

2020 Annual Report

SPECTRUM INSTITUTE

Promoting Access to Justice



Thomas F. Coleman
Executive Director

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Spectrum Institute

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A Message from the Executive Director



Despite the challenges we all faced due to the pandemic in 2020, Spectrum Institute continued to make progress with its mission to protect the rights of seniors and people with disabilities. This report highlights our significant activities in 2020. In addition to promoting reforms in guardianship and conservatorship systems, we initiated a *Mental Health Project* and launched a new *Facebook Page*. We look forward to collaborating with more individuals and organizations in 2021. We also invite people to make [donations](#) to support our work.

-- Thomas F. Coleman

Preview of 2021



These are some of the educational, advocacy, and promotional activities planned for Spectrum Institute in 2021.



State Treasurer Fiona Ma has worked with **Phyllis Kalbach** to organize a hearing in the California Committee on Aging about the dysfunctional conservatorship system. Spectrum Institute will submit recommendations to the committee.



Sheri Kellogg, an internet marketing strategist, will assist Spectrum Institute to advance its mission through more effective social media outreach to enlist greater public support for the organization and its nonprofit activities.



Tina Baldwin will be working with graduate student interns in psychology, law, and journalism, as well as mental health professionals to develop an educational and advocacy program for the Mental Health Project.



Thomas Lee Wright, author and Oscar-nominated filmmaker, will advise Tom Coleman in the production of a non-fiction graphic novel titled *Guardianships: Nightmares and Dreams* as a way of educating a broader audience with our message.



Joseph Reyes, deputy public defender in Solano County, represents a young woman with Down syndrome in a conservatorship jury trial scheduled for March. He is using the Jury Instruction Manual developed by Spectrum Institute.

Preview of 2021



The Freedom Files is a podcast hosted by attorney Thomas F. Coleman and sponsored by Spectrum Institute.

<https://pursuitofjusticepodcast.com/>

The Freedom Files – a Pursuit of Justice Podcast – will launch in 2021. The podcast will focus on a wide range of issues involving liberty and justice for seniors and people with disabilities, including their right to freedom of choice on matters such as health care, finances, living arrangements, sexual relationships, marital status, social interactions, and recreational activities.

Guests with real life experiences, as well as those with academic and professional expertise, will be interviewed by the host on Zoom. Episodes will be disseminated in a video format on YouTube and in an audio-only format on the podcast's website and through podcast distributors.



Preview of 2021

Accountability Finally Arrives in Alameda County

Spectrum Institute has been promoting the use of the Americans with Disabilities Act as a tool to secure access to justice for seniors and people with disabilities in probate conservatorship proceedings. We have advised judges that their failure to provide an attorney in these cases is a per se violation of the ADA. Attorneys and conservators have been advised that they can be held liable under California state disability discrimination laws. These warnings have gone unheeded. There has been no accountability . . . UNTIL NOW!



Attorney Evan Nelson incorporated our legal arguments on ADA duties into a [major lawsuit](#) he filed in November 2020 against the Alameda Superior Court and 22 other defendants for violating the rights of Catherine Dubro, an elderly woman targeted by a conservatorship. Evan will be making the system accountable in 2021. Bravo, Evan!

| | | |
|----|---|--|
| 1 | EVAN C. NELSON (SBN 172957) | |
| 2 | LAW OFFICE OF EVAN C. NELSON | |
| 3 | 1261 LOCUST STREET, #191 | |
| 4 | WALNUT CREEK, CA 94596 | |
| 5 | (925) 247-8992 | |
| 6 | EMAIL: EVANCNELSONLAW@GMAIL.COM | |
| 7 | ATTORNEY FOR PLAINTIFF MICHAEL DUBRO AS TEMPORARY | |
| 8 | CONSERVATOR OF THE PERSON AND ESTATE OF KATHERINE | |
| 9 | M. DUBRO AND/OR AS "NEXT FRIEND" FOR KATHERINE M. | |
| 10 | DUBRO, AND FOR PLAINTIFF ROBERT DUBRO | |
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

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| MICHAEL DUBRO as TEMPORARY) | Case No: ACSC RG20081460 |
| CONSERVATOR for the PERSON and ESTATE of) | |
| KATHERINE M. DUBRO and/or as "NEXT FRIEND") | COMPLAINT FOR DAMAGES AND |
| for KATHERINE M. DUBRO; and ROBERT DUBRO.) | DECLARATORY RELIEF |
| | DEMAND FOR JURY TRIAL |
| Plaintiff: | |
| v. | CAUSES OF ACTION: |
| DEFENDANTS KRISTEN BONEY; LEGAL) | 1. Violation of Federal Rights |
| ASSISTANCE FOR SENIORS; TERESA GREEN;) | (42 U.S.C. § 1983); |
| CAMPBELL GREEN, LLP; DENNIS DUBRO; LEO) | 2. Civil Conspiracy; |
| BAUTISTA; EMELIE S. (JOANN) BAUTISTA;) | 3. Violation of Americans with |
| JACKIE MONTERROSA; DANIEL PRESHER;) | Disabilities Act, Title II |
| MARK CEDERBORG; DANIEL LEAHY; PETER) | (Cal. Gov't. Code § 12940(m)); |
| SHELTON; KELLIE HAYES; JAMES PHILLIPS;) | 4. Violation of Unruh Civil Rights Act |
| KATELYN PHILLIPS; DOUGLAS HOUSMAN;) | Disability Discrimination; |
| GEORGE MCNITT; LIVHOME INC. DBA) | 5. Violation of Unruh Civil Rights Act |
| LIVHOME OF SAN JOSE; L AND C CARE) | Marital Status Discrimination; |
| PROVIDERS, INC.; DR. MICHELLE DHANAK;) | 6. False Imprisonment; |
| SHARON BALDOZA; ELDERCONSULT) | 7. Breach of Fiduciary Duties; |
| GERIATRIC MEDICINE; VITAS HEALTHCARE;) | 8. Elder Abuse (§ 15610.07(a)); |
| ACE HOME HEALTH AND HOSPICE. DR. STEVEN) | 9. Elder Abuse (§ 15610.07(b)); |
| CURRAN, THE SUPERIOR COURT OF) | 10. Professional Negligence; |
| CALIFORNIA, COUNTY OF ALAMEDA (FOR) | 11. Negligence; |
| DECLARATORY RELIEF ONLY); AND DOES 1-25.) | 12. Declaratory Relief |
| | Prayer for Relief |
| Defendants. | Demand for Jury Trial |

Preview of 2021

Volunteer and Internship Opportunities

Spectrum Institute welcomes people of all ages – from college students to retired professionals and adults of all ages in between – to serve as volunteers or interns on our projects. If you have an interest in our mission of guardianship and conservatorship reform or advancing the legal right of adults with developmental disabilities to mental health therapy and counseling, we could use your help. If you are a graduate student, we will work with you and your advisor or professor to ensure that your involvement with Spectrum Institute meets your academic needs. Some of the opportunities are listed below.



Podcasting. We need volunteers experienced in podcasting, audio editing, or video editing, or who can help us produce a show by developing content and recruiting qualified guests.



Social Media. We need volunteers with experience in developing a social media presence through Facebook, Twitter, Instagram, LinkedIn, and other social media platforms.

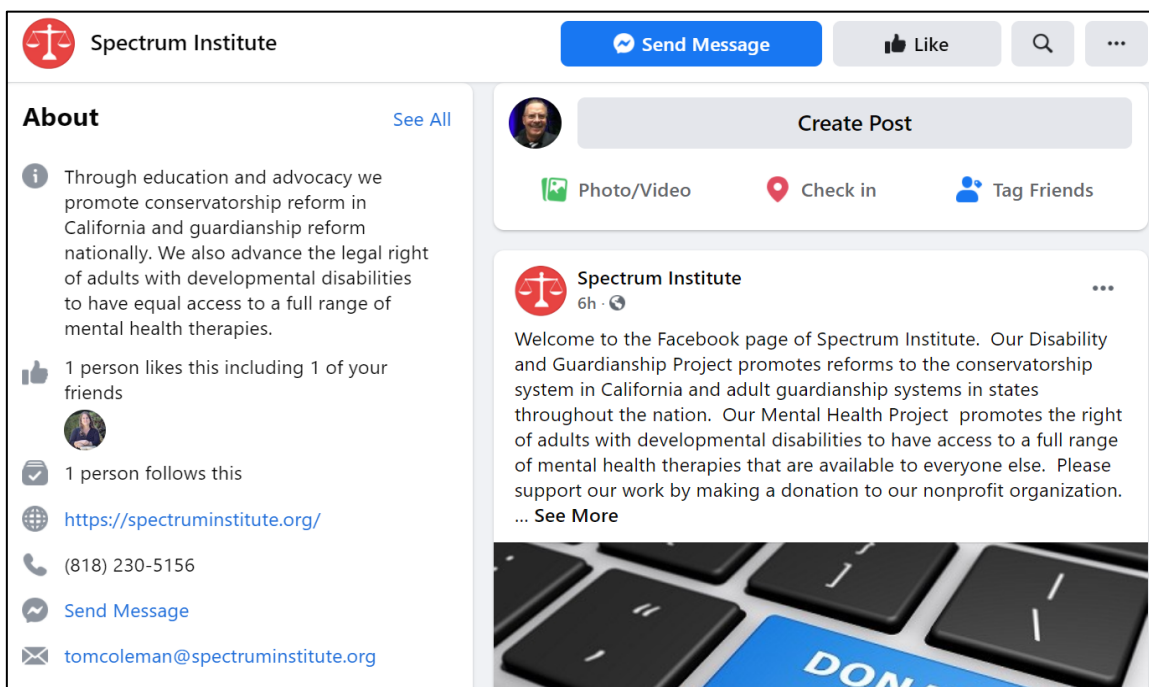


Mental Health. We need graduate students in psychology, law, and journalism and volunteers experienced in the mental health field to help us implement the Mental Health Project.

[Email](#) us to apply for a volunteer or internship position.

Facebook Page


Spectrum Institute created a Facebook page this year. This social media platform will give the organization a way to reach out to a larger audience. It will also enable people to interact with the organization more easily. When we add news of one of our activities, readers will be able to react by posting their comments. Click on the image below to go to the Facebook page.



Website

Spectrum Institute has a website through which viewers can access a variety of features, including webpages for our two projects, our publications, and our “what’s new” page on which we post activities of the organization as they occur in real time. Thomas F. Coleman is the website editor and webmaster. Individuals who wish to support our work can make tax-deductible [donations](#) through the website link to our PayPal account.

[Link to Website](#)

| | |
|---|---|
|  | <u>About Us</u> |
| | <u>Publications / What's New</u> |
| | <u>Disability & Guardianship Project</u> |
| | <u>Mental Health Project</u> |
| <p>Spectrum Institute is a nonprofit organization incorporated in the State of California in 1987. It has been designated by the IRS as a private operating foundation with 501c3 tax-exempt status. The focus of the organization's research, education, and advocacy efforts is primarily directed to conservatorship reform in California and guardianship reform in other states throughout the nation. Attention is also given to research and education on legal issues involved in disability and abuse as well as advocacy on the legal right of individuals with developmental disabilities to have equal access to a full range of mental health therapies.</p> | |
| <u>Our Champions</u> <u>Facebook Page</u> | <u>Legal Advisors</u> <u>Contact Us / Donate</u> |

Mental Health Project



Purpose. The purpose of the Mental Health Project is to promote improved access to mental health therapy for adults with intellectual and developmental disabilities.

Focus. The project focuses on the role of guardians, conservators, and care providers as mental health therapy fiduciaries for this special needs population.

Mission. The mission of the project is to educate these fiduciaries about their duty to take the necessary steps to implement the right of adults with intellectual and developmental disabilities to have prompt access to the necessary and appropriate mental health therapies they need.

Methods. The project accomplishes its mission through research, education, and advocacy. In addition to working with mental health fiduciaries, it also reaches out to primary care physicians who are often the gatekeepers to mental health services, and to psychologists, psychiatrists, social workers, and other licensed mental health professionals.

<https://spectruminstitute.org/disability-abuse-therapy.htm>

Mental Health as a Civil Right

These principles were developed by Spectrum Institute in 2020 and have been endorsed by: The Arc of California, California Siblings Leadership Network, Autistic Self Advocacy Network, TASH, Washington Autism Alliance and Advocacy, Disability Rights Legal Center, Mental Health Advocacy Services, Louisiana State Nurses Association, and the West Virginia Developmental Disabilities Council.

The constitution protects the right of adults to make their own medical decisions. (*Cruzon v. Missouri* (1990) 497 U.S. 261, 262; *Thor v. Superior Court* (1993) 5 Cal.4th 725, 731)

People with developmental disabilities have the right to full participation in society and to have equal access to health care services.

When courts give the power to make health care decisions to guardians or conservators, these fiduciaries should be proactive. They have a [duty](#) to become aware of the need for, and to arrange for, appropriate mental health treatment for adults under their care. ([Daily Journal Commentary](#))

There are a wide range of mental health therapy options available for people with intellectual and developmental disabilities, including therapies to treat trauma, depression, anxiety, and PTSD. (“Intellectual and Developmental Disabilities: A Bibliography on Trauma and Therapy” [[Part One](#): Books] [[Part Two](#): Articles and Other Resources])

Individuals with intellectual and developmental disabilities have a right to prompt medical care. Therapy is essential for those who have experienced [abuse](#).

Additional qualified professionals are needed to provide therapy for individuals with intellectual and developmental disabilities. Those already working in this field should improve their skills with in-service training. Trauma-informed therapy should be included in all training programs.

Care providers who deprive necessary health care services to dependent adults in their custody or care commit dependent adult abuse. Medical care includes mental health therapy. Deliberate indifference to medical and mental health needs is unconstitutional.

People without disabilities have access to a full range of mental health therapies. It is disability discrimination for guardians, conservators, or other care providers to deprive individuals with disabilities access to a full range of mental health therapy options. (Federal Law: Americans with Disabilities Act; State Law: Cal. Gov. Code Section 11135; Wash. Rev. Codes Section 49.60.030)

[Click here](#) for the legal authorities for these principles.

Guardianship Project



The mission of the Disability and Guardianship Project is to promote access to justice for adults with cognitive and communication disabilities who are involved in guardianship or conservatorship proceedings and to promote less restrictive alternatives that are feasible.

The project focuses on adult guardianships and conservatorships involving people with intellectual and developmental disabilities and other adults with cognitive disabilities due to aging, illnesses or injuries.

The mission is accomplished through research, education, public policy advocacy, networking, and increasing public awareness.

<https://disabilityandguardianship.org/>

Guardianship Project

2020 Activities



Website

The project operates a website where visitors can access information on its activities and read or download reports, letters, complaints, and resource materials produced by the project or other sources.

<https://disabilityandguardianship.org/>

Capacity Assessment Report

On July 1, 2020, Spectrum Institute released a report titled: “Capacity Assessments in California Conservatorship Proceedings: Improving Clinical Practices and Judicial Procedures to Better Protect the Rights of Seniors and People with Disabilities.” It was sent to the Governor, Chief Justice, and Legislature of California.

<https://spectruminstitute.org/capacity/>



Guardianship Project

2020 Activities

Freedom of Association

We submitted a [letter](#) to the California Court of Appeal on December 15, 2020, asking it to certify an opinion for publication in the official reports. The court's [opinion](#) clarifies that a superior court judge may not force a conservatee with a developmental disability to associate with a parent against the wishes of the conservatee. We also joined a separate letter sent to the court by the Disability Rights Education and Defense Fund asking for the opinion to be published.

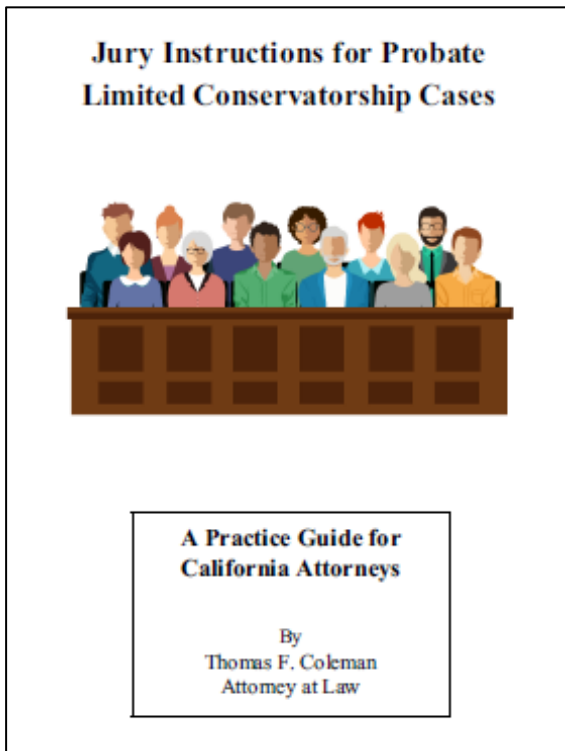


Advice and Referrals

The project received emails and phone calls from individuals and family members who felt victimized by guardianship and conservatorship proceedings. They sought advice and referrals. Due to lack of staffing and resources, we were only able to respond to a fraction of the requests we received.

The Disability and Abuse Project was discontinued in June 2020.

Jury Instruction Manual

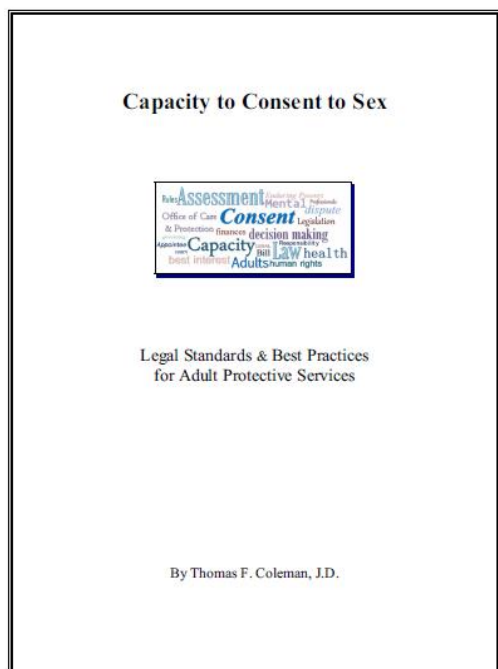


Thomas F. Coleman has developed a jury instruction guidebook for public defenders and appointed counsel who represent proposed conservatees in California's probate courts. It focuses on adults with developmental disabilities who must respond to petitions seeking a limited conservatorship of the person and/or the estate. Spectrum Institute will be notifying judges and attorneys who handle probate conservatorship cases of the availability of this new legal publication.

A book published by the California Judicial Council contains approved jury instructions for most types of civil cases, including mental health conservatorships. Probate conservatorship cases are conspicuously absent from the book, despite the fact that more than 5,000 such cases are filed annually in the state. There are no jury instructions for limited conservatorships even though the Legislature created this special type of conservatorship for adults with developmental disabilities 40 years ago. The new manual is online at:

<https://spectruminstitute.org/jury-instructions.pdf>

Capacity to Consent to Sex



A new report on capacity to consent to sex, released in May 2020, has received excellent reviews from an adult protective services training professional and from a former prosecutor with decades of experience in cases of abuse of elders and dependent adults. The report is titled *Capacity to Consent to Sex: Legal Standards & Best Practices for Adult Protective Services*. Written and published by attorney Thomas F. Coleman, the report is being made available without cost on the website of Spectrum Institute.

In addition to guiding APS workers, the report may help organizations and agencies assisting sexual assault victims. Since the issues of sex and capacity may arise in guardianship and conservatorship proceedings, the report is also a resource for lawyers, court investigators, guardians ad litem, and capacity assessment professionals who are involved in such cases. The report was sent by [email](#) to APS agencies in all [50 states](#) to use as a resource.

To read or download the report, go to: <https://spectruminstitute.org/aps-capacity-sex.pdf>.

Capacity to Consent to Sex *Reviews*

Dear Mr. Coleman,

I've just finished reading your paper on the *Capacity to Consent to Sex*, and I am very impressed! I think that it is a very thorough and significant piece. You have done, in my opinion, what most trainers, writers of trainings, policy makers, and other professionals in the Adult Protective Services and related fields would like to do; but have neither the time nor expertise to pursue. That is to address the question of capacity to consent to sex from various state perspectives, as well as from a rather human perspective.

One note as a trainer and writer/interpreter for training materials; your paper is very well researched and documented as it should be. And, I can't resist adding, for something written by an attorney, is very understandable for we mere mortals who are not attorneys. Thank you for giving me the opportunity to read your paper. It is terrific, and much needed information.

Kevin Bigelow
Consultant, Certificate Program
National Adult Protective Services Association (NAPSA)

Kevin Bigelow is a trainer and consultant specializing in the abuse, neglect, and exploitation of vulnerable populations. Working for Orange County CA government for 25 years, Kevin was an APS worker and supervisor, and later served as the Adult Services Training Coordinator for O.C. Social Services. Since he retired in 2011 Kevin gives, writes, and consults on trainings and elearnings pertaining to APS. Kevin is the Coordinator for the NAPSA Certificate Program.

Capacity to Consent to Sex *Reviews*

Dear Tom:

I am in agreement with Kevin Bigelow as to his comments about your paper. You have taken a very delicate topic and provided a fascinating overview. It is clear that you took considerable time to research the concept of consent. So I have no problem in attaching my name to any “endorsement” of this specific work. I am humbled by the fact that you have reached out to me to be a “peer” critic.

Kind regards

Paul Greenwood

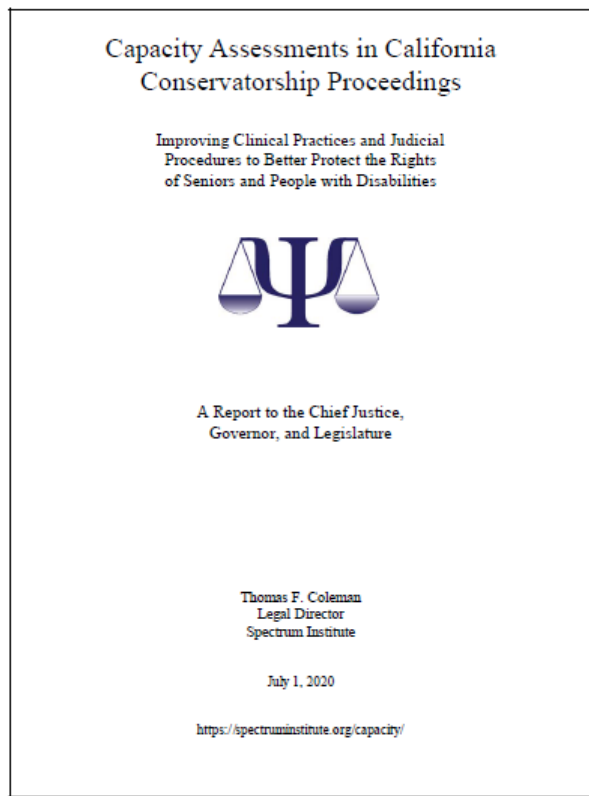
Board Member

National Adult Protective Services Association

Paul Greenwood has been an attorney for over 40 years. For 13 years he worked as a legal aid lawyer in the UK. In 1991 he moved to San Diego with his wife and passed the California Bar. From March 1993 until March 2018 he worked as a deputy district attorney for the San Diego DA’s office. In January 1996 Paul established that office’s elder abuse prosecution unit and has prosecuted over 600 felony cases of elder or dependent adult abuse including homicides, neglect, physical and mental abuse, sexual assaults and financial exploitation. Paul has testified before the US Senate Social Committee on Aging and has been involved in assisting with the drafting of elder abuse legislation in California. Mr. Greenwood is now concentrating on motivating other prosecutors around the nation to get more involved in elder abuse prosecutions.

Capacity Assessment Report

Best Practices



A Capacity Assessment Workgroup was convened in April 2019 to assist Spectrum Institute in reviewing capacity assessment procedures used in probate conservatorship proceedings in California. The 25 members of the workgroup included physicians, mental health professionals, attorneys, elder care consultants, disability rights advocates, public agency officials, and people whose lives have been directly affected by the probate conservatorship process. They received periodic topical reports and were given an opportunity to provide feedback .

The [final report](#), written by Thomas F. Coleman, was sent to the Governor, Chief Justice, and California Legislature on July 1, 2020. It was also sent to the [California Law Revision Commission](#). As seen on the following pages of this annual report, it has received positive reviews. An [addendum](#) on capacity to retain counsel was added to the report after its official release. The report contains dozens of [recommendations](#) to officials and agencies in all three branches of government.

Reviews of Capacity Report

The following reviews have been received regarding our [Capacity Assessment Report](#) released on July 1, 2020.



[Cheryl Mitchell](#) is an elder law attorney in Spokane, Washington, having been in practice for thirty-five years. Cheryl and her husband, Ferd H. Mitchell, are partners and authors of seven volumes of *Washington Practice* – a series of books on Washington State law for attorneys.

“Spectrum Institute and Thomas F. Coleman have done a masterful job of researching and writing *Capacity Assessments in California Conservatorship Proceedings*. This report is replete with citations to legal authorities, as well as actual examples of conservatorship cases gone awry. Its recommendations establish a clear and concise path that can be used to significantly improve the current conservatorship system.”



[Sam J. Sugar, M.D.](#) is a board-certified specialist in internal medicine residing in Hollywood, Florida. He is the founder and director of Americans Against Abuse Probate Guardianship. Dr. Sugar is the author of *Guardianship and the Elderly: The Perfect Crime*. (2018)

“*Capacity Assessments in California Conservatorship Proceedings* is a landmark document. It offers a sobering and cogent analysis of how this ‘system’ intended to assist those in need has instead become a tool of government overreach. The report documents many blatant deficiencies in California’s system. Seeing them so clearly laid out, eloquently explained, and thoroughly documented, raises the question of why the judiciary with its unparalleled latitude and resources has been unable, or more likely unwilling, to recognize the urgency of correcting this long-standing abuse of power.”

Reviews of Capacity Report

The following reviews have been received regarding our [Capacity Assessment Report](#) released on July 1, 2020.



Rick Black and his wife Terri founded [CEAR](#), the Center for Estate Administration Reform in 2018 and have been advocating for better protections for vulnerable adults and their estates since 2013.

“Spectrum Institute and Thomas F. Coleman have done an outstanding job pulling together a team of experts and practitioners from across California to consult as he has conducted extensive research and has written this report on *Capacity Assessments in California Conservatorship Proceedings*. Its recommendations establish a path that can be used to significantly improve the current conservatorship system.



[Kevin Bigelow](#) is the Coordinator for the Certificate Program of the National Adult Protective Services Association. He was an APS worker and supervisor and served as the Adult Services Training Coordinator and Emergency Management Coordinator for Orange County for 25 years.

“Thank you for all of your hard work on this Tom! From what I have read you have pursued this topic with the same combination of professionalism and ability to explain complex issues clearly that I have seen in your other work. Such a report is long overdue, and the workgroup for the project will, I believe, lend great authority to your conclusions and your recommendations. I hope that your very thorough report will be a catalyst that can bring about the badly needed changes and awareness of the all-too-common problems and inequities faced by conservatees.”

Bibliography on Trauma & Therapy

Many adults with intellectual and developmental disabilities are living under orders of conservatorship or guardianship or are dependent on a caregiver. A high percentage of them need mental health counseling or therapy to address prior trauma or current psychological and emotional challenges. A growing body of literature on the subject holds promise for adults with I/DD who would benefit from such therapy. What is needed, however, is for more mental health professionals to become trained on how to provide therapy to individuals with intellectual and developmental disabilities.

This year, Thomas F. Coleman compiled a bibliography of [60 books](#) written by 112 authors and co-authors on a variety of therapeutic modalities currently being used to treat individuals with intellectual and developmental disabilities. He also compiled a bibliography of [49 articles](#) and other educational materials written by 110 authors and co-authors on this subject.

Intellectual and Developmental Disabilities
A Bibliography on Trauma and Therapy

Part One: Books

A large number of books and professional articles have been published on the identification and treatment of trauma experienced by children and adults with intellectual and developmental disabilities. This bibliography has been developed by Thomas F. Coleman, J.D. for the use and benefit of the Disability and Abuse Project of Spectrum Institute. It is being distributed by the project's director, Dr. Nora J. Baladerian, to a network of practitioners, academics, and service providers who have an interest in the topic of abuse and disability. They are being asked to provide comments about the value and usefulness of any of the books or articles listed in this bibliography which they have read. Part One focuses on books published in the last 15 years.

| | |
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|  | <p>Title: The Identification and Treatment of Trauma in Individuals with Developmental Disabilities Author: Sharon McGilvery, Ph.D. Year: 2019 Publisher: NADD ISBN-13: 978-1572561243 Publisher's Description: This book serves as a resource for both practitioners and families on the impact that trauma can have in the treatment of challenging behaviors among individuals with developmental disabilities. It outlines the principle of trauma informed care and provides practical solutions to promote healing and foster resiliency. Appreciating trauma's impact is essential in providing a whole person approach to recovery. It provides invaluable guidance and hope for those who support individuals coping with the tragedies of trauma.</p> |
|  | <p>Title: Trauma-Informed Behavioral Interventions: What Works and What Doesn't Author: Karyn Harvey Year: 2013 Publisher: AAIDD ISBN-13: 978-1937604165 Publisher's Description: This book gives the professionals and paraprofessionals who have dedicated themselves to this field and to the welfare of individuals with intellectual disability a trauma-informed paradigm within which to support people with intellectual disability psychologically and to establish the critical elements needed for recovery. As the author states in her introduction, "when the individual recovers, behaviors change. When the individual recovers, happiness can begin."</p> |

Intellectual and Developmental Disabilities
A Bibliography on Trauma and Therapy

Part Two: Articles and Other Resources

A large number of books and professional articles have been published on the treatment of children and adults with intellectual and developmental disabilities who have experienced trauma or who need therapy for other mental health conditions. This bibliography was developed by Thomas F. Coleman, J.D. for Spectrum Institute. We invite feedback about these books, articles, and other resources from practitioners, academics, service providers and others who have an interest in the topic of abuse, disability, and therapy. We welcome comments about the value and usefulness of any of the books and articles listed in this bibliography. Part One focuses on books published over the last 15 years. Part II focuses on articles and other resources published in the same timeframe. Summaries may contain excerpts from the articles, abstracts, or websites.

| | |
|---|--|
|  | <p>Title: Eye Movement Desensitization and Reprocessing in the treatment of trauma with mild intellectual disabilities: a case study Author: Richard Dilly Year: 2014 Publisher: Advances in Mental Health and Intellectual Disabilities Summary: This paper explores the effectiveness of Eye Movement Desensitization and Reprocessing (EMDR) therapy in an individual with mild intellectual disabilities currently compulsorily detained in secure care. The study identified reductions in symptoms in all three core clinical subgroups of the PDS: re-experiencing, avoidance and arousal, with outcomes being maintained at one-month and six-month follow-up. Reduction in the strength of ratings was most evident in the avoidance domain. https://www.emerald.com/insight/content/doi/10.1108/AMHID-06-2013-0036/full/html</p> |
|  | <p>Title: Trauma Informed Care: Applications for individuals with Intellectual/Developmental Disabilities Presenter: Andrea Winkler, LCSW, LCSW, Year: 2019 Forum: University of North Carolina, School of Social Work Summary: This presentation is designed to introduce care providers for those with intellectual and/or developmental disabilities to trauma informed care. Research indicates that individuals with intellectual and/or developmental disabilities are at heightened risk for traumatic histories. Additionally, there are factors specific to intellectual and/or developmental disabilities that make identification and treatment of such issues difficult. With national attention and accolades for trauma informed approaches for the general population, it is important to begin to understand and apply this framework to services for this population. https://cls.unc.edu/6-feb-12-trauma-informed-care-applications-for-individuals-with-intellectual-and-developmental-disabilities-w-andrea-winkler-lcsw-lcsw-duke-health/</p> |

Heroes



A [page](#) was added to our website to honor the litigants and advocates who have been champions for justice in conservatorship and guardianship proceedings.

Litigants

We are grateful to the men and women whose unfortunate experiences with the conservatorship system have provided examples of the need for systemic reforms in this area of the law:

Gregory D, an autistic young man whose court-appointed attorney waived his rights rather than defend them; **Michael P**, a conservatee with an intellectual disability who lost his life after the probate court failed to protect him; **Stephen L**, an autistic young man whose appointed attorney would have surrendered his right to vote had it not been for outside intervention; **Theresa J**, an elderly woman whose powers of attorney and trust documents were unnecessarily voided by the court and whose court-appointed attorney violated ethical duties of confidentiality and loyalty by arguing against her stated wishes; **David R**, a former producer with National Public Radio who was stripped of his right to vote and whose fiancé contacted over 50 attorneys, none of whom would help; **Olivia B**, an autistic young woman whose case was the subject of a Supreme Court decision requiring appellate courts to use stricter scrutiny in evaluating the sufficiency of evidence in conservatorship cases; **Ashley E**, an autistic young woman in whose case the Court of Appeal ruled that presence of a proposed conservatee at a hearing on the petition is jurisdictional; **Katherine D**, an elderly woman who was not provided an attorney either in the trial court or on appeal, thus completely violating her right to counsel; and **Elizabeth H**, the young woman with Down syndrome whose public defender's demand for a jury trial inspired me to write a manual of proposed jury instructions for limited conservatorship cases.

Heroes



A [page](#) was added to our website to honor the litigants and advocates who have been champions for justice in conservatorship and guardianship proceedings.

Advocates

We are inspired by the dedication and competence of attorneys who have taken steps to secure access to justice for adults with actual or perceived disabilities in probate court proceedings:

Tony Chicotel of San Francisco for writing an excellent guide on conservatorship defense; **Lisa MacCarley** of Glendale for sharing years of her experience in probate court; **Brook Changala** of Long Beach for speaking truth to power in the case of Theresa J, joining an amicus curiae brief in the case of Olivia B, and arranging for an MCLE training with the Long Beach Bar Association; **Pat Murphy** of Lancaster for speaking out for better training for court-appointed counsel; **Susan Sindelar** of Santa Barbara County for filing the first appeal for a limited conservatee in decades – a case resulting in a major victory in the Supreme Court; **Joseph Reyes** of Solano County for demanding a jury trial for a proposed conservatee – a rarity in California; **Jay Kohorn** of the California Appellate Project for helping conservatees receive court-appointed counsel on appeal; **Gerald Miller**, a court-appointed appellate attorney who helped secure victories on appeal for Olivia B and Ashley E; **Stephen Dale** of Contra Costa County who helped obtain endorsements from The Arc of California for various conservatorship reform proposals; **Evan Nelson** who filed a masterfully-written lawsuit against the attorneys and fiduciaries in Alameda County who violated the civil rights of Katherine D; **Sandra Slaton, Lanny J. Davis, and Dario Frommer** for their tenacious and creative advocacy for a client unjustly deemed to lack the capacity to litigate; **Justice Maria Stratton** who, as presiding judge of the probate court in Los Angeles, disclosed “inconvenient truths” about the conservatorship system there; and **Cheryl Mitchell** of Spokane, Washington, for providing advice on best practices in adult guardianship proceedings.

Friend of the Court

Conservatorship of O.B.



Spectrum Institute sent a letter to the California Supreme Court on December 7, 2020, asking the court to delete an appellate opinion from the law books. The opinion was recently published by Division Six of the Second District Court of Appeal. Very few appellate opinions are published in the official reports, but when they are, the decisions create binding precedent throughout the state. An unpublished opinion only binds the immediate parties to the case. In this instance, the Court of Appeal went out of its way to publish an opinion that unfortunately, perhaps inadvertently, undermines the constitutional and statutory requirement that a conservatorship not be imposed on an adult unless less restrictive alternatives have been considered and are found to be unworkable. This opinion dismisses this important safeguard in a way that sends the wrong signal to judges and attorneys in California. Here is a link to our letter:

<https://spectruminstitute.org/supreme-court-depublish.pdf>

Friend of the Court

Lund v. First Republic Trust Company



Attorney Brook Changala filed an amicus curiae letter on behalf of Spectrum Institute with the California Supreme Court on April 3, 2020.

The letter urged the justices to grant review of an appeal by Bradford Lund, grandson of the late Walt Disney. The underlying issue in the appeal involves a decision by Los Angeles Superior Court Judge David Cowan prohibiting Mr. Lund from participating in litigation involving his inheritance and appointing a guardian ad litem (GAL) to represent the interests of Mr. Lund in the litigation over his objection. The order effectively makes Mr. Lund a bystander in his own case and interferes with his right to have his own attorneys advocate for him in the proceeding. The decision to appoint a GAL was made without an evidentiary hearing and was based on the judge's perception that Mr. Lund has a disability that precludes him from directly participating in the litigation through his own attorneys. Spectrum Institute urged the Supreme Court to take the case to determine whether Mr. Lund has the right to challenge the appointment of the GAL through an appeal in state court. To read the amicus curiae letter to the Supreme Court, submitted by attorney Brook J. Changala on behalf of Spectrum Institute, go to: <https://disabilityandguardianship.org/S261158.pdf>

Legislative Testimony



Tina Baldwin, Chairperson of the Board of Trustees of Spectrum Institute, made a presentation this year to the Joint Legislative Executive Committee on Planning for Aging and Disability Issues. Tina stressed that individuals with developmental disabilities have a legal right to mental health therapy, especially during a pandemic. She advised committee members that "Every person with a development disability who has mental health needs is entitled to mental health therapeutic services under the Americans with Disabilities Act." For a copy of her remarks, go to: <https://spectruminstitute.org/tina-presentation.pdf>

Tina also made a [presentation](#) this year to the Washington State Certified Professional Guardian Board focusing on the duty of guardians to ensure that persons under their care receive prompt and appropriate mental health services when they are needed.

Legislative Proposal



Although it does not contain the broad range of protections that Spectrum Institute's [model legislation](#) on the right to counsel for conservatees does, Senate Bill 1016 does have one good provision.

If enacted into law, appointed counsel for a proposed conservatee in a limited conservatorship proceeding would be required to advocate for the expressed interests of the individual being represented. Under current law many appointed attorneys in such cases are not acting as true advocates for their clients but rather function as a de-facto court investigator or guardian ad litem by advocating for what they, the attorneys, think is best for the clients rather than what the client wants. To read a letter sent to the bill's author suggesting amendments to strengthen the measure, [click here](#). The bill was [amended](#) to incorporate some of our suggested changes.

Legislative Outreach



Attorneys Thomas F. Coleman and Lisa MacCarley met with legislators and staff members in Sacramento on January 17 to educate them about the right-to-counsel bill developed by Spectrum Institute. Letters were sent to one [senator](#) and 11 assembly members, including the [chair](#) of the California Assembly's Select Committee on Intellectual and Developmental Disabilities.

The bill will require that all conservatees and proposed conservatees have an attorney represent them in court proceedings and that the role of these attorneys is that of a zealous advocate to advance the wishes of the client and to defend the client's rights. It would also direct the State Bar to develop performance standards to ensure that such attorneys are performing competently and that their advocacy methods ensure access to justice for their clients. For a copy of a report on this bill, [click here](#).

Judicial Outreach



JUDICIAL COUNCIL OF CALIFORNIA

Thomas F. Coleman, legal director of Spectrum Institute, made a presentation at the January 17 meeting of the California Judicial Council in Sacramento. He urged this rule-making body of the judicial branch to establish a pilot project for the management of appointed attorneys who represent seniors and other adults with disabilities in probate conservatorship proceedings. He suggested that the project be modeled after a highly successful test program that centralized management of appointed attorneys representing children and parents in juvenile dependency proceedings. In that program, some 20 superior courts throughout the state surrendered management of these attorneys to the Judicial Council, thereby allowing local judges to adjudicate cases rather than spending time and resources to recruit, train, appoint, pay, and supervise attorneys who appear before them in dependency cases. For a copy of Coleman's written submission, [click here](#).

Judicial Outreach

Securing the Right to Counsel on Appeal



Spectrum Institute has been promoting the appointment of attorneys to represent conservatees in appellate proceedings as a necessity under the [Americans with Disabilities Act](#).

In 2018 we successfully convinced the California Court of Appeal to appoint an attorney for a young autistic woman whose public defender filed an appeal on her behalf to challenge the order of conservatorship. ([Conservatorship of O.B.](#))

In 2019 we expanded this precedent to a young woman with autism who was a respondent on appeal. ([Conservatorship of A.E.](#)) In both cases the judgment below was reversed, largely because the conservatee had competent appellate counsel.

This year we succeeded in having counsel appointed for an elderly woman who is a respondent in a conservatorship appeal. ([Conservatorship of Betty R.](#))

The Second District Court of Appeal appears to recognize that, due to their cognitive disabilities, appellants and respondents with cognitive disabilities need the assistance of counsel so they may meaningfully participate in the appellate process. Without counsel, these litigants would be little more than observers in legal proceedings that will have a profound impact on their lives.

Judicial Rulings



The California Supreme Court issued a landmark [opinion](#) declaring that appellate courts must use stricter scrutiny in analyzing the sufficiency of evidence to support an order of conservatorship. Spectrum Institute filed an [amicus curiae brief](#) in the case. *Conservatorship of O.B.* (2020) 9 Cal.5th 989.



The California Court of Appeal published an opinion reversing a conservatorship order because the judge never once laid eyes on the proposed conservatee. Spectrum Institute was instrumental in having appellate attorney Gerald Miller appointed for the young autistic woman whose rights were violated. Miller joined with Lisa MacCarley, counsel for the woman’s mother, in successfully arguing for a reversal.

The [opinion](#), which is binding on trial courts throughout California, states: “A prospective conservatee who suffers from Autism Spectrum Disorder, regardless of the degree of mental impairment, has due process rights. The Legislature has provided protection for a 'special needs' person. Presence in court so that the trial judge may see and hear the person is a necessary component of the process.” The opinion adds: “Section 1825 is like the light switch to the courtroom and until it is turned on (i.e., satisfied), the trial court cannot truly see the big picture. It is precluded from ruling on the merits of a petition to appoint a conservator until it complies with section 1825.” *Conservatorship of A.E.* (2020) 45 Cal.App.5th 277.

Agency Testimony



Chaya Mandelbaum
Chair



Dale Brodsky
Councilmember



Tim Iglesias
Councilmember



Gabriel Sandoval
Councilmember



Dara Schur
Councilmember

Spectrum Institute submitted a request to the California Fair Employment and Housing Council asking the agency to modify [proposed regulations](#) implementing a state law prohibiting discrimination by state-funded agencies. Courts need to be reminded, in no uncertain terms, of their obligations under the ADA and the equivalent state law to ensure that people with cognitive disabilities have effective communication and meaningful participation in legal proceedings. These obligations exist, even without a request for accommodation, when someone with an official role in a legal proceeding knows or reasonably should know that an individual with a disability may need an accommodation to ensure equal and full access to the proceeding. Attorney Thomas F. Coleman testified before the Council at its [meeting](#) on February 25 in Los Angeles. To read the written request to the Council, [click here](#). To read an addendum of additional recommendations, [click here](#).

Agency Outreach



We obtained [data from DDS](#) in December 2020 showing that in 2019 there were 49,637 regional center clients (29%) in probate conservatorships. That compares with 43,341 (28%) of such clients in conservatorships in 2016.



The staff of the California Law Revision Commission issued a report in November recommending a research agenda for 2021. A capacity assessment report submitted by Spectrum Institute received honorable mention in the staff report but did not make the cut for research priorities suggested by staff. To read excerpts from the staff report, [click here](#).



Spectrum Institute sent a request to the California Department of Aging for records on the number of older adults who are in probate conservatorships. For a copy of the records request, [click here](#). A representative responded that the agency does not have records showing the number of older adults who are in probate conservatorships. "[We count what we care about](#)."

State Bar Testimony



THE STATE BAR OF
CALIFORNIA

Thomas F. Coleman, legal director of Spectrum Institute, made presentations to the State Bar on January 24, 2020 and December 9, 2020.

In January, Coleman encouraged the State Bar to take two actions in 2020: (1) support our right-to-counsel bill to ensure that seniors and other people with disabilities have effective representation of counsel in probate conservatorship proceedings; and (2) take pro-active measures to ensure that the State Bar's complaint system is accessible to people with cognitive and communication disabilities. For a copy of his written submission, [click here](#). Trustees listened attentively to the presentation. The vice-chair indicated that the State Bar will investigate complaints from third parties alleging misconduct against a client.

In December, Coleman spoke at a hearing on attorney competency and discipline. He warned that large case loads of public defenders may be depriving seniors and people with disabilities of effective representation in probate conservatorship proceedings. He urged a State Bar audit of two counties to verify the severity of the problem. He also recommended that the State Bar conduct random audits of cases in which private court-appointed attorneys have represented proposed conservatees. Such pro-active measures may be the only way to make the State Bar's investigation and discipline system accessible to people with cognitive disabilities.

Outreach to Lawyers

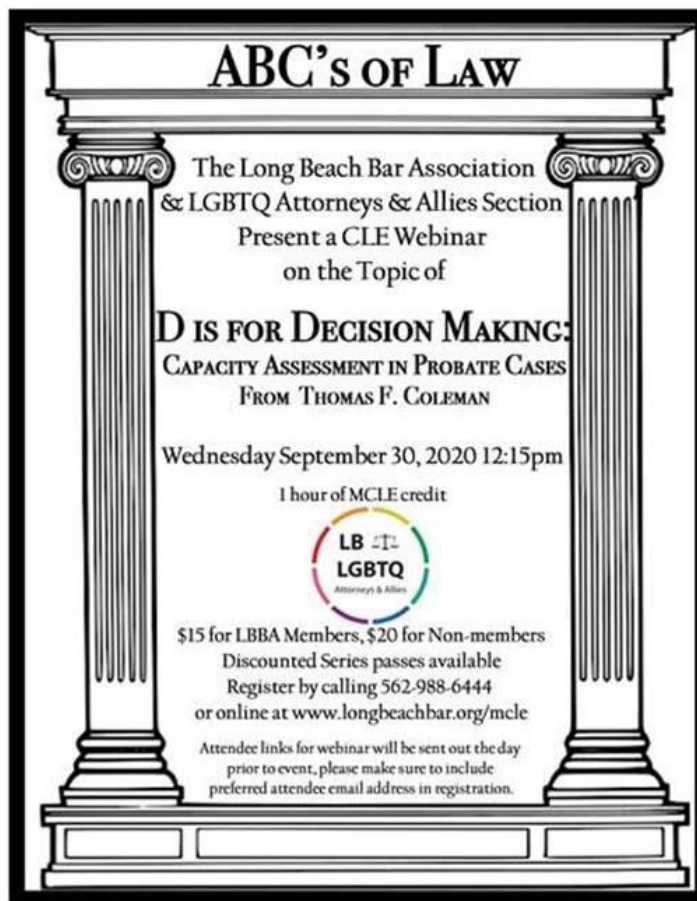


A communication was sent to the Executive Committee of the Trusts and Estates Section (TEXCOM) of the California Lawyers Association. We asked the committee to endorse the principles of the [right to counsel](#) bill we drafted for the California Legislature to consider in 2021. We also asked the committee to support the recommendations in the [capacity assessment report](#) we sent to the Chief Justice, Governor, and Legislature on July 1, 2020.

The communication was sent to attorneys Ralph E. Hughes and Anne Rudolph, authors of “A Lawyer is a Lawyer is a Lawyer” – a [commentary](#) about the duty of court-appointed attorneys to act as advocates for proposed conservatees, not as “best interest” guardians ad litem whose loyalty is to the judge who appointed them to the case rather than to the client.

Outreach to Lawyers

Thomas F. Coleman presented a webinar on capacity assessments in probate proceedings. The event was held on September 30, 2020. It was sponsored by the Long Beach Bar Association. For access to the handout, which includes links to reference materials, [click here](#). Brook Changala was instrumental in arranging for this event to occur.





The Daily Journal legal newspaper has published 25 [articles](#) written by Thomas F. Coleman over the past five years. Because of their educational value, the paper's editor removed the "paywall" this year, thus placing the articles in a publicly available area of the newspaper's website. Links to the articles appear below.

-
- [Jury trials are an elusive right for proposed conservatees](#)
 - [#FreeBritney movement calls for conservatorship reforms](#)
 - [Guardian ad litem process raises serious constitutional issues](#)
 - [Conservatees are legally entitled to better therapy options](#)
 - [Making the State Bar complaint system ADA accessible](#)
 - [Crafting better legal services in conservatorship cases](#)
 - [The right to counsel in California needs a legislative fix](#)
 - [We count what we care about: Conservatees in California](#)
 - [Judicial Council has been misinforming about the ADA](#)
 - [New training rules for California conservatorship attorneys](#)
 - [Looking beyond new training requirements for conservatorship attorneys](#)
 - [HELP WANTED: Brave lawyers to challenge state guardianship systems](#)
 - [More training needed for conservatorship attorneys](#)
 - [Marriage case will require balancing of rights](#)
 - [Access to justice for the disabled](#)
 - [Third-party standing as an ADA accommodation on appeal](#)
 - [Reform at state, federal level must include all vulnerable adults](#)
 - [Access to Justice: E\(quality\) = MC410](#)
 - [Disability awareness all day, every day](#)
 - [Delay and denial of voting rights in California](#)
 - [Court legal services program appears to violate ADA](#)
 - [Deja vu for disability rights at the Justice Department](#)
 - [Legal system without appeals should raise eyebrows](#)
 - [Reform long overdue for conservatorship process](#)
 - [Time to end disability stigmas in judicial opinions](#)

Media Outreach



Mad in America

SCIENCE, PSYCHIATRY
AND SOCIAL JUSTICE

Mad in America, an online magazine with stories advancing the need for profound changes in the field of psychiatry, published a story on October 25, 2020, about voting rights of people with mental disabilities. The story, written by Miranda Spencer, gives a significant mention to the work of Spectrum Institute using the Americans with Disabilities Act to secure voting rights for conservatees in California.

<https://www.madinamerica.com/2020/10/voting-mentally-ill/>

Student Outreach



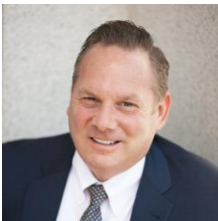
Writing from his experience as legal director of Spectrum Institute, Thomas F. Coleman sent a written presentation to students at the University of California at Los Angeles for a class titled “Perspectives on Autism and Neurodiversity.” The class is taught by Judy Mark and Linda Demer, M.D., Ph.D.

The document focused on injustices experienced by young adults with autism in probate conservatorship proceedings in California. It also discussed the efforts of the Disability and Guardianship Project to promote reforms, in both policy and practice, to protect the rights of proposed conservatees and to ensure they have access to justice in these proceedings.

The use safe and legal supported decision-making arrangements as a less restrictive alternative to conservatorship is one of the goals advanced by Spectrum Institute. The written presentation was titled: “Autism and Conservatorships: Protecting Civil Rights and Providing Access to Justice.” A copy of the presentation is found online at: <https://spectruminstitute.org/autism-ucla.pdf>

Legal Advisors

In addition to Brook Changala (see p. 27), we were fortunate to have three other California attorneys as legal advisors this year. We are grateful for their assistance.



Evan Nelson is a civil litigator in Walnut Creek, California. He represented family members in a conservatorship case the Alameda County Superior Court and on appeal. He recently filed a [civil lawsuit](#) against the superior court and 22 other defendants for violating the civil rights of an elderly woman during a conservatorship proceeding.



Lisa MacCarley is an attorney in Glendale, California, who has more than 25 years experience in probate and conservatorship litigation. She has made [presentations](#) to the California Judicial Council on the need for conservatorship reforms. Lisa has also reached out to members of the California Legislature to educate them about systemic problems with the conservatorship system and to enlist their support for legislative reforms.



Anthony Chicotel is a staff attorney for the California Advocates for Nursing Home Reform (CANHR). His expertise is in the rights of long-term care consumers, conservatorships, and health care decision-making. Tony is the author of a legal [guidebook](#) titled "California Conservatorship Defense: A Guide for Attorneys." He often is called to testify as an expert in elder law issues before various committees of the California Legislature.

Elder Care Advisors



Theresa Jankowski and Sharon Holmes have become advisors to the Disability and Guardianship Project. Theresa knows firsthand what it is like to be unfairly targeted by a conservatorship proceeding. She also knows what it is like when a judge refuses to accept your chosen attorney and forces an appointed attorney on you – one that refuses to advocate for your stated wishes and who fails to defend your rights. As a retired career management employee of the FBI, she also knows how to fight back and [oppose](#) such injustices.

Sharon is an eldercare consultant who helps seniors stay out of conservatorships by finding assisted living environments that provided the proper balance of protection and independence for them. Sharon has been a lay advocate in Theresa's case, monitoring her legal proceeding and speaking up in court against unjust practices of the attorneys and the judge on many occasions. We are fortunate to have them as advisors to the project. (Photo: Sharon (left), Theresa (middle), Tom Coleman (right)).

Personal Essay



In this essay, Thomas F. Coleman explains how he was recently inspired to include the issue of abuse and the right to mental health therapy in the agenda of Spectrum Institute.

Coleman is the primary author of [*Abuse of People with Disabilities: Victims and Their Families Speak Out*](#), (2013) © Spectrum Institute.

Many people with intellectual and developmental disabilities are in guardianships and conservatorships. Many have been abused and are experiencing the lingering effects of that abuse. Others have mental health problems not associated with abuse but which nonetheless need to be addressed in therapy.

The Guardianship Project and the Mental Health Project will jointly promote the civil right to mental health therapy for people with developmental disabilities, especially for those who are in conservatorships or guardianships and who therefore depend on others to locate qualified professionals and obtain such therapy for them. To read the essay, [click here](#).

Corporate Structure



Spectrum Institute is a private operating foundation incorporated in California in 1987. It has state and federal tax-exempt status. To read the history of Spectrum Institute online, [click here](#).

The corporation is governed by a five-member board of trustees: Current trustees are: Tina Baldwin (Idaho), Diane Coleman Rogers (Michigan), Michael A. Vasquez (California), and Thomas F. Coleman (California). Current officers are: Tina Baldwin (Chairperson), Thomas F. Coleman (Executive Director and Treasurer), and Michael A. Vasquez (Secretary).



Attorney Brook Changala will join the board of trustees in January 2021. He has represented Spectrum Institute in filing amicus curiae briefs in two cases before the California Supreme Court. A graduate of Loyola Law School, Brook has been practicing law for 14 years. He lives in Long Beach, CA.



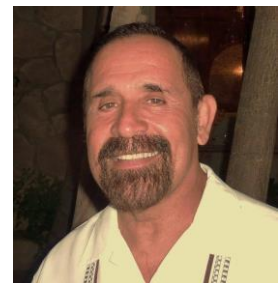
Thomas
Coleman



Tina
Baldwin



Diane
Coleman
Rogers



Michael
Vasquez

Donate



We are grateful to those who made donations in 2020 to support our educational and advocacy activities, including: Thomas Coleman, Michael Vasquez, William Breto and Fred Brugal, Tina Baldwin, John Di Pietro and Rich Carbonaro, and a generous donor who wished to remain anonymous. Thanks to Paula Davis and Michael Vasquez for their volunteer services proofreading many of our publications.

Individuals who would like to make a financial contribution in 2021 may do so by sending a check or donating online by credit card through our PayPal account. Since Spectrum Institute has tax-exempt status under section 501c3 of the Internal Revenue Code, donations are tax deductible under federal law. Information on how to donate is found at: <https://spectruminstitute.org/donate.htm>

Donate to
Spectrum Institute

\$100.00
USD

Make this a monthly donation ?

Donate with PayPal

Our work is done on a pro bono basis. The donations we receive are used for basic operating costs. As of the date this report was released, the foundation had a net worth of less than \$5,000. [2019 Annual Report](#). [2018 Annual Report](#). More information about the corporation (C1400692) is available on the [website of the California Secretary of State](#).



Honorable Mention

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“Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”

Justice Louis Brandeis
Olmstead v. United States

“Supported Decision-Making protects and enhances the principal prerogative all people have to make their own decisions and direct their own lives to the maximum of their abilities and can improve life outcomes like health, independence, safety, and employment.”

Jonathan Martinis
National Resource Center for
Supported Decision-Making



“While guardianship was designed to protect the elderly, it is a process that is often used to take advantage of them. Guardianship in many ways is the most severe form of civil deprivation which can be imposed on a citizen of the United States.”

U.S. Rep. Claude Pepper
House Select Committee
on Aging

