

## REPORT TO THE UNITED NATIONS ON THE HUMAN RIGHTS RECORD OF THE UNITED STATES OF AMERICA

There has been substantial international concern voiced about the tarnished human rights record of the United States. Much of the concern relates to the treatment of those implicated in the “war on terror.” There has been little attention paid to the fact that the United States Government is now targeting its own citizens in manners both brutal and patently illegal.

The reports ITHACA submits to the UNHCHR focus on two issues where the United States has systematically deprived its own citizens of their inherent rights, property and in some cases, their lives. We will be addressing 1) the issue of court authorized conservatorship and 2) the attacks on human rights defenders.

ITHACA is a grassroots independent association of advocates for the protection and restoration of constitutional and human rights. ITHACA has a special focus on elder justice and reform of the mechanisms which oversee the licensing of judicial agents in the USA. The aims of this association are to promote the rights and protections of individuals at risk on a national and international level. Since its foundation in 2010 it has been involved in research, activism, advocacy, and lobbying for legal reforms through the promotion of human rights according to treaties and conventions of the United Nations. ITHACA seeks to deliver a statement to the U.N. each year on the progress of reform regarding the rights of elderly in the USA. ITHACA has an integrative approach towards the issue of human rights through collaboration and cooperation with NGOs and governments advocating the rights of the elderly and their families for social justice and equality before the law. Dr. Catherine O’Loughlin and Janet Phelan sit on ITHACA’s board of directors.

### CONSERVATORSHIP

The possibility for inherent human rights violations when any individual is declared to be incapacitated is profound. When this is coupled with a financial incentive, the possibility for abuse heightens and oversight needs to be provided. What is occurring now in the U.S. in terms of conservatorship constitutes multiple human rights violations of the elderly and disabled through the courts.

ITHACA has been collecting information on conservatorships. At one point in the data collection, two months were spent in a single courthouse going through hundreds of conservatorship files. In depth interviews with conservatees and their family members have been conducted , as well as review of hundreds of newspaper articles on this topic. ITHACA has concluded that the problems in court authorized conservatorships are severe, ongoing and point to systemic human rights violations.

Conservatorships are generally launched through court proceedings when there are allegations that an individual is becoming forgetful or otherwise lacks capacity to care for himself. The terms “conservatorship” and “guardianship” are interchangeable, as some states reference one term and other states use the other. For the purposes of this report we will use the term

“conservatorship.” There are two types of conservatorship—the first is conservatorship of person, whereby the court appointed conservator makes personal decisions for the alleged incapacitated person (AIP). These decisions may include where the AIP may live, whether or not the AIP may marry or have family and friends visit. The second is conservatorship of estate. Upon the initiation of a conservatorship of estate, all assets are then transferred to the “care and protection” of the conservator, who charges hefty fees for services. This introduces a profit motive which now appears to have become paramount.

We cannot emphasize enough that these conservatorships are launched on allegations. There is often no capacity hearing to determine the truthfulness of these allegations. We have seen cases where fully competent individuals are funneled into conservatorships on nothing more than unproven innuendo.

The court is mandated with providing oversight. Adult Protective Services is also charged with investigating allegations of elder abuse, whether it be by family or by a professional conservator. What we have found is that when there are allegations of elder abuse by a court appointed conservator, they are too often not investigated by APS. When conservator abuse is reported to the police, we have found that such complaints are not being investigated by that agency as well. Judges are increasingly prone to rubberstamping the decisions of conservators and ignoring or squelching attempts by family members to point out abuses. In some cases, protective parties, such as family or friends, have been threatened and jailed. Several of the herein mentioned cases, including that of Silvia Tessadri, Raymond Horspool and Amalie Phelan, substantiate that this is a tactic used to isolate the elder from oversight by a concerned family member. In numerous cases we have seen where protective parties have been issued restraining orders and are unable to provide oversight as to their loved ones’ care. We have come to the conclusion that the elderly and disabled, who are the two groups that are impacted by conservatorships, are being systematically denied their rights to be protected from abuse by their court-authorized conservators.

Conservatorships tend to be very expensive. In some states, such as New York, the private professional conservator may charge as much as \$300 an hour. The conservator also employs a lawyer, at the expense of the AIP. When the money runs out, which it may very quickly at these rates, all too often the medical care of the AIP is terminated and death results. A further issue of concern is that frequently the elderly person is inappropriately drugged with an atypical antipsychotic. These drugs are contraindicated for the elderly and may result in diabetes, stroke or sudden death. We have also seen where elderly conservatees are funneled into hospice without a terminal diagnosis, and plied with morphine until death results, such as in the case of Corinne Bramson in Palm Beach, Florida.

We have also attached an article, published in the San Bernardino County Sentinel in September of 2009, revealing a disturbing pattern in financial records of many California judges, including the probate judges. The issue revolves around the number and size of loans taken out by the judges on their personal property, in excess of what they could feasibly repay on a judge’s salary. Further work needs to be done to determine the source of the payments going to pay off the loans on the judges’ properties, as it appears to be a pay-off/bribe scheme.

Reports of conservator abuse are now nation-wide. Several grassroots groups have sprung up to address this issue, including Advocates for National Guardianship Reform and Ethics and Elder Abuse Victims Advocates. Latifa Ring of Stop Guardian Abuse and a delegate to the Democratic National Convention in 2008 and Janet Phelan, a board member of ITHACA, coauthored a document (attached in Appendix) which was submitted to the Platform Planning Committee of the DNC. Through some unfortunate maneuvers at the DNC, the document was not submitted to the appropriate planning committee by the individual in charge and the issue of conservator abuse was never included in the Democratic platform.

The violations of the Declaration of Human Rights generally involve violations of Article 3, Article 12 and Article 16, in terms of rights of privacy, security and freedom of association. Conservatees are often remanded to what amounts to lock-down facilities and deprived of visits from family and friends. Their legal rights are denied as they lose their "personhood" through the allegations of lack of capacity, which are often never determined through a hearing to be valid allegations. The loss of legal rights are violations of Article 6, 7, 8 and 10 of the Universal Declaration of Human Rights.

Property rights are regularly denied the AIP, as the professional conservator may dispense with their homes and their assets without consulting their wards. This could be termed as violations of Article 17 (2). An entire generation of adult children who could have stood to inherit are also being impoverished through these conservatorships, as their parents' money is drained off by the conservators and their attorneys.

In more than one case we see where the courts have violated international treaties and have denied the enhanced time for service mandated by the treaties. Sadly, we have seen many cases in which the lawyers for conservators fail to serve papers at all, both to parties living abroad and to parties living in the U.S. The *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Hague Service Convention) provides for the channels of transmission to be used when a judicial or extrajudicial document is to be transmitted from one State Party to the Convention to another State Party for service in the latter. The Convention provides for one main channel of transmission via a central authority. The USA is a treaty member and a signatory party of the Hague Service Convention. The US judiciary is in violation of private international law in its refusal to enforce or comply with this Convention. The State of California violated civil and probate code on notification of service and even special request for notification of service by a US citizen in the member State of Greece and also for a US citizen residing in the member State of Canada.

The U.S. is not only violating international covenants in which they have been a signer. The state courts are now regularly violating U.S. law when it serves to advance the conservatorship. Due to what is termed the "probate exception," wherein probate matters are deemed best heard by the State courts, we find that the US Supreme Court has been refusing to hear these matters. Appeals to the United States Department of Justice, which have been launched by a number of parties who have been denied justice in conservatorship proceedings, are also being sloughed off. Over twenty complaints were recently sent into the Federal Trade Commission, which is mandated to investigate mail fraud. The complainants alleged that the FTC should look

into their complaints as the use and misuse of U.S. mail was a fundamental part of the fraud being perpetrated by the conservators and their attorneys. The FTC did not respond to a single complaint.

The tragedy underlying elder abuse and financial fraud is the absent liability and accountability of the regulated professions who readily enter into the lives of vulnerable citizens. To reform the current culture of fraud and institutionalized corruption of the legal profession and conservators there must be a citizen- driven initiative under the auspices of a public body which can operate to audit the conduct of professions. To put it bluntly, the professions cannot be overseeing themselves. This includes lawyers, judges and medical professionals who are making decisions that impact the elderly and disabled. At present, the plight of the conservatee is so severe that we strongly suggest a moratorium on all conservatorships until the problem can be ironed out. Simply adding more layers of bureaucracy to an already cancerous system will not suffice.

The reports that are attached are of two types—media coverage and individual statements by those who have personally been involved in a conservatorship. We have also attached the previously cited platform proposal to the DNC. The reports heavily weigh in on Southern California, and particularly scrutinizes one conservatorship company, C.A.R.E., Inc. We have reason to believe that the actions reported by this conservatorship company are duplicated across the U.S. but are going unreported or underreported, due to the reluctance of the media to cover this issue. Nevertheless, we have culled media coverage from recent months from Connecticut, Missouri, Georgia, New Jersey, Arizona, Tennessee, Nevada and elsewhere. These articles follow the coverage in the San Bernardino County Sentinel, which pertain to C.A.R.E., Inc. The actions of C.A.R.E. have been reported to city, county, state and federal law enforcement agencies and there have been no prosecutions launched. The article “How The California Justice System Covers up Crimes,” (<http://www.scamraiders.com/profiles/blogs/how-the-california-justice>) reveals the methods used by law enforcement to detour their mandate to prosecute such crimes.

We have provided a number of individual statements as to what happened to family members in a conservatorship. More stories can be found at The Elder Abuse Victims Advocates site-- <http://www.guardianshipgonebad.com/> and at the website of the National Association to Stop Guardian Abuse--<http://stopguardianabuse.org/victimsandtheirstories.htm>. The Platform Proposal to the DNC is attached at the end of this document.

It needs to be noted that the reporter providing much of the coverage of C.A.R.E., Janet Phelan, has left the U.S. for reasons of personal safety and security. A television reporter, Mary Garofalo, who was covering conservator abuse for Fox 5 TV in New York City, was summarily let go the day in 2006 after the second in her hard-hitting series on this issue aired. Garofalo was the senior member of the investigative team at Fox 5 and had been twenty years on the job at that station.

ATTACKS ON HUMAN RIGHTS DEFENDERS

Attacks on human rights defenders in the U.S. are generally not covered by the main stream press. We therefore believe there to be numerous situations which have not come to our attention and profoundly apologize to those we have been unable to mention, through lack of awareness of their plight. We also understand that Human Rights Alert is submitting information concerning some Human Rights Defenders who are under attack.

The nature of these attacks are either legal or personal (i.e., physical assaults). The plight of attorney Richard Fine will be submitted by Human Rights Alert. Briefly, Fine has been subjected to legal persecution for his attempts to legally controvert issues pertaining to California judges' "extra benefits." These monies are received from the counties in which their bench is seated. These county payments to judges, who are state employees, have been deemed unconstitutional (Sturgeon). Fine was challenging the jurisdiction of Los Angeles County judges to hear cases in which Los Angeles County was a party to the case when he was jailed for contempt of court. It is a clear conflict of interest for a judge to receive payment from a party to the case. Fine has been in jail for over a year.

The reports we are including follow. Each of these individuals has suffered grave revocation of constitutional rights by the justice agencies as a result of attempting to advocate, inform or to protect human rights:

Susan Lindauer, a former CIA asset, held in confinement for eleven months, following her attempts to testify at Bush's Commission on Pre-Iraqi War Intelligence, a testimony which would have belied the official story of the reasons we launched a war against Iraq.

Elena Sassower, a judicial reform advocate, who was imprisoned for six months on charges of "disrupting Congress." At a Congressional Hearing to determine a judicial appointment, Sassower had inquired if she could testify and was arrested and jailed.

Rickie Ritch, a J.D., who was physically assaulted by the police and jailed while attempting to address the conservatorship of his father-in-law through appropriate legal channels.

Dr. Rebecca Carley, an M.D., whose medical license was rescinded by the State of New York as she attempted to protect her only son from an abuser. Dr. Carley is also in the forefront of the anti-vaccination movement and has a syndicated radio show. In the absence of any medical misconduct by Dr. Carley, the New York State Medical Board rescinded her medical license stating she had a "delusion of conspiracy."

Janet Phelan, a print journalist, who was attacked by the police in a nearly fatal sting operation following her attempts to free her mother from the grips of a conservatorship through appropriate legal channels.