

# Stolen Lives

**Thousands of older Americans are being robbed of their freedom, dignity, and life savings by a legal system created for their protection. How can this happen?**

**T**he Christmas Day before the courts stripped Inez America Carr of her independence, she woke up earlier than usual to help prepare the traditional family feast. She started first on the rolls, dozens of them, mixing the homemade batter and allowing the miniature loaves to rise, then bake, before stacking them on sheets of wax paper. She washed the collards, set them to boil in an aluminum pot with a chunk of salt pork for flavoring, then peeled the fat sweet potatoes and dressed them with liberal amounts of butter, sugar,

**By Barry Yeoman Illustration by Jennifer Jessee**



and nutmeg. By evening, her three-story home in San Francisco's upscale Pacific Heights was thick with the savory smells of the cooking of her Mississippi roots.

**I**T WAS A typical Christmas for the Carrs. Inez, a retired practical nurse, and her husband, Carnell, a retired psychiatric technician, never had children of their own, but they never lacked invitations to holiday dinners. Over more than a half-century, the Carrs had grown kin-close to a family named the Jolivets, whose matriarch, Joanne Gentry, worked alongside Inez at the old Franklin Hospital in the Duboce Triangle in the 1950s and '60s. After Gentry's death, two younger generations of Jolivets adopted the Carrs as their own. They've shopped for the couple, shuttled them to doctor appointments, and helped with repairs to their Victorian home. "They are my family," Inez says. "They look out for us."

At 7 P.M., Chris Jolivet, 35, came by to pick up the couple, whom he has called aunt and uncle from the time he learned to speak. Inez removed the apron from her holiday dress and collected the food. A few minutes later, the trio was on the south side of town, where Jolivet, who is unmarried, brought the Carrs for dinner with his mother, Lavern Jolivet, a 60-year-old medical transcriber and Joanne Gentry's daughter. Carnell joked about the steep descent from Jolivet's SUV. "Stairway to heaven," he called it, as they entered the house for an evening of prayer, feasting, and television.

On that peaceful Christmas Day 2001, the assembled family had no idea of the drama that was about to unfold: Just three months later, a visit from two out-of-town relatives would set in motion a series of events that would land the Carrs in front of a San Francisco judge. He would decide the couple were incompetent to handle their own affairs, and place them—ostensibly for their own well-being—under the care of professional conservators. These total strangers



'You could be a **shoe salesman** at a five-and-dime store yesterday and a professional conservator or **guardian** today.'

would assume control of the Carrs' finances, placing them on a restrictive monthly allowance. They would redirect their mail and try to replace Carnell's doctor—all the while billing the Carrs \$90 an hour for their services. Eventually, legal and conservator fees would drain much of the couple's life savings. The court would even bar Inez from hiring her own lawyer.

Inez America Carr grew up with the rural Southern values of self-reliance and autonomy, and the sudden loss of independence—and the ensuing

struggle to win it back—has left her a perplexed and angry 93-year-old. What happened doesn't square with her vision of the country that gave her both a middle name and a lifetime of opportunity. "How in the world can they do this to me under the clear blue sky, under the guise that they're protecting me?" she asks.

The answer: It happens every day across the country to unsuspecting people just like Inez, because of a patchwork of state laws designed to care for adults who can't take care of



**Interference Call** The ordeal began for 93-year-old Inez America Carr when a relative contacted Adult Protective Services.

themselves—incapacitated adults. Often the system works. But too often it backfires, leaving its victims worse off than they might have been without the system's so-called protections.

**T**HAT SYSTEM is known in most states as “guardianship.” California calls it “conservatorship.” Some places use both terms to mean slightly different things. But the upshot is the same: In every state, a judge has the right to decide that someone is no longer capable of running his or her own life. The judge can then appoint a guardian to make all major decisions for the ward (the term used to describe a person placed under guardianship).

Guardians can be attorneys, relatives or friends, government employees, private social workers, money managers, community volunteers, or employees of social-service organizations. They might be volunteers or they might charge a fee. There are no reliable statistics on the number of people under guardianship in the U.S., but estimates run upwards of 600,000, a number that will increase exponentially as the baby boomer generation ages.

The guardianship system, which was brought over from England during colonial times, is now considered a necessary part of elder law, to be used under narrow circumstances and only as a last resort. Without such a process, there might not be anyone to make health care decisions for, say, a person suffering from dementia who has no caregiver. But while many guardianship cases go off without a hitch, the system is also rife with opportunities for financial exploitation, medical neglect, and the wrongful usurping of a competent person's freedom.

“Guardianship is a godsend and a galag,” says Erica Wood, associate staff director of the American Bar Association's Commission on Law and Aging. “It's a lifesaver and a life stopper. It's an

institution that we as a society need. But we need to make it better.”

The perils of guardianship first gained public notice in 1987, when a platoon of Associated Press reporters fanned out across the United States, reviewing 2,200 case files for a six-part investigative series. The reporters uncovered “a dangerously burdened and troubled system” in which judges were committing people to guardianships without first permitting them access to attorneys or even hearings. They also discovered that “often, in the eyes of the court, being old and spending money foolishly” were criteria enough to warrant being placed in a guardianship. What's more, there were few safeguards to ensure that guardians didn't abuse or steal from their charges.

The AP series sparked congressional hearings, a national conference, and legislative reforms in all 50 states. The new laws have strengthened due process and instituted more careful monitoring by the courts. Judges also have been instructed to rely less on labels like “senile” and “incompetent” and more on real abilities to handle day-to-day living.

Still, according to critics, the legal reforms haven't always translated into real-life improvements. Many guardianships continue to be assigned to untrained professionals based solely on flimsy evidence, often without methodical court hearings to determine the scope of the subject's competence. And conservators and guardians continue to siphon five- and six-figure sums from the bank accounts of the very people they are supposed to be protecting. Sometimes that siphoning is pure theft; other times guardians simply charge astronomical fees for their services.

In 2001, New York's *Daily News* reported on guardians who billed their clients' estates \$300 an hour for such routine services as reviewing bank accounts. One guardian reportedly visited a client who was celebrating her birthday, then billed her \$850 for the social call. In many cases, the client not only has to pay the guardian for his or her services, but also must

## Protect Yourself

Nobody wants to end up in a guardianship, and the best way to prevent it from happening is to prepare ahead. Here are the two most important things you can do now to avoid having your life and finances put in the hands of strangers later:

1. Select someone you trust to make health care decisions for you if you couldn't—a family member, friend, or legal representative. Then outline your wishes in a legal document called a Health Care Durable Power of Attorney or health care proxy. That person will make sure your wishes are followed.
2. Designate someone to manage your finances if you're not able with a financial Durable Power of Attorney, a specific document prepared by a lawyer, outlining what you want that person to do for you and when.

To get started:

- **AARP** ([www.aarp.org/guardianship](http://www.aarp.org/guardianship)) provides information and links to other resources.
- **The AARP Foundation** offers a state-specific booklet “Planning for Incapacity.” \$10. Call 800-424-3410.
- **AARP Legal Services Network** lists pre-screened lawyers. Call 800-424-3410 or go to [www.aarp.org/lsn](http://www.aarp.org/lsn).
- **The National Academy of Elder Law Attorneys** ([www.naela.com](http://www.naela.com)) provides an online list of attorneys.
- **The National Guardianship Association** ([www.guardianship.org](http://www.guardianship.org)) offers a list of certified guardians.

PHOTOGRAPHY BY LARRY SULTAN



**Stacked Deck** "The presumption was that Mrs. Carr couldn't possibly be competent," attorney Dennis Livingston says.

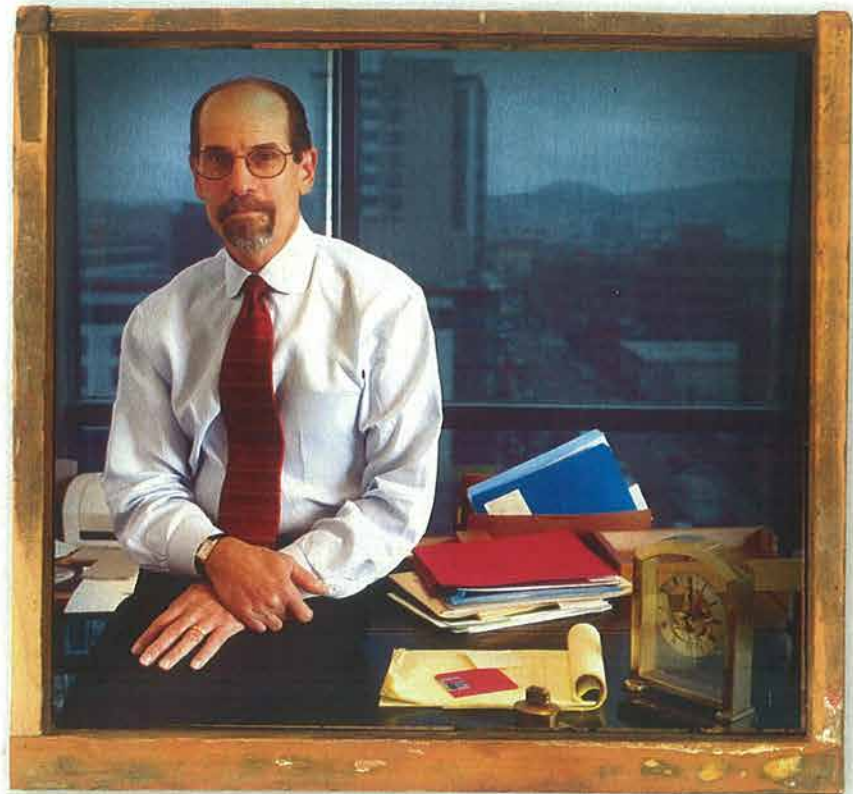
pay the guardian's attorney for time spent on the case.

Adding to the potential for abuse is the fact that there is no uniformity in records states must keep. Consequently, no one knows exactly how widespread the problems are. Many experts consider abuse rampant. Bob Aldridge, a Boise, Idaho, elder-law attorney who testified recently on the issue before Congress, reviewed 250 guardianships on behalf of the state bar association and Idaho court system, uncovering more than 50 with "egregious" problems. "These are not isolated, occasional blips," he says. "This constitutes a significant portion of the cases out there. They were flat-out rip-off situations."

**I**NEZ CARR never expected to become a legal statistic. Born in Kosciusko, Mississippi, she had a difficult childhood. The family lived "with the pan," relying on leftover food from the kitchens of the wealthy white households where her mother worked as a maid. Like many black families living in the Jim Crow South in the 1920s, Inez's family eventually migrated north, first to Philadelphia, then to South Bend, Indiana, chasing economic opportunities that rural Dixie failed to provide. After graduating from high school at 23, she took cosmetology classes and found work at a local beauty parlor.

One day in 1947, Inez dropped by her mother's house for a visit. Her mother rented out a bedroom, and that day Inez spotted the handsome brother of her mother's boarder. His name was Carnell Roosevelt Carr, and he had just returned home from a hitch in the Army. "I saw him, and that was it," she says. The only work Carnell could find in South Bend was sweeping hotel floors, so he moved to San Francisco, where he had family and an opportunity to work in a hospital. Inez followed a year later, and the couple married.

When they had saved enough money, the Carrs took a bold step for the 1950s



**'Guardians are not supposed to play God. They're not supposed to impose their wishes or preferences on the individual.'**

and bought a house in Pacific Heights, an exclusive district of bougainvillea-covered Victorian homes. "We were the only African Americans on this block," Inez recalls. "We expected to see signs all around the next morning." In fact, there was no neighborhood outcry.

Today, the Carr home, valued around \$14 million, is divided into three apartments. The couple rent out the two upper floors, and Inez collects the money and keeps the books. The Carrs live on the bottom floor, a sprawling two-bedroom apartment packed with African art, antique furniture, and a collection of baby dolls, Asian fans, and figurines.

Over the years, the Carrs have accumulated their share of medical problems. Carnell has dementia and heart disease. Inez suffers from high blood pressure and diabetes. Twice a day she measures her blood sugar, keeping meticulous records of her levels. With the Jolivets' help, the couple were

able to juggle the constant demands of medications and doctor visits.

Then, in March 2002, Inez and Carnell received a visit from Carnell's nephew, Ozell Carr, who had just learned that according to the Carrs' will he was in line to split the Carr estate with Chris Jolivet. Accompanying the nephew was his daughter, Pamela Kizer, who says she was immediately dismayed by the condition of the apartment. "When you walked in the door, the house had an odor to it," she says. "You couldn't eat on the kitchen table for all the clutter. The room that I stayed in—you had to make a path to the sofa bed. There were boxes in front of the heating registers." In early June, Kizer called San Francisco's Adult Protective Services and reported her observations. She also claimed that the Jolivets were trying to financially exploit her great-uncle and his wife.

Kizer says her sole concern was for the Carrs' welfare. Inez suspected





other motives: She believed Kizer was trying to protect her father's inheritance by accusing Chris Jolivet and his family of undue influence and neglect. Regardless of Kizer's intentions, her call to APS triggered an aggressive investigation—too aggressive, says Dennis Livingston, an attorney hired by the Jolivets to help them deal with the situation. "Adult Protective Services came in like a bull in a china shop," Livingston says. "The presumption was that because Mrs. Carr was in her 90s, she couldn't possibly be competent."

**O**N JUNE 20, 2002, APS sent a social worker named Dorothy Capers to the Carrs' house to administer a mental-status exam. Inez received the highest possible score, a 30 out of 30. Still, Capers later insisted in a court document, "I found her to be very confused and unable to track her money." The same day as Capers' mental-status exam, a neuropsychologist administered a competency test. "Mrs. Carr appears to suffer from a dementia syndrome," the psychologist, Glenn Hammel, later wrote in his report. "She has the ability to maintain a superficial façade of functionality. However, there are underlying impairments." Hammel concluded that his subject was vulnerable to "undue influence" and was "a suitable candidate for conservatorship."

APS consulted its list of professional conservators—a collection of accountants, social workers, and other professionals who solicit these cases—and referred the Carr case to Debra Dolch, a veteran conservator with a degree in accounting. Without meeting the Carrs, Dolch filed a petition in court to take over making the couple's life decisions. On July 2, the case went to Superior Court. The proceedings lasted an hour, after which a judge named Dolch the temporary conservator over the Carrs, with the option of making the appointment permanent later.

The experience Inez Carr had with the conservatorship system wasn't



**Second Opinion** Neuropsychologist Abraham Nievod tested Inez Carr for 10 hours and found her to be competent.

the best, but it was by no means the worst, either. With overburdened court systems, inconsistent monitoring, and a patchwork of uneven state laws, there are many ways guardianships can go awry.

When it comes to outright abuse, many experts agree that relatives, who make up the greatest number of guardians, are the most common offenders. Last June, for example, Michigan prosecutors filed charges against 41-year-old Keith Allen James, saying the Detroit man obtained guardianship over his mother, then ran through at least \$75,000 of her assets. "He and his wife essentially cleared out his mother's checking and savings accounts," Assistant Attorney General George Stevenson says. "She was left destitute and is currently in a nursing home penniless." Attorney James Cull, who appeared on behalf of James during the arraignment, says his former client in actuality "rescued his mother from squalor."

Although relatives are the most common exploiters, the damage they cause generally stays within the confines of their own families. By contrast, greedy professional guardians can wreak havoc on a far larger scale. In many states, there are few prerequisites for entering the guardianship business: no special training, no licensing process, no enforceable professional standards. "I could be a shoe salesman at a five-and-dime store yesterday and a professional conservator or guardian today," says Melodie Scott, a Redlands, California, conservator who has been certified by the National Guardianship Foundation, the certification arm of the National Guardianship Association in Tucson, Arizona. She's one of only 600 NGF-certified guardians in the United States; each subscribes to a code of ethics and undergoes continuing education. The vast majority of the estimated 600,000 Americans under guardianship are receiving care from people without certification.

In this unregulated environment, the potential for abuse is ever-present. In one infamous case, three officials from the Detroit-based Guardian Inc. were sentenced to prison in 1999 and 2000 for directly participating in embezzlement and fraud involving hundreds of clients. Among the misdeeds, Guardian Inc. sold a client's house, located in a historic neighborhood, for \$500—to the mother of a company officer. It also collected excessive fees from its wards, sometimes as high as 70 percent of their tiny Social Security checks.

Individuals possessing no real assets are often assigned by the courts to public guardians, government employees who manage their care. In these cases, fraud is rare. But as with many social service agencies, these offices are often overburdened and unable to care properly for all their clients.

Lorraine Woodburn of Seattle, Washington, learned this firsthand while visiting her grandmother's widowed sister, 88-year-old Pearl Infrerra, in a Pasadena, California, nursing



home. She had been placed there by the Los Angeles Public Guardian's office. "The place stunk, and some of the residents would try to sexually go after her," Woodburn recalls. "It seemed more like a psychiatric ward." When Woodburn showed up, she says, Infrera "started crying and said, 'Get me out of here.' She felt like she had been thrown into a jail, practically, and forgotten about." (For their part, L.A. Public Guardian officials insist their client was not ignored or treated badly at the nursing home, and once apprised by Woodburn of the problems, they moved Infrera as soon as possible to another facility.)

Why do such problems continue to surface 17 years after the Associated Press series and after reform efforts started in earnest in 50 states? The fact is that in many places, despite tougher laws, monitoring of guardianships remains lax. And although guardians and conservators are required to file reports with the courts, those reports rarely get much, if any, scrutiny. Many jurisdictions don't even know how many guardianships there are, much less how well they're being carried out.

"You can have all the reports in the world, but if there is no assurance that someone is reading them, it is not doing any good," says Peter Santini, vice president of the National Guardianship Association. "Someone can be falsifying a report if they do not think it's being monitored—and for the ward, the very system that is supposed to be protecting them ends up abusing them."

**I**T DIDN'T take long after their hearing for the Carrs to feel the effects of the temporary conservatorship. "Within a matter of a week," says Chris Jolivet, "my aunt and uncle pretty much lost control of their finances and home and everything else." The Carrs' bank account was closed and a new one opened—which the couple were not allowed to control. Inez was placed on a personal allowance of \$1,200 a month. Because Inez felt uncomfortable having a white conservator (Dolch), the courts did allow (continued on page 72)

## The Lifesaver

While untold thousands of guardianships result in fraud and neglect, some are literally lifesavers. Take the case of private conservator Melodie Scott and 91-year-old Merico Zanella of Fontana, California (pictured below).

Two years ago, Scott first visited Zanella at the request of his attorney, who said the former county employee was living in poverty even though his two adult children had grossed almost \$1 million from the sale of his property. A take-charge 45-year-old, Scott is one of 600 professionals certified by the National Guardianship Foundation in Tucson, Arizona. When she arrived at Zanella's home, she discovered him slumped in his wheelchair in an overheated house, drooling and unresponsive. Doctors determined he had fallen unconscious as a result of malnutrition and dehydration. "When [his wife, Genia] died in 1995, he became more and more reclusive," Scott says. "He was done living."

Scott immediately filed a petition for conservatorship, which was uncontested by Zanella's children. After the conservatorship was awarded, she set out sleuthing for money to help take care of her client, who suffers from dementia. She soon tracked down a parcel of oceanfront property Zanella's children had listed for sale. With the court's permission, Scott took over the sale and brought in \$534,000. The windfall enabled Scott to install central air conditioning in Zanella's home. More critically, it provided the means for a personal care aide who cooks for him, tidies his house, and keeps a daily log of his activities. At least twice a month, Scott or one of her employees drops by to review the log and check on the quality of care.

Zanella was fortunate. With more than 150 active cases, Scott's office is overloaded—and there are few certified conservators nearby to whom she can refer requests. "The need is overwhelming," she says. "Sometimes, if I don't take the case, the person will end up destitute and living in his pajamas. We wouldn't do this to a six-year-old. Why do it to a 90-year-old?" —B.Y.





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the Carrs to switch to an African American one—a licensed clinical social worker named Marilyn Lewis—but that did nothing to restore Inez's independence.

According to commonly accepted standards, conservators and guardians are supposed to "carry out the wishes, preferences, and values of the ward," says Sally Hurme, an AARP attorney who has been involved in reform efforts since the 1980s. "They're not supposed to play God. They're not supposed to impose their wishes or preferences on the individual." But according to Inez Carr, that's precisely what Lewis did when she took Carnell to an emergency room for an examination rather than to the physician he had recently started seeing. (Lewis explains that she sometimes has to violate her clients' wishes in order to protect clients. She says that she was unimpressed with the attention Carnell was receiving from his doctor at the time, who had been recommended by the Jolivets.)

To fight the conservatorship, Inez tried to hire an attorney, but the court refused to recognize him. Instead, it appointed San Francisco attorney Anne Marie Paolini-Mori, who argued for keeping Inez under conservatorship. "Although she is very lucid and articulate in the context of conversation, Mrs. Carr exhibits her shortcomings in the way she functions in her everyday life—how she maintains her house and how she manages her paperwork," Paolini-Mori wrote in a report to the court.

Because Inez was not allowed to hire her own lawyer, the Jolivets arranged for a new evaluation by Abraham Nievod, a neuropsychologist who serves as a consultant for the federal government and lectures extensively on elder abuse and undue influence. Nievod met with Inez for 10 hours over four days in December 2002 and found her memory, intelligence, and learning abilities all to be within normal range. He found her verbal ability to be "significantly above average." Based on her test scores, he described her as "a person of unusually good judgment." According to his report, "Ms. Carr is competent and has

the capacity to make meaningful decisions [about] her personal needs [and] the management of her financial resources.... Ms. Carr is competent and has the ability to resist fraud and/or undue influence.... Ms. Carr does not need a Conservator."

Last winter, the court sent the case to mediation, and after eight hours of calm horse trading, the parties reached a compromise agreement: As of last April, Inez was no longer under conservatorship. But she was not allowed to take over as her husband's conservator. Lewis remained in that position until October, when she resigned and a new conservator was assigned. Carnell continues to live at home, receiving visits from nurses and personal care aides. In the compromise, Inez regained only partial control over the couple's assets. Instead, she shares power with a private money manager, who must approve all major financial decisions. (Inez chose a woman named Dovie White from the court's list, and the two get along well.) She's also banned from changing the family trust without court permission.

To some, the termination of Inez's conservatorship is proof that the system works. "The good news is that the court made every effort to protect her," Debra Dolch says. But Inez hardly feels like a winner. The bills have started coming in—not just for Lewis' services, but also for various lawyers' fees. In June, for example, Lewis' attorney, who charges \$225 an hour, billed the Carrs for more than \$21,000 worth of legal work: drafting court documents, consulting with Lewis, and reviewing the various psychological evaluations, all with an eye toward keeping the Carrs under conservatorship. "They're draining us dry," Inez says. "Here we worked and saved this money, and then someone comes in and takes it away from you."

IN LATE NOVEMBER 2001—just a few months before the Carrs' troubles began—elder-law specialists from the National Academy of Elder Law Attorneys, the American Bar Association, the National College of Probate Judges, AARP, and other groups met in St. Petersburg, Florida, to take a hard look at what ails the nation's guardianship system. Over (continued on page 74)

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three days, they developed 15 pages of recommended changes in state laws and courtroom practices, including training and licensing for professional guardians; detailed, audited annual reports on each ward; and laws requiring lawyers to "zealously" advocate the wishes of their clients.

Meanwhile, reforms are being undertaken across the country. In 2002, at least 10 states changed their guardianship laws, including Kansas, which completely revamped its system. And last February, the U.S. Senate's Special Committee on Aging held a hearing on potential abuses of the guardianship system, at which witnesses suggested a need for total overhaul. Senator Larry Craig (R-Idaho), who chairs the committee, says the hearing was the first step in his own crusade to reform guardianship. Although the issue is mostly a state one, he says, the federal government can weigh in with model legislation and funding for research.

And, he says, it must weigh in before the baby boomers hit retirement age in full force; otherwise many of them could face the same ordeal that Inez Carr did. "This is something that ought not to be taken lightly," Craig says. "Seniors have become victims of the legal process, and their personal freedoms and personal property have been stolen away from them. When you become old, you should not, by the action of a court, automatically lose your rights just because some family member or impersonal administrator calls you incompetent."

For Inez America Carr, those reforms could not come soon enough. "I wouldn't want anybody else to go through this," she says. "This is too much. They're supposed to be protecting you. But you're not protected at all."

Barry Yeoman last reported on the death-with-dignity movement in "Colleen's Choice" for the March-April 2003 issue of AARP THE MAGAZINE.

Additional reporting by Tim Dickinson.

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