

# SENIOR FINANCIAL EMPOWERMENT ACT OF 2009

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION

ON

**H.R. 3040**

MAY 25, 2010

**Serial No. 111-137**

Printed for the use of the Committee on the Judiciary



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U.S. GOVERNMENT PRINTING OFFICE

56-638 PDF

WASHINGTON : 2010

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Study entitled “Broken Trust: Elders, Family, and Finances,” by the MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University, March 2009; submitted by Robert B. Blancato, National Coordinator, Elder Justice Coalition, Washington, DC. The study is not reprinted in this hearing but is available at the Subcommittee and can also be accessed at:	
<a href="http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf">http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf</a>	



## **SENIOR FINANCIAL EMPOWERMENT ACT OF 2009**

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**TUESDAY, MAY 25, 2010**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:35 p.m., in room 2237, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Quigley, Gohmert, Poe, and Goodlatte.

Staff present: Ron LeGrand, Majority Counsel; Kimani Little, Minority Counsel; and Kelsey Whitlock, Minority Staff Assistant.

Mr. SCOTT. I am going to begin with my opening statement. We have just had votes called, and once we leave for votes it will probably be the better part of a half hour before we can get back. And the Ranking Member is apparently on the way.

The Subcommittee will now come to order, and I am pleased to welcome you to today's hearing before the Subcommittee on Crime, Terrorism, and Homeland Security.

And I think it may make sense for me to give my opening statement when we come back. Let me go without objection to our two witnesses that are here so they won't have to come back.

We recognize the gentlelady from Wisconsin representing the Second District of Wisconsin, home town is Madison, serves on two Subcommittees on Energy and Commerce and also sits on the Judiciary Committee, and our colleague from North Carolina, Mr. Coble, who is a Member of this Committee and also serves on the Transportation Committee.

And so we begin with Ms. Baldwin.

### **TESTIMONY OF THE HONORABLE TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN**

Ms. BALDWIN. Thank you Chairman Scott and Members of the Subcommittee for allowing me the opportunity to testify today on the Senior Financial Empowerment Act of 2009. And I think it is appropriate that we are convened to consider and discuss this legislation during the month of May, which is Elder Abuse Awareness Month.

And I want to thank my colleague from North Carolina, Mr. Coble, for his leadership on this issue. It has been a pleasure working with you to advance this legislation. And I also want to extend my thanks to your panel of expert witnesses who will follow this Member panel.

My own experiences on this issue began as the primary caregiver for my grandmother. That experience opened my eyes to some troubling exploitative tactics targeted to America's seniors. Growing up in Wisconsin, I was raised by my maternal grandparents.

Though I went away for college, I returned to my hometown, Madison, after graduation to be there for my grandmother, who by that time was widowed. She had sacrificed so much to raise me, and eventually, I became her primary caregiver.

Around the time she turned 90 years old, she asked me for a little help her sort through her mail and balancing her checkbook. And at first, I was struck by the sheer volume of solicitations she was getting.

I was also shocked by how many sort of fly-by-night or "look alike" charities were writing her on a monthly basis. Their pleas for donations looked and sounded legit, but I had my suspicions, and I began digging a little deeper.

I was also disturbed by the amount of money my grandmother had been giving to these entities. She believed that those able to do so, ought to be as generous as possible to those in need, but she had no way of determining the legitimacy of the entities that were contacting her on a regular basis.

That experience opened my eyes to the very real exploitation of seniors like my grandmother, through mail, telephone and Internet fraud. Millions of Americans have become victim of similar financial exploitation each year. And it is not just the isolated and lonely who may fall prey to these sort of practices.

One only need read the newspaper in my home district in Wisconsin to confirm that this issue is widespread. Over the years, there have been ongoing reports about notch baby schemes, where Social Security beneficiaries born between 1917 and 1921 are asked to send money to organizations that promise to change Federal laws to increase their benefits.

These organizations go so far as to ask seniors if they would like their Federal money in a lump sum or paid in monthly installments. Just last month in Madison, the Capital Times reported that an 84-year-old Madison woman was duped out of nearly \$3,000 after a phone scammer convinced her that her granddaughter's boyfriend was in a Canadian jail and needed bail money.

Madison police officers reported that this woman received a phone call from a man who called her grandma and told her he was in a Canadian jail after being picked up for drunk driving.

To convince the elderly woman, "Officer Jacob Harris" joined the telephone conversation and convinced her of the need for bail money for her granddaughter's boyfriend. This elderly woman wired the money and fell victim to a disturbingly common scam.

I also read that not days after President Obama signed the historic health reform bill into law, fraudsters were figuring out how to scam seniors. A cable TV advertisement exhorted viewers to call



an 800 number so they wouldn't miss a limited enrollment period to obtain coverage.

And there have been reports of scammers going door-to-door as salespeople peddling Obamacare insurance policies. Now, we all know that there is no limited enrollment period for any coverage in the health care reform bill and that no such thing as a new Federal insurance policy named after the President exists.

Though we have all read or heard these anecdotal stories, it is difficult to estimate the prevalence of financial exploitation cases due to severe underreporting. According to a 2009 report by MetLife Mature Market Institute, for every report of abuse there are an estimated four or more that go unreported.

We do know some facts though. The same study found that the annual financial loss by victims of senior financial abuse is estimated to be at least \$2.6 billion. In 2007, postal inspectors investigated almost 3,000 mail fraud cases in the U.S. and arrested more than 1,200 mail fraud suspects.

Further, the FBI has confirmed that criminals are modifying their targeting techniques to include online scams such as phishing and e-mail spamming. Given the prevalence of financial fraud targeting seniors, Mr. Coble and I introduced the Senior Financial Empowerment Act with a very precise goal in mind, empowering seniors and ending all abuse, neglect, and exploitation of America's elders.

The bill builds on good work already being done at the Federal Trade Commission and the Department of Justice and seeks to empower these agencies to support local and state efforts to combat financial fraud and empower our seniors.

We seek to accomplish this in three specific ways. First, by creating a centralized service for consumer education on mail, telemarketing and Internet fraud targeting seniors, second, the bill authorizes the A.G. to award competitive grants to carry out locally-focused mail, telemarketing and Internet fraud prevention and education programs for seniors.

And finally, it declares that the week in the month of May, Elder Abuse Awareness Month should be designated as National Senior Fraud Awareness Week, and it encourages the President to issue a proclamation supporting increased public awareness.

Mr. Chairman, as I wrap up my testimony, I want to again commend you for your longstanding commitment to America's seniors. When I saw my grandmother through the last years of her life, I made a pledge to help make sure older Americans have the tools that they need to protect themselves from those who would prey on them.

Mr. Chairman and Members of the Subcommittee, my sincerest thanks to you for helping us see this through. I believe this bill before us represents one of the best examples of what a bipartisan, collaborative Committee process should look like. Thank you.

[The prepared statement of Ms. Baldwin follows:]

PREPARED STATEMENT OF THE HONORABLE TAMMY BALDWIN,  
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

**Congresswoman Tammy Baldwin**  
**Statement for Subcommittee on Crime, Terrorism, and Homeland Security**  
**Hearing on H.R. 3040, the “Senior Financial Empowerment Act of 2009”**  
**Tuesday, May 25, 2010**

Thank you Chairman Scott, Ranking Member Gohmert, and members of the Subcommittee for allowing me the opportunity to testify today on the Senior Financial Empowerment Act of 2009. I think it is appropriate that we are all convened here to discuss these issues during the month of May, which is Elder Abuse Awareness Month.

I want to thank my colleague from North Carolina, Mr. Coble, for his leadership on this issue. It’s been a pleasure working with you to advance this legislation. I also want to extend my thanks to our panel of expert witnesses. Thank you for being here this afternoon.

My own experiences as the primary caregiver for my grandmother opened my eyes to some troubling exploitative tactics targeted to America’s seniors. Growing up in Wisconsin, I was raised by my maternal grandparents. Though I went east for college, I returned to my hometown, Madison, after graduation to be there for my grandmother, by then widowed, who had sacrificed so much for me. Eventually, I became her primary caregiver.

Around the time that my grandmother turned 90, she asked me to help her sort through her mail and balance her checkbook. First, I was struck by the sheer volume of solicitations she was getting. I was also shocked by how many fly-by-night and “look alike” charities were writing her monthly. Their pleas for donations looked and sounded legit, but I had my suspicions. So I dug a little deeper.

I was also disturbed by the amount of money my grandmother had been giving to these entities. She believed that those able to do so, ought to be as generous as possible to those in need, but she had no way of determining the legitimacy of the entities that were contacting her.

That experience opened my eyes to the very real exploitation of seniors like my grandmother, through mail, telephone, and Internet fraud. Millions of Americans become victims of similar financial exploitation each year – and it is not just the isolated and lonely who may fall prey to these scams.

One only need to read the newspaper in my home district in Wisconsin to confirm this issue is widespread. Over the years, there have been ongoing reports about “notch baby” schemes, where Social Security beneficiaries born between 1917-1921 are asked to send money to organizations that promise to change federal laws to increase their benefits. These organizations go so far as to ask if seniors would like their federal money in a lump sum or in monthly payments!

Just last month in Madison, the Capital Times reported that an 84-year-old Madison woman was duped out of nearly \$3,000 after a phone scammer convinced her that her granddaughter’s boyfriend was in a Canadian jail and needed bail money. Madison police reported that she received a phone call from a man who called her “grandma” and told her he was in a Canadian jail after being picked up for drunken driving. To convince the elderly woman, “Officer Jacob Harris” came on the line and convinced her of the need for bail money for her “granddaughter’s boyfriend.” This elderly woman wired the money and fell victim to a disturbingly common scam.

I also read that not days after President Obama signed the historic health reform bill into law, fraudsters were figuring out how to scam seniors – a cable TV advertisement exhorted viewers to call an 800-number so they wouldn't miss a "limited enrollment" period to obtain coverage. And there have already been reports of door-to-door salespeople peddling "Obamacare" insurance policies. We all know that there is no limited enrollment period for any coverage, and no such thing as a new federal insurance policy named after the president.

Though we have all read or heard these anecdotal stories, it is difficult to estimate the prevalence of financial exploitation cases due to severe underreporting. According to a 2009 report by the MetLife Mature Market Institute, for every case of abuse reported, there are an estimated four or more that go unreported.

We do know some facts. This same study found that the annual financial loss by victims of senior financial abuse is estimated to be at least \$2.6 billion.

In 2007, postal inspectors investigated almost 3,000 mail fraud cases in the U.S. and arrested more than 1,200 mail fraud suspects.

Further, the FBI has confirmed that criminals are modifying their targeting techniques to include online scams such as “phishing” and e-mail spamming.

Given the prevalence of financial fraud targeting seniors, Mr. Coble and I introduced the Senior Financial Empowerment Act with a very precise goal in mind: empowering seniors and ending all abuse, neglect, and exploitation of America’s elders. The bill builds on good work already being done by the Federal Trade Commission and the Department of Justice and seeks to empower these agencies to support local and state efforts to combat financial fraud and empower our seniors.

We seek to accomplish this in three specific ways. First, the legislation creates a centralized service for consumer education on mail, telemarketing, and Internet fraud targeting seniors.

Second, the bill authorizes the Attorney General to award competitive grants to carry out locally-focused mail, telemarketing, and Internet fraud prevention and education programs for seniors.

And finally, it declares that a week in the month of May (Elder Abuse Awareness Month) should be designated as “National Senior Fraud Awareness Week.” It also encourages the President to issue a proclamation supporting increased public awareness.

Mr. Chairman, before I wrap up my testimony, I want to again commend you for your longstanding commitment to America’s seniors. When I saw my grandmother through the last years of her life, I made a pledge to help make sure older Americans have the tools they need to protect themselves from those who would prey on them. Mr. Chairman and Members of the Committee, my sincerest thanks to you for helping us see this through. I believe the bill before us represents one of the best examples of what a bipartisan, collaborative committee process should look like.

Mr. SCOTT. The gentleman from North Carolina?

**TESTIMONY OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA**

Mr. COBLE. Thank you, Mr. Chairman. Now, Mr. Chairman given to you, and I would like to ask unanimous consent that my statement be made a part of the record.

Mr. SCOTT. Without objection.

[The prepared statement of Mr. Coble follows:]



PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NORTH CAROLINA

**HONORABLE HOWARD COBLE  
HOUSE COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY  
LEGISLATIVE HEARING ON  
H.R. 3040, "THE SENIOR FINANCIAL EMPOWERMENT ACT"**

**TUESDAY, MAY 25, 2010  
2237 RAYBURN OFFICE BUILDING**

Mr. Chairman, many thanks to you and ranking member Gohmert for taking the time to conduct this hearing on H.R. 3040. Scheduling can be treacherous in fact right now I'm supposed to be attending for another Judiciary subcommittee hearing – so my remarks will be brief.

A strong bipartisan mix of Judiciary committee members sponsored H.R. 3040, including Chairman Conyers and Ranking Member Smith, and the bill has been endorsed by the AARP. Although most people are probably potential targets for mail, telemarketing or internet fraud schemes, many of the reasons why seniors are more susceptible goes without saying. The facts are laid out for you in the bill's findings – this is a huge problem and it's getting worse. Seniors are able to defend themselves, they are not a group that is known for being loose with their money. All they need is accurate information and a little guidance.

That being said, I urge you to carefully consider H.R. 3040 and make sure that it will be effective and that it is efficient.

Again, thank you for your time and attention to H.R. 3040.

---

Mr. COBLE. Thank you, sir.

Mr. SCOTT. Good. Thank you. At this point we will recess the Committee and return as soon as the vote is over. It will probably be at least 15 to 20 minutes. Recess.

[Recess.]

Mr. SCOTT. The Subcommittee will now come to order. We are pleased to welcome you to today's hearing before the Subcommittee on Crime, Terrorism and Homeland Security on H.R. 3040, the "Senior Financial Empowerment Act of 2010."

[The bill, H.R. 3040, follows:]

111TH CONGRESS  
1ST SESSION

# H. R. 3040

To prevent mail, telemarketing, and Internet fraud targeting seniors in the United States, to promote efforts to increase public awareness of the enormous impact that mail, telemarketing, and Internet fraud have on seniors, to educate the public, seniors, their families, and their caregivers about how to identify and combat fraudulent activity, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2009

Ms. BALDWIN (for herself, Mr. COBLE, Mr. CONYERS, Mr. SMITH of Texas, Mr. SCOTT of Virginia, and Mr. GOHMERT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To prevent mail, telemarketing, and Internet fraud targeting seniors in the United States, to promote efforts to increase public awareness of the enormous impact that mail, telemarketing, and Internet fraud have on seniors, to educate the public, seniors, their families, and their caregivers about how to identify and combat fraudulent activity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Senior Financial Em-  
3 powerment Act of 2009”.

4 **SEC. 2. FINDINGS.**

5       The Congress finds as follows:

6           (1) The proportion of the population of the  
7       United States age 60 years or older will drastically  
8       increase in the next 30 years as more than  
9       76,000,000 Baby Boomers approach retirement and  
10      old age.

11          (2) Each year, anywhere between 500,000 and  
12      5,000,000 seniors in the United States are abused,  
13      neglected, or exploited.

14          (3) Senior abuse, neglect, and exploitation have  
15      no boundaries, and cross all racial, social class, gen-  
16      der, and geographic lines.

17          (4) Millions of individuals in the United States  
18      are victims of financial exploitation, including mail,  
19      telemarketing, and Internet fraud, each year. Many  
20      of those who fall prey to these crimes are seniors.

21          (5) It is difficult to estimate the prevalence of  
22      fraud targeting seniors because cases are severely  
23      underreported and national statistics on senior fraud  
24      do not exist.

25          (6) The Federal Bureau of Investigation notes  
26      that senior Americans are less likely to report fraud

1 because they do not know to whom to report, they  
2 are ashamed to have been a victim of fraud, or they  
3 do not know that they have been a victim of fraud.  
4 In some cases, a senior victim of fraud may not re-  
5 port the crime because he or she is concerned that  
6 relatives may come to the conclusion that the victim  
7 no longer has the mental capacity to take care of his  
8 or her own financial affairs.

9 (7) According to a 2009 report by the MetLife  
10 Mature Market Institute, the annual financial loss  
11 by victims of senior financial abuse is estimated to  
12 be at least \$2,600,000,000.

13 (8) Perpetrators of mail, telemarketing, and  
14 Internet fraud frequently target seniors because sen-  
15 iors are often vulnerable and trusting people.

16 (9) As victims of such fraudulent schemes,  
17 many seniors have been robbed of their hard-earned  
18 life savings and frequently pay an emotional cost,  
19 losing not only their money, but also their self-re-  
20 spect and dignity.

21 (10) Perpetrators of fraud targeting seniors  
22 often operate outside the United States, reaching  
23 their victims through the mail, telephone lines, and  
24 the Internet.

1           (11) The Deceptive Mail Prevention and En-  
2       forcement Act increased the power of the United  
3       States Postal Service to protect consumers against  
4       persons who use deceptive mailings, such as those  
5       featuring games of chance, sweepstakes, skill con-  
6       tests, and facsimile checks.

7           (12) During fiscal year 2007, analysts prepared  
8       more than 27,000 letters and informative postcards  
9       in response to mail fraud complaints. During that  
10      same year, postal inspectors investigated 2,909 mail  
11      fraud cases in the United States, and arrested 1,236  
12      mail fraud suspects, of whom 1,118 were convicted.  
13      Postal inspectors also reported 162 telemarketing  
14      fraud investigations, with 83 arrests and 61 convic-  
15      tions resulting from such investigations.

16          (13) In 2000, the United States Senate Special  
17      Committee on Aging reported that, each year, con-  
18      sumers lose approximately \$40,000,000,000 to tele-  
19      marketing fraud, and estimated that approximately  
20      10 percent of the Nation's 14,000 telemarketing  
21      firms were fraudulent. Some researchers estimate  
22      that only one in 10,000 fraud victims reports the  
23      crime to the authorities.

24          (14) A 2003 report by AARP found that the  
25      crime of telemarketing fraud is grossly under-

1 reported among senior victims, but that those who  
2 are properly counseled by trained peer volunteers are  
3 less likely to fall victim to fraudulent practices.

4 (15) The Federal Bureau of Investigation re-  
5 ports that the threat of fraud to seniors is growing  
6 and changing. Many younger Baby Boomers have  
7 considerable computer skills, and criminals are modi-  
8 fying their targeting techniques by using not only  
9 traditional telephone calls and mass mailings, but  
10 also online scams like phishing and e-mail spam-  
11 ming.

12 (16) The IC3 is a partnership between the Na-  
13 tional White Collar Crime Center and the Federal  
14 Bureau of Investigation that serves as a vehicle to  
15 receive, develop, and refer criminal complaints re-  
16 garding cybercrime. The IC3 processed more than  
17 219,553 complaints of Internet crime in 2007. From  
18 these submissions, the IC3 referred 90,008 com-  
19 plaints of Internet crime, representing a total dollar  
20 loss of \$239,090,000, to Federal, State, and local  
21 law enforcement agencies in the United States for  
22 further consideration.

23 (17) Consumer awareness is the best protection  
24 from fraud.

1 **SEC. 3. CENTRALIZED SERVICE FOR CONSUMER EDU-**  
2 **CATION ON MAIL, TELEMARKETING, AND**  
3 **INTERNET FRAUD TARGETING SENIORS.**

4 (a) CENTRALIZED SERVICE.—

5 (1) REQUIREMENT.—The Federal Trade Com-  
6 mission shall, after consultation with the Attorney  
7 General, the Secretary of Health and Human Serv-  
8 ices, the Postmaster General, and the Chief Postal  
9 Inspector for the United States Postal Inspection  
10 Service—

11 (A) disseminate to seniors and families and  
12 caregivers of seniors general information on  
13 mail, telemarketing, and Internet fraud tar-  
14 geting seniors, including descriptions of the  
15 most common fraud schemes;

16 (B) disseminate to seniors and families  
17 and caregivers of seniors information on means  
18 of referring complaints of fraud targeting sen-  
19 iors to appropriate law enforcement agencies,  
20 including the Director of the Federal Bureau of  
21 Investigation, the attorneys general of the  
22 States, and a national toll-free telephone num-  
23 ber for reporting mail, telemarketing, and  
24 Internet fraud established by the Federal Trade  
25 Commission;



1 (C) in response to a specific request about  
2 a particular entity or individual, provide pub-  
3 lically available information on any record of  
4 civil or criminal law enforcement action for  
5 mail, telemarketing, or Internet fraud against  
6 such entity; and

7 (D) maintain a website to serve as a re-  
8 source for information for seniors and families  
9 and caregivers of seniors regarding mail, tele-  
10 marketing, and Internet fraud targeting sen-  
11 iors.

12 (2) COMMENCEMENT.—The Federal Trade  
13 Commission shall establish and implement proce-  
14 dures to carry out the requirements of paragraph  
15 (1) not later than one year after the date of the en-  
16 actment of this Act.

17 (b) AUTHORIZATION OF APPROPRIATIONS.—There is  
18 authorized to be appropriated to carry out this section  
19 \$10,000,000 for each of the fiscal years 2010 through  
20 2014.

21 **SEC. 4. GRANTS TO PREVENT MAIL, TELEMARKETING, AND**  
22 **INTERNET FRAUD.**

23 (a) GRANT PROGRAM AUTHORIZED.—Subject to the  
24 availability of funds authorized to be appropriated under  
25 this section, the Attorney General, after consultation with

1 the Secretary of Health and Human Services, the Post-  
2 master General, and the Chief Postal Inspector for the  
3 United States Postal Inspection Service, shall establish  
4 and administer a competitive grant program to award  
5 grants to eligible organizations to carry out mail, tele-  
6 marketing, and Internet fraud prevention education pro-  
7 grams for seniors.

8 (b) ELIGIBLE ORGANIZATIONS.—The Attorney Gen-  
9 eral may award grants under this section to State Attor-  
10 neys General, State and local law enforcement agencies  
11 and groups, senior centers, and other local nonprofit orga-  
12 nizations that provide assistance to seniors, as determined  
13 by the Attorney General.

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
15 authorized to be appropriated to carry out this section  
16 \$20,000,000 for each of the fiscal years 2010 through  
17 2014.

18 **SEC. 5. SENSE OF THE CONGRESS RELATED TO NATIONAL**  
19 **SENIOR FRAUD AWARENESS WEEK.**

20 It is the sense of the Congress that—

21 (1) there is a need to increase public awareness  
22 of the enormous impact that mail, telemarketing,  
23 and Internet fraud has on senior citizens in the  
24 United States;

1           (2) a week in the month of May should be des-  
2     ignated as “National Senior Fraud Awareness  
3     Week”;

4           (3) the people of the United States should ob-  
5     serve National Senior Fraud Awareness Week with  
6     appropriate educational activities; and

7           (4) the President is encouraged to issue a proc-  
8     lamation supporting increased public awareness of  
9     the impact of, and the need to prevent, fraud com-  
10    mitted against seniors.

○

Mr. SCOTT. Today we will hear testimony about the importance of this bill and the issues pertaining to what is becoming the crime of the 21st century, elder financial abuse. Now, on June 29, Representatives Tammy Baldwin and Howard Coble introduced H.R. 3040, which was referred to the Judiciary Committee, and we have heard from both of our colleagues.

The bill was introduced primarily to address the need to educate and inform the public of the predatory practices of unscrupulous individuals who prey upon the vulnerabilities of our elders. Ours is an aging society.

At one time the elderly population was small, and now it is significant and growing. Where adults age 60 or over represented 6 percent of the U.S. population in 1990, it now represents over 17 percent. The number will continue to climb as the baby boom generation ages.

This older segment of our population owns the largest portion of the wealth in the United States. They control at least 70 percent of the net worth of the Nation's households and very often do not realize that the value of their homes and other assets have appreciated significantly. Because of this elders are often becoming very enticing targets for those who would seek to defraud them of assets that they have set aside for future security, their life savings.

It has been difficult to estimate the prevalence of elder fraud. Cases are under reported, and the definition of elder and senior varies from state to state. Although we currently lack national reporting mechanisms to tracking the financial exploitation of elders, there is no doubt that we have got a real problem in this country.

According to a 1998 study by the National Center on Elder Abuse, financial abuse accounted for approximately 12 percent of all elder abuse through reported nationally in 1993 and 1994, 30 percent of substantiated elder abuse reports submitted to the adult protective services in 1996 after the exclusion of reports of self-neglect.

Now many experts believe that the level of elder exploitation may well exceed that that has been reported to authorities and documented researchers.

That is because many of those who fall victim of financial exploitation including mail, telemarketing, Internet fraud each year are seniors who fail to report, either because of the embarrassment or fear of being deemed incapable of handling their personal affairs.

With the present state of the economy, older Americans are at greater risk than ever of having their financial security threatened and disrupted. Fraud perpetrated against seniors is a crime that can have even more significant impact on its victims because they are often incapable of recovering from financial losses.

Too often they simply don't have the years left to recover and rebuild financially. Many are too old or too frail to re-enter the workplace. For every dollar lost to theft or abuse, there are still unrelated costs associated with stress and health care and the intervention of social services.

It goes beyond people losing dollars for everyday living. It involves millions of dollars in increased costs to Medicare and Medicaid. Based on research in MetLife's Mature Market study, senior

financial fraud and abuse robs America's seniors of more than \$2.6 billion every year.

One estimate projects the number of victims in the range from a low of 100,000 to a high of a million a year. Now, this is a matter of urgency. Elder financial abuse and fraud will become more commonplace as a consequence of the changing demographics of the United States.

Fraud complaints by older persons are increasing annually along with the overall number of complaints filed. In 2007, of consumers reporting their age, persons 50 years of age filed almost 50,000 of the 130,000 complaints. In 2009, that number rose to almost 150,000 out of 450,000 complaints.

Action on H.R. 3040 is urgently needed as another tool in our arsenal of weapons to combat this serious offense. And I also have grave concerns about the growing problem of identity theft.

According to the Federal Trade Commission's Consumer Centennial database, identity theft is the number one consumer complaint involving the use of another's personal identity information such as a bank account or credit card or other government documents such as a driver's license for someone's personal or financial gain.

Identity theft affects as many as 9 million Americans annually. And this bill when enacted to law will be part of the continuing effort to educate seniors about the need to protect their personal information. The consequences of identity theft can be severe.

The victim's good name is tarnished. Financial loss can be substantial. Time, effort and money are often needed to recover, and if the victim is an older person in the 70's or 80's, the effects can be especially devastating, and the time can be even more crucial.

That we have got to have greater enforcement of the laws prohibiting identity theft, and that means the FBI can't opt out of pursuing an investigation simply because the monetary loss is too little. This is an act that requires premeditation and deliberate intent to cause personal harm with no regard of the victim.

The penalties for these crimes already provide sufficient jail time, but penalties must also include stiff fines to make this act financially painful for the perpetrators. But penalties are meaningless if the crimes are not prosecuted. And we frequently hear that one problem is that the crimes are not even investigated.

So if the FBI's ability to investigate and prosecute these crimes is hampered by budgetary constraints, then that is something we need to hear about from the FBI, but the decisive enforcement and prosecution is needed and long overdue.

In today's hearing we have already heard from Representatives Baldwin and Coble who testified about the Senior Financial Empowerment Act, which they have introduced to specifically curb the rapidly growing problem of victimization of senior citizens via telemarketing, mail and Internet, through public awareness, education and prevention.

This witness the panel will hear from shortly will discuss why this legislation is needed and how its passage will not only facilitate the creation of mechanisms for reporting fraud, but will also further the effort to provide greater protection for both seniors and the general public as a result of increased public awareness.

Now it is my privilege to recognize the Ranking Member of the Subcommittee, my colleague from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott, and appreciate the witnesses being here. And obviously, you have been delayed substantially because of the votes and the way they fell. And so I have a statement here, it is in writing, and I would ask that it be submitted into the record. I may do so?

Mr. SCOTT. Without objection.

[The prepared statement of Mr. Gohmert follows:]

PREPARED STATEMENT OF THE HONORABLE LOUIE GOHMERT, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON  
CRIME, TERRORISM, AND HOMELAND SECURITY

Statement of Crime Subcommittee Ranking Member Louie Gohmert  
Legislative Hearing on  
H.R. 3040, the "Senior Financial Empowerment Act"  
May 25, 2010

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**Thank you, Mr. Chairman.**

**Today, the Crime Subcommittee is holding this hearing on H.R. 3040, the Senior Financial Empowerment Act. The bill is sponsored by our colleague on the Judiciary Committee, Ms. Baldwin.**

**I am proud to co-sponsor this important legislation along with Chairman Scott, Chairman Conyers and Ranking Member Smith.**

**This legislation will help stop abusive mail, telemarketing and Internet fraud that targets senior citizens.**

**The legislation promotes efforts to increase public awareness of the enormous impact that fraud has on seniors. H.R. 3040 will also help educate the public, seniors, their families, and their caregivers about how to identify and combat fraudulent activity.**

**There is very little concrete data about the level of financial fraud committed against senior citizens due to severe under-reporting. For every known case of elder**

financial abuse, it is estimated that four to five cases may go unreported.

Despite such underreporting, there are estimates that millions of senior Americans have been targeted for financial exploitation, including mail, telemarketing, and Internet fraud. Unfortunately, the problem appears to be growing.

In 2000, the U.S. Senate Special Committee on Aging reported that consumers of all ages lost billions annually to just telemarketing fraud. The Committee further estimated that approximately 10 percent of the nation's 14,000 telemarketing firms were fraudulent.

In 2009, a study commissioned and published by MetLife insurance company reported that the annual financial loss by victims of senior financial abuse is estimated to be at least \$2.6 billion a year.

Elder financial abuse is regarded as the third most prevalent form of elder abuse, following neglect and emotional or psychological abuse. It occurs in community or institutional settings, and accounts for over 30% of incidence of elder abuse.

The AARP tells us that financial abuse is typically committed by a person the victim trusted. In about half of



financial elder abuse cases, the perpetrator was a family member, friend, neighbor or caregiver. In about 20% of cases, the fraud was committed by a scam artist previously unknown to the victims.

In recent years, older investors have increasingly been victimized by securities fraud. This in large part, undoubtedly, is related to the concentration of wealth held by older investors.

Fraud on older investors is particularly troubling because not only have they often amassed their investment funds over the course of decades, but they are generally beyond their earning years and have little or no ability to rebuild their retirement funds.

In addition to financial fraud, the Medicare program is bilked of millions of dollars every year. This fraud results in higher health care costs for all Americans, but can be particularly damaging for seniors.

Medicare fraud may involve a health care provider billing the government for services that were never rendered, or someone using another person's Medicare card to get medical care, or disreputable companies using false information to mislead seniors into joining a Medicare plan.

In 2009, the government says it recovered \$2.5 billion in overpayments from the Medicare trust fund as a result of joint efforts of the Justice Department and the Health and Human Services Department to work cooperatively to police fraudulent companies. These are good results and I urge the government to do more to stop Medicare fraud.

H.R. 3040 provides funding to the Attorney General to establish a competitive grant program for organizations to carry out locally-focused mail, telemarketing, and Internet fraud prevention and education programs for seniors.

The legislation also will educate the public about the effect financial fraud has on senior citizens by declaring one week in the month of May to be “National Senior Fraud Awareness Week.”

I support this legislation and the effort to combat senior financial fraud.

I look forward to hearing the testimony of the witnesses, and I yield back the balance of my time.

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Mr. GOHMERT. And otherwise just—I mean, I am a co-sponsor of this legislation, and I appreciate so much Ms. Baldwin’s sensitivity in putting this legislation together. It is a huge problem in America, and seniors become more and more vulnerable. And it seems as we have entered a time when people’s minds do not always last as long as their bodies.

It is as my friend, the Chairman, Chairman Scott said, "It is going to just keep growing." So we appreciate your being here. We appreciate hearing what you have to say. Thank you, Chairman.

Mr. SCOTT. Thank you. On this panel of witnesses we will begin with W. Lee Hammond of Salisbury, Maryland. He is recently elected by AARP's board of directors to serve as president for the 2010 to 2012 biennium.

Since his election to the board in 2002, he has served on and chaired several AARP committees including audit and finance, membership committee and national nominating committee. He is a retired educator, began his 30-year career in education in Maryland as a classroom teacher.

He served as a school administrator for 25 years and has had leadership roles in several professional associations. In addition to his service with AARP, he also serves as a member of the Maryland Interagency Committee on Aging Services and is vice-chair of the board of MAC, Inc., a nonprofit area agency on aging, serving four Maryland counties.

Before becoming an AARP board member, he served as president of the Maryland Retired Teachers Association and as AARP Maryland state president. His earlier volunteer service included a 2-year member of the Maryland Commission on Aging.

Our second witness will be Bob Blancato, who is president of Matz, Blancato & Associates, a full-service firm integrating strategic consulting, government affairs, advocacy services and association and coalition management.

He is the national coordinator of the Elder Justice Coalition, a bipartisan, 581-member organization. From 2000 to 2006, he served as president of the National Committee for the Preservation of Elder Abuse and remains on its executive committee.

He currently serves as executive director of the National Association of Nutrition and Aging Services, a program he spent 17 years on the staff of the House Committee on Aging. He served as executive director of the 1995 White House Conference on Aging and on the policy committee for the 2005 conference.

Most recently, he was appointed chairman of the Commonwealth Council on Aging in Virginia by Governor Kaine. He holds a Bachelor of Arts degree from Georgetown University and a Master's of public administration from American University.

He is also on the adjunct faculty of the Erickson School of the University of Maryland Baltimore County and has also taught at George Washington University graduate school of political management and the graduate school of social work at the University of Maryland in Baltimore.

Our third witness was going to be introduced by our colleague from Texas, Mr. Poe, who was with us earlier, but had to leave. Latifa Ring is a grassroots elder rights advocate from Houston, Texas, founder of the Elder Abuse and Guardianship Victims Taskforce for Change, which submitted to leaders in Washington, a proposal to address elder abuse, financial exploitation of elderly and guardianship system abuse.

She has also recently founded the Elder Abuse Victims Advocates. She was born and raised as an orphan in North Africa and came to the United States in 1974.

She has spent the last 30 years working with the computer technology industry and is now an independent consultant when she isn't working on elder abuse issues.

She is passionate, yet she has a passion to deal with elder care issues which stems from her own experience over the past 5 years caring for an elderly missionary woman who was raised as an orphan in North Africa and who was a victim of abuse and neglect in a private home in Delaware.

She is a member of the Elder Justice Coalition and has been a member of the National Guardianship Association and is presently a member of various online communities that address elder issues.

She is a graduate from Truman State University as a premed student with a degree in biology. Ms. Ring is accompanied by Mr. Mark Glasser, who apparently will not make a statement, but is available for questions.

We will begin with Mr. Hammond.

**TESTIMONY OF W. LEE HAMMOND, PRESIDENT, AARP,  
WASHINGTON, DC**

Mr. HAMMOND. Good afternoon, Chairman Scott, Congressman Gohmert. I am Lee Hammond, the AARP president. On behalf of millions of AARP members, we thank you for convening this hearing on protecting the financial security of seniors.

Financial abuse of older Americans is a serious concern and AARP is committed to educating our members about financial abuse so they can avoid it. Through our education and outreach financial security team we inform retirees and those near retirement about how to spot misleading representations about financial investments.

Through our "No Free Lunch" campaign we provide members with checklists on what to listen for if they wish to attend investment seminars. Members can report any concerns about the presentation to AARP and to their state regulators.

Moreover, we have long been advocates for robust regulation of financial products to protect the hard-earned retirement nest eggs of millions of Americans. To that end, we have been strong supporters of financial regulatory reform and in particular, have worked hard to ensure that brokers are subject to the same fiduciary duty that must be met by investment advisors.

H.R. 3040 is another step that encourages a united, bipartisan commitment to protecting older adults from financial abuse by various deceptive techniques that undermine their financial security.

Although, financial abuse has been described as the fastest growing form of elder abuse, too few studies have been conducted on its incidence and prevalence to provide the accurate picture of the number of victims.

Moreover, protecting older people from financial abuse is stymied by insufficient resources devoted to investigating and especially enforcing laws designed to prevent such crimes. Many victims are reluctant to report financial abuse.

Many may not know how or where to report such exploitation and to what extent the right law enforcement agency receives a complaint. It may not have the resources to adequately protect individuals or prevent fraud against others.

Telemarketing fraud is a major concern for older people who are particularly vulnerable to certain types of telemarketing fraud including magazine scams, prizes and sweepstakes scams, and phishing.

To date, consumers have registered 48.4 million phone numbers on the Do Not Call registry, and according to the Federal Trade Commission, most telemarketers have been diligent in their efforts to scrub their lists to meet the registry's requirements.

Encouraging more people to register will help avoid telemarketing fraud and will help enforcement efforts to prevent fraudulent practices.

The U.S. Securities and Exchange Commission has found that an estimated 5 million senior citizens become victims of financial abuse and fraud each year.

They attribute this high rate to the fact that older investors hold a relatively high amount of wealth and to the fact that one-third of all U.S. investors are between the ages of 50 and 64.

Contrary to popular belief, the financial industry regulatory authority finds that the most frequent victim of investment fraud is a college educated male, age 55 to 65, who is an active investor and does not use an advisor.

An analysis of consumer complaints from the database maintained by the FTC indicates that in 2008, identity theft was the number one complaint category in the database of over 1 million complaints.

These complaints totaled \$1.8 billion in financial losses with 84 percent of consumers reporting median monetary losses of \$440 per consumer. Consumers over the age of 50 accounted for 30 percent of all complaints to the database and 26 percent of all identity theft complaints.

According to the 2008 data, more than three out of five consumers who complained indicated that they were contacted by the fraudulent company by e-mail or through the Internet. With the growth in social networking, use of the Internet is anticipated to be a growing method of perpetrating financial fraud.

H.R. 3040 is a cost effective, targeted approach to prevent financial exploitation and promote economic security and financial education among those approaching retirement. The Senior Financial Empowerment Act would make improvements that strengthen and coordinate the efforts of nonprofits and government entities to educate older Americans about abusive mail, Internet and telemarketer schemes.

H.R. 3040 promotes the ability of older Americans to live independently and maintain their financial security through provisions that would centralize a monitoring service for consumer educational mail, telemarketing and Internet fraud targeting seniors in the Federal Trade Commission, authorize the Attorney General to make local grants to prevent mail, telemarketing and Internet fraud and establish a senior fraud awareness week in May of each year to expand education and public awareness.

Again, we commend the Subcommittee for holding this important hearing today to focus more attention on the critical problem of financial elder abuse.

We hope that this hearing is just the beginning, and we urge this Committee to take action to address this growing national problem, including authorizing more resources for enforcement. And I am happy to take any questions.

[The prepared statement of Mr. Hammond follows:]

PREPARED STATEMENT OF W. LEE HAMMOND



**Testimony of W. Lee Hammond,**

**AARP President**

**H.R. 3040 "The Senior Financial Empowerment Act"**

**Before the**

**House Judiciary Committee**

**Subcommittee on Crime, Terrorism and Homeland Security**

**May 25, 2010**

**Washington, DC**

For further information, contact:  
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Good Morning, I am Lee Hammond, AARP President. On behalf of millions of AARP members, we thank you for convening this hearing on protecting the financial security of seniors.

It is important to better equip the nation's elders, their families and caregivers with tools, knowledge, and enforcement agency access to aid in preventing and reporting senior financial abuse. AARP is committed to educating our members about financial abuse so that they may avoid it. Through our Education and Outreach Financial Security Team, we inform retirees and near-retirement individuals about how to spot misleading representations about financial investments. Through our No Free Lunch campaign, we provide members with checklists on what to listen for if they wish to attend an investment seminar. Members can report any concerns about the presentation to AARP and their state regulators. Moreover, we have long been advocates for the robust regulation of financial products to protect the hard-earned retirement nest eggs of millions of Americans. To that end, we have been strong supporters of financial regulatory reform, and in particular, have worked hard to ensure that brokers are subject to the same fiduciary duty that must be met by investment advisers.

H.R. 3040 is another step that encourages a united, bipartisan commitment to protecting older, vulnerable adults from financial abuse and exploitation from various fraudulent and deceptive techniques that undermine their financial security and independence. While most forms of elder abuse go unreported, the results of non-financial abuse tend to be more visible and detected earlier. Financial fraud and abuse often remain hidden until the monetary losses affect the individual's well being. Limited data about the problem of financial fraud and abuse tells us that older persons are targets of fraudulent schemes compared to other age groups. More reliable data will become increasingly important as the Boomer generation swells the 60+ ranks.

#### **Elder Financial Abuse and Exploitation**

AARP continues to be concerned about financial exploitation of older people. Although financial abuse has been described as the fastest growing form of elder abuse, too few studies have been conducted on its incidence and prevalence to provide an accurate picture of the numbers of victims. Moreover, protecting older people from financial abuse is stymied by insufficient resources devoted to reporting, investigating, and especially enforcing laws designed to prevent such crimes. However much exploitation is reported or prosecuted, everyone agrees that more financial abuse occurs than is brought to light.

Accurate current data on financial abuse are difficult to obtain for a number of reasons. No national reporting mechanism exists to record the incidence or prevalence of financial abuse of older persons. Many victims are reluctant to report financial abuse. But even those who would report may be unaware they are being exploited because of the manipulative ways that perpetrators gain their

trust and steal their money. Many may not know where or how to report such exploitation, and to the extent the right law enforcement agency receives a complaint, it likely has insufficient resources to adequately protect individuals or prevent such perpetration against others.

Recognizing that financial exploitation is a pervasive and increasing problem that specifically threatens our members' financial security, AARP is addressing this problem through programs that educate members, families, professionals and potential victims. While important, education alone is not enough. More resources must be made available to local and federal law enforcement agencies to enforce the existing laws in order to better protect older people from such abuse.

### **Telemarketing Fraud**

The National Consumer League's National Fraud Information Center reports that consumers age 60 and older are particularly vulnerable to certain types of telemarketing fraud. These include:

- Magazine sales scams
- Prizes/Sweepstakes scams, and
- Phishing

Telemarketing fraud is a major concern for older people. To date, consumers have registered 58.4 million phone numbers on the Do Not Call Registry, and according to the Federal Trade Commission (FTC), most telemarketers have been diligent in their efforts to scrub their lists and to meet the Registry's requirements. A recent Harris® Poll showed high levels of compliance, with a large percentage of telemarketers who are required to download the list and delete newly included numbers doing so on a timely basis. Encouraging more people to register will help avoid telemarketing fraud and will help enforcement efforts to prevent fraudulent practices.

### **Investment Fraud**

The US Securities Exchange Commission has found that an estimated 5 million senior citizens become victims of financial abuse and fraud each year. They attribute this high rate to the fact that older investors hold a relatively high amount of wealth, and to the fact that one-third of all U.S. investors are between 50 and 64 years of age. Contrary to popular belief, the Financial Industry Regulatory Authority (FINRA) finds that the most frequent victim of investment fraud is a college-educated male, age 55 to 65, who is an active investor and does not use an advisor.

In October of 2009, AARP hosted a Public Policy Institute Solutions Forum on Investment Fraud at which the U.S. Securities and Exchange Commission



Chairwoman, Mary L. Schapiro, addressed enforcement, reporting and complaints review, and public financial education. In her remarks, the Chairwoman noted the importance of comprehensive financial education, emphasizing an effort launched by the SEC to offer a financial handbook focused on research-supported information on key financial decisions during various life stages, including saving for and managing money during retirement, and strategies for avoiding fraud. This effort would be complemented by the objectives of H.R. 3040, which also places an emphasis on education.

### **Identity Theft and Internet Related Fraud**

Identity theft is defined both by statute (ID Theft Act, 18 U.S.C. § 1028(a)(7), 1029(e)) and by FTC rule (16 C.F.R. §603.2), and includes the misuse or attempted misuse of any identifying information – such as the SSN, biometric data, or an existing credit card account number - to commit fraud. Identity theft occurs in numerous ways, including through forgeries, account takeovers, and unauthorized use of personal information to open a new account.

An analysis of consumer complaints from the Consumer Sentinel Data Base maintained by the FTC indicates that in 2008 identity theft was the number one complaint category in the CSN with 26% of the overall 1.2 million complaints. Of all complaints, 643,195 instances of financial fraud, credit card fraud (20%) was the most common form of reported identity theft followed by government documents/benefits fraud (15%), employment fraud (15%), and phone or utilities fraud (13%). Fraudulent tax return-related identity theft, a subtype of government documents/benefits fraud, has increased nearly six percentage points since calendar year 2006. Electronic fund transfer-related identity theft continues to be the most frequently reported type of identity theft bank fraud during calendar year 2008, despite declining since calendar year 2006.

These complaints revealed \$1.8 billion in financial losses, with 84 percent of consumers reporting median monetary losses of \$440<sup>1</sup> per consumer. Consumers over age 50 accounted for 30 percent of all complaints to the database, and 26 percent of all identity theft complaints.

According to 2008 data, more than three of five consumers (63 percent) who complained to the Consumer Sentinel Database indicated that they were contacted by the fraudulent company by email or through the Internet. Moreover, with the growth in social networking, use of the internet is anticipated to be a growing method of perpetrating financial fraud.

### **Conclusion**

Poor data notwithstanding, financial elder abuse is a hidden, but very real, problem. H.R. 3040 is a cost-effective, targeted approach to preventing financial

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<sup>1</sup> Median loss per consumer reporting a monetary loss.

exploitation and promoting economic security and financial education among those approaching retirement and a likely greater dependence on fixed incomes. The Senior Financial Empowerment Act would make improvements that strengthen and coordinate partnerships among public, private non-profits and government efforts to identify, target, and educate seniors most vulnerable to abusive mail, Internet, and telemarketer schemes, along with their families and caregivers.

H.R. 3040 promotes the ability of older Americans to live independently and maintain dignity and autonomy through provisions that would:

- Centralize a monitoring service for Consumer Education on Mail;
- Telemarketing and Internet Fraud Targeting Seniors in the Federal Trade Commission;
- Authorize the Attorney General to make local grants to prevent mail, telemarketing, and Internet fraud; and
- Establish a National Senior Fraud Awareness Week in May of each year to expand education and public awareness.

Again, we commend the subcommittee for holding this important hearing today to focus more attention on the critical problem of financial elder abuse. We hope that this hearing is just the beginning, and we urge this committee to take action to address this growing national problem, including authorizing more resources for enforcement. While more data is necessary to fully understand the various dimensions for these forms of financial abuse, AARP believes that the provisions of this bill are a targeted and reasonable first step in detecting and preventing financial elder abuse. H.R. 3040 empowers seniors to more effectively manage and protect their retirement assets. We thank you again for the Committee's leadership in this area, and look forward to working with the Congress and Administration to protect older Americans from financial exploitation.

Mr. SCOTT. Thank you. I failed to remind people about the timing device before you, but I think most of the witnesses aware that it starts green, goes yellow with 1 minute left and turns red when the time is expired.

Mr. Blancato?

**TESTIMONY OF ROBERT B. BLANCATO, NATIONAL COORDINATOR, ELDER JUSTICE COALITION, WASHINGTON, DC**

Mr. BLANCATO. Thank you, Chairman Scott, Judge Gohmert. It is an honor to once again appear before you in my capacity as National Coordinator of the Elder Justice Coalition, a nonpartisan, 640-member organization working to promote elder justice in the United States.

Let me begin Mr. Chairman, by commending your leadership on behalf of elder justice. In the last Congress this same Subcommittee held a hearing on the Elder Abuse Victims Act and soon thereafter reported it out of the Committee and the House both in 2008 and 2009, passed this crucial legislation.

We remain hopeful that the Senate, beginning with the Judiciary Committee will also pass this bill this year. Your leadership and dedication to this issue of elder abuse prevention is most commendable.

It is a pleasure today to testify in support of H.R. 3040, sponsored by another distinct champion of elder justice, Representative Baldwin.

In addition to her leadership on this Committee for this legislation, she was one of the leaders in the House that helped passed the Elder Justice Act, which was part of the health care reform legislation signed into law this past March.

Passage of H.R. 3040 is necessary in order to improve our capacity to prevent seniors from falling prey to another form of elder abuse, financial exploitation which involves mail, telemarketing and Internet fraud. A review of the findings section of this bill is sobering. Several points are worth emphasizing.

The first, and most obvious, that you all see in your districts and states is the population is aging right before our eyes. We know the numbers today, 34 million people over 65, but come next year, the first wave of boomers will turn 65 and by the time they all do we will have a doubling of our elderly population.

It also references the Senate Special Committee on Aging estimates that there could be as many as 5 million cases of elder abuse each year in this Nation. Financial abuse for the past several years has been one of the most fastest rising forms of elder abuse.

The MetLife Mature Market Study referenced, and I would ask that it be inserted in the record for the education benefit of the Subcommittee, in addition to the \$2.6 billion finding, identified Internet scams that were particularly prevalent going forward, including social networks, e-mail, medications, assisted devices and medical equipment, make-up and anti-aging remedies and property and information solicitations all done through the Internet.

Another Justice Department study released earlier indicated that with respect to Internet fraud data, the study shows that those 60 and over lost more money per incident of financial abuse than any other age group.

Sad reality is that the wonders of modern technology can be offset by their use in the horror of elder financial abuse. The New York Times, in an article on May 20, entitled "Keeping Online Criminals at Bay" noted, "The Web is a fountain of information, a busy marketplace, a thriving social scene and a den of criminal activity."

The Baldwin bill is comprehensive and proactive in its approach to the growing problem as it affects seniors. It will help stop abusive mail, telemarketing and Internet fraud targeting seniors.

It will join with the Elder Justice Act in helping to raise public awareness of the impact of these crimes on the lives of seniors and the need to educate individuals, families and caregivers on how to detect, report and combat financial elder abuse.

We do need to involve the Federal Trade Commission more in this prevention work. The Baldwin bill would have them be the centralized service providing consumer education on mail, telemarketing and Internet fraud targeting seniors.

Here we must use technology as a tool of help by having, as the bill calls for, a centralized Web site to serve as a resource for seniors on financial fraud and abuse prevention.

We support the creation of a new grant program to state and local organizations to do locally focused public awareness prevention campaigns. In many instances, there are communities already doing this kind of service, and these grants could help make them stronger and become more national models.

And designating a week in May to coincide with Older Americans Month and Elder Abuse Awareness Month would be helpful to the overall public awareness raising efforts.

For example, some law enforcement training that was done recently at a forum on upstate New York included such important tips such as if a salesman won't meet with you if your family is present, that is a red flag.

When a postcard claiming that you are a big sweepstakes winner lands in your mailbox, do your research, do your due diligence because just because you see an ad in the newspaper or on television or hear something on the radio does not mean that it is legitimate.

So the reality is financial abuse and exploitation of seniors is as close as a family member or as far away as an international phone call from a scam artist.

No matter the perpetrator, the elderly victim is never the same. They are, in many cases, never able to recoup what they lose financially. Add the psychological harm and it is an especially cruel form of victimization.

And if there is any doubt that this is only a national problem, there are local and state headlines everyday in news articles that come to us that we read about such as "Sweepstakes' Cafes Thrive, Despite Police Misgivings," "Nigerian Scam Still Nets Victims," "South Bay Elderly Warned on Financial Scams," and you can run through a gamut of articles of this kind.

And even in today's Washington Post, an article about a man pleading guilty to a swindling of \$108,000 from a couple in Montgomery County.

So I will end at this point Mr. Chairman, and I appreciate your leadership again on behalf of elder justice issues.

[The prepared statement of Mr. Blancato follows:]

PREPARED STATEMENT OF ROBERT B. BLANCATO

**THE ELDER JUSTICE COALITION**

A NATIONAL ADVOCACY VOICE FOR ELDER JUSTICE IN AMERICA

JOHN B. BREAU, HONORARY CHAIR ♦ ROBERT B. BLANCATO, NATIONAL COORDINATOR

**Hearing-House Judiciary Committee-Subcommittee on Crime, Terrorism and Homeland Security**

**May 25, 2010**

**Bob Blancato, National Coordinator, Elder Justice Coalition**

Mr. Chairman and Members of the Subcommittee:

It is an honor to once again appear before you in my capacity as National Coordinator of the Elder Justice Coalition, a non partisan 640 member organization working to promote elder justice in the United States. Let me begin Mr. Chairman by commending your leadership on behalf of elder justice. In the last Congress this same Subcommittee held a hearing on the Elder Abuse Victims Act and soon thereafter reported it out of the Committee and the House both in 2008 and 2009 passed this crucial legislation. We remain hopeful that the Senate beginning with the Judiciary Committee will also pass this bill this year. Your leadership and dedication to the issue of elder abuse prevention is most commendable.

It is also a pleasure today to testify in support of H.R.3040 sponsored by another distinct champion of elder justice, Representative Baldwin. In addition to her leadership on this Committee with respect to elder abuse prevention, she was one of the leaders in the House that helped pass the Elder Justice Act which was part of the health care reform legislation signed into law this past March.

Passage of H.R.3040 is necessary in order to improve our capacity to prevent seniors from falling prey to another form of elder abuse, financial exploitation which involves mail, telemarketing and Internet fraud.

A review of the findings section of this legislation is sobering. Several points are worth emphasizing. The first and most obvious that you all see in your Districts and States, the population is aging right before our eyes. We know the numbers today, 34 million persons over 65 but come next year the first wave of boomers will turn 65 and by the time they all do we will have a doubling of our elderly population.

It also references the Senate Special Committee on Aging estimate that there could be as many as 5 million cases of elder abuse each year in this nation. Financial abuse for the past several years has been one of the fastest rising forms of elder abuse.

The MetLife Mature Market Institute, the Center for Gerontology at Virginia Tech and the National Committee for the Prevention of Elder Abuse report mentioned in the bill was a real eye opener. Its main finding is that the annual financial loss by victims of senior financial abuse is a very conservative estimate of \$2.6 billion lost per year. In addition, Internet scams were one particular type of elder financial abuse examined in the report. Internet scams included:

- \*Social networks
- \*Email
- \*Medications
- \*Assistive devices/medical equipment

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- \*Clothing
- \*Make up and anti-aging remedies
- \*Property and information solicitation

Another Justice Department study released earlier indicated that with respect to internet fraud data, the study shows that those 60 and over lose more money per incident of financial abuse than any other age group.

The sad reality is that the wonders of modern technology can be offset by their use in the horror of elder financial abuse. The New York Times in an article on May 20<sup>th</sup> entitled "Keeping Online Criminals at Bay" noted that, "The Web is a fountain of information, a busy marketplace, a thriving social scene and a den of criminal activity."

The Baldwin bill is comprehensive and proactive in its approach to this growing problem as it affects seniors. It will help to stop abusive mail, telemarketing and internet fraud targeting seniors. It will join with the Elder Justice Act in helping to raise public awareness of the impact of these crimes on the lives of seniors and the need to educate individuals, families and caregivers on how to detect, report and combat financial elder abuse.

We do need to involve the Federal Trade Commission more in this prevention work. The Baldwin bill would have them be the centralized service providing consumer education on mail, telemarketing and internet fraud targeting seniors. Here we must use technology as a tool of help by having as the bill calls for, a centralized website to serve as a resource for seniors on financial fraud and abuse prevention.

We support the creation of new grant program to state and local organizations to do locally focused public awareness prevention campaigns. In some instances, there are communities already doing this kind of service and these grants could make them stronger and into national models.

Finally, designating a week in May to coincide both with Older Americans Month and Elder Abuse Awareness Month would be helpful to the overall public awareness raising efforts.

Financial abuse and exploitation of seniors is as close as a family member or as far away as an international phone call from a scam artist. No matter the perpetrator, the elderly victim is never the same. They in many cases are never able to recoup what they lose financially. Add the psychological harm and it is an especially cruel form of victimization.

And if there is any doubt that this is both a local and a current problem, let me share and enter into the Record some recent news stories about the kind of financial abuse addressed in this legislation:

"Sweepstakes Cafes Thrive, Despite Police Misgivings."-May 6, 2010- Casselberry, Florida. 'Rick Massa was spending this Friday afternoon as he does every week sitting at a computer on the lonely end of a strip mall here inside Jack's Business Center and Internet Café. He was not checking his email messages or sending a fax and he was not interested in coffee. Mr. Massa 73 wanted to win money.' The story goes on to identify a game called Lucky Sevens, an online

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sweepstakes game that mimics a slot machine. The article describes how officials in 4 other states (California, North Carolina, Utah and Virginia) are grappling with the legality of gaming cafes.

From the Connecticut Post May 3<sup>rd</sup> headline, "Nigerian scams still net victims." Happily this story begins with a conviction of a scam artist involved in the so-called Nigerian scam where promises of money moving from African banks into your bank as long as you pay a few thousand dollars up front in so-called "document fees." In this one case, 52 people were scammed out of \$1.3 million.

And from San Jose, California, "South Bay elderly warned on Financial Scams." This article focused on the so-called Canadian lottery scheme where victims receive notification by email or a letter that they have won prize money but are then required to send a fee.

I know members of this Subcommittee deserve credit for the fact that the Elder Justice Act is now law. We must work to fund it adequately and implement it properly. But there is more to do. We have this legislation as an example and it should move quickly through this Subcommittee, full Committee and the House and the Senate should follow. It will demonstrate to our seniors that the concerns about elder abuse are being heard and addressed. We must treat elder abuse as the crime it is; ensure we are applying all necessary resources to achieve prosecution and use education, training and raise public awareness to prevent future victimization.

Thank you for providing me the opportunity to testify on behalf of this crucial piece of legislation today.

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Mr. SCOTT. Ms. Ring?

**TESTIMONY OF LATIFA S. RING, ELDER ABUSE VICTIMS  
ADVOCATES, HOUSTON, TX**

Ms. RING. Thank you, Mr. Chairman, Congressman Gohmert, opportunity to address the Committee on this critical issue. I am excited to see legislation addressing financial exploitation of the elderly.

I thank you also on behalf of over 1,000 people that have signed a petition that is attached to my written testimony asking us to work to end abuse and exploitation of the elderly.

Financial exploitation and fraud against the elderly is an epidemic, and it has gone largely unaddressed over the last 20 years. It has escalated into what some call the crime of the 21st century.

Often elderly victims do not report these crimes for fear of being declared mentally incompetent, for fear of losing their lives to predators of fraud who know this fear and exploit it.

The Senior Financial Empowerment Act can go far in encouraging seniors to come forward to report these crimes. Many elderly people are alleged to be incompetent just because they are old and need a helping hand.

Ageism is a prejudice in our society more deeply rooted than racism. Simple financial mistakes that you and I make are dismissed as casual, but in an elderly person, making that same mistake can be treated as an irrefutable indicator of clinical decline.

This prejudice alone is stressing many elderly people into unnecessary guardianships where they are stripped of all of their civil rights and often all of their property.

We must ensure that as we work to combat fraud against the elderly that we also have a system in place to protect those who come forward that will be alleged to be incapacitated when they report that fraud.

As it stands today, many of them will fall into guardianships that will deepen their misery, increase their fear, strip them of all of their civil rights, deny them their constitutional rights to due process and further expose them to fraud and financial exploitation that is far worse than the original crime that they reported.

Guardianships and conservatorships in America should be protecting the incapacitated people, but they are not doing so. Instead, guardianships are being used as an instrument to rob them of all of their property using long, drawn out litigation tactics and billing schemes for services that rarely benefit the ward.

To understand this fear, you must understand what happens to the elderly person who has been declared incapacitated, and we must address this fear if H.R. 3040 is going to be successful in helping citizens feel comfortable coming forward and reporting fraud.

This pernicious crime of financial exploitation against the elderly that is occurring under the guise of protection occurs with impunity. It occurs because judges routinely rubber stamp the excessive fee applications, sometimes just to clear the docket.

But sometimes just because we know Medicaid is out there and they are more concerned about making sure that the attorneys and guardians get paid knowing that the taxpayers will step up to the



plate with Federal and state tax dollars and ensure that the elderly person doesn't starve to death.

My written testimony includes a petition signed by close to 1,000 people asking for help to address this issue. Many of them have told their own stories of how a system designed to protect the elderly has in fact impacted them and their loved ones. Please take a minute to look at the petition, and see what private citizens in your state are saying.

My passion to work for reform stems from my own efforts to help an elderly woman who raised me as an orphan in North Africa, who was a victim of abuse in Delaware.

When I went to Adult Protective Services, they sent me into the guardianship system that cost her all of her \$200,000 estate in less than 9 months. It cost me over \$70,000. I traveled from Texas to Delaware for 5 years, struggling through this system.

In the end, I did become her guardian when her money was gone and was actually sued for the attorney fees even though, as a guardian, I never should have been. I could not afford to fight anymore. I took a home equity loan on my house, lost my job, and today I take care of Mary who is 95 years old. She lives in Texas.

She has been supported by the taxpayers for the last 3½ years. It should never cost anyone \$200,000 to get help when they are a victim of abuse, and it should never cost the Good Samaritan \$70,000 to come to their aid.

My friend Mark here is the son of Lillian Glasser. She had an estate valued over \$25 million. Twenty seven attorneys were billing in that case and getting paid for their fees. One hearing took 34 days and another took 20. The cost to date to her estate nears \$10 million.

My friend Kim here is from Pennsylvania where her husband Richard is under an all out assault and by two guardianships in Florida, one against his mother and one against his sister. The lawyers are making a killing on all sides while he is under an all out assault by a cabal of attorneys and guardians.

Bonnie is here today from Florida. She works with CourtWatch. Her mother was in temporary emergency guardianship, and before she was ever adjudicated, she lost \$400,000 in only 4 months.

The guardian put her into hospice with a false diagnosis. She was put onto morphine and passed away shortly thereafter. Of course the elderly fear this system of protection.

H.R. 3040 is an important bill. We need the elderly to come forth and report fraud. We need to stop fraud. But the perpetrators of fraud know this fear. They will exploit that fear until we do something to ensure that when our elderly and vulnerable citizens come forward and report fraud against them and are found to be vulnerable incapacitated.

That we have a fair system that will, in fact, protect them and not further exploit them and destroy not only their lives but the lives of their families. Then how can we ask them to come forward?

The stripping of civil and constitutionally guaranteed rights and the waste of state and Federal tax dollars, Social Security then should be concern enough for you to get involved.

As Congressman Claude Pepper said in 1989, "Guardianship is in many ways the most severe form of deprivation of civil rights

that can be imposed on a citizen of the United States.” An individual under guardianship is typically stripped of his personal rights such as the right to vote, the right to marry and the right to handle money.

These people end up in a system where they can lose everything, all of their liberties, and end up with less liberties than a citizen on death row.

That is—I am just about done. Attached to my testimony I have included two papers on guardianship, one by my organization and one by an organization named HALT. There we have gone into a lot of more details on what the problems are and what we think some of the recommendations could be.

The Senior Financial Empowerment Act can go far toward addressing financial exploitation of the elderly and stopping perpetrators of mail, Internet and telemarketing fraud. But it can go further.

Mr. Chairman, Congressman Gohmert and Members of this Committee, if this bill goes to markup I ask you please to consider adding language to address abuse in the guardianship system and to put in safeguards to protect the vulnerable elderly, who will come forward as a result of this bill and report that they have been victims of fraud.

If we do not act today, tomorrow we will pay for our inaction when any one of us in this room could be old and become a victim of crime. Thank you.

[The prepared statement of Ms. Ring follows:]

PREPARED STATEMENT OF LATIFA S. RING

Testimony of

Latifa S. Ring of Elder Abuse Victims Advocates

HR 3040 - The Senior Financial Empowerment Act of 2009

To

Committee on the Judiciary,

Subcommittee on Crime, Terrorism and Homeland Security

May 25, 2010

Testimony of Latifa S. Ring of Elder Abuse Victims Advocates

HR 3040 – The Senior Financial Empowerment Act of 2009

Mr. Chairman, Congressman Gohmert, Members of the Committee. Good morning and thank you for giving me the opportunity to address this committee on the critical issue of fraud and financial exploitation of the Elderly.

I am Latifa Ring, an elder rights advocate and a grassroots organizer with Elder Abuse Victims Advocates out of Houston, Texas. Our organization is a loosely knit one comprised of private citizens from all over America who have come together to create a voice for those who have no voice - the weak, the disabled and the elderly - and to bring that voice to our Leaders in Washington. Our mission is to seek meaningful change to improve the lives of our most vulnerable citizens and to educate public and private citizens on what they can do to help prevent abuse and exploitation of the elderly.

In America today, we have a rising epidemic of Elder Abuse and financial exploitation of the elderly. The Senior Financial Empowerment Act of 2009 can go far toward preventing and combating some of these forms of exploitation, specifically Mail Fraud, Telemarketing and Internet based Fraud. It is time for tough laws that treat financial exploitation as the devastating crime that it is, and it is time for our criminal justice system to take a tough stance against the perpetrators of these crimes.

According to the CDC<sup>1</sup> by 2030, the number of U.S. adults aged 65 or older will more than double to about 71 million. With medical advances and technology, people are living longer. This increased lifespan brings with it increased opportunity for predators to commit fraud and financial exploitation on the elderly.

Despite the many expert reports that have discussed, the problem of financial exploitation of the elderly over the past twenty years, still remains a silent crime that has mostly gone unaddressed and has escalated into what some call the Crime of the 21<sup>st</sup> Century. As financial Exploitation increases, the cost in both State and Federal Taxpayer Dollars will increase as the victims, whose estates have been looted, end up on SSI, Medicare and Medicaid. According to a recent Met Life Study, Financial Exploitation of the elderly "Involves millions in increased costs to Medicare and Medicaid because of fraud and the costs of caring for

<sup>1</sup>The Health and Economic Effects of an Aging Society -  
<http://www.cdc.gov/chronicdisease/resources/publications/AAG/aging.htm>

impoverished victims. Based on the research in this study, fraud robs America's seniors of more than \$2.6 billion a year"<sup>2</sup>.

Many senior citizens worry about their financial security and do not want to be a burden on their families. They have worked a lifetime to build a retirement nest egg, have struggled to pay off their mortgages, and have carefully invested the surplus and any inheritance in risk free investment opportunities. Exploiting and robbing the elderly can be a lot easier, more lucrative and safer than robbing the bank where they keep their money, but it is no less a crime. These citizens are easy targets for what looks like "a get rich quick" opportunity from perpetrators of telemarketing or mail fraud. Seniors are finding it more and more necessary to use computers for communication and to manage their affairs. They are often intimidated by technology and unaware of security risks such phishing and spamming, so they become easy prey to internet based fraud schemes.

One of the issues mentioned in this bill is the fact that many elderly do not report cases of fraud because they are afraid to report the crime, are ashamed to admit that they have been robbed, or may not know where to go to report these crimes. An underlying fear mentioned is the fear that they will be declared to be incompetent with their lives and assets controlled by a stranger. As part of my testimony today, I would like to address some of the problems that incapacitated elderly face in guardianship and why this is a fear that must be if we addressed.

When a victim of fraud, reports a crime to family, the police, or protective agencies it often results in the elderly victim being thrust into a legal process (determination of incapacity and assignment of a guardian) designed to "protect" them, which instead, worsens the crime, deepens their misery, and robs them of their cherished rights as American citizens. Since a finding of incompetence often results in a loss of autonomy in all aspects of life: financial, social, residential, and medical, through guardianship, many seniors remain silent regarding the crimes committed against them. Speaking out could cost them their home (90% of the elderly prefer their own home to a nursing home and, in fact, dread the thought of a nursing home) and it could cost them the freedom to make financial, medical, and social choices. It could put their estates and savings, as well as their very lives, in the hands of strangers who are a part of a corrupt and unmonitored system. Their dreams of leaving a financial legacy to the grandkids will dissolve the minute the guardian is appointed.

<sup>2</sup>Broken Trust: Elders, Family & Finances <http://www.metilife.com/mmi/research/broken-trust-elder-abuse.html#findings>

A significant component of the problem is ageism, a modern prejudice more firmly rooted than racism. Many elderly people are presumed to be incompetent just because they are old. Ordinary financial mistakes that would be viewed as insignificant in non-elders are seen as signs of clinical decline in an elderly person. Some seniors, realizing that statistically they have only a few years left to live, may choose to live on fast food, offer dollars to the homeless, travel to far off places, donate to charities of their choices or even join a commune. While these choices might be questioned of a younger person, the same choices made by an elder can set in motion incapacity proceedings that ultimately remove all liberties.

In guardianships the incapacitated person is stripped of all of their civil rights and can lose all of their life savings through lengthy drawn out legal maneuverings that rarely benefit the wards. Too often these very systems set up to help our frail elderly, especially those with dementia and Alzheimer's disease, and those who are incapacitated results in even more abuse and financial exploitation of that elderly person once they become incapacitated. Elders are often forced into plenary guardianships when sometimes all they need is a helping hand with a life activity such as balancing the checkbook or cooking meals.

Many perfectly competent seniors are alleged to be incompetent in fraudulent financial schemes designed to separate them from their estates. Others are placed in professional guardianships because of unproven allegations that family members are stealing the assets. These allegations are usually unfounded and rarely result in charges, but they do provide an opportunity for the guardianship players to deplete the assets at a rate and to a degree far in excess of that alleged family member did. The loss of autonomy and dignity that accompanies a guardianship can lead to confusion, depression, guilt, loneliness, a total sense of worthlessness and a complete loss of all of your liberties and privacy.

The determination of incapacity is often a haphazard, sloppy process decided by a single jurist deferring to a single "medical professional" and social worker. It often takes a single hearing, lasting a mere fifteen minutes, to establish a guardianship of an elderly person. There is no uniform standard definition for "incapacity" and the criteria vary from state to state.

The senior may or may not be present at the hearing that determines how the remainder of his or her life will be lived and where a stranger can be appointed to control their life. Emergency Guardianships are frequently used to speed up the process and keep objections from family members at bay. Even in a plenary guardianship hearing where the Alleged Incapacitated Person (AIP) stands to be stripped of all rights, there is no guarantee that the elder will be represented or have an advocate by his or her side. While a criminal will

always have at least one attorney even if he cannot afford one the alleged incapacitated person will stand alone or even be absent unrepresented by counsel at a hearing that will abolish all of his or her rights of citizenship. For criminal to be found guilty of a crime the standard is tough "beyond a reasonable doubt". Yet a person can now be declared incapacitated if they only have a "diminished capacity" instead of the higher standard of being "mentally incompetent".

Once incapacity has been found, a guardianship is imposed. If the incapacitated person has assets, a battle is sure to ensue with the professional companies and/or attorney guardians fighting the families in an effort to be appointed guardian. Since guardianship companies can use the ward's assets to fund their effort, the ward stand to lose life savings as well as property through lengthy drawn out legal maneuverings that usually benefit the guardian and its attorneys and do not benefit the ward. The family, which must foot its own legal bills, often faces bankruptcy. The guardianship system, created to protect our frail elderly and to conserve their assets, instead, it results in even more abuse, financial exploitation, and depletion of the assets the elderly person struggled and sacrificed to save in order to maintain independence and to not be a burden on society.

Perpetrators of financial exploitation in guardianships includes professional "fee for service" guardians, attorneys and other professionals have become skilled perpetrators of financial exploitation with inflated fees or fraudulent billing schemes. The list of fraudulent practices is endless. These businesses have turned guardianships into a lucrative money making enterprise that fleeces the estates of vulnerable citizens and leaves them supported by the taxpayers. It all happens right within the courtroom. Overwhelmed or corrupt judges are allowing it by routinely rubber stamping exorbitant fee applications for services that do not benefit the ward or for services that may not have ever been provided.

One of the problems, as I see it, is the very existence of Medicaid dollars to care for indigent wards. The judges know that the American public will take care of the ward when or if the money runs out. The judges work with a small number of lawyers and guardians that specialize in the guardianship arena and develop a relationship with them. They want to be sure that those lawyers and guardians are taken care of and they are willing to allow the ward's assets to be used for their fees since they know that the State will take care for indigent incapacitated people with State and Federal Tax Dollars. Somehow there needs to be someone in the court room to protect the public's interest in having the elderly pay their own way for as long as possible.

Another reason why the judges rubberstamped is because the judiciary wants to get through the docket and may not have the time to sort through the deliberately complicated and vague fee applications. Since the judges know that state and federal tax dollars will care for the indigent ward, the conscience isn't deeply troubled by the preference of expediency over justice. The same reasoning eases the pangs of conscience in the guardians and their attorneys, if it exists, permitting them to fleece the estates with ease.

The stark reality is that going into guardianship or conservatorship in our country does nothing to conserve the assets of the ward, nothing to spare tax payers from having to foot the bill, and does nothing to preserve the estate for their heirs. What it does do is it sets up a situation where others can benefit from the incapacitated person's life labor, and a stranger will make intimate decisions regarding visitors, residence, medical care and medications.

While exploitation in guardianships is rampant, it is largely kept out of the public eye under the guise of protection. It is a system where abuse and exploitation can be perpetrated with impunity, and where even the victims of the crime do not have the right to report it. This pernicious behavior knows no boundaries and can ensnare any of us with sufficient assets to attract a member of the guardianship industry.

As the late Congressman Claude Pepper reported in 1989, "Guardianship is in many ways the most severe form of deprivation of civil rights that can be imposed on a citizen of the United States. An individual under guardianship typically is stripped of his or her personal rights such as the right to vote, the right to marry, and the right to handle money"<sup>3</sup>.

The 14<sup>th</sup> amendment of the U.S. Constitution guarantees that no citizen shall be denied the right to life, liberty or property without due process of the law, and yet every day thousands of American citizens are determined to be incapacitated and are placed in guardianships without legal representation, without notice, and without the right to be heard offered the rankest criminal. These innocent victims are stripped of all rights, denied any autonomy, and often denied the comfort of their own home and even their family.

Newspapers throughout the country regularly popularize horror stories of elder abuse and exploitation by rogue telemarketing entrepreneurs in basement boiler rooms or overseas fraud schemes on the Internet that go on unchecked and ignored by our state criminal justice systems and adult protective agencies. Too few

<sup>3</sup> Guardianship: Friend or Foe of America's Frail and Elderly?" by Claude Pepper, Journal of Elder Abuse and Neglect, Vol 1(3) 1989. - Harthorwne Press, Inc.



of these stories document the abuse and exploitation that is perpetrated by fiduciaries and in and through the guardianship and conservatorship systems.

Adult protective agencies that should be investigating financial crimes against the elderly are too often not doing so. Most APS case workers are educated in routine social work, not criminal investigations. The minions in this narrowly focused bureaucracy are often the first to admit they are unqualified to investigate crimes involving financial exploitation. Too often, the typical response is to petition to place the client in an involuntary conservatorship or guardianship. In our work with victims, the members of my organization s have found that APS routinely sends the victims of financial exploitation into the guardianship courts instead asking that the perpetrators be pursued through the criminal justice system. This fits neatly in the old maxim, "When the only tool you have is a hammer, every problem looks like a nail." It is a sad but true fact that when a person is placed in a public guardianship by APS, that agency will not respond to reports of subsequent abuse, because it has a political stake in protecting their bureaucracy from evidence of mistakes in the first place. There is also a reluctance to interfere in matters before the court.

Reporting guardianship abuse to the appropriate authorities is virtually impossible as there is no agency that will take reports of court approved abuse. Furthermore, HIPPA rules and other privacy claims regularly deny families access to the information necessary to substantiate the abuse. Family members are forced to sit back silently and watch their loved ones suffer or be exploited. They dare not speak out for fear that the guardians will deny visits to their loved one. Retaliation against caring family members, who are seen as troublesome by the guardian, is common. Family members quickly learn that if they report abuse or complain too much they will be denied access to or visitation with their own loved one who will be left to spend their last days without family at their side. Additionally, every family request results in court time for which the guardians and their attorneys can charge the client's estate.

It is important that the Senior Financial Empowerment Act address not only the problem of fraud against the elderly but also some of the reasons why elderly victims of fraud are afraid to come forward to report these crimes. They have every right to fear a guardianship system that commits its own form of abuse and is so broken it has the potential to destroy lives and tear apart families.

Many seniors are aware that they can lose all their civil and constitutional rights, can lose control of their own lives, can lose access to and control of their own money and essentially lose all of their liberty and property. You don't need to be a senior to find this a terrifying scenario. Many senior citizens have their advanced directives totally ignored in the guardianship system.

We hear numerous reports from victims of guardianships being adjudicated and fee for service or attorney guardians being appointed as the guardians when the alleged incapacitated person had previously designated a pre-need guardian if they were ever found to be incapacitated or incompetent. Trusts that were carefully created and deemed impenetrable are broken with a stroke of a pen. A common tactic again is the use of unproven and often false allegations to exclude the named surrogate decision maker or power of attorney from having any standing in the proceeding other than that of a defendant being accused of alleged crimes that are never proven but create the fodder for more litigation maneuvers.

Lately we hear of more and more case where no reason what so ever is given for not naming the person designated by the ward when they were competent as the guardian. For example a woman in Florida wanted to make sure that she would be taken care of if she should ever be declared incapacitated. She carefully prepared documents and named her niece as her power of attorney, her designated guardian and her health care surrogate. This woman was put into guardianship in Florida and despite the fact that the court had all of the pre-planning documents a paid professional guardian was appointed and the niece was never even notified of the hearing! The family is struggling to no avail to rectify the situation.

If we can do something to stop the abuse in guardianships and conservatorships, then we can help to reduce the fear that people have of being considered incapacitated or mentally incompetent. As long as they have this fear they will continue to be afraid to admit to anyone that they need help and will hesitate to report crimes that show their vulnerability.

I know if I were elderly and lost a couple thousand dollars to a fraud scheme that I would keep my mouth shut rather than report it and risk being forced into the guardianship trap that could fleece me of my liberty, my property, and my estate and that would destroy the lives of my children if they attempt to come to my rescue and I know they would. I never want anyone's children to go through what I have been through over the past five years in the guardianship system in Delaware.

I have attached to my testimony a document that addresses in much more detail the problems in guardianships and suggests some records for improvement. (Appendix A) that our organization originally drafted in 2008 and recently updated. While it does not directly address the type of fraud addressed in this bill, it does address the specific frauds that arise in guardianship systems, where many of victims who report crime will end up if they are found to be incompetent. It also makes recommendations for reform that will ensure that victims of telemarketing, internet or other forms of fraud will not find themselves in a situation where the remedy is incarceration in a system that results in exploitation, violations of civil rights, and even greater fraud.

I have also attached to my testimony a petition signed by over 900 people calling for national reform to end financial exploitation and abuses in the very systems that should be protecting vulnerable citizens. Americans from almost every State, and even abroad, have, in this petition, told the stories of the abuses that their family and loved ones have suffered. Others have made comments and suggestions. I implore each member of this committee to please take a moment to look over this petition and see what the constituents of your state are saying about elder abuse and financial exploitation of the elderly in guardianships.

HR 3040, The Senior Financial Empowerment Act of 2009, can go far toward ending fraud against the elderly but it can go further if there is an opportunity to amend it or to add additional language that can address the abuse of those seniors who have no voice, the weak and incapacitated elderly in guardianships and conservatorships who become victims of fraud and exploitation by perpetrators within the system.

Mr. Chairman, Congressman Gohmert and members of this committee, I implore you to please consider adding some language and or legislation to address the financial protection of our most vulnerable senior citizens. "It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped." - Hubert H. Humphrey.

How will our country be judged if we do nothing to stop the national travesty of abuse and financial exploitation of our most needy citizens; those who often fear reporting the crimes perpetrated against them?

If we do not take action today, then tomorrow we will pay for our inaction, by being subjected to the same violations, the same loss of freedom and autonomy, the same pernicious crimes currently taking place in the shadows of our society. You can make a difference today, to bring this situation into the light and address

it with tools of justice and reform. If you will take action then all of our lives and the lives of our children will benefit as we age and become vulnerable citizens.

Thank you once again for giving me the opportunity to address this committee.

*Latifa S. Ring*

Elder Abuse Victims Advocates -

# SUPPLEMENTAL ATTACHMENTS AND APPENDICES

- A. *FINANCIAL EXPLOITATION, FRAUD AND ABUSES OF THE INCAPACITY PROCESS AND IN ADULT GUARDIANSHIPS – BY Elder Abuse Victims Advocates*
- B. *THE PETITION – TO STOP ELDER ABUSE AND GUARDIANSHIP SYSTEM ABUSE - A CALL FOR NATIONAL REFORM TO PROTECT - LETTERS TO LEADERS TO ADDRESS ELDER ABUSE AND GUARDIANSHIP ABUSE*
- C. *ISSUE BRIEF ON GUARDIANSHIP – H.A.L.T.*

APPENDIX A

*FINANCIAL EXPLOITATION, FRAUD AND ABUSES OF THE INCAPACITY PROCESS AND  
IN ADULT GUARDIANSHIPS – BY Elder Abuse Victims Advocates*

Appendix to Testimony of  
Latifa S. Ring of Elder Abuse Victims Advocates  
HR 3040 – The Senior Financial Empowerment Act of 2009  
To  
Committee on the Judiciary,  
Subcommittee on Crime, Terrorism and Homeland Security  
May 25, 2010

APPENDIX B

*THE PETITION - TO STOP ELDER ABUSE AND GUARDIANSHIP SYSTEM ABUSE - A CALL FOR  
NATIONAL REFORM TO PROTECT - LETTERS TO LEADERS TO ADDRESS ELDER ABUSE AND  
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APPENDIX C

ISSUE BRIEF ON GUARDIANSHIP

by H.A.L.T.

Appendix to Testimony of

Latifa S. Ring of Elder Abuse Victims Advocates

HR 3040 – The Senior Financial Empowerment Act of 2009

To

Committee on the Judiciary,

Subcommittee on Crime, Terrorism and Homeland Security

May 25, 2010

Mr. SCOTT. Thank you. Mr. Blacato asked for a report to be entered into the record and without objection that will be entered into the record.\*

And Ms. Ring asked for the petitions and her whole report to be in the record. That, too, will be entered without objection.\*\*

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\*The information referred to, a Metlife Mature Market Study, is not printed in this hearing but is on file with the Subcommittee. It can also be accessed at the following link:

<http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf>

\*\*Due to its voluminous size, the material referred to is not printed in this hearing but is on file with the Subcommittee.



I will now begin questions under the 5-minute rule. Ms. Ring, you mentioned guardianships, and you had some suggestions on fixing it. Obviously when you have got attorneys involved the meter starts running and people start losing money. What do you suggest as alternatives?

Ms. RING. Well, first I think we need to do a complete study of the problem. Some of the recommendations that we have made is when you go into probate after somebody is deceased I understand there are some limits on how much can be billed to an estate for legal fees.

And since guardianship is sometimes also known as living probate maybe we could come up with something like that to limit the amount of fees that could be charged to an estate.

Furthermore, there is one really important issue here that I think is important. Often the large amount of sums that are billed for legal fees in guardianships are spent on wild goose chases after alleged allegations of criminal conduct that could be under the Victims' Rights Act pursued through the criminal justice system.

And I think that if there are allegations of criminal conduct being made that somebody stole money, that that victim, just because they are incapacitated, they still should have the right to have that allegation investigated through the criminal justice system where they don't have to foot the bill and pay the price for that investigation.

Mr. SCOTT. Thank you.

Mr. Hammond, how often are elder abuse financial crimes not reported?

Mr. HAMMOND. Mr. Chairman, I think probably more are not reported than are reported for a number of reasons. It is an embarrassment to the elderly to feel that they have been scammed.

They don't want to admit that. They are concerned, as was mentioned before, that they may be found incapable of making their own decisions.

We have found in many cases that the efforts that we have made to educate our members have been effective and that they are actually using some of the methods that we have been working with over the years in teaching them how to recognize fraud and abuse, both telephonic and now through the Internet.

But it is increasingly difficult, especially with the Internet abuse, and our members are becoming more and more users of the Internet, exponentially they are increasing over the last 2, 3 years.

So they are getting into this area where they really don't have much expertise and are very vulnerable to the kinds of things that we see on the Internet.

So they don't want to report. They don't want to feel like they are incapable of handling their own affairs. And in many cases it is a plain embarrassment for them to actually acknowledge that they have lost money.

Mr. SCOTT. Once it is reported, how often are the crimes actually investigated and prosecuted?

Mr. HAMMOND. Unfortunately not nearly as often as we would like.

Mr. SCOTT. I mean, do they ever get——

Mr. HAMMOND. As to——

Mr. SCOTT [continuing]. Do most of them, I mean, is anything other than just take the information down? And is there any investigation into it?

Mr. HAMMOND. There are in some cases investigations. I can speak at the State of Maryland that I am familiar with, we work with the attorney general's office in the State of Maryland to help train financial institutions, the tellers in banks and so forth, to recognize this kind of fraud and abuse as it appears to them.

And then unfortunately that is passed on in Maryland to the social services agencies, which have their own budgetary constraints and problems. And a few get investigated.

Mr. SCOTT. And not the criminal justice, Mr. Blancato?

Mr. BLANCATO. Well, there are instances in different parts of the country where they have specialized units within district attorney's offices and local prosecuting offices, like San Diego, California, for example, has had a dedicated person as an elder abuse prosecutor investigating cases. His name is Paul Greenwood.

And, you know, where they have been able to target resources for that purpose they have a very good track record of prosecuting these cases and enhancing public awareness about it.

But I think that the larger question is adult protective services is a primary front line source of investigations of elder abuse cases.

And one of the main features of the Elder Justice Act, which is now law, was to give a dedicated funding source so that they could actually go out and do the kind of work necessary to investigate, detect and help report these cases so that they can be reduced.

But there needs to be more resources dedicated or reallocated depending on the nature of things, for elder abuse prosecutions because there is more work being done in this area, and I think we are in a position now that more local governments could do this and be effective at it.

Mr. HAMMOND. And Mr. Chairman, I would like to add that this is the case in Maryland where there is a person who is dedicated but is a person, one person.

Mr. SCOTT. And many of these crimes can be solved but it takes a lot of legwork, a lot of investigation. What usually happens is if you report a credit card stolen, and there were some charges on it is they just cut off the card, restore the credit rather than going through and trying to catch the guy.

I reported a card stolen once, and while I was going through step-by-step the charges that were made that I remembered making and, you know, crossing off the ones that I didn't make, I was asked am I at a gas station? I said, "No, I am at home." Well, your card is being used right now.

Well, you know, for low kind of things like that it looks like they just let the thing run until they can catch them in the act. I mean as they go get a big screen television and go to pick up to pick up the TV, well, maybe in between the police can be there so with the pickup he will be picked up.

And it seems to me that with a lot more resources we could solve a lot of these crimes. I mean, most of them can be solved. Some of the people actually use the card and have stuff mailed to the house.

These things can be solved but it takes money and the last identity theft bill we put a little money, not enough, into the bill for, as you have suggested, dedicated FBI investigation.

But that is one of the things that is frustrating to me that these things just aren't even investigated. And so the people perpetrating the crimes know that these are low risk crimes.

Mr. BLANCATO. Mr. Chairman, one other point I would make on that, that case in New York, that Brooke Astor case, I think was an interesting example of where you put dedicated prosecutors on the case and they pursue—even though it is a family matter there were large sums of money involved.

And they did a tremendous public education job every day they went to court and pursued that case against what the grandson sued the father, charging the father with elder financial abuse against the grandmother.

But it was a very important case because of the way the prosecutors handled that case and brought that issue to the forefront in New York.

Mr. SCOTT. Yes?

Ms. RING. I am sorry, one more thing about—you had asked about how to cut attorney fees, legal costs of pursuing these crimes? And I think a lot of them, I am not a lawyer, okay, or an expert, but from looking at 250 cases and talking to hundreds of victims, it seems to me the name of the game is find an opportunity just to bill and bill and bill and bill.

People bill to have a 2-hour conference call to find out if Aunt Mary can go to lunch with sister Susie on Friday and Bobby Jo. I mean it is ridiculous, and so because you and I, everyday citizens, when somebody is pursuing a \$100 or a \$1,000 check we can say uncle. We are not pursuing this through the civil justice system.

We are going to go call the police. The incapacitated person can't say uncle or can't say stop. Their voice is taken from them. So it is just a never ending meter. It just runs and runs and runs until the person passes away, and there is no one stopping it.

And you can just basically bill for whatever so I think I want to mention that because a lot of this litigation with these enormous amounts of money are unnecessary, and they don't benefit the wards.

Mr. SCOTT. Mr. Glasser?

Mr. GLASSER. I would like to address the issue of guardianship in terms of the Federal aspects. Guardianship is an abrogation of constitutional rights. And that is where the Federal come in. We have all kinds of protections but there is no protection about this abrogation.

It is a difficult job for you folks, but one of the biggest vehicles is emergency guardianship. Without burdening the Federal system to find a simple protection, we have a PACER online system.

If we could restrict the states in terms of limiting what lawyers could go in the process and having a detailed Federal form that would go into any state emergency guardianship and have it within 48 hours posted on the Federal PACER system with all communication and all communication and all transcripts and possibly some other Federal registries of who files emergency guardianship and finances and fines for lying.

That wouldn't stop it all but it can be done simply and expeditiously. There are professionals who use the system. The fact that somebody reports something and then they go into guardianship isn't an accident. There is targeting, and the easiest way to target is emergency guardianship.

That we should limit the amount of judges that can do it, and we should have it that the state, that the county and the court, if there is a Federal review of what is filed that the state has to pay to proceed, and that would help limit emergency guardianships to if they are necessary. Thank you.

Mr. SCOTT. Thank you.

Gentleman from Texas?

Mr. GOHMERT. Thank you, Chairman Scott. Well, it does pose a difficult question when you are talking about guardianships because you are normally talking about a state law vehicle. And I don't know that we want to federalize, you know, such a state and local procedure. It might scare me to have decisions made on a national scale instead of a judge that is locally with the people involved.

But it seems like there are abuses, at least a couple of different ways in areas you are talking about. One in which there is a family member that tries to take advantage of a senior and may even push them into a guardianship that shouldn't be taking place.

On the other hand, there are some incredibly smooth criminals, who make an amazing living by finding seniors, getting between the family and that senior, convincing them that they are the ones that will help them against the family that doesn't really care and ending up bleeding the estate in that manner.

But that is one of the reasons I appreciated so much Ms. Baldwin pursuing this. Some of these people, I mean this is an interstate issue in so many cases. They go from state to state, taking advantage of seniors, making sure that they are somewhere where they wouldn't be recognized from what they had done to seniors before.

And it would seem that we would be well served to make sure that there is a Federal database that people can go to and make sure whether this is somebody who has done this before, where they can't keep hopping state to state and depriving seniors and families of what should be theirs.

But I had an interesting family situation not long ago where a senior family member was contacted by a gentleman and was told that—and this person was confused as to whether she had overpaid her taxes or underpaid her taxes. But somebody from the government had to come by and visit at her house after 5.

And so there were other family members there to make sure what the situation was. It turns out he pulled up in his Lexus, but he was there to sell AARP Medigap. And that his line was, once there were family there, that she was paying too much for her Medigap insurance, and she ought to be buying it from AARP, and that would save her a ton of money.

And so many seniors are not aware of—since there was so much debate about preexisting conditions, the AARP was able to get an exemption for their Medigap so that the preexisting condition may not be addressed. Let us see, there is still a waiting period that AARP was able to get under the new health care bill.

Also of course others that sell Medigap insurance are limited in the amount they can claim as business expense in the way of payment to executives at \$500,000 but obviously AARP got an exemption there so they can claim the full amount for whatever is paid the executives.

Mr. Rand makes—at one energy and commerce hearing, he said he made around \$800,000, so he would be able to—or AARP would be able to claim that full amount.

So anyway, Mr. Hammond, I know you are a position with the board and not an executive with AARP, but I think it would do seniors a great deal of good if AARP discloses completely the difference between what they were able to get in the way of exemptions through the health care bill to seniors, as opposed to what everyone else will have to do. The exemption they were able to get for their executives compared to other sellers of Medigap, and I welcome your comments.

Mr. HAMMOND. Well, at this point, Mr. Gohmert, I really don't have a comment because I am not aware of any exemptions that we have gotten. So I will be glad to look into that and will get back to you with that answer. In the meantime, I would like——

Mr. GOHMERT. Given your background, I know that you will.

Mr. HAMMOND.—I would like to know who the salesman was, who they talked to so that we can check that information out.

Mr. GOHMERT. All right.

Mr. HAMMOND. Thank you.

Mr. GOHMERT. And I don't want to announce that publicly because of respect——

Mr. HAMMOND. I will see you after.

Mr. GOHMERT [continuing]. Privacy, but I have no problem letting you know who that is, getting that information for you. But because of your position and the positions you have held in the past, I have no doubt you will make inquiry.

And I feel like they will be a lot of people surprised that the special treatment AARP was able to get in return for their endorsement of the health care bill. But I see my time has run out but the problems are so varied and the seniors so vulnerable, and it is so widespread across state lines.

It is going to take a lot of work from a lot of different entities, including working with the states. Maybe with a model law that they can pursue with regard to types of guardianship to help prevent, because obviously as health care has gotten so good in keeping bodies alive and not quite as good in keeping the minds as alert, it is a bigger problem than it has ever been, seniors being taken advantage of.

And it is heartbreaking to watch it happen, which I have seen in family situations and hope we will be able to do some good here. Thank you.

Mr. SCOTT. Thank you.

Gentleman from Texas, Mr. Poe?

Mr. POE. Thank you, Mr. Chairman. Thank you for holding this hearing. I want to thank all of you for being here, especially Ms. Ring coming up here and bringing your victims posse with you up here today and who are in the audience and all of the information that you gave us in this notebook.

I know that this is a book in work because there are thousands of more stories besides the 1,000 cases you have in here. It seems to me that we as a society, we have to be especially sensitive to the most vulnerable among us.

And it has always been the children and the elderly. They are the most vulnerable to predators, snake oil salesmen, thieves, bandits, criminals and all of the scams we all have heard about.

And I think we are doing a better job of taking care of children, especially with violent crime. But all of us are going to be seniors. We are going to be taking care of seniors, maybe both. And it seems to me that we just let them kind of, you know, fade into the sunset. That is my opinion.

The thieves know that they can in many cases just outlive the victim and that is why they offer them prey. But I think also our society allows them to be easy prey because as you have said, Ms. Ring, when a senior, an elderly person is scammed, sometimes they don't want to report the crime because all of a sudden then some judge appoints a guardian over them and then they don't have any decision power.

And many times, it appears that due process does not occur on that decision. Go before a judge, some family member says they are not competent to make a decision, might need the guardian. And then the estate pays for everything, but the elderly person becomes the victim of not just loss of money but loss of dignity, loss of everything.

Ms. RING. Everything.

Mr. POE. And the scam artists know that, so that is why they prey on them. I am not sure what we can do but you being here raises the awareness of this problem because we are all going to be elderly, at least we hope we are.

And we hope, you know, to be able to take care of our loved ones as well without somebody coming in and trying to, you know, rip them off, whether it is criminals or lawyers or the courts or anybody else, legitimate salesmen. What do you think we could do now in the Federal level, Ms. Ring?

Ms. RING. Well, first off I think that guardianship is also a national issue because of the civil rights issues, Federal issue. And also Federal dollars are at stake. These guardians are taking the Social Security dollars.

They are taking the Federal matching Medicaid dollars that they end up—spent the last 5 years taking care of my foster mother. Some of that money is coming from the Federal Government.

I have a couple of suggestions. It may be considered radical, but they are my suggestions. One is I think that there are thousands and thousands of people out there that nobody knows where they are, who they are. You go to the courts and well, we are not sure who is in guardianship. Where are they?

I mean it might sound farfetched, but you could turn this into almost a sophisticated form of identity theft. You become that person, essentially they don't have rights. They can't say anything. You spend their money. You don't even know where they are.

And for years and years everybody sat around and said we have got to monitor, we have got to monitor, we have got to monitor. Well, let us start monitoring. Now I am a technologist,

so my suggestion is a bit of a technological solution here but I think we might be able to help these states do a little monitoring.

We could have what is called the Office of the National Guardian, not to run guardianships but to have a database. And when somebody goes into guardianship, since you are going to take away their Federal and constitutional rights, I think let us put them in a database. Find out who their guardian is and maybe make a record of what their inventory was the day they went in.

And then let us tell these guardians out there to go ahead and on a quarterly basis—we have a vested interest. There are Federal dollars at risk and if they are not at risk right now, they are going to be right around the corner when this person goes broke. So we want to know quarterly or every 6 months, you know, what your inventory looks like.

We are not asking for details. Now, the beauty of this solution is that it can help the states because the little database like this can be very cheap put it together. They can do online like they do SSI.

I am an SSI designated payee. It doesn't cost me much to do my annual accounting. So they put this in, and what this database can do is it can do little red flag reports and a little bit of trending analysis.

And you can kind of see what is coming down the pipe with all these baby boomers. Plus on top of that, the states that can't seem to figure out, you know, where these people are that lost all these rights, we could help them have access to this system where the state could get the automated tools that they don't have today.

This is just one of my ideas. It is in my report. I am sure it takes a lot more thought than that but I will bet you when the thing starts kicking out that guardian number X in state number X, county such and such has 2,000 wards that he is taking care of, you know, with however much, you know, that, you know, red flags might go out here. And I think that we can also help to ensure protection. That is just one of my suggestions.

The other one is I think we have to take the money out, because if you follow the money, the crime defines itself. It should—a person becoming incompetent should not become a money-making business for anybody. We should be able to lend a helping hand and be good Samaritans and help the fellow next door.

And another thing we have to do is we need to make it affordable for people like me and people like you to help your mom or your dad. They are telling me I have to be a—I have to hire a lawyer now after I am already broke and already lost everything. My mom lost everything, my foster mom. I am trying to take care of her, but I have to hire a lawyer to be represented to go and file my accounting.

We have got to make it easier to give a helping hand. And we make it easier to give a helping hand, you take all the bureaucracy and money out of this, people will help each other. They are not all bad out there, you know. Those are just some of my thoughts, sorry. I know I rambled there.

Mr. POE. I knew I would only get one question, Mr. Chairman. So I will yield back my time.

Mr. SCOTT. Do you have other questions?

Mr. POE. Well I do have—thank you, Mr. Chairman.

Mr. HAMMOND, I just had a couple of questions. You have a \$1.3 billion budget at AARP, is that correct? How much of that money percentage-wise is spent on elder abuse information being disseminated to your members?

Mr. HAMMOND. I don't have that exact number but I can certainly get it for you.

Mr. POE. It is not very much, is it?

Mr. HAMMOND. I really don't know, sir.

Mr. POE. Let me ask you this, AARP is also in the insurance selling business—

Mr. HAMMOND. That is not quite correct, sir.

Mr. POE. Well, we both know that you sell insurance, supplemental insurance.

Mr. HAMMOND. Pardon me, Congressman, we do not sell any insurance.

Mr. POE. You broker selling of insurance?

Mr. HAMMOND. We do not broker selling of insurance.

Mr. POE. So when people sign up with AARP to get insurance, who are they buying it from?

Mr. HAMMOND. They do not sign up with AARP. They sign up with our insurance providers. We endorse insurance because of the value it gives our members.

Mr. POE. Okay. To me that just seems like that is a way of hiding the truth that you provide supplemental insurance. But it is not really in your name, it is in their name. Now don't you think that is a conflict of interest to have AARP advocating on behalf of the elderly, who we all just love and want to take care of.

And all of a sudden they are getting endorsed insurance solicitations through the mail through AARP endorsed, although they are not AARP insurance companies. Does that seem like a conflict of interest to you?

Mr. HAMMOND. No, sir.

Mr. POE. Can you see how it would seem like a conflict of interest to some senior citizen, like my parents, who are both 85 years old, and they think you sell insurance.

Mr. HAMMOND. And we try very hard to disabuse them of that thought because we do not sell insurance, sir.

Mr. POE. All right, you endorse insurance companies—

Mr. HAMMOND. That is correct.

Mr. POE [continuing]. You solicit insurance through your mailing list.

Mr. HAMMOND. Excuse me—

Mr. POE. It just seems—just a minute, I am talking.

Mr. HAMMOND. Go right ahead.

Mr. POE. It just seems to me it is a conflict of interest. And if you really want to just take care of the elderly, you just take care of elderly and be an advocate for the elderly down here at this rather than being an advocate for health care reform. How much did you all spend on lobbying for health care?

Mr. HAMMOND. I have no idea, sir. I can get you the information, but I thought we were—

Mr. POE. Okay.

Thank you, Mr. Chairman, and I will yield back.



Mr. HAMMOND. Mr. Chairman.

Mr. SCOTT. Mr. Hammond?

Mr. HAMMOND. I was under the impression today that we were here testifying to help the elderly on this bill.

Mr. POE. We are, and if you divest yourself of your insurance, maybe that will help the elderly, that was my point. But you disagree with me on that is that true?

Mr. HAMMOND. Yes, sir, I do.

Mr. POE. Okay.

Mr. SCOTT. Ms. Ring, you mentioned the importance of doing something like guardianship. Some states have what is called durable powers of attorney, I know Virginia does. Would that not solve a lot of the problems if people would sign those before they get ill?

Ms. RING. Well, you raise a valid point because now there are a lot of durable power of attorneys out there are that are pretty much thrown like confetti to the wind in the guardianship courts.

They ignore them, and I will give you one example. A woman in Massachusetts—I am sorry, a woman, her niece lives in Massachusetts, and it is in my petition here.

I talked to her husband. She wanted to do everything right. She was afraid she was going to go into guardianship. So she signed I want my niece to be my power of attorney. I want her to be my guardian. I am going to do my will.

Everything like lined up in a nice little book in her house. The family stayed in touch. About, I think it was last Memorial Day she got put into guardianship in the state of Florida. They had the book right there in the courtroom, who she wanted her guardian to be, who she wanted her power of attorney to be. They never even called the niece.

They did an emergency hearing, put the lady in guardianship. And put a paid guardian in place, okay, I am not going to use the word professional, I am just going to say paid guardian because they don't act real professional some of them.

So this is what is going on. I meant to mention that earlier, the advance directives of senior citizens are being ignored, absolutely.

Mr. SCOTT. But the state law differs from state to state. Some states there is—are there any states that do not have durable powers of attorney? I know the law in Virginia used to be that once you became incompetent that the power of attorney terminated at that point.

We now have in Virginia the ability to sign a power of attorney if you specifically say that the power extends into incompetence that it will—you can be incompetent, and your person or the power of attorney can continue to act on your behalf, without the guardianship and all this other stuff. I suspect some states don't have that.

Ms. RING. Most of them have something like that, and they also have the ability to designate a pre-need guardian that says if I ever need a guardian here is who I want.

I do actually have a suggestion for that and again you guys are the experts, so I will defer to you. But I know one time in our lives when the Federal Government has our undivided attention.

And that is when you sign up for your Medicare benefits. And if you know who you want your guardian to be at that time, this

is just a thought, okay? And you know who you want your power of attorney, and we are going to play this game in the court where they are going to say well, Johnny is a bad guy, and he can't be in this and that.

You know, maybe since that is the person who is going to handle your Social Security benefits if you get incapacitated, give people the option to mention it then. This is the thought, you know.

And that will cut all this chase of playing around about who said, he said, she said because the person is competent at that time. They don't have to. It is an option. That was just a thought. But I think that we have got to start honoring people's will.

And another thing that is very important is an alleged incapacitated person has every single right that President Obama has, right, because they are not incompetent yet, and yet all of their due process rights are being denied.

Their 14th Amendment right, their rights to their liberty and their properties are being deprived of them without due process of the law. They do not have attorneys representing them. They just take them, put them in guardianship. You don't get an attorney.

And you don't even get notified that you are supposed to have an attorney, where the criminal at least gets his Miranda rights read to him. These people don't have attorneys representing them.

Mr. SCOTT. Well in Virginia, I think you have to get some kind of notice.

Mr. Hammond, does AARP have a position on this issue?

Mr. HAMMOND. On the guardianship issue?

Mr. SCOTT. Right.

Mr. HAMMOND. I am sorry, on guardianship issues? Yes, sir. We have, and I will be glad to leave this with you if you like.

Mr. SCOTT. If we could get that because it is obviously based on the testimony we have heard, it is obviously an area along with identity theft that we are going to have to look into.

Mr. HAMMOND. I have some information here that I will be glad to leave.

Mr. SCOTT. Okay. Thank you. And other questions or comments? Well, I would like to thank our witnesses for their testimony today, and there may be additional written questions, which we will forward to you and ask if you answer as promptly as you can to make sure that the answers are made part of the record.

Without objection, the information that has previously been referenced will be made part of the record.

Anything else? Gentleman from North Carolina has his—Mr. Coble, will have his statement entered into the record. And without objection, the hearing record remain open for 1 week for submission of additional materials.

And without objection, the Subcommittee stands adjourned.

[Whereupon, at 4:52 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**Statement by the Honorable Chairman John Conyers, Jr.  
for the Hearing on  
H.R. 3040, the "Senior Financial Empowerment Act of 2009"  
Before the Subcommittee on Crime, Terrorism, and Homeland Security  
Tuesday, May 25, 2010, at 2:30 p.m.  
2237 Rayburn House Office Building**

A critical responsibility of the Judiciary Committee is to examine ways by which the Government can better fulfill its duty to protect our citizens from crime.

One important part of that is to educate and inform citizens regarding various forms of criminal activity and how to avoid becoming a victim.

Today's hearing focuses on H.R. 3040, the "Senior Financial Empowerment Act of 2009," a bill introduced by my colleague, Tammy Baldwin, that will promote greater awareness of the financial scams and scam artists who would deprive our senior citizens of their hard-earned life savings.

As we consider H.R. 3040 today, I want to highlight three points that emphasize the urgency of this legislation.

First, our Nation's population is gradually becoming an aging society. Persons aged 60 and older currently already represent 17 % of our population. And over the next 20 years, it's expected to reach 25 %.

Among this segment of society are the so-called Baby Boomers, a generation deemed by many to be the largest in history.

It is estimated that Baby Boomers and their parents control more than 80 % of personal financial assets, and more than 50% of discretionary spending power.

In addition, Baby Boomers:

- are responsible for more than half of all consumer spending,
- buy 77 % of all prescription drugs and 61 % of over-the-counter medications,
- and spend \$500 million annually on vacations and comprise 80 % of all leisure travel.

As a result of possessing and controlling the majority of the Nation's wealth, seniors have become an attractive target to scam artists and swindlers.

It is projected that there are as many as 5 million cases of elder abuse each year in the United States, and that financial fraud is becoming one of the fastest growing forms of elder abuse.

A study by the MetLife Mature Market Institute conservatively estimate that seniors are cheated out of \$2.6 billion per year.

So it is imperative that our seniors, as well as their families and care-givers, understand the numerous and various forms of fraud being targeted at them.

Second, the principal forms of senior financial abuse involve mail fraud, telemarketing, and Internet scams. These scams are perpetrated in a variety of forms, including magazine scam sales, the use of fraudulent prizes and sweepstakes, and social networks, to name a few.

Fraud complaints by older persons are increasing annually. Of consumers reporting their age, more than a third of the 441,000 complaints filed in 2009 were filed by persons 50 years of age and older.

Something needs to be done. Action on H.R. 3040 is urgently needed.

Finally, I commend Tammy Baldwin and Howard Coble for their vision and leadership in introducing this bill.

In addition, I commend our witnesses here today, AARP, the Elder Justice Coalition, and Ms. Latifa Ring, for their tireless dedication and their continuing leadership and advocacy on behalf of our senior citizens.

The efforts we are discussing here today can play a major role in helping protect the financial security and well-being of many millions of older Americans, especially in this time of economic uncertainty.

I thank the witnesses for appearing here today, and I look forward to their testimony.



September 15, 2009

601 E Street, NW  
Washington, DC 20049  
T 202-434-2277  
1-888-OUR-AARP  
1-888-687-2277  
TTY 1-877-434-7598  
www.aarp.org

The Honorable Tammy Baldwin  
United States House of Representatives  
2446 Rayburn House Office Building  
Washington, D.C. 20515

Dear Representative Baldwin:

AARP is very pleased to endorse H.R. 3040, the Senior Financial Empowerment Act of 2009. Your bipartisan bill encourages a united Congressional response to preventing the financial abuses that have consistently been among the top policy concerns of AARP members and older persons generally. We applaud your leadership in preventing financial exploitation and promoting economic security and financial education among those approaching retirement and who are likely dependent on fixed incomes. Recent reports of financial abuses via telemarketers, Internet and mail targeted at those age 50+ have expanded dramatically due to the aging of the Boomers. The Senior Financial Empowerment Act of 2009 reflects improvements that strengthen and coordinate partnerships among public, private non-profit and government efforts to identify, target and educate seniors most vulnerable to abusive mail, telemarketer and Internet financial schemes. H.R. 3040 promotes the ability of older Americans to live independently and maintain dignity and autonomy through tools and financial education provisions that would:

- Centralize a monitoring service for Consumer Education on Mail, Telemarketing and Internet Fraud Targeting Seniors in the Federal Trade Commission;
- Authorize the Attorney General to make local grants to prevent mail, telemarketing, and Internet fraud; and
- Establish a National Senior Fraud Awareness Week in May of each year to expand education and public awareness.

While more data is necessary to fully understand the various dimensions and catalysts for these forms of financial abuse, AARP believes that the provisions of this bill are a targeted and reasonable first step in detecting, combating and preventing financial elder abuse. H.R. 3040 empowers seniors to more effectively manage and protect their retirement assets. We thank you again for your leadership in this area, and look forward to working with you on protecting older Americans from financial exploitation.

If you have any further questions, please feel free to call me or have your staff contact Larry White (434-3760) on our Government Relations staff.

Sincerely,

David P. Sloane  
Senior Vice President  
Government Relations and Advocacy

TED POE  
2ND DISTRICT, TEXAS  
  
COMMITTEES:  
FOREIGN AFFAIRS  
JUDICIARY  
FOUNDER OF CONGRESSIONAL  
VICTIMS RIGHTS CAUCUS



**Congress of the United States**  
**House of Representatives**

Washington, DC 20515-4302

January 20, 2010

WASHINGTON OFFICE:  
430 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
PHONE: (202) 226-6666  
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DISTRICT OFFICES:  
**HARRIS & LIBERTY COUNTY**  
1831 KNOXWOOD DRIVE  
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KNOXWOOD, TX 77339  
PHONE: (281) 416-0242  
FAX: (281) 448-0202  
**JEFFERSON COUNTY**  
505 OHL FALKS  
SUITE 100  
BEAUMONT, TX 77701  
PHONE: (409) 212-1057  
FAX: (409) 212-0711

The Honorable Lamar Smith  
Ranking Member  
Committee on the Judiciary  
2409 Rayburn House Office Building  
Washington, DC 20515

Dear Ranking Member Smith:

Unfortunately, elder abuse is an issue that continues to be prevalent in our country. In the past few years, the Department of Justice and other Federal agencies have increased their focus on this issue due to widespread abuse of the elderly in nursing homes and elsewhere. As you know, the Department of Justice created a nursing home initiative and a specific Elder Justice task force to address these problems.

I believe these initiatives have made some progress, however more needs to be done. I continue to hear reports of widespread abuse of the elderly. This abuse often goes beyond mental and physical abuse, but also consists of financial abuse of our elderly citizens. All of these crimes need to be strictly enforced by state, local and federal law enforcement agencies.

A nation is judged by how well they protect their most vulnerable citizens, and I believe we need to continue to be vigilant in our efforts. We have made some progress in recent years; however, more can be done. I respectfully request that the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security hold a hearing on what more can be done at the federal level to combat elder abuse as well as to update the subcommittee on the status of current Department of Justice programs designed to combat the issue.

Sincerely,

TED POE  
Member of Congress  
TEXAS

Cc: Rep. John Conyers, Jr., Rep. Bobby Scott, Rep. Louie Gohmert

Congressman Bobby Scott  
 Chairman of Judicial an Subcommittee on Crime, Terrorism, and Homeland Security &  
 Ranking member Congressman Louie Gohmert  
 2138 Rayburn House Office Building  
 Washington, DC 20515

p/202-225-3951

June 23, 2010

**Inputs to hearing on May 25, 2010 Elder Abuse using in Probate Courts**

The report by witness Latifa Ring states the problem. I offering some suggestions to rid this national shame of lgalized kidnapping more cruel than Al Qaeda. I claim to be the most experienced victim of probate court violations of probate code safeguards to kidnap my wife and elder sister in two States which is summarized in the appended letter to Senate Special Committee on Aging. *My sister is dead but I am still fighting for our rights here in Los Angeles.* My pro se complaint in Central District Court in California documents the lawlessness of the Van Nuys, CA probate court that destroyed our marriage, savings and family. A key issue of appointing a PVP (Private Volunteer Panel) attorney by court legal counsel out of jurisdiction cannot get any judge to rule on its legality, all the way up to the presiding judge showed how broken the system is. Federal action similar to the Terri Shiavo case may yet rescue my wife before she or I die in separation and no more borrowing capacity left to fight in courts for our unalienable rights, our freedom to live frugally without court interference of our choices.

Currently I am under incessant attack in family court being accused of violation of fiduciary duty in defending our freedom, expenditures caused by the legal kidnappers with court on their side One family judge ruled out of jurisdiction. Another helped the kidnapper and suggest civil procedures that might be used to overcome the previous judge's rulings on jurisdiction. It is highly improper for a judge to provide legal advice to help a kidnapper.

1. Congress must recognize that a major issue is to officialize the definition of kidnapping as indistinguishable whether by Al Qaeda or probate courts by testing whether actions falls within definition of Model Penal Code 212.1. DOJ must be mandated to investigate especially there is objection in probate court. Clearly define probate court kidnapping is no "civil matter" which are responses from all law enforcement agencies. Kidnappers are plaintiff in probate courts. Making them defendants in criminal court is the only way to curb such abuses.
2. There is wide open back door to probate courts collusion with the probate court attorney to facilitating kidnapping by bending the law, which is already weak in human rights. Both of my two kidnapping cases are helped by the probate court counsel. One of the ways is for Congress to mandate the move of venue to criminal courts for knowingly violate probate codes by court attorneys to force conservatorship.
3. Probate codes has built-in financial incentives for probate attorney that filed petition for conservatorsip and court appointed attorney. This incentive must be removed or proof of good cause must be established beyond a shadow of doubt. Remove the unlimited discretionary power of probate judges in awarding fees. Is one possibility.
4. In my wife's case, the out of jurisdiction appointed attorney aided the kidnappers in many ways. Any law violations by court to impose conservatorship must be prevented by



stringent enforcement of kidnapping laws by prosecutors in criminal venue. Probate court is a club.

5. Ease local rules of District Courts for probate court victims with special provisions to facilitate injunction request pro se according to precedent reported by ACLU which is parts of Exhibit E in my complaint to district court. The technical problem is now so great that my current attorney in State Courts, refused to represent me in Federal Court. He is the same attorney that set the precedent in the case mentioned in the ACLU paper 34 years ago.
6. Loose standard of incapacity declaration by a single physician without distinct qualifications of special medical expertise in the kind of disability must be strengthened. A panel of medical experts or researches must be used to compensate the absence of jury trial in probate courts, especially there is objections lodged in courts.
7. Objectors of conservatorships must be accorded the same legal fee awards like the petitioner for conservatorship. Now it is in favor of the petitioner, i.e. the kidnapper.
8. My wife is one of about 400,000 stroke sufferers annually. Probate code does not recognize stroke and lump with Alzheimer and Dementia. The common stroke caused speech expression aphasia was equated by uninformed judges (3) as lack of decision capability which is far from the truth. My wife's conviction judge just ignored all expert testimonies including publication by NIH National Institute for Deafness and other Communication Disabilities. Congress must highlight such distinctions and mandate judges of probate court receive medical training to recognize different kinds of disabilities. Congress can also work with Department of Health to publish disability guidelines probate courts must follow.
9. DOJ might be inundated by the number of probate court rights violation cases. If Congress can secure cooperation of Attorney General Holder to order investigation of my two cases simultaneously in California and Texas and if succeed in prosecuting as kidnapping cases with damages assessed and guilty kidnapping attorneys license to practice revoked. U.S. Code 18-242 is very clear and require no new legislation, only if DOJ is mandated to enforce. This could serve as warning to other would be kidnappers and cooperating court attorneys.
10. Make jury trial mandatory when an objector demands it would have prevented both of my two kidnapping cases in probate courts. Bridge over chasm between civil and criminal courts which only prosecutors of crime are permitted to bring charges would further help. The probate court victims are so numerous that may swamp manpower of law enforcement agencies.
11. If Congress can link Constitutional Amendment 9 with U.S. Code Natural Laws that include the Declaration of Independence where the unalienable rights were stated, that would prevent judges and probate attorneys disregarding the most important rights of elderly, i.e. the right to pursue happiness during their limited time left. The word "happiness" does not occur in U.S. Constitution but that does not mean unalienable rights are just a line in the Declaration of Independence that can freely ignore by courts.
12. Organize volunteer Operations Research (OR) groups to survey probate court cases for law violations as basis to weed out guilty probate attorneys or unqualified judges to prevent future crimes. Empower the volunteer groups to list themselves as "real party in interest" to monitor with access to court transcripts in selected cases can be a deterrent of judges abusing their discretionary powers. Statistics can be gathered such as:
  - (a) How many conservatorships are granted each year in a particular court.
  - (b) How many of these resulted in dismissal that conservatorship is no longer necessary and the numbers die under conservatorship.
  - (c) The total expenditures and fees granted by the courts.

- (d) The total amount of estate left after the conservatorship.
- (e) Fees and court costs.
- (f) How many cases were objected to and successfully dismissed.
- (g) How many cases were awarded by jury.
- (h) For long term, a project of "Model Probate Code" after the Model Penal Code may be useful to evaluate probate codes. It will be a tree I will never see. Next month I will be 87.

Respectfully yours

S.Y. Wong  
 5200 Topeka Drive  
 Tarzana, CA 91356  
 Telephone: 818-345-6274  
 Email: sywongusa@sbcglobal.net

<http://www.care2.com/c2c/share/detail/1345475> Abuse Elder

-----  
 New Marriage Vows, "Till Probate Court Does Us Apart"  
 Dec 30, 2009

Chairman Herb Kohl  
 U.S. Senate Special Committee on Aging  
 G31 Dirksen Senate Office Building  
 Washington, DC 20510  
 Phone: 202-224-5364  
 Fax: 202-224-8660  
 mailbox@aging.senate.gov

Elder Justice Act Should Include Elder Abuse, Kidnapping using Probate Courts for Profit.

Many webs on this subject says it is widespread. I am 86. My 82 years old wife had stroke with speech expression aphasia, cannot speak her mind is OK. She has been confined against her will using conservatorship for 2-1/2 years with last 14 months in place secret to me using Elder Abuse restraining order to abuse this elderly couple. We missed our 60th anniversary and two Christmas and New Years. We are driven deep into debt to close a million with more kidnapper fees to pay by three judges sequentially.

U.S.C. 18-242 is clear, Deprivation of Rights Under Color of Law, any law. Laws were broken to put my wife under conservatorship but DOJ or U.S. Attorney will not investigate. "It is a civil matter." I cannot file criminal complaint in Central District Court of California. EJA can use this case as example of kangaroo probate court gone mad controlled by kidnapping attorney via the court staff attorney that transient judges rely on counseling. Case LP 012785 Van Nuys, CA via the court staff attorney. U.S.C. 18-241 applies.

I also have my 94 years old sister in San Antonio, TX also kidnapped using probate court. Several millions of her estate was distributed according to a will obtained by deception of her law professor husband. The judge was his student. She could not change her will because

kidnapped under guardianship judge will not dismiss. She died shortly being confined against her will in Alzheimer unit she does not belong. She could walk up steep stone stairs of San Antonio County Court House unassisted and alert enough to point out to me "we just passed Walmart" where we were going. She died shortly after confined at Alzheimer facility. This case also used the court staff attorney by kidnapper, who was Director of San Antonio Bar Association so that one cannot even complain to the Bar Association. Case 2004PC3226.

These two cases are worse than Iran. Can never happen in China. One person can be victim of two probate courts 2000 miles apart. Legalized kidnapping for profit definitely is too common.

Suggest amend the Constitution to legalize "the right to the pursuit of happiness" in my wife's case to stay married in freedom after 60 years. In my sister's case, is to be with her last remaining sibling in California during her last years which the judge intended but overruled by court attorney: "not to let her leave Texas jurisdiction." U.S.C. 18-241 & 242 needs strengthened with "must investigate if involving elder abuse and prosecute if valid" by District Attorney or FBI. Now only about 2-3 percent of complaints are prosecuted under that code. Probably mostly police use excessive force. I do not think any judge ever was brought to justice for legalizing kidnapping.

Please ask U.S. Attorney offices to investigate these two cases as example for criminal prosecutions to warn future kidnappers and to justify EJA changes. This Committee has the power. Please note the old Chinese proverb: execute one to warn hundreds, i.e. hang on city wall the cut off head. Please assign intern or staff to get details if this Committee is serious for EJA to solve the real problem.

Please coordinate with California Senator Dianne Feinstein (D) and Texas Senator John Cornyn (R), members of the Judicial Committee. Senator Feinstein's office cannot help because of "separation of powers." Probate courts can be above the laws and Constitutional rights, to ruin life of elderly victim with means. I served this country having worked on a computer in the Smithsonian Museum that ushered in the computer era. I do not deserve such legalized cruelty by kangaroo probate courts.

This elder wants justice by EJA.

S.Y. Wong  
5200 Topeka Drive  
Tarzana, CA 91356  
818-345-6274, sywongusa@sbcglobal.net

-----  
Today's probate courts want to re write the marriage vows from 'Till Death Does Us Apart' to "Till Probate Court Does Us Apart." I agree with Mr. Wong and the Constitution should legalize "the right to the pursuit of happiness" my parents were separated by force for financial reasons after 58 years of marriage, my father died a year later of a broken heart, he never understood fully why his wife if 58 years was taken from him!

In order to avoid court sanctioned kidnapping by greedy attorneys and their kingpins (Elder Protection Services a.k.a. DCF in Florida, we were forced to leave the country.

It's very sad that's come to this, the only way for elder couples with money to avoid legalized kidnapping is to leave the country, sad indeed!

Those that stay and face kidnapping for profit have no one to turn to, face forced isolation, overmedicating into oblivion, financial ruin and premature death..... it is beyond sad we can only hope that there is a God and that the crimes being so willfully committed against so many who gave so much for their country and deserve better, so much better does not go unpunished...

Imported from external blog

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Stephen V. Wilson and the assigned discovery Magistrate Judge is John E. McDermott.

The case number on all documents filed with the Court should read as follows:

**CV10- 3673 SVW (JEMx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

1 Name: Sung-Yuen Wong  
 2 Address: 5200 Topeka Drive  
 3 Tarzana, CA 91356  
 4 Phone: (818) 345-6274  
 5 Email: [sywongusa@sbcglobal.net](mailto:sywongusa@sbcglobal.net)  
 6 In Pro Se

FILED

2010 MAY 14 PM 4:14  
 CLERK, U.S. DISTRICT COURT  
 CENTRAL DISTRICT OF CALIF.  
 LOS ANGELES

7 UNITED STATES DISTRICT COURT  
 8 CENTRAL DISTRICT OF CALIFORNIA

9 ) Case No: CV10-03673 SW  
 10 ) To be assigned by Court (JEMK)

11  
 12 Sung-Yuen Wong ) DECLARATORY JUDGEMENT &  
 13 Plaintiff ) MANDAMUS FOR JURISDICTION OF  
 14 ) VAN NUYS PROBATE COURT TO  
 15 ) APPOINT PVP ATTORNEY HOWARD  
 16 ) MYERS TO REPRESENT HELEN  
 17 ) WONG WITHOUT FILED PETITION  
 18 ) FOR CONSERVATORSHIP.  
 19 Richard Roe & Jane Roe )  
 20 POSSIBLE DEFENDANTS )

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**List of Exhibits**

- A. Order appointing PVP attorney.
- B. Hand-written note dictated over the phone.
- C. Fax requesting appointment of PVP attorney.
- D. Letter from Los Angeles Superior Court Presiding Judge's Office.
- E. Stares Decisis: E.1 Extract of ACLU 1978 paper summary of Madonna case.  
E.2 Habeas Corpus. HC 203474 filed DEC-8, 1976  
E.3 Federal Court Injunction . (CIV. No. 76 3597-DWW filed  
Dec. 20, 1978

**I. JURISDICTION**

- 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 2201. It has jurisdiction over plaintiff's state-law claims, which arise out of the same facts as his federal claim, under 28 U.S.C. § 1367(a), and to order investigation for apparent felonious acts and possible prosecution.

**II. VENUE**

- 2. Venue in this Court is proper under 28 U.S.C. § 1391(b).

**III. PARTIES**

- 3. Plaintiff's name is: Sung-Yuen Wong, age 86, and on behalf of wife Helen Wong, age 83, stroke recovery patient now confined against will in secret place.  
Plaintiff resides at: 5200 Topeka Drive,  
Tarzana, California 91356.  
Telephone: (818) 345-6274
- 4. Material Witness Dana Hopkins, Probate Court staff counsel attorney  
Department 114, Room 330  
Van Nuys Courthouse East  
6230 Sylmar Ave.,

1 Van Nuys, CA 91401

2 5. Material witness Howard Myers, SBN 41811

3 Goldsmith & Hull, A.P.C.

4 16933 Parthenia Street

5 Los Angeles, California 91343

6 Telephone: 818-990-6600 Facsimile: 818-990-

7 **IV. STATEMENTS OF FACTS.**

8 6. Exhibit A clearly showed no case number can be assigned to the PVP  
9 appointment order on the filing date of May 9, 2007. Material Witness Dana  
10 Hopkins can verify if subpoenaed.

11 7. Exhibit B showed hand-written note dictated over the phone at Kaiser Hospital  
12 on December 27, 2006, to prevent premature discharge of Helen to distant  
13 rehabilitation facility that Martin Spear was attorney for both Helen and Sung-  
14 Yuen Wong. Mr. Spear said he will testify that he did dictate that note if  
15 subpoenaed by Court. By probate code rules, even if there was a petition for  
16 conservatorship already file, court must ascertain if proposed conservatee  
17 *already has an attorney before appointing a PVP attorney.*

18 8. Exhibit C fax from attorney Lisa MacCarley requesting PVP attorney  
19 appointment clearly stated "intend to file" petition for conservatorship, i.e.  
20 none on the date of PVP attorney appointment order was filed. Thereby makes  
21 verification with material witness Dana Hopkins unnecessary.

22 9. For reference only (because unpublished) to draw corollary of the converse of  
23 case BP214680 California Appeals Court District 2, Division 3, decision  
24 written by Judge Richard D. Aldrich: Relevant parts extracted below.

25 .... CONTENTIONS

26 Allen does not challenge the amount of the PVP fee award but contends  
27 *that the probate court lacked jurisdiction to order that those fees be paid*  
28 *from Lenabelle's estate.*



## DISCUSSION

1. *The probate court was empowered to appoint a PVP attorney.*

“Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.’ [Citation.]” (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660.) “When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void . . . .” (*Ibid.*) Clearly, that is not the case here. The probate court had complete authority over the subject matter of this case because California residents filed petitions requesting their appointment as conservator for Lenabelle.

10. Corollary: The probate court had NO authority over the subject matter of this case because NO California residents filed petitions requesting their appointment as conservator for Helen Wong on the filed date of PVP attorney appointment for Helen Wong.

11. Three Probate Court Judges, Probate Court Supervising Judge and Presiding Judge’s Office of Superior Court (Exhibit D) all declined to rule on PVP attorney appointment was out of jurisdiction or not. Particularly the Presiding Judge has no power over appointed Court Attorney indicate the lack of administrative rules in Los Angeles Superior Court. Therefore the Federal Court is requested to rule in order to issue injunctions and habeas corpus according to stare decisis in exhibits E. Also as consequence of out of jurisdiction PVP appointment is at issue, rights violation under color of law U.S.C. 18 §§ 241, 242 and need to involve U.S. Attorney are all under Federal jurisdiction,

V. CAUSES OF ACTIONSFIRST CAUSES OF ACTIONS

12. Please the Court to rule that the Corollary of Fact 10 is correct that the Van

1 Nuys court has no jurisdiction to appoint PVP attorney for Helen Wong with  
 2 no petition for conservatorship on file. All subsequent court decisions, trials  
 3 and rulings are void. Injunction and habeas corpus to be issued according to  
 4 precedents of case in Exhibit E because Helen Wong has been under  
 5 involuntary confinement in secret place and our lives are fast fading away at  
 6 ages 86 and 83.

7 **SECOND CAUSES OF ACTIONS**

8 13.If the First Cause of Actions validates the corollary10 that probate court has  
 9 no jurisdiction of the referenced PVP appointment, an injunction is warranted  
 10 to prevent Howard Myers claim that he represents Helen Wong in any law  
 11 suits based on the PVP attorney appointment in Exhibit A. Further, any  
 12 subsequent alteration of the filed PVP appointment with case numbers added  
 13 by hand-writing of court staff should be ruled as null and void.

14 **THIRD CAUSES OF ACTIONS**

15 14.Please the court rule that this case is non-frivolous so that L.R. 11-9 Sanctions  
 16 do not apply. This will enable my attorney Barry Fisher, who brought case in  
 17 Exhibit E.3 to District Court, to represent me in sequels of this case according  
 18 to U.S.C. 42 §§ 1983, 1985, 1988 and U.S. Attorney participation at Court direction  
 19 to prosecute under U.S.C. 18 §§ 241, 242. Urgent action may allow this case be  
 20 included in GAO report to Senate Special Committee on Aging regarding Elder  
 21 Abuse by Probate Courts, as precedent to establish path currently do not exist from  
 22 civil to criminal prosecution for elder abuse using probate courts.

23 **VI. REQUEST FOR RELIEF**

24 WHEREAS, the plaintiff requests:

- 25 1. Habeas corpus to immediately free Helen Wong from any conservatorship or  
 26 confinement thereof that was represented by Howard Myers alleging himself  
 27 as legal representative of Helen Wong.  
 28

1 2. Injunction for Superior Court Probate and Family Courts to impose any  
2 conservatorship over Helen Wong based on Howard Myers being her legal  
3 representative.

4 ////

5 3. Instruct FBI to investigate and U.S. Attorney to prosecute for damages caused  
6 by Probate Court rulings assuming Howard Myers was legal representative for  
7 Helen Wong, according to U.S.C. 18 §§ 241, 242. Helen was tried without legal  
8 representation.

9 ////

10 Dated: May 14, 2010

SIGNED Sung-Yuen Wong  
Sung-Yuen Wong

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GILGUTH & HILL APC

PAGE 01/01

FOR COURT USE ONLY <b>FILED</b> LOS ANGELES SUPERIOR COURT MAY 09 2007 JOHN A. DIAMANT, CLERK BY N. WILSON, DEPUTY CLERK	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES	
Conservatorship of the Person & Estate of: <i>Helen Wong</i>	PROBATE CASE NUMBER <i>To be assigned</i>
ORDER APPOINTING COUNSEL	

The Court on its own motion appoints *Edward Myers* to act as  
Counsel for *Helen Wong* the Conservatee / Proposed Conservatee.

Pursuant to Civil Code Section 56.10(b)(1) and HIPAA Regulation 45CFR Section  
164.512(a)(1)(i), the Court orders that counsel appointed herein shall have access to  
and authority to review and copy the medical records of *Helen Wong*  
the Conservatee / Proposed Conservatee, without his/her consent.

Attorney fees, if any, will be determined by the Court at the time of hearing.

Date: MAY 09 2007

*Michael R. Hall*  
Michael R. Hall, Judge

818 990-6140

ORDER APPOINTING COUNSEL

EXHIBIT A

I am Sung G. Wong, husband  
of Helen A. Wong, a patient Kaiser  
Hospital, Woodland hills, rm #3310,  
my wife Helen had suffered a  
stroke cannot write.

Martin J. Spear is attorney for  
Helen & me.

I hereby authorize Kaiser  
Hospital orally and in writing  
to communicate with Mr. Spear.

Further, I authorize you to provide  
to ~~with~~ Mr. Spear all medical records,  
diagnosis and prognosis regarding  
Helen A. Wong regarding her present  
hospitalization, discharge to another  
facilities.

Sung G. Wong Dec 27, 2006  
P/S Spear: 213-617-6135

	<b>Lisa MacCarley</b> <b>Attorney at Law</b>	
<b>Telephone</b>	<b>3436 N. Verdugo Road, Suite 100</b>	<b>Facsimile</b>
<b>(818) 249-1200</b>	<b>Glendale, California 91208</b>	<b>(818) 249-1238</b>

TO: Dana Hopkins  
Van Nuys Probate Department  
FAX NO.: 818.902-2451  
FROM: Lisa MacCarley *LM*  
DATE: May 8, 2007

NO. OF PAGES, INCLUDING COVER PAGE: 10

Conservatorship of Helen Wong  
New Conservatorship

Dear Dana:

It is my hope that I can file paperwork on Thursday, and have ex parte hearing on Friday...but any date will work, even next Thursday.

This situation has become critical because a neighbor has called APS because Mr. Wong refuses to have caregivers for his wife and dropped her - causing the paramedics to be called to assist. This has apparently happened on two occasions.

Please assign a PVP and I will coordinate the hearing and transmit paperwork to him or her.

Thanks,  
Lisa

This message and the following documents are intended only for the use of the individual or entity to which they are addressed. They may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately at (818) 249-1200 and we will immediately arrange to have the materials picked up at no expense to you. Thank you.

EXHIBIT C



*The Superior Court*  
LOS ANGELES, CALIFORNIA 90012  
CHAMBERS OF  
LEE SMALLEY EDMON  
ASSISTANT PRESIDING JUDGE

TELEPHONE  
(213) 974-5550

April 19, 2010

Sung-Yuen Wong  
5200 Topeka Drive  
Tarzana, California 91356

Re: Your Letter Dated April 12, 2010

Dear Mr. Wong:

Presiding Judge Charles W. McCoy, Jr., asked me to respond to your letter dated April 12, 2010.

The Presiding Judge's Office lacks jurisdiction to investigate an appointed probate attorney. If you would like your position to be heard and considered in a particular case, you should follow the appropriate procedures for filing documents with the Court, including service of any documents on the named parties.

This office can be of no further assistance. No further action will be taken, and I am ordering your complaint closed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "L. Edmon".

Lee Smalley Edmon  
Assistant Presiding Judge

LSE:psd

EXHIBIT D

Extract of ACLU Report <<http://bernie.cncfamily.com/acm/achu1.htm>>

Deprogramming and the Law, Anne Prichard, January 1978

*Comments in Itallie*

II. Abduction Under Color of State Law

A. Use of Conservatorship Law

To lend color of law to what would otherwise be unadorned abduction, a standardized method has been devised whereby a parent hires a lawyer to obtain a temporary guardianship or conservatorship over the adult child.

Historically, guardianship or conservatorship proceeding have been readily obtained. The standards have been loose. These proceedings were perceived as beneficial to the subjects of the proceeding. Safeguards were neglected. A provision in the California law which expired this summer, similar to provisions in the laws of other states, allowed a thirty-day conservatorship for a person who "by reason of old age, disease, weakness of mind, or other cause, is unable, unassisted, properly to manage and take care of himself, of his property and is likely to be deceived or imposed upon by artful or designing persons." This standard could not withstand constitutional attack if it were part of the penal law designed to deprive a person of liberty. Even so, it was embodied in the state law used most frequently during the past year to obtain custody for reason of religious affiliation. In this context, the law is an application of the parens patriae doctrine under which the state becomes, in effect, a substitute parent. It was used most often to deal with elderly people in "second childhood."

### 3. Madonna Slavin Walford

Madonna Slavin Walford, a Hare Krishna devotee, was kidnapped and held for six days of mental and physical assault by deprogrammers hired by her parents. One of her deprogrammers told her, "I know enough about brainwashing that I can break you if I want to."

Los Angeles Superior Court Judge Harry Hupp said, in refusing to dismiss the writ of habeas corpus (HC 203474 filed DEC-8, 1976 by attorney Barry A. Fisher) served on Ms. Walford's father, "No one has the right to keep on in custody against one's will. A person's freedom is not to be tampered with, even if you disagree with a particular lifestyle."

After the habeas corpus proceedings, Ms. Walford requested and was granted a temporary restraining order forbidding eighteen defendants from seizing her again under the California conservatorship law. This restraining order, issue in February 1977, is the first time a federal court issued an injunction against a conservatorship. (CFV: No. 76 3597-DWW filed Dec. 20, 1978). Permanent restraining order case by Judge David W. Williams. Ms. Walford has filed criminal charges and a \$2.5 million civil suit against her abductors. Settlement undisclosed Jan. 8, 1979.

EXHIBIT E1



COPY TO: MR. FISHER

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 88

MON. HARRY L. HUPP, JUDGE

IN THE MATTER OF THE  
APPLICATION OF MADONNA SLAVIN

No. BC 203474

REPORTER'S TRANSCRIPT

Friday, October 29, 1976

APPEARANCES:

## For the Plaintiffs:

FLEISHMAN, BROWN, WESTON & RHODE  
By: BARRY A. FISHER  
433 North Camden Drive  
Suite 900  
Beverly Hills, California 90210  
[213] 550-7460

## For the Defendants:

MODJESKI AND ASPELL  
By: DENNIS C. MODJESKI  
HERB ASPELL  
110 North Del Mar Avenue  
San Gabriel, California 91775  
[213] 285-7128

3/6/78

Ret EX 2

COPY

FLORINE BABAJIAN, CSR No. 1691  
Official Reporter

7.  
EXHIBIT E2

1 Q At that time did you give a statement?

2 A Yes, I did.

3 Q Now, keep in mind the statement that you gave  
4 last night, and the statement that you gave in Napa County.  
5 Do those statements in any way differ from what you have  
6 recounted to the court today?

7 A No.

8 THE COURT: Mr. Fisher, there have been no suggestions  
9 that they do. I don't think you need to get into rehabilita-  
10 tion.

11 MR. FISHER: Well, I think there was an attempt, an  
12 implication.

13 I have no further questions.

14 THE COURT: Anything further, Mr. Modjeski?

15 MR. MODJESKI: I have nothing further, Your Honor.

16 THE COURT: Thank you, Miss Slavin, you may step down.

17 Counsel, will there be any further evidence in  
18 this case?

19 MR. MODJESKI: No further evidence, Your Honor.

20 THE COURT: Mr. Fisher.

21 MR. FISHER: No, Your Honor.

22 THE COURT: All right, judgment will be the court will  
23 find that the applicant, Madonna Slavin, was detained against  
24 her will and without legal justification. Judgment will be  
25 that she be released from detention.

26 I will ask you to prepare the judgment, and if  
27 findings are going to be necessary, Mr. Fisher, prepare  
28 findings.

1           It is obvious that what has happened here is  
2 that a family with concern with a family member who has not  
3 chosen to live her life in accordance with their standard,  
4 with, as Mr. Modjeski probably brought out, with sincere  
5 concern taking an illegal action in order to attempt to  
6 correct what they thought was an unfortunate judgment on the  
7 part of Miss Slavin.

8           The law obviously can't and doesn't recognize  
9 that. An adult has the right to live his or her life as the  
10 adult chooses, assuming sound mind, assuming living within  
11 the law. And while we might all sympathize with somebody  
12 whose own standards have not been accepted, the law cannot  
13 accept that forcible detention is a way of persuasion, a  
14 legitimate way of persuasion to the contrary, and does not  
15 accept that.

16           Miss Slavin, you are discharged from any restraint  
17 you are under by virtue of your family's restraint of you.  
18 You are free, of course, to leave the courtroom without  
19 restraint.

20           We are in recess.

21           MS. SLAVIN: Thank you, Your Honor.

22           (Proceedings were concluded.)  
23           - - -  
24  
25  
26  
27  
28

RICHARD B. HAUSER  
A member of the

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES OF  
HAUSER AND SPILKER  
Two CENTURY PLAZA - SUITE 1200  
2049 CENTURY PARK EAST  
LOS ANGELES, CALIFORNIA 90067  
(213) 253-2461

FILED

DEC 20 1978

Attorneys for Defendants CHARLES HOWARD

HUGHES, COLEEN HUGHES, WALTER SLAVIN, SR.,  
ANNAMAE SLAVIN, and TERRANCE SLAVIN

CLERK, U. S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DEPUTY

ENTERED

DEC 20 1978

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CLERK, U. S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
BY DEPUTY

MADONNA WALFORD, and INTERNATIONAL  
SOCIETY FOR KRISHNA CONSCIOUSNESS,  
INC., a California corporation, on  
behalf of itself and its membership,

Plaintiffs,

vs.

CHARLES HOWARD HUGHES, COLEEN HUGHES,  
ILENE I. ROTHSTEIN, DONNA GRIEVING,  
TED PATRICK, SANDRA SACHS, B. SWEENEY,  
INDIVIDUAL FREEDOM FOUNDATION, INC.,  
BENJAMIN ROESHMAN, SAMUEL LIEBERMAN,  
WALTER SLAVIN, SR., ANNAMAE SLAVIN,  
GERARD SLAVIN, TERRANCE SLAVIN, WALTER  
SLAVIN, JR., JOHN B. SLAVIN, DOLLY  
SLAVIN, JOHN LYNCH, BETTY LYNCH, CINDY  
PALEY, FRED CLARK, and DONNA CLARK,

Defendants.

CIV. No. 76 3597-DWW

COURT ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The STIPULATION RE SETTLEMENT BETWEEN PLAINTIFFS,  
AND DEFENDANTS CHARLES HOWARD HUGHES, COLEEN HUGHES, WALTER SLAVIN  
SR., ANNAMAE SLAVIN, GERARD SLAVIN, TERRANCE SLAVIN, WALTER

EXHIBIT E3

1 SLAVIN, JR., JOHN B. SLAVIN, DOLLY SLAVIN, JOHN LYNCH, BETTY LYNCH,  
 2 CINDY FALEY, FRED CLARK, and DONNA CLARK; RELEASE OF DEFENDANTS  
 3 BY EDWARD WALFORD submitted herein is approved as being fair,  
 4 adequate, and reasonable.

5  
 6 2. The Defendants above named are permanently enjoined  
 7 from aiding or participating in taking, restraining, confining or  
 8 holding MADONNA WALFORD or any other devotee of the INTERNATIONAL  
 9 SOCIETY FOR KRISHNA CONSCIOUSNESS against his or her will. The  
 10 Defendants above named are permanently enjoined from aiding or  
 11 participating in any application to any Court seeking a  
 12 conservatorship or guardianship over MADONNA WALFORD while she  
 13 is actively associated with the INTERNATIONAL SOCIETY FOR KRISHNA  
 14 CONSCIOUSNESS.

15  
 16 3. The Court reserves jurisdiction over the Defendants  
 17 above named for the purpose of enforcing paragraph 2 of this  
 18 Order, and for the further limited purpose of enforcing the terms  
 19 of the stipulation referred to in paragraph 1 of this Order.

20  
 21 4. A copy of this Order shall be served by the Plaintiff  
 22 on each of the Defendants above named, and proof of such service  
 23 shall be filed with the Court prior to any application by the  
 24 Plaintiffs to the Court for enforcement of any of the provisions

25 ////  
 26 ////  
 27 ////  
 28 ////

1	of this case.	
2		
3		
4	DATE: 11/1/71	IT IS SO ORDERED
5		
6		DAVID W. WILLIAMS
7		UNITED STATES DISTRICT JUDGE
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# **The House Democratic Caucus Office**

*Protecting Seniors from  
Consumer Fraud*



# ***Protecting Seniors from Consumer Fraud***

## **Agenda**

- Messaging to Seniors
- Congressional Task Force on Seniors
- Consumer Fraud Issues Affecting Seniors
- Questions and Answers





## ***Messaging to Seniors*** **Democrats are on your side**

Too many seniors saw their retirement savings – the savings that they had worked hard all of their lives to sock away – decimated by Bush’s economic crisis.




## ***Messaging to Seniors***

But, Democrats in Congress are working hard to turn that around. We are on your side:

- We are making the tough choices to rebuild the economy for today and for future generations.
- We are helping seniors stay in their homes and get jobs if they want one.
- We strengthened and extended the life of Medicare.
- We are lowering prescription drug prices by closing the dreaded “donut hole.”

Democratic Caucus  
U.S. House of Representatives



John B. Larson, Chairman  
Xavier Becerra, Vice Chairman

# Messaging to Seniors

For seniors, Wall Street reform means:

- No more misleading ads.
- No more fine print.
- No more mortgage tricks and gimmicks.
- Your bank, your lender and your credit card are working for you instead of the other way around.

***You worked hard, played by the rules. Now it's time we make sure that everyone else does too.***

Access outreach resources at <https://demcom.house.gov/seniors>



## **Congressional Task Force on Seniors**

### **Rep. Lucille Roybal-Allard, Founding Member**

The Task Force was formed to ensure that the needs of America's seniors remain at the forefront of public discourse.

Democrats must take control of this message.

- Senior voters will dominate mid-term elections.
- Seniors aged 60+ are those most likely to vote in the mid-term elections.
- In the last mid-term elections, voters aged 60+ made up 29%, and voters aged 65+ made up 19%, of the electorate.

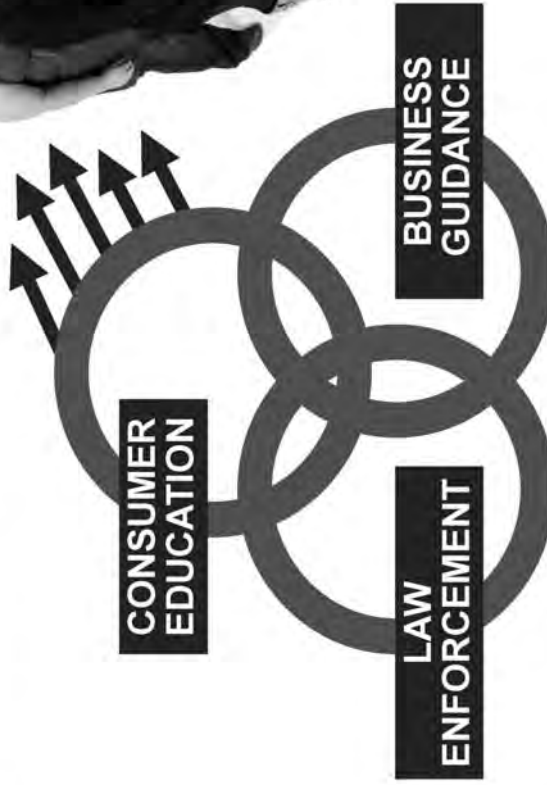


# PROTECTING AMERICA'S OLDER CONSUMERS

*FEDERAL*  
Tools of the Trade  
Λ



# PROTECTING AMERICA'S CONSUMERS



# **HOW WE CAN HELP YOU REACH OUT TO OLDER CONSUMERS**

- What we know about older consumers
- The “refrigerator” issues that matter to them
- How the FTC can support Members’ constituent services programs



## WHAT WE KNOW ABOUT OLDER CONSUMERS

- They're savvy – and skeptical.
- They're not more likely to be victims of fraud, but when they are, the consequences can be devastating.
- They're online – but they use the Internet differently.
- They seek out information from trusted sources.





## REFRIGERATOR ISSUES

- **ID THEFT:** Safeguarding personal information from ID thieves



FIGHTING BACK AGAINST

IDENTITY THEFT

FEDERAL TRADE COMMISSION

DETECT

DEFEND

CONSUMERS

BUSINESSES

LAW ENFORCEMENT

MILITARY

WELCOME TO THE FTC'S IDENTITY THEFT

DETECT-DETECT-DEFEND

AVOID

This website is a one-stop national resource to learn about the crime of identity theft. It provides detailed information to help you detect, defend, and defend against identity theft.

On this site, consumers can learn how to avoid identity theft – and learn what to do if their identity is stolen. Businesses can learn how to help their customers deal with identity theft, as well as how to prevent problems in the first place. Law enforcement can get resources and learn how to help victims of identity theft.

Read on to find out more about identity theft and what you can do about it.

If your information has been stolen and used by an identity thief

more

If your information may have been stolen, but may or may not have been used by an identity thief

more

Learn more about identity theft

more

ftc.gov/idtheft

Use Our Materials In Your Community


Watch the video

The President's Identity Theft Task Force

File a Complaint with the FTC

2005 Identity Theft Survey Report

108



**OnGuard Online**  
YOUR SAFETY NET™


[File a Complaint](#)
[EN ESPAÑOL](#)

[TOPICS](#)
[GAMES](#)
[VIDEOS](#)
[TOOLS](#)


**OnGuardOnline.gov**

provides practical tips from the federal government and the technology industry to help you be on guard against Internet fraud, secure your computer, and protect your personal information.


**TOPICS**




Learn Experts' Top Tips for Computer Security




Test your Cyber Snouts with Interactive Quizzes




Watch Videos about Online Safety



**Net Cetera**  
Kids have many ways of socializing online, but they come with certain risks. These tips help parents talk to kids about being online.



**Spyware**  
Spyware – software installed without your consent – can monitor or control your computer use. Learn how to avoid spyware.



**Phishing**  
Unexpected emails asking you to verify your account could be phishing for your personal or financial information. Don't take the bait.

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**STOP • THINK • CLICK™**

# REFRIGERATOR ISSUES

- **ID THEFT:** Safeguarding personal information from ID thieves
- **FRAUD PREVENTION:** Helping consumers spot, stop, and report fraud



Federal Trade Commission

File a Complaint | Order Publications | Privacy Policy

**WHO'S CALLING?**  
**Recognize & Report**  
**PHONE FRAUD**



Home About Media Room Partner Resources En Esp

**RECOGNIZE** 

Phone Fraud

Learn about common telemarketing scams and how to avoid them.

**SCAMS** ▾

- [Buying Club Memberships](#)
- [Charities & Fundraising Fraud](#)
- [Credit & Loan Offers](#)
- [Government Grant Scams](#)
- [Identity Theft & Telemarketing](#)
- [Medical Discount Plans](#)
- [Reloading Scams](#)
- [Robocalls](#)
- [Sweepstakes & Lotteries](#)
- [Travel Scams](#)
- [Work-at-Home & Business Opportunities](#)



**Who's Calling?**  
**Can You Recognize a Phone Scam?**

[View Video Transcript](#)

**Telemarketing fraud is a crime.** Criminals use the phone to commit many different types of fraud, including sweepstakes and lottery frauds, loan fraud, buying club memberships, and credit card scams.

[Buying Club Memberships](#)

[Charities & Fundraising Fraud](#)

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ftc.gov/phone-fraud

111

# REFRIGERATOR ISSUES

- **ID THEFT:** Safeguarding personal information from ID thieves
- **FRAUD PREVENTION:** Helping consumers spot, stop, and report fraud
- **CREDIT & DEBT:** Empowering people to manage their finances in tough times



en español

# Money Matters

It's become an all-too-familiar headline – lay-offs and furloughs, falling housing prices and rising consumer debt, declining retail sales and increasing costs of living.

Money – and the lack of it – is a source of stress and frustration. And while people the world over are working to stem the global financial situation we're in, folks at home are trying to gain some control over their own financial situations, too.

Practicing positive, tried and true money management techniques – and learning how to recognize and avoid some “ripped from the headlines” consumer scams and rip-offs – can help you weather tough economic times.

The Federal Trade Commission (FTC), the nation's consumer protection agency, created this website to help you tackle some money issues head-on. Use the menu to the right to find tips and resources on money matters.

Scam Watch  
Credit Cards  
Managing Your Money  
Dealing with Debt  
Your Home  
Jobs

*ftc.gov/moneymatters*

Check back often for updates and new topic areas.

Federal Trade Commission | File a Complaint | Order Publications | Privacy Policy

# REFRIGERATOR ISSUES

- **ID THEFT:** Safeguarding personal information from ID thieves
- **FRAUD PREVENTION:** Helping consumers spot, stop, and report fraud
- **CREDIT & DEBT:** Empowering people to manage their finances in tough times
- **BOGUS CURES:** Educating consumers about the telltale signs of snake oil





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Home & Frauds

Care & Services

# Who Cares

Sources of Information About  
Health Care Products and Services

*ftc.gov/whocares*

## Introduction

With so many sources of health information — it can be tough to tell fact from fiction. And for those that don't work or aren't satisfied, the consequences can be serious.

The FTC has created this website to help you find reliable sources of health information. Whether you're an older consumer or a family member, we can help you find the information you need.

- find links to agencies and organizations that care about topics like generic drugs, hormone therapy, caregiving, surgery to improve vision, alternative medicine, hearing aids, Medicare fraud, and medical ID theft;
- learn how to spot misleading and deceptive claims; and
- find out who you can contact to ask questions, enlist help, or speak up if you think a health product or service isn't living up to its promises.

Just remember: Among the best sources of health information is someone you can meet face-to-face. Talk about all of your health-related decisions with your doctors and other trusted health care providers.

Download PDF Version (2.94MB)

HOME  
Care & Services  
Pills & Products  
Scams & Frauds  
Find Health Info Online  
How to File a Complaint  
Partner Resources  
En Español

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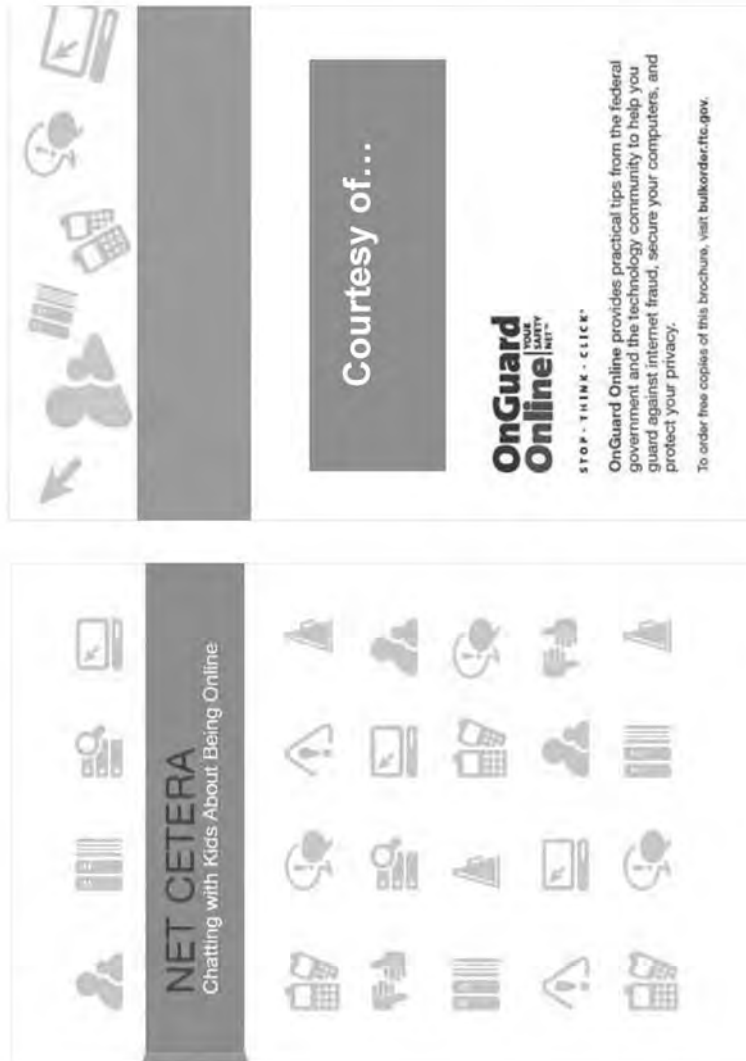
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## **DISTRIBUTE PUBLICATIONS**

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- **On district visits**
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- **For case work**
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**FEDERAL TRADE COMMISSION**  
**PROTECTING AMERICA'S CONSUMERS**

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*ftc.gov/bulkorder*

**ORDER PUBLICATIONS**

**Welcome to the Federal Trade Commission's Bulk Order website.**

You can use this site to order bulk quantities of free FTC education materials. Simply choose a category on the left for a list of available publications. Select the quantity you need for each title and add to your "shopping cart." If you want to view or print the publication before ordering, use the "view" link next to the title.

Once you've made your selections, use the checkout form to submit your order. Please allow three to four weeks for processing and shipping your free publications.

If you need only a few copies, you can print them out from the FTC's website at [ftc.gov](http://ftc.gov) and make photocopies, or you can order from the FTC's Consumer Response Center. The FTC website includes additional publications for consumers and businesses that can be printed or downloaded from [ftc.gov](http://ftc.gov), but that are not offered by mail.

Did you know you can order bookmarks for your organization? The FTC offers a wide range of topics on [bookmarks in English and Spanish](#).

**Publication Categories**

- Bulk Order Home
- Automobiles
- Competition
- Computers and the Internet
- Credit and Loans
- Education, Scholarships, and Jobs
- Energy and Environment
- Health
- Identity Theft, Privacy, and Security
- Investments and Business Opportunities
- Shopping for Products and Services
- Telemarketing and Telephone Services

**NET CETERA**  
 Chatting with Kids About Being Online

## **INCLUDE FTC ALERTS IN NEWSLETTERS and E-NEWSLETTERS**

- Alert consumers about the latest scams
- For The Consumer newsletter



## **DEVELOP A CONSTITUENT SERVICES PAGE ON THE WEBSITE**

- Engage consumers with video
- Buttons and banners
- House Information Resources contact:

Elliott Chabot  
Chief for Web Design & Standards Compliance  
CAO Web Solutions Branch  
(202) 226-6456





**FEDERAL TRADE COMMISSION**  
PROTECTING AMERICA'S CONSUMERS

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# ftc.gov/videos


## FTC Video Library

- Featured Videos
- Advertising
- Business
- Credit
- Health
- Identity Theft
- Mortgage
- Phishing
- Scam Watch
- Telemarketing
- En Español


## Videos

All of the videos in the FTC library are for you to share and post these videos.

### Featured Videos:

 Admongo in Action A promotional video for Admongo.gov	 How to File a Complaint with the Federal Trade Commission	 Operation Bottom Dollar Monica Vaca	 Job Scams
 Money Transfer Scams David Vladeck	 Endorsement Guides Mary Engle	 Get Red Flags Ready Pablo Zybergleit	 Dealing with Debt Collectors





navigation


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Search:


**DEAN OF THE HOUSE OF REPRESENTATIVES**  
**THE HONORABLE**  
**JOHN D. DINGELL**  
 FIGHTING FOR THE PEOPLE OF MICHIGAN'S 15TH CONGRESSIONAL DISTRICT

**SUPPORT FOR CONSUMERS**


The Federal Trade Commission offers publications with advice on avoiding scams and rip-offs, as well as tips on other consumer topics.




**Scam Watch**  
 Tips to help you slow down the call of phishing.




**Tip a Scamper**  
 Use this site to learn about the entertainment rating systems.




**National Do Not Call Registry**  
 The National Do Not Call Registry gives you a choice about whether to receive telemarketing calls at home.




**OnGuard**  
 Practical tips to help you be on guard against Internet fraud, secure your computer, and protect your personal information.




**FREE Annual Credit Report**  
 Find out how to access your free annual credit report from the only authorized online source: [annualcreditreport.com](http://annualcreditreport.com).




**System**  
 Tips on how to reduce the amount of spam email in your inbox.




**What's All About**  
 A one-stop resource to learn about the crime of identity theft.




**What's All About**  
 Learn how the FTC fights against through law enforcement and consumer education.




**What's All About**  
 Find out how to get out of pre-recorded offers of credit and insurance.



**Recall**  
 Obtain the latest recall information, report a dangerous product, and learn important safety tips.



**KID PRIVACY**  
 Find out how to protect kids' privacy online.



**Online Clickwrap**  
 Information to help you shop safely and wisely online.

**In Washington, D.C.**  
 1000 Pennsylvania Ave.  
 Suite 800  
 Washington, DC 20540  
 (202) 225-2330

**In Michigan**  
 20000 Oakridge Commons  
 Suite 100  
 East Lansing, MI 48824  
 (517) 375-2330

**Mobile**  
 202 225-2330  
 202 225-2330  
 202 225-2330



## **HOST AN EVENT**

- Suggested speakers
- Suggested agenda
- Advice on location – for example, libraries
- Handouts for attendees
- Need help? Contact Derick Rill.





**DETROIT ALLIANCE  
FOR FAIR BANKING**



**U.S. SENATOR CARL LEVIN**



**WAYNE COUNTY COMMUNITY COLLEGE DISTRICT**

**IN PARTNERSHIP WITH  
THE FEDERAL TRADE COMMISSION  
THE DETROIT ALLIANCE FOR FAIR BANKING  
AND  
WAYNE COUNTY COMMUNITY COLLEGE DISTRICT**

A Continuing Education Opportunity for Residents of Southeast Michigan

**A Free Financial Literacy Seminar**

**PREVENTING A FINANCIAL CRISIS!**

*An Informational Forum on how to Identify and Avoid Credit and Financial Fraud, Predatory Lending, Student Loan Scams, Business Opportunity Fraud, Credit Card Scams, Mortgage Foreclosure Rescue Scams and other investigations' investment services millions of Michigan consumers fell prey to every day.*

**SATURDAY, MARCH 8, 2008  
9:00 AM - 12 NOON**

**WAYNE COUNTY COMMUNITY COLLEGE DISTRICT  
DOWNTOWN CAMPUS  
1001 W. FORT STREET  
DETROIT, MI 48226  
(near Campus Parking)**

**General Public Invited - Participation is Free**

Special Guest Speakers: Ellis Liddell, CEO, EIE Wealth Management  
Lorrey Brown, Atty, Michigan Poverty Law Program  
Gina Brewer, Community Affairs Specialist, FDIC  
Jon Miller Steiger, Federal Trade Commission

*RSP by calling: 313-226-8878 or 313-871-9659*



**CONSUMER  
PROTECTION**

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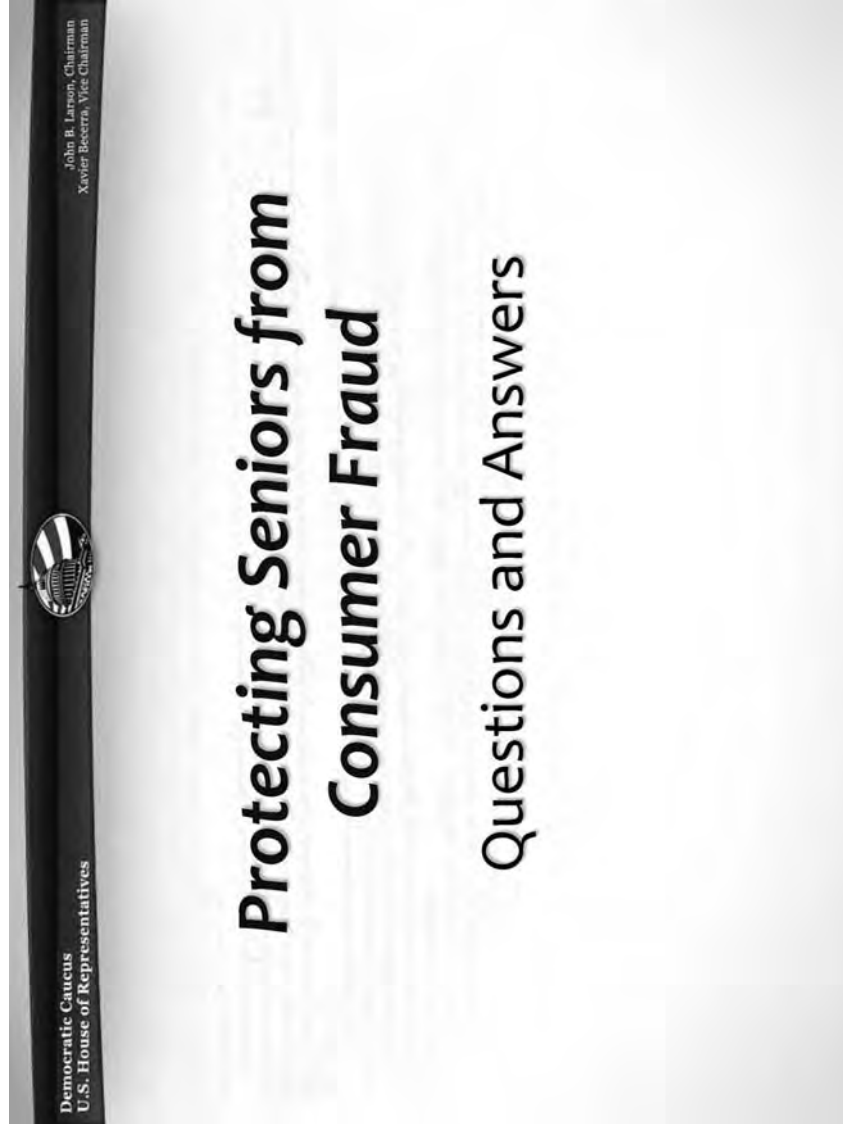
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U.S. House of Representatives



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March 17, 2009 09:00 AM Eastern Daylight Time

## Financial Abuse Costs Elders More Than \$2.6 Billion Annually, According to MetLife Mature Market Institute Study, Though Four in Five Cases Are Not Reported

**Family Members and Caregivers are Responsible in 55% of Cases**

**Related Costs Reach into the Tens of Millions**

**Prevention Tips Available for Older Americans and Their Families**

WESTPORT, Conn.--(BUSINESS WIRE)--Elder financial abuse costs older Americans more than \$2.6 billion per year and is most often perpetrated by family members and caregivers, according to a new report released by the MetLife Mature Market Institute (MMI) entitled, *Broken Trust: Elders, Family and Finances*, which is accompanied by tip sheets for older adults and families on how to prevent such issues. The report, produced in conjunction with the National Committee for the Prevention of Elder Abuse (NCPEA) and Virginia Polytechnic Institute and State University, states up to one million older Americans may be targeted yearly and that related costs like health care, social services, investigations, legal fees, prosecution, lost income and assets reach tens of millions of dollars annually. The study indicates that for each case of abuse reported, there are an estimated four or more that go unreported. The economic downturn may increase vulnerability. Family members and caregivers are the culprits in 55% of cases, although financial losses are higher with investment fraud scams.

The National Adult Protective Services Association (NAPSA) suggests that the "typical" victim of elder financial abuse is between the ages of 70 and 89, white, female, frail and cognitively impaired. She is trusting of others and may be lonely or isolated, although reports show that there is a very diverse population of victims.

"Elder financial abuse has been called the 'crime of the 21<sup>st</sup> century,'" said Sandra Timmermann, Ed.D., director of the MetLife Mature Market Institute. "With the present state of the economy, older Americans are at a greater risk than ever of having their financial security threatened. And, for every dollar lost to theft and abuse, there are still more related costs associated with stress and health care and the intervention of social service, investigative and legal entities.

"This is also a growing problem made greater by the increase in the number of older Americans as targets, the relative wealth of this group, a change in family structure and the availability of technology that may make such abuse somewhat easier," said Timmermann.

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"Sadly, family members and caregivers tend to financially exploit their elderly relatives more often than strangers. Community service providers and other professionals agree, however, that reported cases represent only the very 'tip of the iceberg.' Scholars and practitioners speculate that, like perpetrators of other types of elder abuse, family members who exploit their elders are dependent upon them financially and their actions may be influenced by other problems such as alcohol and drug abuse. In addition, some family members feel a sense of entitlement and believe that they have a right to the money and material goods their parents or older relatives have accumulated," Timmermann added.

Pamela B. Teaster, Ph.D., NCPEA president, said the data provided through the National Center on Elder Abuse daily newsfeed proved invaluable. "The feed tracks media reports of elder abuse through Google and Yahoo Alerts, a process that scans billions of Web pages," said Teaster. "Not only were we able to put a face on the information reported in the primary literature, but more importantly, we had real-time information on financial elder abuse and information from numerous reporting sources," she said.

The 2006 national *Survey of State Adult Protective Services* revealed that victims range in estimated number from a low of 100,000 to a high of one million a year. It is believed that these numbers will grow with the aging population and their increasing net worth.

Elder financial abuse takes many forms, including, but not limited to: fraud (coupon, telemarketing, mail); repair and contracting scams; "sweetheart scams;" false/fraudulent advice from loan officers, stock brokers, insurance salespersons, accountants and bank officials; undue influence; illegal viatical settlements; abuse of powers of attorney and guardianship; identity theft; Internet "phishing;" failure to fulfill contracted health care services; and Medicare and Medicaid fraud.

The report states that the justice and social services systems are often inadequately trained, staffed and funded to address elder financial abuse. Further, at times it is difficult to determine whether financial abuse occurred or if one unwittingly or knowingly made a poor financial decision. Generally under state jurisdiction, most states mention financial exploitation in their statutes, although what it constitutes, who is covered and who is accountable vary as widely as do the remedies. A bill before Congress since 2002, The Elder Justice Act, would increase awareness of elder abuse, neglect and exploitation at the national level and would train individuals from various disciplines, combat elder abuse and prosecute cases. An additional measure would create an Elder Justice Coordinating Council.

Underreporting is attributed to fear of government interference, parents protecting their children and family members; embarrassment and self-blame; a lack of realization that abuse has occurred; fear of being placed in a facility; fear of harm from the perpetrator; and a belief that nothing will be done or more money will be lost.

Additional facts:

- Reports vary as to whether women or men are more vulnerable to financial abuse, but loneliness and isolation clearly leave one more

exposed to theft. The average victim of elder abuse is a woman over the age of 75 who lives alone (48% of women over the age of 75, according to the Administration on Aging). Men are reported to be particularly vulnerable to the "sweetheart scam."

- 60% of substantiated Adult Protective Services (APS) cases of elder abuse involve an adult child; sons are 2.5 times more likely than other family members to take advantage of parents.
- In addition to the obvious financial loss, long-term effects include credit problems, health issues, depression and the loss of independence.
- Signs of abuse include indications of intimidation by or fear of a caregiver, isolation from family and friends, disheveled appearance, anxiety about finances, new "best friends" and missing belongings.
- Elder financial abuse can be prevented by the following: 1) education about one's rights and about the various types of consumer fraud and scams; 2) Financial conservatorship and/or power of attorney for those who are vulnerable; 3) Assignment of responsibility to a trusted outside person, if children are a concern; 4) Additional media attention for this issue; 5) Training financial professionals to properly assist older customers; 6) Assistance from social services, medical/nursing personnel, government agencies; 7) Reporting suspected cases of financial abuse to local authorities.

#### Methodology

Leading researchers from the National Center for the Prevention of Elder Abuse (NCPEA), Virginia Polytechnic Institute and State University (Virginia Tech) reviewed all Newsfeed articles from April through June 2008 from the Administration on Aging's National Center on Elder Abuse (NCEA), a newly established database which tracks media reports of elder abuse through Google and Yahoo Alerts scanning billions of web pages. The researchers also searched 12 electronic databases that index academic journals containing primary literature on elder abuse from 1998 through June 2008 to provide the basis for this analysis. They found 168 articles from journals in the social science, medical and legal disciplines. At the same time, they conducted a database search of organizational and trade magazines published from 2005 to 2008 to find mentions of elder financial abuse by business and private-sector professionals (e.g., bankers, financial planners, insurance agents) who frequently interact with older adults. That search resulted in 110 articles on this topic.

#### National Committee for the Prevention of Elder Abuse

The National Committee for the Prevention of Elder Abuse (NCPEA) is an association of researchers, practitioners, educators and advocates dedicated to protecting the safety, security and dignity of America's most vulnerable citizens. It was established in 1988 to achieve a clearer understanding of abuse and provide direction and leadership to prevent it. The Committee is one of six partners that make up the National Center on Elder Abuse, which is funded by Congress to serve as the nation's clearinghouse on information and materials on abuse and neglect. To learn





more about NCEA, visit [www.preventelderabuse.org](http://www.preventelderabuse.org).

#### About the MetLife Mature Market Institute

Established in 1997, the Mature Market Institute (MMI) is MetLife's research organization and a recognized thought leader on the multi-dimensional and multi-generational issues of aging and longevity. MMI's groundbreaking research, gerontology expertise, national partnerships, and educational materials work to expand the knowledge and choices for those in, approaching, or caring for those in the mature market.

MMI supports MetLife's long-standing commitment to identifying emerging issues and innovative solutions for the challenges of life. MetLife, a subsidiary of MetLife, Inc. (NYSE: MET), a leading provider of insurance, employee benefits and financial services with operations throughout the United States and the Latin American, Europe and Asia Pacific regions.

For more information about the MetLife Mature Market Institute, please visit: [www.maturemarketinstitute.com](http://www.maturemarketinstitute.com).

For a free copy of the study, *Broken Trust* and the accompanying tip sheets for family caregivers and older individuals, *Helpful Hints: Preventing Elder Financial Abuse*, and the Since You Care guide: *Preventing Elder Abuse* call 203-221-6580, e-mail [maturemarketinstitute@metlife.com](mailto:maturemarketinstitute@metlife.com), or download them from [www.maturemarketinstitute.com](http://www.maturemarketinstitute.com). You may also send a written request to the MetLife Mature Market Institute, 57 Greens Farms Road, Westport, CT 06880.

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RESPONSE TO POST-HEARING QUESTIONS FROM THOMAS C. NELSON,  
CHIEF OPERATING OFFICER, AARP



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June 25, 2010

The Honorable John Conyers, Jr.  
Chairman, Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515-4708

Dear Mr. Chairman:

Thank you for your letter of June 2, 2010, sent in follow up to the Crime, Terrorism, and Homeland Security Subcommittee hearing of May 25, concerning H.R. 3040, the "Senior Financial Empowerment Act of 2009," at which AARP President Lee Hammond testified.

Because this letter responds to a number of detailed questions about AARP operations, policies, and member benefits, we thought it would be more appropriate if I responded to your letter. As Chief Operating Officer, I am responsible for overseeing AARP's social impact and advocacy activities, for managing AARP's human, technical, and material resources, and, in partnership with the Chief Financial Officer, for the planning, development, and monitoring of AARP's budgets.

As you know, AARP is a nonprofit, nonpartisan organization that helps people 50 and older improve the quality of their lives as they age. AARP leads positive social change and provides value through information, advocacy, and service. As detailed in Mr. Hammond's testimony, AARP supports H.R. 3040 as a cost-effective, targeted approach to preventing financial exploitation and promoting economic security and financial education among those approaching retirement. The Senior Financial Empowerment Act would make improvements that strengthen and coordinate the efforts of non-profits and government entities to educate older Americans about abusive mail, Internet, and telemarketing schemes.

Enclosed please find our requested corrections to the transcript. The remainder of this letter addresses the specific follow-up questions set forth in your June 2 letter, as well as several other questions posed at the hearing. AARP asks that these responses be made part of the May 25 hearing record.

**I. Supplemental Questions of Representative Poe:**

**Question 1:** *In response to my question during the Judiciary hearing on May 25, 2010 about whether or not it was a conflict of interest for the AARP to "sell" health insurance you stated that*

HEALTH / FINANCES / CONNECTING / GIVING / ENJOYING

W. Lee Hammond, President  
Addison Barry Rand, Chief Executive Officer

The Honorable John Conyers, Jr.  
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*AARP does not "sell" health insurance it merely "endorses" particular plans. I have attached three pages from the AARP's 2008 IRS tax form 990 which states "The AARP Insurance Plan is a grantor trust established by an Agreement and Declaration of Trust for the purpose of making group health insurance and other health-related products and services available to AARP, Inc members . . . ." Additionally, this form includes a DC address for the "AARP Insurance Plan". Can you explain to me exactly what the "AARP Insurance Plan" does?*

Mr. Hammond correctly noted that AARP does not sell health insurance. AARP is a social welfare organization that leads positive social change and provides value through information, advocacy, and service.

Like many other non-profit organizations (including universities, professional associations, and other social welfare organizations), AARP also licenses its name to various providers of member benefits. These providers and member benefits are screened and selected with the help of AARP's wholly owned subsidiary, AARP Services, Inc. This selection process is designed to identify benefits that have unique and distinguishing features designed to further AARP's mission, meet the needs of members and people 50+, and hopefully move the marketplace so that other companies follow suit and introduce similar offerings to serve the 50+ population generally.

For example, United HealthCare was selected as the provider of AARP-branded Medicare Supplement plans, which are designed to promote broad access and availability to individuals, including those with pre-existing conditions. Many other Medicare Supplement plans will not accept applicants who have various pre-existing conditions (e.g., emphysema, Parkinson's disease, multiple sclerosis, osteoporosis with fracture, COPD, mild cognitive impairment, etc.). In contrast, in 2009, the AARP-branded plans from United accepted over 99.9% of all applicants (with end stage renal disease being the only exception).<sup>1</sup> Many other Medicare Supplement plans also use "attained age rating," which means that premiums are more favorable at younger ages, but could become prohibitive at older ages. In contrast, and consistent with AARP's mission, the AARP-branded United plans generally use community rating (with very few exceptions, as in the case of states, like Florida, that require Entry Age Rating) in order to help keep rates more manageable for older individuals, and to ensure that rates do not go up simply because of an individual's age.

The royalty income from these providers, along with income from membership dues and other sources, enable AARP to fund a broad range of advocacy, education, community service, and other activities serving the needs of older Americans.

The AARP Insurance Plan referenced in your question (the "AARP Trust"), is the group policy holder – not the seller – of a number of insurance plans offered by member benefit providers (including the Medicare Supplement plans from United). Neither AARP nor the Trust is the

<sup>1</sup> For 2010, end-stage renal disease remains the only exception, although in some states, beginning in 2010, there are certain limited circumstances under which acceptance may be deferred (e.g., hospitalization in the past 90 days, and pending surgery recommendations).

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insurer or seller of these providers' insurance plans. By acting as the group policy holder, the Trust simply enables individual members to obtain coverage from these insurers.

**Question 2.** *If this plan merely endorses other insurance plans do you think this could be a conflict of interest?*

No. AARP develops its public policy positions through a process that is independent of any royalty-generating activities. This process involves input from AARP members and others, research and analysis by AARP staff of older persons' needs, review by a volunteer National Policy Council, and, ultimately, approval by the all-volunteer AARP Board of Directors. AARP's positions on public policy matters, such as health care reform and H.R. 3040, were in no way formulated, motivated by, or based upon any assessment of the financial impact on AARP. AARP has developed its positions based upon what we believe to be in the best interests of our members and all people age 50-plus. As such, we do not believe that the licensure of AARP's name to providers of member benefits causes a conflict of interest.

## II. Other Questions Posed During May 25 Hearing:

AARP now responds to the questions posed during the May 25 hearing and asks that these responses be made part of the hearing record.

During the hearing, Representative Gohmert described a troubling incident involving someone who purported to be selling AARP-branded Medicare Supplement health insurance. Representative Gohmert described the incident as involving deceptive and misleading sales techniques.

Whether this person was in fact a United agent authorized to sell the AARP-branded Medicare Supplement plans from United, or was instead simply misrepresenting himself, his alleged conduct was unacceptable. If this person was indeed an authorized United agent, AARP will ensure that this alleged conduct is addressed appropriately by United. If this person was not a United agent and was not authorized to use the AARP name, AARP will take appropriate action to prevent the person from using the AARP name to deceive consumers in the future (for example, by filing suit, as AARP has in similar cases of deceptive and unauthorized use of the AARP mark).

We asked United to investigate whether there had been any complaints about United agents in Representative Gohmert's District, and United could not find any reports of this type of conduct. We also asked Representative Gohmert for additional information about the incident, including the name of the individual involved, so that United could determine if this individual was in fact an authorized United agent. As soon as we receive this information, we will ask United to continue the investigation, and will report back to Representative Gohmert with the results.

AARP would like to stress that this type of conduct is unacceptable, and would like to describe briefly the systems designed to ensure that the United agent program is operated appropriately.

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When United prepared to launch the agent program for certain AARP-branded health products in 2008, United, with input from AARP Services, Inc., implemented stringent credentialing requirements that would result in finding those United agents who were truly committed to serving the 50+ community with the utmost professionalism.

The credentialing requirements include the following: Agents are required to undergo criminal background checks, credit checks, and state and federal disciplinary history reviews; as well as maintain extensive errors and omissions coverage. Agents are also expected to complete all training related to the products, the history of AARP and sensitivity to issues affecting older persons; as well as completion of state licensing requirements, before they are appointed by United and thereby authorized to offer certain AARP-branded products. The credentialing process is repeated annually by United to ensure that these agents remain in good standing.

In the event that an agent is suspected of any misconduct, United will initiate an investigation. Typically, United interviews the complainant and any other individuals who may have knowledge of the alleged misconduct. United also gathers other information about the agent, including information about the agent's contractual relationship with United and whether there have been prior incidents or complaints involving the agent. After the information is gathered and documented, United prepares a Request for Agent Response form, which is sent to the agent for completion. The agent then returns the completed form to United.

United records all of the facts involved in the case, and makes a recommendation of corrective or disciplinary action. In order to determine the final disposition, United considers the gravity of the alleged misconduct, the strength of supporting evidence, prior complaint history regarding the agent, and other types of information associated with other quality monitoring activities, such as mystery shopping or outbound education verification. When there is an agent complaint involving an AARP member or an AARP-branded product from United, United immediately begins its investigation, and reports the findings back to AARP.

AARP Services, Inc., also engages in quality control oversight of United's agent program, including review of United's agent marketing materials, use of mystery shoppers, random credentialing checks, and review of periodic complaint reports.

Again, to the extent that Representative Gohmert is able to obtain more information about the alleged conduct, AARP will ensure that appropriate action is taken, and will report back to Representative Gohmert with the results.

Representatives Poe and Gohmert also asked Mr. Hammond several other questions. Below we provide a summation of each question along with our response.

**Question.** *What percent of AARP's budget is spent on the dissemination of elder abuse information to members?*

As you know, AARP is a social welfare organization that leads positive social change and provides value through information, advocacy, and service. Much of what AARP does touches

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on various aspects of elder abuse and protection, from education, to financial training, to crime prevention, to advocacy related to the regulation of elder care facilities, to consumer fraud avoidance.

AARP does not have a single line item in its budget that can easily be described as "elder abuse prevention." AARP and the AARP Foundation do have many discrete elder abuse programs, which reach millions of older consumers, including the following:

- The Consumer Fraud Prevention Project maintains eight call centers across the country and trains volunteers who, since 2006, have reached out to 2.6 million potential victims of fraud by telemarketers, Internet scammers and others. Consumers in need of education are often identified through cooperation with law-enforcement agencies that seize "mooch lists" from con artists. Recently, many of the call centers have been educating consumers on fraudulent schemes involving the \$250 "donut-hole" rebate check.
- Many AARP state offices (FL, WV, AR, VA, ME among others) work closely with the Administration on Aging's Senior Medicare Patrol, holding educational forums on how to protect against fraud, detect potential Medicare fraud and report it to the proper authorities.
- AARP has begun discussions with NAAG, private insurance fraud fighters, HHS-OIG and CMS' Center for Public Integrity to ascertain how best to work with law enforcement and other officials to inform and protect older Americans against health care reform related fraud.
- AARP has created fact sheets, in both English and Spanish, aimed at educating older Americans and at-risk groups about avoiding scams and fraudulent activity related to health care reform implementation. These sheets currently address scams related to the mailing of the \$250 dollar "donut-hole" checks which began this month. This piece is part of a larger factsheet education effort that will address additional topics in the months and years to come as health care reform is fully implemented.
- AARP has partnered in various initiatives with organizations and state officials such as the Better Business Bureau, the North American Securities Administrators Association, the Financial Industry Regulatory Authority, federal regulatory officials, and state Attorneys General and Insurance Commissioners.
- For example, AARP worked with the Texas Department of Insurance to help enact five bills designed to fight fraud and preserve older people's assets, including improved annuity disclosures, reduced annuity penalties, and better training of insurance agents who sell annuities.
- AARP has collaborated with the North American Securities Administrators to launch the "No Free Lunch" program, which provides members with checklists on things to be

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vigilant about if they wish to attend investment seminars. Members can then report any concerns about the presentation to AARP and their state regulators.

- In collaboration with the FINRA Investor Education Foundation and various grassroots organizations, AARP developed a targeted initiative to reduce the incidence of investment fraud among older investors. As part of this initiative, AARP participated in the FINRA Foundation's production of an hour-long documentary on preventing investment fraud based largely on the initiative's research-based, fraud-fighting curriculum. AARP and FINRA Foundation currently hold joint financial literacy workshops in many states.
- AARP ElderWatch fights the financial exploitation of older Americans in the states of Colorado and West Virginia through collection of data, extensive outreach and education, and the provision of technical assistance. The Project provides information to and coordinates efforts by the states' law enforcement offices, adult protection and mental health agencies and organizations assisting older Americans. It also calls homeowners to discuss foreclosure prevention and how to avoid foreclosure and refinance scams.

Moreover, our communications team produces consumer awareness content for the AARP Bulletin, AARP VIVA, our award-winning television and radio broadcast programs, and our website, AARP.org. Our social impact team, the AARP Foundation and AARP state offices have also conducted numerous seminars to educate people about scams that target older Americans, including telemarketing fraud, fraudulent investment brokers, and mortgage foreclosure and reverse mortgage scams.

**Question.** *How much did AARP spend on lobbying for health care reform?*

AARP does not break out its federal lobbying expenditures by issue. As required by the federal Lobbying Disclosure Act, AARP reports to Congress each quarter the *total* amount expended on lobbying related activities in that time period. Although these reports list the specific lobbying issues in which AARP engaged, the report does not assign expenditures to each of those specific issues. In 2009, AARP spent a total of \$20,010,000 on all federal lobbying activities.

**Question.** *What exemptions did AARP receive for Medigap insurance in health care reform law?*

As noted above, AARP is a social welfare organization, not an insurer, and would not therefore qualify for any alleged "exemptions" in the law for Medicare Supplement plans.

Moreover, the health care reform law was focused primarily on ensuring access in the private insurance market for people under age 65. Consequently, the law imposes new requirements, such as loss ratio and pre-existing condition limitations, on insurance plans offered to the under-65 population. Medicare Supplement plans were simply not the focus of these insurance market reforms.

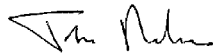
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Regardless of how the absence of such Medicare Supplement provisions is characterized, the fact remains that AARP did not lobby for any special treatment of Medicare Supplement plans, and AARP's support for the health care reform legislation was not based upon any such alleged special treatment. In fact, AARP would support the extension of similar loss ratio and pre-existing condition limitations to Medicare Supplement plans under applicable law.

\* \* \* \* \*

We hope that this information is helpful in answering the questions presented, and look forward, as always, to working with you and other Members of Congress on these and other issues of importance to older Americans.

Respectfully,



Thomas C. Nelson  
Chief Operating Officer



RESPONSE TO POST-HEARING QUESTIONS FROM LATIFA S. RING,  
ELDER ABUSE VICTIMS ADVOCATES, HOUSTON, TX

**Responses to Questions**

**from**

**The House Judiciary Committee on  
Crime, Terrorism and Homeland Security**

**HR 3040 – The Senior Financial Empowerment Act**

**By**

**Latifa S. Ring**

Elder Abuse Victims Advocates

Founder of The National Elder Abuse and Guardianship

Victims Taskforce for Change

June 18, 2009

**Mr. Chairman, Congressman Gohmert, Honorable Members of the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security**

I wish to offer my sincere thanks for the opportunity to address the committee on HR 3040 and Senior Fraud Issues. I am especially grateful to Congressman John Conyers, for inviting me to testify, to Congressman Ted Poe for his support and for believing in this cause and to Congresswoman Tammy Baldwin for sponsoring this bill. I am grateful for the opportunity to respond to your questions. These are very difficult questions, and I have given them a great deal of thought. I have not tried to distinguish state issues from the kind of problems that your committee is able to address. No one knows that as well as you. I have tried to portray what I and many others in the field, facing guardianships as family members and loved ones, see as problematic in the system. I hope these answers will be helpful to the committee in understanding the crisis our most vulnerable citizens are facing in guardianships and am hopeful that the committee will be able to address some of the issues.

I am not an attorney; and I am not an expert in elder law, and I do not claim to be in any of my answers, but I have a great deal of real world experience with the guardianship system. I have been a party in a contested guardianship and in transferring a guardianship across state lines. I have had to deal with interstate guardianship matters and have been a "family" guardian for over three years, and have been a pro se litigant in a guardianship matter and a defendant in lawsuit against me for attorney fees my ward could not pay. As a caregiver and surrogate decision maker for an elderly woman with Alzheimer's disease, I have experienced all stages (from mild to advanced) of this disease that robs the mind and then the body from its victim. I have handled the process of getting a loved one on Medicare, Medicaid and SSI in two states.

As an advocate for reform and improvement to the lives of citizens in guardianships, I have spoken with hundreds of family members and victims. I have helped to record case summaries in my work advocating for national reforms. I have worked with a network of grassroots advocates for reform that stretches from California to Florida. I have had the rare privilege of hearing first-hand the insights of a family member who is a retired 30 year Trial and Chief Judge. He has studied my case thoroughly, sharing his thoughts along the way.

We have written papers and submitted documents to our national leaders asking for reform. I have reached out to state bar associations, the National Guardianship Association (as an active member), the Elder Justice Coalition, The Arc, Elder Care Attorneys and Judges and various other elder care agencies in an effort to learn as much as I can to advocate for change. Over the past 5 years I have participated in and read many blogs from the various guardianship areas. I have solicited and reviewed responses from hundreds of people who have signed our petition for reform of the guardianship system. I have researched guardianship, elder law, and human rights issues every day for the past three years. I have studied the opinions of the experts.

So while I am not an expert and do not claim to be, I am well-informed and passionate about this problem. I am eternally grateful to those grassroots advocates who have worked so hard with me and shared their experiences so generously. These shared stories and perspectives have enabled us to come to a collective understanding of the problems at ground level, from the perspective of those who are living with the ravages of guardianship abuse on a daily basis. All of us have been horrifically abused and harmed by a system designed to protect, not to hurt. Together we bring a realistic and often painful perspective to the table of our state and national leaders. This is a perspective that no attorney, no elder law expert, and no guardian can offer. Because we have been there, our message conveys the pain and anguish that is felt every day, by thousands of victims. We have tried to rise above our suffering to move forward in a constructive fashion and offer the changes that will repair the guardianship and permit it to be what it was intended to be – a helping hand, extended from a compassionate community to a

valued citizen in need. We are a voice for those who have no voice. We speak for those who are locked away from their loved ones, for those whose days are filled with pain and confusion, who don't know what they "did wrong" to send them away from their loved ones and bring in strangers.

We have seen the pain, first hand, in the eyes of our family members and loved ones and we have felt it. We have witnessed the anguish and confusion of those family members and loved ones who are so traumatized from the experience at times they can barely speak. We have shared the devastation of families as their vulnerable loved one is torn from them and removed to places unknown and even died and buried without their knowledge or ability to attend the funeral. We have seen the bankruptcy of spirit, belief systems and financial strength as they try to fight a system designed to make them fail and to let the guardians who are strangers win the a battle over who should care for their lifelong loved one.

There was no crime committed to bring about this tsunami of life changes. This is the "best generation." They worked hard, lived frugally, and saved for a rainy day. When that rainy day arrived, they committed "the crime" of getting old. Their minds failed and their bodies weakened while the financial worlds they created and maintained remained strong. At a time when they should be enjoying the fruits of a lifetime's labor, basking in the love and care of those they loved and cared for, they find themselves in the hands of impersonal strangers who have been attracted by their healthy bank accounts, and isolated from their families and friends assertedly for their own good. Now they are forever lost and their children cry for them at night powerless to say anything, powerless to speak for them and powerless to make a difference.

We are praying that you will help all the old, weak and disabled adults who are lost and that you will demand that America's elderly are treated with the dignity they deserve.

Attached are my answers to the questions you asked. I have done the best to answer them not only from my perspective but also from the perspective of many of my grassroots colleagues who did not get the opportunity to share first hand their perspectives. I am grateful to some of my closest confidants and co-advocates and thank them (there are too many to list in this letter) and the many people who signed our petition and shared their insights for their inspiration and for sharing their views and perspectives.

We must act to save our seniors today and tomorrow from the ravages of the broken guardianships.

Thank you for giving me the opportunity to provide my input on these very important questions. I could have worked many more days and weeks on these questions, but time is of essence, so I am returning what I can under these circumstances. I hope the committee will allow my colleagues and me to provide additional input on these critical questions and issues as time permits.

**Latifa Ring**

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**Responses to Questions**

**from**

**The House Judiciary Committee on  
Crime, Terrorism and Homeland Security**

**HR 3040 - The Senior Financial Empowerment Act**

**By**

**Latifa S. Ring**

Elder Abuse Victims Advocates

Founder of The National Elder Abuse and Guardianship

Victims Taskforce for Change

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### Responses to Questions by Latifa Ring

**1 What recommendations do you have for improving the process of determining whether an elderly person should be assigned a guardian?**

The guardianship process has many problems that need to be addressed before it can be relied on to properly determine if a person is in need of a guardian.

While there are good and protective guardianships, those that are of the greatest concern, are those that are wrongfully imposed on competent persons, those guardianships that are abusive and neglectful and those that are deliberately used to financially exploit the assets of the wards they are intended to protect. For years, experts in the area of elder care have written on the problems of guardianships, but no major reforms have been forthcoming.

Guardianship is a form of civil commitment. It confronts a person with a complete and total loss of all liberty and property, often without due process of the law as guaranteed by the 14<sup>th</sup> amendment. As the late congressman Claude Pepper said of guardianship,

*"The typical ward has fewer rights than the typical convicted felon—they no longer receive money or pay their bills. They cannot marry or divorce . . . It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen, with the exception . . . of the death penalty."*<sup>1</sup>

Guardianship takes vulnerable adults, and puts them into a system that renders them totally helpless and powerless to fend off or report abuses. Many seniors rightfully fear this system.

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<sup>1</sup> <http://penology.umaryland.edu/documents/fall1999.pdf>

As Patricia Parmelee wrote, in her paper "Protective Services for the Elderly: Do We Deal Competently with Incompetence?",

*"Many elderly persons report that they fear the loss of their independence more than they fear dying or even abuse."*<sup>2</sup>

Without proper checks and balances, the incapacitated person (the ward), who has been stripped of all human, civil and constitutional rights, can be abused, neglected and robbed of all his or her property. This often appears to occur with impunity, as most reports of the abuse fall on deaf ears.

Malicious abuse of the guardianship system is one of the most pernicious crimes. It is one that is difficult to identify and almost impossible to prosecute, because it occurs under the guise of "protection" and under the "color of law". Many seniors are thrust into a system by unsuspecting family members who think they are doing the right thing by petitioning for guardianship to help a loved one in need. People think of "guardian angels" when they hear the word guardian. What they find instead is an upside down world where "right is wrong" and "wrong is right", where the rules are up in the air, and where strangers take over a loved one's life instead of family. Guardians frequently force elderly people out of their homes, sell off their possessions, loot their estates, and often force them to take psychotropic and dangerous drugs. The family is forced to the sideline as an unwelcome outsider.

One of the root causes of the problem of guardianship abuse is the incapacity process and the process whereby a guardian is selected and appointed. When the guardianship intake

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<sup>2</sup> Patricia A. Parmelee, Protective Services for the Elderly: Do We Deal Competently with Incompetence?, 2 L. & Pol'y, 397,415 (1980); Sherry L. Willis, Assessing Everyday Competence in the Cognitively Challenged Elderly, in OLDER ADULTS' DECISION-MAKING AND THE LAW 87 (Michael Smyer et. al. eds., 1996). [http://www.elder-law.com/files/Parmelee\\_Autonomy.pdf](http://www.elder-law.com/files/Parmelee_Autonomy.pdf)

process is abused, people who are not incompetent are thrust into guardianships where their lives are, essentially, stolen. The process whereby a person is determined to be incapacitated and has a guardian appointed is flawed from the onset.

This section, addresses some of the problems of the determination of incapacity process and of the guardian appointment process. It also includes recommendations for improvement in these critical areas. Issues discussed include the determination of incapacity, constitutional rights, and due process Issues, advanced directives, the role of families and the guardianship appointment process.

The opinions and recommendations made here, are mine, made not as a legal scholar or as an elder law expert, but as a passionate family member guardian and grassroots advocate for change. One who has lived through the system, conferred with many other family members and professionals, and who has studied the impact of guardianship on wards and their loved ones.

## 1.1 Improve the Incapacity Process

### THE PROBLEM

#### 1.1.1 Better Definitions of Incapacity and Limited Capacity are Needed

The states use various terms to define the mental condition that can lead to the imposition of a guardianship. If the alleged incapacitated person (AIP) has no need for a guardian, he or she is found to have the capacity to live independently and competent to make decisions. If the AIP is found to need a full (plenary) guardianship of the person and of the estate, then he or she is determined to be incapacitated or incompetent. These terms are often used interchangeably, but they both refer to the inability of the AIP to make the necessary decisions to live independently.

An incapacitated or incompetent person needs help with decision making for all the tasks of daily living. However, the AIP is often found to be "limited" in only one or two of the areas of daily living. This limited capacity finding should lead to the assignment of a limited

guardianship. A limited guardianship is one where the guardian has the authority to act on behalf of the AIP only in specific areas of deficit, as opposed to a plenary guardianship where the guardian has unlimited authority over the ward. Most courts underuse limited guardianships because they require constant monitoring and adjustment of orders as the AIP's capacity declines. While this practice may make it easier for the courts and the guardians, it puts the IP in the terribly abusive position of having all of their rights stripped of them unjustly when they may only have some limited incapacity and opens the door for much of the abuse that is being reported.

The standard for a finding of incompetence, incapacity, or diminished/limited capacity is largely subject to the discretion of the judge upon review of the reports of medical and/or psychiatric physicians. While attorneys and judges may understand what justifies a finding of mental incompetence, incapacity, or diminished capacity, many private citizens do not. Most are completely caught off guard and shocked when they find themselves or a loved one declared to be incapacitated and forced into a guardianship. It is important that citizens understand the conditions under which a person can be involuntarily put into guardianship. It is critical that judges use carefully defined, uniform, and objective definitions. The following table lists some of the definitions currently in use:

<u>Term</u>	<u>Current Definitions</u>	<u>Source</u>
A mentally incompetent person	"a person who is not able to manage his/her affairs due to mental deficiency (low I. Q. , deterioration, illness or psychosis) or sometimes physical disability"	People's Law Dictionary
An incapacitated person	"an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs or (C) a person who must have a guardian appointed to receive funds due the person from any governmental source."	Texas Probate Code
An incapacitated person	"means an individual who, for reasons other than being a minor, is a person who is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance"	Uniform Guardianship Code
A person with diminished capacity	In December 2001, the Wingspan Conference recommended that "Functional multi-disciplinary assessment be used in determining Diminished Capacity; and the terms "incapacity," "incapacitated," or "Incompetent" be rejected	Wingspan Conference

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The definitions are too vague and unclear. Based on these broad definitions lives are being damaged in ways that can never be repaired. Most of us suffer from some sort of incapacity at various points in our lives, and many people have temporary moments of incapacity or incompetence as a visit to the local bar will readily affirm. No one should be sentenced to a lifetime of guardianship on the basis of vague definitions or temporary conditions.

#### **1.1.2 The Incapacity Finding Process needs Improvement**

When a judge declares a person to be "incapacitated", that person's life is changed forever. Just ONE WORD, "incapacitated," that's all it takes for ALL of the rights of American citizenship to be voided and passed on to a third party! Often, on the basis of this single word, strangers are appointed as guardians. Once appointed, they can charge exorbitant fees for services, even while family and friends are available and willing to serve at no cost to the ward.

A finding of incapacity or incompetence essentially, renders the ward civilly dead. They have no right to vote, no right to marry or divorce, no right to contract, to drive a car, to go shopping, to choose those with whom to associate, to choose where they live, to choose what medications they can refuse and no right to choose what surgery is performed on their own bodies.

Don Hoyle, the president of the ARC of Michigan, tells the following story<sup>3</sup>.

*"Another woman had an operation. The hospital had problems, and we got a phone call. We didn't know her, but we went down to try to comfort her. She*

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*was terrified. We tried to find out what the operation was for, but they couldn't tell us because of confidentiality. The doctor had never bothered talking with her because he had all the releases signed by the guardian. She was dragged off screaming, to the operating room. She came out of the anesthesia still screaming. She didn't know what had happened to her. Guardianship removed any obligation of that doctor to have to talk to his patient. That's the law, but its poor bedside manners."*

Guardianship is the most severe intrusion into a person's life and privacy. It strips all rights of self-determination and autonomy. Shockingly, this usually happens without due process or even the semblance of due process. There is usually no attorney to represent the AIP, so witnesses are not cross-examined and evidence is not carefully presented and examined. Rarely is the family allowed to defend or to speak on behalf of the AIP. The court relies too often on unreliable, frequently wild, unsworn statements offered by opposing parties and counsel as a basis for excluding the family from the process.

There is a misconception that the Guardian Ad Litem (GAL) or Attorney Ad Litem works for and represents the AIP. In the majority of the cases, this is not true; the GAL works for the court and represents what he or she believes is in the best interest of the AIP. The "best interest" may be contrary to the wishes of the AIP. Ironically, the AIP is almost always forced to pay for the GAL, even when that GAL is actively opposed to the AIP's wishes. What is most disturbing is that many state statutes provide for AIP legal representation and jury trials, but these provisions are almost always ignored. Why and how is this gross violation of human rights allowed to continue?

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<sup>3</sup> <http://www.mouthmag.com/says/dohnsays.htm>

**RECOMMENDATIONS**

- The terms “incapacitated”, “incompetent” and “diminished capacity” should be re-defined in clear, concise, and concrete terms. The definitions should be expanded to include an associated list of medical diagnosis’s (with the proper codes) that justify the finding of incapacity, incompetence, and diminished or limited capacity.
- The definitions should include scales for measuring and quantifying the degree of incapacity. The quantitative scales need to indicate the degree of incapacity in each particular area of daily life. The level of disability on that scale should be used to determine the degree of incapacity and to determine whether a full or limited guardianship should be assigned.
- The highest level of proof should be demanded, along with carefully defined procedures, before a person can be determined to be in need of a guardian. If we are going to have a system that strips a person of all civil, human, and constitutional rights, and if that system is going to rob them of their dignity, move them out of their homes and takes control of all of their property, then that system should be precise, scientific, definitive, and measurable.
- A person should only be diagnosed as mentally incompetent/incapacitated by a psychiatrist of the AIP’s or of the family’s choosing. Any written mental assessment should include the specific medical or mental diagnosis, the level of progression of that condition (i.e. mild, moderate or advanced dementia), and a sworn statement from the psychiatrist, that in his opinion, the AIP will be harmful to self or others without a surrogate decision maker. The alleged incapacitated person’s primary physician should also provide a statement to the court providing his or her opinion of mental competency based on his experience with the patient.
- A list of all psychiatric assessments, medical assessments and other reports to be used in the incapacity determination process should be sent to the AIP, the AIP’s power of attorney, any pre-need named guardian and to the AIP’s next of kin in

advance of any hearing. A written, audio, or video record of all mental tests and exams used in the determination of mental incompetence should be made available to the court and put on the record in the related guardianship matter.

- A written notice of the incapacity hearing should be sent to the alleged incapacitate person (AIP), the power of attorney, the pre-need designated guardian, the next of kin and all immediate family members. This notice should inform the AIP that he or she is entitled to an attorney (other than the GAL or other ad litem) and that if he or she cannot afford one that the court will appoint one. The notice should include a provision for the AIP (who is not yet determined to be incapacitated) to name their own guardian.<sup>4</sup>
- We often hear cases where a petition for guardianship was filed in an effort to take control of a vulnerable person's assets for ulterior motives such as greed or revenge. There should be severe criminal penalties and sanctions for the filing of a frivolous or malicious guardianship petition; and the petitioner and his or her attorney should sign an affidavit when the petition is filed, stating that the petition is being filed in good faith. A particularly disturbing trend we hear of, is one where guardians and attorneys troll for clients at senior community centers, assisted living center or other facilities, and even peruse the obituary sections of local newspapers to locate a vulnerable and lonely elderly individual.

#### EXAMPLES

- In Florida a woman, Yvonne Sarhan, was placed in the hands of a private guardianship who charged for every service and looted the estate, despite the fact that a family

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<sup>4</sup> The court should honor this request based on the level of the AIP's capacity at the time.



member was willing and able to serve as the guardian, and despite the fact that the woman had two letters from two doctors (one court appointed) stating that she was competent. According to the son, when he and his mother argued that she was competent according to the doctor's letters and did not want a guardian, the judge said, "I'll decide who's competent in my courtroom," and told the woman to take it up with her private guardian, which he appointed on the spot.

- An elderly man in Florida who was suffering from mild dementia was given a 20-hour notice of an emergency hearing for guardianship, filed by his nieces. He was suffering from the early stages of dementia. The judge put him into a temporary guardianship and immediately turned him over to his guardian who took him from the courtroom (at least he wasn't handcuffed) to a locked facility where he was denied access to visitors for seven weeks. It was not until four weeks after his incarceration at the facility, that he was found to be incapacitated and in need of a guardian.
- In New York<sup>5</sup> a woman fired her lawyer in a copyright lawsuit, the lawyer asked the judge to appoint a guardian ad litem (GAL) to represent the woman in court. The judge ordered the woman to have a psychiatric evaluation, which she refused. A GAL was appointed anyway. The judge said his docket was full, and he would write up his reasons for the appointment later. The GAL promptly hired back the fired attorney. The woman who was pro se, has filed an appeal. She was told that she is only incompetent in the courtroom. How can you be incompetent in one room and not the other?

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<sup>5</sup> [http://www.abajournal.com/news/article/judge\\_appoints\\_lawsuit\\_guardian\\_due\\_to\\_clients\\_irrational\\_hostility\\_to\\_/](http://www.abajournal.com/news/article/judge_appoints_lawsuit_guardian_due_to_clients_irrational_hostility_to_/)

- In a Delaware case in 2005, it took over 6 months before a woman with dementia had a psychiatric evaluation after she was put into an emergency and then temporary guardianship. In fact, in that case the attorney GAL filed a motion for a temporary injunction to prevent her family from getting a psychiatric evaluation. The judge granted the motion that resulted in a three-month delay in the guardianship hearing. During that three-month period, under an interim guardianship, a former POA was allowed to take over \$65,000 of her money all under the watchful eye of the court and the guardian. To date, despite a conviction, a judgment and a restitution order, the bulk of the converted assets have not been returned.
- A woman in California who had a stroke that resulted in her being paralyzed on one side and a speech problem, was taken from her 86-year-old husband of 60 years, and put into a guardianship. He is not allowed to know where she lives. She is brought to his home to visit weekly. Her stroke has interfered with her ability to care for herself. She is unable to speak but she is able to communicate decisions with the help of her lifelong spouse. Due to the community property concerns and the need to get all the guardianship fees paid, the Judge ordered the 86-year-old husband to get dissolution of marriage. The man refuses to divorce his wife of 60 years. He says her married her "until death do us part". He was ordered to pay all the attorney fees from their joint assets. Over one million dollars has been spent so far. This is elder abuse of the woman and the spouse who is not incapacitated. (see the story Till Probate do us Part" in appendix (C).

*(There are numerous examples in the Appendices that illustrate problems with the incapacity process. )*

## 1.2 Due Process and Constitutional Rights Violations in the Incapacity and Guardianship Process

### THE PROBLEM

One of the biggest problems with the Guardianship Process, and one that Congress should be seriously concerned with, is the flagrant violation of the AIP's<sup>6</sup> constitutionally guaranteed rights. Citizens are committed to captivity in the guardianship system without due process of law as guaranteed by the 14<sup>th</sup> amendment of the Constitution. They are deprived of their liberty, property, and sometimes life<sup>7</sup> in hearings without due process<sup>8</sup>. The AIP(s) are without any voice in a process that deprives them of all rights and commences the rapid depletion of their lifelong assets. It all happens under the guise of "protecting the ward". How can this happen in America, and why hasn't anyone stopped it?

### 1.2.1 Guarantee the Right to Counsel and Representation for the AIP

#### RECOMMENDATIONS

- An alleged incapacitated person should receive proper written notice, well in advance (the number of days varies by state but it should be at least 10 days) of a hearing. They or someone caring for them must be notified and advised in writing and in person, that they have the right to hire an attorney to represent them throughout the guardianship hearing.

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<sup>6</sup> The AIP is only alleged to be incapacitated during the incapacity process and has every right that you and I have and yet their rights are flagrantly denied during the process before a guardian is appointed and their rights are removed.

<sup>7</sup> Sometimes they are deprived of even their life when a guardian makes a DNR decision or some other decision such as putting them into hospice against the family's wishes and the ward's stated wishes and they are put onto a morphine drip to die a "dignified death". This is the most gut wrenching experience for the family members who must stand by and have NO SAY in the health care decisions made by the guardian.

<sup>8</sup> Family members who try to stand up for their loved one's rights are silenced by attacks on their character and the sully of their names. These attacks are launched to keep the judge from appointing a family member as the guardian. This leaves  
(footnote continued on next page)

- A family member or friend of the AIP should be able to help them find an attorney if they need help. If they cannot afford an attorney, the court should arrange for an attorney approved by the AIP or the family, to represent the AIP. In the case of indigent AIPs, the attorney will be provided free of cost.
- The attorney appointed should have no connection with any future guardian that might be appointed and should be bound to represent only the wishes of the AIP and not work for the court.
- There should be no hearing scheduled until the AIP's own attorney (not the attorney ad litem or GAL) can be present and not until the AIP's own attorney has entered his appearance at the court and has had adequate time to meet with his client and the family to prepare for the hearing.

#### 1.2.2 No Ex-Parte Hearings

We often hear of persons being forced into guardianships and declared incapacitated in ex-parte hearings where there are no witness, no voice for the AIP and where neither the AIP nor the AIP's family or friends are present or even notified. This stripping of all civil, constitutional and human rights is such a severe action that it should never be done in a secret hearing. In some jurisdictions, we hear reports that this practice is pervasive in guardianships and applies to many other guardianship proceedings such as the routine approval of attorney fees and guardian fees without anyone present to object. This is one of the reasons there are so many problems.

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the vulnerable AIP at the mercy of professionals driven by greed or at the mercy of an opposing family member whose motives are not altruistic.

**RECOMMENDATION**

There should be no Ex-Parte hearings or conferences in any guardianship proceedings. All interested parties and interested persons (including any heirs) should be notified of any hearing at least 10 days in advance to allow the opportunity for them to be present or to waive their right to be present.

**1.2.3 Provide the AIP with the Opportunity to name a Guardian**

Prior to the appointment of a guardian, a citizen still retains all rights of every other citizen. The AIP is only alleged to be incapacitated. The presumption of incapacity prior to adjudication is a serious problem that must be addressed.

**RECOMMENDATION**

The AIP should be given the option of naming their own guardian and should be informed of this right when they are noticed of the incapacity hearing. If they do name a guardian, or have done so in the past, then the court should appoint that person to be the guardian. If they name the guardian at the time of the notice and are determined to have a limited incapacity that did not prevent them from being able to make this decision then the court should appoint that person as the guardian.

**1.2.4 Uphold the Right to be heard - Federal and State Rules of Civil Procedures in all Incapacity Guardianship Hearings****RECOMMENDATIONS**

- State or Federal Rules of Civil Procedure should be followed in probate courts, in all phases of discovery, and in incapacity or guardianship hearings. In many cases, the AIP is never offered a jury trial and is often not present during these proceedings.
- Family members should be able to call witnesses and cross-examine witnesses. Federal Rules of Civil Procedure are important because they impose important limitations on expert witness testimony and jury rights that need to be followed.

- Since the act of appointing a guardian involves the stripping of fundamental, constitutionally guaranteed rights, then an interested party should have a right to appeal to the federal court (as allowed to any defendant under federal statutes) when jurisdictional requirements are met, under either diversity or federal jurisdiction. Several parties have tried to file appeals but say their attempts have been denied, even though they claimed that the constitutional issues should give them the right to the appeal. The father of one victim reported that the "Domestic Relations or Probate Exceptions to diversity" prevented him from filing the appeal. It would seem that due to the severe consequences to a vulnerable citizen's constitutional and civil rights (guaranteed under the constitution) in these cases, there would be a way to appeal cases that involve gross violations of these rights to the federal court.

#### **1.2.5 Guarantee the Right to a Jury Trial for the Incapacity and for the Guardianship Hearings**

##### **RECOMMENDATIONS**

- The alleged incapacitated person should be entitled to a jury trial on both the questions of incapacity and the choice of the guardian. This right should not be waived by anyone other than the AIP.
- If the AIP is unable to express a preference for a jury trial, then any available agent who is willing to serve as the guardian or surrogate decision maker shall have the right to request a jury trial for the AIP.
- Sometimes a temporary guardian is assigned in advance of the incapacity and guardianship hearing. No temporary guardian should have the right to waive a jury trial on behalf of an AIP.

**1.3 Advanced Directives of the AIP are often not honored in Guardianships****THE PROBLEM**

Many elderly citizens with assets are very careful about planning for their eventual incapacity and will execute a durable power of attorney, a trust, or will designate a pre-need guardian for the eventuality that they become incapacitated. Their intent is for their estate to be protected, not only for their own welfare, but also for their heirs. These advanced directives documents (prepared while the person was competent) are utterly ignored<sup>9</sup> in many guardianship cases. Often, no reason is given for ignoring the AIP's advance directives and instead, appointing a "professional" guardian.

Often reports of family conflict or unproven allegations made by those who have the most to gain are as used by the GAL, the prospective guardian or the attorney to sully or smear the name of the family member setting the stage for the appointment of business entrepreneurs who want the income opportunity. The wishes of the AIP are then ignored, and instead of the estate being managed in accordance with the express wishes of the AIP, the appointed strangers who have seized control of the estate pay themselves large sums of money for services, most of which do not benefit the ward.

**1.3.1 The AIP's Designated Durable Power of Attorney is Ignored**

A Durable Power of Attorney or a Trust should eliminate the need to consider a guardianship. It should be as ironclad as a person's will. There is never a need for a guardian if there is an agent designated under a durable POA. The AIP ) clearly chose this person to protect his or her interests in the event of incapacity. Something is terribly wrong when these wishes are ignored. There have been numerous cases

where an agent under a power of attorney is not even considered as a possible guardian by the court. If they complain, they are often denied visitation rights to the loved one. Our elders are being urged to pre-plan. They have a right to know that their efforts, their choices, and their preferences will be respected by the courts.

### 1.3.2 The AIP's Designated Pre-need Guardian

Senior Citizens will often name a guardian to be appointed in the event they become incapacitated. This directive is even more likely to be ignored than a power of attorney. There is no excuse for this to occur. Family conflict is often the reason given for ignoring advance directives. Professional guardians will often allege to the court that the family is dysfunctional or the adult children don't get along, and so a professional guardian is needed. The "professional" guardian will often allege or imply that the family has or will commit some wrongdoing. This often results in the family members being treated as guilty in the eyes of the court. The court has no resources for investigating allegations and, frequently, relies on their court appointed colleagues, the guardian, and the attorneys. Often the family member or friend is outright slandered and libeled in the court.

Since many of the pre-named guardians are heirs to the estate, they should have standing as interested parties to the guardianship matter; instead, they are without a voice, forced to silently stand by and watch a loved one be abused, neglected and essentially robbed of the estate that took a lifetime to earn. The inheritance is robbed from the family as well.

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<sup>8</sup> While the existing laws in many states supposedly are written to honor the advanced directives, the sad reality is they are often not being honored in the probate or similar courts.



**1.3.3 Trusts and Guardianship**

Many private citizens who want to make sure that their financial affairs are managed for their benefit and that the remainder of their estates are passed on to their heirs, will carefully draft trusts. Instead of their wishes being followed, they are being put into involuntary guardianships, and their carefully planned trusts are being broken through the efforts of greedy perpetrators after the money. All it takes is an unproven allegation, even an innuendo, against the trustee for the court to bust the trust or put in a temporary trustee until the person is deceased (which isn't temporary at all). In some cases, generational wealth that has survived hundreds of years is depleted by the guardianship where exorbitant fees of the guardian and its attorney for "services" do not benefit the ward and used to milk the trust dry.

**1.3.4 Healthcare Surrogate Decision Maker**

When a person names a healthcare decision maker, it is usually a family member who they believe will be compassionate and caring, and who will make the best decisions about their healthcare if they ever become incapacitated and cannot make decisions on their own. This is usually a person who knows the end of life wishes of their loved ones. Why a court would dare to replace a named healthcare surrogate with a third party, defies logic and denies American citizens the right to self-determination. Barring a finding of abuse against the incompetent person, no one should be able to disregard a citizen's legal plan for his or her. We hear many agonizing stories of family members who were the named health care surrogate being forced to watch a loved one die without any voice to express their loved one's stated wishes due to a DNR requested by a guardian and granted by the court. Other previously named healthcare surrogates watch their loved ones being put into hospice because a nursing home is too lazy to feed them where they are allowed to starve to death and again since they are no longer the healthcare surrogate designated by their loved one they can do NOTHING to stop it and cannot even ask the nursing home to feed their loved one. Imagine if it was your parents one day of it was you and your children had to suffer so.

**RECOMMENDATIONS****Provide Senior Citizens the opportunity to designate a Power of Attorney when they sign up for Medicare.**

- Since all seniors will sign up for Medicare and Social Security benefits, this would be an ideal time for the government to encourage or even require citizens to designate who they want their durable power of attorney to be. This would also be a good time to provide educational material to seniors how to avoid Elder Abuse, Fraud, and Financial Exploitation.

**Honor All Durable Power of Attorneys and Advanced Directives when Appointing a Guardian**

- All durable or springing power of attorney agents, any named health care surrogate, any trust instrument and any other advance-planning document prepared by an alleged incapacitated person must be honored in the guardianship process.
- The court must keep a written record of the reasons for unsuitability of any agent under a power of attorney, any pre-designated guardian, any Trustee. These parties designated by the AIP should have the right to appeal the decision of the court, with a jury trial if so desired, and should be entitled to use the assets of the incapacitated person to mount a defense against a finding of unsuitability (unless they have been criminally convicted of abuse and/or exploitation of the AIP).

**EXAMPLES**

- In one **Florida** case, a woman who retired there was concerned about what might happen to her when she got old or if she became incapacitated so she had a durable power of attorney, health care surrogate, and pre-need guardian paperwork prepared and available at her home. She named her niece who lived in another state as her agent in all of the documents. She stayed in touch with her niece and the niece stayed in touch with her. She was a private person and

did not share the fact that she was having more and more problems with remembering things. In the summer of 2009, this woman was put into a guardianship in Florida. In the court Room at the hearing, they had all of her pre-planning documents. The niece was never notified of the hearing or the fact that there was a petition filed until after her aunt was in guardianship. Today the niece and her family are trying to rectify the problem, which is next to impossible.

#### 1.4 Use Family Members as Surrogate / Substitute Decision Makers whenever Possible

##### THE PROBLEM

The family is and has been for centuries that natural guardian and protector of vulnerable family members. This is recognized every day in the medical community it should also be recognized in guardianships.<sup>10</sup> The reality is families are almost always forced to take a back seat to professional strangers who take over the life of their loved ones. These entrepreneurs and businesses are driven by greed and the pursuit of easy money in their quest to be appointed as the guardian or attorney. It is only the family member who can share the memories from the past with a loved one, only the family member or friend can share joys during moments, or days of clarity, and it is the family member who knows the likes and dislikes of a vulnerable and disabled adult. There is no question family and friends are best suited to care for those they love. It is time to put "caring for family" back into the family and take it out of the courts.

Many states have surrogate decision maker laws for healthcare purposes. Every one of them designates the priority of family members in order from closest to farthest. Usually it is the spouse or domestic partner first, and then the adult son or daughter, followed by the

custodial parent of the person, the sibling(s), and finally another relative or close friend. The very existence of these healthcare surrogate decision maker laws acknowledges the natural authority of the family. If every day, all over this country, hundreds of thousands of family members (as the recognized surrogate decision makers) can make life and death decisions for their loved ones in need, then surely they are equally suited to assist them with their daily affairs when they need a helping hand. Unfortunately, Stranger-Guardians routinely push aside family members or friends in probate courts often by smearing<sup>11</sup> them and claiming they are unprofessional, unsuitable and basically unfit.

#### RECOMMENDATIONS

- Family members offer the least restrictive and least expensive alternative to fee-for service guardianships. They should always be appointed ahead of any third party stranger. This priority should be enforced before a paid-guardian is appointed in a legal proceeding that usurps family authority.
- The model of the existing state Health Care Surrogate decision maker laws should be borrowed if necessary until similar laws can be created and enforced for the selection of guardianship surrogate decision makers. The order of priority for family surrogate decision makers should be documented along with the standards for resolving conflicts or disagreements. This information should be included in any probate handbook or probate training material and should be provided anyone petitioning for guardianship . Today, as it stands, often if there are five children and one disagrees

<sup>10</sup> Family members ordinarily have the greatest interest among all available parties to act in the best interests of the incapacitated person, and should be accorded a rebuttable presumption to act as an effective watchdog against abuse.

<sup>11</sup> The family member(s) and friend(s) never really recover from the torture they endure when they are treated as villains and assaulted by the legal process of guardianship in the court and by the attorneys and "professional" or "private" guardians. They become the secondary victims in this all out assault.

with the guardianship then the court throws out all five and assigns a stranger-guardian. Often it is the one(s) disagreeing with a guardianship are the one(s) most devoted to their parent's wishes and best interests as often happens.

- Laws should be amended or written to establish the order of priority for surrogate decision makers in guardianship and should be enforced to honor the order of priority until all available options for family or friends have been exhausted before a stranger-guardian shall be appointed. If laws are not written or amended, then the court should rely on the existing health care surrogate decision maker laws in that state to determine the priority.
- Each state should create a list of concrete rules that specify under what conditions a family member or friend can be prohibited from being appointed as the guardian. This should be published and made available so that prospective petitioners know the rules. The rules must not be deviated from and should not include vague criteria such as, "generally not a good person", or simply, "unsuitable". They must not be any more restrictive than the requirements necessary for a parent or foster parent to raise a child.
- The court must keep a written record of the reasons for unsuitability of any available family or friend and that person shall retain the right to appeal with a jury trial if so desired. If the family member being denied the right to serve was pre-designated by the AIP as the power of attorney or pre-need guardian then AIP's assets may be used to pay for the cost of the appeal by their chosen surrogate decision maker.
- At all stages of a guardianship matter, the individuals listed, as possible surrogate decision makers, should have the right to file complaints, to submit evidence, to testify and to be able to call witnesses at any incapacity or guardianship adjudication hearing.

**EXAMPLE**

- In a Delaware case, as a Good Samaritan, I tried to help a woman in need of medical care. APS, instead of getting her to a doctor as we requested, insisted I file for guardianship. As a last resort I did. The woman was subsequently hospitalized and had urgent surgery to repair a broken hip she had suffered from for three weeks without medical care. That was five years ago and she is still living today due to my intervention as Good Samaritan but she lost all her life savings due to the guardianship. The public guardian and APS agreed to her discharge from the hospital back to that home where she suffered from psychological and mental abuse for four more months until finally the court had an interim guardian remove her. Within six months, another professional guardian was appointed. Finally, when her money was almost all gone we were appointed as her co-guardians. She is destitute now and is supported by the taxpayers in Texas supplemented by help from me. The cost of this matter was close to \$200,000.00. Much of this was stolen by her former caregiver and POA under the watchful eyes of the professional guardians (appointed in lieu of family) and the rest went to attorneys and guardians. The cost to me personally was years of hell dealing with a legal arena that I can only liken to an upside down Alice in Wonderland world. My efforts to help a vulnerable woman who raised me, cost me personally over seventy thousand dollars. Much of this cost was incurred after I was appointed as a family guardian and incredulously was sued by the attorney for payment of guardianship legal fees already approved by the court to be paid from the estate. Finally, I was forced to take a loan on my home to settle the matter when I could no longer afford to defend myself and the cost and stress of caring for Mary and traveling from Texas to Delaware.
- The criminal justice system finally got involved in pursuing the financial exploitation and neglect charges against the perpetrator of the abuse and financial exploitation in this case. Last year (four years later), the man who took the money pled guilty and was ordered to pay some restitution.

- This guardianship could be called a good guardianship by some because it likely saved a woman's life but if this is what it takes for guardianship to help someone in need then something is desperately wrong. If APS had intervened, by removing Mary from harm's way, and if they had neutralized the playing field by taking custody from the abusive person, had frozen her assets and not agreed to return her to the home she suffered in then things may have turned out much different for Mary. I never planned or even considered being a guardian and did not know much about this system. I filed to be a guardian and did not even know what was involved. I could not watch this woman who raised me and 75 other orphans suffer and so when APS would not come to her rescue. IT'S TIME TO PUT CARING FOR FAMILY BACK IN THE FAMILY AND TO TAKE IT OUT OF THE COURTS.

#### 1.5 Improve the Process of Appointing a Guardian

##### Appointment of the Guardian

If an AIP is determined to be incapacitated or incompetent, then the court appoints a guardian. The assessments obtained in the incapacity process indicate to the court the type of guardianship needed.

A guardian of the property or a conservator, makes financial decisions, budgets, pays the bills, and manages the assets and the estate of the incapacitated person (IP).

A guardian of the person assists the IP with health care decisions, safety in the home, medicines, food, and other areas related to health, safety, and happiness.

A limited guardianship is one where the guardian's authority to make decisions is limited only to the areas that the assessments indicate are deficits for the IP. A limited guardian, may pay bills only, or arrange food preparation or provide physical therapy.

A plenary guardianship is one where the guardian is granted full authority to make all decisions in all areas of the life of the IP where the judge has found the IP to be totally incapacitated.

The court may appoint only a guardian of the property, only a guardian of the person or both and may make the guardianship limited or plenary.

#### THE PROBLEM

No guardian of the person should need to be appointed if there is an agent under a “springing” or “durable” power of attorney or if there is, a guardian named in any of the IP’s pre-planning or advance directive documents. If the AIP is able to indicate his or her preference for a guardian then that person should be appointed if they are willing to serve. There should be no need for a guardian of the property if there a trust in place, or if there is an available family member or close friend who is available and willing to serve as a surrogate decision maker for the incapacitated person. If there is a named health care surrogate who is willing to help the IP in other areas of daily life, there should not be a need to appoint a guardian of the person.

The courts frequently bypass available family members and appoint stranger guardians, much to the client’s detriment. Many family members who were the agents under a durable power of attorney or named as guardian by the IP are not even given consideration. Instead, the judge appoints a “professional” guardian without even giving them a reason why they cannot be the guardian. As indicated in a number of the comments on the petition and other stories and articles in the appendices of this document, it happens all the time.

Many of the state laws include provisions to ensure that guardianship is a last resort but these are not being followed in the courts, especially if the AIP has a sizeable estate.

#### RECOMMENDATIONS

- No guardian of the property or conservator should be appointed if there is an existing durable power of attorney, a trust, a pre-designated guardian, if the AIP is able to indicate a preference for a guardian or if a family member or friend willing to serve as a surrogate financial decision maker in lieu of a guardian of the property.
- No guardian of the person should be appointed if there is a named health-care surrogate, if there is a pre-designated guardian, if the AIP is able to indicate a



preference for a guardian or if a family member or friend willing to serve as a surrogate decision maker in lieu of the guardian of the person.

- No third party or professional guardian should be appointed as the guardian of the person or the property if any of the following exists:
  - an existing durable power of attorney,
  - a trust,
  - a pre-designated guardian,
  - the AIP is able to and indicates a preference for a guardian
  - a named health care surrogate
  - a family member or friend willing to serve as guardian of the property
  - a family member or friend is willing to server as guardian of the person
  
- Limited Guardianships - A mechanism for adjusting the limits of a guardianship needs to be efficient and uncomplicated, but must also be fair to the individual in guardianship. If the ward's capacities continue to decline, the guardian can seek a re-evaluation by the original evaluator and can submit that to the court. The judge would have the discretion to hold a new hearing or the judge could make the necessary adjustments to the guardianship order.
  
- The surrogate decision maker in lieu of a guardianship – when a family member or friend is willing to serve as a surrogate decision maker in lieu of a guardianship, and the court allows it, the court should issue a document recognizing the authority of that person to make personal and financial decisions for the incapacitated person as needed. This would not be needed if there is a durable power of attorney but would be needed for the person's authority to be recognized in handling financial matters and other matters for the IP.
  
- The court should rely on the health care surrogate decision maker laws or alternatively the surrogate decision maker laws defined for the probate or similar court in

determining the priority of family members to serve as surrogate decision maker or guardian.

- If the guardian of the person and the guardian of the property are not one and the same, then the guardianship of the property orders must specify the budgeted amount per month that is ordered to be provided to the guardian of the person for the care of the IP. (We have heard of instances where one person is guardian of the property and the other is guardian of the person and the guardian with control of the property will not provide funds for the care of the ward to the guardian of the person).
- If any of the agent or friends and family named above for any reason are prevented from being the guardian or surrogate decision maker, the judge must put the reason in writing on the record and if that person is named in any of the advanced directives (POA, trustee, healthcare surrogate or pre-need guardian) then, that person should have the right to appeal the decision to use the assets of the ward to file the appeal (unless he or she has been convicted of abusing or financially exploiting the AIP). In the event any of these person named above or family or friend is unwilling or unable to serve and the court refuses to appoint them then, that reason must also be documented on the record and the next available surrogate family member or friend should be given the option to serve.
- Family Elder Care Tax Rebates for Family Guardians and Surrogate Decision Makers<sup>12</sup> – The cost of caring for a loved one in need can be devastating to a family emotionally and

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<sup>12</sup> The cost to me to be a guardian was tens of thousands of dollars. I have spoken to other family members who became guardians and suffer the same cost and mental anguish. A woman in Oregon is a guardian for her brother and she is being sued for legal fees by two guardians and the state Public guardian will not take guardianship of him. I have been a guardian in two states and a representative payee. The cost and burden of doing paperwork and struggling with court rules that have

*(footnote continued on next page)*

financially. Private guardians are charged exorbitant fees but the family guardian is forced into a complicated system that demands great time and resources. Their altruistic efforts should be rewarded. Any family guardian and/or surrogate decision maker who agrees to take on the responsibility for caring for a loved one should be entitled to tax rebates or deductions. This will encourage more families to make the sacrifice and care for Mom and Dad.

#### EXAMPLES

For Example: A woman in Florida named her niece as her power of attorney and pre-need guardian. The woman was put into an emergency and then permanent guardianship and even though the court had this information on the niece a professional guardian was appointed and the niece was never even noticed of the proceedings. This is what happens all the time as indicated in a number of the comments on the petition and other stories and articles in the appendices of this document.

In a Florida, case a man (John) was living at home suffering from early dementia. John had a companion (Mary) of 9 years who had her own home but spent most of her time with her friend's home and moved in with him to help him. John had two nieces who were angry because they were taken out of the man's will because of how they treated their mother on her deathbed. They came to Florida to see their uncle and ended up initiating a petition for guardianship unbeknownst to their uncle or his friend.

John was given a 20-hour notice of an incapacity hearing. He and his friend (both in their upper seventies) who was his power of attorney, trustee and named guardian, attended the

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no interpretation make it very hard to be a good Samaritan. Let's make it affordable, and helpful – not hard and cumbersome and most importantly frightening to be a guardian.

hearing. The judge appointed a guardian at the hearing who escorted him to a locked Alzheimer's facility where his was held for seven weeks without any visitors. At first, John would sneak a phone from the facility and go into the bathroom to call Mary begging her to come and get him and saying he would sneak out and meet her at the corner. John knew he had a problem remembering things but he was competent. John got a psychiatric evaluation 4 weeks after the hearing. He was worth well over a Million dollars.

John and Mary had some joint assets including a safety deposit box with valuable coins among other things. Mary was told by the attorney for John's trust who now became the attorney for the guardian and by the guardian that she would have to turn over the contents in the safety deposit box but could keep only those items for which she could produce receipts. They explained that the money would go to take care of John and asked her didn't she want him to get good care? They said if anything were left that it would go to charity. Later when the guardian came to sell all the contents of Frank's home, they were nice enough to offer Mary a chance to purchase items first. Mary purchased some items that had sentimental value to John and paid to get back items she had given him as gifts.

I received a frantic message one day that this woman needed to contact me. I got a hold of her and she pleaded with me to remove her comment that she made on our petition site. She said the lawyer told her that the guardian saw what she posted on the petition site and on another blog site and she was not being denied visitation. Of course, I removed the post. Mary is in her seventies and lives at home. John doesn't call anymore asking to get out. He has been drugged up on Zyprexa (which is contraindicated for elderly with dementia) and other drugs for depression. He watches TV, eats, and sleeps. The guardian has not gone through all the cash yet and right now Mary is still the Trustee. She visits John but doesn't say too much because she doesn't want to lose her right to visit. (The names have been changed to protect the identity of the parties)

*(Note: there are numerous examples in the comments and stories attached in the Appendices)*

## 1.6 Dealing with Disputes between Family Members

### THE PROBLEM

Family conflict has been around since the days of Adam and Eve. We are never going to get rid of it. When a loved one's health is failing and a decision needs to be made about their care or placement in a facility it is already a very stressful time for family members. They are scared, worried and when that person is suffering from cognitive disorders it is even more difficult for everyone to agree on what their loved one really wants so you have even more conflict. Arguments that should be dealt with around the dining room table come to the courtroom instead where conflict escalates when attorneys are hired and outsiders are brought in. Many family members and friends spend thousands of their own dollars trying to intervene in an abusive or fraudulent guardianship.

The problem is that the Guardianships have turned family conflict in matters of elder care into a lucrative money making opportunity<sup>13</sup>, after all the more conflict in a legal arena the greater the opportunity there is to bill. In the skillful hands or the right predator, guardianship can be and is used as a legal license to put a person into captivity, to fleece their estate and to neglect and abuse them and it all appears to happen with impunity because the witnesses are silenced and the victim can't speak. There appears to be no reporting or investigative process for guardianship abuse. It is so torturous to the ward's loved ones that many end up suffering from deep depression, anxiety, posttraumatic stress and it can all last for years after their loved one has passed on. Some victims never recover

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<sup>13</sup> There appears to be a direct relationship between the amount of assets in an estate and the cost of guardianships, usually blamed on family conflict or dysfunction. Cases where an AIP has millions costs millions, cases where an AIP has hundreds of thousands of dollars cost hundreds of thousands and cases where the AIP has nothing cost almost nothing. One must wonder if the cost is due to conflict in rich families or is there really more about looting the assets and using the family as the scapegoat.

and others find themselves fighting a continuing battle as heirs where some of the same perpetrators of the guardianship abuse surface wearing a different title or hat.

#### RECOMMENDATIONS

- IT IS TIME TO GIVE FAMILIES A SEAT AT THE TABLE IN GUARDIANSHIPS.

There would be a lot less conflict, if prior to ever going to court there was a discussion among family members, possibly a geriatric specialist, the family physician, and a social worker, to discuss the problems an elderly person has. At this conference, family members could collectively come up with recommended solutions and even alternatives to guardianship. If a guardianship is later determined to be necessary, then one of the outcomes of this family planning meeting would be a guardianship care plan, that everyone could agree to. When all interested family members, have a chance to participate and have the opportunity on the front end to provide input to a guardianship care plan, there may be less conflict.

After a family conference, some family members may feel comfortable stepping aside and allow another to take over, especially if they know what the concerns of the other members are and if they can have input in the process. This would not be a mediation and, there should not be any attorneys involved in this conference as it is too costly and would only result additional future fodder for a round of “he said, she said” costly litigation and legal maneuvers. This meeting should be an off the record family get together, hopefully as far from a courtroom as possible, and in a family member’s home. It should take place before any petition is acted on by the court, so that the family has a voice and a care plan can be provided to the judge and to assist the judge with making the best decision for the ward.

- The guardianship surrogate decision maker laws should include the process to be used for resolving disputes between family / surrogate decision makers. Many of the health care surrogate decision maker laws have some mechanism defined for resolving disputes.

- If a dispute still exists within one peer group (i.e. : two children) then each person in dispute could be required to attend a training session on “Being a Surrogate Decision Maker”, “Being a Guardian” and “Elder Care Responsibilities”. They should also attend conflict resolution class. Each party would have to pay a reasonable fee for the training unless the court waives the fee.
- The parties in dispute should attend a mediation session and if a decision still cannot be reached then the parties could agree to some sort of co-guardianship or could agree to a neutral third party (agreed to by both parties) to act as a tiebreaker in the instances where a decision cannot be reached.

#### 1.7 Guardianship Should Always be the Very Last Resort

##### THE PROBLEM

A petition for guardianship immediately sets up a situation that requires an invasion of the senior citizens’ privacy with an involuntary psychiatric evaluation and intrusive exams. Once the ward is appointed a guardian, the guardian frequently asserts a defense of the ward’s privacy claim to fend off discovery of abuse by the guardian.

The probate court/guardianship court is a “Court of Last Resort,” yet today it seems with reports of family conflict, allegations of abuse, allegations that an elderly person might be being exploited, that they might need help, or with APS referrals that the court of last resort is becoming the court of first resort.<sup>14</sup> Ideally we shouldn’t have people going to the probate

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<sup>14</sup> In some cases, existing laws already provide some of these safeguards but they are not being honored in the probate courts.

or similar court to determine if that is where they need to go to get help for a person in need. In other words, you don't come to court to find out if you belong there.<sup>15</sup>

A family decision to decide how to help Granny or Mom or Dad and to determine what help they need should never start in a courtroom. By then it is too late, the ball is rolling, and it generates enormous conflict, stress and cost for everyone especially the poor person in need. An accusation by one brother that another brother might be taking grandma's money or cashing her SS checks should be investigated by the proper authorities with the proper power to stop it, prior to assigning a guardian<sup>16</sup>. All alternatives for care and support should be investigated prior to petitioning for guardianship. A court of Law to resolve family care issues should always be an extreme measure used only as the last resort

#### RECOMMENDATIONS

- Ensure all less restrictive alternatives to guardianship are investigated (outside of the guardianship system) by family members with assistance and financial support available where needed, before a petition for guardianship can be filed with the court.<sup>17</sup>

<sup>15</sup> Many times, to avoid such complications, guardianship petitions are intentionally initiated in secret without notice to caring family members or even without the presence of the proposed ward. In these cases, the guardians claim that the "whereabouts of the family members are unknown," such as in the Conservatorship of Nancy Golin.

<sup>16</sup> When we ended up in a guardianship court with someone stealing money, the guardianship court did not have the power to take action against the crime or to prosecute it. The perpetrator knew this so he just kept on taking the money with a few slaps on the wrist. Of course, the court should have had the assets frozen but sometime it takes time. Theft is a crime ... it needs to go to the criminal justice system.

<sup>17</sup> There are potential problems with probate investigators doing this as in the present system, because in cases we documented, 1) they are often court bureaucrats not trained or equipped for demanding investigative work, 2) if a private guardians' attorney falsely claims the family members' whereabouts are unknown the family will not be considered, or 3) where a probate investigator has a history of past employment with the "professional" guardians causing a conflict of interest.



- A petition for guardianship of the person should be denied if there is an existing durable power of attorney, pre-need guardian or health care surrogate named or willing to serve as preneed guardians, trust or other financial surrogate decision maker named or available to serve.
- The appointment of a guardian should be voided if it appears that the above requirements were not met in the guardianship proceedings, and family members who were denied their rights to care for the loved one should retain standing to petition for reversal and appeal notwithstanding the guardians' wishes.
- Use Family Surrogate Decision Makers instead of Guardians.
- Adult Protective Services needs to be reformed so they can protect seniors and disabled adults and keep the out of the Guardianship arena.
- Establish senior community support services<sup>18</sup> and provide geriatric case management services in the community
- Require any petition for guardianship to include a sworn statement signed by the petitioner and the petitioner's attorney under penalty of perjury or subject to contempt proceedings that affirms a good faith effort has been made to investigate all alternatives to guardianship and require supporting documentation to be submitted.

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<sup>18</sup> For example over the past three years I have found it extremely helpful working with social workers and discharge planners at hospitals who assisted us with finding the proper care and placement for my 95-year-old ward and also with my grandson who was born prematurely. They pointed our family in the right direction and let us know what services were available in the community. The same type of service is needed for family members and loved ones to help guide them in finding solutions to help an elderly person in need.

### 1.8 Develop and Fund Community Based Support Services for Senior Citizens and Their Families

#### THE PROBLEM

When families and friends of an elderly or disabled person in need go looking for help they often don't know where to turn and end up going to an attorney, APS or some other agency who recommends that they file for guardianship when there could be many less restrictive options for support and help in the community. Getting advice from an attorney on what to do to protect a loved one is cost prohibitive for many families.

state and Federal Government agencies are dumping elder abuse and financial cases into the guardianship courts.

- APS routinely refers cases of elder abuse and family reports of an elderly person needing protection to the guardianship courts for protection. On theory is that APS focuses their limited resources more on the indigent and those victims with assets are sent to the guardianship court.
- The AG's office, as a rule, just does not go after abuse and financial exploitation once a guardianship commences. They say it is a civil matter so people end up in the courts and end up in a lifelong nightmare while more exploitation occurs. In other instances, when the victim is old and a complaint is filed, members of the criminal justice system tell the family to file for guardianship or tell them to call APS who tells them to file for guardianship.

Initiating an unnecessary guardianship petition does a terrible disservice and injustice to the elderly person who is forced to have psychiatric evaluations and to suffer an invasion of their privacy that will destroy the family and that will destroy the citizen's life.

It would seem that a courtroom is the last place family members should go to find out if someone is suffering from a mental disease or illness. It is costly, it is invasive, it is

destructive, it is abusive, and there are less expensive alternatives available if you know where to go.

Seniors and their families need somewhere to go to get advice and guidance. Today there is no central formalized place to go for advice on helping and elderly family members and we have more and more people retiring. Senior Community Centers could be one way to address this problem.

#### RECOMMENDATIONS

- Offer senior counseling and case management services<sup>15</sup> (in the community and outside of APS) that can provide guidance and assistance to Family members investigating community care, placement alternatives, and help with other elder care issues to assist family members in need.
- When family is available and willing to help, there should be a way for them and other interested parties including the person in need to get geriatric and elder case advice from a social worker or someone with experience with aging issues and who can help them investigate alternatives for care that are less restrictive than guardianship.

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<sup>15</sup> In my case (the Mellinger Guardianship Matter) in Delaware after we reported abuse and neglect to APS instead of intervening and getting the woman to a hospital as we had begged them to do, they told me I had to file for guardianship. I later discovered that at the same time they were encouraging the abusive caregiver to file for guardianship. This leads to a fiercely contested and expensive battle. It set up a nightmare. APS should never send cases to the guardianship court for a battle to be fought out in the courts. In the end the woman was removed from this man's home because of neglect and abuse but the battle in the court once begun as everyone knows won't end till the money runs out or in my case until after the money runs out.

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- Through community counseling and support centers or services (some of this could even be offered on-line) families could be directed to the appropriate agency, facility, home health agency or other community service organization to help them.
- Perhaps grants could be made available to fund setting up Senior Support Centers or to support those already in the community.
- Provide oversight and funding for volunteer programs that help seniors.

**1.9 The Guardians Process should not be initiated to Investigate Allegations of Financial Exploitation and Abuse. These reports should be first investigated by the Criminal Justice System or Adult Protective Services.**

**THE PROBLEM**

Sometimes a guardianship petition is pursued because a person reports that an elderly relative is being taken advantage of financially, or that another person is trying to steal money from the elderly person. We hear cases where a family member or friend reports a suspicion, or even provides proof of financial exploitation or financial impropriety to APS, to the criminal justice system, to a financial planner or to an attorney, and they are told they should file for guardianship.

When a guardianship petition is initiated to gain control<sup>20</sup> of an estate, or to stop the theft of an elderly person's assets, it sets in motion a severe invasion of privacy for alleged victim of

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<sup>20</sup> Sometimes, one family member is mishandling or taking money from an elderly family member, other times an elderly person may be have given money voluntarily to a family member. What happens invariably is someone gets rightfully or wrongfully upset and accuses the person of stealing. Sometimes it is the guilty party that hire an attorney and rush off to file for guardianship to gain control and keep the other kids at bay and other times it is the family member who is legitimately concerned who is trying to protect the estate who contacts the police or APS or an attorney and is told that they need to file

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the crime. Anyone can allege that the person is incapacitated and file a petition. Often times an AIP is assumed to be incapacitated, just because they are old. Where is the criminal justice system and where is APS? Why aren't these allegations of criminal conduct being reported to them so they can be prosecuted in a criminal court?

The victim of the alleged crime (because they were robbed), is forced them into intrusive and likely unnecessary psychiatric evaluations, humiliation, degradation and shame. They may not have any capacity issues at all, they are just rich and old and an easy target for some greedy perpetrator of this abuse.

Allegations of financial exploitation should never go to the probate court to be investigated, they should be immediately referred to the criminal justice system and APS if there is an allegation of financial exploitation or elder abuse and neglect.

It should not be the guardianship system in probate courts that is used investigate crimes against the elderly. It is the grossest violation of a person's rights and lacks any semblance of decency or justice to force a victim of the crime to pay for the cost of investigating the crime, just because they are old and weak and can be put into a guardianship. APS and the criminal justice system have a duty to protect citizens from abuse, neglect, and financial exploitation. They have the power to protect the victim of crime and to pursue justice at no cost to the ward.

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for guardianship. Other times evil predators use the guise of protection to seek, a petition for guardianship claiming the person is vulnerable when in reality they just want to grab the money. In all of these instances, the person who owns the money may be perfectly competent and only be old.

The probate and other guardianship courts should immediately send all petitions initiated to protect assets from theft to the hold bin and refer the matter to the AG's office or APS to conduct an initial investigation. If the person's assets need protection then APS or the criminal justice system should be able to protect the assets (one thing is certain, they won't be protected in the guardianship system). The state should pick up the tab for the investigation of any criminal matter and should be reimbursed for the costs by the criminal who committed the crime through restitution and fines or send the criminal to jail.

In the upside down world of injustice in guardianships, the victim of crime is forced involuntarily to pay the price for litigation to pursue crimes committed against them, even though they almost never result in any conviction or even a penalty for the perpetrator of the crime. This puts the victim in the absurd situation of having to pay for the wrongs committed against him. Nobody is stopping this madness, because it is so lucrative to the professionals, who are being involuntarily paid by the victim, and everyone knows the taxpayers will support the elderly victim in the end.

HR3040 is a bill to combat fraud and encourage seniors to report when they have been a victim of fraud. If I thought there was even a remote possibility I could be found incompetent just because I was old, then why would I report that someone took a thousand dollars from me. If I knew that in the end it would cost me my entire estate, my rights, my liberty, my dignity, my family and maybe even an early demise; and that I would suffer public embarrassment and shame and have some court appointed psychiatrist trying to figure out if I was sane or not, would I report the crime? I think not, I think I would just keep my mouth shut and hope for better luck next time.

In thousands of guardianship cases, all over America, in our state courts, this is exactly what is happening. While the criminal justice system sleeps, cases linger for years in a court that is powerless to prosecute the crimes, with allegations that someone is taking money from an elderly person. Criminal allegations of abuse, neglect and theft are not prosecuted; instead, Trusts are broken, assets seized, rights denied, power of attorneys ignored and endless legal maneuvering, all creating the illusion of seeking justice, deliver constant paydays for the

professionals. The senior citizen loses their rights, all their property, leaving nothing for the grandkids and the family is destroyed. After they spent a lifetime, saving for a rainy day, the day finally came, and then everything they saved for is taken from them at alarming rates. These are the bad guardianships that must be reined in.

#### RECOMMENDATIONS

- Insist that any allegations of financial exploitation and theft, be immediately referred to the criminal justice system for prompt investigation and a finding report or indictment. The AG's office should have the power to freeze the assets temporarily or at least some of them, if there is imminent risk of harm while the investigation is ongoing. Immediately table any guardianship proceeding or the incapacity process until the AG's office completes their investigation. As the Chairman, Congressman Scott, mentioned during the hearing on HR 3040, if someone takes your credit card and is charging against it, you report it and the bank put a freeze on the credit card. Guardianship for cases of financial exploitation is analogous to putting the person who owns the credit card in jail to solve the problem, and then letting everyone charge on their credit card. We need to "cancel the credit cards" in guardianships if financial exploitation is alleged.
- Adult Protective Services, as an agency, needs to be reformed, and their employee need to be trained so that this agency (that operates in the name of protection) can actually protect adults instead of dumping the problem onto the probate courts. APS routinely send cases into the guardianship courts where the "kids can duke it out," or where the poor victimized senior is forced to pay the most awful price imaginable for their "protection" (the loss of their dignity, freedom, wealth and a destroyed family), while APS could have and should have intervened and provided protection through less restrictive measures. If the agency cannot protect vulnerable adults, then it should take the word "protection" out of its name. Of course, once the professionals get to the guardianship court, they appear to more intent on protecting the ward's assets for the payment of their own fees then for the benefit of the ward.

- The use of a ward's assets to pursue investigation of allegations of abuse and exploitation within the guardianship/probate court should be prohibited! Why are we making the victim involuntarily pay because he or she was abused or exploited?
- The deliberate and flagrant use of the guardianship protection system by anyone to steal from a helpless elderly citizen is a despicable crime. When a group of persons conspires to steal an estate under a guardianship, it should be treated as a crime<sup>21</sup> and prosecuted as theft. I hope this committee can help to ensure that our criminal justice system take a firm stance against the financial exploitation and theft, that is occurring in guardianships.

**EXAMPLE**

In the case I outlined above in the Delaware case, we spent two and a half years in the civil guardianship court pursuing what should have been pursued from the onset in the attorney general's office. The lack of action by the criminal justice system on the front-end, cost over one hundred thousand dollars in the guardianship court. In the end, the ward picked up the tab. It is as if you are robbed so you go to court to be robbed again, but this time you are robbed ten times over. All allegations of financial exploitation need to be taken seriously and investigated at the onset. No ward should be required to foot the bill<sup>22</sup>. In a case, I was involved in, we pursued recovery of assets that were

<sup>21</sup> There is a preponderance of evidence in some cases that these crimes against the elderly are being organized and perpetrated by groups of individuals and several RICO Civil lawsuits have been filed in one state. Family members complain that these crimes are racketeering in some cases.

<sup>22</sup> When the Attorney General got involved and we finally got a criminal conviction of financial exploitation in the case of Mary Mellinger in Delaware, as the guardian, I prepared the victim's impact loss statement. I listed the costs incurred in the "guardianship court" pursuing the accounting and the financial exploitation. This included depositions, subpoenas of bank records, a costly hearing, bringing in experts, an ad litem appointed specifically to look into the matter of the missing funds. The cost of investigating the financial exploitation cost the ward tens of thousands of dollars. None of this cost was ordered to be paid back in restitution. A comment was made to me by the Victims of Crime representative that the costs I referred to could have been avoided because the criminal justice system does not charge the victim to investigate the crime. So the victim incurred close to \$70,000.00 of cost directly due to the financial exploitation crime and close to \$60,000 due to the abuse and neglect charges but could never recover the cost in restitution for the crime. This is not justice. I never thought  
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converted, in the guardianship court. There was discovery, hearing, subpoenas of bank records, and finally a judgment was issued for the return of the assets. When the criminal justice prosecuted the matter, and a guilty plea was forthcoming, none of the costs incurred in the guardianship matter to investigate the financial exploitation crime, were included in the restitution order. I was told the matter should have been referred to the criminal justice system from the onset where the victim would not have to pay to investigate the crime. Of course, I did go to them months earlier, but they were waiting for the civil matter in the guardianship case to be closed out. My case is probably one of the few where, thanks to the commitment and dedication of a detective with the Elder Abuse Task Force in Delaware, we were able to get a grand jury indictment and the criminal was prosecuted and forced to pay back some of the money he took. I am extremely grateful for the work that they did to get some justice for us. Unfortunately, the victim, and in this case the "family guardian", paid a huge price for the crime. All cases of financial exploitation, abuse, and neglect, in guardianship matters should be immediately referred to the criminal justice system and to APS for prosecution and should not be pursued with the wards assets in the guardianship court.

***How can the government improve its monitoring of court appointed guardians to stop them from abusing the elderly?***

Many American private citizens in guardianships are being neglected and by either their caregivers, nursing home personnel, guardians, attorneys or others. Many of them are being financially exploited without any knowledge that their estates are being looted under a

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this could happen but from report that I have heard, it happens all of the time. There is no way for the victim of crime to recover the losses incurred in a guardianship matter if a crime is committed, so get it out of the wrong court and into the criminal justice system.  
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system intended to preserve and protect. These citizens have lost the right to recourse and have lost the right to even voice their complaints, or call the police or authorities. Many family and friends who try to complain for them, find themselves losing the right to visit and/or find their complaints fall on deaf years of agencies and persons who believe they cannot get involved when there is a guardian.

A study needs to be done on a national level to gain a better understanding of the problem. I believe there are two (different) roles in the monitoring process: one for the state and one for the Federal Government. Both roles can be instrumental in helping to protect the incapacitated and vulnerable wards and in the end the taxpayers. There is a serious need for a national data repository of information on citizens who have been stripped of their constitutional rights.

#### THE PROBLEM

No one really knows how many people are in guardianships. There is a real need to collect uniform data to address this problem. With the aging of the baby boomer generation and with more and more people being diagnosed with mild to advanced cognitive disorders, the will be more not less guardianships under the present system.

While there are many good guardians who take excellent care of their wards, there are many who are in it for the money or who just don't seem to be concerned with the condition of their wards. Many family members and media reports have reported situations where elderly and disabled citizens in guardianships are being abused and neglected. Many are drugged with Psychotropic drugs (some of which like Zyprexa are being given to elderly citizens with

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right court from the onset. They are right, it is the criminal justice system's job, and we need to get them involved on the front end.

dementia where it is contraindicated). Many are treated with medications for depression. I too, would be depressed, if I lost all my rights, was kicked out of my home, was forced into a guardianship, and denied visitation by my family.

In guardianships, homes are sold pre-maturely; heirlooms are tossed aside or auctioned off and family members are denied access to loved ones and to the courts. Abuse in nursing homes is often not reported by the guardians who don't see it as they do not visit their wards as a family member would. We have heard many stories of family members trying to report abuse of a loved one in a nursing home only to be told that they have to go through the guardian. Some vulnerable citizens may not realize they are being neglected or abused, and it is very painful for family members who are forced to watch silently from the sidelines, powerless to intervene. A family member being denied access to a loved one because they complained is one of the most painful stories we hear. Some family members (including spouses) do not know where their loved ones have been placed. Some guardians are seizing and spending community property that belongs to a married couple where only one is in a guardianship<sup>23</sup>.

Taking care of a ward is hard work, but there is no excuse for deliberate and intentional abuse and neglect. The exploitation of an incapacitated person's estate is unacceptable and unconscionable. This is the powerful preying on the weak and it should be stopped. I am not sure that anyone has really done a study of the problem. How is it possible that guardianship for an indigent person might cost a thousand or two a year, while a guardianship for citizens with significant assets can cost hundreds of thousands, even millions per year until

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<sup>23</sup> We are hearing of more and more cases where one spouse is in guardianship and the other spouse, who may or may not be caring for the ward, is forced to turn over community property, or the property (where 50% belongs to the competent partner) is seized by the guardian to pay for the care of the incapacitated partner.

the assets are depleted. Often the cost is blamed on the family members (ongoing family conflict, visitation issues, and others). What is not explained is how we come up with the enormous disparity in costs from one case to another. Cases can cost anywhere from less than \$10,000 to millions. The wards in the cases that cost a couple of thousand benefit no less than the wards in cases that cost millions. It becomes clear that guardianships cases are being used to bleed the estates dry.

#### RECOMMENDATIONS

##### 1.10 Investigate the Problem of Financial Exploitation and Abuse in Guardianships

- Conduct a study of the problem of financial exploitation and waste so that the proper checks and balances with oversight and regulations can be crafted and put into place to end this abuse of our elderly. No society should have a legal system that renders citizens utterly powerless and then allows them to be robbed and abused.
- Limit the powers of the guardians. No guardian should have the power to:
  - Issue a DNR, without consulting with family
  - Force a ward to take dangerous contraindicated drugs or experimental drugs,
  - Force a couple to get a divorce or break up a marriage,
  - Force a ward to have electro-shock therapy,
  - Deny a ward access to a phone,
  - Deny a ward access to family and friends,
  - Deny access to worship in their own faith,
  - Force involuntary sterilization,
  - Have an executor of an estate changed
  - Make arrangements for funerals without family involvement,
  - Agree to surgical procedures without at least trying to explain it to the ward,

- Deny a mother the right to attend a funeral or say goodbye to her son before he is buried.
- Have unlimited access and control of millions of dollars when only several thousand are needed per month for the care of the ward.

These are just a few of the abuses of power by guardians that we have heard of in guardianship cases.

- Study the ways that our criminal justice system can better be used to prosecute these crimes against vulnerable citizens. Unless they have lost their citizenship, they should still have the right to justice.
- Study the problem of neglect and abuse so that oversights and controls can be put in place. These oversights are needed not just over the guardians, but also the guardianship processes that allow the abuse to occur.
- Develop a reporting system for family members, who are the “natural protectors” for family members and are the best watchdogs over abuse. They must have the right to be heard, to report abuses and to seek relief for their loved ones.
- Study the criminal elements and the fraud that is occurring in guardianships. There is no other way to understand the root causes in order to construct meaningful solutions to the problem. There are too many media reports and reports by private citizens that something is going on that is very wrong. Vulnerable incapacitated persons are being forcing them into guardianships by unscrupulous persons or entities intent on seizing their estates. The intentional looting of the assets of a helpless human being, who has been stripped of any right to fight back or to even to complain, is truly one of the most pernicious crimes imaginable. In the end, it is the victims, the families, the heirs and the American taxpayers that pay the price, while the perpetrators get away with it most of the time.

**1.11 Monitor the Guardians and the Guardianship Process**

We have heard for years that we need to monitor the guardians. Monitoring is a big part of the problem with guardianships. The courts have neither the time, the money, nor the resources, to do the monitoring that most legislatures have assigned to them. There are also many other problems in guardianships that require monitoring. It is almost as if the cases need management and monitoring (to protect against abuse and waste) just as much as the guardians (who are often not appointed until months into the guardianship process).

While we keep hearing that the guardians need to be monitored, there is very little discussion about the need to monitor the guardianship process itself. Often the process itself is broken and abused. There are good guardians who try to do the best that they can with their cases, but others are abusing the process and breaking the process and rules. We hear many reports of estates being fleeced, where most of the money went to attorney fees. Some guardians who do object to the attorney fees, may not have the resources to fight back or may not wish to use the limited assets of the ward to recover excessive fees.

**RECOMMENDATIONS**

- Someone needs to look out for the interests of the ward and the interests of the public from the time a petition is filed to catch and stop abuses from getting out of hand.
- One possible solution is to move the monitoring out of the courts and to put it into mechanisms outside of the courts.
- Create a Mechanism for the Reporting of Guardianship Abuses and for the Investigation of Reported Abuses. There has been much discussion about the need to monitor guardians. Usually this is done through a self-reporting system, where the guardian reports the financial information each year and offers a status update on the ward. There appears to be no real way for citizens to report abuses in the

guardianship system. For any monitoring system to really work there must be a mechanism for abuses to be reported. This is desperately needed with guardianships, as APS and the criminal justice system do not listen to reports of abuse.

**1.12 Establish a Office of the State Guardian to act as a watchdog over the Guardianship System(s) within that State**

Since all of the wards are in reality wards of the state, then it makes sense that the state have an office of the state Guardian. With proper oversight and controls, it could be ultimately responsible for all guardianships in the state. There is no reason for a person with assets to go into a lucrative private guardianship, where no one is watching, where the guardians and their attorneys can fleece the estate leaving the ward to be supported by the state and Federal dollars. The state can play an important role in protecting the ward and the taxpayers.

**RECOMMENDATIONS**

- If there is no named fiduciary, (Power of attorney, guardian, or other fiduciary) then the Office of the state Guardian would become the fiduciary for the administration and management. This office would be charged with "preserving and protecting the estate" for the incapacitated person and for their designated heirs.
- Fees for services provided by the state Office of the Public Guardian should be fixed and be based on the work to be done, not the size of the estate.
- There should be an established fee schedule for all guardianship services that is published on a publicly available website along with the rules that allow a waiver of fees for indigent wards. The schedule should include a schedule for fees or rules for limitation on legal services that could be charged to any estate. A model that comes to mind, is the VA Uniform Guardianship Code that has been adopted by many states and places limits on fees and services. The office of the state Guardian should coordinate with the state Legal Aid offices and/or other legal services providers.

- The guardian of all wards could be the state Public Guardian's Office. The office of the state Public Guardian could also, alternatively, hire private guardians and be responsible for managing and monitoring the estate of the wards.
- Private fee for service guardians, should be hired by, and would report to the office of the state Public Guardian.
- Incapacitated individuals who have sufficient assets and who can afford to pay for services would pay based on the schedule of fees. Incapacitated individuals who are indigent and who could not cover these costs would have their fees waived. The advantage of this model for the Public Guardians Office is that it would be better funded and could help more people in need.
- Unless a family member or friend has been named as the fiduciary, the estate would go under the Office of the State Guardian that exists outside of the court.
- Establish a state and National Data Collection and Data Reporting System with the use of modern technology, to be used to help monitor and ensure the protection of the wards and their property.
- Ensure that family, closest friends of a ward and any surrogate decision makers have ability to file complaints of abuse, neglect, and/or financial exploitation of a ward under guardianship and have standing to sue or to appeal court decisions.
- Ensure that the family, closest friend of a ward or a senior advocacy group has standing to file an appeal in the event an unwarranted guardianship is adjudicated
- Ensure that a guardian of a ward is never granted immunity from breach of fiduciary duty, and that the family and/or closest friend shall have standing to sue on behalf of a ward in guardianship,
- The family member is the natural guardian and should be the "de-facto" guardian and the default surrogate decision maker for a person in guardianship. Ensure they have



the right to report abuses to Adult Protective Services, to the criminal justice system, to the Office of the Public Guardian, or to the probate courts, if they believe a ward is being abused and/or neglected under a guardian.

- At all stages of a guardianship matter, the individuals listed on the list of possible surrogates<sup>24</sup> shall retain standing to file complaints, to testify and to be able to call witnesses at any incapacity or guardianship adjudication hearing.

#### 1.13 A National Database for Guardianship Data Collection and Reporting is needed

##### THE PROBLEM

- WHERE ARE ALL THESE PEOPLE WHO ARE IN GUARDIANSHIPS? Every day, I ask myself this question and worry about private citizens who are lost in the guardianship world. How are they doing? Are they being abused, forced into slave labor, fed, and clothed, or are they locked away in some basement like the cases that have reported in the media.
- In a case in Michigan, a registered sex offender was appointed as a guardian of a mentally handicapped man who was put into guardianship. For two years, the guardian abused his ward until finally the victim came forward, and somehow and got help. In Minnesota, a ward was forced to subject to regular electroshock therapy against his will. He fought long and hard until finally he got a judge to overrule the order. In an Illinois case, a guardian filed a motion to have her niece sterilized with tubal ligation so she would not get pregnant. The young woman who was 29, hoped

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<sup>24</sup> Each of these codes must be followed in not only determining least restrictive alternatives but also in ensuring that any surrogate and/or family member retains the right to Appeal guardianship decisions.

to marry and have a baby one day. The judge approved the motion, and now Illinois has a separate law allowing guardians to have their wards sterilized.

- How can we have a system that strips human beings of all of their federally guaranteed rights and not have a system to keep track of who they are or where they are?
- Where are all these people who are in guardianships? Some courts are keeping track and some are not keeping track of where the wards live and even whether they are living and whom their guardians are. A centralized data repository could help with monitoring to ensure that these citizens are not being abused. This should be a national database in order to deal with interstate issues involved when people move from state to state.

**1.14 The Federal Government should take a national interest in the protection of private citizens under guardianships because:**

The 14<sup>th</sup> amendment rights of individuals in guardianships are being violated by a state laws and statutes that deprives them of liberty and property without due process of the law.

Guardianships cost the federal government in state matching Medicaid dollars and SSI dollars when an elderly person becomes prematurely improvised due to the high cost of guardianship abuse.

The federal government should have a role since many guardianships involve interstate matters, the transfer of assets and sometimes wards across state lines.<sup>25</sup>

Guardians usually take control of the Social Security & Medicare dollars.

Many heirs could be future burdens on taxpayers due to guardianship exploitation of their parent's estate<sup>26</sup> and the loss their inheritance<sup>27</sup>. We have heard from many family members<sup>28</sup> who have lost all of their savings, their jobs, and careers while struggling with a guardianship matter. Today they are jobless; tomorrow they will be burdens on the state.

Despite the fact that many Veterans should be protected under the Veteran's Administration's Uniform Guardianship Code, the states are still subjecting veterans to guardianship that are financially exploiting them.

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<sup>25</sup> In the case of Lillian Glaser, the son lived in Florida, the daughter in Texas, the guardianship matter was first handled in Texas where funds were misappropriated and the woman was taken from New Jersey to Texas and finally the guardianship ended up in New Jersey.

In my case, the abuse of my foster mother began in her home state of Pennsylvania where her agent under a power of attorney essentially dumped her into a home in Delaware. Here she was financially exploited with the assistance of a broker in Tennessee and finally she was moved to Texas. I have had to deal with attorney general's offices in two states and guardianship courts in two states. The criminal indictment and restitution order is in Delaware where her converted assets remain today. When she gets buried one day, it will be in Pennsylvania. There are many cases where exploitation is occurring across state lines.

<sup>26</sup> In Arizona a woman who had a 1.1 million dollar estate went into guardianship. Now all of her estate is gone and she is on Medicaid.

<sup>27</sup> Many children and family members with loved one in guardianships are spending their life savings fighting guardianships that are using their parent's money and their inheritance to fight them. With people living longer some the heirs to an estate of a person in guardianship are already retired.

<sup>28</sup> In my case in Delaware, where as a good Samaritan I spent over \$70,000 trying to help my foster mother, I borrowed against my 401K and took out a home equity loan on my home and then I was Laid off. My ward is destitute so I must cover her expenses and buy her clothes and personal items. We are still suffering financially from our nightmare in the upside down world of guardianship.

**RECOMMENDATION**

- The federal government should have a record of the citizens who have lost their Constitutional rights.
- Many wards are being discriminated against because they are disabled and/or old and are not being integrated into their communities under the integration mandate of Title II of the American with Disabilities Act<sup>29</sup>.
- A national database of all persons in guardianship should be developed and should be updated when a person is put into a guardianship. This database should include information on the guardian of the person, the guardian of the property and the ward's physical and financial situation at the time that they go into guardianship. This database should be updated periodically to reflect changes in the financial and personal condition of the incapacitated person. state courts could be given access online to this database to assist them with tracking the guardianships in their courts.

**1.15 Put Limits on the Amount of Property that is Turned over to the Guardian<sup>30</sup>**

- Another alternative is to create guardianship trusts that are administered by the state and are regulated. Limit the amount of property that is turned over to the guardian to the amount needed for the support of the ward.

<sup>29</sup> When a citizen is denied access to their money, they no longer go out shopping or to restaurants or to the malls. They become depressed and isolated under the stigma that they are incompetent or incapacitated and lose their dignity driving them into depression and isolation. They cannot choose where to go, they cannot drive, they cannot vote, they cannot contract, and most importantly to the guardian they cannot sue the guardian for any reason because to do so would require the guardians to essentially sue themselves. They are often forced into seclusion often locked up in an Alzheimer's ward.

<sup>30</sup> I interviewed over 20 people while writing this paper and asked, "If you had no family, no friends, and no durable power of attorney and if you were declared incapacitated, who would you rather have manage your money?" "Would you prefer a professional guardian or would you want the state to put your property in a trust that is managed by the state?" Without fail, they all said they preferred a state Trust fund to a private or professional guardian. They all said that guardianship trusts should be regulated.

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- Ensure that when a person is put into guardianship, a budget is submitted outlining the monthly costs for the person's care, housing and medical needs.
- Establish a guardianship trust system for incapacitated persons without any family, friends, or fiduciaries already named in advanced planning documents. Have the guardianship trusts regulated by the states with reporting to the National Guardianship Database proposed above. Have the guardianship trusts managed and regulated as any other financial instrument with trustees who are independent from the guardians and have no relationship to them.
- Establish a trust with the state or a state selected bank and put all assets of the ward into the trust protected from everyone except the state or the state appointed trustee. Provide enough money for the monthly budgeted expenses, for incidentals, for petty cash and for payment of guardian fees. The guardian fees should be set in stone based on a reasonable monthly fee not to exceed five percentage of the monthly amount of assets to be managed. Both the state and the federal government would have a vested interest in the protection of the assets as the end result of waste, fraud and exploitation is the cost in Medicaid and Social Security Dollars. In the case of Veterans and federal employees, their federal benefits are at risk.
- Ideally, the guardian of the person and property should be the same. If not, an expense account would needed to help pay for the care of the person. All other assets of the ward should be frozen and require court order and state approval to release funds.

**2 What are the criteria that judges use to determine if a person is incapacitated and in need of a guardian?**

According to the Statutes, Judges usually use the testimony of two or three medical examiners and may include the input from a social worker or some other person with elder care experience in rendering a decision. The process varies from state to state<sup>31</sup>.

**THE PROBLEM**

- Often the civil rules of discovery are not followed and due process is not given to the AIP. The law says the "incapacitated" person MUST appear at his or her own hearing. In many cases, they are kept away from the proceeding, (for example on a doctors' excuse such as it would be too emotionally distressing for them), violating their constitutional rights of due process. So the judges make their decisions without hearing from the AIP.
- The judge is often the judge and the jury as well the one asking the questions of the witnesses. Family members, and even the alleged incapacitated person, are often not allowed to speak. If they are, their wishes are often ignored.<sup>32</sup>
- In most cases the doctors never testify at the incapacity hearing; it is usually done from a written report without any opportunity for the AIP or his or her advocate

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<sup>31</sup> In reality though, through the use of temporary guardianships and emergency guardianships private citizens are often thrust in to guardianships that they never get out without an incapacity hearing until much later sometimes 30 to 120 days later

<sup>32</sup> In the guardianship matter of Yvonne Sarhan in a Florida court the woman was put into a guardianship with a private fee for service guardian when a family member was willing and able to serve as the guardian and despite the fact that the woman had two letters from two doctors (one court appointed) stating that she was competent the judge said "I'll decide if you are competent or not" and told her to take it up with her guardian.

(which they rarely have anyway) to cross-examine anyone much less the physician who is rarely.

- Another problem is that the standards of proof are vague and unclear. Diminished capacity or incapacitated is just too board of a set of terms (as discussed in section 1.1 above) and allow incredible leeway in the determination of incapacity.

***If a new standard such as having to determine a person is “mentally incompetent” is adopted, how should the courts deal with elderly people who suffer from “diminished capacity”?***

For those elderly people who have a diminished capacity and who are not mentally incompetent, there may be a requirement to provide assistance to the person for some aspect of the management of their personal and/or financial affairs.

#### **THE PROBLEM**

The term diminished capacity again is a very broad term as discussed (in section 1.1) above. It would be helpful if this term were more fully defined. When a person is declared incompetent, it is an "all or none" finding. This may contribute to the fact that there are so few limited guardianships. There should be a way to identify on a scale, the level of incapacity or diminished capacity.

Many other countries have already reformed their guardianship system and do not rely on the old English system<sup>33</sup> of protection for vulnerable persons. Sweden reformed their guardianship system to maximize autonomy, using a model where mentors are used to

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<sup>33</sup> In old English law, guardianships were established to guard the rights of someone else to inherit the lands later. People who were under age, or "feeble minded," or gamblers, or drunkards, were put under guardianships so they couldn't squander the inheritance.

facilitate providing assistance to persons with diminished or limited capacity. A similar model that provides assistance and assisted decision making would be much more appropriate for those with a diminished capacity.

#### RECOMMENDATIONS

##### 2.1 Develop a Mentoring or Assistance Program for Citizens with a Diminished Capacity

- We should adopt a similar sort of program to the one that Sweden has, with mentors to assist those vulnerable adults in our society who have a diminished mental capacity and only need a helping hand. Much of this could be done with volunteers with proper oversight. It could be similar to the “big” brothers, “big” sisters program.
- This might be a good project for the National Service Corp. With proper funding, volunteers could be mentors to partner with and help elderly vulnerable adults. Grants should be made available for the management and oversight of this program.
- Many retirees would be willing to volunteer under a “seniors helping seniors” program. If an elderly person needs help managing their assets, a retired accountant might be willing to help them set up bill paying services, or could help advise them of the handling of their financial affairs. Likewise, a senior citizen that just needs someone to check in on them and maybe ensure they get fed, could get Meals on Wheels, could get help going to the grocery store, or could have someone to stop by once or twice a week just to check on them.
- All mentors should be registered in the National Guardianship Database proposed in this document.
- Volunteers would need training and support and also expense reimbursement. They should be able to alert proper authorities if an elderly person with diminished capacity is being abused or neglected.



## 2.2 Provide Community Assistance Programs for Persons with diminished capacity and their Family Members

Many persons with diminished capacity are already being cared for in assisted living facilities without the need for a guardianship. Others may have a diminished capacity, are assisted by social services or mental health agencies. Some live in the community with the assistance of caregivers, case managers, or even home health services. These less restrictive alternatives, already in place, should remain the support model for citizens who have a diminished capacity. But, they can be augmented with more.

- Where there is family or friends available to assist a person with diminished capacity, they should be primary means of providing assisted decision-making when needed.
- Senior foster care programs and senior day cares are options that could be helpful, especially where an elderly person lives at home with a family member who has a career and cannot be home during the day.
- Senior Community Service Centers<sup>34</sup> should be available to support the needs of elderly citizens, including those with diminished capacity, and their family members. There are many such centers already in our communities that with federal funding and grants, could expand the services that they provide.

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<sup>34</sup> "The Gary and Mary West Senior Wellness Center in San Diego, Ca." "Healthy aging is encouraged by addressing the total health and wellness issues faced by seniors living in poverty. Our goal is to help seniors live more productive, satisfying, and healthy lives by improving their overall health status. We take a holistic approach to well-being by ensuring that in addition to nutritious meals, every senior has access to: Nurse case management including assessments, education and referrals to community partner's Mental health assessments and referrals in a partnership with Sharp Mesa Vista Hospital Social service case management and referrals to community partners Cultural, educational, social, and recreational activities. <http://www.serving seniors.org/>

- Legal Aid services and/or pro bono legal services could be coordinated through senior Community services to provide affordable legal services to elderly citizens and their family members who are dealing with elder care issues<sup>35</sup>. Those who are unable to afford to pay for services would not be charged. Those who can afford to pay for the services would pay a reasonable fee based on a fixed fee schedule for specific services, such as assistance with drafting a Will, a power of attorney, a durable power of attorney, a special needs trust, and other forms of documents. Seniors could also get assistance with preparing advance directives, such as designating a surrogate decision maker or pre-need guardian.

### 2.3 Provide Financial Assistance through Bill Pay Services and Other Financial Services for Persons with Diminished Capacity

- For those seniors who need assistance with managing financial affairs, a durable power of attorney or trust should be adequate.
- Where there is no power of attorney or trust set up, and there is a family member or friend available and willing to help, then, this person should be able to provide the necessary financial assistance to an elderly person with diminished capacity. If necessary, a special needs trust or some other form of trust could be set up to provide the third party person with the limited authority to assist only in those areas of need.
- With technology where it is today, automated bill pay arrangements can be setup so that it is not such a burden for a family members to help manage a loved one's finances.

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<sup>35</sup> Note. There have been reports that some legal service providers and guardians troll for potentially incapacitated persons at senior community centers and we must make sure that when setting up community service centers, that we are not creating a system that feeds more people into guardianships. The goal is to provide assistance to those with diminished capacity and to protect them.

When a financial planner or accountant is needed, the family surrogate decision maker can solicit aid.

- Sometimes a family surrogate decision maker for financial matters will need a document that verifies they have the authority to assist the elderly person with financial decisions. This document should be simple and inexpensive to get<sup>36</sup> and should and should be recognized by financial institutions and businesses.

### **3 When telemarketers are calling from outside the United States to scam elderly people is there any way to prosecute them within the United States?**

Scam Artists from outside the United State can only be prosecuted in the US if you extradite them. You CAN prosecute banks that cash checks that are suspect. You can prosecute credit card companies who see suspected charges on credit cards.

Perhaps there is a way to work with international internet providers to disable access for those perpetrating the internet base fraud schemes or to work with Virus Scan Companies to filter out certain scams once they are identified.

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<sup>36</sup> Requiring a family member who is the surrogate decision makers to be a guardian is a daunting and terrifying experience. Judges should simply say, "Go home and take care of your mom and that is the end of it." My ward has been on SSI for the past four years. I am the designated payee. I file my annual SSI report quickly but then each year I have to produce court documents that are complicated and difficult to produce with little instruction for the family member. Some courts require a guardian to hire a lawyer. My foster mother has no money at all and lives off Medicaid in the state of Texas. The court requires me to be bonded and the bonding company requires me to be represented by an attorney because she gets a \$500 per month pension along with her SSI money. Her \$3000.00 per year income goes straight to the nursing home. It is a burden already to deal with abuse in the nursing home, hospital admissions, home care, and Medicare and Medicaid eligibility, ensuring she has clothing, food, and proper care and is visited. On top of that ensuring that family member (in my case close to 50 extended family members) are kept up to date and happy. When a family member like me is volunteering they time and energy why make it harder. The judge's order for Family Surrogate Decision Makers should be "go home and take care of your mom". That it! enough is enough and it is terrifying to be part of this system that has already cost me over \$70,000 dollars of my own personal money not including expenses over the past two years.

***Are Telemarketers who are calling within the United States to scam senior citizens being prosecuted?***

I doubt if they are being prosecuted. Telemarketer's scams are not limited to senior citizens.

If they can catch them then they are but I imagine it is rare.

***4 What type of language would you recommend be added to HR 3040 to better address abuse of the elderly?***

**GUARDIANSHIP RIGHTS AND SENIOR FINANCIAL PROTECTION ACT**

**4.1 THE FEDERAL GOVERNMENT SHOULD TAKE AN ACTIVE ROLE IN REDUCING THE COST OF GUARDIANSHIPS TO THE FEDERAL GOVERNMENT AND THE TAXPAYERS**

- According to the CDC, by 2030, the number of adults aged 65 or older, in the U.S., will more than double to about 71 million. With medical advances and technology, people are living longer physically but as Congressman Gohmert explained, medical technology has not done as good a job of protecting people's minds. With the increased lifespan of seniors, and with their mental decline, comes an increased opportunity for predators to commit fraud and financial exploitation on the elderly.
- Guardianship Systems set up to protect the estates of vulnerable incapacitated persons are often not doing so and have instead become a lucrative money making opportunity for professionals. As a result, guardianships often result in a complete depletion of the assets of the IP.
- Under the present state guardianship systems, many senior citizens (including some who are victims of mail, internet and telemarketing fraud), could be determined to be vulnerable, and may be subjected to state guardianship incapacity proceeding, where they are found to be incapacitated. HR 3040 should ensure that these victims of fraud are protected when, and if, they are found to be incompetent.

- Taxpayers are supporting indigent wards, who have been bankrupted by guardianships, with Medicaid and Social Security Dollars. The Medicaid dollars include Federal matching dollars and can result in a high cost to the federal government that will only increase as the baby boomers retire.
- Senior citizens and baby boomers should all be encouraged to execute a power of attorney by the time they retire. The cost to the Federal Government in Medicaid dollars, is much lower if senior citizens have an agent under a durable power of attorney that eliminates the need for guardianship. Seniors could stay in the community with their families where they would be healthier and happier.

#### 4.2 THE FEDERAL GOVERNMENT SHOULD TAKE AN ACTIVE ROLE IN ENSURING THAT GUARDIANSHIP COSTS ARE REINED IN.

- The Office of the National Guardian should be established and tasked with collecting and analyzing information on guardianships, and with assisting in monitoring guardianships.
- Limits should be placed on the amount of legal, guardian and other professional fees that can be charged to the estate of a person in guardianship.
- A mechanism should be put into place, whereby senior citizens are prompted to indicate if they have a designated Power of Attorney and who that person and if they have named or would like to name a pre-need guardian in the event they should every need one, when they sign up for their Medicare and social security benefits. This information should go into the person's file. If the person ever ends up in a guardianship or is declared incapacitated, the court should be required to check to see if the elderly person designated a guardian or power of attorney at the time they signed up for Medicare. A senior should always have the right to access and update the information just as they would be able to do any other information on their file.

**4.3 THE FEDERAL GOVERNMENT SHOULD TAKE AN ACTIVE ROLE IN ENSURING THE PROBATE LAWS AND GUARDIANSHIP LAWS ARE NOT VIOLATING THE CONSTITUTIONAL RIGHTS OF ITS VULNERABLE CITIZENS,**

**BECAUSE:**

- Guardianships, set up to protect vulnerable senior citizens, are wrought with due process problems and are overly restrictive. They routinely strip away constitutional, civil rights, and human rights.
- There appears to be no mechanism to identify all of those citizens who are in guardianships and whose rights have been stripped of them.
- Incapacitated/ incompetent persons are disabled by way of a mental disability. Guardianships strips away their rights to associate and to integrate into the community from these disabled persons, and the very existence of these guardianships it seems, is a violation of the integration mandate of Title II of the American with Disabilities Act. (ADA)
- Many elderly veterans, who should be protected under the Veteran's Administration Uniform Guardianship Code are not being protected and are facing financial exploitation and fraud in guardianships.
- Many federal employees when they retire receive federal benefits and pension dollars. These funds would be at risk when they come under the control of a guardian and the federal government should ensure that their retirees are protected from abuse and exploitation in guardianships.
- Many private citizens who have a temporary incapacity such as a drug or alcohol problem are now being forced involuntarily into guardianships, where they are stripped of all rights in violation of their constitutional rights. When they regain their rights, they are finding their estates have been looted. These people are not incapacitated and do not belong in guardianships.

*HR3040 - Responses to Questions from The House Judiciary Committee on Crime, Terrorism and Homeland Security*

- The UN Commission on Human Rights ruled this year that a mental incompetent person should not be stripped of the right to vote. It appears the ABA also recommends incapacitated individuals retain the right to vote. If these citizens can retain the right to vote then why can they not retain some of their other rights.
- The federal Government has the responsibility for ensuring that Civil and Constitutionally guaranteed rights are not abridged by the states and any guardianship statutes under the state courts must be amended to ensure that:
  - No Person shall be denied their right to Due Process under guardianship by any state court and that each AIP is noticed of the right to an attorney and that if they cannot afford an attorney that an attorney will be appointed to represent them in any guardianship hearing that denies them the right to any of their liberties and/or property. The AIP and/or their next of kin or family member should have the authority to request that an appointed attorney be removed.
  - Any alleged incapacitated person (AIP) shall have the right to a trial with proper civil discovery procedures and defined standards of proof at any hearing to determine capacity and shall have the right to request a jury trial. The AIP or In lieu of the AIP, any family member or designated agent under a power of attorney, trust or designated payee program shall have the right to call witnesses and cross-examine witnesses at any incapacity or guardianship hearing.

- Ensure that any family member, who agrees to be a guardian is never required and cannot be forced, by any law or any contract to use their own personal funds to pay for the cost of caring for the ward or for managing their property as a guardian or as a power of attorney or other recognized surrogate decision maker<sup>37</sup>. Also, it should be against the law for any creditor to sue a private volunteer guardian for the debt of a ward or the expenses incurred as a guardian on behalf of the ward. Why would any family member agree to be a guardian if they knew, they could be sued for the cost of the guardianship?<sup>38</sup>
- A less restrictive form of protection, one that does not strip rights shall be used in all incapacity proceedings and in the event a family or friend is available to serve as a natural surrogate decision maker, then that should suffice, and the citizen should NOT be placed into a guardianship.
- A National Database should be created and the state should be required to report any person who has been put into a guardianship. Guardians should provide periodic updates on the location and condition of the wards of the states under guardianship and the disposition of their property. This system could be made accessible online.

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<sup>37</sup> As a guardian, I was sued and eventually had no choice but to pay for the guardianship legal fees my ward could not afford to pay due to her assets being stolen. I could not afford the cost of litigation to defend myself. I should have been protected by the statutes, that said a guardian does not have to use their own money but I could not afford to fight. Interestingly there was a judgment for the return of the stolen money but it was put into the ad litem's name so that I could not collect the money to pay the woman's debts while I was being personally sued. This also puts the family guardian in the terrible conflict of interest position. If they contest the attorney fees, as I did, then they can be sued. It compromised their duty to the ward and because of the fear of personal financial destruction they will likely have to agree to the ward paying whatever is billed.

<sup>38</sup> I know of a woman who is a guardian for her brother, who is being sued by two attorneys, and a family member in Florida who is also being sued for attorney fees. There is no way for these family members to fight back.



#### 4.4 THE FEDERAL GOVERNMENT SHOULD TAKE AN ACTIVE ROLE IN COMBATING CRIME AND FRAUD IN GUARDIANSHIPS

- A federal study or investigation should be initiated into adult guardianship with case audits to uncover why the cost of guardianships are so high and to create a better understanding of what can realistically be done to maximize protection of America of vulnerable citizens while minimizing civil and constitutional rights violations. This study should identify what can be done to minimize the cost to ward, to the federal government and to the American taxpayers.
- Guardianships are being used by unscrupulous individuals to exploit the estate of the elderly citizens they are intended to protect. They are being used to perpetrate fraud against the elderly and disabled. It is crucial that HR 3040 address not only the reporting of fraud against the elderly, but also that it ensure protection for those vulnerable senior citizens who are victims of fraud. Those who may be found to be incompetent and in need of protection when they come forward to report a crime must be provided protection under a just system that affords true protection and does not cause additional harm (as in guardianships today) that may far exceeds that caused by the crime they initially reported.
- The looting of Estate Assets for Personal Financial Gain through guardianship shall be defined as a crime of Financial Exploitation of a disabled or incapacitated person and a breach of fiduciary duty under the criminal statutes and treated no differently than the commission of a crime by any other citizen under any other guise.
- Numerous reports and family member accounts of guardianship abuse indicate instances where it appears there is at least some element of collusion and corruption going on in some guardianships. Some of these are getting attention from the press and several civil RICO suits have been filed in one state. The Federal government should get involved to help stop these crimes against elderly and vulnerable citizens in guardianships.

- Require the states to guarantee due process protections to the AIP and the Ward.
- Provide funding for the creation of a national database to keep a record of every citizen in guardianship, the identity of their guardian, where they reside, how their person and property are being protected. This is the most vulnerable population of our society, as they have no rights to even report to anyone that they are being abused.
- Provide funding for the oversight of Senior Community Services to assist those with diminished capacity.
- Require the state to document the rules and grounds under which a family member is to be considered unfit to be the surrogate decision maker for a family member or the guardian if a guardian is still needed.

**5 You mention that there is a lot of financial exploitation and abuse occurring in guardianships. Where does one go to file complaints of abuse or exploitation, and**

**There is NOWHERE to go.** People try to go to the following authorities, but these agencies frequently fail to recognize the right of families and friends to complain.

- The Attorney General's Offices in most states, when informed of financial exploitation by attorneys, guardians, petitioners or family members involved in a guardianship matter will say, "It is a civil matter," or, "there is nothing we can do because the person died". On rare occasions, they will get involved after the guardianship matter is no longer being litigated. Usually by that time, it is "too little, too late".

- **Adult Protective Services** will often not intervene when a case of abuse and/or exploitation of a vulnerable person is reported. Instead, they routinely refer abuse cases that they should be investigating to the guardianship court (or the probate court). Sometimes, there refer two different families on both sides of an issue to guardianship setting up the contested matter in the guardianship court. Rather than looking into the matter, they suggest that the complainant petition for a guardianship. I do not understand how we can have an agency called "Adult Protective Services" that doesn't have a less restrictive means of protecting vulnerable citizens than forcing them into a guardianship system that keeps them captive under the control of a (mostly unmonitored) third party person until they die.
- Reports to **The State Bars** of abuses and even extortion by attorneys does not appear to produce a result other than subjecting the one reporting the abuse to further bullying and retaliation by the attorney who is displeased when he hears of the report. Mostly the Bar will not get involved while litigation is ongoing because they don't want to "impact" the outcome. The bar will tell the complainant to report the problem to the judge. In one case, the state Bar was contacted for three attorney ethical violations. The complainant was told that the bar could not get involved while the case was being adjudicated, and to take it up with the Judge. The judge was already aware of two of the issues so what good would it do to go to the Judge and risk being sanctioned for ex-parte communications with the court. By the time adjudication was over the money was gone, the damage was done and the victim may be deceased, making it impossible to take any action.

Attorney abuse is a huge problem in guardianships. This business has become the new "bread and butter" of the legal profession. The fact that an incapacitated person must pay for the services of attorneys, as well as guardians, gives the attorney motivation to hike up the charges. The client must pay, but usually cannot report the abuses. It is left to the family to be the watchdog (since the courts aren't watching), and to try to report the abuse. They are usually told they don't have standing.

- The **National Guardianship Organizations** are primarily certification, training, and networking organizations for communications between guardians and sometimes judges. They are not an investigative or a disciplinary agency. Complaints are not acted upon by this group. I have been a member of the NGA, and never heard of complaints being investigated. I reported the serious problems I was having in my case, but did not get any offers to help or look into the problems. The NGO is a good place to go if you are a guardian, and want to talk to other guardians and sometimes judges and elder care experts. One problem I do see is that sometimes the list of certified guardians is not purged when a guardian loses their certification in a state. Since so many elder abuse and elder care sites refer elderly and their families to this site to find a "certified" guardian, it should be updated to reflect only guardians who are in good standing in their states. I did try to advance the notion of the need for reform and the need for change; while some agreed that change is needed, the organization is really powerless to implement the changes the changes that are desperately needed not only in the laws, but also in the court's application of the laws.
- The media rarely reports on guardianship abuse. . Sometimes a newspaper is willing to write a human-interest story, but will typically shy away from writing anything about the abuse in the court proceedings. There appears to be a partial news blackout on some of these stories.
- The Appeals courts will not hear appeals and family members are told they have no standing. The federal courts will say it is a state issue. Appeals are time-consuming and extremely expensive, and most family members cannot afford to file an appeal even if they had the right to. Very few attorneys are willing to go up against the guardianship systems. The federal appeals courts often will not hear appeals, although it seems they should since these case often deal the with the violation of constitutional and civil rights.

- The **FBI** will not investigate because they say it is a state Issue, and claim they are not presently tasked to investigate it.
- Legal Aid and the **ADA** will not get involved in helping people in guardianships. I never could understand that because, in my foster mother's case, every document refers to the case with the label "a disabled person" not an "incapacitated person." This would seem to invite the ADA.
- Many **Ombudsmen** have a difficult time dealing with abuse when there is a guardian because the guardian reserves all authority to act and no one can legally interfere with them under present law.
- Some States have **Guardianship Boards** but they are more for certification and education purposes and for membership not for reform. In most of the case we have reviewed, the **State Guardianship** board was ineffective.

The **luck stops with the judge** in the guardianship court. Usually a small circle of attorneys and guardians work together in a particular court. They are experienced in that court and with the judge and each other. In that scenario, the family is always the outsider and usually, "the problem". Many family members have been told they are not allowed to speak or approach the court on behalf of their loved one because now they have a guardian and they have no standing. Even family guardians have a hard time approaching the court because many jurisdictions require them to have an attorney they cannot afford and their ward cannot afford.

As I stated in my testimony, guardianship in the wrong hands, could be used essentially as a sophisticated form of identity theft. You find a vulnerable victim with money, you work with someone else (maybe a disgruntled family member) to facilitate getting a petition filed, and then, if you become the guardian or work with the guardian, you essentially step into that person's shoes and execute financial instruments on behalf of that person, and pay yourself with that person's money.

Anyone can file a petition. Regardless if the petitioner is family or an agency, the end result is always the same. The estate is looted by the guardians and their attorneys who bill and are paid enormous sums for services that are not needed and do not benefit the ward. Since the incapacitated person has no rights, he or she cannot fight back, and since the AIP is not in control of his affairs anymore, the abuse can occur with impunity as long as the judge routinely rubber stamps the fee applications and no one is monitoring the guardian. Right now, the buck stops with the judge who has a full docket, little time, and no staff or technology to facilitate monitoring what happens to the wards after they fall into the guardianship black hole. Monitoring and reviewing these deliberately lengthy and complicated accounting documents and investigating reports for signs of exploitation and abuse can be time consuming, costly and requires special skills that most court personnel do not have the training for.

#### 5.1 Is anything done about these complaints?

NOTHING is done in most all cases.

It is extremely rare for anyone to get complaints investigated. Often the outcome of filing a complaint is retaliation against the person lodging the complaint and sometimes against the ward (namely the denial of visitation rights) and for the ward, sometimes the administration of chemical restraints because they are "depressed" or "agitated".

##### 5.1.1 EXAMPLE(S)

In a Delaware case, it was APS that left my foster mother, Mary, lying in a home with a broken hip suffering in pain, with no medical care. APS told me to file for guardianship. Ten days later, when she still had not seen a doctor, I filed the petition that changed my life, Mary's life, and both of our estates.

"In the case of Nancy Golan in California, an autistic adult who lived with her parents safely and happily for 31 years without needing a guardianship, she was abducted by ruse by police and placed against her will in a psychiatric ward of a hospital where a hearing was held on her mental competence. The court at the hospital found that because she was merely

retarded and not a harm to herself or others, she could not legally be involuntarily conserved under California's LPS laws. Instead of releasing her as was legally required, APS and the state's corporate conservator smuggled her out the back door of the hospital where the parents had been waiting into a private conservator's hands and drove her to a secret hideout where she was abused and neglected while the state pursued a secret conservatorship<sup>39</sup> –

**6 *You mention that abuse and exploitation in guardianships and the looting of estates is done with impunity. Can you elaborate on this statement?***

When a stranger is appointed as a private guardian over a third party who has been found to be incapacitated by a judge in a court of law, that person has absolute power over the ward. With unmitigated power comes the temptation to make medical and residential decisions that benefit the guardian, usually financially, rather than the client. Absolute power can, and often does, lead to neglect, abuse, and exploitation.

Because the guardianship business takes place in a courtroom, the guardian is always accompanied by his or her attorney. These attorneys are able to create a lucrative income from the representation of the guardian. They are always paid, and paid from the client's estate, so the billings are often bloated and inflated, if not ludicrous. The ward that is firmly incarcerated in the guardianship system has no ability to object the draining of an estate that may have taken a lifetime to earn. Exorbitant fees are charged to the ward by the

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<sup>39</sup> According to Nancy's father, Jeff, at a hearing where a temporary conservator petitioned against the family, the family was subjected to wild allegations of abuse by unsworn statements of counsel and the state won temporary conservatorship with all powers. They used these powers to cover up abuse in state care, deflect any civil actions against them, and prevent the parents from seeing her or getting a lawyer for her to represent her rights in the final conservatorship proceedings two years after she was abducted. This is about as bad as it gets." (this story is included in appendix (C))

professionals and guardians who know that the Judge who appointed them will routinely approve their fee statements.

For the guardian and his or her attorney, looting a wide-open available estate it is just too tempting. If a person has a million dollar estate and a third party is handed over the keys to the vault, the bank account numbers, the deed to the home and all property including jewels and valuable heirlooms and no one is watching, the temptation is just too great and looting will occur. If someone is watching too closely (the family), they all you have to do is get them out of the way. It is a tremendous opportunity and many guardians and attorneys just cannot resist the opportunity to create the illusion of work and then get permission to pay the bill your firm generates with the money you have absolute control over, especially in these economic times.

The victim has no voice to complain about this exploitation and, and may, in fact, be unaware of what is happening to them and their estate. Guardians frequently choose not to share the bill with their client (the ward) as it might "upset" him or her.

The wards are essentially sitting ducks" for whatever selfish uses the guardian wants to make of their needs, their lives, and their estates. The authority of the guardians is complete and unchecked. A recent trend has the guardians asking for and the judge issuing Orders of Immunity to prevent the guardians from being held accountable for the conduct of the guardianship.

Frederick Douglass, a civil rights activist, said on Aug. 4, 1857,

*"Find out just what the people will submit to and you have found out the exact amount of injustice and wrong which will be imposed upon them; and these will continue until they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress. "*



When you consider the fact that, in guardianships, the wards have no voice and no rights to defend themselves and you consider their utter vulnerability, the above quote should send shivers down anyone's spine.

#### 6.1 The Family Members and Loved Ones as the Natural Watchdogs

The best watchdog over guardianship is the family of the person in guardianship. The family has always been the natural guardian or protector for a family member down on their luck or in need of a helping hand. Guardianship can be extremely torturous for the family member(s) who has a loved one declared incapacitate by the system. Their attempts to improve the loved ones lives can, and often does, result in being barred from the family home and prohibited from being with the loved one. The family home is often ransacked<sup>40</sup>, the valuables sold, and the mementos of a lifetime thrown away by callous strangers who don't even try to pass on the photo albums. Some family members have been denied the right to know where the loved one is living. Some family members do not find out that their loved one has deceased until days or even weeks after they have been buried. The behavior of too many guardians defies all human standards of decency. When the family member tries to report what is happening they are excluded under one of the following premises: 1. it's a civil matter, 2. the court has adjudicated the issue, 3. you don't have standing. They families quickly realize that they have no options.

The family may try to complain or fight back, but will have to hire an attorney to do so. If the guardian wins, the ward pays for the guardian's time, the attorney's time, and the family's attorney, and a lose-lose situation for the caring family member. If the family wins, the ward

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<sup>40</sup> One man in Indiana, tells the story of how his parent's (they were both in guardianship) neighbors called one day to tell him there was a dumpster outside the home and there were people taking everything out of the home and dumping it in the dumpster. Everything was thrown out. Family photos, mementos, heirlooms, childhood memories all tossed into a dumpster. Locks were put on the home and it was put on the market for an unknown price and quickly sold.

pays for the guardian's time, the guardian's attorney's time, and may or may not be charged for the family's attorney. It's a win-win for the guardian and the guardian's attorneys. The family, on the other hand, has to fight the guardians who uses their loved one's estate and their future inheritance to fight them. These abuses are occurring in guardianships and conservatorships across this nation. It is the perfect system because no one can complain, and those who do can easily be silenced, while everyone remains constantly tied up in court for many years<sup>41</sup>.

Some family members will try to fight this unconscionable system. They are often severely penalized for their efforts, no matter how altruistic and unselfish those efforts might be.

Family members are often attacked with false or unproven allegations that remain forever unproven, but create the illusion of a person being "unfit" and provide the opportunity for the "paid" stranger guardian to get the job in lieu of the family surrogate decision maker who is willing to care for a loved one without reimbursement. Those who persist in trying to end a wrongful guardianship could end up using all their personal assets to fight someone who can use their loved one's assets and possibly their own future inheritance to fight them into the bankruptcy courts.

Family conflict is a key ingredient to the moneymaking opportunity for the professionals and their attorneys. The judges, rather than making a decision or facilitating conflict resolution for family members through mediation or some other mechanism, simply assign a guardianship company or a fee-for service guardian. Long after the conflicts are resolved, the guardian is in place. (See our appendices of stories of abusive guardianships)

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<sup>41</sup> I remember my attorney telling me once I would need an attorney for the rest of Mary's life when I filed for guardianship. I did not believe him five years ago but I am still involved in three courts filing guardianship reports on and still trying to get restitution. This is torturous on the altruistic family members.

***Who Stops the Abuse?***

**No one**, it seems, except for isolated instances where a judge will step in to stop it. The probate courts rarely have more than fifteen minutes for a case, no investigators, and no financial resources. They make the choice to rely on their colleagues, the court-appointed guardian, and its attorney and usually rubber-stamp their request. The perpetrators know that no one is watching and that no one will come after them. After all, the victim is incompetent, the judge has powerful reasons for finding in their favor (looking efficient by clearing the docket), and the family often finds the cost prohibitive. Some guardians and their attorneys behave with stunningly blatant dishonesty because they know they won't be held accountable<sup>42</sup>.

People believe that if a judge approves it, it must be right and legal, but a theft by any other name is still a theft. There is nothing right, and nothing legal about exploiting the vulnerable. As one dear victim, who signed our petition stated:

*"When you have a system that operates with impunity, then it doesn't matter what side you are on, you always lose. "*

***Can you provide examples?***

There are many examples where abuse appears to occur with impunity. I could fill the next 50 pages with examples, but, I will only list a few here and refer the reader to the appendices attached to the end of this document to read the first hand real world example written by family members of victims of guardianship abuse.

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<sup>42</sup> When you have a system with little or no monitoring, with no checks and balance and nowhere to report guardianship abuse and financial exploitation, the system will be abused.

- A man in Minnesota was forced to go every month to get electro-shock therapy by his guardian and physician it took many months to finally get the judge to agree to ending his nightmare.
- A woman in Massachusetts suffered in her own home with the roof was leaking and the wallpaper peeling. The daughters pleaded with the guardian to help her. The guardian was looting the estate and traveling to another state to liquidate assets. In the meantime, she told the daughters there was no money for food and refused to have the roof fixed. The daughter has been everywhere looking for help to no avail. Finally, her mother passed away a few months and the guardian is still involved in wreaking havoc on her children's lives. This story is included in Appendix (C).
- An Illinois woman filed a motion to have a mentally challenged ward (a 29 year old niece) sterilized against her wishes. The woman wanted desperately to marry and have children one day. Despite less restrictive methods of birth control, the guardian insisted on tubal ligation. The judge approved the motion and now there is a special law in Illinois that allows guardians to have a ward sterilized!!! Where is the ADA in all of this?
- In Texas, a woman wrote on our petition site that: "My Mom's guardian without court order placed her in hospice without family's consent without her being terminal. Then Mom was given a terminal injection to put her in a coma and then "allowed", "to die with dignity", as her guardian put it. I call it murder. But everyone lied for everyone. So to this day nothing has been done. They took from Mom and us her constitutional right to life, liberty and the pursuit of happiness."
- In California, a man going through a divorce who did not want to split up the assets had his wife put into a guardianship.
- In Michigan, a registered sex offender was appointed as a guardian and recently the middle-aged mentally handicapped man came forward to report the abuse and he was removed from the home where the guardian sexually abused him for two years.
- A woman in New York was appointed a GAL to take over her multimillion-dollar lawsuit at the request of an attorney she fired. Despite her appeals, the GAL was appointed to represent the case. Immediately he hired back the attorney let go.
- In Delaware, as a family guardian, the rules said a guardian is not required to use personal assets for the care of the ward. This was in the handbook from the court and in the statutes of the state. It did not matter, I was sued for my wards legal fees and three judges in two courts sat by and let it happen while a judgment for the recovery of stolen assets that could have been used to pay the debt was absconded and put into the ad liter's name so I could not collect it as the guardian. Despite my pleas for justice, I was sued in another court in my personal capacity for the fees already approved to be paid from the estate. Nothing could be done. The attorney general's office would not intervene, the state Bar would not intervene, No lawyers would touch the case, the

media twisted the story, three judges did nothing ... there simply was nowhere to go. I had to take a loan on my home to pay the fees. I should have been protected by the statutes of frauds, res judicata and the guardianship protection statute, but *"Nothing mattered but the status of the parties in the courtroom and the home team (the lawyers) won"* – G. Ring

- In **Colorado**, a guardian who son has insisted has abused his mother who is not incompetent recently agreed to step aside and allow the daughter to resume guardianship and requested that she be granted immunity. The judge granted the request.
- **Many family members are denied visitation** with a ward as indicated in many of the stories attached.
- **Many family members don't know where they loved one are.** In the California case, after 60 years of marriage, this 86-year-old man, is not allowed to know where his wife is. The same occurred in the case of Robert Gladson. Both stories are in Appendix (C).
- The Article **"Stolen Lives" by Barry Yeoman** includes many examples of abuse and exploitation. Not much has changed since this article was written and if anything, this crime has become more sophisticated and more damaging. A copy of the article is attached in Appendix (D).

The appendices of this document are the real stories that give many examples of the abuse. Included are real stories and firsthand comments on real cases. The comments provided from our petition site and in the word of the victims. Victims Stories are written in their own words and Articles have been reported by the media.

*We welcome the opportunity to present additional stories and detail on these cases as needed by the Committee.*

## **7 Why aren't family members and loved ones being appointed as the guardians or are they?**

### **THE PROBLEM**

This is something that warrants further study. Sometimes family members are appointed as guardians. They are supposed to be given preference over all strangers, according to all the states' laws. But it doesn't happen. If the alleged incapacitated person doesn't have much money, it is fairly easy to appoint a family member as the guardian. Sometimes the court

appoints a guardianship company to be guardian of the estate and a family member to be guardian of the person. Sometimes one adult child will be appointed guardian of the property and another adult child as guardian of the person. Giving guardianship of the property to one and expecting another one to care for the person without some provision to ensure the caregiver has the necessary funds to care for the person is always hard on the caregiver and can cause serious problems for the ward.

But, in many cases that we have seen, the family members and loved ones are not appointed as the guardians if there is money or they are appointed as guardian of the person only.

Sometimes there are legitimate reasons. The family member may be unsuitable or unavailable. Many times, however, especially if there is money to be had, the fee for service guardian is at the top of the judge's list. The judge's have a tendency it seems to ensure that the professionals are paid and knows that the client won't feel the loss because the taxpayers will pick up the tab in Medicaid dollars when the money runs out. Other judges, I think, are just too busy and some of the guardianships are made into amazing "busy work" cases that accomplish nothing for the ward but a lot of paperwork for the judge to review and lots of fees to be paid. The judge does not have time to review the 200 to 500 plus page accounting so the fee applications are just rubber stamped and approved. In the meantime, some unscrupulous attorneys and guardians are taking advantage of the system and knowingly and deliberately looting the estate. Many judges would prefer to work with someone that they know and have established an easy working relationship in their courtroom with in the past, rather than an unknown family member who probably brings too many questions and does not know the law. More and more attorneys are now becoming attorney guardians.

In many cases, the guardian tells the judge that the family members are unsuitable or, even abusers, that they are thieves or are just after the money. In fact, the term "greedy kids" has been coined in the guardianship arena to refer to "rightful heirs" who may have no motive of greed at all and are only making an altruistic effort to help their mom or dad. The family member or friend stands in the way of the stranger guardian by universal laws of preference,

and so the challenge for the perpetrators of guardianship abuse is simply to push the family or friends out of the way so they can get to the head of the line first. The only way they can safeguard their access to a lucrative income from the estate is if they can keep the family member away. After much of the estate has been depleted in a long drawn out petition process and guardianship hearing, when family is complaining that the money was wasted by unjustified fees the perpetrators have to work extra hard to keep the family on the outside. If the family can wrestle guardianship away from the company, then it will have standing to complain about exorbitant fees and to pursue recovery on behalf of the ward. But if the guardian takes control of the ward in a temporary proceeding, the family loses all standing to object, and this protects the guardian from legal recourse for any or all wrongdoing. The ward becomes, for all practical purposes, the guardian's property, or chattel. This feature of the law provides the best incentive to the guardian to take early control of the case, because once they have asserted exclusive standing there is no recourse; it provides a de facto absolute immunity. It is to the court's benefit not to add recovery actions to an already over-crowded docket. It is to the guardian and attorney's benefit to avoid a challenge to their inflated fees and to prevent the money drain from clogging.

**7.1 Does the elderly person have the ability or right to ask that the court name a family member as the guardian?**

Yes, through pre-planning documents, many "victims" have legal papers that pre-name a guardian if they are declared incapacitated. Many also have Power of Attorney documents and Healthcare Surrogate documents.

However, the courts, in many cases (including some that are included among the stories and comments in Appendix A) do not search for these documents or, inexplicably, choose to ignore them. Power of attorney documents are often ignored.

Often the AIPs are not at the hearing, especially in emergency guardianships. In cases where the judge makes sure they attend, their choice as to whom should be guardian is often ignored.

There must be strict federal guidelines that prevent the violation of federally guaranteed rights. The decisions in the probate courts should be appealable to the federal courts when constitutional rights violations are at stake. Since the ward cannot file an appeal the family or friend of the ward who is an interested party or any heir in the case of a guardianship of the property should be able to file an appeal that will be heard. If the courts can ignore the advanced directives such as the power of attorney of an elderly person, what's next? Will a guardian be allowed to ignore a living will or a DNR order, or as we have heard in many cases, even issue a DNR order contrary to the expressed wishes of the ward?

**7.2 If so, how frequently does this happen?**

Most people with money and wealth have gone to the trouble to create pre-planning documents to name someone as a Power of Attorney. I don't think people know they need to name a guardian or at least as long as the power of attorney is being ignored naming a guardian also might help ensure that one of the two is recognized. Sometimes the named pre-need guardian and in a recent Florida case even the Durable Power of Attorney is not even contacted. In emergency guardianships, often no one is notified.

**7.3 If not, why aren't family members being appointed?**

Because, for some reason, there is a natural bias that favors the professionals and prejudices against the family members. The professionals work with the court on a daily basis and have the trust of court members. The professionals know the ropes and know how to be better influence the judges. The family members often are not even allowed to speak or cross-examine the witnesses if there are any. Many professionals are single career people and the probate courts not family-friendly. There is a cultural chasm. The family is the outsider, unfamiliar with the ways of the court and often emotional, sometimes not as well heeled or well represented as the "professionals." The courts are biased against the family throughout the guardianship process. The whole guardianship system places a grossly unfair and unsought burden on the family.

Even when it's written into state LAW (such as Florida), that family members are appointed over third-party strangers, it very rarely happens. One of the biggest problems in



guardianships is the fact that the rules do not seem to matter or have any teeth. As a wise relative of mine said about a case, I was involved in, at the end of the day, the only thing that mattered in that courtroom was the “status of the parties.” In the case of the vulnerable family members vs. the skilled attorneys and guardians, “the home team wins.” Sometimes it is because there is a real problem, but often it often it seems that the family is just at the bottom of the judge’s list even when it could save the incapacitated one tens, even hundreds of thousands of dollars. Sometimes, even when it is clear that the family loves and cares for the incapacitated person and that love is reciprocated, a stranger guardian is appointed. In fact it is the love that a family member has for a ward that often prevent abuse from being reported because they are afraid the guardian will retaliate against their loved one and they do by routinely denying visitation if a family member complains. Probate court is not family court.

**7.4 Is it because they are unfit?**

The word “unfit” is terribly subjective and whatever the attorneys and judge believe it is. Some people are unsuited to care for others, but there should be an evidentiary finding and criteria establishing what is generally agreed to be unsuitable. One person said “I doubt that Mother Theresa would be a “fit” guardian if she ever came before a probate court judge!!” That statement is not as farfetched as it might sound. A court is more likely to see fitness as a material thing rather than see the situation from the ward’s point of view where priceless emotional values of family history, endearment, and love often far outweigh material advantages. Institutional care rarely if ever trumps family care. Family rights are one of the most essential freedoms we enjoy and ones that the courts have long protected.

**7.5 Are family members among those who are guilty of some of these abuses?**

Yes, sometimes they are. Some family members will get an attorney and file a petition for guardianship because they are afraid other family members will waste or steal money, because they believe another person is exploiting or abusing a family member, or because they are offended that they were not appointed power of attorney. A family guardian can abuse a loved one in all the same ways a guardianship company can, and they can be abusive

to other family members. The courts are much more willing to see and punish the wrongdoing of family members.

Guardianship abuse must be stopped regardless of who is committing the abuse. If a family member is abusing his or her power, then another family member should be appointed. If a professional is abusing their power, the same standard should apply. There is a greater likelihood that a family member who is financially exploiting an estate will be removed and replaced with a professional guardian than with a family member. The rule should be, first do no harm.

**8 *What do you think the Federal Government can do to put an end to these abuses and to protect vulnerable and incapacitated individuals in the guardianship Systems?***

I preface this response with the following: I am not an expert on the laws and what the federal government can or cannot do; however, I will offer what I think the federal government could do.

**THE PROBLEM**

When “we have a process that should be protecting American citizens that instead strips them of all human, civil and constitutional rights, and leaves them utterly powerless with no self defense mechanisms, then if we cannot protect them then we should abolish the system or put a moratorium on all guardianships until we can get this right.

Guardianships instead of protecting and preserving assets, are setting up a system whereby, in many cases, estates can be essentially be “legally” stolen; where instead of protecting the person they are can be dumped them into facilities the ward never would have chosen only to be locked away from own loved ones and family. This abuse under the guardianship system is all set up and occurs, without due process and under the color of law. Who is responsible for protecting rights? Whatever agency that is, needs to get involved in this terrible aspect of abuses in guardianships. This criminal aspect of guardianship abuse must be stopped.

As Matthew Paulson wrote in his paper "Be on the Lookout: Con Artists Stealing Guardianship of Senior Parents":

*"Senior adults have been targeted as easy victims in a number of different scams for the last two decades now and it's only getting worse. Instead of just stealing money from them or ripping them off, con artists are now actually stealing guardianship of many senior adults. Some criminals have figured out that they can assume guardianship of elderly individuals just by telling a judge they are no longer mentally stable."*<sup>43</sup>

#### RECOMMENDATIONS

- **PROTECT THEIR RIGHTS.** The federal government needs to get involved in protecting the rights of American citizens in guardianship. Many of these citizens are as or more vulnerable than a child.<sup>44</sup> The person in guardianship has no advocate and has no mechanism to report the abuse. Often they will complain to family members but they have nowhere to go to complain and if they try the guardian restricts their right to visit their loved one so many remain silent. What is amazing is that the UN Commission on Human Rights and the ABA say an incapacitated person should retain the right to Vote. If they can retain the right to vote, then there are many other rights they should be able to retain; like the right to their own property, to their liberty and to their happiness.
- The federal government must protect the public interest. My husband's uncle is a retired Trial and Chief Judge. He made the following observation in a guardianship case where I was trying to help my foster mother Mary and she lost all her money.

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<sup>43</sup> [http://www.associatedcontent.com/article/388002/be\\_on\\_the\\_lookout\\_con\\_artists\\_stealing.html](http://www.associatedcontent.com/article/388002/be_on_the_lookout_con_artists_stealing.html)

<sup>44</sup> Children can, at least report the abuse to a teacher.

*“There is a need for someone to be more concerned about the public interest. The problem is that all of the participants know that the only money is that of the ward. If lawyers and professional guardians are to get paid, her money will be used for those payments. They also know that if her money runs out the taxpayers will support her so she will not starve. Over time, the tendency is to be more concerned with getting participants paid than protecting taxpayers. It is up to the judge to protect against that tendency.”*

- The Federal Government could get involved in helping to protect the public interest and reducing the cost to taxpayers that guardianship creates.
- The ADA should be protecting the disabled citizens in guardianships. ALL these citizens are disabled by way of a mental disability (incapacity). I have never understood why the ADA doesn't protecting them and address some of these problems. The ADA should take a serious interest in the problems and discrimination against adults in guardianship. Guardianship by its very nature isolates and segregates these disabled citizens from the community and is in violation of the Segregation mandate of Title 2 of the Act as Mr. Salzmann's argument that guardianship isolates and doesn't integrate.

*“Rethinking guardianship (Again): Substituted decision making as a violation of the Integration Mandate of Title II of the American's with Disabilities Act”. There are numerous reports of what appears to be widespread<sup>45</sup> corruption in guardianships. The FBI should look into some*

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<sup>45</sup> [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1567432](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567432)

*of these cases and should be able to take complaints and act on them when appropriate.*

- The US Attorney General should get involved to ensure that our state and Federal criminal justice systems and the state Attorney General's office have dedicated staff and resources well trained and charged to investigate abuse, financial exploitation and any other crimes committed under the auspices of the guardianship system. What kind of system strips people of all self-defense mechanisms, and the right to report the crime, and then sits back and allows them to be robbed and abused. I can only liken this to a cop shooting an innocent person in the back and saying he was trying to protect him.
- Set up an 1-800 number for people to report guardianship abuse and have the complaints collected and studied and then as the federal government takes the lead in making sure the most vulnerable in our society are protected especially after the legal system makes them even more vulnerable.
- Perhaps someone should look into guardianship being brought into FEDERAL courts under interstate commerce, Medicare and Social Security FRAUD, Tax fraud, and violations of CIVIL RIGHTS such as due process. Much of the abuse, financial exploitation, and fraud in guardianships occurs across state lines.
- Implement monitoring of the system as indicated in response to an earlier question and implement a national guardianship database for the reporting of all guardianships. There are likely millions of wards in guardianships and no agency knows who they are or where they are and nor does anyone seem to care. Some courts keep track and others don't. How do we know there are not wards being subjected to forced servitude somewhere? We know in the case of disabled adults many of them are sent to work each day but do not get to keep their earnings. The question may seem absurd but when we look at the lack of checks and balances, the lack of monitoring, and the fox watching the henhouse

approach, you can see how this could be very possible. In fact, not long ago it was reported in the media that a registered sex offender was appointed as a guardian over a middle-aged mentally disabled man. The guardian had been sexually abusing him for two years in a private home. He finally got help and I understand that the criminal justice system is pursuing that matter. In another case, a home was found with half a dozen emancipated senior citizens without rights.

- As I asked in my testimony, “WHERE ARE THESE PEOPLE?” The Federal Government should not only setup a national guardianship database but also should insist that every single ward in a guardianship should be located, identified and reported right now and that information should be entered into a database. It should identify who the wards are, who their guardians are, what condition they are in, and where they live. Someone might cite privacy concerns but they already lost their rights. Hopefully, they have not lost their right to protection. Who know what abuses are being perpetrated against citizens who have had their rights stripped from them? How many wards does one guardian have<sup>46</sup>? Are they being forced into servitude somewhere?<sup>47</sup> Some guardians are so busy they don't have time to keep track of their wards. Someone should take an interest in the condition of the incapacitated in private guardianships.
- Make it a federal crime to maliciously or intentionally take advantage of anyone through the guardianship system. Prosecute all forms of abuse and exploitation through this system against the weakest of our society (maybe it's even as a hate crime). When

<sup>46</sup> “There are guardians who have wards they have never met. There are people who are guardians for 400, 500 people.” – Dohn Hoyle - <https://www.nothingis.com/says/dohnsays.htm>

<sup>47</sup> “Legal people tell me that when a guardian decides that someone is going to work in a sheltered workshop, and that person earns money working there but the guardian decides how that money is spent – at the minimum that's peonage. And it could very well be considered to be slavery.” – Dohn Hoyle - <https://www.nothingis.com/says/dohnsays.htm>

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multiple players in the guardianship arena collude to defraud and ward or their family members (recently family guardians have been getting sued and in other cases attorneys are suing the family members when the money in the estate runs dry) then it should be treated as the racket it is and prosecuted as such.

- The FBI should get involved in cases where millions of dollars cross state lines and cases of fraud, collusion, corruption, and even racketeering in guardianships.
- Judges should limit the number of guardianships that are awarded to persons who are or have been campaign contributors.

*Note: Some of the answers to this question are addressed in earlier questions and responses.*

**9 Guardianship and Probate are all State issues. What can the Federal Government do when this really isn't in our jurisdiction?**

**THE PROBLEM**

Since the federal government picks up the tab or part of the tab after seniors are pauperized due to a guardianship that depletes their entire estate, guardianship are the federal government's business. Once they have depleted the money, guardians are more than willing to return their currently indigent client to the family. <sup>48</sup> Adult children who assume responsibility for the newly indigent parent are forced to give up their jobs and make considerable financial sacrifices to care for their parent. Many of these adult children are at or near retirement as well and many will never recover from the financial loss. One day,

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<sup>48</sup> In my case (the case of Mary Mellinger), I became the guardian after the money was gone. In the end, I was forced to spend my savings and take a loan on my home to cover the costs of the guardianship. In the end, I moved my foster mother to Texas where a petition was filed to transfer the guardianship.

they too, could become a burden on the taxpayers, costing the government state and Federal taxpayer dollars.

#### RECOMMENDATIONS

The federal government has the responsibility to ensure that the states act constitutionally. The stripping of constitutionally guaranteed rights without due process is a federal issue.

- When family members contact federal agencies such as the FBI to report abuse or financial exploitation, or to allege that persons have colluded to steal an estate through a guardianship action, they are told it is not a federal issue, it is a state issue. Many victims of guardianships believe that there are elements of racketeering involved in this industry. But, the federal government, with all its resources to investigate corporate fraud and racketeering has refused to investigate in every case where it has been sought by aggrieved families. When appeals are filed in federal courts, the response is always, "This is a state issue." It is not or should not be, as this is a fundamental civil rights issue. The time for a serious investigation is long overdue.
- Jurisdictional issues do arise when the vulnerable loved one is in one state and the family in another and when money is extorted and/or transferred across state lines. The federal government can provide clarity here. When there is widespread corruption occurring across state lines, the federal government must get involved.
- There should be an investigation of these crimes in guardianships that are occurring. Too often, it appears that competent people are being stripped of their rights so that a close-knit group of perpetrators (which is often the case) can essentially steal their property and their identity. There is just no other explanation for some of the cases we are hearing. Citizens are now going in guardianships after they check in to a drug rehab center. (It is a matter for the federal government.
- When states have laws that violate constitutional and civil rights, the Government must get involved. The 14<sup>th</sup> amendment guarantees, "No person shall be denied the



right to liberty and property without due process of law.” The federal government needs to demand or, at least to assist the states in creating a solution that will protect the rights of its citizens and that will protect taxpayers from the burden of supporting indigent persons who deprived of their assets by guardianships.

- Protect victims of guardianship crime. The victims of guardianship crime often include not only the ward or AIP, but also often members of their families and their heirs. There should be a system for victims of crime to get restitution (especially if there is a criminal conviction<sup>49</sup>).
- Name the Crime. It should be defined as a federal crime if not a Hate crime to steal from disabled person who has had all of the rights removed in guardianship. It matter not under what guise it is done or who commits the crime. There should be no immunity granted to guardians. In Colorado, a judge recently granted immunity to a guardian upon their withdrawal as guardian after a million dollars was spent. Now a family member is the guardian.

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<sup>49</sup> In my case there was a criminal conviction (the guy pled guilty). There is a judgment and a restitution order but the restitution was only for a fraction of the cost of pursuing the accounting in guardianship matter. Even though the victim's impact loss statement showed all of the direct costs of the discovery in the guardianship court, the criminal was not ordered to pay any of the near \$100,000 that he cost the ward's estate and he pled guilty! The first restitution check was for \$1.00 (one dollar). The court responded and ordered the man to pay regular payments. One payment was made. There is not justice for victims of guardianship abuse.

***10 If we advise seniors to name a guardian as part of their advanced directives or by some other means or even to ensure they have designated a power of attorney, how can we expect that it will be honored by the courts as you mentioned in your testimony?***

You can't expect it to be honored, under the current system; the courts casually ignore advance directives. The problem isn't the laws it is the fact that these are guideline laws and they are not followed. We need laws with teeth that will be followed and enforced.

#### **RECOMMENDATIONS**

If you look at the cost of a Power of Attorney vs. a guardianship, you will see that once the client's assets are depleted, the cost to the Federal Government and to the states in Medicaid dollars and Social Security dollars is astronomically higher when a guardianship is imposed and the person is prematurely force onto these public support systems. (A study should be done to identify the real costs). That alone should make it worthwhile to have federal intervention.

#### **ASK SENIORS TO DESIGNATE A POWER OF ATTORNEY WHEN THEY SIGN UP FOR MEDICARE**

- **The federal government could ask those who sign up for Social Security to designate a power of attorney at the same time.** One cautionary note is that it needs to be ensured that ensure that power of attorneys are not made into a new complicated legal process to create a similar opportunity for perpetrators to fleece the estates of the vulnerable through the courts.

If senior citizens would designate their power of attorney when they sign up for SS and Medicare then it would be simple for the court to contact Social Security and find out who the POA is.

When a court receives a petition, the court<sup>50</sup> should be required to diligently search for a power of attorney or some other directive. If a named agent is found, the situation should be automatically referred to that person and removed from the courts.

***11 Many studies indicated that 90% or more of seniors want to stay in their own homes. Are guardians helping them achieve that? Should they?***

In many cases, the guardians not only force the senior from their homes, they trash the place, throwing away everything that can't be sold, but in some cases sell the home below market value to insiders and then make a fortune when they buy it back. Abusive guardians have been doing this to vulnerable seniors for decades, and getting away with it because they HAVE THE LEGAL AUTHORITY TO DO SO!

**RECOMMENDATIONS**

Seniors should be kept in their homes. <sup>51</sup> We should move in the direction of the Community Choice Act. One of the problems Medicaid: If homeowner runs out of

<sup>50</sup> Robin Westmiller, who originally founded the National Association to Stop Guardian Abuse, stated, "My father's legal papers stated my mother was to be named guardian should he be declared incapacitated. The Florida guardianship business did not even check to see if he had any legal documents in NY where he lived. It just grabbed him. Courts don't care, Judges don't ask, they just hit the gavel and give away life, liberty, and property to anyone who wants it." That pretty much sums it up. We must ensure that a named agent is not prevented from carrying out the wishes of the person who named him or her. It should be illegal to ignore it without a jury trial that will remove him only with cause. The agent should have full due process.

<sup>51</sup> In California, there is a model program, the In Home Health Support Services (IHHS) program that pays family members an hourly wage as caregivers to care for a disabled adult at home, but this has been the object of severe state budget cuts.  
(footnote continued on next page)

cash and their home is worth less than a certain amount they are eligible for Medicaid and can stay in the home, in many cases, under a Medicaid Community Waiver. The problem is that Medicaid is not going to pay for the guardians or at least, only a token amount. This creates another problem. Let's say the guardian sells the home of a ward supposedly to help to pay for his or her care, the money may go to pay for the ward's care but it also goes to pay for the guardian and any other legal fees, etc... that are getting paid from the ward's estate. Now's let's assume the home is worth less than say \$500,000 and is exempt from disqualifying the ward for Medicaid. So the ward could go on Medicaid and the home would be available for Medicaid recovery after the ward was deceased. We have heard of numerous cases where the home is sold and guardians and their attorney get paid a good bulk of the money when their fees continue to be paid from available assets. I have often wondered about this dilemma and wondered what the correct decision is in this case. In the end, the ward pays the price again, instead of staying at home; they end up in a nursing home on the taxpayers rolls.

***12 What percentage of a senior's assets go to pay for the guardianship, as opposed to medical care, housing, etc. ?***

It depends on the size of the estate. In my case, we had to do an assessment of what it would cost to care for my foster mom per month. We determined that if the guardian were making careful decisions, it would cost \$5,000 per month at the most. That would cover her care in a very nice assisted living facility or nursing home. It could cover her care at home, even if she needed 24 hour a day care. This was based

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while the federal government pays the bills. Social services often do not tell family members about this program, even  
(footnote continued on next page)

on the current rate for home health care aides. Most people have some form of insurance or Medicare which would also contribute. In the majority of the cases, the monthly cost of care should be less than \$5000.00 per month.

The percentage that goes to pay for the guardianship not quantifiable without knowing the size of the estate but I would venture to say it should not cost more than the total amount in the estate less \$5,000 per month for the care and support of the ward.

#### EXAMPLE

In my foster mother's case, the cost per month for her care never exceeded \$300 per month when she was living with family. When she went into a nursing home on Medicaid the cost to her was her small pension and her SSI dollars totaling around \$600 per month. The only time the cost of her care was higher was when a guardian put her into a special Alzheimer's unit with one exception and that was when she was in my home for a couple of months getting qualified for the Medicaid community waiver program and I paid for some caregiver help over and above the 30 hours a week that Medicaid paid for and for a few months when we paid about \$200 per month for a stair-climber. During that time, the cost was about \$5,000 per month. Her insurance and then Medicare and Medicaid has always covered her medical and expenses. When the guardian is frugal, it seem that they should be able to cover the cost of the care of the ward for about five thousand dollars per month.

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though family members are willing to work at much reduced rates of pay and the program is a bargain for the state.

**13 What needs to be done to ensure that a finding of incapacity truly does indicate a true incapacity or mental incompetence that justifies the appointment of a guardian?**

*(See The incapacity process under section 1.1)*

**14 You mention that emergency guardianships and plenary guardianships are a big part of the problem. Can you elaborate and also explain what you think can be done to limit these emergency and plenary guardianships.**

#### THE PROBLEM

##### Plenary guardianships

Plenary guardianships have become the norm. In a plenary guardianship, all rights are removed instead of only those that the incapacitated person is unable to exercise. All of those rights are conferred onto a third party guardian. Rarely is a person totally incapacitated and yet it is just easier to sign the order and strip all of the rights. Probate courts have become an assembly line, a cattle call for old and disabled people. Doctor's diagnoses are reduced to filling out a nice neat and tidy form and checking all the boxes, and the doctor never has to appear in court to be subject to being challenged under cross-examination under current laws, as any criminal witness would have to do. It takes more time to work out a limited guardianship, but it goes so much further in helping the client to maintain dignity and autonomy.

Unless a person is unable to make any decision at all, and unless they are unable to express their wishes by any means, they should not have their rights taken away. However, in many cases where a guardianship is not even needed all rights are stripped from the person. If the client can reject the imposition of a guardian, that should be honored.

**No Emergency Guardianship Hearings and No Temporary Guardianships**

There should never be an emergency hearing or an Ex Parte hearing to determine incapacity and appoint a temporary guardian. In such hearings a guardianship can be set up based solely on notoriously unreliable unsworn statements of opposing parties and council that cannot be impeached or rebutted and can be based on inadmissible hearsay or unqualified witness statements, with no rules of evidence being imposed.

**RECOMMENDATIONS**

- There should never be an emergency guardianship ever and there should never be a temporary guardianship imposed on anyone.
- A prescribing doctor should always have to appear in court to be subjected to challenge by an opposing attorney that represents the ward and the family. It should not be done by mere paperwork.
- Any emergency where an elderly or disabled adult is at risk should be referred to Adult Protective Services. APS agency should be able to protect vulnerable adults with less restrictive measures than a guardianship. They should ensure a person is not at risk of imminent danger, that their assets are protected, and they should continue to follow the situation until all least alternative measures have been investigated and due process provided, if it is determined that a guardianship is needed.
- There should never be a plenary guardianship that just strips all rights. All guardianship orders should delineate which rights are being denied specifically. If they are all being denied that the order should delineate the rights that are being denied, and if the person is in a coma and cannot communicate, at all add a comment that says why all other rights are being removed. This will at least force the contemplation of each right that is being removed and careful consideration.

**EXAMPLE**

Bennie's mom, Corrine, was being robbed by her sister. Bonnie and her mom contacted the police. They started an investigation. Bonnie's sister knew better than to file for

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guardianship because of the ongoing investigation so she got her son to file an emergency petition for guardianship. Corine was not incompetent. She was living in an assisted living facility and suffered from a physical problem that was managed. The nephew refused her mom needed surgery and pain medicine. The court appointed a private fee for service guardian who soon had her mother put into hospice with a wrong diagnosis of terminal cancer when she did not have cancer.

Corrine mom passed away within days. The sister was never required to pay the money back and the criminal justice system said there was nothing they can do because the woman is dead. A guardianship court is not the place to pursue these allegations and furthermore it is extremely dangerous and harmful. It cost Corrine's estate over \$400,000 and it was all done in 12 weeks under a temporary guardianship; there was no incapacity hearing or guardianship hearing. Bonnie will never recover the hurt and pain of what happened to her mom but remains determined and committed to make a difference for others.

*(Also, see the examples listed in the Appendixes that include many firsthand stories and comments that illustrate this enormous problem in guardianship. )*

***15 Since Guardianship strips private citizens of their rights and often due process, what do you think are some of the alternatives to guardianship?***

**RECOMMENDATIONS**

**15.1 Guardianship Surrogate Decision Maker Laws for the Person and the Property as an Alternative to Guardianship**

- Every state already has some form of Surrogate Healthcare Decision Making Laws for healthcare purposes. The usual order of priority to determine the health care surrogate, before a guardian is appointed is the spouse or domestic partner, the adult son or daughter, the custodial parent of the person, sibling, and some other relative or close friend. (see Section 1 for more detail on the guardianship surrogate decision maker recommendation)



- Each state should develop a list of the carefully specified criteria that can be used to bar a family surrogate decision maker from being unable to serve. (see discussion under section 1)
- Provide Grants for Community Based Senior Care, Legal Aid Services and Geriatric Support, Financial Management and Other Support Services for Senior Citizens and their families (see Section 1)
- Often guardianships are initiated under the premise that an elderly person might be subject to undue influence, could become a victim of financial exploitation, has had money stolen from them, or an allegation is made that a family member is exploiting or stealing from the elder. Often the unproven allegation is the very excuse used to put an elderly person into guardianship. No vague allegations should influence court determinations. Suggestions of financial exploitation or allegations of abuse should be pursued in the criminal justice system, not the guardianship court. Imposing a guardianship is not a solution.
- Establish and/or utilize existing senior elder abuse and financial exploitation investigative taskforces within the criminal Justice system of each state to address allegations of financial exploitation or misappropriation. Penalizing the victims by putting them into a guardianship (where they will lose the rest of their assets and their freedom) is not any way to pursue criminal activity. This investigation should occur outside of the guardianship court. It should be conducted as all criminal investigations are conducted, out of tax dollars. The use of a ward's assets to pursue the investigation of crimes against him or her in the probate court must be prohibited.
- All allegations of financial malfeasance against a family member must be referred immediately to law enforcement for prompt investigation. We hear of many cases where a family member or friend reports a suspicion of some form of elder abuse to APS or to the criminal justice system. Instead of conducting an immediate investigation, the complaining party is referred to the guardianship system to sort it all out, at an

enormous expense to the AIP and Ward. The victims should never be forced to pay for the wrongs committed against them.

- If a crime was committed (and all financial exploitation is a crime) then the criminal justice system should do its job, investigate the crime, and issue an indictment. The process should be funded with tax dollars as are the investigations of other crimes. In thousands of guardianship cases, family members and guardians end up on court steps with “he said she said” allegations that someone is trying to rip off granny. Cases can linger for years with unproven allegations being used to break trusts, seize assets, deny rights, and creating endless legal maneuvering that gives the appearance of seeking justice, but rarely results in anything more than the attorneys and guardians draining the senior’s pockets and devastating lives. When crimes against seniors are sent to the guardianship courts, the seniors, unlike other criminal victims, pay the price of investigating and the additional price of having their preferences and plans thrown out.
- 15.2 Develop a Mentoring or Assistance Program for Citizens with a Diminished Capacity**
- Sweden reformed their guardianship system to maximize autonomy and uses a model whereby mentors are used to facilitate providing assistance to persons with diminished or limited capacity.
  - We should adopt a similar sort of program with mentors to assist those vulnerable adults in our society who need only a helping hand. Much of this could be done with volunteers and an oversight system could be put in place funded by grants. All mentors would be registered in the National Guardianship Database proposed above.
  - Provide Case Management Services to coordinate Community Home Care Services for citizens who have a diminished capacity and need help in the home. Many of the services are available through Medicaid for indigent Citizens.

**15.3 Develop Senior Community Services for seniors and their Families**

- Establish a National Senior Assistance Program to develop a plan and programs to coordinate the delivery of community services through senior community service centers to elderly citizens and their families.
- Fund programs to assist seniors in the community (similar to “Meals on Wheels”). For example” a program could be setup to transport senior citizens to the bank or to the grocery stores. Much of this could be done with volunteers, through non-profits, and by working with church programs.

**16 We all hear that monitoring is one of the biggest problems with guardianship. What do you think the solution is,**

All fifty states have put monitoring of guardianships in the hand of the courts. The courts have failed conspicuously in every state. That fact must be acknowledged and an alternative to courtroom monitoring must be found. courts were created for litigating, not for monitoring. They send people to jail or to rehabilitation but the courts don’t monitor the prison system or the rehabilitation programs. The court place people in guardianships, it is not equipped to monitor them. It doesn’t begin to have the time needed nor the resources.

Monitoring must be removed from the courts

There must be a mechanism in any monitoring system for people to report abuses in the guardianship system and by the guardians.

**What would you recommend as an alternative if guardianship were taken out of the courts?**

If guardianship is taken out of the court then the following are some alternatives that could be used instead of guardianships to help vulnerable persons in need of assistance.

- Family First

Family and friends should always be first in line to take care of family members in need.

- The Durable Power of Attorney

A Durable Power of Attorney or a Trust should be the de-facto alternative to guardianship. It should be as ironclad as a will. There should never be a question as to who should be the guardian or even if there should be a guardian needed at all when there is a power of attorney. .

- Care Management Trusts or Other Types of Trusts

A trust can be a powerful alternative to guardianship. It can clearly define the responsibilities of the trustees and put into place any limitations and restrictions as needed. It can be used to ensure that the senior citizens wishes are followed. A trust is a tool for preserving generational wealth for the next generations. .

- Health Care Surrogate Decision Makers

Rely on Advanced Directives that name a Healthcare Surrogate decision maker as an alternative for care of the person.

- Family Surrogate Decision Makers

Family should always be preferential to a guardian as discussed under Question (1) above.

- Pre-Need Guardian

A designated pre-need guardian, specified in any advanced planning documents, should be able to step into the role of the financial decision maker for an incapacitated person.

- Designated Payee under SSI

A designated payee for incapacitated persons on SSI is an alternative to guardianship of the property.

Perhaps there could be a way to designate payees for seniors

***17 You mention in your testimony that Adult Protective Services and the Criminal Justice System are not doing the job in protecting victims of fraud and financial exploitation and also that they often recommend guardianship instead of addressing the problems.***

#### **THE PROBLEM**

State agencies routinely refer those who try to report problems to guardianship courts. This has contributed to the alarming overuse of guardianships when other alternatives such as family are available. APS is frequently the one referring the cases. Once a guardianship referral has been made, this agency will rarely admit a mistake was made and the agency can become adversarial to the family member who is attempting to prevent a guardianship. Instead of investigating the alleged crime, APS works with the guardian to cast aspersions on the families. The agency will work to ensure that the original flawed decision (made by their agency) that set a guardianship in motion is not exposed. Many APS offices are overburdened and understaffed with qualified personnel to investigate these crimes. It is critical that before additional funding be put into this agency and it is expanded, it must recognize and implement safeguards to ensure that they are not sending vulnerable victims and their families or other agencies wrongly into the guardianship arena. Hospitals and nursing homes to ensure that they too are not referring people into the guardianship system. It is a broken APS system that is responsible for many of these terrible cases in guardianship where people are being abused because APS sent them away when they needed help and referred needlessly to a guardianship court.

The criminal justice system, also, fails to investigate allegations of financial exploitation and abuse of elderly citizens when families report them. Too often, the excuse given is that

there is a guardian to whom it should be reported, or that it is a civil matter. Theft is not only a civil matter (conversion, unjust enrichment), it is a criminal matter, and a destitute family should be able to rely on the criminal justice system to address these issues. They should not have to use their own resources to investigate crimes. . The failure of the criminal justice system to prosecute and investigate results in the allegations (proven or not) being dragged into the guardianship arena at a tremendous expense to the victim who is victimized again by having to foot the bill for whatever time the judge might give the matter.

**17.1 Adult Protective Services should Protect these citizens and not penalize the victims of abuse by sending them into the abusive guardianship system.**

Adult Protective Services should be able to take control of any emergency and have to power to intervene where a vulnerable person is at risk without sending that person into the upside down legal world of guardianship. APS should even have the ability to request a psychiatric evaluation if it is warranted prior to referring a person into guardianship. APS should offer protection from emergency problems eliminating the need for emergency guardianships. There should be a multiplicity of venues available to family members who are reporting abuse in the guardianship system. Both state police and federal resources should be available to complainants. This will foster competition between agencies rather than letting the buck-passing continue. There must be fundamental overhauls so that APS can truly provide real protection and not send private citizens into the black hole of the guardianship system where there is no justice. Some changes are needed before more money is thrown at the problem.

**17.2 The Criminal Justice System should prosecute crime and be tough on the crime of financial exploitation and abuse of the vulnerable. .**

The attorney general's offices need to have a task force to address this problem of exploitive guardianships. They need training to recognize the signs. They must realize that theft is not a civil matter, and that forcing a powerless victim of crime to involuntarily pay for the cost of prosecuting the felonious actions involved with exploitation and elder abuse in guardianship is adding insult to injury. When, these crimes are not prosecuted, the senior citizens and

sometimes their heirs are bankrupted, costing the taxpayers who will support them 'til they die. In some cases, there is a financial exploitation racket going, and it is up to the criminal justice system and our federal crime investigators to take this crime seriously. To force a citizen involuntarily to a legal system without due process, and then to use that system to intentionally rob them, after you have essentially tied their hands behind their back, is unconscionable, it defies any sense of decency or democracy. It is, in a word "inhumane". STEALING MONEY FROM SENIOR CITIZENS IS UNDER THE GUISE OF PROTECTION IS A CRIME, IT IS NOT A CIVIL MATTER, IT IS A CRIME THAT IS NOT ONLY A STATE MATTER BUT ALSO A FEDERAL LEVEL.

### **17.3 APS and the Criminal Justice System Should have a Role in the Incapacity Process and Guardianship Process.**

#### *The Role of APS and the Criminal Justice System in the Incapacity Process*

APS and the AG's office should have a role in all petitions for guardianship (especially those that allege abuse or financial exploitation). The guardianship court should be required to get an external review from these agencies before a petition can be acted on in the court. There should never be an emergency guardianship, as indicated earlier in this report. APS should do an initial assessment and visit and if there is an immediate financial risk, they should notify the office of the AG to investigate and take appropriate action to ensure protection of the estate. The advantage of this process is that the AIP is protected.

**The Role of APS in the Petition Process**—Adult protective services would do a review of any petition for guardianship and of the AIP's living situation to ensure there is no abuse that needs to be addressed immediately and no immediate action needed to protect the AIP. APS should perform an investigation of the AIP, the living circumstances, and the family. It should then issue an unbiased summary of findings and recommendations to the court. If APS sees any financial exploitation, it should be referred immediately to the office of the state AG. If APS sees any signs of elder abuse, it should also report the crime to the AG office.

for prosecution. APS should make their investigation as non-intrusive as possible. A copy of the report should be sent to the AIP.

**The Role of the Attorney General's Office in the Petition Process** – The AG's office should also do an initial review of any petition that is requesting guardianship of the property and should do an assessment of the AIP(s) financial situation (explaining to the AIP that a petition has been filed and that someone is alleging they need financial protection). The AG's office should do an initial assessment of any possible criminal conduct and of any possible risk to the AIP 's) estate. If there is an immediate need for protection then the AG's office should assist the AIP with protecting their assets by contacting any agent or family that can assist them in the meantime. The AG's office should then issue a summary of their findings and it should be submitted to the guardianship court. The AG's office should make its investigation as limited as possible.

**The Petition remains pending until the AG and APS reports are reviewed by the court.** If these reports indicate there is no need for guardianship then the court can send a visitor to confirm the findings, and the petition should be set aside. A nuisance, malicious or bad faith filing of a petition should be subject to strict sanctions. If the court decides to proceed with the incapacity process then notice should be sent to the AIP with copies of both the APS and AG assessment findings. The notice should also include in large print that the AIP "Has a right to an attorney" and should ask the AIP to call a number at the court if they need a court appointed attorney.

The value of this front-end protective measure to ensure a guardian is not appointed for the wrong reasons and the estate is not looted unnecessarily.

**During the Guardianship Matter, APS and the AG's office must stay available to investigate any allegations of abuse and/or financial exploitation** and report back to the court if they find them to be true. In the case of financial exploitation or misappropriation findings, it should be the AG(s) office that takes the matter and pursues the crime, not the probate court. If there are allegations of abuse at anytime during the guardianship matter, again,



these should be referred to APS and the AG's office for action. This matter should not be considered in the probate court, unless there is a need to remove a guardian.

***18 Why you think the costs of guardianship is so high and what you think can be done to reduce the cost.***

**THE PROBLEM**

Guardianship has become a business, and it is a very lucrative one. Guardianship service fees and legal fees are a large part of the costs, but there are also enormous costs when a person is taken from their home and put into a nursing facility when that is not needed. Often there appears to be a rush to use up the assets to get the ward on Medicaid. In fact, when I was complaining about the costs in my case, the attorney said that this would help my foster mother get on Medicaid, so I shouldn't be upset. I would hate to think there might be a tendency to believe it is okay to spend down the assets to get the ward on Medicaid.

In many of the cases that have come to us, there seems to be a rush to sell the home and possessions so that money can be "earned by the guardians". One of the problems with the homes being sold is that often, if the home's worth is under a certain amount, the home would not disqualify a person from Medicaid eligibility. It would later, after the client's death, become available to the state for Medicaid recovery. That won't happen when the guardian sells the home prematurely. Often we hear that the home must be sold to help pay for the person's care, but one has a right to wonder how much of the money is used to pay for the fees of the guardians and attorneys rather than client care.

**RECOMMENDATIONS**

- There are two things we can be sure of: the client would most likely prefer to remain in his or her home, and if the client went on Medicaid without selling the home, there would probably be no money to pay for the guardian and attorney fees. Once the home is sold, there is no asset remaining for Medicaid recovery and the client has been made virtually homeless. The guardianship sells the home immediately. This puts the client more in the control of the guardianship. It also puts the house money

in the guardians' pockets where the guardians can pretend to "earn" it with a variety of activities, none of which benefit the ward. The guardians should be prohibited from selling property, especially family homes.

- There should be a way to control the amount that the professionals (guardians and attorneys) can charge for their services. Some states are experimenting with service fee caps. The Uniform Veteran's Guardianship Act, which has been adopted in some form by many of the states, specifies limits on payments to professionals. Perhaps similar cost controls could be put in place for guardianships. Several of the provisions of this model act, which the federal government has wisely codified to protect their veterans, are 1) no more than 5% of the veterans' estates can be charged by the guardian, 2) no more than 5 wards per guardian
- Some courts already have controls in place to limit the fees professionals charge but they appear to get around that. Since this money is being taken involuntarily, then there must be controls to protect what the ward cannot protect.

***19 Are there other groups like yours working to combat and expose the problems with guardianship? What are groups like yours doing to combat the problems?***

There are many new groups available to the victims of guardianship abuse.

These groups permit victims to vent, to learn from others' experience, and to be comforted and consoled. Many media outlets are reluctant to air cases. Some groups are trying to educate the general public; others are trying to educate leaders. Some function as a support group for victims and their families. Others are more focused on blogging and posting stories. In my case, we have also posted a petition to create a voice for victims to join our call for change. Many groups focus on warning others so they won't fall into the nightmare. I have spoken to family members and been able to convince them not to file for guardianship. Many states are organizing their own state chapters for victims of guardianship abuse. The movement is growing.

Mostly we are all trying to educate people so they will not suffer and their loved one's won't suffer.

There are a number of online websites, some of which are listed below. Most of them chronicle media reports and stories from all over America. It would be great if there could be a town hall or a forum where victims and advocates could come and share their stories.

Our group is: Elder Abuse Victims Advocates at [www.stopelderabuse.net](http://www.stopelderabuse.net) (our website)

Other Groups include: Estate of Denial - <http://www.estateofdenial.com>

N ASGA—National Organization to Stop Guardianship Abuse - [www.stopguardianabuse.org](http://www.stopguardianabuse.org)

A-N-G-E-R - Advocates for National Guardianship Ethics and Reform - <http://anger.us/>

G. R. A. D. E – Guardianship Reform Advocates for the Disabled and Elderly

<http://www.exploitationelderly.com>

[STOP ABUSIVE CONSERVATORSHIPS](http://www.stopabusiveconservatorships.com)

[www.GUARDIANSHIPSCAM.COM](http://www.GUARDIANSHIPSCAM.COM)

[www.elderabusehelp.org](http://www.elderabusehelp.org)

<http://faqusa-judicialcorruption.blogspot.com>

[Www.guardianshipgulg.com](http://www.guardianshipgulg.com)

<http://www.exploitationelderly.com>

[www.sacnow.com](http://www.sacnow.com)

**APPENDICES**

## APPENDIX (A)

*Comments on Cases of Guardianship Abuse and Exploitation*

By: Latifa Ring

<p>The following are just a handful of the guardianship cases that we have reviewed. All of these cases are real examples where more information can be provided if needed. There are thousands more and we can submit more examples and more detail on the following examples if the committee wishes. In many cases the family and loved ones have gone to extreme lengths at great cost to seek justice in the guardianship courts to no avail.</p>
<p>1. In <b>Arizona</b> a reporter, Laurie Roberts, with Arizona Central, has been reporting on guardianship cases in the State. In the case of a woman Ms. Long, she had over a 1 Million dollar estate and was put into guardianship and now is destitute and on Medicaid. Her sister attempted to sue on her behalf and was told she had no standing since the woman had a guardian. A Civil RICO case is being filed against a group of attorneys and guardians over three cases including Ms. Long's.</p>
<p>2. In another case in <b>Arizona</b> the multimillionaire heir to Abbott Laboratories, Mr. Ravenscroft, who is only 49 years old was put into guardianship when he went into a drug rehab program. He is now free it appears and is hoping to recover his \$500,000.00 that were spent in the case. In one report his attorney is quoted as saying that the attorneys were charging \$3000.00 per hour but reduced their fee to \$1500.00 per hour. The last report I read said Mr. Ravenscroft is filing a Racketeering lawsuit against his guardianship abductors. This report is available at Laurie Roberts Blog on azcentral. <a href="http://www.azcentral.com/members/Blog/LaurieRoberts/76751">http://www.azcentral.com/members/Blog/LaurieRoberts/76751</a></p>
<p>3. In <b>Florida</b>, a 56 year old multimillionaire is seized and put under guardianship while his estate is looted of millions of dollars. Supposedly he had a drug or alcohol problem and needed rehab but there was no reason to strip him of all his civil rights and put him into guardianships. The perpetrators in this case recruited a family member to put him into guardianship. Today after several years in captivity he's a free man thanks to the efforts of two doctors who reported to the court that there was nothing wrong with him except for what the court had done to him. Today he lives in fear and shock traumatized beyond belief by the administration of chemical restraints and other abuses while he was in captivity under the guardianship system.</p>
<p>4. In <b>Illinois</b>, an elderly man in his 70's was taken by the police, handcuffed and put into the back of a police car and taken straight to a locked Alzheimer's ward where he remained for two years until finally a judge granted him his freedom. Today he is in hiding, terrified and traumatized with lifelong damage that he will never ever recover from. Hundreds of thousands of dollars of his lifelong earnings and savings are gone. This story was published in the Columbus Dispatch and resulted in the Judge Eric Brown putting out a call for public input on guideline for attorney guardians.</p>
<p>5. In <b>Texas</b> a woman struggled for years for the freedom of her dependant adult son who was the victim of an accident and recipient of a large settlement and placed into guardianship. She watched helplessly over the years as her son was abused, raped, contracted HIV and suffered grave abuses in a facility powerless to speak on his behalf or protect him because he had a guardian. Several months ago she received a call that her son had died and was being buried in one hour. She was in another State and was unable to get there in time when a judge refused to issue a stay to stop the funeral. She never got to even say goodbye to her own son. This woman and her sister tried numerous times to get help and appeal but the federal courts won't interfere where the probate courts are concerned it seems.</p>

6.	In another prominent <b>Texas and New Jersey</b> case, an elderly woman (Lillian Glasser) with a \$25,000,000.00 (Million) dollar estate was shuffled between the two States and finally a New Jersey Guardianship was awarded. In this case between \$7 Million and \$10 Million was spent on attorneys and guardians. It took a 34 day hearing to resolve the guardianship matter and over 25 lawyers were involved and/or paid from her estate. In this case, according to her son, Goldman Sachs had an involvement. One of the fee applications approved \$189,000 for one of the attorneys and \$215,000 for the guardian's attorney for services provided during a 9 month period of time. That amounts to a cost to the estate of about \$50,000 per month. This is unspeakable and something is very wrong when a system intended to protect and preserve assets can be used to exploit the estate. Regardless of the family conflict or disagreements it should never take a 34 day trial and scores of attorneys to handle a guardianship matter. It seems that the cost of a guardianship case is directly proportional to the value of the estate of the vulnerable person it is intended to protect.
7.	In <b>New Jersey</b> a man, a Veteran with three purple hearts, is in a New Jersey guardianship while his children in Georgia are pleading with the courts to let him come and live with them where they can care for him. He has no family in New Jersey and has three children and 15 grandchildren in Georgia. Over \$700,000.00 has been spent and this is a veteran with veteran benefits. His property is being sold to the lowest bidder and his children and ultimate heirs were given a 10 day notice of the sale and to come up with the money or see the property sold. In this case it is the office of the Public Guardian that is involved. One of the sons is at wits end as there seems to be no way to get his father back from what he believes is really a kidnapping by the Public Guardian. This son was not notified that his father was being put into guardianship and the excuse given was that the father (who was found to be incompetent due to Alzheimer's) forgot to list this man and one of his sons. Update: One of the sons tried every avenue to free his Dad. Finally exasperated and angry in a moment of extreme frustration he said or wrote the wrong thing to the wrong person. He was extradited from his home State and is now in Jail in NJ awaiting trial. Guardianship Abuse is the only form of abuse that I know of where there is nowhere to turn to in order to report it.
8.	In <b>Pennsylvania</b> there is a man who is under the worse assault by two guardianships; one over his mother and one over his sister. He was the designated pre-need guardian, the trustee. The multimillion dollar trust has been broken, the attorneys are having a field day, and the guardians are making a killing and a temporary trustee that seized the gold bullion and assets. Everyone is getting paid. Without any final accounting and an absolute refusal by the guardians to even sit down and review the accounting to allow the trustees to answer any questions that may be made, an all out lawsuit has been launched against the trustee without any stated cause other the allegation of wrong doing. The daughter who was living in her own apartment is now locked in a psychiatric ward and the mother who has dementia is unaware of the harm being done to her. The family members and friend are destroyed and denied access or visitation with the wards. Update: The mother passed away and the son was not notified for days. Finally the son was literally told to bury his mother in an unpaid for plot at a location chosen by the niece or he could bury her in a county plot despite the fact that there is still a couple million left in the estate and the son is the heir to the estate.
9.	In <b>New York</b> a business woman involved in a lawsuit finally fired her lawyer because she did not believe he was properly representing her. The lawyer went to the judge and petitioned that a guardian be appointed to represent this woman's interest in the lawsuit. The judge ordered the woman to undergo a psychiatric evaluation to see if she is competent. The woman did not and an ad Litem was appointed who has assured the woman she is only incompetent in the court room. She was still appealing the last I heard.
10.	In <b>Massachusetts</b> an elderly woman is confined to her home under the care of guardian appointed

<p>caregivers. The guardian and attorney are one and the same. While the guardian is systematically looting the estate through outrageous fees and traveling to another state to seize her assets, the roof at the woman's home is leaking and the wall paper is peeling off the walls. The midwife is affecting the woman's health and she is being denied proper medical care. Recently the guardian informed the daughters that there is no money for food so they are buying food and taking it to the home. Where is the justice in this and where are the protections to prevent elder abuse? Update: The mother passed away and the guardian would not release the funds to cover her burial costs.</p>
<p>11. In <b>California</b>, an elderly couple has watched their dependant adult daughter suffer the worse form of abuses and medical neglect for the past eight to ten years. As she has aged they have aged and as she has suffered they have suffered. Today they are still fighting for justice for their daughter and for her rights. In another case and dependent adult child was taken from his parents for no real apparent reason. Forced into guardianship and into a group home where he is forced to go to a place to work while the facility gets paid with his money. They do not even get holidays off. What kind of systems puts these dependent adults into forced servitude where someone else gets their earnings?</p>
<p>12. In another case in <b>California</b> a man married to his wife for 60 years does not know where she is while their joint estate is looted. He himself has become a victim of abuse from a broken system. He has exhausted all avenues to be with his wife who had a stroke and has been separated from him. In this case the daughter was appointed as the guardian. The man gets to meet his wife at neutral locations and he pays for someone to pick her up. Last time I spoke to him the judge was ordering him to pay the fees from the trust and he was being told he had to divorce his wife or separate their assets somehow. Here you have a case of an elderly man who is not being abused. He spent his first Christmas away from his wife in 60 years.</p>
<p>13. In the conservatorship of Diane Hastings in <b>California</b> in 2002, the principal ground for conserving her was the claim that she was "gravely disabled" due to a diagnosis of "oppositional defiant disorder" (ODD). In other words, she opposed the conservatorship and because of that she needed to be conserved and forced to take psychiatric drugs. Naturally she was upset. She was also supposedly mentally disabled because she did not want to take Zyprexa, because she thought she did not need it. The guardian's psychiatrist axiomatically testified that her opposition showed she was mentally disabled because her goals were deemed "unrealistic." If she was of diminished capacity, she had no way of understanding that the doctor knew best for her. She had no access to her own doctors. This is an example of the type of "obnoxious paternalism" that should not be used to justify guardianship, and the abuse of psychiatry that goes on every day in probate courts when retained private guardians' psychiatrists testify.</p>
<p>14. In <b>Colorado</b> a woman was taken from her home by force with armed officers and the guardian. She was placed in a facility where she is being giving dangerous drugs. She is not or was not incompetent and was told so before she was taken. Her son who lived with her and cared for her was forced out of the home and the home was put on the market. The son who is traumatized by the whole ordeal has been denied any access to the courts or his mother. UPDATE: The Court ordered immunity for all professional fiduciaries, upon request to the court. The Judge excused professional fiduciaries claiming it was too expensive to audit guardianship accounts that have taken millions from the senior citizen. After it is taken the senior citizen has no money for audit or to sue fiduciaries, the fiduciaries have all their money, and the judge orders immunity called "Decree of Discharge" and "Court Approval of Accounts." (Jefferson County, Colo. Case # 01-PR-306, May 3, 2010)</p>
<p>15. In <b>Indiana</b> a man does not know where his parents are. An injunction was placed against the entire family including the four year old grandson of his parents. They were forced into guardianship. The last time I spoke to this man he explained how one day he got a call from his parents neighbors in Florida telling him that there was a huge dumpster outside of his parents home and they had taken</p>

<p>all of the contents out of the home and dumped them into a dumpster. Locks were put on the home and it was put up for sale. The son was a broken man from watching the abuse of his parents and the looting of their estate. How would you feel if one day someone could take your parents and lock them away somewhere and you were not allowed even know where they were of if they were alive or dead?</p>
<p>16. In <b>Delaware</b> a woman laid suffering from a broken hip. She suffered in that home for ten days after Adult Protective Services was called and all they could do was tell the family member who reported the abuse to file for guardianship. Finally out of desperation and duty the oldest of 75 orphans this woman raised in her 60 years as an overseas missionary flew from Texas to file for guardianship along with the woman's nephew. They were not granted guardianship until a year had passed although during that time the woman had surgery and the foster daughter arranged for her care when she was finally removed from the abusive home. During that year the former power of attorney took half her money and the rest went to lawyers and guardians who did not protect the estate and to an Alzheimer's facility that she did not need to live in as family offered to care for her at home. The case ended with a guilty plea to financial exploitation four years later. The foster daughter who care for the woman throughout this ordeal and managed to get her moved to Texas where she lives today thanks to the taxpayers, was assaulted by the legal system for her altruistic efforts as a Good Samaritan. When the money was gone, despite the existence of a guilty plea, a restitution order, a judgment for recovery of the stolen assets and a court order for the attorney to be paid from the recovered assets, the attorney launched a personal lawsuit against the foster daughter who was the legal guardian for the guardianship legal fees. When it was clear that was no justice forthcoming in three Delaware Courts, exhausted and overwhelmed with the stress of litigation and care giving and financially broken she took out a home equity loan and paid the extortionate lawsuit for her foster mother and ward's debt. The cost of rendering aid to a victim of elder abuse in this matter cost the little missionary lady her entire \$200,000.00 estate and cost her foster daughter over \$75,000.00. A few months later the foster daughter lost her job. The restitution order by the criminal court was a joke and not a single penny has been paid. Today the daughter is the guardian in Texas where the courts say she must be represented by a lawyer. She cannot afford a lawyer but continues to care for her foster mother. What will happen next remains an unknown. What happened in this case is not a solution to elder abuse and constitutes pure abuse of the guardianship system. This is my story and why I am fighting so this will never happen to your children or mine when we are old and need a little help and they step in to help us. I will never recover from the immense damage that was done to me but I will try to change the world for others. Update: To Date Mary, who will be 95 this July, her health is failing and I see to her care. Up until last month she had only received a \$1.00 (one dollar!!!) restitution check from the State of Delaware. The judge has ordered some restitution and has finally ordered monthly payments and she got one check last month.</p>
<p>17. In <b>New Jersey</b>, A 49 year old man with a brain tumor and associated cognitive deficits is denied the opportunity to speak during his guardianship proceeding. He wanted to obtain a limited guardianship-limited to just health-care and financial decisions-but the judge declared him totally incapacitated and awarded a full guardianship. If the judge had bothered to read the detailed neuro-Psychology evaluation written by a Harvard-trained Neuropsychologist, he would not have declared the ward totally incapacitated, as his cognitive deficits are intermittent. This ward ended up paying \$58,000.00 in legal fees, to fight a frivolous and meritless lawsuit brought on by his mother who just wanted to grab money from his estate. By default in guardianship proceedings, legal fees are paid out of the wards estate.</p>



## APPENDIX (B)

## STOP ELDER ABUSE AND GUARDIANSHIP ABUSE PETITION RESPONSES

On-Line at: <http://www.thepetitionstop.com/2/stop-elder-abuse-and-guardianship-abuse-in-our-courts>

<b>Deborah Barclay</b>	<b>CT</b>
<p>Guardianship Abuse is the biggest SCAM on America Families today. Probate/Juvenile/family courts are exploiting vulnerable citizens: elders, children and the disabled. The federal government encourages State Gov'ts to 'spend down' elders assets before placement on the Medicare/Medicaid system; the federal government gives 'bonuses' and federal tax dollars to state governments for every child they take into their custody. State governments are double dipping taxpayers and then billing parents for providing 'warehousing' of their children. These 'agents of the court' and their 'professional' consultants are fattening their wallets and feeding state coffers by using the court process to unjustly disparage family's for putting their vulnerable loved one at risk, or mismanaging their funds when in fact, displacing these vulnerable citizens into 'warehouses': long term care facilities, group homes, etc. put them at much greater risk for emotional and physical abuse and death than if they were left in the home with in home services while these costs are exorbitant to family's and taxpayers.</p>	
<b>Teresa Shaw</b>	<b>CA</b>
<p>October 2007 my only sister took her life. My father and sister who lived in Albuquerque New Mexico My mother and father were separated; my mother was residing in El Paso Texas. My father passed a month later. I prepared the military services for my father, November 2007. New Mexico did not allow my mother to attend the services. She was placed in the hospital the night before. She started having delusional thoughts, the early stages of dementia. They would not allow me to take her back home. She was kept in New Mexico for 9 months. She was being financially abused. They cleaned everything out of her house on her birthday Oct. 10, 2008. She was not allowed to have her own pillow or blankets; the main interest was to sell everything. I was never notified. She is currently been placed in a Living Assistant Facility in El Paso Texas. For some reason New Mexico is in charge of her funds. I had been on planning on moving in with her of course I was denied. Lack of funds to hire another attorney in Texas. Since I live in CALIFORNIA, things were difficult working with attorneys out of State, NEW MEXICO cleaned me out and got me nowhere. Still fighting for my mother on my own.</p>	
<b>Carolyn Spencer</b>	<b>CO</b>
<p>What I have seen and heard of is the ones that are supposed to protect the elderly are the ones abusing them. I am appalled about a case I know of in Chicago where the lawyer, appointed agency for protecting this man and the bank are all working diligently to fleece this man of all his money. It is a crime and the lawyer should be disbarred, and the rest of them thrown in jail.</p>	
<b>Jeanne Bloom</b>	<b>DE</b>
<p>My mother was a victim under my controlling, volatile and greedy brother. She had dementia, was isolated from her family, and lived in a home with a woman who was not capable, emotionally and physically abusive. My brother had her keep my mother away from myself, (her daughter) and her family. He sold everything she owned, lived high on the horse while my Mom slept in a chair, suffered without the proper care, and taken away from her family. She passed away before I could see her and get the help she needed. No one listened to her voice, nor mine. The lawyers promised I would see her,</p>	

but just took my money. I need justice for my Mother...

**Maritza Torrent-Viola FL**

"My mother Estela Torrent has been involved with the Guardianship/Probate Judge Maria M. Korvick since 2002, when I reported the rehab. Center she was temporarily staying to the Department of children and Families (DCF) Elder Abuse Hotline of numerous incidents of physical, mental abuse, and neglect...in turn, the Rehab/Nursing home Administrator, filed an abuse complaint against me... although the investigation on the administrator's claims were dismissed as unfounded, and the case close; Judge Maria M. Korvick appointed a professional guardian to the person- my mother, and appointed my mentally ill in an active psychiatric disability brother as guardian of the property/ mother's assets which included her home. Guardians by law must have an attorney in guardianship cases, so everyone Judge Maria M. Korvick appointed unbeknown to my mother, and against her wishes to be at the rehab. center/ nursing home, was paid, against mother's assets. once their "bills" reached the my mothers' net worth, Judge Maria M. Korvick Ordered mother's home and furniture and all of my mother's belongings among everything she owned to be sold to pay those she Judge Korvick, had appointed to my mother's case. In addition, she Ordered that Mother stayed at the rehab. center I had called the DCF for an investigation.... based on the hard copy of the investigation, the Department of children and Families did not investigate my complaints, in fact there is a mention of someone I did not even know but who had approached me as a witness of an abuse against my mother, but nothing was done as a follow up, nor any mention of finding the people or the rehab. liable for any abuse. Furthermore, the Administrative Judge Maria M. Korvick, Ordered that my mother STAY at the rehab. center she was and continued to be abused. I have numerous pictures, and tape recording relating to the abuse. It was not until the money was about to run out, that Judge M. Korvick, Ordered the Professional guardian to remove mother from this abusive setting within 24 hours. something that never happened. After I filed a contempt of Order petition hearing, there was NO action taken against the professional guardian, furthermore, mother stayed at this abusive setting for almost if not an entire year after the Order of removal in 24 hours... after mother's money ran out, the professional guardian and her attorney quit the case, and in fact, even my brother quit, as the guardian of the property,, something Judge Maria M. Korvick ignored. ... in the process she had ordered that I have supervised visitations by someone the professional guardian chose, and I was forced to paid for the 2 hour limit visiting time, Judge Korvick Order made me look as if I was guilty of something, as if I was a criminal. pardon me, a criminal would have visiting time, without having to pay,, I wonder if the fact that Judge Maria M. Korvick appointed my brother although in an active psychiatric disability of which she was aware has anything to do with the fact that my brother used to be an attorney and be a partner on a law firm.... by the way, it is against the Florida Statute to appoint anyone who is mentally ill guardian of someone the court has deemed incompetent! Guess Judge Maria M. Korvick is above the law...

It would be nice, if anyone reading this situation would contact the Miami Herald Action Line, and ask that THEY investigate mother's case. and by the way, after years of Judge Maria M. Korvick abuse of power towards me on this case, I WAS appointed and I AM my mother legal guardian...although she still haunts me, humiliates me, and Orders against my rights as my mother's guardian. I have NO decision making power over my mother. What is wrong with this picture???"

This is happening now to me and my mother. The nursing home believes her delusions that she owns multiple homes out of state. They have made a report to the DCF who now charges that I am financially

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exploiting her -- she has dementia and they have started litigation in court to declare her incompetent. Because I am the "accused" I cannot file for guardianship---how convenient.

**Cindy Lewis FL**

This is all being done behind closed doors with no information being forwarded to me (I have POA) or any other family members regarding hearings or court dates.

The nursing home transferred her to the hospital and never contacted any family members - then discharged her also without notification. Clear violation of law.

And while all this has been going on the nursing home has denied visitation for any family member until the "investigation" is complete by the DCF/APS.

THIS IS FLORIDA - WE ARE BEING RAPED BY DCF/APS.

**Lynn Sayler FL**

My mother is involved in a Florida guardianship that is so out of control and there are many attorneys and judges that are just sitting back and permitting it. I am very concerned of my mother's money. It is not going to her care but to guardians and their appointed attorneys. This system is set up to fail for the

ward. I want to see change now!!!!	
<b>Marsha Celano</b>	<b>FL</b>
my husband is getting wiped out by the guardian and the judge signs off on the bills and I am going to court on the 22 to fight it also applying for guardianship of the person. the guardianship spends time degrading me and I am the one who takes care of my husband.	
<b>Clara Sharp</b>	<b>GA</b>
I am a senior, on limited income, and so far, I am treated ok. I do have some issues with a TV provider who took a few hundred dollars from my checking account, without notifying me. They will not budge. I have heard other stories about this provider. So I am starting to feel it. I have health issues, so I don't have the energy to fight back. I feel this is one way we are targeted. They know we probably have some medical concerns, and have little energy or resources. I pray to God this kind of subtle abuse does not continue. They legally stole money from me.	
<b>Michael Blasco</b>	<b>GA</b>
My dad is being held hostage and having all his assets sold as the ocean county public guardian refuses to turn over custody to us in Georgia. we made a website <a href="http://www.newjerseycorruption.com">www.newjerseycorruption.com</a> help my Alzheimer's stricken dad and his family. Michael G Blasco	
<b>Denise Grooms</b>	<b>IL</b>
My grandmother is a victim to two lawyers that are attempting to take control of her estate from me. My mother her only child died 33 yrs ago. I am her only living grandchild and cared for her after her stroke for 7 years while maintaining a full time job and raising two children to adulthood. It is appalling the lies and personal assumptions that these court officers have try to come up with. I never thought that I would be portrayed as such a villain for trying to give my grandmother a good life in the last years of her life. She had lost the ability to do this for herself. I know that they will have to answer to God one day for the evil they have committed in their lives. I will never be sorry for extending myself to her. I will use everything in my power to make sure that she will have what she wants and needs in these final years. I know that God will deliver us as a family in our time of need.	
<b>Tami Goldmann</b>	<b>IL</b>
In other countries the elderly are revered. Here they're abused and neglected. The whole legal system needs an overhaul. I watched a Senior get burned by their own attorney, get set up with a guardian who is now raping them financially and threatening to take a restraining order out on everyone who hears this poor soul cry rape and foul. It is the sickest thing I've ever seen in my life. Guardians, lawyers and the entire justice system is clearly the problem. Who's protecting these poor souls from the greedy when they're nearing the end of their lives? Doesn't anyone have a sense of moral decency anymore?	
<b>Kathy Goldmann</b>	<b>IL</b>
I've seen this abuse first hand. There appear to be no credentials that guardians even need. They can feed off the assets of the elderly and wipe out their accounts with little benefit to the person who has	

saved all their life for their old age! We need control over this!	
<b>Leslie Armijo</b>	<b>MD</b>
<p>I WAS NAMED BY MY MOTHER TO BE IN CHARGE OF HER WHEN SHE WAS AT HER LATER STAGES OF DEMENTIA. MY MOTHER SIGNED IN FRONT OF FIVE NOTARIES IF NOT MORE THAT SHE ONLY WANTED HER DAUGHTER TO TAKE CARE OF HER. NEXT, MY SIBLING AND HIS GIRLFRIEND WHO WAS NEVER THERE FOR MY MOTHER'S NEEDS, CAME INTO THE PICTURE AND TRICKED MY MOTHER INTO SIGNING A NEW POA AND HEALTHCARE FORM NEXT, THEY EXPLOITED HER AND TOOK OVER 100,000.00 DOLLARS OF HER MONEY. I CALLED SOCIAL SERVICES AND THEY TOLD ME TO FILE A GUARDIANSHIP CASE AND I DID NEXT, I FOUND OUT MY BROTHER KNOWS THE JUDGE AND THEY CORRESPOND ON THE TELEPHONE, I HAVE ACTUALLY WITNESS THEM TALKING IN THE PAST. NEXT, THE TRIAL IS COMPLETELY BIAS AND I AM CONCERNED - MY MOTHER WANTED TO FIRE HER COURT APPOINTED LAWYER BECAUSE THE LAWYER IS NOT PAYING HER BILLS, I AM AND THE JUDGE DID WILL NOT APPOINT A NEW LAWYER. CAN SOMEONE PLEASE HELP US WE ONLY WANT A FAIR TRIAL AND TO MAKE MY MOTHER'S WISHES COME TRUE. MY MOTHER MADE ME PROMISE HER THAT I WOULD TAKE CARE OF HER YEARS AGO AND THAT IS WHAT I INTEND ON DOING. THANK YOU</p>	
<b>Linda M. McMillan</b>	<b>MD</b>
<p>My disable son has an conservatorship in the DC Superior Court, funds are being swindled he has more than one social security number created under a guardian named Renee I Fox it was issued in Arizona years ago.</p> <p>The conservator was nominated by Ms. Fox. Now the conservator is trying to take my son who's 24 years old and his new home, it's more to our story. Please Help.....</p>	
<b>Elesha Tonken</b>	<b>ME</b>
<p>I have just been through the most unbelievable situation with mother. A neighbor whom she hardly knew petitioned for conservatorship, they family had absolutely no say in the court. The conservator ultimately left my delusional mother in the care of another delusional elderly woman so family couldn't call or visit.</p>	
<b>Cynthia Sha'aouni</b>	<b>MI</b>
<p>At Autumnwood Rehab in Livonia Michigan USA, the employed there are giving me a hard time about seeing my father on specific times. His temp. guardian that put papers through the court threatened me and have given me a hard time. My father needs help, because they are petitioning for guardianship over my father through a professional guardianship to overtake my father and what costs they can pocket. They are going to court 25 January 2010. They are frauding my father, and hurting our family. This is not supposed to be a professional business and they doing this, truthfully, to the vulnerable. My dad needs his attorneys. Maybe, my brother, with some wealth and legal pull as an attorney can help our dad. Charles Paul Thomas Phoenix, my brother, may be able to get him out of guardian care.</p>	

<b>Bonnie Jean Smith MN</b>
I have a friend whose father is being held against his will by a woman who claims to be his wife. My friend has records showing this woman never married her father and her son who is now in prison in TN for robbery and assault attack my friend's dad gave him a TBI and has never left their home since. The only thing keeping him alive is her persistence in contacting him once a week letting this woman know she is being watched. Mean while she has drained all of his savings and retirement monies going on elaborate cruises with her daughter. This woman's last two husbands died mysteriously and last year her daughter's husband died mysteriously also.
<b>nancy pierce NY</b>
Do I know what can be done ....no. But at this moment I have 2 neighbors in guardianship of their parent, waiting for them to die. Yes they are in charge of their money. One won't let their elderly Father have new teeth to eat. The other leaves her Mother in a tiny room alone all day, admitting openly...when she dies I am moving to Arizona.
<b>Kim Baudry PA</b>
I have seen a woman unnamed of any recognition in a wealthy woman's estate plan use her professional knowledge of guardianship to act as a weapon to destroy the woman's son who was the favored heir. Out of nowhere she filed for guardianship despite the woman's Trust, Power of Attorney and 5 layers of medical and nurses in place. Now this family is ravaged by TWO corporate guardians. 57 years of a family life...as though it never happened. False accusations all as the art of war. Now they are going after the Trust which should be protected.
<b>Lenora Stubblefield-Thompson WA</b>
Our courts system are corrupt here in Walla Walla Washington we have more adult guardianship here than in Seattle--Our Dad had 3 different doctors stating he was of sound and did NOT need a guardian--the GAL refused to accept the doctor reports--constant EX-Part communication with the petitioner--the GAL was handpicked by the petitioner attorney not in order from the register, courts not have transcripts and not giving proper notice--Judges signing orders who did NOT hear the case--ADA Rules not followed our Dad was told to be Quite or he would be removed we were trying to tell him what was being said against him--No micro-phones in the court room then was charged by his worthless attorney for a hearing device (before she ever was his attorney)Our Local courts and attorneys along with the Banks are all working together to steal our Elderly Estate's--Our Dad died Oct 3, 2008 was never proven incapacitated and now the same person filed the petition for the Guardianship and Guardianship of our Dad's Estate is now contesting our Dad's WILL. Our Dad sold one piece of his property for over \$400,000.00 in February then a petition was filed and our Dad was not allowed to receive a dime of his money--the courts have kept his money in a attorney's Trust Fund and even with a NONINTERVENTION WILL the Judge will not allow the money released to my brother who is the Personal Representative of our DAD'S Estate--the courts are stating they can use the GAL as evidence even though both cases were closed back in December 2008--nothing is done legally--laws are NOT being followed and our Elderly people are dying due to the stress and corruption of our court system who is suppose to protect our Elderly (Our Dad was Hard of Hearing) other than that there was NOTHING wrong with him--94 years old still ran his own business, owned over 30 acres, over \$150,000.00 in his Bank account, still drove with a valid driver's license--The GAL lied over 57 times in her reports to court under Perjury we tried to file a grievance against her the local Judge sent the complaint to all attorneys including the GAL who was involved in our Dad's case and NO Investigation was ever done.

**Albert Stubblefield WA**

There is a small group of 'professionals' engaged in racketeering to fleece the elderly in Walla Walla, Washington. These include at least one Superior Court judge (now retired), two attorneys and one guardian ad litem. These individuals finally drove our elderly father to his grave on October 3, 2009. The felon, who originally brought the charges, claims to be an adopted son and is now suing our family to remove me as the personal representative and challenging our father's will to take over his estate.

The guardian ad litem (GAL), Lorraine Mastin, visited our father just two times in eight months, yet spoke several times each week with the petitioner and reported over 50 lies to the court under penalty of perjury.

The GAL was chosen out of order from the roster by the petitioner's attorney. The petitioner's attorney was a niece to the attorney representing our dad. Yet the attorney did not inform our father of this fact.

Our dad's attorney threatened him and repeatedly told him not to come to the hearing that was to establish guardianship over him and his estate.

Our dad, my two sisters and I have searched everywhere for help and have spent nearly \$200,000 in medical and legal fees trying to protect our father, yet the saga goes on.

The petitioner's are now challenging our dad's will based on his alleged incapacity.

I beg you to investigate these facts and change the laws so that they really do protect the elderly instead of lining the pockets of attorneys, doctors and guardians.

Al Stubblefield

Personal Representative for the Estate of Emory N. Stubblefield

SUSANNE PRAHL - WI

Jeanette suffered a severe stroke 6 months ago that almost took her life. This is her 2nd stroke. Jeanette suffered her 1st stroke 4 years ago. She recovered and was able to function completely, including the ability to drive her car.

Now with this 2nd stroke, Jeanette has made it past the 6 month mark. She is just starting to recover and is moving her right arm some, and now can perform the task of picking up her left hand with her right hand. She is also moving her legs some now. She may be unable to move her arms and legs; but, with the correct therapy, I know that will improve greatly!

Now, as far as how this guardianship battle started: The Nursing Home (Wild Rose Manor) made an accusation that my father fondled my mother's breasts. He didn't do that at all! Then he couldn't visit her without a watchdog on him! Then it only got worse!

This was my first time ever going to court. All I can say is "WOW"! I'm sitting in a chair outside of the courtroom, all of the sudden, this older man comes out and starts having a conversation about how he is going to work in his garden at his house this week! He asks the Ombudsman and a few other people who we were waiting for. When those people arrived, he went to put on his black robe right where everyone in the waiting area outside of the courtroom could witness it. It was very unprofessional conduct! The judge's demeanor left me to believe that this was all pre-determined before court even started!

Once court had started, he proceeded to ask other people (state workers) questions. He used the term "suggestions". My father (guardian) and I (daughter) was named as the back-up guardian. My father immediately asked for the trial to stop and asked that his constitutional rights be protected. The judge immediately denied him his rights! When the judge was speaking directly to my father, the judge made several comments about them not having a good marriage! My father's marriage was not on trial! He pre-made his determination and wasn't even going to let me talk! I insisted on saying something, and made the suggestion that I be made guardian. Judge Wright didn't give me consideration of guardianship, because he didn't want to put me in a position to make a decision against my father's will and the nursing staff stated they had some complaints with me! Boy would I like to know what those complaints are about! When Judge Wright spoke, it was very monotone and it was very difficult to hear him! I am only hard of hearing to monotone voices!

Ron and Jeanette are both only children. They had 2 children (my brother and I). My mother was an advocate for my brother as he has several severe disabilities (cognitive and physical - speech) since birth. When she took sick this time, she was not able to advocate for him and now because Jim doesn't have skills or abilities to defend himself, he is going to prison. I attempted to contact my brother by phone; but, I need to go through the court system phones. About a year ago I had that number blocked because I was a victim of inmates calling random numbers and I was being charged by my phone company. I was not informed of my brother's trial date. I was in that town that day because I was visiting my mother in another town 8 miles away and that town was on the way to my parent's house.

It was the same Judge (Judge Wright) who sentenced my brother to prison. I have attempted to see him, but, visiting hours are only on Friday, Saturday, and Sunday and must be made in advance by phone; thereby, preventing me from seeing him. I ask to see the records and they denied my stating that they don't have to share that information. Why are they afraid to share this information with me? Are they afraid of something? Maybe that I will start to advocate for him like my mother did? Jim really needs an advocate in her place. I have all the paperwork for those who may be interested.

They claim Jeanette to be incompetent! That is such a big word and I have lots of documentation (because my mother studied this subject with a passion) that her rights have previously and are currently being violated!



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There's more, I could go on all day!

Please feel free to contact me.

Thank you,

God Bless and God Be With you,

Susan Prahl

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## FLORIDA - Catherine Bartlett Roberts – a Human Being



Have you ever watched your mother cry? Or seen her imprisoned in a jail-like facility, in which, her everyday ends at the window, looking out?

Have you ever seen a pair of eyes that would once light up a room but became dull and lifeless and

seemed to beg, "why?" Imprisoned, not for a crime or a contagious disease or mental decline. "Why?"

I guess we all have something that we will take to our grave. Mom took this simple question, "Why?" to hers. And now I will take it to mine! Why? How, in God's Name, can this happen in our country, or in any country? Why? Her only "sin?" ..... falling down and breaking her shoulder!

One bone! One broken bone and then.....all properties seized, county locks placed on her home! Possessions, heirlooms, antiques confiscated and put in an impound storage to be sold at an auction! Hearings, greedy appointed lawyers, an uncaring judge and county Guardians spending Mom's money like it was theirs! And Mom?

Mom, never to see her home or possessions, again, was "dumped" in an "end of the line," terrible place, in which, you wouldn't let your dog live! And me, her only son restrained from seeing her because she cried when I came to visit! You wouldn't treat an animal this way! Well, I wouldn't, anyway! Guardianships are a very lucrative scenario. Lucrative and beneficial to everyone, it seems, except the very ones it was designed and created to help! Myself, family members, friends that knew Mom, well, will always know this; an archaic, unnecessary and corrupt guardianship system and an uncaring, miserable nursing home murdered my Mother! And took away the last years of her life, for, absolutely, no reason other than greed!

We have fought bloody wars over less than this! And I would just like to "thank" the County Public Guardian and the Convalescent home for this "wonderful" memory that I am left with of my Mother.

- William Roberts,

willyb246@sbcglobal.net

## FLORIDA - Ruby Cohen's Story



Ruby Cohen – FLORIDA

December 22, 1922 – June 26, 2007

Father of Robin C. Westmiller, J.D.

My father Ruby Cohen, owner of Cohen's Quality Bakery in Ellenville New York, worked his entire life to build a lasting legacy for their grandchildren and financial security for him and my mother in their retirement years, yet it took only a handful of outsiders less than eighteen months to destroy everything they worked their entire lives to acquire.

After my father had a stroke in 2002, causing him to suffer from severe dementia, a distant cousin ceased upon the opportunity to replace her deceased father with mine and gain control of our family's assets.

She convinced him to come "visit" her in Florida and within three weeks of his arrival, had him revoke my mother's power of attorney, have it reassigned to her and, with the help of a sleazy attorney, convinced him to file for divorce.

The Florida State Department of Child and Family Services suggested a temporary emergency guardian from West Palm Beach, who would end the divorce and return my father home.

Neither of which occurred. Instead, they took over all control of my father's life and began systematically depleting the rest of his estate to pay their attorney, *(unnamed)* and several others. They did their best to eliminate his family from his life, threw him into a nursing home and began giving him antipsychotic medication.

He suffered total kidney failure, and his health began to fade. Fortunately I was able to rescue him in 2005, but not before the Florida Guardians and their attorneys took every penny. When he passed away on June 3, 2007, there was no life insurance, no stock portfolios, or any other assets, which would have gone to my 82-year-old mother to care for her.

My Memoir "*Blood Tastes Lousy With Scotch*" tells the story with actual court documents and testimony on how this horrific nightmare nearly destroyed our family and began my personal mission to STOP GUARDIAN ABUSE.

My mother was placed into "Temporary guardianship" by her grandson who did this terrible deed to keep his grandmother from testifying against her daughter (his mother) whom she filed grand theft and identity theft charges. This was done by the grandson going in exparte and without a hearing or ANY due process my mother's life and all her civil rights were taken away. There was no way to get her to have a lawyer chosen by her to represent her, rather the lawyer for

My mother was in guardianship only 10 weeks when they put her into Hospice and claimed she had "end term colon cancer" which is what they told me. Recently I thought there were loose ends and I went back and got the medical reports from my mother's doctor and found out that my mother's diagnosis was not cancer but rather ulcerated colitis. They put her into a Hospice program and 12 days later she was dead from the effects of morphine. After having to get a court order from a Judge, I was allowed to see the hospice records. To my total shock, there were NO doctor's reports from my mother's private doctors. There was no pathology report or any reports what so ever testifying that my mother had only 6 months left to live.

I ask that you allow me the privilege to speak to you personally. I honor your interest in this issue because it is so important that the free press keeps its ability to inform its' public. I will hopefully hear from you or a representative and that you will hear my story of how I tried to save my mother but failed.

Respectfully, Bonnie

## WASHINGTON - THE STORY OF DORIS DENNEY



This is my mother, Doris Denney. Through no fault of her own, she ended up in an Adult Family Home for six weeks and for the same amount of time, she had a guardian of the person, Care Planning Associates.

During her time at the Adult Family Home, she was sheltered, received her medications, had some entertainment, was fed and received assistance with the activities of daily living. For that she was charged about three thousand a month, totaling about \$4500 for the six weeks. For the guardianship of the person, she was charged \$18,000 for six weeks. For this, she had a visit or two. The rest of the dollars were for conferring, reporting, talking, calling, meeting, and considering. Since she had considerably more dollars to be stolen, the guardian and its loathsome attorney tried in every way to keep themselves in the picture. They especially wanted to get her home. Her wishes were of no interest to them. I succeeded in releasing her from their greedy, dishonest grasp.

When I examined the bill, I noted that the charges didn't match. They were obviously bogus. They had just made up calls and meetings and other activities. They also had neglected her therapy for a broken hip. She is currently in a wheelchair - a fact I attribute to their negligence. I tried in every way I could to get the Commissioner's attention. But that was not going to happen in the Seattle Superior Court where such fraud is routinely rubber stamped. I brought an action for fraud and submitted thirty or more pages of fraudulent charges. The judicial joke behind the bench told me I should have shown him this earlier and fined me the guardian's and their attorney.

The attorney's legal fees amounting to about eleven thousand dollars. He never asked about a single bogus charge. Additionally it is not my responsibility to point anything out to him. The legislature has written it into the law that the court must monitor this program. Instead of monitoring, this corrupt court has given the green light to elder abuse and financial exploitation of the elderly. It defies belief that the one place where theft is permitted is in a County Supreme Court of Washington. This has nothing to do with justice but rather is indisputable proof of corruption.



#### ALABAMA - TO WHOM IT MAY CONCERN:

Grief Stricken: Open letter to family members who have loved ones who have been victimized by the broken and corrupt health care system.

It is my opinion that the elderly care system in Alabama is broken; that this system

is corrupt as individuals are not allowed to appoint, assign and specify their own guardian/conservator through a durable power of attorney. Hence lawyers, the courts and nursing homes can benefit from the exploitation of the elderly or other incapacitated persons. This is a big business in Alabama and the only way to correct the situation is to change the law.

Obviously when you have lawyers, judges and nursing homes profiting from exploitation of those who cannot help themselves, this is akin to slavery. My dear

mother, La Faye S. Lynch, has been financially raped and robbed by these people to the tune of over \$50,000.00 per year! This is a form of legalized robbery; it is exploitation of the elderly. As a result my home valued at over \$250,000.00 was lost in addition to significant personal property. Plus I spent a significant sum on lawyers trying to fight the system to no avail.

I have no resources left to fight these people. They are very corrupt and powerful; they essentially took away all the income and property that would have been used to fight their corruption. When through such exploitation you disarm and impoverish someone, due to greed and immorality, all they have left to fight with is words and the pride, dignity and respect they are given through their belief in God and faith.

I understand many family members are experiencing a similar financial rape, robbery and exploitation with respect to those you love and care for deeply. There is not much I can do to help other than to offer my hope and prayers. Those family members who have a loved one who has been victimized need to see a lawyers and try to get help. I am not a lawyer and cannot give you any legal advice. It may also be helpful if you go to a support group. When corrupt and greedy people were assaulting my dear mother, I went to a support group at Fraser United Methodist Church, in Montgomery, which was very helpful. What one wise elderly woman told me was that I needed to look out after myself first, because unless you do that, there is no way you can help the one you love. So if you have a loved one who has fallen prey and been victimized by the broken and corrupt health care system, you may also want to be sure that you make taking care of yourself a priority.

In my own case I had no idea that such a corrupt, greedy and exploitative system even existed. Paying an attorney thousands of dollars did not help as still everything was lost to these greedy, selfish people who exploited me and my dear mother at a time when she could not speak for herself. Her wishes and desires were totally ignored and great effort was made to defame me and cause injury to me by those who gained financially and otherwise through their defamation.

This is why I would never recommend that anyone retire in Montgomery, Alabama, especially military families, as should something happen, they may become victims of this same corrupt system which came to exploit my dear mother and caused the loss of my home and much that my parents had worked their entire lives to acquire with the hope of leaving it to their children.

There is nothing left; these people who are motivated by greed have power and know how to use it to control those who cannot speak for themselves, the elderly and the incapacitated. It is a corrupt and broken system and until the public cries out and demands reform, other family members and the ones they love who have falling into the abyss of this corrupt system, will continue to be hurt and suffer loss.

This is why I am advocating that the laws be changed so that everyone can appoint their own guardian/conservator; that this power of God not be left to probate court judges. This corruption involves hundreds of millions of dollars and supports nursing homes and institutions throughout Alabama. I became aware of it, as others have, because my dear mother, who I much love and was very close to, became a victim of the system. But most people do not know about this corruption, or if they do, don't seem to care. I say it is like slavery as power and control of the income and property of people is being taken away and exploited to benefit others. In slavery you have people working for the benefit of others; when the elderly or incapacitated who have benefits or income are made wards of the state, then they are as slaves as their benefits or income serve to support those very same corrupt systems and institutions which have taken power and control over their lives.

This is a BIG problem that involves hundreds upon hundreds of millions of dollars in Alabama alone. Yet it is also happening in other states. I get the impression that most people just do not know or care about this problem because it involves the elderly and the incapacitated. It is a disturbing problem and I get the impression that most people do not want to think about this problem until it happens to them and someone they love. But then it is often too late. When the crocodile of exploitation grabs your leg and pulls you under, there is not much you can do as what follows is a death roll; the monsters roll over and takes all your money and resources, so that you have nothing left to fight them with. It is a terrible, terrible situation and I commend everyone who takes notice for trying to stand up for someone they love and care about to help advocate their rights and provide for their health, care and welfare.

There is nothing else I can say or do to help. These people have taken everything from me, my home in Montgomery was lost, and hundreds of thousands of dollars in property was lost. My dear mother and I were financially raped, robbed and victimized by Alabama's corrupt elder care system. What is especially vial and evil about the people involved is they parade themselves as trying to help the elderly, when all they really want is the money!

I wish those who are trying to help well in their struggle. Please do not let those people who are corrupt and greedy destroy your faith in humanity or take away your love. Continue to tell your story to others. If enough people do that perhaps the day will come when this form of exploitation and the financial rape and robbery of the elderly and the incapacitated is stopped and not enabled by antiquated laws which go back to a time when it was legal to make slaves out of people just because they were different, just because they were black.

My hopes and prayers are with you and the ones you love, with all who have been victimized by a corrupt and broken health care system. I hope that if you have been victimized, that your situation works out better than mind did. My dear mother is a virtual prisoner, confined to a small concrete block room where she sees other people dying all around her and awaits her own death, unable to be at home with those she loves, having been financially raped and robbed of everything that she and my father worked so hard for and sacrificed so much of their lives for to provide their children. But those who are greedy and corrupt do not respect family and family values; they only want money, which they obtain by taking power



and control over the lives of others who are defenseless to help themselves. It is just awful that this sort of thing is happening in America!

I do hope and pray for everyone who has suffered a similar experience to that of my dear mother. I do not have all the answers. This is like trying to fight city hall, but in this case city hall is a fire breathing dragon, a devil that only cares about money and is victimizing the elderly and those who are incapacitated. The only solution that I can see is to change the laws and thus slay the dragon such that this monster does not exist to torment people's lives in the future.

The problem goes much deeper than a single judge; the problem relates to the law and to how we care for the elderly and incapacitated. Until the law is changed and people can appoint their own guardian/conservator, and until we have a health care system that is properly funded and not dependent upon exploitation of the elderly and incapacitated, then the monster will continue to devour its victims, destroying their lives and their families.

Whatever you do, just remember to say a prayer for the one you love, and when you are with them, give them a kiss and a hug. I never hurts to say, "I love you!" Try to focus your efforts on positive actions, and remember to take care of yourself. Do not let what is happening turn your thoughts or deeds to the dark side; always respond with love that one day we may all reach the mountain top and see the promised land!

In kind regards,

Terry Lynch

**COLORADO – NO ONE OVERSEES COURT-APPOINTED PROFESSIONALS**

Investigators: No One Oversees Court-Appointed Professionals

System Could Drain Your Retirement Savings

***Tom Burke and Laney Vailian and John Ferrugia, 7NEWS Investigators***

Court-appointed conservators and guardians watch over the financial affairs of many of Colorado's elderly and others considered high risk, but 7NEWS Investigator John Ferrugia discovered no one is watching the conservators.



Those conservators, at times, are in charge of hundreds of thousands – even millions – of dollars.

When there is no family member to monitor how the money is spent, or when dysfunctional families are involved, a state audit shows questionable fees and expenses can drain a life's savings.

Rudy Bush's mother is 81 years old, and until three years ago she lived at home with her son. 7NEWS can't identify her because she is an at-risk adult with court-appointed professionals taking care of her finances, health and safety.

Her son, Rudy, says his divorced mother has had physical and mental health problems, and despite his own problem he claims he can still take care of her.

The court rejected his petitions.

"They started to run my mom like a corporation," Bush told 7NEWS.

Bush's mother is one of thousands of elderly people in assisted living and nursing homes in Colorado whose affairs are overseen by court-appointed guardians and conservators, who run all aspects of their lives for a fee.

It's those fees, running hundreds of thousands of dollars that has Bush very angry.

"It's like my mom is a holiday ham and they're just sitting around gorging themselves," said Bush.

That may sound like a gross exaggeration, but 7NEWS Investigators found a state audit has raised serious questions about the case. For example, why is the lawyer in charge billing \$145 an hour for purchasing a washer, dryer and television for Bush's mother? Why is he charging \$145 an hour for talking to an electrician and another \$145 an hour for talking to her neighbors?

"Do you understand why the auditor would have concern about this? Why this raises a serious concern?" Ferrugia asked Michael Beutz, the conservator for Bush's mother. "Yes, I think uninformed it could appear to be something that would be questionable and noteworthy," Beutz responded. Beutz said his obligation is to protect her the best he can – whether it's inquiring about someone he thought was a threat to his client or concern about a house with faulty wiring.

*HR3040 - Responses to Questions from The House Judiciary Committee on Crime, Terrorism and Homeland Security- Appendix C*

Even if the charges are justified, who is checking conservators' bills? Who's watching the money? Jefferson County District Court Judge Stephen Munsinger told 7NEWS, "We don't have the resources to do it and we don't have the time to do it."

Ferrugia then asked, "Basically you have to rely on the good intentions of lawyers?"

"Absolutely," Munsinger replied.

Despite the state audit, Beutz believes his fees for taking care of Bush's mother are justified. He also believes someone should be watching over the spending of conservators to make sure.

A statewide panel was appointed and met recently to discuss the issue and come up with recommendations for oversight of conservators and guardians.

Submitted by Rudy Bush

<http://www.thedenverchannel.com/7newsinvestigates/13285803/detail.html>

**CALIFORNIA - New Marriage Vows, "Till Probate Court Does Us Apart"**

Dec 30, 2009

Many webs on this subject says it is widespread. I am 86. My 82 years old wife had stroke with speech expression aphasia, cannot speak her mind which is OK. She has been confined against her will using conservatorship for 2-1/2 years with last 14 months in place secret to me using Elder Abuse restraining order to abuse this elderly couple. We missed our 60th anniversary and two Christmas and New Years. We are driven deep into debt to close a million with more kidnapper fees to pay by three judges sequentially.



U.S.C. 18-242 is clear, Deprivation of Rights Under Color of Law, any law. Laws were broken to put my wife under conservatorship but DoD or U.S. Attorney will not investigate. It is a civil matter. I cannot file criminal complaint in Central District Court of California. EJA can use this case as example of kangaroo probate court gone mad controlled by kidnapping attorney via the court staff attorney that transient judges rely on counseling. Case LP 012785 Van Nuys, CA via the court staff attorney. U.S.C. 18-241 applies.

I also have my 94 years old sister in San Antonio, TX also kidnapped using probate court. Several millions of her estate was distributed according to a will obtained by deception of her law professor husband. The judge was his student. She could not change her will because kidnapped under guardianship judge will not dismiss. She died shortly being confined against her will in Alzheimer unit she does not belong. She could walk up steep stone stairs of San Antonio County Court House unassisted and alert enough to point out to me we just passed Walmart where we were going. She died shortly after confined at Alzheimer facility. This case also used the court staff attorney by kidnapper, who was Director of San Antonio Bar Association so that one cannot even complain to the Bar Association. Case 2004PC3226.

These two cases are worse than Iran. Can never happen in China. One person can be victim of two probate courts 2000 miles apart. Legalized kidnapping for profit definitely is too common.

Suggest amend the Constitution to legalize the right to the pursuit of happiness. In my wife's case to stay married in freedom after 60 years. In my sister's case, is to be with her last remaining sibling in California during her last years which the judge intended but overruled by court attorney: not to let her leave Texas jurisdiction. U.S.C. 18-241 & 242 needs strengthened with must investigate if involving elder abuse and prosecute if valid by District Attorney or FBI. Now only about 2-3 percent of complaints are prosecuted under that code. Probably mostly police use excessive force. I do not think any judge ever was brought to justice for legalizing kidnapping.

Please ask U.S. Attorney offices to investigate these two cases as example for criminal prosecutions to warn future kidnappers and to justify EJA changes. This Committee has the power. Please note the old Chinese proverb: execute one to warn hundreds, i.e. hang on city wall the cut off head. Please assign intern or staff to get details if this Committee is serious for EJA to solve the real problem.

Please coordinate with California Senator Dianne Feinstein (D) and Texas Senator John Cornyn (R), members of the Judicial Committee. Senator Feinstein's office cannot help because of separation of powers. Probate courts can be above the laws and Constitutional rights, to ruin life of elderly victim with

means. I served this country having worked on a computer in the Smithsonian Museum that ushered in the computer era. I do not deserve such legalized cruelty by kangaroo probate courts.

This elder wants justice by EJA.

S.Y. Wong  
5200 Topeka Drive  
Tarzana, CA 91356  
818-345-6274, sywongusa@sbcglobal.net

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Today's probate courts want to re write the marriage vows from "Till Death Does Us Apart" to "Till Probate Court Does Us Apart." I agree with Mr. Wong and the Constitution should legalize the right to the pursuit of happiness my parents were separated by force for financial reasons after 58 years of marriage, my father died a year later of a broken heart, he never understood fully why his wife if 58 years was taken from him!

In order to avoid court sanctioned kidnapping by greedy attorneys and their kingpins (Elder Protection Services a.k.a. DCF in Florida, we were forced to leave the country.

It's very sad that's come to this, the only way for elder couples with money to avoid legalized kidnapping is to leave the country, sad indeed!

Those that stay and face kidnapping for profit have no one to turn to, face forced isolation, overmedicating into oblivion, financial ruin and premature death..... it is beyond sad

**FLORIDA - The Guardianship of Yvette Margaret Half**

In a South Florida case, a woman in her upper eighties who had a trust worth about 4 Million dollar had lawyer and a son who were co-agents under durable power of attorney, co-executors named in the will. The son was the sole healthcare surrogate, the co-trustee along with the woman's account and the sole name pre-need guardian. The woman began to suffer from dementia. A distant relative, a niece, was upset because she was concerned that the two sons might spend the money in the trust that she was not named in but her children were the remainder beneficiaries. The lawyer who had a duty to protect the woman had her brother bring the woman to his office where she remove the son from all the documents making the lawyer the sole executor, the sole agent under the durable power of attorney, the sole trustee, and he helped the woman remove the son as the health care surrogate and replaced him with a distant who was wheelchair bound living 1500 miles away and he agrees to become the sole pre-need guardian.

Four month later the woman went back to the lawyer's office to change back the papers where she reinstates the son as the co-trustee with the CPA and the lawyer, leaving the lawyer as the sole pre-need guardian. About two months later the woman was declared incompetent by two physicians.

A few months later the niece files for guardianship. With the assistance of the woman's own attorney who is the pre-need guardian, helps the niece locate an attorney to assist with the guardianship when he had just had her sign documents months before indicating that he believed she was competent at the time. At the guardianship hearing the woman's attorney who had just recently agreed to be the pre-need guardian told the court he was not willing to serve setting the stage for a well-know guardianship agency to step in as the guardian.

The woman had a daughter who was living with her mother who suffered from a mental problem. The mother was the guardian of the daughter and at the hearing the lawyer who is now the pre-needs says he is not willing to serve as the guardian.

Now there were two guardianship companies, one over the mother and one over the daughter. Prior to time the son had been travelling to Florida to assist his mother and sister with their affairs as the mother's mental capacity was declining. During that time he expended funds from the trust that provided for distributions for the care support and comfort of anyone dependent on her include the son who was unemployed at the time as he finding it necessary to travel constantly to assist his mother.

Once the guardianship was in place an informal accounting was prepared by the trustees. When the guardian had questions the co-trustees made every overture to review the accounting with them and to answer any questions and offered to create a formal accounting. The guardian refused to discuss any of the informal accounting. The niece filed motion to compel them to file suit against the son and co-trustee. Despite the fact that the judge denied the

motion, the guardianship company who had a well respected house attorney hired a powerful outside attorney to pursue a lawsuit against the son unspecified amounts due to undetermined amounts that the trustee may have wasted from the trust. No cause of action was really reported just vague inferences but the objective was reached, the opportunity to bill large sums of money to the estate. Eventually the trustee were temporarily removed and the judge appointed a temporary trustee who was a close friend of the judge while the full scaled "go nowhere" litigation commenced with mounds of request for discoveries, etc... etc...

In 2010 the mother passed away and the niece and the guardian who had no power to do so made arrangements of a memorial service and a coffin contrary to her wishes to be cremated all unbeknownst to son and heir to the estate. Eventually the body was sent to Pittsburg where the son was told of a fictitious plot that supposedly had been paid for but in reality did not exist. The son asked for money to arrange the service for her in Pittsburg and he was told to find a county plot to bury her in. Eventually the executor located the language in the will that did in fact call for the cremation. A service was held and the woman was cremated. The former lawyer who started this whole mess is the executor. The former guardian of the mother has no standing so guess what happens next. The high powered lawyer who was suing the trustee and has already been paid fees in excess of \$100,000 has now showed as an attorney representing the second guardian who is the guardian the woman's daughter. The lawsuit is still out there but and now some other attorneys are suing him. It appears that lawyer who was suing on behalf of the mother is now going to represent the attorney represents the guardians of the daughter who is the other beneficiary. The son in this case is completely stressed. Somebody needs to stop this madness. But it appears that is it clear this is a terrible case of abuse.

## CALIFORNIA - AMALIE PHELAN'S STORY



Amalie's former attorney is a probate attorney doing business in Redlands, CA. His behavior in one particular case, the conservatorship of (Dr.) Amalie Phelan (RIP 080974), now deceased, has evidenced a degree of corruption, gross manipulation of the legal system, and disregard for the well-being of a vulnerable and elderly woman that begs further scrutiny. I am requesting you read this documented report.

My mother, Dr. Amalie Phelan, first visited this Attorney in the fall of 2001. My sister, had been residing with my widowed mother, and following the death of our father in 1997, had been stealing from the family estate, at one time valued at approximately \$1 million dollars. In an effort to curtail the hemorrhaging of the estate by my sister, and reluctant to initiate criminal proceedings against her, my mother and I approached the attorney.

The attorney was seeking a fiduciary to handle the funds of my mother, who was in her eighties. He stated he had knowledge of an excellent fiduciary, a conservator who is president of a local conservatorship company. At no time did the attorney disclose that conservator he recommended was his established client, and had been so for many years.

In December of 2001 my mother and I met with the conservator and the attorney. The attorney expressed consternation at my sister's behavior, and stated she would "cut Judith off." Not wishing to leave her elder daughter destitute (my sister, though well-educated, is psychiatrically and physically disabled and does not work), my mother expressed her wish that she not be "cut off" but be granted adequate funds for her needs.

On December 2, 2001, my mother signed a document nominating the conservator recommended by the attorney as conservator of her person and estate. In the Living Will set up by my parents in 1997 by an Attorney they had hired from Escondido, a conservator was named in advance should this prove necessary. An old family friend of Riverside, had been designated as "stand-by" should conservatorship prove necessary. He was also named successor trustee.

In light of the actions embarked on by this new attorney and conservator against the best interests of Amalie and me, her signing the conservatorship nomination proved disastrous. Almost immediately, the conservator started funneling thousands of dollars a month to Judith. The attorney placed aides in my mother's home, ostensibly to care for Amalie, although none were needed before. On several occasions she threatened to call the police on me when I came to visit Amalie. Very shortly, Amalie requested I find her an attorney to consult on this matter, as she was distressed by Scott's behavior.

The first week in March, 2002, my mother and I visited a probate attorney in Laguna Hills. Immediately, the attorney stopped payment on my trust fund. As a result of her refusal to abide by the December 18, 2001 court order to distribute "up to \$1500 a month" to me, I was later that year to lose my apartment and my car.

I ignored the attorney's threats and continued my weekly visits to my mother. I noticed my mother's health was worsening. In June of 2002 I received a desperate phone call from Amalie. "I'm very ill and no one is paying attention to me," she reported. I took immediate action. At that time, both my sister and the conservator's employee / caregiver were residing in my mother's home and being paid by the attorney to care for Amalie. I drove to Temecula, to find my mother too ill to walk unassisted. Immediately, I drove her to the Emergency Room at Rancho Springs Hospital in Murrieta. She was examined and admitted, and went into surgery, where a pacemaker was inserted to regulate her heartbeat.



On returning to her home, I examined my mother's medicine bottles. My mother had been a cardiac patient for some time. She had gone through two previous bypass surgeries, had a history of angina and was on cardiac medication. Indicated by full, un-dispensed pill bottles, there were at least two months of heart medicine which had been filled and withheld from my mother. I called the police. The caregiver had already fled the scene, never to be seen by me again. When the police arrived, my sister went into her room and locked the door behind her.

The police counted the pills. My mother's conservator called the house and told the reporting officers that I was crazy and to lock me up. Parenthetically, this is a tactic this conservator has used before. In the case of another woman who went under the care of the conservator, there was a protective and concerned sister, as reported by her niece. As this woman's situation worsened and her sister attempted to intervene, the conservator used the "crazy" appellation in order to thwart the protective efforts. The woman died quickly under her care. "And she wasn't even in poor health," stated her niece in conversation in 2002. When I received a copy of the police report on my mother several weeks later, the police had misreported the pill count. I contacted the Temecula Police Department immediately. I was told not to contact them again.

The situation worsened. Three days after my mother's hospitalization and surgery, a Riverside Probate Judge issued a Temporary Restraining Order against me, stating I was not to intervene in my mother's care. The declaration in support of the Restraining Order, concocted by the conservator and the attorney, is replete with lies. All the opinions they proffered in support of the TRO, certainly damning if true, omitted one basic fact-- Amalie was immediately trundled into surgery to correct her failing heart.

At this point the story takes a shocking turn. The TRO came to hearing August 1st, 2002. I sat in the courtroom all morning, but there was no hearing on the TRO. In fact, the Judge signed the order into permanency without granting me my legal right to a hearing, thus stripping me of my rights. The minute order signed by Judge does not mention any parties present.

Jack Smith of West Hollywood accompanied me to court that morning. His letter-- detailing the actions of the Court are in Attachment B. This document substantiates what is revealed in examination of the minute order-- that there was no hearing, and that I was stripped of my right to due process.

Family friend and journalist Patricia Lambert had flown in from Arizona to interview Amalie in the facility in which she had been placed. Lambert produced two reports (Attachments C and D) recording Amalie's wish to end the conservatorship and to restore her relationship with me, to whom Lambert referred as "Amalie's lifeline." The Judge ignored the reports.

I had been granted permission by the Court to visit my mother "under supervision." On September 28, 2002, I handed Amalie a legal document to sign, prepared by a Los Angeles Attorney. (Attachments E and F). Probate Code 1863 delineates the legal right to a jury trial to determine the fate of the conservatorship. With a Judge issuing Restraining Orders for life saving efforts by a loving daughter, then depriving the restrained party to her legal right to a hearing, it was felt that Amalie would have a better chance with a jury than with this obviously corrupt judge.

The Judge denied her request. His remarks to the Attorney state that the request needs to be tendered by Amalie's own attorney. According to the Probate Code, this is simply untrue. The Judge then unleashed a second TRO against me. The declaration for this TRO, prepared by my mother's attorney, makes no attempt whatsoever to approximate reality.

I stood in front of the compromised Judge at this hearing, and informed him that he signed the first Restraining Order without a hearing. I asked him to recuse himself. He refused. I produced the letter and stated, for the record, that my mother had incurred surgery and a pacemaker as a result of my bringing her to the Emergency Room. Cunnison shot me a dark look. "That was another matter," he said. He then cleared the courtroom. When

the matter was finally dealt with, at the end of the day, I stood in a courtroom emptied of all possible witnesses. "Restraining Order upheld," was all he said. I walked out into the unrelenting sunlight of an October day, stained by contact with a darkness I could not comprehend. The second RO, which is the final attachment in this report, prohibits me from contacting the police, the FBI, the CIA (?!!), Adult Protective Services or the Ombudsman's Office. Aside from the bizarre and irrelevant inclusion of the Central Intelligent (sic) Agency in the Restraining Order, I was effectively barred from contacting any agency which might assist in my mother's situation. And the fact remains that a judge cannot legally restrain a citizen from contacting law enforcement. This did not seem to bother the Judge. Months later, the source of the hemorrhaging of the estate by my sister surfaced. She had been forging my endorsement on checks made out to me by Amalie. My sister, who had studied calligraphy for many years, had been telling Amalie that I was in need of large sums of money, then forging my endorsement on these checks and depositing them into her Wells Fargo account. She had arranged joint signing on my mother's Bank of America and Washington Mutual

When I contacted the Temecula Police Department to report this, the detective cited the second RO and told me I was "not allowed" to contact him. "You'd better watch out," he warned me. Due to this Restraining Order, I was not allowed to see Amalie again until February of 2004. My mother's attorney and her conservator's retaliation against me had decimated my income. I had lost my apartment, my car and one-third of my body weight, due to the lack of money for food. There was no longer even a remote possibility of hiring an attorney.

In 2004 I was granted permission to visit my mother several times. In late April, I was unable to reach her at the home in which the conservator had placed her. I called the conservator and the attorney to find out what had happened to her. They did not return my calls. In late May, after dozens of calls to the attorney and the conservator concerning the well-being of my mother, I finally reached a case manager at the conservator's office. She informed me that my mother had passed away on May 4. She had died alone and had been buried without my notification.

The conservator had gone to court in January of 2003 and secured the Power of Health Care Decisions over my mother. According to the will, this had been accorded to my sister. I had beseeched my sister to go to court and to challenge this move by the attorney. My sister refused. The daughter-in-law of another woman who had also been under conservatorship with this same conservator (represented again by the same attorney) revealed to me in conversation in late 2002 that the conservator had ordered a catheter removed from this woman a week prior to what was ordered by the attending physician. As a result, the woman died a premature and agonizing death. "Her life was cut short," stated her daughter-in-law. I was contacted by another woman who told me she had been a friend of one man, also under conservatorship with this same conservator. She told me that the conservator had placed her friend in a nursing home. When she attempted to visit him at the home, she reported to me that the attorney (again same attorney in my mother's case) threatened to "pull the note" on her property, which was held by the ward, and initiate foreclosure proceedings on her home. The man died shortly thereafter. My friend told me "I believe he died of a broken heart,".

It is now too late for my mother. Hopefully, the details of this report will inform your passage through the perilous waters of the Riverside Superior Probate Court. The Judge in my mother's case was removed from the bench as the sitting probate judge several years back. It appears to be time for another, more extensive housecleaning.

Janet C. Phelan

**DELAWARE - Mary Mellinger, Missionary of 60 years Victim to Elder Abuse**

My foster mother was a victim of abuse. She was a missionary in North Africa for over 60 years and spent her whole life to helping others. She co-founded a mission in 1950 and a children's home in 1953 where over 75 children have been raised. My foster mother was sent away from her home when she was suffering from dementia at the age of 89 by the directors of the mission and home that she co-founded and was sent to live with a middle aged single businessman and foster son that she raised who offered to care for her without using any of her money<sup>1</sup>. The foster son hired a teenage girl to care for our mother and five months later this man had power of attorney over our foster mother and she was in desperate need of Medical care. We were told she was in her last days and just tired. When I visited my mom her eyes were rolling back in her head. We knew something was very wrong and feared she was on her deathbed and would not live much longer without medical care<sup>2</sup>. We begged her caregivers to get her to a doctor to no avail.

I am the oldest of the orphan children my two foster moms raised and would not be where I am today had they not taken my teenage birth mother in off the streets and offered to raise her baby. Our other foster mother Wennie (born in 1896) and co-founder of our home suffered from neglect before she passed away 25 years earlier. Now here was our foster Mother Mary in much worse condition. I reached out to help her; I had to... I felt it was my duty ... there was never a question. We called Adult Protective Services begging them to get her some medical care or at least a medical assistance. They seemed powerless to intervene and told me I should file for guardianship. In the meantime my mother continued to suffer from incredible pain. Finally after 10 days of non-intervention and our mother has still not seen a doctor I flew 1500 miles away from my home in Texas to file the petition for guardianship. I called no less than 30 attorneys before I could find one who would help me. I filed the petition out of desperation and as a last resort to end my mother's suffering and in my opinion to save her life. The day after I had hired the attorney and completed the guardianship paperwork, my mother was admitted to a hospital by her caregivers and found to have a broken hip which we learned had collapsed at least two weeks earlier. I had no clue what we were about to be thrust into. I was advised it was a simple process— you file for guardianship and the court will make a quick decision. I was supported with letters of support from about 20 of our mother's foster children and former orphans. None of my foster mother's blood relatives would be contesting and all were supportive so we really thought we were doing the best thing.



Mommy Wennie  
(RIP) 09/09/1896 –  
05/01/80

Instead, a three year nightmare ensued in an East Coast State 1500 miles away from where I live and work. The man who was neglecting our mother and being investigated by APS was allowed to file a cross petition contesting the guardianship. It seemed to me that everyone was nervous when they found out my mother had a broken hip<sup>3</sup>. I was shocked when she was discharged back to the same home she suffered in. Over the course of 9 months my mother had a public guardian, two professional guardians and has had three different attorneys ad Litem. At first there was a suggestion that we (the foster children) were fighting over her money

<sup>1</sup> (Coincidentally, the Mission director had power of attorney over our Mother and is the executor of a new Will he helped draw up that our mother signed a few months before she was sent back to the US naming the mission and the home as beneficiaries. Later the director notified all of my mom's supporters that she did not need any more help or money and cut off all her sources of support from her sponsors.)

<sup>2</sup> I was even told by one caregivers that funeral arrangements had already been made and it would be a closed casket ceremony.

<sup>3</sup> I was advised by counsel after a court conference that we were not to speak with anyone with the State.

but it soon became clear none of us (including myself as the petitioner) were relatives of our foster mother and none of us had any vested interest in her estate nor were we heirs to her estate or beneficiaries in her Will.

After three and a half months my foster mom was finally removed from the home by a professional guardian with court approval when they found she was suffering emotional and mental harm in the home. Mom was initially placed in a nursing home that cost her tens of thousands before finally being placed with a family member who had offered to care for her all along and was an original co-petitioner. One year after we had filed our petition, when our mother's money was mostly gone, I was appointed co-guardian of the person and property along with our foster mom's blood nephew. As her guardians we cooperated with the Court's efforts to get an accounting and recover her assets when problems arose with the accounting. The former power of attorney had taken large sums of her money and placed in into his personal account. While he finally returned what he took with a voided power attorney after he got caught he retained the balance. He claimed it cost him over \$200,000 to care for our mother for her 10 months stay in home even though he has offered to care for her at no charge to her. Most of the expenses in the accounting could not be substantiated. The lack of cooperation with the court in the accounting matter led to extensive discovery efforts and a two day hearing in the Court to straighten out the accounting matter. This cost thousands of dollars and everyone was sent on a wild goose chase to figure out the accounting. The emotional and mental toll on me has been incredible.



of

Today my mother's estate which was close to \$200,000 is gone and so far I have spent close to \$40,000 of my personal funds to help my mother. At least my mother is alive today. The guardians had to let our attorney go since my foster mom had no money to pay him and we could not afford the personal expense. We have represented ourselves pro se for the past year. One year ago the court indicated its opinion that some of money should be returned and some used to pay my mom's remaining legal fees and other expenses but we are still waiting for a judge to review this and sign an order. The attorney general's office says it is still investigating.

Unbelievably, while we now wait on an order for the return of my foster mom's money and for the attorney general's office to act, the former attorney for the co-guardians is suing me personally in another court for the legal debt. My mother's estate does not have the money to pay. The attorney has already been paid over half of the money-- some from my personal funds and some from her estate. All of these fees were incurred by the guardians of the property after they were appointed guardian of the person and property by the Court and only to benefit our ward and protect her estate.



can

has

Mommy Mary  
07/27/1915 - present

State Statutes and federal guidelines say a Guardian "shall not be required to use personal funds" to pay for the care and services of the ward and the property but none of that seems to matter as it seems a new precedent is about to be set at my personal expense. I am shocked and I am scared. I have nowhere to turn. No one help, not the Bar Association, not either of the two Courts and not the criminal justice system. Legal aid services state they don't handle guardianships and it doesn't seem the senators' offices can help either. The attorney general's office indicated they will take action and we are waiting for that to happen. In the

meantime, a personal civil action is in full swing against me as the legal court appointed guardian of the property. I feel that I, as my foster mom's guardian, am being penalized for our efforts to help her recover and protect.

her assets in our fiduciary duty as her guardians. Finding an attorney who understands guardianships and who can represent me in almost a futile exercise.

I have been in shock for three years and this latest assault over the past four months just pushed that over the top. How can it be that someone can improperly take an older person's money but they all sit by silently while the guardian whose altruistic efforts most likely saved a woman's life and who personal sacrifice has ensured she is well cared for today is being sued for the legitimate debt that her estate cannot pay? To answer that the system is too slow is just not good enough. I seriously doubt if this has or would ever happen to any professional Guardian-for-money. The professional guardians are protected by the system. Are there two sets of laws for guardians...one for family member and on for guardians-for-profit? Of course there are not. This case sets a very dangerous precedent wherein family guardians will be personally penalized, while the laws protect the guardians-for-profit from similar sorts of legal actions. The end result would put a "chill" on family members who wish to help a loved one in trouble, and would only cement the legal foothold of the professional guardians. This should never happen in America. Americans should be able to help their loved ones through the systems set up to protect them. I understand now why so many times when a person is placed into the guardianship system and their estates are robbed there is no one to go after the money and seek restitution for the victim.

My mother is doing great. I brought her to Texas and cared for her. She is now on Medicare, Medicaid and SSI and living in a beautiful assisted living facility due to my efforts. Three years later she is up and about and happy but pleasantly confused due to the toll of Dementia. This week we will celebrate her 93<sup>rd</sup> birthday. I am not doing too well. I risk losing my home and my livelihood due to the financial and emotional toll this continues to take on me. The one thing that keeps me going is believing that together we can CHANGE things for the better.

**EVERY DAY I ASK MYSELF "WHERE IS THE JUSTICE IN ALL OF THIS"?**

**GOD HELP THE ELDERLY AND THEIR FAMILIES IF WE DO NOT FIX THE PROBLEMS WITH OUR GUARDIANSHIP SYSTEMS. YES, IT IS TIME FOR CHANGE ...**

*(Latifa.Ring@comcast.net 713-896-0511)*

This guardian failed to remove home health aides who failed to ensure that my mother took her daily medication.



Yet, it appears that this abuse is allowed to continue.

**FLORIDA - Guardianship Fraud – Dr. Robert SARHAN'S STORY**

The elderly people of this country are being ruled incapacitated by our legal system, their homes are being sold, all their assets are stolen, they are being put on Medicaid and their being dumped in nursing homes to be abused and even sometimes killed.

If you have money, you are definitely a target. They have done this to my mother and many others just like her. She has already lost her nest egg that my father left her and soon if I do not win this case, she will also lose her home; it is a race against time.

My case is in Miami Florida, one of the most corrupt cities in this country for Guardianship Fraud. Please let me list the key points in our case to give you a general idea what is going on:

1. Two weeks ago the second judge recused himself; the first judge recused himself in March 2004.
2. After two years into this case we found, my mother's court appointed attorney was also representing the guardian of my mother in other cases; the guardian uses my mother's attorney as a personal reference on her application for guardianship, both which are Conflicts of Interest.
3. My brother who is adverse to me, his attorney was also representing the guardian in other cases at the same time representing my brother and she was paid by my mother's assets, while submitting fraudulent documents,
4. My mother was ruled competent by the court appointed psychiatrist and the judge says, she is not competent until I say she is competent, she has not received her rights back yet, he recused himself.
5. To date she is being charged \$8,500 per month to live in her own home which is paid for. She has lost estimated 250,000 in the last 3 years, when I would care for my mother for free.
6. It is very clear that the Judges are in cohorts with these guardians and attorneys and give them whatever they want, even keeping a 4 month old grandson in contempt, being kept from my mother for 2 years.
7. My mother age 75 had to run away from home that she loves for 35 years, so the guardians would stop charging her \$102,000 per year plus attorney and guardian fees. 8. Currently, the second judge who just recused himself, stated that he did not see a conflict of interest but would have to check with the Florida Bar to see if this was a conflict, he never came back with an answer, when question he stated, I am recusing myself, case closed.

If you can imagine being in a situation like myself fighting for my mother's freedom against people that could not care if my mother lives or dies, they just want her home, it is all about money. I think this would be a great story for the American people, they must be informed or else they can fall into the same situation as my mother, we must protect the elderly. Please call me, I am willing to send you all information to back up my story.

Thank you Robert Sarhan, MD 305-338-6160

**MASSACHUSETTS – ABUSIVE GUARDIANSHIP OF ELIZABETH A. EKLUND**

Connecticut - Probate Court: Offering Unequal Protection Under The Law

**Hartford Courant**

Rick Green

January 19, 2007

Welcome to the Hotel Connecticut. Come visit and you can never leave.

Because if you're elderly and frail and don't watch out, there's a probate court judge somewhere out there willing to lock you up in a nursing home. For your own good, of course, Grandma.

Unless something dramatic happens, another session of the General Assembly will slide by without probate reform. Oh, they'll hold hearings again, but don't bet on our elected leaders actually disrupting a system steeped in decades of old-boy politics and favoritism.

So this court system - where even the rules of evidence and recordkeeping are inconsistent and the legal experience of judges is uncertain - marches on, unimpeded.

The latest outrage-of-the-month comes from the Woodbridge probate district, where a judge last year denied a request by the children and husband of an elderly New Jersey woman, Maydelle Trambarulo, that she be allowed to leave a Connecticut nursing facility and return home.

Trambarulo was brought here for treatment in 2004 by a niece. Soon after, the niece went to probate court in Connecticut and had a conservator appointed to oversee her finances and health care, handing over the 76-year-old New Jersey woman's liberty - and control of her money - to probate.

"The husband is in New Jersey. The wife was brought here for rehabilitation by a relative. Then the relative had her conserved," said John Peters, a lawyer who won freedom for Daniel Gross, a Long Island man held against his will in a Waterbury nursing home.

Do I need to add that the Trambarulo estate is worth more than \$1 million and that this fight, if nothing else, continues to provide thousands of dollars worth of work for lawyers?

It doesn't matter that this family could be a dysfunctional mess. It's not up to a Connecticut probate court to decide.



A former West Hartford probate judge who previously represented the Trambarulo family, John Berman, understood this when he said in court papers in December 2005 that the "court lacks jurisdiction to appoint a conservator."

Clifford D. Hoyle, the acting judge in Woodbridge, ruled, instead, that he was "not convinced that the respondent's family is willing to make the time commitments necessary to care for her."

Peters, now representing the Trambarulo family, told me that Maydelle "doesn't live here. The judge doesn't have jurisdiction. The fact that you are here doesn't mean you are a resident. She wants to go home."

Royal Stark, director of the health law clinic at the Quinnipiac University School of Law, said the legislature must limit the power that probate courts hand to conservators.

"Until I got a glimpse of it, I didn't realize what was at stake and how bad things could go," Stark said. For example, Stark said that once a person has been "conserved" by probate court, it is nearly impossible to remove the conservator.

Reform-minded lawyers want basic changes, such as mandating that courts respect previous requests made by the elderly, known as "advance directives." Courts should also follow the rules of evidence and proceedings should be conducted on the record. They also want to make it easier to appeal decisions.

"We are going to wade into it and see if there are solutions for it," promised state Sen. Andrew McDonald, the chairman of the judiciary committee. "A lot of this operates in the shadows."

There you have it - a court system that operates in the dark. Time to turn the lights on.

Rick Green's column appears on Tuesdays and Fridays. He can be reached at [rgreen@courant.com](mailto:rgreen@courant.com).

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### Texas - Guardianship Abuse in Denton, Texas



I would like to tell my families most terrifying story, of abuse and neglect. It is abuse of a good law gone badly, abuse by the very court system that is supposed to be protecting our elderly and disabled. It is an abuse that is going on all over the US. This abuse is happening with the courts of our states approval. The judges and attorneys, and people that are appointed to care for and guard from abuse, are the very ones who are doing the abusing. Not the family. There are no charges made against the family, but I would love for the real abusers to be charged.

My mother in-law was taken from the safety of her home kicking and screaming by Adult Protective Services, she was hidden from her husband and family, in ICU and observed for a week. Within 3 to 4 days of taking her, she fell and had to have stitches in her knee, within a week and a half, she was in a vegetated state, all while in the care of the court and its appointed guardians. You see, she had Alzheimer's, I had known

her at this time over 25 years, and she had always bruised easily, all her life. We do not know who for sure, called APS, and reported that she was being abused, and this set off a chain reaction, that I am hoping that the media will pick up and expose to the world.

My father-in-law checked himself into a nursing home to see if he wanted to live there to be close to my mother-in-law, or with us, in his home. During his 30 day trial the court appointed guardians had an ankle monitor put on him, and asked him questions about his family. They used this information to lie in court and discredit the family. My father-in-law told the court that he wanted to go home and the court refused to let him. He lost his glasses and asked for them, and the guardian did not bother to get him any. The courts were granted a monthly allowance for things like new shoes, clothes, books, haircuts, or anything else that they might want or need personally, but there was nothing bought for them.

My mother and father-in-law had land, cars, investments, medical, home, and car insurances, they had pensions, mineral rights..... They had right at 1/2 of a million dollars in total assets. The court has approved that the guardians take well over half, and pay them, to as they say protect and preserve my in-laws and their estate. They have liquidated everything; sold the homestead below fair market value, and now they are fighting over who is getting paid how much out of the last \$154,000.00 of my in-laws money from the sale of the Homestead. And if that's not enough get this. They are refusing to pay for a Pre-need burial contract for my father-in-law. Although the money from a pension plans saving account has not come in as of yet, my son, Cody has put up over \$4,000.00 for his grandfathers funeral, along with some money that the guardian of the person put in his name in the court registry.

My father-in-law passed away on June 29, 08.

## INDIANA - PROBATE NIGHTMARES - GLADSON STORY



Doing my best to stop the destruction caused by "Gross Misconduct".

Just a little insight, it used to be that persons in positions of authority or appointed to government, positions were law abiding God fearing persons, do you think that is the case in 2008?

If you watch the news you too should see the corruption by Judges, Attorneys, Police officers and Government officials, have you not? If you do feel that every person in a position of authority is actually there because of their ability to be truthful, law abiding or God fearing, then I am sorry, but you are either naive or lack any intelligence at all.

And do not get me wrong; for I do respect the badge and uniform, the robe and what they stand for, it's the person behind the badge or inside the robe that is corruptible, after all they are simply products of our society.

Probate courts were actually intended to help in the division of a person's property after death, as in administering a will, Not Today, probate courts are big business, allowing judges and their Elder law attorney friends to reap huge rewards, again if you don't think that is possible, then once again, I am sorry but you are either naive or lack any intelligence at all.

This is not a story of someone who feels they didn't get something in a will that they feel should have, this is a story of corruption, deceit, theft, violation of 4<sup>th</sup> Amendment Rights and Adult Kidnapping.

Food for thought!

Does a private law firm belong in the very same office building as government offices, such as Judges office, Prosecutor, Family & Social Services Administration, the very government officials of which decide on their cases before the court, do you not see a conflict within that?, Once again if you do not, then I am sorry, but you are either naive or lack any intelligence at all.

Could it happen?

Do you think that Judges and their Elder law attorney friends are watched to avoid corruption, do you think that is possible for 2 people (friends) (Judge) (Attorney) could possibly devise a plan to skim from many probate cases and place funds into a secret bank account for division after retirement?

Once again if you feel that is not possible, Guess What, I am sorry, but you are either naive or lack any intelligence at all. Do you think it's possible for an Elder law attorney to affectively deny Mr. Robert & Mrs. Edith Gladson access to their great grandson, their granddaughter or even their own son, do you also think it would be possible for this person to take property of theirs and make it his own? Do you think he could possibly get his friend Judge Charles Deiter to rule in his favor? Do you think it would be possible for him to destroy not only Mr. & Mrs. Gladson's lives but also their family and families he comes in contact with?

Below are the lives adversely and forever affected by the corruptible actions of the attorney and his friend Judge!



Edith Ken Bob Christa Imari

Christa is Edith & Ken's granddaughter and Imari is their great grandson of Edith and Ken who they are not allowed to see and he isn't allowed to see them, neither are Christa or Bob, all controlled by this elder law attorney appointed by the court !

Remember Probate is big business these days, it pays for Jaguars and million dollar mansions!

Is it possible that the attorney would accept a large amount of old coins found in the Gladson's car, have them appraised and then report that the value of the coins only came to the amount of the appraisal? When actually the 50 1800's Liberty Walking Silver Dollars are actually worth \$500 to \$1,000.00 each, would he actually keep these for himself?

These are the kinds of questions you need to ask and have TRUTHFULLY answered before you ever use an attorney in this type of situation!

A will is useless these days absolutely *USELESS!*

There will be nothing left to hand down, because it will all belong to someone else.

<http://www.indianaprobatenightmares.net/index.htm>

## CALIFORNIA - ADULT AUTISTIC CHILD WITHOUT A CHAMPION

## A SUMMARY OF DISABILITY, IMPRISONMENT, AND JUDICIAL LEGALITIES

Golin v. Allenby

Santa Clara County Superior Court No. 1-07-CV-082826

6<sup>th</sup> Appellate District Court of Appeal Case No. H032619

We are Jeffrey and Elsie Golin, and we live near San Jose, California. Our daughter, Nancy was born on September 30, 1970. She was diagnosed with autism at age two. This year she will be 38 years old. We raised her from birth and cared for her at home with love and quality care. She is our dearest companion. We will also soon (miraculously) mark our 46<sup>th</sup> anniversary of marriage. We are now retired able seniors and remain together and united in support of Nancy.

On November 15, 2001, 31-year-old Nancy Golin was illegally taken by Palo Alto, California police from us, never again to be returned. Up to then, she had depended on us to protect her. We had fought against California agencies who are legally required to help support the handicapped and their families but who proved to be inept, stingy, aloof and arrogant, after attempting for years without success to obtain appropriate services. In our care she had the best medical care and supports we could find. Our efforts had won us the admiration of many in our local community, where Nancy was well accepted. Nancy is able to do most things herself except she does not talk or write. She is merely autistic and harmless, and is very expressive and normal in other ways, is healthy, happy, friendly and charming, and relates to people very well. She has never been diagnosed with any mental illness, or been institutionalized or prescribed any form of psychiatric medications in the past. There is no known treatment for autism.



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Nancy's speaking

This nightmare began when Nancy innocently wandered away for a walk one evening and we immediately reported her missing, but after she walked up our driveway happy, healthy and unharmed, the police requested that she be taken to a medical facility for examination to insure that nothing had happened during her absence. Yet when we tried to reach Nancy, the nightmare began, with a series of clearly illegal confinements. Police had taken Nancy to the nearby Stanford psychiatric ward on a ruse, without warrant, emergency or probable cause, and attempted to involuntarily institutionalize her. There she was apparently molested, drugged and subjected to medical malpractice. We were prevented from telling the doctors there about her medical history or needs, and this led to some disastrous mistakes. When after two weeks they could show no probable cause or legal authority to hold her, they chose instead to "place" her in a group home at a secret destination chosen by the local Regional Center, San Andreas (SARC) and Adult Protective Services (APS), via a forged signature to her IPP constituting "consent" to institutionalization. For all practical purposes, from the standpoint of federal and California law and the US Constitution, she was kidnapped by state authorities under color of law and wrongfully institutionalized when she had dedicated family willing and able to care for her with love at little expense to the taxpayers.

To cover up their mistake and to squelch press reports, the San Andreas Regional Center (SARC) and Adult Protective Services (APS) appealed to the Santa Clara County DA to maliciously trump up abuse charges us. Incredibly, we were falsely arrested, and spent a night in jail facing felony charges. The local police produced a fabricated police report which was immediately discounted by Nancy's doctors and our supporters. It took 14 months for our attorneys to get the district attorney to drop and expunge the charges. Meanwhile, State attorneys from the Department of Developmental Services (DDS) pursued Nancy's state controlled conservatorship, proceeding at first in secret. Then opposing our own petition in a David versus Goliath mismatched 2003 probate trial (which did not address the illegalities of the removal and confinement). In which Nancy was given to the state permanently, in a ridiculous state court ruling composed of a web of lies and innuendo, unsupported by admitted evidence. The transcript, the parts we were able to obtain, was tampered with to remove damaging evidence.

Out attempt to appeal was thwarted by procedural barriers caused by our inability to procure a complete record of the trial; the transcripts cost \$7,000 and they were not granted for free. She is now being held in a group home with restricted access in Santa Clara, California. By then we were bankrupted, having spent hundreds of thousands fighting them in court. We have asked for her to be returned home, so far without any response. The state court has three times failed to review her conservatorship, as they are required to do by probate law. For all practical purposes, the state now regards her as their property, and receives all her income and benefits, including those disabled benefits deriving from our retirement, and income for her care and programs from Medicare and numerous other lucrative public funding sources.

Since her confinement, Nancy has suffered numerous physical and neurological injuries and abuses. She has lost the use of her hands, been hospitalized dozens of times for life-threatening seizures and esophageal ruptures, five years of dental neglect causing her to lose almost half her teeth, been improperly subjected to destructive psychiatric drugging, and likely molestation. X-rays showed she had suffered a broken collarbone and dislocated shoulder. She had received emergency treatment for an indicated skull fracture and broken leg from falling off an examination table during a seizure. Doctors were ordered not to speak to us, but we did get some records. SARC now reports to doctors she has cerebral palsy.

Recent evidence has surfaced concerning terrible abuses she suffered at the hands of the state conservators which were concealed before her conservatorship trial and did not come to light. The house temperature was kept at 60 degrees when no visitors were expected, to save energy costs. The meals were junk food, not conforming to the approved menus. They could not get more than a rationed amount of food to eat, while her caregivers fed themselves well. She was occasionally locked out in the backyard in the cold. She had frequent respiratory illnesses. She was kept locked in her room, without access to toilets, even when having seizures, and was temporarily denied emergency medical treatment for seizures when she was in her tenth seizure and turning blue from lack of oxygen, near death, in order to prevent information of abuse from leaking out. The off-label use of unnecessary and disabling psychotropic medications such as Zyprexa and Risperdal had the known effect of lowering seizure thresholds causing her uncontrolled seizures and life-threatening esophageal ruptures and bleeding. In 2006 we had to watch helplessly while SARC had half her teeth removed due to five years of their dental neglect, which they tried to blame us for, though we had provided her excellent dental care.

We found *there was nothing we could do about any of this*. All of these injuries occurred while in SARC's and APS's care. Even now, she is often taken to hospital alone without notice to us and we are not allowed to see her or comfort her there. Not the least of the harms, she is not allowed to see us except under

extreme restrictions and she is not being allowed to go back home for reasons she cannot understand and no one purports to explain. We have been denied visits on holidays and birthdays, even during the Christmas holiday season. She lives in a house segregated with five other mentally disabled residents, watched by unskilled foreign workers who speak only Tagalog (Philippine). When she is taken out in the community she goes stigmatized with the group, not with family or able-bodied relatives. Everything the state does, from transportation to boondoggle day programs, results in a rich benefit to state agencies' funding. She has not benefited from these programs but has only declined in habilitation and health. We have thus far been denied any say in her care or standing to litigate on her behalf for seven nightmarish years. Whenever we attempt to report to ombudsmen and advocacy watchdogs, our state opponents attempt to dismiss us as crazy, or criminal.

The state civil lawsuit

From the start, we had always intended to sue, and we did within the statutory timelines and rules. We filed timely tort claims and a §1983 civil lawsuit for damages in Federal District Court in 2003. We also filed a petition for Habeas Corpus there. Our first attorneys took our money and then let us down. After we had interviewed hundreds of attorneys, we were unable to overcome the lack of counsel for next friend standing. Federal law mandates that parents need an attorney of record in order to have legal standing as "next friend" of the adult child. The case then wound its way through the federal courts into our present state court proceeding in Santa Clara County, where we have finally obtained top-notch representation *pro bono* by New York attorney Gerard W. Wallace of Albany Law School, and fortunately have more recently added David J. Beauvais of Oakland.

We and Nancy are suing Nancy's Conservator of DDS, several County of Santa Clara defendants (including APS, the DA, and the public defender), several SARC defendants, the City of Palo Alto, Stanford Hospitals and Clinics, the care home operator, and others. Our 17 causes of action include both claims on our own behalf and on behalf of Nancy. We are claiming constitutional violations under 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> amendments, Section 1983 civil rights and ADA, as well as state tort claims including attorney and medical malpractice, personal injury, slander, emotional distress, and malicious prosecution. We are seeking general, compensatory, exemplary and punitive damages. Our statutes of limitations have not yet accrued. All parties have been served and all but three defendants have filed demurrers and answers.

In California, well-established authorities entitle us to represent Nancy in litigation as *guardian's ad litem* (GAL), because the conservators are defendants and thus have conflicts of interest. Those theories are disputed by the defendants.

The focus of SARC's and County's intent appears to revolve around their interest in covering up abuse by opposing and denying discovery rights by relying on the (flawed) theory that conservatorship creates a monopoly of legal standing. *This theory, unsupported by any legal authority, which the Golin's lawsuit challenges, leads to the absurd conclusion that no one other than the conservator may sue the conservator.* Without expressly claiming it, SARC has thus far garnered absolute protection from liability. Our desire for our daughter's return and her companionship is paramount, but we perceive that due to local judicial entanglement this will never be possible as long as SARC perceives the loss of their conservatorship as representing a liability threat.

## Critical Issues at Stake in Elder Law

One critic of probate abuse has recently referred to a “white collar crime wave” involving handicapped persons in involuntary conservatorships, due to lack of effective court oversight, and due to the so-far undefeatable tactic of such defendants to smear anyone, whether family or friends, that attempts to intervene to rescue their loved ones from what would otherwise be considered kidnapping, abuse and false imprisonment.

In each of these thousands of documented cases across the country, the standing of a caring relative or committed advocate to represent the interests of the ward is attacked as a defense strategy. *Once the defense succeeds at removing the family member, the ward is helpless, because no one other than the alleged wrongdoer can represent the ward. And a reasonable person never sues himself. Thus, the ward is left with no rights at all.*

As a counter and check to such abuses, a precedent that controls such advocates rights to act as GAL’s in civil proceedings, which may in some cases be the ward’s only way out, would be very helpful. It affords a measure of heightened due process and damages that are not available in probate courts, and allows interested parties to participate that would otherwise be excluded. Authority is available under Title II of the ADA for “parties aggrieved” to afford independently enforceable standing to parents or relatives to litigate on behalf of their incapacitated family members, as well “interested parties” as under California statute, Elder Abuse and Dependent Adult Civil Protection Act (EADACPA).

## Important Issues

Issue #1: Does a defendant ever have standing to object to the plaintiff’s choice of guardian ad litem?

Issue #2: Do parents with ADA claims have standing to sue as “parties aggrieved” on behalf of their developmentally disabled child notwithstanding that the child has been appointed a conservator, when the conservator has a conflict of interest by virtue of being named a defendant?

Issue #3: How can a conservatee ever find their way out of the conservatorship without civil relief by interested parties, given that the state attacks the credibility of anyone that attempts to represent them?

Issue #4: Does it make sense to provide relief to disabled adults under the ADA without allowing anyone to advocate for that relief, given that they are handicapped?

## CORRUPTION AND INFLUENCE IN LOCAL STATE COURTS TO PROTECT THEIR OWN MINIONS

Our case proves that private conservators abusing elders are not the only perpetrators of abuse. The public conservatorship system is at least equally broken and rife with deplorable official corruption and oppression, and much more difficult to fight. While there are alleged to be many good success stories in which conservatorships are necessary or beneficial, our mission is to draw relevant attention to the distressing problem cases here, and they are *far from exceptional*.

We experienced severe bias in Santa Clara County Superior court due to the influence, power and entrenchment of Santa Clara officials due to their misconduct in this case, and judicial entanglement with these parties. We faced severely altered court transcripts, tampered with in obvious ways to benefit the state opposition. Nancy had a court appointed attorney purportedly representing her who we could not get rid of, who appeared for the state and railroaded her own client into conservatorship, fighting at every tune against her own client’s safety and interests and defeating all discovery motions, to protect the state. We were denied the opportunity to obtain an independent psychological examination and family evaluation, while Nancy was denied all visitors other than County approved officials. Adult Protective Services worked hard on the side of the state to suppress evidence of clear abuse while in state care. State residential care licensing squelched our



complaints showing persuasive medical evidence of abuse in state care, claiming it was unfounded and unsupported.

We fought to keep the civil case in Sacramento last year, alleging impossibility of a fair trial in Santa Clara County, but the Sacramento judge simply did not accept our allegations as proving sufficient bias to resist County of Santa Clara's motion to change venue to their home turf.

Events since then have resoundingly vindicated our allegations of suspected bias in Santa Clara County. Mrs. Golin, who was appointed *guardian ad litem* to represent Nancy, was removed as soon as the case was moved to Santa Clara County (without prejudice), and the County has done everything in their power to resist appointing anyone else. To date, four judges have been challenged for cause, and two of them have recused themselves in response. One of the defendants in the case, Jaqui Duong, who worked for County Counsel's office and appeared in as an opposition attorney, was sworn in as a judge, necessitating **the recusal of the entire Santa Clara County bench**. Still, the court would not move the case to another venue on renewed motion. It had become obvious that the purpose of the conservatorship was to protect the conservators and their friends in court, not Nancy.

A judge assigned by the judicial counsel, Hon. Thomas P. Breen, was appointed from San Benito County, 60 miles away, to sit in Santa Clara, over the plaintiffs' objections. On September 21, 2004, the state was poised to get the Judge to steamroll through all their demurrer motions without a guardian ad litem on the theory that Nancy had no standing to bring her claims, but Judge Breen recused himself instead, after a showing of *prima facie* bias and challenge for cause, sympathizing openly with the defendants.

#### STATE FRIVOLOUSLY LABELS US VEXATIOUS LITIGANTS AS LAST RESORT, NOW ON APPEAL.

We are committed and knowledgeable about our case. One of us (Jeff) is sufficiently self educated in the law as to present a formidable adversary during *pro se* hearings, but with Mr. Beauvais newly signed up on the appeal, I am glad to relinquish control to my veteran attorney. The opposing state parties attempted to bury us in frivolous motions and demurrers, in March 2007 in Santa Clara County Superior Court.

In March 2007, the opposing state parties, represented by seven high powered law firms including the attorney general's office representing the state, sought to bury us in a mountain of frivolous dismissal motions, attempting to prevent us from proceeding to discovery and trial. It took some time to recover, research cases and file answers, but by the time we were finished destroying their arguments with our legal responses, the opposing parties apparently sensed looming defeat of their meritless motions to dismiss. Their only desperate recourse was to improbably try to get us declared as "vexatious litigants", on the grounds that OUR motions were supposedly meritless, but the court never reached consideration of the merit of these papers. We meet none of the statutory criteria, (such as repetitive, numerous and meritless unsuccessful lawsuits without an attorney, intended only to harass and punish) and yet the state defendants got another assigned retired judge from Calistoga, in Napa County (112 miles away), Hon. J. Michael Byrne, to grant them a dismissal motion on that unsupportable basis, without ever reaching the merits of the pending motions. The judge was appointed for only 30 days, supposedly to hear a complex civil case.

The court ordered us to post an unprecedented \$500,000 surety bond, ten times larger than any we had previously heard of, and when we could not post it, the court dismissed our civil lawsuit entirely, without ever reaching a determination of the merits of our damages claims.

The court also dismissed Nancy's very serious claims without any legal explanation or authority. The ruling was so arbitrary that it would make her or anyone else in her situation civilly dead with no legal relief possible under any available theory, akin to Guantanamo detainees.

Where do we stand right now?

The case is now on appeal in the State Sixth Appellate District. The record is completed and we are filing our opening brief next month. The oral record is very weak for the defendants and strong for us and we fully expect to win reversal on the law.

Our and Nancy's rights continue to be infringed. Our visits with Nancy resemble jail visits more than family occasions. We come for an hour, cannot take photos, cannot take her outside, no activities, and then we have to leave her even though we do not want to, when she cries to be taken home. Our visits for 7 years have had to be supervised; yet no one has ever purported give a good reason why. Nancy cannot understand why this seems to be heartlessly done to her by her own parents, as she cannot know we are really opposing this. She is used to being treated like anyone else in public, when she was at home; now she is stigmatized and segregated. She views it as punishment and rejection because of something she has done, in her innocent mind. She appears more and more withdrawn, weak and abused each time we see her. We have no access to her medical treatment or her day care program, where we suspect much of the abuse is occurring. All of this is in direct contradiction to the spirit and letter of codified laws and civil rights of developmentally disabled persons and their families to plan and receive services, without coercion.

If we fail, Nancy will face a lifetime of false imprisonment and abuse without any available relief, truly a "creature of the state" as decried in the US Supreme Court decision, *Parham v. JR*, 442 U.S. 584, 602 (1979). This is not only a bad outcome for Nancy, but sets an extremely dangerous statist precedent for the country as well.

The main problem with Nancy's case is that it unavoidably implicates a network of high public local and state officials in criminal conduct. The mandated watchdogs have all become lapdogs. One conservatorship attorney opined, "Nancy has fallen into a black hole from which there is no escape". We hope to change that.

For more information or help please call Mr. David Beauvais (510) 832-3605, Gerard W. Wallace (845) 594-6398, or Jeffrey Golin (650) 518-2850, and visit our web site at: <http://www.freemancy.com/>, which has numerous links to our court documents, exposure of the smears and myths, and medical evidence. we can only hope that there is a God and that the crimes being so willfully committed against so many who gave so much for their country and deserve better, so much better does not go unpunished...

## FLORIDA - STEWART'S STORY

When I was paralyzed in '81 I remember Bruce visiting me in the beginning, but not after. I arrived home on Dec. 34th, '81 to begin living alone as a paraplegic with no means of transportation. I had a friend, Tom Asferny, who would take me places in his van so I wouldn't be stuck in my house to face the uncertain future. I also had a friend, Billy Hurt, who would take me places sometimes. I went to soccer games with both friends, and Dolphin games with Tom, but Bruce wasn't around, and I rarely heard from him.

When I got my settlements and built my new home in Pompano Beach, he began coming once a year, sometimes twice, but just to leave his bags and go off with his friends and then have lunch with me before he returned to N.Y. He never helped me and he never went on a vacation with me. When you're talking to him he's almost never listening. His mind is elsewhere, perhaps planning something.

In the early '80s I went to Red Lobster with Mike for lunch and after going to bed, I got the worst case of diabetes imaginable. I'd get over it and I would return. This lasted for 3 years. I spent 6 days at the Miami VA for dehydration.

About 10 years ago, I had a prepaid check and when I showed the ticket to him, he didn't want to go. Early in '07, Steve offered a paid vacation in the Keys, but Bruce said it was too far to drive (he had driven here from N.Y.). About 5 years ago, the tire on my van was broken and I couldn't drive the Ford van, and Bruce was going to use his bike to the beach and leave me in the house on a gorgeous Sunday, which he knew was the day I would go to the Swap Shop. I got very mad and then he did drive me to the Ford. It just showed his selfishness and lack of caring.

In May '04 I was convulsing. Steve rushed me to Imperial Point MC where I went into a coma for 6 days. The 2nd day Steve was preparing to visit me, and Mike showed up to go with him. How did he know? We weren't supposed to get in touch with him. Steve had called Bruce the night I was admitted and told him he was the one who called Mike. The nurse told me my blood was toxic when I regained consciousness. I knew I was poisoned, but I didn't know how until we found this white powder in my computer desk where I would sit for hours every day. People in my house were getting sick and it was from this powder.

I had water poured in the crankcase of my Dodge and the engine blew and it cost \$5400 to have a rebuilt engine installed. I was without wheels for a long period.

In Nov '05 Steve and I decided to take Bruce up on his offer to go visit him. We were in VA and began the drive to NY. When we were getting close we called him and told him we were coming into the city. He said "I'll call you guys back". We tried calling him and he didn't answer. We didn't know our

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way in NY and we couldn't find any wheelchair accessible hotels at all. I didn't know what we were going to do. Steve called Carolanne, the paraplegic who came to California with us. She was in an accessible room in Ardsley. She came and got us and we followed her there. We wouldn't've found it on our own. We waited for Bruce to call and he finally did. FOUR DAYS LATER: How could a brother do that? He took the train to Ardsley and we went to the Bronx Zoo. He took us to the apartment that he's been renting for over 25 years and all he had was a bed in the middle of the room. NOTHING ELSE!! He could've moved to FL and lived with me for free. He has shown up to make my home his winter home, never offering to pay for one thing and has NEVER offered to clean up, and he brought strangers with him that he met on the plane. They were always ridiculous pains in the butt. He has used my SS # to gain access to bank accounts etc., and to access personal information without setting the alarm back causing imminent danger to me with the very strangers Bruce brings in my home.

I went to Puerto Rico in Dec '05 and stayed for 6 days. It turned out that Bruce was there too and he hadn't called me. He returned to my house and turned off the security system and the cameras and he entered my safe and stole a very rare 14K Masonic ring that I paid hundreds for and a very valuable coin worth thousands. He also removed insurance papers and a folder containing appraisals I had done for my bronzes.

In Jan '07 he arrived with what my roommate called "an agenda", asking for a new will because I had given him a "Swap Shop" will, because I had bought the home there. Steve knew what I was refusing to believe, that Bruce only cared about my money, not me. There was vandalism being done to my vehicle and my house and some of them were definitely attempted murder. Steve and I both had our fuel lines cut and I had someone get underneath my van which was in the parking lot at Wakodahatchee and gauged the rubber out of the transmission mount. The vibration was extreme on the way home. This was done to cause an accident; another murder attempt. Mike replaced the mount at a huge cost. I have the mount as evidence. There were two fires in my house, one in the kitchen which hospitalized Steve for a day and more time in bed. Two of his sisters and his father flew here to care for him. A second fire started in my bedroom while I was in bed for 8 months. This would've burned me and my bird to death. We later discovered that my bedroom was wired to the kitchen through the attic. My brother is a retired electrical engineer. My friend, Mike Gelger, worked on the new kitchen. He's an electrician. I was in bed with a terrible pressure sore that was caused by Bruce getting a flat tire and then saying he didn't know how to change a tire. I stayed in my van for two hours and was out of bed for 14 hours which resulted in the worst pressure sore I ever had. When we got home I was so exhausted and had to go to bed, but I had soiled my sheet. Bruce didn't want to change the sheet, so I laid on the

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dirty one and the next day I had a red swelling on my right leg and Bruce took me to the emergency room and they diagnosed it as cellulitis, which was caused by the dirty sheet. The next day, Steve came to visit only to find Bruce and Mike there. Mike couldn't've known I was there because he didn't have a phone. How did he know I was there? Bruce and Steve became enemies and soon after, I got a phone call from Bruce saying he had called DCF and they would be there shortly. They arrived within minutes and accused Steve of abusing me, which was absolutely false. He also told them I was incompetent and they made me undergo a competency hearing later. I was terrified. I thought I answered one question wrong, they would take me away and put me in a nursing home and take my bird away from me. DCF told Steve not to do any trading on the commodity account and as a result we lost \$100,000! Bruce mentions this in his allegations but he neglected to say that he caused the loss. The case was closed with no action needed. It was about then that I got a new will and emailed Bruce that I had removed him from my will. He got mad, but I reminded him that he always would say that he doesn't want my money. It is was when he started on his vengeful calling about competency. It's obvious he won't stop.

Steve's keys were stolen soon after and he had all the locks in the house and the cars changed at a cost of about \$900. Soon after there was a meeting with my brother who was driven there by his friend Warren Flager where it was talked about doing something to Steve. The next day, Roger Menendez, a worker, was shot to death in his apartment and the Police called it a suicide. It wasn't. His best friend, Mike Reinhalter lived right next door and never heard any shots. There was a shot in the ceiling and one in Roger's head. The Police ruled it a suicide cause the keys were found inside the apartment. Anybody could've had a key made and locked the door. They just didn't want to investigate a murder.

The day after we got back from Puerto Rico, where we had bought property, on 2/11/09, there was a knock on my door while I was still in bed, and it was DCF again. Bruce was in F.L. and had made another call alleging that I was incompetent again. I was outraged and I let them know it. The case was closed and I got a letter dated 4/1/09, saying "No Action Needed".

Less than two months later, thinking it was over, I got a call from a Dr. saying he was court appointed and would come out the next day with a Psychologist and a Social Worker to give me another competency hearing, all because my dear brother filed a petition with the court alleging that I am incapacitated. I had to undergo this grueling, high pressure hearing which lasted 90 minutes. I was exhausted and I could see that no matter how I answered their questions, they were leaning toward putting me in a guardianship and managing my money. I've never even bounced a check, so I don't need anyone managing my money. My brother was causing all this and it is about my money. He would be happy if they put me away and after I was declared incompetent and have my new will declared null and void and the old will would give everything to him. What he doesn't realize

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is that I was declared incompetent in April of '07 and the new will is legal. He deserves to be in prison for what he's done and what he's trying to do. His new lawyer wants to freeze my assets. What's next? The funny thing is, he has such a poor memory he doesn't remember that he said something contradicting what he's saying now. If that isn't incompetent, I don't know what is. His allegations are lies. Like him saying that I'm a prisoner in my own house. How absurd this is, I go where I want when I want. This whole thing with Broward County has cost me much sleep and has made me a wreck. Nobody should have to undergo this torture, especially not a paralyzed vet.

So far, these interruptions have cost our trading account \$150,000 and a total of \$750,000 that Bruce has cost.

I believe he has Alzheimers and I know he has ADD. I'd love to have a marital test between the two of us, he'd be the one to get a guardian. The allegations in the petition are false and without merit. They're made up. He will be charged with perjury and defamation of character.

*Stewart Rosenberg 5/9/10*  
*Joanette Ellis 6/15/09*

***Appendix (D)******ADULT GUARDIANSHIP MEDIA STORIES*****Contents**

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***Old lady could use a lot less court "protection"***

from : [Laurin Roberts' Columns & Blog](#)

Marie Long was officially declared indigent this week by Maricopa County Superior Court Commissioner Lindsay Ellis.

Ellis ought to know. She's been there the whole time, presiding over the case of this 88-year-old lady who just four years ago was worth \$1.3 million.

Ellis is the probate judge who stood by and did nothing as hundreds of thousands of dollars of Marie's money was drained away, much of it spent on guardian fees and lawyers. Marie's court-appointed attorney Jon Kitchel warned Ellis a year ago what was happening and practically begged her to do something about it.

Unfortunately, it took Ellis a year to consider Kitchel's request. By last month, when she finally got around to holding a hearing, the money was gone and the trustee and guardian – along with their ~~attorneys~~ -- were heading for the exit.

On Thursday, Ellis appointed a new guardian to look after Marie but announced that if she tries to sue to get any of the old lady's money back, she'll be taken off the case.

If this is what we call court protection of the vulnerable, I'm pretty sure that Marie could use a lot less of it.

I first met this sweet old lady in October, not long after she was moved into a Phoenix nursing home that accepts welfare clients. It was sad to see her there, especially when you consider her \$1.3 million in assets, all gone now.

According to court records, the Sun Valley Group has collected nearly \$178,000 for acting as Marie's guardian and another \$235,000 for supplying companion care over a 20-month period while she was still in her own home. Sun Valley's attorneys were paid nearly \$57,000.

The trustee, Marie's niece Jenny Olen, meanwhile, reported a \$172,000 drain from her elderly aunt's account due to "long term" investments that lost money.

But the biggest bill came from the trustee's attorney. Brenda Church, or rather, the ~~law firms~~ for which Church has worked – Gammage & Burnham and Frazer, Ryan, Goldberg & Arnold. Court and trustee records show those firms have collected more than \$330,000 of Marie's money, though Church has said that \$24,000 of that went to third parties to pay litigation costs.

Both Marie's attorney, Kitchel, and her guardian ad litem, Brian Theut, objected to Church's legal bills last January and the total has since skyrocketed – costs that Church has attributed to the need to defend against the objections. Kitchel also has objected to Sun Valley's bills.

Commissioner Ellis, however, still hasn't ruled on whether they'll have to return any of the money. Meanwhile, Marie has been moved to a nursing home that reeks of urine, one where taxpayers will foot the bill.

It's up in the air whether anyone will sue to get any of Marie's money back. Kitchel filed such a lawsuit but Ellis tossed it, ruling that he lacked the authority to do so because his client Marie is incapacitated. Theut, as Marie's guardian ad litem, could do it but he hasn't. In May, he asked Ellis to set aside \$60,000 from Marie's trust so he could pursue claims against the trustee and her attorney but Ellis didn't. So, he hasn't.



HR3040 - Responses to Questions from The House Judiciary Committee on Crime, Terrorism and Homeland Security- Appendix D

Marie's niece Kim Raynak, who was appointed the new guardian on Thursday, could sue. But Ellis declared that if she does, she'll be removed as guardian -- and thus would no longer have standing to pursue legal action on Marie's behalf --- because she would have a conflict. Ellis didn't specify what that conflict is.

But the trustee's new attorney, Corey Hill, points out in court papers that Raynak's husband, attorney Dan Raynak, is representing her mother and Marie's other sisters and thus the trust might have a claim against him. Curiously, though, Hill told Ellis that he wouldn't object to Kim Raynak serving as guardian as long as she's barred from trying to recover money for Marie.

Which, in essence, she has been.

"The filing of a lawsuit would provide for an immediate conflict that would require a replacement of the guardian," Ellis said.

Leaving me to wonder who Ellis is protecting. It's certainly not Marie.

Source - <http://www.azcentral.com/members/Blog/LaurieRoberts/59879>

### ***Scottsdale millionaire to be freed Friday...maybe***

**Laurie Roberts' Columns & Blog** - <http://www.azcentral.com/members/Blog/LaurieRoberts/76754>

At the stroke of midnight on Friday, Scottsdale millionaire Edward Abbott Ravenscroft is scheduled to be a free man.

If I were Ravenscroft, I wouldn't be planning my liberation celebration just yet.

Ravenscroft has filed a federal racketeering lawsuit against his probate handlers – the ones who last year gained control over his life and his bank account. Now Maricopa County's probate court may use that lawsuit as an excuse to continue its protection of the man and his millions.

A hearing on whether to let him live his own life – and spend his own money as he sees fit – is scheduled for this morning.

"It's all about money," he told me on Tuesday. "If I didn't have millions, I'd be like anybody else, out there on my own."

Ravenscroft, 49, is part of the Abbott pharmaceutical family. Court records indicate he's worth \$5 million and has an income of \$168,000 a year from Abbott stock dividends.

He also has battled drug and mental-health problems, having been arrested several times for drug possession and hospitalized several times for drug overdoses. In early 2009, his probation officer, concerned that he might be victimized due to the size of his bankbook, handed him over the probate court, where fiduciaries and attorneys are appointed to help vulnerable people – and sometimes themselves, as well, when a well-to-do ward comes along.

Ravenscroft has been clean and sober since August. His temporary guardian and conservator were due to bow out last month but at an emergency hearing they asked to continue their oversight of Ravenscroft and his money for another 30 days, "to ensure a successful transition" back to independence.

That transition is set to end on Friday.

Now, in yet another emergency hearing, the Sun Valley Group is asking that it be named his permanent conservator. Sun Valley attorney Alisa Gray told Judge Karen O'Connor last week that there are "sophisticated and complex financial matters," including questions about whether Ravenscroft is being exploited by a bank, a real estate firm and the attorney who filed the federal lawsuit.

"Our client has undertaken extensive financial investigations of those matters," she said, referring to the bank and real estate matters, "and for his conservatorship to be ended in the next 10 days, I think would put Mr. Ravenscroft in jeopardy."

I can certainly see why Sun Valley would want to remain in control of Ravenscroft's purse strings. Sun Valley is among those being sued by Ravenscroft in federal court. All other defendants in that lawsuit have withdrawn from Ravenscroft's probate case, citing a conflict.

Sun Valley, however, has stuck with the case, noting in court records that Ravenscroft has been ruled "incapacitated" and thus incapable of hiring an attorney or filing a lawsuit.

It could be that he won't be incapacitated much longer. Gary Strickland, attorney for the county public fiduciary, last week asked O'Connor to let the guardianship expire this Friday, citing a

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psychiatrist's opinion. "Dr. (Jack) Potts is prepared to testify that Mr. Ravenscroft has capacity to handle his own affairs from a guardian's perspective," he told O'Connor.

Now, however, questions are being raised about the attorney who filed the federal lawsuit. O'Connor has ordered attorney Grant Goodman to court today to explain why he's refused to disclosed his fee agreement with Ravenscroft. Goodman cites attorney-client privilege.

It's nice to see that the probate court is so concerned about whether Goodman may be taking advantage of Ravenscroft. If only judges were as vigilant about the people they appoint.

To date, there's been no accounting of how much of Ravenscroft's money has been spent by his protectors over the last 14 months. His court-appointed guardian ad litem and his court-appointed attorney were paid \$95,000 for their first few months of work but they haven't disclosed their fees since May 2009. And Sun Valley has never disclosed how much it's paying itself to handle Ravenscroft's money.

Ravenscroft says he's asked for a full accounting but so far been told only that more than \$500,000 is gone. That was a few months ago.

One wonders just how much court-appointed protection even a millionaire can afford.

(Column published March 24, 2010, *The Arizona Republic*)

## ***Lawyer Is Accused of Stealing Disabled People's Assets He Was Assigned to Protect***

By JOHN ELIGON

Published: January 28, 2009

Source: [http://www.nytimes.com/2009/01/26/nyregion/26lawyer.html?\\_r=2&em](http://www.nytimes.com/2009/01/26/nyregion/26lawyer.html?_r=2&em)

### *Lawyer Is Accused of Stealing Disabled People's Assets He Was Assigned to Protect*

Steven Rondos was supposed to help people with mental and physical illnesses care for their money. Instead, prosecutors said Wednesday, in the last seven years he helped himself to their money, stealing \$4 million from 23 people who could not help themselves.

Mr. Rondos, 43, who had been appointed as guardian for the people, was indicted in State Supreme Court in Manhattan on charges that he stole their assets and used them for personal expenses, like the mortgage on his home in Ridgewood, N.J., kitchen renovations, landscaping and a home theater. In some instances, prosecutors said, Mr. Rondos continued to steal money from victims' estates after they had died.

Mr. Rondos stole more than \$1 million from a 32-year-old patient with cerebral palsy and spastic quadriplegia, prosecutors said. In another case, he took a total of more than \$400,000 from a person with bipolar depression, before and after the patient died in 2007, prosecutors said.

This was "a pretty vicious guy," Robert M. Morgenthau, the Manhattan district attorney, said Wednesday at a news conference in his office.

Mr. Rondos has a law firm in Brooklyn with his wife, Camille Raia, Mr. Morgenthau said. Ms. Raia has not been criminally charged and the district attorney's office is unlikely to charge her, said Daniel J. Castleman, the chief assistant district attorney.

Prosecutors have filed suit against both Ms. Raia and Mr. Rondos for more than \$4.7 million, which includes the total amount that prosecutors say was stolen and the value of their law firm, Raia & Rondos. The money will be used to repay the victims or the estates that were assigned to Mr. Rondos, prosecutors said.

Mr. Rondos was arrested Wednesday morning at his home in New Jersey and charged with money laundering, grand larceny and scheme to defraud. He was being held in New Jersey on Wednesday night and was expected to appear before a judge there on Thursday morning. If he waives extradition, he will be taken to Manhattan for arraignment. If convicted, he could spend up to 25 years in prison.

Mr. Rondos's lawyer, David Frankel, did not return telephone calls and an e-mail message seeking comment. Calls placed to Mr. Rondos's home and office were not returned.

Mr. Morgenthau said a "good Samaritan" notified the authorities of Mr. Rondos's activities, though he would not identify the person. Although the indictment charges Mr. Rondos with defrauding 23 clients, he could have defrauded up to two dozen more, prosecutors said. The assets he controlled in the cases covered in the indictment total between \$20 million and \$30 million, prosecutors said.

Mr. Rondos has indicated that he faces similar charges in New Jersey. He consented to being disbarred there this month after saying he was under investigation on charges of knowingly misappropriating clients' funds.

In a sworn statement dated Dec. 10, 2008, included in the disbarment file, Mr. Rondos also acknowledged that "these allegations are true, and if I went to a hearing on these matters, I could not successfully defend myself against those charges."

In an attached letter dated Dec. 19, 2008, Daniel A. D'Alessandro, a Jersey City lawyer, wrote that Mr. Rondos was being treated for depression and was taking prescribed antidepressants.

Guardians in New York are appointed by judges to manage the affairs of people who cannot handle their own because of physical or mental problems. Judges must also assign examiners to ensure that a guardian is handling the finances appropriately. Guardians must, for instance, present examiners an annual summary to show what, if anything, has been done with an account's assets.

Mr. Rondos often did not file the summaries, and the examiners often did not report that failure to judges, said David Bookstaver, the spokesman for the New York Office of Court Administration.

"The court examiner failed to do due diligence," Mr. Bookstaver said, adding that Mr. Rondos' activities probably would have been caught earlier if the examiners had done their jobs properly.

In response to the Rondos case, Mr. Bookstaver said, the office, which oversees the operations of the entire New York court system, will start keeping a central database to ensure that guardians report to examiners on time. The database will allow court administrators to know when a guardian's summary is past due, Mr. Bookstaver said, and will automatically generate a meeting with the judge in charge of the case.

In the past, court administrators had no central oversight of guardians and their dealings with examiners, Mr. Bookstaver said.

"While it's an aberration, this certainly brought about this change today," Mr. Bookstaver said.

The change will come after years of problems concerning guardianships. In 2004, after a Long Island City lawyer stole \$2.1 million from assets he was assigned to protect, a special grand jury in Queens issued a report saying the system for appointing guardians for incapacitated people had "gone horribly wrong" and needed to be overhauled. The report recommended several changes, most of them concerning supervision of examiners.

In Mr. Rondos's case, it appears that the examiners may have been too friendly with him and turned their heads to the fact he had not been filing his summaries, the authorities said. One examiner was fired and another suspended because of the Rondos case, Mr. Bookstaver said.

The thefts did not result in the loss of vital medical services for any of the victims, prosecutors said. Some of the money could be recovered through insurance and a state fund that reimburses clients up to \$300,000 when their funds are misused, the authorities said.

As a guardian, Mr. Rondos was entitled to collect fees of 2 percent to 5 percent of the assets he controlled. Prosecutors said that his appointments came from six or seven judges, and that there did not seem to be a pattern of political patronage in the Rondos case.

***Ex-Guardian Must Repay \$403,000 to Judge's Estate*****The New York Times**

Top of Form

By TRYMAINE LEE

Published: July 5, 2008

A Brooklyn lawyer and a onetime legal guardian to John L. Phillips Jr., the so-called kung fu judge and the owner of the Slave Theater in Bedford-Stuyvesant, has been ordered to repay the Phillips estate \$403,000 that she improperly kept for herself or misused, according to a judge's ruling.

The lawyer, Emani P. Taylor, paid herself fees from the estate that she was not entitled to and used the money to pay family and friends and to make mortgage payments, according to the decision issued on Monday by Justice Michael A. Ambrosio of State Supreme Court in Brooklyn.

Ms. Taylor also kept profits from the sale of some of Mr. Phillips's real estate holdings, Justice Ambrosio wrote in his decision. The judge's decision was part of proceedings held to review Ms. Taylor's handling of Mr. Phillips's estate.

"It is patently clear that Taylor failed miserably as Phillips's guardian," Justice Ambrosio wrote. "At trial she readily admitted not knowing her responsibilities and duties as Phillips's guardian and repeatedly attempted to shift the blame to others including the court, the guardianship department and prior guardians."

In February, shortly before Mr. Phillips died at the age of 83, a state panel suspended Ms. Taylor from practicing law while it investigated her handling of his estate from 2003 to 2006. Ms. Taylor was the fourth guardian assigned to Mr. Phillips. The previous three guardians had each been accused of various improprieties.

Ms. Taylor did not return several calls for comment about Justice Ambrosio's decision.

In an interview in November, Ms. Taylor acknowledged that she paid herself about \$300,000 from the judge's estate but said that she had been paying for clothing and food for him out of her own pocket.

"I received a guardianship account that was bankrupt," Ms. Taylor said at the time. "I wrote an order to the best of my ability, and that order was in consideration of the numerous people that needed to be paid in the future. At the point I was finally able to have the funds to pay persons, I rightfully believe that I was one of those persons."

In 2001, Mr. Phillips announced a plan to challenge the incumbent, Charles J. Hynes, in the race for Brooklyn district attorney. As a result of an investigation started by Mr. Hynes that some believe was politically motivated, Mr. Phillips was declared mentally incompetent and court-appointed guardians were placed in control of his affairs.

Some of Mr. Phillips's supporters believe Ms. Taylor is a scapegoat and have said that none of the three guardians that preceded her managed his financial affairs properly or ever filed complete taxes on his behalf.

"The whole situation prior to her coming in was basically the same thing — stealing of his property, inside dealings," said Dee Woodburne, one of Mr. Phillips's supporters. "She just came in after and continued it."

Mr. Phillips, who got his kung fu nickname because he was a 10th-degree black belt, and who left the Civil Court bench in 1994 at the mandatory retirement age of 70, suffered from diabetes and mild Alzheimer's symptoms, relatives said. He had seen many of his real estate possessions and much of his personal fortune, once estimated at about \$10 million, depleted.

What remains, including the Slave Theater and another Brooklyn theater, the Black Lady, may have to be sold to pay off more than \$2 million in back taxes. When killings in the 1980s frayed race relations in the city, the theaters became stages for rallies by a new crop of black activists, including the Rev. Al Sharpton.

None of the other guardians have faced any fines or punishment. Justice Michael L. Pesce, the judge overseeing the guardianship case during Ms. Taylor's tenure, is facing a review by the New York State Commission on Judicial Conduct for his oversight of the guardianship case.

Samuel Boykin, a nephew of Mr. Phillips who lives in Ohio, reacted to news of the decision against Ms. Taylor with mild approval.

"As we all know, the hand of justice moves very slowly," Mr. Boykin said. "And that is a very sad consequence, that my uncle didn't get a chance to witness some of the things that are taking place now."

### *At long last, please set Judge Phillips free*

[http://www.brooklynpaper.com/stories/30/19/30\\_19johnphillips.html](http://www.brooklynpaper.com/stories/30/19/30_19johnphillips.html)

**May 12, 2007 / News**

By Christopher Ketcham - for The Brooklyn Paper

Could the tragic, six-year-long saga of retired Brooklyn Civil Court judge John L. Phillips finally be nearing a conclusion?

In 2001, Phillips was placed under a county-run guardianship program because he was declared to be "mentally incompetent" and needed the aid of government.

Now, six years later, this self-made multi-millionaire who served honorably for 13 years, is destitute and confined against his will to a Bronx nursing home. He is barred from receiving visitors or mail or even phone calls without permission of the court. His property has been sold off in unpublished and possibly illegal auctions. Millions in assets have disappeared.

Judge Phillips's epic troubles began when Assistant District Attorney Steven Kramer, who worked for DA Joe Hynes, sought to have a guardian appointed for Phillips, claiming concern about the safety of the old man's considerable assets. Phillips was 77 years old at the time and had no family, and Hynes sought to "help" him, according to letters his office has written to The Brooklyn Paper and elsewhere. A question exists, however, that Hynes may have had another concern — after all, Phillips had tried to unseat the DA in 1997 and was gearing up for another run.

In New York State, anyone can file a motion to declare a person incompetent. The alleged "incapacitated person" essentially becomes an accused person: He must defend himself before a judge. In February 2001, Phillips was declared "mentally incompetent" by Judge Leonard Scholnick, who has since retired. His sizable estate, worth an estimated \$10 million, was initially handed over by Scholnick to a court-appointed guardian named Harvey Greenberg, Hynes's former chief of staff.

Assistant DA Kramer claimed in court papers that Phillips needed protection because he had been the victim of a real-estate swindle. But in a July 2004 court appearance, Hynes's office told the court that the investigation into the alleged scam had yielded no arrests and would be closed. The irony is that Hynes's "help" — in the form of a round-robin of guardians lining up at the trough of Phillips's estate — opened the doors to the kind of swindling against which the court-appointed lawyers were supposed to protect.

Things sped downhill for Phillips once the DA stepped in. In 2002, the electricity and heat in his Bedford-Stuyvesant brownstone were shut off — the bills went unpaid by the guardians — leaving the old man to shiver through two winters. Phillips had never missed filing his taxes, but since the 2001 takeover of his estate by the court, not a single tax return has been submitted by his "guardians." In November 2004, the brownstone where Phillips lived caught fire. Now the building is a shell; the guardians had failed to pay fire insurance.

Since 2001, there has been no official accounting of the assets in his estate, despite requests by Phillips's pro-bono lawyer. Where are the rent rolls from his 16 buildings — a revenue of hundreds of thousands of dollars a year? Where are the sale proceeds from the buildings themselves?



The most recent guardian, a lawyer named Emani Taylor, admitted to the court that she took at least \$187,000 from Phillips's accounts. Taylor testified that she felt she was owed the money, but Judge Michael Pesce demanded that she return it. Taylor is disputing this order, claiming that her records were lost in a flood and, more alarmingly, that an associate disappeared with the pertinent papers on a trip to Indonesia.

Since 2005, Phillips's supporters have filed complaints about the handling of the case with the Commission on Judicial Conduct, the Office of Court Administration, and to chief judge Judith Kaye. To date, there has been no response.

Why haven't these agencies investigated or intervened?

When I last interviewed Phillips in person, in February 2006, I was forced to sneak into the Bronx nursing home to avoid Pesce's court-ordered lockdown. Phillips looked fit and healthy. Around him were legless women in wheelchairs. In conversation, Phillips mentioned how once in Russia he was mistaken for the great baritone and political agitator Paul Robeson, who under the weight of his own duel with government became a shell of himself in old age. I noticed he wore a tracking bracelet on his left wrist. "Paul Robeson!" he said. "My, my — that was a nice thing to be mistaken for him."

It struck me as outrageous, almost unbelievable, that a respected judge had come to this. "If it can happen to him," a friend of his told me, "it can happen to anyone."

On April 29, Phillips made yet another in a long line of appearances in Pesce's court. There was discussion, yet again, of moving him out of the nursing home into his niece's apartment or into an assisted living center on Prospect Park West. The event was mostly identical to the scores of court-dates in the five years previous: the case was adjourned, and Phillips, now 84, was sent back to his Bronx limbo.

Phillips's court appearance on May 10 was expected to result in the same treatment. But Pesce stunned the courtroom by ordering that Phillips be released from the Bronx nursing home and placed in the care of an assisted living facility, where he would no longer be barred from seeing people. It was a step forward, but it was not the "milestone moment" as Pesce called it because there is still no punishment for those involved in plundering Phillips's estate.

So perhaps Judge Phillips will soon be free, but there's still more work to be done to clean up this rotten

affair. ©2007 The Brooklyn Paper

### *Rethinking Guardianship*

## ***Families say loved ones are being ripped away by a closed, unfair system.***

WEDNESDAY, 18 MAY 2010 08:24 STORY AND PHOTOS  
BY JEFF PRINCE



The gray-haired woman drifts in and out of reality. One moment, her mind seems sharp. "Isn't that a perfect tree?" she says, rolling in her wheelchair through the parking lot at the nursing home where she lives. Bradford pear trees flank the pavement.

A moment later, she is beaming, telling a visitor how her mother and father are still alive and well. But they're not. Her parents are dead. Her husband too. She has no family. If not for the volunteer guardian pushing her wheelchair, the old woman wouldn't have much of anybody to look out for her.

Volunteer guardian Sara Lee has looked after her for seven years, visiting the nursing home at least once a week and on holidays, serving as an advocate, sounding board, and friend.

"I watch very closely what's going on with her," Lee said. "I check her charts. I make sure she gets the care she needs. I keep an eye on her — and they know it."

Lee volunteers at [Guardianship Services Inc.](#), a Fort Worth-based nonprofit group that represents vulnerable residents in Tarrant County to ensure they receive social services, medical care, and financial management. The nonprofit, celebrating its 25th anniversary, is legal guardian for 425 people and money manager for 245. Those numbers have been steadily increasing. More than 100 volunteers such as Lee have stepped in to help the elderly or otherwise incapacitated clients who become GSI's legal wards.

Putting legal power over a person into a stranger's hands is supposedly considered a last resort by the court system. On its web site, GSI says it gets involved only when "all other alternatives have been tried" and "no family member or friend is willing, able, or suitable to serve in that capacity."

But several local families say that what began as a volunteer program to help the old and vulnerable has evolved into a close-knit alliance of probate judges, attorneys, care providers, and quasi-governmental nonprofit employees. These factions, while doing good in many cases, sometimes rip families apart without giving relatives so much as the courtesy of being present at the hearings where such decisions are made.

"The system is rigged, and the family has nowhere to turn," said Kathie Seidel, one of a handful of local residents who accuse the probate court and GSI of removing loved ones from their homes unnecessarily.

The residents describe being replaced as guardians in court hearings without being given a chance to defend themselves — and then being required to put up \$10,000 bonds in order to be allowed to appeal the decision. Overturning a court's decision on guardianship can become a maze of dead ends. Families don't know where to turn, other than to legislators who might change the laws — and that's been a slow-moving ship.



1 Volunteer Sara Lee visits this GSI client once a week and on holidays at a Fort Worth nursing home.

"It is true there is no statewide agency with oversight over guardianship programs," said Lesley Ondrechen, director of the Texas Guardianship Certification program. "They are accountable to the court that appointed them."

The families believe the system involves too-cozy relationships between judges, attorneys, caseworkers, and others and is rife with intimidation and retaliatory behavior designed to shut out families that might get in the way.

Attorneys donate money to the election campaigns of probate

judges who assign those same attorneys to guardianship cases. Attorneys also donate money to GSI, which in turn shepherds clients to nursing homes and other facilities that want to keep their beds filled. The nonprofit's funding is based on its number of clients. Its board of directors is mostly composed of attorneys and has included nursing home representatives in the past.

"Guardianship Services is supposed to be a service," said Debby Valdez, a San Antonio-based activist who is helping families fight back through legislative action. "When it becomes a business, it's no longer about the ward, it's about the money."

Those who take part in the system say it runs well and provides valuable assistance. "This is not a perfect world, but we do guardianship as well as anybody, better than anybody, and we want people to know we do it right, and we do it according to the law," GSI marketing director Marnie Stites said.

Efforts to expose the system's flaws and build support for reforms fell on deaf ears in the past, but that might be changing. Four North Texas families traveled to Austin last week to testify at a Texas Senate interim hearing along with other families from around the state. They told their stories to a committee led by Sen. Jane Nelson of Flower Mound, describing secret hearings and retaliation from court-appointed guardians using family members as pawns in power struggles. They lamented an overall lack of regulation.

Senators appeared surprised and concerned about what's happening in some guardianship cases.

"It's not making sense," said Dallas' Sen. Royce West.

Eamestine Starks was independent most of her life, working two and sometimes three jobs at a time as a single mom raising five children in Fort Worth. After her kids were grown, Starks continued living alone well into old age, even after she began suffering delusions. Medication helped, but she didn't think she needed it and sometimes refused to take it. An anonymous caller notified Adult Protective Services about Starks. The agency, part of the Texas Department of Family and Protective Services, evaluated her and determined she needed an assisted-living situation.

Her daughter, Sharon Richardson, became her legal guardian, and Starks settled into a facility. But Richardson began questioning the quality of care her mother was receiving. A struggle of wills among Richardson and nursing staff and caseworkers ensued.

"Before I started complaining about the nursing home, the court investigator thought I was fully qualified to be my mother's guardian," she said.

In summer 2009, Richardson signed out her mother for an eight-hour release one day and took her to a relative's funeral. When they returned, Richardson said, Starks resisted going back into the nursing home and began slapping at her daughter. Richardson said she tried to restrain her raging mother, and they both toppled over in front of several nursing home staffers.

Richardson considered it an unfortunate incident, a grieving mother lashing out at the world. The nursing staff saw it differently.

Within a couple of hours, the Fort Worth probate court that oversees the guardianship program sprang to action. Judge Pat Ferchill removed Richardson as legal guardian without consulting her or hearing her side. GSI was appointed as her mother's new caretaker. The document granting the change in guardianship noted that family members did not contest the decision but didn't mention they weren't given an opportunity to do so.

"I wanted to testify and dispute that," Richardson said. "She's my mother, I love her, and I wanted to be her guardian. My father was killed when I was 5. My mother raised her kids as a widow and always took care of us. She was there for us. I owe it to her to be there for her."

A year later, Richardson and her brothers and sisters are still battling a guardianship system that leaves little room for second-guessing. Nursing home staff threatened them with arrest for trespassing during one of their visits. They say they've been treated like annoyances by the judge, court investigators, court-appointed attorneys, and GSI caseworkers. When they fight back, it makes things worse.

"It gives you an ill feeling," said Starks' son, Gerald Banks. "It's frustrating to try to hold it all in."

The low point came when their mother was moved to a different facility without their knowledge.

"They kept my mom for a week and refused to tell us where she was," Richardson said. "They told us if we undermine them in any way or do anything they didn't like they would prevent us from seeing our mother. They would not tell us where she was until we agreed to those terms."

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Richardson's attempts to talk to the judge went nowhere — Ferchill wouldn't return her calls, and when she went to visit him in person, he wouldn't see her, she said. Her siblings became split — some wanted to follow GSI's directions and toe the line. Others wanted to fight to get their mother back.

"I've been overwhelmed trying to figure out what's the right thing to do," Richardson said. "I don't want anything worse to happen to her."

A staffer in Ferchill's court, who asked for anonymity, said the court lost confidence in Richardson as a guardian after the scrap with her mother. Also, she wasn't providing information needed to get her mother qualified for Medicaid and was insisting on moving her mother out of the facility against her doctor's recommendations.

Richardson could have contacted the court and possibly worked within the system to re-establish her guardianship, the source said. Otherwise, she could appeal the court's decision.

Several local families have complained of being removed as guardians in ex-parte hearings — that is, hearings where not all interested parties are in attendance. The families call them "secret hearings" because the judge makes a decision without listening to their side of the story. The senators in Austin appeared to be most appalled at the idea of families being shut out of such hearings.

U.S. House of Representatives Committee on Crime, Terrorism and Homeland Security

In Richardson's case, however, an ex-parte hearing wasn't used. Ferchill merely rescinded his previous order designating Richardson as guardian. "It's a fine sort of legal distinction, but within 30 days any judge can rescind an order and say there's been a mistake," the source said.

Ex-parte hearings have been used in questionable situations in other parts of the state, the source said, but Tarrant County's probate courts use them in a tiny fraction of cases — only a handful of times in 30 years. In the Starks case, guardianship was changed quietly and without Richardson's involvement because the judge worried she might whisk away her mother if she knew.

Richardson's ordeal is reminiscent of one previously covered by *Fort Worth Weekly* ("Saving Katia," July 2, 2008). Kathie Seidel adopted a Russian orphan in 1993, and 4-year-old Greg lit up the house. Wanting Greg to have a sibling, Seidel adopted another Russian orphan, this time a girl named Katia.

Katia spent her first eight years living in a Russian orphanage. She arrived in Fort Worth with a host of problems, including autism and mild brain damage. And she was explosive, diagnosed with attachment disorder, a behavioral difficulty common among neglected and abused infants. Such children can swing back and forth between kindness and sometimes-dangerous cruelty.

Seidel was prepared. She had taught emotionally disturbed students for years and earned a master's degree in special education. "Katia came to the right place when she came to me," she said.

The ensuing years were a roller coaster. Seidel spent her savings on assorted treatments for Katia and noticed marked improvement. Katia took nutrition supplements under a doctor's guidance and participated in a program at the Texas Christian University Institute of Child Development.

Her rages tapered off. She was maturing. But in September 2006, Katia erupted at home, threatened her mother and brother, and was taken to a local hospital for examination, medicine, and, Seidel assumed, a quick release.

Katia, however, was upset and told hospital staff she argued frequently with her mother. She admitted she might physically harm her family, and she said she wanted to live somewhere else. Those comments prompted a discussion among hospital staffers and representatives of the probate court and Mental Health and Mental Retardation of Tarrant County.

Ferchill assigned a court investigator to study the situation. Afterward, the court removed Seidel as Katia's guardian without inviting her to the hearing.

Patti Gearhart Turner is a former court investigator and guardianship attorney in Ferchill's court and a former GSI board member. Now an assistant dean of student affairs at Texas Wesleyan University School of Law, Turner said ex-parte hearings are allowable in certain situations under the probate code.

"If you need to remove a guardian who is perceived to have placed the ward in eminent harm, there are provisions in the code that allow you to act quickly," she said.

Ex-parte hearings are used sparingly and only in emergencies, she said. She recalled a past situation where someone needed emergency medical care and the guardian couldn't be found, so an ex-parte hearing was held to name a new guardian.

"In a situation like that the court needs to act very quickly ... and get treatment for the ward," she said.

The Texas probate code empowers judges to remove guardians for any number of reasons and without notice. None of the reasons appeared to apply to Seidel. But the judge appointed Fort Worth attorney Robert Gieb to represent Katia temporarily until the court could determine what to do with her.

Seidel supplied the court with documents and expert testimony describing how Katia's condition had improved with treatments. Attachment disorder specialist Karyn Purvis, who had worked with Katia, sent a letter to Gieb explaining the girl's condition and how damaging it could be to remove Katia from her family and put her in an institution.

Gieb didn't respond. A court investigator advised the court to remove the girl from her home. Gieb agreed. The judge assigned GSI as the new guardian. And Katia was enrolled at Cimarron, a Lewisville institution with a poor record for treating clients.

More than three years later, Seidel is still battling the court and GSI over her daughter's welfare. She feels like she's up against a system that doesn't appreciate squeaky wheels, a system that has the law on its side. Seidel is allowed to see her daughter once a month for a short, supervised visit. A court staffer said Katia is improved, happy, well-adjusted, working, and independent. Seidel, however, has received numerous letters from Katia saying she misses her family and wants to come home.



"Everything Katia is doing now, she did while she was at home with me," Seidel said.

GSI and the courts won't discuss specific clients or guardianship cases, citing confidentiality requirements. But GSI Executive Director Colleen Colton touts the Tarrant County system as a solid, efficient method of protecting the elderly and vulnerable from harm or exploitation. Family members' wishes are considered, but the clients' needs come first, she said.



**2** Colleen Colbert was honored recently for her 25 years of directing Guardianship Services Inc.

"The judges in Tarrant County have set up kind of a unique system," she said. "Theoretically, there are court-initiated guardianships all over the state of Texas. But in Tarrant County they've taken that seriously to the point that they've hired court investigators, assistant court investigators, and court visitors that go out to the house." The law requires ad litem attorneys to be appointed to represent clients.

Donors to Ferchill's election campaign are almost exclusively attorneys — and that's the case with many judges. Some of these attorneys are given ad litem appointments. Meanwhile, GSI's private donors include both judges and attorneys.

Seidel views this mutual back-scratching as unethical and proof of collusion.

Both Colton and Turner pointed out that family members can appeal any court decision.

But appeals are expensive, and many families can't afford them. Seidel found out just how expensive when she filed a motion in Ferchill's court and was told to provide a \$10,000 security bond to cover probable court costs.

"It was effective — it kept us out of court," she said.

An Arlington couple who tried to challenge Ferchill's decision to remove them as their child's guardian ran into the same requirement for a \$10,000 security bond. The couple asked for anonymity for fear they'll make their situation worse by speaking publicly. "My wife and I have been living a nightmare," the child's father said.

The Ferchill staffer said judges don't "sell their soul" for contributions. Acknowledging that some contributors do get ad litem appointments, the staffer said that happens because the attorneys are experienced in guardianship matters.

Katia remained at Cimarron for 10 months before being moved to a group home. Later, when the *Weekly* asked her ad litem attorney to explain why Katia was sent to the facility despite its low ratings and despite her doctors' wishes, the attorney said Katia "wasn't there that long."

Court investigators and GSI caseworkers are certified by the state. Anyone who disagrees with their actions can complain, Colton said.

"If they think that we're abusing our certification, they can go to the Guardian Certification Board," she said. "There are several different parties that can investigate. It's not a closed system. It's all public record."

Seidel tried that method as well. She'd never been told about the certification board, but once she discovered it she filed a complaint against GSI caseworkers assigned to Katia, saying they were not caring for her properly.

The Texas Guardianship Certification Program was created in 2006 to make sure court-appointed guardians are competent and qualified. The program currently oversees 327 licensed guardians. But few family members are aware of the certification board. GSI doesn't tell them, and the certification board doesn't advertise itself. Since its creation, the board has received only two complaints from family members. One was dismissed because the board didn't have jurisdiction. The other came from Seidel.

Ondrechen, the director, said complainants are allowed to speak to the board members during the complaint process. Members then make a decision. Colton said both sides get a fair hearing, and the board rules without bias.

"We had to go down there and appear, and the complainant filed a stack that big, and we hired an attorney and filed a stack that big, and they took hours and hours going over the case and interviewing the people complaining," Colton said.

Seidel recalled things differently. Prior to the scheduled hearing, she was recuperating from knee replacement surgery and asked to reschedule. The board denied her request. Seidel asked to be allowed to participate by phone and was again denied. So, despite Seidel's physical problems, her son, Greg, drove her to Austin.

"We sat and waited a long time in the lobby, which was hard for me to do because of my surgery," Seidel said. "Then we went into a room where Lesley Ondrechen and other people were talking. I was told the complaint was dismissed. I did not get to talk to that board at all."

Some board members participated by phone, even though Seidel had been denied the same opportunity. Ondrechen said the committee met in closed session because of the confidential nature of the case. After the closed session, the committee moved to an open meeting, and Seidel was given an opportunity to speak. Then the committee "recommended that the complaint be dismissed," Ondrechen said.

Seidel was so upset she left.

"It's rigged," she said. "Family guardians have no place to turn."

Colton said the board ruled against Seidel because "it was not a valid complaint."

Several local families saw an opportunity to grab attention for their cause when a state Senate committee met in Austin last week to discuss guardianship issues. Instances of guardianship abuse are common across the country. Critics lament unethical attorneys and court investigators who are supposed to protect vulnerable residents but, on occasion, exploit them instead.

The hearing was supposed to focus on guardianship programs overseen by state agencies. Sen. Nelson made it clear beforehand that guest speakers were to stay on subject.

Tarrant County's guardian system, overseen by the courts, didn't really match the topic, so the families knew they might make the drive to Austin for the 9 a.m. workday session and still not be heard. At best, they expected to get three minutes each to talk. Tired of being blocked at every turn by judges, caseworkers, and professional guardians, they figured it was worth the gamble.

To the families' relief, the senators listened. Most were given far longer than three minutes. Afterward, the senators continued talking to them for more than an hour.

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"Rest assured, I know we have some real concerns that need to be fixed," Nelson said. She encouraged the families to keep working within the system for reform.

After hearing Richardson's story, Sen. Bob Deuell of Greenville said the committee should consider legislation that requires family members to be present in hearings that strip them of guardianship.

"She should have had the opportunity ..." he began.

"... to have her day in court," Nelson chimed in, finishing her colleague's sentence.



Greg Seidel took off work and drove to Austin to tell Sen. Jane Nelson's committee about guardianship abuses.

Pushing for similar reforms nationwide is the National Association to Stop Guardianship Abuse (NASGA), an Indiana-based nonprofit group working to get a federal response to guardianship problems caused by self-policing courts and programs.

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"Each state is different, and each county has their own procedure, so the only answer is federal," said Sylvia Rudek, a NASGA board member. "There is no due process. They have ex-parte hearings. There are no civil rights — that's what makes it federal."

Richardson, Seidel, and the other families who made the long haul to Austin were thrilled when they left the Senate chambers.

"That was better than anything that's ever happened," Seidel said, beaming. "I can't understand why it's taken so long for Sen. Nelson and the others to be aware of this, because we've been notifying them for years."

Judge Steve M. King, one of two probate judges in Tarrant County, said the guardianship program contains checks and balances. Disgruntled family members can file motions for new hearings or appeal court decisions, he said, but some choose to seek redress by lobbying lawmakers.

"We've got legislative committees that are amenable to these one-sided complaints," he said. "The judges can't be advocates."

King serves on a national association of probate judges and has seen abuses in the system. He sees people living longer while also owning more property and money — and who thus are more apt to be taken advantage of by others.

"This is why the courts are tasked with monitoring guardianships," he said.

Counties establish their own guardianship programs, and Fort Worth's is considered a model because of its investigators and social workers trained in guardianship issues and its zeal in monitoring cases, according to many within the local and statewide guardianship systems.

King said that, nationally, when courts are struggling under heavy caseloads and insufficient funding, poor decisions can result. But he said the local system is among the best in the country.

"Texas is way ahead of many other states in their ability to monitor and their actual monitoring," he said.

Colton, GSI's longtime leader, said she understands that family members sometimes feel they have been unjustly removed as guardians. She has plenty of faith in Tarrant County's probate judges and their methods but acknowledged that some cases are difficult and require judgment calls that can be controversial.

She is considering establishing an outreach program to help families understand how to deal with the system. She recalled instances in the past when families have volunteered with GSI, completed training courses, and re-established themselves as legal guardians, she said.

The people who have the most problems are those who clash with caseworkers, nursing staff, and seemingly everyone else involved in the system, rather than working to establish a rapport, she said.

"They don't understand the way we operate," Colton said. "You just need to kind of show us you are on the same page and you are not trying to cause trouble at the nursing home."

Volunteer guardians are trained to deal with nursing staff, follow protocol, approach the right people for the right solutions, and fight for their clients in a manner that, in GSI's opinion, ultimately works out best for the ward.

"I'd like to provide support for family members serving as guardians," she said. "Sometimes the family members may be removed even though they're trying hard — they just don't understand how it works. A lot of it is learning how to do things — not just pitching a hissy fit but to know the ropes."

Family members say they've tried that route unsuccessfully. But it's tough to be cooperative with a program that removes them as guardians in secret hearings, and it's hard not to pitch fits when someone they love is being taken from them by strangers who don't seem interested in hearing their side of the story.

"We're going to come up with ways to put transparency in this system," Seidel said.

Source:

[http://www.fweekly.com/index.php?option=com\\_content&view=article&id=3402:rethinking-guardianship&catid=30:cover-story&Itemid=375](http://www.fweekly.com/index.php?option=com_content&view=article&id=3402:rethinking-guardianship&catid=30:cover-story&Itemid=375)

***Feb. 15: 2 years and \$672,808 gone***

***An Excelsior woman joined the growing ranks of Minnesotans who lose control of their finances to lightly regulated guardians.***

By **JAMES ELI SHIFFER**, Star Tribune

Last update: February 16, 2009 - 1:46 PM

It still feels like heaven for Peggy Greer to wake up in her own bed. One of her sons checks on her each day, but she's happy enough on her own in her Excelsior home, writing stories alongside her 20-year-old cat, Nyse.

Greer will be 86 in March. That month will mark the fourth anniversary of her strange journey through the justice system in which she overcame a life crisis but her assets disappeared with the approval of a Hennepin County judge.

For more than two years, Greer was among a growing number of Minnesotans living under the authority of a guardian and conservator. The court-appointed officials had broad power over her life once a judge deemed Greer incapable of making decisions about her housing, health care or finances.

Disturbed by the decisions made on her behalf, Greer repeatedly fought to regain control of her affairs. During that time, the guardian, Professional Fiduciary Inc. (PFI), and the conservator, Wells Fargo Elder Services, spent more than \$600,000 of her money, much of it on health care for her that some family members called excessive. Nearly \$100,000 went to lawyers.

"My money was all used up, was all gone, without my knowledge or OK or anything," Greer said.

The system was set up to protect the vulnerable. Guardians make decisions about an individual's living situation and medical care. Conservators manage a person's finances with the purpose of

preserving as much as possible. But it is an industry with little regulation: In Minnesota, there are no licensing requirements for guardians and conservators.

Last month, a state study concluded that the system has inadequate procedures for dealing with complaints, evaluating a ward's well-being and keeping track of money.

Nationally, groups that represent guardians and conservators and senior citizens have raised concerns about how well the courts oversee the actions of guardians and conservators, even as the nation's aging population places greater and greater demands on them.

"It needs improvement and it needs more resources," said Naomi Karp, a policy adviser for the AARP's Public Policy Institute who has testified in Congress about how the system doesn't always protect vulnerable people. "We need to beef up the system so that fewer of them fall between the cracks."

In Greer's case, in the spring of 2007, the guardian no longer opposed having her rights restored. The change coincided with the fact that Greer's assets had been exhausted.

Representatives of PFI said they always acted in Greer's best interest and blamed the high costs on the family's contentious behavior. "PFI and Wells Fargo went to extraordinary lengths for this woman," said Ruth Ostrom, a lawyer for PFI. "We were not in any way trying to deplete Peggy Greer of her assets and walk away."

Asked whether Wells Fargo had properly managed Greer's assets, Peggy Gunn, a Wells Fargo spokeswoman, said: "Every action that Wells Fargo took in this matter was approved by the court, and that includes all the accounting for all the expenses."

Michael Greer, one of Greer's two surviving sons, has a different view. "It's a money-producing machine, it's a livelihood for these folks," he said. "Once you get a guardian, and conservator, it's as if a person's hands and feet are tied and their mouth is bound with tape. ... I was dumbfounded at how difficult it was to unwind this thing."

Guardians and conservators preside over the lives of about 22,500 Minnesotans, many struggling with Alzheimer's disease or dementia. That number grows by about 3,000 a year.

#### Entering the system

A lifelong vegetarian and animal lover, Peggy Greer grew up in south Minneapolis and raised a daughter and three sons through two marriages and divorces.

In the summer of 2004, after she turned 81, her life was heading toward crisis. Her eldest son, Charles Heintz III, was living with her in Excelsior, unemployed and addicted to drugs. After a back injury, Greer herself became dependent on morphine.



In July 2004, Greer's daughter, Judith Wryk, filed a petition in Hennepin County Probate Court asking that she and her brother Terry Greer be appointed her mother's guardians and conservators.

Her mother was "suffering from dementia and chemical dependency" that made her "unable to arrange for her medical care," the petition said. She was "unable to manage her estate and is vulnerable to financial exploitation," especially since Peggy Greer was about to inherit a large sum of money from her late sister.

Not everyone in the family wanted to take this step. Before the family could agree on how to proceed, a home health care worker checked on Greer and found a disturbing scene.

Greer was malnourished, dehydrated and suffered from bedsores. That day, in December 2004, she was removed from the home by Hennepin County Adult Protection and committed to a hospital to wean her off painkillers.

In the face of the crisis but still divided, the family agreed that a third party should take over the mother's decision-making.

In March 2005, Hennepin Probate Court Referee Richard Wolfson appointed PFI of Minneapolis as Greer's guardian and Wells Fargo as the conservator. William Sanden, a Wells Fargo vice president, would handle the account.

Greer was no longer considered chemically dependent or suffering from dementia. Still, Wolfson deemed her unable to arrange medical care or understand her condition.

By then, Greer was already living in Hillcrest nursing home, which cost about \$5,700 a month. She was eager to go home, she regularly told her guardian. She learned quickly that she had lost the power to decide where she lived.

"We were very aware of Ms. Greer's wishes," said Ostrom, PFI's attorney. "It's also the guardian's role to protect the ward ... if the wishes are counter to her best interest."

Greer's condition had improved markedly, and the guardian was already discussing how to move her back home. But there was an impediment.

Charles Heintz was still living in the Excelsior home. The guardian would not put her back in a house with him.

Terry Greer tried to get his mother into an assisted living center, half the price of Hillcrest and closer to family. That was rejected -- despite guardian guidelines calling for the "least restrictive" arrangements.

Ostrom, PFI's attorney, said: "The reason we didn't move her is because it would cost a lot to get her discharged from one nursing home and admitted to a new one when we all anticipated she would be returned to her home pretty quickly."

That didn't happen. Peggy and Terry Greer filed a petition in August 2005 seeking to replace the guardian.

It failed. But it did start a frenzy of court filings, meetings and hearings. The lawyers' billable hours grew. Under Minnesota law, the protected person must pay the legal fees of all parties involved.

In March 2006, after a year under a conservator, the attorney's fees totaled at least \$45,000. With other costs, such as the nursing home, Greer's \$226,800 inheritance from her sister -- a justification for having a conservator in the first place -- was gone.

Now the conservator looked for other sources of money to pay the mounting bills.

Eyeing the house

In April 2006, Sanden, the Wells Fargo VP, petitioned the court to sell Greer's home, even as the guardian was trying to arrange for her to move back into it.

"The protected person is not able to return to independent living," Sanden wrote in court papers as part of his justification.

Wolfson eventually agreed to grant a reverse mortgage -- a loan arrangement in which a bank gradually gains equity in a house in exchange for providing payments that allow homeowners to stay in their homes. In this case, the money was disbursed in a lump sum and used to pay debts.

The bank that received the reverse mortgage? Wells Fargo.

Gunn, the Wells Fargo spokeswoman, said the family did not oppose the reverse mortgage in court. But Terry Greer said their attorney at the time did not follow the family's wishes. He, his brother Michael and his mother wrote to the judge weeks later seeking to stop the reverse mortgage.

In November 2006, the situation took an unexpected step toward resolution. Charles Heintz died, his body exhausted by years of addiction.

Within weeks, his mother moved home.

Pricy home health aides

Peggy Greer wasn't living alone. She had 24-7 care from a home health agency. Because she could take care of most daily functions, the ever-present aides watched television, read magazines, talked on their cell phones. All at a cost of about \$26,000 a month.

In desperation, family members consulted with Greer's doctor at Hillcrest. He examined her and recommended discontinuing the 24-7 care immediately.

The guardian refused.

"Usually, the guardian is the one who is a liaison between the protected person and the doctor," Ostrom said. "In this case, the Greers went and found him on their own and then presented us with this report. We had no idea this was coming. Again there are procedures, court procedures, on how these things are handled."

By the time the guardian agreed that the care should be scaled back, in late January 2007, it had cost more than \$55,000.

Shortly after that, Greer wrote to Sanden, asking for \$1,000 to fulfill a lifelong dream. She wanted to self-publish a novel she had written about an American Indian, titled "Face of Light, Face of Stone." She was told she didn't have any money left.

In the ensuing months, PFI reached the conclusion that Greer no longer needed its services.

"Once the money ran out, almost to the day, suddenly the care was no longer needed," Terry Greer said.

Tracy Allen, the PFI guardian, said what changed was the willingness of Terry and Michael Greer to agree to a care plan for their mother, as well as the guardian's thorough confirmation of Greer's recovery.

Yet at a March 2, 2007, hearing, Wolfson, the probate court referee, rejected Greer's petition to restore her rights. A snowstorm had prevented her from attending the hearing.

Wolfson acknowledged that the costs of Greer's home health care had been "large" but said they were "not unreasonable" given the "chaotic situation" of her return home.

Three days later, still seeking money to pay debts, Sanden once again tried to put Greer's home up for sale, even though she had been living there on her own for months.

This time, Sanden petitioned the court, Greer's poverty was the justification.

He wrote that Greer needed nursing care to be at home, "but does not have the cash to sustain that care at home." His solution: Move her out of the house and into assisted living.

Greer and her sons raced to get the conservatorship ended before the hearing on Wells Fargo's proposal to sell the house.

They prevailed. On July 6, 2007, with the guardian's consent, Wolfson terminated the guardianship and granted Greer's petition for a restoration to capacity, a rare occurrence.

The final accounting of Greer's conservatorship was approved in October 2007. Total spent on her behalf since March 2005: \$672,808. PFI had earned more than \$11,000, while Wells Fargo earned \$11,000, plus the fees from the reverse mortgage. Still owed by Greer: \$48,388. Total assets: zero.

Under terms of the reverse mortgage, Greer can stay in her house as long as the taxes are paid. Her retirement accounts liquidated, she lives on Social Security.

"I shouldn't have had to go through all of this to, in the end, get my rights restored," Greer said.

She doesn't understand why all of her money was spent. Mostly she's content to simply be home. She still dreams of publishing her stories, written longhand, about a dog she once had or a pet monkey.

When she lays her head on her pillow, Nyse the cat leaps onto the covers and curls up. Greer can see, on the opposite wall, a framed portrait of her late son Charles. He's smiling at her.

"It needs improvement and it needs more resources," said Naomi Karp, a policy adviser for the AARP's Public Policy Institute who has testified in Congress about how the system doesn't always protect vulnerable people. "We need to beef up the system so that fewer of them fall between the cracks."

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### ***Stolen Lives***

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

By Barry Yeoman

Originally published in AARP The Magazine, January/February 2004

<http://www.barryyeoman.com/articles/guardian.html>

THE 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, 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.

It 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 them 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 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 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.

THAT 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 gulag," 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 about 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 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."

INEZ 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 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 \$1.4 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."

On 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 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 who 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 Inferrera, 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, Inferrera "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 Inferrera 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."

IT 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 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 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."

Nievod wasn't surprised to learn that the courts had assigned Inez a conservator, despite her good mental and physical health. "The court is trying to err on the side of protecting people and being more open to granting conservatorships in questionable cases," he says. "The problem is that competent people can get included."

Lewis believes Nievod's evaluation was tainted by the fact that the Jolivets commissioned it. "Some psychologists will tell you just what you want to hear," she says. Livingston maintains that the evaluation strengthened the case against the conservatorship.

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 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. Witnesses recounted stories of guardianships gone awry and 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. Though 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. 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, 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."

## *A Family Feud Sheds Light on Differences in Probate Practices From State to State*

**The New York Times**

By **RALPH BLUMENTHAL**

Published: December 28, 2005



Alicia Wagner Calzada for The New York Times

Lillian Glasser with her son, Mark Glasser, at a restaurant in San Antonio on Dec. 14. Mr. Glasser, who lives in Miami, has the support of many of Mrs. Glasser's New Jersey friends in the fight over his mother's future.

HOUSTON, Dec. 20 - Lillian Glasser, by all accounts, never intended to spend her twilight years in Texas. Or her \$25 million fortune.

A lifelong New Jerseyan, Mrs. Glasser owned a million-dollar home and a second house in Highland Park, N.J., with her husband Ben, a doctor who died in 2002.

But to the consternation of Mrs. Glasser and the New Jersey authorities, Texas now has a major grip on her life and her money - a consequence of a family feud and anomalies in probate practices from state to state.

After coming to Texas last February to visit her daughter, Mrs. Glasser, now 85 and afflicted with Parkinson's disease and Alzheimer's, fell subject to the Bexar County Probate Court in San Antonio.

Placed under Texas guardianship after her daughter attested that her mother resided there, Mrs. Glasser is largely confined to a gated apartment complex in Alamo Heights, a small city surrounded by San Antonio, under 24-hour care and

forbidden to return to New Jersey while a storm of litigation swirls around her.

Beyond the personal drama, the case highlights the checkerboard practices of local probate courts, which govern the transfer of property from people who die or are declared incompetent. The courts are not federally regulated, but in response to a growing number of interstate disputes, the National Conference of Commissioners on Uniform State Laws is drafting nationwide probate standards similar to those in the field of child custody.

Some states require residency, known as domicile, for a probate court to have jurisdiction. Other states, including Texas, require only physical presence. Experts say the lack of uniformity can be exploited by parties seeking legal venues where they enjoy an advantage.

"These cases are popping up all over the country," said Terry Hammond, executive director of the National Guardianship Association, a nonprofit group of lawyers, social workers and other professionals seeking uniform standards. "The combination of the mobile character of society plus the demographics of an aging population combine to create a potentially volatile situation," said Mr. Hammond, a lawyer in El Paso who briefly represented Mrs. Glasser's son in the Texas dispute.



Betty Stultz

Suzanne Matthews, Mrs. Glasser's daughter, with her father.

The Glasser case, pitting her daughter and former guardian, Suzanne Matthews of Alamo Heights, against her son, Mark Glasser of Miami, has already consumed nearly \$3 million of Mrs. Glasser's assets, accumulated over years of successful investing, and filled hundreds of pages of court records with conflicting accounts of filial devotion, financial skulduggery and elder abuse.

Ms. Matthews has the support of a relative on her mother's side, David Lawrence, a managing director at Goldman Sachs in New York, while a nephew of Mrs. Glasser's, Rick Smith, has sided with Mark Glasser, as have many of her friends in New Jersey.

Approached Dec. 14 in a San Antonio restaurant where she was having dinner with Mr. Glasser and asked where she would like to be living, Mrs. Glasser said, "in New Jersey."

"They took me here to San Antonio, it was night," she said. Asked about her relocation to Texas, Mrs. Glasser, who appeared disoriented at times, said, "Nobody asked me."

On the witness stand in June, Mrs. Glasser was blunter. "It was just like being taken by the Gestapo or something," she said.

In an independent evaluation in July, Dr. Katherine E. Goethe, a San Antonio psychologist, said, "Her situation in San Antonio I would describe as a form of psychological torture, frankly."

Ms. Matthews declined to comment for publication. In depositions in November and in earlier testimony, however, she said her mother was often confused and had asked to come to

Texas. She said they had "a close and loving relationship where we did everything for each other." Sharon B. Gardner, a lawyer for Ms. Matthews, wrote in an e-mail message, "Unfortunately when the dispute started Mrs. Glasser was already severely demented and had no insight into her condition."

Ms. Matthews brought her mother to Texas in February from Boca Raton, Fla., where Ms. Glasser has an apartment she uses in the winter, but the circumstance of the visit and how long it was to last are in dispute.

On March 14, Ms. Matthews, alarmed, she said, by her mother's growing incapacity to handle her own affairs - and having already transferred her mother's assets into joint partnerships under a power of attorney - applied to become her temporary guardian.

Ms. Matthews attested that her mother "resides" in Bexar County, that "a substantial portion" of her assets were in the county and that her mother was in "imminent danger" from mental incapacity.

At a hearing called that same day by the probate judge, Polly Jackson Spencer, Ms. Matthews testified that her action was precipitated by her mother's effort that morning to take off in a cab with \$6,000 she had just withdrawn from the bank.

Mrs. Glasser opposed any guardianship, a San Antonio lawyer appointed to protect her interests in court, Karen Ellert Pena, testified at the hearing.

The chain of events began, witnesses testified, with the death of Mrs. Glasser's husband of more than 50 years. In deep bereavement, she drew up a conditional power of attorney, giving Ms. Matthews the right to conduct her affairs "effective upon my disability or incapacity." Mrs. Glasser later also gave the power to Mr. Lawrence, her relative at Goldman Sachs, and moved her investments to that brokerage.

In 2003 and 2004, the court record shows, Ms. Matthews created a number of financial partnerships with her husband, Gilbert, and Mrs. Glasser. Using her power of attorney, she transferred Mrs. Glasser's \$25 million in assets into the partnerships, under Goldman Sachs management.

Ms. Matthews acknowledged in court that that she had not informed her mother - "I did not want to hurt her feelings," she testified - and had structured the transfers so that they were effectively irreversible by Mrs. Glasser. Ms. Matthews also acknowledged using the accounts to pay for a son's college tuition and for gifts and other expenses, which she said her mother would have approved.



"I act in my mother's best interest all the time in this," Ms. Matthews testified.

Ms. Matthews did not disclose the size of her mother's estate in her application for temporary guardianship in March. Required to supply a general description of the ward's property, Ms. Matthews wrote "unknown." Asked later in court how she would not have known since she had recently transferred the \$25 million in assets into her partnerships, Ms. Matthews said her characterization "was on the advice of counsel."

Asked why she also attested that her mother "resides in Bexar County," Ms. Matthews said "that's where she was staying and so that's what I was told to put down." Ms. Gardner, her lawyer, said the asserts were not part of the probate proceedings and that the responses were proper.

Since landing in Texas in February, Mrs. Glasser was granted a trip home to New Jersey in August by Judge Spencer. But caregivers overseen by Ms. Matthews monitored her visitors, and friends said they had trouble seeing her. New Jersey was also claiming jurisdiction over Mrs. Glasser. The Middlesex County Board of Social Services filed a complaint in New Jersey Superior Court in September seeking a public guardian for Mrs. Glasser as a resident of that state. Judge Alexander P. Waugh Jr. appointed Joseph J. Catanese, a lawyer in New Brunswick, as counsel for Mrs. Glasser.

"When I met with her, she was very clear," Mr. Catanese, who is also the police director of New Brunswick, said of Mrs. Glasser in an interview. "She said, 'I want to live in New Jersey.' " He said that despite her impairment, doctors had agreed that Mrs. Glasser was competent to decide where she wanted to live and who her guardian should be.

On Sept. 14, as Judge Waugh was issuing a temporary restraining order preventing Ms. Matthews from removing Mrs. Glasser from New Jersey pending a custody hearing two days later, Ms. Matthews chartered a jet and flew her mother back to Texas. She testified later that she had not been told of the court order.

In a conference Dec. 20, Judge Waugh asked Mr. Catanese to file a report by Jan. 13 on whether the New Jersey court should try to exercise jurisdiction in the case over Texas.

To Russell Verney, an investigator with Judicial Watch, which has been studying probate courts, the issue boils down to "forum shopping."

"In my opinion," Mr. Verney said, "this is a case about a resident of New Jersey who amassed her fortune in New Jersey and never indicated any interest in subjecting herself or her estate to the probate laws of Texas. If anyone has jurisdiction, it should be the State of New Jersey."

*HR3040 - Responses to Questions from The House Judiciary Committee on Crime, Terrorism and Homeland Security- Appendix D*

Saying that only a federal court can bridge the competing jurisdictions, Mark Glasser filed a civil action this month against his sister in Federal District Court in San Antonio, blocking a scheduled trial before Judge Spencer.

Last month, the parties failed to agree on a proposed comprehensive settlement that would also resolve an underlying dispute about Mrs. Glasser's will, but Ms. Matthews agreed to give up her temporary guardianship in favor of a nonrelative appointed by the court, Dan A. Naranjo, a lawyer in San Antonio.

Dr. Rodney L. Carry, a San Antonio physician who examined Mrs. Glasser for Mr. Naranjo, reported Dec. 13 that "her contentment and security have improved nicely" and put her life expectancy at two to four years. But Dr. Carry urged against "allowing her to control her residence."

### ***Family fights probate court over fortune***

Relatives trying to end financial dispute say they found a patronage system that cost them



Johnny Hanson For the Chronicle

Susan Conte stands in front of her family's River Oaks mansion. The Conte family is fighting the probate court for what they consider to be a waste of more than \$1 million of their money.

By LISE OLSEN Copyright 2007 Houston Chronicle  
July 9, 2007, 3:49PM

Probate court comes cloaked in mourning, its chambers filled with feuding families and highly charged dramas of human riches and human rights.

It's where the grieving, the embittered and sometimes the unscrupulous seek to settle inheritance issues, where the disabled and the mentally ill venture to find protection.

But it's also where some Texans claim they're getting ripped off.

Court critics — from a River Oaks heiress to a retired Baytown refinery worker — have alleged that Texas probate judges run a patronage system that allows court-appointed lawyers and others to charge exorbitant fees, at times forcing the sale of family heirlooms, homesteads and businesses.

Some of the fattest fees generated by any recent Texas probate case went to the accounting firm of Paula Miller, a former court favorite who is not a lawyer, a certified public accountant or a banker.

Miller, an accountant with two master's degrees, did serve for a while, though, as Probate Judge Russell Austin's campaign treasurer — something the family of River Oaks widow Doris Conte initially did not know.

Her family trusts eventually paid Miller and her company \$1.38 million. Austin ordered more than \$780,000 in additional payments to people assigned to work with her, according to court and family records.

The judge entrusted to Miller a family fortune built by Joe Conte, son of an Italian immigrant who had come here from New Orleans as a car salesman and worked his

way up to own the Mike Persia dealership downtown and then another, Joe Conte Chevrolet, in Clear Lake.

By the time he died unexpectedly in March 1993, Conte had amassed a fortune later valued at more than \$10 million. It included land with buildings in the Texas Medical Center and nearly three full blocks downtown, about \$2 million in cash and a huge home on a River Oaks cul-de-sac that had never been mortgaged and sat on a prime lot next to former Enron CEO Jeff Skilling's.

In the aftermath of their father's death, the Conte siblings argued over how money was being used and borrowed from the family trust. Each accused the other of spending too much or not paying back what they owed — though Doris Conte and her children were each beneficiaries of the trust money. They sued each other over the dispute, as well as their mother's care, and went to probate court seeking help, never imagining what the ordeal would eventually cost them.

The Conte appointment was among the most complex and lucrative probate assignments in Harris County in years, the type of job that usually goes to a bank, a large law firm or an attorney/certified public accountant.

Instead, it became the first probate appointment for Miller, then a 33-year-old accountant who had recently started her own consulting firm.

In 1998, Austin personally introduced Miller to Doris Conte's feuding children, Susan and Joe Conte Jr. The two at first agreed to allow Austin to appoint Miller to review accounting in their family trusts.

Initially, Miller charged the Contes more than \$30,000 a month for what was supposed to be a temporary job. She later got the judge to approve hiring five law firms and a CPA, who got paid separately to help.

Within seven years after her 1998 appointment, Miller had generated more than \$1 million for her own firm. When the Contes' cash ran low, Miller got more by selling properties and cutting lease deals, sometimes over family objections.

In an interview, Miller claimed her fees were similar to those a bank might charge for a complex trust case. "We did a tremendous amount of work," she said.

However, when Miller prepared to leave the trusts in 2003, she collected estimates from banks who competed to replace her. Those documents show that their proposed fees were lower than her own.

Miller's work at first included redoing five years of financial records, funding the trusts, overseeing accounting and monitoring several lawsuits. But she also frequently billed

at \$225 an hour for tasks such as buying a lawn tractor and arranging for household repairs.

From 2003 to 2005, her last three years on the case, she earned nearly \$400,000 from the Conte trusts, the second-largest reported payout to any appointee in a probate case in the state of Texas, based on a Houston Chronicle analysis of fees paid in probate cases over a three-year period.

Austin, who oversaw every step of Miller's work, regarded her as the salvation of the Conte trusts. He credits her with resolving lawsuits and property disputes.

The judge blames the Conte children for mismanaging and taking money from the family trusts, which they ran jointly with their mother.

Austin described the estate as "bankrupt" at the time, despite paperwork that shows its assets in 1998 included stocks, millions in real estate and more than \$1 million in cash.

"The family fortune had then been essentially squandered on very poor investments and the lifestyle of the family members. Succinctly stated from her agreed upon appointment ... she (Miller) resolved multiple complex litigation matters and managed the estate to the extent that its value increased to, circa, 10 million dollars," Austin said in a letter he sent to the Chronicle about the case.

But the Contes saw Miller as their destroyer.

"My family was financially raped," Susan Conte said.

No other Harris County judge had appointed Miller to a probate case before the Conte case or had appointed her to any case since, according to the newspaper's review of appointments from 2003 to 2005.

Two other probate judges, William C. McCulloch and Rory Olsen, said in interviews with the Chronicle that they did not consider Miller qualified for appointment. Olsen said he met Miller when Austin introduced her to him at a reception as a prospective appointee.

Judge Mike Wood said Miller sought appointments by approaching his staff attorney. Wood said he might have tried her, but she seemed to have plenty of work in Austin's court.

In an interview, Miller disputed that she was unqualified to be appointed to probate cases. She said she had often served as an accountant under lawyers who had been appointed by probate judges in other probate matters.

Austin, as a judge, is bound by judicial conduct rules not to play favorites and not to approve payments above fair market value for court-ordered services. Austin said he thought Miller's fees were reasonable in the Conte case, given the circumstances. So did Louis M. Ditta, a board-certified attorney who still serves as guardian of Doris Conte's estate.

Yet other prominent probate lawyers interviewed by the Chronicle said they thought Miller's hourly rate of \$225 and her monthly fees and expenses, which ran as high as \$30,000, seemed excessive.

Attorney R.W. Calloway of Dallas, who is board-certified and a CPA, said he had never seen monthly and total trustee fees run as high in his nearly 50-year legal career: "I've not run across that, nor have I seen that."

Miller's own reports show that the trusts never appeared to make enough money to pay the professional fees she generated.

"Due to the condition of the Conte Trusts at the time of (her) appointment ... and the amount of work required to correct those conditions, the total attorneys' fees, trustees compensation and all similar professional fees for Oct. 1998-Sept. 1999 exceeded the net income of the Conte Trusts," read the first of Miller's yearly reports.

It was a line she would often repeat.

The Rev. James J. Gaunt, a Catholic priest and longtime family friend who met the Contes during his years as teacher and principal at Houston's St. Thomas High School, initially advised the Contes to go to the courts but quickly regretted it.

"They trusted, and their trust was shattered," he said in an interview. "It's a tragedy."

The Conte family's troubles began not long after Joe Conte collapsed and died after his regular weekly trip to buy groceries.

Conte had envisioned that his children, Joe Jr. and Susan, and his wife, Doris, would jointly run the family trust he'd planned. But a few years after his death, a Toyota dealership in New Orleans owned by son Joe Conte Jr. began to fail; financial woes followed.

So began a sibling struggle.

Joe Jr. argued that Susan had mishandled the trust management; Susan and her mother sued Joe Jr., arguing he had not paid back money he owed to the trust.

The Conte siblings fought over the care of their mother, who suffered a series of small strokes after losing her husband.

The court found Doris Conte unable to manage her affairs. Two lawyers, appointed to represent her at the time, recommended liquidating the family trust assets, including their River Oaks home, a place Susan Conte felt her mother could not bear to lose.

To avoid that, the Conte siblings agreed to allow Miller, an accountant they had not previously met, to run their trusts and review their financial records. The Contes insist that Austin personally recommended Miller and believe the judge gave them little choice: "I never heard of that woman before I met that judge," Susan Conte said.

Austin denies he pushed Miller or even that he strongly recommended her. "That's totally false," he said. In a letter he sent to the Chronicle about the case, he wrote: "They chose Mrs. Miller after (an) exhausting inquiry of corporate fiduciaries."

According to court records, the Contes signed an order that originally limited the agreement to six months and said that, at the termination of the appointment, the Contes would be "reinstated without further Order of this Court."

Austin then hand-altered the document to make Miller's appointment "continue until terminated by court order." He said he read the changes into the record with all of the lawyers present. Later, in a series of hearings, he extended the agreement for seven years. In interviews, Austin emphasized that the Contes did not frequently object and instead praised Miller.

At first, the Contes assumed that Miller had done other probate work. However, Miller admits she had never run a trust, though she had done accounting work on trusts.

The Contes' cash quickly dwindled. In 2000, Miller began the first of multiple attempts to sell their properties.

It was then that Joe Conte Jr. fought back hard, arguing that Miller should be removed, and that she was pushing unwise deals solely to raise cash to enrich herself and others.

In an objection he filed in court records, Conte described her efforts as "fraudulent and illegal and solely for Miller, her associates and agents to personally profit ... " In January 2000, Joe Conte Jr. essentially asked the judge to fire Miller.

Later that year, the Contes persuaded Judge Austin to stop the sale of one of their downtown properties after proving that Miller was pushing to sell below market value. Austin did approve, at Miller's request, another deal, however, for the sale of 2.2 acres of land on Old Spanish Trail for \$2 million — a transaction Joe Conte Jr. argued in an interview should have made at least \$3 million, based on the value of its most recent lease deal.

But that deal was nothing, the family said, compared with the one with a tax dodger and a criminal.

Miller pushed through a 25-year lease on property the family owned near the Toyota Center — even though no rent would be paid to the family for the first four years.

At the time, Joe Conte Jr. protested that Miller had provided no background or credit information on the tenant and that the lease was too long, according to court records.

It turned out that the tenant had unpaid taxes and had received deferred adjudication on prostitution and theft charges in 1990 and 1994, records show. In 2006, he pleaded guilty to felony charges of conspiracy, drug sales and unlawful travel as part of a multistate drug ring based in Louisiana, according to federal court documents.

The Contes had to hire an attorney to evict him. "We have had to pay to get rid of him," Susan Conte said.

Miller said she was aware of some of the tenant's legal problems but didn't know he was involved in a drug ring. And he did put up \$274,053 toward improvements as part of the deal. She says she shared specifics of all the deals with the family.

In an interview, Austin said he left the details to Miller: "I cannot micromanage estates."

In 2001, Miller became Austin's campaign treasurer.

Miller also was among Austin's \$5,000 campaign contributors. Others who worked on the Conte case gave Austin money, too, including an appraiser, a CPA, lawyers and the doctor who had examined Conte and recommended she be declared unable to manage her own affairs. Such contributions are legal and subject to Texas disclosure laws, though critics claim they may present an appearance of impropriety.

Texas judicial rules generally do not require judges to disclose campaign-related relationships in court. However, Lillian Hardwick, co-author of the *Handbook of Texas Lawyer and Judicial Ethics*, said it might have been prudent in this case for Austin to tell the Contes that Miller was serving as his treasurer.

Austin said he felt it was unnecessary because it was a matter of public record. He said Miller did not help him raise money, though her name appeared on fundraising letters.

In 2005, the Contes discovered Miller's role as Austin's treasurer in an Web search of Harris County records. They were furious.

That same year, Miller had requested authorization from Austin to put all the Conte properties on the market, including their home. After the Contes objected, Miller, who



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had previously talked about resigning, stepped down from their case. She also stopped serving as Austin's treasurer.

But before her work ended, Austin signed one more document in Miller's favor. This one could protect her from the Contes.

"For purposes of any future claims of liability the effect of judicial discharge shall be as though Paula Miller never served ... No person or entity shall have any cause of actions against Paula Miller or any of her actions or inactions ... ," the order said.

Doris Conte, 81, is now the only family member who gets any money from the family trusts, which are now being run by Frost Bank under court order.

Her children were removed from running the trusts after Austin ruled they both owed it hundreds of thousands of dollars, though he said they did not have to repay the debts.

At the mansion, which Joe Conte bought for cash in 1973, the strain on family finances is visible. Outside, there are unrepaired gaps in the ornate balustrade and damaged garage doors; inside, some gilded furniture is shoved aside because of ceiling leaks.

Still, Doris Conte likes to hold court with visitors in her small wood-paneled parlor, a room she keeps decorated for Christmas year round. She and her daughter, who serves as her unpaid guardian, have reconciled with her son to fight the probate courts.

"They're putting my money in their pockets," Doris Conte says slowly in her native New Orleans accent. "How do they get away with that?"

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