

Trauma-Informed Justice: A Necessary Paradigm Shift for the Limited Conservatorship System

by Thomas C. Coleman

“Trauma-informed justice” is a relatively new concept in the law. It has been discussed and applied in the context of criminal, family, and juvenile courts. Not so with respect to the administration of justice in probate courts.

Many mental health and substance abuse professionals have used a trauma-informed approach for some time now in counseling and therapy programs. It is in this context that much has been written on the subject.

“A *trauma-informed approach* refers to how a program, agency, organization, or community thinks about and responds to those who have experienced or may be at risk for experiencing trauma; it refers to a change in the organizational culture. In this approach, all components of the organization incorporate a thorough understanding of the prevalence and impact of trauma, the role that trauma plays, and the complex and varied paths in which people recover and heal from trauma.” ([Website](#), Substance Abuse and Mental Health Services Administration, “Trauma Definition: Part Two: A Trauma Informed Approach.”)

Three elements occur in a trauma-informed approach: (1) realizing the prevalence of trauma in the population being served; (2) recognizing how trauma affects this population; and (3) responding by putting this knowledge into practice in the delivery of services. (SAMHSA, *supra*.)

A system that is trauma informed must realize the widespread impact of trauma, recognize the signs and symptoms of trauma, and fully integrate knowledge about trauma into policies, procedures, and practices.

The first step in delivering trauma-informed justice

in the Limited Conservatorship System is for the participants – judges, attorneys, investigators, case workers, and program volunteers – to acknowledge that the majority of proposed conservatees are probably trauma victims.

As difficult as it may be to make this mental and emotional shift, participants also need to be aware that the trauma to these victims was likely caused by those who are close to them – members of their household, school, or day programs.

From what I have seen in the way the limited conservatorship system currently operates, there is an assumption by participants that all is well, that proposed conservatees have a normal life, and that proposed conservators have been doing a good job of raising their children. Research shows that such assumptions are not warranted.

The most recent report on abuse of people with disabilities was published by our own Disability and Abuse Project in 2013. ([Website](#), Victims and Their Families Speak Out: A Report on the 2012 National Survey on Abuse of People with Disabilities.) More than 7,200 people throughout the nation responded to this survey, including thousands of people with disabilities and their families.

Over 70 percent of people with disabilities reported that they had been victims of abuse. More than 63 percent of family members said their loved one with a disability had been an abuse victim. Focusing exclusively on those with developmental disabilities, 62.5 percent of this group said they had experienced abuse of one type or another.

Of the various types of abuse, victims with disabilities reported verbal-emotional abuse (87.2%), physical abuse (50.6%), sexual abuse (41.6%),

neglect (37.3%), and financial abuse (31.5%).

Although this was not a random sample of the nation, the results of the survey certainly should be enough to cause concern within any system that is supposed to protect people with developmental disabilities. The Probate Court is such a system.

Dr. Nora J. Baladerian, Executive Director of the Disability and Abuse Project, was not surprised by the results of our national survey. She is a recognized expert on abuse and disability and lectures on the subject at professional conferences throughout the nation. She trains law enforcement personnel, psychologists, social workers, and service providers.

Dr. Baladerian cites retrospective studies that summarize the accounts of adults about their experiences of abuse as children. These studies show that one in four women, and one in six men, report that they were victims of sexual abuse as a child. ([Centers for Disease Control and Prevention, 2006](#))

In another study of adults retrospectively reporting adverse childhood experiences, 25.9 percent of respondents reported verbal abuse as children, 14.8 percent reported physical abuse, and 12.2 percent reported sexual abuse. ([Center for Disease Control and Prevention, 2009](#))

The findings of these studies are for the generic population. But what are the rates of abuse for people with developmental disabilities?

A recent review of studies published in professional journals indicates that children with disabilities are victims of abuse and neglect during their childhood years at a higher rate than children in the general population. ([A Review of the Association Between childhood Disability and Maltreatment, 2017](#))

The review cited above explains that some studies show that 27% of children with disabilities have been victims of abuse that was reported to authorities. But most abuse goes unreported. This leads to a conclusion that a majority of children with disabilities experience abuse during their childhood years.

The data on perpetrators is also very instructive. Perpetrators of abuse are generally not strangers. Most often, they are people close to the victim.

In the generic population, more than 80 percent of child abusers were reported to be parents. ([Office for Victims of Crime, United States Department of Justice, 2009](#)) According to Dr. Baladerian, victims with developmental disabilities are most likely to be abused by parents, household members, caregivers, or service providers.

This data alone should cause a paradigm shift in the limited conservatorship system, which currently assumes that proposed conservatees, as a class, are being treated well at home, and that proposed conservators, as a class, are treating their children well. Those assumptions are based on wishful thinking, not statistical probabilities.

I am not suggesting that judges, attorneys, and investigators should automatically view each parent or relative who wants to be a conservator as a likely abuser. But I am suggesting that the system should interact with a prospective conservator in a procedural context of caution and verification.

When we add the perpetrator statistics to our new understanding of child abuse dynamics, we should be stopped in our tracks. As a class, on the whole, and statistically speaking, a significant percentage of would be conservators may have perpetrated abuse against the people whose life they are seeking to control in adulthood. If not perpetrators themselves, they may have failed to protect the child from abuse.

Although this information is hard to digest, it requires a paradigm shift in the way the limited conservatorship system currently operates.

Questions begin to arise as to what changes should occur in policies and practices as a result of the paradigm shift from assuming that probably all is well to assuming that all may not be well. What should judges, attorneys, investigators, and service providers do differently with this newly acquired information about the likelihood that people with

developmental disabilities have been abused?

A trauma-informed approach to the administration of justice in probate courts would require a complete review of all policies and practices, from top to bottom, from start to finish, in the Limited conservatorship system. That is beyond the scope of this essay. But some aspects of the system that are crying out for attention do come to mind.

Let's look at form GC-314, the "Confidential Conservator Screening Form." This form must be completed by any person seeking to be appointed as a conservator. It must be filed with the petition.

A cursory review of this form suggests that it was originally designed to screen potential conservators for elderly conservatees in which cases the conservator is likely to be taking charge of the finances of the conservatee. So it contains questions asking if the proposed conservator has filed for bankruptcy protection. It also asks about arrests of the proposed conservator for theft, fraud, or taking of property.

Limited conservatorships are generally restricted to conservatorships of the person, not of the estate, of an adult with a developmental disability. So questions that pertain to the ability of a proposed conservator to manage finances have little relevance.

What is not asked by the screening form is very instructive. Proposed conservators are asked if they have ever been arrested for or charged with elder abuse or neglect. But they are not asked about arrests or prosecutions for dependent adult abuse or child abuse! They are also not asked if anyone in the household has been arrested for such offenses.

Proposed conservators are asked if they are required to register as a sex offender. But they are not asked if anyone else in the household is a registered sex offender. So the mother of a proposed conservatee can honestly answer "no" to this question, even though her husband, who lives in the home, is a registered sex offender. Since he is not seeking to be a conservator, this information is not provided to the court on form GC-314.

The form does ask if the proposed conservator has anyone living in the home who has a probation or parole officer assigned to him or her. A parent could answer "no" even though she has two adult sons living there who have a long history of felony convictions for drugs and violent crimes, but they are not currently on probation or parole.

Although the form does ask limited questions about bankruptcy proceedings and criminal proceedings, it asks nothing about juvenile court proceedings. So proposed conservators do not have to reveal that they have had a child taken away by the Juvenile Dependency Court (Children's Court). Nor do they have to reveal that they have had two children processed through Juvenile Delinquency Court – one for drug sales and the other for prostitution – and both of them spent time at the Youth Authority. Both children are now living in the same home with the parents and the proposed conservatee.

Since court investigators no longer conduct interviews, review records, and submit reports to the Probate Court in limited conservatorship cases, I have no idea of how these so-called "screening" forms are used. Presumably they are reviewed by the judge. Perhaps by the PVP attorney.

It would appear that this is a declaration system that relies on the proposed conservator to tell the truth. But even if the truth is told, critical information is missing due to the failure to ask the right questions, and to ask the questions of all people living in the household. Does the court run a criminal background check? Are the names of household members checked against the sex registration database? Are these names checked against the databases of Child Protective Services or Adult Protective Services? These questions are worthy of answers.

A so-called "protection" system that eliminates the use of court investigators to screen and evaluate petitions for limited conservatorships must be a system that assumes that child abuse or dependent adult abuse cases are rare, rather than probable.

A system that uses reports of court-appointed attor-

neys in lieu of reports of court investigators must be a system that has closed its eyes to statistics regarding the prevalence of abuse against people with developmental disabilities. Only a system in a state of disbelief could expect court-appointed attorneys to screen out potentially abusive conservators, and yet not train such attorneys about the prevalence and dynamics of abuse.

Only a system in denial could expect these attorneys to be the front line of defense against the appointment of dangerous conservators, and yet not train them with the special skills needed to interview people with developmental disabilities. Only such a system would fail to emphasize the importance of talking personally and privately with all relatives of the first degree in order to find any dissenting views in the family about how wonderful the proposed conservator is.

A trauma-informed conservatorship system would not only require court investigators in every new case, it would also train them properly and thoroughly so they would have a better chance of identifying risky applicants. Such a system would also require court-appointed attorneys to acquire interviewing skills appropriate to the task, to interview proposed conservatees in a private setting away from their parents, to review all Regional Center records and not just the three-page report prepared for the court, and to run a criminal background check on everyone who lives in the household.

In a trauma-informed conservatorship system, the staff and volunteers at Bet Tzedek Legal Services would not assume that parents who come to the Self Help Clinic are wonderful people who should have all “seven powers” granted to them. They should be aware that a significant portion of those who attend the clinic either are or will be perpetrators of abuse. If those who operate the training programs of the County Bar Association were trauma-informed educators, they would act differently when they select topics and speakers for PVP training programs.

Trauma-informed training coordinators would

provide more seminars because of the need to include much more information than is currently transmitted during the few training programs that are offered now. They would include speakers on the dynamics of each type of disability and how to interview people who have each type of disability.

Seminars would include a presentation on the prevalence of abuse against people with developmental disabilities and who the likely perpetrators are. They would also include requirements of the Americans with Disabilities Act and what the courts and attorneys must do to accommodate the special needs of clients with disabilities.

Court-appointed attorneys would be informed that most cases of child abuse or dependent adult abuse are not reported. In many cases, the victim is too embarrassed, or too afraid of consequences, or thinks they will not be believed.

The fact that no report has been made to Child Protective Services or Adult Protective Services does not mean that abuse has not occurred. Such knowledge would inform the actions of the attorneys, prompting them to do more thorough investigations and not to be distracted by smooth-talking and friendly-appearing proposed conservators. A trauma-informed PVP training session would advise court-appointed attorneys not to be fooled by pleasant appearances. Too much is at stake.

Many other changes in the Limited conservatorship system would be required if the probate court shifts paradigms from the current model that assumes benevolence to one that is trauma informed. Such a trauma-informed justice system would operate with more caution and scrutiny. Thousands of people with developmental disabilities would then have a greater degree of protection from the probate court.

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