs. private guardians? Are there any issues unique to family vs. corporate guardians? How would any differences affect how a court assesses its performance?
9. Other issues concerning the availability concerning, sufficient numbers of qualified professional guardians, public guardians, attorneys experienced in guardianship cases, or guardianship monitors?
10. What are the issues concerning the monitoring and accountability of guardians' activities?
 - a. What is the court's role?
 - b. How might a court know how successful were its efforts to monitor guardians' activities and/or assure accountability of guardians? Do you have any suggestions regarding the kinds of questions a court might ask?

Probe...for example, frequency of detected fraud or timeliness of fraud detection?

11. What are the issues concerning the availability of data/systems to track guardians and wards? Are there issues related specifically to record-keeping? What type of IT support would make it easier for the court and its staff to appropriately oversee Guardianships?
12. What are the issues concerning sanctions and enforcement?
 - a. What standards or guidelines would you recommend regarding the court's role in sanctions and enforcement? What sanction or enforcement options might a court need to have to make the court process more effective?
13. Are there other issues concerning a court's oversight of guardianship activity, e.g., numbers of cases, case re-openings, workload, competence of guardians, resources needed (such as magistrates, hearing officers, law clerks, case managers, and guardianship monitors) or other issues that we have not yet discussed?
14. Should judges presiding over guardianship cases receive at least some initial and continuing education on aging? On guardianship issues? Mental and physical infirmities? How would you suggest expressing this in a standard?
 - a. Is education on the special issues involved in older adult guardianship cases offered to judges? If not, why? If yes, do most judges take advantage of this education?

INTERVIEW GUIDE: SELF – HELP CENTERS

The Center on Aging of Florida International University is engaged in a research project funded by the State Justice Institute to develop or adapt existing Performance Standards and Measures to make them relevant to issues involving older adults specifically. The Standards and Measures are intended to be an internal self-assessment tool for courts to measure their ongoing effectiveness.

One of the areas we are exploring is the use of Self-Help Centers by older adults. We recognize that most courts may have never addressed standards and performance measures with respect to older adults, which is why our project is important. Therefore, we would like to solicit your opinions and recommendations to better understand what standards and measures would be most appropriate and useful.

1. Overall, what do you believe are the primary challenges and issues of concern regarding the use of Self-Help Centers by older adults?
2. Do you have any recommendations about how a Self-Help Center can address these issues?
3. What is the appropriate measure to assess a Self-Help Center's performance on each of these issues vis a vis older adults?
 - a. How might a Self-Help Center know how well it does for older persons? Do you have any suggestions regarding the kinds of questions that self-help centers might ask to assess effectiveness in terms of:
 - i. The range of topics available?
 - ii. How the resources are provided (i.e., process)?
 - iii. Availability of information, forms, or other types of assistance?
 - b. How might a Self-Help Center know if it benefits the court? What kinds of questions might be asked to assess the impact on the court?
4. Do you see any specific issues or challenges when older adults (vs. younger users) use the Self-Help Center as one approach in pursuing litigation without legal representation? Are there issues in any of the following areas?
 - a. Location of court facility
 - b. Physical access
 - c. Instructions
 - d. Large print
 - e. Computers/technology
 - f. Pre-filing and drafting the complaint or petition?
 - g. Post-filing and judicial review of the complaint or petition?
 - h. Processing of requests for counsel?
 - i. Evaluation of case for alternative dispute resolution?
 - j. Discovery process?
 - k. Drafting of motions and hearings on motions?

- l. Judicial intervention?
 - m. Final disposition of cases?
 - n. Processing appeals?
5. We use the term efficiency to refer to process, and effectiveness to refer to outcomes.
- a. Does use of the self-help center increase the efficiency and/or effectiveness of court administration in processing elder litigants through the system?

Probe: Does the SHC make the court run more smoothly and produce better results?

- b. How would you suggest defining and measuring court efficiency and effectiveness in these cases?
 - c. How would a court determine if use of the SHC improves outcomes for elder litigants?
6. Should judges presiding over cases where older litigants have used a Self-Help Center to learn how to represent themselves receive at least some initial and continuing education on aging? How would you suggest expressing this in a standard?

INTERVIEW GUIDE: CRIMINAL COURT (ABUSE, NEGLECT, EXPLOITATION, AND DOMESTIC VIOLENCE)

The Center on Aging of Florida International University is engaged in a research project funded by the State Justice Institute to develop or adapt existing Performance Standards and Measures to make them relevant to issues involving older adults specifically. The Standards and Measures are intended to be an internal self-assessment tool for courts to measure their ongoing effectiveness.

One of the courts we are exploring is criminal court, specifically in the area of felonies involving elders and abuse, neglect, exploitation, or domestic violence. We recognize that most courts may have never addressed standards and performance measures with respect to older adults, which is why our project is important. Therefore, we would like to solicit your opinions and recommendations to better understand what standards and measures would be most appropriate and useful.

1. What are the primary general issues of concern regarding elders who are involved in cases of abuse, neglect, exploitation, and/or domestic violence?
 - a. Elder defendants?
 - b. Elder victims?
2. Do you have any recommendations about how a court can better address these issues?
3. How might a court know if its efforts to address these issues were successful? What are your suggestions regarding the kinds of questions a court might ask to assess whether it was effective?
4. Should the court have a means of conducting screening or assessment of older individuals in jail prior to the first hearing? Why or why not?
5. What do you believe is the court's appropriate role in holding a defendant accountable when defendants or victims are older persons?
6. Should the court address penalties for offenders differently when the offender or victim is an older adult? If so, in what way?
7. Should the court address offender treatment differently when the offender or victim is an older adult? If so, in what way?
8. How could the court monitor compliance or effects of court-ordered...
 - a. pretrial release?
 - b. penalties?
 - c. treatment?
9. Should the court have a role in victim safety and welfare when victims are older persons? Why or why not?

Probes:

- a. Immediacy of response?**
- b. Intensive monitoring of defendant?**
- c. Coordination of appearances in multiple courts?**
- d. Coordination of legal issues and court services (e.g., in addition to criminal proceeding, victim is suing for divorce from defendant)?**
- e. Coordination of legal issues/court issues and community services?**
- f. Specialized staff?**
- g. Victim recovery?**
- h. Victim restitution?**

10. Does the court have a probation program or other type of program that brings offenders back into the courtroom for post-disposition monitoring?
- a. How might a court determine if it does a good job in terms of monitoring probation or other post-disposition monitoring efforts?
11. Should judges receive at least some training specific to elders in cases that include abuse, neglect, exploitation, and/or domestic violence charges? Describe.

Probe: Should the court system educate (a) elders, (b) health and human services professionals, (c) lawyers, and (d) the community, about services available through the court related to this issue? For example, how to get a restraining order...

- a. If yes, describe how this might be done?
12. Should the court address access of older victims of abuse, neglect, exploitation, or DV to court services? If so, how?
- a. How might a court measure itself in terms of assuring victims' access to court services?

FOCUS GROUPS QUESTION GUIDE: Guardians

Overview:

NOTES: Begin with self introductions. General note: create as casual an atmosphere as possible. Place chairs around a table or in a circle. Do not stand behind a desk or podium...it is better to sit down with the group.

The Center on Aging of Florida International University is engaged in a research project funded by the State Justice Institute to develop or adapt court Performance Standards and Measures to make them relevant to issues involving older adults specifically. The Standards and Measures are intended to be an internal self-assessment tool for courts to measure their ongoing effectiveness, helping not only the court, but older court users and persons representing older court users as well. It is important for you to understand that our study focuses on offering recommendations regarding standards and measures that reflect concerns specific to older court users. However, we are not evaluating the courts, per se, and will not be making recommendations regarding how to “fix” any issues and concerns that may come up during our discussion today.

One of the areas we are exploring is guardianship for elders and the Probate Court experience. We recognize that most courts have not addressed standards and performance measures with respect to older adults, which is why our project is important. Therefore we want to solicit your opinions and recommendations in order to better understand what standards and measures would be most appropriate and useful.

Our general approach will be to ask somewhat open-ended questions so that we hear from everyone in the group. Please remember that the group will be most helpful for us if all participants feel comfortable expressing their personal points of view. We welcome all opinions. No participant should be criticized for his or her point of view.

Although this is a discussion where you may choose whether or not to participate, our University monitors all projects where we talk directly to subjects. Therefore, before we go any further, please read the consent form I have given you. If you have any questions, please ask. Once your questions are answered, or if you have no questions, please sign the form where indicated unless you do not want to participate further. Please pass the forms up to me. If anyone wants a copy of this, I have extras for you to take with you at the end of the session.

Please say your first name each time you speak so we can keep track of participants on the recording.

1. To begin, I would like to ask each of you to introduce yourself and tell us about your most recent experience with the probate court in a situation that involved guardianship of an older person. Please briefly describe the issues of the case, any challenges with the court, and your opinion of the outcome.
2. I'm going to go around again, and now can each of you please tell us approximately how many guardianship cases you have been involved with. If you've been involved with more than one type of guardianship case, about how many of each type?

3. In your experience, what are the most challenging or problematic aspects of guardianship court proceedings for guardians of older persons?
4. In your experience, what aspects of the probate court or guardianship process works pretty well for guardians of older persons in this County?
5. What do you think would be some good indicators of whether a ward's legal needs are being met and legal rights are being protected? Have you ever used any of these indicators?
6. Remember that the goal of our project is to identify some ways that courts can measure themselves in terms of how well they do for older court users. How do you think the information generated by these measures should be used?
7. This is an opportunity for you to make suggestions regarding how the court might improve the guardianship approval and oversight process (a) to make things easier for guardians without compromising safety and rights of wards, and (b) to make things better for your wards. What recommendations do you have? **Note: Cover each of the specific probes below if the items have not already been covered in the group discussion.**
8. In your experience, are there any aspects of a ward's life that the court guardianship proceeding is not adequately addressing?

Specific Probes

- ***Any partial/limited guardianships represented?***
- ***Effectiveness of partial Gs? Issues?***
- ***Reports required by court***
- ***Burden of reports***
- ***Amount and type of monitoring by court***
- ***Similarity of public vs. private G treatment by court***
- ***Background of "visitors"/assessors typically? Appropriate?***
- ***Way court treats relationship of G to power of attorney***
- ***Proportion of cases coming via APS?***
- ***Racial/ethnic mix of caseloads***

FOCUS GROUPS QUESTION GUIDE: APS Professionals

Overview:

NOTES: Begin with self introductions. General note: create as casual an atmosphere as possible. Place chairs around a table or in a circle. Do not stand behind a desk or podium...it is better to sit down with the group.

The Center on Aging of Florida International University is engaged in a research project funded by the State Justice Institute to develop or adapt court Performance Standards and Measures to make them relevant to issues involving older adults specifically. The Standards and Measures are intended to be an internal self-assessment tool for courts to measure their ongoing effectiveness, helping not only the court, but older court users and persons representing older court users as well. It is important for you to understand that our study focuses on offering recommendations regarding standards and measures that reflect concerns specific to older court users. However, we are not evaluating the courts, per se, and will not be making recommendations regarding how to “fix” any issues and concerns that may come up during our discussion today.

One of the areas we are exploring is guardianship for elders and the Probate Court experience. We recognize that most courts have not addressed standards and performance measures with respect to older adults, which is why our project is important. Therefore we want to solicit your opinions and recommendations in order to better understand what standards and measures would be most appropriate and useful.

Our general approach will be to ask somewhat open-ended questions so that we hear from everyone in the group. Please remember that the group will be most helpful for us if all participants feel comfortable expressing their personal points of view. We welcome all opinions. No participant should be criticized for his or her point of view.

Although this is a discussion where you may choose whether or not to participate, our University monitors all projects where we talk directly to subjects. Therefore, before we go any further, please read the consent form I have given you. If you have any questions, please ask. Once your questions are answered, or if you have no questions, please sign the form where indicated unless you do not want to participate further. Please pass the forms up to me. If anyone wants a copy of this, I have extras for you to take with you at the end of the session.

Please say your first name each time you speak so we can keep track of participants on the recording.

1. To begin, I would like to ask each of you to introduce yourself and tell us about your most recent experience in the probate court with an APS client. Please briefly describe the issues of the case, any challenges with the court, and your opinion of the outcome.
2. What aspects of the probate/guardianship court in [this] County seem to consistently work pretty well in your experience as an APS professional -- For APS professionals? For clients/wards?
3. What are the most challenging or problematic aspects of guardianship court

proceedings in your experience as an APS professional?

Probe for both substantive and procedural challenges.

4. How do you know if you are meeting the needs of elders who you refer to the probate court? In terms of assuring that he/she lives in the least restrictive environment? In terms of offering the best possible quality of life? What about the needs of society...how do you know if you are meeting the needs of society as a whole in terms of the elders you refer to the probate court? If you don't measure these things now, what ideas do you have about what might be good indicators for these measures?
5. What are the reasons you interact with the court other than guardianship proceedings?
 - a. What about criminal cases of abuse, neglect, exploitation, and domestic violence. What has your experience been? Have you been involved with any cases that were tried in felony court?
 - b. Are there aspects of how these cases are handled that you would like, or not like, extended to guardianship proceedings?
 - c. Are there differences between situations where lawyers are involved in the proceeding (e.g., the prosecutor in criminal cases) and where they are not (e.g., no role similar to prosecutor in guardianship cases). Explain.
6. What do you think would be some good indicators of whether an APS client's legal needs are being met and legal rights are being protected? Have you ever used any of these indicators?
7. Remember that the goal of our project is to identify some ways that courts can measure themselves in terms of how well they do for older court users. How do you think the information generated by these measures should be used?
8. This is an opportunity for you to make suggestions regarding how the court interacts with APS professionals. What recommendations do you have? **Note: Cover each of the specific probes below if the items have not already been covered in the group discussion.**

Probes

- ***Which specific courts, e.g., probate, criminal, etc., do each of the APS professionals typically interact with?***
- ***Typical and atypical reasons for interaction with different jurisdictions?***
- ***Assessment of interactions?***
- ***Satisfaction with outcomes?***
- ***Experience with criminal courts in terms of elder abuse, neglect, exploitation and domestic violence?***