

First Supplement to Memorandum 87-4

Subject: Study L-1050 - "Professional" Conservators

Attached is an article from the Los Angeles Times concerning the problems associated with so-called "professional" conservators. Judge Marshall sent the staff the article, indicating that it merits study by the Commission.

The article identifies a problem that needs attention. However, the staff is now working on putting the 1987 legislative program together and preparing the various recommendations to be submitted to the 1987 Legislature for printing. This will require almost all of the staff resources during the next two months. If the Commission determines that it wants to give a top priority to this matter, the staff could perhaps prepare something for the March or April meeting for consideration by the Commission. We could defer work on other work in progress in order to do this. If we give this our top priority, we might be able to submit a recommendation to the 1987 session. The Commission should be aware, however, that there are significant fiscal considerations involved in the solution of this problem. The establishment of a licensing requirement may require state moneys, at least to establish the system and perhaps to maintain the system after it is established. Requiring the public guardian to undertake additional responsibilities in this area will require state funding. (Any state mandated program must be financed by the state.) The Governor is not likely to approve new programs that cost state money. (The Governor has just ordered all state agencies to reduce their expenditures for the current fiscal year by two percent and has ordered that the approved budget for each state agency for the next fiscal year be reduced by one percent.)

The staff suspects that some member of the Legislature who is aware of the Los Angeles Times article will introduce legislation at the 1987 session to deal with the problem. That member will also have to deal with the problem of obtaining state money to finance the solution to the problem. The Commission may want to wait to see if this occurs. If it does not, the Commission might decide to

investigate the alternative solutions to the problem during the last six months of 1987 and to draft a bill for the 1988 session to deal with the problem.

Respectfully submitted,

John H. DeMouly
Executive Secretary

"Keepers of Poor: Field's Wide Open"

Los Angeles Times

December 17, 1986

By JONATHAN PETERSON
and ROBERT A. ROSENBLATT,
Times Staff Writers

In the court of Judge Julius A. Leetham, there are no defendants. Yet Leetham can restrict people's rights to choose where they live, to make their own medical decisions and to control their money. He can even withdraw their power to vote or marry.

Leetham is a probate judge for the Superior Court of Los Angeles County, and the most poignant cases that come before him involve the elderly and frail. He does not mean to punish them. In fact, he tries to protect them. If he decides that they are unable to handle the most basic responsibilities of life by themselves, he appoints conservators to do it for them.

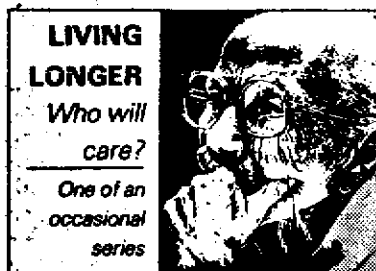
'Never-Never Land'

"What I can't do anything about—and this is the haunting thing—is what happens to the people who go through conservatorship, are placed in some facility with a minimum of care and spend the rest of their lives in a never-never land," he said.

The crises before his court are multiplying these days as masses of elderly people struggle through a confused twilight of life, many of them without family or friends to help. With so many people alone, society is being forced to look beyond families to find caretakers for the lost elderly.

For the solitary and helpless, the choice can be nothing less than a matter of life and death. With compassion—or with callousness—conservators may wield total control over personal finances, medical care or both.

"A person can come in and take over the life and the assets of another person," observed Gordon W. Treharne, the Los Angeles



County public guardian. "Can you think of any greater power?"

For fees that typically range between \$40 and \$70 an hour, growing numbers of entrepreneurs are offering to serve the elderly as conservators. Courts and medical authorities are frequently forced to match conservators with clients.

"The demand is quite great," said Andrea E. McShane, president of Guardianship Services Inc. in Pasadena. "We turn away more referrals than we can accept."

Yet some authorities worry that conservators in the business of making money are not always qualified to carry out their delicate, critical responsibilities. "Some of these people are truly caring," said Ann E. Stodden, commissioner of the Los Angeles County Probate Court. "But unfortunately there's no licensing. Anybody can get in the act."

GUARDIANS: 'Anyone Can Get in Act'

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For the elderly poor who cannot afford professional conservators, public officials are increasingly serving the same purpose. The Los Angeles County public guardian's office, the nation's biggest and oldest, was begun in 1947. It supervises 870 clients, nearly all of them elderly, in addition to 1,330 mentally ill people who are wards of the court. In Florida, Tallahassee and Fort Lauderdale launched similar programs in October. New Jersey will begin a public guardianship program in January.

Most localities make no such provisions, however. There, mental institutions are frequently the last stop for the helpless elderly without family or friends.

The great mass of the elderly never come close to reaching such a pass. They never need guardians, either public or private.

But for a minority of the isolated elderly—those battling Alzheimer's disease, strokes, blindness, depression and a host of lesser problems—the world can gradually turn hostile and confounding. Bills stack up unpaid. Social Security checks are not deposited. Homes become filthy. Nutrition is ignored. A simple trip to the grocery store turns into a perilous adventure.

Neighbors, Repairman Battle

Such situations invite greedy exploitation. Judge Leatham recalled the case of a woman in her late 80s who suffered a stroke and had no close relatives to manage her assets of \$400,000. Neighbors and a repairman battled for control of the money.

"She's a widow, no children," the judge recalled. "So you have neighbors and a handyman." He picked an outside professional to serve as conservator.

Public controversies sometimes arise. For example, there was the bitter contest for Groucho Marx's money between a son and the comedian's live-in companion. More recently, John A. Zaccaro, husband of 1984 Democratic vice presidential candidate Geraldine A. Ferraro, became embroiled in controversy after it was learned he had borrowed \$175,000 from an estate he was managing for an elderly woman.

And, for each celebrity case, thousands more are just as dramatic for the individuals involved. Although they draw little notice, they raise hard questions about the power of conservators.

Consider the story of 82-year-old Irma Schultz, as pieced together through court records and accounts of those familiar with her predicament.

Case of a Shattered Life

Schultz—not her real name because she asked that her identity not be revealed—suffered a dizzy spell in her Santa Monica apartment last February, fell down and was taken to a hospital. Although she was found to have broken no bones, her familiar life was shattered. With her physician's approval, hospital employees contacted a professional conservator, Rodney P. Swanson, and a probate court in Van Nuys gave him temporary authority to manage her affairs.

Swanson quickly moved Schultz, an escapee from the Holocaust who

In March, a court investigator, Norma D. Kayser, visited Schultz in her nursing home and reported that the situation "appears to satisfactorily meet her needs. She is chair-bound, hard of hearing and appears confused and disoriented. She did not appear to comprehend and made no intelligible response to this interview." In April, Swanson became Schultz's permanent conservator.

Today, after an unnerving odyssey through two hospitals and two nursing homes—and mistaken treatment for diabetes, which she does not have—she lives in a board-and-care home, where she receives three meals a day and some help with her personal needs. And she is gaining weight and walking again.

Was He Really Needed?

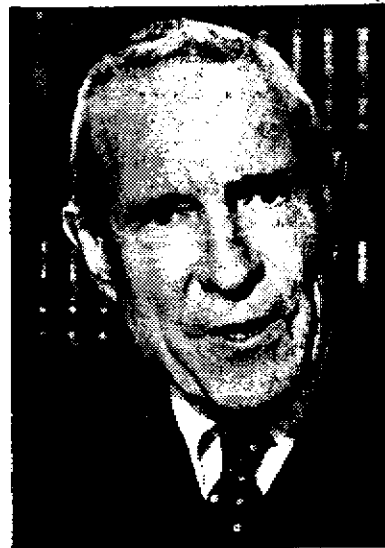
Swanson remains her conservator. But did she ever need him?

According to Schultz's friend, Fern Haberman, the older woman's competence was underestimated at the hospital from the beginning because she was separated from her hearing aid and glasses and did not have her false teeth. It became very difficult for her to understand what was going on around her and to communicate.

Haberman, who is president of a company that manufactures graphic art supplies, contends that Schultz never needed a conservator at all. She says she even offered to pay temporarily for the Santa Monica apartment and to provide a housekeeper so that Schultz still could live there, but the offer was rejected.

"Why is it necessary for her to have a conservator when she can write her own checks and think for herself?" asks Haberman. "If she's not feeling well, so what? Many people don't feel well. Does that mean we need conservators?"

Swanson said the decision to move Schultz to a nursing home was based on medical advice and the overwhelming cost of round-the-clock care in her apartment. "We're struggling to get her what she needs with the money that's available," he said. "It's an uphill battle at best."



TONY BARNARD / Los Angeles Times
Judge Julius A. Leatham.

lived on \$722 a month in Social Security and war reparations from West Germany, from her studio apartment to a nursing home, where her condition and morale deteriorated. Depressed, she often refused to eat. Her dress size plummeted to 6 from 16.

GUARDIANS: Worry on Licensing

Swanson said Schultz is typical of his Van Nuys firm's 40 clients, who are charged between \$35 and \$75 an hour, depending on the services provided. "There's a difference between what reality is and what you wish it could be," he said. "The relationship with a conservator is a love-hate relationship. They love you if you're doing everything they want you to do. But if you're not, the conservator is a victim of anger and hostility."

Schultz's case has come to the attention of a legal services organization in Los Angeles, which questions whether the current arrangement is in her best interest. "We're interested in assessing [Schultz's] current needs and will seek either a substitute conservator or petition to remove the conservatorship based on the findings," said Janet Morris, director of Bet Tzedek Legal Services' nursing home advocacy project.

In California, courts review conservatorships a year after the appointment and once every two years after that. An investigator visits the elderly person and reviews the financial assets.

Despite that, some conservators may cheat or exploit the estates. "The integrity, honesty and moral fiber of people has diminished over the last seven or eight years," said Robert Spaak, president of Southern California Bonding Service, which insures estates against such abuses. "And it's getting worse."

Jimmy Johnston, also a pseudonym, is an elderly person with a lot of cash but little ability to protect it. As his memory splintered away a couple years ago, Johnston lost his job as a dishwasher in Palm Springs. The portly, white-haired native of Yugoslavia then wandered to Skid Row in Los Angeles, living in a hotel and later a mission for the homeless. The next stop—it is unclear how he got there—was a rooming house in Littlerock, in the Mojave Desert.

An old friend, fearful that the home's owner was taking Johnston's savings, contacted the public guardian's office. During a preliminary investigation, Los Angeles County officials became suspicious about \$15,000 that the elderly man had apparently transferred from

his bank account to the home's owner, Laura Bell. At the public guardian's request, five banks froze Johnston's remaining accounts—totaling a surprising \$100,000.

Christopher Fierro, chief of the public guardian's conservatorship division, visited Bell's home in September, 1984. Johnston was sitting alone. "We called him into the kitchen and asked him some questions," said Fierro. "He seemed to recognize who he was. He wasn't clear on where he was or how he got there. But he did make it clear that he wanted to leave."

The public guardian's office got court permission to become conservator of the 84-year-old Johnston. Officials relocated him to a board-and-care home in Highland Park and sued Bell to return the \$15,000. The suit is pending.

Owner Defends Action

Bell's attorney, John Brevidoro, said in an interview that Johnston paid Bell to care of him. "Rather than let her take care of him, the public guardian went in and took physical possession of him," Brevidoro said. Bell is willing to return at least some of the money, the lawyer said, since Johnston no longer lives with her.

States have moved in different ways to safeguard the assets of the helpless. After the Zaccaro controversy, courts in New York issued specific guidelines clarifying prohibitions on using a client's money. California judges often require conservators to purchase bonds to insure an estate's assets. Arizona requires that the bond cover not only the ward's assets but also a year's income.

Important as financial matters may be, they take second place to medical care among the gut issues involving the incompetent elderly. Judges in California decide on a case-by-case basis whether to transfer medical responsibility—everything from routine checkups to surgery—to conservators.

The toughest medical question of all is whether patients should be restored to life if the heart stops or breathing ceases. A decision that a patient will not be revived is known, in doctors' jargon, as a "no" code.

Before agreeing on a no code, the Los Angeles public guardian gets the opinion of a consulting physician and requires that death be imminent and inevitable. That sounds clear enough, yet the issues sometimes become cloudy.

Several weeks ago, for example, state troopers in San Diego picked up a disoriented 65-year-old Los Angeles man driving in the wrong direction on a freeway. At a hospital, doctors found a large tumor in his bowel.

Hospital employees contacted the Los Angeles public guardian, who became a temporary conservator. Both the guardian's consulting physician and the patient's doctor agreed that death was certain and soon. Mindful that the patient said he did not want special measures to prolong his life, the public guardian accepted a no code.

Nonetheless, the man survived emergency surgery to relieve his pain. After the operation, the patient's wife, who had been located in the meantime, sought removal of the no code. But within a month, the man had died.

"Obviously, these decisions are very difficult and sensitive," Fierro said. "We try to get the patient's wishes known and work from there. But most of the time it's impossible to ascertain the patient's wishes. At that point you work with the family and the treating physician and staff to make the best decision possible."

In some cases, hospitals, which face pressure from Medicare officials to treat and discharge elderly patients promptly, are accused of seeking conservators to make it easier to stop treating frail, older patients.

Most Are Unlicensed

A veteran professional conservator who asked not to be identified said he recently turned down a hospital's request that he take charge of a dying patient who had been on a respirator for 13 days. "More and more doctors are bringing pressure to ask conservators to authorize no-code responses and things of that sort," he complained. "The question is, 'Do we have the right to do that sort of thing?'"

And, while private conservators claim to offer better service than their public counterparts, they also inevitably raise questions about whether they sometimes subordinate the welfare of their clients to the welfare of their own businesses. In California and most other states, professional conservators are unlicensed.

Nonetheless, maintained Judith Chinello, a professional conservator based in La Canada, "you're accountable to the court. You have control of someone's life. It's not something for on-the-job training."

Virtually everyone agrees that the elderly should be spared conservatorship when a less intrusive approach will suffice. The Guardianship Diversion Project in Los Angeles, for example, is one of seven federally financed efforts intended to promote alternatives, such as programs to manage finances or to help people make decisions without resorting to conservatorship.

"There have to be options available for older people," said Carol Fraser Fisk, U.S. commissioner of aging. "We want there to be a range of services and options in each community."

The new public guardian program in New Jersey will emphasize

personal independence whenever it is possible, even for those who need some protection. "I have a strong personal feeling to provide the least restrictive setting for anyone who needs our services," said Marie Muhler, who is running the project.

California and many states allow people to transfer decision-making authority to others through a "durable power of attorney" that takes effect only if the person becomes disabled. Individuals may also set up legal trusts, which allow others to manage their money without conservatorship.

Yet these alternatives have limitations. Critics label the durable power of attorney, which does not get periodic court review, "a license to steal." Trusts generally make sense only for those with substantial estates.

In reality, society has yet to discover the ideal approach for those who have lost the ability to function within it. Stodden, Los Angeles County's probate court commissioner, related the story of an elderly woman living in an abandoned laundry. Although the woman was raped there, her conservator cannot persuade her to leave and will not use legal powers to have the woman forcibly taken to a nursing home.

"She doesn't want to leave the laundry," said Stodden, shaking her head. "What are you going to do. Carry her out bodily?"