

HELP WANTED: Brave Lawyers to Challenge State Guardianship Systems

By Thomas F. Coleman
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Two years ago I wrote a commentary that exposed my frustration and captured my hope. (“Something That’s Actually Rigged: the Conservatorship System,” Daily Journal, Nov. 18, 2016)

In the commentary, I expressed my frustration that several years of challenging the limited conservatorship system in California was being met with avoidance and denial by government officials despite clear evidence that policies and practices of the probate courts were denying justice to adults with developmental disabilities. I was hopeful that perhaps the U.S. Department of Justice might intervene, just as it had done the prior year by accepting my complaint and opening a formal investigation regarding voting rights violations by the conservatorship system in California. What I failed to consider in 2016 was the impact on the DOJ that Donald Trump’s election victory would have.

There were, and still are, good reasons to challenge the conservatorship system in California and adult guardianship systems elsewhere. Many seniors and adults with disabilities are being pushed into conservatorships and guardianships they do not need. Fundamental rights are being taken away that should be retained. The process is generally unfair and the result is often unjust. Seniors are being stripped of their assets by guardians and lawyers who enrich themselves at the expense of these vulnerable adults. People with developmental disabilities who generally do not have many assets are rushed through the process by judges who often do not even give them an attorney. These probate proceedings are being operated in violation of the access-to-justice requirements of the Americans with Disabilities Act.

There is an analogy between the “rigged” criminal law enforcement system I encountered when I was

a law student and young lawyer in the 1970s and the guardianship systems I challenge today. Back then, the criminal law and its enforcement were unfairly rigged against gay men. Vice cops were paid to entrap them. Prosecutors got easy convictions and more notches in their belts by threatening jail and securing plea bargains which still gave them conviction statistics. Judges were biased and saw gay men as sick, sinful, and criminal. A judge who challenged the “system” would pay a political price at the next judicial election. Defense attorneys made lots of money representing defendants – most of whom were in the closet and fearful of publicity and loss of jobs, not to mention jail time and registration as a sex offender if they were convicted. Thousands of men were arrested and prosecuted each year in California alone. The same was happening in all states throughout the nation. These were easy arrests. Cops did not fear violence. Gay men went silently in the paddy wagons to jail. Bail bondsmen got rich. Defense attorneys got rich. The pattern and cycle repeated itself over and over.

Although I was not personally affected by any of this, I was appalled by the injustice. I saw a class of people who were being victimized. I was angry that the defense attorneys – including closeted gay attorneys – were profiting on the system. I was upset that no one was challenging the constitutionality of the statutes and the discriminatory enforcement of the laws. I vowed to devote my professional life to changing this. I “came out” as a law student and co-founded the first gay law student association in the nation. Some of us were able to align with a few good lawyers who were willing to participate in the reform process. We formed a National Committee for Sexual Civil Liberties.

After getting my law license in December 1973, I



became one of a handful of openly gay lawyers who decided to take on the system of entrapment and oppression of gay men. I filed constitutional challenges – attacking the system and all the moving parts of it – police, prosecutors, judges, and defense attorneys. Despite experiencing loss after loss, I persisted. Then one day the right case came along. I took it to the top and in 1979 I won a major victory in the California Supreme Court. The victory occurred for a few reasons: (1) the string of losses nonetheless had an educational effect on the judiciary; (2) a few other lawyers joined the movement and we persisted in our challenges; and (3) a courageous member of the Supreme Court – Justice Mathew Tobriner – decided to side himself with justice and reform rather than the status quo. He wrote a compelling and brilliant opinion for the Supreme Court. *Pryor v. Municipal Court*, 25 Cal.3d 238 (1979)

Today, I find myself feeling the same frustration with the prospect of guardianship and conservatorship reform. I got involved in 2012 when one case came my way. After seeing a few more individual injustices in 2013 and 2014, I decided to devote myself to *systemic* reform – first with California’s limited conservatorship system and later with state guardianship systems throughout the nation. Having devoted more than 7,000 hours of volunteer time to this cause so far, I still remain frustrated. Unlike three years ago when I felt hopeful for federal intervention, I am not as hopeful. However, I have not lost all hope and have not given up on the vision of reform. I just realize now that it will be harder and taken longer than I originally had thought.

My advocacy activities have been supported by a handful of others – most of them are family members victimized by abusive guardianship proceedings. Very few people who have not been personally touched by the guardianship system have joined the cause. One exception is my friend and colleague, Dr. Nora J. Baladerian. Until very recently, I could not find even one lawyer in California who was willing to join me in challenging the conservatorship system.

For the past few years I have been asking: Where are all the lawyers?

Every successful civil rights cause has had a coalition of lawyers participating in, supporting, and leading the charge. But when it comes to the movement to reform abusive guardianship and conservatorship systems, there is an advocacy void when it comes to attorneys willing to challenge these systems – file complaints, draft legislation, write commentaries, give television interviews, etc. The National Disability Rights Network has recently tiptoed into these troubled waters – but ever so gently and tentatively. Elder law attorneys may write some academic articles, but where are they when it comes to actually filing lawsuits?

This civil rights advocacy vacuum must be filled. All of the wonderful non-lawyers who are fighting for this cause deserve to have the support of a cadre of dedicated and committed attorneys who assume the mantle of civil rights advocates. Unless and until there is a strong network of lawyers who become leaders in this reform movement, progress will be minimal and victories will remain local.

We cannot count on government civil rights enforcement agencies to do the heavy lifting. For example, state attorneys general are advisors to and defenders of state officials, including the judges who are running these guardianship systems. So we won’t get help from the chief law enforcement officers in the 50 states. What we need is an army of private attorneys general.

So again, I ask: Where are all the lawyers?

Thomas F. Coleman is the legal director of the Spectrum Institute. He may be contacted at: tomcoleman@spectruminstitute.org

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