

**THE ELDER LAW AND  
MISCELLANEOUS REMEDIES  
DIVISION: A UNIQUE OPPORTUNITY  
TO SERVE AS A MODEL COURT FOR  
THE NATION**

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*The Circuit Court of Cook County, Illinois, announced the creation of the Elder Law and Miscellaneous Remedies Division on December 3, 2010. Several state court districts around the country have already implemented programs or created dockets focused exclusively on meeting the needs of elder litigants. Some programs consolidate cases involving litigants over a certain age or concerning certain topics to a single docket; others maintain traditional court dockets while providing elder litigants counseling, mediation, and advocacy services. Still others focus on homebound elders, making protective orders or assigned attorneys available over the telephone. These programs attempt to improve the ability of the local court system to meet the needs of an aging population by increasing access to the physical site of the court, modifying court schedules, limiting delays, and providing additional training to judges and other staff. The common practice of using a litigant's age as a key qualification for access to such services, however, is overly simplistic and can perpetuate stereotypes and practices that elder litigant services themselves are designed to address. Therefore, to be successful the new Elder Law and Miscellaneous*

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*Remedies Division should adopt practices of similar initiatives that improve access to and speed of courts while basing the availability of its services not simply on age, but also on the individual needs of litigants.*

## I. Introduction

“Imagine a Probate Court . . . which handles a landlord-tenant case involving an elderly widow who has rented out a room to an abusing and harassing tenant who will not vacate, and who needs to obtain a restraining order against her grandson who is using her premises to deal drugs.”<sup>1</sup> These are the words of the Honorable Julie Conger, the Superior Court Judge who pioneered the Elder Protection Court in Alameda County, California, and whose presence is often requested at state and national events regarding this award-winning, innovative court system.<sup>2</sup> On December 3, 2010, the Circuit Court of Cook County followed the Elder Protection Court’s lead when Chief Judge Timothy Evans announced the establishment of the Elder Law and Miscellaneous Remedies Division, touted as “a new division dedicated to elder law matters.”<sup>3</sup> Chief Judge Evans’s words make it clear that the Circuit Court of Cook County wishes to do more than simply improve its own services to litigants within its borders; along with new appointments to the presiding judge positions in several divisions, the new division “[is] designed to ensure that the Circuit Court of Cook County remains on its current trajectory as a model court for the nation.”<sup>4</sup>

Is the Elder Law and Miscellaneous Remedies Division truly a model court for the nation? Or is it indicative of a disturbing trend emerging for litigants deemed “over the hill” by judicial administra-

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1. Julie Conger, *Elder Protection Court, an Introduction*, JOURNAL 5, 5, <http://www.vermontjudiciary.org/CommissionLibrary/Elder%20Protection%20Court.pdf>.

2. *Elder Abuse: Legal Issues*, PROBATE FORUM PROGRAM (Jan. 25, 2007), available at <http://www.centerforjudicialexcellence.org/documents/ElderForumProgram.pdf> [hereinafter PROBATE FORUM PROGRAM]. Judge Conger is now retired. Patricia Banks, *A New Age and a New Court for Older Litigants*, 22 EXPERIENCE 12 (2012).

3. Press Release, Circuit Court of Cook Cty. Chief Judge Evans Begins Series of Sweeping Changes Throughout the Court System (Dec. 3, 2010), <http://www.cookcountycourt.org/MEDIA/ViewPrViewPressR/tabid/338/ArticleId/458/Chief-Judge-Evans-begins-series-of-sweeping-changes-throughout-the-court-system.aspx>.

4. *Id.*

tors? Part II of this Note introduces a number of court initiatives aimed at elders, including the Elder Protection Court created in Alameda County, California, and the recent announcement that the Circuit Court of Cook County is following Alameda County's example. Elder Justice Centers in Florida—although not specific branches of the court system but rather a system of resources for older litigants—also betray the trend.<sup>5</sup> Kentucky and New York programs aimed at older homebound individuals are also a new feature of certain courts that are worth exploring.<sup>6</sup> Though the Elder Law and Miscellaneous Remedies Division has yet to open its doors to litigants, Presiding Judge Banks's statements regarding the litigants that will be served indicate that at least some individuals may have their cases forced into the new division based solely on age, even though their matters have traditionally been handled in many other divisions of the circuit court.

Part III examines the justifications for isolating this segment of the litigant population and the stereotypes it may perpetuate, as well as other specialty courts that have proven successful and the existing organization of the Circuit Court of Cook County. Access issues specifically affecting elders are integral to understanding the Elder Law and Miscellaneous Remedies Division (as well as other court programs already in place), as is the benefit that increased community connections can provide the court and litigants. Additionally, Part III will give the crime of elder abuse special consideration in this context. Finally, Part IV suggests that the Elder Law and Miscellaneous Remedies Division truly will serve as a model for the nation by offering needed services to elder litigants, forged through greater community connections, but that it will be most successful by ensuring that no litigants are thrust out of mainstream courtrooms solely due to preconceived notions concerning the consequences of their advanced age.

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5. *Victim Services Directory (Elder Justice Center)*, FLA. OFFICE OF THE ATTORNEY GENERAL (copy on file with author).

6. Lori A. Stiegel & Pamela B. Teaster, *Final Technical Report to the National Institute of Justice*, A.B.A. & UNIV. KY. RESEARCH FOUND. (2011), available at [http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011\\_aging\\_ea\\_multi\\_assess.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/2011/2011_aging_ea_multi_assess.authcheckdam.pdf). This report, conducted by the American Bar Association in connection with the University of Kentucky Research Foundation, is cited throughout this Note and it focuses on the five court initiatives discussed. Each was chosen by the ABA because it was either a specific court system or a program partnered with a court that the researchers felt was heavily tied to the crime of elder abuse. *Id.*

## II. Background

Recent years have seen the creation of a number of specialty courts and court programs aimed at elder litigants,<sup>7</sup> and a quick look at their offerings and missions is integral before a discussion of how the Elder Law and Miscellaneous Remedies Division may further the progress that they have started.

### A. Elder Protection Court (Alameda County, California)

The Elder Protection Court was established in 2002 and has a separate court calendar for litigants over a particular age.<sup>8</sup> This offers a shorter time litigants must wait to have their cases heard, as well as a myriad of social services.<sup>9</sup> It considers itself a “model program for other courts to consider.”<sup>10</sup> To act as a model program is the least of this court’s ambitions—the Court’s innovator, Judge Julie Conger, considers the Elder Protection Court to be “a visionary paradigm for the court of the future which truly provides access [for] our most needy community members.”<sup>11</sup> Conger says that such special treatment is warranted for elders just as it is for younger members of society, and that both specialty courts serve to accomplish the important goal of protecting the most vulnerable individuals.<sup>12</sup> The Elder Protection Court is also unique in that it hears matters that are both civil and criminal in nature.<sup>13</sup>

There are many benefits that come along with the centralization of matters in the Elder Protection Court. These benefits begin with technology that can be helpful in capturing testimony in the event

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7. See generally *id.* (discussing in depth the court initiatives in California, Florida, New York and Kentucky that have recently been developed).

8. See PROBATE FORUM PROGRAM, *supra* note 2.

9. Conger, *supra* note 1, at 11.

10. *Alameda Elder Abuse Protection Court*, YOUTUBE, <http://www.youtube.com/watch?v=FrKEX-6KLWk> (last visited Nov. 26, 2012).

11. Conger, *supra* note 1, at 11.

12. *Id.* at 5 (citing juvenile divisions of the court system as an example of another department of the courts that, like the Elder Protection Court’s service of litigants who are elderly or have disabilities, serves potentially vulnerable individuals in society).

13. See PROBATE FORUM PROGRAM, *supra* note 2 (citing Conger as having established an Elder Abuse Court that hears both civil and criminal cases throughout their progress through the court system); see also Conger, *supra* note 1, at 5 (quoting Julie Conger’s exaltation of the strength of a court system that can handle civil and criminal cases emanating from the same pattern of conduct affecting elder litigants).

something should happen to the elder witness or party before the matter is resolved.<sup>14</sup> The efficiency of the Elder Protection Court helps to promote shorter time spent at the courthouse as well as additional privacy, which is especially appealing considering that the actions in which elder litigants are parties often involve delicate personal issues.<sup>15</sup> Indeed, the Elder Protection Court can attribute much of its success to these simple measures, which allow litigants to predict more accurately when their matters will be heard, and escape a more “frenzied court environment.”<sup>16</sup> Perhaps the greatest benefits, however, come from the additional services available to the litigants (especially *pro se* parties), such as court staff to assist with testimony preparation or a special elder abuse case manager who is also knowledgeable concerning referrals to other beneficial services.<sup>17</sup> Greater links to the community can also be forged through such efforts. For example, many California counties have created Elder Abuse Councils, which have been staffed with personnel from all local organizations that deal with matters involving elderly and dependent individuals.<sup>18</sup>

In addition to praise for Judge Julie Conger, the Elder Protection Court has received recognition not only for providing increased access for litigants, some of whom are being abused, but also as an innovative system that may be readily transferred to other state court systems.<sup>19</sup> Due to her role as the impetus for the court, Judge Conger often is seen as an expert on such matters—for instance, she was asked to speak at the First National Meeting of Elder Abuse and the Courts

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14. Conger, *supra* note 1, at 6 (explaining that video equipment makes conditional examinations, which include confrontation and cross-examination, possible).

15. JUDICIAL COUNCIL OF CAL. ADMIN. OFFICE OF THE COURTS, INNOVATIONS IN THE CALIFORNIA COURTS: MODELS FOR ADMINISTERING JUSTICE, 12 (2005), [http://www.flcourts.org/gen\\_public/cmplx\\_lit/bin/reference/Other%20States/California/innovationsCal%20Cts.pdf](http://www.flcourts.org/gen_public/cmplx_lit/bin/reference/Other%20States/California/innovationsCal%20Cts.pdf).

16. Stiegel & Teaster, *supra* note 6, at 23.

17. Conger, *supra* note 1, at 6.

18. *Id.* at 7; see Stiegel & Teaster, *supra* note 6, at app. A-1, 1 (explaining that the Elder Access Committee involved with the Elder Protection Court is comprised of individuals from several community organizations that meet periodically and facilitate discussions concerning “challenges, resources, training opportunities, collaboration, and much more.”).

19. Press Release, Judicial Council of Cal., Eleven California Courts Win Top Awards (Apr. 15, 2005), <http://www.alameda.courts.ca.gov/Pages.aspx/2005> (click hyperlink entitled “Alameda’s Elder Abuse Protection Court is recipient of 2005 Kleps Award”).

Working Group.<sup>20</sup> The court's influence is apparent, as it has grown not just in California, extending further into the San Francisco Bay region,<sup>21</sup> but also in other state's efforts, including Cook County's court system.

#### **B. Elder Law and Miscellaneous Remedies Division (Cook County, Illinois)**

The creation of the Elder Law and Miscellaneous Remedies Division in late 2010 is an example of both the Elder Protection Court's spreading influence and the promise of what Chief Judge Evans claims to be part of continuing changes in the Circuit Court of Cook County.<sup>22</sup> Along with the announcement of the division, the Honorable Patricia Banks was named as its Presiding Judge.<sup>23</sup> Judge Banks, formerly serving in the Law Division, was to "hear those elder law matters formerly heard in the Probate Division," according to the first statement released articulating the division's jurisdiction.<sup>24</sup> Though announced in December 2010, the new division has yet to hear a single case, with no definite plans on when it will open its doors to litigants and their controversies.<sup>25</sup>

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20. BRENDA UEKERT ET AL., THE NAT'L CTR. ON STATE COURTS, POLICY PAPER: A REPORT FROM THE FIRST NATIONAL MEETING OF THE ELDER ABUSE AND THE COURTS WORKING GROUP MEETING 18 (2006), <http://www.ncsconline.org/famviol/elderabuse/pdf/meetingreportfinal.pdf>.

21. Conger, *supra* note 1, at 5.

22. Chris Bonjean, *Chief Judge Evans Reshapes Circuit Court Leadership, Forms New Elder Law Division*, ILL. LAW. NOW (Dec. 3, 2010), <http://iln.isba.org/2010/12/03/chief-judge-evans-reshapes-circuit-court-leadership-forms-new-elder-law-division>.

23. Press Release, *supra* note 3. Prior to becoming a member of the judiciary, Judge Banks's practice focused on probate and family law. She has advanced training in the area of "Adult Guardianship and Eldercare Mediation," is a recent appointee to the American Bar Association Commission on Law and Aging, and, in 2011, received the "Governor's Award for Unique Achievement in Recognition of Dedicated Community Service and Exceptional Concern for Illinois Seniors." Banks, *supra* note 2, at 13.

24. Banks, *supra* note 2, at 13.

25. *Id.* An initial call to Presiding Judge Banks' chambers by the author indicated that the jurisdiction of the division might be more certain by January or February, 2012. A call on February 15, 2012 indicated that the division was not yet up and running and a date when it would be was still uncertain. Subsequent phone calls in March, accompanied by a request for the author to interview Judge Banks, were unreturned. Speculation among the elder law community that the division would officially open its doors in late March was unrealized and a phone call in late May 2012 confirmed that there have been no new developments as to the division's opening, nor its jurisdiction. An article written by Judge Banks said that the

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Thanks to an article written by Judge Banks herself, however, more information has recently become available concerning the development of the division, as well as the various resources it will offer litigants. It is apparent that the time between which the court was first announced in December 2010 and the present has been filled with an immense amount of work behind the scenes for Judge Banks and her team. First, she has strived to ensure that the division incorporates recommendations of many groups who aim to increase the access older litigants have to the court system.<sup>26</sup> In addition, even in the earliest days of development, Judge Banks reached out to Judge Julie Conger to get her involved in the court's inception.<sup>27</sup> Most importantly, Judge Banks created what she deemed a "Workgroup" made up of "elder law practitioners, two law schools, the Cook County Probation Department, the Illinois Department on Aging, and representatives from the offices of the Illinois State's Attorney, Public Defender, Attorney General, Public Guardian, and the Chicago Police Department"<sup>28</sup> to assist her with planning every aspect of the division's creation. Already a diverse group, Judge Banks reached out to others as well, including members of the clergy, forensic experts and elderly individuals themselves.<sup>29</sup> Ultimately, over one hundred interviews with such individuals were conducted and the collective wisdom gleaned reveals, in Banks's words, the "need for a centralized and holistic response toward older adults utilizing the courts."<sup>30</sup>

In regard to the litigants that will be served by the division, it is apparent this was given careful thought as an entire subcommittee within the Workgroup was given the task of "Research of Age Category Versus Elder Definitions."<sup>31</sup> Judge Banks revealed that she and her Workgroup reached a "consensus on the threshold age of 60 for

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division would open in August 2012 (Banks, *supra* note 2, at 12), but that goal has not come to fruition. A phone call to Judge Banks's law clerk on November 9, 2012 verified that the division is still not open.

26. Banks cites the American Bar Association, American Association of Retired Persons, National Association of Elders Lawyers Association, and the National Center for State Courts as such groups. Banks, *supra* note 2, at 14.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 16.

31. *Id.* at 15. Judge Banks also noticed the wide disparity in definitions in the Illinois Compiled Statutes, noting "the legislature has classified adults as elderly at different ages—anywhere from 55 to 70—for different purposes." *Id.*

criminal and domestic violence cases” but that Workgroup members were “less comfortable with using a threshold age of 60 without more criteria in many of the civil causes of action,” so they ultimately “adopted, for civil matters, a minimum age of 60 plus the additional criterion of cognitive disability or vulnerability.”<sup>32</sup> She also states that both civil and criminal matters will be heard in the division.<sup>33</sup> While some cases will be filed directly in the division, Cook County judges may transfer others to the division based on “well-defined criteria.”<sup>34</sup> During development, Judge Banks’ venue subcommittee considered many aspects of the division’s reach, including how the budget would affect it, the inception of cases in the division (mandatory versus permissive filings, as well as transfers) and also ways to identify litigant age without engaging in discrimination.<sup>35</sup>

The Elder Law and Miscellaneous Remedies Division will incorporate a number of other services into its offerings as “[i]t was agreed . . . that the inclusion of social services would be integral to its effectiveness.”<sup>36</sup> Judge Banks has announced that the division will be “supported by a new resource center, the Cook County Elder Justice Center, which will be staffed by a multidisciplinary team.”<sup>37</sup> During development, Judge Banks and her team visited various sites of existing models discussed in the other portions of this Note. She notes that the Thirteenth Judicial District Elder Justice Center was one of the places visited and that “many EJC features” will be incorporated into the Cook County version.<sup>38</sup> Ultimately, the aspiration is that the Cook County Elder Justice Center “will provide . . . training, counseling, assessments, mediation, hotline support, informational brochures, and other resources to improve elderly adults’ access to the court.”<sup>39</sup>

Looking ahead to the future of the division, Judge Banks and her team have also “created a 45-person ELMRD [Elder Law and Miscellaneous Remedies Division] Task Force, drawing members from the

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32. *Id.* Note, however, that “[t]he Workgroup did not add this additional criterion where civil statutes had already specified age 60.” *Id.* The article does not further explain what is meant by “vulnerability.”

33. *Id.* at 14.

34. *Id.*

35. *Id.* at 16.

36. *Id.* at 15.

37. *Id.* at 14.

38. *Id.* at 16.

39. *Id.* at 22.

public and private sectors” that will “bring together and guarantee sustainability of the ELMRD and the Cook County Elder Justice Center in the Circuit Court of Cook County.”<sup>40</sup> Although little public information can be found regarding the Task Force, a government blogger who spoke with Judge Banks described it as a way “to train judges on elder law issues.”<sup>41</sup>

One thing that Judge Banks has already clearly done right is to recognize that “[t]here has been a *de minimis* amount of elder law training and education for the bench and court personnel”<sup>42</sup> and get the ball rolling on the educational process. The division, along with a committee of attorneys dedicated to the field of elder law, developed an elder law seminar that would span two days, which took place on March 22 through 23, 2012. Although designed to be comprehensive in nature, the seminar allowed individual attendees to choose between “guardianship, criminal, consumer, and special-topic tracks.”<sup>43</sup> There are many questions still left open regarding the Elder Law and Miscellaneous Remedies Division, but Judge Banks’ admissions reveal that it may realize much promise in the quest for a model court for the nation. Its promise will be even more apparent if, when the division’s doors open, a greater means for separating litigants over sixty on criminal dockets is realized, rather than basing the entire inquiry on age alone, as the article may suggest.

### C. Elder Justice Centers (Thirteenth & Fifteenth Judicial Circuits, Florida)

Florida’s Elder Justice Centers differ fundamentally from the Elder Protection Court and Elder Law and Miscellaneous Remedies Division because they are not courts, but rather ancillary court programs for individuals over the age of sixty.<sup>44</sup> These litigants are in need of services during a range of proceedings, from guardianship actions to civil cases that involve the family or even criminal matters.<sup>45</sup> The

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40. *Id.*

41. Skip Humphrey, *Illinois: Working Hard to Protect Seniors*, CONSUMER FIN. PROTECTION BUREAU (Mar. 14, 2012), <http://www.consumerfinance.gov/blog/illinois-working-hard-to-protect-seniors/>.

42. Banks, *supra* note 2, at 16.

43. *Id.* at 16, 22.

44. FLA. STAT. ANN. § 4.107-9/08 (West 2008).

45. FLA. STAT. ANN. § S-2010-101 (West 2010).

Thirteenth Judicial Circuit's website sums up the Elder Justice Center's mission neatly, calling the Elder Justice Center a "Gateway to the Courts."<sup>46</sup> The range of services offered by the Thirteenth Judicial Circuit's Elder Justice Center (which includes individuals who live in Hillsborough County, Florida) is wide, including "publication education," "crisis counseling," "mediation and dispute resolution," and "criminal justice support/advocacy" according to the Florida Office of the Attorney General.<sup>47</sup>

The Thirteenth Judicial Circuit's Elder Justice Center was created in 1999—three years prior to the creation of the Elder Protection Court—and was made possible by way of grant funding through a number of community organizations focused on research and social services for elders and crime victims.<sup>48</sup> The court program's founders recognized the important role these centers serve in the community and, in a plea to the U.S. Senate Special Committee on Aging to implement more centers throughout the country, extolled the Elder Justice Center for "address[ing] the inevitable fear, confusion, uncertainty, [and] lack of confidence experienced by many elders confronting the courts for perhaps the first time, especially those with dementia or mental health issues."<sup>49</sup> The Florida legislature also had a hand in creating this program, authorizing a statutory scheme that includes centers in the Fifteenth Judicial Circuit.<sup>50</sup>

The Elder Justice Center's goal is not only to increase access to the courts for seniors, but also to assist the community and court in

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46. *Elder Justice Center*, THIRTEENTH JUDICIAL CIRCUIT ADMIN. OFFICE OF THE COURTS, <http://www.fljud13.org/CourtPrograms/ElderJusticeCenter.aspx> (last visited Nov. 26, 2012) (a drawing on the website shows the courthouse doors thrust open by the scales of justice, with the words "Elder Justice Center" and "Gateway to the Courts" accompanying the image).

47. *Victim Services Directory*, *supra* note 5.

48. *About Elder Justice Center*, THIRTEENTH JUDICIAL CIRCUIT ADMIN. OFFICE OF THE COURTS, <http://www.fljud13.org/CourtProgramsBusinessOperations/ElderJusticeCenter/AboutElderJusticeCenter.aspx> (last visited Nov. 26, 2012).

49. *Id.*

50. See § S-2010-101 (explaining the Elder Justice Center's role in guardianship proceedings in the Thirteenth Judicial Circuit); see also FLA. STAT. ANN. § 4.107-9/08 (West 2008) (authorizing Elder Justice Center staff in the Fifteenth Judicial Circuit to offer services to criminal defendants over the age of sixty); Stiegel & Teaster, *supra* note 6, at 4 (servicing older criminals by identifying when cognitive issues may be at the heart of their criminal activity so that those individuals are not sent to prison but rather rehabilitated in various counseling programs aimed at solving mental health or substance abuse issues).

matters affecting the elderly. For example, the Elder Justice Center in the Thirteenth Judicial Circuit offers case management services to the aged and offers a class for individuals who would like to serve as a guardian to an elderly person.<sup>51</sup> In addition, staff members directly assist the court with assessments of guardianship proceedings by preparing and filing reports for the court's review.<sup>52</sup> Who makes up these staff members? Advocates, case managers and counselors serve the elderly litigants, the community, and the court itself by taking on this support role. Such individuals do whatever is needed in a particular situation, whether it is tracking a litigant's progress, referring individuals to other social services, or simply serving as emotional support.<sup>53</sup>

#### **D. In-Home Emergency Protective Order Initiative (Jefferson County, Kentucky)**

Far different from the Elder Protection Court, Elder Law and Miscellaneous Remedies Division, or Elder Justice Centers, is a new type of initiative which began in Jefferson County, Kentucky in 2005.<sup>54</sup> Described by Louisville's Metro Police as a "service [that] assists in the issuance of Emergency Protective Orders (EPOs) for medically fragile/homebound elderly victims of abuse,"<sup>55</sup> the initiative is available to eligible litigants age sixty and older, who may obtain certain domestic violence orders over the telephone.<sup>56</sup> The program is able to function due to the efforts of several community organizations and agencies, including the local Clerk's Office, state Family Court, the local chapter of Adult Protective Services, and the Sheriff's Office, as well as a regional nonprofit organization, Elder Serve, Inc.<sup>57</sup>

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51. FAQs, THIRTEENTH JUDICIAL CIRCUIT ADMIN. OFFICE OF THE COURTS 1, <http://www.fljud13.org/CourtPrograms/ElderJusticeCenter/FAQs.aspx> (last visited Nov. 26, 2012).

52. *Id.*

53. *Id.* (noting, however, that Elder Justice Center staff are not responsible for giving litigants legal advice).

54. Stiegel & Teaster, *supra* note 6, at 3.

55. *Crimes Against Seniors Information*, LOUISVILLEKY.GOV, <http://www.louisvilleky.gov/MetroPolice/CrimesAgainstSeniors.htm> (last visited Nov. 26, 2012).

56. Stiegel & Teaster, *supra* note 6, at 3.

57. *Id.*

### E. Elder Temporary Order of Protection Initiative (Kings County, New York)

Similar to the Kentucky program, the Elder Temporary Order of Protection (ETOP) initiative in New York also serves to help older litigants who have been victimized by the horrors of domestic violence and who may also have trouble traveling to the courthouse to obtain protection thanks to “great hardship due to infirmity or disability.”<sup>58</sup> Eligibility comes with the aforementioned conditions, as well as reaching a minimum of sixty years of age.<sup>59</sup> Individuals taking part in the program are not only assigned an attorney, but a social worker as well, both of whom provide a variety of services to the elderly litigant.<sup>60</sup> In addition, such individuals act as a link to the local District Attorney’s Elder Abuse Unit, Family Court and the local Clerk’s Office.<sup>61</sup>

### F. Demographic Shifts Inciting Change

The concentrated efforts of local courts to improve their services to aged litigants makes one wonder why such a push seems imperative now. The changing demographic structure of the United States likely provides the answer. Since 1950, the U.S. population has increased more than twofold—from 152.3 million in 1950 to 307.5 million today. The numbers are not the only change—as the Population Reference Bureau put it, “[t]he U.S. is getting bigger, older and more diverse.”<sup>62</sup> Projections of future population show that this is just the beginning of the trend—the United States Census Bureau estimates that by the year 2030, 71.5 million Americans will be sixty-five or older.<sup>63</sup> This is a large departure from previous figures.<sup>64</sup> By 2050, over

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58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. LAURA B. SHRESTHA & ELAYNE J. HEISLER, CONG. RESEARCH SERV., RL 32701, THE CHANGING DEMOGRAPHIC PROFILE OF THE UNITED STATES 1 (2009), <http://aging.senate.gov/crs/aging4.pdf> (internal citations omitted); *see id.* at 13 (“Since 1950, the United States has been in the midst of a profound demographic change: rapid population aging, a phenomenon that is replacing the earlier ‘young’ age-sex structure with that of an older population.”).

63. Richard Van Duziend, *The Implications of an Aging Population for the State Courts*, NAT’L CTR. FOR STATE COURTS (2008), <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/208>.

twenty percent of the U.S. population will be over age sixty-five, with projections coming in at 88.5 million.<sup>65</sup> Much of this is due to increased life expectancy rates, which can be attributed in part to health care advancements.<sup>66</sup>

The reason for such rapid population aging also can be credited to the Baby Boom generation. As is well known, “[a]verage fertility in the United States reached a post-World War II maximum during the peak of the ‘baby boom’ in the late 1950s.”<sup>67</sup> Baby Boomers, those born between the years of 1946 and 1964,<sup>68</sup> not only affect the demographic structure of the United States, but also have had a profound impact on state judicial systems during every major phase of their lives. For example, Baby Boomers’ adolescence in the 1960s and 70s resulted in a surge of juvenile cases, with a flux of domestic relations cases soon following this generation’s entrance into maturity. Court response was required, and many state courts dealt with the bevy of cases by developing special programs, court calendars, and different techniques to handle disputes.<sup>69</sup>

This means that as the Baby Boomers reach elderly status (“America’s 78 million Baby Boomers . . . are turning 65 at a rate of one every 10 seconds”),<sup>70</sup> the state courts will have to deal with a whole new host of issues. In less than a quarter century, the doubling of Americans aged sixty-five plus will cause an explosion of matters falling within the jurisdiction of elderly-aimed court dockets, which also means new issues for court systems nationwide.<sup>71</sup> While many are concerned with the special challenges that accompany a society that is rapidly growing older, this segment of the population’s effect on the judicial system has been largely unexplored. Much work needs to be done to gain knowledge regarding the “nature of situations that

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64. *See id.* (citing the number of Americans age sixty-five plus as 35 million, or 12.4% of the total U.S. population in the year 2000).

65. SHRESTHA & HEISLER, *supra* note 62, at 17.

66. *Older Americans 2008: Key Indicators of Well-Being*, AGINGSTATS.GOV, [http://www.agingstats.gov/agingstatsdotnet/Main\\_Site/Data/2008\\_Documents/Health\\_Status.aspx](http://www.agingstats.gov/agingstatsdotnet/Main_Site/Data/2008_Documents/Health_Status.aspx) (last visited Nov. 26, 2012). “Life expectancy is a summary measure of the overall health of a population . . . represent[ing] the average number of years of life remaining to a person at a given age if death rates were to remain constant.” *Id.*

67. SHRESTHA & HEISLER, *supra* note 62, at 4.

68. *Id.* at 17.

69. Van Duziend, *supra* note 63, at 1.

70. Banks, *supra* note 2, at 13.

71. Van Duziend, *supra* note 63, at 1.

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."<sup>72</sup> In addition, it is almost certain that the litigants will demand such a response, and that they will get their way. Recent data also indicates that older U.S. citizens are often educated individuals with a significant amount of wealth, both of which translate into political power.<sup>73</sup>

As the population ages, one thing is certain—more individuals of advanced age and with disabilities will enter the judicial system, either as litigants or as witnesses in legal matters.<sup>74</sup> Mental clarity issues will undoubtedly affect many members of such populations—for example, the Alzheimer's Association approximates that the number of Americans with Alzheimer's Disease will be almost one million by the year 2050.<sup>75</sup>

The types of matters facing state courts will also change. Probate cases, guardianship matters, elder abuse cases, and allegations that fiduciaries have abused their positions of trust will explode in number.<sup>76</sup> The types of services the judiciary offers will also need to change to meet the needs of elder litigants.<sup>77</sup> In addition, time is the enemy for most litigants past a certain age; delays in the judicial process can result in especially tragic consequences, so that traditional actions may not be the most beneficial form of dispute resolution for elders.<sup>78</sup> Problems with access to court will also come to the fore. For example, the courthouse may not be friendly to litigants who fall under the protection of the Americans with Disabilities Act, and others

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72. MAX B. ROTHMAN ET AL., ADAPTING TRIAL COURT PERFORMANCE STANDARDS TO AN AGING SOCIETY: GUARDIANSHIP, SELF-SERVICE, AND CRIMINAL CASES INVOLVING ELDER MISTREATMENT AND DOMESTIC VIOLENCE (2006), available at <http://www2.fiu.edu/~coa/downloads/elder%20justice/SJI4-03-06.pdf>.

73. LAWRENCE A. FROLIK & RICHARD L. KAPLAN, ELDER LAW IN A NUTSHELL 2 (5th ed. 2010).

74. ERICA WOOD ET AL. (1991) (coming about after the 1991 National Conference, this book sets forth the concerns and recommendations made by the over two hundred individuals in attendance, who were comprised of court system leaders, practicing elder law attorneys and individuals from community organizations making up the aging and disability networks).

75. Van Duziend, *supra* note 63 (see chart).

76. *Id.*

77. *See id.* (discussing the need for links between the courts and various social service agencies to help older litigants, as well as advocacy and counseling services, especially when it comes to serving *pro se* litigants and informing the elderly about their rights).

78. WOOD ET AL., *supra* note 74.

may be in need of video equipment to broadcast testimony if they cannot physically travel to court.<sup>79</sup> Specialized case management systems will also take on increased importance, as court personnel expand their services to include counseling and similar resources.<sup>80</sup>

### III. Analysis

One thing is certain: in the coming years, courts will have to make changes to accommodate the rapidly growing U.S. population. The proper response, however, is not as definite. Luckily, there are existing state court models and programs from which to determine the appropriate solution. The jurisdiction of existing models is a good place to start. Next, the broader justifications cited for isolating older litigants, the idea of an elder division as it relates to other specialty court systems, and the risks and inherent problems associated with using age as a qualifier for entry into the courtroom, deserve special attention. Finally, because the unique crime of elder abuse is intermingled with all of these initiatives, it will be explored as well. This will help to expose the fact that much of the controversy has access issues at its heart, which may be solved using greater community connections to the state court system.

#### A. Jurisdiction of Existing Elder/Senior Models

The Elder Protection Court begun in Alameda County, California, has an age threshold of sixty-five for its litigants.<sup>81</sup> The Elder Justice Center uses an even younger age—sixty—as the threshold for access to its resources.<sup>82</sup> Both the Kentucky and New York initiatives aimed at elderly homebound litigants have sixty as the threshold age for entry as well.<sup>83</sup> Judge Banks has indicated that sixty will be the

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79. Van Duziend, *supra* note 63; see Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2006) (noting that there has been historical discrimination against individuals with disabilities, sometimes in the form of “the discriminatory effects of architectural . . . barriers . . . [and] failure to make modifications to existing facilities and practices.”).

80. Van Duziend, *supra* note 63.

81. Conger, *supra* note 1, at 5.

82. *About Elder Justice Center*, *supra* note 48.

83. Stiegel & Teaster, *supra* note 6, at vi.

threshold age for access to the Elder Law and Miscellaneous Remedies Division, with additional criteria instituted for civil matters.<sup>84</sup>

Although the initial press release from the Office of the Chief Judge indicated the division's jurisdiction would extend to probate matters,<sup>85</sup> the fact that the Elder Law and Miscellaneous Remedies Division still has not opened its doors to litigants, in addition to the Probate Division's continuing existence,<sup>86</sup> may mean that the question of jurisdiction is not so simple. An elder advocate blogger who attended the Illinois Department of Aging's Elder Rights Conference in Chicago and heard Judge Banks speak concerning the division, recounted her assertions regarding "the benefit to seniors of having their cases heard by judges with additional knowledge and training around elder-specific issues."<sup>87</sup> According to his account of Judge Banks' address, the Elder Law and Miscellaneous Remedies Division would be "more senior-friendly," providing proceedings beginning during the late morning hours, a decrease in the amount of waiting time, and venues that may be easily reached.<sup>88</sup> Although the division was said to "debut in August, 2012,"<sup>89</sup> the division has yet to open its doors to litigants.<sup>90</sup> However, it is certain that the Elder Law and Miscellaneous Remedies Division has followed the lead of the Elder Protection Court and Elder Justice Centers, and includes an age threshold for its litigants in its jurisdictional statement.<sup>91</sup> While Judge Banks has also stated that both civil and criminal matters will be heard by the divi-

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84. Banks, *supra* note 2, at 15.

85. Press Release, *supra* note 3.

86. See STATE OF ILLINOIS, CIRCUIT COURT OF COOK COUNTY: AN INFORMATIONAL GUIDE 2 (July 2011), available at [http://12.218.239.52/forms/pdf\\_files/CircuitCourtInformationalGuide.pdf](http://12.218.239.52/forms/pdf_files/CircuitCourtInformationalGuide.pdf).

The Probate Division hears matters concerning wills and administration of estates. Cases heard include: probate and contest of wills and testamentary instruments, claims against an estate arising in contract or tort or otherwise, administration of estates of decedents, disabled persons, minors and wards, contracts to make a will, construction of wills, actions arising under the Illinois Power of Attorney Act, [and] orders of protection filed in conjunction with a probate proceeding.

*Id.*

87. Paul Dowling, *Advancing Justice for the Elderly*, CHICAGO IRISH IMMIGRANT SUPPORT (August 2011), <http://www.ci-is.org/monthly-articles/2011/monthly-take-august-2011/>.

88. *Id.*

89. *Id.*

90. See *supra* notes 6 & 41.

91. See Conger, *supra* note 1, at 5 (noting victims sixty-five and older are eligible for the Elder Protection Court's resources).

sion's judges,<sup>92</sup> the exact matters falling within the court's jurisdiction have yet to be articulated by any court insider.

While many aspects of the Elder Law and Miscellaneous Remedies Division remain a mystery, the Elder Protection Court serves as a particularly pertinent model. Often described as an "elder abuse court,"<sup>93</sup> the Alameda County Court system provides a number of benefits for victims of such heartbreaking proceedings. For instance, the system takes into account that such individuals often proceed *pro se* and schedules appearances at a time deemed easiest for them to get to court—11 AM.<sup>94</sup> In addition, any request for a restraining order accompanied by allegations of abuse by a caregiver or family member is given priority over other matters so that the case can be resolved with minimal wait time.<sup>95</sup> The concentration in a single court of elder abuse matters means that proceedings are often taken from other dockets—for instance, Judge Conger planned to expand the Elder Protection Court's jurisdiction so that "all matters involving elder abuse, whether filed in the civil courts, family courts, landlord-tenant courts or other branches, would all be referred to this one judge."<sup>96</sup> The union of civil and criminal actions before a single judge includes the benefit of swift resolution of related matters.<sup>97</sup> The court is not dedicated strictly to elder abuse matters, however, despite the majority public perception.<sup>98</sup> Any case in which the victim is over age sixty-five or has a disability is included on the Elder Protection Court's docket, whether the charge is elder abuse, robbery, sexual assault, fraud, or simple theft.<sup>99</sup>

## B. Isolating Elderly Litigant Populations

The justifications for isolating elder litigants are numerous. One of the strongest arguments for special treatment of older litigants is

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92. Banks, *supra* note 2, at 14.

93. Van Duziend, *supra* note 63, at 2 ("[P]rovides civil remedies and hears felony-elder and dependent-abuse cases.").

94. Conger, *supra* note 1, at 6; see WOOD ET AL., *supra* note 74, at 184–85 ("sundowning" is the phenomenon that occurs when certain elderly persons tend to lose alertness later in the day).

95. Conger, *supra* note 1, at 6.

96. *Id.*

97. *Id.*

98. See Van Duziend, *supra* note 63.

99. Conger, *supra* note 1, at 5.

that delays in the justice system, or difficulties accessing its resources, may affect them more strongly than younger litigants. Elderly individuals, as well as those with disabilities, may not only have trouble getting to court, but also participating in the proceedings in the same way other individuals can.<sup>100</sup> Delays in proceedings that are considered normal effects of judicial handling also may have a profound effect, especially if the individual who is elderly or has a disability dies or becomes too sick to participate in later proceedings while waiting for his or her case to come to the head of the docket. In such a case, "justice delayed is, indeed, justice denied."<sup>101</sup> Delays may also have a more profound impact on elder abuse cases since postponing resolution often means that the abuse does not end or, perhaps worse, that the victim has more time to lose his or her nerve and may end pursuit of the proceeding completely.<sup>102</sup>

There are a number of other ways in which treatment of litigants can be specialized for elders. For instance, one of the recommendations of Florida International University's Center on Aging for adapting trial court standards to an older population is for courts to be cognizant that elders may need more time to conduct their testimony, and that they are often less tolerant of waiting in court and of making frequent appearances.<sup>103</sup> Traditional proceedings may not be the answer for such older litigants. Rather, alternative dispute resolution techniques, such as arbitration and mediation, can take on increased importance. This may require better case management techniques, "with the aging and disability networks . . . work[ing] with the courts to identify those cases that could be resolved outside the judicial process."<sup>104</sup> This will also allow the court system to better handle the influx of older litigants that will continue as the Baby Boomers reach advanced age, since using the "diversion" of alternative dispute reso-

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100. WOOD ET AL., *supra* note 74, at 1.

101. *Id.* at 183.

102. *Id.*

103. ROTHMAN ET AL., *supra* note 72, at 14.

104. WOOD ET AL., *supra* note 74, at 23. The Aging Network came about due to a provision in the Older Americans Act that has resulted in a number of units on aging at the state and local level. *Id.* at 21; *see infra* note 145 and accompanying text (discussing the Older Americans Act as it relates to Congress' repudiation of the crime of elder abuse).

lution techniques will allow controversies once heard in court to be resolved more efficiently outside of traditional proceedings.<sup>105</sup>

Although some legislatures have tried to address this problem by using age as a qualifier for specialized treatment,<sup>106</sup> imposing the greater requirements tied to necessity, in addition to an age threshold, seems like a safer approach. For instance, an Illinois statute defining criminal abuse or neglect of an elderly person or a person with a disability defines “elderly person” as “a person sixty years of age or older who is incapable of providing for his or her own health and personal care.”<sup>107</sup> Some commentators warn that statutes that set forth age alone as a qualifier use ageist stereotyping.<sup>108</sup>

While the needs of elder litigants may require special treatment, especially if advanced age is tied to sensory loss, disability, or the like, many argue that segregation is unnecessary. While some commentators may call for priority when scheduling such actions,<sup>109</sup> others vehemently oppose such measures as fundamentally unfair.<sup>110</sup> Perhaps the strongest argument against special treatment is that such measures would simply not be necessary if courts employed effective case management at all times. Proponents of this “universal access” believe that “case processing should be designed for the greatest ease of *everyone* of all ages, needs and abilities, rather than focusing on separate, discrete needs.”<sup>111</sup> After all, case management ensures easy ac-

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105. WOOD ET AL., *supra* note 74, at 165–66.

106. Conger, *supra* note 1, at 5. For example, in California, victims over the age of seventy are given preference, with “direct calendaring of ALL elder-related felonies.” CAL. PENAL CODE § 1048(b)(2) (West 2008).

107. 720 ILL. COMP. STAT. 5/12-2 (2011) (relating to the abuse or neglect of an elderly person; as explained in the text, this statute has recently been repealed by recently-proposed legislation, but it is still a good example of how such language may differ in various statutes).

108. Carolyn L. Dessin, *Financial Abuse of the Elderly: Is the Solution A Problem?*, 34 MCGEORGE L. REV. 267, 292–303 (2003) (presenting the point of view that ageism is prevalent in American society and is perpetuated by the use of stereotypes about the elderly, which is exemplified in statutes that address financial abuse and target the elderly as particular victims, increasing false ideas about lack of cognition that comes naturally with age, as well as paternalism, even though studies cited by the author indicate that there is actually a low prevalence of cognitive impairment in elders).

109. WOOD ET AL., *supra* note 74, at 184–85.

110. *Id.* at 185 (“The justice system, some would argue, should be even-handed, and all persons should be treated equally. Many other litigants may be equally in need of having their disputes resolved promptly and efficiently.”).

111. *Id.*

cess to the court system for all litigants, solving problems for older litigants and ensuring justice for all.

### C. Court Systems Generally and the Circuit Court of Cook County in Particular

The idea of special court dockets or calendars is nothing new. Today, separate divisions are an inherent part of many state court systems, an instructive example being the Circuit Court of Cook County. Illinois is divided into twenty-two judicial circuits, the courts of which are organized under the direction of a chief judge (such as Cook County's Chief Judge Timothy Evans).<sup>112</sup> The Circuit Court of Cook County is the largest of these twenty-two judicial circuits, and also has the distinction of being recognized as "one the largest unified court systems in the world."<sup>113</sup> This is not surprising, given the number of residents in Chicago and its suburbs, as well as the cases that those residents file every year.<sup>114</sup> The organizational structure does not end there. The Circuit Court of Cook County is further separated into County, Municipal, and Juvenile Justice and Child Protection departments.<sup>115</sup> Further division occurs within those particular departments. The County Department is particularly relevant, since it includes the Chancery, County, Criminal, Domestic Relations, Domestic Violence, Law, Probate, and, now, Elder Law and Miscellaneous Remedies Divisions.<sup>116</sup>

Before the Elder Law and Miscellaneous Remedies Division, the new kid on the block in the Circuit Court of Cook County was the Domestic Violence Division, which is indicative of a nationwide trend of state courts creating special court calendars for victims of this particular crime.<sup>117</sup> Before the Domestic Violence Division opened its

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112. STATE OF ILLINOIS, CIRCUIT COURT OF COOK COUNTY: AN INFORMATIONAL GUIDE, *supra* note 86, at 2.

113. *Id.*

114. *See id.* (stating that there are approximately 5.1 million Chicagoans and suburbanites who are responsible for filing over 1.2 million cases in a given year).

115. *Id.*

116. *Id.* at 4–5.

117. Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1287 (2000) ("These specialized courts consolidate judges, prosecutors, court personnel, and other domestic violence resources into one central system designed to provide a more effective response to domestic abuse cases.").

doors at 555 West Harrison, in the city's West Loop, the 28 North Clark Street location was the principal spot for a litigant to get a civil order of protection, while 1340 South Michigan Avenue was the site to obtain a criminal order. Chicago is a large city and the different locations, spread across the downtown area, meant that such separation "put a heavy burden on the victims."<sup>118</sup>

This burden was also due, in part, to inadequate separation of alleged victims and offenders at these facilities.<sup>119</sup> The new centralized location was meant, therefore, to be "completely victim friendly," according to then-supervisor of the Cook County State's Attorney's Office, and now judge, Laura Bertucci.<sup>120</sup> Such a feature included separation in elevators and waiting rooms, in addition to distinct entrances and exits for petitioners and respondents.<sup>121</sup>

The matters heard in the Domestic Violence Division include both civil and criminal matters—orders of protection, where the litigants involved are family or household members, may be obtained as specified in the Illinois Domestic Violence Act.<sup>122</sup> The hope surrounding the creation of the Domestic Violence Division was great—it was predicted that the facility would both promote efficiency and fairness in resolving matters between the parties, according to Circuit Judge Moshe Jacobius,<sup>123</sup> and also improve court service for everyone involved in the judicial process—whether litigants, lawyers, or the members of the judiciary tasked with resolving disputes. The hope was expressed with a desire for criminal and civil judges to come together under one roof.<sup>124</sup>

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118. Bill Myers, *Domestic Violence Court Now Under One Roof*, CHI. DAILY L. BULL. (Sept. 16, 2005), <http://67.199.28.97/news/newsitem.asp?language=english&newsitemid=975>.

119. *Id.* (explaining that at the Michigan Avenue location, there was not proper separation of petitioners and respondents in the elevators, while at the Clark Street location, the absence of separate waiting rooms was the problem).

120. *Id.*; see STATE OF ILLINOIS, CIRCUIT COURT OF COOK COUNTY: AN INFORMATIONAL GUIDE, *supra* note 86, at 26 (listing Laura Bertucci Smith as one of the associate judges).

121. Myers, *supra* note 118.

122. *County Department Overview*, CIRCUIT COURT OF COOK COUNTY, <http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment.aspx> (last visited Nov. 26, 2012); see Illinois Domestic Violence Act of 1986, 750 ILL. COMP. STAT. 60/103(6) (2011) (specifying that "family or household members" fall under the Act's protection, which includes a wide range of people related by blood, sharing a common dwelling or former relationship).

123. Myers, *supra* note 118.

124. *Id.*

The Domestic Violence Division's success supports the idea that criminal and civil proceedings can be united under one roof in a single division in a manner that allows efficient resolution of all such proceedings. The relation to the Elder Law and Miscellaneous Remedies Division is not obvious, unless one considers the fact that the division's jurisdiction will combine criminal and civil matters involving elders on one docket.<sup>125</sup> Currently, the Criminal Division of the County Department "hears cases in which the state alleges the commission of a serious criminal act such as: armed robbery, assault, burglary, criminal sexual assault, [and] murder."<sup>126</sup> For those over the age of sixty, however, the cases may not be heard in the criminal division for much longer.

#### D. Domestic Violence Courts and Juvenile Courts

In order to understand why uniting criminal and civil matters may be useful in a context like domestic violence, but hurtful if applied as a blanket rule to litigants of a certain age, one must understand the models set forth by other specialized court systems. Domestic violence courts, as well as juvenile dockets, serve as particularly useful examples.

As stated earlier, separate domestic violence courts are a growing trend employed by judicial administrators. "These specialized courts consolidate judges, prosecutors, court personnel, and other domestic violence resources into one central system designed to provide a more effective response to domestic abuse cases," a method which incorporates "the principles of therapeutic jurisprudence."<sup>127</sup> Although a complicated legal theory in and of itself, therapeutic jurisprudence is interdisciplinary at its heart, combining the insights of psychology and sociology into its study of the way that the law interacts with society and individuals.<sup>128</sup> The relations to proposed models

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125. Banks, *supra* note 2, at 15.

126. *County Department Overview*, *supra* note 122.

127. Tsai, *supra* note 117, at 1287; see BLACK'S LAW DICTIONARY 933 (9th ed. 2009) (defining therapeutic jurisprudence as "[t]he study of the effects of law and the legal system on the behavior, emotions, and mental health of people; especially, a multidisciplinary examination of how law and mental health interact.").

128. See Tsai, *supra* note 117, at 1295 ("[T]herapeutic jurisprudence proposes examination of the law's effect on the mental and physical health of society through a social science lens.").

for court systems for the elderly is obvious—integration of government entities and services to provide a more unified response to the particular needs of these litigants is a suggestion many commentators have made to deal with the surge of the aging population and its effect on state courts.<sup>129</sup> An inherent difference, however, lies in the nature of controversies falling within the jurisdiction of domestic violence courts and systems like the Elder Protection Court. Domestic violence litigants are united by the abuse that has defined their experience—whether petitioner (alleged victim) or respondent—before coming to the judicial system for relief. A court like the Elder Protection Court, however, does not group litigants based on similar experiences, but rather suggests organizing them based on qualifiers like age, despite a range of experiences. For example, victims of elder abuse, robbery, or those currently engaged in a landlord-tenant dispute are on the same docket.<sup>130</sup>

Court divisions serving juveniles are another point of comparison. It is taken for granted that juvenile cases are not to be combined with the resolution of matters involving adults.<sup>131</sup> This is necessary because “the differing needs and characteristics of adult offenders and juveniles justify the maintenance of a separate and distinct system of justice for each of the two classes.”<sup>132</sup> The Circuit Court of Cook County also serves as an example of this proposition because it has a separate department for matters deemed to involve juvenile justice or

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129. See *supra* notes 18 and 19 (explaining that the Elder Protection Court in Alameda County offers greater community links to its litigants and the entire state has councils aimed at preventing and raising awareness about elder abuse) and notes 30 and 36 (pointing out the role community resources play in the Florida Elder Justice Centers success).

130. See Conger, *supra* note 1, at 5 (giving a myriad of examples of cases to be adjudicated by the court). Conger gives other examples of claims that she is proud fall within the Elder Protection Court’s jurisdiction, including a “neighborhood dog dispute involving an elderly landowner,” a dissolution of marriage action involving a domestic violence restraining order, a case of financial exploitation of an older woman by her daughter where the perpetrator is ordered to undergo “drug, alcohol and gambling counseling,” and an award of restitution to elderly victims who were defrauded on their mortgage. *Id.*

131. 47 AM. JUR. 2D *Juvenile Courts, Etc.* § 4; see *State ex. rel. City of Minot v. Gronna*, 79 N.D. 673 (1953) (holding that the state of North Dakota’s juvenile court law does not violate the Constitution).

132. 47 AM. JUR. 2D *Juvenile Courts Etc.* § 4; see *In re R.C.*, 39 Cal. App. 3d 887 (1974) (offering an example of such differing treatment, which was seen here in the form of a relaxed showing in a criminal matter based on the differing requirements of juvenile criminals).

child protection, which was established in the mid-nineties.<sup>133</sup> Programs provided through this department include monitoring initiatives, especially for young offenders, as well as a commitment for the department's resource section to "serve as a liaison to the academic, business and religious communities to identify and develop services and resources that will augment programs vital to juvenile justice."<sup>134</sup>

The tie to different community organizations to further provide services to litigants should ring a bell. Yet juveniles, unlike those over age sixty or sixty-five, are *all* inherently different from adults, due to their age. Many seniors are able to live healthy and productive lives on their own well past this "advanced age."<sup>135</sup> Using age as a qualifier for entry into such court systems for the elderly is therefore inherently more problematic than doing so for individuals under the age of majority.<sup>136</sup>

#### E. Using Age as a Qualifier for Entry

Using age as a qualifier for entry, by itself, is challenging because individuals' experiences at a given age are not uniform. Yes, at a certain point an individual's appearance begins to change—hair loss or graying, sensory depletion in the form of decreased hearing or sight, and changes to posture are all sure signs that an individual has reached an advanced age. And along with this change in physical appearance often comes a shift in the way society views the person.<sup>137</sup> Despite such widespread perceptions concerning the "horrors" of aging, however, "older people are [actually] the most heterogeneous age group" and mere age alone "does not lead to the onset of impatience, senility, poor health or cantankerous attitudes."<sup>138</sup> In addition, it may come as a surprise to learn that notions concerning the age at which one advances to the senior stage of life are more related to a contrived

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133. STATE OF ILLINOIS, CIRCUIT COURT OF COOK COUNTY: AN INFORMATIONAL GUIDE, *supra* note 86, at 8.

134. *Id.*

135. WOOD ET AL., *supra* note 74, at 109 ("The reality is that most older Americans are healthy in body and mind.").

136. See BLACK'S LAW DICTIONARY 271 (9th ed. 2009) (defining child as "a person under the age of majority . . . . See juvenile.").

137. WOOD ET AL., *supra* note 74, at 108.

138. *Id.*

historical cutoff than any valid reason prescribed by science or biology.<sup>139</sup>

Effectively handling the rapid aging of litigants to give them the proper benefit of all the services the law can provide requires striking a delicate balance. As mentioned previously, Florida International University adopted Trial Court Performance Standards as the result of a research project resulting after the State Judicial Institute called the university to the cause.<sup>140</sup> The adopted thirty-three substandards betray attitudes about the elderly, as well as common notions about the actions that the judiciary must take in order to accommodate older litigants.<sup>141</sup> Some appear helpful—for example, one such substandard requires all court personnel, both members of the judiciary and court-appointed attorneys, to familiarize themselves with jurisdiction-specific information on aging issues that reflect that particular locale's legislative stance on such issues, as well as caselaw.<sup>142</sup> Other recommendations, though obviously well-intended, appear more invidious, such as Recommended Substandard 1.3A—that “[a]ll 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 instruction written at or below a 4th grade level.”<sup>143</sup> There are undoubtedly many individuals age sixty or sixty-five or older who are sophisticated users of legal services—the judges and lawyers who are involved in deciding and filing such actions, even—who do not need documents written at a fourth grade level to adequately participate in the judicial process.

Perhaps most convincing is the argument that such specialized treatment perpetuates the very stereotypes that the judicial process should seek to avoid. In a system that seeks to treat all litigants with an equal amount of respect and fairness, this seems like the worst possible result. After all, “[i]f older persons . . . are perceived as so frail or

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139. *Id.* at 109 (explaining that the retirement age of sixty-five is due to the age chosen by Germany's Chancellor Von Bismarck in the nineteenth century, who decided to allow his militia to retire at that age, along with his commencement of paying benefits to them for their service—the age strategically chosen since almost all of the world's population had no hope of reaching sixty-five in the late 1880s).

140. ROTHMAN ET AL., *supra* note 72, at 5.

141. *Id.* at 21.

142. *Id.* at 10.

143. *Id.* at 7–8.

vulnerable they require protections and advantages in the processing of cases . . . judges and jurors [might] then begin to transfer this image to judicial decision-making and assessments of the capability of witnesses . . . .”<sup>144</sup> Stereotypes concerning what is rapidly becoming a large segment of the population are the last thing that should enter a judge’s mind when issuing orders or judgment in a given case.

#### F. Elder Abuse

Although using age alone as a qualifier for entry is problematic, a look at a crime that is inherently tied to older individuals—elder abuse—may shed light on what can be accomplished using such special court initiatives. To truly understand many of the court initiatives already in place, one must understand why elder abuse is often so closely associated with such programs, even if courts help to serve litigants with a variety of other matters as well. Elder abuse is not only morally wrong but is seen as a major problem by Congress, which states in the Older Americans Act 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 . . . [to protect elders] against abuse, neglect, and exploitation.”<sup>145</sup> Elder abuse itself, however, is not an easy thing to understand, partly because it is a “generic term for a complex problem that takes many forms” and “[s]tatutory definitions of elder abuse may include physical abuse, psychological or emotional abuse, sexual abuse, financial exploitation, neglect, abandonment, and/or self-neglect . . . .”<sup>146</sup> Because of the range of possible definitions, state laws are far from consistent in the actions identified as constituting elder abuse.<sup>147</sup> One thing is certain: both abuse and neglect differ from other types of criminal behavior due to their repetitive nature. This also means that almost all abuse goes on between individuals with a close relationship, because the abuser must have access to the victim over

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144. WOOD ET AL., *supra* note 74, at 185.

145. Older Americans Act, 42 U.S.C. § 3001 (2006).

146. Stiegel & Teaster, *supra* note 6, at 1.

147. *Elder Abuse/Mistreatment Defined*, NAT’L CTR. ON ELDER ABUSE, ADMIN. ON AGING, [http://www.ncea.aoa.gov/NCEARoot/Main\\_Site/FAQ/Basics/Definition.aspx](http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Basics/Definition.aspx) (last visited Nov. 26, 2012).

an extended period of time.<sup>148</sup> As a result, abuse is often inflicted by family members, such as spouses, children, grandchildren, siblings, nieces, nephews and others<sup>149</sup> for a variety of reasons.<sup>150</sup> In this way, then, elder abuse is often a special type of domestic abuse, and raises similar issues, as well as a host of distinct ones due to the victim's age, mental and physical condition, and problems that could be further complicated as a result of perpetual abuse and victimization.

Elder abuse is a growing concern because of its increased prevalence and potential to expand with the growing number of older Americans. Called "the hidden crime,"<sup>151</sup> reports of elder abuse steadily grow each year (although many incidents are still never reported), even as individuals suffer through more than one kind of abuse.<sup>152</sup> The National Center on Elder Abuse estimates that the number of Americans over age sixty-five who have ever been abused by a caregiver is between one and two million, but that only one quarter of abuse that takes place in the home is ever reported.<sup>153</sup> Financial abuse of elders is also prevalent.<sup>154</sup> There is now greater national awareness about this phenomenon, which will certainly only become more of an issue as a larger subset of the American population grows older and more vulnerable.<sup>155</sup> In addition, attention by lawmakers and the judi-

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148. FROLIK & KAPLAN, *supra* note 73, at 404.

149. *Id.* at 408.

150. *Id.* at 413 (citing retaliation for prior child abuse or a visceral reaction to dealing with an individual seen as difficult as two reasons that elder abuse may occur between family members).

151. AMERICAN BAR ASSOC. COMM'N DIV. ON LEGAL PROBLEMS OF THE ELDERLY SENIOR LAWYERS, REPORT TO THE HOUSE OF DELEGATES 2 (1996), available at [http://www.americanbar.org/content/dam/aba/migrated/aging/Public Documents/1996\\_aba\\_ply\\_st\\_cts\\_hlg\\_eacases.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/Public Documents/1996_aba_ply_st_cts_hlg_eacases.authcheckdam.pdf).

152. Press Release, Illinois Department on Aging, IL Dept on Aging Honors Elder Rights Advocates, (Jul. 8, 2011); see FROLIK & KAPLAN, *supra* note 73, at 416 (noting that many reasons lead to underreporting, including the fact that bringing a criminal case brings publicity to a very emotional and shameful episode in the person's life, and may cause the victim to be sent to institutionalized care since the majority of abusers also serve as the caregiver).

153. Van Duziend, *supra* note 63, at 3 (indicating that underreporting among victims is a large phenomenon, that when it comes to physical elder abuse, only one out of every fourteen experiences in a domestic setting are reported, and that the numbers concerning financial abuse of the elderly are even lower—with only one of every twenty-five incidents being brought to the attention of police authorities).

154. *Id.* at 2 ("[T]here may be at least five million elderly victims of financial abuse each year.").

155. AMERICAN BAR ASSOC. COMM'N DIV. ON LEGAL PROBLEMS OF THE ELDERLY SENIOR LAWYERS, *supra* note 151, at 2.

ciary has resulted in enhanced emphasis on the legal remedies that courts may offer, as well as an increasing amount of elder abuse cases appearing on state court dockets.<sup>156</sup>

State courts must increasingly grapple with a crime that is as unique as each victim who suffers it. Certain issues that affect the way the justice system interacts with some members of the elder community are exacerbated by the incidence of elder abuse. For instance, as previously mentioned, the delays often experienced by litigants can take on unexpected severity for the victim of elder abuse. Continuances may mean that litigants die while waiting for their day in court, either due to illness or thanks to the very abuse from which they are seeking protection.<sup>157</sup> As a result, it is not exactly surprising that court commentators recommend that elder abuse cases be expedited.<sup>158</sup> Delays in such cases can also have profound effects when intermingled with issues of capacity. For instance, a victim may lose competence to testify about the abuse if the delay is long enough.<sup>159</sup> A lack of capacity could also be the impetus for the very incident of abuse or make it more likely, a fact to which courts should be sensitive. As a result, the American Bar Association's Commission on Legal Problems of the Elderly recommends that an unbiased assessor determine the capacity of any older individual interacting with the court.<sup>160</sup>

A lack of understanding on the part of judges and court staff, then, may be especially harmful to a crime that affects an unknown number of older Americans. Indeed, some argue that a "lack of knowledge about and sensitivity to elder abuse by judges . . . inhibit[s] prosecutors, civil lawyers, and abused persons from bringing cases into the courts."<sup>161</sup> Without such knowledge, "subtle nuances that older litigants may have difficulty conveying" may totally evade the judge's perception even when a case makes it to court.<sup>162</sup> The value of a team of individuals who understand and are trained to help older

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156. Stiegel & Teaster, *supra* note 6, at 1.

157. *Id.* at 27.

158. *Id.* at 9.

159. *Id.* at 6.

160. *See id.*

161. *Id.* at 5.

162. JUDICIAL COUNCIL OF CAL.: ADMIN. OFFICE OF THE COURTS, *supra* note 15, at 43 (internal quotation marks omitted).

litigants who have suffered abuse is thus integral to the pursuit of justice for such crimes.<sup>163</sup>

### G. Solving Access Issues

Underlying many of the concerns about the interaction between elders and the judicial system are barriers that reduce access to justice, whether they are physical or psychological. Simply put, part of the problem is that courthouses are “designed to accommodate the ‘normal’ person—a healthy adult male who is right-handed and about 30 years old” as well as “instill reverence for justice” with architectural features like ornate staircases, traditional columns and weighty doors.<sup>164</sup> Even more daunting, however, is the emotion that visits to such sites may ignite in litigants, including fear and intimidation.<sup>165</sup> Such feelings may be amplified if a litigant does not understand the proceedings that he or she is about to experience or has just experienced. Especially for those who do suffer from a lack of mental clarity, a considerable barrier is the failure of those involved with administering the court to explain the process to litigants.<sup>166</sup> Even more tragic, a significant number of elder litigants may not even get the chance to be intimidated by the courthouse’s white pearly columns at all if they are unable to attain transportation.

Some of the initiatives already in place around the country have come up with solutions to improve access for litigants who have special needs. An accommodating schedule for court proceedings is one answer.<sup>167</sup> Another is eliminating the need for a trip out of the house at all, as the Kentucky and New York initiatives have done.<sup>168</sup> Finally, Florida’s Elder Justice Centers improve services to litigants by com-

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163. See AMERICAN BAR ASSOC. COMM’N DIV. ON LEGAL PROBLEMS OF THE ELDERLY SENIOR LAWYERS, *supra* note 151, at 11–12 (recommending that there should be individuals from multiple disciplines present, including advocates who are familiar with the legal process who can guide the witness or victim as they navigate through it).

164. WOOD ET AL., *supra* note 74, at 45.

165. Stiegel & Teaster, *supra* note 6, at 5.

166. *Id.*

167. *Id.* at 22 (“The EPC starts later than other courts and sets specific times at which certain types of cases will begin in an attempt to minimize transportation challenges and time spent waiting on hard court benches.”).

168. *Id.* at 5, 23 (stating that a significant barrier to justice exists when courts do not take account of the fact that older individuals bound to their homes or beds are able to testify but not able to travel to the particular locale where court is held).

binning related services in one geographic area, so that individuals need not waste time traveling from one building to another.<sup>169</sup> Such solutions require flexibility, however, as well as create a challenge to court systems that are used to dealing with litigants in the traditional way. For example, judges in both the Kentucky and New York counties that allow orders of protection to be obtained over the telephone report that an integral part of the hearing—observing the disposition of the petitioner as manifested through his or her physical presence in the courtroom—is lost.<sup>170</sup> Such a problem would easily be solved through the use of cameras that allow a video image,<sup>171</sup> but such technological advances clearly require a larger investment of time and money by court systems and personnel.

If the location of the Elder Law and Miscellaneous Remedies Division is any indication (50 W. Washington, Room 2505),<sup>172</sup> and matters formerly heard in other parts of the court system are consolidated in the Daley Center, then Cook County is taking a nod from the Elder Justice Centers in Florida by consolidating efforts in a central location.<sup>173</sup> Indeed, this does seem to be the case as Judge Banks has said, “Chief Judge Evans has secured space centrally located in our main courthouse for our Justice Center.”<sup>174</sup> Currently, the criminal division is located on Chicago’s South Side, at 2600 South California Avenue; the Domestic Violence Division calls 555 West Harrison in the West Loop its home, while the Probate Division is already located in the heart of downtown at the Daley Center, albeit on a different floor.<sup>175</sup> Although the consolidation of matters in one location would certainly help some individuals, it does not solve the problem of homebound litigants in need of protection by the court system. If ultimately implemented in its current form, the consolidation would actually disregard the Center of Aging’s recommendation that in urban areas, “the court provides an adequate number of strategically dispersed self-service centers and court dockets in areas where substantial popula-

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169. *Id.* at 3, 22.

170. *Id.* at 29.

171. *Id.*

172. *Court Locations*, CIRCUIT COURT OF COOK COUNTY, <http://www.cookcountycourt.org/ABOUTTHECOURT/CourtLocations.aspx> (last visited Jan. 9, 2013).

173. See *supra* notes 27–36 and accompanying text.

174. Banks, *supra* note 2, at 22.

175. *Court Locations*, *supra* note 172.

tions of older adults reside.”<sup>176</sup> If the same problems plague litigants as those seeking orders of protection, however, the strategy the Domestic Violence Division employed has already proven successful.<sup>177</sup>

One easy, and perhaps overlooked, way to ensure ease of access, especially for victims of elder abuse, is to make sure that judges and other court personnel receive adequate training. The American Bar Association and University of Kentucky Research Foundation analyzed all five existing court initiatives as they related to elder abuse and found that through their very existence, both members of the judiciary and other staff became more educated concerning the crime of elder abuse in particular, and also more aware of the special needs such litigants often display.<sup>178</sup> Luckily, training for the bench and other individuals is already something Judge Banks has expressed a commitment to throughout the development of the division.<sup>179</sup>

#### H. The Benefit of Community Connection

One way to increase access to the court system for elder litigants, including those who have suffered from abuse, is for the court system to build connections to different community organizations and agencies. Such recommendations include working with aging and disability networks that are knowledgeable when it comes to referring litigants to other resources, and that are effective in helping them obtain representation in court proceedings,<sup>180</sup> including adult protective services and mental health networks.<sup>181</sup> There is already a concrete example of success in such an approach, as the Elder Protection Court in California attributes its effectiveness in part to connection with different community organizations. Not only are standard judicial staff involved with the special calendar for elder litigants, but the Elder Protection Court has “an elder abuse case manager, a clinical supervisor,

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176. ROTHMAN ET AL., *supra* note 72, at 9.

177. See Myers, *supra* note 118 and accompanying text (regarding the scattering of placements around the city where an individual can get different orders of protection and other related orders before the Circuit Court of Cook consolidated matters in the Domestic Violence Division at 555 West Harrison).

178. Stiegel & Teaster, *supra* note 6, at 23.

179. Banks, *supra* note 2, at 16.

180. WOOD ET AL., *supra* note 74, at 3.

181. ROTHMAN ET AL., *supra* note 72, at 17.

administrative staff, and filing and courtroom clerks," all of whom play an integral role in making sure the proceedings run smoothly.<sup>182</sup>

Emotional support and education about expectations inside and outside the courtroom can do wonders for litigants, as well. In the aforementioned study of the existing court initiatives, observers found that the support provided by such individuals helped victims give testimony about sensitive subjects more readily, and improved the efficiency of the proceedings, as the testimony was focused on the particular incidents relevant to the legal issues at the heart of the remedies sought.<sup>183</sup> Help from support agencies and specially-trained court staff has the added benefit of decreasing courtroom load by getting litigants the help they need, so that they are referred to appropriate services, or their matters are resolved in a timely manner, and they do not have to come back for repeat proceedings.<sup>184</sup>

Outside of the courtroom, increased awareness and education of others in the community can also have a positive effect on such court initiatives. For example, since underreporting is such a great problem with elder abuse, if bank and retail employees are educated about warning signs that indicate there may be ongoing elder abuse affecting customers, they can report such behaviors. In addition, it would be greatly beneficial to educate law enforcement officers so that they are aware of the proper protocol when faced with such sensitive situations.<sup>185</sup> It is clear that, both inside the courthouse and in the community in general, greater efforts to communicate and work together can do wonders for elder litigants. The virtues of such efforts have not been lost on Judge Banks, who has emphasized that "people and groups within each jurisdiction can work together as we did and create an elder protection court that fits the needs of their community and enhance the linkage between the elderly, social services, and our judicial system."<sup>186</sup>

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182. JUDICIAL COUNCIL OF CAL.: ADMIN. OFFICE OF THE COURTS, *supra* note 15, at 42.

183. Stiegel & Teaster, *supra* note 6, at 27.

184. *See id.* at 25, 41.

185. Conger, *supra* note 1, at 5-7.

186. Banks, *supra* note 2, at 13.

#### **IV. Resolution and Recommendation**

Although greater accommodations for older Americans will undoubtedly be necessary as the net age of the litigant population increases, there are a variety of ways that courts can address this fast-approaching surge. Based on current experience, the recipe for success seems to exist in increasing access for older litigants who need additional resources while also maintaining a justice system that treats all litigants fairly and is sensitive to specific needs that may impact a litigant's pursuit of justice.

It is undeniable that a specialty court like the Elder Law and Miscellaneous Remedies Division holds a tremendous amount of promise for older litigants. One of the ways that this new division can offer the maximum amount of benefit to litigants is by carefully choosing the elders that it will serve. Although history has designated that the age of sixty or sixty-five means that an individual has reached his or her golden years, this does not mean that an individual cannot interact with the judiciary in the same way that he or she always has, unless there is a special need for different or additional resources.

Using age as a threshold inquiry makes sense since certain matters, especially those relating to capacity, do affect elders more frequently than younger litigants. However, there must be something more than age alone to justify uniting litigants that would not otherwise be separated from the rest of the population. Qualifying conditions, based upon physical or mental need for further resources, are certainly a reason for separation that would benefit such individuals. Separation based on these conditions would automatically increase access to additional services that are likely to better the overall experience with the judiciary. In addition, it makes sense to look at certain proceedings that traditionally affect the elderly solely or in disproportionately high numbers and use those cases as a basis for separation. Although Judge Banks and her workgroup have already acknowledged the plan to use additional criteria to separate litigants in civil matters, criminal litigants should receive the same treatment.

The union of civil and criminal matters has already proven successful when blended in a manner such as that used by domestic violence courts. It cannot be forgotten, however, that those litigants are united by the abuse they have allegedly suffered, rather than demographic qualifiers like age. The judges and court personnel associated with court initiatives like the Domestic Violence Division in the Cir-

cuit Court of Cook County also benefit from specialized training in dealing with this very specific type of litigant. The separation also allows the application of therapeutic jurisprudence and greater links to community resources. Greater understanding of the litigant population served, as well as a greater offering of case-specific resources, is a way to truly make the Elder Law and Miscellaneous Remedies Division a model for the nation. It seems that Judge Banks understands these core principles, as she has already acknowledged that “the success of the ELMRD [is] largely dependent on education and training of judges and court personnel”<sup>187</sup> and the division strives to “provide a bridge between the courts and various social services, legal services, and other service providers through the Cook County Elder Justice Center.”<sup>188</sup> However, this can only occur with thoughtful choice of the litigants it will serve.

An effective screening mechanism will allow litigants who need additional resources to be separated, while allowing others, who may not need those resources, to go before judges well-versed in that particular area of law. By allowing litigants to engage in traditional proceedings, it will not only conserve additional resources for those who most benefit from them, but respect a system that has worked for generations. Attempting to bring so many matters under one roof on the basis of age alone will waste judicial resources and try efficiency goals. This is because judges simply cannot be experts in every area of the law, both civil and criminal, without some other unifying feature of the litigants they are expected to serve. Since the screening mechanism and criteria for litigants has not yet been announced, it remains to be seen whether the Elder Law and Miscellaneous Remedies Division will serve as a model court in this respect.

The American Bar Association already recommends that an unbiased assessor determine the capacity of any older individual interacting with the court. Thus, the Circuit Court of Cook County will be most successful if it implements this advice and unites efforts among its divisions to recognize individuals whose needs may not be met in other divisions and would be best served in the Elder Law and Miscellaneous Remedies Division. It is important that this is done, however, while also treating all litigants with respect and fairness, and not pre-

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187. *Id.* at 16.

188. *Id.* at 14.

suming that age automatically signals a greater need for the resources than the division may offer. After all, perpetuating stereotypes that *all* older litigants are not capable of participating as fully in the judicial process will harm the justice they receive in an inherent way: by undermining their credibility as witnesses and parties in the eyes of all members of the judiciary, as well as the community. By examining its venue statement in terms of nondiscriminatory ways to ascertain litigant age, it appears the division is on the right track, but judgment will be reserved until all relevant facts are available, including the exact means by which litigants will be separated.

The Elder Law and Miscellaneous Remedies Division has the unique opportunity to truly serve as a national model for state courts by proving that litigants in need can be effectively separated, and experience the benefit of enhanced resources, without using age as the *sole* factor of analysis and perpetuating such hurtful stereotypes. The fact that Judge Banks and her workgroup have determined that age should not be the sole factor considered for civil litigants served by the division exemplifies their acknowledgement of the harm that such a shallow inquiry could cause. The tie of existing court initiatives to the crime of elder abuse is no accident. Elder abuse is a serious and underreported crime that exacerbates many of the effects of capacity issues, court delay, and lack of judicial training and understanding that plague many older Americans as they try to interact with the judiciary. A victim of elder abuse is exactly the type of litigant in need of specialized attention in a separate division,<sup>189</sup> just as domestic violence victims found refuge in Cook County's Domestic Violence Division not long ago.<sup>190</sup> This fact has not been forgotten and Judge Banks's statement suggesting that age will be the sole inquiry as to victims of domestic violence over sixty seems perfectly acceptable, as such individuals are essentially affected by elder abuse.

Though already showing immense promise, lessons may also be taken from the other court systems and programs this Note has ex-

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189. WOOD ET AL., *supra* note 151, at 10 (recommending that "[f]urther study should be given to the concept of consolidation of the courts handling cases involving elder abuse, for example, into a 'family court.'").

190. Judge Julie Conger was actually inspired to create the Elder Protection Court in Alameda County because she handled order of protection hearings in family court over the course of her career and was impacted deeply by the ways in which these proceedings affected older people, who were in the middle of what she deemed a "cattle-call or a circus." Stiegel & Teaster, *supra* note 6, at app. A-1.

plored. Though perhaps implied by Judge Banks, better case management within the Elder Law and Miscellaneous Remedies Division would be of tremendous benefit, as experienced case managers could recognize litigants who would benefit more from alternative dispute resolution mechanisms. This would not only take cases off of crowded dockets, but would decrease the burden on the litigant who is expected to travel to court again and again, and would likely expedite resolution of the issue. Managing cases even after the litigants have had their day in court may also make future trips to court unnecessary. Moreover, there is always the suggestion that the programs in Kentucky and New York highlight: that there is much to be gained from allowing proceedings to go forward without requiring a trip to the courthouse at all. By establishing a Cook County Elder Justice Center, and forging a bridge to other community resources, Judge Banks and her team have already recognized and taken steps to implement what will surely be an important ingredient in the Elder Law and Miscellaneous Remedies Division's recipe for success.

Specializing the services offered by the Elder Law and Miscellaneous Remedies Division, both by uniting litigants whose experience is similar due to decreased mental or physical functioning or who have undergone a similar experience that has led them to court, will also allow greater education for judges and court staff to improve the handling of such sensitive matters.

## V. Conclusion

All of the litigants served by the Elder Law and Miscellaneous Remedies Division of the Circuit Court of Cook County should be united not simply by age, but instead by an approach that uses age as a threshold inquiry before determining specific need based on a litigant's unique attributes and physical or mental condition. Victims of elder abuse may benefit the most from this new and exciting division, as they are not only united by the experience that has led them to the judicial system, but also may have the most to gain by greater access to social services and adjudication of their matters by judges well versed in their particular plight. It is clear that two years of development has already resulted in aspirations that may truly result in the Elder Law and Miscellaneous Remedies Division serving as a model court for the nation—and, with a few more tweaks, there is no end to

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the good it can do for Cook County's growing elderly litigant population.

