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“My Older Clients Fall Through Every Crack in the System”: Geriatrics knowledge among legal professionals

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Abbreviated title: Geriatrics Knowledge Among Legal Professionals

ABSTRACT

With the rapid aging of the criminal justice population, legal professionals increasingly provide front-line identification and response to age-related health conditions (including cognitive and physical impairments) that may affect legal outcomes, such as the ability to participate in one's defense or stay safe in jail. The goals of this study were to assess legal professionals' ability to recognize and respond to age-related conditions that could affect legal outcomes and to identify recommendations to address important knowledge gaps. This was a mixed quantitative-qualitative study. Legal professionals (N=72) in the criminal justice system were surveyed to describe their demographics, expertise and prior aging-related training, and to inform the qualitative interview guide. Those surveyed included attorneys (district attorneys (25%), public defenders and legal advocates (58%)), judges (6%), and court-affiliated social workers (11%). In-depth qualitative interviews were then conducted with a subset of 10 legal professionals who worked with older adults at least weekly. Results from the surveys and interviews revealed knowledge deficits in four important areas: age-related health, identification of cognitive impairment, assessment of safety risk, and optimization of services upon release from jail. Four recommendations to close these gaps emerged: (1) educate legal professionals about age-related health; (2) train professionals to identify cognitive and sensory impairment; (3) develop checklists to identify those at risk of poor health or safety; and (4) improve knowledge of and access to transitional services for older adults. These findings suggest that geriatrics knowledge gaps among legal professionals exist that may lead to adverse medical or legal outcomes for criminal justice-involved older adults and that partnerships between healthcare and legal

professionals are needed to address these challenges.

KEY WORDS

Geriatric, qualitative, attorneys, prisoners

INTRODUCTION

Although attorneys, judges and other legal professionals are rarely thought of as healthcare team members, they often play a front-line role in identifying and responding to critical health conditions in the criminal justice system. Thirteen million Americans enter jails each year to await trial or serve short sentences.¹ Of these, older adults (age 55 or older) are the fastest growing age group. While arrests among all ages increased 0.4% from 2007 to 2009, arrests of older adults increased 19%.² Similarly, the jail population rose by 53% from 1996 to 2009, while the older inmate population increased 278% to approximately 500,000.^{3, 4} Jails disproportionately house persons in poor health with high rates of behavioral health risk factors, such as substance abuse and homelessness.⁵⁻⁷ These risk factors, when coupled with chronic disease and disability, could put older adults at risk for poor legal outcomes or adverse health events in custody.^{8, 9} Although legal professionals are among the first to come into contact with older adults entering the criminal justice system, their attitudes towards aging and knowledge of common age-related health issues is unknown.

For many older adults, arrest and detainment may constitute a sentinel event, similar to hospitalization, which affords an opportunity to diagnose and treat underlying psychosocial or medical pathologies, such as substance abuse or cognitive impairment.^{10, 11} After arrest, sensory impairment, disability, or dementia could affect an older adult's ability to access adequate legal representation, participate in their defense, or comply with court orders.^{12, 13} When unrecognized and untreated, these geriatric conditions could jeopardize safety during detainment or increase the likelihood of re-arrest after release. For these reasons, jail detainment is increasingly considered a

public health opportunity for arrestees,¹⁴⁻¹⁶ especially for older adults.¹⁷ Additionally, age is considered by legal professionals when determining guilt or innocence, eligibility for alternatives to incarceration, and leniency in sentencing.^{18, 19}

Despite the aging arrestee and jail populations, little is known about whether legal professionals are prepared for this significant demographic shift.²⁰ Therefore, this mixed-methods study was conducted to assess legal professionals' self-reported abilities to recognize and respond to age-related health conditions that could affect legal outcomes and to elicit their recommendations to address identified knowledge gaps.

METHODS

Study Design and Sample

This was a mixed quantitative-qualitative study of legal professionals, defined as all professionals who come into contact with older adults in a legal capacity in the criminal justice system in San Francisco County. First, quantitative surveys were conducted with 72 legal professionals to: (1) describe the demographics, expertise and prior aging-related training of a group of professionals who come into contact with older adults in a legal capacity in the criminal justice system; (2) identify participants for in-depth interviews; and (3) inform the discussion guide for qualitative interviews. Since the group of professionals in the criminal justice system who come into contact with older adults in a legal capacity is large, diverse and dynamic, a grounded theory approach of selective and theoretical sampling was used to identify a representative group of participants.²¹ First, key stakeholders were identified in each professional group. Next, snowball sampling was used to identify professionals who work with older adults.

Finally, in response to preliminary findings that public defenders generally serve as an older adult's first and primary contact in the system, public defenders were over-sampled. The three participant groups included: attorneys (public defenders, legal advocates and district attorneys), judges, and court-affiliated social workers (pre-trial diversion case managers and social workers for the county jails). Pretrial diversion is a case management-based alternative to incarceration for some defendants with minimal criminal justice histories. Identical surveys were conducted in-person or online according to participant preference. There were no systematic differences found between the responses according to survey method.

Following the completion of questionnaires with 72 professionals, semi-structured, in-depth interviews were conducted to better understand the findings from the questionnaires.²² Interviews were conducted until thematic saturation was reached which occurred after 10 interviews. Survey respondents were asked to participate in in-depth interviews if they reported at least weekly interaction with older adults. This criterion was chosen to ensure that interviewees had relevant professional experience on which to draw. The qualitative interviews lasted between 1 and 2 hours. All ten survey respondents who were invited for an in-depth interview accepted, including 5 attorneys, 2 judges, and 3 court-affiliated social workers. Surveys and interviews were conducted over a 6-month period in 2011-2012. All participants provided written consent. This study was approved by the Committee on Human Research at the University of California San Francisco.

Measures

Quantitative survey

The quantitative survey was comprised of open-ended, closed-ended and Likert-Scale items that covered four domains: demographics, professional training, attitudes towards older adults, and knowledge of aging and aging-related health. Demographics and professional training were assessed using close-ended questions. Attitudes towards older adults were determined using the 14-item Geriatrics Attitudes Scale.²³ Agreement with each item was rated using a Likert scale (scores 1-5), where scores of more than 3 reflect positive attitudes towards aging.²³ Knowledge of aging-related health was assessed using items based on the experience of study authors with a background in geriatric correctional healthcare (BW, TS) and the law (DF), and included knowledge of common geriatric syndromes that might affect legal outcomes (e.g., cognitive and sensory impairments); local social service organizations for older adults; and the ability to obtain health information relevant to criminal justice proceedings.

Qualitative Interviews

The semi-structured interviews included open-ended questions about the extent of professional interaction with older adults; prior professional training in age-related health; and perceived need for further knowledge. The guide included questions related to geriatrics knowledge from surveys, including the ability to recognize and respond to cognitive impairment and delirium; knowledge of barriers to communication (e.g., sensory impairment and limited health literacy); and familiarity with community-based health and social services for older adults. Participants were also asked to give examples of system-level deficiencies encountered in their interactions with older adults and to offer suggestions for how to address these deficiencies.

Analysis

Descriptive statistics were used to report findings from quantitative surveys. Qualitative interviews were analyzed using standard grounded theory principles. All interviews were recorded and transcribed. Using constant comparative analysis, a multidisciplinary research team including scholars from academic medicine, geriatrics and law reviewed the interviews iteratively to identify new themes and develop a common codebook. One author coded all interviews (TS) and a second repeated coding for 50% of questionnaires (SG) with >80% concordance. Disagreements were resolved by consensus between the two main coders and the senior author. As new themes emerged, new codes were developed with input from the team. Because the study aimed to determine attitudes towards aging, geriatrics knowledge among legal professionals, and how to close knowledge gaps and address system-level issues, the emergence of new themes guided our study end-point. Thematic saturation was reached when no new themes emerged and no further interviews were conducted.

RESULTS

Quantitative surveys

Through snowball sampling, stakeholders recommended 83 professionals to the study investigators, of whom 72 (87%) agreed to participate in the quantitative survey. Overall, survey respondents included attorneys (district attorneys (18, 25%), public defenders and legal advocates (42, 58%)), judges (4, 6%), and court-affiliated social workers (8, 11%) (Table 1). Participants were predominantly under age 55 (83%) with at least 5 years of professional experience (65%). Thirty percent worked with older adults weekly and 68% reported using age or age-related factors to make legal decisions

about and/or recommendations for their clients. All participants scored ≥ 3 on the Geriatrics Attitudes Scale²⁴ consistent with a positive attitude towards older adults, though nearly half (46%) held the negative view that, “As people grow older, they become less organized and more confused.” All had positive beliefs about the social value of older adults. For example, (88%) agreed or strongly agreed that it is society’s responsibility to provide care for older adults.

Ten participants (14%) rated themselves as knowledgeable or very knowledgeable about aging-related health as it pertains to their work. Most (74%) reported no professional training in aging-related health. Overall, 20 participants reported having received training about aging- 23% of attorneys, 75% of judges and 27% of court-affiliated social workers. Over two-thirds (67%) of participants reported training in aging-related health would be important or very important for their work (Table 1). The majority reported knowledge gaps in key content areas such as how dementia, delirium or depression might affect behavior or a client’s ability to follow or understand instructions (54%) (Table 2). Qualitative interviews were conducted to further explore these knowledge gaps.

Qualitative interviews

Four overarching gaps in legal professionals’ geriatrics health knowledge emerged in the qualitative interviews: (1) general knowledge about aging and health; (2) identification and response to cognitive impairment in older adults; (3) recognition and response to older adults at high safety risk; and (4) how to optimize transitional services upon return to the community (Table 3).

General knowledge about aging and health

Many participants described a lack of knowledge about aging and health as it pertains to their work. A public defender described her knowledge deficits related to sensory and cognitive impairment:

My client was 87, his first time in jail, can't hear, has hearing aids... I don't know if he really didn't understand what was happening or if he didn't want to or if he was playing a role but the deputy at the front desk [said] "Oh, yeah, I know [him], he buzzes the buzzer every 15 minutes and asks why he's here."... He was difficult to work with because he'd get angry and you'd have to explain to him again what was going on and why.

A court-affiliated social worker explained his confusion about what constitutes "normal aging":

An older client I had ... would just sit there. He had a wheelchair and... he [would say], "Get me my [expletive] oatmeal," and he would throw stuff at us... it would be a real barrier to services ... I don't know if that's just a natural part of aging where you don't care so much about what other people think about you and you're not trying to please others.

Identifying and responding to cognitive impairment in older adults

A dominant theme described lack of sufficient knowledge about cognitive impairment in older adults. Many stated this knowledge gap posed professional challenges. A public defender described one client with suspected cognitive impairment:

His crime was to go into [a coffee shop] and steal the tip jar...he would always go back and keep doing it no matter what...even though he had a stay-away order,

even though we would talk to him daily about not going, he would keep going back to the same [shop] and stealing the tip jar... I think if we had been more educated in what was going on with [cognitive impairment] him then we could have done a better job, and maybe he wouldn't have gone back –he's still floating around the system now, in and out.

Recognizing and responding to older adults at high safety risk

Many participants felt underprepared to identify older adults at high safety risk, including physical and emotional abuse. One public defender described this challenge:

[I am concerned about] abuse by younger, stronger, more criminally minded prisoners. This includes physical abuse as well as mental and emotional abuse, manipulation, victimization. I have many times felt outraged by such living conditions for my older clients.

A district attorney noted:

The population of older prisoners is growing tremendously and the prisons and jails are not equipped to keep them safe from attack.

Optimizing services upon return to the community

Participants frequently expressed concern that older adults are at high risk of poor outcomes during the transition from jail to the community. According to one court-affiliated social worker,

My [older] clients fall through every crack in the system that the younger ones do... in addition they have other serious basic needs which make navigating a very tedious and frustrating system very difficult.

Participants reported that older adults were less likely than younger adults to obtain

healthcare and social services after detainment, and many felt underprepared to optimize linkages to health and social services. One public defender described his difficulty creating a transitional housing plan for an older client:

[His family] had the resources to pay \$4000 a month for him to go to a board-and-care or he'd [still] be stuck in jail.... His son hired outside agencies that work with elderly people. That's how he got his [neuropsych] exam. If it wasn't for him doing all the legwork [it would not have happened]. We have some social workers but they're not trained in ... elderly care so they would have been starting from scratch trying to find housing for him.

Lack of resources available for professional consultation

Despite these knowledge gaps, many reported using age or age-related factors to make legal decisions, including eligibility for social services programs, competence to stand trial, and sentencing. Professionals described occasional consultation with specialists in geriatrics or gerontology to conduct neuropsychiatric testing, aid in decision-making, or enhance client services. However, many stated that budgetary constraints greatly limited their ability to do this for all clients in need. One court-affiliated social worker described the implications of this resource gap:

A year and a half later, she still doesn't have a grasp of what's going on with her situation, and it's only gotten worse... Her social workers and doctors [say], 'Well, [neuropsych testing] is really expensive' [so it hasn't been done]... Well, there's something going on; we need to figure out what it is because... she could be eligible for even more services, things that will keep her housed. It's very difficult.

Recommendations for addressing the geriatrics knowledge gap among legal professionals

When asked to identify their most pressing training needs, legal professionals' responses ranged from understanding aging-related health ("common medical conditions facing older adults and how urgent such medical conditions are"), identifying high risk older adults ("identifying mobility impairments and accommodations"), and understanding cognitive impairment ("how aging impacts decision making"), to helping create effective transitions planning ("a list of resources that can serve older adults released from custody").

Four overarching recommendations to close legal professionals' aging-related knowledge gaps emerged (Table 3). These recommendations included: (1) educate legal professionals about aging-related health; (2) develop checklists to identify older adults at risk of poor health or safety; (3) train legal professionals to assess older adults for cognitive and sensory impairments; (4) improve knowledge of and access to transitional resources for older adults.

DISCUSSION

This study assessed legal professionals' attitudes towards older adults, identified their geriatrics knowledge gaps, and described their recommendations to address these gaps. Participants demonstrated an overall positive attitude towards older adults and asserted that knowledge of aging-related health was important for their work. Legal professionals identified knowledge gaps in four critical areas: (1) general aging-related health; (2) cognitive impairment; (3) assessment of safety risk; and (4) community-

based social services for older adults. Despite often feeling unprepared to identify or respond to aging-related issues, many professionals reported using age as a factor in their legal decision-making. Participants identified four recommendations for closing their geriatrics knowledge gaps including (1) increased education about aging-related; (2) development of a checklist to identify older adults at heightened risk for poor health and safety outcomes; (3) training to screen for cognitive and sensory impairments before legal proceedings; and (4) improved knowledge of and access to transitional resources for older adults returning to the community.

This is the first study, to the authors' knowledge, to examine criminal justice legal professionals' knowledge of aging-related health. This study's findings are consistent with prior research in elder law showing that little has been done to prepare legal professionals in the criminal justice system for increasing numbers of older adults in need of criminal representation.²⁵ Specific courses in elder law are taught by only half of U.S. law schools, and focus primarily on health insurance, benefits, and elder abuse rather than considering the health and legal consequences of aging in the criminal justice system. In a national survey of elder law curricula, medical knowledge was not mentioned²⁶, and one report found that legal professionals recognize age-related health deficits, such as cognitive impairment, based on prior experience rather than through formal training or screening procedures.²⁷ As the criminal justice population ages, these shortcomings may result in increasingly avoidable and costly health and legal consequences.

In this study, legal professionals described the limited availability of resources for consulting specialists in geriatrics or gerontology for older adults requiring additional

evaluation. This financial constraint underscores the importance of enhancing legal professionals' knowledge of aging-related health. Such knowledge could help to limit the need for outside geriatrics consultation while simultaneously improving health and legal outcomes for a growing, vulnerable population.

Several limitations should be considered when interpreting these results. This study was designed to understand the health-related educational needs and potential points of intervention for professionals in the criminal justice system that come into contact with older adults in a legal capacity. The study was not designed to account for specific differences in the attitudes and educational needs of individual professional groups. Rather, since studies have not previously examined criminal justice legal professionals' geriatrics knowledge, this study represents an important first step in addressing professionals' preparedness for aging in the criminal justice system as a whole. Due to the relative wealth of research on older victims, this study did not address the important work the legal community has undertaken in training professionals on critical health issues pertaining to older victims and witnesses. Finally, this study focused on judges, attorneys and court-affiliated social workers in an urban county criminal justice system. While the broad categories of educational needs described in this study are likely similar for other criminal justice professionals, similar assessments should be considered for other groups, such as police officers, correctional officers (guards), and jail-based healthcare clinicians, and in other geographic locations.

This study identifies critical geriatrics knowledge gaps among legal professionals and their recommendations for closing these knowledge deficits to minimize the potential legal and medical consequences for older adults in a rapidly aging criminal

justice system. The results suggest that for legal professionals, further research is needed to determine each group's specific educational needs to target training in geriatrics, and optimize legal representation, healthcare and social services for older adults. Furthermore, geriatricians might consider proactively offering medical expertise to legal professionals and the broader public, since the community is often unaware that geriatric specialty services exist.²⁸ Such partnerships could potentially reduce criminal justice and healthcare costs associated with older adults whose criminal behavior is influenced by underlying, undiagnosed health or cognitive impairment and help professionals develop and target legal interventions for medically vulnerable older adults, including alternatives to incarceration and specialized elder courts. Given the aging of the U.S. population, medical educators, departments of public health, geriatricians, gerontologists, and service-oriented community providers should look to the legal profession and other non-medical professionals as important venues for geriatrics training and education.

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Table 1: Baseline Characteristics of Legal Professionals from Quantitative Survey (n = 72)

Characteristic	n (%)
Profession	
Attorneys	
Public Defenders and Legal Advocates	42 (58)
Lawyers in the District Attorney's Office	18 (25)
Court-affiliated Social Workers	8 (11)
Judges	4 (6)
Age ≥55 years	11 (16)
Female	47 (65)
Race/ethnicity	
White	41 (57)
Black	10 (14)
Latino	5 (7)
Asian	7 (10)
Other	8 (11)
Professional experience, years	
<5	24 (33)
5 – 20	32 (44)
>20	14 (19)
Frequency of encounters with older adults	
Never or Less than monthly	19 (27)
Monthly or a few times per month	30 (42)
At least weekly or a few times per week	22 (30)
Self-reported knowledgeable or very knowledgeable about aging-related health as it pertains their work	10 (14)
Has received training or education specific to working with older adults	20 (29)
Believes it would be important or very important to receive training in aging	46 (67)

Table 2: Aging-related Health Knowledge Gaps among Legal Professionals^a (n = 72)

Self-Reported Knowledge Gap	n (%)
Cannot explain how depression, dementia and delirium might affect behavior or the ability of someone to follow or understand instructions	39 (54)
Cannot identify and assess barriers to communication such as hearing and/or sight impairment, speech difficulties, limited health literacy, or cognitive impairment	29 (40)
Cannot obtain adequate and relevant information about medical or psychiatric health, including understanding how their health status may be relevant in criminal justice proceedings	20 (28)
Cannot identify older persons at high safety risk, including driving safety and risk of elder abuse	43 (61)
Cannot describe 3 local organizations that provide social services to at-risk older adults or older adults transitioning from incarceration	51 (71)

a

Knowledge Items were chosen based on the experience of study authors with a background in geriatric correctional healthcare (BW, TS) and the law (DF). Responses ranged on a scale of 1-5 described as “Cannot do at all” (1) to “Very certain can do” (5). Reported percentages are based on a response of 1 or 2 (Cannot do at all or Cannot do).

Table 3: Legal Professionals’ Recommendations to Close Their Knowledge Gaps about Aging-Related Health, from Qualitative interviews

Knowledge Gap	Recommendations to Close Knowledge Gaps	Illustrative Quotations
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<p>Insufficient general knowledge and training about aging</p>	<p>Educate legal professionals about aging related health</p>	<p>If my parents were younger or didn't have any medical issues, as a young judge there might be a lot of things I just never encountered in my personal life and I might not really understand the issues of the aged population... We all would benefit from education. (Judge)</p>
<p>Identifying and responding to cognitive impairment in older adults</p>	<p>Train legal professionals to assess older adults for cognitive and sensory impairments before legal proceedings</p>	<p>[I would like more information about] how disability might explain actions that would otherwise amount to criminal behavior. (Public Defender) If there's a simple thing that para-professionals can do to try to figure out which direction to go [in determining whether a client has cognitive impairment] I would love to be trained on how to do that so that when we're doing interviews in the jail, we can do that and know beforehand instead of waiting to see [later] that there are memory issues. (Court-affiliated Social Worker)</p>
<p>Recognizing and responding to older adults at high safety risk, including how to</p>	<p>Develop checklists to identify older adults at risk of health decline or at high safety risk</p>	<p>I need to know what questions do you ask to elicit the most information? What the lawyer has to know is, 'Okay, who do I call? Okay, there's something here,</p>

mobilize surrogate
decision makers and
social services

what's my next step?' Not to diagnosis
it, but to know what direction to go."
(Public Defender)

Optimizing social and
health services upon
transition from jail to
the community

Improve knowledge of and
access to transitional
resources for older adults
returning to the community

Older adults who are released after
lengthy prison terms have enormous
hurdles reintegrating with their
community. Although in many cases they
are no longer inclined to engage in the
risky behaviors that landed them in
prison in their 20's, they have few
internal or external resources to support
them as they try to make a new life for
themselves, and thus often end up back
in the criminal justice system. (Attorney)
