

Genna LaPeer:

Elder exploitation is a massive problem around the country, but also in the state of Florida specifically, because we have a massive elder community. Elder exploitation is incredibly prevalent. And for us here in Florida, we are so fortunate that our laws are probably some of the most advanced and specific to help these types of cases.

Shannon Miller:

We guard against exploitation. It's crazy, 20% of people out there are exploited. That means one in five are exploited. The average amount of exploitation per person who's been exploited by someone known to them is \$50,200. That's the average. I can tell you that we've seen one that was \$10 million. We've seen exploitation from non-family members, just scammers on the internet, that range between 300 and \$400,000.

Shannon Miller:

Exploitation is one in five people. It is rampant and the exploitable brain is sometimes very difficult to detect. It's crazy. We have this great information now. We have some research on the exploitable brain. And it's very compelling to understand that in the United States in 2019, \$36.5 billion, same amount of money that McDonald's earned in 2018, went out the door to exploiters in the United States.

Shannon Miller:

The same amount of money that McDonald's earned internationally in 2018. That's how much money is going to exploiters in this country. It's epidemic and it's happening every day. We're trying to create better laws to protect people, but the best way to protect people is to have good estate planning and also to have helpers that you trust.

Shannon Miller:

Having family members or anybody who is going to be like a fiduciary for your stuff, who is going to keep watch over your stuff for you, because you might become exploitable. Those are things that we layer into the life care planning, and that becomes super important when we're trying to maneuver through that end stage of life. And the statistics are compelling.

Shannon Miller:

We're going to talk about the study that was done. And it involves a study size of 36 people. Half of them ... It's a very small study size, but half of them were exploited. They were subjected to a scam and they fell victim to it. They took the bait. The other half were subjected the scam and they did not take the bait.

Shannon Miller:

What they did is they put all 36 of them under MRI. And what they found was 100% of the victims that took the bait and fell victim to the scam, had a thinning of the cortical insula. Let me show you right where it is. It's like above your ear, behind your temple. The thinning of the cortical insula in your brain.

Shannon Miller:

What we know is that region of the brain allows us to assess risk. It allows us to look down a dark alley and say, "I'm not going down there." And when that region of the brain is no longer ... The neurons

aren't firing there anymore ... What we know is that people cannot tell the difference between a truth and a lie.

Shannon Miller:

The second important research study involves showing people pictures of a menacing face. Seriously, it's a menacing face and a non-menacing face. The same person, but it's with a menacing look and a non-menacing look. Again, putting people under MRI. And again, determining that when that thinning of the cortical insula is in place, that those people cannot tell the difference between a menacing face and a non-menacing face.

Shannon Miller:

And so, if you've been in the area of elder law or dealt as a financial advisor ... Anyone dealing with people who are aging, they can tell you that they know when people are exploitable. That exploitable brain is epidemic as we age. We find that, in general, we know that 20% of seniors are being exploited, so we can assume that that's going on. That their brains are having those issues.

Shannon Miller:

It doesn't mean that you would notice it talking to them in general. What I find is that they're just incredibly suggestible. They are incredibly easy to persuade. And so, we have to protect those people, because they will make very bad business decisions. They may have been the president.

Shannon Miller:

We had a client, he was an incredible attorney from New York. He was incredibly successful, and he had been convinced that something was happening that clearly was not based in reality. It's like, no matter how many times you could explain to him that that is not true, that is not what was happening, he couldn't conceptualize it.

Shannon Miller:

So, it is a problem. And what we do in our planning to protect against the exploitable brain is when we have our clients come in, we ask them, "Will you sign this agreement that allows your helper that you trust, your trusted contact, to step in and freeze your assets down?" Maybe take over as trustee, maybe take full authority of your accounts, when your brain becomes exploitable. And do you trust them to make that determination?

Shannon Miller:

We've created these tools that allow us to take advantage of the laws in Florida that allow us to lock assets down. It's called the Exploitation Injunction. We have something called a Pre-Need Consent Against Exploitation. And then, we also have provisions in our trust agreements, in our state plans, that allow for your helpers, your trusted advisors, to lock it down.

Shannon Miller:

Now, I'll tell you when I first started using these new tools, I thought people wouldn't want it. I thought that our clients would say like, "I don't want that. I don't want somebody to be able to lock me out of my assets." That has not been my experience at all.

Shannon Miller:

People come in and I tell them about exploitation, and I tell them what we've seen. And they go, "Oh, no, I know. My neighbor or my friend has been exploited. They lost all their retirement assets. They gave them to this scam or they bought gift cards or they did all these silly things. I don't want to do that. And I know that my brain could change at any time." And so, what we've found is that clients are very willing to allow for people to protect them against themselves if they become exploitable.

Shannon Miller:

Some basic things about exploitation. A change in behavior, becoming more secretive, engaging with a new friend or contact that you don't know about. It can be a boyfriend or girlfriend, it can be a caregiver. Isolation, changing phone numbers, getting a new cell phone. Changing banks, eliminating joint account holders that otherwise we're just there to supervise. Becoming more secretive, expressing things that aren't true.

Shannon Miller:

For example, we know that undue influencers will tell lies to the person. They'll say, "Your kids don't love you. Your kids are stealing from you." Things that just simply are not true. And you as a family member hear about these things and you're like, "Dad, that's not true. I haven't used your credit card, or stolen money from you."

Shannon Miller:

Those repeated lies sometimes become fact in the exploitable brain. What can happen is, if I hear it enough times from my girlfriend or boyfriend, that my children no longer care about me or that they've stolen from me ... That becomes my truth, because of the repetition and the frequency.

Shannon Miller:

And it's loud. It's loud in my ear. And you're the only one who's going to take care of me. And you're the only one that's going to me out of the nursing home. It's a pretty typical story.

Shannon Miller:

The ways to prevent against it? We have a lot of tools in Florida that allow us ... We're actually in the process of, potentially in this legislative session, creating some additional tools through the Attorney General's Office that will protect exploitable people from becoming victims of undue influence and exploitation.

Shannon Miller:

In 2014, I sat on a work group with a number of people across the state of Florida, including at the time, Representative Passidomo. Now she's a Senator. She's about to be president of the Senate ... To redraft the criminal exploitation laws and make them more usable.

Shannon Miller:

What we basically did is we created five new definitions of exploitation, criminal exploitation. And the way that became useful to us in the civil world is we were able to use the criminal definition of exploitation to pursue civil theft.

Shannon Miller:

If somebody stole \$30,000 from somebody else, we could use the criminal definition of exploitation to get triple damages. And that's the Civil Theft Statute. That happened in 2014, we had those laws passed, which were amazing. It revolutionized. The first of its kind in the United States to have such great exploitation laws.

Shannon Miller:

In 2017, we passed the Exploitation Injunction Statute, the Elder Law Section, and a local entity called the North Central Florida Senior Advocacy Network of which I'm a member. And I also helped draft that legislation, which was amazing.

Shannon Miller:

Basically, what it does is it's a tool that allows us to go into court and freeze assets. What that means is, if an exploiter comes in and gets grandma to add him or her to the joint account, and they actually are able to access those funds ... We can go into court, we can lock the money down, and we can also reach into the exploiter's assets if they've taken the money out already.

Shannon Miller:

It gives us some really great tools for getting the assets back. Whereas before we'd have to go through a protracted litigation process, we'd have to file a complaint or a guardianship. Now, we can go in ... Literally, we can go in and file something with the court. Sometimes the judges will enter the freeze orders that day or the next day. To freeze those accounts down, the orders go over to the bank, so we can stop the bleed.

Shannon Miller:

And then, we have a hearing with the court. And the court has so many options with regard to returning assets to that vulnerable adult. With regard to exploitation, this Exploitation Injunction is my favorite tool that we have in Florida now. But it is still difficult. We still have to go to court to get things done. It would be better if we could prevent it from the front end.

Shannon Miller:

But right now that Exploitation Injunction has become such a sword to use against exploitation in Florida. With regard to undue influence, as I said, it's not criminal right now. Unfortunately. What we have are some really great tools for getting ... Someone has their money stolen by a caregiver, an exploiter, and we can use the Exploitation Injunction Statute to get that money back.

Shannon Miller:

But we don't have a tool for undoing ... An undue influence will, for example, if that exploiter also has you go on LegalZoom or some other online and draft a new Will leaving them as the beneficiary ... We don't really have any criminal penalties for doing that.

Shannon Miller:

There is some legislation that we're hoping to pass this year through the Attorney General's Office that will make that a crime. But for right now, what we have to do is we have to wait until that person dies, and then we can do things like a Will contest.

Shannon Miller:

We use something called the Carpenter Factors to basically shift the proof burden onto the exploiter or the undue influencer. How that would work is, if they got this Will and they were able to file it with the court and say, "Oh, now I get all their money," the victim ... Then, we would contest that Will, and we would say, "This Will was obtained by the person. They knew what was going into the Will. They made themselves a beneficiary."

Shannon Miller:

These are called Carpenter Factors and there's actually seven of them. Then, there's three additional factors that include things like isolating or telling lies to what we call the testator, the person who was making the Will. Basically, we would go into court and make that contest doing a Will contest. But there's a whole range of other types of causes of actions that we could pursue.

Shannon Miller:

If, for example, they didn't change the Will, but they changed the beneficiary on the IRA. We can engage in something called Intentional Interference with an Expectancy, which is another way to litigate those kinds of issues. But again, it still includes factors like isolating the person, or ... When we talk about undue influence, what we're really talking about is someone saying, "I wouldn't have given my money to that person, but for their influence over me."

Shannon Miller:

If I had my own free will, I wouldn't be giving my money to a caregiver who I met two weeks ago. I would be giving it to my family, whose been my long-standing beneficiaries. Undue influence has become another epidemic in our country and we're starting to get more and more tools to deal with it. But one of the ways that we deal with it now is by engaging in things like Will contests or Trust contests, and also doing litigation using that Exploitation Injunction while the person's still living.

Shannon Miller:

But when they die, we can still do things like Intentional Interference with an Expectancy. We can still use things like Civil Theft. We can still use things through the estate process that we simply didn't have as options before. So, it's still ... We can still get there, but we are hoping that more tools come into play as we move forward.