

Q & A with T.S. Laham, author of *The Con Game: A Failure of Trust*

Q. Why did you decide to write *The Con Game: A Failure of Trust*?

A. A close relation of mine shared a tragic story about an elderly relative who was stricken with dementia and became a victim of elder abuse in her own household. The macabre story contained intrigue, predation, betrayal, injustice, misappropriation, and debasement. I became so interested in the situation and in the topic that I plunged into a decade-long exploration of it. As a writer, then, I felt morally compelled to shine a public spotlight on the disturbing social phenomenon of elder abuse and neglect in America.

Q. You talk about both physical abuse and neglect and financial abuse in *The Con Game*. How widespread is each?

A. That's a head-scratching question even for experts who often disagree among themselves. Adult Protective Services, the first responder to reports of elder abuse, acknowledges that an exact estimate on the number of older Americans who are physically abused, neglected, or financially exploited is unknown. In fact, there are no official national statistics. Still, estimates on the prevalence and incidence of elder abuse are available. For example, neglect is the most common type of abuse, followed by physical abuse, financial exploitation, emotional abuse, sexual abuse, and other types of abuse, according to a national study on elder abuse. One thing all experts can agree on is that the elder abuse problem is far more persistent than the numbers reveal, it isn't going away anytime soon, and it's growing into a national crisis.

Q. Why it is so hard to detect abuse against the elderly and who is often responsible for it?

A. Just as experts disagree over elder abuse statistics, they often differ on what precisely constitutes elder abuse and neglect, which makes detection difficult. Some experts say there's simply no gold standard. In other words, it—the abuse—is in the eye of the beholder. For example, clinicians working with abused or neglected elderly victims typically identify forensic markers. These markers often overlap with disease markers, making it difficult to prove beyond a reasonable doubt that abuse occurred. Furthermore, actual abuse and neglect are rarely observed by clinicians or protective service professionals who have the legal authority to intervene with immediacy, but instead by people who interact with the elderly person routinely—and almost always away from prying eyes.

A snapshot of a typical abuser in a domestic setting is a family caregiver who's financially dependent on the elderly victim and lives with him or her. The perpetrator often suffers from low self-esteem, exhibits a poor sense of self-control, and struggles with substance addiction or abuse, or physical or mental disorders. Moreover, he or she may have an inadequate set of coping skills to deal with life stressors, such as unemployment, caregiver burden, and relationship conflicts.

Q. Which older Americans are mostly likely to fall prey to abuse or financial fraud?

A. Let's focus on financial crimes against seniors to address this. The FBI provides several reasons why seniors are prime targets for financial fraud. First, seniors usually have a nest egg and excellent credit, which attract scammers. Second, older Americans were raised to be courteous and trusting, which are qualities scam artists play on. Third, elderly victims are less inclined to report a fraud, as they don't always know where to go to report it. Fourth, elderly victims feel ashamed that they've been scammed and so hide the incident from family members and others. Fifth, elderly victims often make poor witnesses—scammers actually count on this. For

instance, it might take an elder several weeks or months to realize that he or she was scammed, making it difficult for the elder to remember what happened.

Q. Much of *The Con Game* is dedicated to exposing the problems associated with conservatorship (also called “guardianship”). First, tell us what purpose conservatorship is supposed to serve?

A. A conservatorship is a court case where a judge appoints a “reasonable person or organization,” a “conservator” or guardian, to make medical and/or financial decisions for an incapable adult, a “conservatee” or ward. Know that conservatorships aren't reserved for the elderly. Britney Spears and the late British singer Amy Winehouse were conserved for running amok and posing a danger to themselves. The scary thing is that any of us could become a ward of the state. Growing old and forgetful, getting ill, becoming unable to take care of ourselves or our affairs, getting into a crippling accident, or depending on others for our care could happen to any of us. Losing capacity doesn't distinguish between the genius or the average, the rich or the poor, or the healthy or the unhealthy.

Q. Now, explain why conservatorship can lead to abuse and exploitation.

A. A conservatorship is the most restrictive alternative and most intrusive option to addressing a situation. It can create new problems and even perpetuate the abuse when a court-appointed protector seizes “supreme control” over a conserved elder. You hear lots of stories of conservators gone bad. For example, there was the story of a guardian who embezzled over \$640,000 from an 87-year-old Alzheimer's patient. The guardian, a former taxi cab driver, spent the stolen funds on things like a Hummer and exotic dancers. When county employees caught wind of the guardian's misdeeds, they discovered that the victim, who was wearing nothing more than an old knit shirt and a diaper, was living in the filthy basement of the guardian's home. Such egregious violations perpetuated by abusive guardians against the dependent elderly are not uncommon.

Q. In *The Con Game* you profile the Lyon family whose matriarch, Selma, was allegedly abused by family members. Can you tell us about this case and how typical is it of elder abuse cases?

A. Selma Lyon was a well-to-do elderly widow suffering from dementia and other chronic illnesses, which left her completely dependent on others for her care. Selma's son lived with her, and was financially dependent on her. By default, the son became Selma's primary caretaker but was ill-equipped to care for her. He hired a home health aide to assist with Selma's care. Soon afterward, the son married the home health aide, who, along with her immediate family, moved into Selma's home against Selma's protests, and then isolated Selma from the world. Selma's basic needs were being ignored, and the son and his family were allegedly exploiting Selma's weakened state by getting what they wanted from Selma, even going as far as convincing Selma to change her estate plan by putting the son and his family in charge of Selma's personal and financial well-being. Before long, Selma's relatives tried to intercede to protect Selma and to help the son, which led to a bitter family feud. The disagreement became so heated that the Probate Court eventually intervened. Selma was conserved, and then Selma's story takes another unusual turn.

Selma's situation is fairly typical of elder abuse cases, and there are far worse ones. According to an elder law attorney working on Selma's case, a typical elder abuser finds professionals who will satisfy his or her requirements and not the elder's. One ploy used by elder abusers is to isolate the elder, have all the elder's assets placed under the abuser's name, take the elder from doctor to doctor for medication, and eventually overmedicate the elder until death. No autopsy would be done because the death of an elder with health

problems is rarely regarded as suspicious. The elder would then be buried, and the elder's assets would disappear, without the knowledge of the family. Due to the elder's age, no one would be the wiser as to the fact that the elder was actually a victim.

Q. What is the “protection industry” and why do you say it has a dark side?

A. The courts usually appoint a family member to be a conservator or a guardian for an elderly loved one who needs help. When no suitable family member is available to serve as conservator, the courts may appoint a professional fiduciary—a person who acts as conservator for two or more individuals who are not related to the fiduciary. A whole cottage industry of professional fiduciaries, called the "protection industry" by some, has burgeoned around the dependent elderly who can't fend for themselves. A professional fiduciary often manages many clients, plays a paternalistic role in their lives, and demonstrates no or limited interest in their well-being. Some critics say that fiduciaries "profit off mostly helpless people."

Q. You say that a conservatorship can strip people of their basic freedoms. So how can a person avoid a conservatorship and what are some of the alternatives to it?

A. In two words, advance planning. Advance planning can guard you against being conserved, and even if you were conserved, you'd have named the individual, or individuals, in advance whom you'd like to serve as your conservator, or conservators. So by building a "safety net" of legal tools, you cannot only protect yourself but also dodge the conservatorship card.

There are many alternatives to a conservatorship for financial management and personal care, including powers of attorney, bill payer programs, banking arrangements, trusts, living wills, and estate planning, and other options.

Q. One of the major problems with end-of-life care is that so many people don't prepare for the later years or the possibility of becoming unable to communicate their wishes. Why do you think this is, and what are a few things that you think everyone should do when they are young to lessen the chances that they will be vulnerable to abuse and exploitation in later years and to ensure that their wishes are respected?

A. End-of-life decisions are the most difficult, complex, emotional, and sensitive decisions we'll ever have to make for ourselves and for our loved ones. As a result, many people put off advance planning that would ensure that their wishes are carried out. Why? Well, most people have an inherent fear of death. One way to deal with that fear is simply not to think about it, and so avoid planning for it. Some people feel that by planning for death, they'll hasten its arrival.

Being proactive by taking steps to get your affairs in order while you're young and healthy can preempt family conflict and confusion over what you want to happen in the event of death, a health care crisis, or mental incompetency, as well as can guard you against the wiles of a nefarious stranger or an abusive family member. Let's face it. Accidents happen and illnesses befall us with little or no forewarning. To prepare for an unexpected occurrence that may prevent you from handling your personal or financial affairs, you should furnish formal instructions for loved ones or whomever you've selected to make surrogate decisions. By not doing that, you could leave family members, relatives, or friends in a quandary, which could lead to arguments or uncertainty over how best to handle a particular situation and in turn erupt into an ugly situation like

Selma's. We all have the power to govern ourselves—in life and in death—if we choose. The important thing is to not wait until it's too late.