Elusive Justice

False Advocacy

A Case Study of Social Rights for Limited Conservatees Reveals a Larger Problem of Defective Legal Representation

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false advocacy

(n) 1. pretending to promote a position while simultaneously using tactics that undermine it; 2. going through the motions of advancing a cause or a goal but not putting real energy into the process; 3. having dual roles which preclude the possibility of being loyal to one of them; 4. secretly advancing a hidden agenda while giving the appearance of promoting a stated goal

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Autistic Man Denied Freedom of Association

Lawyer Advocates for Removal of Her Client's Rights

by Thomas F. Coleman

In 2005, Gregory Demer's mother filed a petition asking the Los Angeles Superior Court to appoint her as the limited conservator of her adult son. Gregory, an autistic young man, had just turned 18. He needed help with major life decisions, especially medical and financial decisions. His mother did not seek to control his social life, so Gregory retained the right to make social decisions.

As Gregory progressed, he moved into an apartment with a roommate. Three shifts of support staff shared responsibility to assist him with his needs. Gregory worked part time and engaged in a variety of social, recreational, and volunteer activities. He developed a rich and enjoyable life.

As his time was being filled with activities of his own choosing, Gregory would often decline other optional opportunities on weekends. His parents, who were divorced, reacted differently to the manner in which Gregory was exercising his freedom. His mother was fine with Gregory choosing to see her or not, whenever he wished. His father felt differently and sought orders to force Gregory into a custody arrangement.

After a year, drained financially by legal fees and the stress of orders she could not enforce, Gregory's mother resigned as conservator. A professional conservator was chosen to take her place. The new conservator was also very supportive of Gregory's freedom of choice in social matters. She would encourage him to visit his parents, but she did not pressure him. When he often chose his own activities over visiting with his parents, she accepted his choices. This did not sit well with Gregory's father.

Once again, frequent court battles occurred over Gregory's resistance to visit with his father. The new conservator was replaced with a professional fiduciary company which was less supportive of Gregory's freedom. Long-standing support staff who had supported Gregory's freedom, and who Gregory liked, were replaced. The court ordered increasing restrictions on Gregory's freedom, even though he technically retained his social rights. Gregory's court-appointed attorney vacillated between being a social worker with a law degree and a real advocate. Despite his mother's efforts to support Gregory's freedom of choice, the judge made three orders over a period of a few years.

The first order created a schedule. Of every three weekends, Gregory could have social freedom on one; the second he was required to stay with his father, and the third with his mother. His mother did not ask for or want such power. She told the court that Gregory could see her or not as he wished.

Gregory started evading going with his father, often saying he was scared of him. Sometimes he would leave his apartment before his father arrived. Other times he would not open the door. His father then obtained a new court order requiring the support staff to "prompt and redirect" Gregory to stay until pickup. This required them to persuade him not to leave, but if he did, they were ordered to follow him and call the father to tell him where Gregory was located so he could find Gregory and pick him up.

Gregory's attorney acquiesced to the order. He did not object or file an appeal. So Gregory's mother objected and appealed, challenging both orders as being a violation of Gregory's constitutional rights. The court did not decide the case on the merits, but reversed on a technical ground that a parent lacks "standing" to appeal for an adult child.

Not satisfied with the current encroachment on Gregory's freedom, the conservators filed a petition to take all of Gregory's social decision-making rights from him. They wanted full authority to make social decisions for him. This power grab appeared to be an attempt to put an end to the ongoing litiga-

tion in reaction to Gregory's repeated statements that he did not want to visit with his father and his "civil disobedience" in locking his door or leaving home before his father would arrive.

Despite this pending petition, the court dismissed Gregory's court-appointed attorney. This left Gregory without any protection. His mother lacked standing to appeal and he now had no attorney. Fortunately, Gregory learned about his right to ask for an attorney, so he did. When the judge received a note from Gregory, the judge was obligated to appoint a new attorney, so one was appointed.

Gregory's supporters hoped the new attorney would fight for his rights. They were sorely disappointed when they saw a pattern of conduct by the attorney that actually worked against Gregory. The attorney apparently decided that Gregory did not know what he wanted and that his stated wishes carried no meaning. Therefore, she ignored his requests to keep his social rights and for freedom to choose whether or not to visit with his father.

The attorney decided that, in her opinion, Gregory was better off having paid strangers make these decisions for him. She surrendered his rights by arguing against her own client's wishes. She ignored evidence in support of him retaining his social rights. She did not ask for an evidentiary hearing, nor did she make the conservators prove their case by clear and convincing evidence. Gregory's attorney did all the heavy lifting for her client's opposing parties. She even cross-examined Gregory as though he were a hostile witness.

Without an evidentiary hearing, the judge entered an order stripping Gregory of his social rights. Gregory now lives in social bondage. The court order legalizes conduct which, without the order, would be considered kidnapping and false imprisonment.

Gregory is forced to visit with his father whether he wants to or not. During these visits, the court order gives his father authority to choose the activities. Despite the fact that Gregory has expressed his opposition to going to church on Sundays – expressed to many different people over the course of many years – he is taken to church anyway. This violates his right to freedom of choice in matters of religious practices.

After his social rights were taken away completely, Gregory wrote a note stating his objection to the order of the court and asking for help. His supporters inquired with dozens of disability rights organizations but none of them would get involved. Perhaps a review of available evidence will cause them to reconsider.

Spectrum Institute has studied this case extensively. I focused on the civil rights aspect of this case. My colleague, Dr. Nora J. Baladerian, reviewed the case as a clinical psychologist who works with victims of abuse who have developmental disabilities. I am dismayed by the lack of true advocacy in this case. She is stunned that a court would enter orders that impose psychological and emotional abuse against someone with a developmental disability.

There was ample evidence to support Gregory's social rights – evidence that was not presented to the court. A reasonably competent attorney, acting as a diligent and conscientious advocate, would have presented to the court all evidence supporting the retention of the client's social rights.

For Gregory, justice requires that a new lawyer be appointed – a true advocate whose first course of action should be fighting to restore Gregory's freedom of association.

For thousands of others who will someday find themselves facing a conservatorship, justice requires major changes in educational requirements and performance standards for lawyers appointed to represent people with developmental disabilities. Proposals for such changes are pending with the Probate and Mental Health Advisory Committee of the California Judicial Council. ◊◊◊

Go to: http://disabilityandabuse.org/gregorys-case/

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Preface

The Disability and Abuse Project of Spectrum Institute sent a letter to Los Angeles Superior Court Judge Roy Paul on August 4, 2013. The letter informed him that we had selected the Conservatorship of Gregory Demer as a case study. We indicated that we would follow the case closely and would use our observations and analysis of policies and practices in order to educate judges and attorneys throughout the state.

The case involved a legal battle over the right of Gregory, an autistic adult, to make social decisions, such as who to visit or not visit, when to visit, and what activities to engage in on a visit. As time progressed, the battle intensified. Gregory's mother wanted her adult son to have freedom of choice. She did not need or want a court order restricting his freedom. Gregory's father, on the other hand, sought and obtained a variety of orders that incrementally imposed more restrictions on Gregory.

As we followed the case – reading pleadings, reviewing reporter's transcripts, attending hearings, and interviewing potential witnesses – we realized that whether Gregory would retain his social rights would depend in large measure on whether his court-appointed attorney advocated for him in a diligent and conscientious manner.

The professional conservators filed a petition to transfer authority over all social decisions from Gregory to them. We contacted Gregory's lawyer and offered to assist her in defending Gregory's rights. We sent her legal authorities. We provided letters from people who had known Gregory for years, even decades, and who would testify about his ability to make social decisions. Our communications were ignored.

Gregory lost his social rights. The court's order was based primarily on the actions and inactions of Gregory's attorney. She argued against her own client. The judge was not made aware of a treasure trove of evidence supporting Gregory's capacity to make social decisions. The ruling is tainted by ineffective assistance of counsel.

We did publish a report about the social rights aspect of the case. (Gregory's Case: The Tip of an Unconstitutional Iceberg of Disability Discrimination and First Amendment Violations (2015)) We also published a generic report, hoping to stimulate new court rules governing court-appointed attorneys in these cases. (Proposals to Modify the California Rules of Court: Qualifications, Continuing Education Requirements and Performance Standards in Limited Conservatorship Cases (2015)). That report is under review by the Judicial Council of California.

This companion report should serve a "Exhibit A" as to why new court rules on qualifications, standards, and educational requirements are sorely needed. Perhaps the information contained in this report, and its exhibits, may even cause a reconsideration of the order on social rights in Gregory's case, due to violations by Gregory's attorney of ethics, professional standards, and constitutional guarantees.

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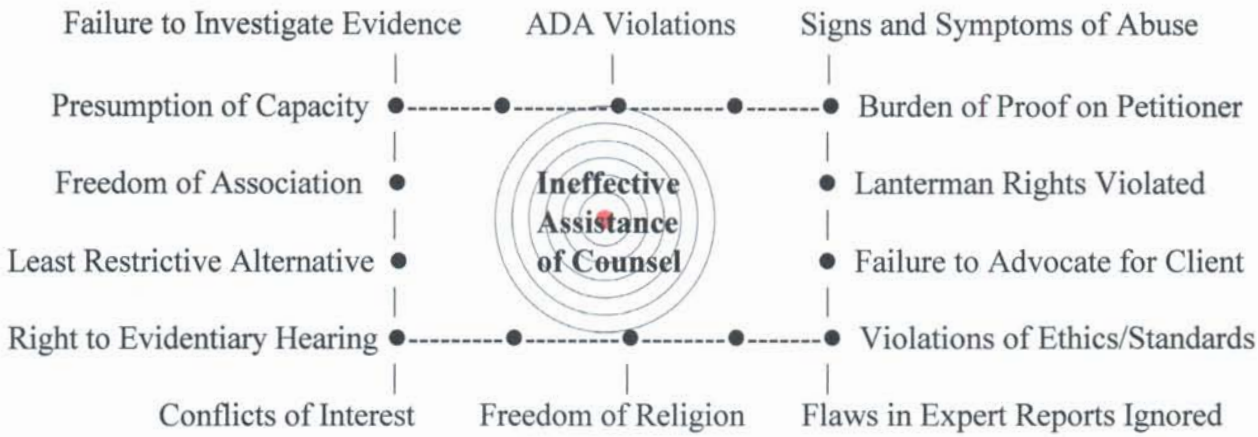
CONNECT THE DOTS

Attorney's Errors and Omissions Deprived Client of Due Process

by Thomas F. Coleman



Duty of Fidelity

"One of the principal obligations which bind an attorney is that of fidelity, the maintaining inviolate the confidence reposed in him by those who employ him, and at every peril to himself to preserve the secrets of his client. [Citations.] This obligation is a very high and stringent one. It is also an attorney's duty to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client without the latter's free and intelligent consent given after full knowledge of all the facts and circumstances. [Citation.] By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests. Nor does it matter that the intention and motives of the attorney are honest. The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent." (Flatt v. Superior Court (1994) 9 Cal.4th 278, 289)

Introduction

This case is about the abuse of power. It is an example of the use of government authority to advance a private interest. It also shows how the judiciary is failing to respect the rights of people with developmental disabilities.

The conservators in this case have tried to characterize this case as a young man caught in the middle of an ongoing visitation battle between two sparring parents. They would have us believe that the order stripping Gregory Demer of the rights to make his own social decisions is really for his own good. They claim that if they have the power over his social life, he will be better off.

None of these claims are true. The parents have not been fighting over the right to control Gregory. The position of Gregory's mother has been consistent over the years. She says "Let Gregory decide." Gregory himself has said, over and over again, that he wants to be independent – to make his own decisions about whom to visit and when. Westside Regional Center has agreed with Gregory. They have known him for years – and they know him well. They say he is quite capable of making his own social decisions.

His former conservator of three years supported Gregory's right to make his own social decisions. Based on objections from Gregory's father, the court got rid of her. Gregory's former support staff of several years endorsed his right to choose. The father was able to have the court get right of them too.

This case is about Gregory's right to say "no" to his father – his right, as an adult, to shape his own social life and to decide the extent to which family members will be included or not. As it turns out, the case is also about the abysmal failure of a court appointed attorney to advocate for the rights of her client.

The pattern of evidence, from 2008 to 2014, shows instance after instance where Gregory spoke up for his rights – his right to say no. His resistance to going with this father was not arbitrary or whimsical, although he had every right to make subjective and sometimes inconsistent social decisions, just as we all do occasionally. His resistance was based on fear, an emotion that is real whether the person who is feeling it has a disability or not.

Gregory's fear is real to him. There is evidence that this fear is based on bad experiences Gregory has had in the past. Teachers, school aides, support staff, and even Gregory's long time psychiatrist, revealed evidence which may explain the basis for Gregory's fear. The fact that Gregory's court-appointed attorney failed to share that evidence with the court is astounding. Really, it is disturbing. It is so disturbing that when the court learns that Gregory's stated fears were grounded in bad experiences, the court may find that this attorney's removal from the case may not be the only step the court should take. Someone was harmed by the false advocacy in this case. When a violation of ethics causes demonstrable harm to a client, further inquiry is needed. The court is not equipped to conduct such an

inquiry, but it certainly can set the process of further inquiry in motion.

This case turns the role of the attorney on its head, revealing a pattern of conduct where a client's own attorney is surrendering his rights rather than defending them. A review of the record in this case shows instance after instance where the attorney violated ethical duties of loyalty and confidentiality. When all of the dots are connected, what we see pictured is a shining example of ineffective assistance of counsel. We see a deprivation of constitutional rights. We see the Lanterman Act, and the rights that it guarantees, tossed to the side. We see false advocacy. We see injustice.

Fortunately, the court has an opportunity to correct this injustice. The first major correction should be to remove the attorney who engaged in these unethical and unprofessional practices. The second correction should be to appoint a qualified attorney – one who will have undivided loyalty to the client.

The new attorney should immediately announce to the court that he or she will not assume a "secondary duty" to help the court resolve the social rights dispute. The attorney can point out that the local court rule imposing this secondary duty is invalid. It conflicts with the statutory provision that gives attorneys appointed in these cases one duty – to represent the interests of their client. It is also unconstitutional because it interferes with the duty of attorneys to provide effective assistance, a task they cannot perform when they have conflicting duties. Making such an objection and challenging the constitutionality of this local rule would be unnecessary if the presiding judge were to suspend the "secondary duty" portion of the rule in conservatorship cases or if the judge in Gregory's case were to declare the attorney exempt from it in this case for the reasons stated above.

The next action of the new attorney would be to file a motion to set aside the order that transferred authority to make social decisions to the conservators. Part of that motion would also ask that the order forcing Gregory to visit his parents and the order requiring his support staff to "prompt and redirect" him when he resists, be set aside pending full review of the issue of social rights. The grounds for setting aside these orders – ineffective assistance of counsel – are amply demonstrated in the following pages.

Each dot – an example of poor advocacy – is described in detail. When the dots are connected, the pattern of negligent, indeed intentional violations of ethical and professional standards, calls for a reversal of all court orders that coerce Gregory into visiting anyone he chooses not to visit. These orders perpetrate emotional and psychological abuse. Rather than protecting Gregory, the court is making him a victim of "legalized" abuse.

The fact that a court-appointed attorney would be so brazen as to repeatedly violate ethical standards in a public forum demonstrates that the culture of the limited conservatorship system needs to be changed. New rules on qualifications and professional practices should be adopted. Training programs need to be improved.

The fact that a judge would allow such unethical practices to occur, and would witness them without showing disapproval, shows that judicial education programs need a new chapter written on limited conservatorship proceedings. The Benchguide needs a new section on that subject as well. Court investigators and regional centers need new standards and training programs too.

Summary of Deficiencies

The performance of Gregory's attorney was so deficient in so many ways that it is hard to know where to start. So the summary of deficiencies will try to list them all, with a brief description, but not in any particular order. A fuller explanation of each particular aspect of ineffective assistance will be included in one of the three major headings: deficient investigation, deficient PVP report, and deficient courtroom performance.

The first problem – conflict of interest – arose the moment the attorney was appointed to represent Gregory in this case. She had been appointed in response to Gregory's hand written note to the judge, which stated: "They tried to take way my social rights. I need an attorney. Please appoint 1 for me." (Exhibit A-3) This note made it clear that Gregory did not want to lose the right to make social decisions and he wanted an attorney to defend that right.

The appointed attorney had a duty to advocate for Gregory's stated wish to keep his right to make social decisions. Unfortunately, she had a "secondary duty" to "assist the court in the resolution of the matter to be decided." (Rule 4.125) The attorney immediately had a conflict of interest: defending the rights of her client versus helping the court settle the matter; loyalty to the client versus loyalty to the court. She should have objected to Rule 4.125 and asked the judge to exempt her from this unconstitutional provision. She did not.

The next deficiency is the failure of the attorney to research applicable law and to inform the court of these precedents. Of more than a dozen statutory requirements and appellate cases applicable to the issue in this case, the attorney apprised the judge of two of them. The others were either unknown to her, ignored by her, or rejected without good reason.

The attorney claimed that she had read everything in the court file and reviewed all of the materials in the file of the prior PVP attorney. She said that she interviewed various people. She acknowledged receiving emails and letters of potential witnesses from me. Her assertions gave the impression that she was thoroughly prepared. Unfortunately, she failed to contact and vet the many available witnesses favorable to the retention of social rights, leaving many valuable stones unturned. Simply put, her investigation of the facts was deficient.

The PVP report she filed with the court is fatally flawed in so many ways. Attorney-client communications were revealed. Information damaging to retention of social rights was included. Arguments undercutting the credibility of her client were advanced. This could have been filed as a brief for the petitioner.

Her performance in court was extremely damaging to her client. She and the judge both violated the Americans with Disabilities Act by rejecting an express request that Gregory be allowed to have a support person with him in chambers in order to have someone intimately familiar with his comprehension abilities. She further aggravated matters by cross-examining her client as though he were a hostile witness.

When the judge, the attorney, and Gregory emerged from chambers, the judge announced his tentative ruling, a decision he said was made mostly because of what he heard in chambers. The other parties, of course, were not privy to that information. They probably assumed that what Gregory said was under oath. It was not. They probably assumed that Gregory had made some damaging statement. He did not. His attorney's hostile examination got Gregory to admit that on one occasion he had a good time at his father's house for a short period of time. The judge and the attorney could not get him to say that he had been coached. They could not get him to back off from his position that he had a right to say "no" to his father.

The judge announced that he would reject the request in the amended petition for shared decision making. He indicated that he would transfer full social rights authority to the conservators. The attorney did not object. Rather, she said she agreed with the decision. No mention was made of the lack of clear and convincing proof, the lack of sworn witnesses, and the failure to conduct an evidentiary hearing. The attorney surrendered Gregory's rights without showing that Gregory had been advised of his rights and waived them. No mention was made of the court investigator's report that indicated the investigator was concerned that Gregory did not understand the nature of the proceeding and did not understand his rights.

These are highlights of some of the deficiencies of counsel's performance in this case. More detailed information about these and other flaws is contained in the sections that follow.

Deficient Investigation

Upon request, the court has a mandatory duty to appoint counsel to represent a limited conservatee whose interests are in jeopardy. (Probate Code Section 1471(a)(4)) The duty to perform in an effective and professional manner is implicit in the mandatory appointment of counsel. (Conservatorship of Benvenuto (1986) 180 Cal. App.3d 1030, 1037, fn. 6) An attorney appointed to represent a conservatee must vigorously advocate on the client's behalf. (Conservatorship of John L. (2010) 48 Cal.4th 131)

Several judicial precedents firmly establish that at the core of the duty to provide effective representation is the duty to investigate. For example, in Moore v. United States, 432 F.2d 730, 735 (3rd Cir. 1970), the court observed: "Adequate preparation for trial often may be a more important element in the effective assistance of counsel to which a defendant is entitled than the forensic skill exhibited in the courtroom. The careful investigation of a case and the thoughtful analysis of the information it yields may disclose evidence of which even the defendant is unaware and may suggest issues and tactics at trial which would otherwise not

emerge."

Trial strategy must be based on a meaningful investigation and not on guesswork. "Constitutionally effective counsel must develop trial strategy in the true sense-not what bears a false label of 'strategy'–based on what investigation reveals witnesses will actually testify to, not based on what counsel guesses they might say in the absence of a full investigation." (Ramonez v. Berghuis, 490 F.3d 482 (6th Cir. 2007).

Courts are concerned that counsels' decisions reflect "informed, professional deliberation" rather than "inexcusable ignorance or senseless disregard of their clients' rights" (United States v. Bosch, 584 F.2d 1113, 1122 (1st Cir. 1978))

"Reasonable performance of counsel includes an adequate investigation of the facts of the case, consideration of viable theories, and development of evidence to support those theories. Counsel has 'a duty ... to investigate all witnesses who allegedly possessed knowledge concerning [the issue in question].'" (Hendersen v. Sargent, 926 F.2d 706, 711-12 (8th Cir. 1991))

The issue before the court in this case was whether Gregory lacked the capacity to make his own social decisions. At the time his attorney was appointed to the case, Gregory retained his social rights. They had never been removed by any court order. The law presumed that Gregory had the capacity to make such decisions. (Probate Code Section 810) The burden of proof was on the petitioner to demonstrate that he lacked such capacity. (Evidence Code Section 500) Petitioner had a burden of showing lack of capacity by clear and convincing evidence. (Conservatorship of Sanderson (1980) 106 Cal. App.3d 611)

The petition to terminate Gregory's social rights cited an expert witness, Dr. Bruce Gale, in support of the transfer of decision-making authority from Gregory to the conservators. Dr. Gale had seen Gregory in therapy for six months in 2009. The hearing on the petition was scheduled to occur in April 2014, more than four years after Dr. Gale had last seen Gregory. While expert testimony is admissible on the issue of competency, it is not the only evidence that can be presented to the court.

Dr. Gale's report focused on Gregory's mental condition for a six month period several years prior to the hearing that would be conducted on the issue of capacity to make social decisions. His report focused on some inconsistencies in the expression of Gregory's feelings during a few therapy sessions. "[C]apacity cannot be destroyed by showing a few isolated acts, foibles, idiosyncrasies, moral or mental irregularities or departures from the normal . . ." (Estate of Wright (1936) 7 Cal.2D 348, 356)

Lay witnesses may also testify on the issue of capacity. (Estate of Buthmann (1942) 55 Cal.App.2d 585, 591) "It is not the mere opinions that are of importance but the reasons given in support of such opinions." (Ibid.) California has a longstanding rule allowing intimate acquaintances to testify about the mental capacity of someone they know. (Evidence Code

Section 870, which is a re-codification of former subdivision 10 of section 1870 of the Code of Civil Procedure)

Gregory's attorney was presented with written statements signed by several people who knew Gregory very well – some for as long as 20 years. A minister who knew Gregory since he was three years old submitted a letter affirming Gregory's ability to make social decisions. A special education teacher who worked with Gregory for many years did the same. Friends who knew him for more than a dozen years rendered their opinions and stated reasons for them. The conservator who worked closely with Gregory for three years shared her observations and rendered her opinion that Gregory had the capacity to make social decisions. The former PVP attorney had previously submitted a report with glowing remarks about this conservator. (These letters are contained in Exhibit C)

Gregory's attorney failed to call any of these available witnesses to testify in support of her client's social rights. In fact, when they were recently contacted they indicated that the attorney had never reached out to them to discuss their opinions or the facts upon which they were based. These supportive witnesses were ignored by the attorney.

As disturbing as this is, more disturbing is the fact that the attorney failed to investigate facts that would explain why Gregory felt that his father was "scary." Gregory's use of this term became a big issue in the case. Because Gregory could not adequately explain his use of this term to the satisfaction of his attorney and the judge, an adverse conclusion was drawn that Gregory did not know what he was saying. The court, the attorney, and court-appointed psychologists concluded that Gregory did not understand the meaning of this term and was just mimicking what he had heard somewhere else. This adverse conclusion was central to the decision of Gregory's attorney that Gregory did not really mean it when he said that he did not want to visit his father because he was too scary.

Had the attorney read all of the records in the court file, as she claimed that she did, and had she reviewed all of the materials in the file of the former PVP attorney, as she also claimed to have done, she would have discovered there was a factual basis for Gregory feeling scared of his father. (Summaries of several documents that detail reports of school staff and other professionals have been submitted to the court as an attachment to form MC-410)

Had she taken the time to review documents that were available and that included statements from reliable sources, Gregory's attorney would have, or should have, taken a completely different course of action. She would have believed that her client was truly afraid of his father, and she would have understood why. If, however, she did read these documents and chose to ignore their import, then her disloyalty to her client would have been beyond rehabilitation.

Deficient PVP Report

Before analyzing the PVP report, it is important to note what was in dispute and what was not in dispute.

No claim was presented by anyone, including the petitioner, that Gregory had ever made social decisions that caused harm to himself or others. When the original petition for limited conservatorship was filed when Gregory was 18 years old, there was no request to remove Gregory's right to make his own social decisions. When the conservatorship order was entered, Gregory retained his social rights.

For the next few years, Gregory made his own social decisions. No one complained that Gregory was making bad social decisions, no one, that is, except his father. His father's complaints intensified when Gregory moved into his own apartment. With his new freedom, Gregory began choosing to engage in his own social priorities on weekends. Sometimes, therefore, he chose not to visit with his father. This did not sit well with Gregory's dad.

Gregory's mother supported the social decisions of her adult son. When a new conservator took over, the conservator was also supportive of Gregory's right to choose whom to visit and when. Gregory's support staff accepted Gregory's right to make his own social choices. So did staff at the Westside Regional Center.

Then began a series of legal manipulations to oppose the right of Gregory to make his own social choices. At the insistence of the father, the conservator was removed. Support staff were removed too. Orders were obtained by the father to require Gregory to visit him every third weekend, with the father being given authority to choose the activities. When Gregory would sometimes leave his apartment so he would not be there when his dad was scheduled to arrive, another manipulative move resulted in a court order directing support staff to "prompt and redirect" Gregory – a code phrase for "pressure him to go with his father."

Gregory's mother objected to these orders on her son's behalf – since Gregory's own attorney at the time had assented to them. She appealed to the Court of Appeal. On appeal, she pointed out that the orders were inconsistent with the fact that Gregory retained his social rights. They had never been taken away. The appeal was dismissed on a procedural technicality, but the inconsistency had been exposed, which made the conservators uneasy.

Recognizing there was a problem with Gregory retaining his social rights, and at the same time having a mandatory visitation schedule and a "prompt and redirect" order, the conservators filed a petition to remove Gregory's social rights altogether. They noted the desire to remove this inconsistency in their petition. Again, the petition did not cite any harm that had ever been caused to anyone by Gregory making his own social decisions.

The petition was, in effect, a way to bolster the two prior orders that had been issued for the benefit of Gregory's father. A total removal of Gregory's social rights was seen as a way to

put an end to the ongoing litigation that was unfairly blamed on Gregory's mother but in reality was caused by his father's refusal to accept Gregory's right to decline visitation at his own discretion. It was a battle between father and adult son, with the father and other participants (except for Westside Regional Center) making Gregory's mother a scapegoat.

It is in this historical and procedural context that the PVP report is examined. The real issue in the case was not the capacity of Gregory to make social decisions in general, it was about his capacity to say "no" to visiting with his father whenever he would not want to do so.

As Dr. Nora Baladerian explained in a letter to the judge, the threshold for capacity to make social decisions is very low. The capacity to say "no" to an unwanted encounter with another person is based on the capacity to feel emotions – anticipation of an encounter is either pleasant or distasteful. People know almost instinctively whether they want to be near someone or not.

Since capacity to make decisions is dependent on the type of decision in question, capacity must be examined in a situation specific context. Evaluation of capacity for a specific type of decision takes into consideration the risk of harm associated with the situation in question. Capacity to decide what type of clothing to wear, for example, is much different than capacity to engage in high risk behavior.

In Gregory's case, although the general question posed involved his capacity to make social decisions generically, the real issue was his capacity to refuse to visit with his father. That is what triggered the litigation. That is what was motivating the legal process.

Dr. Bruce Gale, the psychologist who provided "reunification" therapy to Gregory in 2009, was never asked to evaluate Gregory's capacity to make social decisions, either in general or in the context o saying "no" to his father. He was a therapist, not a forensic psychologist. Plus the petition to remove social rights had not yet been filed.

Dr. Jean Ottina, the psychologist who evaluated Gregory in 2012, did attempt to answer the question: "What is Greg's ability to make choices for his social contacts?" Her report, however, did not identify even one time that Gregory had made a social decision that caused harm to himself or others. Nor did it examine his capacity to experience fear or his capacity to know whether he liked or disliked another human being. It is also noteworthy that her report failed to identify the legal criteria she was using for her evaluation of capacity to make social decisions. What was the legal standard to which she was comparing her clinical observations?

The opinion of an expert is only as good as the basis for the opinion. In the case of Dr. Ottina, we do not know what legal standard she was using. Did she agree with Dr. Baladerian that the threshold for capacity to make social decisions is very low, especially the capacity to feel and know when a social contact is not wanted?

When Dr. Ottina's report is examined carefully, she never directly stated that Gregory lacked the legal capacity to make social decisions in general, or to decline visits with his father in particular. She merely concluded that "Greg's conservators should have the power to make decisions regarding Greg's social contacts." She never adequately explained why that power should be given to the conservators. She never explained what harm Gregory would suffer if he were allowed to continue to make social decisions, just as he had been for many years without a problem. In sum, Dr. Ottina's report and her conclusion were subject to challenge on any number of grounds.

Notwithstanding the length of this preliminary discussion of the procedural history of the social rights dispute and the evaluations of the two psychologists, this prelude was necessary to understand the importance of the PVP report and the opportunities it provided to refocus attention to the real issues in dispute and the weaknesses in the expert opinions.

The PVP report stands as a testament to bad lawyering. Judge Maria Stratton, Presiding Judge of the Probate Division of the Los Angeles Superior Court, recently explained the duties of PVP lawyers who represent conservatees. (Exhibit A-8) She provided attorneys with a list of actions that attorneys should and should not do in terms of ethical duties and professional standards. Gregory's attorney did just the opposite.

The PVP report contained statements made by Gregory to his attorney – statements that were covered by attorney-client privilege and which should have remained confidential. Information that was gathered during the attorney's investigation and was covered by the work product privilege was shared in the report, aggravated by the fact that the information was harmful to Gregory's keeping his existing social rights. Psychological reports that were harmful to retention of social rights were attached to the PVP report. Gregory's attorney was making the case for the petitioner, not advocating for Gregory's stated wishes to keep his social rights.

Gregory's attorney made statements in the PVP report that undermined the credibility of her client. No mention was made that Gregory was advised of his rights, what those rights are, and that he waived his rights. The PVP report failed to mention the court investigator's written remarks that she questioned whether Gregory understood the reason for the hearing or that he understood his rights. No mention was made that Gregory understood that what he told his attorney was confidential and that he knowingly waived that right.

The PVP report in this case is prima facie evidence of violations of the duties of fidelity, loyalty, and confidentiality.

Seizing on a few inconsistent statements made by Gregory over the course of a year, the attorney alleged that she did not know Gregory's true wishes and therefore she could not advocate for them. However, she failed to advise the court that there was a pattern of evidence – statements to many different people over many years – that Gregory feared his father and that he did not want to be with him. The few inconsistent statements were presented to the court,

but the larger pattern of evidence was ignored. I say "ignored" because the attorney claimed that she had read the court file in its entirety and had reviewed the complete file of the prior PVP attorney. Therefore, this appears to have been a deliberate failure to mention this pattern of evidence showing that Gregory was generally consistent in his expressions of not wanting to see his father.

The PVP report recited the duties of PVP counsel as: (1) representing the interests of the client; (2) assisting the court in the resolution of the matter to be decided; and (3) ensure the client is given an opportunity to address the Court directly.

Gregory's attorney claimed that she was fulfilling all three duties. Her claim deserves close examination.

An examination of the first claim, representing the interests of the client, requires an analysis of what those interests are in the context of a proceeding to take away existing social rights from a client.

Gregory had an interest in having the court and his attorney adhere to governing legal standards. The status quo was that Gregory had the right to make his own social decisions. The law presumed that he had the capacity to make such decisions. Any petition to remove his social rights would have to allege lack of capacity for social decision making. The burden of proof for a finding of lack of capacity would have to demonstrate clear and convincing evidence of lack of capacity.

The clear and convincing evidence test requires a finding of high probability, based on evidence so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (Conservatorship of Wentland (2001) 26 Cal.4th 519, 5222) Evidence in rebuttal may be submitted by the conservatee. (Conservatorship of John D. (2014) __ Cal.App.4th __, March 4, 2014, Certified for Partial Publication)

The PVP report was submitted prior to the hearing which occurred on April 28, 2014. Based on Gregory's note to the court asking for an attorney because his social rights were threatened, Gregory's attorney knew that he wanted to contest the petition to remove social rights. The attorney also knew that at the status conference on October 4, 2014, Gregory got up in open court and declared that he did not want to see his father. The attorney had been put on notice on a variety of occasions and in a variety of ways that Gregory wanted to contest the attempt to take away his social rights. Despite this knowledge, the PVP report did not ask for an evidentiary hearing, nor did it indicate that Gregory had been advised of his right to a hearing and that he waived it.

In the PVP report, Gregory's attorney claimed that she could not advocate for her client's interests because she did not know what his "actual" wishes were. That statement is a red herring, a clever distraction. First, she feigned confusion because Gregory had supposedly made a few inconsistent statements. However, had she done proper investigation, she would

have found that he had made consistent statements about not wanting to see his dad on many occasions to many people over the course of many years. There was a pattern of consistency that she deliberately chose to ignore.

Having set up the straw man of "I don't know what he really wants," she was then able to pivot to the "secondary duty" to assist the court in the resolution of the matter. That's the rub. She used her obligation to the court as a justification to violate her duties of fidelity, loyalty, and confidentiality. She told the court things that she knew would diminish her client's credibility with the court. She submitted information adverse to the retention of social rights by her client. She advocated against Gregory. If there ever was an example of disloyalty and betrayal of a client by an attorney, this is it.

Deficient Courtroom Performance

Gregory's current attorney was appointed on August 20, 2013. At her first court appearance on October 4, 2013, Gregory stated in open court that he had a right to say "no" to his father and that he wanted his attorney to protect him. (Exhibit B-1, p. 37)

At the next hearing on April 28, 2014, while the parties and attorneys were stating their appearances, Gregory interjected: "I have the right to speak up for myself and say no to my dad," adding "Dad, I don't want to be with you, and I want to be with mom, and I want to keep myself independent." (Exhibit B-3, p. 2)

The court advised the parties that Gregory was going to be taken into chambers with his attorney where the attorney would examine him. Gregory's mother asked that her son be given an accommodation under the Americans with Disabilities Act to allow a representative of the regional center – someone who was familiar with Gregory's disabilities – to be able to make sure that Gregory was understanding things and to facilitate better communication. (Exhibit B-3, pp. 11-13) The court summarily denied the request. The court stated that it had no problem understanding Gregory. Gregory's mother explained that the ADA accommodation was not for the benefit of the court but for the benefit of her son to help insure that he was understanding what was happening. No accommodation was provided. Gregory's attorney remained silent throughout the ADA discussion.

Once in chambers, Gregory's attorney engaged in a lengthy question-and-answer session. The transcript of the session makes it clear that the attorney was trying to get Gregory to back down from his repeated statements, at this proceeding, in the prior proceeding, and to many other people on many other occasions, that he did not want to be with his father. Gregory clearly resisted the pressure to change his position. However, he reluctantly agreed that on Easter, when he was required to go to his father's house, and when he was required to stay longer than he wanted, he did enjoy a small part of the visit. That concession cost Gregory dearly.

During the session in chambers, Gregory told the court that he found his father to be scary. When asked why, he said that his father "tries to hurt me and tries to tell lies to me." (Exhibit B-3, p. 16) He said that his dad tries to spank him. (Ibid.) He further explained that when he knows his father is coming over to pick him up, he keeps his apartment door locked and he blows his whistle to signal that he does not want to let his father in. (Exhibit B-3, p. 18) Gregory's attorney then asked him if anyone had told him what to tell the judge. Gregory said no. (Exhibit B-3, p. 19) She then showed him pictures, including one where he looked like he was having a good time. It was an obvious attempt to pressure her client into saying that he had a good time at his father's house. The fact that the attorney had the photos with her made it apparent that she had premeditated the plan to get her client to make a concession.

As soon as they came back into the courtroom, Gregory stated again, in open court that he had the right to say "no" to his dad and the right to be away from him. (Exhibit B-3, p. 28)

During the process of announcing its tentative decision, the court expressed its opinion that Gregory appears to have been coached to make the statements about his dad. The court explained that although Gregory says he finds his dad to be scary, he is unable to explain why. The court found Gregory's statements about his dad being scary inconsistent with the fact that on one occasion Gregory appeared to have a good time with his father. (Exhibit B-3, p. 30)

Despite finding Gregory bright and articulate, the court found him susceptible to coercion and undue influence. The court also found that Gregory did not have the maturity to have shared decision making with the conservators. (Exhibit B-3, p. 31) Gregory's attorney chimed in and said: "I'm in support of the court's decision. (Exhibit B-3, p. 32)

None of the court's findings are supported by evidence, much less clear and convincing evidence. There were no sworn witnesses. Evidence supportive of Gregory's capacity to make social decisions was suppressed by his own attorney – a very disturbing fact.

The courtroom performance of Gregory's attorney violated professional standards of competency and also violated the duty of loyalty. Had his attorney provided effective assistance, she would have engaged in preparation for this hearing. She would have been aware that there is ample evidence, from a variety of reliable sources, that Gregory is truly afraid of his father. There is evidence from his teachers and other at school of signs and symptoms associated with suspected abuse. Gregory had told people that his father was mean to him and that his father and stepmother and stepsister said hurtful things to him. The statement that Gregory made to the court about being spanked by his father was not the first time that problem was revealed. There is another report from 2009 in which that same problem was reported.

The failure of Gregory's attorney to conduct a proper investigation had an adverse effect on her courtroom performance. She appears to have had a predetermined agenda that precluded her from exploring evidence favorable to the retention of social rights. She rejected offers of assistance from me. She tossed letters of support aside without even contacting the potential

witnesses to discuss the basis of their opinions and the validity of their observations. She immediately latched onto the two psychological reports, overlooking their flaws.

Anyone unfamiliar with the back story of this case who observed her performance without knowing who her client was would have assumed that she represented the petitioner. The attorney for the petitioner presented no evidence and literally sat silent throughout this proceeding. There was no need for petitioner's counsel to say or do anything, because Gregory's attorney did all the heavy lifting for the petitioner.

The performance of Gregory's attorney at the next court hearing sheds light on the confusion of this attorney, feigned or real, about her role in this case. The hearing on September 11, 2014, focused on a fee dispute between the conservators and Gregory's mother. The monetary dispute had nothing to do with Gregory or his rights. The appearance of Gregory's attorney at the hearing was totally unnecessary, that is, unless her role was something more than being an advocate for Gregory.

The attorney for the conservators was Cynthia Pollock. Gregory's mother, Dr. Linda Demer, was representing herself. When Dr. Demer questioned an order that allows for unlimited fees to the conservator, it was Gregory's attorney, not Ms. Pollock who responded. (Exhibit B-4, p. 2) The back and forth conversation for most of the hearing involved Gregory's attorney, Dr. Demer, and the court, with Ms. Pollock observing the argument. (Exhibit B-4, pp. 2-7)

In the midst of the hearing, the court made a very telling remark. "And we do have PVP counsel who serves pretty much as doing some due diligence work for the court, because I can't go out and investigate these things. That's why we have PVP counsel." (Exhibit B-4, p. 4) That remark suggests there was actually a reason for Gregory's attorney to be at the hearing – not to represent Gregory because this money dispute did not affect him one way or another. She was there to serve as a de-facto investigator for the court.

The court does have investigators, but they are paid out of the court's own budget. A PVP attorney, on the other hand, is paid out of county funds, not the court's funds. So having PVP counsel do investigative work for the court, unrelated to representing the legal interests of a conservatee, saves the court money. It appears that in connection with this hearing, Gregory's attorney was acting as a de-facto court investigator who would get paid by the county for performing investigative services for the court.

Gregory's attorney assumed an additional role, acting as an attorney protecting the financial interests of the county. That is the role of county counsel. Gregory has no interest in whether the fees of his attorney are paid by the county or by his parents. The court had been requiring the parents to split the fees of the attorney for the conservators. But because there is no estate involved, and because Gregory is indigent, the fees for Gregory's attorney – like PVP attorneys in other cases – was being paid by the county.

Gregory's attorney chimed in at one point in this hearing and argued that the court should start requiring the parents to pay for her fees, as a way of saving the county money. What is Gregory's interest in whether the county saves money or not? What is his interest in shifting fees from the county to someone else? None.

Gregory's attorney has played many roles in this case, and she was good at all of them except the one that counts. She failed to act as a diligent advocate for Gregory's rights. She did perform well as an assistant to the court to resolve the matter. She also acted well as a de-facto advocate for the petitioners by presenting evidence adverse to her client. She then became a de-facto court investigator. Then she put on the hat of county counsel, advocating for the county treasurer by seeking to shift her fees from the county to the parents.

When the dust settled, Gregory's attorney communicated with Dr. Nora Baladerian and referred to herself in a written statement as Gregory Demer's "guardian ad litem."

Gregory's attorney was a legal "shape shifter," changing her role as she perceived the need to do so: a PVP attorney for a conservatee, an assistant to the court to help resolve a case, a de-facto court investigator, a ghost attorney for the petitioner, a deputy county counsel defending the county treasury, and a guardian ad litem. The conflicts of interest inherent in such shape-shifting are so obvious that a first-year law student would blush at the thought of trying to engage in such shenanigans. Unfortunately, of all her assumed roles, the only one she was obligated to perform well she failed at miserably.

Harm Caused to the Client

These many violations of ethical duties and performance standards are not minor technicalities. These violations, and the major conflicts of interest that are also apparent, caused serious harm.

These transgressions were not the product of an oversight or due to temporary distractions. They appear to be intentional and recurring.

Substantial harm was caused to a client by the deficient performance of his attorney. These misdeeds have resulted in Gregory remaining in social servitude. He has been subjected to what, without a court order, would be considered kidnapping and false imprisonment. Gregory believes, and for good cause, that his choices mean nothing. His pleas for help have been ignored. His stated wishes have not been given the respect they deserve. Because of his disability, he is not being treated as an adult. He must believe that he will be treated like a child for the rest of his life.

When Gregory moved into his own apartment in 2008 and was no longer required to live part time at his father's home, he gleefully told an aide at school, "I'm independent and misery-free." She looked perplexed and asked him why, free from what misery. He answered that

he was free from his did and step family. The aide asked why he felt that way. Gregory replied: "Because they are mean to me. Dad and Melissa are too scary and say mean hurtful words to me."

Because his attorney failed to fulfill her duties – indeed advocated against her client – Gregory is not misery-free. Unless and until his current attorney is discharged and a new attorney is appointed – one who will be a loyal and faithful advocate for Gregory and who will help him regain the social rights to which he is entitled – Gregory will continue to suffer.

The harm that has been done because of these serious violations of ethics cannot be undone, but perhaps this case can serve as an educational tool. People with developmental disabilities can learn that they have the right to an attorney who is a real advocate for them. They deserve more than false advocacy. Other PVP attorneys can compare the performance of the attorney in this case with the standards announced by Judge Stratton and learn how to avoid ethical pitfalls. The Judicial Council can realize that the proposals submitted to them for new rules governing court-appointed attorneys in limited conservatorship cases are necessary and adoption of them is an urgent matter.

This has been an amazing journey for those of us who have been analyzing the limited conservatorship system and monitoring this case. It has been stressful. It has been painful to observe the deprivation of rights and the personal disrespect experienced by Gregory Demer.

We trust that this journey will not be in vain, not for us and certainly not for Gregory. We look forward to changes in court rules, improvements in educational programs, and most importantly, better advocacy by court-appointed attorneys in these cases. We also envision a day in the near future when Gregory Demer regains his social rights – an aspect of liberty that should never have been taken from him, especially not by the very "protection court" that is supposed to be administering the equal rights and dignity promised by the Lanterman Act.

Law and Evidence in Favor of Gregory Keeping His Social Rights But *Not Used* by His Attorney

Attorney Claims to be Prepared

Attorney's Remarks: "I have reviewed the file extensively. I was appointed about a year ago. And I have reviewed the file from the start of all the litigation to the present..." (Reporter's Transcript, *Sept. 11, 2014, p. 2, SP006273, Los Angeles Superior Court)*

Attorney's Report: "I have reviewed all pleadings and reports that have been provided to me by the Court, by the parties and their counsel (current and former), as well as all appellate pleadings . . . I have reviewed the reports filed by my predecessor PVP counsel, Paul Gaulke and have also reviewed parts of two Court Investigator reports that were provided to me by Linda Demer, my client's mother. . . . For the past several months I have been receiving periodic emails from an attorney named Thomas Coleman . . . ." (Exhibit B)

Legal Precedents Ignored by Attorney

California Supreme Court: "Like all lawyers, the court-appointed attorney is obligated to keep her client fully informed about the proceedings at hand, to advise the client of his rights, and to vigorously advocate on his behalf. (Bus. & Prof. Code, § 6068, subd. (c); Conservatorship of David L. (2008) 164 Cal. App.4th 701, 710." (Conservatorship of John (2010) 48 Cal.4th 131)

California Appellate Courts: The relation between an attorney and client is a fiduciary relation of the very highest character. (Cox v. Delmas (1893) 99 Cal. 104) As a fiduciary, an attorney assumes duties beyond those of mere fairness and honesty. (T&R Foods Inc. v. Rose (Cal. Super. 1996) 47 Cal. App.4th Supp. 1) An attorney not only owes the duty to use skill, prudence and diligence in the performance of the tasks he undertakes, but owes undivided loyalty to the interests professionally entrusted to him. (Goodley v. Wank & Wank, Inc. (2nd Dist. 1976) 62 Cal. App.3d 389)

California Supreme Court: "An attorney's duty of loyalty to a client is not one that is capable of being divided . . ." (Flatt v. Superior Court (1994) 9 Cal.4th 275, 282.) "It is also an attorney's duty to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client without the latter's free and intelligent consent given after full knowledge of all the facts and circumstances. . . . Nor does it matter that the intention and motives of the attorney are honest." (Flatt, at p. 289) "An attorney who serves a dual role has a per se conflict of interest." (People v. Austin M. (Ill. 2012) 975 N.E.2d 22).

Rules of Professional Conduct: "Client-lawyer confidentiality encompasses the attorney-client privilege, the work-product doctrine and ethical standards of confidentiality. The principle of client-lawyer confidentiality applies to information relating to the representation, whatever its source, and encompasses matters communicated in confidence by the client, and therefore protected by the attorney-client privilege, matters protected by the work product doctrine, and matters protected under ethical standards of confidentiality, all as established in law, rule and policy. (See In the Matter of Johnson (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179; Goldstein v. Lees (1975) 46 Cal.App.3d

614, 621 [120 Cal. Rptr. 253].) The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a member may be called as a witness or be otherwise compelled to produce evidence concerning a client. A member's ethical duty of confidentiality is not so limited in its scope of protection for the client-lawyer relationship of trust and prevents a member from revealing the client's confidential information even when not confronted with such compulsion. Thus, a member may not reveal such information except with the consent of the client or as authorized or required by the State Bar Act, these rules, or other law." (Discussion under Rule 3-100, "Confidential Information of Client," Current Rules)

Lanterman Act: "Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California. . . It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following . . . (e) A right to religious freedom and practice. . . (Statement of Rights, Lanterman Act, Welfare and Institutions Code Section 4502)

United States Supreme Court: "Freedom of association ... plainly presupposes a freedom not to associate." (Roberts v. United States Jaycees 468 U.S. 609, 622 (1984)) "[I]t is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, *family relationships,* and child rearing and education." Carey v. Population Services International, 431 U.S. 678, 684-85 (1977) (Emphasis added) "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. *Neither can force nor influence a person to go to or to remain away from church against his will* or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance." *Everson* v. *Board of Education,* 330 U.S. 1, 15-16 (1947) (Emphasis added)

California Court of Appeal: "Even though developmentally disabled, as an adult [conservatee] has a right not to have contact with [a parent] if he so chooses. (Welf. & Inst. Code, §§ 4501, 4502.) . . . It is the policy of this state that a developmentally disabled person should have the same legal rights and responsibilities guaranteed all other individuals (Welf. & Inst. Code, § 4502) and be able 'to approximate the pattern of everyday living available to nondisabled people of the same age.' (Welf. & Inst. Code, § 4501 (italics added).)" (Conservatorship of Sides (1989) 211 Cal. App.3d 1088)

California Legislature: "A limited conservatorship may be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's *proven* mental and adaptive limitations. (Probate Code Section 1801(d)) (Emphasis added)

California Legislature: "A limited conservator does not have any of the following powers or controls over the limited conservatee unless those powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited

conservator: (6) The limited conservatee's right to control his or her own social and sexual contacts and relationships." (Probate Code Section 2351.5)

California Legislature: "[T]he court investigator shall do all of the following: (b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding . . . (Probate Code Section 1826)

California Legislature: "[T]here shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions . . ." (Probate Code Section 810)

California Legislature: "A party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief ... that he is asserting." (Evidence Code Section 500)

California Court of Appeal: "Balancing the benefit and purpose of the probate conservatorship proceedings against the adverse consequences to the individual clearly suggests the proper standard is clear and convincing proof." (Conservatorship of Sanderson (1980) 106 Cal.App.3d 611)

California Supreme Court: The "clear and convincing evidence" test requires a finding of high probability, based on evidence " ' "so clear as to leave no substantial doubt" [and] "sufficiently strong to command the unhesitating assent of every reasonable mind." ' " (In re Angelia P., supra, 28 Cal. 3d 908, 919; accord, Sheehan v. Sullivan (1899) 126 Cal. 189, 193.)" (Conservatorship of Wentland (2001) 26 Cal.4th 519, 522.

California Court of Appeal: "The party seeking conservatorship has the burden of producing evidence to support the disabilities sought, the placement, and the powers of the conservator, and the conservatee may produce evidence in rebuttal. [Citation.]" (Conservatorship of Christopher A. (2006) 139 Cal.App.4th 604, 612, fn. omitted.) (Conservatorship of George H. (2008) 169 Cal.App.4th 157, 165-166.)" (Conservatorship of John D., California Court of Appeal, March 4, 2014, Certified for Partial Publication)

United States Department of Justice: Title II of the Americans with Disabilities Act applies to the operations of state and local governments. (ADA Title II Technical Assistance Manual, Department of Justice) Title II requires that "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." (ADA Title II Regulations, Department of Justice) When a recipient of government benefits or services has a mental disability that is known to program personnel, the agency has an obligation to provide reasonable modifications to its policies and practices to ensure that the person is not denied services or benefits. (Title II Technical Assistance Manual," Section II-3.61000 Reasonable modifications.)

California Legislature: "No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds." (Welfare and Institutions Code Section 4502) Probate courts receive public funds.

Procedural and Evidentiary Facts Not Used by Attorney

July 25, 2005 – Statement Regarding the Initial Order for Limited Conservatorship

"The petition of Linda Demer for appointment as the limited conservator was granted by the Court after noticed hearing. Linda Demer did not request, the Court did not order, and the Letters of Conservatorship do not provide, that the limited conservator be granted the power to control conservatee's social contacts and relationships." (Paragraph B1, page 4, Joint Trial Statement dated September 19, 2011.) (Exhibit D-11)

June 19, 2008 – Court Investigator Report (Judicial Notice, Report is in Court File)

The report of the court investigator contains information from interviews with Gregory's support staff, school personnel, and Gregory himself which should have raised suspicions that Gregory may have been a victim of abuse.

This report was filed with the court and made available to the PVP attorney who was on the case at the time. Presumably both the judge who presided on the case in 2008 and the PVP attorney read the report.

The current PVP attorney claims to have read everything in the court file. If so, then she should be aware of the basis for Gregory's verbal expressions of fear.

Despite this evidence, the current PVP attorney failed to inform the judge currently on the case about this important evidence. It is not mentioned in her PVP report, nor was it mentioned in court.

July 11, 2008 – Note by Violet Wieczorek, Support Staff (Exhibit available at Marsden Hearing)

Violet Wieczorek was a support staff person for Greg in 2008. On July 11, 2008, she made the following notation: "I asked Greg if he would like Dad, Melissa, and Julia to visit his new apartment and he said: 'No, I will tell them to go away, but I would prefer Belle would come and visit me on Sunday." Melissa is his father's wife and Julia is Greg's stepsister.

July 15, 2008 – Letter of Alan Garfinkel (Exhibit D-2)

The letter stated: "I have known Greg Demer for approximately 11 years. 1 am a friend and mentor to his younger brother Eric (Ricky), and have visited with them at home 4 or 5 times a month over those 11 years. I would therefore say that 1 know Greg fairly well, have had many meals with him etc. Greg has no problem expressing his likes and dislikes, or stating things that he does or does not want to do. Sometimes these are expressed a little brusquely, with some chance of causing hurt feelings, but I have found them to be consistent and reliable. On Sunday, July 13, during lunch, I asked Greg how he liked his current living situation, and he said, 'I have my own apartment. I like my apartment.' I asked him whether he wanted to visit me in the Marina, and he said, ''yes.' I asked him if he wanted to visit his Dad, and he said 'No, that's too scary.' He shook his head several times and repeated, 'That's too scary'"

July 15, 2008 – Declaration of Carol Bertoni (Exhibit D-4)

The declaration stated: "To Whom It May Concern: I have known Gregory Demer for about eight years. I have been his aide at school since junior high school. This summer, he told me that he was happy at his new apartment, and that he felt safe there. Yesterday, he said "I'm independent and misery-free." I asked him "Free from what misery?" He answered, 'From Dad, Melissa, and Julia.' I asked 'Why?' He said, 'Because they are mean to me. Dad and Melissa are too scary and say mean hurtful words to me.' Today I asked, 'Do you want your Dad to see your apartment?' He answered 'No! He doesn't belong there. I will tell him to go away. I don't want to see Dad!'I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct."

July 17, 2008 – Declaration of Thelma Rozelle (Exhibit D-1)

School district classroom aide explains how Greg has repeatedly expressed being afraid or upset with his father. He told her that he did not want the father to visit his apartment.

July 30, 2008 – Declaration of Myra Einberg (Exhibit D-3)

The declaration of Myra Einberg stated: "My name is Myra Einberg. I have had the pleasure of knowing Gregory Demer for about 3 years as his Home Room Teacher at Venice High School. Over the years, I've noticed that Greg is generally cheerful when he comes to school from his mother's house. However, almost every day that he comes to school from his father's house, Gregory shows

worry and seeks reassurance, saying things such as 'Ms. Einberg, I'm not lazy.' Or 'I'm not a weenie.' More specifically, on Monday, June 30, 2008, Greg told me twice: 'Dad is scary,' and, once, 'Dad is too scary.' I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct."

September 5, 2008 – Court Transcript (Exhibit D-5)

Statements by Paul Gaulke, attorney appointed to represent Greg.

"I can tell the court that I have seen my client now several times and he is consistent with what he tells me . . . And at this point he does not want to visit with his father." (p. 1)

"Your honor, at this point in time my client has said that he doesn't want anymore visitations with either his father Joe or Melissa (Joe's wife) or Julia (stepsister). I believe he can tell me at the time I talked to him and I believe he's competent enough to tell me who he wants to see." (p. 2)

"I believe my client is competent enough to answer my questions regarding visitation. He doesn't want to do it. I would rather that the 730 expert apprise the court of what might be in the best interest but as an advocate, I would have to advocate for my client." (p. 14)

March 4, 2009 – Report of PVP Counsel Paul T. Gaulke (Exhibit D-6)

The report indicates that counsel had read the psychological evaluation report of Esther B. Hess, Ph.D.

Paragraph 6 of the report states: "The Probate Investigator Report suggested that the time GREGORY DEMER spends with his father should be 'closely scrutinized' an that his safety and well being should be priorities. These concerns were raised by interviews with GREGORY DEMER'S teachers and caregivers as they experienced changes in GREGORY DEMER'S behavior and certain phrases that GREGORY DEMER used after spending time with his father."

Paragraph 8 states: Whether GREGORY DEMER truly understands why or if he is truly 'scared' of his father, I do not know. However, as I understand my responsibilities as Probate Volunteer Panel Attorney for GREGORY DEMER, I believe I must advocate for my client if he clearly tells me what he wants and he has done that. GREGORY DEMER does not wish to see his father at this time. He should not be forced to do so."

March 5, 2009 – Court Transcript (Exhibit D-7)

The court indicates that it has read the report of Dr. Hess. (p. 15)

Court appointed expert, Mr. Tom Beltran, states that the court order "should say the conservator does not have the power to set social contacts." (p. 34)

July 10, 2009 – Incident Report of My Life Foundation (Exhibit is available at Marsden hearing.)

My Life Foundation provided support staff for Greg. Staff wrote a report of an incident with Greg not wanting to go with his father. It stated: "On July 10, 2009, at approximately 6:00am Greg Demer was scheduled to go on a trip with his father. Greg told his support staff that he did not want to go on a trip with is father .. At 6:30am Tim Dehaven, Program Director went to go meet Mr. Demer (Greg's father) in front of the apartment complex to inform him of Greg's decision. After Informing Mr. Demer of Greg's decision he proceeded to go to Greg's apartment to talk to him. Greg met Mr. Demer in the hallway and stated "I do not want to go with you". . . "I am going to school." Mr. Demer (Greg's father) responded by stating 'Cinderella is waiting at the airport. I have her on the phone for you.'Greg's response stayed the same, he told his father that he still did not want to go on the trip and that he wanted to go to school." The report indicated that a supervisor had been notified that "Support staff attempted to talk with Mr. Demer and explain that Greg had expressed to staff that he did not want to go" and that Mr. Demer's response was to tell them to "back off."

2009 – Report of Dr. Esther B. Hess (Judicial Notice – Report is in court file)

Dr. Hess, a clinical psychologist, evaluated Greg at the request of the court. In reference to visits with the father, the first recommendation of Dr. Hess is that "the decision for the visit should be left entirely up to Greg's choosing." (p. 4)

March 23, 2009 – Psychiatric Report of Dr. Edward R. Ritvo (Available at Marsden hearing)

This report contains allegations of physical abuse of Gregory.

This report was given by attorney Eric Yamamoto, attorney for the conservator, to Mr. Paul Gaulke (PVP attorney) and to Mr. Tom Beltran (court-appointed expert). It was later referenced in the Declaration of Dr. Linda L. Demer which was filed with the court in April 2014.

August 1, 2011 – Report of Westside Regional Center (Exhibit D-8)

The report stated: "Gregory does not wish to change anything about his present program and services, except that he does not want to have to go to church with his father on Sunday mornings."

May 13, 2011 – Report of PVP Attorney Paul Gaulke (Exhibit D-9)

The report stated: "I have been told by MY LIFE, GREG's caregivers and the conservator, LINDA COTTERMAN, that they all try very hard to encourage GREG to see his father on Sunday, but sometimes GREG just doesn't want to go and refuses. I can see the difficulty in coercing this rather large, young adult to budge if he doesn't agree, especially when he is being taught to be independent."

It added: "If given the choice, GREG will choose his mother over his father. He will choose Disneyland and airplanes over both his parents. I don't see a perfect or best answer here. As hard as we have tried, and many have tried mightily, there doesn't appear to be a situation that will please everyone. My client's life appears very good right now. He always seems upbeat and content. I would rather not see drastic changes in his routine although I do believe he is resilient and flexible to some extent. I don't necessarily believe it's in Greg's best interest to capriciously change appointments with his parents when something else comes up that he would rather do. Long term it is probably better that he cultivate a solid relationship with his parents. On the other hand, if am to advocate for what my client tells me, then he should only see his parents when he is agreeable."

September 16, 2011 – Trial Brief of PVP Attorney Paul Gaulke (Exhibit D-10)

The trial brief of the PVP attorney opposes the request of petitioner (father) to remove the conservator (someone who Greg liked and had bonded with). The attorney stated: "The conservatee participates in many social activities, and many of those social and work-related activities are scheduled on the weekends . . . Petitioner has been adamant about attending church with the Conservatee on Sundays, however the Conservatees activities conflict with the Church service. In order to promote the conservatee's growth in independent living, the Conservator has encouraged the Conservatee to continue participating in his employment, social activities, and education and allowed the Conservatee to decide whether he would like to visit with his parents or opt to participate in his extracurricular activities." The report continued: "Problems arose as the Conservatee often chose to participate in his social activities and employment rather than allow his parents to have time to visit with him on the weekends." (p. 6 of trial brief)

September 19, 2011 – Joint Trial Statement (Exhibit D-11)

The Joint Trial Statement was developed by and signed by all parties except Greg's father. It stated: "PVP Attorney is concerned about the Order dated July 2, 2009 in that it institutes rules about who the Conservatee must see and when, without regard to promoting the Conservatee's care, maintenance and growth towards independent living, which is what the Conservatee's caregivers, MyLife Foundation, and the Westside Regional Center are promoting." (Paragraph 8, p. 7)

The Joint Trial Statement continues: "Gregory Demer is a remarkable young man. Though beset with a developmental disability necessitating the protection and assistance of a limited conservatorship, Gregory is intelligent and energetic. With the assistance of services provided

primarily through the Westside Regional Center, Gregory lives independently in an apartment complex in West Los Angeles. With the assistance of dedicated caregivers, Gregory enjoys daily a wide-variety of productive and meaningful community activities . . ."(p. 8)

The statement adds: "The Court determined that Gregory Demer is a developmentally disabled adult and that the appointment of a Limited Conservator is in Gregory's best interest. Specifically, pursuant to Probate Code Sections 1828.5, 1830 and 2351.5, the Court granted the Limited Conservator the following powers: (a) to fix conservatee's residence or specific dwelling; (b) to access conservatee's confidential records and papers; (c) to contract on conservatee's behalf; (d) to consent or withhold consent to medical treatment for conservatee; and (e) to make decisions regarding conservatee's education. The Limited Conservator did not request, nor did the court grant the Limited Conservator the power to control Gregory's social contacts and relationships." (p. 9)

February 7, 2012 – IPP, Westside Regional Center (Exhibit D-13)

This report was attached, as Exhibit A, to My Life Foundation's Objections. The IPP report stated: "During the IPP Greg stated without prompting that things he dislikes are going to church and going with his dad on Sundays. There is currently a court mandated visitation schedule which requires Greg to see both of his parents on alternating weekends, followed by a personal weekend."

This exchange, taken from a transcript of a regional center meeting, is an example of how, despite his repeated expressions of his preferences, the conservators do not respect what he says: "Debra Ray (Regional Center Representative): I think we have addressed the, about the, having to go to church, we just addressed that. Are we in agreement with that? LeeAnn Hitchman (Greg's Professional Co-Conservator): Wait, what is it, what is it that we said? Debra Ray: That he doesn't want, that Greg doesn't want to attend church. Bruce Hitchman (Greg's other Professional Co-Conservator): We heard him say that. That doesn't mean that he doesn't want to attend church. Greg Demer: Dad, will you listen to me, I don't want to attend church, I just want to have my free personal day, and I don't want to go with you."

March 8, 2012 – Ex Parte Application for Clarification of Orders (Exhibit D-12)

The application asked for clarification of whether prior orders requiring mandatory visits with Greg's parents is in effect even though an appeal against the order was pending. (p. 2, ex parte application) Exhibit C is a true copy of a proposed order submitted by Thomas Beltran, court appointed expert. (p. 9 of ex parte application) Paragraph 6 of Exhibit C states: "My Life Foundation staff report that the Limited conservatee, on occasion, will state his wish to leave his apartment to avoid visitation with his father."

April 27, 2012 – Appellant's Opening Brief (Exhibit D-14)

The brief stated: "Importantly, in each instance in which a limited conservator has been appointed for Gregory (i.e., Linda Demer, Ms. Cotterman, Bruce and Lee Ann Hitchman), there has never been a request made in the petition for appointment, and no order of appointment has been entered, to

limit Gregory's rights to control his own social contacts and relationships pursuant to Probate Code Section 251.5(b)(6)."

It also stated: "Indeed, there has never been any evidentiary showing (by clear and convincing evidence as required by Probate Code Section 1801(e), or otherwise), that Gregory's constitutionally protected liberty and privacy rights to control his own social contacts and relationships should be curtailed due to some unalleged and unproved mental or adaptive limitations."

June 26, 2012 – Report of Jean Ottina, Ph.D. (Judicial Notice – Brief is in court file)

Page 6 of the report states: "When Greg came to my office the first time, he brought a notebook which had his schedule, other important information about him, and a log that the My Life staff keeps of their time with Greg. The log is collected each Sunday. Most of it was routine but there was an entry quoting Greg's negative remark about his Dad."

August 9, 2012 – Declaration from Westside Regional Center (Exhibit D-16)

The declaration of William Feeman, Director of Client Services, stated: "Mr. Demer should be permitted to make his own choices about whom he spends time with and what he does with his time. Based on his voluminous records at WRC, he has never demonstrated behavioral issues which would justify termination of his right to make his own such choices."

The declaration added: "To the contrary, Gregory Demer has demonstrated an ability to create a rich social and work life. It would be a very sad thing for him to lose the ability to continue with his volunteer work and preferred socialization simply to satisfy his parent's and conservator's need to control his social life."

November 30, 2012 – Report of Probate Investigator (Judicial Notice – Report in court file)

This report contains statements by Gregory that he does not like being forced to go to church on Sundays.

In the "recommendations" section, she suggested "That a PVP attorney is appointed to represent the conservatee's interest and to explore the conservatee's concerns addressed in the report regarding the co-conservators and modification of the visitation with his father."

August 8, 2013 – Handwritten Note by Gregory Demer (Exhibit D-18)

The note, which was addressed to Judge Roy Paul, and which was signed by Greg, stated: "Dear Judge, They tried to take away my social rights. I need an attorney. Please appoint 1 for me. Thanks." He needed an attorney because Mr. Gaulke had been discharged by the court on May 16, 2013, despite the fact that a petition to remove Greg's social rights was pending.

October 4, 2013 – Court Transcript (Exhibit B-1)

Greg stated in open court: "No, I don't want to see you, Dad. I don't want to go flying with you anymore and I don't want to go to Catalina Island with you and I don't want to be with you. I want to walk off from you. And I want to use my legs and go see my Mom and I don't want to see – Dad, I don't want to see you anymore. Your honor, I don't want to see my Dad and go flying with him anymore and I don't want to see my Dad and go to Catalina Island with him anymore." (p. 17)

Later in the hearing, Greg reiterated "I have my right to say no to Dad." In reference to his court-appointed attorney, he said: "I need Ms. Maillian to protect me." (p. 37)

With reference to keeping his conservator, Linda Cotterman, and keeping his service providers who he referred to as his friends, Greg said: "Your honor, I have the right to speak up for myself, so I can tell my friends that I want to have fun and I want Linda Cotterman protected and I don't want my friends changed." (p. 38)

February 13, 2014 – Court Investigator's Report (Judicial Notice – in court file)

This report contains more protests by Gregory about being forced to visit with his father and being forced to attend church. Also contains information from a support staff person about Gregory refusing to open the door when he father would come to his apartment.

February 21, 2014 – Letter of Dr. Nora J. Baladerian (Exhibit E-4)

Dr. Baladerian sent a letter to the court regarding her observations of Gregory's presentations and remarks to the court at a hearing on October 4, 2013, at which she was personally present in the courtroom.

The letter stated: "At that hearing, I witnessed an amazing spectacle. Gregory stepped forward and addressed the court and expressed his wishes with respect to the issue of visitation with his father. The fact that he initiated the presentation was amazing in and of itself, considering the limitations experienced by people with autism. But the clarity of his remarks and the deliberate focus of his presentation was even more amazing."

The letter continued: "Gregory stated, and reiterated, in several different ways, that he did not want to see or be with his father. Gregory could not have been more clear about his wishes. What surprises me, however is that his court-appointed attorney did not follow up by making a motion to eliminate the order creating a schedule of visits, or seek a protective order clarifying that Gregory has a continuing right to veto any proposed visit with his father. Perhaps the attorney is engaging in 'best interests' advocacy rather than "client's wishes" advocacy. But if that is the case, then Gregory has been left without an attorney to advocate for what he wants."

She added: "It appears that the co-conservators believe that Gregory lacks the capacity to make social decisions. The argument seems to be based on the notion that a person must be able to make well informed decisions in order to have a capacity for social decision making. Such an argument overstates the role of intelligence and cognitive judgments in social decisions."

Explaining that further, she stated: "We are not talking about the capacity for entering into contracts, making medical decisions, engaging in sexual relations, or whether someone will marry or not. These are more difficult decisions and ones that may have consequences, not only on the conservatee, but on others, as well as on society. In contrast, a decision to visit someone or not, or to engage in conversation with them, or to participate in recreational activities with them, is quite a different matter."

She further explained: "Social decisions, such as these, are premised largely on subjective emotional choices. They are usually determined by likes and dislikes. An adult with autism knows whether he likes cartoons or cowboy movies or not. He knows whether he likes to walk in the park or go bowling or not. He knows whether he feels good or bad when he is in the presence of a particular person. He is the definitive expert when it comes to his own feelings, his likes and dislikes. It takes very little capacity to make such choices."

The letter contains further explanation of the harm that is done to someone with a developmental disability by being forced to socialize with and be with someone when they do not want to.

February 24, 2014 – Declaration of Westside Regional Center (Exhibit D-20)

William Feeman is the Director of Client Services at Westside Regional Center (WRC). Paragraph 3 states: "In accordance with Probate Code section 1827.5, WRC still strongly recommends against granting the Limited Conservators power over Gregory Demer's social and sexual contacts and relationships."

Paragraph 4 states: "There have been no changes between the present and August 2, 2012, which would justify the issuance of the requested powers. Gregory has a supported living program. He

lives in his own apartment and has staff with him twenty-four hours a day. He works, volunteers, recreates and generally manages his life without difficulty. He has shown no behavior or tendency that would require the intercession or protection of a conservator in relation to his social and sexual contacts and relationships."

Paragraph 6 states: "With the services that are available to him and the support he has from his staff, his family and Westside Regional Center, there is no reason to take away Greg Demer's right to control his own social and sexual relationships. It is respectfully submitted that removing that right would deprive Mr. Demer of the rights to which he is entitled under the Lanterman Act."

April 2, 2014 – Letter of Laurie Coles (Exhibit D-21)

Laurie Coles has known Greg for many years. She has spent time with him in class at West Los Angeles College. She has shared time with him in social settings. She wrote: "My opinion of Greg is this: if he likes you, you will have his full attention. It is very clear that he knows what he wants from you: respect and kindness. We all need our own space, and the right people we want to be around. Greg has every right to decided (sic) who he wants to share his life with. He is conscious about who he is as a person with challenges of his own. Taking away his right to do so is not ever right. Therefore, such course of action undermines Greg and the decisions he feels he needs to make for himself." (This letter was sent to Ms. Maillian by Mr. Coleman.)

April 3, 2014 – Letter of Matthew Bertoni (Exhibit C, p. 47)

Matthew Bertoni, who has known Greg for 13 years, wrote a passionate letter on behalf of Greg, noting that Greg's case "could set a precedent for how thousands of autistic people are treated in the future as they attempt to be successful and contributing members of society." He added: "In order to be a contributing member of society one needs to be taken seriously as a member of society. This means not undermining the rights of autistic people – In Greg's case, the court ruling that he must reconnect with his father."

Commenting further about Greg's distress with his father, Mr. Bertoni continued: "You'll also discover that his father is never one of his favorite topics of conversation – and when he does speak about his father, there is much worry and fear in Greg's voice and overall demeanor. This is not a result of others pressuring Greg to feel fear towards his father, which is virtually impossible for an autistic person to fake, but because the father has simply earned a place in Greg's mind as a stressful stimulus." (This letter was sent to Ms. Maillian by Mr. Coleman.)

April 5, 2014 – Letter of Lillian White (Exhibit C, p. 45)

Lillian White is a recently retired special education teacher who has had interactions and experiences with Greg over the course of several years. She stated: "I have observed him in many situations both within the school setting and without and found him to be able to clearly articulate his needs and

desires." She continued: "He is able to determine for himself and express clearly his preferences for participating in particular social settings. These should be respected."

She added: "It is my firm belief that Greg should be able to exercise the right to determine for himself the individuals with whom he wishes to interact. He should be allowed the freedom to express his needs and desires and his wishes should be respected to the degree that there is no harm to himself or others." (This letter was sent to Ms. Maillian by Mr. Coleman.)

April 6, 2014 – Letter of Janet Fox (Exhibit C, p. 46)

Janet Fox, who has observed Greg in social, religious, and employment settings over the years, stated: "I have known Greg since he was a child. I have watched his growth over the years, and find him a caring, loving, and courteous young man. I've seen Greg at work the 'Spitfire' restaurant at the Santa Monica Airport, and he has volunteered at the church I attend doing office work." She concluded: "Finally, I feel that taking over his social rights, controlling his decisions of how to spend his free time and with whom, very disagreeable. Greg needs freedom to live his own life without extraordinary controls." (This letter was sent to Ms. Maillian by Mr. Coleman.)

April 7, 2014 – Letter of Very Rev. Canon James A. Newman II (Exhibit C, p. 44)

Rev. Newman has known Greg for over 20 years. He has had extensive experience observing and interacting with Greg in social and other activities. Referring to Greg's interactions with family members, Rev. Newman stated: "I think that he needs to be able to express his wishes in this and other areas." He added: "I have not known Greg to have made poor choices or to associate with undesirable people."

Rev. Newman's letter concluded with the following remarks: "I would hope that the court would use its power to continue to give Greg as much latitude in his decision making as possible. I would personally hope that Greg have relationships with all members of his family – but that those relationships be of his own choice. To limit his freedoms in such basic decisions as this is to offer hime (sic) less of a range of hope which is so essential to every human being." (This letter was sent to Ms. Maillian by Mr. Coleman.)

April 19, 2014 – Letter of Linda Cotterman (former conservator) (Exhibit C, p. 39)

The letter of Linda Cotterman, who served as Greg's conservator from August 2009 to November 2012, contains numerous statements about Greg's ability to make his own social decisions and to create a responsible schedule of activities for himself. The four-page letter contains detailed explanations of Greg's abilities in this regard, based on observations of Ms. Cotterman over a three year period of time. It concludes: "In my opinion, Greg expresses his social preferences very adequately and should retain the right to make his own social decisions." (This letter was sent to Ms. Maillian by Mr. Coleman.)

In 2011, PVP Attorney, Paul Gaulke, took the position that "Ms. Cotterman has always acted in the best interest of the Conservatee to make sure that he is properly cared for and maintains a healthy

social life." (p. 9 of Joint Trial Statement) The Joint Trial Statement was submitted to the court in September 2011, by attorneys for: Gregory Demer, conservatee; Linda Cotterman, limited conservator; Linda Demer, objector, and Daniel Rodarte, objector. Greg's father, Joseph Demer, refused to participate in the preparation of the Joint Trial Statement.

April 19, 2014 – Letter of Andrew Lewis (Exhibit D-22)

Andrew Lewis met Greg through a mutual friend. He has known Greg for several years. He started his letter by stating: "In short, I am a firm believer that he has the ability to make his own positive choices about which people he spends time with, the activities he would like to do, and when he would like to socialize. In those years, I have never once seen any harmful decision making on his part, and based on the time I've spent with Greg I also believe him capable of making good decisions in the future."

After giving a few examples of social settings in which he has observed Greg, Mr. Lewis added: "On the one hand I'm very happy for Greg, because I've seen for myself how well he has been doing over the years, but on the other I am deeply concerned by the idea that his social rights could be taken away. I don't believe that would be the right choice based on the evidence I have, which is why I write you this letter as his personal friend."

April 25, 2014 – Declaration of Dr. Linda Demer (Exhibit D-23)

Dr. Linda Demer is Gregory's mother. She filed a declaration in response to the amended petition filed by the conservators to control Gregory's social contacts and relationships. In that declaration she made the following statements.

"I whole heartedly support Mr. Demer having a good relationship with his father. I believe the right way – and the only effective way – to achieve this is to empower Mr. Demer with control over: how visitation occurs, whether he can bring support staff, and when he can go back to his apartment. The Conservators have seen, first-hand, how effective empowerment is in Mr. Demer's ability to overcome fear and resistance. In visitation with me, I have always empowered Mr. Demer to decide whether or not to visit."

"The amended petition purports to seek 'shared' authority with Mr. Demer. However, it includes a provision giving the co-conservators veto power. Hence, in effect, it is a petition to remove – not share – Mr. Demer's social rights."

"I am informed and believe that Mr. Demer's attorney has received copies of letters from people who have known Mr. Demer for many years. I understand that the writers explain that, in their opinion, based on their observations, Mr. Demer has not made poor social decisions and should retain his right to make social decisions. I understand that Mr. Demer is entitled to legal counsel who will advocate for his stated wishes and his Constitutional and statutory rights to make his own social decisions. If Mr. Demer's current court-appointed attorney will hear him, advocate for his rights, and provide effective assistance of counsel, my involvement in the proceedings will be unnecessary."

April 28 2014 – Court Transcript (Exhibit B-3)

Greg made the following statements about his rights:

"Your honor, I have to – my name is Greg. I have the right to speak up for myself and say no my dad." (p. 2) "Dad, I don't want to be with you, and I want to be with mom, and I want to keep myself independent." (p. 2) Speaking to the judge, Greg said: "I need my rights protected, sir." (p. 11)

At this point in the proceedings, the judge called Greg and his attorney into chambers, where Greg was examined by his attorney at length. (p. 15-26) No other parties were present.

Before the questioning began, Greg he spoke up and stated: "So, if you please, I would like to remind you, I would like to have myself independent with a chance." (p. 15) Greg replied "yes" when his attorney asked him: "And you've told me that you want to be independent, is that right?" (p. 15)

His attorney also asked: "Have you told me anything else about how you want to spend you time?" Greg replied: "I want to spend my time with mom. And I want to have fun with mom." His attorney also asked: "And do you want to spend time with your dad?" He replied: "No." The attorney continued: "Why don't you want to spend time with your dad?" He replied: I don't want to spend time with my dad because he is scary?" (p. 16)

Later Greg added: "I want to tell you, I have the right to say no to my dad, and I have the right to blow the whistle and say back off to dad." (p. 18)

Referring to when his dad comes to his apartment, Greg stated: "I just keep my apartment door all locked and latched, so I just blow my whistle so dad won't come in." (p. 18) His attorney asked him when the last time was he would not let his dad into his apartment and Greg replied that it was on last Saturday, adding: "What really happened was, he tried to come in, and he tried to play tricks on me, and I have the right not to open the door." (p. 19)

The attorney then probed to see if Greg was coached to say these things, asking: "And did anybody tell you to tell me and judge about this?" Greg replied that nobody told him what to say. (p. 19) The attorney then examined him, as if he was a hostile witness, trying to get him to say that he enjoyed being with his dad. After a barrage of questions asked and pictures shown to him, Greg admitted that on Easter he had fun for a short time but that he got bored. (p. 20-22)

The attorney asked Greg if he liked Lee Ann Hitchman (a co-conservator). He said yes. She asked if he liked talking to her. Greg said: "I like telling her that I am not going to see dad anymore, so I have the right to say back off as well." (p. 26)

When the court and Greg and his attorney returned to the courtroom from chambers, the court asked the parties if there was any other evidence anyone wanted to present before the court made its ruling on the petition. (p. 29) At this point, hearing the word "ruling," Greg addressed the court and stated: "If you please, sir, I make the – if you please, I will make the rules now. The rules are, I'm not going to see my dad, and I want to see mom and have fun with mom. And I want to have myself independent so I can just have my chance and see mom."

May 29, 2014 – Handwritten Note by Gregory Demer (Exhibit D-24)

The note, which was signed by him, stated: "I just don't like being with Dad and Melissa. I don't like the judge's decision. I have the right to say no. Help me."

May 4, 2015 – Handwritten Note by Gregory Demer (Exhibit D-25)

The note, which was signed by him, stated: "Dear Tom, I will have my rights with myself. Please help me get a new attorney."

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Court Appointed Counsel for
GREGORY R. DEMER, Limited Conservatee

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - WEST DISTRICT

In the Matter of the Limited Conservatorship of GREGORY R. DEMER, Limited Conservatee.	CASE NO. SP006273 **ORDER ON PETITION FOR INSTRUCTIONS RE ADMINISTRATION OF THE LIMITED CONSERVATORSHIP OF THE PERSON OF GREGORY R. DEMER, LIMITED CONSERVATEE** Hearing: Date: 11/7/11 Time: 8:30 AM Dept: O

The Petition for Instructions re Administration of the Limited Conservatorship of the Person of Gregory R. Demer, Limited Conservatee, filed by Court Appointed Counsel for the Limited Conservatee, Paul T. Gaulke, Esq. ("PVP Attorney"), came on regularly for hearing on November 7, 2011 at 8:30 a.m. in Department WE-"O" of the above entitled court located at 1725 Main Street, Santa Monica, California 90401, the Honorable John L. Segal, Judge presiding. Present at the hearing were one of the two proposed Successor Co-Conservators, Bruce Hitchman, represented by Cynthia R. Pollock; Paul T. Gaulke, of the Offices of Hromadka & Gaulke, representing the Conservatee Gregory R. Demer (the "Conservatee"), who was also present; Linda L. Demer, M.D. Ph.D., mother of the Conservatee, represented by Daniel D. Rodarte; and Joseph L. Demer M.D. Ph.D., father of the Conservatee and Petitioner in Pro Per. Also present at the

hearing was the Court appointed Evidence Code Section 730 expert, Thomas E. Beltran of the Law Offices of Thomas E. Beltran.

The Court having found that proper notice of the time and place of the hearing has been given as required by law, and after reviewing and having heard the evidence presented by the parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Successor Co-Conservators of the Limited Conservatorship of the Person of Gregory R. Demer are to comply with the July 2, 2009 Order with respect to the removal of My Life Foundation as a vendor and care service provider for the Limited Conservatee Gregory R. Demer;

2. The Successor Co-Conservators of the Limited Conservatorship of the Person of Gregory R. Demer shall retain a successor supported living services vendor for the Limited Conservatee Gregory R. Demer, specifically a supported living services vender that has not previously cared for the Limited Conservatee, including personal care individuals, within sixty (60) days from the issuance of Letters of Administration to the Successor Co-Conservators;

3 The parents of the Limited Conservatee Gregory R. Demer, namely Joseph L. Demer, M.D., Ph.D. and Linda L. Demer, M.D., Ph.D., shall have a designated visitation schedule with the Limited Conservatee Gregory R. Demer, commencing at the time that Letters of Administration are issued to the Successor Co-Conservators as follows:

a. The first weekend, Saturday and Sunday only, shall be designated to the Limited Conservatee Gregory R. Demer, in which he shall have ~~sole and complete~~ control of decision-making on how that weekend shall be spent by him;

b. The second weekend, Saturday and Sunday only, shall be designated to Joseph L. Demer, M.D., Ph.D., in which Joseph L. Demer, M.D., Ph.D. shall have ~~sole and complete~~ control of decision-making on how that weekend visitation, if any, will be spent with the Limited Conservatee Gregory R. Demer. The Limited Conservatee, Gregory R. Demer, may elect an overnight stay with Joseph L. Demer, M.D., Ph.D.'s at Joseph L. Demer, M.D., Ph.D.'s home or elsewhere;

c. The third weekend, Saturday and Sunday only, shall be designated to Linda L. Demer, M.D., Ph.D., in which Linda L. Demer, M.D., Ph.D. shall have ~~sole and complete~~ control of decision-making on how that weekend visitation, if any, will be spent with the Limited Conservatee Gregory R. Demer. The Limited Conservatee, Gregory R. Demer, may elect an overnight stay with Linda L. Demer, M.D., Ph.D.'s at Linda L. Demer, M.D., Ph.D.'s home or elsewhere;

d. Upon the conclusion of the third week, the rotation of visitation shall commence again, beginning with the Limited Conservatee Gregory R. Demer's personal weekend, followed by Joseph L. Demer, M.D., Ph.D.'s weekend, and concluding with Linda L. Demer, M.D., Ph.D.'s weekend, and such visitation designation shall remain ongoing until ordered otherwise by the Court;

4. The Limited Conservatee Gregory R. Demer's ~~continuing~~ reunification therapy with Bruce M. Gale, Ph.D. is ~~denied~~ without prejudice;

5. All costs of living, pertaining to the Limited Conservatee, including but not limited to housing, utilities, clothing, food, and care not paid for by a government or public agency, shall be borne equally by the Limited Conservatee Gregory R. Demer's parents, namely Joseph L. Demer, M.D., Ph.D. and Linda L. Demer, M.D., Ph.D.

6. All records, pertaining to the Limited Conservatee Gregory R. Demer, including but not limited to medical, financial, and personal, shall be furnished by the Successor Co-Conservators to the parents of the Limited Conservatee Gregory R. Demer, namely Joseph L. Demer, M.D., Ph.D. and Linda L. Demer, M.D., Ph.D., pursuant to the terms of the July 2, 2009 Order of this Court;

7. All notices, pertaining to the administration of the Limited Conservatorship of the Person of Gregory R. Demer, by the Successor Co-Conservators shall be made in accordance with the terms of the July 2, 2009 Order of this Court.

8. The provisions of this Order shall supercede previous Orders entered by this Court, concerning the issues set forth herein.

9. Thomas E. Beltran, Esq. shall remain as Court Appointed Evidence Code Section

730 expert for sixty (60) days from the date Letters of Administration are issued to the Successor Co-Conservators of the Limited Conservatorship of the Person of Gregory R. Demer to assist and counsel the Successor Co-Conservators during this transition period. Upon the sixtieth day, Thomas E. Beltran, Esq. shall be discharged, with the Court's appreciation.

Dated: 11/16/11

JUDGE OF THE SUPERIOR COURT

JOHN L. SEGAL

LAW OFFICE OF CYNTHIA R. POLLOCK
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Attorney for Bruce Hitchman and Lee Ann Hitchman, Co-conservators

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In re the Matter of the Conservatorship of the Person and Estate of GREGORY DEMER, Conservatee	Case No. SP 006273 ORDER AFTER HEARING ON PETITION TO CLARIFY FEBRUARY 24, 2012 ORDER Date: March 9, 2012 Time: 8:30 a.m. Dept.: N Judge: The Honorable Craig D. Karlan

PLEASE TAKE NOTICE that on Friday, March 9, 2012 at 9:00 a.m., in the above-referenced matter was duly called for hearing, by the Honorable Craig D. Karlan, Judge, in Department N of the Los Angeles County Superior Court, Northwest Branch.

The appearances were as follows: Jeffrey A. Kiburtz, Esq., Shapiro, Rodarte & Forman LLP, for the applicant and nonparty, My Life Foundation. Paul T. Gaulke, Esq., PVP attorney for Gregory Demer, Cynthia R. Pollock, Esq. For Limited Co-Conservators of the Person of Gregory Demer, Daniel D. Rodarte, Esq., for and with Dr. Linda Demer, and Dr. Joseph Demer, in pro per.

This ex parte petition was brought by counsel for My Life Foundation to clarify the order rendered by the Court February 24, 2012. All of the above persons were also in attendance February 24, 2012. The following persons attended the February 24, 2012 hearing, but were

unable to attend the March 9, 2012 hearing: Tim De Haven and Jim De Haven of My Life Foundation, Bruce Hitchman, of Hitchman Fiduciaries, although both of these parties were representation by counsel, and Thomas Beltran, Esq., Court appointed expert was also unable to attend.

The Court requested that the orders from February 24, 2012 and March 9, 2012 be consolidated into one order. Such matters are consolidated herein:

Good cause appearing, the Court orders the following:

IT IS ORDERED that: CAK

1. The father has a continued right to visit the Limited Conservatee, Gregory Demer at 8:30 a.m. on Sundays. As necessary, the Limited Conservatee's caregivers should utilize prompting and redirection to assure that the Limited Conservatee is available, at his apartment, to be picked-up by the parent with scheduled visitation for a particular day.

2. If the Limited Conservatee insists upon leaving his apartment prior to scheduled visitation with a parent, the Limited Conservatee's caregivers should ~~then follow the Limited Conservatee and~~ advise the parent with scheduled visitation by cell phone, on an on-going basis, of Limited Conservatee's location to allow and facilitate pick up.

3. ~~My Life Foundation will remain Gregory's vendor,~~ Reconsideration of My Life Foundation as Gregory's vendor is to be stayed for sixty (60) days from the original hearing date of February 24, 2012. During this time, Co-conservators or any other party have an opportunity to file a petition to clarify, modify or amend the 2009 Order. Such petition shall not be filled ex parte, but may be filed on shortened time as permitted by the Court. Such petition must be filed no later than May 4, 2012. DURING THIS STAY, MY LIFE FOUNDATION SHALL REMAIN GREGORY'S VENDOR. CAK

4. The stay with respect to reconsideration of My Life Foundation as Gregory's vendor will continue upon the filing of a petition to clarify, modify or amend the 2009 Order, until further order of the Court. If no petition is filed, the 2009 orders with respect to Gregory's caregivers and/or My Life Foundation will remain in effect. AFTER HEARING ON THIS PETITION. CAK THE STAY SHALL BE LIFTED AND THE CURRENT CONSERVATOR SHALL HAVE 30 DAYS TO COMPLY THEREWITH. CAK

5. Gregory is to be assessed by an appropriate psychiatrist/psychologist related solely to

the issue of the impact on Gregory if My Life Foundation is replaced by another vendor. Selection of such professional shall be by the parents by mutual determination, provided however, if the parents fail to agree by March 18, 2012, the appropriate psychiatrist/psychologist will be chosen by Paul T. Gaulke, Esq. and Thomas Beltran, Esq. on March 19, 2012.

GREGORY'S DESIRE(S) SHALL BE TAKEN INTO CONSIDERATION. 6. AS PER THE 2009 STIPULATION AND ORDER, CDK

APPROVED AS TO FORM AND CONTENT: "VIOLET" SHALL NOT BE INVOLVED WITH GREGORY'S CARE. CDK

SHAPIRO, RODARTE & FORMAN, LLP	HROMADKA & GAULKE
By:_____ Jeffrey A. Kiburtz, Esquire Attorney for My Life Foundation	By:_____ Paul T. Gaulke, Esquire PVP Attorney for Gregory Demer
LAW OFFICE OF DANIEL D. RODARTE	DR. JOSEPH DEMER, FATHER
By:_____ Daniel D. Rodarte, Esquire Attorney for Linda Demer	By:_____ Joseph Demer In Pro Per

IT IS SO ORDERED:

4.17.12
Date

THE HONORABLE CRAIG D. KARLAN
Los Angeles Superior Court Judge

CRAIG D. KARLAN

LAW OFFICE OF CYNTHIA R. POLLOCK
Cynthia R. Pollock; SBN: 153298*
Haroun R. Nabhan; SBN: 272273
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Attorneys for Lee Ann Hitchman and Bruce A. Hitchman,
Limited Co-Conservators

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In the Matter of the Limited Conservatorship of the Person of: GREGORY R. DEMER, Limited Conservatee.	Case No. SP006273 ORDER ON AMENDED PETITION FOR AUTHORITY TO CONTROL LIMITED CONSERVATEE'S SOCIAL AND SEXUAL CONTACTS AND RELATIONSHIPS [Prob. C. §1801(d) and 2351.5] Date: April 28, 2014 Time: 8:30 a.m. Dept: 29 Judge: Daniel S. Murphy

Petitioners, Lee Ann H. Hitchman and Bruce A. Hitchman, as Limited Co-Conservators of the Person of Gregory R. Demer having filed their Amended Petition for Authority to Control Limited Conservatee's Social and Sexual Contacts and Relationships, and the matter coming on regularly for hearing on April 28, 2014, in Department 29 of the above-entitled Court, the Honorable Daniel S. Murphy, Los Angeles Superior Court Judge, presiding. Petitioner, Lee Ann Hitchman, appeared with her attorney, Cynthia R. Pollock, Esquire. Other appearances were as follows:

Gregory Demer	Limited Conservatee
LeAnne E. Maillian, Esquire	PVP attorney for Gregory Demer
Dr. Linda Demer	Mother of Gregory Demer
Dr. Joseph Demer	Father of Gregory Demer
Julie Ocheltree, Esquire	Attorney for Regional Center

Charlene Williams	Case Worker for Regional Center
Eric R. Adler, Esquire	Co-Counsel for Lee Anne Hitchman and Bruce Hitchman
William Sias, Esquire	Deputy County Counsel for Public Guardian

The Court issued a tentative ruling and, there were no objections thereto.

THE COURT FINDS that:

1. Notice of said hearing was given to all interested parties as prescribed by law.

2. Limited Conservatee is susceptible to coercion and undue influence.

3. Authorizing Limited Conservatee to make joint decisions with the Co-Conservators would unfairly put Conservatee in the middle of matters he lacks the maturity and ability to handle.

4. It is in the best interest of Limited Conservatee, Gregory Demer, to grant the Co-Conservators sole authority to make decisions regarding the Limited Conservatee's social and sexual contacts and relations.

THEREFORE IT IS ORDERED THAT:

1. Lee Ann Hitchman and Bruce A. Hitchman, as Limited Co-Conservators, are granted the sole authority to make decisions, regarding Gregory Demer's social and sexual contacts and relationships, pursuant to Probate Code §2351.5(b)(6);

2. Co-Conservators are to take into consideration prior visitation stipulations and orders; and

/// DATED: MAY 12 2014 DANIEL S. MURPHY

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Abuse Awareness by Attorneys, Investigators, and Judges

What We Can Learn from One Case

Official participants in the limited conservatorship process should be engaged in the administration of "trauma informed justice." A trauma-informed approach to the processing of limited conservatorship cases takes into account, at every stage of the procedure, a very inconvenient truth – a majority of people with developmental disabilities are victims of abuse.

By the time someone with a developmental disability has reached the age of 18, it is not only possible, but probable, that he or she has been a victim of abuse. People with disabilities are 3 to 4 times more likely to be abuse victims than their age-peers in the general population.

Abuse takes many forms. It may be physical, sexual, or emotional. Abuse scars its victims and subjects them to the prospect of recurring trauma.

Another unpleasant fact concerns the identification of likely perpetrators of abuse. Abusers are generally not strangers. They are people close to the victim – a parent, relative, household member, service provider, or someone else in the victim's circle of support. It is important for attorneys, court personnel, and judges to be mindful of this disturbing reality. It cannot be assumed that all parents and family members are protectors of people with disabilities. Sometimes they are abusers. Once abuse starts, and the perpetrator has ongoing access to the victim – especially in situations without observation or monitoring – the abuse may continue for months or years.

It is crucial for people in positions of authority, who are supposed to be protecting limited conservatees, to be aware of the signs and symptoms of abuse. Statements by victims are one sign, but they are worthless if the victim is not believed or the statements are summarily dismissed. Perplexing changes in the victim's mood or behavior is another crucial sign that abuse may be occurring. When either one of these signs occurs – verbal statements of not wanting to go with someone, or changes in mood or behavior – a report should be made to the proper authorities. But when both are happening, the need for a prompt investigation is even more imperative.

In the instant case, there were recurring statements of fear by Gregory. He told school personnel, service providers, lawyers, and even the judges who presided in his case. The statements of fear occurred over a period of years. And the response? They were ignored or dismissed. There were obvious changes in mood and behavior. This was observed by school personnel and was reported to the court investigator. The judge presumably read the investigator's report as did the PVP attorney. And the response? The problem was ignored or dismissed.

Then there were instances of non-verbal protestations. Gregory would leave his house prior to the arrival of his father for a mandatory visit. And the response? It was not ignored. It resulted in another court order to use the support staff as enforcers of the coercive judicial decree. They were

ordered to "prompt and redirect" him and follow him if necessary so he could be delivered to his father for the visit he was trying to avoid.

Gregory would then lock the door to his apartment and blow a whistle as a sign of protest. And the response? He would be forced to go on the visit anyway.

Gregory would ask that a support staff person accompany him on his unwanted visit. And the response? They were ordered by the father to "back off" and were not permitted to go with Gregory.

At various court appearances, Gregory would tell the judge and everyone present in court that he had the right to say "no" to his father. He stated, over and over, and in various ways, that he did not want to visit his father. And the response? The PVP attorney that did half-baked advocacy for Gregory was removed from the case, despite the fact that a social rights hearing was pending. Gregory was left to fend for himself without an attorney. Gregory protested and asked for another attorney. And the response? He was assigned an attorney who disbelieved him and who advocated that he be deprived of his right to refuse visits with his father.

Things might have turned out differently had the attorneys, court investigators, and judges received training on the prevalence of abuse of people with developmental disabilities, awareness of signs and symptoms of suspected abuse, and the need for prompt reporting. Our investigation of the limited conservatorship system in Los Angeles has revealed that such training has not occurred for judges, investigators, or PVP attorneys. This must be corrected, and corrected as soon as possible.

Whether Gregory was in fact abused or not is beyond the scope of this case study. That is for others to determine. But the signs and symptoms of possible abuse cannot be denied.

The issue of abuse could have been avoided had the attorneys and judges respected Gregory's right to make his own social decisions. But as the Westside Regional Center said in a declaration, the court succumbed to the desire of a parent and the conservators to use the power of the government to force an adult with developmental disabilities to do what he instinctively resisted. Gregory knows what he likes and dislikes. He knows who he wants to spend time with and who he wants to avoid. It takes very little "capacity" to make these emotionally-based decisions. Gregory has such capacity, regardless of whether his attorneys and the various judges who have presided over his case want to believe this or not. They should not disregard his request because he has a disability. To demean the validity of his verbal request because of his disability is inhumane and illegal.

We will leave it to the readers of this report to decide for themselves whether justice has been served in this case. Now that this report is in the public arena, it is time for the public to judge the judges.

Perhaps in the future, whether it is in this case or other limited conservatorship proceedings, judges and lawyers will use their newly acquired abuse awareness to administer trauma informed justice. If so, Gregory and others like him, will be allowed to live their lives "misery-free." That should not be asking too much.

– Thomas F. Coleman
"Next Friend" of Gregory Demer

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?

Dr. Baladerian refers to a study by her Canadian colleague, Dr. Dick Sobsey, whose research found that people with developmental disabilities (adults and children) are 4 to 10 times more likely to be victims of abuse than the generic population.

Other studies cited by The Arc of the United States confirm these high rates of abuse for children with disabilities, especially children with developmental disabilities. (Davis, Abuse of Children with Intellectual Disabilities.)

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 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 household members.

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.

Perhaps 20 percent of generic children are victims of child abuse. Children with developmental disabilities are at least 3.4 times more likely to be victims than the generic child population. Do the math. A large majority of prospective limited conservatees may have been victims of sexual abuse.

Add to that the other forms of abuse, such as physical or emotional abuse. Then, just to be conservative, subtract a few percentage points. We still end up with 60 percent or more of prospective limited conservatees who may have been victims of abuse.

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 majority of would be conservators may have perpetrated abuse against the people whose life they are seeking to control in adulthood. 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 polices 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 attorneys 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.

Recognition of a Pattern, Call for a Response: A "Rule Out Abuse Campaign" for Physicians (Part 1)

by Nora J. Baladerian, Ph.D.

Over the past 20+ years working with children and adults with intellectual and developmental disabilities who have been victims of abuse, I have noticed a consistent and clear problem: the parents are confused by and concerned with the onset of a constellation of new moods, behaviors, regression or loss of language skills completely different from their child's prior psychological and developmental presentation. Prior state of well-being is absent. There is no identifiable cause. Part II includes statistics showing high rates of disability-abuse. (Click here)

They may take their concerns to their physician (pediatrician, neurologist, psychiatrist). The practitioner, focused on the disability, does not rule out or identify abuse as a possible cause. Yet, the signs and symptoms presented by he parents are those included in lists of "typical signs of abuse." I believe these practitioners, so focused on the disability "forget" that children are vulnerable to child abuse, and adults are vulnerable to dependent adult abuse.

I propose a "RULE OUT ABUSE CAMPAIGN" to urge practitioners to put abuse (back) on their list of possible causes to rule out when asked to examine children or adults with intellectual and developmental disabilities when significant changes occur.

PROBLEM TO BE SOLVED: failure to recognize signs of abuse

Typically a distinct change has occurred in the individual including new fears, regression in previously achieved developmental milestones, new difficulties in communication and mood changes, such as tearfulness/crying and/or anger and aggression and loss of interest in activities previously enjoyed. They live in distress rather than the prior state of well-being.

The parents inform their health care practitioner that they have asked the teachers and aides at the program (school, day program) their child attends, where they are assured that all is well. The parents have not been warned or prepared to know that such persons *may be* lying to them (for their own self-preservation). Further, in the cases in which I have been involved, the administration of the school/program has made efforts to keep the abuse a secret and conspire to protect their staff rather than the students or participants of their programs. It could be a camp, church, or other place frequented by the child. The individual with a disability may be a child or an adult. If an adult, the same pattern described above may emerge while the adult is attending a day program, working, participating in a social experience or residing in a licensed residential program or facility.

The parents, confused and frightened, take the child/adult to their physician at the local Children's Hospital, HMO or private practice. In addition they may seek help from a mental health specialist such as a psychiatrist, psychologist or social worker.

In my experience with dozens of families, none of these practitioners, although specializing in working with individuals with intellectual and developmental disabilities, has identified abuse as a possible cause of the symptoms pattern that, frankly, screams abuse. It appears that abuse is not on their list of contributors or conditions to rule out. Why not? Or better, how can it be quickly added? (continued)

Online at: www.disabilityandabuse.org/rule-out-abuse-physicians.pdf

PROPOSED SOLUTION: Health Care Professionals

(1) The major organizations for licensed health care professionals serving children and adults with intellectual and developmental disabilities should issue a bulletin that describes the current knowledge on the incidence and prevalence of abuse of children and adults with disabilities. The bulletin should include a list of typical changes in abuse victims, including how these may manifest in children/adults with I/DD and other disabilities. The bulletin should encourage practitioners to include in their assessments of presenting problems, the practice to rule out abuse as a possible cause of the changes, and comply with the laws in their state for mandated reporting of suspected abuse.

(2) Physicians should advise the parents of signs of abuse and mandatory reporting laws. For example, California law states: "Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, may make a report to an agency specified in Section 11165.9. (Cal. Penal Code § 11166.05)

(3) The health practitioner should also recommend or authorize a two-week release from school/day program to check for any reduction in symptoms during this holiday from school (like a medical holiday). This allows time for the law enforcement agency to conduct its investigation, and time for the child/adult to be free from a possible source of trauma/abuse.

(4) Referral for mental health trauma treatment for the patient should be made. A similar referral for the parents and other family members is also recommended. (Some reviewers of this document suggested that I include Munchausen's or Munchausen's by proxy. While such conditions do exist, they are tiny in number, and this may be a good recommendation. However, most Munchausen's patients (abusers) would not, with their family members, demonstrate the same depression, anxiety, secondary trauma in the way the parents of the victims I have served have done. The parents with whom I have worked are open, and any record, any inquiry is welcomed.)

These recommendations apply to all professionals to whom parents turn for support and intervention for children with disabilities.

(5) I also recommend that the listed professionals (and others) change their curricula to add a course of training on abuse of individuals with I/DD for those currently completing their education to become qualified to practice in their field; a course for those who are in preparation for becoming licensed, and those who are already licensed and will be renewing that license.

This should be made mandatory. While I realize that making anything mandatory may require changes in legislation and policy both by the state and the regulatory agencies, as well as among the University and other entities, it should be done.

Too many people are suffering for too long while the perpetrators continue to abuse and/or protect the abusers. And those to whom the parents turn may be unaware, or are seemingly unaware, that abuse is a *likely* contributor and certainly one that matches, in whole or in part, the list of symptoms recited to them by the parents and guardians.

Part 2 contains details on symptoms and other scientific information. Part 2 is found online: http://disabilityandabuse.org/rule-out-abuse-physicians-2.pdf

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Rule Out Abuse Campaign Part 2

Specific suggestions for addressing the reason for the Rule Out Campaign are grounded in the research on abuse of children and adults with intellectual and developmental disabilities. Part 2 includes citations to the research. Part 2 was designed to include a "quick look" at signs and symptoms for health practitioners, and provide a quick look at contributing factors such as trauma and the ACE Study.

This second part also allows for a brief comment responding to questions that have arisen regarding suspecting the parents of child abuse. While it is true that a large percentage of abusers are family members, it is also true that an apparently growing number of abuse cases occur without the knowledge of the parents while their children are attending school, supportive therapy sessions, on the school bus, or for older children or adults, attending state-supported day or work programs, or participating in Independent Living Skills programs or residences. The Rule Out Abuse Campaign began with a focus on these cases, where the parents are blindsided by the changes in their children, and are at a loss to discern the reason for the signs and symptoms listed herein. And, when consulting with their physicians, found that they were baffled as well, and none suggested abuse as a possible contributor.

1. Statistics On Abuse Of Children And Adults With Disabilities

a. Children with disabilities are abused more than generic kids.

Research shows that children with disabilities are more vulnerable to abuse than their generic counterparts by a factor of 1.7 (Westat, 1991) or 3.4 (Sullivan et al 2000). Here are the numbers when you "Do the math."

All types of Child Abuse Girls 1 in 4	Boys 1 in 4
Sexual abuse Girls: 1 in 4 (sexual abuse) (25%)	Boys: 1 in 6 ((17%)
x 1.7 = 43%	x 1.7 = 28%
x 3.4 = 85%	**x 3.4 = 58%**

Sources:

1. Finkelhor D, Turner HA, Ormond R, Hamby SL. Violence, crime, and abuse exposure in a national sample of children and youth: an update. JAMA Pediatr 2013; 167(7):614-621. doi:10.1001/jamapediatrics.2013.42
2. 1.7 DHHS/NCCAN (Westat Inc., 1991)
3. 3.4 Boystown Research Hospital (Sullivan & Knutson, 2000)

According to American Humane Associates:

One million children abused annually. 50.7% girls, 47.3% boys.
8% of these are children with disabilities, who are abused at twice the rate of generic children.
2 x 50.7 = 101.4% 2x 47.3 = 94.6%
(http://www.americanhumane.org/children/stop-child-abuse/fact-sheets/child-abuse-and-neglect-statistics.html) downloaded 4/30/15.

b. Abuse of adults with disabilities:

- Annually abuse is reported among vulnerable adults, elders and children:
  - 5 million vulnerable adults
  - 2 million elders
  - 1 million children
- 2 million + 1 million = 3 million children/elders abused compared to 5 million adults with disabilities who are abused
- From this data, we can see that adults with disabilities are abused more than children and elders *combined.*

(Petersilia, 2000)
(NCPEA, 2013)
(NACC, n.d.)

2. Signs And Symptoms Of Abuse Among Children And Adults With I/DD

Signs vary among abuse victims. Here is a list of common signs. The essential sign is a change in the person.

Abuse that is not sexual in nature:
There has been a ***change*** in mood, conduct, and/or communication.

DEVELOPMENTAL
Regression from skills already mastered
New disabilities psychiatric, physical, sensory, communication or other.

BEHAVIOR
Eating, sleeping, dressing skills/preferences
Does not want to go to x location or with x person
Re-enacting/acting out what was done to him/her (replicating the assaultive act upon self or others)
Self-harm or mutilation
Self-injury

PHYSICAL
Clothes are changed, soiled or torn
Change in monthly menstruation
Diarrhea or constipation; enuresis or encopresis
Change in appetite, change in food preferences (food, texture)
Gain or loss of weight
Change in energy
New ailments: headaches, stomach ache, back ache, difficulty hearing, seeing, walking, etc. Include chest pain, heartburn, increased use of OTC's.
Bruising, petechiae, swelling or lack of use of an extremity, welts, burns, marks of objects, bite marks
Sweating, anxiety, dizziness, sense of panic

PSYCHOLOGICAL
Onset of new fears such as social anxiety, generalized anxiety, specific phobias
Depression and sadness, tearful, crying, inconsolable
Irritability, anger, easily frustrated

Withdrawal
Trouble thinking, concentrating, remembering
Somatization
Change in normal behavior & personality
Sleep disturbances
Needing to sleep with parents
Change in interest in normal activities
Difficulty learning
Angry, irritable, easily frustrated
Wanting to stay home
New phobias, terror of leaving the house or going to usual location (school, day program, church, work, etc.)
Episodes of lack of control, tantrums longer and inability of parents to communicate during tantrum w/ child

COMMUNICATION
Change in communication including selective mutism (when a previously verbal child stops talking after a trauma.)

Sexual Abuse:

BEHAVIOR:
A change in modesty, ranging from becoming overly concerned about their body to engaging in inappropriate sexual behaviors; Onset of increased sexualized conduct; Self-molestation (replicating assaultive act upon oneself)

PHYSICAL:
Genital pain, itching, discharge and bleeding; stomachaches, headaches and other physical complaints; Indications of a sexually transmitted disease (STD) – itching, burning, pain with urination/defecation; Change in monthly menstruation

PSYCHOLOGICAL:
Sleep disturbances, bed-wetting, new fears, and refusal to go to certain places or be with certain people. School problems, difficulties with peers, excessive crying, depression, clinginess, aggression or secretiveness. Other psychological changes include running away, drug or alcohol use, excessive day dreaming, isolating themselves.

COMMUNICATION:
New questions related to sex, the body, pregnancy, touching the body, photos or pornography. New problems are emerging regarding texting, being asked to take and send photos.

NO CHANGE:
Some may not demonstrate any type of change. Some offenders are able to groom children for abuse in a manner that makes the child feel comfortable, close to and even protective of the offender, while remaining unable to report or evade the abuse.

3. Signs Of Post-Traumatic Stress Disorder (PTSD) In DSM-5

Health practitioners should be aware of the changes in DSM-5 developed by Michael Scheeringa, M.D.

A challenge for the Diagnostic and Statistical Manual (DSM) taxonomy has always been to consider developmental differences in the expressions of disorders in different age groups. Research has suggested that individuals of different ages may express features of the same criteria somewhat differently. The Fifth Edition of the DSM (DSM-5) includes a new developmental subtype of PTSD called Post-traumatic Stress Disorder in preschool children. Since an alternative diagnostic set of criteria was initially proposed by Michael Scheeringa and Charles Zeanah (2), the criteria have been refined empirically (3,4), and endorsed by a task force of experts on early childhood mental health (5). Because young children have emerging abstract cognitive and verbal expression capacities, research has shown that the criteria need to be more behaviorally anchored and developmentally sensitive to detect PTSD in preschool children (2,13). The criterion that the children's reactions at the time of the traumatic events showed extreme distress has been deleted. The change to the re-experiencing symptoms is a relatively minor change in wording to increase face validity and, thereby, lower the symptom detection threshold. The major change was to require only one symptom in either the avoidance symptoms or negative alterations in cognitions and mood. The symptoms of "sense of a foreshortened future" and "inability to recall an important aspect of the event" were deleted. The wording of two symptoms was modified to enhance face validity and symptom detection. Diminished interest in significant activities may manifest as constricted play. Feelings of detachment or estrangement may be manifest more behaviorally as social withdrawal. The symptoms "irritability or outbursts of anger" was modified to include "extreme temper tantrums" to enhance face validity.

(Taken from: PTSD for Children 6 Years and Younger by Michael Scheeringa, M.D. Dr. Michael Scheeringa is the Remigio Gonzalez, MD Professor of Child Psychiatry, Tulane University School of Medicine, New Orleans, LA. (*References:* ***2.*** Scheeringa, M. S., Zeanah, C. H., Drell, M. J., & Larrieu, J. A. (1995). Two approaches to the diagnosis of posttraumatic stress disorder in infancy and early childhood. Journal of the American Academy of Child and Adolescent Psychiatry, 34 (2), 191-200. doi: 10.1097/00004583-199502000-00014; ***3.*** Scheeringa, M. S., Myers, L., Putnam, F. W., & Zeanah, C. H. (2012). Diagnosing PTSD in early childhood: an empirical assessment of four approaches. Journal of Traumatic Stress, 25 (4), 359-367; ***4.*** Scheeringa, M. S., Zeanah, C. H., Myers, L., & Putnam, F. W. (2003). New findings on alternative criteria for PTSD in preschool children. Journal of the American Academy of Child and Adolescent Psychiatry, 42 (5), 561-570. doi: 10.1097/01.CHI.0000046822.95464.14; ***5.*** Task Force on Research Diagnostic Criteria: Infancy and Preschool. (2003). Research diagnostic criteria for infants and preschool children: The process and empirical support. Journal of the American Academy of Child and Adolescent Psychiatry, 42, 1504-1512.)

4. Trauma-Informed Medicine

According to Substance Abuse and Mental Health Services Administration (SAMHSA), *individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.*

"In the U.S., 61% of men and 51% of women report exposure to at least one lifetime traumatic event, and in public behavioral health settings, 90% of clients have experienced trauma. Data suggests that … ignoring trauma can hinder recovery. All care — in all health settings — must address trauma in a safe and sensitive way in order to ensure the best possible health outcomes."

Providing care in a trauma informed manner will promote positive health outcomes. A trauma informed approach is defined by SAMHSA as "*a program, organization, or system that is trauma-informed realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization." Reference: http://www.integration.samhsa.gov/clinical-practice/trauma*

5. ACE: Adverse Childhood Experiences Study

Adverse Childhood Experiences Study, completed in 1999, demonstrated that such events contribute to later significant physical maladies. Thus it is essential when identifying childhood abuse to be vigilant to prevention efforts. The ACE study information can be found online at: http://www.cdc.gov/violenceprevention/acestudy.

The ACE Study is one of the largest investigations ever conducted to assess associations between childhood maltreatment and later-life health and well-being. The study is a collaboration between the Centers for Disease Control and Prevention and Kaiser Permanente's Health Appraisal Clinic in San Diego.

More than 17,000 Health Maintenance Organization (HMO) members undergoing a comprehensive physical examination chose to provide detailed information about their childhood experience of abuse, neglect, and family dysfunction. To date, more than 50 scientific articles have been published and more than100 conference and workshop presentations have been made.

The ACE Study findings suggest that certain experiences are major risk factors for the leading causes of illness and death as well as poor quality of life in the United States. It is critical to understand how some of the worst health and social problems in our nation can arise as a consequence of adverse childhood experiences. Realizing these connections is likely to improve efforts towards prevention and recovery. It is essential to include children with disabilities into an awareness of the impact of adverse child experiences on them.

6. References To Articles On Abuse Of Children And Adults With I/DD

1. Lancet. 2012 Sep 8;380(9845):899-907. doi: 10.1016/S0140-6736(12)60692-8. Epub 2012 Jul 12. Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies. Jones L1, Bellis MA, Wood S, Hughes K, McCoy E, Eckley L, Bates G, Mikton C, Shakespeare T, Officer A. http://www.ncbi.nlm.nih.gov/pubmed/22795511

2. Child Abuse & Neglect, Vol. 24, No. 10, pp. 1257–1273, 2000 Copyright © 2000 Elsevier Science Ltd. Printed in the USA. All rights reserved 0145-2134/00/$–see front matter; PII S0145-2134(00)00190-3, Maltreatment and Disabilities: A Population- Based Epidemiological Study; Patricia M. Sullivan Boys Town National Research Hospital, Omaha, NE, USA; John F. Knudson

3. Summaries from four reports Save the Children, Sexual abuse of children with disabilities. Docs-_22867-v1-sexual_abuse_of_disabled_children summaries_from_three_reports1_0.pdf

4. 2012 National Survey on Abuse of People with Disabilities, Disability and Abuse Project, Coleman, T. and Baladerian, N.J. http://disabilityandabuse.org/survey/index.htm

For additional information on abuse and those with intellectual and developmental disabilities, visit disabilityandabuse.org

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