

## Parents Are Hard To Raise® S03 Episode 98 Transcript

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[00:00:24] And this week on Parents Are Hard To Raise® ELDER LAW EXPERT Amos Goodall president of the National Elder Law Foundation is back to discuss some recent changes in the law that could immediately and severely impact the welfare of our aging parents and us.

[00:00:55] Join 180 million monthly subscribers who can now listen to Parents Are Hard To Raise® on Spotify.

**Diane Berardi:** [00:01:13] Welcome to Parents Are Hard To Raise®... Helping Families grow older together without losing their minds. I'm elder care expert, Diane Berardi.

[00:01:22] Longtime listeners will recognize my next guest as our "go-to" expert on all matters in elder law. If I were to list all of his credentials we wouldn't have any time left in the show. So let me just say he's a certified elder law attorney practicing in Centre County Pennsylvania with the firm Steinbacher, Goodall and Yurchak, where he has been practicing elder law since 1976. Philadelphia Magazine named him a "Super Lawyer" in elder law as they have every year since the category was created. He's a Fellow of the National Academy of Elder Law Attorneys and currently serves as president of the National Elder Law Foundation. Attorney Amos Goodall, welcome back to Parents Are Hard To Raise®.

**Amos Goodall, Esq.:** [00:02:06] Thank you, Diane. It's a pleasure to be back and I appreciate the chance to speak to your large audience.

[00:02:11] Well, what do you have for us this week?

[00:02:16] Well, Diane... I wanted to talk about fiduciaries. A Fiduciary is someone who makes decisions for you if you can't make them for yourself, generally.

**Diane Berardi:** [00:02:25] Okay.

**Amos Goodall, Esq.:** [00:02:25] And I'm going to talk about that in general. I'm also going to talk on that under as a matter of Pennsylvania law. But I would like to encourage your listeners that if they hear something that is... That they want to investigate further that they really need to talk to their own lawyer and they should, if they don't have a family lawyer, they should talk to a Certified Elder Law Attorney, because these questions are generally arising under state law and the law of each state might be a little bit different than the law of other states.

**Diane Berardi:** [00:02:59] Okay.

**Amos Goodall, Esq.:** [00:03:00] So I I'm going to talk about the general rules that I'm going to talk about Pennsylvania law, but every state's law has to be consulted by its president.

**Diane Berardi:** [00:03:10] Yeah I understand. Yeah, every state could be a little different.

**Amos Goodall, Esq.:** [00:03:13] OK. So we're going to talk we're talking about fiduciaries, and I I wanted to point out that there is no such thing as a common law fiduciary. So many people think

well I as a parent I speak for my children which is true of children are minors, as a husband I speak for my wife, which probably is not often true. [laughing]

[00:03:36] Or my wife, if my wife could speak for me, which is slightly more often true as a matter of fact, but not a matter of law. And if my parents get old, I can speak for them because I know what's best. And the answer is those categories are those logical decision makers, or common a law decision makers have no authority under the law of any state.

**Diane Berardi:** [00:04:00] Okay.

**Amos Goodall, Esq.:** [00:04:01] If a child, when a child reaches the age of eighteen, even if that child has no capacity, if the child has special needs, the parents can no longer speak for the child, in most areas. And after the child reaches 21 in no areas.

**Diane Berardi:** [00:04:18] Really?

**Amos Goodall, Esq.:** [00:04:18] And husbands and wives and children for their parents all of those categories are... There is no such thing as an automatic or common law or a de facto fiduciary or a de facto decision maker. And so, people need to either take the matter in their own hands and figure out who should be their decision makers and what the boundaries or what the guidance should be, which is what we help people do. Or they have to wait until the court appoints someone. And if that happens, the court may not appoint the right person, the person appointed by the court may not have the total best interests of the person for whom the decisions are being made in in mind. And it's often very expensive. And if you've heard about problems recently, I believe the Philadelphia Inquirer ran a series of articles about abuses in the in a guardianship system where guardians were actually milking their wards. At least it seemed like from the articles, were milking their wards money, at least using it improvidently and impoverishing the people that they were making decisions for.

**Diane Berardi:** [00:05:34] Right. Yeah.

**Amos Goodall, Esq.:** [00:05:36] For a whole lot of reasons it's so much better that a person who is... Who anticipates that they may have someone, maybe have someone make decisions for them will take action in advance and say who that person should be, and also set up what the parameters are.

**Diane Berardi:** [00:05:55] So now, let's say myself as a child of an aging parent and I feel, maybe for health reasons, my parent can't make decisions or needs help with certain things. We would go to a Certified Elder Law Attorney and explain that and then what would happen? Or that's the proper thing to do, right?

**Amos Goodall, Esq.:** [00:06:16] That's the proper thing to do. And what happens is that your parents would say to that... your aging parent would say to that Certified Elder Law attorney, "I realize that my mind may be doing a little bit fuzzy, or I might get a little bit fuzzy someday, or I don't expect ever to get fuzzy but I want to have somebody on backup.

**Diane Berardi:** [00:06:43] Okay.

**Amos Goodall, Esq.:** [00:06:44] But whatever they have to say, however they have that to say, "and I would like to name Diane to make decisions for me. I'd like to provide for her that if I can't make my own health care decisions she's the one I want to have making those decisions for me. I don't want to have my wife or my husband who might be as scared as I am about my future making

those decisions. I want I want my daughter is younger and smart and strong and able to make the decisions and able to make herself understood. I don't want my son who is...who has a hard time making decisions or would have a hard time making a hard decision because he's too emotional. I don't want him making the decisions. I want Diane to make the decisions."

[00:07:36] So that would be the first thing that the parent would need to say to the lawyer.

**Diane Berardi:** [00:07:40] Okay.

**Amos Goodall, Esq.:** [00:07:40] And then the second thing. The second thing the parent would need to say is these are the parameters for how Diane should make decisions for me. Number one I want to be kept comfortable. Number two I want to be... I want to preserve my privacy or my my dignity. And number three, if they could say I want, if I'm dying if I'm expected to die in the near future and my heart stops beating, I don't want to be resuscitated. And I want Diane to have the power to make that decision and I want her to know that that's what I want to have her do and I want her to have the authority to say that to the doctors. And I want I want to pick someone like Diane who would have the backbone to make that decision as opposed to some other family member who might not have that strength.

**Diane Berardi:** [00:08:36] Right. Now... I Guess those parameters, they could say everything you said as far as decisions involving health care, they could say also financial as well? Or anything could really be in those parameters?

**Amos Goodall, Esq.:** [00:08:54] Exactly. The person I described would be called a "health care decision maker."

**Diane Berardi:** [00:09:00] Okay.

**Amos Goodall, Esq.:** [00:09:02] And then... And often that document is called a health care power of attorney or an advanced health care document or a Living Will. Those are... there are many ways to accomplish that giving that decision making authority and different lawyers will have different ways that they favor. In my own office, for example, I try to... Assuming that the same, that they want the same person to make all of those kinds of decisions, all those health care decisions, I would try to do it all in one document. But it's possible to say, I want for routine health decisions, I want to have... I want to name somebody and for end of life health care decisions, I want to name somebody else. That's as much flexibility as the person wants.

[00:09:52] The second category would be business decisions, as you said. And you might say, your parent might say well you know I missed a quarterly tax payment filing date or I missed paying my electric bill last month and I got a penalty or I didn't pay my credit card on time or something, and I don't want to be doing that anymore. I want to have somebody else make those decisions, make those payments for me. And I want to have that person have authority to call up the credit card company and say, Hey I'm calling for my parent and I'm his or her agent. And I don't, I dispute this bill, or I want to know what this bill is for... And that's that would be a an agent under a business power of attorney.

**Diane Berardi:** [00:10:43] Okay.

**Amos Goodall, Esq.:** [00:10:45] And again, the person that you choose, the parent chooses, may not be the logical or they may not be the person someone outside the family would say well that's the person that ought to do that. It's important that the parent actually have an idea who should be making decisions. There again, there are family members who are lovely family members who are

emotionally supportive and who are the apples of their parents eyes, but they may not be the people with business like approach to things that you would want making business decisions. And so the parent could name a different child or someone else to make those decisions. That's called a power of attorney.

[00:11:31] And there are various kinds of powers of attorney there are limited powers of attorney. I want my child to make... I want my agent to make banking decisions for me.

**Diane Berardi:** [00:11:43] Okay.

**Amos Goodall, Esq.:** [00:11:44] Or I want my agent to make have the right to do something else... meet with my stockbroker or something.

[00:11:51] And there are general powers of attorney that say, I want my agent to make any business decision that has to be made. And that's a very, very powerful document as you can imagine.

**Diane Berardi:** [00:12:02] Yeah.

**Amos Goodall, Esq.:** [00:12:04] And so you want to be sure that you choose the person making that decision making a decision for you with care.

[00:12:10] We're going to continue talking with Amos. But first, if you're a woman or there's a woman in your life there's something you absolutely need to know.

[00:12:22] I want to tell you about my friend Katie. Katie is a nurse and she was attacked on her way home from work. She was totally taken by surprise. And although Katie is only 5 feet tall and 106 pounds she was easily able to drop her 6 foot 4, 250-pound attacker to his knees and get away unharmed.

Katie wasn't just lucky that day. She was prepared.

In her pocketbook, a harmless looking lipstick, which really contained a powerful man stopping aerosol propellant.

It's not like it was in our grandmother's day. Today just going to and from work or to the mall can have tragic consequences. The FBI says a violent crime is committed every 15 seconds in the United States. And a forcible rape happens every five minutes. And chances are when something happens, no one will be around to help.

It looks just like a lipstick. So no one will suspect a thing. Which is important since experts say, getting the jump on your attacker is all about the element of surprise.

Inside this innocent looking lipstick is the same powerful stuff used by police and the military to disarm even the most powerful, armed aggressor. In fact, National Park rangers used the very same formula that's inside this little lipstick to stop two-thousand pound vicious grizzly bears dead in their tracks. It's like carrying a personal bodyguard with you in your purse or your pocket.

Darkness brings danger. Murderers and rapists use darkness to their advantage. We all know what it's like to be walking at night and hear footsteps coming at us from behind. Who's there? If it's somebody bad, will you be protected? Your life may depend on it.

My friend Katie's close call needs to be a wake up call for all of us. Myself included. Pick up a

Lipstick Bodyguard and keep it with you always.

**Announcer:** [00:14:20] You're listening to Parents Are Hard To Raise®... Now, thanks to you. The number one eldercare talk show on planet Earth. Listen to this and other episodes on demand using the iHeart Radio app. iPhone users can listen I'm Apple podcasts and Android users on Google podcasts. Want a great new way to listen to the show? Have an Amazon Echo or Dot? Just say, Alexa play Parents Are Hard To Raise® podcast.

**Alexa:** [00:14:49] Getting the latest episode of Parents Are Hard To Raise®. Here it is for my iHeart radio.

**Announcer:** [00:14:55] It's as simple as that.

**Diane Berardi:** [00:14:57] You're right Dolly. There are so many really cool new ways to listen to our show. It's so hard to keep track. You can join the 180 million listeners on Spotify. You can listen in your car, at the gym, or pretty much anywhere on your smartphone with Apple podcasts and Google podcasts. You can get us on Apple TV, Direct TV, Roku and like Dolly said, you can even ask Alexa to play the show for you. It's great because you don't have to be tied to a radio anymore. You can listen when you want, where you want, for as long as you want. And if you're listening to the show one of these new ways please do me a big favor. Share this new technology, helps someone else learn about the show and show them a new way to listen.

[00:15:39] I just wanted to mention, Amos. We were talking about abuses in guardianship and we had done some shows on guardianship abuse... number 71 was with Marcia Southwick on guardianship abuse a number 86 with Marty Oakley on medical kidnapping. So if we have new listeners out there it'd be great for you to hear those shows.

**Amos Goodall, Esq.:** [00:16:04] Thanks for pointing that out, Diane. Because that points out a problem that we often have with with these estate planning creations and that is that sometimes people change. And it's important when you are writing your... when your conferring this authority that you have ways to to control that, or what I call escape valves.

[00:16:35] For example, I... We were talking a few minutes ago about powers of attorney.

**Diane Berardi:** [00:16:43] Right.

**Amos Goodall, Esq.:** [00:16:44] And another way to handle decision making is to create something called a trust, a revocable living trust, which actually allows you to provide more of a framework for the decision making and allows you to... And sometimes folks will name a bank for example as the trustee of a revocable living trust. In fact often they will make a bank or some other institution or some other professional trustee. I always, and I think a lot of lawyers always insert in their documents some sort of an escape valve that maybe something called a trust committee or a trust protector which actually creates an advocate for the beneficiary with the trustee.

[00:17:38] So if, for example, I'm that classic parent who missed a couple of filing deadlines or missed a couple payments and I decide I don't want to handle my my fiscal affairs anymore. And I name a bank or name someone as the trustee, I can create a second position called a trust committee or a trust protector who has the power first of all to interact with the trustee and to find out what's going on and to have the same basic rights that I do as a beneficiary to get information and to interact with the trustee. But the second thing that the trust protector has is the power to fire the trustee and hire a new one. So if I've named x y z bank or if I've named a person as my agent and or

my trustee and the person is not acting properly or is not paying close enough attention to my needs or isn't doing what should be done, then the trust committee or the trust protector would have our fire that trustee and to hire a new one. So that as I as the beneficiary as maybe I get a little bit less able to speak for myself, there's a family member who can still speak for me. That allows the parent to keep the family members involved in their affairs, keep the family members involved in their lives. It also keeps the trustee's feet to the fire so that if the trustee doesn't act properly the trustee could be replaced.

[00:19:21] That's one of the reasons that I am so much in favor of having powers of attorney and trusts having the people name their own fiduciaries. Because if the court names the fiduciary you're going to have to go back to the court and convince the judge that the judge made a mistake in naming that fiduciary. You want to get the fiduciary changed or at least you have to convince some third party and it's an adverse proceeding. It's not... there's a chance for controversy. And it's much easier if you have a trust committee that can send a letter that says Dear Mr. trustee we have the power to hire and fire trustees with or without cause, you're fired.

[00:20:11] And so that unfortunately when there is a custodian, if you haven't had the foresight to create a trustee or a power of attorney you don't have that power to hire and fire, the courts the only one that has the power to hire and fire. So I advocate for this private transfer of authority so that we can engraft those kinds of safeguards into it.

[00:20:44] Most states have other safeguards that apply the powers of attorney. In Pennsylvania for example, there are very you have to be very precise in how you give powers to people to act. And even if the agent has the power to act it would be illegal for the patient to do the agent to act contrary to that to the principal's wishes that if the agent knew what they were. And the agent has to account to the principal from what the agent is doing. And I will often say I authorize it some other person in the family to ask for that kind of an accounting so that it's possible to protect the principal when we, when we're creating this fiduciary relationship.

[00:21:38] The other thing I wanted to point out to your listeners or another thing at least is that you can have a guardian. You need to be fairly far along in terms of mental incapacity to need a guardian for the court to be authorized to appoint a guardian for you. And people say well you know, Amos is losing his marbles. I don't think he should be handling his own affairs. That may not be enough to create a guardian. But someone who is slipping mentally, there are ways to enhance their capacity so that they can make a decision to name an agent or to name a trustee.

[00:22:20] I mean you know Elder Law Attorneys are trained to try... Oftentimes, as you know, people tend to sundown. And so you want to have the conversations in the morning.

**Diane Berardi:** [00:22:31] Right.

**Amos Goodall, Esq.:** [00:22:33] You may want to have a number of small conversations where you talk about the concept in little bites, and maybe go back and talk about it again in little bites until the person might actually understand what's going on and thereby have the capacity to transfer the authority. It's not capacity is not an all or nothing thing. It's not you know the curtains up or the curtains down. People... there's a whole spectrum of abilities and there are, and those abilities change from day to day from time to time during the day.

**Diane Berardi:** [00:23:10] Right.

**Amos Goodall, Esq.:** [00:23:11] So no one should say, my father is too far gone for me to be able to have him sign a power of attorney. If he is moving down that path it would be important to get in

to see any attorney as soon as possible and see what can be done. I can't say that every single I've never ever had a client that I decided was unable to sign a power of attorney. But it's very very rare. And as I said, it's much better to have a relationship, a fiduciary relationship that the lawyer and the parent or the lawyer designed expressly for the parent with all the kinds of safeguards that we've been talking about as opposed to having to go to court. And of course going to court is, the other thing is always a lot more expensive than simply doing it in a lawyer's office.

**Diane Berardi:** [00:24:15] Yeah definitely. And you had mentioned a parent... You have, you know, four children and you can kinda know which child might be better off handling the day to day business and then maybe another who might be better for health care decisions, etc.

**Amos Goodall, Esq.:** [00:24:39] I... One of the stories I tell clients is that when I was doing... I think that everyone who is over the age of 18 should have a power attorney. Everyone is over the age of 18 should have a health care power of attorney or a living will. And I'm over the age of 18 and so when I was at a point I was doing my own health care document and I knew I wanted to make my wife as my primary decision maker. But I also, I always when I do one of these documents I always want to name a secondary person because something might happen to my wife. So I was casting about who should be the second decision maker and I thought I didn't really want to burden my children who were then younger, much younger, with having to make life and death decisions for their father. It might be very hard for them and so I have I had a law partner who I still have as a life partner, Kathleen Yurchak. Who... she's our litigator and I went to her and I said, you know Kathleen if would you be the number two decision maker? And her answer was, "Well Amos let me understand... If something happens to you I get this practice, right? I'll pull your plug in a minute." And that was really the kind of decision maker that I wanted to have in power of attorney, that was the kind of person I wanted making decisions for me. So that's the kind of, I mean I didn't name either one of my children as the alternate decision. So it's important to do that. To make sure you've got the right person in the role.

**Diane Berardi:** [00:26:15] Right. Definitely.

[00:26:17] Amos, where can people find out about the national Elder Law Foundation?

[00:26:22] Well we recently published a new website that makes it very simple. If they go to NELF.org National Elder Law Foundation, NELF.org. There's a button press that says find a lawyer that will allow them to locate wherever the nearest lawyer is to them, who is certified as a national elder law attorney. As an Elder Lawyer. We have only there are 500 of us now.

**Diane Berardi:** [00:26:54] Wow.

**Amos Goodall, Esq.:** [00:26:54] We just broke that 500 number. And so there are a lot of them around. I mean I think there are almost 50 in Pennsylvania, for example.

[00:27:06] To become a Certified Elder Law Attorney, there are a number of steps that one has to go through, and we think that if the people have gone through those steps we would have lawyers who are trustworthy and who can handle the situation. They're not somebody who just hung out their shingle and said hey I want to practice elder law.

**Diane Berardi:** [00:27:28] Right.

**Amos Goodall, Esq.:** [00:27:29] You have to have practiced for at least five years in this area. You have to have it as your full time as your main focus of your practice. You have to have handled a certain number of cases. You have to have to document that you've handled 50 different cases in an

divided among the twelve areas of elder law. You can't just say well I've written 50 wills and that qualifies me you could.. Five those cases or seven of those cases could be writing wills, but you have to do all the other things that elder law attorneys can be expected to do. You have to be knowledgeable about needs-based public benefits. You have to be knowledgeable about senior citizens rights. You have to be knowledgeable about veterans rights, special needs law and housing. The full panoply of areas of the law that apply to senior citizens. You have to have cases in those areas.

[00:28:28] You also have to have references from at least five attorneys who are personally familiar with your work, to vouch that you were a good lawyer. And then you have to also have performed a certain number of CLE credits within a certain period of time and it's usually two or three times greater than the CLE requirement for the standard CLE Continuing Legal Education requirement. And then the last thing you do and which is what brought me to Florida right now is you have to pass an examination. And it's a six and a half hour examination and it's on all 12 areas of elder law. And the pass rate is generally around 20 or 25 percent. So three of every four people who have passed, who say they practiced in this area for five years and we say they've got this broad practice and who think they can get references from the different lawyers can't pass the knowledge requirement to be certified as an elder law attorney.

**Diane Berardi:** [00:29:45] Well I'm always saying it's so very important. In these are you know important issues, to go to the professional. Choose the right professional and that's why we have our guest experts like yourself on.

[00:29:57] Amos, I know your practice is limited to Pennsylvania. So if people in Pennsylvania want to contact you how can they do that? And for people let's say like in New York, New Jersey or anywhere else in the country what should they do?

[00:30:13] Well, my firm is Steinbacher, Goodall and Yurchak. We're in State College Pennsylvania. PAEldercounsel.com is our Web site. And our number is 814- 237-4100.

[00:30:30] But if someone's in New Jersey they should really contact a New Jersey Certified Elder Law Attorney and there are many of them, and I know half a dozen, all of whom are very good. And in New York there are a lot of elder law attorneys and I know a number of really good ones in New York.

[00:30:51] And as I said before there are many certified attorneys in Pennsylvania who if there's a local lawyer who's who has the certification that's where the person should start.

[00:31:02] Now, it's always important when you're hiring a lawyer that you feel good about it. So if you go and talk to the lawyer and you after an initial consultation you don't feel like this lawyer takes the time to understand or is responsive, is trying to do... Is not willing to let the client drive the train drive or drive the car, but insists on saying, this is what you need whether that's what the person's needs are not, without educating the person, then it's time to look for another lawyer.

[00:31:34] I really recommend that folks go to the NELF website and look for a Certified Elder Law Attorney in their own local area. As that would be, in my view, the best, absolute best place to start.

[00:31:45] Thank you so much Amos. And unfortunately we're out of time again, already.

**Diane Berardi:** [00:31:52] Thank you so much Amos. You really did it again.

**Amos Goodall, Esq.:** [00:31:56] Well, Thank you.

**Diane Berardi:** [00:31:56] And to our Parents Are Hard To Raise® listeners, I love getting your e-mails and questions so keep just sending them in. You can reach me at [Diane@ParentsAreHardToRaise.org](mailto:Diane@ParentsAreHardToRaise.org) or just click the green button on our home page.

[00:32:07] Parents Are Hard To Raise® is a CounterThink Media production. The music used in this broadcast was managed by Cosmo Music, New York, New York. Our New York producer is Joshua Green. Our broadcast engineer is Well Gambino and from our London studios, the melodic voice of our announcer Miss Dolly D.

[00:32:25] Thank you so much for listening. Till next time. May you forget everything you don't want to remember and remember everything you don't want to forget.

[00:32:33] See you again next week.